RESOLVED, That the American Bar Association encourages states and territories to establish guidelines for courts, child welfare service agencies, and participating attorneys to follow when abused, neglected, and abandoned children are placed in kinship care, and for use in the provision of services to kinship providers for such children, based upon the following:

1. Conducting an aggressive search for maternal and paternal kin and consider kinship placements as early as possible after the child becomes known to the child welfare agency and/or the court;

2. Carefully screening potential kinship providers before any kinship placement, just as agencies do with potential foster parents;

3. Thoroughly educating kinship providers regarding current and future social and custodial expectations, and the legal permanency possibilities of the placement which include subsidized adoption and subsidized legal guardianship;

4. Providing notice to and the opportunity for kinship providers to participate in the legal/judicial process, and help them to obtain legal representation;

5. Providing financial support, child health and mental health care coverage, other government assistance, and other resources to kinship providers throughout the term of the placement, including aid and services after a permanent placement is legally finalized; and

6. Encouraging state, local, and territorial governments to enact medical consent, standby guardianship, subsidized permanent guardianship, and open (cooperative) adoption laws.

FURTHER RESOLVED, That the American Bar Association encourages state, local and territorial bar associations to develop and support pro bono and low-cost legal services projects for kinship care providers, whether the providers have been involved with a child welfare agency or have otherwise assumed care of the child.
1. KINSHIP CARE – A DEFINITION AND DESCRIPTION OF THE NEED FOR GUIDELINES

As used in this report, the terms “Kinship Care” or “Kinship Placement” refer to an abused, neglected or abandoned child’s placement with relatives or, when appropriate, with close family friends or household members. In child protection cases, kinship placements are made directly by court order and/or through a child welfare or social service agency. The number of children in kinship care is consistently increasing.

A 1990 report determined that up to 50% of all children in out-of-home family-based care in some regions of the country are living in kinship care, and that approximately 878,000 children were living with their grandparents. A 1992 report indicated the number of foster children living with kin in California, Illinois, Maryland and New York had risen from 18% to more than 31% during the preceding five years.

Removing children from their parent’s home and custody, even in the face of abuse and neglect, is often traumatic for children. Appropriate placements that reduce the trauma of separation from parents, siblings and extended family members should be explored first. Placements with kinship caretakers with whom children have an established supportive, caring relationship and with whom they will be protected and provided for are beneficial in many ways. Kinship placements have the potential to provide neglected, abused and abandoned children much needed continuity and familiarity during a period of extreme loss and instability.

Other benefits also exist:

• Kinship caretakers are more likely to be familiar with the child, parents or family, as well as the issues and needs of the children and parents;
• Children and parents are more likely to be familiar and comfortable with kinship caretakers;
• It is more likely that there already exists a bonded relationship and sense of commitment to the health and well-being of the child by the kinship caretakers;
• There is less stigma in living with kin than with foster parents and less stigma attached to both caretaker and child in a kinship care situation; and
• With appropriate and safe kinship placements, courts and agencies often can continue to have children’s care provided by adults who have the same cultural and ethnic heritage as the children themselves.

Although kinship placements appear preferable on their face, there can be risks or drawbacks for children if the placements are not made carefully. When kinship care providers are not carefully screened, educated about their responsibilities, or properly supported, there exists the potential to compound the abuse, neglect or other trauma the children have already faced. Some of the risks and drawbacks exist because of incomplete background review, incomplete information sharing or caretaker education, and sparse provision of legal, financial and social support resources.
When courts or social services agencies do not receive or share all the necessary information about the child, or when the kinship provider does not have necessary resources, the child can be further traumatized in their kinship placement because they lack any real sense of permanency. For example, children can be harmed in poorly screened or supervised kinship placements when:

