ASCEND JUSTICE

SELF-REPRESENTATION IN DCFS ADMINISTRATIVE EXPUNGEMENT HEARINGS (APPEALS OF INDICATED REPORTS)

A MANUAL FOR SELF-HELP BY ASCEND JUSTICE

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TABLE OF CONTENTS

Preface ……..…….……..……..…...5
About the Family Defense Center ..…….…..5
About this Manual …….……..……..……..7

I. BACKGROUND TO DCFS INDICATED REPORTS

Overview of DCFS Investigations ……...…….……..9
Challenging a DCFS "Indicated" Report .....……...……..14

II. HOW TO HANDLE YOUR OWN APPEAL FROM FILING TO DECISION

Getting Started ……..…..15

1. *Should I appeal even if I don't have a lawyer?*
2. *What can I appeal?*
3. *When can I appeal?*
4. *Can an appeal hurt me?*
5. *How do I appeal and how will my appeal start?*
6. *Do I really have any chance of winning if I represent myself?*
7. *Can I have someone besides a lawyer speak for me?*
8. *Why is this process called an "expungement" hearing or "appeal" when there has been no conviction against me?*
9. *What is an expedited appeal and who gets one?*
10. *Who is considered a child care worker?*
11. *How do I know if DCFS has received my request for an appeal?*

What Happens Before the Hearing?…….……...23

1. *What is the pre-hearing conference?*
2. *How does the conference start?*
3. *What do I do if my appeal was dismissed because I missed the pre-hearing conference call from the judge?*
4. *Why is it important to pay attention to scheduling the hearing date?*
5. *What if I am unable to get witnesses I need on the date I am offered?*
6. *Does DCFS ever drop cases before the hearing?*
7. *Will I find out before the hearing what evidence DCFS is going to present against me?*
8. *Who should I list as witnesses?*
9. *Should I have as many character witnesses as possible?*
10. *What is a subpoena and do I have to subpoena witnesses?*
11. *What time should be included on the subpoena for the witness to testify?*
12. *Can my witnesses testify over the phone?*
13. *What do I do if something unexpected happens and I need to discuss it with the judge and DCFS' lawyer?*

How Do I Prepare for My Hearing? ……...31

1. *What rules should I know?*
2. *What do the terms "abuse" and "neglect" mean?*
3. *How do I start in my preparation?*
4. *What do I do with the investigative file?*
5. *How should I review the specific allegations against me? How can I use the definitions of these allegations to my advantage?*
6. *What areas should I focus on in preparing my cross-examinations of the DCFS witnesses?*
7. *What kinds of questions should I ask in cross examination? What form should my questions take?*
8. *How do I prepare to question DCFS' other witnesses? What questions should I ask those witnesses?*
9. *Who should I call as my own witnesses? How should I present their testimony?*
10. *How do I examine myself? How do I tell my side of the story?*
11. *What do I do if I need a continuance?*
12. *What do I do if DCFS requests a continuance?*

What Happens at the Hearing? ….……43

1. *General suggestions for the hearing.*
2. *Where are the cases heard? In a regular courtroom?*
3. *What is the "burden of proof" that applies to this hearing?*
4. *What does "preponderance of the evidence" mean?*
5. *Who goes first at the hearing? What is the usual order of the presentation?*
6. *Should I make an opening statement?*
7. *What are objections to testimony and evidence? How should I handle them?*
8. *Should I testify? When do I testify?*
9. *Does the alleged victim testify?*
10. *What if one of my witnesses has to testify early in the day, before DCFS has finished presenting its case?*
11. *What is a stipulation?*
12. *What is "hearsay" evidence?*
13. *What does it mean that the rules of evidence do not strictly apply? Do I still make objections?*
14. *Is the investigative file evidence? Should I object to letting the file into evidence?*
15. *Should I make a closing statement?*

What Happens After the Hearing? ……..……..54

1. *Does the Administrative Law Judge decide the case?*
2. *When does the Administrative Law Judge issue the recommendation?*
3. *When does the DCFS Director issue the final administrative decision?*
4. *How am I notified of the decision?*
5. *What if the Director disagrees with the Administrative Law Judge?*
6. *What if I lose my administrative hearing?*

Appendices

III. SAMPLE DOCUMENTS FOR APPEALS

Request for Expedited Administrative Expungement Appeal……...A-2
Request for Administrative Expungement Appeal ..…….……..…..……A-3
Appearance of Authorized Representative ……..……..…..……...A-4
Witness and Exhibit List……...……A-6
Request for Subpoenas.……...……A-8
Motion for Testimony by Telephone ..…….A-9

IV. ADVANCED ADVOCACY TECHNIQUES TO PROTECT YOUR RIGHT TO A SPEEDY DECISION

General Overview……..……..A-12
Scheduling the Hearing Date……..……..A-13
Special Note Regarding Expedited Hearings……...…….A-15
Counting Time: Examples ……...……...…….……A-16

V. OUTLINE OF A TYPICAL DCFS INVESTIGATIVE FILE

Introduction……...……...……...A-23
Investigation Summary and Allegation Rationale ……...…A-23
Risk and Safety Assessments……...……A-25
Contact Notes……...…...……....…A-25
Domestic Violence Screen……... A-26
Redaction Checklist ……...……..A-26
Police Report Redaction Notice……...……A-26
Notice of Indicated Finding.……...……..……A-27
Notice of Pre-Hearing ……...……...…....A-28

PREFACE

If you think that the Illinois Department of Children and Family Services has wrongly targeted you as a "perpetrator" of abuse or neglect, you are not alone. Thousands of Illinois residents have been subject to "indicated reports" that are successfully removed through the DCFS appeal process. People who go through with their appeal often get these indicated findings overturned, whether or not they have a lawyer to help them. If you believe you have been wrongfully accused or if you believe the finding against you should be changed, this Manual may help you get a fair decision on your appeal.

While this Manual is written to guide you if you do not have a lawyer, you may wish to consult it even if you have a lawyer. You may want to share it with your lawyer, too. Lawyers who help people in the DCFS administrative appeal process can access another version of this Manual written for lawyers (with more rule and case law citations) on our website (www.familydefensecenter.net) under "Resources." This Manual is not meant to substitute for the legal advice and assistance you will get from your own legal representative. However, for many people who are unable to get legal representation (because of where they live or the costs of hiring an attorney or other reasons), this Manual will help you know how to approach your appeal and give you some tools to increase your chances of success.

ABOUT THE FAMILY DEFENSE CENTER

The Family Defense Center's mission is to advocate for justice for families in the child welfare system. We advocate for families who need our help the most: families who are under investigation and threatened with losing their children to foster care. Any family can be the victim of a false, harassing, or misguided DCFS Hotline call. And, unfortunately, many times DCFS does not successfully screen out the valid calls from the false ones. We strongly believe that the fairness of the child protection system depends on respecting the legal rights of

persons who are investigated, so that people who are guilty of abuse or neglect are either punished or rehabilitated and people who are innocent of abuse are able to care for children without DCFS intervention. Unfortunately, however, throughout America, families at risk of separation lack legal resources to adequately defend themselves against abuse or neglect charges even when they are innocent.

The Family Defense Center works to change the imbalance of resources available to families who are suddenly faced with accusations of child abuse or neglect in a DCFS investigation. We help people respond to these allegations when they have defenses but do not know how to present them in order to protect themselves, their families, and their careers. The Family Defense Center does not, however, focus on criminal [police] investigations and if a family member's primary concern is a criminal investigation, we generally refer them to criminal defense counsel.

The Family Defense Center opened its doors to clients in Cook County and the collar counties in 2007. The Family Defense Center is a first-of-its-kind legal advocacy organization: we provide high-level systemic advocacy for families treated unfairly by state child protection agencies, focusing especially on issues that arise during child protection investigations. We have also served thousands of individual clients, and there are thousands of other individuals and families who benefit from our systemic advocacy. We hope this Manual will assist individuals throughout Illinois who we cannot represent directly but who still need guidance in interacting with DCFS.

The Family Defense Center handles many individual cases each year and refers dozens of cases to its pro bono program, which may be available for families who meet certain income eligibility requirements. More information on our legal services is available on our website at www.familydefensecenter.net. Prospective clients can also contact us by calling (312) 251-9800

and leaving a message on our intake line.

ABOUT THIS MANUAL

This Manual is meant to help you make sense of a process that most people—even many lawyers—may not be familiar with. The judges and administrators who run the DCFS administrative hearings system are required to maintain a fair system, including creating a complete record of the process on your appeal. You have the right to be treated with respect through the appeal process and to be informed of your rights.

The DCFS administrative hearing system will not make your case for you, and it will not help you if you miss important deadlines. This Manual is meant to highlight some of the steps in the process so you can avoid some of the pitfalls that trip people up along the road to an appeal decision. The Manual includes helpful sample forms and issues to consider during a case. However, it cannot and does not cover every possible issue that may come up in your particular case.

You, the reader, are referred to as "the appellant" in this Manual because you are *appealing* DCFS's decision to indicate you for abuse or neglect. This Manual is organized in five parts; you may not need to read through the entire Manual if, for example, you are just looking for a sample form to use or the answer to a specific question. Part I gives an overview of the DCFS investigation process and the appeal process for people who have been "indicated" for abuse or neglect following an investigation. If you are looking for more information on the investigation process, we have another manual available on our website called the "Responding to Investigations Manual."

Part II—the main part of this Manual for people who are representing themselves in their own appeal—discusses the appeal process itself and uses a question and answer format. Some of the questions have a number in parentheses next to them; this is the number of the DCFS

Administrative Rule related to the question. This is not a complete list of all the possible issues that arise in appeals, but it does review many of the most common questions appellants and their lawyers have.

Part III includes sample forms for all the usual steps in the appeal process.

Part IV presents some advanced strategies to deal with common problems that arise in scheduling DCFS appeal hearings. These problems occur because DCFS operates under court orders to hold timely hearings, but there are some exceptions to that duty that DCFS can use to cause unwanted delays. This section provides some ways to avoid having long continuances that cannot be counted in the strict court-ordered deadlines. Finally, Part V describes the various sections of a typical DCFS investigative file.

We hope this Manual helps you. The Family Defense Center welcomes feedback on this Manual. We will revise it periodically to address comments and questions we receive from appellants who use the Manual in their hearings. This Manual was originally developed in 2010 by Family Defense Center Founder Diane L. Redleaf and staff attorneys at the Center. It is updated periodically.

Warning (Disclaimer). This Manual is not intended to provide specific legal advice. Only a lawyer can give you legal advice that fits your specific case. Nor is it intended to provide information about how to handle a case in another state: each state's system, laws, policies, and practices are different. If, after reading this Manual, you believe you need legal services to help you respond to a pending investigation and you reside within the direct service area for the Family Defense Center (Cook and collar counties), you may wish to proceed with an application for services from the Family Defense Center by calling our intake line at (312) 251-9800, or seek other legal counsel. This guide is not a substitute for the direct legal representation a lawyer can potentially provide. The authors of this guide and the Family Defense Center expressly disclaim

liability arising from the use of information contained herein. No attorney/client relationship is created as a result of this guide's posting and distribution. Please be aware that your contact with the Family Defense Center does not represent any agreement by the Family Defense Center to accept your case for legal representation. The Family Defense Center only represents clients in individual cases after those clients enter into specific attorney-client engagement agreements with the Center.

PART I. BACKGROUND TO DCFS INDICATED REPORTS

Overview of DCFS Investigations

DCFS investigations begin when someone calls the DCFS State Central Register phone number (800-25-ABUSE), commonly called the "Hotline," to report suspected child abuse or neglect. The Hotline's offices are located in Springfield, Illinois. Employees at the DCFS Hotline first conduct a brief screening interview with the caller to decide if the case should be referred for investigation. If the call meets the minimum requirements for investigation, the Hotline employee will "code" the investigation by number, according to DCFS's categories of abuse and neglect allegations.

Each allegation number describes a specific category of abusive or neglectful behavior. Some calls can be listed under a number of allegations. (A list of the categories of abuse and neglect allegations can be found in DCFS Rule 300 Appendix B, available on the DCFS website here: https://www2.illinois.gov/dcfs/aboutus/notices/pages/default.aspx.) The Hotline employee will then refer the call to an investigative team in one of DCFS's local field offices throughout Illinois.

DCFS requires investigators to see (or make a "good faith" attempt to see) the child within 24 hours of the call. Within 48 hours of the call, this investigator should perform a safety

and risk assessment based on Appendix G to DCFS Procedures 300. Safety assessments may result in a "safety plan," possibly requiring temporary placement of your children in someone else's care, or even the decision to take protective custody of a child. This Manual does not address the complex legal issues related to safety plans or protective custody, but for more information on those issues you can read our "Responding to Investigations Manual," available on our website, or contact us directly to inquire about possible legal services.

At the beginning of the investigation, the investigator is required to talk to the child abuse/neglect reporter (the person who called the Hotline) and to the child's parents. The reporter may be any person. Reporters can be anonymous callers, identified persons, or "mandated" reporters. "Mandated" reporters are people who work with children, such as teachers and doctors, who are *required* to call the Hotline whenever they have a good faith reason to believe a child is abused or neglected. These Hotline calls are strictly confidential, so the person who is the target of the investigation cannot find out who made the call except in very unusual situations. It is often possible to guess, however, who made the call.

