
Support for S6074a/A2581a

Assign Counsel to Indigent Kinship Caregivers in Family Court

The NYS KinCare Coalition represents the kinship community in New York State. Led by the statewide Kinship Navigator with support member organizations and kinship caregivers, the Coalition seeks to improve supports for New York State kinship families - grandparents, other relatives, and family friends who provide care for an estimated 195,000 children not living with their parents, with less than 7,400 of these children in foster care.

The Kinship Navigator provides information, education, and referrals via its helpline and website. It also provides leadership for the kinship community and works to establish collaborations with local departments of social services and other human services organizations. It is operated by Catholic Charities Family and Community Services in Rochester and it is administered by the Office of Children and Family Services (OCFS) and works closely with OCFS to improve supports for kinship families and to assist the 14 local kinship programs.

The NYS KinCare Coalition and the Kinship Navigator supports amending Family Court Act section 262 to provide assigned counsel to indigent kinship caregivers in custody and guardianship proceedings. This bill utilizes the definition of kin codified in SSL§ 371 (22). Kinship caregivers who met the standards for indigency would be eligible for assignment of counsel when petitioning for legal custody or guardianship. Additionally, the bill adds indigent respondent guardians as eligible parties.

Support for the amendment was first recommended in the [2005 KinCare Coalition Summit report](#). Subsequent reports issued by the Coalition reiterated the need for assigned counsel: it was repeated as a specific recommendation in the 2008, 2011, 2014 reports (available on the [Coalition's website](#)). As such, it is the only recommendation stated in all four reports.

In New York, there is a long history of third party (non-parent) awards of custody. There is no statistical data on the number of custody proceedings because the Office of Court Administration does not track non-parent (third party) custody or guardianship proceedings. However, based upon well-known court practices, statistical data from other sources, and court case reporters, it is not unreasonable to conclude that thousands of petitions for custody are submitted by non-parents each year.

Seeking Custody or Guardianship

For the kinship community, non-foster care legal arrangements include:

- Informal custody pursuant to the personal in parental relationship laws or the General Obligations Law
- “Direct custody” pursuant to Article Ten placements
- Legal custody
- Legal guardianship
- Adoption



Kinship programs are routinely contacted by caregivers who have recently taken in children and are seeking guidance for obtaining court orders of custody or guardianship. The reasons that they seek court help are usually in order to facilitate their care, including school enrollment, medical care, access to records, and security of the children in their home.

Need for Legal Representation for Caregivers

Caregivers frequently inquire about legal assistance, as many are thrust into caregiving suddenly and unexpectedly and few have planned for care. With an average age of 56 years, many are approaching or already are of retirement age, and are on pensions or Social Security. They are not prepared to hire attorneys, do not understand the law regarding Article Six proceedings, and often are without adequate financial resources.

Parents are Provided Protections of Assigned Counsel but not Non-Parent Caregivers

Pursuant to N.Y. FAM. CT. ACT §262(a)(v) assigned counsel is provided to indigent parents in custodial proceedings. However, while there is anecdotal evidence that some family court judges have assigned counsel to kinship caregivers, there is no official Office of Court Administration policy nor statutory guidance regarding such assignments for kinship caregivers.

Kinship Caregivers Have Statutory and Case Law Rights

In the U. S. Supreme Court's 1977 decision, *Moore v. City of East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, members of extended families, especially grandparents, under certain circumstances are to be afforded protections similar to those afforded parents. Cases invoking *Moore* have almost exclusively involved caregivers versus state child welfare power, not versus parental rights. Yet, in New York State, under certain circumstances, kinship caregivers who are acting as parents or have assumed parenting duties have standing in custodial proceedings versus parents (*Bennett v. Jeffreys*, 40 N.Y.2d 543 (1976).

Moreover, the state favors kin as a resource for children who have been removed from parents (N.Y. FAM. CT. ACT §§1017, 1055-b, 1089-a) and even kinship foster parents have a right to seek custody *Elizabeth L. v. Jaris S.*, 52 Misc.3d 777, 32 N.Y.S.3d 475 (Fam. Ct. Kings Co. 2016).

With the Court's core interest in the well-being of children, and the fact that most kinship children are living with kin pursuant to non-foster care arrangements, there is a need for the state to provide indigent caregivers with assigned counsel in third party custody proceedings.

Support for the Amendment of Family Court Act § 262: Assignment of Counsel for Indigent Persons

While some judges already award assigned counsel to certain caregivers, possibly pursuant to N.Y. FAM. CT. ACT § 262(b), the Office of Court Administration does not provide guidance to judges regarding whether such assignments are permissible or legally mandated. It would be of immense value to the well-being of kinship caregivers and the children in their care if the assigned counsel statute was amended to codify such assignments.