

The Intersection of FCA Art. 10 and Art. 6

**What are the custody options
for NRP and relatives in an
FCA Art. 10?**

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2009

When child has to be removed

- **Option 1 – the child resides at home with either of both parent(s) – consider orders of protection, supervision, services**
- **Option 2 – the child resides with “other” parent they had not been residing with – issues re non respondent parents**
- **Option 3 – the child resides with relatives or suitable persons - suboptions!**
- **Option 4 – the child resides in nonkin foster placement**

Must First Consider all parents

- **Who are they and where are they?**
- **Non adjudicated “fathers”**
- **What could make them suitable/safe?**
- **How long would that take?**
- **Rights of non-respondent parents to child**
 - **should they automatically get custody?**

What if no safe parent?

- **Relatives is next option – agency is to be looking for them asap – this is reasonable efforts, also they know 1017 is coming**
- **“Suitable persons” can also be considered along with relatives – “fictive kin”
“pseudo-relatives” – godparents, best friends, neighbors - agency needs permission or court order to talk to non-relatives**

Before Court

- **Conduct immediate investigation to locate any non-respondent parent or relatives of child including all grandparents**
- **18 NYCRR 430.10(b)(2) requires that districts attempt prior to placement in foster care to locate adequate alternative living arrangements with a relative or family friend to avoid foster care**
- **This is consistent with IV-E requirements**
- **BUT must have parent's consent**

Legal mandate to look to relatives–FCA 1017

- **Where child now in court action must be removed or placed in Article 10 Child Protective and Voluntary Placement Agreement**
- **Look for Non-Respondent Parents, relatives including all grandparents – OCFS requires local DSS to provide booklet of options**
- **Written Notice of pendency to NRP**

FCA 1017:

Explore all non respondent parents or suitable relatives identified as potential placement resources by

- **any parent, also any child over the age of five and:**
 - **inform them of the pendency of the proceeding and their opportunity to become Foster Parents or to provide free care**
 - **or for seeking custody or care of the child and that the child may be eligible for public assistance**

Should LG, defense atty also ID possible resources?

OCFS Booklet to relatives to explain options

Fostering Connections to Success and Increasing Adoptions Act of 2008

- **Notification of Relatives**
- **Within 30 days after the child has been removed from parental custody, the state shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child. The notice will be sent to any other adult relatives suggested by the parents, subject to exceptions due to domestic violence.**

**Agency is to inform them that child
may be adopted if reunification
efforts with parent fail**

- **Applies also to possible
Voluntary Placements**
- **No complete definition of who
is relative**

**Court should reinforce this
information to relatives**

Emergency Regulations on Relative Notifications: 18 NYCRR 430.11(c) (4)

Within 30 days after the removal .., or earlier where directed by the court, the social services district must exercise due diligence in identifying all of the child's grandparents and other adult relatives, including adult relatives suggested by the child's parent or parents and, with the exception of grandparents and/or other identified relatives with a history of family or domestic violence.

