

Do I Have To Let The DCCP (DYFS) Case Worker Into My House?

August 30, 2013 | by Einhorn Barbarito

Dear Ask the Attorney:

The judge terminated litigation in my DYFS case before a fact finding hearing with no findings of abuse or neglect and stated that there were no safety issues. However, the case worker is insisting he needs to come to my house to make sure that everything is fine so he can close out the case. Am I legally obligated to entertain his request? Or can I refuse his request?

Thank you,

N.C.

Our Guest Blogger 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 Protection and Permanency \(formerly DYFS\)](#).

Dear N.C.:

Congratulations on receiving a dismissal on a pre-fact finding basis. Before I can adequately answer your inquiry, I would need to know the basis for that dismissal. If the Judge terminated the litigation without a finding of abuse or neglect, your case may remain open on an administrative level. If there was a judicial finding after a fact-finding hearing and the Court held that abuse or neglect had not been proven by DCCP, the matter should have concluded.

The Division might still seek to close its file by conducting a final visit. However, a finding of no abuse or neglect would permit you to refuse that visit. More facts would be necessary to provide you with a precise answer.

The only remaining aspect of your case is governed by the New Jersey Administrative Code. Under the Code, the Division would have made an administrative finding on the allegations made against you. As of April 1, 2013, the category of administrative findings was changed to provide for four (4) rather than two (2) specific findings. The first finding remains the same and is “substantiated,” which means that the Division found the existence of abuse or neglect and harm or risk of harm. That requires your name be placed in central registry. The next category is “established” which means that the evidence accumulated by the Division established that your child or children were either abused or neglected as defined in the statute, but the particular acts alleged do not warrant a finding of substantiation due to extenuating circumstances. The next finding is “not established” which means the Division did not obtain sufficient evidence to find that your child or children were either abused or neglected but evidence of some harm exists. The final category is “unfounded” which means there was neither evidence of abuse, neglect nor harm.

Individuals who have been substantiated have their name placed in a central registry. Unfounded findings result in expungement from the records after three (3) years; “established” or “not established” findings do not result in inclusion in the registry. However, those records may be obtained during a matrimonial, criminal or other proceeding. There is no present way for an individual to administratively challenge or appeal either an “established” or “not established” finding. That appears to be a violation of due process rights. Under the circumstances of your inquiry, it would appear that the Division is seeking to close its case by making a final visit to the house. Your DCPD attorney should contact the Deputy Attorney General involved on behalf of DCPD to determine the actual basis for the final visit.

A concrete answer to your inquiry cannot be provided since the basis for the dismissal was not presented in your question. Ultimately, you should seek the advice of an attorney who is totally familiar with Title 9, the Child Abuse and Neglect Statute and also the specific provisions of the New Jersey Administrative Code which governs DCPD investigations contained in N.J.S.C.10:129-1 et seq.

“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.