

Fighting Substantiations of Abuse or Neglect

By Atty. Michael H. Agranoff

The Situation

A day care facility was in disarray. It was having financial problems and was understaffed. Paperwork was being neglected. Children were left unsupervised. Worse yet, an unruly four-year-old was acting in a sexually inappropriate manner.

Someone called DCF, and an investigator was sent. She spoke to a few people, made some hasty observations, and came to the conclusion that one of the workers (not management) was "substantiated" as a perpetrator of "neglect" (but not of "abuse").

It was a classic scapegoat situation, with an investigator pressured into doing something. It may have seemed safe to make a "little person" the fall guy, but this particular person fought back and called me.

Abuse and Neglect Investigations

If DCF gets a referral, it must, for everyone's protection, conduct an investigation. As a result of that investigation, abuse or neglect may be "substantiated" or "not substantiated". If substantiated, there may be various consequences for the individual, including employment difficulties, or greater likelihood of future problems with DCF.

In this case, if substantiated, the charge would remain on the person's records. On anything she applied for, including another day care position, she would be identified as a "substantiated perpetrator of child neglect." The facts would hardly matter; the stigma had attached.

Challenging the Substantiation

We challenged the finding, did our homework, and were prepared for the DCF administrative hearing. The investigator was revealed as having been hasty, less than thorough, and biased against my client.

The "substantiation of neglect" was overridden by DCF itself, and my client regained her clean record.

Had we lost at the DCF administrative hearing, we still could have appealed to a Judge of the Superior Court.

DCF Administrative Hearings

If the DCF investigation substantiates you for abuse or neglect, there is a reasonable chance to get that substantiation overturned at a DCF administrative hearing.

The hearing is conducted by a DCF employee. However, that person is a lawyer, is called a "Hearing Officer" or "Adjudicator", and is normally a fair-minded person with a good degree of independence from the investigators. In other words, you have a chance to win here, if you are prepared.

Hearings are private, but less formal than courts, and strict rules of evidence are relaxed. DCF, in fact, is sometimes represented by a paralegal, and not by a lawyer. However, that can be a trap for the unwary.

A lawyer will get the DCF "investigation protocol" (DCF written evidence) ahead of time, and will be able to review it, line-by-line, along with other documents, and look for inconsistencies. An experienced lawyer will be able to effectively cross-examine witnesses, and help you call your own factual and expert witnesses. The lawyer will also prepare a closing argument, and help the Hearing Officer understand your version of the facts, as well as the law.

DCF often tries to hurry up these hearings. Your lawyer will be able to arrange adequate preparation time, and get additional hearings as may be necessary. Also, since hearsay evidence is allowed, the lawyer will be able to minimize the effect of this evidence against you.

Therefore, while you are perfectly permitted to represent yourself in a DCF administrative hearing, it is not a wise thing to do. You are not only at a professional disadvantage, but are also personally and emotionally involved, which always clouds one's judgment.

Finally, if you lose at the Administrative Hearing, you have the right to appeal to the Connecticut Superior Court, and be heard by a Judge. However, in that hearing, the Judge is required to give deference to DCF's decision. In other words, you must prove that DCF was wrong; DCF does not have to prove its case all over again. The lawyer will be in the best position to ensure that, if you lose at the hearing, you have adequate grounds, under administrative law, for an appeal.

There are, of course, no guarantees. There never are.

In short, if you are being investigated by DCF, a lawyer might help you to avoid a substantiation. If you are substantiated, a lawyer might help you to get it overturned. Whatever you choose, it is best to get legal advice from a lawyer, not from DCF itself or from other well-wishers

How Can This Happen?

Many people believe that, under the Constitution, they cannot be "substantiated" as perpetrators of abuse or neglect, and suffer financial and emotional loss, without being heard by a Judge. They are surprised to find that DCF often does just that. They may be further surprised to find out that DCF can hit them twice -- with a substantiation and a Juvenile Court petition -- and force them to defend essentially the same charge again.

Before 2000, incredibly, people could be substantiated as perpetrators of abuse or neglect, and suffer financial and emotional loss, and not even be aware of it! DCF did not have to tell them, and certainly they had no right of appeal. Thus, a cloud remained on their records, and they didn't even know about it. Fortunately, this has changed; but it provides an indication of DCF's attitude toward individual rights.

Make no mistake -- being angry at DCF won't help. You need an experience professional to fight for you.

The Child Abuse/Neglect Registry

Also, before October 1, 2005, anyone substantiated for abuse or neglect was automatically placed on the Child Abuse/Neglect Registry. Whether you committed one non-serious incident of neglect, admitted the fact, and moved forward from there with an exemplary life; or whether you committed serious and repeated acts of abuse and were an obvious threat to children; you were all on the same Registry.

Fortunately, that changed. It is now possible to be substantiated but not placed on the Registry. Registry placement has several negative consequences, such as denial of certain employment or child care opportunities, or even of adopting children. Please see our pamphlet, [The Child Abuse/Neglect Registry](#).

It helps to see a lawyer because the above-listed law can also change. If you count on DCF social workers to interpret the law for you, then nothing I can say will help.

The Lesson

When you are unjustly accused, don't get mad -- get even. Try to use the system to beat the system.

Now and then, you can fight City Hall.

[Other Substantiation Cases . . .](#)