Review of Subsidized Kinship Guardianship in NYS

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Subsidized Kinship Guardianship

Subsidized Kinship Guardianship – New SSL §458

Allows RELATIVES to APPLY to local district for an ongoing subsidy that is different from the foster care or adoption subsidy and if granted, then petition the court to be appointed as the guardian of the child and receive a subsidy

Child must be **under 21** and have been placed in **foster care before 18**

Must be foster care, not an Art. 6 or Art. 10 direct custody arrangement

Can be a foster care under an **Art. 10, a voluntary under SSL or a PINs or a JD**

Foster parent of the child **must be related, by any degree**, to the child by blood, marriage or adoption and must be the child's **CERTIFIED or APPROVED** foster parent for over **6 months** before any application is made

- Art. 10 - the FF and 1st PH must be completed before any application

- all others, 1st PH must be completed

Must first APPLY to the local district

- LOCAL DISTRICT MUST APPROVE FIRST – Court **cannot order until after** local district's approval of the subsidy
- Local District controls the decision – not the court

- **Return home or adoption must not be appropriate** for child – there are “compelling reasons” why these are not in child’s interests – this permanency is subordinate to return home or adoption
- Child must have strong attachment to relative and relative has strong commitment to **permanently** care for child

- Child consulted - over 18 must consent
- Cannot consider the financial status of the relatives
- Criminal record check of all in home over 18 , SCR checks here, other states for last 5 years
- THAT THIS IS IN CHILD'S BEST INTERESTS – again this is subordinate to return home and adoption as a goal

- Relative can now move the court for the guardianship status and if court grants it, child exits foster care and relative will continue to get a monthly subsidy for the child

- Relative will get up to $2,000 to pay for one-time expenses of guardianship proceeding – including attorney expenses

- Relative(s) is/are child's sole guardian – local district and court end involvement with child

- If the local district denies a relative's request for this option, can the relative do anything? YES – they will have a limited fair hearing right with OCFS

- Could we do this for a freed child? Yes, combine with a Permanent Guardianship under FCA§ 661

- **Will these subsidized guardianships provide medical insurance?** YES – if IV- E then would cover, or if guardian cannot provide insurance, then district shall

- **Any other services?** YES – independent living services, education and training vouchers

- **How long would a guardian get the money?** Until 18, except if child was 16 or older when granted , then to 21

- Money stops if guardian no longer has legal authority like guardianship was revoked or suspended or guardian no longer supporting the child

- FCA §1055-b - ability of a relative to file for guardianship
- FCA § 661 (C) – If goal under an Art. 10 is referral for legal guardianship, relative files in court that has been handling the case
- Petition can be consolidated with the dispo or the next PH – but remember must have had the 1st perm hearing

FCA §1055-b and FCA §1089-a will require Judge to consider child ‘s best interests including:

- Permanency goal of the child – **Judge** must determine that there is **a compelling reason why return home and adoption are not appropriate for the child** – just like district was required to do as well

- FF and 1st perm hearing are completed
- Will be a safe and **permanent** home
- Relationship between child and relative
- Must consult with the child, 14 or over must ask preference, over 18 must consent

- In dispo or perm hearing – (not likely at dispo, too soon to rule out return home or adoption, usually)
- If in dispo, 1st perm hearing must be finished
- If parents do not consent – court must find **extraordinary circumstances**
- If AFC does not consent, then court must rule on **best interests -** DSS/ACS already consented re approval of subsidy

- **MUST** order that ACS/DSS and AFC be notified and be parties to any subsequent proceeding to modify to modify the guardianship or it's terms

- Could you add other terms to the order?

  "Loaded Order" – Like Art. 6?

  See handout for suggestions!

- FCA §1089(a) - Court **MAY NOT** order anything further under the Art. 10 – it's over
- No supervision or services for the guardian or the parents or respondents
- guardian may be eligible for preventive services but court cannot order district to provide

THIS IS AN IMPORTANT CONSIDERATION!

- Guardian has right to physical custody of the child and the right to "make decisions, including issuing any necessary consents, regarding the child's protection, education, care and control, health and medical needs"
- May want even more detail in the order in certain kinds of cases

- Parents still have parental rights
- Can seek visitation and can move to modify/cancel this guardianship in the future

How does it stack up against adoption?

- More money for adoptive parent

  Unless child over 16, guardianship subsidy will stop at 18 and adoption goes to 21

  Adoption means the tax REFUND of $13, 170 per child!

- Perhaps more “coverage” if caretaker dies having adopted with a subsidy can be preserved upon a death
- Depending on circumstances, “getting to” an adoption via a TPR may take a lot longer then a guardianship

- Parent still has rights with guardianship – for visitation, to petition to get child back

- Guardian gets “free” lawyer, almost always true for adoption as well

How does it stack up against Art. 6 custody?

- More money with guardianship - unless parents have some income and the custody comes with child support

- Parent still has parental rights under both - same re parent who wants to get custody back or modify visitation

- Court must have notice, party provisions in all guardianship orders – but could do in custody orders
- About the same as to what the caretaker "gets" – bit more clarity in the law about what the guardianship is - could be equalized if the Art. 6 order well written

- Caretaker gets a “free” lawyer to do guardianship – may have to pay for lawyer themselves or pro se with custody
- For both, court cannot “order” supervision or services but both may be eligible for preventive
- It is better from agency point of view to take a voluntary placement back from a guardian instead of a custodian as possibility of IV-E money

Other stuff to review!

- Emergency regs are out – 18 NYCRR 426.1, 428.5 c (12) and mostly in 436
- OCA forms are out – on the website
- OCFS has issued 11-OCFS-ADM-03 and 27 page booklet for relatives called “Know Your Permanency Options: The Kinship Guardianship Assistance Program”
- ACS policy