

# Children's Law Center

Caregiver Custody (Part Two)

Pro Bono Training

Jen Masi, Pro Bono Director



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

# Today's Training

## Content

- Caregiver Custody Pretrial and Trial Advocacy

## Remote Representation

- These cases can be handled remotely.

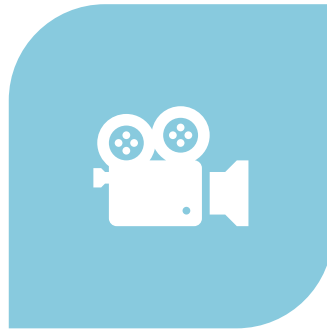
## Questions

- 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](mailto: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](mailto:jmasi@childrenslawcenter.org)



# Pretrial and Trial Advocacy: Special Considerations in Custody Cases

Lauren Birzon Harriman, Senior Attorney



July 8, 2020



# Session Goals

- ◆ To understand best practices in pretrial and trial advocacy in custody cases in DC
- ◆ To spot evidentiary issues unique to domestic relations practice
- ◆ To identify concerns uniquely related to **COVID-19**

# Burden of Proof

## Standing

**Preponderance  
of the evidence**

D.C. Code § 16-831.02(a)(1)

## Parental Presumption

**Clear and  
convincing  
evidence**

D.C. Code § 16-831.07

## Best Interest

**Preponderance  
of the evidence**

D.C. Code § 16-831.08

**Burden applies even if case is uncontested**

# Building the Case

- ◆ Interview witnesses
- ◆ Review records
- ◆ Check social media
- ◆ Discovery
  - ◆ SCR-Dom. Rel. Rules 26-37



# Raising Issues Before Trial

- ◆ Motions
- ◆ No ex parte communications
  - ◆ Communications to the judge outside the presence of the parties or their lawyers concerning pending and impending matters.
    - ▶ Code of Judicial Conduct R. 2.9
  - ◆ D.C. Rule of Professional Conduct 3.5
  - ◆ *Except* for administrative purposes

# Settlement Negotiations

- ◆ Paths to settlement
  - ◆ \*Attorney Negotiator\*
  - ◆ Multidoor Dispute Resolution
  - ◆ Alternative Dispute Resolution
  - ◆ Informal Negotiations
    - ▶ D.C. Rules of Professional Conduct 3.3 and 4.3
    - ▶ Be clear about your role!
- ◆ Strategize which path is best in your case.



# Joint Pretrial Statements and Pretrial Hearings

- ◆ *Sua sponte* or upon request
- ◆ Joint Pretrial Statement
  - ◆ Include witnesses, exhibits
  - ◆ Stipulations?
  - ◆ Note objections
- ◆ Disclosures for experts
  - ▶ SCR-Dom. Rel. Rule 26(a)



# Primary Methods of Presenting Evidence



# Sources of Authority

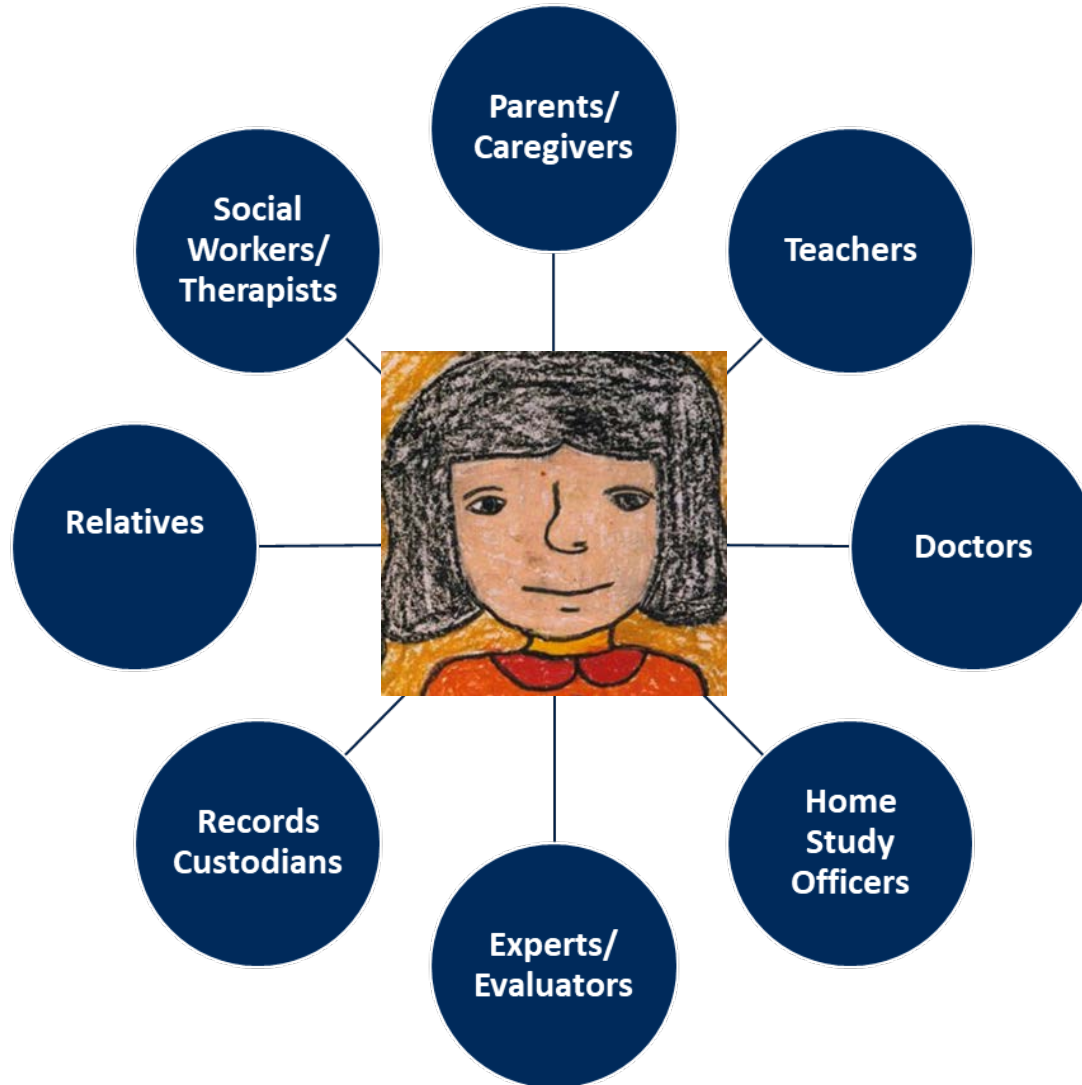
- ◆ Law of evidence in D.C. is largely common law (based on case law)



