

Family Court 101:

What Caregivers Should Know Before Going to Family Court



MFY Legal Services, Inc.

299 Broadway, New York, NY 10007 • www.mfy.org

You must go to Family Court to apply to be appointed a child’s legal guardian or custodian or if a child is removed by the Administration for Children’s Services (ACS). Below are some pointers to keep in mind when preparing to appear in Family Court to petition for custody, guardianship, or visitation.

Be Prepared: Review Documents in Your Case File

When you start a case in Family Court, the court clerk will open a file for the case. That file will contain all the important documents for the case, such as petitions, orders, state central registry searches, and court-ordered investigation reports. You should review the documents in your file one week before each hearing date. The files are located in the “record room” in the Family Court. Tell the clerk in the record room that you want to see your file and give him the number for the case (this is called the “docket number”). You will also need to show the clerk a government-issued ID with your name and picture on it, such as a driver’s license or passport. Each record room usually has a copy machine. Bring quarters since you may want to copy documents and take them home to read more carefully. You cannot leave the room with the file.

Need Help? Ask the Court Clerk for Assistance

When you do not know what to do, you may ask for help from the Family Court clerk. If you are polite and ask specific questions, the clerk will often help you. However, please note that clerks are not allowed to give legal advice. You also have the right to an interpreter when you appear in court.

The Difference between Judges and Referees

You have the right to have your case decided by a judge. Sometimes, though, the court will ask if you would like for your case to be heard by an experienced attorney called a “referee” instead. In most cases, it will not make a difference whether your case is heard by a judge or a referee. However, since there are only a limited number of judges for each family court and many more referees, your case may be heard more quickly if you agree to have your case heard by a referee.

Prepare Yourself for What a Courtroom Looks Like

When you enter a courtroom in Family Court, you will typically see a judge or referee sitting behind a raised desk in the back-center of the courtroom. On one side, next to the judge, will be the court clerk. On the other side, the court officers (in police uniforms) will often sit. There will be long tables with chairs where you come in. If you started the case, you are called the “petitioner.” The petitioner sits behind the table on the right side. The “respondents” (the birth parents, if you started the case) will sit behind the table on the left side. If the Court has appointed an attorney for the child, that person will sit to the left of the respondents.

Do’s and Don’ts in Family Court

DO NOT arrive late! Always arrive early. Family Courts usually open at 8:30 AM. There are no weekend or evening sessions. Expect it to take 30 minutes to go through security—the line can be very unpredictable. The Court will not wait for you to get through the security line before calling your case.

DO NOT miss a court date! If you do, your case may be dismissed (thrown out). The Court will say you have “defaulted,” meaning that you did not appear. If you cannot attend for reasons beyond your control such as sickness, call the clerk’s office and/or the court part immediately to set a new court date (this is called an “adjournment”).

DO bring all relevant papers for your court appearance. Keep all papers that relate to your case in a file, and bring that file to court each time you go. Make copies of all documents you want to give to the court clerk or the judge.

DO dress nicely. Men should wear pants and a shirt and women should wear either a skirt or pants and a blouse. Do NOT wear jeans, sneakers or revealing clothes. If you are wearing a hat, remove it. Do not chew gum.

DO conduct yourself in a formal manner. Before speaking to the judge/referee you should first ask if you may speak. Call the judge/referee “Your Honor” and always be respectful, no matter what the judge/referee decides. While being respectful, you must also speak up if you need to say something that will help your case.

ABCs of Family Court: Understanding the Language of the Law

The courts have their own language. You may hear words that sound familiar but they often have a different meaning when lawyers or judges use them. Here are some legal terms you may see or hear while you are in Family Court:

Affidavit: a written statement made by a person that is sworn to be true, notarized, and filed with the court.

Affidavit of Service: the affidavit that a person must complete to show that he has made Personal Service on a party. The person serving the papers and making the affidavit cannot be a party to the case.

Affidavit of Attempted Service: an affidavit that describes all the times and places where the person tried but could not serve the papers on the Respondent(s).

Article 6 Case: a case that involves legal guardianship, custody or visitation rights, without the direct involvement of ACS. The number 6 refers to the relevant part of the Family Court Act.

Article 10 Case: a case involving the removal of a child from her home by ACS due to an allegation of neglect or abuse. The number 10 refers to the relevant part of the Family Court Act. An Article 10 case can last several years.

Best Interests of the Child: a legal standard used by courts for deciding who will care for a child. It is based on all facts of a case that affect the well-being of a child.

Court Attorney: the lawyer who works for a Judge. Referees do not have Court Attorneys.

Court Clerk: the person in the Petition Room who helps people file a Petition or other papers.

Court Ordered Investigation, or "COI": an investigation ordered by the court into the family and home of the person who requests guardianship or custody of a child. Sometimes referred to as an Investigation and Report, or "I & R."

