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Governor

NEW YORK STATE
OFFICE OF CHILDREN & FAMILY SERVICES
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Administrative Directive

Transmittal:	07-OCFS-ADM-07
To:	Commissioners of Social Services
Issuing Division/Office:	SPPD
Date:	May 2, 2007
Subject:	Obtaining Court Orders When Denied Access in CPS Investigations
Suggested Distribution:	Directors of Service Child Protective Services Supervisors Child Welfare Legal Staff Staff Development Coordinators
Contact Person(s):	See Page 10
Attachments:	Yes
Attachment Available Online:	Yes

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR Part 432.2	SSL 424 FCA 1034		

I. Purpose

The purpose of this directive is to advise local departments of social services (LDSS) and child protective services (CPS) staff of recent changes to Section 424 of the Social Services Law (SSL) and Section 1034 of the Family Court Act (FCA) through Chapter 740 of the Laws of 2006. These changes affect the ability of CPS caseworkers to seek court assistance when CPS is denied access to allegedly abused or maltreated children or to their homes during a CPS investigation and prior to filing a family court petition of neglect or abuse under Article 10 of the FCA. This

directive describes the circumstances in which a child protective service may obtain a pre-petition court order to gain access to an allegedly abused or neglected child, the child's residence, or other children living in the home, as well as the specific steps and actions that a child protective service must take in order to obtain such a court order. Additionally, included herein is a description of the protocols that the New York State Office of Court Administration (OCA) has developed to be used to obtain such a court order during hours in which the local family court is not in session.

II. Background

New York State law and regulations require a child protective service to begin an investigation within 24 hours of receiving a report of suspected child abuse or maltreatment. Part of the investigation requirements include evaluation of the environment of the child named in the report as well as of other children in the same home, and an assessment of the current safety and the risk of future abuse and maltreatment to the child and other children in the home. However, parents or persons legally responsible for children may refuse a CPS caseworker access to a named child and to the child's home. Previously, the law did not provide a specific remedy if a CPS caseworker was denied access to a named child, denied entry to the child's home, denied access to other children believed to be living in the home but not named in the CPS report, or if the child was not found on the premises. While CPS workers could seek a pre-petition court order for emergency removal of a child from a home, the standard of evidence for that is very high, requiring the child protective service to show reasonable cause to believe there is "imminent danger to the child's life or health," a standard that is extremely difficult to meet without observation and/or an interview of the allegedly abused or maltreated child. The limitations of the available legal remedies when CPS caseworkers have been denied access to children were made clear in several cases in recent years in which CPS caseworkers were denied access to children named in CPS reports, and the children were subsequently harmed.

III. Program Implications

Chapter 740 of the Laws of 2006 became effective on January 18, 2007 (<http://www.ocfs.state.ny.us/main/legal/leg2006/S8344.pdf>). Corresponding changes to section 432.2 of the OCFS regulations were filed on an emergency basis on October 1, 2006, and appeared in the New York State Register as final regulations on January 24, 2007 (the new regulations are included with this document as Attachment A). OCA has developed new protocols for accessing the courts during off-hours and has developed forms to be used in conjunction with court orders for access (the protocols are described at the end of section IV in this document; a Web link for the new forms is in section V of this document, and the forms are also included as attachments following this document and Attachment A).

Chapter 740 requires that, when denied access, CPS staff must advise a parent or other person legally responsible for the child or with whom the child is residing that his or her continued failure to provide access may result in CPS seeking a court order without further notification. This notification is a requirement for the issuance of a court order. CPS staff must also advise the parent or other person legally responsible or with whom the child is residing that law enforcement officers may be asked to remain at the site while CPS is applying for a court order.

A family court judge must now be available to CPS staff at all hours to hear requests for immediate orders for access to allegedly abused or maltreated children or to their homes. OCA has developed protocols for accessing a family court judge during hours when family court is not in session. OCA has also developed new forms to be used in conjunction with court orders for access, including an application form and a mandatory follow-up report that CPS must submit to the court subsequent to the issuance of an access order.

All information in this directive refers only to CPS investigations in which:

- there is a report alleging child abuse or maltreatment of one or more children, and
- there is no existing abuse or neglect petition applicable to the family, and
- while attempting to investigate the report of child abuse or maltreatment, CPS staff are unable to adequately assess the safety of the named child or children or other children living in the home because the CPS caseworkers have been denied any access to the child or other children in the home, or were denied access sufficient to assess the safety of one or more of the children, or they have been unable to locate one or more children, or they have been denied any access to the home environment or denied sufficient access to evaluate the home environment where a named child lives.