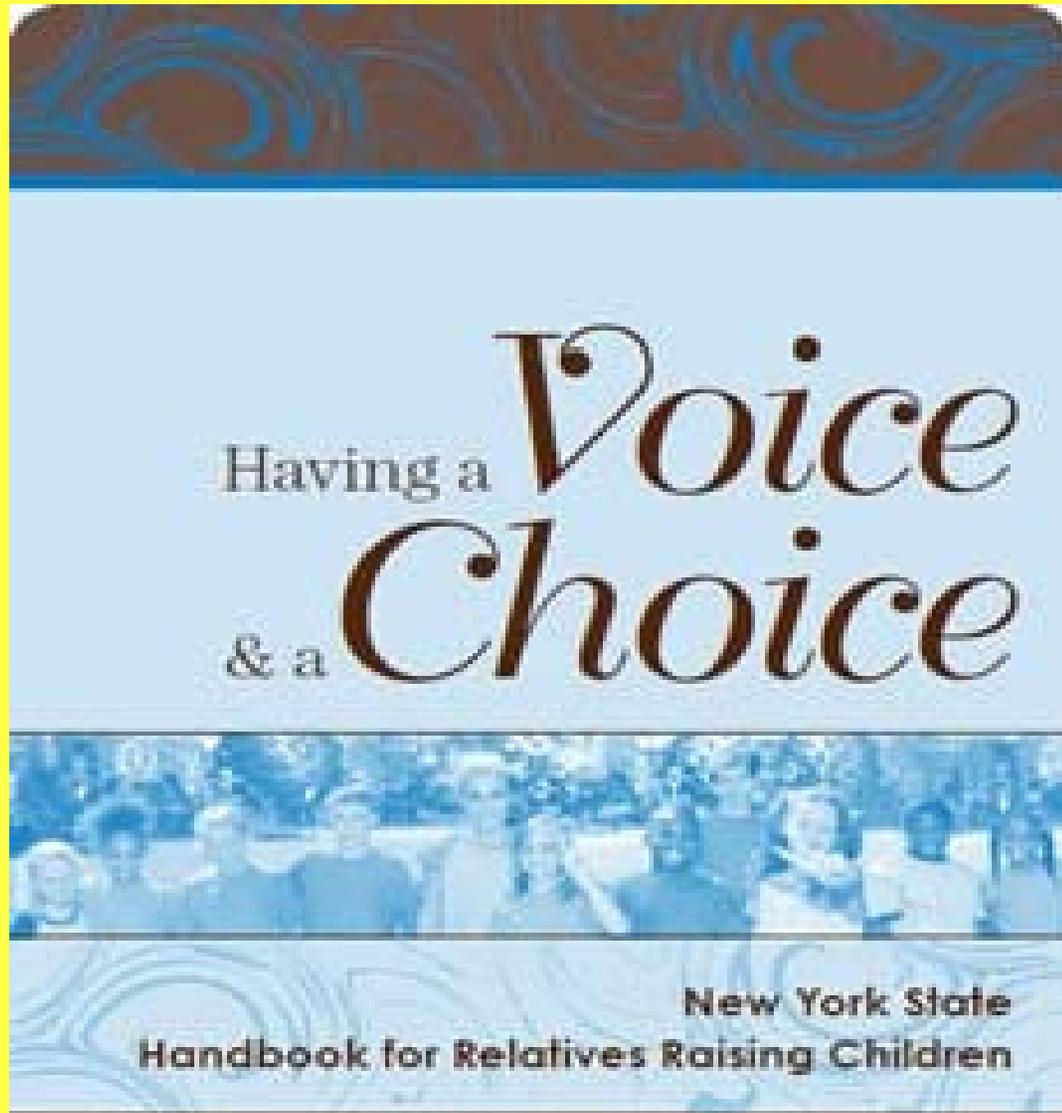
The social services district must provide the child's grandparents and other identified relatives with notification that the child has been or is being removed from the child's parents and which explains the options under which the grandparents or other relatives may provide care of the child, either through Foster care or direct legal custody or guardianship, and that

Any options that may be lost by the failure to respond to such notification in a timely manner.

The identification and notification efforts made in accordance with the paragraph must be recorded in the child's uniform case record.

04-OCFS -ADM-09

- ***Handbook for Relatives Raising Children***
- **Addresses OCFS requirement that local DSS distribute the handbook to “relatives considering caring for children who have been protectively removed as well as in certain other circumstances.”**
- **Implements a requirement of “The Fostering Connections to Success and Adoptions Act”: Section 103 Notice requirements**



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How do we know who is violent?

- **In custody cases Family Court is required to review as to parties - FCA 651 e:**
- **Article Ten actions and decisions,**
- **Order of Protection registry,**
- **Warrant Registry re Orders of Protection.**
- **Sexual Offender Registry**
- **The results are supposed to be shared with counsel in custody cases, but does this apply to Article Ten cases or counsel?**

- **CPS does not have access to OP data base**
- and CPS access to criminal records is limited to persons in the home or parents
- CPS should try to get releases!
- **Does DSS have to see every relative in person? Do they all get the book?**
- **What about relatives who are not interested or disabled or in nursing homes?**

18 N.Y. Codes, Rules, and Regulations § 443.7

Regulation is optional

- **Agency procedures for certifying or approving potential “emergency foster homes” and “emergency relative foster homes”**
- **Allowable Circumstances:**
 - **Child removed under 1021, 1022, 1024, or 1027 or child “removed and placed into to foster care under Article 3, 7, or 10 or SSL 384-a.**
 - **Child currently placed in foster care setting needs to be placed in a foster home—must document the need to approve or certify on emergency basis.**

18 N.Y. Codes, Rules, and Regulations § 443.7

- **Eligible relative or non-relative identified by child, parent(s), stepparent(s), court, (anyone)**
- **Eligible Non-relative may include but not limited to:**
 - **Godparent, neighbor, family friend, or “adult with a positive relationship with the child”**
 - **Relative within 2nd or 3rd Degree of parent or stepparent**

Some Issues

- If placed as a foster child, 10 day removal notice unless an emergency.**
- If court ordered DSS placement with relative to be a foster parent and if home is found to be unqualified for approval, the commissioner shall report to the court forthwith.**
- Can the Family Court direct DSS not to remove child from a particular home?**
- Can the Family Court direct DSS to approve a relative as a foster parent?**

§1028-a. Hearing to become a kinship foster parent.

