

GRANDPARENTS RAISING GRANDCHILDREN: LEGAL OPTIONS TO PROTECT THE CAREGIVER RELATIONSHIP

BY

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A trip to grandma and grandpa's house is often a one-way trip for many children. Nationwide, approximately 5.4 million children are living in grandparent or other relative-maintained households, according to a 2000 U.S. Census Bureau report. In Hillsborough County alone, there were 17,555 children residing in the household of a grandparent in 2000. As a result of the vast number of children requiring care outside the homes of their biological parents and the shortage of available foster parents, the number of grandparent and relative caregivers is expected to increase.

Many kinship caregivers have taken on the responsibility of raising another's children without the benefit of legal representation or advice. As such, they are often unsure of their legal status with the children entrusted to their care or they are in informal caregiver situations.

INFORMAL PLACEMENTS

Informal placements are those where the children are residing with and being cared for by a caregiver other than the birth parent without benefit of a court order. Some examples include a grandparent caring for a grandchild while the birth parent is incarcerated, or an uncle taking a nephew in while the birth parent receives substance abuse treatment, or a neighbor caring for the teenager who was locked out of his parent's home. In informal caregiver situations, grandparents and other relatives are seldom afforded any of the rights or benefits that are provided to legally appointed custodial caregivers.

In Florida, a variety of legal custody options exist to assist kinship caregivers. However, those options appear piecemeal throughout the Florida Statutes. Currently, there are three divisions (family, probate, and juvenile) within the circuit court exercising jurisdiction over the custody of children.

FAMILY LAW PLACEMENTS

Within the family law division, kinship caregivers are awarded custody of children through petitions for: (1) temporary custody of minor children by extended family, F.S. § 751.03; and (2) adoption, F.S. § 63.112.

PROBATE LAW PLACEMENTS

Grandparents and other relatives may also file petitions within the probate division for guardianship of minor children, F.S. § 744.3021. Depending on the needs of the children in their care, grandparents and other relatives will need

assistance in determining whether the appointment being sought is for a guardian over the person, property, or both.

JUVENILE LAW PLACEMENTS

Custody options for kinship caregivers within the juvenile division include: (1) court-ordered placement with a relative under the protective supervision of the Department of Children and Families (DCF), F.S. § 39.401(2)(a)(3); (2) court-ordered temporary legal custody to a relative under the protective supervision of the DCF, F.S. § 39.521(1)(b)(3); and (3) long-term relative custody, F.S. § 39.622. In Hillsborough County, DCF initiates dependency cases through the Office of the Attorney General. However, any party with knowledge of the facts alleged may file a petition for dependency, F.S. 39.501.

ALTERNATIVES TO FORMAL LEGAL PROCEEDINGS

Grandparent and other relative caregivers may also seek alternatives to formal legal proceedings. Three such alternatives are: (1) obtaining an affidavit of parental consent; (2) obtaining a limited power of attorney, Florida Statutes § F.S. 709.08(7); or (3) establishing themselves as the children's social security representative payee, 42 U.S.C. § 405(j).

As attorneys working with the kin caregiver community, it is important to assess the special needs of grandparents and other relatives raising children. The exponential growth of relative caregivers has created a large client base in need of legal advice and advocacy to maneuver through the various custodial options, sources of financial assistance, and eligibility for support services.

For those Hillsborough County clients who are unable to afford private counsel, Bay Area Legal Services has established the Caregiver Advocacy Program (CAP). For more information, contact (813) 232-1343.

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