Permanency Options Comparison Chart

This chart provides information about various permanency options for adjudicated neglected children in the District of Columbia (*i.e.*, children who are the subjects of neglect cases pursuant to D.C. Code § 16-2301 *et seq*.). As a result, some of the information is only applicable to children in the neglect system, although some information is relevant to any child.

It is intended as a general overview of relevant statutes, regulations, and cases and should not be used as a substitute for legal research and a fact-specific analysis. We try to provide accurate and up-to-date legal information, but we make no claims, promises, or guarantees about the correctness, completeness, or adequacy of the information contained in the chart.

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	Adoption	**Guardianship (*Note*: this category refers only to guardianships filed pursuant to D.C. Code §16-2381 *et seq.*)**	**Custody *(Note: this category refers to third party actions under D.C. Code § 16-831.01 et seq.)***	**Another Planned Permanent Living Arrangement (APPLA)**
What is it?	A final decree of adoption establishes the relationship of parent and child between the adopter and the adoptee for all purposes as if the adoptee were born to the adopter. *See* D.C. Code § 16-312(a) (2001).	Legal guardianship refers to the authority and duty to make long-range decisions concerning the child's life, including education, discipline, medical care and other matters of major significance. *See* D.C. Code § 16-2389(a) (Supp. 2005).	Legal custody refers to the authority and duty to make long-range decisions concerning the child's life, including education, discipline, medical care and other matters of major significance. *See* D.C. Code §§ 16-831.01, 16-831.10 (Supp. 2008); *cf.* D.C. Code § 16-914(a)(1)(B) (Supp. 2005); *Ysla v. Lopez*, 684 A.2d 775, 777-78 (D.C. 1996).	Planned permanent living arrangement is one of several permanency goals that can be set for a child who has been adjudicated neglected. Permanent planned living arrangements include continued placement through the neglect case with, *e.g.*, a kinship or other foster parent or in independent living. *See* D.C. Code § 16-2323(c)(4) (Supp. 2005).

Am I eligible to seek this option?	Anyone may petition to become an adoptive parent. D.C. Code §§ 16-301, 302 (2001); *see also In re M.M.D.*, 662 A2d 837 (D.C. 1995). Before a final order can be entered, the child must have resided with the adoptive parent for six months. *See* D.C. Code § 16-309(c).	Anyone may file to become a legal guardian. *See* D.C. Code § 16-2384(a). Before a final order can be entered, the child must have resided with the guardian for six months. *See* D.C. Code § 16-2383(a).	Non-parents have standing to file for custody under the circumstances set forth in D.C. Code §§ 16-831.02, 16-831.03 (Supp. 2008).	Federal and D.C. law contains preferences for adoption, custody, and guardianship as permanency goals for children. However, under certain circumstances, the court in the neglect case may determine that a goal of planned permanent living arrangement is in the child's best interest. *See* D.C. Code § 16-2323(c)(4) (Supp. 2005). In 2014, federal law prohibited the goal of APPLA for children under 16. *See* 42 U.S.C.A. § 675 as amended by Preventing Sex Trafficking and Strengthening Families Act, P.L. 113-183 § 112.
What is the legal standard?	Rebuttal of fit parent presumption/waiver of parental consent (if no consent given) and best interest of child, guided by the factors set forth in D.C. Code § 16-2353(b). *See* D.C. Code §§ 16-304, 16-309 (2001); Super. Ct. Adopt. R. 43; *In re D.R.M.*, 570 A.2d 796, 805 (D.C. 1990);	The permanent guardianship is in the child's best interests; adoption, termination of parental rights, or return to parent is not appropriate for the child; and the proposed permanent guardian is suitable and able to provide a safe and permanent home for the child. *See* D.C. Code § 16-2383(c)	Rebuttal of presumption in favor of parental custody and in the best interest of child, guided by the factors set forth in D.C. Code §§ 16-831.07 and 16-831.08 *et seq.* (Supp. 2008). *See* D.C. Code §§ 16-831.05, 16.831.06.	Compelling circumstances. *See* D.C. Code § 16-2323(c)(4) (Supp. 2005).

	Petition of W.D., 988 A.2d 456 (D.C. 2010); *In re S.L.G.*, 110 A.3d 1275 (D.C. 2015).	(2001). "Best interests" guided by factors set forth in D.C. Code § 16-2383(d) (2001).		
What rights will the birth parents retain?	It depends. An adoption decree terminates parental rights. However, under the Adoption Reform Amendment Act of 2010, subject to Court approval, a pre-adoptive parent and a birth parent (or other birth relative) may enter into a judicially enforceable post-adoption contact agreement. Absent such agreement, biological parents retain no right to have any contact with adopted children, although the adoptive parents may allow the child to see whomever they deem appropriate. *See* D.C. Code §§ 4-361, 16-312.	Parental rights have not been permanently terminated and are intact; however, the guardian has the right to make most major decisions. *See* D.C. Code § 16-2389. The parent retains the opportunity to demonstrate parental fitness and to seek modification and custody. At any time, the parents can move the court to change the provisions of the guardianship order. *See* D.C. Code §§ 16-2390, 16-2395(a) (Supp. 2005).	Parental rights have not been permanently terminated and are intact; however, the custodian has the right to make most major decisions. *See* D.C. Code §§ 16-831.01, 16-831.10. The parent retains the opportunity to demonstrate parental fitness and to seek modification and custody. At any time, the parents can move the court to change the provisions of the custody order. *See* D.C. Code § 16-831.11 (Supp. 2008).	Parental rights have not been permanently terminated and are intact. The parent retains certain "residual rights" and also the opportunity to demonstrate parental fitness and to seek reunification. If determined by the court to be in the child's best interest, the court can return the child to his/her parent. *See* D.C. Code §§ 16-2301(21), 16-2301(22), 16-2323 (Supp. 2005).
What rights and responsibilities will I have?	The adoptive parents have the same rights and responsibilities to the child as would a birth parent. *See* D.C. Code § 16-312(a) (2001).	The guardian has legal authority to make most major decisions concerning the child's life. *See* D.C. Code § 16-2389(a) (Supp. 2005).	The custodian has legal authority to make most major decisions concerning the child's life but the specific extent is unclear. *See* D.C. Code § 16-831.01 *et seq.* (Supp. 2008); *cf.* D.C. Code § 16-914 (Supp. 2005); *Ysla v. Lopez*, 684 A.2d 775 (D.C. 1996).	Children in CFSA custody are under the jurisdiction of the D.C. Superior Court, which has ultimate decision-making authority in connection with most issues. CFSA and the foster parent may have decision-making authority

				in the first instance. The parent retains certain "residual rights." *See, e.g.*, D.C. Code §§ 16-2301(22), 16-2320.
Does the birth parent have the right to visit?	Possibly. Under the Adoption Reform Amendment Act, a pre-adoptive parent and a birth parent may enter into a judicially enforceable post-adoption contact agreement. Absent such agreement, biological parent retain no right to visitation/contact, although the adoptive parent may allow the child to see whomever they deem appropriate. *See* D.C. Code §§ 4-361, 16-312.	The guardianship order may specify the nature and frequency of visitation between the child and the birth parents. *See* D.C. Code §16-2389 (c)(2) and (d). In the absence of a court order, the guardian may decide whether to allow the parent to visit. *See* D.C. Code § 16-2389(a)(9).	The custody order may specify the nature and frequency of visitation between the child and the birth parents. In the absence of a court order, the custodian may decide whether to allow the parent to visit. D.C. Code §16-831.10.	The court determines the nature and frequency of visitation. *See* Super. Ct. Neg. R. 15 (b) (4).
What happens to the neglect case?	Customarily, when the adoption is finalized, the neglect case is closed by the court *sua sponte* or upon motion of a party.	The neglect case will remain open after the guardianship order is entered unless, upon motion by a party, the court finds that closure is in the child's best interest. *See* D.C. Code §§ 16-2389(e)-(f), 16-2395 (Supp. 2005). In practice, the court typically closes the neglect case *sua sponte* upon the granting of a guardianship order.	Customarily, once a custody order is entered, the neglect case is closed by the court *sua sponte* or upon motion of a party.	The neglect case remains open in order to maintain the child's custodial status and can remain open until the child is 21. When the court is requested to close the case prior to the child reaching 21 years of age, the court must first find that commitment is no longer necessary to

		If the case remains open after the guardianship order, it is inactive and periodic review hearings are not held. *See* D.C. Code § 16-2389(e) (Supp. 2005). The case can be "reactivated" as a result of a motion to modify or terminate the guardianship. The court can modify the guardianship; the court can also hold a dispositional hearing pursuant to D.C. Code § 16-2320 and place the child in CFSA custody (if the child is under 18).		safeguard the child's welfare. *See* D.C. Code § 16-2322(f) (Supp. 2005); *In re A.R.*, 950 A.2d 667 (D.C. 2008).
Can this custody arrangement be modified in the future?	No. A final decree of adoption cannot be modified, and it cannot be challenged unless there is a procedural or jurisdictional defect and the motion is filed within one year following the decree. *See* D.C. Code § 16-310 (2001). A final decree may be vacated under certain circumstances after one year. *See In re M.N.M.*, 605 A.2d 921 (D.C. 1992).	Yes. If there is a substantial and material change in the child's circumstances and modification is in the child's best interest. *See* D.C. Code §§ 16-2390, 16-2395(d) (Supp. 2005). A child who exits foster care to guardianship may not reenter foster care after age 18. D.C. Code § 16-2390(b) (Supp. 2005) (as amended by the Adoption Reform Amendment Act of 2010).	Yes. If there is a substantial and material change in circumstances and modification is in the best interest of the child. *See* D.C. Code § 16-831.11 (Supp. 2008); *cf.* D.C. Code § 16-914(f)(1) (Supp. 2005).	Yes. At a permanency hearing, the Court may determine that permanent planned living arrangement is not in the child's best interest and set a different permanency goal. *See* D.C. Code § 16-2323(c)(4) (Supp. 2005). In addition, regardless of the goal that has been set, a person may file for adoption, custody, or guardianship of the child.
What cash benefits can the child receive?	A special needs child may receive an adoption subsidy until age 21. *See* D.C. Code § 4-301(e) (2001)	Guardianship subsidy is available if: (1) the child has been adjudicated neglected, (2) the child is committed to the	A custodian may be eligible to receive Temporary Assistance for Needy Families (TANF), which provides cash benefits	Foster care payments continue until the neglect case closes (the case may

	(as amended by the Adoption Reform Amendment Act of 2010). CFSA can receive Title IV-E funding for adoption subsidies for eligible children until age 18. Title IV-E is a federally-funded program under the Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272 (as amended). Title IV-E dollars will be available until age 21 if the state determines that the child has a mental or physical handicap that warrants the continuation of assistance, or if the child was adopted after turning 16 and works half-time, is in school of any sort, or is too disabled to do either. *See* 42 U.S.C.A. § 673(a)(4) (West 2003). Effective Oct. 1, 2010, CFSA may also receive funding until the child turns 21 if the child attained 16 years of age before the subsidy agreement became effective	legal custody of CFSA, and (3) a subsidy payment agreement is entered into by CFSA and the permanent guardian. D.C. Code § 16-2399 (b) (Supp. 2005) (as amended by the Adoption Reform Amendment Act of 2010). The child must: (1) be adjudicated neglected and in the legal custody of CFSA; (2) have resided with a *kinship caregiver for at least six months; and (3) either be a member of a sibling group, difficult to place for adoption because of racial or ethnic background or mental or physical disability, at least two years old, or not likely to be placed in any other permanent placement. Moreover, (4) CFSA must have determined that the child's best interest is not met by the permanency plan of reunification or adoption; (5) CFSA must have determined that guardianship with the caregiver is in the child's best interests; and (6) the applicant has a financial need for a permanent guardianship	to children who are deprived of parental financial support. The child must be living with a relative as defined by the statute. TANF is a means-based program; the income of the caretaker is not counted if he/she is not seeking to be a part of the grant unit. See 42 U.S.C.A. § 601 *et seq*. (West 2003) and D.C. Code § 4-205.01 *et seq*. (2001) for eligibility requirements. If the custodian is a grandparent (the term grandparent is defined to include great-grandparents, great-aunts, and great-uncles), the custodian may be eligible for a subsidy through the "Grandparent Caregivers Program Establishment Act of 2005" as amended in 2007. To be eligible, (1) the caregiver must have been the child's primary caregiver for the most recent six months and have resided with the child for at least the previous six months; (2) the parent cannot have resided in the home for the last six months except under	remain open until child's 21st birthday).

	and the child is either (1) enrolled in school; (2) employed 80 hours per month; or (3) is incapable of doing either 1 or 2 due to a medical condition. *Id.* In addition to meeting the Title IV-E eligibility requirements, the child must have special needs as defined by the state. CFSA considers a "special needs child" to be based on one or more of the following conditions: (a) child has a chronic medically diagnosed disability that substantially limits one or more major life activities, or requires professional treatment, or assistance in self-care; OR (b) child has been diagnosed by a qualified mental health professional to have a psychiatric condition which impairs the child's mental, intellectual, or social functioning, and for which the child requires professional services; OR	subsidy. *See* 29 D.C. Mun. Regs. § 6101.1 (Weil 2001). *Note that the Adoption Reform Amendment Act of 2010 has repealed the requirement that the permanent guardian be a "kinship caregiver;" and thus the existing regulations conflict with the law. The amount of the subsidy used to be based on the guardian's federal adjusted gross income and on the amount of the foster care payment paid for the child's support in foster care. However, CFSA has now changed its policy to enable the guardian to receive the full guardianship subsidy regardless of income; however the regulations have not been updated to reflect this change. *See* 29 D.C. Mun. Regs. § 6103.2 (Weil 2001). The subsidy will continue until the child's 21st birthday (for guardianships finalized after May 7, 2010). *See* D.C. Code § 16-2399 (as amended by the Adoption Reform Amendment	certain specified circumstances; (3) the caregiver, and all adults living in the home, must submit to a criminal background check and a child protection registry check; (4) the household income must be below 200% of the federally defined poverty level; (5) the caregiver must reside in the District; (6) the caregiver must apply for TANF benefits for the child; and (7) the caregiver must comply with any implementing regulations. Legal custody is not required. The subsidy is provided on a first come, first served basis subject to the availability of funds (which are limited). *See* D.C. Code § 4-251.01 *et seq*.; 29 D.C. Mun. Regs. § 6801 *et. seq*. If the child is not a relative, the custodian may be eligible for the General Assistance for Children (GAC) program. GAC is only available in D.C. See D.C. Code § 4-205.05a (2001) for eligibility requirements, which are similar to TANF.	

	(c) child has been determined to be mentally disabled by a qualified medical professional; OR (d) child has been diagnosed by a qualified mental health professional to have behavioral or emotional disorder characterized by situationally inappropriate behavior which deviates substantially from behavior appropriate to the child's age and interferes significantly with the child's intellectual, social, and personal adjustment; OR (e) child meets all medical or disability requirements of Title XVI of the Social Security Act with respect to eligibility for supplemental security income benefits; OR (f) child is a member of a sibling group, in which the siblings should be placed together and the adoptions must be finalized at the same time; OR (g) child is of an age or has an ethnic or racial	Act of 2010). *See also* http://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/Program%20-%20Permanent%20Guardianship%20Subsidy%20%28FINAL%202015%29_0.pdf If the child does not qualify for a guardianship subsidy, he or she may be eligible to receive Temporary Assistance for Needy Families (TANF). TANF is a means-based program; the income of the guardian is not counted if he or she is not seeking to be a part of the grant unit. *See* D.C. Code § 4-205.01 *et seq*. (2001) for eligibility requirements.		

	background which presents a barrier to adoption; OR (h) child has been legally free for adoption for six (6) months or more and an adoptive placement has not been found. http://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/Program%20-%20Adoption%20Subsidy%20%28final%29%20rev%205-3-2011%28H%29_0.pdf Typically, the subsidy rate is the same as the child's foster care board rate. If the child does not qualify for an adoption subsidy, he or she may be eligible to receive Temporary Assistance for Needy Families (TANF). TANF is a means-based program; the income of the adoptive parent is considered. See D.C. Code § 4-205.01 *et seq.* (2001) for eligibility requirements.			
Can the child receive Medicaid?	Yes. An adopted child with Title IV-E subsidy is automatically eligible to	Yes. The child is categorically eligible for Medicaid if they receive a Title IV-E eligible	Probably, in most situations. The child is subject to general Medicaid eligibility	Yes. A child in foster care receives D.C. Medicaid or may, under certain

	receive D.C. Medicaid or Medicaid in the state of residence. The adoptive parent's income is not counted. *See* 42 U.S.C.A. § 671 (West Supp. 2005); 42 U.S.C.A. § 1396a (West 2003). A child without the Title IV-E subsidy is subject to general Medicaid eligibility requirements. Medicaid is a means-based program and the adoptive parent's income is counted in determining eligibility. See 29 D.C. Mun. Regs. § 901 (Weil 2003) for income requirements. Specific eligibility requirements for non-subsidy-based Medicaid may vary according to jurisdiction, as this federal program is administered by each state. To qualify for Medicaid in D.C. you must be categorically eligible and have low income and resources. Some eligibility groups are: the medically	guardianship subsidy (if the guardian is kin to the child and the child meets all other IV-E requirements). The District has also promised via subsidy agreement to provide Medicaid to non-IV-E eligible children. Otherwise, the child is subject to general Medicaid eligibility requirements, and is likely to be eligible. Medicaid is a means-based program and the guardian's income is not counted in determining eligibility. *See* 29 D.C. Mun. Regs. § 901 (Weil 2003) for income requirements. Specific eligibility requirements for Medicaid may vary according to jurisdiction, as this federal program is administered by each state. To qualify for Medicaid in D.C. you must be categorically eligible and have low income and resources. Some eligibility categories are: the medically disabled, children under the age of 19, or the medically needy. *See* 42 U.S.C.A. § 1396a (West Supp. 2005); D.C. Code § 1-307.02 (2001).	requirements. Medicaid is a means-based program and the custodian's income is not counted in determining eligibility. *See* 29 D.C. Mun. Regs. § 901 (Weil 2003) for income requirements. Specific eligibility requirements for Medicaid may vary according to jurisdiction, as this federal program is administered by each state. To qualify for Medicaid in D.C. you must be categorically eligible and have low income and resources. Some eligibility categories are: the medically disabled, children under the age of 19, or the medically needy. *See* 42 U.S.C.A. § 1396a (West Supp. 2005); D.C. Code § 1-307.02 (2001).	circumstances, be eligible for Medicaid in the state of residence. Effective Jan. 1, 2014, former foster care youth who have spent more than 6 months in care and leave care after age 21 can receive Medicaid coverage until age 26. *See* 42 U.S.C.A. § 1396a as amended by Health Care Reform Act, P.L. 111-148, §§ 2004, 10201.

	disabled, children under the age of 19, or the medically needy. *See* 42 U.S.C.A. § 1396a (West Supp. 2005); D.C. Code § 1-307.02 (2001).			
Could the child receive Supplemental Security Income (SSI) benefits (if the child is otherwise eligible based on physical or mental handicap)?	Probably not. Even if the child was receiving SSI prior to the final decree of adoption, SSI is a means-based program and the adoptive parent's income is counted in determining eligibility. Many adoptive families' income will be over the limit to receive SSI for the adoptee. If the child is eligible, SSI benefits will be reduced based on any adoption subsidy being received. See 42 U.S.C.A. § 1381 *et seq*. (West 2003) for eligibility requirements.	Probably, in most situations. SSI is a means-based program but the caretaker's income is not counted in determining eligibility. See 42 U.S.C.A. § 1381 *et seq*. (West 2003) for eligibility requirements and 42 U.S.C.A. § 1382a *et seq*. (West Supp. 2005) for a list of excluded income. A child who qualifies for SSI could receive SSI benefits as well as guardianship subsidy. If the child is eligible, SSI benefits will be reduced based on the guardianship subsidy. *See* 42 U.S.C.A. § 1382a *et seq*. (West Supp. 2005) for a list of excluded income.	Probably, in most situations. SSI is a means-based program but the caretaker's income is not counted when determining the eligibility of a child for SSI benefits. See 42 U.S.C.A. § 1381 *et seq*. (West 2003) for eligibility requirements and 42 U.S.C.A. § 1382a *et seq*. (West Supp. 2005) for a list of excluded income.	Yes. SSI is a means-based program and the foster parent's income is not counted when determining the eligibility of a child for SSI benefits. See 42 U.S.C.A. § 1381 *et seq*. (West 2003) for eligibility requirements and 42 U.S.C.A. § 1382a *et seq*. (West Supp. 2005) for a list of excluded income. CFSA customarily serves as the representative payee for a foster child. CFSA may be entitled to use at least some of a child's SSI benefits to pay for the child's foster care expenses. *See Wash. State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371 (2003).
Can the child receive Social	Probably not. Subject to some exceptions (generally relating to time of	Yes. The child is eligible to receive benefits through the birth parents, if the birth parents	Yes. The child is eligible to receive benefits through the birth parents if the birth	Yes. The child is eligible to receive benefits through the birth parents if the

Security survivors' benefits from his/her birth parent?	application and time of adoption), the definition of an eligible child rests on whether, under state law, the child has the right to inherit from the insured; under D.C. law, adoption cuts off inheritance rights from the birth parent. *See* 42 U.S.C.A. §§ 402, 416 (West Supp. 2005) (for eligibility requirements); 20 C.F.R. §§ 404.355, 404.361; D.C. Code § 16-312. The adopted child is probably eligible to receive benefits under the adoptive parent's Social Security work quarters if the adoptive parent dies.	have enough Social Security vested quarters. The child would not be eligible to receive survivors' benefits from the guardian's work quarters. *See* 42 U.S.C.A. §§ 402, 416 (West Supp. 2005) (for eligibility requirements); 20 C.F.R. §§ 404.355, 404.361.	parents have enough Social Security vested quarters. The child would not be eligible to receive survivors' benefits from the custodian's work quarters. *See* 42 U.S.C.A. §§ 402, 416 (West Supp. 2005) (for eligibility requirements); 20 C.F.R. §§ 404.355, 404.361.	birth parents have enough Social Security vested quarters. *See* 42 U.S.C.A. §§ 402, 416 (West Supp. 2005) (for eligibility requirements); 20 C.F.R. §§ 404.355, 404.361.
Can the child receive daycare services?	Daycare expenses are not covered by the adoption subsidy. Funding may be available through Title XX of the Social Security Act. Funds are administered through a means-based program and the adoptive parent's income is counted. Service availability may be limited due to financial	Daycare expenses are not covered by the guardianship subsidy. Funding may be available through Title XX of the Social Security Act. Funds are administered through a means-based program. Service availability may be limited due to financial constraints. *See* 42 U.S.C.A. § 1397 *et seq*. (West 2003).	Funds are available through Title XX of the Social Security Act. Funding may be administered through a means-based program. Service availability may be limited due to financial constraints. *See* 42 U.S.C.A. § 1397 *et seq*. (West 2003).	CFSA is usually willing, or directed by the court, to provide necessary daycare services. CFSA will typically pay up to a certain rate per week to a licensed daycare provider of the caretaker's choice.

	constraints. *See* 42 U.S.C.A. § 1397 *et seq*. (West 2003).			
Can the child receive special education services?	Eligibility for special education services is based on federal law (the Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 *et seq*.) as implemented by the state where the adoptive parent resides. *See, e.g.*, 5 D.C. Mun. Regs. § E3000 *et seq*. (Weil 2003) for D.C. law regarding eligibility. The adoption subsidy does not provide for tuition, tutoring, testing, or special education.	Eligibility for special education services is based on federal law (the Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 *et seq*.) as implemented by the state where the guardian resides. *See, e.g.*, 5 D.C. Mun. Regs. § E3000 *et seq*. (Weil 2003) for D.C. law regarding eligibility. The guardianship subsidy does not provide for tuition, tutoring, testing, or special education.	Eligibility for special education services is based on federal law (the Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 *et seq*.) as implemented by the state where the custodian resides. *See, e.g.*, 5 D.C. Mun. Regs. § E3000 *et seq*. (Weil 2003).	Eligibility for special education services is based on federal law (the Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 *et seq*.) as implemented by D.C. without regard to where the child is living. *See* 5 D.C. Mun. Regs. § E3000 *et seq*. (Weil 2003). CFSA is responsible for the education of children in its custody. *See* D.C. Code § 16-2301(21)(C). CFSA may be willing or directed by the court to provide funding for necessary educational services, such as tutoring.
Is college financial aid available?	There are no special programs available. The child may be eligible for a number of federal and state programs. For example, the D.C. State Education Office administers several financial aid programs, including the D.C. Tuition Assistance Grant Program	There are no special programs available. The child may be eligible for a number of federal and state programs. For example, the D.C. State Education Office administers several financial aid programs, including the D.C. Tuition Assistance Grant Program (DCTAG) and the D.C.	There are no special programs available. The child may be eligible for a number of federal and state programs. For example, the D.C. State Education Office administers several financial aid programs, including the D.C. Tuition Assistance Grant Program (DCTAG) and the D.C.	CFSA is responsible for funding educational expenses of foster children and may be willing or directed by the court to provide necessary educational services. College funding is currently handled by

	(DCTAG) and the D.C. Leveraging Educational Assistance Partnership Program (DCLEAP) for D.C. residents. *See* D.C. Code § 38-2731 *et seq.* (2009) (DC LEAP); 29 D.C. Mun. Regs. § 7000 *et seq.* (Weil 2001) (for DC TAG eligibility requirements); *see also* https://hefs.seo.dc.gov/appforms/seo_logon.aspx Federal financial aid is administered through FAFSA, http://www.fafsa.ed.gov/	Leveraging Educational Assistance Partnership Program (DCLEAP) for D.C. residents. *See* D.C. Code § 38-2731 *et seq.* (2009) (DC LEAP); 29 D.C. Mun. Regs. § 7000 *et seq.* (Weil 2001) (for DC TAG eligibility requirements); *see also* https://hefs.seo.dc.gov/appforms/seo_logon.aspx. Federal financial aid is administered through FAFSA, http://www.fafsa.ed.gov/	Leveraging Educational Assistance Partnership Program (DCLEAP) for D.C. residents. *See* D.C. Code § 38-2731 *et seq.* (2009) (DC LEAP); 29 D.C. Mun. Regs. § 7000 *et seq.* (Weil 2001) (for DC TAG eligibility requirements); *see also* https://hefs.seo.dc.gov/appforms/seo_logon.aspx. Federal financial aid is administered through FAFSA, http://www.fafsa.ed.gov/	CFSA's Office for Youth Empowerment (OYE). The child may also be eligible for a number of federal and state programs. For example, the D.C. State Education Office administers a variety of financial aid programs, including the D.C. Tuition Assistance Grant Program (DCTAG) and the D.C. Leveraging Educational Assistance Partnership Program (DCLEAP) for D.C. residents. *See* D.C. Code § 38-2731 *et seq.* (2009) (DC LEAP); 29 D.C. Mun. Regs. § 7000 *et seq.* (Weil 2001) (for DC TAG eligibility requirements); *see also* https://hefs.seo.dc.gov/appforms/seo_logon.aspx. Federal financial aid is administered through FAFSA, http://www.fafsa.ed.gov/
What other services can I receive for	If the child is receiving a Title IV-E adoption subsidy, payments may be	If the child is receiving a Title IV-E guardianship subsidy, the subsidy agreement must specify	No special services are available based solely on the child's status.	The foster child is in the custody of CFSA. As such, CFSA is responsible for

the child (based on the child's status)?	available for medical care, therapy, or other services related to a diagnosed physical or mental handicapping condition existing prior to adoption and not covered by the adoptive family's medical insurance or Medicaid. CFSA may request documentation that the service is not available through any other resource.	any "additional services and assistance" that the agency will provide. 42 U.S.C.A § 673(d)(1)(B)(ii). In addition, D.C.'s guardianship subsidy agreement includes a heading "subsidy amount and services." However, it is unclear whether CFSA is prepared at this time to offer additional services through guardianship subsidy other than the monthly stipend.		his/her welfare and may be willing or directed by the court to provide needed services. *See, e.g.*, D.C. Code § 16-2320 (a) (5) (2001).
Will the child be able to inherit from his/her birth parents?	No. The child may not inherit after a finalized adoption. See D.C. Code § 16-312(a) (2001).	Yes. The child may still inherit from his/her birth parents. See D.C. Code § 16-2389(c)(1) (Supp. 2005).	Yes. The child may still inherit from his/her birth parents.	Yes. The child may still inherit from his/her birth parents.
What tax benefits will I receive?	The adoptive parent may be eligible for tax credits, including but not limited to the adoption credit (tax credit for qualifying adoption expenses paid to adopt an eligible child, which can be subtracted directly from tax liability); the child care credit (limited credit for certain services incurred to enable the taxpayer to work); the child tax credit (a credit	The legal guardian may be eligible for tax credits, including, but not limited to, the child care credit (limited credit for certain services incurred to enable the taxpayer to work); the child tax credit (a credit against tax liability for children under 17 years of age); and the earned income tax credit (a credit available to very low-income parents).	The legal custodian may be eligible for tax credits, including, but not limited to, the child care credit (limited credit for certain services incurred to enable the taxpayer to work); the child tax credit (a credit against tax liability for children under 17 years of age); and the earned income tax credit (a credit available to very low-income parents).	Foster parents may claim a foster child as a dependent (i.e. dependent exemption) if the foster parent provided half of the child's support throughout the year which does not include foster care payments received from the state. Foster parents may be eligible for tax credits, including, but not limited

	against tax liability for children under 17 years of age); and the earned income tax credit (a credit available to very low-income parents). The adoptive parent may also be eligible for a dependent exemption (an annual exemption for each adopted child that is based on the taxpayer's gross income).	He or she may also be eligible for a dependent exemption (an annual exemption for each supported child that is based on the taxpayer's gross income).	He or she may also be eligible for a dependent exemption (an annual exemption for each supported child that is based on the taxpayer's gross income).	to, the child care credit (limited credit for certain services incurred to enable the taxpayer to work); the child tax credit (a credit against tax liability for children under 17 years of age); and the earned income tax credit (a credit available to very low-income parents).
Can I add the child to my health insurance policy?	An adoptive parent can place children on his/her health insurance either upon signing of placement agreement or final decree of adoption. Effective for plan years beginning on or after the date that is 6 months after March 23, 2010, "a group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available for an adult child until the child	The ability of the guardian to place a child on his/her health insurance will depend upon the terms of the policy and the law of the state where the policy is written. Effective for plan years beginning on or after the date that is 6 months after March 23, 2010, "a group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available for an adult child until the child turns 26 years of age." 42 U.S.C.S. § 300gg-14(a) (2010).	The ability of the custodian to place a child on his/her health insurance will depend upon the terms of the policy and the law of the state where the policy is written. Effective for plan years beginning on or after the date that is 6 months after March 23, 2010, "a group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available for an adult child until the child turns 26 years of age."	The ability of the foster parent to place a child on his/her health insurance will depend upon the terms of the policy and the law of the state where the policy is written.

