

FILED
5/6/2020 4:44 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020CH04100

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

9208516

KRISTEN BUXTON, et al.,)	
)	
Plaintiffs,)	
)	
v.)	
)	
ILLINOIS DEPARTMENT OF)	
CHILDREN AND FAMILY)	
SERVICES, and)	20 CH 4100
)	
MARC D. SMITH, in his official)	
capacity as Acting Director of the Illinois)	
Department of Children and Family)	
Services,)	
)	
Defendants.)	

**EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiffs, through their attorneys, move the Court as follows for a temporary restraining order and preliminary injunction:

1. Plaintiffs have filed a complaint alleging constitutional rights violations and seeking declaratory and injunctive relief. Plaintiffs allege that Defendants' March 25, 2020 action transmittal which unilaterally, without exception and without seeking the approval of any court, indefinitely suspended all in-person supervised parent-child and sibling visits is unlawful.

2. This is an emergency because the suspension of all in-person supervised parent-child visits was sudden and unforeseen, and Plaintiffs are suffering ongoing and potentially permanent and irreparable injury to their constitutionally protected right to a relationship with their children which requires urgent action and remediation. *See* Affidavits of Molly Romer Witten, Kristen Buxton, Chelsea Joyce, Quincita Fleming and Kharis McDonald attached to this motion.

3. Plaintiffs have raised a fair question of success on the merits and have no adequate remedy at law because their motions to enforce visitation have been delayed in the Child Protection Division of the Circuit Court.

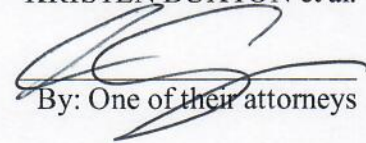
4. The balance of hardships favors Plaintiffs because their relationships with their children may be permanently and irreparably damaged, while Defendants' safety concerns can be satisfactorily addressed through the use of a pre-screening tool and social distancing.

5. In support of this motion, Plaintiffs attach their affidavits, the affidavits of their attorneys, the affidavit of an expert and have filed a memorandum of law.

WHEREFORE, Plaintiffs respectfully request that the Court grant their motion and for such other and further relief as the Court determines to be equitable and just.

Respectfully submitted,

KRISTEN BUXTON et al.


By: One of their attorneys

AMY P. CAMPANELLI, #30295
By: Aaron Goldstein
Chief, Civil Division
2245 W OGDEN AVE, FL 7
CHICAGO, IL 60612
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Aaron.goldstein@cookcountyil.gov

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

AFFIDAVIT OF MOLLY ROMER WITTEN

Molly Romer Witten, being duly sworn, deposes and states on oath as follows:

1. My name is Molly Romer Witten
2. I am a practicing clinical psychologist focusing on the effects of trauma on infant mental health and early child development.
3. I have a Ph.D. in Education (Educational Neuropsychology) from the University of Michigan, Ann Arbor.
4. I am licensed to practice psychology in the state of Illinois.
5. I have published extensively on the effects of early childhood trauma on infant and early childhood development, and on mental health and developmental disorders of young children.
 - a. I am the author of the chapter "Assessment of Attachment in Traumatized Children" in the book, *Handbook for Treatment of Attachment-Trauma Problems in Children*.
 - b. I was a member of the Ongoing Task Force of the Diagnostic Classification Task Force which drafted the *Diagnostic Classification 0-3: Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood*, (1994) (DC:0-3) which classifies emotional and behavioral patterns that represent significant deviations from normative development in the earliest years of a child's life. This manual was updated in 2005 by a second task force and is now abbreviated as DC: 0-3R and in 2016 by a third task force and is now abbreviated as DC: 0-5.
 - c. I was lead author on a diagnostic reference requested by the State of Illinois. This reference allowed those diagnosticians using the DC: 0-3R to use appropriate

mainstream Diagnostic Statistical Manual (DSM) and International Codes for Diagnosis 9-10 (ICD 9-10) diagnoses for conditions affecting children prior to age three. It also assisted the process in enabling insurance and state agencies to reimburse for intervention during the first three years of life.

6. I have also trained other psychologists, clinical social workers, and psychiatrists on diagnosing and treating attachment disorders caused by trauma in infants and young children.

7. A true and accurate copy of my *curriculum vitae* is attached to this affidavit as an exhibit.

8. There has been a great deal of empirical research on the effects of separation of minor children from their parents. I am familiar with this research.

9. I have reviewed Action Transmittal 2020.02 (Updated).

10. I am aware, upon information and belief, that the Action Transmittal suspends all in-person, agency supervised visitation between children in foster care and their parents, and all sibling visitation.

11. I am aware, upon information and belief, that the Action Transmittal calls for caseworkers and caregivers to identify alternative ways for communication between parents and children, such as telephone and videoconferencing, that is available in the caregiver's home.

12. I believe the following, to a reasonable degree of certainty in the fields of child psychology, child development, and child psychopathology:

- a. Suspension of supervised visits has the potential to cause permanent harm to affected children.
- b. For children, especially children under three years of age, sudden physical separation from a parent creates feelings of loss, abandonment, anger and anxiety, dysregulation of affect and functional developmental delay. Infants and young children express separation as a traumatic experience.

- c. Because children under three are not fully verbal, they mentally process events and things in images, not words, their memory does not follow a time frame, nor do they have the cognitive capacity to predict the ending of a separation.
- d. A child under three can lose the image of the parent in their mind within two weeks of physical separation from the parent.
- e. In response to this loss, the child undergoes a grief response.
- f. Sudden separation from the parent also disrupts the deepening development of the parent-child emotional attachment.
- g. The parent-child emotional attachment is the primary source of the child's sense of safety and security.
- h. For children under three efforts to avoid trauma and maintain the parent-child relationship through audio or video calls will likely fail, because, as part of their on-going development of attachment dynamics, children that age depend on proximity in the form of physical interaction with the parent to maintain their internal image of the parent and their sense of safety and security. If the child cannot sense, as in see, hear, smell or feel the hug from their parent, the hug goes away.
- i. For children under three, the presence of a surrogate parent, such as a foster parent or relative caregiver, is not an effective substitute for the child's relationship with their natural parent because the child must begin again the development of the attachment dynamic with the foster parent. Research suggests that they must develop an attachment relationship as if a much younger infant under one year of age. Each relationship for a child under three, begins at the beginning, they do not have a permanent internal pattern of relating to rely on when beginning a new relationship.

- j. Research has shown that even short-term separation from a parent lasting only a week can be associated with increased aggression and/or depression in older children.
- k. Even though they are more verbal, children up to the age of eight do not think logically as adults do, but instead think imaginatively. They still process the memories of their parent as images, not internal representations.
- l. Up to the age of eight, when physically separated from a parent, the child may lose the image of their parent within a month.
- m. For children up to the age of eight, physical separation from a parent results in the same emotions of loss, abandonment, anger, functional developmental delay and anxiety as it does for very young children.
- n. Because of the authority that a child accords their parents, when in-person visitation is restored, a child who has had an abrupt and extended stop to visitation with their parent is likely to have feelings of anger toward their parent because they may believe that the parent had the authority to stop visiting. The separation, and attendant angry, hurt, or frightening feelings further complicates the relationship, especially if the parent is psychologically vulnerable and not able to appropriately respond to the child's feelings.
- o. Indefinite suspension of supervised visits can be additionally harmful to the parent-child relationship because parents who in the past have not been able to fully meet the emotional needs of their children use supervised visitation to build these skills.

13. I have previously testified in cases involving children as an expert witness in child psychology and child development. I have been called as a witness by a variety of offices including the State's Attorney's Office, the Office of the Public Guardian, and Legal Aid Chicago (formerly, the Legal Assistance Foundation (LAF)).

FURTHER AFFIANT SAYETH NAUGHT

Molly Romer Witten, PhD

Molly Romer Witten
April 28, 2020

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109], the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Molly Romer Witten, PhD

Molly Romer Witten
April 28, 2020

AMY P. CAMPANELLI, #30295

By: Steven L. Pick

Assistant Public Defender

2245 W OGDEN AVE, FL 7

CHICAGO, IL 60612

312-433-4217

steven.pick@cookcountyil.gov

Molly Romer Witten Ph.D.
122 S. Michigan Ave Suite 1301
Chicago, Illinois 60603

Office: (312) 765-0246
Email: beso1948@me.com

EDUCATION

Recognition in Psychoanalysis

2011 Institute for Psychoanalysis, Chicago: Certificates in Adult and Child
Psychoanalysis Certificates of Completion
2017 Fellow, American Board of Psychoanalysis Certificate
2017 Training and Supervising Adult Psychoanalyst Certificate

Zero to Three Fellowship

2001-2003 Fellowship Project: Creation of a curriculum to teach DIR theory and
intervention in the first three years of life at the Erikson Institute for Early
Childhood

DIR Senior Faculty Interdisciplinary Council for Development and Learning **Certificate**
1999-2010

Post Doctoral Fellow

1987-1989 Rutgers University, University of Medicine and Dentistry of
New Jersey. Infant Toddler **Infant Mental Health** Program.
Thea Bry, Ph.D. Supervisor

Post Doctoral Certificate Family Therapy

New Jersey Center For Family Studies, 3 years Post-Graduate Training in
Family Therapy: **Patricia Moldawsky**, Ph.D. Supervisor
1986-1989

Ph.D. Education

University of Michigan, Ann Arbor Michigan.
Major: Clinical Child Neuropsychology. Doctoral Dissertation: "Characteristics
of Adolescent Learning Disabled Children Who Suffered Peri-natal Anoxia".
1981 Dr. **William M. Cruickshank**, Ph.D. Advisor.

M.A. Special Education

University of Michigan, Ann Arbor Michigan:
Infant Mental Health and Early Childhood Development. Master's Thesis: An
Exploratory Study of the Sibships of Blind Children: Influence on Educational
Attainment Clinical Supervisor: **Selma Fraiberg**, M.S.W.
1975

B.A. Psychology/Philosophy/Zoology

University of Michigan (1970), Ann Arbor Michigan.

