

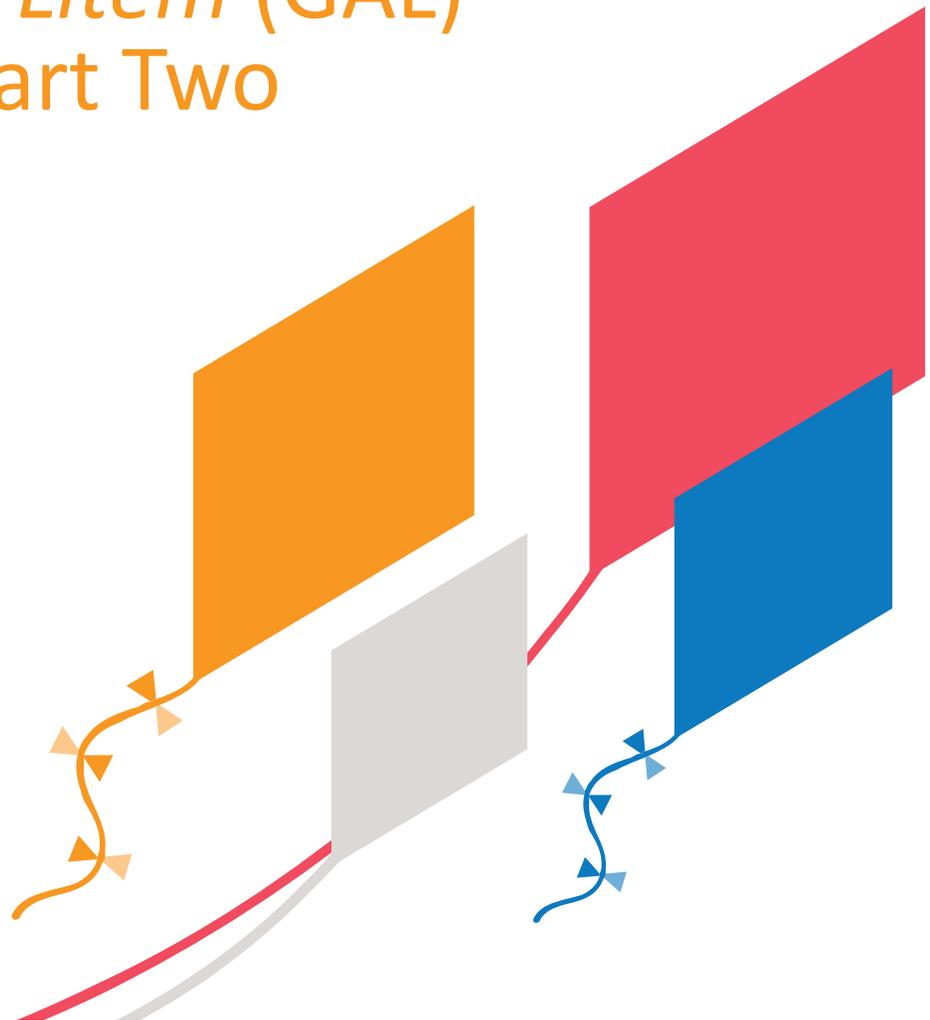
Children's Law Center

Custody Guardian *ad Litem* (GAL) Pro Bono Training - Part Two

Jen Masi, Pro Bono Director



July 15, 2020



Quick Roadmap



CLC Pro Bono Program



Virtual Training Series



Today's Training



On Demand Resources

About Children's Law Center



WE REACH
1 out of 9 children
IN DC'S POOREST
NEIGHBORHOODS EACH YEAR

WE HAVE LAWYERS ONSITE AT
6 health clinics
ACROSS DC TO HELP FIND
AND FIX BARRIERS TO HEALTH



WE HAVE SERVED
**30,000 children
and families**
SINCE 1996



WE PARTNER WITH MORE THAN
500 pro bono lawyers



WE PARTNER WITH DISTRICT
AGENCIES, THE DC COUNCIL
AND COMMUNITY LEADERS TO
FIND OR IMPLEMENT
city-wide solutions
THAT BENEFIT ALL DC KIDS

Children's Law Center fights so every child in DC can grow up with a loving family, good health and a quality education. Judges, pediatricians and families turn to us to advocate for children who are abused or neglected, who aren't learning in school, or who have health problems that can't be solved by medicine alone.