Description of the Two Types of Court Orders for Access

Chapter 740 amended Section 1034 of the FCA to authorize family courts to issue two different types of court orders for pre-petition access to conduct a CPS investigation when sufficient access has been denied during the investigation of a report:

- an order mandating access to a *child* (or children) named in a CPS report or living in the same home as a child named in a report, and
- an order mandating access to the *home* of a child or children named in a CPS report.

The court must apply a different set of standards in determining the need for an order for access to a child as opposed to access to a home. Similarly, the possible contents of the order are different for an order for access to a child, as opposed to access to a home. In all cases, the court is directed to order the actions that are necessary for the child or children's safety, but are least intrusive to the family.

Court order requiring production of child

Each of the following elements must exist for CPS to seek a pre-petition court order for access to a child or children:

- A CPS has a report of suspected abuse or maltreatment;
- The caseworker has been unable to locate the child named in the report or other children living in the household, or has been denied access to the named child or other children living in the household sufficient to determine their safety;
- The CPS staff has “*reasonable cause to suspect that a child or children’s life or health may be in danger*”; and
- CPS staff has advised the parent or other person legally responsible for the child or children that CPS may seek an immediate court order to gain access to the child or children without further notice to the parents or other persons legally responsible for the children.

The court order should be tailored to the needs of the particular investigation and the conditions of the particular family and case. The order may require the parent or person legally responsible to:

- Produce the child or children at a particular site, which may be a child advocacy center, for an interview of the child or children and for observation of the condition of the child outside the presence of the parent or other legally responsible person; or
- Produce a child or children to a particular person for interview and for observation of the condition of the child outside of the presence of the parent or other legally responsible person.

Court order authorizing entry into the home

Each of the following elements must exist for CPS to seek a pre-petition court order for entry into the home:

- A CPS has a report of suspected abuse or maltreatment;
- The CPS caseworker has been denied access to the home of the child or children to evaluate the home environment;
- There is “*probable cause to believe that an abused or neglected child or children may be found on the premises*”; and
- CPS staff has advised the parent or other person legally responsible for the child or children that CPS may seek an immediate court order to gain access to the home environment without further notice to the parent or other person legally responsible for the children.

The specific contents of the court order should be tailored to the specific needs of the case and conditions of the household. The order may include:

- Authorization for the person conducting the CPS investigation to enter the home in order to determine whether a child or children named in a CPS report are present; and/or
- Authorization for the CPS caseworker to conduct a home visit and evaluate the home environment of the child or children.

IV. Required Action

This following section details procedures that must be followed when, in the course of an investigation of a report of child abuse or maltreatment, but prior to filing a petition under Article 10 of the FCA, a CPS caseworker is denied access to a child named in the report, denied access to any other child in the household, is unable to locate a named child or any other child in the household, or is refused entry to the child's home and the CPS caseworker fears that there is an abused or neglected child in the home or that there is danger to the safety or health of a child. The CPS caseworker must assess whether the denial of access creates a sufficient potential of danger to a child or children that necessitates seeking a court order to obtain access to the child or the home or to compel the production of the child, or whether any other emergency action must be taken. If the CPS caseworker feels that the situation is potentially dangerous, then there are a number of steps that must be taken to attempt to procure a court order mandating that access be given to continue the investigation.

Procedures to follow when access to child or home is denied

1. ***Advise the adult who has denied access of the possibility of CPS obtaining a court order*** - Chapter 740 requires that a CPS caseworker immediately advise the parent or other person legally responsible for the child or children or with whom the child is living that, when denied sufficient access to the child or home, the caseworker may consider seeking an immediate court order to gain access to the child or children or to the home without further notice. Prior notification to the parent or other adult of this possibility is a requirement for obtaining a court order. OCA's new application for requesting a court order requires the CPS caseworker to specify the date that s/he so advised the parent. The law does not specify whether the notification must be given verbally or in writing.
2. ***Notify the adult who has denied access to the child or home that law enforcement may be called to the site*** - SSL Section 424, subdivision 6-a, requires a CPS caseworker who is denied sufficient access to inform a parent or other person responsible for a child's care or other person with whom the child is residing that, if a court order is sought, "law enforcement may be contacted and if contacted shall respond and shall remain where the child or children are or are believed to be present." While CPS is required to add this information, this part of the notification is not a requirement for obtaining a court order. It is left up to CPS to decide whether they want to request law enforcement assistance. Subdivision 6-b of Section 424 of the Social Services Law states that if the parent or other person denies access and the CPS caseworker seeks a court order, s/he may contact law enforcement, and "...if contacted [law enforcement] shall respond and shall remain where the child or children are or are believed to be present while the request is being made."