Custody: the legal arrangement under which one person (a Custodian) has the right and duty to care for a child instead of a parent. A Custodian has less authority to act for a child in her medical care than a Guardian.

Direct Placement: the temporary placement by Family Court of a child with a relative while the court decides what to permanently do with the child. This is sometimes referred to as an "N" (for neglect) docket number case or "1017 case"

(in reference to section 1017 of the Family Court Act).

Due Diligence Search: when the Respondent in a case (usually a birth parent) cannot be located and personally served with legal papers, the Court will set out steps that the Petitioner must perform to attempt to locate the missing Respondent. These steps are called a due diligence search.

Extraordinary Circumstances: a legal standard that must be met for a non-parent to gain guardianship or custody of a child. To demonstrate "extraordinary circumstances," a non-parent generally needs to show that the parents have stopped being or are not able to be suitable parents for the child.

Guardianship: the legal arrangement under which one person (a guardian) has the right and duty to care for a child instead of a parent. A guardian has greater authority to act for a child in her medical care than a custodian.

Indicated Report: a child abuse or neglect report by ACS that has been found to be "substantiated." This means that the investigation revealed some believable evidence of child abuse or neglect.

Kinship Foster Care: a special form of foster care in which a relative is approved as a foster care resource for the child, during the course of an Article 10 case. Regular foster parents undergo a process called "certification," which can take many months. Kinship foster parents can undergo a process called "approval," which does not have as many requirements as certification and can take less time.

Kinship Guardianship Assistance Program, or "KinGAP": a program under which a kinship foster parent may, after six months, become a guardian for a qualifying child outside of the foster care system, while receiving payments that are the same as foster care payments.

Order: the document signed by a court that indicates the result of a case or that requires a person to perform an act; for example, a Custody Order gives a relative custody of a child.

Part: this is the courtroom where a Judge or Referee hears a case. There are several parts on each floor, and there is usually a sign by the elevator telling you which floor your part is on.

Petition: a formal written application to a court requesting a court action. For example, a relative asks a court to become the legal guardian of a child by filing a petition.

continued on next page

ABCs of Family Court: Understanding the Language of the Law, continued

Petitioner: The person who signs the petition. This is the person submitting papers.

Permanency Hearing: a hearing in which the Court sets out or approves a long-term plan for the placement of the child, during the course of an Article 10 case. The Court holds a new hearing to review this plan at least once every six months.

Personal Service: handing required legal papers (Petition, Summons and Temporary Order) to the Respondent (usually the parents) in a case.

Placement: the court-approved home where the child resides during the course of an Article 10 case. This can be a foster home, a direct placement, or placement with the birth parents.

Publication: when personal service cannot be performed (for instance, because the Respondent cannot be located), this is a legal process for serving a party by including a notice in a newspaper. Service by publication is rare and can only be done if the court approves it. It will only be ordered after a due diligence search has been done.

Respondent: the person who must respond to a petition. This is similar to the “defendant” in a criminal case, but you should avoid using the term “defendant.” In an Article 6 or Article 10 case, the respondents are usually the birth parents.

Section 1028-a Motion: a legal filing that allows a relative to ask the court to become a foster parent for a child who is already in foster care with a non-relative.

Service of Process: the delivery of required legal papers (usually a Petition or Summons) to a person (usually the parents) who is thereby officially notified of a Family Court proceeding, the outcome of which may affect his rights to care for a child. Generally, personal service will be the form of service required by the court.

Standby Guardian: a person who a parent or legal custodian/guardian chooses to care for a child in case the caregiver dies or is too ill to care for the child.

State Central Register, or “SCR”: the place where all reports of child abuse or neglect are filed and maintained.

Summons: the document that shows the county and street address of the Family Court, the Part, and time and date for the next hearing for a case. It must be served by personal service on a party.

Temporary Order: an Order that will last for a limited time. A party may ask for a Temporary Order of Guardianship or Custody for a child for medical or educational reasons until the next Hearing date. If a Temporary Order is given, the party should request a new Temporary Order at each court date until the Court issues a Final Order.



MFY provides free legal services to low-income residents of New York City on a wide range of civil legal issues and works to end the root causes of inequities through impact litigation and policy advocacy. Our **Kinship Caregiver Law Project** helps families caring for related children to secure orders of custody or guardianship, or to adopt children in their care. MFY also helps families secure the benefits to which they are entitled and to challenge placement of children in the traditional foster care system when placement with relatives is an appropriate option. For more information on our services, please go to www.mfy.org or call 212-417-3700.

MFY's Kinship Caregiver Law Project receives generous support from the New York Community Trust, the Ira W. DeCamp Foundation, Greenberg Traurig LLP, and members of the New York City Council.

For more information about your options as a kinship caregiver, please contact MFY's Kinship Caregiver Law Project at 212-417-3850.