# Presenting Evidence Through Stipulation of Facts

- ◆ Parties agree to the admission of certain facts without presenting evidence
- ◆ Parties provide a written list of stipulated facts to the court
- ◆ May help narrow issues, allow for more time to be devoted to disputed issues

# Presenting Evidence Through Witnesses



# Presenting Evidence Through Witnesses



Interview all  
potential  
witnesses



Draft  
questions in  
advance



**\*Prepare your  
witnesses\***

# Child Testimony

- ◆ The court must consider evidence about the child's wishes when possible.
- ◆ *Duguma v. Ayalew*, 145 A.3d 517 (D.C. 2016) (the court should have considered the children's wishes by interviewing them)

# Limits and Conditions on Child Testimony

- ◆ All witnesses presumed competent
  - ◆ *O'Brien v. United States*, 962 A.2d 282 (D.C. 2008)
- ◆ BUT testifying may have detrimental impact on the child
  - ◆ *In re Jam. J.*, 825 A.2d 902 (D.C. 2003) (three-part test in neglect matters for precluding testimony)
  - ◆ *N.D. McN. v. R.J.H.*, 979 A.2d 1195 (D.C. 2009) (court can regulate conditions; process for in camera interviews of child by judge)



# Child Witnesses

- ◆ You or other parties may seek to call the child as a witness (usually interview with the judge outside the presence of parties/counsel).
  - ◆ Consider the impact on the child, the child's relationships with your client and the parties
  - ◆ Consider other means to get the same information into evidence
  - ◆ Take a position on whether it is in the child's best interest to testify
  - ◆ Advocate with the parties and court to further this position



# Child's Out-of-Court Statements as Evidence?

- ◆ No explicit exceptions to the rules of evidence.
- ◆ But see:
  - ◆ *In re L.W.*, 613 A.2d 350, 352-53 n.6 (D.C. 1992)
    - ▶ . . . “[W]here, as here, the future of a child is at stake, the judge should do her (or his) best to obtain all of the information needed to effect a judicious disposition....**The rigorous application of evidentiary rules is out of place in a case of this kind, and technical defects will not be given primacy over the best interest of the respondent.**” (citations omitted)

# Child's Out-of-Court Statements as Evidence?

- ◆ *In re T.W.*, 623 A.2d 116, 117 (D.C. 1993)
  - ◆ “The statute does not say the judge must derive this opinion even partly from questioning of the child herself when ‘feasible’, . . . **[I]n many cases the most probative evidence of the child's opinion may lie in statements the child has made to others . . .**”

# Presenting Evidence Through Documents

**Certified copy of a D.C. criminal Judgment and Probation/Commitment Order**

**Drug test results**

**Expert reports**

**Home study reports**

**Observation notes from the Supervised Visitation Center**

**Report cards, medical records**



# Documentary Evidence: Considerations

- ◆ \*Subpoena the witness who will provide foundation for admitting the documents.\*
- ◆ Consider the basis for admission of documents or particular statements within them.
- ◆ Prepare responses to hearsay and other objections in advance.
- ◆ Prepare your documents/exhibits for trial .
- ◆ Use the pretrial hearing to discuss how exhibits should be submitted during WebEx hearings.

# Common Records Rules

## Business Records

- ◆ SCR-General Family Rule Q

## Judicial Notice

- ◆ *Daniels v. United States*, 33 A.3d 324 (D.C. 2011); *S.S. v. D.M.*, 597 A.2d 870 (D.C. 1991); *W.M. v. D.S.C.*, 591 A.2d 837 (D.C. 1991)

## Certified Public Records

- ◆ SCR Dom. Rel. 44

**Questions?  
Interested in a case?**

**Email Jen Masi  
[jmasi@childrenslawcenter.org](mailto:jmasi@childrenslawcenter.org)**



# Thank You!



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