3. ***Determine whether a court order is needed*** - The CPS caseworker must determine if there is a need for a court order to gain access to the child or to the home. This should be based on a review of all relevant evidence and an assessment of the potential danger to a child or children if the caseworker cannot otherwise obtain prompt access to a child or the home.
- a. ***Review all evidence*** – Pre-petition court orders requiring access to a child or a home can only be issued when CPS caseworkers have been denied sufficient access to accurately determine the safety of children. CPS caseworkers must review all pertinent information whenever they are refused access and, ultimately, present it to a family court judge when seeking a court order. At a minimum, they should consider all the factors that a family court judge is required to consider, and be prepared to present all such information to the court. Section 1034(2)(d) of the FCA states that the court must consider all relevant information when determining whether to issue a pre-petition order when access is denied in a CPS investigation, including but not limited to:
- i. the nature and seriousness of the allegations made in the CPS report;
 - ii. the age and vulnerability of the child or children;
 - iii. the potential harm to the child or children if a full investigation is not completed;
 - iv. the relationship of the source of the report to the family, including the source’s ability to observe that which has been alleged;
 - v. the child protective or criminal history, if any, of the family; and
 - vi. any other relevant information that the caseworker has already obtained.
- b. ***Determine the level and likelihood of possible harm to children*** – When denied access, CPS caseworkers must evaluate whether any potential safety concerns for children are serious enough to warrant seeking a court order to gain access to a child or a child’s home. Should CPS bring an application for a court order before the family court, the court will apply one standard of proof for access to the child or children, and a different standard of proof for access to the home. As the court will be applying these two standards, the CPS staff should make a similar evaluation in determining if an application for the court order is appropriate at this time.
- i. **Reasonable Cause to Suspect** - If the CPS caseworker is denied access to interview or observe an allegedly abused or neglected child, or other children in the household, sufficiently to be able to determine the safety of the child or children, or if a child cannot be located, CPS staff must consider whether the information currently available provides a “reasonable cause to suspect that a child or children’s life or health may be in danger.” This is the standard that the court must apply in determining whether to issue a court order to produce a child.
 - ii. **Probable Cause to Believe** - If the CPS caseworker is denied access to the home of the child or children named in a CPS report in order to evaluate the home environment, CPS staff must consider whether the

information currently available provides a “probable cause to believe that an abused or neglected child may be found on the premises.” This standard must be used by a court to issue an order permitting access to the premises.

4. ***Act quickly*** – OCFS regulations require that the assessment to seek a court order for access must be made no more than 24 hours after the refusal to allow access or the failure to locate a child.
5. ***Consult with a supervisor*** – OCFS regulations require that the decision to seek a court order must be made, at a minimum, in consultation with a CPS supervisor.
6. ***Consult with a lawyer, if possible*** – OCFS regulations require that, when they have made a determination to seek a court order, CPS staff must consult, whenever possible, with a member of the legal staff who represents the CPS.
7. ***Determine whether to call in law enforcement*** – If CPS staff has decided to seek an immediate warrant to gain access to a child or to a child’s home, they must also decide if the situation warrants asking law enforcement to remain at the home while they are making the request for a court order. This determination may depend on the assessment of the possibility of immediate danger to one or more children, the perceived likelihood that the child might be moved while CPS is seeking the court order, or any other factor that the CPS considers pertinent. SSL section 424(6-b) requires law enforcement to respond to a request by CPS while they are seeking an immediate court order for access and to remain where the child or children are or are believed to be while the request is made.
8. ***Determine the appropriate remedy to request, remembering there is a requirement for the “least intrusive action”*** – Chapter 740 stipulates that the actions that the judge orders should be those that are necessary, but least intrusive to the family. Any order for access that is issued will specify what action must be taken and by whom. OCA’s form 10-29a, which is a Child Protective Application for Order for Access to Children and/or Home before Petition Filed, has boxes to check off, and spaces to fill in, to describe the ordered action(s) the CPS is requesting. The form is not mandatory for use.