During the investigation, you *do* have the right to know what the allegations against you are. You are entitled to be told approximately when and how you are alleged to have abused or neglected a child. You have the right to present as much evidence contradicting the charges as you can. DCFS rules require investigators to make contact with alleged perpetrators (the person being accused of committing the abuse or neglect) within 7 days of the Hotline call in order to provide written notice of the allegations being investigated. In practice, DCFS frequently delays talking to the accused perpetrator, sometimes because of police involvement, but more often without a good reason. If DCFS failed to follow its own policies during the investigation, you can bring that up at your hearing. See p. 32.

NOTE: If you work with children (except if you are a <u>tenured</u> public school teacher

who is protected under state law), you should notify DCFS right away that your job involves work with children. While you might be afraid to tell DCFS this information, it will actually provide you some added protection for your career. At the same time, be sure to tell DCFS that you are not giving them permission to contact your employer about this allegation, unless the alleged abuse or neglect occurred at your work. We recommend that you give DCFS a written notice that you work with children (you can use the words "*Dupuy*-eligible" if you wish; *Dupuy* is the lawsuit that establishes the rights of people who work with children to special processes for review before a finding can be made against them). No person who has been identified under the *Dupuy* lawsuit as working with children may be "indicated" without *first* having the investigation and evidence reviewed by a high-level DCFS Administrator at an Administrator's Conference. This is a telephone conference at which you and the DCFS investigator on your case each have a chance to explain your sides and answer any questions asked by the Administrator. People who work with children also have the right to faster appeals. See pp. 21-22 (discussing rights of people who work with children).

While DCFS is the primary agency responsible for investigating abuse and neglect claims against people who have legal responsibility for taking care of children (parents, some household members, and child care professionals), some cases that are called into DCFS are also investigated by the police. Similarly, many calls to the police are often referred to DCFS. The outcome of one investigation does not decide the outcome of the other, except that "unfounded" DCFS investigations rarely result in a criminal case being filed. DCFS investigations are different from police investigations in several ways:

(a) The police have the power to arrest and detain adults and to take children into protective custody for up to 48 hours. DCFS has no power to arrest or detain adults, but its investigators do have the power to take children into protective custody. Neither the

police nor DCFS can hold a child in protective custody for longer than 48 hours (excluding legal holidays and weekends) without filing a court action;

(b) The police have no time limit on their investigations. In contrast, DCFS *does* have time limits under its rules to complete its investigations; and,

(c) The police have no authority to demand that people under investigation must cooperate with them unless they get warrants or court orders; even with a court order, the police cannot compel anyone to make a statement in a criminal investigation. DCFS similarly cannot demand cooperation, but unlike the police, it can and often does treat lack of cooperation as a negative factor against you in making safety decisions and issuing an "indicated" report.

By law, the DCFS investigator has a duty to complete the investigation within 60 days, but can obtain extensions for a good reason, or "good cause." At the end of a DCFS investigation, the investigator and his or her supervisor make a final outcome determination, concluding that the allegation is either "unfounded" or "indicated." If the allegation is "indicated," DCFS is expected to decide who the "person responsible" for the abuse or neglect (i.e., the "perpetrator" of the abuse) was.

"Unfounded" means DCFS determined that there was not credible evidence to support a finding of abuse or neglect; "indicated" means DCFS determined that there was credible evidence to support a finding of abuse or neglect. It is now a constitutional requirement that before DCFS concludes there is "credible evidence" to indicate a report, it must conduct a full investigation in which it gathers and considers both inculpatory and exculpatory evidence—that is, evidence of guilt as well as evidence of innocence. After collecting any evidence supporting the allegation *and* any evidence contradicting the allegation, DCFS must review all of the evidence gathered and make a decision based on that evidence. (While this is the constitutional

requirement, many DCFS investigators are not well-trained and do not consider the evidence suggesting that there was no abuse or neglect, which is why people targeted in DCFS investigations are too often wrongly "indicated.")

Once DCFS makes an indicated finding, that finding is registered in the State Central Register ("SCR" or "Register") for various lengths of time depending on the seriousness of the specific allegation category (5, 20, or 50 years). The only way to get rid of an indicated finding after it is registered in the SCR is to have it overturned through the DCFS administrative appeal process. Indicated findings are only partially confidential: they can be accessed in a number of harmful ways that can have very serious negative consequences for individuals, both personally and professionally. The personal consequences are potentially varied and deep: an indicated finding may be used to determine the custody of children or restricted visitation with children; it may cause a strained relationship with a spouse, significant other, or family member; and it may be used against the person who is indicated in limiting their access to children in the future. Indicated findings limit individuals' ability to adopt children or become foster parents or guardians of children. Of course, in many cases, indicated findings also lead to added debt through lost time at work and the assumption of legal bills to overturn the finding.

If the indicated person works with children, the indicated finding may operate as a "blacklist" against employment in their field. For non-tenured public school teachers and teachers in private schools, social workers, day care owners, residential care owners, medical personnel in a children's health clinic, and individuals in many other careers, there is a real and significant risk the person may lose their job or career because of the indicated report. While the report remains registered, it may be harder to get a promotion or change jobs even if the employer does not take any negative action in the current job. Indicated findings hurt people who work with children because most employers in these areas do background checks and search the

DCFS State Central Register when they make hiring decisions or when they have to get their own licenses renewed.

Not everyone is likely to be affected by an indicated report in the same way. For people whose children are grown and people who have no intention of ever working with children, the consequences of an indicated report may be much less significant than for parents of younger children, persons planning to adopt children, and people who work in a child care field such as day care or social work.

Challenging a DCFS "Indicated" Report

After DCFS makes the decision to indicate you and place your name in the State Central Register, you may decide to challenge, or appeal, the indicated finding. In DCFS terms, your appeal is a request for an expungement hearing. See Question 8 at p. 20 (explaining why this name is a misnomer). An expungement hearing is an administrative hearing that is convened by an administrative law judge (ALJ). We refer to this person as the "judge." These hearings take place in a conference room, usually last at least a half day, and often take a full day and sometimes longer. Hearings are legal proceedings that include the presentation of the testimony of various witnesses and offering other evidence including documents like pictures and medical records.

Following the hearing, the judge will make a recommendation to indicate or unfound allegations against you based on applying the policies and procedures listed at DCFS Rules and Procedures 300 Appendix B to your specific situation. See p. 32 for an explanation of how you can find the DCFS Rules and Procedures. The judge's decision is only a recommended decision; it must still be reviewed and approved or rejected by the DCFS Director. See p. 55 for a discussion of what happens if the judge and DCFS Director disagree.

The DCFS Director's decision will tell you either that expungement is granted or denied.

Sometimes, if there is more than one finding against you, you can win on one finding and lose on another. If expungement is granted, congratulations—you won! DCFS is not permitted to try and overturn the decision to grant an expungement. If expungement is denied, you can "appeal" the decision to the Circuit Court in your area (by filing a Complaint in Administrative Review) but you MUST DO SO within 35 days of the decision, according to the Illinois Administrative Review Act. This deadline is very strict.

PART II. HOW TO HANDLE YOUR OWN APPEAL FROM FILING TO DECISION

Getting Started

In the next sections of this Manual, we will walk you through the appeal process from start to finish, answering the questions we often get from clients and from lawyers who have never handled this type of case before. We assume the person asking the question is the person DCFS has "indicated" for abuse or neglect and refer to that person as "You." For the most part, only an indicated person can appeal an indicated finding. Parents, however, can act as "next friends" and appeal on behalf of their children. Minors under the age of 18 may only be indicated if they are "responsible" for the care of the alleged child victim, are a parent or immediate family member, or live with the alleged child victim. Indicated findings against minors can only be retained for either 5 years or until their 23rd birthday, rather than the 20 or 50 year findings that can apply to adults.

1. Should I appeal even if I don't have a lawyer?

a. You should appeal an indicated finding if you believe it is wrong. Indicated findings can have many negative effects on you, your family and, potentially, your career if you work with children or plan to in the future. Depending upon the specific allegations, an indicated finding will remain in the state record for 5, 20 or even 50 years. It will turn up

during background checks for employment and volunteer activities. It may prevent you from getting a job where you work with or have contact with children and could seriously limit or completely change your career options if you are already working with children. It could also prevent you from being a placement option for a relative's child who has to go into foster care, and if you have another DCFS investigation in the future, they will judge you more harshly because you have already been indicated. For some people, the consequences are not significant, but for most people, even if the consequences are not obvious, a mistaken indicated finding just does not feel right and it is worth appealing to clear your record. Anyone who is concerned about the consequences of an indicated report *and* who believes the indicated finding is wrong *should* appeal.

2. What can I appeal?

a. The main purpose of appealing an indicated finding is to ask for it to be completely removed, or expunged, from the State Central Register, on the grounds that you did not commit any abuse or neglect.

b. In some cases, you can also appeal the length of time that the indicated finding will be on the State Central Register. A list of how long each finding is maintained can be found in DCFS Rule 431.30. For some specific allegations, including Allegation 79, Medical Neglect, the investigator can choose whether the finding stays on the register for 5 or 20 years, depending on how serious the alleged abuse or neglect was. If you have been indicated for an allegation that could be 5 years but yours has been recorded for 20 years, you can also appeal how long the finding is on the register. Even if you are not successful in convincing the judge that no abuse or neglect occurred, you can make the argument that the facts of the case were not severe enough to justify being indicated for 20 years.

3. When can I appeal?

a. You can and should appeal as soon as you get the notice of an indicated finding. Be sure you do not miss the 60-day deadline!

b. There is no rule against an "early" appeal if you have been told you are being indicated but you haven't received the notice in the mail yet. But if you file an appeal and don't receive a response within 14 days, you need to contact the DCFS Administrative Hearings Unit (see address and phone number at Question 5 below) to make sure that your appeal request was received, especially if it was filed early.

4. Can an appeal hurt me?

a. Generally, no. Rarely, a very negative final written decision can hurt you but usually it is possible to protect yourself even if the decision against you is very negative. You have a legal right to appeal, and exercising this right should not have a negative impact on you if you have been wrongly indicated. However, you may decide this finding is something you can live with, especially if it is only a five-year finding and you do not work with children or have children of your own.

b. On rare occasions, an appeal can have a negative impact if the administrative law judge makes a written determination that finds you are "not credible" or you have committed a serious act of child abuse and someone (such as an ex-spouse) gets a copy of the decision. Because appeals are confidential, however, no one but you and DCFS should receive a copy of the appeal decision. If someone close to you was involved in the DCFS case against you, if they learn of the outcome, they may try to use it against you. In these circumstances, you may need to think about how a negative decision might hurt you more than help. At the same time, many people do win their appeals! Sometimes those who lose their appeals get decisions that are either neutral

(no worse than the indicated finding itself) or even helpful (such as finding that the person appealing loses for technical reasons but is a "good parent" nevertheless).

5. How do I appeal and how will my appeal start? (DCFS Rule 336.80)

a. You must file your request for an appeal within 60 days of the date on the DCFS letter stating that the report was indicated. If it is filed beyond that 60-day deadline, it will be dismissed as untimely. For purposes of determining the timeliness of a request for an appeal, the appeal is considered filed as of the date that DCFS receives it. If you were indicated but never received written notice that you were, you may still have the right to appeal—contact our office for more information.

b. You must fax or mail a written request asking DCFS to review its decision; we suggest that you send the request by fax *and* by mail just to make sure DCFS gets it. A template for this written request can be found in Part III of this Manual. Make sure that you keep a copy of any documents that you submit.

c. The request must be sent to: DCFS Administrative Hearings Unit
Expungement Appeals
406 E. Monroe St., Station #15
Springfield, Illinois 62701-1498
Fax: 217-557-4652
Phone number: 217-782-6655 (call if you do not hear about your appeal within 14 days of filing it)

d. The written request must include the following:

i. Name, address, *and* phone number of the appellant (remember, that's you!);

ii. Name, address, *and* phone number of the appellant's representative, if any (see p. 20 below for a comment on representation by a non-attorney);

iii. Full name(s) and birth dates of the child(ren) involved in the investigation (if known);

iv. The SCR number (which should be listed on the indicated finding notice you

receive from DCFS).

IMPORTANT: The phone number you list here is the number at which the judge assigned to your case will contact you. This is critical because, as will be discussed below at p. 24, if the judge cannot reach you, your appeal will be declared abandoned, and then, unless a request to reinstate is granted, will be dismissed. Therefore, you must notify DCFS Administrative Hearings Unit (312-814-5540 in Chicago; 217-782-6655 in Springfield) immediately if your number changes or if you will not be at the number they have on record for you for a specific scheduled call. See pp. 23-24 below regarding pre-hearing phone conferences.

v. If you need a translator at the hearing, you should note that and your preferred language in your appeal request.

e. You should include with your written request for an appeal a request for a copy of the DCFS investigative file for the case, although DCFS is required to provide you a copy for your appeal even if you don't specifically ask for it.

f. *Suggestion*: Send the appeal request via certified mail to have proof of when DCFS received it. Also, fax it and keep a copy of the fax confirmation. Timing is critical!

g. *Suggestion*: You can use the sample at Part III in this Manual. Fill in your own information and sign it!

6. Do I really have any chance of winning if I represent myself?

a. Yes! The mere fact you are appearing *pro se* (representing yourself) does not mean you will lose. Remember that no one knows the facts of your case better than you. Pro se appellants with good cases who present themselves and their cases well *can and do win*! In 1997, the last time a complete review of all appeals was done outside of DCFS, it

turned out that 74.5% of people who appealed won! While the percentages reported as winning their appeals dropped to about 50% by 2005 and may have changed since then, that's still a very high rate of success. Many of the people who have won their appeals represented themselves.

