

Permanency Planning

- With a focus on Standby Guardianship



Definition of Permanency Planning

- Process of making plans
- for the **long-term** custody
- of children at risk of losing parent or guardian



Overview Care & Custody of Children

- Parent/child relationship is constitutionally protected;
- Parents have liberty interest in raising child without undue interference from state.

Care & Custody of Children

- Biological parents are considered the “natural” guardians of their children;
- Broad legal powers re: custody, education, discipline, medical care etc.
- No need for court order to exercise that right.

State Intervention

- When can the State intervene in the parent/child relationship?
- In cases of abuse or neglect
- When parents seek court intervention to settle custody disputes.

Abuse or Neglect

- State seeks legal and/or physical custody
- Child placed in foster care temporarily
- If conditions leading to abuse or neglect are not corrected, parental rights could be terminated;
- Child then free to be adopted.

Disputes between parents


- Parties litigate and “invite” state in to settle custody dispute;
- In disputes between parents, standard is “best interests of the child.”
- In disputes between a parent and a 3rd party, typically parent must be proven to be “unfit,” or to have abdicated parental responsibility.

Guardianship Proceedings

- Typically arise when neither parent is alive and child is in need of someone to care for him/her and make legal decisions.
- Where 1 parent dies and other is alive but unavailable, 3rd party can’t be appointed as guardian, but has to sue nat’l parent for custody.


Guardians

- **Guardian of the Person**— can decide where child lives, consent to medical care, make education, discipline decisions etc.
- **General Guardian**— also controls finances.




SOME FACTS

- HIV has a strong impact on women of **child-bearing age**;
- **6 in 10 of new infections among women are among those ages 13-39**;
- **76% of women receiving HIV medical care have children <18 in their homes**



OBSTACLES TO CLIENT REPRESENTATION

- Fear of breach of confidentiality
- Other priorities
 - Financial issues
 - Transportation issues
- Trust issues
- Denial issues



Qualities of a ideal future caregiver

- Existing relationship/bond with kids,
- long-term commitment to kids,
- ability to handle special needs of HIV+ child
- ability to care for the kids:
 - physically
 - emotionally
 - financially

Checklist of Planning Considerations

- Biological Parent Available?
Paternity established?
- Consider Terminating Parental Rights
- Health Care Power of Attorney for Minor
- General Power of Attorney for Minor
- Guardianship and Trustee Clauses in Will

Planning Considerations (cont'd)

- **Benefits available to minor**
 - Workfirst/TANF
 - SSI
 - SSD
 - Food Stamps
 - VA benefits
 - Child Support

Rights and Obligations of Absent Parent

Absent Parent Questionnaire

- Standby Guardian Intake Part II

Health Care Power of Attorney for Minor

- Custodial parent designates another adult
- to make health care decisions re: child

- “custodial parent” --parent having sole or joint custody of the child

Exceptions to Authority of Health Care Agent for Minor

- May not authorize the withholding or withdrawal of life sustaining procedures

Revocation--Health Care Power of Attorney

- When minor child reaches 18;
- Designating parent loses custody;
- Parent executes written revocation;
- Parent revokes “in any manner which communicates the intent to revoke.”

Standby Guardianship

Statute became effective 12/1/95;
N.C.G.S. §35A-1370 et. seq.

GOALS

- Facilitate Permanency Planning
- for children whose primary parent
- suffers from a
 - *“progressively chronic illness,”* or
 - *an “irreversibly fatal illness.”*

BENEFITS OF STANDBY GUARDIANSHIP

- Flexibility of having someone who can step in when parent is ill;
- Kids can stay with parent throughout illness;
- Peace of mind;
- Catalyst to discuss illness and future
- On-going interaction with guardian

Who may name a Standby guardian?

- Biological or adoptive parent
- Guardian of the person of child
- General Guardian of child

Designator Must Suffer From Either:

- A "Progressively Chronic Illness," or
- An "Irreversibly Fatal Illness."

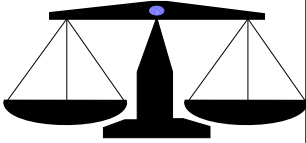
Two Methods to Initiate Standby Guardianship Process

- Parent as Petitioner
 - Parent petitions court for appointment of standby guardian
- Designated Guardian as Petitioner
 - Parent signs a written designation and guardian petitions court after triggering event

Triggering Events

- Death
- Incapacity
- Debilitation and Written Consent
- Written Consent

PARENT AS PETITIONER



- Parent files Petition
- With Clerk of Superior Court
- In county where child resides

Contents of Petition

- Name of petitioner, child, standby guardian and alternate standby guardian;
- State that authority becomes effective upon occurrence of triggering event;
- State that petitioner suffers from illness (which need not be identified).
- Identify any lawsuits which involve child

Notice to Absent Parent

- Notice of Hearing with time, date and place of hearing;
- Copy of Guardianship Petition
- must be served on non-petitioning biological parent.


Methods of Service

- Certified Mail, Return Receipt Requested
- Sheriff
- By Publication if due diligence cannot locate parent

Rights of Absent Parent


- File Written claim for custody
 - stays sbg proceeding for 30 days
- File a Custody case in District Court.
 - Sbg proceeding dismissed if custody case is filed within 30 days of written claim.





What Must be Proven at Hearing

- o Petitioner suffers from a progressively chronic illness or an irreversibly fatal illness, and
- o The best interests of the child would be met by appointing a standby guardian; and
- o The person named as standby guardian is fit to serve in that capacity.



If Successful, Clerk will sign

- o Order appointing Standby Guardian
- o Letters of Appointment




Triggering Events

Death
Incapacity
Debilitation and Consent
Consent



Designated Guardian as Petitioner

- starts with parent signing Written Designation.



Reasons Clients Choose Not to Proceed to Hearing

- Health
- Fears of notifying absent parent
- Qualms about plan
- Inability to Face Process



WRITTEN DESIGNATION

- Parent signs Written Designation and stops.

Within 90 days of Triggering Event


- Named Standby Guardian must file Petition with Clerk of Superior Court where child resides.
- Authority of guardian lapses if Petition not filed within 90 days

Petition Must:

- Attach copy of Written Designation;
- Attach copy of Evidence of Triggering Event;
- Contain statement re: lawsuits involving child;


Notice and Absent Parent's Rights

Same as discussed with Petition Method




Required Findings at Hearing

- That Petitioner was designated as standby guardian;
- That 1 of 4 Triggering Events has occurred;
- The best interests of the child will be served by appointment of standby guardian; and
- The standby guardian is fit to serve as guardian.



If Successful, Clerk will sign

- Order on Standby Guardian's Petition
- Letters of Appointment




Bond Requirement

- Can be waived by parent

RIGHTS/OBLIGATIONS OF ABSENT PARENTS

- Rights are not terminated
- Still have right to visitation;
- Still have right to file future custody actions;
- Still have obligation to pay child support
- Child may still inherit or collect benefits on absent parent's record.



Standby Guardian Checklist

In your materials
