

Memorandum To: Task Force on Kinship Families

From: Joseph R. Mazziotti, Cumberland County
Judge of Probate

Dated: September 27, 2010

As a backdrop to my comments, I would like the Committee to be aware that 14 of the 16 probate judges are members of the Maine Probate Judges Assembly. Although formally structured, one of the more important facets of this organization is to provide a forum for the informal exchange of information, opinion, and, to the extent possible, consensus on various issues facing our respective courts.

Comments were solicited from the judges on the topic of kinship placements and responses are just beginning to arrive.

With that, please accept my comments as those expressed by a single probate judge and not necessarily those shared by the other judges.

The responses of Janice Stuver, AAG have provided an instructive context for requests 10 and 11 along with useful recommendations. My comments will be to supplement hers.

10. Suggestions for reducing the threshold for terminating parental rights making it easier to terminate.

The specific application of the rebuttable presumptions set out in Title 22 M.R.S.A. §4055 would be helpful. The probate court is otherwise left to apply the general standards of Title 22.

I, too, am mindful of the constitutional and statutory protections afforded parents in termination proceedings and I support the continued need for the higher burden of proof and the factual finding of unfitness before permanently removing a child.

That said, the probate courts have very little in the way of resources to offer the process in terminating parental rights. DHHS may not be involved in a particular case because it is a kinship placement leading to adoption. The parents may not have access to the reunification services offered during child protective matters and the probate judge must make a decision based on the independent efforts of the parent(s).

Having more specific standards/guidelines to apply to a given situation would assist the probate court; directly connecting conduct with consequence.

11. Once a guardianship has been ordered, suggestions for:

A. The legal standard for modifying a guardianship.

In addition to AAG Stuver's comments, I would propose that the probate judges be asked to provide a specific set of recommendations in the form of statutory revisions to improve the guardianship process.

It seems to me that a reform may take one or more directions. A change of circumstances may give rise to a petition to modify the existing guardianship order, or, a timetable may be established to review the existing order thus keeping the court informed of the progress of the parents or lack thereof. With the latter, a guardianship may become an adoption in a shorter time frame.

B. The legal standard for terminating a guardianship.

I would only add that the standard of proving parental unfitness in a termination hearing appears to remain clear and convincing.

C. Requirements/limits on filing motions to amend or terminate guardianship.

I would support a revision that limits the number of petitions to terminate. If there is an allegation of change in circumstances the petitioner should make out a prima facie case presented to the court before the matter is in order to proceed.

Also beneficial, would be the incorporation of the language found in the Permanency Guardianship statute limiting the right of a parent to bring subsequent petitions to, not more frequently than 12 months following an unsuccessful petition.

D. A recognized timeline that should be followed or considered by the Courts.

A periodic review of guardianship appointments may be desirable. It would keep the court informed of the progress of the parent(s) or lack thereof and may encourage a more permanent placement through adoption.

E. Mechanisms for decreasing the uncertainty in kinship care situation, increasing the likelihood of the child staying with the kinship care provider.

I agree that adoption is an appropriate course. But, as one of the witnesses testified at our last meeting she, as guardian, was reluctant to adopt as it would remove what she felt was the most important incentive towards her child's recovery.

12. How can Maine provide more legal representation for kinship families in the informal system?

A. Who qualifies for assistance now?

Attorneys are appointed for indigent parents in all contested guardianship matters. I use the same criteria as the District and Superior Courts in making the appointment. I also appoint attorneys for the petitioner depending on the circumstances, however, that is purely discretionary. (As an aside, Cumberland County has a budget of \$31,000.00 for the payment of all court appointed counsel for minor and adult guardian and conservatorship matters, guardians ad litem, court reporters, and expert witnesses).

C. Given the number of pro se parties appearing before the Probate Courts, I believe that more could be achieved by providing a funding mechanism for mediators rather than attorneys.

The state system of providing counsel would not likely be able to provide the counsel necessary to support the Probate Courts without the infusion of funds in excess of those currently furnished by the individual counties. I don't have an empirical data to support this; it is more inductive than deductive. However, it may be worthy of further analysis.

