

ALTERNATIVE FAMILY ARRANGEMENTS

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In the past we had “Leave it to Beaver” households; an intact family with a mother, a father, and children. This is no longer the norm, where “alternative family” arrangements make up many households. When parents are unwilling or unable to care for a child, whether due to death, drug or alcohol dependency, illness, imprisonment or other such factors, others have stepped in to fill the void.

Some of these care-giving arrangements have been sanctioned by law and by the court. Other are informal. N.J.S.A. 9:2-9 gives “any person” interested in the welfare of a child the right to institute a custody action. N.J.S.A. 9:2-10 grants the court authority to award custody to a third party based upon a finding of a parental unfitness. Yet, many caregivers forego the legal process entirely and assume the responsibility for the child without authority and without the benefits, burdens or authority of a Custody Order. Even though these caregivers assume financial responsibility for the child, they lack the legal right to make decisions for the child. A court order serves to legitimize informal custody arrangements. This then empowers the caregiver to apply for financial aid for the child (if the caregiver is income eligible), enroll the child in the Medicaid program, register the child at school, and make all other important decisions regarding the child’s health and welfare.

In addition to the relevant statutes, the court has the power, in all instances when dealing with custody and adoption issues, to decide custody under the doctrine of *parens patriae* so long as the child resides in New Jersey. Jurisdiction of a state to regulate the custody of infants found within its territory does not depend upon the domicile of the parents. It has its origin in the protection that is due to the incompetent or helpless, and our jurisdiction, *parens patriae* is firmly established in our jurisprudence and is derived from common law, our case laws and the statutes.

A third-party Complaint for Custody can be filed under FD Docket number. That stands for the Non-Dissolution Unit. In order to obtain custody, the following are requirements:

1. The child has resided in New Jersey for at least six months.
2. The child’s parents must be notified.

3. If custody is awarded, the custodian must retain responsibility for the child until another adult is willing to assume custody.²

In cases where the child has not resided in New Jersey for six months, many judges, if they deem it to be in the child's best interest, will order temporary custody. No custody determination will be made unless the court ascertains the safety, happiness,³ physical, mental and moral welfare of the child. If a parent contests the transfer of custody, "...the presumption in favor of a parent can be overcome only by a showing of unfitness, abandonment, gross misconduct, or exceptional circumstances.

Physical or psychological harm can rebut the presumption in favor of the biological parent as can a showing that the third party⁴ has become the psychological parent of the child." When a Custody Order is granted, it usually does not address support. The court can order support if it believes the biological parents have financial resources. A custodian within income can apply for Medicaid and welfare assistance for the child.

Whether by a formal custody order, or when a child has lived with a third party for one year or more, the third party may apply for Kinship Legal Guardianship under FL docket number N.J.S.A. 3B:12A-6 took effect on January 1, 2002 and was enacted to provide stability to children who are no longer with their parents. There is an excellent article in May, 2003 New Jersey Family Lawyer, by Mary Coogan, Esq. explaining Kinship Legal Guardianship⁵. In it, she states that "purpose of kinship legal Guardianship is to formalize a relationship that already exists, not to create a new one. In order to apply to become a guardian, a person must have a legal, biological or psychological relationship with the child; the child must have resided with that person for at least twelve consecutive months, and that person must have supported the child." He or she must show that he or she is ready for a long-term commitment to the child. Sometimes, the Division of Youth and Family Services (DYFS) recommends to a custodian that they should apply and assists in the application process. In cases where there is no DYFS involvement, the custodian applies privately through the Kinship Navigator Program. The Kinship Navigator Program was created to make the process easy for the potential Kinship Guardians by guiding them through each individual step. Information is available on the program calling 1-877-816-3211. In non-DYFS cases, in

order to apply, a petition must be filed with court. The petition must include an assessment. There are four centers throughout the state that perform assessments. The assessment will include a home study for safety, an interview with the prospective guardian, and background checks on all the adults living in the household. The cost of the assessment is \$400 and if the applicant is income eligible, the Navigator Program will pay the costs.

N.J.S.A. 3B:12A-6 outlines factors to be considered in appointing a kinship legal guardian. The court must consider: (a) whether proper notice was given to the child's parents; (b) the best interest of the child; (c) the kinship caregiver assessment; (d) in DYFS cases, DYFS's recommendations; (e) the ability of the proposed kinship legal guardian to provide a safe and permanent home for the child; (f) the wishes of the child's natural parents; (g) the wishes of the child if 12 years of age or older; (h) the suitability of the kinship caregiver and the caregiver's family to raise the child; (i) the ability of the kinship caregiver to assume full legal responsibility for the child; (j) the commitment of the caregiver and the family to raise the child; and (k) an analysis of the child abuse record check. Appointment of a guardian does not terminate parental rights.

A potential guardian must show by clear and convincing evidence, "... that the parents' incapacity is of such a serious nature as to demonstrate that the parents are unable, unavailable or unwilling to perform the regular and expected functions of care and support of the child (and that) the parents' inability to perform those functions is unlikely to change in the foreseeable future." Once Kinship Legal Guardianship is established, the guardian steps into the shoes of the child's parent. Such a guardian can make all decisions for the child and is totally responsible for the child's well being. He or she can apply for the financial assistance and social services and can also apply for funds through the Department of Family Development. If the Guardian is income eligible, the guardian can apply for a \$250 per month per child subsidy. The income level to be eligible for subsidies is 150% of the federal poverty level. For a family of four (4), that is \$27,600 per year. Besides the monthly subsidy, there are also wrap around services to help the needs of the child. A subsidy may be given to purchase a child's furniture or paying for moving expenses or even pay security deposits if a bigger home is needed. The income limit for wrap around services is 350% of the federal

poverty level if the guardian is under 60 years of age or 500% of the federal poverty level if the guardian is over 60 years of age.

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² Youth & Family Services Division v. Torres, N.J. Super. 182 (App. Div.1980)

³ Fantasy v. Fantasy, 21 N.J. Super. 25, 122 A.2d 593 (1956)

⁴ Watkins v. Nelson, 163 N.J. 235,648 A.2d (2000)

⁵ New Jersey Family Lawyer, May 2003 Kinship Legal Guardianship: The New FL Docket Adoption Statute