High School Diploma Rincon High School, Tucson Arizona 1966

ACADEMIC POSITIONS

9/11-present	Faculty Member, Institute for Psychoanalysis of Chicago: Teach five courses: Expressions of Attachment Through the Life Cycle, Human Development, Development of the Mind, Introduction to Theories of Therapeutic Action, Infant Observation (an 18 month sequence): Supervisor: 4 Candidates
3/2017-10/2019	Secretary, Board of Directors, Chinese American Psychoanalytic Alliance
3/2014-10/2019	Instructor, Chinese American Psychoanalytic Alliance
6/2012-present	Faculty, ICDL Graduate School: Instructor for two practicum courses: IMH 305 (Developmental Process), IMH 309 (Internship for IMH 305)
2009-2015	Clinical Supervisor of Medical Residents, Psychology Interns for Internship/resident training years: Rush St. Luke Presbyterian Hospital, Chicago
6/2004-5/2014	Clinical Supervisor of the Developmental Intervention Internship of the Infant Mental Health Certificate Program of Erikson Institute.
2019-present	Emeritus Instructor at the Erikson Institute
2003-2018	Adjunct Faculty at the Erikson Institute: Responsibility for organizing and teaching a developmental interventions courses and practicum within the Infant mental Health Certificate Program at Erikson
2003-2005	Adjunct Faculty at the Institute for Clinical Social Work , a PH.D. Degree granting program: Responsibility for organizing and teaching Development in the 0-3 age range to Ph.D. students at ICSW. Erika Schmidt, Director of Developmental Courses Sequence
1992-1998	Adjunct Faculty, Northwestern University: Course creation and Teaching of two courses: "Typical and Atypical Development in the Zero to Three Age Range" & "Family Systems of Families with Infants and Toddlers".
1990-1993	Member , Clinical Psychology representative to Pediatric Ethics Committee, University of Chicago Wyler Children's Hospital
1990-1992	Psychology Internship Training Coordinator La Rabida Children's Hospital of University of Chicago Hospitals
1987-1989	Lecturer , 1988-1989 Rutgers' University Univ. of Medicine and Dentistry of New Jersey, Department of Pediatric Medicine: 1987 the Infant Specialist Program, Participated in developing program structure and planning activities, lecture responsibilities in the Early Intervention Assessment course, and in the Social and Psychological Development of Infants course.

ADMINISTRATIVE, CLINICAL, AND TRAINING EXPERTISE

2020-present	Member, Distance Learning Committee, Chicago Psychoanalytic Institute
2019-present	Dean's Representative, Evaluation Cmte, Chicago Psychoanalytic Institute
2016-2019	Secretary, Board of Directors, Chinese American Psychoanalytic Alliance
2015-present	Consultant , Early Intervention Training in DIR based Diagnosis in infancy & Early Childhood-Rochester NY
2013-present	Co-Chair of the Progression Committee for the Chicago Institute for Psychoanalysis

2020 Curriculum Vitae: Molly Romer Witten, Ph.D.

2013, 2014 **Panel Organizer**, Child and Adolescent Panel of the American Psychoanalytic Association Topics:
2013 Treatment of Autism in Infants,
2014 Origins and Developmental Course of Intentionality Infancy Through Adulthood

2013 National Trainer: **DC: 0-3 R Training Presenter:** Zero to Three National Training Institute, San Antonio, Tx

2010 National Trainer: **DC: 0-3 R Training Presenter:** Zero to Three National Training Institute, Phoenix, AZ

2003-present **National Trainer and Member of the Trainers of Trainers Work Group**, Zero to Three:. Training of statewide diagnosticians in Minnesota, Ohio, Connecticut, Illinois, Kentucky, Westchester Cty, NY.

2004-present **Director, Parent Child Playgroups**, Clinical Director of developmentally appropriate playgroups in which toddlers, children and adolescents receive parental and peer led developmental support through enriched play with peers, parents and therapists.

2007-2011 Illinois **DC: 0-3 R Crosswalk Committee Author** and Co-Chair with Karen Freel, Ph.D. and Tonya Anderson, MD for the State of Illinois: Developed funding methodology for providing diagnoses according to the requirements of federal funding guidelines.

2003-2010 State Wide Trainer, providing Three Two-Day Training: **Diagnosis of Infants and Young Children using the DC:0-3R:** States of Ohio, 2003; Minnesota,2005; Illinois,2005; Connecticut, 2007; Kentucky, 2007; Pennsylvania, 2010

2009-2011 Four-Day and Two-Day Training: Observing and Helping Infants and Young Children Westchester

2009 Country Jewish Children Services, White Plains New York.20

2006 **DIVISION 39 of the American Psychological Assoc. (Section II): CONFERENCE:** Psychoanalytic Child And Adolescent Psychotherapy: psychoanalytic psychotherapy with Children, Adolescents, and their Parents: Chicago, Illinois. Panel Member with Christine Kieffer, Ph.D., Thomas Burns, MD, Amy Eldridge, DSW, and Robert Galatzer-Levy.

2004-2008 **One Day Training: FLOORTIME AND THE DIR PARADIGM FOR PARENTS AND BEGINNERS:** with Barbara Kalmanson, Ph.D. Washington DC, ICDL Conference Pre-conference workshop

2000-2007 **Clinical Co-Editor:** Best Practices Newsletter Interdisciplinary Council for Developmental and Learning Disorder online at www.icdl/publications/newsletter 2000-2007

1999-2010 **DIR Institute** Senior Faculty, Psychology

1996-2007 **Regional Coordinator** International Interdisciplinary Council for Developmental and Learning Disorders

2006 **WORKING WITH PARENTS:** with Barbara Dunbar, Ph.D. Washington DC, ICDL Pre-conference workshop

2003 **FLOORTIME AND THE DIR PARADIGM FOR PARENTS AND BEGINNERS:** with Serena Wieder, Ph.D., & Barbara Kalmanson, Ph.D. Washington DC, ICDL Pre-conference workshop

2020 Curriculum Vitae: Molly Romer Witten, Ph.D.

2003 **BUILDING FOUNDATIONS FOR THE FUTURE:** with Stanley Greenspan, MD, Serena Wieder, Ph.D., & Monica Osgood: Chicago Ill-conference organizer

2003 **The Integration of Attachment and Regulation: New Intervention Opportunities:** Care Development Centers, Bangor Maine

2003 **CHAIRPERSON:** Chicago Regional DIR conference: 9/19/03-9/20/03

2003-2004 **Consultant-**Little Cities Foundation

2002 **DIR Intervention Strategies:** Minneapolis Minn.

2003-2005 **Advisory board member:** Gallery 37, AFTER SCHOOL MATTERS City of Chicago, Mayor's Office for Disabilities

2002-2004 **Consultant:** Arlington Pediatric Therapies.

2001-2004 **Consultant:** Beth Osten and Associates

1999 **Consultant:** parent consultation regarding families and their young children with ASD: AFIK, an Israeli interdisciplinary team serving children with developmental disorders-Rehovot Israel

1996 **Clinical Participant** in Tallel & Mirscenic national beta testing for auditory training clinical protocol for young children with auditory processing delays. Refer to Journal "SCIENCE" 1/96 for relevant article.

1995-1997 **Project Director:** Clinical Follow-up Study of infants sexually and physically abused in a daycare setting: Research on the resolution process. Decatur, Illinois

1996 **Consultant/Psychologist:** State of Georgia, Child Protective Services (adoption)

1994-1998 **Consultant/Psychologist:** Clinical Assessment and Expert Witness for Macon County, Illinois State's Attorney's Office

1993-1998 **Attending Staff,** Michael Reese Hospital Department of Psychiatry, Outpatient Clinics: supervision of postdoctoral fellows and pre-doctoral psychology interns on their child-related clinical work: Project Co-director of research grant on diagnostic classification for 0-3 population

1989-present **Private Practice:** Chicago 1992-present

1991-1992 **President:** Chicago Area Directors of Internship sites in Professional Psychology,

1990-1992 **Coordinator of Training:** Behavioral Sciences Department, La Rabida Children's Hospital and Research Center, University of Chicago. Administrative and clinical responsibility for the APA approved psychology internship program, clinical supervision of staff and interns in the Behavioral Sciences Department, course development and lecture responsibilities for the child psychopathology and child abuse seminar, pediatric psychology seminar, and treatment team seminar, direct clinical work, workshop presentations, and court testimony.

1989-1990 **Clinician II Staff Psychologist,** Dept. Child and Adolescent Psychiatry, University of Medicine and Dentistry of New Jersey, Rutgers University Community Mental Health Center, Infant Mental Health. Supervising Psychologist for Infant Mental Health. Responsibility for diagnostic assessment and psychotherapy treatment of children, ages 0-6 years, and their families or foster care giver systems, consultation to other services of the hospital including pediatrics, inpatient psychiatry, consultation to state and community agencies and school systems; academic teaching duties in pediatrics and psychology and professional-student supervision.

- 1989-1990 **Staff Therapist** New Jersey Center for Family Studies. Family systems focused psychotherapy with individuals and families, and consultation with schools, and other social service agencies.
- 1985-1987 **Psychologist, Pediatrics/Child Evaluation** and Treatment Units. Hunterdon Medical Center. Responsible for psychological assessment of referred children and their families, family and individual therapy with early intervention families, consultation with staff, participation in parent conferences, program outreach.
- 1984-1986 **Psychologist**, Clinton Public School, Clinton, New Jersey.
- 1975-1979 **Project Associate** Special Education at the University of Michigan Institute for the Study of Mental Retardation and Related Disabilities; Ann Arbor Michigan.
- 1973 **Research Associate** National Association of Independent School Development Councils (NAISDC), Boston Massachusetts Responsibilities included development of survey materials to evaluate the utility of the 1968 E.S.E.A. legislation on secondary education, Grant Funded through Harvard University.
- 1972 **Psychologist and Consultant**, Yale University, Government Tunisia, Government United States, Tunis, Tunisia, North Africa. Consultation with Tunisian professionals in adapting Bayley Scales to Tunisian culture, supervision of tester training and research Bayley Scales
- 1971-1972 **Basic Grade Psychologist** Guys Hospital, London England: Psychological assessment of children, participation on interdisciplinary team at the Bloomfield Clinic for Children.
- 1971-1972 **Visiting Participant** Hampstead Child Therapy and Training Clinic. Supervised therapeutic interaction with blind nine-year-old girl, attendance at selected meetings and lectures. Supervisor: Ann Hayman
- 1970-1971 **Clinical Trainee and Master's Thesis student, and Research Assistant:** Child Development Project, Selma Fraiberg, Director, University of Michigan, Ann Arbor Michigan.