- Kin allow parents to have unauthorized and inappropriate access to the child;
- Kin themselves are abusive to or neglectful of the child;
- Kin and parents are hostile towards each other, the social services agency, and the court;
- Kin accept care of a child as a result of pressure or guilt—when they don’t really want such a placement;
- Kin are not provided sufficient economic and/or social resources or assistance to allow them to provide for the child properly; and
- Kin are not provided specialized training and ongoing support services that would enable them to care for the child properly.*

II. PROPOSED GUIDELINES FOR JUVENILE OR FAMILY COURT PERSONNEL AND CHILD WELFARE AGENCY STAFF TO FOLLOW IN MAKING KINSHIP PLACEMENTS A PRIORITY AND TO ENSURE PROPER, SAFE, SECURE AND ADEQUATELY SUPPORTED KINSHIP PLACEMENTS

1) Conduct an aggressive search for relatives or kin and consider possible kinship placements as early as possible after the child becomes known to the child welfare agency and/or the court

Children placed in kinship care have similar physical, mental health, behavioral and educational problems as children placed with unrelated foster parents. Recent studies have found that kinship caregivers have more positive perceptions about the children placed in their homes than do non-related family foster care providers. In addition, studies show that kinship providers are more likely to recognize the importance of dealing with children’s physical, mental health, behavioral and educational problems than unrelated foster care providers. Furthermore, abused and neglected children placed with kin may be less likely to experience multiple placements than children placed with unrelated foster parents. Notably, children in kinship homes were more likely to be placed with siblings than those in non-kinship foster care. Thus, aggressively searching for possible kinship care providers should be a priority for child welfare agencies and juvenile or family court personnel.

2) Carefully screen potential kinship providers before placement

Many questions can and should be asked before a kinship placement is made. Experts suggest several preconditions for placing children with kin:
- The kinship caretaker has no history of abusive or neglectful behavior towards other children, or behavior that would present a danger to this child;
- The child is comfortable with the kinship caretaker;
- The kinship caretaker recognizes the parent’s history of abuse or neglect and is committed to protecting the child’s health and safety interests first and foremost;
• The kinship caretaker is capable of denying unauthorized requests by the parent for access to the child;
• The kinship caretaker is able to get along with the child's parent (regardless of whether the goal is reunification of the child and parent);
• The kinship caretaker is committed to caring for the child as long as needed;
• Ideally, the kinship caretaker knows the child well;
• Ideally, the kinship caretaker lives in the child's neighborhood and community; and
• The kinship caretaker is willing to make sacrifices for the child and does not demand compensation that is not needed.¹¹

Some additional questions that are helpful in considering kinship placement and analyzing the home's suitability include:

• Did the proposed caregiver volunteer to provide care, rather than having to be asked? Why or why not?
• Do the parent, the child, and other family members favor choosing this person? Why or why not?
• Are the parent and relative in agreement with the conditions, duration and responsibilities of the planned arrangement?
• Is the proposed caregiver healthy enough to care for the child?
• If there is a sibling group, will siblings be able to remain together, in close proximity to each other, or in regular contact?
• Does the planned arrangement permit the child to stay in a familiar neighborhood, school or family community?
• Does the proposed kinship home meet basic safety and privacy standards?
• Can the relative, with or without assistance, provide a healthy, safe and wholesome living environment for the child?
• What is the proposed caregiver's attitude toward the child and his or her needs?
• Will the relative provide needed emotional, physical, social and other support to the child?
• Can and will the relative protect the child from: a) further abuse or neglect by the original perpetrator or another; b) retaliation for disclosing the maltreatment; and c) pressure to recant?
• Does the relative recognize the need for the child not to be placed with the parent at this time?
• Will the relative follow any prescribed rules for visitation or care?; and
• Will the relationship between the parent and the relative reduce or contribute to the child's distress?

Asking all of the right questions is the first step towards successful kinship placements.
3) Thoroughly educate kinship providers regarding the current and future social and custodial expectations, and the legal permanency possibilities of the placement.