Chapter 740 specifies the possible range of actions the judge may order, which depend on the nature of the denial of access (i.e., access to the home or the child). In some cases, an order for *both* access to the child and access to the home may be appropriate. The CPS may request the following remedies, which are specified in statute, for each type of access requested:

- a. If the CPS caseworker has been unable to find either a child named in a CPS report or any other child in the household, or has been denied

sufficient access to any child to determine that child's safety and, based on a report of suspected abuse or maltreatment and any information obtained from the subsequent investigation of that report, has reasonable cause to believe that the life or health of any of those children is in danger, the CPS may request the court to order a parent or other legally responsible person to bring the child or children, who must be named in the request, to a specified location to meet with a specified person for observation and interviews outside the presence of the parent or other legally responsible person. The applicant is asked to specify whether the child should be brought immediately at any hour or between the hours of 6 AM and 9PM. The applicant is also asked to choose from the following possible locations for the interview:

- i. Child Advocacy Center (with name and address specified);
 - ii. an address specified by CPS, to be interviewed by a specified individual; or
 - iii. an address specified by CPS, to be interviewed by the applicant.
- b. If the CPS caseworker has been denied access to the home of the child or children in order to evaluate the home environment and, based on a report of suspected child abuse or maltreatment and any information obtained from the subsequent investigation of that report, has probable cause to believe that there is an abused or neglected child in the home, the CPS may request an order to grant the CPS caseworker authority to enter the home. Applicants must specify whether they are asking for entrance immediately at any hour or only between 6 AM and 9 PM, and must specify for which (or both) of the following purposes they are requesting entrance:
- i. to determine whether an abused or neglected child or children is/are present
 - ii. to conduct a home visit and evaluate the home environment
9. ***Request a court order from a family court*** – The request for a court order can be made at any hour. Requests can be made either in writing or orally, but must be made in person to a local family court judge during hours that the court is open. OCA has developed a protocol for requesting a court order during hours that the family court is not open, which is described below. OCA has developed a new form, 10-29a, which can be used when making a request for a pre-petition court order for access to a child or the home. The use of this form to make a request is not mandatory, but it is recommended that it be used because its use will make it more likely that the CPS will present all the information that the judge may need, thus increasing the likelihood that the application will be granted.
10. ***Keep progress notes*** – OCFS regulations require that the assessment and the decision be clearly documented in the progress notes for the investigation.

11. ***Complete a follow-up report to family court*** – FCA 1034(2)(g) requires a CPS caseworker to prepare a report to the family court within three business days of the issuance of a pre-petition court order providing access, in which the caseworker must detail the findings of the investigation and any actions taken regarding the children named in the court order. OCA has created Form 10-29b to be used for this purpose.

OCA Protocols for Seeking Pre-Petition Court Orders for Access When Court is Not in Session

Chapter 740 of the Laws of 2006 requires, in part, that a family court judge be available at all times to hear pre-petition applications for an order requiring access to a child who is the subject of a CPS investigation. The OCA has developed the following protocols governing applications by local social services agencies for access during the night, over the weekend, or on a court holiday.

Making the call – **Off-hours calls should never be made directly to a judge.** Off-hours calls from local social services districts seeking access orders must be made to the following toll-free number:

1-800-430-8457

Establishing the conference call - The toll-free number will be answered by an OCA employee (“call coordinator”) who will conference-in the on-call judge.

Recording the call - The call coordinator will remain on the line and be responsible for recording the call, in case a transcript is required.

Conducting the hearing and issuing an order – Form 10-29a has been developed for use in connection with off-hours applications. The call coordinator will fill in the numbered blanks on the form at the direction of the judge. If the application is granted, the judge will direct the call coordinator to affix the judge’s electronic signature to the order.

(Note: Form 10-29a includes a section for notarizing the signature. While it is preferable to have the signature notarized as an affirmation of the accuracy of the CPS caseworker’s statements and signature, both the written application itself and the notarization are optional. It may be difficult to find a notary during off-hours. Please note that many police departments have a notary available. With the judge’s approval, an application may be made verbally.)

Distributing the order – At the conclusion of the telephone hearing, the call coordinator will transmit the signed order to the local social services agency at the fax number or email address provided by the agency. In addition, a copy of the order will be sent to the judge who issued the order, to the clerk of the family court of the county of origin, and to the appropriate Permanency Planning Coordinator.