SCHOLARSHIPS, SCHOLASTIC and GRANT AWARDS

- 2017, 2019 **RESEARCH to ACTION Grant Award**, Academy of Fellows, Zero to Three
- 2014 **The SABSHIN AWARD** for Outstanding Teaching in Psychoanalysis Chicago Institute for Psychoanalysis
- 2001-2003 **HARRIS Fellowship**, Mid career fellowship: Leadership Development Initiative, Zero to Three
- 1994-1996 **Michael Reese Hospital grant** to study Diagnosis Patterns in 0-3-age range for this hospital
- 1979-1980 **Horace H. Rackham Dissertation Grant**, University of Michigan
- 1977-1978 **Full Fellowship**, Bureau for Educationally Handicapped, U.S. Department of Health & Human Services, Office of Education,
- 1970-1971 **Teaching fellowship** University of Michigan, psychology

PUBLICATIONS

“Sensory Processing Disorder and Mental Health Assessment of Affect” Chapter 12 co-authored with Lucy Jane Miller, PhD and Roianne Ahn, PhD. in: Handbook of Infant Toddler and Preschool Mental Health Assessment edited by Anne Dellinger, Alice Carter, and Rebecca DelCarmen-Wiggens (in press 2019)

2020 Curriculum Vitae: Molly Romer Witten, Ph.D.

Schneider, J. Wilkerson, D. Solomon, B. Perlman, C. Tsioles, D.D. Shelby, D. Witten, M. Sadow, L. (2014). Psychoanalytic Training Experience and Postgraduate Professional Development: A Survey of Six Decades of Graduate Analysts. *Int. J. Psycho-Anal.* 95(6): 1211-1233.

Schneider, J. Sadow (filicide), L. Wilkerson, D. Solomon, B. Perlman, C. Duval, D. Shelby, D. Witten, M. (2016). Respuesta a la carta de Tillman Habermas. *Int. J. Psycho-Anal. Eds'*, 2(2):545-548.

Schneider, J. Wilkerson, D. Solomon, B. Perlman, C. Duval, D. Shelby, D. Witten, M. (2017). Psychoanalytic Training Experience and Postgraduate Professional Development - Part II. *Int. J. Psycho-Anal.*, 98(5):1385-1410.

Schneider, J. Sadow, L. Wilkerson, D.C. Solomon, B. Perlman, C. Duval, D. Shelby, D. Witten, M. (2016). Response to the Letter of Tillman Habermas. *Int. J. Psycho-Anal.*, 97(2):505-506.

"Witten, M. (2017). A Child Mourns the Family He Cannot Come From. *Psychoanal. Inq.*, 37(8):549-554.

"A Young Teen Mourns the Family He cannot come From: Effects of Artificial Reproductive Technology on the children produced" Paper presentation" International Forum of Psychoanalysis: Bilbao Spain, May 2015.

"Intention to Develop or Development of Intention?" (submitted 2015 JAPA)

"**Psychoanalytic Treatment of a Baby with Autism**" *Psycho Dialogues* (in press 2014)

"**Uses of Email to Establish Object Permanence in a Latency Age Child Suffering Multiple Parent-loss**" with Benjamin Garber, MD co-author (submitted to JAPA, 2011)

"**How Trauma Enters Development**" (submitted to JAPA, 2011)

"**Developmental Transformations of Traumatic Experience in Infancy**" *Zero to Three Journal*, September, 2010

"Witten, M.R. (2008). Some Questions about Attachment Theory Implications for the Development of Mind in Infancy. *Ann. Psychoanal.*, 36:216-229.

Pervasive Developmental Disorders: Chapter 4: -with Gerald Costa, PhD in *Evidence Based Practice in Infant and Early Childhood Psychology*, (2008) B. Mowder and F. Robinson and A. Yasik Eds., New York, Wiley & Son.

"**What about the Future: How 9/11 Affected Families with Small Children.**" *Zero to Three Journal* 1/02.

"**Mood Disorder: Depression in Infancy and Early Childhood** Chapter 203 in *DC: 0-3 Case Book*: Eds: Alicia Lieberman, Ph.D., Serena Wieder, Ph.D., and Emily Fenichel, *Zero to Three: The National Center for Infants, Toddlers, and Families* 1997 Pg. 81-107.

"Assessment of Attachment in Traumatized Children" Chapter in Handbook of Attachment-Trauma Disorders in Children. Beverly James, Brookes Pub. Co.: New York: 1994.

"The Pattern and Sequence Of Psychotherapeutic Intervention with Children Who Have Experienced Sexual Abuse: A multi-systems approach" (unpublished manuscript)

"Joey and His Family: A Case Study in Family Systemts Therapeutic Resolution of Enuresis in a Five Year Old Boy" Submitted to State of New Jersey Board Of Licensure, in partial fulfillment of Psych. Lic. requirements, Nov. 1989.

"Developmental Process, Life Cycle Issues, and the Early Adolescent Mother", Illinois Association for Infant Mental Health, Vol. VII, No. II, fall 1989.

"Differential Treatment of Twins with PDD: An example of ineffective parent-child interactions in infancy: Factors contributing to pervasive developmental delay"; videotape, 1987.

"Parents Look Back: A conversation with mothers of autistic children who "graduated from Early Intervention to Preschool in an Early Intervention Program" videotape, copyright, 1986.

"Characteristics of Pubescent Specific Learning Disabled Children Who Suffered Anoxia at Birth", Dissertation Abstracts, May 1981.

"An Exploratory Study of the Sibships of Blind Children": A Multiple N of 1 Experimental Design in Clinical Resesarch, Journal of Visual Impairment and Blindness, Vol. 71, No. 3, March 1977, pp. 102-107.

INVITED TALKS AND PAPER PRESENTATIONS

Chinese American Psychoanalytic Alliance- 2018 Graduations Chinese mainland conferences in Hangzhou, Nanjing, Beijing, Cheng Du, Zhenzen, Shanghai. Presentation of three papers:

A Child Mourns the Family He Cannot Come From: Outcomes and Issues for Children Produced by Artificial Reproductive Technologies"

Psychoanalysis of a Baby with Autism

Early Development of Attachment

Psychoanalytic Training Experience and Postgraduate Professional Development: Rethinking Findings in Terms of Intimacy. Schneider, J. Wilkerson, D. Solomon, B. Perlman, C. Tsioles, D.D. Shelby, D. Witten, M. Sadow, L: International Psychoanalytic Association Buenos Aries, Argentina, July, 2017

"A Child Mourns the Family He Cannot Come From: Outcomes and Issues for Children Produced by Artificial Reproductive Technologies" at the Symposium on the Future of Psychoanalysis, Bilbao, Spain. 2015

Chair and Presenter **Child and Adolescent Panel**, Development of Intention or Intentional Development APsaA January 2015, New York, New York

2020 Curriculum Vitae: Molly Romer Witten, Ph.D.

Presenter: Development Of Affect Regulation & Developmental Derailment In Young Children With Severe Mood Disturbance: Depression And Pediatric Bipolar Disorder World Association for Infant Mental Health, Edinburgh Scotland, 2014 with Ira Glovinsky, PhD

Presenter: **Child and Adolescent Panel**, Psychoanalysis of a Baby with Autism from the DIR perspective with Steven Seligman, DMH, Gerard Costa, PhD, Gilbert Foley, PhD. APSaA Jan. 2014, New York, New York

WAIMH Edinburgh, Scotland World Congress 2014: Two Paper Presentations: 5/17/2014
“Development of Affect Regulation and Developmental Derailment in Young Children with Severe Mood Disturbance: Depression and Pediatric Bipolar Disorder

Disc. Group Moderator: **Post Panel Discussion on Affect Regulation** Chair, Mary Target, PhD: IPA, 48th Congress, Prague, Czech Republic 8/2/2013

Some Thoughts on What Children Tell Themselves About Themselves During Infancy and Early Childhood: BERTRAM J. COHLER MEMORIAL CONFERENCE The University of Chicago 6/13-14, 2013

Presenter: Casa Blanca School Annual Conference Keynote speaker, Miami Fla 4/8/2013

DIVISION 39 of the American Psychological Assoc. (Section II): Conference Speaker: *Relational Mis-Attunement in Infancy and One Path Into and Out of Loneliness* 3/10/2012

ICDL Annual Conference: Panel Moderator 11/2011

Faculty, Institute for Psychoanalysis, Chicago **Promoting Social Emotional Capacities in the Community** 09/2011

Making FloorTime work for the Entire Family: ICDL Annual Conference: The Power of Affect. Conference Speaker 11/7/2012

WAIMH Cape Town World Congress 2012: Two Paper Presentations: 4/17/2012

“Using the DC:0-3R to understand the needs of infants, young children, and their families” 2566 “How Trauma Enters Development” D 2567

“DC:0-3R One Day Training”: **Using a Crosswalk to insure Medicaid Reimbursement: Zero To Three National Training Institute, Phoenix AZ** 12/8/2010

ICDL Annual Conference: Panel Speaker : “Neighborhood Groups Support Growth in Families: Brining Play-Based Consultation to Early Head Start” 11/4/2011

“How Trauma Enters Development” Loyola One-Day conference: Development and Psychoanalysis 11/7/2010

“Supporting Baby to Enjoy Eating with Others: working with infants and children with complex eating disorders “ Presented with Diane Culinane, MD, DIR Institute 2010

"Everything you wanted to know about Autism but didn't know how to ask": presented to the Forensic Forum Chicago, IL 2/07

Working on the Edge of Chaos psychotherapy with children **Institute for Psychoanalysis of Chicago.**
Panel Member: with Robert Galatzer-Levy, MD, Paul Holinger, M.D., Gil Foley, Ph.D. 09/06

"Working with Children in Specialized Foster Care": Legal Assistance Fdn. of Chicago, Child Law Project 2004- 2006

Psychiatry Rounds **"New Clinical Applications of Psychoanalytic Theory (DIR paradigm) to Support Development for Individuals with Autism Spectrum Disorders"** Rush, St. Luke Presbyterian Hospital Department of Psychiatry: 3/04.

"New Clinical Applications of Psychoanalytic Theory (DIR paradigm) to Support Development for Individuals with Autism Spectrum Disorders" Institute for Psychoanalysis February, 2004

"FloorTime-Six Stages of Early Emotional Development with Serena Wieder, Ph.D. and Barbara Kalmanson, Ph.D. Pre Conference One Day workshop at the 2002 ICDL International Conference: Improving Long Term Outcomes of Children with Autism Spectrum Disorders: 11/02 Tyson's Corners VA.