- **1. Applicant is a Relative within 3rd degree**
- **2. Child on temporary removal status or placed in non-relative foster care**
- **3. Wants to become a foster parent**
- **4. DSS has refused to place child with the relative although they qualify under the regulations**
- **5. Respondent parent(s) consent to relative becoming foster parents for the child**
- **6. the application is brought within six months from the date the relative received 1017 notice that the child was being removed and no later than 12 months after the removal**
- **7. They did not previously “refuse”**

FCA 1028-a continued

- **“The court shall give due consideration to such application and shall make the determination as to whether the child should be placed in kinship foster care with the relative based on the best interests of the child.”**
- **What is the reason they do not want the child placed with relative as a foster parent?**

Notice of Pendency to Non Respondent Parent (FCA 1035 (d))

- **Court MAY order an investigation whether a petition should be filed against N R Parent**
- **If child removed, order investigation on whether NRP would be a suitable custodian**
- **If child placed and remains in foster care 15 out of 22 months agency may be required to seek a TPR even if parent was not named as a respondent in Article Ten case**
- **So – is it better for a NRP to appear as an interested party intervenor or should file an Art. 6 for custody?**

Notice of Pendency to Non Respondent Parent (FCA 1035 (d))

- **May participate in all fact finding and dispositional hearings**
- **May go to court to seek temporary or permanent custody or enforce visitation**
- **Serve with copy of summons and the petition**
- **Who is a “father” in out of wedlock situation?**

DSS Obligations as to fathers

- **Obligation to try to find, determine relationship with mother and children.
18 NYCRR 421.4 & 5**
- **Establishment of Paternity**
- **Plan with father if child is in foster care**
- **May be a way to keep children out of foster care**
- **What about “putative grandparents”?**

Intervention by relatives

- **Child's adult sibling, grandparent, aunt, or uncle may seek to "intervene" if parent consents.**
- **The allegedly abusive or neglecting parent must consent to intervention as per FCA 1035(f) – kinda weird.....**
- **Do relatives really "intervene" anymore now that we have 1017?**
- **Do relatives have a "right" to a 1017 hearing?**

Options for Placement

- **There are two times court is considering options: when removal is first argued as temporary option and at dispo or a perm hearing as a perm option for the child**
- **Of course could be motion for mod at any time**
- **Some options are better as temp ones and some as perm ones**
- **Some segue from one to others better**

Casual- NO COURT

- **Short term**
- **Parents' plan**
- **Parents' agreement**
- **Caseworker assessment of safety**
- **No court order - sometimes DSS brings to court later - what if they do not?**
- **Does not change custody**

GOL § 5-1551- 5-1555

- **Parents can sign a “designation” to allow someone to act as a parent for 6 months or less – education and medical decisions**
- **No court needed**
- **Should change school district – may be a hassle**
- **Parent can revoke – can also supersede any decision**
- **Parent can specify what action is covered**

Art. 6 Custody - V docket

- **Relative must file a petition, can do it at any time while Art. 10 pending – but more common as a dispo or in a perm**
- **DSS would be a party if child in care**
- **Little or no services or supervision as court cannot order DSS to provide any services or supervision**
- **Money may be a problem**
- **Non parent custodian - education, health insurance - FCA § 6.37**

Art. 6

- **Art. 6 is combined into dispo or perm – if granted “ends” any Art. 10 orders -**
- **Can be an adjudication re the Art. 10 then a dispo that just reflects the granting of Art. 6**
- **Can “load” the Art. 6 order with o/ps and requirements but cannot order DSS to do anything**
- **Court must find it is in child’s best interests, safety would not be jeopardized and is safe and permanent – should not be**

Art. 6

- **“Loaded” orders could include requirements for a return**
- **Could stip a finding of extraordinary circumstances**
- **Could do an o/p that is better than you can get in an Art. 10!**
- **Could order custodian to apply for preventive**

