

RIAC2



CRIMINAL LAW

FAMILY LAW



IMMIGRATION LAW

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PART 4: FAMILY (and Criminal) COURT: AN ADVISORY FOR FAMILY COURT PRACTITIONERS AND JUDGES

UPCOMING EVENTS:

4/1/21: Immigration and Family Court by RIAC2. 12pm - 1:30 pm. Open to all Public Defenders and 18b Assigned Counsel from all counties. To register, email: marcello@ocgov.net

4/14/21: Oneida Co Bar Assoc. Immigration Update 12 - 1:30 pm. To register, email: diane@oneidacountybar.org

4/22/21: Combined CLE: Immigration in Criminal and Family Court by RIAC2. 12pm - 2:30 pm. Open to all Public Defenders and 18b Assigned Counsel from all counties. To register, email: marcello@ocgov.net

The Regional Immigration Assistance Center provides legal support for attorneys who represent indigent noncitizen clients in criminal and family court. Founded in the wake of Padilla v. Kentucky, there are six centers located in New York State. Region 2 covers sixteen counties in the central part of the state.

**RIAC2 is administered by the Criminal Division of the Oneida County Public Defender.*

This month, we conclude our discussion surrounding the Advisory issued for Family Court judges and attorneys in this complex area of law.

PART 4: FAMILY (and Criminal) COURT: An advisory for court practitioners and judges when litigants are in ICE custody

Once a parent is picked up by ICE, access to the outside world is severely limited, and he or she will not be able to participate in any pending family court proceedings without strong advocacy and persistence to ensure his or her attendance at court. Here are some key strategies to help when a parent has been arrested and detained by ICE.

1) Assignment of Counsel for Parental Representation

Assignment of counsel for parental representation in Family Court is not provided when a family court respondent is in ICE custody, yet for a parent or guardian who is facing detention and/or removal from the U.S., representation in Family Court (and criminal court) is critical. Assignment of counsel under FCA §262 is mandatory under certain categories that include child welfare, family offense proceedings, child support violation, permanency, and termination of parental rights, among others.

Given the New York State Court System's increased attention to parental representation in Family Court and the various situations that warrant such an appointment, including matters involving immigration issues, there may be additional resources to provide for assignment of counsel depending on the jurisdictional authority (see, FCA §262, §1022 & §1022-A). In situations where the parent or the legal guardian is detained while proceedings are pending in Family Court, there should be a presumption of eligibility for representation and the judge should appoint counsel for the absent parent or legal guardian.

5/13/21: Immigration and Criminal Court by RIAC2. 3:00 pm - 4:30 pm
Open to all Public Defenders and 18b Assigned Counsel from all counties. To register, email: marcello@ocgov.net

6/3/21: Immigration and Family Court by RIAC2. 3:00 pm - 4:30 pm
Open to all Public Defenders and 18b Assigned Counsel from all counties. To register, email: marcello@ocgov.net

6/24/21: Combined CLE: Immigration in Criminal and Family Court by RIAC2. 2:00 pm - 4:30 pm.
Open to all Public Defenders and 18b Assigned Counsel from all counties. To register, email: marcello@ocgov.net



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Contact the RIAC2 to schedule your next training, lunch hour or other session in your office/county. CLE credit is available.

2) Standby Guardianship (NY SCPA §1726)

In 2018, Governor Cuomo signed a bill that amends SCPA §1726 to allow immigrants at risk of being separated from their child(ren) to appoint a standby guardian. Parents can designate someone to be a standby guardian if they are subject to “administrative separation,” which includes arrest, detention, deportation or even the receipt of notice of intent to deport a parent. In effect, the appointment of the standby guardian only becomes final if the “administrative separation” (the triggering event) occurs, and when proof of the parent’s arrest, detention or deportation is submitted to the court.

3) “Person in Parental Relation” Designation (GEN OBL LAW §§5-1551–1555)

The General Obligations Law was amended to permit individuals to designate a person in “parental relationship” for up to one year (which can be renewed indefinitely). The designation is made by filling out a notarized agreement and it allows the parent to grant the designee limited power to make educational and medical decisions for the child. Like standby guardianship, the designation can also be set up so that it only goes into effect when a specified event, such as deportation, occurs. There are other limitations, but again, the idea is to provide for the care of children if a parent is detained.

BEST PRACTICES FOR COURTS & ADVOCATES

- Determine whether the respondent is detained by using the ICE Detainee Locator at www.locator.ice.gov.
- If a parent is detained, advocates or court personnel should contact the governing ICE Field Office Director’s Point of Contact for Parental Interests (buffalo.outreach@ice.dhs.gov) to facilitate the respondent’s participation in family court proceedings and ensure visitation ordered by the court occurs.
- When contacting ICE, Family Court personnel and practitioners must not provide any substantive information about the underlying legal matter to ICE, even casually, as disclosure to ICE could have adverse consequences to the respondent’s immigration matter.
- Training is critically important for court personnel, panel attorneys and AFCs re: immigration issues, including best practices for screening to determine whether a child’s parent is in a detention setting, benefits and pitfalls of the Directive, and, the latest developments under New York state law aimed at keeping families together, preserving family unity and avoiding permanent family separation.
- Courts should consider assigning counsel to unrepresented parents who are detained in order to ensure that they can participate as fully as possible in the family court proceedings.
- All parties and the Court should exercise extreme discretion in discussing sensitive immigration matters on the record or in open court.

AS ALWAYS, CONTACT YOUR RIAC AS SOON AS POSSIBLE!