CLC Pro Bono Cases

Family

- ◆ Caregiver Custody
- ◆ Custody Guardian *ad Litem* (GAL)

Health

- ◆ Housing Conditions

Education

- ◆ Special Education

Supporting Pro Bono Attorneys



Screening

CLC thoroughly screens clients when assessing cases for pro bono placement to ensure the case is a good fit for a pro bono attorney.



Training and Resources

CLC offers in-person and online training and an abundance of resources on our website, including model pleadings, training materials and videos.



Mentoring

Experienced CLC attorneys mentor our pro bono lawyers. Mentors provide initial case recommendations, discuss strategy and legal issues, and remain available throughout the duration of the case.

Virtual Training Series

July 2020				
Monday	Tuesday	Wednesday	Thursday	Friday
6	7 2:00 p.m. - 3:00 p.m. Caregiver Custody Part One: Custody Law and Practice	8 9:30 a.m. - 10:30 a.m. Caregiver Custody Part Two: Pretrial and Trial Advocacy	9	10
13 12:00 p.m. - 1:00 p.m. Custody GAL - Part One: The Role of the GAL	14	15 2:00 p.m. - 3:00 p.m. Custody GAL - Part Two: Custody Law and Procedure	16	17 10:00 a.m. - 11:00 a.m. Custody GAL - Part Three: Communicating with Children and Teens; Overview of Domestic Violence, Substance Abuse, and Child Abuse and Neglect
20 10:00 a.m. - 11:00 a.m. Special Education - Part One: What is Special Education?	21	22 3:00 p.m. - 4:00 p.m. Special Education - Part Two: Handling a Special Education Case	23 3:30 p.m. - 4:30 p.m. Cultural Humility Training	24 10:00 a.m. - 11:00 a.m. Special Education - Part Three: The Due Process Hearing
27	28 12:00 p.m. - 1:30 p.m. Housing Conditions Training	29	30	31

Today's Training

Content

- Custody Law and Procedure

Remote Representation

- These cases can be handled remotely.

Questions

- Zoom Chat
- Email Jen Masi

On Demand Resources



**Training
Presentations**



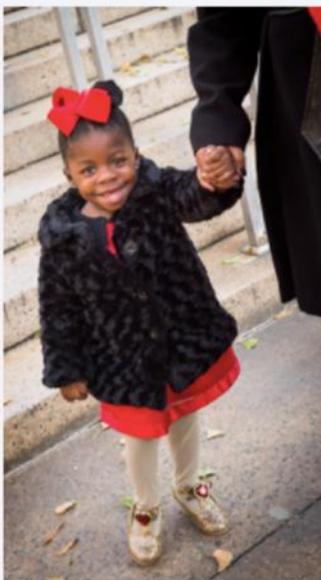
**Training
Videos**



**Training
Manuals**

On Demand Resources

Pro Bono



Though Children's Law Center is the largest non-profit legal provider in DC, many more children come to us than we can help. We are honored to partner with more than 500 pro bono attorneys every year from the area's top law firms, in-house legal departments and government agencies to help fill the gap.

If you are a pro bono attorney, we hope you will partner with us. We provide world class mentorship, training and written materials to help attorneys feel more comfortable navigating new areas of law. In addition to gaining valuable trial skills, we promise that you will be deeply touched by your experience – because our cases are life changing.

Want to learn more about becoming a pro bono lawyer for Children's Law Center? [Check out our FAQs](#) and sign up to [join our mailing list](#)! Closing a case? [Click here](#).

For information on how to partner with us, please contact Jen at JMasi@ChildrensLawCenter.org.

Resources >

Fact Sheets

Pleadings

Training Manuals

Training Presentations & Videos

Other



Meet Our Mentors



Pro Bono Partners

Interested in a case?