	turns 26 years of age." 42 U.S.C.S. § 300gg-14(a) (2010).		42 U.S.C.S. § 300gg-14(a) (2010).	
How do I initiate the proceedings ?	Filing of petition for adoption. *See* D.C. Code § 16-305 (2001); Super. Ct. Adoption R. 7.	Filing of guardianship motion in the neglect case. *See* D.C. Code § 16-2384 (Supp. 2005).	Filing of complaint for custody. *See* Super. Ct. Dom. Rel. R. 3.	Request the court to set a permanency goal of APPLA pursuant to D.C. Code § 16-2323.
What is the procedure generally?	Procedure in adoptions cases is governed by the adoption statute, D.C. Code § 16-301 *et seq*. (2001 & Supp. 2005), the Uniform Child Custody Jurisdiction Enforcement Act, D.C. Code § 16-4601.01 *et seq*., and the Superior Court of the District of Columbia Adoption Rules.	Procedure in guardianship cases is governed by the guardianship statute, D.C. Code § 16-2381 *et seq*. (Supp. 2005) and the Uniform Child Custody Jurisdiction Enforcement Act, D.C. Code § 16-4601.01 *et seq*. In addition, the Superior Court of the District of Columbia has issued Administrative Order 16-02 concerning procedure in guardianship cases.	Procedure in custody cases is governed by the "Safe and Stable Homes for Children And Youth Act," D.C. Code § 16-831 *et seq*. (Supp. 2008); the Uniform Child Custody Jurisdiction Enforcement Act, D.C. Code § 16-4601.01 *et seq*., and the District of Columbia Superior Court Domestic Relations Rules. *Cf*. D.C. Code § 16-914 (Supp. 2005).	Procedure in neglect cases is governed by the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA); D.C. Code § 16-2301 *et seq*. (2001 & Supp. 2005); and the District of Columbia Superior Court Neglect Rules.
Does the Interstate Compact on the Placement of Children (ICPC) apply?	Yes. ICPC approval is required when child is placed across state lines. *See* D.C. Code § 4-1422, Art. III(a) (2001). Current CFSA procedure calls for separate ICPC approval for adoption, distinct from the one for foster care placement.	Yes. ICPC approval is required when child is initially placed across state lines. *See* D.C. Code § 4-1422, Art. III(a) (2001).	ICPC approval is not required for non-neglect custody cases; however, ICPC approval is required when child is initially placed across state lines in a neglect-involved case. *See* D.C. Code § 4-1422, Art. III(a) (2001).	Yes. ICPC approval is required when child is initially placed across state lines in foster care. *See* D.C. Code § 4-1422, Art. III(a) (2001).

Litigating Contested Cases

Permanency Standards Comparison Chart

This should not be used in place of legal research.

February 2018

	Adoption	**Guardianship** (*Note*: this category refers only to guardianships filed pursuant to D.C. Code §16-2381 *et seq.*)	**Custody** (*Note:* this category refers to third party actions under D.C. Code § 16-831.01 *et seq.)*	**Competing Cases** (*Note:* this category refers to cases where there is more than one petitioner/movant/ complainant)
What is the legal standard?	"'A petition for adoption may not be granted by the court unless there is filed with the petition a written statement of consent" by the prospective adoptees' parent. D.C. Code §§ 16-304 (a), (b)(2)(B) (2001). The parent's consent may be waived by the court, however, upon a finding that either 1) the parent has abandoned the prospective adoptee and failed to contribute to his/her support for at least six months next proceeding the date the petition was filed OR 2) the consent is being "withheld contrary to the best interest	The permanent guardianship is in the child's best interests; adoption, termination of parental rights, or return to parent is not appropriate for the child; and the proposed permanent guardian is suitable and able to provide a safe and permanent home for the child. See D.C. Code § 16-2383(c) (2001). **"Best interest" guided by factors set forth in D.C. Code § 16-2383(d):**	Rebuttal of presumption in favor of parental custody and in the best interest of child, guided by the factors set forth in D.C. Code § 16-831.07 and .08 (2011). **§ 16-831.07. Findings necessary to rebut the parental presumption by clear and convincing evidence:** (a) To determine that the presumption favoring parental custody has been rebutted, the court must	"'Where the parents have unequivocally exercised their right to designate a custodian, the court can terminate the parents' right to choose only if the court finds by clear and convincing evidence that the placement selected by the parents is clearly not in the child's best interest[.]'" *In re T.W.M.*, 964 A.2d 595, 604 (D.C. 2009) (quoting *In re T.J.*, 666 A.2d 1, 16 (D.C. 1996)); see also *In re C.A.B.*, 4 A.3d 890, 900 (2010); In re *A.T.A.*, 910 A.2d 293, 295

	of the child." D.C. Code §§ 16-304 (d), (e). There is a presumption in the law that a fit parent is entitled to custody of his/her child. If the parent does not consent to the adoption, that presumption must be rebutted by showing either that the parent is unfit, or that placement of the child with the parent is clearly detrimental to the child. *See, e.g., In re H.R.* 581 A.2d 1141 (D.C. 1990); *In re S.L.G.*, 110 A.3d 1275 (D.C. 2015); *In re J.J.*, 111 A.3d 1038 (D.C. 2015). Once either the parent consents OR the parental presumption is rebutted and the parental consent is waived, the court can grant the adoption when it finds: (1) the prospective adoptee is physically, mentally, and otherwise suitable for adoption by the petitioner; (2) the petitioner is fit and able to give the prospective adoptee a proper home and education;	(1) The child's need for continuity of care and caretakers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages; (2) The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child; (3) The quality of the interaction and interrelationship of the child with his or her parent, siblings, relatives, and caretakers, including the proposed permanent guardian; (4) To the extent feasible, the child's opinion of his or her own best interests in the matter; and	find, by clear and convincing evidence, one or more of the following factors: (1) That the parents have abandoned the child or are unwilling or unable to care for the child; (2) That custody with a parent is or would be detrimental to the physical or emotional well-being of the child; or (3) That exceptional circumstances, detailed in writing by the court, support rebuttal of the presumption favoring parental custody. (b) The court shall not consider a parent's lack of financial means in determining whether the presumption favoring parental custody has been rebutted. (c) The court shall not use the fact that a parent has	(D.C. 2006); D.C. Code § 16-304 (a), (b)(2)(A), (e) (2001). **Best interest of child guided by the factors set forth in the termination of parental rights statute (D.C. Code § 16-2353(b)):** (1) The child's need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages; (2)The physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child, the decisive consideration being the physical, mental and emotional needs of the child; (3) The quality of the interaction and interrelationship of the child with his or her parent,

	(3) the adoption will be for the best interests of the prospective adoptee; and (4) the adoption form has been completed by the petitioner pursuant to section 10 of the Vital Records Act of 1981. D.C. Code § 16-309 (b) (2001). **Best interest of child (as laid out in D.C. Code §§ 16-304 and 16-309) guided by the factors set forth in the termination of parental rights statute (D.C. Code § 16-2353(b)):** (1) The child's need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages; (2)The physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child, the decisive consideration being the physical, mental and emotional needs of the child;	(5) Evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided….	been the victim of an intrafamily offense against the parent in determining whether the presumption favoring parental custody has been rebutted. **§ 16-831.08 (a). Factors to consider in determining best interests of child**: (1) The child's need for continuity of care and caretakers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages; (2) The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child;	siblings, relative, and/or caretakers, including the foster parent; (3A) Abandonment of child after birth despite medical determination that the child was ready for discharge; (4) To the extent feasible, the child's opinion of his or her own best interests in the matter; and (5) Evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided ….

	(3) The quality of the interaction and interrelationship of the child with his or her parent, siblings, relative, and/or caretakers, including the foster parent; (3A) Abandonment of child after birth despite medical determination that the child was ready for discharge; (4) To the extent feasible, the child's opinion of his or her own best interests in the matter; and (5) Evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided …. *In re W.D.*, 988 A.2d 456, 459 (D.C. 2010) (citing *In re J.L.*, 884 A.2d 1072, 1076-77 (D.C. 2005)). *See also* Super. Ct. Adoption R. 43; *In re D.R.M.*, 570 A.2d 796, 805 (D.C. 1990).		(3) The quality of the interaction and interrelationship of the child with his or her parent, siblings, relatives, and caretakers, including the third-party complainant or movant; and (4) To the extent feasible, the child's opinion of his or her own best interests in the matter.	
Movant's Burden of Proof	**Clear and convincing evidence**	**Preponderance of the evidence**	**Preponderance of the evidence but when rebutting parental presumption standard is clear and convincing**	**Between non-parents - preponderance of the evidence** **Between non-parents where one petitioner has consent –clear and convincing evidence (petitioner without the parental consent has the burden)**

Adoption Law and Practice in the District of Columbia

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Introduction

This manual has been developed to assist *pro bono* attorneys representing caregivers seeking to adopt children in the D.C. neglect system. It is not a comprehensive treatise and attorneys should conduct their own independent research specific to their own cases.

Neglect Cases

This manual is written primarily to assist attorneys who are representing individuals seeking to adopt children "in the neglect system" — children about whom there is an open neglect case in D.C. Family Court. For a number of reasons, it is important for counsel for the adoptive parents to understand this neglect proceeding. Much information that is relevant to your adoption case will have been created as a result of or in the context of the neglect case, so it is important to know what kind of information and evidence to look for and how to obtain access to it.

In addition, the neglect case is a court proceeding involving the status and custody of the adoptee that will be going on simultaneously with the adoption case. The fact that there is an on-going neglect case may create strategy options and legal issues that you will want to be aware of as you prepare your adoption case.

Neglect proceedings generally

Neglect proceedings are governed by Title 16, Subchapter 23 of the D.C. Code (D.C. Code §16-2301 *et seq.*)[1] The definition of neglect is set forth in §16-2301(9). "Neglect" is an umbrella term that encompasses both abuse (*e.g.*, physical and sexual abuse) and neglect (*e.g.*, improper care of a child, incapacity to care for a child).

Neglect cases are civil proceedings. In one sense, neglect cases are a kind of custody case: if the court determines that the child is neglected, it has the authority, subject to certain limitations, to determine who shall have custody of the child.[2]

The District of Columbia government is required to investigate most reports it receives of alleged child abuse and neglect. D.C. Code §4-1301.01 *et seq.* The D.C. Child and Family Services Agency (CFSA) is the government agency responsible for conducting the required investigations.[3] If

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[1] Also relevant to neglect proceedings are D.C. Code §§ 4-1301.01 *et seq.* and 4-1321.01 *et seq.* Those provisions address, *inter alia*, mandatory reporting of suspected abuse and neglect, investigations of reported child abuse and neglect, the establishment of a child protection registry for reports of abuse and neglect, and the establishment and duties of the D.C. Child and Family Services Agency, the District's child protective services agency. There are also court rules governing neglect proceedings (Super. Ct. Neg. R. 1- 47).

[2] The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) specifically includes neglect cases in its definition of "child-custody proceeding." D.C. Code §16-4601.01 (4). The UCCJEA is a uniform law, enacted by 49 states and the District of Columbia, which determines when a state can exercise jurisdiction over a custody case and addresses various procedural requirements in such cases. A related statute is the Parental Kidnapping Prevention Act, 28 U.S.C. §1728A, a federal full faith and credit statute.

[3] At one time, responsibility for investigations was divided between CFSA and the Metropolitan Police Department,

CFSA recommends the filing of a neglect petition, it will refer the case to the Office of the Attorney General. The Office of the Agency General makes the decision whether or not to file a neglect petition. A neglect case is commenced by the filing of a petition in D.C. Family Court by the Office of the Attorney General, alleging that a child is neglected.[4] D.C. Code §16-2305.

A finding by the court that a child is neglected is called a "neglect adjudication." Children can be adjudicated neglected as the result of a fact-finding hearing (trial) or as the result of a stipulation (a written admission by the parent to specified facts coupled with a judicial finding of neglect based on those facts). D.C. Code §16-2317; Super. Ct. Neg. R. 18-19. The court has on-going authority over adjudicated neglected children to make decisions about custody and certain related matters, subject to the applicable legal standards.

After the child is adjudicated neglected, the court next holds a "dispositional hearing." D.C. Code §§16-2319, -2320; Super. Ct. Neg. R. 20-25. At the dispositional hearing, the court makes a custody determination about the child in light of the facts underlying the neglect adjudication together with such other information as it is entitled to consider at this stage. The order that results from this hearing is called a "dispositional order." The terms that are customarily used to describe the most common dispositional statuses are:

- ***protective supervision***: placement in the custody of a parent

- ***private placement*** or ***third-party placement***: placement in the custody of an individual who is not the parent

- ***commitment***: placement in the custody of a public agency responsible for the care of neglected children (CFSA) or a licensed child-placing agency[5] or institution.[6] Commitment is also referred to as "being a ward" or as "foster care".[7]

A dispositional order can be entered for a period not to exceed one or two years (depending on the custodial status of the child). Dispositional orders can be extended by the court for additional successive periods of one year, subject to the applicable legal standard, until the child is 21 years of age.[8] D.C. Code §§ 16-2322, 2303. Disposition orders can also be modified or new disposition orders entered by the court. D.C. Code §16-2323. It is the disposition order, following an adjudication of neglect, that is appealable. *See In re Na.H.*, 65 A.3d 111, 113 (D.C. 2013).

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depending on the nature of the allegations.

[4] D.C. Family Court is a part of D.C. Superior Court.

[5] *See* D.C. Code §4-1401 *et seq.* (licensed child-placing agencies). Licensed child-placing agencies are more commonly known as foster care or adoption agencies.

[6] It is currently the universal practice of the court to commit children to CFSA rather than to a private agency or institution, although CFSA contracts with a private agency (National Center for Children and Families (NCCF)) to provide foster homes together with case management and related social services for wards of D.C. who are placed in Maryland.

[7] "Foster care" is an umbrella term that encompasses not only foster family homes but also other living arrangements (including congregate care placements such as group homes or residential treatment facilities).

[8] By comparison, the age of majority in the District is age 18. However, a parent's duty of child support continues until a child is 21. *See* D.C. Code §46-101.

As long as a neglect case is open -- in other words, as long as the child is subject to a dispositional order in the neglect case and remains under the jurisdiction of the court -- the court continues to have the authority to make certain decisions relating to the child and the family, most significantly the on-going authority to determine the child's placement.

After disposition, the court must hold review hearings in a neglect case a minimum of once or twice a year depending on the age and legal status of the child, although review hearings are typically held more often.[9] D.C. Code §16-2323. This post-dispositional phase of a neglect case is commonly referred to as the "review stage."

In addition to reviews, what is typically called a "permanency hearing" must be held within twelve months after a child's entry into foster care and at least every six months thereafter. The purpose of the permanency hearing is to determine one permanency goal for the child and whether CFSA has made reasonable efforts to achieve the permanency goal. D.C. Code §§ 16-2323(a)(4), 16-2323(c); 4-1301.09a; Super. Ct. Neg. R. 34. Permanency goals are initially set at the disposition hearing and at every hearing thereafter. At the disposition/review stages, the Court can set concurrent (more than one) permanency goals for the child. At the permanency hearing and each hearing thereafter, the Court can only set one permanency goal for the child. *See* Super. Ct. Neg. R. 25 (e); 34 (a). Permanency goals are reunification, adoption, legal custody, guardianship, or Alternative Planned Permanent Living Arrangement (APPLA) (long-term foster care). D.C. Code § 16-2323.

New procedures are required if a party plans to request that a child's permanency goal be changed from reunification to adoption; if the goal is changed, it is now immediately appealable.[10] Parents are entitled to an evidentiary hearing if the government is seeking to change the goal from reunification to adoption. At that hearing, the government has the burden of proof to demonstrate, by a preponderance of the evidence, that "[1] it has provided the parents with a reasonable plan for achieving reunification, [2] that it expended reasonable efforts to help the parents ameliorate the conditions that led to the child being adjudicated neglected, and [3] that the parents have failed to make adequate progress towards satisfying the requirements of that plan." *In re Ta.L.*, 149 A.3d 1060, 1078 (D.C. 2016). Before changing the goal to reunification, the trial court must find:

> (1) the District has in fact expended reasonable efforts to reunify the family as it is statutorily obligated to do, in accordance with 42 U.S.C. § 675 (5)(E)(iii); (2) the goals set for the parents were appropriate and reasonable; and (3) other vehicles for avoiding the pursuit of termination, e.g., kinship placements, 42 U.S.C. § 675 (5)(E)(i), have been adequately explored.

Id. at 1079-80 (footnote omitted).

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[9] At each review hearing, the next one is scheduled. Hearings can also be convened on motion and it is common practice for judges to convene "emergency hearings" on very short notice on an as-needed basis at the request of counsel.

10 *In re Ta.L.,* 149 A.3d 1060 (D.C. 2016) (en banc) overruled past precedent that had held that permanency goal changes are not appealable. *Id*. at 1075-77. *In re Ta.L.* then affirmatively ruled that a new procedure is required at a hearing where a judge is going to change the goal from reunification to adoption, and that the order changing the goal from reunification to adoption is immediately appealable. *See id.* at 1075-81.

As a general rule, a neglect case will be heard by the same judge, starting with the initial hearing and throughout the duration of the case.[11]

The court's jurisdiction in a neglect case terminates by operation of law when the child turns twenty-one years of age. The court can also terminate jurisdiction ("close the neglect case") if it determines that termination is in the best interests of the child. D.C. Code §16-2322; *In re A.R.*, 950 A.2d 667 (D.C. 2008); *In re T.R.J.*, 661 A.2d 1086 (D.C. 1995). For example, the court will customarily close the neglect case if a child has been returned to the custody of the parent and monitoring is no longer necessary, or when the court is satisfied that a long-term custodial arrangement with a caregiver is in effect and court intervention and oversight and any social services provided through the neglect case are no longer necessary.

Who is involved in the neglect case?

A. Office of the Attorney General

The District of Columbia is a party to all neglect proceedings. D.C. Code §16-2305(f). The District is represented by the Office of the Attorney General. An individual attorney with OAG is known as an Assistant Attorney General (AAG).

The AAG who files the petition will usually continue to be assigned to the case at all stages. At this time, there are teams of AAGs assigned to each Family Court judge and magistrate judge to whom neglect cases are assigned.

B. Child and Family Services Agency/Social Worker

The public agency that is responsible for the District's statutory child protective services and social services duties and responsibilities in neglect cases is the D.C. Child and Family Services Agency. CFSA is represented by the Office of the Attorney General and also CFSA's General Counsel's office.

There is always at least one social worker assigned to a neglect case and occasionally more than one.[12] The social worker is responsible for statutory duties such as monitoring the child and the family; providing mandated services; providing and supervising foster care placements for children removed from their parents or custodians; and submitting reports to the court for disposition, review and

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[11] In January 2002, Congress enacted the "District of Columbia Family Court Act of 2001," P.L. 107-114, which amended Title 11 of the D.C. Code to abolish the Family Division of Superior Court and to create a separate Family Court within Superior Court. All existing neglect cases were transferred to judicial officers assigned to Family Court (judges and magistrate judges). New neglect cases are now heard in and remain assigned to judicial officers (judges and magistrate judges) sitting in Family Court. Neglect cases are typically heard by magistrate judges. Magistrate judges assigned to neglect calendars typically do not rotate out of their assignments; however, judges do rotate. If a Family Court judge rotates out of Family Court, the case will remain in Family Court and be heard by the judge who takes over the departing judge's calendar.

[12] For example, if siblings are placed in foster homes through different private agencies, each sibling will have a social worker from the agency through which s/he is placed.

permanency hearings. The assigned social worker in the neglect case will also, as a general rule, be responsible for any of CFSA's obligations in connection with the adoption case (*e.g.*, preparation of the adoption report, *infra*). *See* D.C. Code §4-1303.01a-1303.07.

CFSA is responsible for providing all "foster care" -- out-of-home care for children removed from their homes and placed in CFSA custody by the court in neglect cases. CFSA recruits and provides case management services for foster homes. It also contracts with private licensed child-placing agencies (foster care agencies) and other organizations to provide foster care placements and related case management services. Thus, if the child is in a foster home that is provided and supervised through one of the private contract agencies, there will be a social worker from that agency assigned to the case.[13] However, a child in foster care is in CFSA custody even if the child is placed in a private agency foster home and CFSA thus remains responsible for the child.

In cases in which there is more than one social worker, the day-to-day division of responsibilities among them is generally left to CFSA's administrative protocols.

One important reason to understand which social workers are involved in a case is because social workers will be important sources of information and evidence for the adoption case.[14] In addition, knowing which agency, branch or individual social worker is responsible (either by law or in practice) for the various duties or decisions in connection with the neglect and adoption cases will help you direct your advocacy appropriately.

C. Guardian *ad litem*

All children in neglect cases are assigned court-appointed guardians *ad litem*. D.C. Code §16-2304(b)(5). The statute provides that the court "shall appoint a guardian ad litem who is an attorney to represent the child in the proceedings. The guardian ad litem shall in general be charged with the representation of the child's best interest." [15] The legislative history of the neglect statute indicates that the GAL is to function as a lawyer (e.g., litigate, file pleadings, call and examine witnesses, etc.).[16]

There is nothing in the statute or legislative history to suggest that the GAL is anything other than a lawyer/advocate. In other words, the GAL has no authority to make decisions on behalf of the

[13] Although a child may be placed in a foster home through a private contract agency, the universal practice is that judges commit children to the custody of CFSA, not to the custody of the private agency. As a result, CFSA is considered and for the most part considers itself as being the agency with ultimate custodial responsibility for a child in foster care, even if the child is placed in foster home through a private agency.

[14] Because of intra-agency transfers of cases between different branches of CFSA, transfers of responsibilities between CFSA and the private agencies, and staff turnover, it is not unusual for cases to have been transferred several times by the time an adoption case is filed.

[15] *See S.S. v. D.M.*, 597 A.2d 870 (D.C. 1991); Super. Ct. Neg. R. A-5, (Child Abuse and Neglect Attorney Practice Standards). Occasionally, a judge will "bifurcate" the appointment and appoint both an attorney (to represent the child's best interests) and a GAL (to represent the child's best interests) for the child. *See* Super. Ct. Neg. R. A-5 (comments).

[16] Report, Prevention of Child Abuse and Neglect Act, Committee on the Judiciary (David A. Clarke, Chairperson), Council of the District of Columbia, March 29, 1977.

child or to take legal action on behalf of the child (as a parent or guardian) (*e.g.* authorize release of information, consent to medical treatment).

GALs are considered to have party status in neglect cases and participate fully in all aspects of the proceedings. *See* Super. Ct. Neg. R. 10.

D. Parents

Parents are parties to neglect proceedings (as are guardians and custodians as defined in D.C. Code §16-2301). D.C. Code §16-2304; Super. Ct. Neg. R. 10. They are entitled to be represented by counsel and if they cannot afford counsel, the court must appoint counsel to represent them. The majority of parents in neglect cases have court-appointed counsel. Each parent is assigned separate counsel. [17]

E. Foster parents/caretakers

Foster parents and individuals in whose custody children have been placed in a neglect case can be made parties to the neglect case. D.C. Code §16-2304; Super. Ct. Neg. R. 10. If they have been foster parents for less than a year, the court has the discretion to give them party status; after a year, the court shall make them parties upon request. D.C. Code §2304 (4)(B); *see In re Phy. W.*, 722 A.2d 1263 (D.C. 1998). In addition, regardless of whether or not they are parents, foster parents shall be provided notice of and have the opportunity to be heard in neglect proceedings. D.C. Code §16-2304 (4)(A).

What is a foster parent?

"Foster parents" are individuals who are licensed to provide care for children who have been removed from their homes and placed in CFSA custody.[18] Some foster parents, often known as "kinship" foster parents, had a pre-existing connection to the child prior to filing of the neglect case (relatives, family friends) and became licensed foster parents, typically because there are financial and other benefits and services available to children in foster care that are not available if the child is simply placed in that individual's custody in the neglect case (through an order of third-party placement).[19]

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[17] The court office that is responsible for administering the appointment of counsel and GALs in neglect cases is the Office of Counsel for Child Abuse and Neglect. Court-appointed attorneys in neglect cases are known as "CCAN attorneys."

[18] For the most part, there is no meaningful distinction between a "foster parent" and "adoptive parent" and those terms will be used interchangeably. Some individuals are interested only in adopting, not fostering (providing care for a child knowing that it may be temporary). As a result, the term "adoptive parent" will occasionally be used, as distinct from "foster parent," to mean someone who only wants to adopt and does not want to foster. However, foster parents may eventually decide that they do wish to adopt a child who has been placed with them. By the time the foster/adoptive parent files for adoption, however, the child will probably already be placed in the home and any distinction will no longer be of any real significance. Similarly, a foster parent may be referred to as an adoptive parent after the foster parent has expressed an interest in adoption her/his foster child.

[19] A "kinship caregiver" is defined in D.C. Code §4-1301.02 (14) as a relative of the child by blood, marriage or adoption, or a godparent recognized by a religious ceremony or recognized by reputation in the community and by other family members. Thus, a "kinship foster parent" is a kinship caregiver who is a licensed foster parent. Although "kinship foster care" is often spoken of as if it were a separate category from "regular foster care," there is no longer any meaningful distinction between

Foster parents receive a monthly foster care payment and foster children receive Medicaid. CFSA may also fund a range of other services for foster children as needed, either voluntarily or as a result of a court order in the neglect case.

Foster homes must be licensed. Foster home licensing is regulated by 29 DCMR 6000 *et seq.* Foster homes located in Maryland must be licensed pursuant to Maryland licensing laws and regulations. *See* COMAR 07.02.25.01-24.

The decision to adopt; counseling your client

Your clients will have been referred for representation through Children's Law Center's Families First Project because they have expressed an interest in adopting. As with any client, however, you should thoroughly review the decision and the alternatives with your clients in order to ensure that they have all the relevant information concerning their options so that they can make informed choices. Remember that until you became involved, your client was not represented by counsel and had no source of thorough, accurate and objective information.

In cases involving children in the neglect system, it is particularly advisable to explore the process by which your client reached the decision to adopt. During the past several years, CFSA has increasingly focused on what is known as "permanency planning" in neglect cases. The federal "Adoption and Safe Families Act (AFSA)," Pub. L. 103-89 (amending the Adoption Assistance and Child Welfare Act (AACWA) of 1980, Pub. L. 96-272),[20] federal AFSA regulations, and parallel (although not identical) amendments to D.C. law enacted in 2000 encourage the child welfare system to achieve legally "permanent" arrangements for children in foster care – reunification with the parent, adoption, legal custody or guardianship – that get the child out of foster care status and permit the neglect case to be closed (court jurisdiction terminated).