Important Notice: - Before making an off-hours call seeking an access order, applicants should confirm that they have all information required for the granting of an order, as well as a fax number or email address (which requires access to a printer) to which the order can be sent. For caseworkers who do not have access to the County Office fax machine, arrangements to have the order faxed to a law enforcement agency may be an option.

V. Additional Information

OCA has developed three new forms that may be used in conjunction with the request for pre-petition court orders for access. Local social services districts can find and download these forms on the New York State Uniform Court System website at <http://www.nycourts.gov/forms/index.shtml>. The forms are also included as attachments to this document. The new forms are:

- 10-29 – The court order that will be issued by the family court. There are two versions: one to be issued only for off-hours requests (identified by its large print heading), and one for requests made in person during court hours.
- 10-29a – The application to be submitted by a CPS to request a pre-petition order to access children.
- 10-29b – The report that must be filed by the CPS caseworker within three business days after a pre-petition court order for access has been issued. CPS must detail its findings and any actions taken pertaining to the child subsequent to the issuance of the order.

VI. Contact List

Questions about this Administrative Directive should be addressed to:

BRO - Linda Brown (716) 847-3145

User ID: Linda.Brown@ocfs.state.ny.us

RRO - Linda Kurtz (585) 238-8201

User ID: Linda.Kurtz@ocfs.state.ny.us

SRO - Jack Klump (315) 423-1200

User ID: Jack.Klump@ocfs.state.ny.us

ARO – Glenn Humphreys (518) 486-7078

User ID: Glenn.Humphreys@ocfs.state.ny.us

YRO - Pat Sheehy (914) 377-2080

User ID: Patricia.Sheehy@ocfs.state.ny.us

NYCRO – Brenda Smalls (212) 383-1820

User ID: Brenda.Smalls@ocfs.state.ny.us

/s/ Nancy Martinez

Issued By:

Name: Nancy Martinez

Title: Director

Division/Office: Strategic Planning and Policy Development

ATTACHMENT A

OCFS Regulations

Subparagraph (ii) of paragraph (3) of subdivision (b) of section 432.2 has been amended to read as follows:

- (ii) The full child protective investigation must include the following activities:
 - (a) face-to-face interviews with subjects of the report and family members of such subjects, including children named in the report. If at any time during an investigation the subject of the report or another family member refuses to allow a child protective service worker to enter the home and/or to observe or talk to any child in the household, or if a child in the household cannot be located, the child protective service worker must assess whether it is necessary to seek a court order to obtain access to the child or home or to compel production of the child or whether other emergency action must be taken. The assessment must be made, at a minimum, in consultation with a child protective service supervisor as soon as necessary under the circumstances, but no later than 24 hours are the refusal or failure to locate the child or access the home. When it is assessed that it may be appropriate to seek a court order, legal staff who represent the child protective service must also be consulted, if possible. The assessment and the decision must be clearly documented in the progress notes for the investigation;
 - (b) obtaining information from the reporting sources and other collateral contacts which may include, but are not limited to, hospitals, family medical providers, schools, police, social services agencies and other agencies providing services to the family, relatives, extended family members, neighbors and other persons who may have information relevant to the allegations in the report and to the safety of the children; provided however, the name or other information identifying the reporter and/or source of a report of suspected child abuse or maltreatment, as well as the agency, institution, organization, program and/or other entity with which such person(s) is associated must only be recorded or documented in progress notes and such documentation must be recorded in the manner specified by OCFS pursuant to section 428.5(c)(2) of this Title;
 - (c) within seven days of receipt of the report, conducting a preliminary assessment of safety to determine whether the child named in the report and any other children in the household may be in immediate danger of serious harm. If any child is assessed to

be unsafe, undertaking immediate and appropriate controlling interventions to protect the child(ren); the results of each safety assessment must be documented in the case record in the form and manner required by OCFS;

- (d) a determination of the nature, extent and cause of any condition enumerated in such report and any other condition that may constitute abuse or maltreatment;
- (e) obtaining the name, age and condition of other children in the home; and
- (f) after seeing that the child or children named in the report are safe, notifying the subjects and other persons named in the report, except children under the age of 18 years, in writing, no later than seven days after receipt of the oral report, of the existence of the report and the subject's rights pursuant to title 6 of article 6 of the Social Services Law concerning amendment or expungement of the report.

(Child Protective -- Order on Application for Access to Child(ren) and/or Home--Before Petition Filed) (9/2006)

At a term of the Family Court of the State of New York, held in and for the County of _____, at _____, New York, on _____.