◆ **Email me!**

jmasi@childrenslawcenter.org



Custody Law and Procedure

And Child Support and Civil Protection Orders

Diane Weinroth, Special Counsel



July 15, 2020



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COVID-19 Updates in **RED**

Types of cases in which custody orders can be requested

- ◆ Divorce
- ◆ Custody
- ◆ Civil Protection Order (domestic violence)

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Where's the law?

Statutes

- ◆ D.C. Code, Title 16, Chapter 9
 - ◆ custody/visitation between parents
-- especially § 16-914
- ◆ D.C. Code § 16-831.01 *et seq.*
 - ◆ custody/visitation for non-parents
("third-party custody")
- ◆ D.C. Code § 16-1001 *et seq.*
 - ◆ civil protection order proceedings (temporary custody, time-limited order)

Court Rules

- ◆ Divorce and custody cases
 - ◆ Domestic Relations Proceedings Rules
 - ▶ *Note: new rules effective November 26, 2018*
 - ◆ General Family Rules
- ◆ CPO cases
 - ◆ Domestic Violence Division Rules

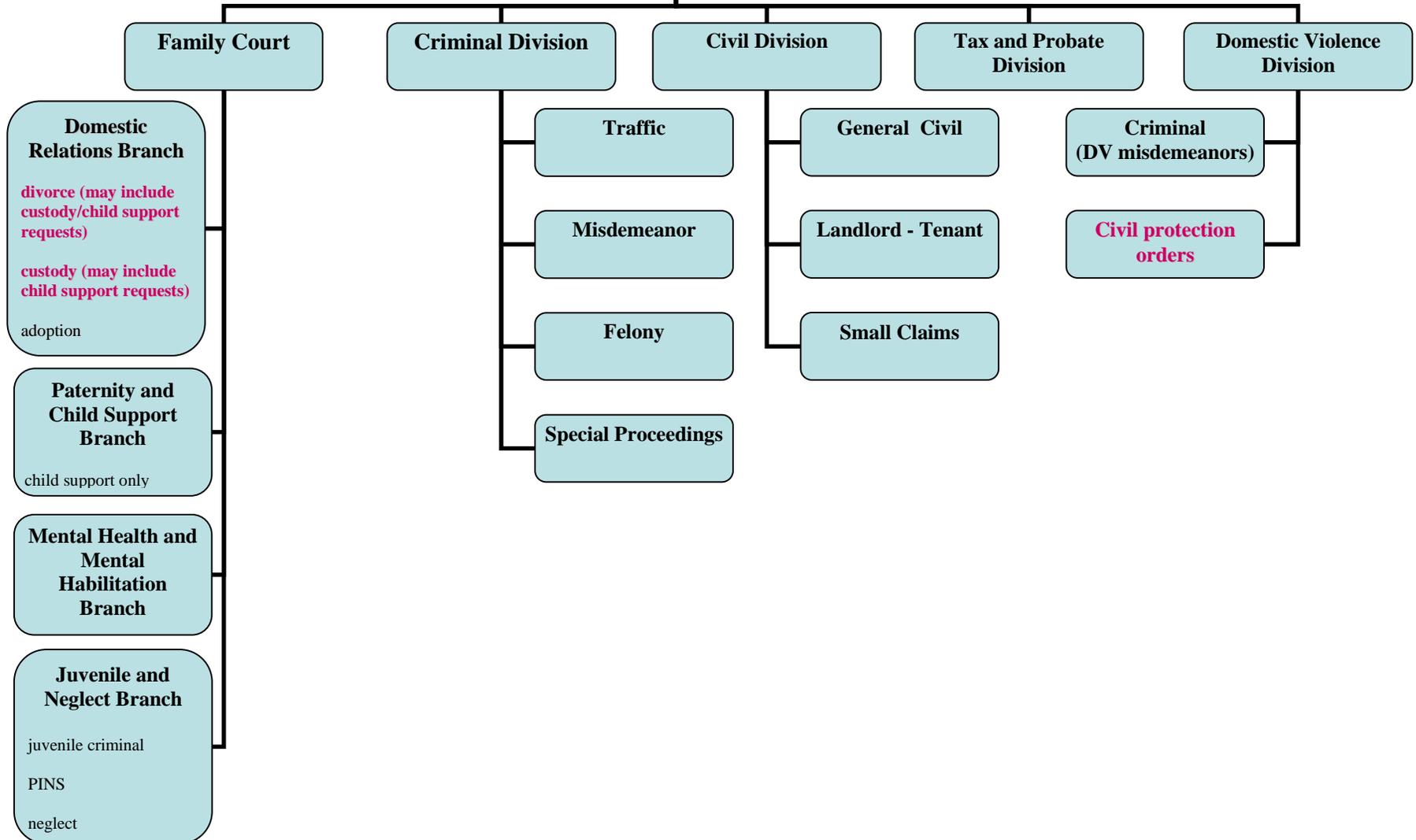
Welcome to D.C. Superior Court

H. CARL MOULTRIE I
COURTHOUSE OF THE DISTRICT OF COLUMBIA

500



D.C. Superior Court



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What is custody?

Legal Custody

- ◆ Decision-making:
 - ◆ “Legal custody” means legal responsibility for a child. The term “legal custody” includes the right to make decisions regarding that child’s health, education, and general welfare, the right to access the child’s educational, medical, psychological, dental, or other records, and the right to speak with and obtain information regarding the child from school officials, health care providers, counselors, or other persons interacting with the child.
 - ▶ D.C. Code § 16-914, § 16-831.01

Physical Custody

- ◆ Whom the child is with and when:
 - ◆ “Physical custody” means a child’s living arrangements. The term “physical custody” includes a child’s residency or visitation schedule.
 - ▶ D.C. Code § 16-914, § 16-831.01

Relationship between legal and physical custody

- ◆ “Although the decision authority allocated between a physical and a legal custodian may at times overlap – for example, if the need arises for emergency medical care – the short-term, tactical decisions made by a physical custodian should be made in a manner consistent with the long-term, strategic decisions made by the legal custodian.”
 - ◆ *Ysla v. Lopez*, 684 A.2d 775, 777 (D.C. 1996)

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Who has these rights?

- 
- ◆ In the absence of a court order, parents have joint legal and physical custody.
 - ◆ Probably by operation of law.
 - ◆ Statutory: parents are the natural guardians of their children (D.C. Code § 21-101)
 - ◆ Co-extensive equal rights

