

My Child Was Taken Away Because Of A False Accusation. What Can An Attorney Do?

September 5, 2013 | by Michael Ascher

Dear Ask the Attorney:

What can an attorney do for me if I was falsely accused of child abuse and neglect? My child was taken without any evidence and I have proof that it never really happened. I really miss my daughter and just want to get my baby back.

I.C.

*Our guest blogger today is **Michael R. Ascher, Esq.** Mr. Ascher is a partner in the firm and is engaged in a litigation practice handling both **criminal** and complex civil matters. His practice includes all categories of criminal cases including drunk driving defense, sex offenses, drug and white collar crimes, computer crime, conspiracy, fraud & theft cases and matters involving the **Division of Child Placement and Permanency (DCPP formally known as DYFS).***

Dear I.C.:

The question cannot be answered as you have submitted. An accusation of child abuse or neglect can arise in either a DCPP proceeding or in a criminal case. However, the issues are different in both. You would have a different set of rights in a DCPP matter because it is civil in nature. However, a criminal prosecution for endangering the welfare of a child would invoke additional constitutional rights including the right to a jury trial.

You indicate that your child was “taken;” if this was a DCPP removal proceeding, commonly known as a Dodd Removal, you would have the right to challenge the removal. You should obtain the services of an attorney skilled in DCPP law and administrative procedures. You have definite rights which must be immediately implemented. Those rights include putting the burden of proof on the Division and

obtaining any evidence that they claim they have against you. You also have a right to present exculpatory evidence (evidence of your innocence) to show that their allegations are unfounded.

There are actually, two (2) separate proceedings which would be ongoing. The first would be an administrative proceeding undertaken by the Division once they receive a referral (or notice) of either abuse or neglect. The second proceeding would be the Dodd removal which would be conducted in the Superior Court of New Jersey – Family Part. You would have the right to seek the return of your child upon application made by an attorney. In order to do so, you must confront the allegations against you and present positive evidence about yourself and your home environment.

If your child is placed in foster care there are alternatives including placement of the child with family members or friends if they are determined to be appropriate custodians.

Unfortunately, the question you pose does not provide sufficient facts to allow a detailed response. However, one thing is clear. You should obtain the services of an attorney who is fully knowledgeable about Title 9, the Statute governing abuse or neglect of children and removal actions at the Administrative Code which sets forth the standards for Dodd Removals, as well as someone who is well versed with the Criminal Code of New Jersey if you are being charged under criminal statutes

“Ask the Attorney” is a blog in which answers to your legal questions submitted to asktheattorney@einhornlawyers.com may be answered. The answers to the questions are for informational purposes only and are not to be construed as legal advice or the creation of an attorney-client relationship. The facts of each case are different; therefore you should seek competent legal representation.