There is often a wealth of information about the child and the situation that the kinship provider should have access to at the outset of placement. A kinship provider must first be educated on what the child’s special emotional, mental and physical needs are and, where necessary, trained in handling any special needs of the child. The kinship provider must understand the need not to second guess or overrule the agency’s and court’s decision by allowing unauthorized contact between the child and the parent and must be able to understand why it would be detrimental to allow the parent unsafe access to the child. The kinship provider must be told about specific requirements of the child welfare agency and court, including but not limited to financial requirements and obligations. The kinship provider must first be fully informed about the requirements of the initial placement and informed that options after initial placement may include guardianship, adoption, full legal custody or another permanency plan. Before the placement, the kinship provider must understand the importance of pursuing such options.

It is particularly important to educate kinship caregivers about the option to adopt, as it is the most permanent placement for a child who is unable to live with his or her birth parents. All too often, adoption is not explored because of a desire to preserve pre-existing family relationships. These relationships may become strained if a caregiver attempts to terminate a birth parents’ parental rights, a necessary precursor to adoption. Those who support and counsel kinship caregivers should present adoption as an available option, since it may be appropriate in many permanent kinship care situations.

Child welfare agencies also should be encouraged to explore subsidized legal guardianship as a permanency planning option for children in kinship foster care. Generally, subsidized legal guardianship involves transferring legal custody of a child to his or her current kinship caregiver, continuing to provide a subsidy to the legal custodian, and closing the child welfare case. The amount of the subsidy, the age of eligible children, and the length of time children must be in state custody vary from state to state. Before considering the option, efforts at reunification and adoption should generally have been attempted. States presently utilizing subsidized legal guardianship have noted that children in guardianships experience more stability than those in foster care, that caregivers’ financial needs are met without unnecessary social service intervention, and that millions of dollars in administrative costs are saved each year. Where reunification or adoption is not feasible, this is a permanency option that should be explored. For states that do not currently offer this option, administrative and legislative action should be taken to remedy this.

4) Provide notice to and the opportunity for kinship providers to participate in the legal/judicial process, and help them to obtain legal representation.

Kinship providers must deal with a variety of law-related problems. This is especially true for the overwhelming number of kinship caregivers who are not involved in the child welfare system. Kinship caregivers outside of the system face a myriad of legal issues including issues of custody, adoption, financial entitlements, estate planning, wills, special education, and landlord-tenant law.
When child welfare-related court proceedings are required, sometimes those hearings can result in drastic changes in the child’s legal relationship with his or her parents and substitute care providers. Kinship caregivers, therefore, need access to quality legal representation so they can meaningfully participate in these proceedings. Unfortunately, legal services are not easily accessible for many low and moderate-income kinship caregivers. Many cannot afford private legal assistance or are unaware of existing legal resources available to them. Also, legal services through publicly funded or pro bono programs are scarce and often under-funded. Exacerbating this is the lack of legal service providers with expertise in these areas.

Generations United’s 1988 Report, Grandparents and Other Relatives Raising Children: An Intergenerational Action Agenda, suggests five ways courts and bar associations can enhance kinship care provider access to legal services:

• Improve and increase grandparents’ and other relative caregivers’ access to legal services through community agencies;
• Educate legal service providers about the legal interests of families in which grandparents and relatives are raising children and the related custodial issues;
• Develop creative pro bono partnerships to increase the number of attorneys with special expertise in issues facing grandparents and other relative caregivers;
• Encourage private law firms to take an active role in expanding representation to children and kinship caregivers; and
• Train students in law school clinics to handle grandparent and other kinship caretaker cases.

Studies show that kinship providers of abused, neglected, and abandoned children tend to be of middle age or older (the majority being grandmothers and aunts with an average age of about fifty). Only about half are employed outside the home and many are single and poor. Studies also show that kinship providers receive fewer services and less monitoring than unrelated foster care homes. The reduced level of services is often attributed to the fact that caseworkers believe the families do not require or are not entitled to as much supervision and assistance as unrelated foster care providers.

