



Chapter 9

Glossary of Legal Terms

ADJUDICATION: The process of rendering a judicial decision as to whether the facts alleged in a petition or other pleading are true. An adjudicatory hearing is that Court proceeding in which it is determined whether the allegations of the petition are supported by evidence. Also called a "Jurisdictional" or an "Evidentiary" hearing.

When a matter (civil or criminal) is brought before the Court it must then be decided, settled or resolved. The act of deciding finally is called adjudication.

ADMISSION: 1) A statement tending to establish the guilt of the person making the statement. 2) The transfer of a minor's physical custody to a detention or shelter facility.

ADOPTION: A legal proceeding in which an adult takes, as his or her lawful child, a minor who is not the adoptive parent's natural offspring. The adopted minor loses all legal connection to the previous parent(s), and the adoptive parent undertakes

AFFIANT: The person who makes or subscribes an affidavit.

AFFIDAVIT: A written statement of facts signed under penalty of perjury, often before a Court clerk or notary public who administers the oath to the signing party.

ALLEGATION: A charge; a statement of fact in a petition or complaint which must be proved if the petition or complaint is to be found true.

A charge or claim set forth in a petition, which must be proven true or false at a hearing.

ANCILLARY MATTERS: Matters in dispute between the parties in connection with divorce or annulment including equitable division of marital property, alimony, and attorneys fees, to be resolved after the divorce.

ANSWER: A formal written statement in which the respondent in a civil case sets forth his or her defense to the relief asked for in the petition.

APPEAL: Resort to a higher Court, in the attempt to have the decision of a trial Court changed. Appeals from Family Court are filed either in Superior Court or in the Supreme Court, depending on the type of case.

APPEARANCE: Coming into court as party to a suit, either in person or represented by an attorney, whether as plaintiff or defendant.

ARBITRATION: The process by which minor delinquency and some adult criminal charges are settled without a hearing before a Judge. This process of dispute resolution involves a neutral third party, an Arbitration Officer, who renders a decision after both parties are given the opportunity to be heard.

ARREARS: An overdue support payment.

ASSETS: Property of all kinds, real and personal, tangible and intangible, which belong to any person (including a corporation or the estate of a decedent).

B

BEST INTEREST OF CHILD: The standard used by the Court to determine issues of custody and visitation.

C

CASA: Court Appointed Special Advocate is a trained volunteer appointed by a Family Court Judge to represent the best interests of abused, neglected, or dependent children who are the subject of Court proceedings.

CERTIFIED COPY: A copy of a document or record, signed and certified as a true copy by the officer having custody of the original.

CHARGE: A complaint having a legal basis found in the Delaware Criminal Code or the Municipal Code.

CHIEF JUDGE: The administrative head of Family Court. Qualifications and judicial authority are the same as the Associate Judge. The Chief Judge is nominated by the Governor and approved by the Delaware State Senate. The Chief Judge is responsible for the administrative affairs of Family Court and for executing judicial policies as set forth by the body of judges. He or she does not have the power of judicial review of decisions made by Associate Judges of Family Court.

CHILD ABUSE: Traditionally, any physical mistreatment of a child, as opposed to child neglect or negligent care. However, the term is increasingly used to cover any "physical or mental injury, sexual abuse, negligent treatment or maltreatment of a child...by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby," and is so defined in the federal Child Abuse Prevention and Treatment Act (Pub. Law 93.247,1974).

CHILD NEGLECT: Failure by a parent or custodian to render appropriate care to a child; an act of omission by the person legally responsible for a child's care which threatens the child's well-being. Failure to provide a child with suitable food, shelter,

CIVIL PROCEEDING: All lawsuits other than criminal prosecutions, including juvenile delinquency cases.

CLERK: Officer of court, who accepts pleadings, motions, judgments, etc., issues process, and keeps records of court proceedings.

COMMISSIONER: A judicial officer appointed by the Governor, confirmed by the Senate with constitutional powers including the power to incarcerate. A Commissioner can hear any civil case within the Court's jurisdiction not precluded by

statute as well as criminal and delinquency cases, including those resulting in detention of a juvenile, and incarceration of an adult.

COMMON LAW: Law developed as the result of judicial decisions rather than by statutes written by the legislature.

CONSENT: An agreement of the parties resolving pending matters before the court.

CONTEMPT: The action of a person who willfully disobeys a court order or fails to comply with a court decision.