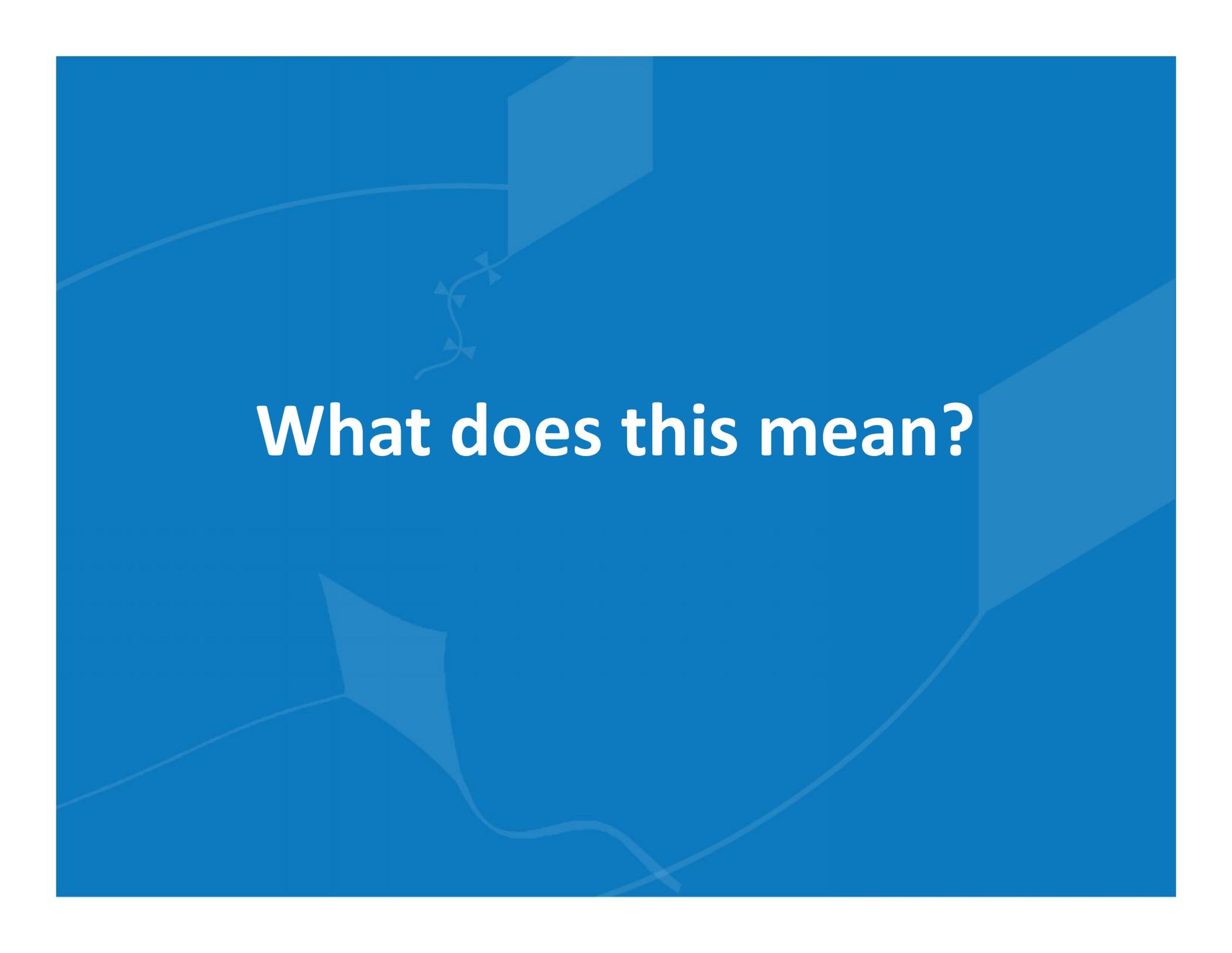
- 
- ◆ The court can allocate custodial rights between the parents.
 - ◆ The court can also award custodial rights to a non-parent (third party) under certain circumstances. D.C. Code § 16-831.01 *et seq.*

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**What kind of
custody arrangements
can the court order?**

Custody Order

- ◆ A custody order may include:
 - ◆ sole legal custody
 - ◆ sole physical custody
 - ◆ joint legal custody
 - ◆ joint physical custody
 - ◆ any other custody arrangement the court may determine is in the best interests of the child
 - ▶ D.C. Code §§ 16-914; 16-831.04

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What does this mean?

Custody

- ◆ Joint legal
 - ◆ equal authority to make major decisions
- ◆ Sole legal
 - ◆ sole authority to make major decisions
- ◆ Joint physical
 - ◆ unclear – approximately equal time with each parent?
- ◆ Sole physical
 - ◆ somewhat unclear – usually means child lives/resides with custodial parent

What does this really mean?

**Court has broad discretion
to fashion custody arrangements**

General language in a custody order

- ◆ For example:
 - ◆ joint legal custody; shared legal custody
 - ◆ joint legal custody with tie-breaker authority to one parent
 - ◆ joint legal or joint physical with additional or clarifying details/specifics
 - ◆ joint physical custody with specifics/schedule
 - ◆ sole physical custody; primary physical custody; primary residential custody
 - ◆ reasonable rights of visitation; basic visitation schedule; detailed visitation arrangements

Specific language in a custody order

- ◆ For example:
 - ◆ more detailed living and/or visitation arrangements
 - ◆ more detailed decision-making allocation or process (generally or about a specific decision or decisions)

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What is the legal standard?