"Clinical Evaluation" Panel presentation to the Illinois Infant Mental Health Association, 10/18/2002.

"New Directions in Training Infant Mental Health Workers" Zero to Three Fellows Weekend, Chicago Il 10/02.

Current Intervention Issues for Autism Spectrum Disorders: NSSD annual meeting, Northbrook Illinois, 9/17/2002.

"The DIR Clinical Paradigm" A 2 day conference on DIR Theory and Intervention Strategies. Arlington Ped. Therapies Inc. 2/22-23/2002

"DIR Theory, Research, and Intervention Strategies" Psychology/Psychiatry Rounds, Juvenile Protection Association, Sept 26, 2001, Chicago IL. **Psychology Rounds** "DIR Theory, Research Findings, and Intervention Strategies", Children's Memorial Hospital, Feb.19, 2001, Chicago IL.

"A View From the Floor" A two day conference on DIR Theory and Intervention Strategies. Star Net, October 14 & 28, 2000.

"DIR Theory and Strategies in the Classroom" NSSD In-service day August 7, 2000

"Evaluating and Using Alternative and Complimentary Medicine with infants and Small Children with Developmental Delays."

Star Net, February 16, 2000 **"DIR Theory and Strategies in the Classroom"** NSSD Institute day, February 15, 2000.

"Six Stages of Emotional Development and the Relationship to Floortime Intervention: Kirsten Center for Young Autistic Children: Jewish Children's Bureau, August 18, 1999.

"One Week Floortime Training" CEITAN Grant for didactic training and clinical intervention coaching with the Lynn Center Early Intervention Program, Pittsburg, California August 2-6, 1999

"Affect Development: Issues of Regulation, Relationship, and Intervention" DDR Conference, Chicago Illinois, June 12, 1999

"Affect Development: Issues of Regulation, Relationship, and Intervention" Part 1 and Part 2: Brinker Symposium of Cook County Children's Hospital June 2, 1999.

"The Functional Emotional Assessment Scale: Use in Early Intervention Screening and Assessment" Star Net closed circuit Conference May 18, 1999

"Affect Development: Issues of Regulation, Relationship, and Intervention" two-day conference sponsored by AFIK, an Interdisciplinary Treatment Center. Israel: May 3-4, 1999

"The Toddler Who Did Not Play" Resolution of Depression in Infancy: Invited talk at Turning Points Mental Health Center, Skokie Illinois Feb. 1998

"Understanding the Diagnostic Classification 0-3": Invited talk at the IPA Conference 11/97

"Issues of Attachment in the Resolution of Trauma in Infants and Toddlers" Invited talk at the Annual Illinois Association for Infant Mental Health Conference November 1997.

"Development of Affect and the Treatment of Regulatory Disorders in Children" Invited talk to Illinois Parents and Professionals Together Organization: May 1997

"Should We Teach Infant Mental Health in Early Intervention Training Programs?" Invited lecture to the Illinois Association For Early Intervention: April 1997

"Interviewing Strategies for Use With Children in the Juvenile Justice System": Illinois Annual C.A.S.A. Conference: April 1997

"Treatment of Psychological Trauma in Infants and Toddlers" Invited paper at pre-conference workshop at the Society for Traumatic Stress Studies San Francisco: 11/4/96

"Interviewing Strategies for Use With Children in the Juvenile Justice System": National Association of Council for Children: Chicago, October 1996

Psychiatry Grand Rounds "The Toddler Who Did Not Play: The Diagnosis of Depression in Infancy", Michael Reese Hospital 3/96

"Implications for Primary Grade Teachers of the Multi-system Developmental Disorder Diagnosis" Developing 'Inclusive' Lesson Plans for Teaching Preschoolers diagnosed with Developmental Delay and Autistic spectrum disorders in the Regular Education Classroom Setting. "In-service I for: Evanston School District: 3/95, 1/96, 4/96

"Investigation, Assessment, and Prosecution of Daycare Sexual Abuse". The National Center for Clinical Infant Studies, 13th Biennial Training Institute, Atlanta Ga. Dec. 1995.

"Developmental Diagnosis using the DC-0-3" Training at Univ. of Illinois at Chicago, Medical School, 3/95

"Attachment Disorders in Traumatized Children", with Beverly James, M.S.W., and Karen Sitterly, Ph.D. The International Traumatology Conference, 11/94, Chicago IL. National Symposium on Abuse and Neglect of Children with Disabilities: Invited Participant: 11/94, Washington DC

"Sexual Abuse in Young Children: A multi-system model of intervention" with Sylvia Turner, MD., Carol Wheeler-Liston, Ph.D. The 13th Internat'l Congress of the Internat'l Assoc. for Child and Adol. Psych. and Allied Prof. San Francisco, July 1994.

"Attorney-Psychotherapist interfaces in the Disposition of Child Maltreatment Cases": Presentation at the Civitas Center for Child Advocacy of the Loyola Law School: March 1994.

Early Intervention's Response to Child Maltreatment Erikson Institute Working Seminar: **Seminar Coordinator** with Linda Gilkerson, Ph.D., **Invited Speaker**

"The Therapeutic Process with Maltreated Children Under the Age of Three." March 17-18, 1994

"Integrated Psychotherapy with Sexually Abused Children Under Three Years of Age" Invited Symposium at NCCIP Training Institute Washington DC: 12/93.

"Developmental Considerations in Investigative Interviewing of Children Younger Than Twelve" Full Day Workshop sponsored by the Public Services Administration, Wash DC and Macon County Illinois State's Attorney's Office, in conjunction with the Missing and Exploited Children's Act of 1992. 9/93.

"Assessing Risk of Child Maltreatment in Early Intervention Settings"--Presentation to the Evanston branch of American Lekotek 6/93

"Issues regarding Child Testimony in Cases of Physical or Sexual Abuse By a Parent"-- Presentation to the Dupage County Sexual Abuse Consultation Group and Dupage County Guardians Ad Litum. 5/93

"Interviewing for Purposes of Court Discovery"--coordination of five session training for the Cook County Office of the Public Guardian 4/93-5/93

"Greenspan's Stages of Emotional Development"-- Lecture in the Infant Studies Postdoctoral Program at the Erikson Institute of Loyola University, Chicago, Illinois, 3/93.
Expert witness testimony regarding specific cases: three times in 1993.

"Family Systems Theory Applied to Issues of Early Intervention"--Two lecture series at the Erikson Institute of Loyola University, Chicago, Illinois, 1992.

"Case Studies in the 0-3 Age Range; testing new diagnostic categories for the upcoming Diagnostic and Statistical Manual (IV and V)" -- Paper and Video Presentation, National Center for Clinical Infant Programs, Washington DC 1992

"Emotional Development in the 0-3 Age Range: Variations in Premature Babies, and Children of Substance Abusing Parents" --Invited Talk, La Rabida 0-3 Conference, Chicago 1992

"Parent-Infant Interaction" Invited All Day Workshop: The Theraplay Institute. Chicago, 1991

"Current Research on the Family Dynamics Associated with Failure-to-Thrive Medical Status" Failure to Thrive Conference, La Rabida, Chicago Illinois: 1990

"Family Systems Theory Applied to Issues of Early Intervention"--Two lecture series at the Erikson Institute of Loyola University, Chicago, Illinois, 1990.

"Indicators of Early Relationship Disorders in the Pediatric Clinic Visit"--Invited Talk, Evanston Hospital, Evanston Illinois: 1990.

"Dynamics of Projection, and the Young Adolescent Mother"-- Evanston Hospital, Evanston Illinois; 1989.

Pediatric Grand Rounds," Parent-Infant Psychotherapy: Use in the Inner-city Pediatric Clinic: Outpatient Department— A case presentation", University of Medicine & Dentistry of New Jersey, (Rutgers-Newark) 1988.

LICENSES AND CERTIFICATES

•State of Illinois•

License to Practice as a Clinical Psychologist
License Number 071.004453

State of New Jersey

License to Practice as a Psychologist
License Number SIO 2639

•State of New Jersey School Psychologist Certificate

- Certificate** Zero To Three Graduate Fellow 2003.
- Certificate** Risk Management in the Expanded Health Care Market 8 CEUs 1998 (APA sponsored)
- Certificate** Cutting Edge Issues in Infancy & Early Childhood, (Greenspan)
George Washington University 1997-2007,
- Certificate** Infancy & Early Childhood Training Course, (Greenspan)
George Washington University 1992-2003
- Certificate** Bayley Scales Training fall 1993
- Certificate** "Developmental Psychotherapy for Adults, Adolescents and Children"--Department of Psychiatry
and Behavioral Sciences, The George Washington University Medical Center 1996

2020 Curriculum Vitae: Molly Romer Witten, Ph.D.

•**Certificate** of Completion of Post Graduate Training in Infant Mental Health, Rutgers, The State University of

New Jersey, University of Medicine and Dentistry of New Jersey: 1987-1989

•**Certificate** of Completion of Post Graduate Training in Family Systems and Family Therapy

New Jersey Center for Family Studies—1985-1988

PROFESSIONAL AFFILIATIONS

Chinese American Psychoanalytic Alliance Secretary, Board of Directors 2017-present

Kohl Children's Museum scientific advisory board member 2008-present

American Psychoanalytic Association: Member 2011-present

Chicago Psychoanalytic Association Member 2011-present

American Psychological Association Member 1992-present

Illinois Psychological Association Member 1992-present

World Association for Infant Mental Health Member 1994-present

Interdisciplinary Council for Developmental Learning Disorders: Advisory Board 1995-present

Zero to Three: The National Center for Clinical Infant Programs: Member--Diagnostic Classification

Taskforce: participant 1991-1994, Member 1995-2002DC: 0-3 Training Taskforce: Member 2001-2017;

National Trainers of Trainers Work group:

Zero to Three 2005-present Harris Mid Career Fellow 2001-2003:

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

AFFIDAVIT OF KRISTEN BUXTON

Kristen Buxton, being duly sworn, deposes and states on oath as follows:

1. My name is Kristen Buxton. I am the mother of T.B.
2. My child, T.B., is 2 years of age, born August 2, 2017.
3. My child is under the care, custody and control of the Illinois Department of Children and Family Services ("the Department").
4. Pursuant to an order of the Circuit Court of Cook County dated February 20, 2020, the Department is required to provide in-person supervised day visits to me and my child.
5. Until on or about March 1, 2020, the Department was providing in-person supervised day visits to me and my child.
6. On or about March 19, 2020, I was informed by my caseworker that my in-person supervised parent-child visits were being indefinitely suspended based on a new policy by the Department.
7. Since on or about March 19, 2020, Defendants have refused to provide any in-person supervised parent-child visits to me and my child.
8. I desire to continue receiving in-person supervised parent-child visits with my child.
9. I believe my child and I are suffering harm from the lack of in-person supervised visits because it is breaking the parent-child bond and delaying any healing and growth to take place. In place of in-person visits, the Department has provided that phone and video visitation should suffice, but this is not adequate. Video visitation is unproductive to sustaining the parent-

FILED DATE: 5/6/2020 4:44 PM 2020CH04100

child bond between myself and T.B., being only 2 years of age, is unable to have a meaningful visit over the phone or video. He is often distracted by the other people and things in physically near him. I am not able to bring him gifts, cook for him, hold him while we read, hug him or kiss him over the phone. I am missing first steps for my child, such as, learning how to ride a bike for the first time. The video "visits" do not allow for the same activities, conversations, or love to take place as an in-person visit does. Further, my child does cannot even fully understand the reason we are being separated, thus, causing more trauma to T.B. The Department's prevention of allowing my son and I to see each other in person is causing more trauma to us both. The Department's ban on in-person supervised visitation is not allowing the bond between T.B. and I to strengthen and instead, is continually breaking that bond and delaying any healing and growth to happen between us.

