

## TPRs/Adoptions for Children Under Article 10 Custody Orders - "Dale P. Terminations"

By Margaret A. Burt, Esq.

In 1994, the New York State Court of Appeals held that a child who was placed out of the home with a friend of the mother's under an Article 10 order could be the subject of a TPR petition filed by the agency. Here the child had been abandoned by the mother and the friend wished to adopt the child. The court ordered the agency to file an abandonment TPR and the agency argued that it could not do so as the child was not in foster care but only placed in the custody of the friend under the Article 10 supervision order. The Court found that moving the child from the direct placement to a certified foster home simply to justify the TPR was "unnecessarily circuitous" exaltation of form over substance and the court had the authority to order the TPR to be filed. **Matter of Dale P. 84 NY2d 72 (1994)**

Later that same year, the Third Department cited Dale P. and held that Chemung County Family court had authority to order DSS to file a permanent neglect petition where the child had been placed under the neglect dispositional order in the custody of friends under DSS supervision **Matter of Patricia HH. 613 NYS2d 276, 200 AD2d 115 (3<sup>rd</sup> Dept. 1994)**

In 2002, the Fourth Department again looked at this issue and indicated that Genesee County DSS had the right to bring a permanent neglect termination petition against a mother whose children had been in the custody of an aunt under DSS supervision. The court pointed out that the caseworker had told the mother that she could face a termination. **Matter of Hannah D. 292 Ad2d 867, 740 NYS2d 130 (4<sup>th</sup> Dept. 2002)**

Some counties do lots of Dale P. terminations, some do none and some will only do them if the Judge orders them. There is no legal mandate under ASFA to do them as the children are not in foster care. However, since Art. 10 placement orders can only be extended with perm hearings, a court could order DSS to file one. Most importantly, the county should consider doing one if that is what is in the child's best interests. Carefully consider the option of adoption vs an ongoing - Article 6 custody or guardianship order for the child. Issues to consider would include monies and benefits, including day care and PA under each as well as the finality of an adoption. Also remember that under SSL 384-b 3(a) the Dale P termination results in an order placing the child in the guardianship of the resource who then must file an adoption petition privately. Are they ready, willing and able (\$) to do so? The law goes on to say that if they do not file the adoption in 6 months then the court is to place the child with the DSS. Who will monitor that? Are you prepared to deal with that? Consider if you want to offer to do the homestudy - would help them with \$ issues and you could monitor the finalization of the adoption.