



L E G A L

S E R V I C E S

INCORPORATED

TESTIMONY
ON
KINSHIP CAREGIVER SERVICES

BEFORE:

NEW YORK CITY COUNCIL
COMMITTEE ON GENERAL WELFARE
AND
COMMITTEE ON AGING

PRESENTED BY:

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Thank you for inviting our organization to testify today. My name is Barbara Graves-Poller, and I supervise the Kinship Caregiver Law Project at MFY Legal Services. MFY envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We offer advice and representation to more than 8,000 New Yorkers each year. MFY’s Kinship Caregiver Law Project represents and counsels New Yorkers who serve as *de facto* parents for non-biological children. MFY is the only civil legal services organization in the city that has a program dedicated to kinship caregiver issues. We also collaborate with MFY’s other units as well as our partners on the New York City Kinship Care Task Force to provide holistic support to our caregiver clients.

Community Demographics and Needs

While the number of children in kinship care is difficult to ascertain, recent reports suggest that between 150,000 and 300,000 children in New York City live in kinship care arrangements.¹ The overwhelming majority of kinship caregivers are African American women and Latinas. While most of our clients are grandmothers of the children in their care, approximately 60% of our caregivers are aunts, older siblings or other types of “family” – biological or not – who step in when a child’s biological parents are incarcerated, institutionalized, deceased or otherwise unable to parent. Unlike their counterparts upstate, New York City caregivers are generally under the age of 65.² Geographically, the greatest concentrations of our cases involve residents of the South Bronx and Central Brooklyn. Most of our clients have cared for their child for years without obtaining a formal order of custody or guardianship; others are kinship foster parents.

Our clients face a diverse range of challenges in caring for their children. Some reach out to us when their local elementary school refuses to register their child without first reviewing a court order. Others seek help when they or members of their family enter homeless shelters or learn that relatives have been placed with foster parents outside of the family. In each case, the legal resources available to help caregivers access essentials of life are exceedingly scarce.

¹ U.S. Children’s Bureau, available at <http://www.acf.hhs.gov/programs/cb/resource/fy2003-2012-foster-care-entries-exits>; Stepping Up for Kids: What Government and Communities Should Do to Support Kinship Families, The Annie E. Casey Foundation, available at <http://www.aecf.org/KnowledgeCenter/Publications.aspx?pubguid={642BF3F2-9A85-4C6B-83C8-A30F5D928E4D}>; New York City Administration for Children’s Services, available at http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml; Kinship Care in New York: Keeping Families Together, available at assets.aarp.org/www.aarp.org/_cs/.../aarp_kinshipcarekeepingfamilies6.pdf

² Source: Rachel Dunifon and Catherine J. Taylor, *Characteristics of relative Caregivers and Children in their Care in New York State*, available at www.human.cornell.edu

I. Legal Challenges Faced by Kinship Caregivers

Certain legal needs of kinship caregivers are preventative. For example, some kinship caregivers need representation to adopt children who have been in their care for many years or seek Special Immigrant Juvenile Status for an undocumented child before disaster strikes. More often than not, though, clients call MFY's intake line or visit our walk-in clinic in the Bronx Family Court when their families are in crisis. In these cases, relatives who have been informal caregivers for years need help obtaining orders of custody or guardianship when children experience healthcare emergencies. Without an order conferring decision-making authority, caregivers may be unable to access mental health services or consent to medical procedures for the child in their care.

Since a majority of caregivers lack the financial resources to retain counsel,³ those who seek help in the Family Court are likely to do so *pro se*. The Family Court clerks that caregivers encounter at the courthouse are not advocates and cannot provide advice on applicable legal standards. Thus, caregivers end up handwriting petitions at the courthouse, trying to organize emotionally charged facts into cognizable claims without knowing what information is legally relevant or understanding how to serve legal papers on hard-to-locate biological parents. Other caregivers have to sort out complex jurisdictional issues when the child in their care has parents who live out-of-state.

Family Court clerks frequently misinform caregivers about their legal options and impose inconsistent filing requirements on caregiver petitions. For instance, many MFY clients who first appeared in the Family Court *pro se* have reported that their petitions for custody or guardianship were previously rejected based on arbitrary, clerk-made rules.⁴ Other clients were advised to file petitions for custody of a child in foster care, an action impermissible under the Family Court Act, instead of challenging the foster care placement within the timeframe set forth in the statute.⁵ Even caregivers who manage to overcome these significant obstacles must then try their case on their own against an actual attorney since they, unlike biological parents, are not appointed attorneys if they are unable to afford retained counsel.⁶

³ See *At Grandmother's House We Stay, One-in-Ten Children Are Living with a Grandparent*, Pew Research Report available at <http://www.pewsocialtrends.org/2013/09/04/at-grandmothers-house-we-stay/> (finding that 77% of grandparent caregivers live near or below the federal poverty line).