7. ***Can I have someone besides a lawyer speak for me? (DCFS Rule 336.70)***

   a. Yes. DCFS rules allow you to have an "Authorized Representative," which may be a lawyer or anyone else you choose. The authorized representative needs to file a written authorization for representation. See DCFS Rule 336.70 for the exact format requirements for this authorization. Sometimes, appellants without an attorney have found it easier to have a friend or family member who is not an attorney question the witnesses (including you) and make the arguments.

8. ***Why is this process called an "expungement" hearing or "appeal" when there has been no conviction against me?***

   a. Good question! We think these appeals are misnamed and should be called "Indicated Report Appeals."

   b. These types of administrative hearings (challenging DCFS "indicated" findings) are termed "expungement" hearings or "appeals" even though they are the <u>first</u> hearing on the question of whether an indicated report is supported by the law and the facts (i.e., they are the first neutral decision regarding the guilt or innocence of the person who has been "indicated" for abuse or neglect).

   c. The term "expungement" refers to the fact that indicated reports are placed on the State Central Register *prior* to this hearing, and are maintained in the State Central Register for a legally defined period (5, 20, or 50 years), unless removed through the administrative appeal process. Therefore, by appealing you are requesting expungement

of your name from the State Central Register.

9. ***What is an expedited appeal and who gets one? (DCFS Rule 336.85).*** NOTE: THIS SECTION APPLIES ONLY IF YOU ARE A CHILD CARE WORKER AS DCFS DEFINES IT. See DCFS definition under Question 10 at p. 22.

   a. Child care workers (broadly defined as including many types of professionals who work with children) are entitled to special "expedited" processes, including an Administrator's Conference and an expedited appeal.

   b. Administrator's Conference. An Administrator's Conference for child care workers (also discussed at p. 11 above and in DCFS Rule 300.160) takes place *before* DCFS "indicates" the report. It is a phone conference with a high level DCFS Administrator that is intended to allow you to present your side of the case against DCFS' decision to indicate you for abuse or neglect. An Administrator's Conference is not like a typical hearing during which testimony is provided; rather, it is a conversation regarding why you should or should not be indicated. It is especially important to present evidence and issues that the DCFS investigator has not considered. You may also send in documents and supporting statements from witnesses for the Administrator to consider.

   c. Expedited Appeal. If at the close of the conference DCFS decides to indicate an abuse or neglect finding, you will receive a formal letter notifying you of the indicated report. As a child care worker, you are entitled to an expedited appeal and DCFS must issue its final decision within 35 days of receiving the appeal request, if you request an expedited appeal. (The timing for a standard appeal requires DCFS to issue its final decision within 90 days of receiving the appeal request. See pp. 24-25 below for more information on timing.) A pre-hearing conference will be set within 14 days of the receipt of your appeal request, and the hearing must be held within 7 days of the pre-hearing

conference. Any child care worker can request the expedited appeal even if DCFS failed to properly provide the Administrator's Conference prior to "indicating" the report.

10. Who is considered a child care worker? (DCFS Rule 300.20 and Rule 336.20)

a. A child care worker means any person who works directly with children, or owns or operates a child care facility, regardless of whether the facility is licensed by DCFS. Child care workers also include license applicants and people in education programs or other training who work in a child contact field. Nannies are child care workers, as are park district workers who work in children's programs. Tenured school teachers in public schools are not eligible for the special review processes available to other child care workers (because they have job protection under state law), but most school employees (including non-tenured teachers) and many health care employees who work with children are eligible.

b. You should consult with the Family Defense Center ("FDC") on any questions that arise regarding whether you are entitled to "child care worker" status, especially if you are a child care worker and DCFS refuses to accept that status, and you have been notified you are going to be "indicated."

11. How do I know if DCFS has received my request for an appeal?

a. Once DCFS receives your appeal request, it will send you a letter by certified mail notifying you of the pre-hearing date and time. This letter should contain the following information:

   i. Time and date of your pre-hearing conference (explained in the next section);

   ii. Name of the DCFS attorney (often a temporary assignment; the assigned DCFS attorney will usually send you his or her "appearance" by mail a few days before the pre-hearing teleconference);

iii. Name and contact information of the Administrative Law Judge (ALJ) hearing your case;

iv. The DCFS Rules and Procedures for the particular allegation(s) at issue (this includes the definition of the allegation as well as the investigative steps DCFS was required to follow during the investigation). This is important to review as you prepare for your hearing,

v. Your rights and responsibilities on appeal. This last piece of information is extremely useful and answers a lot of questions regarding what you need to do to handle your appeal. Keep it for reference during your case.

b. Around this time, you should also receive a copy of the Investigative file (see pp. 35-37 below, in the section *How Do I Prepare for My Hearing*? for more information on the investigative file).

What Happens Before the Hearing?

1. What is the pre-hearing conference? (DCFS Rule 336.105)

a. A pre-hearing conference is a telephone conference call with the Appellant (or their designated representative), the Administrative Law Judge (ALJ), and the DCFS attorney. The pre-hearing conference will be recorded for the record, like all of the hearing proceedings.

b. At this meeting, certain issues are always addressed: 1) each side provides the witnesses they will call (some judges prefer that a list of potential witnesses be exchanged in writing prior to the pre-hearing conference); 2) whether either side wishes to have a minor under 18 years of age testify at the hearing; 3) scheduling of the hearing; 4) documents to be exchanged before the hearing; 5) stipulations (which are written agreements to certain facts or certain testimony); and 6) pre-hearing motions (for

example, a request to have a witness testify by telephone).

2. How does the conference start?

a. The ALJ calls you <u>at the number you provided on your appeal request</u> unless you have provided another phone number or an attorney has appeared for you.

b. You have an obligation to update DCFS and the DCFS attorney *any* time your contact information changes. If your phone number changes and the judge attempts to call you at a non-working number and cannot reach you, the ALJ may dismiss your appeal.

c. Call the DCFS Administrative Hearings Unit (Chicago 312-814-5540 or Springfield 217-782-6655) to update any phone number information and fax in a letter with your new phone number (Chicago Fax 312-814-5602 or Springfield Fax 217-557-4652). If your case is not in Chicago, look at your notice of pre-hearing for the correct number of the ALJ's office in your area.

d. If you have not received a call within 10-15 minutes of the scheduled time for your pre-hearing conference, we suggest that you call the main number listed for the ALJ on the pre-hearing notice you received and let the main receptionist know that you are expecting a call but have not heard from the judge.

3. What do I do if my appeal was dismissed because I missed the pre-hearing conference call from the judge?

a. <u>Immediately</u> file a request to reinstate your appeal. (DCFS Rule 336.200(d)). Currently, you only have a 14-day window of time in which to make such a request. In your request to reinstate your appeal, you should explain why the phone call was missed and that you did not intend to abandon your appeal.

4. Why is it important to pay attention to <u>scheduling the hearing date</u>?

a. <u>Timing issues.</u> You have very clear rights to a timely decision on your appeal. In fact,

even if you lose your expungement appeal, you can still win expungement if DCFS violated your rights to a timely hearing by even one day. Keeping track of the allowed time for DCFS to complete the hearing and give you a decision is important. And DCFS will be very well aware itself that the clock is ticking while your appeal is pending.

b. Strategies. There are many complicated techniques we have seen DCFS use to avoid providing a late appeal decision. In general, you need to assert that you want your hearing as soon as possible as long as you still are given enough time to get subpoenas out (allowing 14 days in regular, non-expedited appeals). See Part IV for a discussion of strategies on getting a timely hearing and avoiding pitfalls that can delay the date on which a final decision is required.

c. If you do genuinely need more time to prepare for your own hearing, you can ask for more time. But make it clear that at the end of the time you need, you want the next available date the judge can give you. It is good to state that you are not waiving any of your rights after the date you are asking for. See Part IV for possible responses you can give if you are asked to waive your speedy hearing rights.

5. What if I am unable to get witnesses I need on the date I am offered?

a. You need to decide how critically important the witness is to your case. As with any decision about when you want your hearing to be held, you need to balance your own interests and your rights to a timely decision with your need to get all the essential evidence in. Sometimes there is no one "right" answer as to when the hearing should be held. If you do need more time, you can call the judge and ask for a status conference to discuss the dates. Some judges will want you to put your request in writing.

6. Does DCFS ever drop cases before the hearing?

a. Sometimes. If, after reviewing the DCFS investigative file, you think there are strong arguments that DCFS had little or no evidence supporting the allegations, we recommend that you contact the DCFS attorney to discuss why DCFS should drop the indicated findings. We recommend you call the attorney as soon as possible because the DCFS attorney has to go through a long, bureaucratic process to get permission to drop a case; if you bring this up with the attorney too close to the hearing, there may not be enough time for the DCFS attorney to get a decision. If the case is weak, occasionally (and depending on the DCFS attorney) DCFS will decide not to go forward with a case and, instead, will inform the judge that DCFS has decided to "voluntarily unfound" the case. Alternatively, sometimes DCFS will agree to cut the Registry period from 20 or 50 years to 5 years.

b. If you sense any hostility or disrespect from the DCFS attorney, you should terminate the conversation. You have no duty to talk to that attorney. Occasionally, DCFS attorneys act inappropriately toward appellants; most, however, are professional and competent and will appreciate hearing reasons why the case should have been unfounded.

7. Will I find out before the hearing what evidence DCFS is going to present against me? (DCFS Rule 336.140)

a. Prior to the pre-hearing, you should have received the DCFS investigative file. See pp. 35-37 below for more information on the contents of the file. If you have not received this file by the time of the pre-hearing, you should let the judge know that you have not yet received the file and that there should be a new pre-hearing so that you have the opportunity to review the file prior to the pre-hearing. Because it is DCFS'

responsibility to send you the file prior to the first pre-hearing, the time between the pre-hearings *should* count against the 90-day deadline for DCFS to issue a decision.

b. In addition to the DCFS investigative file, there is an exchange of information in which each party presents a list of witnesses who may be called at the hearing and a list of documents that may be introduced in evidence. Copies of any documents either side wishes to introduce into evidence must be provided to the other party at least several weeks prior to the hearing. There is usually no "formal discovery" (that is, no depositions and usually no written discovery requests).

c. The list of witnesses and documents are merely *possible* witnesses and exhibits that DCFS *may* present at the hearing. This means that not everyone on the list will necessarily testify. In fact, DCFS usually lists every person the investigator talked to and does not list critical witnesses the DCFS investigator may have omitted. Closer to your hearing date, the DCFS lawyer is likely to know that many of the witnesses listed won't actually be called to testify. You may call the DCFS attorney in advance of the hearing to find out who from their list they actually plan on calling to testify. DCFS almost always calls the investigator (or supervisor, if the investigator is not available) and anyone who witnessed the alleged abuse or neglect as witnesses.

8. Who should I list as witnesses?

a. This question is hard to answer in general terms; it very much depends on the case. However, you should always list at least the following individuals: 1) yourself; 2) anyone who has direct knowledge about the alleged incidents of abuse or neglect and can present reasons why the account DCFS has given is flawed; and, 3) "everyone on the DCFS witness list," to protect your right to call DCFS' investigators and others as witnesses on your side. When in doubt, put someone's name on the list because you can always

decide later not to call that person as a witness, but it is harder to add someone's name late in the process if you leave that person out on the first list you submit.

b. See Part III of this Manual for a sample witness and exhibit list.

9. Should I have as many character witnesses as possible?

a. No. The ALJ presumes that anyone you call as a character witness will say good things about you. Judges often do not want to hear from a witness unless the person can testify directly about the allegations. If possible, choose one or two people who have seen you around children—preferably those children against whom DCFS has alleged abuse or neglect—to say that they've known you for a long time and they have never seen you act inappropriately with these or any other children. A recent friend or neighbor who has seen you around children a lot is likely to a better witness than an old friend who knows your character well but has never seen you with children. Don't list all of your relatives; rather, list only those who know you and your interaction with children best, as well as those who present information most clearly. Keep in mind that witnesses generally must be present in person at the hearing unless special arrangements are made.

10. What is a subpoena and do I have to subpoena witnesses? (DCFS Rule 336.160)

a. A subpoena is an order (from the DCFS Administrative Hearings Unit) compelling a witness to appear at the hearing to testify. Issuing a subpoena is a way to ensure that a particular person will appear at the hearing.

b. You are not <u>required</u> to have subpoenas issued for your witnesses, but you may. <u>We suggest you do</u>, particularly for people who are testifying as professionals (i.e., a teacher or doctor for the child) and for witnesses who are not close family members. DCFS will issue the subpoenas for you, but a request for the subpoenas must be

submitted *no later than 14 days before the hearing*.

c. Your request for subpoenas can be done in a somewhat informal way; there isn't a required form for it. You can write a memo or a letter with the names and addresses of the witnesses to whom you want subpoenas sent. The request should be faxed to "Debra Martin or Other Administrator at the DCFS Administrative Hearings Unit" at 312-814-5602. See Part III of this Manual for a sample.

11. What time should be included on the subpoena for the witness to testify?

a. You may put down an approximate time. The DCFS attorney will present his or her witnesses first, so your own start time will usually be at least 1-2 hours after DCFS. You can ask the DCFS attorney prior to the hearing date how many witnesses she plans to call and how long she expects the presentation of her case to last, and schedule your witnesses accordingly.

b. **TIP**: Tell your witnesses to bring something to read to the hearing because it is often unclear how long they will have to wait. Your witnesses will usually testify after DCFS finishes its side of the case. If you have several witnesses, they may be waiting for a while before their own testimony starts. They will not be allowed to sit in the hearing room, so having a good book in the waiting room helps.

c. **EXAMPLE:** Let's say your hearing is set for August 20. You know that you will call the following witnesses: 1) your spouse, 2) your best friend who has also been your neighbor for the past 10 years, 3) your child's pediatrician, and 4) a case worker who had been coming to your house before the investigation.