CONTINUANCE: The adjournment or postponement of a session, hearing, trial or other proceeding to a subsequent day or time.

COUNSEL: Advice or assistance given by one person to another in regard to a legal matter. May also be used to refer to an attorney.

COUNTERCLAIM: A claim presented by a defendant in opposition to the claim of the plaintiff.

CROSS-PETITION: A formal written application to the Court requesting judicial action on a certain matter against a party/person who has already filed a petition in that case.

CUSTODY: The right to or responsibility for a child's care and control, carrying with it the duty of providing food, shelter, medical care, education and discipline. Custody can be joint or sole.

CUSTODY (JOINT LEGAL): Where parents have equal decision making authority regarding the care and control of a child. Joint custody differs from Residential Custody.

CUSTODY (SOLE LEGAL): One parent, the sole legal custodian, makes all major decisions affecting the child(ren).

D

DEFAULT ORDER: An order entered against a party who has failed to appear after proper notice to defend against a claim that has been brought by another party.

DEFICIENT FILING: A document filed with the Court that does not contain the necessary requirements, fees or elements.

DELINQUENCY: The commission of an illegal act by a juvenile.

DELINQUENT CHILD: A child who commits an act, which if committed by an adult, would constitute a crime.

DEPENDENT CHILD: A child whose physical, mental or emotional health and well-being is threatened or impaired because of the inability of the child's custodian to provide adequate care and protection.

DETENTION: The confinement of a juvenile by a legally authorized person.

DISMISS: To dispose of an action or suit without any further consideration or hearing.

DISPOSITION: The Judicial Officer's written order as to how the case was decided.

DOCKET: A brief, formal record of the proceedings of the Court.

DOMESTIC VIOLENCE: A pattern of assaulting and controlling behaviors, including physical, sexual and psychological attacks, committed by one family member against another or by an intimate partner against the other partner.

DUE PROCESS: The constitutionally guaranteed right of persons to be treated by the law with fundamental fairness. In criminal proceedings, due process means the right to adequate notice in advance of hearings, the right to counsel, the right to confront and cross examine witnesses, the right to refuse to give self-incriminating testimony, the right to notification of allegations of misconduct in advance of the hearing and the right to have allegations proven beyond a reasonable doubt.

E

EMERGENCY (PRIORITY): An unforeseen combination of circumstances that calls for immediate action without time for full deliberation. An emergency/priority order will be issued by the Court, without notice to the parties for a hearing, when it appears from facts shown by affidavit or verified complaint that immediate and irreparable harm will result before the adverse party can be heard.

ENTRY OF APPEARANCE: A coming into court as party to a suit, either in person or by an attorney, whether plaintiff or defendant.

EVIDENCE: Any sort of proof submitted to a Court for the purpose of influencing the Court's decision. Some special kinds of evidence are:

Circumstantial Evidence - Evidence which implies another fact.

Direct Evidence - First-hand evidence, usually of a witness who saw an act committed.

Hearsay Evidence - Testimony about an out-of-court statement made by someone other than the person testifying; for example, "I heard him say..." Except where the law provides an exception to the hearsay rule, such

evidence is usually excluded because it is considered unreliable and because the person who made the original statement cannot be cross-examined as to the factual basis for the statement. There are numerous exceptions to the hearsay rule, however.

Physical Evidence - Any tangible piece of proof, such as a document, x-ray print, photograph, firearm, etc. Also called "real" evidence.

EX PARTE: A judicial proceeding or order which is held or granted at the instance and for the benefit of one party without notice to the other party. Normally, these hearings are held on an emergency basis. A full hearing with notice to both parties is held at a later date.

EXPERT TESTIMONY: Witnesses with various types of expertise may testify in a case. Experts are usually questioned in Court first about their education or experience which qualifies them to give opinions about certain matters. Only after the hearing officer decides that the witness is sufficiently expert in the subject matter may the witness proceed to state his or her opinions. Doctors and psychologists are common expert witnesses in Family Court cases.

F

FAMILY: Under Delaware law, for the purpose of determining whether Family Court has jurisdiction over a case, family is defined as: spouses; a couple cohabiting in a home in which there is a child of either or both; custodian and child; or any group of persons related by blood or marriage, without regard to legitimacy and relationships by adoption, who are residing in one home under one head and where one is related to the other by any of the following degrees of relationship, both parties being residents of this State: mother, father, mother-in-law, father-in-law, brother, sister, brother-in-law, sister-in-law, son, daughter, son-in-law, daughter-in-law, grandfather, grandmother, grandson, granddaughter, stepfather, stepmother, stepson, stepdaughter.