In an overburdened child welfare system, children placed with kin are often thought to be more “settled,” thereby needing fewer services. One study found that 86% of grandparents who had parental responsibilities towards their grandchildren reported feeling “depressed or anxious most of the time” and also reported increased economic or financial struggles. Many younger kinship caregivers are forced to quit their jobs, cut back on work hours, or make other job-related sacrifices which can negatively affect their future economic well-being as well as their physical and emotional stability. Kinship providers who are either retired or non-working frequently end-up depleting life savings, selling belongings, and spending their retirement income to care for the child. Because of their increased age or poor financial situation, kinship providers often experience serious physical health problems themselves. The stress of caring for young children, accompanied by their own health
difficulties, can be overwhelming for many older grandparents and relatives, often resulting in a variety of stress-related illnesses.

Social isolation is also a problem. Many grandparent and relative caregivers are raising children alone, without the support of extended family and community networks. They sometimes minimize the severity of their needs or leave problems untreated because of their care-giving responsibilities or because there is nowhere to turn.24

Although there are a number of federal and state programs designed to help children living in poverty, few of these programs specifically accommodate the unique needs of kinship care providers. The current government programs that fail to adequately assist many kinship providers are: Temporary Assistance to Needy Families (TANF); Medicaid; food stamp programs; state child support enforcement programs; the Earned Income Tax Credit; and public housing and rent subsidies.25 Many caregivers could utilize legal assistance to aid them in obtaining such public benefits, if such representation were available.

Other resources that can help address the physical, emotional and social support needs of kinship providers include, support groups, resource and information centers, informational lunches and fairs, employee assistance programs, on-site child care, child care subsidies, medical leave, flex-time, and dependent care accounts.

6) Encourage state legislatures to enact medical consent, standby guardianship, subsidized permanent guardianship, and open (cooperative) adoption laws

Since most kinship caregivers are providing care to children informally, with no child welfare agency involvement or a lack of a legal guardianship or custody order, they often face obstacles accessing medical and mental health treatment for their relative children. If the parents have abandoned the children, have an unknown address, or only visit sporadically, getting consents for such care may be a serious problem. State medical consent legislation can provide for birth parents to execute a simple form providing medical decision authority for the kinship caregiver, similar to a power of attorney.26

Another important legal issue in kinship caregiving situations involves birth parents who are terminally or chronically ill. Many dying parents, and parents with severe recurring mental health or medical problems that interfere with parenting abilities, leave children in the care of kinship caregivers. Parents can be aided in making legal decisions, prior to death or hospitalization, by state laws that provide authority for choosing an individual to become the child’s guardian immediately upon incapacity or death. Such laws are able to help prevent orphaned children and children with hospitalized parents from unnecessarily entering the public child welfare system. These laws can create legally-recognized standby guardianships or standby adoptions under which a court can approve a permanent kinship caretaker prior to the parent’s death or incapacity.27

Financial constraints commonly inhibit many potential kinship caregivers from providing permanent homes to children of their relatives. The U.S. Department of Health and Human Services has been
given congressional approval to authorize, and many states have developed special programs for, subsidized permanent guardianship. Government-subsidized guardianship is similar to adoption subsidies often provided to those adopting children with special needs who were in the foster care system. Federal law now provides waivers for states that, among other reforms, use permanent guardianships as an option for securing permanent care for abused, neglected, or abandoned children, and Congress has provided authority for state experimentation in using federal funding for subsidized legal guardianship as an alternative to subsidized adoption. Most states, however, lack laws specifying guardianships as permanent and legally secure living arrangements for children in foster care.

Finally, as an aid to securing the adoption of children in the foster care system, including adoption by kin, there should be legal authority for courts to approve — in appropriate cases — specified post-adoption contact between birth parent(s) and the child. This is often referred to as “open” or “cooperative” adoption. State laws should authorize courts terminating parental rights or granting adoption of foster children to approve agreements made by the adopting parent(s) that would allow a birth parent, biological family members, or other significant persons in the child’s life to maintain some degree of contact with the child after the adoption is granted. State law should also provide for the legal enforcement of such post-adoption contact agreements when in the best interests of the child.