⁴ For example, Staten Island clients have told us that their *pro se* guardianship petitions were rejected by Family Court clerks who require grandparents to apply for custody. In contrast, Brooklyn-based grandparents have told us that the Kings County clerks refused to accept their *pro se* custody petitions and required the grandparents to file for guardianship instead.

⁵ Under § 1028-a(v) of the New York Family Court Act, relatives who want to become kinship foster parents of a child who has been removed from his or her parents must commence proceedings "within six months from the date the relative received notice that the child was being removed . . . and no later than twelve months from the date that the child was removed." According to many MFY clients, biological parents struggling with substance abuse or other mental health issues sometimes fail to identify potential kinship placements due to embarrassment, guilt and grief they experience in connection with the child's removal. Frequently, prospective caregivers who discover that a relative entered foster care after this period cannot challenge the child's placement under this provision.

⁶ See New York Family Court Act § 262.

II. Administration of Children’s Services and Foster Care Challenges

Since MFY last testified before the Committee on General Welfare in 2009, we have expanded our services to provide legal advice and representation to caregivers who have certain questions about the Administration for Children’s Services (“ACS”) and foster care. A number of our clients and the children in their care have been traumatized by ACS investigations commenced after someone calls in a false complaint to the anonymous hotline, an attempt to obstruct the adoption process or retaliate against a caregiver. One of our current clients, the kinship foster mother of an HIV- and cocaine-affected boy in her care since birth, had initiated the adoption process when she became the victim of a false complaint. The child was removed from her care without notice, even though the ACS report was determined to be unfounded. Another kinship foster parent in Brooklyn who was close to finalizing an adoption was similarly subjected to a false ACS complaint. ACS had recently found virtually identical complaints against her to be unfounded. Nevertheless, the foster care agency that placed the child with her began pressuring her to withdraw her adoption petition and even threatened to remove the child.

Other clients have contacted us for help when they are unable to become kinship foster parents and their relatives are placed in care of strangers. In recent months, we have worked with clients who were rejected as kinship foster parents because they had undergone minor surgeries or had been the subject of ACS investigations simply because they had been the victims of domestic violence in a past relationship. While MFY has offered advice or full representation in all of these matters, countless other caregivers in similar situations have no access to legal assistance.

III. Difficulties Accessing Available Financial Support

Mr. James Reynolds and his wife, Kathleen, wanted us to share their story with you today as an example of the types of difficulties caregivers face when they seek financial assistance for children in their care. Mr. and Ms. Reynolds have cared for their grandson for almost four years. They receive no financial support from the child’s parents and live on a fixed income of SSI and SSD. When he and his wife sought financial assistance from HRA on behalf of their grandson, the agency not only refused to authorize the shelter allowance for which the child was eligible, it also attempted to place a lien on the Reynolds’ family home in Staten Island. Mr. Reynolds reported that the experience “was a nightmare” that forced him and his wife to shuffle from one appointment to another with agencies in three boroughs. He also stated that he and his wife were subjected to verbal abuse by caseworkers at HRA. Fortunately, the couple contacted MFY, and we obtained over \$1,000 in retroactive shelter allowance for the family. However, we have no idea how many other caregivers have been similarly affected by HRA but have not been able to access legal help.

IV. Recommendations

A. Provide Funding for Legal Assistance to Caregivers

The demand for legal services within the kinship community far exceeds the capacity of our attorneys. Not only is funding crucial to maintaining and expanding the assistance that MFY and our partners can provide to caregivers, it would relieve a significant burden on our Family Courts that work with large numbers of unrepresented caregivers. It also would represent a significant investment in the welfare of children in kinship care who directly benefit from our ability to secure public benefits and resolve housing and other issues for their caregivers.

B. Create Specific Hotlines for Kinship Caregivers

Presently, ACS offers an “ACS Parents’ and Children’s Rights helpline.”⁷ HRA advertises dedicated hotlines for New Yorkers with child support, domestic violence, and other emergency needs on its website.⁸ Neither agency maintains hotlines dedicated to kinship caregiver needs. Given the lack of knowledge about existing kinship resources by local office caseworkers in both agencies, creating specific hotlines would reduce erroneous decision-making within the agencies and help caregivers access the assistance they need more efficiently.

C. Pass ACS Anonymity Resolution

Finally, we urge the Committee to adopt Resolution 1933 to support a modification of the existing reporting requirements for Statewide Central Register of Child Abuse Maltreatment (“SCR”) and instead require identifying information from callers reporting child abuse. As the examples above illustrate, many of our clients have been subjected to ACS investigations after a vindictive family member or domestic abuser called in a false report against them. This resolution would help deter malicious callers from engaging in this type of pernicious abuse of caregivers and child protective services.

Once again, thank you for allowing us to speak about these important issues today. MFY is available to provide additional information on caregiver legal concerns. We are also happy to assist caregivers your respective communities.

⁷ See http://www.nyc.gov/html/acs/html/advocacy/office_advocacy.shtml

⁸ See <http://www.nyc.gov/html/hra/html/contact/contact.shtml>