FILING: A paper is filed when it is delivered to the Clerk of Court, to be entered and docketed in the court's file.

FOSTER CARE: A form of substitute care, usually in a home licensed by a public agency, for children whose welfare requires that they be removed from their own homes.

G

GUARDIAN: An adult appointed by a Probate or Family Court to serve as custodian of a minor until the minor's parent proves renewed ability to provide proper care to

the child. A guardian has almost all the rights and powers of a natural parent, but the relationship is subject to termination or change.

GUARDIAN AD LITEM: An adult who is appointed by a Court to act in the minor's behalf ad litem (in a lawsuit), because minors lack the legal capacity to sue or defend against suit. The guardian is considered an officer of the court.

Guardian Ad Litem are sometimes known as NEXT FRIENDS. In Delaware, the CASA serves as a Guardian Ad Litem for the child.

GUARDIANSHIP: The power and duty of taking care of, and/or managing property and rights of a child or an individual who is considered incapable of taking care of his/herself.

H

HEARING: A trial or other proceeding before a judicial officer. Several types are described below:

Adjudicatory hearing – In delinquency cases, a fact finding hearing to determine whether the accused committed the alleged acts; in civil cases, a fact finding hearing to determine the rights and duties of the parties.

Amenability hearing – A hearing in Family Court to decide whether the juvenile charged with a serious crime can be effectively helped by our Court, or whether the juvenile should be treated as an adult and the case transferred to Superior Court. Required for juveniles between the ages of 16 and 18 who have committed certain felonies.

Arraignment – A hearing to notify the accused of his or her rights and of the charge before the court. The accused must enter a plea of guilty, not guilty, or, where permitted, “nolo contendere”.

Bond (Bail) hearing – Hearing during which a Judge or Commissioner sets an amount of money, which the defendant/respondent must post, or be incarcerated in default of bail, pending dispositional hearing.

Fact Finding hearing – A formal trial before a judge, commissioner, or master where witnesses may be present to testify, to determine if the allegations are true.

HEARING OFFICER: The individual who presides at a judicial proceeding.

I

INJUNCTION ORDER (PRELIMINARY): A court order prohibiting someone from doing some specified act or commanding someone to undo a wrong or injury.

J

JUDGE: A lawyer, appointed by the Governor and confirmed by the Senate who presides over court hearings and has the power to enter orders affecting the parties. Family Court has one Chief Judge, who is the administrative head of the Court, and 12 Associate Judges. All Family Court Judges are appointed for 12-year terms.

JUDGMENT: A final decision of the Court resolving the dispute and determining the rights of the parties involved in the case.

JURISDICTION: The power of a particular Court to hear and dispose of cases involving certain categories of persons or allegations. Family Court has jurisdiction over most juvenile delinquency cases, adult misdemeanor domestic violent crimes, and family civil actions, such as divorce and custody.

JUVENILE: A youth under 18 as established by the laws of the State of Delaware.

JUVENILE DELINQUENCY: When a juvenile is found guilty of committing an act which would be a crime if the juvenile were an adult.

M

MASTER: A person appointed by the Chief Judge to hear cases as assigned. Masters' orders may be reviewed before a Judge of Family Court.

MEDIATION: The process by which Court mediators assist parties to reach voluntary agreement in domestic relation matters (e.g., support, custody, visitation) without a formal court hearing before a Judge. This is an informal dispute resolution process in which a neutral third party (Mediation Officer) helps litigants to reach an agreement. The mediator has no power to impose a decision on the parties.

MEDICAL SUPPORT ORDER: A medical support order requires one or both parents to provide health insurance and requires both parents to pay a portion of medical expenses not covered by health insurance for their children.

MELSON FORMULA: The informal name of the Delaware Child Support Formula, named after former Judge Melson. This is a standard guideline formula used to calculate child support obligations.

MISDEMEANOR: A category of crime, for which the punishment can be no more than one year of imprisonment (usually in a county jail rather than state prison) and/or fine of \$1,000.00. Distinguished from a felony, which is more serious, and from an infraction, which is less serious (e.g., loitering).