P R E S E N T:

Hon. _____ Judge

.....
In the Matter of

Docket No. _____

A Child(ren) under the Age of Eighteen Years Alleged to be Abused or Neglected by

ORDER ON APPLICATION FOR ACCESS TO CHILD(REN) AND/OR HOME (Before Petition Filed)

Respondent(s)

An application pursuant to section 1034(2) of the Family Court Act having been made before this Court [check box]: in person by telephone;

And the following person(s) having participated [check applicable box(es) and specify]: Petitioner/Applicant/Child protective investigator [specify name, title and agency]:

Other [specify, if any]:

And the parent or other person legally responsible having been advised by the child protective investigator that, if access to the child and/or home, as applicable, was denied, the investigator may seek an immediate court order for such access;

The Court finds and determines that, based upon a report of suspected abuse or maltreatment, pursuant to Article 6 of the Social Services Law, and other information learned in the child protective investigation and reported to the Court, [check all applicable box(es)]:

A. There is reasonable cause to suspect that a child's or children's life or health may be in danger, but the child protective investigator was:

- unable to locate the child or other children in the household; or
- denied access to the child or children sufficient to determine his/her/their safety;

B. There is probable cause to believe that an abused or neglected child or children may be located on the premises, but the child protective investigator was denied access to the home to investigate;

NOW, therefore, it is [check applicable box(es)]:

ORDERED that the application is hereby [check applicable box(es) and specify]:

GRANTED OR **DENIED**; (and it is further)

[Applicable where application has been GRANTED and FINDING ¶A, above, has been checked; check all applicable box(es) and specify]:

- ORDERED that the parent or other person legally responsible shall
- immediately at any hour between the hours of 6AM and 9 PM
- bring the following child or children [specify names]:
- for observation and interviews outside the presence of the parent or other person legally responsible:
 - to the following Child Advocacy Center [specify name and address]:

 - to the following person for an interview and observation [specify name and address of interview/observation location]:

 - to the Petitioner/Applicant for an interview and observation as follows [specify, including address of interview/observation]:

[Applicable where application has been GRANTED and FINDING ¶B, above, has been checked; check all applicable box(es)]:

- ORDERED that the parent or other person legally responsible shall permit the child protective investigator to enter the home: immediately at any hour between the hours of 6AM and 9 PM
- in order to:
 - determine whether an abused or neglected child or children is/are present;
 - conduct a home study to evaluate the home environment of the child or children;

(and it is further)

[REQUIRED in all cases in which the application has been GRANTED; check box if applicable]:

ORDERED that the Petitioner/Applicant shall report back to this Court within three business days regarding what, if any, findings have been made and what, if any, actions have been taken with respect to the child and/ or other children in the household; (and it is further)

ORDERED that [specify]:

ENTER

Judge of the Family Court

Dated:

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE LAW GUARDIAN UPON THE APPELLANT, WHICHEVER IS EARLIEST.

Check applicable box(es):

- Order transmitted on [specify date]: _____ by: facsimile e-mail
- Order received in court on [specify date(s) and to whom given]: _____
- Order mailed on [specify date(s) and to whom mailed]: _____

Child Protective—Order on Application for Access to Child(ren) and/or Home— Before Petition Filed

At a term of the Family Court of the State of New York, held in and for the County of:

1. _____, on <current date: mm/dd/yyyy>

PRESENT: Hon. **2.** _____, (Judge)

IN THE MATTER OF: 3. *(names of child[ren])* _____,

A Child(ren) under the Age of Eighteen Years Alleged to be Abused or Neglected by:

4. _____ Respondent(s)

Docket No.: *(note: this will usually be blank)* _____

ORDER ON APPLICATION FOR ACCESS TO CHILD(REN) AND/OR HOME (Before Petition Filed)

An application pursuant to section 1034(2) of the Family Court Act having been made before this Court by telephone; And the following person(s) having made application:

Petitioner/Applicant/Child protective investigator:

specify name: **5.** _____,

title: **6.** _____ and agency: **7.** _____

And the parent or other person legally responsible having been advised that, if access to the child and /or home, as applicable, was denied, the child protective investigator may seek an immediate court order for such access;

The Court finds and determines that, based upon a report of suspected abuse or maltreatment, pursuant to Article 6 of the Social Services Law, and other information learned in the child protective investigation and reported to the Court, *[check all applicable box(es)]*:

8. There is reasonable cause to suspect that a child's or children's life or health may be in danger, but the child protective investigator was:

9. unable to locate the child or other children in the household; or

10. denied access to the child or children sufficient to determine his/her/their safety;

11. There is probable cause to believe that an abused or neglected child or children may be located on the premises, but the child protective investigator was denied access to the home to investigate;

NOW, therefore, it is ORDERED that the application is hereby *[check applicable box(es) and specify]*:

12. GRANTED OR **13.** DENIED; *(and it is further)*

continued

[Applicable where application has been GRANTED and FINDING #8 OR #11, above, has been checked; check all applicable box(es) and specify]:

ORDERED THAT THE PARENT OR OTHER PERSON LEGALLY RESPONSIBLE SHALL:

14. bring the following child(ren) to the following location for an interview and observation as follows:

Name(s) of children: **15.** _____

Location (*name and address*):

16. Name: _____

17. Street: _____

18. City: _____ State: NY

Time: **19.** immediately at any hour **20.** between the hours 6 AM and 9 PM

OR

[Applicable where application has been GRANTED and FINDING #11, above, has been checked; check all applicable box(es) and specify]:

21. permit the child protective investigator to enter the home as follows:

Time: **22.** immediately at any hour **23.** between the hours 6 AM and 9 PM

Purpose:

24. to determine whether ... _____

25. to conduct a home study... _____

[REQUIRED in all cases in which the application has been GRANTED]:

ORDERED that the Petitioner/Applicant shall report back to this Court within three business days regarding what, if any, findings have been made and what, if any, actions have been taken with respect to the child and/ or other children in the household.

DATED <current date: mm/dd/yyyy>

ENTER
(system will generate)

Judge of the Family Court

Name of Judge & Electronic signature (above)

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE LAW GUARDIAN UPON THE APPELLANT, WHICHEVER IS EARLIEST.

Protocols for Off-Hours Applications for Access Pursuant to Chapter 740, L. 2006

Chapter 740 of the Laws of 2006 requires, in part, that a Family Court Judge be available at all times to hear pre-petition applications for an order requiring access to a child who is the subject of a child protective investigation. The following protocols govern applications by local social services agencies for access orders during the night, over the weekend, or on a court holiday:

Making the call **Off-hours calls should never be made directly to the Judge.** Off-hours calls from local social service districts seeking access orders must be made to the following toll-free number:

1-800-430-8457

Establishing the conference call The toll-free number will be answered by an OCA employee (“call coordinator”) who will conference-in the on-call Judge.

Recording the call The call coordinator will remain on the line and be responsible for recording the call, in case a transcript is required.

Conducting the hearing and issuing an order The attached order has been developed for use in connection with off-hours applications. The call coordinator will fill in the numbered blanks on the form order at the direction of the Judge. At the direction of the Judge, the call coordinator will affix the Judge’s electronic signature to the order.

Distributing the order At the conclusion of the hearing, the call coordinator will transmit the signed order to the local social services agency at the fax number or email address provided by the agency. In addition, a copy of the order will be sent to the Judge who issued the order, to the clerk of the Family Court of the county of origin, and to the appropriate Permanency Planning Coordinator.

Important Notice to Applicants: **Before making an off-hours call seeking an access order, applicants should confirm that they have all information required for the granting of an order, as well as a fax number or email address to which the order can be sent.**

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF

In the Matter of

Docket No.

A Child(ren) Under the Age of Eighteen
Alleged to be
Abused or Neglected by

APPLICATION FOR
ORDER FOR ACCESS TO
CHILD(REN) AND/OR HOME-
Before Petition Filed

Respondent(s)

TO THE FAMILY COURT:

I, [specify name]: _____, having been duly sworn, state the following:

1. I am [specify job title, agency and county]:

2. (Upon information and belief,) the child(ren) who are the subject(s) of this application is/are:

Name Sex Date of Birth Custodial Parent/Guardian Child's Address

[Select Paragraph 3(a) OR 3(b) and check applicable boxes]:

3. a. Based upon the report of suspected child abuse or maltreatment, dated [specify]:
and my subsequent investigation, I have reasonable cause to suspect that the life or health of the
following child(ren) [specify]: _____ may be in danger. However,

I have been unable to locate the above-named child or other children in the household; or

On [specify date]: _____, I visited the child(ren)'s home at the address set forth
in ¶1, but was denied access to the child (ren) sufficient to determine his/her/their safety;

b. Based upon the report of suspected child abuse or maltreatment, dated [specify]:
and my subsequent investigation, I have probable cause to believe that an abused or neglected child or
children may be located at the address set forth in ¶1, but on [specify date]:

I visited the child(ren)'s home at that address, but was denied access to the home to investigate;

4. On [specify date]: _____ I advised [specify parent or other person legally
responsible]: _____ that, if access to the child and/or home, as applicable
above, was denied, I may seek an immediate court order for such access;

5. [REQUIRED if application is made when the Family Court is not in session or if it is later than the Family Court's deadline for new applications]: I would like to contact the Family Court judge by telephone. I can be reached at [specify telephone number]:
I am able to receive the Court's order at [specify e-mail and/or fax number]:

6. No previous application has been made to any court or judge for the relief requested herein (except [specify]:).

WHEREFORE, for the reasons stated above, I am requesting that the Family Court issue an order [check applicable box(es)]:

[Applicable where paragraph 3(a) was selected]:

requiring the parent or other person legally responsible to bring the following child or children [specify names]:

immediately at any hour between the hours of 6AM and 9 PM

for observation and interviews outside the presence of the parent or other person legally responsible :

to the following Child Advocacy Center [specify name and address]:

to the following person for an interview and observation [specify name and address of interview/observation location]:

to the Petitioner/Applicant for an interview and observation as follows [specify, including address of interview/observation]:

OR

[Applicable where paragraph 3(b) was selected]:

requiring the parent or other person legally responsible to permit me to enter the home

immediately at any hour between the hours of 6AM and 9 PM , in order to:

determine whether an abused or neglected child or children is/are present;

conduct a home study to evaluate the home environment of the child or children;

Dated:

Signature of Applicant

Print Name

Title, Agency and County

Sworn to before me this
day of ,

(Deputy) Clerk of the Court
Notary Public

F.C.A. §1034(2)
[Required within 3 business days of

Form10-29b
(Child Protective- Report After Court Order]
Order for Pre-petition Access to
Child(ren) and/or Home)
(9/2006)

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF

In the Matter of

Docket No.

A Child(ren) Under the Age of Eighteen
Alleged to be Abused or Neglected by

REPORT AFTER ORDER FOR
PRE-PETITION ACCESS TO
CHILD(REN) AND/OR HOME

Respondent(s)

TO THE FAMILY COURT:

I am [specify job title, agency and county]:
and respectfully allege that:

1. On [specify date]: _____, this Court issued an order [check box]:
 requiring the parent or other person legally responsible to immediately bring the following child or children [specify names]:
for observation and interviews outside the presence of the parent or other person legally responsible:
 to the following Child Advocacy Center [specify name and address]:
 to the following person for an interview and observation [specify name and address of interview/observation location]:
 to the Petitioner/Applicant for an interview and observation as follows [specify, including address of interview/observation]:

OR

- requiring the parent or other person legally responsible to permit me to enter the home to:
 determine whether an abused or neglected child or children is/are present;
 conduct a home study to evaluate the home environment of the child or children.

2. Pursuant to the Court's order, I took the following actions and made the following findings and regarding the child(ren) named in the report of suspected child abuse or maltreatment [check applicable boxes]:

- a. The following child(ren)[specify]:
were observed and interviewed on [specify date]: _____ by [specify]:
The following findings were made [specify]:

- The following child(ren)[specify]:
have not yet been observed and interviewed, because [specify]:

- b. I entered the home on [specify date]: _____ and found the following:
- The following child(ren) were present [specify]:
 - The following child(ren) appeared to be abused neglected [specify]:
 - I have been unable to locate the following child(ren) [specify]:
 - I was unable to determine whether any children were abused or neglected.
 - I conducted an evaluation of the home and found the following [specify]:

I have not entered the home, because [specify]:

- c. The report of suspected abuse or maltreatment:
- has been found to be indicated unfounded
 - is still under investigation.

- d. The following actions have been taken with respect to this matter:
- i. The following child(ren) have been removed from the home
 - by Family Court order [specify child(ren)]:
 - on consent of the parent or person legally responsible [specify child(ren)]:
 - on an emergency basis [specify child(ren)]:
 - ii. The following preventive services have been provided to the family [specify]:
 - iii. A petition [Docket # _____] was filed on [specify date]:
 - A petition is anticipated to be filed on [specify date]:
 - iv. Other [specify any other actions taken]:

Dated:

Name and Title

Agency and County

Office Address and Telephone