Thus, CFSA, the GAL, and even the judge presiding over the neglect case may put pressure on foster parents to adopt their foster children. It is not uncommon for foster parents to be informed by CFSA that if the goal of the child's case plan is adoption and if the foster parents will not adopt (or file for legal custody or guardianship), CFSA must then seek an adoptive home for the child. In other words, there may be a tacit or explicit threat that the child will be taken from your clients and placed elsewhere if they do not adopt.

However, while ASFA may establish a preference for certain permanency goals, the focus of the AACWA and ASFA is on ensuring that there is accountability on the part of the child welfare agency for appropriate planning for the child. This is done primarily by requiring that the court and the agency follow certain procedures to ensure that appropriate planning takes place for children who have been removed from their homes. For example, "permanency hearings" must be held at specified intervals to determine what the permanency goal for the child is; and in order for the agency to receive federal

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the two, although there was in the past.

[20] The AACWA is a federal funding statute. States that opt into the funding scheme must satisfy the requirements of the statutes or potentially lose federal funding.

funds for foster care and related programs, there must be a judicial finding that the agency has made reasonable efforts to finalize the permanency plan.

There is no absolute requirement that so-called "permanency" be achieved within a set period of time. In addition, reunification, adoption, legal custody and guardianship are not the only acceptable permanency goals. ASFA specifically provides that a "planned permanent living arrangement" (also known as "alternative planned permanent living arrangement" or APPLA) that is not reunification, guardianship/legal custody, or adoption is also a permissible goal if there are compelling circumstances. *See* D.C. Code §16-2323. Thus, it is permissible for children to remain in foster care status if that is what is in the child's best interest, and there are situations in which that is the outcome that your client wants and is in fact in the child's best interest.

Keep in mind that foster parents and caregivers, while very committed to their foster children and willing to continue to care for the them indefinitely, may nonetheless be hesitant to adopt or to pursue other forms of permanency for a variety of reasons. In particular, foster parents may lose significant financial, medical, mental health and educational services that are available if a child remains in foster care status.[21] So-called "legal permanency" is only one factor to be considered in determining what is in a child's best interest – the child's emotional well-being, relationships and emotional attachments, stability, the effect on the child of a move to a new home, and the need for services are other important issues to be considered.

In addition, guardianship is a "permanency option" that is an alternative to adoption, which your client may not have been made aware of.

Thus, it is important to ensure that your client knows what all of the options are and the benefits and disadvantages of each so that your client can make an informed choice.

Adoption

Overview

Statute

Adoptions are governed by D.C. Code §16-301 *et seq.* Adoptions are creatures of statute; there is no common law adoption. *In re A.W.K.*, 778 A.2d 314, 318 (D.C. 2001).

The Uniform Child Custody Jurisdiction and Enforcement Act also applies to adoptions. D.C. Code §16-4601.01 *et seq*. The UCCJEA is a uniform law adopted by 49 states and the District of Columbia which determines when a state can exercise jurisdiction over a custody proceeding. The UCCJEA also addresses various procedural issues such as pleading and notice requirements.[22]

[21] You may want to consider making a list of all the services that your client and the child are receiving (e.g., stipends, therapy, school, day care/after-school care, transportation, summer programs) and ascertain the funding source for all of them and whether or not that funding would be affected if the child were no longer a ward of CFSA.

[22] A related statute is the federal Parental Kidnapping Prevention Act, 28 U.S.C. §1738A, a federal full faith and credit

Court rules

There are Superior Court rules applicable to adoptions. Super. Ct. Adopt. R. 1-79-I 101, 201.

In addition to the adoption rules, the General Family Division rules are also applicable to all proceedings in the Family Division of the court. D.C. Fam. Ct. R. A - T.

What are adoptions?

Adoptions are civil cases. Like neglect cases, they are included in the definition of "custody case" set forth in the Uniform Child Custody Jurisdiction and Enforcement Act.

While the statute does not, strictly speaking, provide a definition of adoption, §16-312 describes the "legal effects" of adoption:

> A final decree of adoption establishes the relationship of natural parent and natural child between adopter and adoptee for all purposes . . . as if adoptee were born to adopter . . . . All rights and duties including those of inheritance and succession between the adoptee, his natural parents, their issue, collateral relatives, and so forth, are cut off . . . .

One useful way of conceptualizing adoption is that it results in both (1) the termination of the parent-child relationship between the birth parents and the child, if not already previously terminated, and (2) the creation of a parent-child relationship between the adoptive parents and the adoptee.

The second step -- creation of the new parent-child relationship -- can only be achieved through an adoption proceeding pursuant to §16-301 *et seq.*

The first step -- the severing of the legal relationship between the birth parent and the child -- can be done through the adoption proceeding. It can also be accomplished separately in one of two ways:

- Birth parents can voluntarily give up their parental rights by executing a "**relinquishment** of parental rights." Relinquishments are governed by D.C. Code §4-1406. Relinquishments can only be made to a licensed child-placing agency or CFSA. Upon relinquishment, the agency taking the relinquishment becomes the guardian of the child. There is no court involvement in the relinquishment process (although the document is to be filed with the court).

- If a child has been adjudicated neglected, the court can terminate parental rights as a result of a **motion to terminate parental rights** (TPR) filed pursuant to D.C. Code §16-2351 *et seq*. The motion may be filed in the neglect case by the District of Columbia government or the GAL.[23] *See* D.C. Code §16-2354 (a). A TPR can be filed and litigated

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statute.

[23] The TPR statute uses the term "legal representative," which includes the guardian *ad litem*. *In re L.H.*, 634 A.2d 1230 (D.C. 1993).

prior to the filing of an adoption or while an adoption case is pending. A TPR and an adoption can also be consolidated and litigated together. Super. Ct. Adopt. R. 42; *In re Baby Girl D.S.*, 600 A.2d 71 (D.C. 1991).

But even if parental rights have <u>not</u> already been terminated or relinquished, the court can grant an adoption under the following circumstances:

- A birth parent can **consent** to the adoption. *See* D.C. Code § 16-304 (b). While the prevailing view is that a consent does not in and of itself terminate parental rights (which would terminate only upon the entry of the adoption decree), the consent obviates any requirement of further notice to the birth parent and will, in the absence of any other disputed issue, result in the adoption being granted.

- If a birth parent does **<u>not</u> consent**, the court can nonetheless grant the adoption if it finds that consent is being withheld contrary to the best interests of the child or that the parent had abandoned and voluntarily failed to support the child for six months preceding the filing of the petition. This is often referred to as "**waiving the consent of the birth parent.**" *See* D.C. Code § 16-304 (d) and (e).

Thus, while parental rights can be terminated separate and apart from an adoption proceeding -- either voluntarily by the parent through relinquishment or involuntarily by the court through a motion to terminate parental rights filed in a neglect case -- the court also has the power in the adoption proceeding to terminate the birth parent's rights. Therefore, it is not necessary for parental rights to have already been terminated prior to the filing or granting or an adoption; the legal effect of an adoption decree is the termination of the birth parent-child relationship.

To put it another way, under District of Columbia law, a parent does not have "veto power" over an adoption. The court can grant an adoption over the objection of the birth parent, even when parental rights have not been previously terminated, pursuant to D.C. Code § 16-2304.

However, in contrast to TPRs or relinquishments, the court in an adoption proceeding cannot terminate parental rights without at the same time creating a new parent-child relationship; it is an all-or-nothing proposition. If an adoption petition is withdrawn, dismissed or denied, parental rights remain intact.

If parental rights have not been terminated prior to the adoption and there is no consent by the parents, the adoption is commonly known as a "**direct**," "**show cause**" or "**contested**" adoption. When parental rights have been separately terminated or the birth parents consent, the adoption is often referred to as "**uncontested**."

Post adoption contact

The "Adoption Reform Amendment Act of 2010" allows adoptive parents and birth parents to enter into enforceable post-adoption contact agreements. D.C. Code §4-361.

Where are adoption proceedings heard?

Adoption petitions are filed in D.C. Family Court, which is part of D.C. Superior Court. D.C. Code §11-1101.

There is currently one adoptions calendar to which all adoption cases are initially assigned. However, adoptions cases in which the adoptees have open neglect cases will not be heard by the adoptions judge. The District of Columba Family Court Act of 2001 provides that the Family Court should implement a "one family, one judge" policy whenever possible. D.C. Code §11-1104(a). As a result, the procedure currently followed by the court is that the adoptions calendar judge issues the initial orders in all adoption cases – the order of reference and the order to show cause (see below). But the first hearing in the adoption case (the "initial show cause hearing") will be scheduled before the judge or magistrate judge who presides over the neglect case, who will hear the adoption case from that point on.[24]

Clerk's office

Pleadings in adoption cases are filed through the Family Court Intake Center, located on the east end of the JM level of the courthouse. Adoption files are kept in the Adoptions Clerk's office, located in the Family Court Clerk's office, Room JM-300. The hours of the clerk's offices are 8:30 a.m. to 5:00 p.m.[25]

Jurisdiction

The adoption statute provides that an adoption petition may be filed if:

(1) the petitioner is a legal resident of the District,
(2) the petitioner has actually resided in the District for one year next preceding the filing of the petition, or
(3) the adoptee is in the legal care, custody or control of the Mayor or of a child-placing agency[26] licensed under the laws of the District.

D.C. Code §16-301; *see In re A.W.K.*, 778 A.2d 314 (D.C. 2001).

Children in foster care by virtue of a neglect case are in the custody of CFSA pursuant to D.C. Code §16-2320(a)(3)(A). As a result, foster parents can file to adopt in D.C. pursuant to §16-301(b)(3) even when they reside in another state.

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[24] Although this system has been in effect for several years, as yet unresolved is the issue of whether the fact that the judge hearing the adoption case has also been presiding over the underlying neglect case could create grounds for recusal.

[25] Pleadings can be filed after hours through a box located outside of the information window on the first floor of the courthouse. However, if a pleading is filed after hours, it is recommended that you date-stamp a copy (there is a time clock located there) and possibly re-file the pleading during regular business hours.

[26] *See* D.C. Code §4-1401 through 1410 and 16 DCMR Chapter 29 (D.C. Register, vol. 37, no. 19, page 3033) regarding licensed child-placing agencies.

In addition to the jurisdictional requirements of the adoption statute, the jurisdictional requirements of the Uniform Child Custody Jurisdiction and Enforcement Act must be met. D.C. Code §16-4601.01 *et seq*. The UCCJEA is a uniform law that sets forth criteria for determining when a state has jurisdiction of a child custody proceeding.[27] The definition of "custody proceeding" in the UCCJEA includes adoptions. Typically, for adoptions that have a companion neglect case, D.C. will have jurisdiction under the UCCJEA.

Who can adopt?

Any person may petition the court for a decree of adoption. D.C. Code §16-302. It is generally accepted that any adult may adopt, including married couples and single individuals.

§16-302 requires that a spouse must join in an adoption petition.[28] This provision is generally interpreted as meaning that both spouses must adopt.[29] On occasion, you may discover that your client is married but separated from the spouse. If your client is willing, a divorce proceeding can be initiated.[30]

Adoption by more than one unmarried individual (gay and lesbian adoptions)

In *In re M.M.D.*, 662 A.2d 837 (D.C. 1995), the D.C. Court of Appeals ruled that two unmarried individuals living together in a committed personal relationship (including same-sex couples) may jointly adopt a child. The decision allows for adoption by one partner of the other partner's birth/adoptive child, or adoption of a child by both partners simultaneously.

Who can be adopted?

A person, whether a minor or an adult, may be adopted. D.C. Code §16-303.

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[27] Jurisdictional defects under the UCCJEA may be waivable. *Kenda v. Pleskovic*, 39 A.3d 1249 (D.C. 2012); *B.J.P. v. R.W.P.*, 637 A.2d 74 (D.C. 1994).

[28] Step-parent adoptions are explicitly exempted from this requirement. In step-parent adoptions, the spouse (i.e., the child's birth parent) need only consent to the adoption.

[29] Some attorneys have proposed an argument that a spouse can "join in the petition" by agreeing to the adoption but not actually adopting him/herself.

[30] D.C. has jurisdiction over a divorce proceeding if either spouse has been a resident of D.C. for six months next preceding the filing of the action. D.C. Code § 16-902 (a). There are only two grounds for divorce in D.C., both no-fault: voluntary separation for six months or separation for one year. D.C. § 16-904. The court can grant a divorce even if the whereabouts of the spouse are unknown. If your client is willing to divorce and there are no collateral issues to be litigated (such as division of marital property), divorce proceedings can be simple and can often be completed in a few months. Form divorce pleadings (http://www.dcbar.org/for-the-public/legal-resources/pro-se-pleadings.cfm#annulment) and a *pro se* divorce handbook (http://www.dcbar.org/for-the-public/help-for-individuals/upload/for_the_public-legal_information-family-divorce.pdf) are available from the D.C. Bar. In Maryland, there are both fault grounds and no-fault grounds (voluntary separation for more than twelve months or separation for two years) for divorce, and there are a number of handbooks and on-line forms available. *See* Md. FAMILY LAW Code Ann. § 7-101 through 107. *See also* http://www.msba.org/departments/commpubl/publications/brochures/separation.asp.

There is no statutory requirement that a child be living with or in the physical or legal custody of the petitioner at the time the petition is filed. However, in order for a final decree of adoption to be entered, the child must have been living with the petitioner for at least six months, unless the adoptee is over 18 years of age.[31] D.C. Code §16-309 (c).

Parties

The adoption statute

The adoption statute does not explicitly define or designate parties as such. Instead, D.C. Code §16-304 lists those persons whose consent is required in order for a petition for adoption to be granted. D.C. Code §16-306 then states that notice of adoption proceedings shall be given to each person whose consent is necessary.[32]

D.C. Code §16-309 also provides that the court may grant the adoption after considering such evidence as "the parties and any other properly interested person may present."

Uniform Child Custody Jurisdiction and Enforcement Act

The UCCJEA provides that notice and an opportunity to be heard must be given to all persons entitled to notice under the law of the District as in child custody proceedings between residents of the District, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child. D.C. Code §16-4602.05. *See also* D.C. Code §16-914(b).

The adoption rules

SCR-Adoption 17, "Parties; Interested Persons," provides that the parties to an adoption proceeding include the petitioner; birth parents who have not consented to the adoption, relinquished parental rights or had their parental rights terminated; the child (or, if appointed, a guardian for the child); the Mayor, if the child has been committed in a neglect proceeding or if parental rights have been relinquished to the Mayor; and a D.C. licensed child-placing agency if parental rights have been relinquished to that agency. *See also* Super. Ct. Adopt. R. 24 (intervention).

Paternity

There is virtually no legal distinction between children born in and out of wedlock or the rights of parents of children born in and out of wedlock. *See*, *e.g.*, D.C. Code §§16-907, -908. *But see Lehr v. Robertson*, 463 U.S. 248 (1983) (a biological father who did not take advantage of his "opportunity interest" in order to develop a relationship with his child that constitutes a constitutionally protected right is not entitled to notice of adoption proceedings). D.C. Code §§16-909, -909.01, and -2341 through 2349.01 address issues relating to the establishing of paternity generally.

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[31] If the child has not lived with the petitioner for the requisite period, the court can enter an interlocutory decree of adoption. D.C. Code §16-309(d).

[32] §16-306 also provides that "a party who formally gives his consent to the proposed adoption . . . thereby waives the requirement of notice . . ."

The procedural question that arises most frequently with regard to fathers in adoption cases is: how is it determined who is a father for purposes of notice and party status? In practice, judges in recent years have tended to err on the side of caution in connection with providing notice to putative fathers, possibly due in part to two Court of Appeals decisions which reversed and remanded adoptions because of lack of notice to birth fathers, *In re H.R.*, 581 A.2d 1141 (D.C. 1990) and *In re M.N.M.*, 605 A.2d 921 (D.C. 1992) (the right of a putative father to notice of a pending adoption proceeding does not depend upon proof that the putative father is in fact the biological father). *Cf. In re T.M.*, 665 A.2d 207 (D.C. 1995); *In re: Three Adoption Cases*, 118 Daily Wash. L. Rptr. 645 (March 27, 1990) (Suda, J.). Over the past several years, the trend has been for the court, at least initially, to treat as a party and require that notice be given to anyone who has been named by the birth mother as a possible father, or any person who comes forward and asserts paternity regardless of whether that person would be entitled to notice under a *Lehr v. Robertson* analysis. In general, the court will rely on the information that is provided during the course of the neglect case and in the CFSA adoption report (see *infra*) in determining who those individuals are.

Note that if the identity of a birth father cannot be established, Superior Court Adoption Rule 4 permits notice to be given by posting or publication. *See also* D.C. Code §16-304(d).

Another question that arises in connection with paternity is: does the petitioner have to establish or prove paternity in order for the adoption to be granted, particularly when a putative birth father does not appear during the course of the proceedings and contest paternity? Historically, in practice, the answer has been "no." *See In re T.M.*, 665 A.2d 207 (D.C. 1995) (court has the authority to address the rights of a putative father in a termination of parental rights proceeding brought pursuant to §16-2351 *et seq.*).

If paternity is contested, the court will customarily grant a request for genetic testing. Super. Ct. Adopt. R. 35. The court has a contract with a laboratory which will perform the paternity tests in Family Court cases. The test sample is gathered by a non-invasive swab from the mouth. The test can be performed with samples from the mother, putative father and child, or with samples from just the child and father (although the latter test is more expensive). Although the court contracts with a laboratory, the test is not free. However, the court will usually approve payment for the test from court funds through an "expert services" voucher issued through the neglect case.[33]

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[33] Parties who are eligible for court-appointed counsel in neglect cases, including the guardian ad litem, are also entitled to "investigative, expert, or other services necessary for adequate representation." D.C. Code §16-2326.1(g). Authorization to secure such services is obtained by *ex parte* submission to a judge of a voucher form (obtained from the Defender Services Branch of the court's Budget and Finance Office). Although vouchers can arguably only be issued in the neglect case, paternity is an issue of relevance to both cases and judges will routinely approve vouchers for paternity testing. In addition, judges appear to be willing approve to vouchers for litigation services more directly related to the adoption because the neglect and adoption cases are consolidated. The guardian *ad litem* or counsel for the parent may have to request the voucher.

Counsel

Birth parents

There is not an absolute constitutional right to counsel for birth parents in an adoption case.[34] In addition, there was originally no statutory right to counsel in an adoption (as opposed to neglect cases) nor was there any provision for court-appointed counsel. D.C. Code §16-316 now provides that the court may appoint an attorney to represent a parent or guardian in an adoption whose parental rights have not been previously terminated or relinquished, if the individual is financially unable to obtain adequate representation.

As a practical matter, when there is a companion neglect case, attorneys in that case will represent their clients in the adoption case. It has long been the prevailing practice of the court that if the neglect and adoption cases are consolidated,[35] the court-appointed neglect attorney will be compensated for work done in connection with the adoption, and it is now the universal practice for the judge handling the adoptions calendar to *sua sponte* consolidate the neglect and adoption cases at the time the initial orders in the adoption case are issued (the order of reference and order to show cause), not only because of the "one family, one judge" policy set forth in the Family Court Act, but also for the purpose of providing counsel for the birth parents.[36]

Guardian *ad litem*

Originally, the adoption statute did not expressly provide for the appointment of a guardian *ad litem* for the child.[37] However, D.C. Code §16-316 now provides that the court may appoint a guardian ad litem who is an attorney to represent the child in an adoption proceeding. *See also* Super. Ct. Adopt. R. 17.

The prevailing practice at this time is for the adoptions judge to consolidate the neglect and adoption cases and either explicitly or *sub silentio* appoint the attorneys in the neglect case to represent their clients in the adoption case as well. Thus, when the neglect and adoption cases are consolidated, this is treated as an appointment of the guardian *ad litem* in the adoption case. The current practice in the adoptions calendar is for the court automatically to allow the guardian *ad litem* in the neglect case to participate fully in the adoption proceeding.

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[34] In *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981), the Supreme Court held that notwithstanding the fundamental constitutional right that is involved in a proceeding resulting in the termination of parental rights, there is no absolute due process right to counsel in such proceedings. Whether due process requires counsel for the birth parents is to be determined on a case by case basis. *Cf. In re J.A.P.*, 749 A.2d 715 (D.C. 2000).

[35] Super. Ct. Neg. R. 3 provides that a neglect case may be consolidated with any other family division case relating to the child or family.

[36] This is sometimes known as a "limited consolidation" because at one time, the two cases were <u>not</u> heard by the same judge and the consolidation was only for the purpose of providing counsel. However, subsequent to the enactment of the Family Court Act, adoptions cases are in fact assigned to be heard by the neglect judge.

[37] In *In re Female Infant*, 237 A.2d 468 (D.C. 1968), the Court of Appeals held that it was not error not to appoint a guardian *ad litem* for the child in an adoption case.

Intervention

Superior Court Adoption Rule 17 provides that a person who is not a party under the rule may present evidence in a particular case with permission of the Court pursuant to D.C. Code §16-309(b).

Filing the adoption

Beginning the adoption; filing procedures

Adoptions are commenced by the filing of a petition. The court files ("jackets") in adoption cases are maintained by the Adoptions Clerk's office, which is located in the Family Court Clerk's office, Room JM-300. Pleadings are filed through the Family Court Central Intake Center, located in Room JM-520, at the east end of the John Marshall level of the courthouse. The clerk's office and CIC are open from 8:30 a.m. to 5:00 p.m.

It is recommended that you bring an original and at least three copies of the petition when you file. As in any case, it is advisable to get a copy of any pleading date-stamped for your own files. In addition, the clerk customarily requires that you submit an additional copy of the petition together with the original; this copy will be sent by the court, together with the order of reference, to the agency that is responsible for preparing the adoption report (see below).

Filing fees; waiver: The filing fee for an adoption is $80. However, filing fees are automatically waived by the court in an adoption proceeding if the adoptee is an adjudicated neglected child; no motion for a fee waiver is necessary. *See* D.C. Code §15-719.

In non-neglect-related adoptions, petitioners can also seek a waiver of filing fees through an application to proceed *in forma pauperis*. The Family Court Intake Center will provide an IFP forms packet upon request.[38] The form is also available at http://www.dcbar.org/for-the-public/legal-resources/pro-se-pleadings.cfm#request.

Separate petitions: Superior Court Adoption Rule 7(b) requires separate petitions, and thus separate cases, for each child. However, for good cause shown, the court may grant permission for a petition to include more than one adoptee. The comment to the rule cites step-parent adoptions and siblings with same birth parents as examples of appropriate circumstances for petitions to include more than one child.

Caption of pleadings: Adoption cases are traditionally captioned "Ex Parte in the Matter of the Petition of [*Petitioner's Name*] and [*Petitioner's Name*] for Adoption of a Minor."

What else is filed with the petition?

Superior Court Adoption Rule 7(a)(3) requires that at the time of filing the petition, the petitioner must also furnish several proposed orders that the court will be issuing. However, the court

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[38] Counsel should submit the IFP application, together with a copy of the petition, to Judge-in-Chambers, Room 4220, where it will typically be ruled on without a hearing, usually the same day. After the motion is granted, the petition then needs to be filed by counsel through the Family Court Central Intake Center.

now uses its own templates for those orders, and Family Court "General Order Concerning Adoption Cases in Which the Adoptee is the Respondent in a Neglect Case," dated February 26, 2004, requires only that the following be submitted at the time the petition is filed:

(a) ***the original and one copy of the petition***. The copy will be sent together with the order of reference to the agency that is responsible for filing the adoption report (see below).

(b) ***Vital Records form***. This form, which is required by statute, is sent to the vital records office after the adoption decree is signed so that a new birth certificate will be created. D.C. Code §§7-209, -210. It is an accepted practice for counsel to sign this form. Note that this form is supposed to be completed with information as of the date of birth of the adoptee (not as of the date the form is filled out).

(c) an ***Adoption Information Form***

(d) a "***copies to*"** list with the names and addresses of petitioner's counsel, the social worker, and all attorneys of record in the neglect case.

Notwithstanding the General Order, the court has announced that mailing labels or addressed envelopes need not be filed with the adoption petition.

Criminal records check

D.C. Code §4-1305.03 requires that a criminal records check be applied for by the petitioner for adoption and every adult residing in the petitioner's home "before the filing of the petition for adoption." "Criminal records check" is defined as a search conducted by the FBI, the police if the individual resides in the District, and a state law enforcement agency if the individual resides outside the District. Records checks have to be conducted for the petitioner's state of residence and certain other states where the petitioner has previously resided. Note that the records check need only be applied for, not obtained, prior to filing; there can be some delay between the application and receipt of the information.

The requirement that the records check be applied for prior to the filing of the petition is not rigorously enforced; however, the records check will be required to be completed or updated prior to the entry of a decree of adoption. If a new or updated records check needs to be obtained, the social worker will routinely inform the petitioners as part of the process of preparing the adoption report.

If the petitioner is a foster parent, a criminal records check should have been conducted as a part of the original foster home licensing process, although CFSA may require an updated check when it prepares the required adoption report.

The petition

D.C. Code §16-305 sets forth information that must be contained in the petition. In addition, the Uniform Child Custody Jurisdiction and Enforcement Act requires that certain information be

included regarding whether there have been or are other custody proceedings involving the child and identifying individuals who may be entitled to notice and party status. D.C. Code §16-4602.09.

Superior Court Adoption Rule 7 provides more detailed requirements regarding what information is to be included in the petition. The petitioner is only required to provide information s/he has. Information in the petition can be "to the best of petitioner's knowledge" or, if the information is not known to the petitioner, that can be stated in the petition. *See* D.C. Code §16-305; Super. Ct. Adopt. R. 7.

Petitions must be signed under oath (signed before a notary or before the adoptions clerk, who can administer oaths in adoption cases). *See* D.C. Code §16-305. If there are two petitioners, they do not need to sign at the same time, as long as each signature is notarized.

Name change

If the petitioners are requesting that the child's name be changed, that request should be included in the factual statements and in the prayer for relief, although the adoption statute provides that the family name of the adoptee will be changed to that of the adopter unless the decree otherwise provides. Both the given and family names of the adoptee may be changed. *See* D.C. Code §16-305; Super. Ct. Adopt. R. 7; D.C. Code §16-312(c). If between the time of filing and the time the decree is entered the petitioner would like to change or add a name-change request, this can usually be done by filing a praecipe rather than through a formal motion to amend the petition.

Confidentiality

D.C. Code §16-311 provides that from the filing of the petition on, the record in adoption proceedings is sealed and can only be inspected, even by the parties, upon order of the Court. *See also* Super. Ct. Adopt. R. 79-I (upon request, clerk shall provide a case summary to specified individuals, including counsel of record). As a result, parties and counsel cannot inspect the court file, including the adoption report, without leave of court. Authorization can be sought through a motion.

The adoption rules require that parties be referred to in pleadings by initials and not name when necessary to maintain confidentiality or in pleadings to be served on other parties. *See*, *e.g.*, Super. Ct. Adopt. R. 5, 10, 26, 39(c). Superior Court Adoption Rule 10 provides that in the petition and the adoption decree, the full name of the petitioner should be used. Those documents will not be served on the birth parents.

The court has announced that pleadings which reference an adoption case number or any information about an adoption case will not be accepted for filing in neglect cases. Pleadings referencing an adoption will only be filed in the adoption file. If you need to file a pleading which applies to both an adoption and a neglect case, you will need to file two separate pleadings, one in the neglect case reflecting the neglect case number and one in the adoption case reflecting the adoption number.

Service of pleadings generally

Superior Court Adoption Rule 5 requires that, except as otherwise provided, service of pleadings shall be made by the Clerk. *See also* Super. Ct. Adopt. R. 8 (motions). However, the comment to Rule 5 states:

> Under paragraph (a) of this rule, pleadings and other papers relating to an adoption case will be served upon the parties by the Clerk . . . . In contested cases [as defined in Superior Court Adoption Rule 2], service by the parties is permitted under SCR-Adoption 8(a)(4). Provisions for service of notices of adoption, orders to show cause and subpoenas are set forth in SCR Adoption 4, 39 and 45.

Pleadings filed after the petition are, in fact, served by the parties/counsel, not by the clerk. Pleadings filed after the petition can be served by mail.[39] The petition itself is not served on the birth parents; the notice of adoption and order to show cause are the required notice documents that are served instead. It is the universal practice when there is a companion neglect case that CFSA is responsible for effecting service of the required notice documents on the birth parents (see below).

The adoption report and the "order of reference"

Upon the filing of an adoption petition, D.C. Code §16-307 requires the court to refer the adoption petition for "investigation, report and recommendation" to the licensed child-placing agency by which the case is supervised, or to the Mayor if the case is not supervised by a licensed child-placing agency.[40]

This process is initiated by the court issuing what is known as an "order of reference" to the appropriate agency. The order of reference directs the agency to submit the required report within the required time frame. The order is issued automatically in response to the filing of the petition without the need for a motion or other action by counsel.[41] Super. Ct. Adopt. R. 4(a)(3) and 7(c).

Who prepares the report?