10. An actual controversy exists between myself and the Department because I desire to continue in-person supervised visits with my child and believe my child is being harmed by the lack of visits, and the Department is refusing to provide them.

FURTHER AFFIANT SAYETH NAUGHT

/s/ Kristen Buxton
Kristen Buxton

May 4, 2020
DATED

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109], the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Kristen Buxton
Kristen Buxton

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

AFFIDAVIT OF RACHEL A. SHIRLEY

Rachel A. Shirley, being duly sworn, deposes and states on oath as follows:

1. My name is Rachel A. Shirley. I am an Assistant Public Defender. I represent Kristen Buxton in the action involving her child in the Child Protection Division of the Circuit Court of Cook County.
2. My client's child is under the care, custody and control of the Illinois Department of Children and Family Services.
3. As of the date of this affidavit, the case is pre-trial, and no finding has been made that my client abused or neglected her child.
4. Pursuant to orders of the Circuit Court of Cook County dated February 20, 2020, the Department is required to provide in-person supervised day visits to my client and her child.
5. After the suspension of my client's in-person supervised visits with her child, on or about April 29, 2020 I filed an emergency motion asking that her visits be restored.
6. On or about April 29, 2020 I received a response to my emergency motion from Larry Grazian informing me that Judge Balanoff has entered an order regarding the motion. The order is attached to this affidavit.
7. The order, issued by Judge Robert Balanoff, indicated that court reviewed my emergency motion and has set the matter for a hearing on June 3, 2020 at 9:00 a.m. before Judge Shannon O'Malley, in Courtroom 6-F.

FURTHER AFFIANT SAYETH NAUGHT

/s/ Rachel A Shirley

Rachel A. Shirley

May 4, 2020

DATED:

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109], the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Rachel A Shirley

Rachel A. Shirley

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
JUVENILE JUSTICE AND CHILD PROTECTION DEPARTMENT
CHILD PROTECTION DIVISION

IN THE INTEREST OF

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Minor.

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Petition Number: 20 JA 318

ORDER

This cause coming to be heard on mother Kristen Buxton's Emergency Motion to Compel Visitation, the court having reviewed the motion,

It is hereby ordered that this matter is set for hearing on June 3, 2020 at 9:00 a.m. in Calendar 6-F before Judge Shannon O'Malley.

Entered: May 4, 2020

By: _____
Robert Balanoff

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

AFFIDAVIT OF CHELSEA JOYCE

CHELSEA JOYCE, being duly sworn, deposes and states on oath as follows:

1. My name is Chelsea Joyce. I am the mother of W.C.
2. W.C. is seven months of age.
3. My child is under the care, custody and control of the Illinois Department of Children and Family Services ("the Department").
4. Pursuant to an order of the Circuit Court of Cook County dated March 13, 2020, the Department is required to provide in-person supervised day visits to me and my child.
5. Until on or about March 19, 2020, the Department was providing in-person supervised day visits to me and my child.
6. On or about March 19, 2020, I received a text message from Child Link, the assigned social services agency, informing me that my in-person supervised parent-child visits were being suspended until April 1, 2020. On April 1, 2020, I received a text message from my caseworker stating that my in-person supervised parent-child visits would be suspended again until April 30, 2020.
7. Since on or about March 19, 2020, Defendants have refused to provide any in-person supervised parent-child visits to me and my child.
8. I desire to continue receiving in-person supervised parent-child visits with my child.
9. I believe my child is suffering harm from the lack of in-person supervised visits because he is only seven months old and should be allowed time to bond with his mother.

10. An actual controversy exists between myself and the Department because I desire to continue in-person supervised visits with my child and believe my child is being harmed by the lack of visits, and the Department is refusing to provide them.

FURTHER AFFIANT SAYETH NAUGHT

/s/ *Chelsea Joyce*
Chelsea Joyce

May 1, 2020

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109], the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ *Chelsea Joyce*
Chelsea Joyce

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

AFFIDAVIT OF SEAN ROCHFORD

Sean Rochford, being duly sworn, deposes and states on oath as follows:

1. My name is Sean Rochford. I am an Assistant Public Defender. I represent Chelsea Joyce in the action involving her child in the Child Protection Division of the Circuit Court of Cook County.
2. My client's child is under the care, custody and control of the Illinois Department of Children and Family Services.
3. As of the date of this affidavit, the case is pre-trial, and no finding has been made that my client abused or neglected her child.
4. Pursuant to an order of the Circuit Court of Cook County dated March 13, 2020, the Department is required to provide in-person supervised day visits to my client and her child.
5. After the suspension of my client's in-person supervised visits with her child on or about March 15, 2020, I filed an emergency motion on April 16, 2020 asking that her visits be restored.
6. On or about April 22, 2020 I received a response to my emergency motion from Paul Thomas of the Clerk of Cook County Circuit Court. Mr. Thomas's response was simply the word "Received."

FURTHER AFFIANT SAYETH NAUGHT

/electronically signed/ Sean Rochford
Sean Rochford
April 28, 2020

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109], the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/electronically signed/ Sean Rochford

Sean Rochford

April 28, 2020

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
JUVENILE JUSTICE AND CHILD PROTECTION DEPARTMENT
CHILD PROTECTION DIVISION

IN THE INTEREST OF

W [REDACTED] C [REDACTED]

Minor.

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Petition Number: 20 JA 409

ORDER

This cause coming to be heard on mother Chelsea Joyce's Emergency Motion to
Compel Visitation, the court having reviewed the motion,

It is hereby ordered that this matter is set for hearing on May 22, 2020 at 9:00 a.m. before
Judge Bernard Sarley, in Courtroom 9-I.

Entered: May 1, 2020

By: _____
Robert Balanoff

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

AFFIDAVIT OF QUINCITA FLEMING

Quincita Fleming, being duly sworn, deposes and states on oath as follows:

1. My name is Quincita Fleming. I am the mother of J.T., D.G. Jr., and D.G..
2. My child, J.T., is 9 years of age. My child, D.G. Jr., is 2 years of age. My child, D.G. is 4 months of age.
3. My children are under the care, custody and control of the Illinois Department of Children and Family Services ("the Department").
4. Pursuant to an order of the Circuit Court of Cook County dated March 28, 2019, the Department is required to provide in-person supervised day visits to me and my children, J.T. and D.G. Jr.
5. Pursuant to an order of the Circuit Court of Cook County dated January 29, 2020, the Department is required to provide in-person supervised day visits to me and my child, D.G..
6. Until on or about March 19, 2020, the Department was providing in-person supervised day visits to me and my children.
7. On or about March 19, 2020 I was informed by a case aid caseworker that my in-person supervised parent-child visits were being indefinitely suspended based on a new policy by the Department.
8. Since on or about March 19, 2020, Defendants have refused to provide any in-person supervised parent-child visits to me and my children.

9. I desire to continue receiving in-person supervised parent-child visits with my children.

10. I believe my children are suffering harm from the lack of in-person supervised visits because it is breaking down the parent-child bond between me and my children, both emotionally and physically. One of the most important factors is that I am unable to breastfeed my 4-month-old child, D.G. The ban on in-person visits meant I was forced to pump my breast milk and attempt to freeze it to later provide to D.G. However, I was unable to get the frozen milk to D.G., and since visitation stopped, my breast-milk production has stopped. Breastfeeding is fundamental and necessary to feed my child, to aid in his health and growth, and to continue the parent-child bond. That fundamental necessity and personal choice that mothers have to breastfeed has been stripped from me due to the Department's ban on allowing me to see my children. In place of in-person visits, the Department has provided that phone and video visitation should suffice, but this is not adequate. Video visitation is unproductive to sustaining the parent-child bond because we are unable to engage in the same activities, conversations, or physical affection that occurs during an in-person visit. Further, my younger children are unable to properly communicate via video "visits" and are unable to understand the meaning of the video "visit" time. My children are emotionally distraught from not being able to hug and feed from their mother, while not even being capable of understanding why they are not allowed to see me in person. The Department's ban on in-person supervised visitation is not allowing the bond between my children and I to strengthen and instead, is continually breaking that bond and delaying any healing and growth to happen between us.

11. An actual controversy exists between myself and the Department because I desire to continue in-person supervised visits with my children and believe my children are being harmed by the lack of visits, and the Department is refusing to provide them.