Parent v. Parent Custody Cases

- ◆ Best interests of the child
- ◆ The court “shall consider all relevant factors.”
- ◆ 17 non-exclusive factors that must be considered
 - ◆ D.C. Code § 16-914

Parent v. Parent Custody Cases

- ◆ Presumption in favor of joint custody
- ◆ Presumption can be rebutted
- ◆ Presumption against joint custody if court has found or finds by a preponderance of the evidence that a party has committed an intrafamily offense, neglect, or parental kidnapping (as defined by the statute).
 - ◆ Also rebuttable

Third-Party Custody Cases

- ◆ Standing (D.C Code § 16-831.01, 831.02)
 - ◆ A parent who is or has been the primary caretaker within past 3 years consents, or
 - ◆ Third party lived in the same household as the child for at least 4 of the preceding 6 months (or half of the child's life if child is under the age of 6 months) and primarily assumed caretaking responsibilities, or
 - ◆ Child is living with third party and there are exceptional circumstances such that relief is necessary to prevent harm to the child, or

Third-Party Custody Cases

- ◆ “De facto” parent as defined by the statute
 - ▶ a de facto parent is treated as a parent for purposes of the legal standard

Third-Party Custody

- ◆ Legal standard
 - ◆ Court must find that the “parental presumption” has been rebutted and that custody with the third party is in the child’s best interest

Third-Party Custody

- ◆ Rebutting parental presumption – D.C. Code § 16-831.07
 - ◆ Parental presumption: presumption that it is in the best interests of the child to be in the custody of a fit parent
 - ◆ Statutory bases for rebutting presumption

Third-Party Custody

- ◆ Best interests – D.C. Code §16-831.08
 - ◆ 4 non-exclusive factors that must be considered.
 - ◆ Parent v. parent factors in § 16-914 do not apply directly but may be instructive.
 - ◆ Rebuttable presumption that it is not in the best interests of the child to grant custody to a third party who has committed an intrafamily offense.

Duration of Custody Orders

- ◆ Custody orders last indefinitely until age 18, the age of majority in D.C.
 - ◆ Court cannot award custody through a Family Court proceeding after child turns 18.

Modification

- ◆ Custody is always modifiable
 - ◆ “Permanent custody” is a misnomer
 - ◆ Motion to modify
- ◆ Substantial and material change in circumstances and in best interests of child
 - ◆ D.C. Code § 16-914(e)(1); § 16-831.11
 - ◆ Exception: if the order in a third-party custody case is based on parent’s revocable consent (see below *re* revocable consent)

Enforcement

- ◆ Civil contempt
 - ◆ Alternative (sort of): motion to enforce order

Jurisdiction – Is D.C. the right place?

- ◆ Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA)
 - ◆ D.C. Code § 16-4601.01 et seq.
 - ◆ Governs jurisdiction over “custody determinations”

Basic UCCJEA Principles

- ◆ Only one state at a time has jurisdiction to make a custody determination
 - ◆ Initial jurisdiction analysis (no previous custody determination)
 - ◆ Modification jurisdiction analysis (previous custody determination)
 - ◆ Exception: enforcement jurisdiction – any state has jurisdiction to enforce a custody order

UCCJEA Red Flags

- ◆ Child has lived in D.C. for less than six months
- ◆ Previous custody order
- ◆ Parties live in different states

D.C. may still be the right place

Procedure in DRB Cases

- ◆ Divorce and custody cases are heard in D.C. Superior Court, Family Court, Domestic Relations Branch (DRB)

Procedure in DRB Cases

- ◆ Family Court Clerk's Office
 - ◆ Room JM-300 – *operating remotely during pandemic*
 - ◆ Custody and divorce case files are open to the public and available in the clerk's office
 - ▶ Family Court has gone paperless – pleadings and documents are scanned into Courtview, the court's electronic database
 - ▶ Information about Family Court cases is not available online

Procedure in DRB Cases

- ◆ Family Court Central Intake Center
 - ◆ Room JM-520 – *operating remotely during pandemic*
 - ◆ All pleadings in Family Court cases are filed through CIC
 - ▶ mandatory e-filing for counsel
 - ▶ previous exception was case-initiating pleadings (e.g. complaint) but can now file electronically.
 - ▶ see materials for more information on e-filing

Life Cycle of a DRB Case

- ◆ Complaint filed
 - ◆ Initial court hearing is scheduled by the clerk at the time of filing
 - ◆ Case assigned to a judge at time of filing
- ◆ Service of process
 - ◆ Plaintiff must effect service on defendant(s)
- ◆ Answer
 - ◆ If no answer filed, plaintiff files for default