In general, in adoption cases in which there is a related open neglect case, the agency responsible for the report is CFSA. The assigned social worker in the neglect case is usually the individual responsible for actual preparation of the report. If the child is in a foster home through a private foster care agency, the assigned social worker from that agency will probably prepare the report, although it will be reviewed by CFSA and submitted over its signature.

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39 E-filing is not available in adoption cases. Pleadings must still be filed with the Central Intake Center and served via mail.

[40] The court may dispense with the report if the adoptee is an adult or if the petitioner is a spouse or domestic partner of the natural parent. D.C. Code § 16-308.

[41] Pursuant to D.C. Superior Court Administrative Order 97-10, the order of reference is to be sent out within 48 hours after the filing of the petition. In practice, it is generally issued within a month of filing.

When is the report submitted?

The report is to be filed within ninety (90) days after service upon the agency of the order of reference and copy of the petition. D.C. Code §16-309(a); Super. Ct. Adopt. R. 4(a)(3). However, the agency is routinely granted extensions of time and it is unusual for a final report to be filed within the ninety-day period.[42] The status of the report and what information is still needed in order to complete a final report is often discussed at adoption status hearings or neglect review hearings. If you have reason to believe that the agency is not taking appropriate steps to complete the report, counsel can bring that to the attention of the judge or possibly move for an order to show cause why the agency should not be held in contempt for failing to file the report as ordered. Super. Ct. Adopt. R. 39(b)[43].

The agency may submit "interim reports" until it can submit a final report and recommendation.

What is in the report?

The statute itself is very general as to the contents of the report, requiring the report to address the truth of the allegations of the petition; whether the adoptee is a proper subject for adoption; the home of the petitioner to determine whether it is suitable; and any other circumstances and conditions which have a bearing on the adoption. D.C. Code §16-307.

Superior Court Adoption Rule 7 sets out more explicit requirements regarding the information to be included in the report. The information required by the rule incorporates, *inter alia*, various statutory and regulatory requirements relating to the licensing of foster and adoptive homes, as well as information that the court decided it wants to have.[44]

The report usually consists of a narrative about the background and current status of the birth parents, adoptive parents and the child,[45] together with confirmation that any information specifically required by statute or rule has been obtained by the agency.[46]

The petitioners will be asked by the social worker to furnish information or updated information that is required for the report. The information and documents are for the most part the

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[42] Parties are commonly not served with the agency's request for an extension of time. In fact, the agency may not even file a formal request for an extension of time.

[43] Although the parties are not permitted to see the report(s) without leave of court, the social worker can be asked about the status of the reports and what information is outstanding, and these issues can be raised at and in fact are typically discussed at court hearings.

[44] For example, D.C. Code §4-1305.01 requires that petitioners apply for a criminal records check. 16 DCMR 29 (D.C. Register, vol. 37, no. 19, page 3033) (May 11, 1990)) sets forth regulations regarding licensed child-placing agencies which include regulations relating to licensing of adoptive homes and the placement of children for adoption. The court is also looking, for example, for confirmation that an adoption subsidy agreement has been signed (federal law requires the signing of the agreement prior to the entry of the decree) or that subsidy is not being requested.

[45] When there is an open neglect case, much of the information for the narrative is culled from CFSA's existing agency records and the disposition and review reports that CFSA submits to the court and parties in the neglect case.

[46] CFSA has a standardized format for adoption reports that is used fairly consistently.

same as what the petitioners, if they are foster parents, had to supply as part of the foster home licensing process.

Access to the report

Because the adoption file is sealed upon the filing of the petition, the parties can obtain access to the adoption report only upon order of the court. D.C. Code §16-311; Super. Ct. Adopt. R. 79-I.

The expedited report

Superior Court Adoption Rules 4(a)(2) and 7(c) require the submission of an "expedited report" concerning the identity and whereabouts of the birth parents if the identity and address of a person whose consent to the adoption is being withheld are not disclosed in the petition.

This "expedited report" procedure was devised to help ensure that birth parents receive timely notice. Historically, the court has relied on information in the adoption report in order to ascertain to whom and what kind of notice should issue. However, the frequent and lengthy delays in the submission of these reports led to the development of the requirement of this "expedited report" so that the notice process could proceed more expeditiously (see notice requirements section below).

The rule requires that within twenty-one (21) days after its receipt, the agency submit a report on the name and address of each person whose consent to the adoption is being withheld or the status of efforts to identify and locate such persons. Super. Ct. Adopt. R. 4 (a)(2). The information provided in the expedited report enables the court to determine to whom notice should issue (i.e., to whom the notice of adoption and order to show cause should be directed, and whom CFSA should be directly to locate and serve).

Consents

D.C. Code §16-304 lists those individuals whose consent is required for adoption of a person under the age of 18. They are:

- an adoptee who is 14 years of age or older
- birth parents
- any court-appointed guardian of the child
- the licensed child-placing agency or the Mayor if parental rights have been terminated by a court of competent jurisdiction or by a release of parental rights based on the consents of the parents[47]

However, as discussed more fully below, the court can waive any of the required consents pursuant to D.C. Code §16-304(d) and (e).

[47] "Release" has generally been read to mean a voluntary relinquishment of parental rights pursuant to D.C. Code §4-1406.

Consents must be in writing and either notarized or signed and acknowledged before a representative of a licensed child-placing agency or the Mayor.[48] D.C. Code § 16-304 (a). No particular form of words is required by either the statute or the rules. The court has a standard form that is commonly used, but attorneys may draft their own forms.

Minority of a natural parent is not a bar to that parent's consent to adoption. D.C. Code §16-304(c).

The prevailing view is that the signing and filing of a consent does not constitute a termination of parental rights; it is simply a consent to the adoption. If an adoption decree is not entered, parental rights remain intact. *See In re J.A.*, 119 Daily Washington Law Reporter 941 (1991).

Consents can be revoked if it is shown that the consent was not given voluntarily. Super. Ct. Adopt. R. 70 (and cases cited in the annotation to the rule). Incompetence, fraud or duress may be bases for a revocation. *See In re Adoption of S.E.D.*, 324 A.2d 200 (D.C. 1974).

Waiver of consent

The court can grant an adoption even in the absence of any of the "required" consents.

The adoption statute provides that when "after such notice as the court directs, [a parent] cannot be located, or has abandoned the prospective adoptee and voluntarily failed to contribute to his support for a period of at least six months next preceding the date of the filing of the petition, the consent of that parent is not required." D.C. Code §16-304(d).

In addition, "the court may grant a petition for adoption without any of the consents specified in this section [16-304], when the court finds, after a hearing, that the consent or consents are withheld contrary to the best interest of the child." D.C. Code §16-304(e).

Initial Notice and Service

Who is to be served?

D.C. Code §16-306 requires that "due notice of pending adoption proceedings" be given to each person whose consent is necessary (pursuant to §16-304).[49] SCR-Adoption 4(d) requires service of notice on each party (Super. Ct. Adopt. R. 17) and on any other person whose consent to the adoption is necessary (D.C. Code § 16-304) who has not in fact consented and whose rights have not otherwise been relinquished or terminated.

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[48] This is generally interpreted to mean the social worker.

[49] If parental rights have been terminated or relinquished or a consent to adoption has been filed, notice does not have to be given to that individual. D.C. Code §§16-304, -306.

The Uniform Child Custody Jurisdiction and Enforcement Act provides that notice and an opportunity to be heard must be given to all persons entitled to notice under the law of the District as in child custody proceedings between residents of the District, any parent whose parental rights have not been terminated, and any person having physical custody of the child. D.C. Code §16-4602.05.

Regarding service on birth parents whose identities or whereabouts are unknown, see "Method of service," below.

How does the court determine whom to serve and how?

The petition, the expedited adoption report required by Super. Ct. Adopt. R. 4(a)(2) and 7 (c), and information from the neglect case, are the primary means by which the court determines in the first instance who is entitled to notice. *See also* Super. Ct. Adopt. R. 4(b)(1) (the Clerk shall serve a notice and an order to show cause to the required individuals whose names and addresses are provided in the expedited report); Super. Ct. Adopt. R. 4(d)(2) and (4). While the petitioner may also provide such information to the court, and while Rules 4(a)(1) and 7(a)(1) mandate that the court serve notice based on such information, petitioners often do not have much or any information, although when there is a companion neglect case, the petitioners and their counsel may know the identity of the mother and the father/putative father.

Regarding service on putative birth fathers, see "Paternity," *supra*.

In practice, formal service of process pursuant to Super. Ct. Adopt. R. 4 is currently only effected on the birth parents and not on other individuals whose consent to adoption is required and are thus entitled to notice, in particular children over age fourteen. With regard to children over fourteen, the usual practice is for the court to raise the issue of the child's consent with the parties at an early stage of the proceedings and prior to trial, to ascertain whether the child consenting or not and, if so, what is the best way to obtain the written consent and, if not, how to proceed.

What is to be served?

The adoption rules require that birth parents be served with a "notice of adoption proceedings" and an "order to show cause." Super. Ct. Adopt. R. 4. Super. Ct. Adopt. R. 4 (c) sets forth the information that must be contained in the notice and the order to show cause.

The order to show cause directs the named parent to appear before the court at a date and time certain to show cause whether his/her consent to the adoption is being withheld contrary to the best interests of the child. (See below, on "show cause hearings.") The current practice is for the show cause order also to require CFSA to conduct a "diligent search" to locate the parents and to effect service of the notice and order on them.

The court will issue the notice of adoption and order to show cause *sua sponte*.

The petition for adoption is not served on other parties.

Who is responsible for effecting service?

Notice is one of the more confusing aspects of how adoptions are handled. In most civil cases, including custody cases, the responsibility for giving notice and securing personal jurisdiction over the other parties falls to the plaintiff. In adoptions, however, the task of giving notice of the adoption proceeding has traditionally been handled by the court, not the petitioner. The adoption rules have now, in essence, formally adopted that practice.[50] Super. Ct. Adopt. R. 4(a)(1), (b)(1). The procedure that has ultimately evolved is that, when there is a companion neglect case, the court places on CFSA the responsibility for effecting service.

The current practice of the court is, through the order to show cause, to direct CFSA to effect service when there is a companion neglect case. *See, e.g.*, Super. Ct. Adopt. R. 4(d)(2). CFSA has created the "Diligent Search Unit" (commonly referred to as DSU) for this purpose. The DSU, which is part of the Legal Services Unit at CFSA, investigates the identity and whereabouts of birth parents and serves the notice of adoption and order to show cause. The diligent search investigator who serves the process will file an affidavit of service with the court or an "affidavit of efforts" if s/he has been unable to effect service.

When is service to take place?

Neither the statute nor the rules specify a time frame for service. D.C. Code §16-306(a) states that "due notice of pending adoption proceedings shall be given . . . immediately upon the filing of a petition."

Super. Ct. Adopt. R. 4(a) provides that immediately upon the filing of an adoption petition, the Clerk shall serve notice of the adoption proceeding and order to show cause on each person whose consent is being withheld and whose identity and address are disclosed in the petition. Super. Ct. Adopt. R. 4 (b) provides that "upon receipt of the expedited response [to the order of reference], the Clerk shall immediately . . . serve a notice of adoption proceedings and an order to show cause . . . ." In *In re H.R.*, 581 A.2d 1141 (D.C. 1990), the Court of Appeals called attention to the need for prompt notice.

Method of service; constructive service

D.C. Code §16-306(a) provides that notice shall be given by summons, by registered letter sent to the addressee only, or otherwise as ordered by the court.

Super. Ct. Adopt. R. 4(e) permits service by delivery to the individual personally or, with leave of the court, by leaving a copy of the notice/show cause order at the individual's dwelling house or usual place of abode with some person of suitable age or discretion then residing therein. Service is also permitted by registered mail, restricted delivery, return receipt requested.

Upon a determination that personal service cannot be effected, the court may order service by means of posting or publication of notice. Specifically, Super. Ct. Adopt. R. 4(d)(2) permits these forms

[50] Super. Ct. Adopt. R. 4 (e)(5) also permits parties to effect service themselves.

of constructive service upon parents whose identities are known but whose whereabouts are unknown despite "diligent efforts" by the child-placing agency responsible for filing the adoption report to locate the person. Super. Ct. Adopt. R. 4(d)(4) also permits constructive service upon a parent whose identify is unknown. In such cases, the agency "shall, whenever possible, submit to the Court an affidavit of the known birth parent which sets out the reasons the other birth parent is unknown, or the known birth parent's reason for not revealing the other parent's identity."[51] Super. Ct. Adopt. R. 4 (d) (4).

CFSA's Diligent Search Unit will file an "affidavit of efforts" if it is unable to locate or serve the birth parent. The petitioner may then file a motion requesting constructive service.

How will you know whether the birth parent has been served?

The show cause order usually directs that CFSA notify the parties when service has been effected. The Diligent Search Unit may mail you a copy of their affidavit of service. If you have not received either an affidavit of service or an "affidavit of efforts" setting forth DSU's efforts to locate and serve a birth parent, you may want to contact DSU or inquire of the judge's chambers as to whether an affidavit has been filed. In addition, the status of service is typically addressed at the initial court hearings in the adoption case.

Consolidation of neglect and adoption cases

It is currently the universal practice of the adoptions judge to order consolidation of the neglect and adoption cases, usually as part of the notice of adoption proceedings/show cause order or the order of reference. In the past, this was called "limited consolidation" and some judges still use that language. The consolidation was "limited" because it was solely for the purpose of providing counsel for the birth parents (see *supra*) and the cases were not heard by the same judge. However, the current procedure is that the adoption calendar judge issues the initial orders (the order of reference, the notice of adoption and the order to show cause) but the case is then assigned to the neglect judge and the initial show cause hearing and all subsequent proceedings in the adoption are heard by the neglect judge.

Opposition to the adoption

There is no requirement that a responsive pleading be filed in an adoption. An adoption can be opposed either by filing a written opposition within twenty days after service of the notice of adoption proceedings or by appearing through counsel at the hearing on the order to show cause. Super. Ct. Adopt R. 12; *see also* Super. Ct. Adopt. R. 2 (3) (defining "contested case"); Super. Ct. Adopt. R. 26(a).

First Court Hearing: The "Initial Show Cause" Hearing

The current practice of the court, which for the most part follows the procedure set forth in Super. Ct. Adopt. R. 4, is that upon receipt of sufficient information through the petition and the expedited adoption report about the birth parents' identity, the adoption judge *sua sponte* issues a

[51] *See also* 29 DCMR 1631 *et seq.* (efforts by agency to identify and locate birth parents).

"notice of adoption proceedings" and an "order to show cause." The judge may also issue the notice and order prior to receiving the adoption report.

The show cause order directs a birth parent who has not consented to the adoption to appear in court on a date and time certain and show cause whether his/her consent is being withheld contrary to the best interests of the child. SCR-Adoption 4(c). This hearing is called a "show cause hearing" or "initial show cause hearing."

What happens at the initial show cause hearing? This is one of the questions most frequently asked by attorneys, and the applicable court rule is not entirely clear. The language of the order may suggest that the hearing will be a full merits hearing. But is it? Will service have taken place by the date of the hearing? What about discovery?

The short answer is that the initial show cause hearing will be a status hearing.

The adoption statute does not make reference to a "show cause" procedure. It states that the court can grant an adoption without the consent of the birth parent when the court finds "after a hearing" that consent is being withheld contrary to the best interests of the child. D.C. Code §16-304. D.C. Code §16-309 provides that upon receipt of the report and recommendation required by D.C. Code §16-307, "the court shall proceed to act upon the petition" and "[a]fter considering the petition, the consents, and such evidence as the parties and any other properly interested person may present, the court may enter a final or interlocutory decree" upon finding that the adoptee is suitable for adoption, that the petitioner is a fit person to adopt, and that the adoption will be in the best interests of the child.

The "show cause" procedure is a judicial creation that evolved over time and is now incorporated into the court rules.[52] Super. Ct. Adopt. R. 39 provides that "[w]henever, after issuance of a show cause order pursuant to SCR-Adoption 4, the Court is made aware that there are persons . . . who have not appeared but whose consent to the adoption is necessary, it may set a show cause hearing on its own initiative or at the request of any party." Super. Court. Adopt. R. 4 provides that a

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[52] To understand the show cause concept, it may be helpful to understand its genesis. The show cause order and hearing are essentially judicial inventions that pre-date the promulgation of the current adoption rules. The procedure was developed over time as a means of giving adequate notice to the birth parents. *Cf.* Super. Ct. Dom Rel. R. 4(a)(2) (requiring service of a notice of hearing and order directing appearance in actions initiated by petition). In addition to giving clear notice to the birth parent, the procedure serves to create, in the absence of a requirement of a responsive pleading or other required appearance, an event after which the court can proceed to act on the petition even if the parent fails to respond or participate -- in essence, a default procedure.

Prior to the evolution of the show cause process, the customary practice of the court was to issue a notice (ordinarily served by mail) that stated that the parent was to enter his/her appearance on or before a specified date and that failure to do so could result in the case proceeding. No hearing was held if the parent did not respond.

Over time, judges became concerned about the adequacy of this process and developed the show cause procedure. At one time, the show cause hearing was used almost exclusively as a default-triggering mechanism. If the parent appeared at the show cause hearing and objected to the adoption, the general practice of the court was to then schedule a trial date. If the parent did not appear, the court would note the default, waive the birth parent's consent and grant the adoption (often without an evidentiary hearing).

notice of adoption and order to show cause shall be served on each party and on any other person whose consent to the adoption is required under D.C. Code §16-304 and who has not consented or whose rights have not been terminated or relinquished.

Super. Ct. Adopt. R. 39 (a)(3) states that at the show cause hearing, the court "shall determine":

(A) whether the putative father fails to admit or deny paternity; if he neither admits nor denies and fails/refuses to take a paternity test, the court may find his consent unnecessary;

(B) whether the birth parent/putative birth parent will consent to the adoption;

(C) whether the birth parent has abandoned the adoptee and voluntarily failed to contribute to the adoptee's support for at least six months next preceding the date of filing of the petition [pursuant to D.C. Code §16-304(d)];

The rule then goes on to state:

(D) if the (putative) birth parent does not appear at the show cause hearing, the court may determine that her/his consent is being withheld contrary to the best interests of the child [pursuant to D.C Code §16-304(e)].

Thus, the rule essentially creates a hearing at which the parent must come forward and either consent or object to the adoption. If the parent does not appear, the case could go forward in default for a determination on the merits.

The show cause order itself, consistent with the language of Rule 4, may state that the birth parent is required to appear and show cause why her/his consent is not being withheld contrary to the best interests of the child -- the language of D.C. Code §16-304(e). Such wording suggests that whether the birth parent appears or not, the show cause hearing will be an evidentiary hearing on either of the grounds for adoption: abandonment (304(d)) or that the parent's consent is being withheld contrary to the best interests of the child (304(e)).

Notwithstanding the wording of the order, however, when there is a companion neglect case, the initial show cause hearing will <u>always</u> be a status hearing. Even if the birth parent <u>does</u> appear at the show cause hearing, one of the problems with having an evidentiary merits hearing at this juncture is that the parties may not have had sufficient notice and opportunity to prepare, and it therefore might be an abuse of discretion for the court to deny a continuance request. For example, if there is no personal jurisdiction over the birth parent until s/he has been served, the birth parent may have a legitimate claim that s/he had insufficient time between service and the hearing within which to prepare. Although the amount of time varies, there may be only a relatively short period between the issuance of the notice and show cause order and the date of the show cause hearing -- or, even more significantly, between the date of service and the hearing date.

In addition, until personal jurisdiction over the birth parent has been obtained, it is unlikely that discovery will have been conducted, and there is frequently insufficient time to conduct discovery

between the date of service (or even the date the notice/order was issued) and the date of the hearing. Indeed, Super. Ct. Adopt. R. 26(a) states that discovery is only available if and when the adoption becomes contested, and adoption may not become contested until the birth parent appears at the show cause hearing.[53]

Furthermore, even if the parent has been served and does not appear in person at the hearing, the parent has counsel and will, in essence, be deemed to be appearing through counsel, and thus the case will be in a contested posture.

Regardless of the reasoning, at this time, **the court invariably treats the initial show cause hearing as a status hearing.** The judge will then proceed to schedule further hearings as appropriate at that time, e.g. additional status hearings, sometimes called "continued initial show cause hearings," a pre-trial hearing, and trial (sometimes called a "contested show cause hearing").

If service has not been effected as of the initial show cause hearing: If the birth parents have not been served by the time of the show cause hearing, the court will usually continue the hearing, although not in advance. The hearing will remain on the calendar and be treated as a status hearing, a new "initial show cause hearing" date will be scheduled, and a new show cause order will be issued with the new hearing date. This process will continue until the parents are served.

If service has been effected prior to the initial show cause hearing: when there is a companion neglect case, the initial show cause hearing is still treated as a status hearing even when one or both parents have been served. Once both parents have been served, the court will, at the initial/continued initial show cause hearing, set further dates; for example, further status hearings, a discovery schedule, a pre-trial hearing, and trial ("contested show cause hearing").

Birth parents who are incarcerated

If the parent is at the D.C. Jail, the court can issue what is called a "come-up" for the parent, which will result in the parent's being brought in from the jail for the hearing. Counsel can contact chambers (the judge's law clerk) to ensure that a come-up is issued.

If the parent is incarcerated outside of the District, it is much more difficult to arrange for the parent to be present at the hearing.[54] However, judges are becoming reluctant to proceed without any participation from the parent. In theory, the court can issue a writ of *habeas corpus ad prosequendum* or *ad testificandum* for the parent to be brought into the District for the hearing but that is a somewhat complicated and unreliable process.

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[53] "Contested case" is defined as a case in which a written challenge to the adoption is filed by a party or in which a party whose consent is necessary and being withheld appears. Super. Ct. Adopt. R. 2 (3). Various other provisions of the rules suggest that the initial show cause hearing in a contested case cannot be the merits hearing. *See, e.g.*, Super. Ct. Adopt. R. 16 (scheduling and status conference) ('[i]n every contested adoption case, an initial scheduling and status conference shall be held . . .").

[54] This is because D.C. inmates who are sentenced to jail terms longer than a certain number of months are housed in the federal prison system in any number of facilities throughout the country. Parents incarcerated in the federal system can be located through the Bureau of Prisons at www.BOP.gov.

Increasingly, judges and attorneys are making arrangements for an incarcerated parent to participate in adoption hearings by speakerphone. See, e.g., *In re R.E.S.*, 978 A.2d 182 (D.C. 2009). In addition, the court has the capacity to use Skype (online video-conferencing) as do many facilities, although it would be prudent to make those arrangements well in advance.

Pretrial Procedure

As described above, the basic sequence of events in an adoption case is usually:

(1) Filing the petition
(2) Issuance of the order of reference, notice of adoption proceedings and order to show cause
(3) Initial show cause hearing(s) and status hearings
(4) Trial (contested show cause hearing)

Several aspects of current adoption practice are worth noting or reiterating because they deviate from conventional civil practice.

You will not always receive copies of filings

Remember that counsel will not receive a copy of any of the adoption reports (and leave of court is required in order to see the report). In addition, counsel may not always be served with affidavits relating to the diligent search for or service on the birth parents.

Consolidation of neglect and adoption cases

The adoption calendar judge usually issues the order of reference, notice of adoption and order to show cause, and also issues an order consolidating the neglect and adoption cases. The initial show cause hearing will be scheduled before the neglect judge and all subsequent proceedings in the adoption will be heard by the neglect judge.

Consolidation with a competing adoption petition

If a competing adoption petition has been filed, the court will customarily issue an order consolidating the two adoption cases. Super. Ct. Adopt. R. 42 (b).

Rule 16 scheduling and status conference

Super Ct. Adopt. R. 16 provides that in every contested adoption case, an initial scheduling and status conference shall be held no later than 45 days after the case becomes contested.

The court rarely specifically schedules such a hearing. Instead, the initial show cause hearing is a *de facto* status hearing and the court will then proceed to schedule further status hearings, a pre-trial hearing, and trial (sometimes called a "contested show cause hearing").

Discovery

Discovery is governed by Super Ct. Adopt. R. 26 through 37. For the most part, the adoption rules parallel the civil discovery rules. The principle distinction is that the court must approve discovery in adoption cases. Typically, this can be addressed at a status hearing; otherwise, counsel can request leave as the need arises. In addition, Super. Ct. Adopt. R. 26 provides that the discovery rules are applicable "only in the event that an adoption becomes contested." A "contested case" is defined in Super. Ct. Adopt. R. 2.

Regarding access to the required adoption reports filed by CFSA, see above.

Burden of proof

The burden of proof in an adoption is clear and convincing evidence. *Santosky v. Kramer*, 455 U.S. 745 (1982) (due process requires clear and convincing evidence in a parental rights termination-type proceeding); *In re J.S.R.*, 374 A.2d 860 (D.C. 1977).

Notwithstanding the wording of the show cause order (Super. Ct. Adopt. R. 4) which appears to place the burden of proof on the birth parent, the burden of proof and the burden of going forward are on the petitioner.

The Legal Standard

D.C. Code §16-309(b) states that:

> After considering the petition, the consents, and such other evidence as the parties and any other properly interested person may present, the court may enter a final or interlocutory decree of adoption when it is satisfied that: (1) the prospective adoptee is physically, mentally and otherwise suitable for adoption by the petitioner; (2) the petitioner is fit and able to give the prospective adoptee a proper home and education; (3) the adoption will be for the best interests of the prospective adoptee . . . .

The adoption statute also sets forth two grounds for adoption without the consents of the birth parents.[55]

- D.C. Code §16-304(d) states that:

> When a parent whose consent is hereinbefore required, after such notice as the court directs, cannot be located, or has abandoned the prospective adoptee and voluntarily failed to contribute to his support for a period of at least six months next preceding the date of the filing of the petition, the consent of that parent is not required.

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[55] Note that §16-304(e) applies to any of the required consents, not merely those of the birth parents.

- D.C. Code §16-304(e) states that:

> The court may grant a petition for adoption without any of the consents specified in this section, when the court finds, after a hearing, that the consent or consents are withheld contrary to the best interest of the child.

§16-304(d) cases

Regarding the interpretation of "abandonment and failure to support," see *In re J.T.B.*, 968 A.2d 106 (D.C. 2009); *In re C.E.H.*, 391 A.2d 1370 (D.C. 1978).

As a matter of strategy, many attorneys choose not to proceed on this ground exclusively because the definition is so vague.

§16-304(e) cases; the "best interests" standard

D.C. Code §16-304(e) provides that the requirement of a birth parent's consent to adoption may be waived if consent is being withheld contrary to the best interests of the child.

How does the court determine whether adoption is in the best interests of the child?

The statute itself gives little indication as to how the court is to make such a determination and what factors the court may, must, or must not take into consideration. There are appellate decisions that shed some light on how this abstract standard is translated into concrete terms. Some additional guiding principles have emerged that can assist lawyers in analyzing what the best interests standard means.

1. The termination of parental rights (TPR) factors

Under certain circumstances,[56] if a child has been adjudicated neglected, the child's guardian *ad litem* or the government may file a motion to terminate the parent-child relationship (TPR) in the neglect case. D.C. Code §16-2351 *et seq*. If the court grants the motion, the rights of the birth parent are completely severed. D.C. Code §16-2352. Thus, for adjudicated neglected children, it is possible only to terminate the legal (birth) parent-child relationship without creating a new (adoptive) parent relationship at the same time.

The standard for granting a TPR is "the best interests of the child." D.C. Code §16-2353. However, unlike the adoption statute, the TPR statute lists a number of more specific factors that the court is to consider in making its determination. D.C. Code §16-2353. Those factors include, *inter alia*:

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[56] *See* D.C. Code §16-2354. In general, a TPR can be filed if the child has been adjudicated neglected at least six months prior to the filing of the motion and is in the court-ordered custody of a department, agency, institution or person other than the parent.

- (1) the child's need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;

- (2) the physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child, the decisive consideration being the physical, mental and emotional needs of the child;

- (3) the quality of the interaction and interrelationship of the child with his or her parent, siblings, relative, and/or caretakers, including the foster parent;

- (3A) the child was left by his or her parent, guardian, or custodian in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child was ready for discharge from the hospital, and the parent, guardian, or custodian of the child has not taken any action or made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child;

- (4) to the extent feasible, the child's opinion of his or her own best interests in the matter; and

- (5) evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided pursuant to section 106(a) of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; § 4-1301.06(a)). Evidence of continued drug-activity shall be given great weight.

D.C. Code § 2353 (b).

In *In re D.R.M.*, 570 A.2d 796 (D.C. 1990), the Court of Appeals held that it was not error for the trial court, in an adoption case, to utilize the TPR factors in reaching its decision. Subsequently, the Court of Appeals held that, in an adoption, the court must consider these factors. *In re K.D.*, 26 A.3d 772 (D.C. 2011); *In re A.T.A.*, 910 A.2d 293 (D.C. 2006); *See also, e.g.*, *In re S.M.*, 985 A.2d 413 (D.C. 2009); *In re H.B.*, 855 A.2d 1091 (D.C. 2004); *In re A.W.K.*, 778 A.2d 314 (D.C. 2001).