QUESTION: Who should you subpoena?

ANSWER: To be safe, you should request subpoenas for *all* of your witnesses, so that in case one is unable to testify for some reason, you have proof that you tried to get

them there, and could possibly get another chance to present their testimony. While you may trust your spouse to show up and testify, sometimes employers require proof that a court has required someone's presence before letting that person leave work. It is always a good idea to subpoena professional witnesses, such as doctors, other medical professionals and case workers.

d. **TIP**: Tell everyone you are subpoenaing to expect to receive a subpoena in the form of an official notice from DCFS, and tell them the time you are asking them to come to the hearing. You can let them know that if you decide they will not be needed, you will tell them not to come. Some witnesses worry that once they have a subpoena, it cannot be cancelled. This is not true—you can always cancel the witnesses you have subpoenaed. However, before you tell someone they no longer have to come, make sure that DCFS didn't subpoena them as well. <u>You do NOT have the right to cancel a witness that DCFS has subpoenaed</u>. You should send any witness whose testimony you cancel a written notice of your decision not to call them at the hearing.

QUESTION: In the situation above, when should you submit the subpoena request?

ANSWER: No later than August 6 (14 days before the hearing date).

12. Can my witnesses testify over the phone?

a. You may make a motion to have testimony heard by telephone. This is common for professional witnesses, i.e. doctors, or those witnesses who live far away. See Part III for a sample Motion for Testimony by Telephone. You should file this motion as soon as you think telephone testimony is a possibility and no later than 14 days before the hearing. If you're not sure you need someone to testify by telephone, go ahead and file the motion because it is better to have the motion granted and then have the person be

able to testify in person, than it is not to have requested it and determine a few days before the hearing that the witness is only available by phone.

b. We strongly encourage all non-professional witnesses who live locally to be physically present, if possible. This is because a judge can more easily assess how believable a witness is if the judge sees him or her in person. Many judges will not allow people to testify by phone if they live in the same area as the hearing and do not have a particularly strong reason why they can't come to the hearing. Judges' practices vary, however, so if a witness you want to call has a particular reason why they cannot make it in person, ask the DCFS lawyer and judge for a status hearing to discuss the concern.

13. What do I do if something unexpected happens and I need to discuss it with the judge and DCFS' lawyer?

a. Unforeseen issues do come up in expungement hearings. A witness you had counted on may be unavailable after they get their subpoena. You may become sick or notice something about DCFS' case record that shows you haven't received the whole file. These are just a few of the issues that sometimes occur in the few weeks before a scheduled hearing.

b. If you decide you cannot proceed with the scheduled hearing because of the unforeseen issue, call the DCFS Administrative Hearings Unit (see p. 19 for phone numbers) to ask for a prompt phone status hearing. Also try to call the DCFS lawyer to explain the situation.

How Do I Prepare for My Hearing?

1. What rules should I know?

a. DCFS Rule 336 explains the administrative hearing process that DCFS uses for appeals

of indicated findings. However, you do not have to learn these rules by heart. Reading over the rules is a good idea, but do not pressure yourself to learn them.

b. DCFS Rule 300 and Procedures 300 provide the general guidelines for reports of child abuse and the procedures to be followed by DCFS investigators during an investigation. As with the hearing Rules, it is not a bad idea to read over these rules as you are preparing your case—but you don't have to learn these rules in detail. The focus of your hearing is on the facts of your case and presenting them as well as you can.

c. Appendix B of Rule 300 *and* Appendix B of Procedures 300 list the specific allegations and provide specific required investigative steps for each allegation. We strongly suggest that you become very familiar with the requirements for the specific allegation(s) that pertains to your case, especially because you may find certain required steps that the DCFS investigator ignored or didn't complete in the DCFS investigation against you. You may look up the allegation using the allegation number, such as 60 ("Environment Injurious") or 74 ("Inadequate Supervision").

d. DCFS rules and procedures can be found at:

https://www2.illinois.gov/dcfs/aboutus/notices/pages/default.aspx.

Click on the "Rules" or "Procedures" links on the right-hand side of the page.

2. What do the terms "abuse" and "neglect" mean? (DCFS Rule 300.20)

a. DCFS Rules 300.20 and 336.20 define the terms "abused child" and "neglected child." We are including a summary of those definitions here; for the full definition, refer to the Rules.

b. An "abused child" is a child whose parent (or immediate family member, or any person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent) 1) inflicts or allows to be inflicted mental or

physical injury, by other than accidental means; 2) creates a substantial risk of physical or mental injury; 3) commits or allows to be committed any sex offense against such child; 4) commits or allows to be committed an act or acts of torture upon such child; or, 5) inflicts excessive corporal punishment. A "paramour" is a parent's romantic partner who is not a spouse, such as a fiancé, girlfriend or boyfriend.

c. A "neglected child" is any child who is: (1) not receiving the proper or necessary nourishment or medically indicated treatment or other necessary care; or (2) who is subjected to an environment which is injurious insofar as: (a) the child's environment creates a likelihood of harm to the child's health, physical well-being, or welfare; and (b) the likely harm to the child is the result of a blatant disregard of parent, caretaker, or agency responsibilities.

d. Each of the specific types of abuse or neglect is defined at Appendix B for Rule 300 and Appendix B for Procedure 300. Look at these definitions carefully as you prepare—most likely, you will see some types of evidence listed that DCFS did not adequately focus on in the investigation. This information will help you to prepare your own evidence, your cross-examination of the investigator, and your arguments.

e. DCFS has to prove its case against you by a preponderance of the evidence, meaning that they have to show that it is more likely than not that you abused or neglected a child. DCFS must also show that the person being indicated is an "eligible perpetrator," which means that he or she either resides in the same household as the child or was a "person responsible" for the care of the child. For example, a cousin who was visiting the home where the alleged abuse occurred and was not in charge of caring for the alleged victim could not be indicated for child abuse.

3. How do I start in my preparation?

The following steps will be discussed in more detail below:

a. Read through the investigative file very carefully, and take notes. See Question 4 below for tips on what's important to look at most closely. For example, the safety assessment forms usually do not have any real effect on the indicated finding decisions DCFS makes, so do not get tripped up examining those forms in too much detail. The contact notes are the "guts" of the investigation. In reviewing the contact notes, look for who DCFS did not talk to but should have interviewed.

b. Review the DCFS definitions for the specific allegation(s) at issue in your case. This definition tells investigators what they should have found in order to indicate you for the allegation against you.

c. Find the "procedure" that has the same number as the Rule defining the allegation against you.

   See https://www2.illinois.gov/dcfs/aboutus/notices/pages/default.aspx (Select Procedures from the menu, then select "Procedures 300, Appendix B"). Procedures set out what the investigator was supposed to do during the investigation. You may find areas that were missed during the investigation and you can prepare questions (cross-examination) about any of the missed requirements.

d. Speak to the witnesses.

e. Prepare questions for the witnesses DCFS will call to testify. These are called cross-examination questions.

f. Prepare questions for the witnesses you will call to testify. These are called direct examination questions. You must be careful not to put any words into your witness's mouth. You can share your questions in advance with witnesses you think are going to

help you make your case for expungement. If the information you get is not what you expected, try rephrasing your question. Although you can and should discuss the case with the witnesses ahead of time, don't tell them how they should answer the questions. You should simply tell them that all they have to do is tell the truth. It is possible that the DCFS attorney will ask your witnesses whether you told them what to say, and they will be required to answer truthfully. If you have arranged for an authorized representative to do the questioning at the hearing (see p. 20 above—as a reminder, this person does not need to be an attorney), work with your authorized representative to prepare the examination questions for your testimony. If you will be representing yourself at the hearing and asking all the questions, for your own testimony you should prepare a written statement to read to the ALJ.

g. Prepare an opening statement and a closing argument. In general, an opening statement just reviews what you expect your witnesses to show without debating why DCFS' decision is wrong. A closing argument can be a logical argument about what the evidence showed and why it was not sufficient for an indicated finding. Be prepared to deliver your closing argument at the end of the hearing. It is a good idea to have an outline prepared before the hearing starts with points you want to be sure to make.

4. What do I do with the investigative file?

a. You should *very carefully* review the DCFS investigative file prior to a hearing because it presents DCFS' case against you, including all of the evidence DCFS gathered and considered during its investigation. We cannot emphasize enough the importance of reviewing this file. In the cases we handle at the Family Defense Center, we always do an abstract (i.e., an index and summary) of the file so we can quickly find the page at which each witness was interviewed. We recommend you do this too.

b. The file is comprised of computer-generated forms completed by the DCFS investigator. Investigative files are generally organized in the following way:

   i. Hotline narrative

   ii. Investigation summary

   iii. Safety assessments

   iv. Contact and Supervisory Notes

c. The first few pages contain the names and contact information of the appellant and the subjects of the investigation. The "Narrative" section, also located toward the beginning, is the information that was given to DCFS by the person who called the DCFS Hotline (the Hotline caller is referred to as "the reporter").

d. The investigation summary lists each allegation that was investigated and whether that allegation was indicated or unfounded. This section is very important because it provides DCFS's reasons for reaching the determinations it did and lists the information that either supports the allegation (inculpatory evidence) or contradicts the allegation (exculpatory evidence).

e. The next section of the file will include information regarding any risk assessments that were completed and details of the safety plans a family was under, if applicable. These forms are generally not particularly important to the final investigation decision.

f. The remainder of the file is comprised of "Contact Notes" and "Supervisory Notes." For each interview the investigator conducts during the course of the investigation, he or she should have created a Contact Note documenting the date of that interview and summarizing the content of the interview. Supervisory Notes represent instructions the investigator's supervisor is giving and may also summarize conversations that occurred between the supervisor and investigator. Occasionally, there are general Case Notes as

well, which are generally at the beginning of the investigative file and do not have dates.

g. Behind the computer-generated forms, there may also be additional documents the DCFS investigator collected, such as medical records or letters.

5. How should I review the specific allegations against me? How can I use the definitions of these allegations to my advantage?

a. As noted above, Appendix B for Rule 300 and Appendix B for Procedures 300 define the allegation(s). These definitions will specify the elements of the allegation—in other words, what DCFS must prove to win the case.

b. For most abuse allegations, DCFS must prove both an injury (or substantial risk of serious injury) *and* that a *non-accidental* direct action of the caretaker caused the injury (or that the caretaker failed to prevent someone else from causing the injury in a non-accidental way).

c. For most neglect allegations, DCFS must prove that the caretaker blatantly disregarded his or her responsibilities. Not every accident equals blatant disregard!

d. For less serious allegations, DCFS must prove not only the existence of the elements, but also that the application of a list of factors (such as the child's age and/or the frequency of the occurrence) demonstrates that the incident was serious enough to constitute abuse or neglect. These factors do not apply in all allegations, however, so be sure to check the Rule and Procedure for your specific allegation.

e. Appendix B of Procedures 300 also sets out the required investigative steps, including the people an investigator must speak with and the documents they must gather to indicate someone. Definitely cross-examine the investigator on these procedures if she failed to follow them.

6. What areas should I focus on in preparing my cross-examinations of the DCFS

witnesses?

a. Begin with preparing the cross-examination of the investigator, since you can be sure the DCFS attorney will call the investigator to testify (or, in limited cases, the investigator's supervisor will be called if the investigator is unavailable). Write down all of your questions and review them a few times—do not plan to come up with all of your questions at the hearing because you will not have time to prepare before the cross examination starts. You can make notes on your question sheet as the investigator is testifying.

b. A good way to start preparing questions for DCFS witnesses is to look for any inconsistencies in the investigative file among witness statements, and particularly the alleged victim's statement. Determine which parts of the Appendix B to Rule 300 or Procedures 300 the investigator ignored, if any (such as factors to be applied, required contacts that should have been made, or other investigative steps). If applicable, cross-examine the investigator on the incompleteness of the investigation—who the investigator did not talk to, who he or she did not meet with in person, etc.

7. What kinds of questions should I ask in cross examination? What form should my questions take?

a. In preparing for cross examination, you should ask questions to which you already know the answers. You should not give witnesses open-ended chances to explain their actions. For example, "why did you decide to indicate this report?" would not be a good cross examination question. It is better to ask the same sort of question (to show there was not a good reason to indicate the report) in a very direct "leading" form, such as, "Isn't it true that when you indicated the report, you hadn't talked to Dr. X? And you didn't talk to Sally Johnson, whose name I had given you?" and "Isn't it true I

told you that I had already seen a doctor? But even though I told that to you, you didn't write that down in your note of our conversation on September 1, did you?"

b. Cross examination is a hard skill for anyone to learn without experience. Try to avoid asking "why" questions. Try not to argue with the witness. One thing to consider in preparing to cross examine a DCFS investigator is, "Did the investigator write anything that is *helpful* to my case?" If so, you need to ask the investigator questions to bring out that information. Cross examination doesn't have to be "cross" or mean. You can use it to draw attention to information that helps your side of the case.

c. Sometimes investigators are told by their supervisors that they must indicate the allegation even when they believe the investigation should be unfounded. In such cases, be sure you ask the investigator about his opinion and the fact that it was the supervisor who decided to indicate the report.

d. Often, our clients are surprised that witnesses say things they believe are untrue. They are tempted during hearings to start an argument with the witness. This is not a good idea! Remember that the witness who is testifying can be cross-examined to bring out evidence that she is lying, but only on TV do witnesses break down on the stand and admit a lie! It is usually better to try to show the witness is misremembering information because notes contradict what she is saying than to confront the witness directly.