Filing the Case: COVID-19 Updates

- ◆ E-mail documents to CIC at FamilyCourtCIC@dcsc.gov
 - ◆ If IFP status is requested, CIC will process the application and filing of the complaint
 - ◆ If IFP status is not requested, CIC will assist with the process of initiating the case through CaseFileXpress
- ◆ CIC issues a summons
- ◆ Initial Hearing set after service (see below)

<https://www.dccourts.gov/sites/default/files/DRB-Case-Initiation-Instructions-for-filers.pdf>

Life Cycle of a DRB Case

- ◆ Initial hearing (status hearing) (**remotely**)
 - ◆ Temporary custody/visitation may be addressed
 - ◆ PAC program dates set (**currently on hold**)
 - ▶ large group parent education session, mediation intake
 - ◆ Home study? forensic evaluation? guardian *ad litem*?
 - ▶ may be ordered upon request/motion or sua sponte
 - ◆ Discovery schedule?
 - ▶ most commonly when both parties have counsel

Life Cycle of a DRB Case

- ◆ Subsequent status hearing(s)
 - ◆ Usually (but not always)
 - ◆ Same potential for issues as initial hearing
- ◆ Motions hearings
- ◆ Pre-trial hearing, pre-trial statement, and/or witness and exhibit lists exchanged
 - ◆ Often, not always

Settlement

- ◆ Settlement
 - ◆ Almost always a consent order (as opposed to dismissal)
 - ◆ Court must accept agreement of parties unless, by clear and convincing evidence, it is not in the best interests of the child.
 - ▶ D.C. Code § 16-914(h), § 16-831.06(d)(1)

Settlements (Consents) in Third-Party Custody Cases

- ◆ §16-831.11(c) provides for a “revocable consent” option.
- ◆ Upon filing of revocation of consent, the order “shall be immediately vacated and of no further effect”
- ◆ If the right to the “parental presumption” is not knowingly and voluntarily waived, consent is revocable. *S.M. v. R.M.*, 92 A.3d 1128 (D.C. 2014)

- 
- ◆ If consent is later revoked, the complaint would still be pending and the case would resume.
 - ◆ The legal standard would then be the statutory standard for third-party custody, not the legal standard for modification.

- 
- ◆ Knowing and voluntary waiver of the parental presumption probably means in a written answer or through an oral colloquy in open court.
 - ◆ No law yet as to what language is sufficient
 - ▶ Probably an acknowledgement that the parent is giving up the right to trial (and the right to a presumption of custody) and that the order can only be modified by the parties' agreement or a court order based on substantial and material change in circumstances and best interests.

- 
- ◆ Current procedure for revocation of revocable consent:
 - ◆ Upon filing of a revocation, judge sets a status hearing.
 - ▶ Sometimes the proceeding is initiated by a parent's motion to modify rather than a revocation of consent.
 - ◆ Complaint remains pending – case resumes, court can enter a temporary custody order as it can in any case.

Trial

- ◆ Trial
 - ◆ Evidentiary hearing
 - ◆ Written findings of fact and conclusions of law (SCR-Dom.Rel. 52)

What might happen after a final order?

- ◆ Motion to modify
- ◆ Motion for contempt/to enforce order
 - ◆ In the past, often turned into modification even in the absence of a motion to modify, but see *Cheek v. Edwards*, 215 A.3d 209 (D.C. 2019).

When are GALs appointed?

- ◆ GALs are typically appointed after the initial hearing or after a status hearing.
 - ◆ GALs are sometimes appointed after trial and before a decision, but that is rare.
 - ◆ GALs are occasionally appointed in default situations – for example, when the defendant fails to participate but the child has been living with them.
 - ◆ GALs are also appointed in connection with motions to modify and motions for contempt.

Practice Pointer

- ◆ Formality v. informality
 - ◆ Family Court can be more informal.
 - ◆ It is difficult to predict with certainty if/when proceedings will be more informal.
 - ◆ If you want greater formality, you may need to invoke it.

Child Support - FYI

- ◆ Although involvement in child support issues is not part of a GAL's mandate, understanding how child support works may help you help the parties understand, which can sometimes help facilitate an appropriate resolution in the case.