As a result, attorneys can look not only to the adoption statute and adoptions appellate cases but also to the TPR factors, and presumably to TPR appellate cases, for guidance in interpreting the “best interests” standard.

2. Constitutional issues; In re H.R.

There is a constitutional dimension to adoption cases (as well as neglect cases). The Supreme Court has stated in a series of cases that the care, custody, management and control of a child is a fundamental right under the Constitution. Because this right is constitutionally protected, individuals are entitled to certain heightened due process protections if the state wishes to interfere with or terminate it. *See*, *e.g.*, *Quilloin v. Walcott*, 434 U.S. 246 (1978); *Caban v. Mohammed*, 441 U.S. 380 (1979); *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981); *Santosky v. Kramer*, 455 U.S. 745 (1982); *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996).

However, not all biological parents are entitled to these constitutional protections. In *Lehr v. Robertson*, 463 U.S. 248 (1983), a birth father claimed that, as a matter of constitutional due process, he was entitled to notice of the adoption proceeding concerning his child. The Court ruled that the parent's biological relationship alone does not give him/her a constitutionally protected "fundamental right" and attendant due process protections. Rather, the biological relationship gives the parent the opportunity to develop, by his/her actions, an interest that is constitutionally protected. A birth parent who has not exercised or taken advantage of this "opportunity interest" to develop a constitutionally protected relationship is not entitled to the heightened level of due process protection that a fundamental right affords.[57]

The due process protections are primarily procedural rights relating to, for example, the right to notice and a hearing, or the burden of proof. The level of due process protection accorded to a parent may, however, also have a bearing on the substantive standard applicable in an adoption proceeding. The case of *In re H.R.*, 581 A.2d 1141 (D.C. 1990) (also known as "Baby Boy C.") is primarily a case about a birth parent's due process right to notice in an adoption case. However, the lead opinion by Judge Ferren[58] also addresses in some detail an analysis of the substantive standard to be applied in an adoption proceeding. While his opinion may not be binding precedent, subsequent decisions have applied his analysis, or at least cited his language.

Judge Ferren concludes that because a fundamental constitutional right is implicated in an adoption proceeding, the "best interests" standard must incorporate a presumption that a fit birth parent is entitled to a presumption that it would be in the child's best interests for the parent to have custody.[59] The presumption is rebuttable if it is shown by clear and convincing evidence that failure to terminate parent's rights would be detrimental to the best interests of the child.

Therefore, in order to grant an adoption, the court must make an explicit finding that the parental presumption (also known as the "parental preference") has been rebutted. *See In re S.L.G.*, 110 A.3d 1275 (D.C. 2015); *In re* J.J., 111 A.3d 1038 (D.C. 2015).

The constitutional parental preference also applies in connection with a birth parent's consent to one of two competing adoption or custody petitioners. *In re T.W.M.*, 18 A.3d 815 (D.C. 2011); *In re T.W.M.*, 964 A.2d 595 (D.C. 2009); *In re T.J.*, 666 A.2d 1 (1995); *In re Ta.L.,* 149 A.3d 1060 (D.C. 2016). (See "Consents," above.)

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[57] The term "opportunity interest" is sometimes misunderstood to mean that a birth parent who has exercised his opportunity interest is entitled not only to procedural due process rights and the application of a substantive standard that reflects the fact that a fundamental constitutional right is at stake, but is also entitled to some kind of right to an opportunity to regain custody of the child. This appears to be an incorrect reading of *Lehr*.

[58] Each of the three judges on the panel authored a separate opinion.

[59] As discussed further, above, this presumption would be available only if the parent has seized his/her "opportunity interest" to develop a constitutionally protected relationship with the child and thus be entitled to the greater degree of due process protection that is afforded a fundamental constitutional right.

Subpoenas

Super. Ct. Adopt. R. 45 governs subpoenas. It requires that every subpoena in an adoption proceeding must be approved by the court prior to issuance. You should call the judge's law clerk after the subpoenas are completed by you to arrange for subpoenas to be submitted and signed by the judge.

Other than the approval requirement, the rule generally parallels other court rules regarding subpoenas in civil cases. Subpoenas must be personally served on the witness.

The court has blank subpoena forms that are available at the Family Court Central Intake Center, Room JM-520.

Vouchers (litigation and expert services)

Parties eligible for court-appointed counsel in neglect cases are also entitled to "investigative, expert, or other services necessary for adequate representation." D.C. Code §16-2326.01. Authorization to secure such services, known as "vouchering," is obtained by *ex parte* submission of a voucher form to the neglect judge. Vouchers are obtained from the CCAN Finance Office (Defender Services Branch of the court's Budget and Finance Office).

Thus, it may be possible for court-appointed attorneys to obtain approval for a voucher for services necessary to the litigation (*e.g.*, expert witness fees, depositions). Although vouchers are available through the neglect case, the voucher will be approved because the requested service relates to both cases. In addition, when the neglect and adoption cases are consolidated, judges are generally willing to approve vouchers for services more directly related to the adoption.

Evidence

Super Ct. Adopt. R. 43 provides that evidence is to be competent, material and relevant.

The District of Columbia is primarily a common law evidence jurisdiction, although there are a few statutory provisions and court rules addressing particular evidence issues. Graae and Fitzpatrick, *The Law of Evidence in the District of Columbia* (Fourth Edition) (Bar Association of the District of Columbia) is a useful reference. D.C. follows the federal rules in many respects, but there are some differences. Imwinkelreid's *Evidentiary Foundations* (LexisNexis) is also a useful and practical reference book on evidence.

Common evidence issues

Absent social workers and other witnesses; hearsay generally

One common problem that may be encountered in marshaling evidence in an adoption case is locating witnesses with first-hand information about the history of the case and past events.

For example, if the child is adjudicated neglected and has been "in the system" (under the neglect jurisdiction of the court and in foster care or third party placement) for several years, it is possible that the social worker who is currently assigned to the case has not always been the social worker on the case. In fact, the case may have gone through several social workers. The prior social workers may no longer work at the agency and may even have moved out of the jurisdiction. Other professionals who have worked with the birth parents, adoptive parents or the child in the past may also be difficult to track down.

The problem, then, is finding competent, non-hearsay evidence about past events if the witness who would ordinarily have first-hand knowledge is unavailable.

If there are records or case files documenting past events, you may be able to get them admitted under the business records exception to the hearsay rule. See Super. Ct. Gen. Fam. R. Q. For example, many social services agencies require that social workers keep, as part of the case file, a "running record" or log of narrative entries summarizing significant contacts in the case. Social workers also prepare written reports in connection with the neglect proceedings (D.C. Code§ 16-2319 (disposition reports), D.C. Code § 16-2323 (d) (review reports)). To the extent that those documents contain objective information ("Ms. Doe did not come to the visit") they may qualify as business records. However, statements incorporating more subjective information (opinions, diagnoses) may not qualify as business records. *Durant v. United States*, 551 A.2d 1318 (1988); *New York Life Insurance Co. v. Taylor*, 79 U.S.App.D.C. 66, 147 F.2d 297 (1944).

Also keep in mind that the business record exception addresses only one level of hearsay -- the prior social worker's statement. The records may contain multiple levels of hearsay (the social worker's recording of information that s/he was told by others). Under a traditional evidentiary analysis, each level of hearsay must be "justified." For example, if the birth parent made statements to a prior social worker that are recorded in the running record ("Ms. Smith said that she wants to enter a drug treatment program"), there is double hearsay: Ms. Smith's statement and the social worker's entry in the record. In this example, Ms. Smith's statements are admissions of a party-opponent and are therefore admissible; and if the social worker's record is a business record, then the record (including the Ms. Smith's statement) is admissible.

Criminal convictions, civil protection orders and other orders

A record of most of an adult's arrests and all criminal charges and convictions in the District of Columbia can be obtained through the D.C. Superior Court Criminal Division clerk's office.[60] The main criminal information office (Room 4001) can generate a computer print-out summarizing of

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[60] Criminal court records in most states are usually open to the public. Many states also make basic docket information available on-line through a court website. Counsel will have to inquire of the particular jurisdiction's courts as to the various ways to obtain information and records (in person, by mail or phone, on-line). Local public defender and legal services offices can also be helpful in this regard. In Maryland, docket information for most but not all Maryland courts is available on-line through the Maryland Judiciary Case Search database at http://casesearch.courts.state.md.us/inquiry/inquiry-index.jsp. Basic information for many Virginia criminal cases is also on-line but can only be searched by county.

Information regarding civil cases is also often on-line. Some states post information on-line about non-confidential

the individual's criminal record.[61] In addition, the court files themselves are open to the public and can be reviewed and copied. "Open cases" are available in the felony and misdemeanor clerk's office; files for "closed cases" are available in the information office. The closed files are kept in the clerk's office for several years, after which they are microfiched and stored offsite. Copies of files in storage can be ordered through the clerk's office. In addition, certain basic docket information is available on line through the court's website at https://www.dccourts.gov/superior-court/cases-online.

A certified copy of the appropriate court order reflecting the criminal conviction and sentence is admissible as a self-authenticating public record. *See* Super. Ct. Adopt. R. 44). Judicial notice of a D.C. conviction and sentence is probably also an appropriate way to get information into evidence, particularly if supported by a proffer of some documentation corroborating the information.

Civil protection orders cases are cases brought under D.C. Code §16-1001 *et seq*. Under certain circumstances, individuals can file for restraining orders against individuals with whom they have an intra-family relationship as defined by the statute. Those files are open to the public and housed in the Domestic Violence Unit's clerk's office, Room 4242. The DV unit clerks will do a name search in the court database.

Evidence of court findings and orders in the neglect case

If there is a companion neglect case, there may be court orders that would be helpful to get into evidence in the adoption. For example, the child will have been adjudicated neglected either after a trial, in which case there will be findings of fact, or by means of a written stipulation signed by a parent, which will contain factual admissions and well as the court's finding that the child was neglected.[62] There may be visitation orders or orders for parents to submit to drug-testing that you will want to have admitted into evidence.

Certified copies of such orders can be admitted as self-authenticating public records, or the court can take judicial notice of them.

It is probably improper for the adoption court to take judicial notice of the entire neglect file. *Cf.* Federal Rule of Evidence 201.

Evidence of drug test results

A birth parent may have been ordered in the neglect case to submit to drug testing. Those tests are usually done through the Pre-trial Services Agency (PSA) Juvenile Drug Testing Unit, Room C-210 in the courthouse. A print-out of the test results is available and, with a witness from PSA to lay the necessary evidentiary foundation, this record should be admissible under the business record

family/domestic relations cases, others (such as D.C.) do not.

[61] A D.C. criminal record can be researched through the individual's name. It is helpful the person's middle name or birth date but the search can be done by first and last name.

[62] Although the burden of proof for a neglect adjudication is "preponderance of the evidence," it is proper for the adoption court to consider the adjudication findings from the neglect case when making its determination. *S.S. v. D.M.*, 597 A.2d 870 (D.C. 1991).

exception to the hearsay rule. It is also possible to subpoena someone from PSA who can explain the test results, the technology and the testing protocols if necessary, but these tests are universally relied on by the court in both criminal cases and neglect cases and testimony concerning the testing system and procedures may not be necessary.

It is unclear who is entitled to access to the test results from court-ordered drug testing in a neglect case. However, Pre-trial Services' protocols for releasing drug test results without a subpoena changes periodically so it is advisable to check with them (202-220-5500). Because of Pre-trial Services' confidentiality policies, petitioner's counsel may not be able to get information or a copy of the test results without a subpoena, although the social worker or the guardian *ad litem* usually can.

Evidence from children

D.C. does not have "child witness" statutes establishing any special procedures or criteria for calling and examining child witnesses, or creating special rules of evidence concerning the admissibility of hearsay statements from children.

Child witnesses

In practice, it is relatively unusual for children to testify at adoptions, either because they are too young[63] or because neither party wishes to subject the child to appearing in court (or be perceived as being insensitive to that issue). However, occasions may arise when a party may wish to call the child as a witness.

In *In re Jam. J.,* 825 A.2d 902 (D.C. 2003), the D.C. Court of Appeals addressed the question of whether and under what circumstances the court can prevent a party from calling a child as a witness in a neglect case, or place restrictions on the conditions under which the child testifies, and discussed existing case law in D.C. and other jurisdictions. *See also In re K.S.*, 966 A.2d 871 (D.C. 2009); *In re N.D.*, 909 A.2d 165 (D.C. 2006).

The Court of Appeals addressed the issue of *in camera* interviews of a child by a judge in a custody case in *N.D. McN. v. R.J.H., Sr.*, 979 A.2d 1195 (D.C. 2009).

Child hearsay

D.C. has no statutes concerning children's hearsay statements. Thus, in order to introduce a child's out-of-court statement for the truth of the matter asserted, the statement presumably would have to fall within a recognized hearsay exception (or not be hearsay).

The hearsay exception that is probably used most frequently is "state of mind." This exception could allow for the admission of a child's statements about what the child wants or how the child felt about someone or some occurrence.

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[63] Competence of child witnesses has been addressed by the Court of Appeals, primarily through criminal cases. *See*, *e.g.*, *Galindo v. U.S.*, 630 A.2d 202 (D.C. 1993).

Expert testimony

In some cases it may be helpful to present expert testimony concerning the mental and emotional status of the birth parent, or the child's mental and emotional development and needs. In addition to these kinds of individual evaluations of the birth parent or the child, it may also be of benefit to have expert testimony in the record about the nature and quality of the relationship of the child with the adoptive parent and/or birth parent. An evaluation of the birth parent, adoptive parent, and the child for the express purpose of analyzing the child's relationships with the adults and his/her needs in connection with those relationships in aid of the court's determination is commonly referred to as a "bonding assessment", "attachment assessment", or "interactive evaluation".

Pursuant to Super. Ct. Adopt. R. 35 (physical and mental examination of persons), the court probably has the authority in most adoptions to require evaluations. The neglect statute also gives the court the authority to order mental (and physical) evaluations in neglect cases. D.C. Code § 16-2315. [64]

A party can retain the services of an expert to perform the evaluation. In addition, the D.C. Department of Behavioral Health's Assessment Center, will perform court-ordered evaluations in Family Division cases for no charge.[65] Although technically a part of a D.C. agency, the Assessment Center was created for the sole purpose of performing psychiatric and psychological evaluations for the court (comparable to the Adult Forensic Services Division, which provides similar services in criminal cases). The Assessment Center can perform interactive evaluations as well as psychiatric and psychological evaluations of adults or children.

The Assessment Center requires a court order before doing an evaluation and also requires that certain referral materials be provided by the social worker. The Assessment Center customarily welcomes any additional materials or information that any counsel wishes to submit. The psychiatrist or psychologist must be subpoenaed to testify

With regard to previously existing mental or physical health testimony and records, D.C. Code §14-307 creates a doctor/mental health professional-patient privilege. However, D.C. Code §4-1321.05 provides that notwithstanding the provisions of §14-307, the privilege shall not be grounds for excluding evidence in any proceeding concerning the welfare of a neglected child, provided that a judge has determined that the privilege should be waived in the interest of justice.

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[64] The court can specify by whom the evaluation is to be done and may also require CFSA to pay for it. D.C. Code §16-2320(a)(5). Otherwise, the form order that is used allows the social worker to designate an appropriate individual or facility to perform the evaluation. Social workers will usually look for a free service (such as the Department of Behavioral Health's Assessment Center, *infra*) or for someone who accepts Medicaid. Some private foster care agencies are willing on occasion to pay for a private evaluation.

A party to the neglect case could also request a voucher from the neglect judge to pay for a private evaluation. The adoption judge will also usually be willing to approve a voucher if there has been limited consolidation of the adoption case with the neglect case.

[65] The Assessment Center is located at 300 Indiana Avenue, N.W., Room 4023 (202-724-4377).

Close of trial; issuance of decree

Contested cases

At the conclusion of the contested show cause hearing, the judge may rule from the bench or may take the case under advisement. In either case, written findings of fact and an order waiving the birth parent's consent will be issued (and petitioner's counsel may be asked to submit proposed findings of fact). Once the parent's consent has been waived after a contested show cause hearing, the judge will usually not require any further presentation of evidence and instead rely on the adoption report to address the issue of the suitability of the proposed adoptive parent, although judges do occasionally want to hear additional evidence.

Consent cases

If both parents have consented, the judge does not have to hear evidence about and make a determination concerning whether consent should be waived (in particular, about the fitness of the parent). Instead, the expectation is that brief evidence about the petitioner and child will be presented.

Generally

Even if the petitioner prevails at a hearing, the court may not yet be in a position to grant the petition and enter a decree of adoption if the adoption report required by §16-307 is not complete. Two common reasons that the report may not be complete by the time of the hearing are (1) the adoption subsidy agreement has not yet been signed, and (2) if the adoptive parents do not live in D.C., approval by the state of residence pursuant to the Interstate Compact on the Placement of Children (D.C. Code §4-1401 *et seq*.) has not yet been obtained.[66]

The court will usual schedule further status hearings to monitor the status of the case (typically, those status hearings will be combined with review hearings in the neglect case).
At such time as the final adoption report is filed, the court will enter a final decree of adoption.

The judge may request the petitioner to submit a proposed final decree (together with the notice of issuance of decree that is sent to the birth parent's counsel) or prepare the decree her/himself. Super. Ct. Adopt R. 7 (f) sets forth some requirements for the wording of an adoption decree.

Judges now usually ask parties if they wish to have a ceremonial adoption hearing (which the child, family and friends can attend and photographs can be taken), whether they wish to finalize the adoption on the D.C. Superior's Court Adoption Day (a ceremony usually held in November where multiple adoptions heard through the year are finalized together), or whether they wish to have the decree issued from chambers without a hearing.

[66] The ICPC approval process typically resembles what is necessary to recertify a foster home license.

Certified copies of the decree of adoption will be mailed to petitioner's counsel. The court customarily provides four certified copies of the decree. The birth parent does not get a copy of the decree but instead receives a notice, issued simultaneously, that a final decree has been entered.

What happens to the neglect case?

If no appeal is taken in the adoption case, the neglect case will usually be closed (jurisdiction terminated). The neglect judge may do this automatically upon receipt of the adoption decree, or petitioner's counsel, the guardian *ad litem* or the government can file a motion. If an appeal of an adoption is taken, the customary practice is not to close the neglect case until the appeal has been decided, on the theory that if the adoption decision is reversed, the neglect case will be there as a "safety net." However, someone may nonetheless seek to close the neglect case on the assumption that if the adoption is in fact reversed, the neglect case also re-opens automatically (an assumption that may be shared by the Court of Appeals).

Name change; new birth certificate

The adoption decree will contain a provision that the adoptee's name is changed if a name change was requested by the petitioner.

A new birth certificate will be created automatically. The court forwards the necessary paperwork to the Vital Statistics office which then generates a new birth certificate. D.C. Code §§ 16-314, 7-209, -210. The adoptive parent can obtain a copy of the new birth certificate from the Vital Records Division, D.C. Department of Public Health, 889 North Capitol Street, N.E., Washington, D.C. 20002, 877-572-6332.

Appeals

Appeals in adoptions are for the most part governed by the generally applicable laws and rules governing appeals: D.C. Code §11-721 and the rules of the District of Columbia Court of Appeals.

The time for taking an appeal is governed by D.C. App. R. 4, which provides that a notice of appeal in a civil case shall be filed within 30 days after entry of the judgment or order from which the appeal is taken. Note, however, that if a magistrate judge presided over the adoption, Super. Ct. Gen. Fam. R. D (e) applies, which imposes a 10 day period to seek review by an associate judge. Orders issued by magistrate judges are not final for purposes of appeal and must be reviewed by associate judge before they can be appealed to the Court of Appeals. D.C. Code §11-1732(k) and 1732A (d); D.C. App. R. 3(a)(2); *Bratcher v. United States*, 604 A.2d 858 (D.C. 1992). The review by an associate judge is not a de novo proceeding; the associate judge sits as an appellate court. See, e.g., *Weiner v. Weiner*, 605 A.2d 18 (D.C. 1992). When a motion for review is filed, the current protocol is that the Presiding Judge of Family Court will issue a written order assigned the motion to a Family Court associate judge.

The adoption decree is the appealable final order in the adoption case. In *In re Petition of S.J.,* 772 A.2d 247 (D.C. 2001), the Court of Appeals in a *per curiam* opinion held that an order in an adoption case waiving the birth parent's consent is not an appealable final order.

Adoptions are not automatically stayed pending appeal. A party who wants a stay would have to follow generally applicable law and procedures for seeking a stay pending appeal. See D.C. App. R. 8.

Motion to break seal

At this time, the trial record will not be transmitted to the Court of Appeals unless the trial court breaks the seal in the adoption case, nor will a transcript be produced. *See* D.C. Code §16-311. As a result, a motion to break seal needs to be filed. Typically, the appellant would file this motion, but counsel for the appellee should monitor this because the need for a motion to break seal is not widely known. Counsel for appellee can also file the motion.

Adoptions and Termination of Parental Rights Motions (TPRs)

As discussed elsewhere in this manual, the parental rights of an adjudicated neglected child can be involuntarily terminated in one of two ways:

(1) through an adoption proceeding, or

(2) through a separate motion to terminate parental rights filed in the neglect case pursuant to D.C. Code §16-2351 *et seq*.

Because there are two alternatives, question may arise such as:

-- should a Termination of Parental Rights (TPR) be done first, and then an adoption?

-- should both an adoption and a TPR be filed? If so, how is that handled?

Either the GAL or the government can file a TPR. D.C. Code § 16-2354 (a). At one time, the common practice was for GALs to file TPRs, terminating parental rights before an adoption was filed. At this time, however, TPRs filed by GALs are relatively infrequent. By contrast, at one time, the government rarely if ever filed TPRs. However, pursuant to the D.C. "Adoption and Safe Families Act" amendments to the statute, the District must file a TPR under certain circumstances, and thus, more TPRs are being filed by the government. D.C. Code §16-2354(b)(3). However, the District will often treat a pending adoption case as the functional equivalent of a TPR for purposes of satisfying the requirements of the statute in this regard and, if an adoption is filed, either not file a TPR or request that a pending TPR be held in abeyance. However, the TPR could go forward even though an adoption has also been filed; the TPR and adoption could be consolidated and tried together. Super. Ct. Adopt. R. 42; *In re D.S.*, 600 A.2d 71 (D.C. 1991).

The following is a brief look at some of the considerations that may come into play in making a decision about whether both a TPR and an adoption should be pursued. One reminder first: it is not necessary to terminate parental rights in a separate TPR proceeding in order for an adoption to be filed

and granted. If parental rights have been terminated prior to the adoption, then the birth parents have no legal connection to the child and are not entitled to notice of or to participate in the adoption proceeding. If parental rights are intact at the time an adoption is filed and heard, it means that the birth parent is entitled to notice and an opportunity to contest the adoption, but the court has the authority to grant the adoption over the objection of the birth parent.

Possible advantages of a TPR:

1. A TPR (done first, prior to the filing of an adoption) eliminates the need for a more direct battle between the adoptive parent and the birth parent. While the adoptive parent may be a witness in the TPR, the government or guardian *ad litem* files and litigates the TPR motion. Some adoptive parents might prefer not being the moving party.

2. One possible advantage associated with having a TPR proceeding before the adoption is that it could help avoid a "T.J." issue. In *In re T.J.*, 666 A.2d 1 (D.C. 1995), the Court of Appeals ruled that under certain circumstances, the birth parent's choice of custodian will be entitled to a presumption that the choice is in the best interests of the child. Thus, if the birth parent's rights are terminated, the possibility that s/he could consent to a subsequent competing individual's adoption (or guardianship or custody) is eliminated.

3. If a TPR and an adoption are litigated together, there could be an advantage to having the government directly responsible for the litigation in connection with the TPR.

Possible disadvantages of a TPR:

1. The adoptive parent will not have control over the litigation. If there is no consolidated adoption case, the adoptive parent will simply be a witness in the TPR, not a party. (While the court has some discretion under the TPR statute to permit intervention, it has generally not been the practice for adoptive parents to move to intervene.) Similarly, if there is also an adoption case pending, it may not be helpful to have the government actively litigating if there are concerns about differences in strategy.

2. If a TPR is litigated separately, without an adoption, and the TPR is appealed, the adoptive parents would probably have to wait for the TPR appeal to be decided before the court would grant the adoption. While legally there may be no significant differences between awaiting the outcome of a TPR appeal and then finalizing the adoption as opposed to awaiting the outcome of an adoption appeal, some adoptive parents might simply prefer having a final decree of adoption entered so that everything will be resolved by the appellate decision, rather than having to wait for the resolution of the TPR appeal before filing or moving forward on an adoption. In addition, a TPR is automatically stayed upon appeal, D.C. Code §16-2362, whereas an adoption is not.

3. If both a TPR and an adoption are filed, depending on the timing and sequence, the filing of the second case might delay the entire process, as the court will generally consolidate the cases. Thus, the original case would have to "wait" until the second case is at issue (i.e., at least until the parties have been served in the second case).

Interstate Compact on the Placement of Children (ICPC)

The Interstate Compact on the Placement of Children (ICPC) is a uniform law set forth at D.C. Code §4-1421 *et seq*. The ICPC was designed to regulate the interstate placement of children by courts and adoption agencies.[67]

The core requirements of the ICPC are:

- A child shall not be placed in the receiving state unless the sending state complies with the ICPC and applicable laws of the receiving state concerning placement of children.
- Prior to placing a child, the sending state shall furnish written notice to the receiving state.
- A child shall not be placed until the receiving state notifies the sending state that the proposed placement does not appear to be contrary to the best interests of the child.

ICPC approval has, in theory, already been obtained when children have been placed through the neglect case with foster parents or caretakers who live out of state. However, even if ICPC approval was obtained for the original placement, it is the position of CFSA and/or some receiving states that separate approval must be obtained in connection with the adoption. It is the general practice of CFSA to request ICPC approval in connection with the adoption, and for the court not to finalize the adoption until ICPC approval has been obtained.

In light of the fact that ICPC approval was already obtained for the original placement, and particularly when the petitioner is a licensed foster parent, the ICPC re-approval process should not be unduly burdensome and may be comparable to the process for recertifying the foster home license. The petitioner will likely have to provide some updated information to the out-of-state social services agency handling the ICPC process.

According to CFSA, certain states will not give ICPC approval until the child is “freed for adoption” – i.e., until parental rights are terminated. However, in adoption cases, parental rights are not terminated until the decree is signed – but the decree will not be signed without ICPC approval. The escape from this “catch-22” is for the judge to issue an order that the consent of the birth parent has been waived. This kind of order apparently will satisfy the receiving states that D.C. customarily deals with, such as Maryland.

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[67] For more information on the ICPC, consult the American Public Human Services Association website, http://icpc.aphsa.org/.

Children's Law Center Fact Sheet

Adoption Reform Act of 2010

Updated February 2018

The Adoption Reform Amendment Act ("ARA"), B18-0547, was passed by the D.C. Council and took effect in September 2010. The ARA includes provisions extending adoption and guardianship subsidies until children turn 21 and expanding guardianship subsidies to include non-kin. It also contains other important provisions including: judicial enforcement of voluntarily-entered post-adoption contact agreements between adoptive and biological parents; easing requirements for adoption of foster children over 18; and establishing a foster care registry so adults who are or were in foster care can seek out biological family members with whom they have lost contact. This memorandum summarizes each of these provisions and how they may play out in practice. As with any new law, not all of the details of how this will work in practice are clear. Please feel free to call the Children's Law Center Helpline during regular business hours at 202-467-4900, Option 3, with any questions.

I. Adoption and guardianship subsidy extension and expansion and related changes

a. *In general*

The law extends a child or youth's eligibility for an adoption or guardianship subsidy until he or she turns 21 years old. ARA § 501, *codified at* D.C. Code §§ 4-301(e)(2) and 16-2399(d)(2). The law also removes the limiting of guardianship subsidies to kinship foster parents – thus permitting subsidized non-kinship guardianship. ARA § 501(b), *repealing* D.C. Code § 16-2399(b)(3).

The subsidy changes have prospective effect only; this law only extends subsidies until 21 for adoptions and guardianships that are **finalized after May 7, 2010**. ARA § 501, *codified at* D.C. Code § 4-301(e)(2) & 16-2399(d)(2).[1]

Note that Child and Family Services Agency ("CFSA") has not yet amended its regulations governing guardianship subsidies nor issued new policies or "administrative issuances" to implement the new law.[2] The now-outdated regulations are invalid to the extent they conflict with the new statute.

II. Guardianship proceedings

a. *Guardianships for youth 18 – 20 years old*

The ARA clarifies that the Family Court has authority to enter guardianship orders for youth who are 18-20 years old.[3]

Several factors regarding guardianship for 18-20 year olds are important to note. First, under the new law, an 18-20 year old must consent to any guardianship in writing; indeed, such written consent is a condition of the court's jurisdiction. ARA § 501(b), *codified at* D.C. Code § 16-2390(a).

