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Child Abuse Defined: April is Child Abuse Prevention Month and should remind us all that child abuse is prevalent in family law cases. It is not something we can afford to be disconnected from as practitioners. Under CRS § 19-1-103, child abuse is defined as an act or omission that threatens the health or welfare of a child in the following categories: physical abuse, neglect, sexual abuse or exploitation, emotional abuse, and abandonment.

Family law attorneys regularly work with families going through dissolution of marriage or allocation of parental responsibilities proceedings where child abuse allegations arise. These cases are rarely simple. They involve multiple parties, agencies, and difficult judgment calls. One of the hardest questions we face is advising a client on when conduct crosses the line from permissible discipline into abuse under the law. That question is almost never black and white, and more often than not it falls squarely in the gray area.

Our clients look to us to help protect their children throughout the process of separating the parental households. It is important to be able to advise them on three fronts: (1) whether you have a duty to disclose; (2) when DHS and law enforcement should be involved, if they are not already; and (3) whether a Motion to Restrict should be filed against the other parent, or whether a Protection Order should be sought on behalf of the child. There are cases where the evidence of abuse is clear. In many others, we are working in gray areas and must proceed carefully.

Duty to Report, CRS § 19-3-304: When a client comes to you and discloses that they believe their child is being abused by the other parent, what is your duty? Colorado law identifies nearly 40 categories of mandatory reporters who are required to report suspected abuse to law enforcement or to the Department of Human Services (“DHS”). As of September 2025, the law was updated to require that the report be made within 24 hours when the information was obtained in a professional capacity, with no mandatory duty if it was obtained in a personal capacity. The duty cannot be delegated to a supervisor or colleague, and victim advocates were removed from the mandatory reporter list. Child and Family Investigators (“CFI”) are included as mandatory reporters, this would include those that are attorneys.

Attorneys are not listed as mandatory reporters under Title 19, unless you are serving as a CFI. That said, the Colorado Rules of Professional Conduct, Rule 1.6, provide some guidance. Under Rule 1.6, an attorney may disclose confidential information to prevent reasonably certain death or substantial bodily harm, which can include child abuse. You will need to carefully weigh your ethical duty of confidentiality against the risk of imminent harm to a child.

Involvement of DHS and Law Enforcement: Before any report is made, it is important to go through the evidence with your client. Do the allegations fall within the range of permissible corporal punishment, or do they cross into abuse? If nothing has been reported and the conduct warrants it, your client can make a report to DHS, law enforcement, or both. A report to police will bring in DHS and trigger a formal investigation.

DHS operates under specific protocols that govern the timeline for response based on the severity of the report. In general, investigations begin within 24 hours to a few days of the initial report. Allegations of physical or sexual abuse will typically prompt a response within 24 hours, or sooner. From the initial report, a final determination (or finding) generally takes 30 to 60 days. During that time, the caseworker must visit the home, interview the children and the parents, and determine whether the report is substantiated or unsubstantiated. The goal is to gather enough information to assess whether the child is safe and whether further intervention is needed.

This investigative process is often an important step before filing a Protection Order or a Motion to Restrict. Knowing where DHS is in that process, and what they have found, can be essential to how you proceed in court.

Involvement of the Court: Under CRS § 14-10-129(4)(b)(I), the court shall not restrict a parent's parenting time unless it finds that the parenting time would endanger the child's physical health or significantly impair the child's emotional development. This is the legal standard that governs every Motion to Restrict, and it should guide your decision about whether and when to file one.

Before filing, you need to assess what evidence you actually have and whether you can present it to the court in a way that meets that standard. You also need to have a frank conversation with your client about the risks of filing prematurely. If the motion is denied, your client may face an award of attorney fees to the other side, be required to provide makeup parenting time, and suffer lasting damage to the co-parenting relationship. In my opinion, deciding whether and when to file a Motion to Restrict is one of the hardest calls we make in family law practice.

The timeline makes it harder. Once filed, the motion must be heard within 14 days. That does not give you much room for uncooperative witnesses, authentication problems, or gaps in your preparation, especially if you plan to offer child hearsay evidence or ask the court to conduct an in camera interview of the child.

If you are on the defense side, the situation is equally difficult. Your client has been restricted from seeing their child simply because the motion was filed. They may be in crisis, handing you a pile of texts, records, and documentation while you are trying to sort out what is admissible, track down witnesses, and prepare for a hearing on a very short timeline. All of this happens while your client is pushing you not to seek any continuance that would keep them away from their child any longer.

If you have never handled a Motion to Restrict, on either side, it is worth reaching out to a colleague who has before you dive in, with your client's permission. It is also common to have clients come to you after already filing a pro se Motion to Restrict or Civil Protection Order. Your job in those situations is to figure out what protection is actually needed, what the law allows, and how to make sure the child is safe while working within the process. From the client's perspective, they are often acting out of fear after a disclosure of abuse, trying to do anything they can to protect their child until a proper investigation or hearing can take place.

Closing: Child abuse often first comes to light in a domestic relations case. For many families, it is the first time the family is no longer unified and the abuse is brought into the open. Whether you represent the parent making the allegation or the parent defending against it, the information you receive at the outset needs to be handled with care. Getting a full picture of the facts and evidence early on will set the tone for the entire case. The safety of the children involved is

always the priority. At the same time, we have to balance that against a parent's constitutional right to raise their child. That balance is not always easy to strike, but it is what our clients and the children in these cases deserve from us.