8. How do I prepare to question DCFS' other witnesses? What questions should I ask those witnesses?

a. In general, this is a hard question to answer because every case is fact-specific. If you need to find out what the person is likely to say against you, you can call them in advance of the hearing to ask that question. This will help you avoid being surprised by information you haven't heard before. Be aware, however, that some witnesses who are

being called by DCFS may not want to speak with you before the hearing. If the person was interviewed by DCFS, you can go over the notes of that conversation to make sure that DCFS recorded their information correctly. You will often find that the DCFS notes in the investigative file are incomplete or even incorrect. You should ask questions to highlight any inconsistencies, mistakes, or incomplete aspects of what DCFS says you did versus what the paperwork shows. You can also highlight any incomplete or inconsistent aspects of what DCFS claims a witness said during the investigation versus what the witness is actually saying at the hearing.

b. We recommend that you prepare bulleted lists of questions for each witness, and bring those lists with you to the hearing. This will help you keep track of the points you want to make with each witness and will guard against forgetting points due to understandable nerves or anxiety during the hearing.

9. Who should I call as my own witnesses? How should I present their testimony?

a. When you question your own witnesses, it is called direct examination. The general rule for direct examination is that, unlike cross examination, you are NOT allowed to ask leading questions (see below for an example of a leading question). Instead, you should try and frame your questions in an open-ended way.

b. **EXAMPLE:** DCFS indicated a report against you because you had left your four-week old baby on the couch alone while you briefly used the bathroom, and he fell off the couch and suffered a bruise. You want to call your mom as a witness because she arrived at your house shortly after the accident and she has often observed you with your children.

<u>DON'T</u> ASK: You see me and the kids about 3 days each week, right?

DO ASK: In an average week, how often do you see me and the kids?

DON'T ASK: When you arrived at the house after the accident, wasn't I really upset and worried?

DO ASK: When you arrived at the house after the accident, how did I appear?

c. Try to frame the direct examinations like a natural conversation as best you can. Asking questions in chronological order helps the judge to follow the story you are trying to present. Ask follow-up questions in order to elicit more helpful information. For example, if in the example above your mom testifies that she thinks you are, in general, very concerned about the safety and well-being of your children, ask her *why* she thinks that—what specific observations has she made that has led her to that conclusion?

d. Keep in mind that generally, people can only testify as to matters about which they have direct knowledge. Generally, they are NOT allowed to testify as to matters where their knowledge came from other people. However, see p. 51 below for exceptions to this general rule.

e. As with cross-examination, we suggest that you prepare a bulleted list of all of your questions for your own witnesses. When you are in the middle of a stressful hearing, you won't remember the questions you wanted to ask unless you prepared them beforehand!

10. How do I examine myself? How do I tell my side of the story?

a. This depends on whether you have arranged for a friend or family member to handle all of the questioning at the hearing (see p. 20 above for information on "authorized representatives") or you are handling all the questions yourself.

b. If you have an "authorized representative," you should work with that person to develop the questions for you similar to how you developed your other direct examinations. You will want the questions to guide you through the incident step-by-step. If the allegation is as to your own children, you will want to include questions that highlight your

strengths as a parent and demonstrate your commitment to their safety. If the allegation is related to your professional capacity (i.e., teacher or daycare provider), you will want to include questions that demonstrate your commitment to your field and to the safety of the children you work with.

c. If you do not have an "authorized representative" to conduct the direct examination of you, you should prepare a statement to read at the hearing. The statement should include the information mentioned above. The point in time in the hearing at which you will deliver the statement may vary (see p. 45 below for more information on how events may transpire at the hearing).

d. **TIP:** Try to stick just to the **facts** and your direct knowledge and observations. Your testimony is *not* the time when you make your arguments about why you think the indicated report is wrong—save that for your closing argument! Your testimony is merely your opportunity to present the facts as you know them to exist.

e. In either scenario, you should be aware that the DCFS attorney will likely have cross examination questions he or she will want to ask you.

11. What do I do if I need a continuance?

a. Continuances, or extensions of time, may be granted for "good cause" (DCFS Rule 336.150). Any request for a continuance should be in writing and submitted to the judge. You must also send a copy to the DCFS attorney.

b. HOWEVER, be careful. A request for a continuance affects your right to a timely decision within 90 days (35 days if you are a childcare worker). Any additional time you request will not be included as part of the 90-day count, but instead will be attributed to you and extend the amount of time in which DCFS must provide you with a final decision. See Part IV for more examples of how the timing problem might play out

if you ask for a continuance.

12. What do I do if DCFS requests a continuance?

a. Object to it! You have no duty to agree to any continuance request by DCFS (and DCFS attorneys are instructed not to make such requests because of the tight time limits for these appeals). If the ALJ grants the DCFS continuance over your objection, insist on the earliest possible rescheduled date. Accept any date that is as early as possible and convenient for you, and state that you do not waive any of your rights under Lyon. (Lyon v. DCFS is an Illinois Supreme Court decision (in 2004) that requires DCFS to provide you with a final decision in your appeal within 90 days of the date that DCFS receives your appeal request.)

b. Date counting strategies are discussed in more detail in Part IV.

What Happens at the Hearing?

1. General suggestions for the hearing.

a. At any hearing, what matters most is the impression you give the judge of yourself as a human being. You want the judge to think you would never hurt a child. To the extent your demeanor gives the judge second thoughts about you, you will hurt your own case. Being a little emotional is not a bad thing (contrary to what many of our clients think), but trying to avoid answering questions will make you look bad at your hearing.

b. Demeanor. Appeals from DCFS indicated finding cases can be difficult because they involve emotional issues, which can make representing yourself even harder. You may demonstrate *some* emotion during your own testimony. For example, it is not necessarily a bad thing to cry, but it is never good to act out in anger. We strongly recommend, for example, that you do not do things like sigh loudly or roll your eyes

while the investigator testifies. This will not help your case! Your sighs and harrumphs are not evidence and will not help you with the judge. Remember, you have the chance to question all the DCFS witnesses—save your energy for when it can do you the most good.

c. How to address people. Call the Administrative Law Judge, or ALJ, "Judge (Last name)" or "your honor" or "judge." Call the DCFS attorney Mr./Mrs./Ms. (Last name). Do the same for all witnesses, even your own. It demonstrates professionalism and seriousness about your case.

d. What to wear. Your case begins the minute you walk into the room with the ALJ, and how you present yourself and your case matters. Therefore, we suggest dressing at least in business casual attire, though a suit or other formal business attire is best.

2. Where are the cases heard? In a regular courtroom?

a. In the Chicago area, cases are heard in the DCFS Administrative Hearings Unit, located at 17 North State Street, on the Seventh Floor.

b. The location of the hearing depends on the location of the investigation and, if the investigation did not occur in Chicago, the hearing may be held at a local DCFS field office.

c. The hearings are held in regular meeting rooms, around conference tables, with the judge at the head of the table. It is likely that the hearing will last a full day.

d. The only people who will be allowed in the hearing room at any given time are you, your authorized representative (if any), the judge, the DCFS attorney and the testifying witness. Therefore, if you have brought friends or family members with you, they will not be allowed in the hearing room unless they are your authorized representative or while they are giving their testimony as a witness. Tell them to bring a book with

them to pass the time in the waiting area.

3. What is the "burden of proof" that applies to this hearing? (DCFS Rule 336.115)

a. DCFS has the burden to prove that a preponderance of the evidence supports the indicated finding, and, therefore, that the indicated finding should not be amended, expunged, or removed. For this reason, DCFS presents its evidence first.

4. What does "preponderance of the evidence" mean?

a. Preponderance means "more likely than not." This is the amount of proof DCFS has to show in order to "win" the case. If DCFS wins, it means your expungement request is denied. Many of us are familiar with the burden of proof in criminal cases—beyond a reasonable doubt—which is the highest level of proof the law can require. In civil cases, and in these hearings, the burden is a lot lower. If it is helpful to think in terms of percentages, preponderance means a 51% probability that the appellant abused or neglected the child.

5. Who goes first at the hearing? What is the usual order of the presentation?

a. First, usually the ALJ starts the hearing by turning on the tape recorder, and introducing herself or himself and the people present. She or he may also have some opening remarks regarding the procedure for the day.

b. The ALJ will ask if you received a copy of your rights and responsibilities (which you should have received with the pre-hearing notice, see pp. 22-23 above). If you have already reviewed those rights and responsibilities, you may waive the reading of them at the hearing. If you do not waive the reading, the ALJ will be required to read them aloud.

c. The ALJ will ask both you and the DCFS attorney if you want to present any opening statements. Opening statements are discussed further in Question 6 below.

d. After the opening statements (if any), DCFS begins to present its case by calling its first witness, usually the investigator. Sometimes, however, DCFS may call *you* first. Be prepared for this! After each DCFS witness is questioned by DCFS, you will have an opportunity to cross-examine the DCFS witness. Generally, your questions are limited to those topics that the DCFS attorney asked the witness. Once DCFS has called their last witness, their case is closed and they will inform the ALJ that they have "rested."

e. Finally, you may present your case by calling the witnesses you choose in whatever order you would like. You ask them questions first, and then the DCFS attorney will have the opportunity to cross-examine them. This is also your opportunity to introduce any documents or exhibits you want the judge to consider. Once your last witness has testified and you are done introducing your documents (if any), you tell the judge that you have no more evidence to present.

6. Should I make an opening statement?

a. Generally, a short opening statement outlining what you believe to be the important facts and evidence and/or your main arguments for expungement is a good idea. It provides a framework for the judge. You are not required to make one, however. An opening statement should list the witnesses and provide a brief idea of what they are going to say during the hearing.

7. What are objections to testimony and evidence? How should I handle them?

a. As a non-lawyer, you are not expected to know the rules of evidence but you are entitled to object to evidence that the judge should not consider.

b. There are many kinds of objections that can be made while evidence is presented and most of these have a "common sense" basis. For example, you can object that

testimony is "not relevant." You can object if a witness is talking about something about which they do not have "personal knowledge." You can also object to any hearsay testimony, though as discussed below, some hearsay (such as the statements of children as to their own abuse or neglect) will be allowed into evidence. You should not try to learn all the "exceptions" to the hearsay rule, but if it sounds like a witness is repeating information reported to them by someone else (i.e., "the doctor told me it was a serious bruise") you should object to that testimony as "hearsay." You can state, "If DCFS wants to present this testimony as to what the doctor said, DCFS should call the doctor himself." DCFS judges often will not allow testimony as to what someone said when that person is an important witness who should testify directly.

c. You should not be rattled by objections to your testimony or your witness' testimony. Objections are ways that are used to clarify questions and make sure that the evidence that is being considered is reliable enough to get into the "record." Objections do not mean that you or your witness said something wrong.

d. If essential information you want to present is not being considered, you can ask to do what is known as an "offer of proof." This is just a statement that you make as to what the evidence would show if you were allowed to present it.

8. Should I testify? When do I testify?

a. If there are no pending criminal charges related to the underlying incident(s) that led to the indicated finding, you should generally testify. This is the case particularly if the alleged victim has made statements contrary to your own regarding the alleged abuse: you may testify about those inconsistencies. Unlike a criminal case, if you don't testify, it is likely that the judge will reach more negative conclusions about you than if you do testify.

b. **NOTE:** If there is the possibility of a criminal case against you concerning the allegations for which you have been indicated, even if you have not been charged yet, you should consult with a criminal lawyer before making any decision about whether you should testify. Your statements at the hearing will be under oath and could be used against you in other court proceedings.

c. As discussed above at p. 41, the format of your testimony will depend on whether you are being questioned by a person you have authorized to act as your representative (such as a family member or close friend) or you are proceeding without an authorized representative and, instead, have prepared a statement.

d. If the DCFS attorney has called you as a witness in his or her presentation of DCFS' case against you, you have a choice. You can deliver your statement (or give your whole testimony if you are being questioned by your authorized representative) directly after DCFS has questioned you. The alternative is to only answer the questions DCFS asks you and then wait to tell your side of the story the way you had prepared (via statement or examination) after DCFS has rested its case and it is your turn to present your case. We recommend the second option, because if you testify last you will have the opportunity to fully address and respond to the testimony given by all of the other witnesses.

e. REMEMBER, your testimony is *not* the time for you to make your arguments about why you think the judge should rule in your favor. Rather, when you testify (by either answering the questions of your authorized representative or by delivering your prepared statement) you are merely presenting the facts of what occurred based upon your direct knowledge and observation.

f. No matter which options you choose regarding <u>when</u> you testify and <u>how</u> you testify,

the DCFS attorney (and very possibly the judge) will have follow-up questions for you when you are finished.

g. **TIP:** Answering the questions from the DCFS attorney can be a bit nerve-wracking. Try to stay calm and take deep breaths. The best approach is to *listen carefully* to the *exact* question the DCFS attorney is asking and answer *only* that specific question. Remember that you will get your chance to tell your side of the story later! Also remember that you don't have to convince the DCFS lawyer you are right, you need to convince the judge, so stay focused on how the judge is responding to you. If you are not sure that you understand the question, you can ask for it to be repeated. As always, remain respectful of the attorney and the judge at all times.