Second, attorneys for youth or prospective guardians may want to consider language regarding the authority of a permanent guardian that differs from typical guardianship orders. The statutory provision describing the effect of guardianship orders, D.C. Code § 16-2389, is drafted for younger

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[1] This provision of the ARA is already in effect. Emergency (B18-759) and temporary legislation (B18-760) allowed the subsidy extension and expansion sections of the ARA to go into effect in May.

[2] The regulations still provide that a guardian must be a "kinship caregiver," and the subsidy will terminate when a child turns 18. 29 D.C.M.R. §§ 6101.1(b) and 6104.4(d)(1).

[3] The law amends D.C. Code § 16-2390 to provide that "the court shall have jurisdiction to **enter** a guardianship order and shall retain jurisdiction to enforce, modify, or terminate a guardianship order until a child reaches 21 years of age; provided, that when the child reaches 18 years of age, the child consents and the court finds it is in the best interest of the child." (emphasis added)

children, over whom parent-like authority is appropriate. The same authority may be less appropriate for 18-20 year olds, so the parties can consider requesting the judge to issue a more age-appropriate order giving older youth more autonomy over certain decisions. It might also be worth considering an order that provides that the guardian has certain authority until 18, and modified authority after 18. Under the statute, the statutory language applies "[u]nless the court specifies otherwise." § 16- 2389(a).

Third, the guardianship statute remains silent as to what rights, if any, biological parents have regarding guardianships involving 18-20 year olds. An argument exists that parents have no custodial rights regarding youth of that age (who are legal adults) and therefore should not have any standing to contest a motion for permanent guardianship. On the other side, parents can argue that so long as they are parties to a neglect case, they may challenge a guardianship motion.

b. *Youth in guardianships cannot re-enter foster care after turning 18*

The ARA prohibits youth from re-entering foster care after they turn 18. ARA § 501(b), *codified at* D.C. Code § 16-2390(b). Just as youth in biological or adoptive families cannot enter (or re-enter) foster care after turning 18, youth living with permanent guardians now may not do so either.

The Family Court retains jurisdiction to modify or terminate a guardianship order until a youth turns 21 – the only restriction is that, unlike children under 18, youth 18 or older cannot then re-enter foster care. D.C. Code §§ 16-2390 & 16-2395. A 19 year-old can, for instance, move the Court to terminate the guardianship order or to modify any of the provisions of the guardianship order and the Court has jurisdiction to decide such motions.

III. Adoptions of 18-20 year olds

The existing adoption statute already permits adoption of anyone of any age, but the legislation changes the legal standard applicable to adult adoptions. The new law provides that a person 18 and older "may be adopted, on the petition of the adopting parent or parents and with the consent of the

prospective adoptee, if the court is satisfied that the adoption should be granted." D.C. Code § 16-304(e). This standard differs from the more familiar "withholding consent contrary to the best interests of the child" standard (the standard into which the Court of Appeals has incorporated the termination of parental rights (TPR) standard into adoption cases).

IV. Waiving the 6-month requirement for adoption of children over 18

The Act provides that an adoptee 18 or older need not live with an adoptive parent for six months before the adoption can be finalized. ARA § 701, *codified at* D.C. Code § 16-309(c)(2).

V. Post-adoption contact agreements

The ARA establishes judicially-enforceable "post-adoption contact agreements." ARA § 101.[4] Biological parents, adoptive parents, and adoptees (if they are 14 or older) can enter into agreements governing "contact" between the child and his or her biological family after the adoption is finalized. ARA § 101(a).

Either the adoptive or biological parent can move the Family Court to enforce a post-adoption contact agreement, and the Court should do so if it finds that enforcement is in the child's best interests. ARA §§ 101(b) and 101(c)(2). For instance, if an adoptive parent refuses to permit promised contact soon after an adoption is finalized, the birth parent may petition the Family Court to enforce the agreement.

A party may also ask the Court to modify a post-adoption contact agreement and the Court may do so if convinced that such modification is in the child's best interest. ARA § 101(c)(3). For instance, if an adoptive parent stops permitting contact after some time because the birth parent's substance abuse problems have worsened and the birth parent seeks to enforce the agreement, the adoptive parent could

[4] The post-adoption contact provision will not go into effect until after the Congressional review period ends.

ask the Court to modify the agreement to make any future contact in the adoptive parent's discretion.

Under no circumstances may any dispute over post-adoption contact lead to rescission of an adoption order or revocation of consent to adoption. ARA § 101(a)(2).

In foster care adoption cases, the ARA provides that "the court finalizing the adoption shall review and approve any PAC [post-adoption contact] agreement based on whether it is in the best interest of the child prior to finalizing the adoption." ARA § 101(b).

If post-adoption disputes regarding contact agreements arise, the statute states: "the parties shall certify that they have participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute prior to seeking judicial resolution. The mediator shall be selected by the adoptive parent." ARA § 101(c)(1). This provision does not clarify whether failure to seek mediation will prevent a party from seeking to enforce a post-adoption contact agreement in Family Court, or how adoptive parents are supposed to select a mediator.

Several practice points are noteworthy:

First and foremost, post-adoption contact agreements are entirely voluntary and must be agreed to by both adoptive and biological parents. Client counseling and negotiations with other parties are therefore essential. Some adoptive parents will want (or will not mind) such agreements but others will want to avoid them entirely – and such adoptive parents have every right to refuse to sign such an agreement, proceed to trial and advocate for an adoption with no such agreement. Clients will need to consider all of the ramifications of such an agreement so they can make an informed choice, and if they choose to pursue such an agreement, will need an able negotiator to help them.

Second, the statute does not define what kind of "contact" may be included in post-adoption contact agreements. Lawyers and parties negotiating such agreements have to define "contact" in each case. To best represent your client in such negotiations, it is important to know that a range of actions

may amount to "contact" – from annual letters and/or photographs from an undisclosed address to the biological parent to regular in-person visits – and to determine whether to seek specific or general provisions about the "contact" that will occur.

Third, as with adoptions themselves, an adoptee who is 14 years old or older must consent in writing to any post-adoption contact agreement. ARA § 101(a)(1). This gives foster children of that age (and their GALs) some influence over the negotiating process.

Fourth, once entered into, and in the cases from the abuse and neglect system approved by the judge in the adoption proceeding, the agreement is enforceable. Once the agreement is signed and approved, only a judge can change the agreement. Therefore, all parties should be comfortable with the agreement before signing it.

VI. Foster care registry

The ARA requires CFSA to establish a "voluntary foster care registry" to help individuals 18 and older who are or at any time were in foster care reconnect to family members with whom they have lost touch. ARA §§ 301-302, *codified at* D.C. Code §§ 4-1303.03(a)(16), 4-1303.08, 4-1303.09. Current and former foster youth and their immediate birth family members can learn more about the registry online at https://cfsa.dc.gov/service/voluntary-foster-care-registry. However, applicants must submit their materials to CFSA in person or by mail at 200 I St SE, Washington, DC 20003.

The registry enables a former foster child (or current foster youth 18 or older) and an immediate family member – parents and siblings – to reconnect if *both* parties so desire and sign up for the registry. The only people who may sign up for the registry are: an individual who is 18 or older and is or was a respondent in a child abuse or neglect case in DC, and his or her mother, father, or sibling who is also 18 or older. ARA § 301(b), *codified at* D.C. Code § 4-1303.08(g). An individual who was a respondent in an abuse or neglect case can sign up for the registry no matter how long his or her case was open and no

matter how that case ended. It is envisioned that most registrants will have been permanently separated from their biological family through adoption, guardianship, or growing up in foster care.

To sign up for the registry, a current or former foster child must consent to have their own contact information shared with family members who also sign up for the registry. The individual can consent to have their information shared with any family member who registers, or only with certain specific family members who register. ARA § 301(b), *codified at* D.C. Code § 4-1303.08(b)(1)(C). For instance, a former foster youth may consent to his information to be shared with his mother only but not his father, or only with siblings but not either parent.

Individuals may withdraw from the registry at any time. ARA § 301(b), *codified at* D.C. Code § 4-1303.08(d).

It is worth discussing with current – and possibly former – clients whether they want to register. It is particularly worth doing so with older GAL clients who wish to reconnect with parents or siblings with whom they have lost touch.

VII. Other provisions

The ARA contains several other provisions that may be of interest, but which are not likely to affect neglect practice directly. They include:

- Permitting adoption agencies to charge sliding scale fees rather than be subject to a fee cap. ARA §§ 201-201. This section is designed to encourage private adoption agencies – most of which are located in Maryland, which has sliding scale fees – to relocate to D.C. The pre-existing fee cap was a significant deterrent to agencies being located in the D.C. This provision only affects private adoptions; foster care adoptions do not depend on privately-paid fees.
- Easing the process of recognizing foreign adoptions in D.C. Courts. ARA § 401, *codified at* D.C. Code § 16-317.

ENROLLED ORIGINAL

Codification District of Columbia Official Code

2001 Edition

2010 Fall Supp.

West Group Publisher

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To provide for a post-adoption contact agreement between an adoptive parent and the birth parent; to amend An Act To regulate the placing of children in family homes, and for other purposes to replace the obsolete reference to the Department of Human Services and replace it with the Department of Health, to establish a sliding-fee scale for adoptions, to repeal the authority for a rules committee, to repeal the prohibition against relinquishment of parental rights within 72 hours of a child's birth, and to extend from 10 days to 14 days the time that a relinquishment by a parent may be revoked; to amend the Prevention of Child Abuse and Neglect Act of 1977 to establish the Voluntary Foster Care Registry and to establish the Voluntary Foster Care Registry Fund; to amend Chapter 3 of Title 16 of the District of Columbia Official Code to clarify the recognition of the foreign adoption process; to amend An act to provide for the care of dependent children in the District of Columbia and to create a board of children's guardians and Chapter 23 of Title 16 of the District of Columbia Official Code to extend subsidies for a child from 18 years of age to 21 years of age; to amend the Newborn Safe Haven Amendment Act of 2010 to reflect the change in time from 10 days to 14 days during which a relinquishment by a parent may be revoked under An Act To regulate the placing of children in family homes, and for other purposes; to amend the Vital Records Act of 1981 to clarify the procedure for issuing a new certificate of birth for an adoptee born outside of the United States; and to amend section 16-309 of the District of Columbia Official Code to exempt a prospective adoptee who is 18 years of age or older from a certain 6-month waiting period.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Adoption Reform Amendment Act of 2010".

TITLE I. POST-ADOPTION CONTACT AGREEMENT.

Sec. 101. Post-adoption contact agreement.

(a)(1) A prospective adoptive parent or an adoptive parent ("adoptive parent") and the birth parent or other birth relative of a prospective adoptee or adoptee ("adoptee") may enter into a written post-adoption contact agreement ("PAC agreement") to allow contact, after the

adoption, between the adoptee and a birth parent or other birth relative of the adoptee; provided, that written consent to the PAC agreement is obtained from an adoptee who is 14 years of age or older.

(2) The decision to enter into a PAC agreement shall be at the sole discretion of the adoptive parent.

(3) Failure to comply with a condition of the PAC agreement shall not be grounds for revoking consent to, or setting aside an order for, adoption.

(b)(1) The Family Court of the Superior Court of the District of Columbia ("Family Court") shall enforce a PAC agreement made in accordance with this section if the Family Court finds that enforcement of the PAC agreement is in the best interest of the adoptee.

(2) In enforcing a PAC agreement, the court shall take into consideration the written consent to the agreement of an adoptee who is 14 years of age or older.

(3) For cases involving an adoptee who is a respondent in a child abuse or neglect case under Chapter 23 of Title 16, the court finalizing the adoption shall review and approve any PAC agreement based on whether it is in the best interest of the adoptee prior to finalizing the adoption.

(c) If a party moves to modify a PAC agreement and satisfies the court that the modification is in the best interest of the adoptee, the court shall order that the PAC agreement be modified accordingly.

(d) If a dispute arises between the parties to a PAC agreement, the parties shall certify that they have participated, or attempted to participate, in good faith, in mediation or other appropriate dispute resolution proceedings to resolve the dispute prior to seeking judicial resolution. The mediator shall be selected by the adoptive parent.

TITLE II. ADOPTION FEE CAP.

Sec. 201. An Act To regulate the placing of children in family homes, and for other purposes, approved April 22, 1944 (58 Stat. 193; D.C. Official Code § 4-1401 *et. seq*.), is amended as follows:

(a) Section 3 (D.C. Official Code § 4-1403) is repealed.

Repeal § 4-1403

(b) Section 4 (D.C. Official Code § 4-1404) is amended as follows:

Amend § 4-1404

(1) Subsection (a) is amended as follows:

(A) Strike the phrase "Department of Human Services" and insert the phrase "Department of Health" in its place.

(B) Strike the phrase "the Department" and insert the phrase "the Department of Health" in its place.

(C) Strike the phrase "said Department" and insert the phrase "the Department of Health" in its place.

(2) Subsection (b) is amended by striking the phrase "Department of Human Services" and inserting the phrase "Department of Health" in its place.

(c) Section 6 (D.C. Official Code § 4-1406) is amended as follows:

Amend § 4-1406

(1) Subsection (b) is repealed.

(2) Subsection (c) is amended as follows:

(A) Strike the number "10" both times it appears and insert the number "14" in its place.

(B) Strike the phrase "10th day" and insert the phrase "14th day" in its place.

(d) Section 9 (D.C. Official Code § 4-1409) is amended by striking the phrase "Department of Human Services" and inserting the phrase "Department of Health" in its place.

Amend § 4-1409

(e) Section 12 (D.C. Official Code § 4-1410) is amended to read as follows:

Amend § 4-1410

"Sec. 12. (a)(1) Except as provided in paragraph (2) of this subsection, neither the Mayor nor a child-placing agency authorized to perform services in connection with placement of a child in a family home for adoption may make or receive any charge or compensation for these services.

"(2) A child-placing agency may charge an adoptive parent a reasonable fee if the child-placing agency is operating in the District of Columbia exclusively for religious purposes or as a nonprofit organization, pursuant to section 501(c) of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)), and no part of its net earnings inure to the benefit of any private shareholder or individual.

"(b)(1) A child-placing agency providing domestic or international adoption services that is authorized to charge a fee pursuant to subsection (a) of this section shall develop a sliding-fee scale based on the per capita income of the applicant and provide each applicant with:

"(A) Its fee and refund policy;

"(B) An estimate of the agency's maximum fee for specific services;

"(C) Information regarding available public and private subsidies;

"(D) Its sliding income fee scale; and

"(D) A complete list of the services that it will provide at each stage of the adoption process.

"(2) If a child-placing agency that charges a fee fails to implement and to maintain a sliding-fee scale as required by this act, or rules issued pursuant to this act, the failure shall be grounds for suspension or revocation of its license.

"(c) Except for a reasonable, nonrefundable administrative fee, a child-placing agency shall not retain the fee paid by an adoptive parent unless the child-placing agency has provided the service.

"(d) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement te provisions of this section, including the process for suspension and revocation of the license required to maintain a child-placing agency.".

TITLE III. VOLUNTARY FOSTER CARE REGISTRY.

Sec. 301. The Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.01 *et seq*.), is amended as follows:

(a) Section 303(a) (D.C. Official Code § 4-1303.03(a)) is amended as follows:

Amend § 4-1303.03

(1) Paragraph (14) is amended by striking the word "and" at the end.

(2) Paragraph (15) is amended by striking the phrase "applies." and inserting the phrase "applies; and" in its place.

(3) A new paragraph (16) is added to read as follows:

"(16) To establish and maintain the Voluntary Foster Care Registry, established pursuant to section 308 as a post-care service, for individuals 18 years or older who were or currently are respondents in a child abuse or neglect case under Chapter 23 of Title 16 and for their immediate birth family members, as defined in section 308(g).".

(b) New sections 308 and 309 are added to read as follows:

"Sec. 308. Voluntary Foster Care Registry.

"(a) For the purposes of this section, the term:

"(1) "Immediate birth family member" means a person 18 years of age or older who is the birth mother, father, or sibling of a registrant.

"(2) "Registrant" means an individual, 18 years of age or older, who was, or currently is, a respondent in a child abuse or neglect case under Chapter 23 of Title 16 or his or her immediate birth family member.

"(3) "Registry" means the Voluntary Foster Care Registry established by subsection (b) of this section.

"(b) Within 180 days of the effective date of the Adoption Reform Amendment Act of 2010, passed on 2nd reading on June 15, 2010 (Enrolled version of Bill 18-547), the Agency shall establish the Voluntary Foster Care Registry ("Registry") for a registrant who seeks to reconnect with his or her immediate birth family member to place otherwise personal confidential information in the Registry to aid in that endeavor.

"(c) To use the Registry, an applicant shall:

"(1) Complete a registration form, which shall include:

"(A) Proof that the applicant qualifies as a registrant, as defined in subsection (a) of this section, including the following information, to the extent known, pertaining to both the applicant and the individual being sought:

"(i) Name;

"(ii) Previous name;

"(iii) Address;

"(iv) Telephone number;

"(v) Name of adoptive parents, if applicable; and

"(vi) Name of birth mother and father;

"(B) The name and address of the child placement agency that placed the

child for adoption, if applicable; and

"(C) A statement of consent to be identified to other registrants who are matched as immediate birth family members, including a statement whether the registrant consents to be identified to any immediate birth family member who registers or only to specific immediate birth family members. If the registrant consents to be identified only to specific immediate birth family members, the statement shall indicate by name or relationship which immediate birth family members for whom the consent is valid;

"(2)(A) Except as provided in subparagraph (B) of the paragraph, pay a one-time fee, to be established by rule, which may be waived or reduced for individuals with verified income at or below the national poverty level.

"(B) A registrant who, at the time he or she registers, is the respondent in an open neglect case under Chapter 23 of Title 16 shall not be required to pay a fee.".

"(d) A registrant shall provide changes in the information in the Registry occurring after registration to the Agency. The Agency shall timely input the updated information in the Registry.

"(e) A registrant may withdraw from the Registry at any time by submitting a notarized affidavit to the Agency that contains the registrant's name and a request to be removed from the Registry.

"(f)(1) Upon receipt of a completed registration and the applicable fee, the Agency, or its designee, shall search the Registry for potential matching immediate birth family members.

"(2) In addition to the Registry search, the Agency may inquire into the records of:

"(A) Child placement agencies;

"(B) Local departments of social services;

"(C) The court, which shall grant the Agency access to the court record upon receipt of a petition from the Agency that provides proof of consent of the parties to disclosure of the information, as evidenced in the registration forms, and states that review of the record is needed to make a match or to provide matching information; and

"(D) The Vital Records Division of the Department of Health.

"(3) Prior to releasing any identifying information to a registrant, the Agency shall verify that the registrant consents to have his or her identifying information released to a immediate birth family member who is a registrant. The Agency shall also obtain substantiation of a familial relationship from a reliable, independent third-party source, as established by rule and upon whom the Agency did not rely in conducting its search. A third-party independent source may include:

"(A) The child placement agency that placed the child for adoption;

"(B) The Vital Records Division of the Department of Health; or

"(C) The Family Court of the Superior Court of the District of Columbia.

"(4) A match shall be ascertained between the child and an immediate birth

family member if:

"(A) The child and the child's birth mother and birth father are registrants;

"(B) The child and one or more birth siblings are registrants; or

"(C) The child and only one birth parent are registrants.

"(5) Information shall be provided regarding only those immediate birth family members who are registrants.

"(g)(1) The Registry shall retain information and documents collected until the date specified by the registrant or for 99 years, whichever occurs first.

"(2)(A) Registry documents and information shall be destroyed in accordance with the District procedure for disposal of confidential information.

"(B) Information in the Registry may not be disclosed except as provided by this act or regulations issued pursuant to this act, or pursuant to a court order.

"(h) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this section.

"Sec. 309. Voluntary Foster Care Registry Fund.

"(a) There is established as a nonlapsing fund the Voluntary Foster Care Registry Fund ("VFCR Fund"), into which shall be deposited all fees collected pursuant to section 308(c)(2)(A) and any gift or appropriation intended to assist in the funding of the Voluntary Foster Care Registry, which shall be solely used to cover the costs of administering the Voluntary Foster Care Registry.

"(b) All funds deposited into the VFCR Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the purpose set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.".

TITLE IV. FOREIGN ADOPTION.

Sec. 401. Chapter 3 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding at the end the phrase "16-317. Recognition of foreign adoptions and elective petitions for District adoption.".

(b) A new section 16-317 is added to read as follows:

New § 16-317

"§ 16-317. Recognition of foreign adoptions and elective petitions for District adoption.

"(a)(1) A final judgment of adoption granted by a judicial, administrative, or executive body of a jurisdiction or country other than the United States shall have the same force and effect in the District as that given to a judgment of adoption entered by the Superior Court of the District of Columbia, without additional proceedings or documentation if the:

"(A) Adopting parent is a resident of the District of Columbia; and

"(B) Validity of the foreign adoption has been verified by the granting of an IR-3 immigrant visa, or a successor immigrant visa, for the child by the United States Citizenship and Immigration Services.

"(2) The foreign adoption that meets the requirement of paragraph (1) of this subsection shall be considered final under the laws of the District of Columbia and, notwithstanding any other provision of law to the contrary, no further petition for an adoption decree shall be required in the Superior Court of the District of Columbia.

"(3) The Department of Health shall issue a birth certificate for the child upon:

"(A) Request by the adoptive parent;

"(B) Presentation of evidence that the adoptive parent is a resident of the District of Columbia; and

"(C) Presentation of evidence that the child was granted an IR-3 immigrant visa, or a successor immigrant visa, by the United States Citizenship and Immigration Services.

"(b)(1) Notwithstanding subsection (a) of this section, an adoptive parent may elect to file a petition for a District adoption decree with the Superior Court of the District of Columbia.

"(2) If the foreign adoption meets the requirements of subsection (a) of this section, notwithstanding any other provision of law to the contrary, the court shall issue:

"(A) A finding of fact on the foreign adoption, including the:

'(i) Name of the adoptive parent;

"(ii) Name or names of the child;

"(iii) Reported birth date of the child;

"(iv) Country of the child's birth;

"(v) Country and the date of the foreign adoption; and

"(vi) Date and issuance of an IR-3 immigrant visa, or a successor immigrant visa, for the child by the United States Citizenship and Immigration Services; and

"(B) An adoption decree to the petitioner.

"(3) A petition for a District adoption decree pursuant to this subsection may be combined with a petition for a name change.

"(4) A petition for an adoption decree issued pursuant to this subsection shall be placed on an expedited calendar to ensure minimal expense of time and money to the petitioning party in attaining a adoption decree.".

TITLE V. ADOPTION AND GUARDIAN SUBSIDY EXTENSION

Sec. 501. Section 3(e) of An act to provide for the care of dependent children in the District of Columbia and to create a board of children's guardians, approved July 26, 1892 (27 Stat. 269; D.C. Official Code § 4-301(e)), is amended as follows:

Amend § 4-301

(a) The existing text is designated paragraph (1).

(b) The newly designated paragraph (1) is amended by striking the phrase "Eligibility for payments" and inserting the phrase "Except as provided in paragraph (2) of this

subsection, eligibility for payments" in its place.

(c) A new paragraph (2) is added to read as follows:

"(2) For adoptions that are finalized on or after May 7, 2010, eligibility for payments shall continue until the child reaches 21 years of age.".

Sec. 502. Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) Section 16-2390 is amended to read as follows:

"§ 16-2390. Jurisdiction.

"(a) Subject to subsection (b) of this section, the court shall have jurisdiction to enter guardianship order and shall retain jurisdiction to enforce, modify, or terminate a guardianship order until a child reaches 21 years of age; provided, that when the child reaches 18 years of age, the child consents and the court finds it is in the best interest of the child.

New § 16-2390

"(b) A child who exits foster care to guardianship may not reenter foster care after age 18.".

(b) Section 16-2399 is amended as follows:

(1) Subsection (b) is amended as follows:

New § 16-2399

(A) Paragraph (2) is amended by adding the word "and" at the end.

(B) Paragraph (3) is repealed.

(2) Subsection (d) is amended as follows:

(A) Designate the existing text as paragraph (1).

(B) The newly designated paragraph (1) is amended by striking the phrase "Eligibility for subsidy" and inserting the phrase "Except as provided in paragraph (2) of this subsection, eligibility for subsidy" in its place.

(C) A new paragraph (2) is added to read as follows:

"(2) For guardianships that are finalized on or after May 7, 2010, eligibility for subsidy payments under this section shall continue during the period of the guardianship order until the child reaches 21 years of age.".

TITLE VI. CONFORMING AMENDMENTS.

Sec. 601. Section 105(c)(1) of the Newborn Safe Haven Amendment Act of 2010, effective March 25, 2010 (D.C. Law 18-158; D.C. Official Code § 4-1451.05(c)(1)), is amended by striking the phrase "10-day" and inserting the phrase "14-day" in its place.

Amend § 4-1451.05

Sec. 602. Section 11(a-1) of the Vital Records Act of 1981, effective October 8, 1981 (D.C. Law 4-34; D.C. Official Code § 7-210(a-1)), is amended to read as follows:

New § 7-210

"(a-1)(1) The Registrar shall establish a new certificate of birth for an adoptee born outside of the United States upon receipt of a request of the adoptive parent or the adoptee, if the adoptee is18 years of age or older, and receipt of either:

"(A) An adoption form prepared according to section 10; or

"(B)(i) A copy of the foreign adoption decree;

"(ii) A certified translation of the foreign adoption decree; or if birth information is not already included in the foreign adoption decree, evidence as to the child's birth date and birthplace, which may be evidenced by:

"(I) An original birth certificate;

"(II) A post-adoption birth certificate issued by the foreign jurisdiction, including a certified copy, extract, or translation; or

"(III) Other equivalent document, such as a record of the U.S. Citizenship and Immigration Services or the U.S. Department of State; and

"(iii) Evidence of IR-3 immigrant visa status, or successor immigrant visa status, for the child by the U.S. Citizenship and Immigration Services.

"(2) Following review by the Registrar, all adoption documents issued by the foreign jurisdiction shall be returned to the adoptive parent or adoptee, whichever is applicable.

"(3) Subsections (f) and (g) of this section shall not apply to this subsection.".

Sec. 603. Section 16-309(c) of the District of Columbia Official Code is amended to read as follows:

New § 16-309

"(c)(1) Except as provided in paragraph (2) of this subsection, a final decree of adoption may not be entered unless the prospective adoptee has been living with the petitioner for at least 6 months ("6-month requirement").

"(2) A prospective adoptee shall be exempt from the 6-month requirement if he or she is 18 years of age or older.".

TITLE VII. APPLICABILITY, FISCAL IMPACT STATEMENT, AND EFFECTIVE DATE.

Sec. 701. Applicability.

Title III of this act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

Sec. 702. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 703. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as

provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

____
Chairman
Council of the District of Columbia

____
Mayor
District of Columbia

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Child and Family Services Agency

Voluntary Foster Care Registry Registration Form

For purposes of completing this application, the term "**immediate birth family member"** applies only to a birth mother, birth father, biological child or biological sibling. Additionally, the term **"registrant"** means an individual, 18 years or older, who was, or currently is, in the legal custody of Child and Family Services Agency ("CFSA") or an immediate birth family member of that person. The Voluntary Foster Care Registry cannot be used to locate grandparents, guardians or other extended family members.

You are responsible for contacting CFSA and updating your contact information should you relocate or your contact information changes. Failure to update your contact information will make it difficult for CFSA to successfully match you with your immediate birth family members in the registry.