CONCLUSION

As the number of children living with kin continues to rise, states must assure that kinship placements for abused, neglected, and abandoned children are a positive response to a child’s maltreatment. Kinship placements can be beneficial in many ways and, when in the best interests of the child, should be preferred over placements with those who are essentially “strangers” to the child. However, all the implications of kinship placements must be understood and guidelines should be followed to assist social workers, children’s attorneys, judges and others with properly assessing kinship care placement on a case-by-case basis.

Respectfully Submitted,

La Ronda D. Barnes, Chair
ABA Young Lawyers Division
February 1999

NOTES


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1 Davis and Chiancone, supra at 90.

2 Id. at 91.


4 Id.

5 Davis and Chiancone, supra at 91, citing, I. Berrick et al., A Comparison of Kinship Foster Homes and Foster Family Homes: Implications for Kinship Foster Care as Family Preservation, 16 Children and Youth Services Review 33 (1994).


7 Davis and Chiancone, supra at 92, citing Berrick, et. al, supra.

8 Mikens and Baker, Making Good Decisions About Kinship Care, ABA Center on Children and the Law, 1997.

9 Hardin, supra 92. Davis and Chiancone, supra at 93. Relative caregivers who meet the state licensing requirements have the right to be compensated at the same rate as foster parents if the children in their care have been adjudged dependent and ordered removed from their homes. Miller v. Youakim, 440 U.S. 125 (1979).

10 Hardin, supra 93.


14 Cervone and Thomas, Legal Relationships, in Relatives Raising Children 74 (1997).


16 Id. at 18.

17 Id. at 9.
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31 Davis and Chiancone, supra at 91, citing Minkler and Roe, Grandmothers as Caregivers: Raising Children of the Crack Cocaine Epidemic (1992).


GENERAL INFORMATION FORM

Submitting Entity: ABA Young Lawyers Division

Submitted By: La Ronda D. Barnes, Chair, ABA/YLD

Summary of Recommendation: This recommendation proposes the establishment of guidelines for courts, child welfare service agencies, and participating attorneys to follow in making kinship care placements of abused, neglected, and/or abandoned children.

Date of Approval of Submitting Entity: The Resolution was approved by the Young Lawyers Division Executive Council on October 29, 1998.

Has this or a similar recommendation been submitted to the ABA previously? No.

Are there any ABA policies that are relevant to this recommendation and, if so, how would they be affected by its adoption? Yes. The ABA has a wealth of policy concerning the care and placement of abused, neglected, and/or abandoned children, although none address the issue of kinship care. Adoption of this resolution would increase the effectiveness of existing policy by promoting an increase in safe and effective kinship care placements.

Does this recommendation require immediate action at the next meeting of the House of Delegates? If so, why? Given that states are presently developing law and policy to implement the federal law entitled "1997 Adoption and Safe Families Act," the instant resolution is particularly timely and necessary as states continue to draft implementing legislation.

Status of the Legislation (If applicable): None.

Cost to the Association: None.

Disclosure of Conflict of Interest: None.

Referrals: This resolution has been referred to the Chairs and Staff Directors of ABA Sections, Divisions, and pertinent Standing Committees and Commissions.

Contact Person (Prior to the Meeting): Bo Landrum, Staff Director, ABA Young Lawyers Division, 750 N. Lake Shore Drive, 60611, Telephone: 312/988-5608; Fax: 312/988-6231; E-Mail: jlandrum@staff.abanet.org.

Contact Person (Who will present report to House of Delegates): To be determined from 5 YLD Delegates to the ABA House of Delegates: Raquel A. Rodriguez, Jeffrey M. Paskert, Fredrick H. L. McClure, William G. Seoggin, and John G. Alioco.