9. Does the alleged victim testify?

a. Generally, the alleged victim does not testify, for several reasons. First, any hearsay statements (out of court statements offered for their truth) by a minor regarding abuse or neglect can be considered without the minor testifying in the hearing (DCFS Rule 336.120(b)(10)). See p. 51 below for more information on hearsay. This means that anyone who the child told about the abuse may testify as to what the child said. For example, if the alleged victim told their teacher, step-father, older sibling and social worker that they were abused, any or *all* of those people may testify as to what the child said. This is hearsay evidence, which is not admissible in a regular court, but <u>is</u> admissible in DCFS appeal hearings. Any statements from the child that show that abuse or neglect *did not* occur are also admissible.

b. Second, under DCFS Rules, any minor under 18 years of age may testify *only if* the party proposing such testimony can demonstrate certain factors. Those factors include that the child's testimony is essential; the likelihood of inflicting emotional harm can

be minimized; and no alternatives (i.e., stipulations or prior transcripts) exist as a substitute to the minor's in-person testimony (DCFS Rule 336.105(b)(3)). Judges usually frown on a party suggesting such testimony because they do not want to traumatize children or take them out of school. However, until recently, the Rules only restricted the testimony of minors under the age of 14. Due to this, judges may be more willing to allow the testimony of minors between the ages of 14 and 18.

c. **NOTE:** This rule applies to DCFS as well as to the appellant. If DCFS wants to call a minor as a witness, the DCFS attorney should affirmatively show the judge that the testimony meets the requirements in the Rule. If DCFS lists a minor on their witness list and does not make this showing, you can bring that up to the judge on one of the pre-hearings, especially if the minor is your child and you believe that the testimony *will* cause them emotional harm. If the DCFS attorney cannot show that the testimony meets the factors in the rule, they should not be allowed to call the minor as a witness.

10. What if one of my witnesses has to testify early in the day, before DCFS has finished presenting its case?

a. You can ask to call this witness "out of order." Usually, you should plan your witnesses' testimony to begin after allowing adequate time for DCFS to present its entire case, but special scheduling needs can be accommodated by asking the judge for permission to allow a witness to testify earlier in the day.

11. What is a stipulation?

a. A stipulation is an agreement between you and the DCFS attorney that a certain fact is true or uncontested. Stipulations can narrow the issues for the hearing and minimize the number of witnesses actually called to testify so that the judge is able to focus on the most important facts. They can also be a way for you to make sure that favorable

evidence is included in the record. So you can stipulate that a certain document is truthful and authentic to avoid having to call a witness to verify that. It's generally not a good idea to stipulate to the investigative file, however, because there will likely be a number of statements in the file that you would like to contest through your cross-examination of witnesses.

b. As an example, the DCFS attorney will often agree to stipulating that, if called as a witness, the regular pediatrician for the child would testify that the child was up-to-date on his or her regular examinations and immunizations and that the pediatrician has never observed any signs of abuse or neglect (assuming, of course, that the DCFS attorney is able to verify this information with the pediatrician before the hearing). Through this stipulation, you can make sure that this favorable evidence is in the record, and you don't need to call the pediatrician to testify.

12. What is "hearsay" evidence? (See also Question 7 above regarding objections.)

a. Hearsay evidence is second-hand information that is reported based on what someone has told the witness, rather than something that the witness observed himself.

b. At regular trials, the general rule of evidence is that hearsay is not allowed—people can only testify to matters about which they have <u>direct</u> knowledge (and *not* as to matters about which their knowledge has been obtained from someone else).

c. However, at DCFS hearings, the rules of evidence do not strictly apply and many hearsay statements may be allowed. The judge will <u>definitely</u> allow the hearsay statements of minors to be admitted via other persons (for example, the investigator will always be allowed to testify as to what the 7-year-old child told him, or the teacher will always be allowed to testify as to what the 11-year-old child told her).

13. What does it mean that the rules of evidence do not strictly apply? Do I still make

objections? (DCFS Rule 336.120(b)(1))

a. The rules of evidence are rules that determine what kinds of evidence are admissible in court proceedings and how that evidence can be submitted to the court. They can be found on the website of the Illinois Supreme Court, here:

http://www.illinoiscourts.gov/SupremeCourt/Evidence/Evidence.asp.

b. Judges vary in how they apply the rules of evidence. Some judges will apply the rules of evidence more strictly than others. Some will rule that evidence of prior arrests is not allowed (as is usually the case in regular trials) and will "sustain" (rule in favor of) objections of "double hearsay" (where the Department is often trying to bring in testimony from the investigator regarding what the reporter said the alleged victim said). Other judges will be very loose about the evidence rules and let all sorts of evidence into the record that would not be allowed at a civil trial.

c. Regardless of the loose application of the rules of evidence, if you think that the evidence is irrelevant or should be legally inadmissible (like an arrest, or a polygraph test), make objections! See Question 7 above at p. 46. If the DCFS attorney is relying upon the hearsay statements of an adult witness (i.e., having the investigator testify as to what your ex-spouse said happened) without calling that adult witness to testify directly, object to this as inadmissible hearsay. While your objection might be overruled, as with any trial proceeding, you are creating a record for potential further review in case you lose your hearing.

d. Remember that just because a certain piece of evidence is presented against you, you do not automatically have a reason to object. The judge is going to want to hear all of the appropriate evidence, even if it is information you don't like.

14. Is the investigative file evidence? Should I object to letting the file into evidence? (DCFS

Rule 336.120(b)(9))

a. Despite the fact that the investigative file contains mountains of hearsay that may not all be relevant, judges usually allow them in as evidence. However, there are two points you can make to try to limit information included in the file.

b. First, if the file is incomplete or notes were not made close in time to the conversations recorded, you can object to the admission of the file because it was not "kept in the ordinary course of business." Under DCFS Procedures, investigators are required to enter contact notes within 48 hours of making the contact.

c. Second, even if everything in the file is proper, you can state that the admission of the file as a business record does not mean that all of the information in the file is admitted "for the truth." You should state that the file should only come into evidence as a recording of what DCFS did during the investigation, and that specific conversations recorded in it cannot be taken as true.

d. **EXAMPLE:** In the investigative file, there is a contact note created by the investigator wherein the investigator summarizes a conversation she had with a doctor. The contact note claims that the doctor told the investigator the child's injury could only have been caused by abuse. At hearing, the doctor does <u>not</u> testify.

   QUESTION: What do you say about this part of the investigative file when the DCFS attorney asks to have the file admitted into evidence?

   ANSWER: You have no objection to that contact note being admitted as a record of one of the investigative steps DCFS took during the investigation. However, because the doctor did not testify at the hearing, you *do* object to the contact note being admitted as support for the alleged "truth" of what the investigator claims the doctor said because it is hearsay and the doctor could have been called to testify at the hearing.

15. Should I make a closing statement?

a. YES! This is the moment you have been waiting for—your golden opportunity to present all of the reasons why you think the indicated report is wrong.

b. You should prepare a closing argument beforehand, using the DCFS definition of the allegation (see p. 37 above) and the anticipated testimony to make your points. After all testimony has been presented at the hearing, you can change your argument to respond to the testimony, if needed.

c. The ALJ may state that she or he does not need to hear closing statements. You should try to give your statement, however, even if DCFS decides not to make one. Tell the judge you have prepared a statement that you would like to get on the record.

What Happens After the Hearing?

1. Does the Administrative Law Judge (ALJ) decide the case? (DCFS Rule 336.220)

a. No. The ALJ writes an opinion and makes a *recommendation* to the DCFS Director, who then makes the final decision.

2. When does the Administrative Law Judge issue the recommendation? (DCFS Rule 336.220)

a. In expedited appeals involving "child care" workers (discussed on pp. 21-22), the judge has to make their recommendation within 35 days from the day you requested your appeal. In regular appeals, the judge has 90 days from the day you requested your appeal. Note: these time limits only apply where the client has not "agreed" to a later hearing date or waived their right to a speedy hearing.

3. When does the DCFS Director issue the final administrative decision?

a. Within the same time period explained above (35 days for child care workers; 90 days for all others). Note: these time limits only apply where the client has not "agreed" to

a later hearing date or waived their right to a speedy hearing. At most, under Illinois law, DCFS must issue the decision no later than 60 days after the hearing was completed.

4. How am I notified of the decision?

a. You will receive a certified letter from the Director stating the Director's decision and enclosing the ALJ's written recommendation/opinion.

5. What if the Director disagrees with the Administrative Law Judge?

a. It is unusual, but sometimes the Director will disagree with the ALJ. In this case, the Director's final administrative decision is the one that counts. In this situation, you may have strong grounds to appeal the decision through an administrative review action (see next question) because you can highlight the fact that the ALJ (the person who actually heard the live testimony) ruled in your favor.

6. What if I lose my administrative hearing?

a. You may choose to file an appeal of the Director's decision in the circuit court under the Illinois Administrative Review Law (735 ILCS 5/Art. III). To be timely, the "action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within **35 days** from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision." The DCFS decision is considered to be "served" based upon the date it was post-marked. In order to be timely, be sure to file the complaint (and have the summons issued) no later than 35 days from the date listed at the top of the decision. This is a very strict deadline! If you miss it, you will not be able to appeal. It's important to note, additionally, that you must present all of your evidence and witnesses at the administrative hearing in

order to have them reviewed on appeal. You will not be able to present any new evidence or testimony in the administrative review action.

APPENDICES

PART III

SAMPLE DOCUMENTS FOR APPEALS

STATE OF ILLINOIS
DEPARTMENT OF CHILDREN AND FAMILY SERVICES
ADMINISTRATIVE HEARINGS UNIT

IN RE: EXPUNGEMENT APPEAL OF	)	
	)	
_____	)	**SCR# _____**
[Your Name]	)	
	)	
Appellant.	)	
	)	

TO: Administrative Hearings Unit
Expungement Appeals
406 E. Monroe St., Station #15
Springfield, Illinois 62701-1498
Fax: 217-557-4652

REQUEST FOR AN <u>EXPEDITED</u> ADMINISTRATIVE EXPUNGEMENT APPEAL

I, _____, hereby appeal the indicated finding against me in the cause involving the following minor(s): [<u>Insert Minor Name(s) and DOB(s), if known</u>]. Because I work as a [teacher / day care provider / nurse / bus driver / etc.] and have regular contact with children through my work, I am requesting an **<u>expedited appeal</u>**. I am requesting a hearing decision within 35 days of DCFS receiving this request. I also request that a copy of the investigative file be sent to my attention at the following address:

[Your Name]
1234 W. Main St.
Chicago, Illinois 60616
Phone: 312-555-1234

Respectfully submitted,

_____
[Your Signature]

STATE OF ILLINOIS
DEPARTMENT OF CHILDREN AND FAMILY SERVICES
ADMINISTRATIVE HEARINGS UNIT

IN RE: EXPUNGEMENT APPEAL OF	)	
	)	
_____	)	**SCR# _____**
[Your Name]	)	
	)	
Appellant.	)	
	)	

TO: Administrative Hearings Unit
Expungement Appeals
406 E. Monroe St., Station #15
Springfield, Illinois 62701-1498
Fax: 217-557-4652

REQUEST FOR AN ADMINISTRATIVE EXPUNGEMENT APPEAL

I, _____, hereby appeal the indicated finding against me in the cause involving the following minor(s): [Insert Minor Name(s) and DOB(s), if known]. I am requesting a timely hearing and that a copy of the investigative file be sent to my attention at the following address:

[Your Name]
1234 W. Main St.
Chicago, Illinois 60616
Phone: 312-555-1234

Respectfully submitted,

_____
[Your Signature]

STATE OF ILLINOIS
DEPARTMENT OF CHILDREN AND FAMILY SERVICES
ADMINISTRATIVE HEARINGS UNIT

IN RE: EXPUNGEMENT APPEAL OF)		
)		
_____)	**SCR#**	**_____**
[Your Name])	**AHU#**	**_____**
)	**DKT#**	**_____**
Appellant.)		
)		

TO: Administrative Law Judge [First and Last Name]
Dep't of Children & Family Servs.
Administrative Hearings Unit
[Street Address]
[City, State, Zip Code]
Fax: xxx-xxx-xxxx

[Name of Attorney]
Attorney for Department
Illinois DCFS
[Street Address]
[City, State, Zip Code]
Fax: xxx-xxx-xxxx

Administrative Hearings Unit
Expungement Appeals
406 E. Monroe St., Station #15
Springfield, Illinois 62701-1498
Fax: 217-557-4652

NOTICE OF FILING

You are hereby notified that on _____, 2019, I caused to be filed with the Department of Children and Family Services Administrative Hearings Unit the attached **Appearance and Authorization**.

AUTHORIZED REP NAME
ADDRESS
ADDRESS
PHONE NUMBER

_____
AUTHORIZED REP NAME

CERTIFICATE OF SERVICE

I, AUTHORIZED REP NAME, hereby certify that I am an authorized representative for the Appellant, APPELLANT NAME, and that on_____, 2019, I served a copy of the attached Notice upon the persons to whom the Notice is addressed via facsimile and First Class Mail.