PLEASE DELIVER THE COMPLETED ORIGINAL FORM *ALONG WITH A COPY OF YOUR DRIVER'S LICENSE OR SOME FORM OF GOVERNMENT ISSUED IDENTIFICATION* TO:

Child and Family Services Agency
200 I. Street, S.E.
Washington, DC 20003
Attn: Voluntary Foster Care Registry
(202) 442-6188

Part I: Registrant Information [Please PRINT or TYPE]

Initial Registration ☐ **Modify Existing Registration** ☐

Registrant Classification (please check only one): Are you the ☐ Birth Parent ☐ Birth Sibling ☐ Foster Youth

NAME:____ Gender: ☐M ☐F

Last First Middle

D.O.B. __________ Social Security No. ______--_____--_______ Race: ____________________________

List **all** names (Last, First, Middle) ever used *(maiden, married, pre-adoptive, alias, etc.)*:

____

Last First Middle

____

____

List **Current** Contact Information:

____

Address (include apt. number if applicable) City State Length of Residency

____

Telephone Numbers: Home Cell Work Email

Were you adopted? **Yes** or **No**
Are you trying to locate a birth child/sibling who was adopted? **Yes** or **No**
If you were in foster care, in what year did your foster care case close? ________

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Child and Family Services Agency

PART II: Immediate Birth Family Information. In the table below, please list the names (and relationship to you) of the immediate birth family members (as defined above) with whom you would like to reconnect through the Voluntary Foster Care Registry. Please mark the Consent box (and initial next to it) for *each family member* for whom you give consent to receive your contact information in the event of a match. *If there is any further contact information, physical description, or other details about these family members that may help us confirm a match, please provide it on additional sheets.*

Name (Last, First), Gender, & Relationship to Registrant	D.O.B	Race	Last Known Address	Consent	Initials
				❒	
				❒	
				❒	
				❒	
				❒	
				❒	

PART III: Registrant Consent to Release of Information

In the event of a registrant match, CFSA is required by law to obtain independent verification of a familial relationship by contacting one or more of the following entities:

- D.C. Superior Court
- Vital Records Division of the D.C. Department of Health
- Child Placing Agencies of Maryland, Virginia and the District of Columbia
- D.C. Collaborative Agencies and/or local departments of social services

By signing below, I authorize the above entities to disclose information from my file (including HIPAA protected information) to CFSA for the sole purpose of verifying my familial relationships with immediate birth family members, as required by the District's Voluntary Foster Care Registry. I understand that this information cannot be re-disclosed by CFSA without my written authorization.

By signing below, I also give express consent to CFSA to release my contact information to the immediate birth family members for whom I indicated consent in Section II of this registration form. I understand that these family members must also be registrants in the Voluntary Foster Care Registry in order to receive this information.

______________________________ _______________
Applicant's Signature Date

PART IV: District of Columbia Notarization. Please have a District of Columbia Notary Public fill out this section. CFSA can provide Notary services if you fill out the application in person at the Voluntary Foster Care Registry Above.

Subscribed and affirmed or sworn to me, in my presence,

on this __________day of ______________________, 20____.

Signature of Notary Public

____
Notary Public, District of Columbia

My commission expires on ___/___/____.

- **YOU HAVE THE RIGHT TO WITHDRAW FROM THE REGISTRY AT ANY TIME.**

In order to withdraw from the registry, please submit a letter to the Child and Family Services Agency that includes your name and a request to be removed from the Registry. The letter must be signed, notarized, and sent to the address above.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT – ADOPTION BRANCH

EX PARTE IN THE MATTER OF	:	
The Petition of	:	**Adoption Case No.:**
For Adoption of Minor Child	:	**Adoption Calendar Judge**

Post-Adoption Contact Agreement

This Post-Adoption Contact Agreement ("Agreement") is made and entered into effect pursuant to D.C. Code § 4-303 (2010) (Section 101 of D.C. Law 18-230) as of January 25, 2010 by and biological great-aunt, biological great-uncle, preadoptive mother, and preadoptive father (collectively "the parties").

RECITALS

Whereas, all of the undersigned parties concur that this Agreement is in the best interest of the children;

Whereas, this Agreement has been negotiated in the context of consultation and review by their respective counsel;

Whereas, all parties to this Agreement acknowledge that they have signed this Agreement voluntarily and that they have consulted their respective attorneys before signing;

Whereas, all parties to this Agreement acknowledge that this Agreement contains the entirety of their understanding and agreement as to the grounds for this post-adoption contact Agreement.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. [redacted] each agree to provide a telephone number and address through which they can communicate.

2. Mr. and Mrs. [redacted] agree that Mr. and Mrs. [redacted] may visit with [redacted] one day a week and one weekend-overnight visit a month.

   (i) These visit shall take place in the [redacted] home at a mutually agreeable date and time.

3. Mr. and Mrs. [redacted] agree that [redacted] and [redacted] may be present at family gatherings or events attended during the visitation periods identified in paragraph 2 of this agreement upon notice to Mr. and Mrs. [redacted] and that any interaction between [redacted] and her biological parents be supervised by Mr. and Mrs. [redacted]

INTEGRATION AND FUTURE MODIFICATION

This Agreement contains the entire understanding between the parties. There are no representations, warranties, covenants, or undertakings other than those expressly set forth in this Agreement. No modification or waiver of any terms of this Agreement by the parties shall be valid unless made in writing and signed by the parties.

GOOD FAITH

The parties will undertake to resolve any disagreements through good faith discussions and mediation. Only in the event that they fail to reach mutual agreement on a resolution will they seek to invoke the assistance of the Court.

MISCELLANEOUS

a.) No provision of this Agreement shall be interpreted for or against any party hereto by reason that said party or his or her legal representative drafted all or any part hereof.

b.) Any headings preceding the text of any of the provisions in this Agreement are inserted solely for convenience of reference and do not constitute a part of the Agreement, nor shall they affect the meaning, construction, or effect of any of the provisions of this Agreement.

c.) This Agreement shall be executed in duplicate or more copies, and each executed copy shall have the same force and effect as if it were the original copy.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

BY THE COURT:

____
Date

____
The Honorable

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
DOMESTIC RELATIONS BRANCH – ADOPTION

EX PARTE IN THE MATTER OF	)	
	)	
THE PETITION OF	)	
	)	
___________________________	)	**Adoption Case No. A-** ____________
	)	
	)	**Judge Juliet McKenna**
FOR ADOPTION OF MINOR CHILD.	)	

PETITION FOR ADOPTION

The Petitioner(s) in this case is/are . The Petitioner(s) represent(s) the following to this Court:

1. That this Court has jurisdiction under the provision of D.C. Code § 16-301, et. seq. in that (the Petitioner(s) is/are legal resident(s) of the District of Columbia and has/have been for months/years.) (The Petitioner(s) has/have been [a resident][residents] of the District of Columbia since , which is at least one year next preceding the filing of the petition.) (The prospective adoptee, , is in the legal care, custody, or control of [the Child and Family Services Agency] [ ], a child-placing agency licensed by the District of Columbia.)

2. The Petitioner(s) is/are/are not married. They were married on . (If the Petitioners are not married, state the nature of their relationship.)

3. The Petitioner(s) reside(s) at .

4. The first Petitioner, (name), was born on (dob) and is (age). This Petitioner is (race) and is a member of the religion.

5. The first Petitioner, , is employed by in the position of .

6. The second Petitioner, (name), was born on (dob) and is (age). This Petitioner is (race) and is a member of the religion.

7. The second Petitioner, , is employed by in the position of .

8. The prospective adoptee is a young boy/girl, who is years old, was born on (dob) in (place). The prospective adoptee is (race) and a member of the religion.

9. The prospective adoptee is the Petitioner'(s)' (relationship to the Petitioner).

10. (The Petitioner(s) is/are (not) requesting an adoption subsidy.) (An adoption subsidy agreement has (not) been entered into prior to the filing of this Petition. The status of the subsidy agreement is .) (The prospective adoptee will (not) qualify for an adoption subsidy as the prospective adoptee is years old and .)

11. The Petitioner(s) has/have (not) received the complete medical, social, or background information on the prospective adoptee.

12. On information and belief, the prospective adoptee's birth mother is . Her last known address is . Ms. is (race) and a member of the religion. (The birth mother's identity and/or location is unknown and the following efforts have been made to obtain this information: .)

13. On information and belief, the prospective adoptee's birth father is . His last known address is . Mr. is (race) and a member of the religion. (The birth father's identity and/or location is unknown and the following efforts have been made to obtain this information: .)

14. (The prospective adoptee was placed in the care of the Petitioner(s) on (date) (The prospective adoptee was placed in the Petitioner'(s') care on (date) by Child and Family Services Agency.) (The prospective adoptee is not residing with the Petitioner because: .)

15. (There is/are [no] executed original written consent(s) signed by (mother/father/guardian). (There is/are [no] relinquishment(s) of parental rights signed by the biological parent(s).) (There is/are [no] order(s) terminating parental rights by a court of competent jurisdiction.) (There is [not] an affidavit by the putative father denying paternity and/or an affidavit by the birth mother that the birth father is unknown.)

16. The name and address of the agency responsible for securing any required consent or relinquishment of birth parent(s) is .

17. The name and address of the birth parent(s), who have not executed a consent and the reason a consent has not been executed is as follows: .

18. The Interstate Compact on the Placement of Children (ICPC) (D.C. Code Sec. 32.1041 et. seq.) (is) (is not) applicable to this adoption due to the fact that . (Approval has (not) been received prior to the filing of this petition.) (*Rule requires copy of approval if received.*)

19. (The Indian Child Welfare Act (Title 25 U.S.C. Sec. 1901 et. seq.) is not applicable to this adoption.) (The Indian Child Welfare Act (Title 25 U.S.C. Sec. 1901 et. seq.) is applicable to this adoption and there has (not) been compliance with the Act.)

20. (The prospective adoptee has been the subject of a neglect case, N- . Judge (name) is assigned to hear periodic neglect reviews in this matter.) (Other court actions involving the prospective adoptee, which have been initiated or pending within the prior five years are .) (There are no [other] court actions involving the prospective adoptee, which have been initiated or pending within the prior five years.)

21. During the past 10 years, the Petitioner(s) has/have not been a party in a personal capacity in any criminal, civil, or domestic matters, except that Petitioner(s) was/were made a party in the adoptee's neglect case and .

22. The combined assets of the prospective adoptee do not exceed $3,000.00. (*If incorrect, itemize all assets.)*

23. The prospective adoptee is physically, mentally, and otherwise suitable for adoption by the Petitioner(s).

24. The Petitioner(s) is/are fit and able to give the prospective adoptee a proper home and education.

25. The adoption is in the best interest of the prospective adoptee.

26. The Petitioner(s) desire(s) to have conferred upon the prospective adoptee the same status the prospective adoptee would have if the Petitioner(s) was/were the prospective adoptee's natural parent(s).

WHEREFORE, the Petitioner(s) pray(s):

1. That an interlocutory/final decree of adoption be entered establishing the relationship of parent and child for all purposes between the Petitioner(s) and the prospective adoptee.

2. That the name of the prospective adoptee be changed to ______.

3. That this Court issue an order of reference with a copy of the Petition attached to be served upon Child and Family Services Agency for the purpose of verifying the allegations contained in the Petition. A report is to be made to the Court within 90 days regarding the advisability of the proposed adoption.

4. That the Court waive the requirement of a written consent by the biological (mother) (father) (parents) if that person(s) after such notice as the Court directs, cannot be located, or has abandoned the prospective adoptee and voluntarily failed to contribute to his/her support for a period of at least six months next preceding the date of the filing of the petition.

5. That the Court waive the requirement of a written consent by the biological (mother) (father) (parents) if the Court finds pursuant to D.C. Code § 16-304 that the consent or consents are withheld contrary to the best interest of the child.

6. For such other and further relief as may seem just and proper to the Court.

____________________, 2010 ____________________________________
Date Signature of Petitioner

____________________, 2010 ____________________________________
Date Signature of Petitioner

DISTRICT OF COLUMBIA, ss:

________________________________ (and ________________________________)

Petitioner(s), being first sworn, testify that (he/she/they) have read the Petition for Adoption and understand its terms and believe that the statements contained in this Petition are true.

Subscribed and sworn to before me this ________ day of ___________________.

201____.

____
Deputy Clerk/ Notary Public

____
(Petitioner's Counsel's signature)

(Petitioner's Counsel's)
(Petitioner's Counsel's Office Address)
(Petitioner's Counsel's Telephone No.)
(Petitioner's Counsel's Fax No., if any)
(Petitioner's Counsel's D.C. Bar No.)

ADOPTION INFORMATION SHEET

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
DOMESTIC RELATIONS BRANCH – ADOPTION

EX PARTE IN THE MATTER OF	**ADOPTION CASE NO. A-**
THE PETITION OF	
	JUDGE JULIET MCKENNA
FOR ADOPTION OF MINOR CHILD(REN)	

---

1. **Petitioner's Full Name:**
2. Petitioner's Address:
3. Petitioner's Phone Number:
4. Petitioner's Date of Birth:
5. Petitioner's Social Security Number:
6. Petitioner's Driver's License No.:
7. **Minor Child's Full Name**
8. Minor Child's Address:
9. Minor Child's Phone No.:
10. Minor Child's Date of Birth:
11. Minor Child's Place of Birth:
12. Minor Child's Social Security No.:

13, **Neglect Case Number:**

14. **Neglect Social File Number:**
15. **Neglect Judge's Name**

16. **Is the Mother's Affidavit of Paternity Attached** Yes or No

17. **Has the Mother's Affidavit of Paternity been filed** Yes or No

18. **Please provide the case number of the case in which the affidavit was filed:** _______________

19. **Mother's Full Name:**

20. Mother's Last Known Address:

21. Mother's Phone Number:

22. Mother's Date of Birth

23. Mother's Social Security No.:

24. Mother's Driver's License No.:

25. **Father's Full Name:**

26. Father's Last Known Address:

27. Father's Phone Number:

28. Father's Date of Birth:

29. Father's Social Security No.;

30. Father's Driver's License No.:

31. **Consent from Mother:** Yes or No

32. **Consent from Father:** Yes or No

33. **Relinquishment from Mother:** Yes or No

34. **Relinquishment from Father:** Yes or No

35. **Termination of Mother's Parental Rights:** Yes or No

36. **Termination of Father's Parental Rights:** Yes or No

37. **Social Worker's Agency:**

38. Social Worker's Name

39. **Neglect Hearing Date:**

40. Place of Hearing: Courtroom No. Hearing Room No.

41. **Petitioner's Counsel's Name:**

42. Address:

43. Phone Number:

44. Fax, if any:

45. Email, if any:

46. **Petitioner's Additional Contact Information if not Represented by Counsel:**

47. Fax, if any:

48. Email, if any:

49. **Mother's Counsel's Name:**

50. Address:

51. Phone Number:

52. **Father's Counsel's Name:**

53. Address:

54. Phone Number:

55. **Guardian *Ad Litem's* Name:**

56. Address:

57. Phone Number:

58. **Petitioner's Relationship to Adoptee:**

59. **Child has Lived with Petitioner(s) Since:**

60. **Petitioner's Marital Status:**

61. **Jurisdiction in Which Petitioner Resides:**

62. **Competing Case:** Yes or No

63. If yes, Competing Case Number:

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CHILD AND FAMILY SERVICES AGENCY
VITAL RECORDS FORM FOR ADOPTION PROCEEDINGS

1. Original name of child ______________________________

2. Date of birth ______________________ Place of birth ______________________

3. Name of Natural father ______________________________

4. Name of Natural mother (including maiden name) ______________________________

5. Birth certificate number if known ______________________

6. Name of child-placing agency ______________________________
(required only when the names of the natural parents are unknown)

In order that there may be a complete record of the history of the adoptive parents as if they were the natural on the new certificate, it will be necessary that the information requested below be furnished.

ADOPTIVE FATHER	**ADOPTIVE MOTHER**
Full Name ______________________	Full Maiden Name ______________________
Race __________ Date of birth __________	Race __________ Date of birth __________
Birthplace ______________________	Birthplace ______________________
Occupation ______________________	Occupation ______________________
Usual residence ______________________	Usual residence ______________________

Other children born to, or adopted by this mother (**do not include this child**):

No. now living __________ No. born alive but now dead __________ No. born dead __________

The items regarding the age, occupation, and residence of the adopters are to be furnished as of <u>the date that the adoptee was born</u>.

Signed: ______________________________

Address: ______________________________
____
____

ADOPTION NO. ______________________

dc's CHILDREN'S LAW CENTER family. health. education.

Guardianship – A Primer

Updated February 2018

I. Background

In 2000, legislation was enacted in D.C. that permits the court to grant guardianship of adjudicated neglected children to non-parent caregivers.[1] This legislation created a new custodial status that had not existed previously.[2]

What is guardianship and why was it created?

The purpose of the guardianship law is to create another "permanency option" for caregivers of adjudicated neglected children in addition to custody and adoption.

A guardianship order, like an order of custody or adoption, creates a long-term custodial status that vests a caretaker with continuing legal authority over a child without the periodic review, oversight and renewal by the court and D.C. Child and Family Services Agency (CFSA) that is required by law when a caregiver is given time-limited custody through a disposition order in a neglect case.[3]

Why was an alternative to the existing long-term options of adoption and custody created? Not all caregivers, even those who have cared for children for many years, are comfortable with adoption, particularly when the caregiver is a relative. However, a custody order may not be a viable option for caregivers who are foster parents, because they would no longer be able to receive foster care maintenance payments if they obtained long-term custody through a custody proceeding, the neglect case closed, and the child no longer in foster care status.[4]

Guardianship grants long-term custodial authority to the caregiver without permanently terminating the birth parents' rights. The indefinite duration of the guardianship order obviates the need for an active neglect case as the means for vesting custody in a caretaker. In addition, if the child is eligible, the guardian can receive "guardianship subsidy" payments that are similar to foster care payments (see below).

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[1] D.C. Law 13-273, "Foster Children's Guardianship Act of 2000," D.C. Code §16-2381 *et seq*.

[2] Although there is another statute, D.C. Code §21-101 *et seq.*, that empowers the court to appoint guardians for children generally, such cases are rarely brought. Those proceedings are heard in the Probate Division of the court and are utilized for the most part for orphans and the management of their estates.

[3] In a neglect case, the court can only grant custody through a "disposition order" for one or two years, subject to extensions of one year at a time until the child is 21. D.C. Code §§16-2320, 2322.

[4] Children in foster care are in the legal custody of the D. C. CFSA ("committed" to CFSA). Children can be placed in foster care only through an order in an open neglect case in D.C. Superior Court.

How does guardianship differ from custody and adoption?

Rights

Guardianship differs from adoption in that it does not result in a permanent severance of the birth parents' rights. It more closely resembles a custody proceeding, in that custodial rights are allocated between the caregiver and the parent, with the guardian routinely having sole or primary legal and physical custody.[5] Like a custody proceeding, guardianship vests custody in the caretaker for an indefinite period of time and is subject to modification upon order of the court.[6] Adoption, on the other hand, permanently terminates the birth parents' rights and creates a new parent-child relationship between the child and the adoptive parent. The court does not have on-going authority to modify an adoption decree.[7]

Another distinction is that, unlike custody and adoption, if the guardianship is terminated (see below), the neglect case can usually be reopened, and the court will resume its post-dispositional authority in the neglect case.

Financial support

There are five main government benefits programs through which children not in foster care status might be eligible for cash assistance.[8] They are:

> <u>Temporary Assistance for Needy Children</u> (TANF): TANF is an income-based program available to children in the care of relatives who are not receiving parental financial support. In addition, a child who is eligible for TANF will also be eligible for Medicaid.
>
> <u>General Assistance for Children</u>: a program available only to D.C. residents, GAC is similar to TANF but does not require that the caretaker be a relative.
>
> <u>Supplemental Security Income</u> (SSI): an income-based program for children with qualifying physical, mental or emotional disabilities. A child who is eligible for SSI will also be eligible for Medicaid.

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[5] See D.C. Code §16-914 for definitions of legal and physical custody. *See also Ysla v. Lopez*, 684 A.2d 775 (D.C. 1996). The scope of guardianship is addressed in D.C. Code §16-2389.

[6] The terms "permanent custody" and "permanent guardianship" are misleading. Custody and guardianship are always modifiable subject to the applicable legal standards.

[7] As a result of the Adoption Reform Amendment Act of 2010, D.C. Law 18-0232, *codified at* D.C. Code § 4-361, birth parents and adoptive parents can now enter into judicially enforceable and modifiable post-adoption contact agreements. Other than that, adoptions are non-modifiable.

[8] These are only brief general summaries of the programs. Attorneys are cautioned to fully investigate the nature of the benefits and the eligibility requirements. In addition, as the descriptions suggest, eligibility for some of these programs may be mutually exclusive.

Adoption subsidy[9]: The main, although not exclusive, benefits are a monthly cash payment (comparable to the foster care payment) and Medicaid. Most children in foster care will be eligible for adoption subsidy. In order for the child to receive subsidy, the caregiver must be a licensed foster parent prior to the adoption.

Guardianship subsidy: Modeled in part on the adoption subsidy program, guardianship subsidy provides a monthly cash payment comparable to the foster care payment. In most situations, the child will also be eligible for Medicaid. Most children in foster care will be eligible for guardianship subsidy. In order for the child to receive subsidy, the caregiver must be a licensed foster parent prior to the guardianship. (See below for more information on guardianship subsidy.)

Thus, probably the most important difference between guardianship and custody is not a legal one but rather a financial one: the "guardianship subsidy" that is available to most caregivers who are awarded guardianship of the child.

Keep in mind that there may be caregivers and children for whom adoption, custody and guardianship all have drawbacks and whose interests would best be served by keeping the neglect case open (and keeping the child in foster care status). It is usually advisable to discuss all the options with a caregiver and, in particular, to explore the financial consequences of each option (what services will and will not continue to be paid for). However, guardianship may offer some caretakers an appropriate option of a long-term non-adoptive custodial arrangement with some financial support but without the intrusiveness and constraints that may result from an open neglect court case and from the child being in the foster care system.

II. Procedure and Legal Standard

Guardianship proceedings are governed by D.C. Code §16-2381 *et seq*. In addition, the court has issued Administrative Order 16-02 (February 5, 2016) at **https://www.dccourts.gov/sites/default/files/2017-03/16-02-Guardianship-Procedures-Supersedes-02-05-Feb-5-2016.pdf** concerning procedure in guardianship proceedings.[10]

The language of the guardianship statute and the procedure for obtaining guardianship are modeled in part on the termination of parental rights statute, D.C. Code §16-2351 *et seq*., and in part on the adoption statute, D.C. Code §16-301 *et seq*.

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[9] Adoption subsidy is a program that D.C. is required to offer pursuant consistent with the requirements of Title IV-E of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272). See also D.C. Code §4-301.

[10] Administrative Order 16-02 replaces Administrative Order 02-05. There are currently no court rules specifically governing guardianship proceedings. While the neglect rules may apply because guardianship proceedings are motions in neglect cases, neglect and guardianship proceedings are sufficiently different that not all the rules may be relevant. The guardianship statute had not been enacted at the time that the neglect rules were adopted.

The guardianship statute provides the following:

- A guardianship proceeding is initiated by the filing of a motion in the neglect case. The motion can be filed by the proposed guardian, the District of Columbia or the child's guardian *ad litem*.[11] D.C. Code § 16-2384 (a).

- The motion can be filed at any time after a neglect petition has been filed, but a guardianship order cannot be entered unless the child has been adjudicated neglected and has been living with the proposed guardian for at least six months. D.C. Code §§ 16-2384 (b), 2383 (a).
    - Guardianship motions are filed through the Family Court Central Intake Center as are other pleadings in neglect cases.[12] A separate guardianship case file will be created and will be assigned a case number that parallels the neglect case (e.g., 2009 NEG 1246, 2009 GDN 1246).

- Parties specified by statute are the parents, the child, the proposed guardian, the agency having legal custody of the child, and the District of Columbia. D.C. Code § 16-2385.

- Personal service of the motion and a summons is required or, if personal service cannot be effected, the court can authorize constructive service. D.C. Code § 16-2386.
    - Summonses for guardianship cases can be obtained in the Neglect Clerk's office.
    - At this time, the "Diligent Search Unit" (DSU) of CFSA will conduct a search for the birth parents and either serve them and file an affidavit of service, or file an "affidavit of efforts" which can be used in support of a motion for constructive service.

- After an adjudicatory hearing, the court may enter a guardianship order if it finds that guardianship is in the child's best interests, that adoption, termination of parental rights, or return to the parent is not appropriate, and that the guardian is suitable and able to provide a safe and permanent home. D.C. Code § 16-2383 (c).
    - The general practice is that the judge or magistrate judge who presides over the neglect case will hear guardianship motion.

- The court looks at the following factors in determining whether guardianship is in a child's best interests:
    - (1) The child's need for continuity of care and caretakers, and for timely integration into a stable and permanent home, taking into

[11] The statute uses the term "legal representative." D.C. Code § 16-2384 (a). In interpreting the same language in the termination of parental rights statute, the Court of Appeals held that it includes the court-appointed guardian *ad litem*. *In re L.H.*, 634 A.2d 1230 (D.C. 1993).

[12] Filings shall be done pursuant to procedures set out in Administrative Order 12-10, E-Filing in the Neglect and Abuse, Juvenile and Domestic Relations Branches of the Family Court.

account the differences in the development and the concept of time of children of different ages;

   - (2) The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child;
   - (3) The quality of the interaction and interrelationship of the child with his or her parent, siblings, relatives, and caretakers, including the proposed permanent guardian;
   - (4) To the extent feasible, the child's opinion of his or her own best interests in the matter; and
   - (5) Evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided pursuant to section 6-2104.01. Evidence of continued drug-activity shall be given great weight. DC Code § 16-2383 (d).

- The standard of proof is preponderance of the evidence, and the guardianship movant bears the burden of proof. D.C. Code § 16-2388 (b), (f).

- If the child is 14 years of age or older, the court shall designate the permanent guardian selected by the child unless the court finds that the designation is contrary to the child's best interests. D.C. Code § 16-2383 (b).

- The guardian may not relocate over 100 miles from the place of residence at the time the order was entered without filing a notice with the court that is personally served on all parties fifteen business days prior to the relocation. D. C. Code § 16-2391.

- Once an order for permanent guardianship is entered, the guardian, in addition to maintaining physical custody, has the following rights and responsibilities regarding the child:
   - (1) Protect, nurture, discipline, and educate the child;
   - (2) Provide food, clothing, shelter, education as required by law, and routine health care for the child;
   - (3) Consent to health care without liability by reason of the consent for injury to the child resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;
   - (4) Authorize a release of health care and educational information;

  - (5) Authorize a release of information when consent of a parent is required by law, regulation, or policy;
  - (6) Consent to social and school activities of the child;
  - (7) Consent to military enlistment;
  - (8) Obtain representation for the child in legal actions; and
  - (9) Determine the nature and extent of the child's contact with other persons. D.C. Code § 16-2389 (a).

- A guardianship order does not terminate the parent-child relationship, and the parent retains certain rights and responsibilities, including the child's right to inherit from the parent, the parent's right to visit and contact the child[13], the parent's right to consent to the child's adoption, the parent's right to determine the child's religion, and the parent's responsibility to provide support to the child. D.C. Code § 16-2389 (c).

- A guardianship order lasts indefinitely unless and until modified or terminated by the court. The court retains jurisdiction until the child is age 18 or, if the child consents, until age 21. D.C. Code § 16-2390 (a).

- Guardianships can be modified or terminated. If the court finds by a preponderance of the evidence, that there has been a substantial and material change in the child's circumstances, and that it is in the child's best interests, the order for guardianship can be modified or terminated following an adjudicatory hearing. D.C. Code § 16-2395.

- There is also a procedure for designating successor guardians. Upon filing a motion for permanent guardianship, the movant may designate and the court shall approve any successor guardian. In the event of the permanent guardian's death, or physical or mental infirmity, the successor guardian shall immediately obtain physical custody of the child and assume the permanent guardian's rights and responsibilities concerning the child. Within 30 days of obtaining physical custody of the child, the successor guardian shall move the court for a modification of the original guardianship order. D.C. Code § 16-2398.

- Upon entry of the guardianship order and during the period of time the order remains in effect, the requirements of D.C. Code §§16-2322 and 2323 are suspended. Upon the

[13] The statute also states that the "guardianship order may specify the frequency and nature of visitation or contact between relatives and the child. The court may determine whether the visitation or contact is in the child's best interest." D.C. Code § 16-2389 (d).

entry of an order terminating the guardianship, the court shall hold a hearing pursuant to §16-2323.[14] D.C. Code §§ 16-2389 (e), (f), 2395 (g).

III. Guardianship Subsidy

The guardianship statute allows the District to make subsidy payments to guardians, subject to the availability of appropriated funds.[15] The eligibility requirements set forth in the statute are (1) the child must be adjudicated neglected, (2) the child must be committed to the legal custody of CFSA (*i.e.* in foster care), and (3) a subsidy payment agreement must be entered into by CFSA and the guardian. Originally, guardianship subsidy was only available if the child's foster parents were kinship caregivers as defined (relatives or "godparents"). However, as a result of the "Adoption Reform Amendment Act of 2010," D.C. Law no. 18-0230, unrelated foster parents are now also able to receive guardianship subsidy.

Guardianship subsidy regulations were promulgated in 2001. 29 DCMR 6100, *et. seq.* (D.C. Register, November 23, 2001). The regulations require that:

- the guardian must have been the kinship caregiver (defined in the regulations as a foster parent caring for a kin foster child) for at least six months immediately preceding the application for subsidy; <u>however</u>, as noted, this provision of the regulations was superseded by the Adoption Reform Amendment Act, *supra*;

- the child must be adjudicated neglected and in the legal custody of CFSA (*i.e.* in foster care);

- the child must be either a member of a sibling group; difficult to place for adoption; at least two years old; or would likely not be placed in a permanent placement outside of the applicant's family;

- the applicant has a financial need for guardianship;

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[14] The oversight mechanisms of the neglect case (counsel, social worker visits, reports, periodic review hearings) are thus suspended for the period of time the guardianship order is in effect. In essence, this allows the neglect case to become dormant subject to reactivation should the guardianship order be terminated. The statute also allows the neglect case to be "closed." This distinction seems to be blurred in practice, although they are two separate options in the statute.