FURTHER AFFIANT SAYETH NAUGHT

/s/ Quincita Fleming
Quincita Fleming

May 4, 2020
DATED:

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109], the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Quincita Fleming
Quincita Fleming

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

AFFIDAVIT OF RACHEL A. SHIRLEY

Rachel A. Shirley, being duly sworn, deposes and states on oath as follows:

1. My name is Rachel A. Shirley. I am an Assistant Public Defender. I represent Quincita Fleming in the action involving her children in the Child Protection Division of the Circuit Court of Cook County.
2. My client's children are under the care, custody and control of the Illinois Department of Children and Family Services.
3. As of the date of this affidavit, the case is pre-trial, and no finding has been made that my client abused or neglected her children.
4. Pursuant to orders of the Circuit Court of Cook County dated May 21, 2019 and January 29, 2020, the Department is required to provide in-person supervised day visits to my client and her children.
5. After the suspension of my client's in-person supervised visits with her children, on or about April 29, 2020 I filed an emergency motion asking that her visits be restored.
6. On or about April 29, 2020 I received a response to my emergency motion from Larry Grazian informing me that Presiding Judge Martin has entered an order regarding the motion. The order is attached to this affidavit.
7. The order, issued by Presiding Judge Martin, indicated that court reviewed my emergency motion and has set the matter for a hearing on May 29, 2020 at 9:00 a.m. before Judge Shannon O'Malley, in Courtroom 6-F.

FURTHER AFFIANT SAYETH NAUGHT

/s/ Rachel A. Shirley
Rachel A. Shirley

May 4, 2020
DATED:

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109], the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Rachel A. Shirley
Rachel A. Shirley

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
JUVENILE JUSTICE AND CHILD PROTECTION DEPARTMENT
CHILD PROTECTION DIVISION

IN THE INTEREST OF

J [REDACTED] T [REDACTED]
D [REDACTED] G [REDACTED], and
D [REDACTED] G [REDACTED]
Minors

Petition Numbers: 19JA00518
19JA00519 and
20JA00136

ORDER

This cause coming to be heard on mother, Quincita Fleming's Emergency Motion to Compel Visitation, the court having reviewed the motion,

It is hereby ordered that this matter is set for hearing on May 29, 2020 at 9:00 a.m. before Judge Shannon O'Malley, in Courtroom 6-F.

Entered: April 29, 2020

By: _____
Patricia M. Martin

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

AFFIDAVIT OF KHARIS MCDONALD

Kharis McDonald, being duly sworn, deposes and states on oath as follows:

1. My name is Kharis McDonald. I am the mother of two minor children.
2. My child, V.M., is 11 years and 5 months old. My child, V.V., is 7 years and 2 months of age.
3. My children are under the care, custody and control of the Illinois Department of Children and Family Services ("the Department").
4. Pursuant to an order of the Circuit Court of Cook County dated February 6, 2020, the Department is required to provide in-person supervised day visits to me and my children.
5. Until on or about March 25, 2020, the Department was providing in-person supervised day visits to me and my children.
6. On or about March 26, 2020, I received a phone call from the DCFS assigned supervisor informing me that my in-person supervised parent-child visits were being indefinitely suspended.
7. Since on or about March 25, 2020, Defendants have refused to provide any in-person supervised parent-child visits to me and my children.
8. I desire to continue receiving in-person supervised parent-child visits with my children.
9. I believe my children are suffering harm from the lack of in-person supervised visits because they are suffering emotionally and psychologically due to being separated from

me. The children have never been out of my home and also have never been separated from each other as they are now. They cannot visit with each other, or even speak to each other via phone. On February 21, 2020, VM (age 11), was transferred to another placement without any follow-up on his well-being. The Department is not providing the necessary support for his everyday care. Since his placement that caregiver has received \$92.00 for his care..

10. An actual controversy exists between myself and the Department because I desire to continue in-person supervised visits with my children and believe my children are being harmed by the lack of visits, and the Department is refusing to provide them.

FURTHER AFFIANT SAYETH NAUGHT

Kharis McDonald

Kharis McDonald

05/01/2020

DATED:

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109], the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Kharis McDonald

Kharis McDonald

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

AFFIDAVIT OF Miriam Walton

Miriam Walton, being duly sworn, deposes and states on oath as follows:

1. My name is Miriam Walton. I am an Assistant Public Defender. I represent Kharis McDonald in the action involving her children in the Child Protection Division of the Circuit Court of Cook County.
2. My client's children are under the care, custody and control of the Illinois Department of Children and Family Services.
3. As of the date of this affidavit, the case is pending a temporary custody hearing, there has been no findings of probable cause or urgent and immediate necessity. Custody was granted to DCFS without prejudice.
4. Pursuant to an order of the Circuit Court of Cook County dated February 6, 2020, the Department is required to provide in-person supervised day visits to my client and her children.
5. After the suspension of my client's in-person supervised visits with her children, on or about March 24, 2020 I attempted to file an emergency motion asking that her visits be restored,. I sent an email to the Chief Judge's Office to schedule my motion, as all motions now have to be screened by the Chief Judge's Office.
6. On or about March 25, 2020, I received a response to my request for an emergency motion from Dianne Maurer, of the Chief Judge's Office.
7. The emailed explained that a request for in person visitation is not an emergency, therefore, the motion will not be heard.

FURTHER AFFIANT SAYETH NAUGHT

Miriam Walton

[NAME]

April 29, 2020

DATED:

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109], the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Miriam Walton

[NAME]

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

KRISTEN BUXTON, et al.,)
)
Plaintiffs,)
)
v.)
)
ILLINOIS DEPARTMENT OF)
CHILDREN AND FAMILY)
SERVICES, and)
)
MARC D. SMITH, in his official)
capacity as Acting Director of the Illinois)
Department of Children and Family)
Services,)
)
Defendants.)

MEMORANDUM IN SUPPORT OF
MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs submit this memorandum in support of their motion for temporary restraining order:

I. INTRODUCTION

Plaintiffs have filed a complaint alleging constitutional rights violations and seeking declaratory and injunctive relief. Plaintiffs allege that Defendants' March 25, 2020 action transmittal which unilaterally, without exception and without seeking the approval of any court, indefinitely suspended all in-person supervised parent-child and sibling visits is unlawful. Simultaneously with filing their complaint, Plaintiffs filed a motion for a temporary restraining order and preliminary injunction supported by affidavits asking the Court to enjoin implementation of the action transmittal.

II. STATEMENT OF FACTS

Plaintiff Kristen Buxton is the mother of T.B.,¹ two years of age. *See* Affidavit of Kristen Buxton. He is under the care of Defendant Illinois Department of Children and Family Services (“the Department”). The existing court order and visitation plan in his case provide for in-person supervised visits. The Department provided these visits until on or about March 19, 2020. On or about March 19, 2020 she was informed that her visits were being indefinitely suspended due to a new Department policy. She has not had any visits with T.B. since March 19, 2020. She believes the lack of in-person visits is harming T.B. because he is too young to have any meaningful visits by video or phone. She is not able to hold him while she reads to him, hug him or kiss him, as she is able to during in-person visits. She believes that the lack of in-person visits is breaking the emotional bond between her and T.B. and delaying any healing and growth. T.B. does not have the ability to understand the reason for the lack of in-person visits, harming him further.

Plaintiff Chelsea Joyce is the mother of W.C., seven months of age. *See* Affidavit of Chelsea Joyce. He is under the care of the Department. The existing court order and visitation plan in his case provide for in-person supervised visits. The Department provided these visits until on or about March 19, 2020. On or about March 19, 2020 she received a text message saying that her visits were being suspended until April 1, 2020. On April 1, 2020 she received another text message saying that her visits were being suspended until April 30. She believes the lack of in-person visits is harming W.C. because he is only seven months old and should be allowed to bond with his mother.

¹ Because he is a minor, he is referred to by his initials only to protect his anonymity. *See* Supreme Court Rule 341(f). All minors referred to in this memorandum are referred to by their initials.

Plaintiff Quincita Fleming is the mother of J.T., 9 years old; D.G. Jr., 2 years old and D.G., 3 months old. *See* Affidavit of Quincita Fleming. They are all under the care of the Department. The existing visiting order and visitation plan provide for in-person supervised visits. On March 19, 2020, she was informed by her caseworker that her visits were being suspended due to a new Department policy. She has not had any in-person visits with her children since then. Her children are being harmed by the lack of in-person visits because the parent-child bond between her and them is being broken down and she is not allowed to breastfeed D.G.

Plaintiff Kharis McDonald is the mother of two children, V.M., who is eleven years old, and V.V., who is seven years old. *See* Affidavit of Kharis McDonald. The Department is responsible for her children. Her existing visiting order and plan provide for in-person supervised visits. On March 26, 2020 she was informed by her caseworker's supervisor that her visits were being indefinitely suspended. She has not had any visits since then. Her children are suffering emotionally and psychologically due to being separated from their mother.

III. ARGUMENT

A. Standard for a Temporary Restraining Order

The elements an applicant must establish to warrant the extraordinary remedy of a temporary restraining order are well-established. As variously stated, the movant must demonstrate (i) an ascertainable right in need of protection, (ii) a likelihood of success on the merits, (iii) irreparable harm in the absence of injunctive relief, and (iv) the lack of an adequate remedy at law. *Bridgeview Bank Group v. Meyer*, 2016 IL App (1st) 160042 ¶ 12 (citations omitted).

B. Ascertainable Right in Need of Protection

Under substantive due process, the right to familial relations is a fundamental liberty interest protected by the Illinois and United States Constitutions. *In re B.A.*, 283 Ill. App. 3d 930, 935 (3d

Dist. 1996) (citation omitted). A parent's interest in maintaining a parental relationship with her child is clearly a fundamental liberty interest. *In re K.L.P. v. R.P.*, 198 Ill. 2d 448, 466 (2002). The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (parent-child relationship cannot be terminated except by clear and convincing evidence).

Parents also have a statutorily created right to visitation with their children under Article I of the Juvenile Court Act. The definition of “Residual parental rights and responsibilities” states:

“Residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including, but not necessarily limited to, *the right to reasonable visitation* (which may be limited by the court in the best interests of the minor as provided in subsection (8)(b)^[2] of this Section), the right to consent to adoption, the right to determine the minor’s religious affiliation, and the responsibility for his support.

705 ILCS 405/1-3(13) (emphasis added). Thus, Plaintiffs have demonstrated that they have ascertainable rights in need of protection in this action.

C. Likelihood of Success on the Merits

A party seeking a “preliminary injunction or temporary restraining order is not required to make out a case which would entitle him to relief on the merits; rather, he need only show that he raises a ‘fair question’ about the existence of his right.” *Buzz Barton & Assocs., Inc. v. Giannone*, 108 Ill. 2d 373, 382 (1985).