_____
AUTHORIZED REP NAME

STATE OF ILLINOIS
DEPARTMENT OF CHILDREN AND FAMILY SERVICES
ADMINISTRATIVE HEARINGS UNIT

IN RE: EXPUNGEMENT APPEAL OF	)	
	)	
_____	)	**SCR#** **_____**
[Your Name]	)	**AHU#** **_____**
	)	**DKT#** **_____**
Appellant.	)	
	)	

APPEARANCE AND AUTHORIZATION

I, APPELLANT NAME, hereby authorize AUTHORIZED REP NAME to represent my interests during the appeal of the above-captioned matter.

APPELLANT NAME
ADDRESS
ADDRESS
PHONE NUMBER

Respectfully submitted,

_____
APPELLANT NAME

Signed and sworn to before me on _____, 2019

_____ **Notary Public**

I, AUTHORIZED REP NAME, hereby enter my appearance in the Administrative Hearings Unit as an authorized representative for the appellant in the above-captioned matter.

AUTHORIZED REP NAME
ADDRESS
ADDRESS
PHONE NUMBER

Respectfully submitted,

_____
AUTHORIZED REP NAME

STATE OF ILLINOIS
DEPARTMENT OF CHILDREN AND FAMILY SERVICES
ADMINISTRATIVE HEARINGS UNIT

IN RE: EXPUNGEMENT APPEAL OF)		
)		
_____)	**SCR#**	**_____**
[Your Name])	**AHU#**	**_____**
)	**DKT#**	**_____**
Appellant.)		
)		

TO:

Administrative Law Judge [First and Last Name]	[Name of Attorney]
Dep't of Children & Family Servs.	Attorney for Department
Administrative Hearings Unit	Illinois DCFS
[Street Address]	[Street Address]
[City, State, Zip Code]	[City, State, Zip Code]
Fax: xxx-xxx-xxxx	Fax: xxx-xxx-xxxx

APPELLANT'S LIST OF WITNESSES AND EXHIBITS

NOW COMES the Appellant, _____[NAME]_____, and states that she may call the following individuals to testify as witnesses and may present the following exhibits at the hearing on this matter:

A. WITNESSES

1. [Your Name]
2. Jenny Smith
3. Dr. Melinda Johnson
4. Barbara Garcia
5. Without waiving any objection as to relevance, any and all witnesses listed by the Department of Children & Family Services, if not otherwise listed above.

B. EXHIBITS

1. Photographs of the living room in which the incident is alleged to have occurred
2. Medical Records from Advocate Christ Medical Center
3. Excerpts from the DCFS investigative file

4. Without waiving any objection as to relevance or authenticity, any and all documents listed by the Department of Children & Family Services, if not otherwise listed above.

[Your Name]
1234 W. Main St.
Chicago, Illinois 60616
Phone: 312-555-1234

Respectfully submitted,

_____
[Your Signature]

VIA FACSIMILE to: 312-814-5602

To: Debra Martin or Other Administrator at the DCFS Administrative Hearings Unit
From: [Your Name]
Re: **Request for Subpoenas**
Date: [date]

In the matter of _____ (SCR#: _____), for which an administrative hearing is set to take place in the [*Name of City*] DCFS office on Tuesday, May 18, 2019, please issue subpoenas to the following persons for the following times on the day of hearing:

1:00 p.m.:
Dr. Melinda Johnson (*Presence Requested via Telephone Only*)
Advocate Christ Medical Center
[Street Address]
[City, State, Zip Code]

1:30 p.m.:
Barbara Garcia
Counselor, Behavioral Health Center
[Street Address]
[City, State, Zip Code]

Thank you, and please contact me with any questions.

_____
[Your Signature]

[Your Name]
1234 W. Main St.
Chicago, Illinois 60616
Phone: xxx-xxx-xxxx

STATE OF ILLINOIS
DEPARTMENT OF CHILDREN AND FAMILY SERVICES
ADMINISTRATIVE HEARINGS UNIT

IN RE: EXPUNGEMENT APPEAL OF)		
)		
_____)	**SCR#**	**_____**
[Your Name])	**AHU#**	**_____**
)	**DKT#**	**_____**
Appellant.)		
)		

TO:	Administrative Law Judge [First and Last Name]	[Name of Attorney]
	Dep't of Children & Family Servs.	Attorney for Department
	Administrative Hearings Unit	Illinois DCFS
	[Street Address]	[Street Address]
	[City, State, Zip Code]	[City, State, Zip Code]
	Fax: xxx-xxx-xxxx	Fax: xxx-xxx-xxxx

MOTION FOR TESTIMONY BY TELEPHONE

NOW COMES the Appellant, _____, and respectfully requests that this Court, pursuant to Rule 336.170, grant her Motion for Testimony by Telephone, and in support thereof states the following:

1. Appellant has an administrative hearing scheduled for May 18, 2019.

2. As part of her case, Appellant will call several material witnesses for whom testifying in person would be a significant burden.

3. Appellant's witness Jenny Smith resides in Cincinnati, Ohio, approximately five hours away. Traveling to and from Chicago for this hearing would be a hardship for her.

4. Appellant's witness Dr. Melinda Johnson is a medical doctor at Advocate Christ Medical Center. Her work schedule and responsibilities do not permit her the time to travel to the administrative hearing. Dr. Johnson qualifies as a professional under the definition in Rule 336.170(b) and therefore it is presumed that she should be permitted to testify by telephone.

WHEREFORE, having demonstrated good cause, Appellant respectfully requests that the above witness be permitted to provide their testimony by telephone.

[Your Name]
1234 W. Main St.
Chicago, Illinois 60616
Phone: xxx-xxx-xxxx

Respectfully submitted,

_____
[Your Signature]

PART IV

ADVANCED ADVOCACY TECHNIQUES TO PROTECT YOUR RIGHT TO A SPEEDY DECISION

General Overview

The Illinois Supreme Court (in the case Lyon v. Ill. Dep't of Children & Family Svcs., 209 Ill. 2d 264, 807 N.E.2d 423 (2006)), and the federal court (in the case Dupuy v. Samuels, 141 F. Supp. 2d 1090 (N.D. Ill. 2001)) have said that the right to a timely decision is constitutionally protected. For a standard appeal (i.e., a non-expedited appeal; see pp. 21-22 of this Manual for information on expedited appeals), DCFS is required to issue its final decision within 90 days from the date it received the appellant's request for an appeal. This means that DCFS is supposed to hold the pre-hearing teleconference, hold the hearing, and issue its decision all within a 90-day timeframe. See Example #1 below. The Consequence of DCFS' failure to meet the 90-day deadline is that the appellant (you) should win expungement regardless of the merits of the case.

In the usual case, whether or not DCFS has violated this 90-day deadline is not actively debated unless you lose the administrative hearing, and want to seek further review of DCFS' decision (through an Administrative Review Action filed in Illinois Circuit Court). However, you must remain constantly mindful of the 90-day timeframe in order to make sure that you are not unknowingly giving up (i.e., waiving) the right to have a decision within 90 days. Therefore, this is an issue that you must raise with the ALJ and protect for the record in case you lose your hearing and want to appeal further.

Certain actions on your part will stop the "90-day clock" from ticking (stopping this clock is also known as "tolling" the time). If you **request** a "continuance" (i.e., a postponement of the pre-hearing or hearing), the time between the date of your request and the next date everyone meets (either by phone for a pre-hearing or in-person for the hearing) will be excluded from the 90-day count. In other words, if at any time during the course of the appeal you need to

reschedule a date or request more time, the time between the previously scheduled date and the newly scheduled date (either a pre-hearing or hearing) will not be counted as part of the 90-day deadline. See Example #3 below. Also, if you affirmatively **agree** to a continuance requested by the DCFS attorney, that time will *also* be excluded from the 90-day count. See Example #4 below. You need to be careful; you have no duty or obligation to agree to DCFS requests for continuances. Feel free to object to any requests by the DCFS attorney for later pre-hearing or hearing dates. If you object, the time caused by such DCFS requests should not "stop the clock" on the 90-day deadline.

DCFS has a motive to try to get around the 90-day deadline (35-day deadline for expedited appeals), as this takes pressure off of them to hold hearings and get decisions issued. DCFS attorneys and ALJs may sometimes engage in efforts to persuade appellants to agree to continuances. If the DCFS attorney tells you that they need a later hearing or pre-hearing date, you should make it clear (in a courteous and polite manner) that you are not agreeing to the delay that may be caused by such a request.

Scheduling the Hearing Date

A particularly tricky area in connection with preserving your right to a decision within 90 days is scheduling the hearing date. The best way to protect your right to a decision within 90 days is to "accept" the first date that the ALJ offers you. When it comes time to schedule the hearing date, the ALJ may begin by asking you what date you would like. YOU SHOULD NOT OFFER A DATE FIRST. If you do respond to this question by offering a date, DCFS can later argue that any time between the pre-hearing and the hearing date you chose should be excluded from the 90-day count because by choosing the hearing date, you were essentially requesting a delay of the appeal process.

Instead, if asked by the ALJ what date you want for your hearing, you should politely respond that you will consider the first date that the ALJ has to offer you. See Example #5 below. Keep in mind that the date the ALJ offers cannot be sooner than 14 days from the pre-hearing date (so as to give you and the DCFS attorney time to subpoena your witnesses). If the ALJ tries to offer a date that is less than 14 days from the date of the pre-hearing, you should politely state that your understanding of DCFS Rule 336 is that all parties are entitled to a 14-day window in which to subpoena witnesses.

If you know that the first date the ALJ offers you would be beyond 90 days from the date DCFS received your appeal (again, excluding any delays caused by your own requests for additional time), you must clearly notify the ALJ of that fact, either in writing or on the record during a telephone pre-hearing. You must also state that while you will "accept" that date if it is the earliest the ALJ has to offer, you are not waiving your right to a timely decision. For this reason, it is beneficial for you to keep your own record of how much time is passing so that you can give clear notice (preferably in a written letter addressed to both the ALJ and the DCFS attorney) if you have reason to believe that an offered hearing date would violate the 90-day deadline. See Example #6 below.

Finally, one confusing tactic that may be used is for the ALJ to ask if a date that is offered for the hearing is "by agreement." See Example #7 below. You need to draw the following distinction: <u>being "agreeable" to a date is fine, but having your agreement treated as a request for more time beyond the 35- or 90-day deadlines is not</u>. Therefore, if you are asked whether a proposed date is "by agreement," you need to say that the date is "acceptable" to you, but that you **<u>are not</u>** waiving your rights to a timely hearing. You may need to repeat this statement to make it clear on the ALJ's recording.

The only time you should waive your rights to a decision within 90 days (or 35 days for an expedited hearing) by agreeing to a continuance or delay is when **you** are the one who needs more time. If you need more time, then you should request a date as soon as possible after the earliest date by which you would be ready for your hearing. For example, if you will be ready for a hearing on January 22, you should say, "Your Honor, I am requesting a continuance to the soonest date you have available after January 22, and I am agreeing to toll the time for the hearing until January 22."

If you receive an Order in the mail saying a continuance or hearing date was "by agreement" when it was not, you should file a "Motion to Clarify." In that motion, you should state that you did not agree to the continuance (or that as to scheduling the hearing date, you simply accepted the first date the ALJ offered). Send your motion to the DCFS lawyer and the ALJ. By sending this motion, you will create a written record that you did not give up your right to a timely decision.

Special Note Regarding Expedited Hearings

As explained in the Manual (see pp. 21-22), persons who have contact with children as part of their job (or who are engaged in seeking or training for a job that involves working with children) have the right to a decision within 35 days, instead of 90 days. Generally, all of the guidelines that have been discussed in this section as to preserving your right to a decision within 90 days also apply to preserving your right to a decision within 35 days for expedited hearings. However, there is one difference: in expedited appeals, certain requests you may make for additional time will convert your expedited appeal to a regular 90-day appeal.

When an appellant is receiving an expedited appeal, the first notice that the appellant receives will include:

1. The date and time of the telephonic pre-hearing
2. Two pre-assigned in-person hearing dates (the second date is reserved just in case more time is needed)

Consistent with DCFS policy, these dates will comply with the 35-day deadline. If the pre-assigned hearing dates simply will not work for you (or one of your essential witnesses) you are free to request a different date. However, if the new date that you request is ***more than seven days*** from the pre-assigned hearing date, you will ***give up your right*** to receive an expedited appeal and, instead, your appeal will be treated as a regular appeal (and must still be decided within 90 days). In addition, as with a regular 90-day appeal, any time between the pre-assigned hearing date and the new hearing date will not be counted within the 90-day deadline. See Examples #8-10 below for illustrations of this information.

Counting Time: EXAMPLES

EXAMPLE #1

Let's say you received notice of your indicated finding on June 1. You decided to appeal the decision and mailed your appeal letter by certified mail on June 10. (Remember, you can follow-up with a fax to speed up the process.) Assuming you did not fax a copy of your appeal letter, let's assume that DCFS receives your mailed appeal on June 15. You receive a letter from DCFS on June 20 (dated June 16) that states your appeal has been received and your pre-hearing conference will be held on July 3 at 2:30 p.m.

QUESTION: Assuming there are no continuances during the course of your appeal, by what date should you receive the final DCFS decision on your appeal?

ANSWER: September 12, because that is 90 days from June 15 (the date when DCFS received your request for an appeal).

EXAMPLE #2

Same facts as above. Let's say that at the July 3 pre-hearing, the ALJ offers a hearing date of August 10 and asks if you accept that date.

QUESTION: Should you accept that date? When should you "accept" a hearing date that is offered by the judge?

ANSWER: You should accept the soonest date that is convenient for you, leaving at least 14 days for you to request that DCFS issue subpoenas to your witnesses. (See pp. 28-30 of this Manual for more information regarding subpoenas.) Because a hearing date of August 10 will give you at least 14 days to subpoena your witnesses, you should accept that date so long as you do not have a major scheduling conflict for that day.