Child Support - FYI

- ◆ Can be requested by a party but does not have to be
 - ◆ complaint for custody/divorce and child support
 - ◆ petition for child support (which may be consolidated with the custody case)
- ◆ Uniform Interstate Family Support Act
 - ◆ jurisdiction – D.C. Code § 46-301.01 *et seq.*

Child Support – how much?

- ◆ Child Support Guideline
 - ◆ D.C. Code § 16-916.01
 - ◆ Presumptive (up to a certain income level)
 - ◆ Guideline calculator on-line at <http://cssd.dc.gov/service/calculate-child-support-payments>
 - ◆ Essentially a mathematical formula based primarily on the parties' gross incomes

Child Support – how much?

- ◆ Child Support Guideline
 - ◆ Calculation also takes into account (1) other biological or adopted children living with the parent, (2) other court-ordered child support being paid by the parent, (3) health insurance costs for child, and (4) child care costs
 - ◆ If child spends more than 35% of time with the non-custodial parent, a different mathematical formula is used
 - ◆ If the initial child support order is issued by D.C., a parent's duty to support continues until the child is 21.

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Civil Protection Order Cases

Civil Protection Order Cases

- ◆ Also known as intrafamily, intrafamily offenses, or DV cases
 - ◆ D.C. Code § 16-1001 et seq.
 - ◆ Domestic Violence Division rules
- ◆ CPO cases are heard in the Domestic Violence Division of D.C. Superior Court
 - ◆ Clerk's office/file room – Room 4510 – *operating remotely during pandemic*

Civil Protection Order Cases

- ◆ The court can grant a civil protection order if:
 - ◆ there is a qualifying relationship, as defined by statute, between the petitioner and the respondent, and
 - ◆ an act punishable as a criminal offense is committed or threatened to be committed by the offender upon the other person

Civil Protection Order Cases

- ◆ Qualifying relationships include blood, marriage, romantic, dating, or sexual relationships, having a child in common
- ◆ Crimes include assault, threats, stalking
 - ▶ Crimes against property can sometimes qualify
- ◆ No qualifying relationship is required if the crime is stalking, sexual assault or sexual abuse

Civil Protection Order Cases

- ◆ Protection order can last for a year; can be extended upon motion and for good cause
- ◆ Relief includes:
 - ◆ Do not commit further offenses
 - ◆ Stay-away orders
 - ◆ No-contact orders
 - ◆ Move-out orders under certain circumstances
 - ◆ Temporary custody
 - ◆ Temporary child support

Civil Protection Order Cases

- ◆ Petition filed
 - ◆ Petitioner can request a two-week temporary protection order; hearing on TPO will be held on the day of filing (ex parte – no notice to respondent)
 - ◆ Respondent must be served
 - ▶ Petitioner can be responsible for service and/or request that the police serve

Civil Protection Order Cases

- ◆ CPO hearing usually held in two weeks
 - ◆ Hearing date is scheduled at the time the petition is filed
 - ◆ CPO hearing will usually be scheduled for two weeks after filing; if there is a TPO, it will always be scheduled two weeks after filing (i.e. before the TPO expires)

Custody Determination in a CPO

- ◆ GAL may be appointed before or after the determination of whether an intrafamily offense has been committed.

Custody Determination in a CPO

- ◆ The court can award temporary custody in a TPO or CPO
- ◆ The court may, sua sponte or upon request:
 - ◆ Postpone the CPO hearing to allow the GAL time to investigate and prepare
 - ◆ “Bifurcate” the hearing, deciding first whether an intrafamily offense has been committed and then handling the custody determination separately
 - ◆ If there is a DRB case, enter a temporary custody order in the CPO case with the direction or understanding/expectation that subsequent orders in the DRB order will govern custody

CPO and Custody Cases

- ◆ CPO cases and custody cases can be consolidated.
 - ◆ SCR-DV 2

Training Part Two – Complete!

- ◆ What's next?
 - ◆ Custody GAL Training Part Three
 - ▶ Communicating with Children and Teens
 - ▶ Overview of Domestic Violence, Substance Abuse, and Child Abuse and Neglect

**Questions?
Interested in a case?**

**Email Jen Masi
jmasi@childrenslawcenter.org**



Thank you!



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