Art. 6

- **Parent could modify without knowledge of agency or without going to court – order can be made to the contrary**
- **Change of circumstances required to modify in court**
- **Not foster care...so ASFA not applicable regarding permanency hearings or TPR mandate**
- **No adoption possible without consent, abandonment, death of parents or mental illness/retardation**

Art. 6

- **No oversight by agency - cannot order any supervision or services but could apply for preventive**
- **It really is permanency - court should spell out specifics of custody - must be “safe” and seen as permanent – there is no “custody return depot”**
- **Problem with subsequent voluntary placement**

Art. 6

- **Court is required to check DV registry, DV warrants, sex offender registry and any Art. 10 history**
- **Court is not – yet – required to check criminal records or SCR records**

Art. 6

- **Article 6 at a dispo or perm hearing means the end of any efforts to reunify to parent – it means this is perm placement for child**
- **Cannot give Art. 6 of child in foster care unless DSS also involved as party**
- **Can order no return of child without return to court or mandate notice to DSS and child's attorney who will be parties**

Art. 6

- **Can grant as a dispo or at perm hearing if all parties agree and consent – including any foster parent who has had child over a year**
- **If parent does not agree must be hearing with extraordinary circumstances and then best interests**
- **If anyone else does not agree, including foster parent of over a year – hearing on best interests**

**Art. 10 custody - also called-
N docket, direct placement,
paroled to and 1017 placement**

- **Court must order or do it in an O/P**
- **Services and supervision ordered – including custodian must consent to jurisdiction – bring them to court!**
- **Can order custodian to obey court's orders re access, visits, cw interaction**

Art 10 Custody

- **Agency gives supervision and services but no direct money**
- **Will be ongoing perm hearings so not a perm option in and of itself – must achieve another permanency**
- **Possible Dale P TPR**
- **But not foster care so not a mandatory TPR**

Matter of Dale P

- **Child directly placed with “suitable person” or relative**
- **The child is considered in care of an “authorized agency” for purposes of filing a TPR - Dale P. 84 NY 2d 72(1994)**
- **Adoption is then done as private adoption**
- **Must file to adopt within 6 months or could be placed in foster care**
- **Court may want to keep this on the calendar**

Art. 10 to an Art. 6 segue

- **Court order**
- **Good device for permanency planning**
- **Court cannot do an Art. 6 and an Art. 10 at the same time – meaning cannot order supervision or services when doing an Art. 6 order but can segue as a perm option**

Guardianship

- **Court order under Family Court or Surrogate's Court**
- **Relative must file petition**
- **Non-parent re schools, medical insurance FCA§ 657**
- **May be lack of services – can't order DSS to supervise or provide services**
- **Can go to 21 if child agrees**

Guardianship

- **SCR is checked**
- **Fee if done in Surrogate Court**
- **Lots of confusion and local culture issues on Guardianship vs Custody**

Guardianship

- **May be a problem with money**
- **Permitted also as a permanency goal**
- **Less of a problem with subsequent voluntary placement**

Foster Parent or “Kinship Care”

- **Court order--Article Ten
or Voluntary must have been filed**
- **Services and supervision ordered**
- **Money to relatives is better**
- **DSS has custody (also called
remand downstate)**
- **Court can specify particular home
if certified home**

Foster Parents

- **Process can be burdensome and take time**
- **Certification and training**
- **Emergency approval**

Foster Parent

- **IV-E Six Month Rule**
- **ASFA Permanency Hearing required**
- **TPR and adoption possible**
- **Subsidized adoption possible**
- **Exception to the TPR mandate**

Permanent Guardian

FCA §661(b)

- **Child who is in foster care and freed for adoption or orphaned**
- **“Best interests” and “not in conflict” with FCA intent**
- **Can make all parental decisions – including to consent to an adoption**
- **Can be brought by anyone on behalf of the child – must be agency assessment and recommendation**

Permanent Guardian

- **If child is over 14 court will consider their wishes**
- **Good alternative to adoption or long term foster care where child does not want to be adopted**
- **No foster care or adoption subsidy money!**
- **Can continue to age 21 with child's consent**

Out of State Relatives

- **Not a lot of good options here**
- **Not good early on and if want to reunite unless parent willing to move to relative**
- **Not good if later due to foster parent not having rights**
- **Takes forever due to ICPC altho could be a Reg 7 one**

Pop-Up Relatives

- **Proper notification reduces likelihood**
- **Proper notification make relative less sympathetic**
- **Foster parents who have had child for one year and want to adopt can trump relatives—relatives must be told**
- **FCA 1017 – get results on the record!**