QUESTION: Assuming the hearing takes place on August 10, by what date should you get the decision?

ANSWER: September 12 (90 days from June 15, the date that DCFS received your request).

EXAMPLE #3

Same facts as above. But let's say that on July 25, you learn that you have to be out of town for work on the day of the hearing. You file a request for a continuance that the ALJ grants, and a new hearing date of August 25 is set.

QUESTION: By what date should you get your decision now?

ANSWER: September 27, which would be 90 days from June 15, plus the extra 15 days resulting from your continuance request (which are considered to "count against" you—in other words, stopping the clock or "tolling" the time).

EXAMPLE #4

Same facts as Example #2, with the ALJ offering a hearing date of August 10. Both you and the DCFS attorney accept that hearing date. Let's say that on July 25, the DCFS attorney sends a written request for a continuance because she has had knee surgery scheduled for August 10.

QUESTION: Should you agree to the DCFS attorney's request for a continuance?

ANSWER: **NO**. If you agree, the delay caused by the request will be excluded from the 90-day deadline. Of course, you still want to be courteous, though! You should state the following: "While I have no position as to the DCFS attorney's request—which seems reasonable in light of the circumstances—I cannot agree to a delay of the hearing and am not waiving any of my rights under *Lyon*."

EXAMPLE #5

Same facts as above, but let's say that at the July 3 pre-hearing instead of offering you a date, the ALJ asks *you* what date *you* would like for the hearing.

QUESTION: Do you pick a date that is good for you?

ANSWER: **NO!** By you picking the date, it could easily be construed as you requesting a delay and, therefore, waiving your right to a timely hearing.

QUESTION: How should you respond to the ALJ's question?

ANSWER: You should state as follows: "Judge, I would consider whatever earliest date the Administrative Hearings Unit has to offer that still gives me 14 days to request subpoenas." (See pp. 28-30 of this Manual regarding subpoenas.)

EXAMPLE #6

Same facts as above, but let's say that at the pre-hearing (taking place on July 3), instead of offering you a hearing date of August 10, the ALJ offers you a hearing date of September 15. The DCFS attorney quickly agrees to that date and the ALJ asks if you will also agree to that

date for the hearing. You know that because DCFS received your appeal request on June 15, a hearing date of September 15 would be beyond the 90-day time limit.

QUESTION: What do you say?

ANSWER: First, you should tell the judge and the DCFS attorney that according to your count, that date would be beyond the 90-day deadline required by *Lyon* and, therefore, you are requesting a sooner date if possible (that would still allow you 14 days in which to issue your subpoenas).

QUESTION: What if the ALJ says that September 15 is the only date that works for her and asks if you "agree" to this date?

ANSWER: You should state the following: "Since it is the earliest date AHU has to offer, I ***accept*** the date, but I do not waive any of my rights or objections under *Lyon*." If the judge keeps asking you to *agree*, just keep repeating the same as above: you *accept* the date.

EXAMPLE #7

Same facts as in Example #2. Let's say that at the July 3 pre-hearing, the ALJ offers you a hearing date of August 10. When you state that you find that date acceptable, the ALJ says, "Okay, so that date is by agreement?"

QUESTION: Should you say anything?

ANSWER: As noted above, it is important to make clear the distinction between a date that is "acceptable" and a date that is "by agreement" in order to fully preserve your rights. If the ALJ is repeatedly asking you to state that the date is by agreement, just keep repeating the following: "I am ***accepting*** the date offered by AHU of August 10, and I am not waiving any of my rights to a timely decision."

EXAMPLE #8

New facts: Let's say that you are a child care worker and that on April 1, you faxed in a request for an **expedited** hearing. On April 3, you receive a letter from DCFS informing you that your pre-hearing will take place April 10 and that the two hearing dates that have been reserved for your hearing are April 15 and April 16.

QUESTION: Assuming there are no requests for continuances during the course of your appeal, by what date should you receive the final DCFS decision on your expedited appeal?

ANSWER: May 5, because that is 35 days from April 1 (the date when DCFS received your request for an expedited appeal).

EXAMPLE #9

Same facts as in Example #8, but let's say that you have an unavoidable conflict for April 15 and April 16.

QUESTION: If you request a new hearing date of either April 19, 20, 21, or 22, do you waive your right to an expedited appeal?

ANSWER: No—because the new hearing date you are requesting falls within 7 days from the originally-assigned date, you are still entitled to your expedited appeal.

QUESTION: If the hearing is re-scheduled for April 20 and April 21, by what date should you receive the final decision?

ANSWER: May 10, which would be 35 days from April 1, plus the extra 5 days resulting from your request for a new hearing date.

EXAMPLE #10

Same facts as Example #9, except let's say that you request a new hearing date no earlier than April 30.

QUESTION: By requesting a continuance until at least April 30, do you waive your right to an expedited appeal?

ANSWER: YES—because the soonest hearing date you are requesting falls beyond 7 days from the originally-assigned date, your appeal will convert to a regular appeal. You will still be entitled to a hearing decision within 90 days from when DCFS received your appeal.

QUESTION: Let's say that after receiving your request, the hearing is re-scheduled for May 5. By what date should you receive the final decision?

ANSWER: The 90-day deadline would be July 19 (which would be 90 days from April 1, plus the extra 20 days (between April 15 and May 5) resulting from your request for a new hearing date.) However, Illinois statute also requires DCFS to issue its decision no later than 60 days following completion of the hearing. So if a hearing is completed on May 5, it should be issued no later than 60 days after that, or July 4.

PART V

OUTLINE OF A TYPICAL DCFS INVESTIGATIVE FILE

Introduction

We include below a brief description of the various sections of a typical DCFS file, including how each section may be useful to you.

Investigation Summary and Allegation Rationale

The investigation summary is the central decision-making document that DCFS uses to justify its indicated reports. It normally spans the first several pages of the investigative file and contains a lot of useful information. The top of the first page of this document identifies itself as the "Investigation Transition/Handoff Document." It documents when the Hotline call was made (next to "Report Date/Time") and when the indicated finding was made (next to "Finding Date"). It also reveals whether or not the investigation due dates were met, which can be useful to know when you are analyzing how careful, thorough, and timely the DCFS investigators were in handing the investigation. This page normally also includes a date stamp of when the appeal request was received by the DCFS Administrative Hearings Unit.

The middle section of the first page just relates to whether there is a "follow-up" case for intact services. The following sections include the names and demographic information for the subjects of the investigation. Both children and adults are considered "subjects."

The next section contains information about which DCFS Allegations of Harm were investigated. It also includes the Narrative from the Hotline report. The Narrative is the information that the hotline caller provided to the hotline on the initial call, also called the hotline report. Although there will be some redactions in order to protect the identity of the child abuse reporter, there should be enough narrative for you to know the main factual claims that started the investigation. If any additional reports or calls were made to the hotline, that information and narrative will also be included.

There will be references to "reporter/source/OPWI." "OPWI" means "other person with information." These names may be redacted. You may also see the word "Burgos," which is a code DCFS utilizes to identify those persons who speak primarily Spanish. DCFS is expected to provide notices in Spanish for these individuals.

The heart of this document is found under **"Allegations/Relationships"** in the pages immediately following the hotline narrative. In this section, you will find a summary of the reasons why DCFS decided to indicate or unfound each allegation. DCFS lists each allegation it investigated and makes a determination as to each one (this includes separate determinations for each possible alleged child victim). Then DCFS is required to "List all evidence that suggests an incident occurred and that the alleged perpetrator is responsible." This list should include the main reasons DCFS had for indicating you. DCFS is also required to "List all evidence that suggests an incident did not occur or that the alleged perpetrator is not responsible." This is where the main evidence *in your favor* should be listed. DCFS OFTEN FILLS THIS PART OUT INCORRECTLY. This will be important for you to review, especially if this section fails to mention important and favorable information that DCFS obtained during the investigation or if this section erroneously lists unfavorable information.

Immediately thereafter, the "Allegation Rationale" states DCFS's reasons for indicating you. In some cases that are well-handled, the rationale will actually discuss the reasons. But in many cases this section will just repeat the evidence against you and not explain why that evidence was stronger than the evidence in your favor. If the "Rationale" in your case is incomplete or inaccurate, you should bring this out in your cross-examination of the investigator.

Risk and Safety Assessments

The "Risk Assessment Summary" is completed at the end of an investigation, while a "Safety Determination Form" is completed at the very beginning of an investigation. Sometimes, there may be multiple "Safety Determination Forms" completed during the course of an investigation. These forms are not used in the determination of whether or not to indicate a report of child abuse or neglect. It may be that the information DCFS included on these forms in your case is inaccurate. However, because DCFS does not use these forms to determine the indicated finding, we do not recommend that you focus your energy on analyzing or asking questions about these forms when you prepare for your hearing. If the safety assessments contain favorable information or identify favorable family strengths, however, that is information you can bring out at the hearing.

Contact Notes

These notes are the heart of the case because they show every contact DCFS made—or didn't make—during the investigation. You need to read these carefully. Note the date and time of the contact to make sure that there is not a huge gap between the date of the contact and the date the Note was created. If you find a huge gap, you can ask about it and then argue that the file was not kept "contemporaneously," is therefore not reliable or accurate, and should not be admitted into evidence.

The notes themselves tell you the information DCFS gathered and (in most instances) from what source DCFS gathered that information. If there are errors in the notes (because they were inaccurately recorded or misunderstood by DCFS), you will want to bring that out in your hearing.

Look for what is missing as well as what is there. If a note of an essential witness does not have detailed information that would have been important to ask, you can bring that out in your cross-examination. We recommend making notes on the file that you bring with you to your hearing.

Domestic Violence Screen

DCFS policies require that the investigator fill out this form (as well as a Substance Abuse Screen) in each case, and they are usually contained towards the end of the investigative file. However, DCFS investigators often fill out these forms very quickly and without any real questions having been asked. If DCFS filled out these forms incorrectly, you may wish to bring out these errors.

Redaction Checklist

This lists all the laws that allow DCFS to black out information in the file. This form will be included in your packet. If you think there was over-redaction (too much blacking out of information so that you cannot read the file sufficiently), you can ask the judge to order disclosure of overly-redacted parts. Keep in mind that DCFS will not reveal who was the "child abuse reporter" because their identity is confidential. For that reason, it is generally not worthwhile to try to get disclosure of that information.

Police Report Redaction Notice

This form simply tells you if the case had a police report associated with it. If DCFS never obtained a police report in connection with the investigation, option "b" will be checked. However, if option "a" is checked, that means that DCFS **does** have a copy of a police report. If this is the case, then you will need to request a copy of that police report either from the DCFS attorney (who should provide it to you if he or she has it) or from the police department itself.

DCFS does not include the police reports in the files it sends to appellants but getting the report may be important to prepare your appeal. Sometimes police reports are very helpful because the police version of the same event may be very different from DCFS' version. In other cases, you will simply need the police report in order to prepare your own cross-examination of a police officer.

Notice of Indicated Finding (separate document)

This Notice is used to inform people of an indicated finding following an investigation. This is a separate document and not a part of the numbered DCFS file. This Notice informs you of the specific allegation(s) for which DCFS has indicated you. Although each allegation has an assigned number in the DCFS allegation system (see p. 9 in the Manual for a description of the DCFS allegation system), the number is not always stated on the Notice of Indicated Finding. This Notice also tells you for how long the allegation will be kept in the State Central Register (either 5, 20, or 50 years) if you do not successfully appeal it.

As explained in the Manual (see p. 17), you have a 60-day deadline by which you must file your Request for Appeal. The 60 days begins according to the date listed at the top of the Notice of Indicated Finding. For example, if you receive a Notice dated March 1, 2019, you must file your Request for Appeal no later than April 30, 2019.

Do keep in mind the 90-day deadline by which DCFS must issue its final decision begins from the day that DCFS **receives** your Request for Appeal. Faxing your Request to the Administrative Hearings Unit (217-557-4652) is the best way to trigger the 90-day deadline quickly. (See pp. 24-25 and Part IV of this Manual for more information on preserving your right to a timely hearing.) Faxing your Request will also enable you to have a fax confirmation sheet,

providing proof that you faxed your Request. For these reasons, we recommend faxing your Request as well as mailing it.

Notice of Pre-Hearing (separate document)

This is the notice you will receive to let you know when your first telephone pre-hearing conference is scheduled. This is a separate document and not a part of the numbered DCFS file. This notice will list the date and time that the DCFS ALJ will call you at the telephone number you listed on your Request for Appeal. (If you have requested an ***expedited appeal***, this notice should also include the date of the in-person hearing. If you have requested an expedited appeal and you believe that you are eligible to receive one, you should immediately contact the DCFS Administrative Hearings Unit (217-782-6655) if the notice you receive does not include a scheduled in-person hearing date in addition to a telephone pre-hearing date.)

This notice will also tell you the name of the assigned ALJ and the assigned DCFS attorney. DCFS frequently assigns an attorney different from the one listed *after* this notice is sent to you, but you can call the attorney whose name you are given to find out if that attorney will be handling the case for DCFS or if you should contact another DCFS attorney. You should contact DCFS attorneys in order to (a) get missing file information; (b) provide your own witness and exhibit list and get the DCFS list from them; and (c) discuss the possibility of a settlement, which could include DCFS voluntarily unfounding the indicated report prior to a hearing.