² Subsection 8, referred to in this provision outlines the meaning of “guardianship of the person”, and 8(b) specifically defines that it includes “the *authority and duty of reasonable visitation*, except to the extent that these have been limited in the best interests of the minor *by court order*.” The action transmittal is not a court order, and there is no court order eliminating the duty to provide Plaintiffs and their respective children visitation with each other.

1. The Department's Unilateral Action, with no Opportunity for a Hearing to Consider Individual Circumstances, Violates Procedural Due Process

The essence of procedural due process is meaningful notice and a meaningful opportunity to be heard. *Tolliver v. Hous. Auth. of Cook*, 2017 IL App (1st) 153615 ¶ 22 (citation omitted). To deprive Plaintiffs of their fundamental right to a relationship with their children by suspending visits, Defendants must afford them procedural due process. However, by its own terms, the action transmittal affords no opportunity whatsoever to Plaintiffs to plead their individual cases in a hearing, before or after visits are suspended. Similarly, the Department did not seek the approval of any court before taking action. At least before a court, Plaintiffs would have had the opportunity to make arguments against implementing the policy. Plaintiffs are completely denied any hearing, violating principles of procedural due process. Plaintiffs have raised a fair question of success on the merits based on this argument.

2. The Department's Action Violates Substantive Due Process Because it is not Narrowly Tailored to Achieve its Purpose

Government action that infringes upon fundamental rights is subject to strict scrutiny. *Lulay v. Lulay*, 193 Ill. 2d 455, 476 (2000) (citation omitted). To survive strict scrutiny, the action must be narrowly tailored to serve a compelling government interest. *In re H.G.*, 197 Ill. 2d 317, 330 (2001). To be narrowly tailored, the government action must use the least restrictive means consistent with the attainment of its goal. *Id.*

At first glance, one might think that the compelling government interest is the health and safety of children in the Department's care. However, this is belied by the fact that Action Transmittal 2020.02 (Updated) does not suspend *unsupervised* parent-child visits. If isolating children in its care from all potential sources of infection were the reason for its implementation, then unsupervised visits would have been suspended also.

Instead, with respect to unsupervised visits, the action transmittal implements a pre-screening tool and isolation measures depending on the results of the tool. This shows why the blanket suspension of all in-person supervised parent-child visits is not narrowly tailored. There is no reasoning in the action transmittal why the pre-screening tool is not also appropriate for in-person supervised parent-child visits. The pre-screening tool, coupled with the use of masks and social-distancing for the supervisor of the visits, is an appropriate solution for maintaining the safety of all involved in in-person supervised parent-child visits.

As further evidence that the complete suspension of all supervised visits is not narrowly tailored consistent with attainment of the goal, it is of note that Governor Pritzker's stay home orders do not prevent such visitation, but in fact suggest they must continue as essential. The orders deem child welfare and child protection personnel "categorically exempt," from the orders, and require that essential government functions continue. COVID-19 Executive Order No. 8, Sect. 1(10); COVID-19 Executive Order No. 30, Sect. 2(10). The orders further deem that caring for family members, including those in another household, is essential activity not prohibited. COVID-19 Executive Order No. 8, Sect. 1(5)(e); COVID-19 Executive Order No. 30, Sect. 2(5)(v). And essential travel is defined to include "[t]ravel to care for ... minors" and "[t]ravel required by law enforcement or court order, including to transport children pursuant to a custody agreement." COVID-19 Executive Order No. 8, Sect. 1(14); COVID-19 Executive Order No. 30, Sect. 2(14). A myriad of other activities deemed essential that do *not* involve fundamental rights – including fast food services, cannabis dispensaries, and laundry services, to name just a few – have all continued under the COVID-19 executive orders. Particularly given the fundamental right at stake, suspending all supervised visitation is not narrowly tailored consistent with public health goals surrounding COVID-19. Plaintiffs have raised a fair question

of success on the merits with this argument.

3. The Action Transmittal Deprives Parents with Supervised Visits of the Equal Protection of the Laws

Government classifications that affect a fundamental right violate the equal protection clause unless they are narrowly tailored to serve a compelling state interest. *In re L.T.M.*, 214 Ill. 2d 60, 75 (2005). In this case, the relevant classifications are parents with supervised visits with their children as compared to those with unsupervised visits with their children. Parents with supervised visits have had their visits indefinitely suspended without exception. Parents with unsupervised visits must pass a pre-screening tool to identify possible risk. As discussed *infra* the action transmittal offers no justification or compelling reason for this disparate treatment. Blanket suspension of all in-person supervised parent-child visits is the antithesis of being narrowly tailored. There is no reason why the pre-screening tool used for unsupervised visits coupled with additional social distancing and protective measures could not work for in-person supervised parent-child visits. The action transmittal is not narrowly tailored and violates the principles of equal protection.

4. The Department's Blanket Action Violates Guidance from the Federal Government

The Department's blanket suspension of all in-person supervised parent-child and sibling visitation is contrary to guidance issued by the Children's Bureau of the Department of Health and Human Services. The guidance, in the form of a letter from the Associate Commissioner of the Children's Bureau to "Child Welfare Legal and Judicial Leaders," states:

CB is also aware of instances where judges have issued blanket orders suspending or drastically reducing family time (visitation) between children in foster care and parents, sometimes indefinitely. Family time is important for child and parent well-being, as well as for efforts toward reunification. Family time is especially important during times of crisis. CB strongly discourages the issuance of blanket orders that are not *specific to each child and family* that suspend family time; doing so is contrary to the well-being and best

interest of children, may contribute to additional child trauma, and may impede the likelihood of reunification. Department of Health and Human Services, Children's Bureau, letter dated March 27, 2020 (emphasis added).

The Department's action transmittal unilaterally suspending all in-person supervised parent-child and sibling visitation for every child in its care violates the Children's Bureau's guidance that any decision regarding visitation in this time of crisis be "specific to each child and family." Plaintiffs have raised a fair question that they will succeed on the merits of their claim based on this argument.

5. The Department's Action Violates the Federal Requirement that it Make Reasonable Efforts to Reunify Families under the Social Security Act

The Department's action transmittal violates the federal requirement that it make reasonable efforts to reunify families. As a condition of receiving federal financial assistance for foster care payments under Title IV-E of the Social Security Act, the Department must adopt a plan that it will, *inter alia*, make "reasonable efforts...to preserve and reunify families— (i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and (ii) to make it possible for a child to safely return to the child's home." 42 U.S.C § 671(a)(15)(B). Unilaterally cutting off all in-person supervised parent-child visitation is inconsistent with this requirement, since it is through visitation that parents and their children maintain their relationship. Maintenance of the parent-child relationship is critical to successful reunification. Plaintiffs have raised a fair question of success based on this argument.

6. The Department's Action Violates its Obligation to Make Reasonable Efforts to Reunify Families under the Children and Family Services Act

The Department is also under an obligation to reunify families under Illinois law. The Children and Family Services Act, which creates the Department, provides, "The Department must make reasonable efforts to reunify the family when temporary placement of the child

occurs unless otherwise required, pursuant to the Juvenile Court Act of 1987.” 20 ILCS 505/5(1-1). In none of Plaintiffs’ Child Protection Division cases has the Department been relieved of this obligation. Suspending in-person visits is inconsistent with the Department’s obligation to make reasonable efforts to reunify families. Plaintiffs have raised a fair question of success on the merits based on this violation.

7. The Department’s Action Violates its Duty to Provide Visitation under the Juvenile Court Act

The Juvenile Court Act explicitly establishes the right of parents to visitation with their children and the duty of the Department, as guardian or custodian of the child, to provide visitation. Parents have a statutorily created right to visitation with their children under Article I of the Juvenile Court Act. The definition of “Residual parental rights and responsibilities” states:

(13) “Residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including, but not necessarily limited to, *the right to reasonable visitation* (which may be limited by the court in the best interests of the minor as provided in subsection (8)(b) of this Section), the right to consent to adoption, the right to determine the minor’s religious affiliation, and the responsibility for his support.

705 ILCS 405/1-3(13) (emphasis added). Corresponding to this right, in its definition of “Guardianship of the person” the Juvenile Court Act imposes a duty on the guardian or custodian of the child to respect the parent’s right to visitation and to provide visitation:

(8) “Guardianship of the person” of a minor means the duty and authority to act in the best interests of the minor, *subject to residual parental rights* and responsibilities, to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned with his or her general welfare. It includes but is not necessarily limited to:

* * *

(b) the authority and *duty of reasonable visitation*, except to the extent that these have been limited in the best interests of the minor *by court order*;

* * *

705 ILCS 405/1-3(8) (emphasis added). The Department's action suspending all in-person supervised parent-child visits violates this duty because it is not reasonable under the circumstances and has not been sanctioned by a court. Plaintiffs have raised a fair question of success on this issue.

8. The Action Transmittal Violates the Department's Obligation to Provide Visitation under its own Rules

The Department's rules on visitation require the establishment of a family visitation plan. However, the Department's action transmittal unilaterally suspends all in-person supervised parent-child visitation. The Department's existing rule on parent-child visitation is found at 89

Ill. Adm. Code 301.210:

a) The Department recognizes that there is a strong correlation between regular parental visits and contacts with a child and the child's discharge from placement services. Therefore, when a child is in placement and the permanency goal is return home, parent-child visits, telephone calls at reasonable hours, and mail are encouraged unless they have been prohibited by court order. The name, address and telephone number of the foster parent/relative caregiver shall not be disclosed to the parents until the assessment has been completed and a determination has been made whether to disclose the information in accordance with Section 301.440(a). The responsible agency shall arrange for parent-child visits and shall advise parents that repeated failure to visit according to the visiting plan shall be considered a demonstration of a lack of parental concern for the child and may result in the Department seeking a termination of parental rights.

b) When the permanency goal is return home, a visiting plan shall:

- 1) be established before placement or within three working days after placement out-of-home unless the placement was an emergency;
- 2) be established within ten working days after an emergency placement;
- 3) specify that visits are to begin immediately;
- 4) specify that parents shall be expected to visit weekly unless there is documentation to the contrary in the case/record;
- 5) increase in length unless specific harm to the child is caused by the visits;

6) specify visiting in the home of the child's parents, if consistent with the safety and well-being of the child. When visits in the home of the child's parents are not consistent with the child's safety and well-being, visits shall be in the most homelike setting possible. Office visits are acceptable if structure is necessary to evaluate or protect the child;

7) specify how contacts are to be maintained if the determination has been made not to release identifying information regarding the foster parent/relative caregiver in accordance with Section 301.440(a); and

8) specify the responsibilities of the Department, the purchase of service providers, the parents, and the child in regard to visitation.