MOTION: An application made to a court or judge in a pending matter for the purpose of obtaining an order directing some act to be done in favor of the applicant.

Q

ON THE RECORD: Anything that is put on the written or recorded account of the court proceedings, to remain as permanent evidence of the matters to which it relates.

ORDER: The direction of a court or judge, usually reduced to writing.

P

PARTY: A person who has filed a petition with the Court or who has had a petition filed against him or her. A petitioner or a respondent.

PATERNITY: The state or condition of a father; the establishment of a father and child relationship.

PETITION: A civil pleading filed to initiate a matter in Court, setting forth the alleged grounds for the Court to take jurisdiction of the case and the relief requested. A formal written application to a court requesting judicial action on a certain matter.

PETITIONER: The person initiating a legal action, usually in a civil case. The person who presents a petition to a court.

PFA ORDER (PROTECTION FROM ABUSE ORDER): Order preventing a person from abusing another person, where persons are members of following classes: family; former spouses; man and woman cohabiting; or man and woman living apart with a child in common. Relief granted may include restraining the respondent from committing domestic violence, restraining the respondent from contacting the other person, granting the petitioner exclusive possession of residence, granting temporary custody of children, awarding child and/or spousal support, ordering the respondent to relinquish firearms, and ordering participation in counseling.

PLACEMENT: The residential and/or custodial arrangements determined for a child by the Court. The removal of a child from his or her natural home and placement in a different custodial setting for more than a short period of time. Placement may be in a foster home, group home, relative's home, or an institution. Juvenile or Family

Courts sometimes place minors through their own staffs, but usually commit delinquents or dependent children to other agencies for placement services.

PLEADINGS: Any one of the formal written statements of accusation or defense in an action of law.

The formal allegations by the parties of their respective claims and defenses.

PRAECIPE (ALIAS): A document filed with the Clerk of Court requesting that the Clerk take action, i.e., issue subpoenas, prepare a file for appeal, etc.

PRO SE: Litigant who is representing himself (not represented by counsel).

PROTECTIVE CUSTODY: In child abuse and neglect cases, the emergency removal of a child from his home when the child would be in imminent danger if allowed to remain with the parent(s) or custodian(s).

R

RESPONDENT: The person against whom the petition or complaint is filed.

RESPONSE (TO MOTION): An answer to a pleading filed by the defendant/respondent, which addresses each of the allegations made by plaintiff/petitioner in his/her complaint.

RETROACTIVE SUPPORT: The establishment of back child support.

S

SOCIAL REPORT: The document prepared by a probation officer or social worker for the Family Court hearing officer's consideration at the time of disposition of a case. This report addresses the minor's history and environment.

STATUTE: A law enacted by a State legislature or the U.S. Congress.

STIPULATION: A voluntary agreement between the parties in a case, allowing a certain fact to be established in evidence without the necessity for further proof.

SUBPOENA: A legal document, usually issued by a Court clerk, requiring that the person named in the subpoena appear or send materials requested on a stated day and time at a specified Court. Failure to obey a subpoena is punishable as a contempt of Court.

SUBPOENA DUCES TECUM: A subpoena served upon the person who has custody of records, commanding that such custodian bring the specified records to Court on the stated day and time. Requires specific documents such as books or files to be submitted for review in a legal proceeding.

SUMMONS: A legal document, issued by the Court Clerk or other Court officer, notifying the named person that a lawsuit or legal cause has been filed against or involves him or her, and notifying such person of any dates set for hearings and deadlines for responding to the complaint or petition. The purpose of a summons is to notify the persons concerned.

I

TERMINATION OF PARENTAL RIGHTS (TPRs): A legal proceeding to free a child from his or her parents so that the child can be adopted by others without the parents' written consent.

TESTIMONY: A statement or declaration made to establish a fact or facts and given under oath.

TRIAL: A judicial hearing to determine issues between parties to an action through the testimony of witnesses and documentation.

W - Z

WAIVER: The understanding and voluntary relinquishment of a known right, such as the right to counsel or the right to remain silent during police questioning.

WITNESS: A person called upon to testify in a Court proceeding.

WORK RELEASE: Program supervised by Department of Corrections where a person committed to prison is allowed to leave for the purpose of either finding work or going to work. They must return to the prison at the end of the work day.

WRIT: An order issued by a Court commanding that a certain act or acts be done or not done.