This rule requires the establishment of a family visitation plan with weekly visits. 89 Ill. Adm. Code 301.210(b). The Department's March 25, 2020 action transmittal contravenes this rule by unilaterally suspending all in-person supervised parent child visits, *i.e.*, suspending all family visitation plans calling for in-person supervised parent-child visits.

An administrative agency must follow its own rules. When an administrative agency has adopted rules and regulations under its statutory authority for carrying out its duties, the agency is bound by those rules and regulations and cannot arbitrarily disregard them. *Tolliver*, 2017 IL App (1st) 153615 ¶ 33 (citation omitted). The Department has violated its own rule. Plaintiffs have raised a fair question of success on this issue.

9. The Action Transmittal is Invalid because it was not Adopted According to the Required Rulemaking Provisions of the Administrative Procedure Act and Violates the Department's Enabling Act

a. The Action Transmittal Contravenes an Existing Rule

As argued *infra*, the Department's rules on visitation require the establishment of a family visitation plan. In contravention of this requirement, the Department's action transmittal unilaterally suspends all in-person supervised parent-child visitation. But the Department did not follow the rulemaking procedures of the Administrative Procedure Act in amending its existing rule. Therefore, the action transmittal cannot be implemented. In order to suspend, amend or

contravene an existing rule, the Department must follow the rulemaking provisions of the Administrative Procedure Act, because its enabling statute explicitly adopts its provisions. 20 ILCS 505/4. But the Department did not follow any of the rulemaking provisions of the Administrative Procedure Act in issuing the March 25, 2020 action transmittal.

The Administrative Procedure Act provides that “No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act.” 5 ILCS 100/5–10(c); *Illinois Dep't of Revenue v. Illinois Civil Serv. Comm'n*, 357 Ill. App. 3d 352, 370 (1st Dist. 2005). Because it did not follow the rulemaking provisions of the Administrative Procedure Act, the Department’s action transmittal is not valid or effective against any person.

b. Standing Alone, the Action Transmittal Falls Within the Definition of “Rule” and must be Adopted in Accordance with the Administrative Procedure Act

Even if the action transmittal did not contravene an existing rule, it falls within the definition of “rule” in the Administrative Procedure Act and must be adopted in accordance with it. The definition of “rule” is:

“Rule” means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (ii) informal advisory rulings issued under Section 5-150 [5 ILCS 100/5-150], (iii) intra-agency memoranda, (iv) the prescription of standardized forms, (v) documents prepared or filed or actions taken by the Legislative Reference Bureau under Section 5.04 of the Legislative Reference Bureau Act [25 ILCS 135/5.04], or (vi) guidance documents prepared by the Illinois Environmental Protection Agency under Section 39.5 or subsection (s) of Section 39 of the Environmental Protection Act [415 ILCS 5/39].” 5 ILCS 100/1-70.

The action transmittal is a statement of general applicability that implements a policy that affects parents’ private right to a relationship with their child. Therefore, it falls within the definition of “rule” and must be promulgated in accordance with the Administrative Procedure

Act. A rule which affects private rights and procedures available to persons outside an administrative agency is specifically included within the definition of a rule in the Administrative Procedure Act. *Sleeth v. Department of Public Aid*, 125 Ill. App. 3d 847, 853 (3d Dist. 1984); *see also Senn Park Nursing Center v. Miller*, 118 Ill. App. 3d 504, 513 (1st Dist. 1983) (explaining that “[a] rule which has a substantial effect on persons outside an agency cannot be characterized as a matter relating solely to agency management; therefore, notice and comment procedures from this Act apply”).

Any rule adopted without following the rulemaking provisions of the Administrative Procedure Act is without effect and cannot be implemented. 5 ILCS 100/5–10(c). Therefore, the action transmittal is void.

c. As a Rule, the Action Transmittal Contravenes the Department’s Enabling Statute

Since the action transmittal is properly considered as a rule, it must be consistent with the powers granted to the Department by its enabling statute, the Children and Family Services Act. 20 ILCS 505/1 *et seq.* An administrative agency's authority to adopt rules and regulations is defined and limited by the enabling statute. *Illinois Dept. of Revenue v. Illinois Civil Service Comm’n*, 357 Ill. App. 3d 352, 363 (1st Dist. 2005).

However, as discussed *infra*, the action transmittal violates the Department’s obligation in the Children and Family Services Act to make reasonable efforts to reunify families. 20 ILCS 505/5(l-1). Agency rules cannot alter or extend the scope of the enabling statute. *Illinois Dept. of Revenue*, 357 Ill. App. 3d at 364. Rules that conflict with the enabling statute are void *ab initio*. *Id.* at 367. The action transmittal is void for this reason.

D. Irreparable Injury

Irreparable harm means that “monetary damages cannot adequately compensate the injury

and the injury cannot be measured by pecuniary standards.” *Happy R Sec., LLC v. Agri-Sources, LLC*, 2013 IL App (3d) 120509, ¶ 36 (citation omitted). Transgressions of a continuing nature are also sufficient. *Cent. Water Works Supply, Inc. v. Fisher*, 240 Ill. App. 3d 952, 959 (4th Dist. 1993). Generally, a continuing violation of a constitutionally protected right is irreparable harm as a matter of law. *Walters v. Thompson*, 615 F.Supp. 330, 341 (N.D. Ill. 1985) (internal citation omitted); see also *De Leon v. Perry*, 975 F.Supp. 2d 632, 663 (W. Dist. TX 2014). In this case, therefore, because their constitutionally protected right to a relationship with their children is being violated, Plaintiffs have established irreparable injury as a matter of law.

However, even if that were not the case, the harm caused to Plaintiffs’ children’s psychological development and the parent-child relationship by the suspension of in-person visits is irreparable injury. Suspension of visits has the potential to cause permanent harm to affected children. See Affidavit of Molly Romer Witten, ¶ 12(a). And even short-term separation from a parent lasting only a week is associated with increased aggression and depression in older children. *Id.* at ¶ 12(j).

For children under three, separation from the parent creates feelings of loss, abandonment, anger and anxiety, dysregulation of affect and functional developmental delay. *Id.* at ¶ 12(b). A child under the age of three can lose the image of their parent within two weeks. *Id.* at ¶ 12(d). In response to the loss of their parent the child undergoes a grief response. *Id.* at ¶ 12(e). Separation from the parent also disrupts the development of the parent-child emotional attachment, which is the primary source of the child’s sense of safety and security. *Id.* at ¶ 12(f), (g).

The measures in the action transmittal to maintain contact through video and other calls will not prevent these harms. Children under three depend on the physical proximity of the parent to

maintain their image of the parent and their sense of safety and security. *Id.* at ¶ 12(h). “Mothers who have left the home environment, even if available by phone, are perceived as unavailable. Maternal availability is particularly important within the first two years of life because of the infant’s limited understanding of the reasons for maternal absence and the timing of her return.” Howard K, Martin A, Berlin LJ, Brooks-Gunn J. Early mother-child separation, parenting, and child well-being in Early Head Start families. *Attach Hum Dev.* 2011;13(1):5–26. P2 available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3115616/>. Parent-child separation in children of this age group is associated with child aggression and child negativity. *Id.* at 10. The data is clear that “physical proximity to primary caregivers is key to the formation of child-parent attachments” and that both short term and long-term parent-child separation can be associated with negative consequences to the children. *Id.* Involuntary separations likely negatively impact the minors to a higher degree than voluntary separation, where the parent has had the chance to mitigate the separation. *Id.* at 12.

The presence of a foster parent is not an effective substitute for the presence of the parent. For children under three, the child must begin again the development of the attachment dynamic with the foster parent. Witten Aff. at ¶ 12(i). The foster parent cannot simply step in to provide the sense of safety and security offered by the child’s relationship with their parent.

Although it is especially acute for children under three, children up to the age of eight depend on maintaining an image of the parent as their source of safety and security. *Id.* at ¶ 12(k). They undergo the same emotional reactions to the loss of the image of the parent as children under three. *Id.* at ¶ 12(m). This can occur within a month. *Id.* at ¶ 12(l).

After suspension of visits, resumption of them can create additional problems. The child may experience anger toward the parent because they believe the parent had the authority to stop

visiting. *Id.* at ¶ 12(n). If the parent is psychologically vulnerable and not able to appropriately respond to these feelings, this further complicates the parent-child relationship. *Id.* Similarly, parents who have not been able to meet the emotional needs of their children use supervised visits to build those skills and cannot do so if visits are suspended. *Id.* at ¶ 12(o).

The harm caused to children, especially infants, by depriving them of physical contact with their parent is irreparable. And additionally, interference with the constitutionally protected parent-child relationship is irreparable injury for purposes of injunctive relief. *Doe v. Mattingly*, 2006 U.S. Dist. LEXIS 88320 *6; 2006 WL 3498564.

E. No Adequate Remedy at Law

An adequate remedy is one that is clear, complete, and as practical and efficient as the potential equitable remedy. *Granberg v. Didrickson*, 279 Ill. App. 3d 886, 890 (1st Dist. 1996); see also *Clinton Landfill, Inc. v. Mahomet Valley Water Auth.*, 406 Ill. App. 3d 374, 380 (4th Dist. 2010) (explaining that irreparable harm and adequacy of a remedy at law are separate factors).

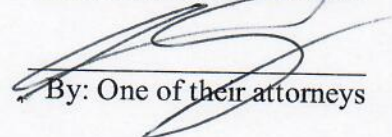
Here, Plaintiffs have no adequate remedy in their pending cases in the Child Protection Division because the Presiding Judge has issued a gatekeeping order limiting access to the courts to emergencies and has not allowed Plaintiffs to proceed on an emergency basis on their motions to enforce existing visitation orders. Copies of affidavits of the respective attorneys are attached to the motion for a temporary restraining order. These Plaintiffs and minor children affected by Action Transmittal 2020.02 (Updated) are being harmed on a continuous and irreparable basis. The inability to be heard in any timely or reasonable fashion in the Child Protection Division renders them without a remedy at law, let alone a practical, efficient, or complete remedy.

IV. CONCLUSION

For the reasons set forth in this memorandum, Plaintiffs request that the Court grant their motion for a temporary restraining order and for such other relief it determines to be equitable and just.

Respectfully submitted,

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