[15] D.C. Code §16-2399 as amended by D.C. Act 18-478, the Adoption Reform Amendment Act of 2010. The guardianship subsidy program was originally a D.C.-funded program loosely based on the adoption subsidy program. Adoption subsidy is a program that must be offered by states that participate (as does the District) in the federal funding scheme offered through the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) (also known as Title IV-E). (D.C. Code §4-301 also provides that the District shall have a subsidy program.) Federal financial participation may also now be available for some guardianship subsidies.

- CFSA has determined that the permanency plan of legal guardianship is in the child's best interest;

- the guardian has a financial need for guardianship subsidy; and

- the guardian enters into a subsidy agreement with CFSA.

Subsidy payments can be time-limited or can continue indefinitely until the child's 21st birthday.[16] Typically, subsidy agreements should provide for subsidy until the child is 21.

Subsidy Benefits

Monthly Payment

The core benefit of guardianship subsidy is a monthly cash payment. The subsidy regulations set forth a rate schedule. Pursuant to the D.C. subsidy regulations, the subsidy amount is based on the foster care payment rate (a level system based on the age and needs of the child) and the income of the applicant. D.C. Mun. Regs. Tit. 29, § 6103.03 (2001).

However, the schedule in the regulations is not actually what is currently used by CFSA in determining the amount of guardianship subsidy. First, CFSA has stated (in spring 2011) that it will no longer consider the guardian's income in determining the amount of subsidy. In other words, there will no longer be a means test and the amount of subsidy will be based only on the child's age and needs classification.

Second, the rates in the regulations are not currently followed for either foster care payments or for guardianship subsidy. CFSA reviews foster care rates annually and typically increases them every year (a small cost of living adjustment), but the guardianship subsidy regulations may not be updated accordingly. In practice, the subsidy amount offered by CFSA will be based on the foster care rate that the foster parent is currently receiving, even if the subsidy regulations have not been updated to reflect the current rates.[17] In addition, in practice, if foster care rates increase after the agreement is signed, CFSA will typically increase the subsidy as well.

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[16] This is another change resulting from the Adoption Amendment Reform Act, *supra*. Previously, guardianship subsidies could only continue until age 18. As of now, the regulations have not been changed to conform with the statute, but CFSA offers subsidy agreements that provide that payments will be made until the child is 21.

[17] The foster care and guardianship subsidy rate schedule provides for four possible levels (and two age categories of under-12, and 12-and-over). However, some foster parents receive a rate higher than the "multi-handicapped" (level 4) rate. Typically, these are foster parents who are licensed and monitored by private foster care agencies that contract with CFSA.

The permanent guardianship subsidy is reviewed on a yearly basis by CFSA to assess whether any adjustment to the permanent guardianship subsidy is necessary based on the child's age or any changes in the foster care board and care payments. Further, according to CFSA policy, the review shall determine whether there are any other factors, such as change in the circumstances of the permanent guardian or the needs of the child, which necessitate a change in the subsidy amount.[18]

Medicaid

Originally, Medicaid was not a part of guardianship subsidy. Once the guardianship order was entered and the child was no longer in foster care, the guardian would have to apply for Medicaid for the child in the state of residence, and eligibility would be determined. Typically, a child would be eligible for Medicaid because the guardian's income would not be counted in determining the child's eligibility.[19] However, CFSA had a practice of automatically continuing children on D.C. Medicaid even after the entry of the guardianship order, without the child having to apply and establish eligibility, and regardless of the state of residence.

With the passage in 2008 of the federal Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351), a federal child welfare funding statute, Medicaid is now available automatically for children who meet the Title IV-E eligibility requirements (which most foster children do) and who are with kinship guardians. For other children, Medicaid will have to be applied for and eligibility determined independently, unless CFSA continues its practice of keeping children on D.C. Medicaid.

Non-recurring Costs

As a result of the Fostering Connections to Success and Increasing Adoptions Act, *supra*, guardianship subsidy for Title IV-E-eligible children, if it is a kinship guardianship, can include $2,000 for one-time reasonable and necessary non-recurring costs associated with securing guardianship.

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[18] *See* CFSA Permanent Guardianship Subsidy Policy, Effective June 21, 2011 and Revised June 30, 2015.

[19] The regulations provide that the guardianship subsidy agreement shall include "a statement as to whether District of Columbia Medicaid shall be provided." However, once the child was out of the foster care system, D.C. Medicaid should only have been available to D.C. residents and only if the child applied and was found eligible under the laws and regulations governing the Medicaid program. The caregivers of children residing in other states, such as Maryland, would likewise have to apply for Medicaid in the state of residence and have the child's eligibility for the Medicaid program in that state determined. As indicated in the text above, children would typically be eligible because the guardian's income was not counted in determining eligibility.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
JUVENILE AND NEGLECT BRANCH

In the Matter of	)	Case No. [YEAR] NEG [XXXXXX]
[CHILD],	)	Social File No. [YEAR] JSF [XXXXXX]
Respondent.	)	Next Date: [DATE]
	)	Magistrate Judge [NAME]

MOTION FOR PERMANENT GUARDIANSHIP

[MOVANT], by and through counsel, hereby requests that the Court grant [HIM/HER] permanent guardianship of the Respondent, [CHILD]. In support, [MOVANT] respectfully refers the Court to the accompanying Memorandum of Points and Authorities.

Respectfully submitted,

____
[ATTORNEY]
Counsel for the MOVANT
D.C. Bar No. [######]
[FIRM]
[ADDRESS]
[PHONE/FAX]
[EMAIL]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
JUVENILE AND NEGLECT BRANCH

In the Matter of	)	Case No. [YEAR] NEG [XXXXXX]
[CHILD],	)	Social File No. [YEAR] JSF [XXXXXX]
Respondent.	)	Next Date: [DATE]
	)	Magistrate Judge [NAME]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PERMANENT GUARDIANSHIP

[MOVANT] ("[MR./MS.] [MOVANT]."), through [HIS/HER] counsel, moves this Court to order that [HE/SHE] be made the Permanent Legal Guardian of the Respondent [CHILD].

1. Jurisdiction. The Court has jurisdiction of this matter pursuant to D.C. Code §§ 11-1101 (13) and § 16-2381 *et seq.* This is the proper court pursuant to D.C. Code § 16-4601.01 *et seq.*

2. Child's Information. [MOVANT] seeks permanent guardianship of [CHILD]. [CHILD] is a [MALE/FEMALE] child who was born on [DATE] in [CITY, STATE]. [CHILD] is currently placed with [MOVANT], who resides in [CITY, STATE].

3. Proposed Permanent Guardian. The proposed Permanent Guardian, [MOVANT], is the [RELATIONSHIP] of [CHILD]. [HIS/HER] current address is [ADDRESS].

4. Biological Mother. [CHILD]'s biological mother is [BIO MOM]. To the best of [MOVANT]'s knowledge, [BIO MOM]'s home address is [ADDRESS].

5. Biological Father. [CHILD]'s biological father is [BIO DAD]. To the best of [MOVANT]'s knowledge, [BIO DAD] lives at [ADDRESS].

6. Facts and Opinions on Which Guardianship is Sought. [MOVANT] seeks permanent guardianship of [CHILD] so that [HE/SHE] can provide a stable, permanent home for [CHILD]. To the best of [MOVANT]'s information and belief, [CHILD] entered the neglect system on or about [MONTH/YEAR]. A neglect petition was filed on [DATE]. On [DATE], the court removed [CHILD] from [HIS/HER] [PARENT'S] care due to [REASON]. On [DATE], [CHILD] was adjudicated neglected pursuant to D.C. Code § 16-2301 *et seq*. Both parents still are unable to resume caring for [CHILD]. [DETAILS REGARDING PARENTS' INABILITY TO CARE FOR CHILD]. For over [#] years, since approximately [DATE OR YEAR], [CHILD] has lived with and been cared for by [MOVANT]. In light of [CHILD]'s need for stability, continuity of care, and a permanent home, Permanent Guardianship by [MOVANT] would be in [CHILD]'s best interests.
7. Placement with Proposed Guardian. Since approximately [DATE], for over [#] [MONTHS/YEARS], [CHILD] has resided with [MOVANT]. On [DATE], the Court removed [CHILD] from [HIS/HER] [PARENT'S] care, and [CHILD] was placed in the care of [MOVANT], the proposed guardian. At that time, [MOVANT] was residing at [HIS/HER] current address. [CHILD] was committed to the custody of the Child and Family Services Agency ("CFSA") on [DATE], and continues to reside with [MOVANT].
8. Child's Residence for Past Five Years. [LIST ALL ADDRESSES AND WHO CHILD LIVED WITH AT EACH ADDRESS]

9. Child's Mental and Physical Health. [CHILD] is currently in good health, both physically and mentally. [CHILD] has developed a close emotional bond with [MOVANT], with whom [HE/SHE] has lived for over [#] [MONTHS/YEARS].

10. Guardianship versus Other Permanency Options. The permanent guardianship of [CHILD] by [MOVANT], rather than adoption, termination of parental rights, or a return to [HIS/HER] parents, is in [CHILD]'s best interests. A return to [CHILD'S] parents is not appropriate because [DESCRIBE REASONS]. Adoption is not appropriate because [DESCRIBE REASONS]. Termination of parental rights is not appropriate because [DESCRIBE REASONS]. [CHILD]'s placement with [MOVANT] is a nurturing, stable and appropriate permanent placement. For these reasons, permanent guardianship rather than adoption, termination of parental rights, or a return to either parent, is in [CHILD]'s best interests.

11. Efforts by Movant to Locate Birth Parents. [MOVANT] anticipates that CFSA will attempt to serve this motion on the birth mother personally pursuant to D.C. Code § 16-2386 (see attached Order Directing Service). [MOVANT] anticipates that CFSA will attempt to serve this motion on the birth father personally pursuant to D.C. Code § 16-2386 (see attached Order Directing Service).

12. Six-Month Requirement. Since approximately [DATE], [CHILD] has been living with [MOVANT], the proposed permanent guardian. Therefore, [CHILD] has lived with [MOVANT] for over [#] [MONTHS/YEARS], well over the six-month requirement necessary for this Court to enter a final guardianship order.

13. Child's Assets. [CHILD] has no assets, so Chapter 3 of Title 21 is not applicable.

14. <u>Successor Guardian</u>. [MOVANT] would designate [NAME OF SUCCESSOR GUARDIAN] as the successor guardian of [CHILD] in the event of [MOVANT]'s death, or physical or mental infirmity. [NAME OF SUCCESSOR GUARDIAN] is the [RELATIONSHIP] of [CHILD] and the [RELATIONSHIP] of [MOVANT]. [NAME OF SUCCESSOR GUARDIAN] resides at [ADDRESS].

15. <u>Participation in Related Proceedings</u>. [MOVANT] has not participated as a party, witness, or in any other capacity, in any other litigation concerning the custody of or visitation with [CHILD] in the District or any other state.

16. <u>Related Proceedings</u>. To the best of [MOVANT]'s knowledge, there is no proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, or adoptions.

17. <u>Non-party Claims</u>. To the best of [MOVANT]'s knowledge, there is no person who is not a party to these proceedings who has physical custody of [CHILD] or claims rights of legal custody or physical custody of, or visitation with [CHILD].

18. <u>Written Consents</u>. [CHILD] is younger than fourteen years old, and neither biological parent has consented at this time.

19. <u>Guardianship Subsidy</u>. [MOVANT] will apply for a permanent guardianship subsidy pursuant to D.C. Code § 16-2399.

20. <u>Child's Best Interests</u>. The proposed guardianship is in [CHILD]'s best interests, based on all relevant factors, including those which the Court must consider under D.C. Code § 16-2383 (d). Since approximately [DATE/YEAR], [CHILD] has resided with [MOVANT]. As the permanent guardian of [CHILD], [MOVANT] would continue to

provide the care, stability and safety needed to promote [CHILD]'s physical, mental, and emotional health.

WHEREFORE, in light of the foregoing, [MOVANT] respectfully asks this Court to:

1. Find that the Court has jurisdiction of this matter pursuant to D.C. Code §§ 11-1101 (13), 16-4601.01 *et seq.*, and 16-2381 *et seq.;*
2. Find that [CHILD] is a [MALE/FEMALE] child born on [DOB] in [CITY/STATE];
3. Find that [CHILD] was removed from the custody of [HIS/HER] [PARENT] on [DATE];
4. Find that on [DATE], [CHILD] was adjudicated neglected pursuant to D.C. Code §§ 16-2301;
5. Find that [CHILD] was committed to the custody of the Child and Family Services Agency on [DATE];
6. Find that [CHILD] began to continuously reside with [MOVANT] more than six months ago, since approximately [DATE/YEAR];
7. Find that Permanent Guardianship by [MOVANT] is in the best interests of [CHILD];
8. Enter an order establishing that [MOVANT] shall be the Permanent Guardian of [CHILD], establishing that [MOVANT] shall maintain physical custody of the child, and enumerating the following rights and responsibilities of [MOVANT] concerning the child:
   a. Protect, nurture, discipline, and educate the child
   b. Provide food, clothing, shelter, education as required by law, and routine health care for the child;

c. Consent to health care without liability by reason of the consent for injury to the child resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;

d. Authorize a release of health care and educational information;

e. Authorize a release of information when consent of a parent is required by law, regulation, or policy;

f. Consent to social and school activities of the child;

g. Consent to military enlistment;

h. Obtain representation for the child in legal actions; and

i. Determine the nature and extent of the child's contact with other persons;

9. Enter an order establishing that the biological parents of [CHILD] retain the following parental rights and responsibilities:

   a. The right to visit or contact the child, except that such right is expressly subject to such limitations and conditions as the permanent guardian, in her sole discretion, may impose;

   b. The right to consent to the child's adoption;

   c. The right to determine the child's religious affiliation; and

   d. The responsibility to provide financial, medical, and other support for the child.

10. Designate [INITIALS], [RELATIONSHIP] of [CHILD] as the successor guardian;

11. Grant such other and further relief as the Court finds just and proper.

Respectfully submitted,

_____________ _____________________________________

Date

[ATTORNEY]
Counsel for the MOVANT
D.C. Bar No. [######]
[FIRM]
[ADDRESS]
[PHONE/FAX]
[EMAIL]

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Permanent Guardianship has been served via E-Filing, on the _______ day of [MONTH] [YEAR] to:

[AAG NAME], Esq.
200 I Street S.E.
Washington, D.C. 20003
Assistant Attorney General

[SOCIAL WORKER NAME]
Child and Family Services Agency
200 I Street S.E.
Washington, D.C. 20003
Ongoing Social Worker

[GAL NAME], Esq.
[ADDRESS]
Guardian ad Litem

[ATTY NAME], Esq.
[ADDRESS]
Counsel for Mother

[ATTY NAME], Esq.
[ADDRESS]
Counsel for Father

____
[ATTORNEY NAME]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
JUVENILE AND NEGLECT BRANCH

In the Matter of	)	Case No. [YEAR] NEG [XXXXXX]
[CHILD],	)	Social File No. [YEAR] JSF [XXXXXX]
Respondent.	)	Next Date: [DATE]
	)	Magistrate Judge [NAME]

ORDER DIRECTING SERVICE

Upon consideration of the Motion for Permanent Guardianship filed in the above-captioned matter, it is by the Court this ________ day of [MONTH] [YEAR],

ORDERED, that the District of Columbia Child and Family Services Agency (CFSA) shall forthwith effect personal service of the Motion for Permanent Guardianship and a Summons upon [NAME], the biological father of the child in this matter, and [NAME], the biological mother of the child in this matter. In addition, within thirty (30) days of receipt of this order, CFSA shall submit to the Court a report documenting the efforts CFSA has taken to effect such service.

____
Judge [JUDGE NAME]

Copies to:

[AAG NAME], Esq.
200 I Street S.E.
Washington, D.C. 20003
Assistant Attorney General

[SOCIAL WORKER NAME]
Child and Family Services Agency
200 I Street S.E.
Washington, D.C. 20003
Ongoing Social Worker

[GAL NAME], Esq.
[ADDRESS]
Guardian ad Litem

[ATTY NAME], Esq.
[ADDRESS]
Counsel for Mother

[ATTY NAME], Esq.
[ADDRESS]
Counsel for Father

[ATTY NAME], Esq.
[ADDRESS]
Counsel for the Movant

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
JUVENILE AND NEGLECT BRANCH

IN THE MATTER OF THE MOTION FOR GUARDIANSHIP OF

____

CASE NUMBER **GDN-**________

SOCIAL FILE NUMBER SF-___________

SUMMONS AND NOTICE OF MOTION FOR GUARDIANSHIP TO PARENT

TO: ____
NAME OF PARTY TO BE SERVED

ADDRESS: ____
ADDRESS OF PARTY TO BE SERVED

You are hereby notified that a motion has been filed with the Family Court of the District of Columbia, 500 Indiana Avenue, NW, Washington, D.C. 20001, to appoint ____ as the permanent
(Name of Proposed Guardian)
guardian of _______________________________________, born _______________. A copy of the motion is enclosed.
(Name of Child) (D.O.B.)

Contact Your Lawyer
This is an important matter that could change your legal rights and responsibilities concerning the child. You should contact your attorney for legal advice on this matter. Your attorney's name is _____________________._________________. He/She can
(Attorney's Name)
be reached at____.
(Attorney's address and telephone number)

If you do not have a lawyer, you may ask the Court to appoint one to represent you by submitting the attached Request for Counsel form or by calling the Court's Counsel for Child Abuse and Neglect Programs at (202) 879-1304.

If a Hearing Is Scheduled, You Will Be Notified by Mail
No action will be taken on this motion for permanent guardianship unless and until the Court has found that
_______________1_______________________________, born_______________, was neglected. If the Court finds, or has
(Name of Child) (D.O.B.)
already determined, the child was neglected, the Court will schedule a hearing on the motion for permanent guardianship. You will receive separate notice of the hearing date by mail. Contact your attorney to learn more about the hearing.

If You Oppose the Guardianship, You Must Appear at the Hearing
If you do not want ____ to be the legal guardian of
(Name of Proposed Guardian)
____, you must appear at the hearing. If you do not appear at the
(Name of Child)
hearing, the hearing may take place without you. You may file a written opposition before the hearing with the Family Court's Clerk of the Juvenile and Neglect Branch at 500 Indiana Avenue, NW, 4th Floor, Room 4310, Washington, D.C. 20001.

If You Are the Child's Parent, You May Consent to the Guardianship
If you are a parent of ____ and you want
(Name of Child)
____ to be your child's legal guardian, you may file an
(Name of Proposed Guardian)
affidavit of consent with the Clerk of the Juvenile and Neglect Branch or appear at the hearing to give your consent in person. Contact your attorney to learn more about consenting to the guardianship.

This Matter Could Change Your Rights and Responsibilities Concerning the Child
If the Court approves the guardianship, ____ will have legal
(Name of Proposed Guardian)
rights and responsibilities to:

- Have ____ live in his or her home;
  (Name of Child)
- Protect, nurture, discipline, and educate the child;
- Provide food, clothing, shelter, education, and routine health care for the child;
- Consent to health care for the child;
- Authorize a release of confidential information about the child, such as health care and education records;
- Consent to the child's military enlistment;
- Obtain legal representation for the child when necessary; and
- Determine the nature and extent of the child's contact with persons who may visit and communicate with the child.

If the Court makes ____ the legal guardian of
(Name of Proposed Guardian)
____, the parents will continue to have rights and
(Name of Child)
responsibilities. Specifically, if the Court approves the permanent guardianship the parents of
_____________l___________________________________ will retain:
(Name of Child)

- The right to visit or contact the child, except as may be limited by the court;
- The right to consent to the child's adoption;
- The right to determine the child's religion; and
- The responsibility to provide financial, medical, and other support for the child.

In addition, if the Court approves the permanent guardianship, _______________________________________ will retain the
(Name of Child)
right to inherit from his/her parents.

Witness, the honorable Chief Judge of the Superior Court of the District of Columbia, and seal of said Court

Seal

Clerk of the Court

By____
Deputy Clerk

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

FAMILY COURT

JUVENILE AND NEGLECT BRANCH

In re:	) Next Court Date
	)
	) GDN- SF
	)
Respondent.	) Judge

CONSENT OF THE [MOTHER/FATHER] TO THE APPOINTMENT OF

PERMANENT GUARDIAN

I, [mother/father] state as follows:

1. I am the [mother/father] of [child's full name] ("child"), a [female/male] who was born on [date], in [city and state] and who currently resides in the home of [full name of proposed permanent guardian].

2. I hereby consent to the appointment by this Court of [proposed permanent guardian(s)], who reside(s) at _________[full address]______________, as the permanent guardian(s) of the child. [Proposed permanent guardian(s)(if applicable)] [is/are] the [relationship(s)] of the child. I further consent to having [proposed successor guardian(s)] named as successor guardian(s) of the child in the event of death or incapacity of the permanent guardian(s). [Proposed successor guardian(s)] is/are the [kinship relationship(s)] of the child]. I believe that [these/this appointment(s)] [is/are] in the best interest of the child.

3. I understand that if _______________ and _______________ [is/are] appointed the child's permanent guardian(s), [he/she/they] will be given the following rights and responsibilities towards the child:

- To maintain physical custody of the child;
- To protect, nurture, discipline, and educate the child;
- To provide food, clothing, shelter, education as required by law, and routine health care for the child;
- To consent to health care without liability by reason of the consent for injury to the child resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;
- To authorize a release of health care and educational information;
- To authorize a release of information when consent of a parent is required by law, regulation, or policy;
- To consent to social and school activities of the child;
- To consent to military enlistment;
- To obtain representation for the child in legal actions; and
- To determine the nature and extent of the child's contact with other persons;

4. I understand that even if [proposed guardian(s)] is/are appointed the child's legal guardian(s), as the child's parent I maintain the following parental rights and responsibilities towards the child:

- To visit and have contact with the child except as limited by court order, and under reasonable restrictions of time and location as specified by the permanent guardian;
- To consent to any future adoption of the child;

- To determine the child’s religious affiliation;
- To provide financial, medical, and other support for the child.

5. I understand that even if [proposed guardian(s)] is/are appointed the child's legal guardian(s), the child retains the right to inherit from me in the event of my death.

6. I understand that if [proposed guardian(s)] is/are appointed the child's legal guardian(s), any party may, in the future, ask this Court to modify, terminate or enforce the guardianship order. I also understand that if, following a hearing, the Court finds that there has been a substantial change in the child’s circumstances and that modification or termination of the guardianship order is in the child’s best interest, the guardianship order may be modified or terminated. Finally, I understand that I have the right to present evidence on my behalf at these hearings.

7. I hereby swear or affirm that the contents of this Consent of [Mother/Father] to the Appointment of Permanent Guardian are true and correct to the best of my knowledge, information, and belief.

____
[Mother/Father]’s signature

____
[Mother/Father]’s name printed

____
Date

Subscribed and sworn to before me this ____ day of ______ 20___.

____
Notary Public

My commission expires ______________________.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

FAMILY COURT

JUVENILE AND NEGLECT BRANCH

In re:	) Next Court Date
	)
	) GDN-
	)
Respondent.	) Judge

CONSENT OF CHILD 14 YEARS OF AGE OR OLDER TO THE APPOINTMENT OF PERMANENT GUARDIAN

I, [name], state as follows:

1. My name is [child's full name]. I am a [female/male] and was born on [date], in [city and state]. I am _____ years of age.

2. I reside in the home of [full name of proposed permanent guardian(s)].

3. I agree to ("consent to") the appointment by this Court of ______________________ and ________________________, who live(s) at ____, as my permanent guardians(s).

4. (If applicable)I further consent to having ___________________________ and _______________________, who live(s) at ______________________________ ____, named as the successor guardian(s) for me in the event that the permanent guardian(s) die(s) or [is/are] unable to continue caring for me.

5. It has been explained to me and I understand that if ________________ and __________________________ [is/are] appointed my permanent guardian(s), [he/she/they] will have physical custody over me.

6. It has also been explained to me and I understand that if _______________ and ____________________ [is /are] appointed my permanent guardian(s), unless the Court specifies otherwise, [he/she/they] will have the following rights or responsibilities towards me:

- To protect, nurture, discipline, and educate me;
- To provide me with food, clothing, shelter, education, and routine health care;
- To consent to my health care without liability by reason of the consent for injury to me resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;
- To provide information about my health or health care to others;
- To provide information about my school and education to others;
- To provide other information about me in situations where a parent's consent is required;
- To consent to my participation in social and school activities;
- To consent to my enlistment in the military;
- To obtain a lawyer for me in legal actions; and
- To determine whether and in what capacity I can have contact with other people.

7. It has also been explained to me and I understand that if _________ and ________ [is/are] appointed my permanent guardian(s), it will not terminate the legal relationship between my parents and me. My parents will still be my legal parents. In particular, it has been explained to me and I understand that I still have the right to inherit from my parents and that my parents will still maintain the following parental rights and responsibilities towards me:

- To visit and have contact with me, unless limited by the Court;
- To consent to any future adoption of me;
- To determine my religion;
- To provide me with financial, medical, and other support.

8. It has also been explained to me and I understand that if _________________ and ____________________ [is/are] appointed my permanent guardian(s), the Court may specify when and how I will visit with my relatives.

9. I understand that if _________________ and ________________ [is/are] appointed my permanent guardian(s), we cannot relocate over one hundred (100) miles from where we reside when the order is entered without notifying the Court and all parties fifteen (15) days in advance of the relocation.

10. I understand that if ______________ and ________________ [is/are] appointed my permanent guardian(s), any party, including me, may, in the future, ask this Court to modify, terminate or enforce the guardianship order. I also understand that if, following a hearing, the Court finds that there has been a substantial change in my circumstances and it is in my best interest, the order may be modified or terminated.

11. I hereby swear or affirm that the contents of this Consent of Child 14 Years of Age or Older to the Appointment of Permanent Guardian are true and correct to the best of my knowledge, information and belief.

____
Child's signature

____
Child's name printed

____
Date

Subscribed and sworn to before me this ______ day of _________, 20____.

____
Notary Public

My commission expires ________________________

Guardian *Ad Litem* Statement

I hereby swear or affirm that I explained the contents of the Consent of Child 14 Years of Age or Older to the Appointment of Permanent Guardian to [child's full name] ("child") prior to the child's signing, and that the child signed this Consent of Child 14 Years of Age or Older to the Appointment of Permanent Guardian in my presence.

____
Guardian *ad litem* signature

____
Guardian *ad litem* name printed

____
Date

Guardianship Case Planning

1) **CFSA Administrative Issuance, Case Planning for Guardianship (3-09)**
   a. https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/AI%20-%20Case%20Planning%20for%20Guardianship%28H%29_1.pdf

2) **CFSA Quick Reference Guide, Case Planning When the Goal is Guardianship (01-11)**
   a. https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/QRG%20-%20Case%20Planning%20for%20Guardianship%20Goal%20(final)(H)_0.pdf

dc's CHILDREN'S LAW CENTER family. health. education.

Custody Primer

Updated February 2018

Background

What is custody?

Prior to 2002, there was no statutory definition of custody. In 2002, D.C. § 16-914 was amended to include the following definitions of legal and physical custody:

> (i) "Legal custody" means legal responsibility for a child. The term "legal custody" includes the right to make decisions regarding that child's health, education, and general welfare, the right to access the child's educational, medical, psychological, dental, or other records, and the right to speak with and obtain information regarding the child from school officials, health care providers, counselors, or other persons interacting with the child.
>
> (ii) "Physical custody" means a child's living arrangements. The term "physical custody" includes a child's residency or visitation schedule.

See also Ysla v. Lopez 684 A.2d 775, 777 (D.C. 1996).

The court may award sole legal custody, sole physical custody, joint legal custody, joint physical custody, or any other custody arrangement the court determines is in the best interests of the child. *See,* D.C. Code §16-914 (a)(1)(A).[1]

The basics: law and procedure

There is no single comprehensive "custody statute" in the D.C. Code. Many custody-related provisions are found in Title 16, Chapter 9 and were originally part of the Marriage and Divorce Act (§§ 16-901-25). In practice, the provisions that were part of the Marriage and Divorce Act have been applied to all custody proceedings between parents. *See Ysla v. Lopez*, 684 A.2d 775, 778 (D.C. 1996). In addition, the "Domestic Relations Laws Clarification Act of 2002" amended several of these provisions so that they more clearly apply not just to divorce proceedings but to any proceeding between

[1] Constitutionally and by statute, there is no distinction between children born in wedlock and children born out of wedlock. *See, e.g.*, D.C. Code §16-908. Parents of children born out of wedlock almost always have the same rights and duties as parents of children born in wedlock.

parents in which custody is an issue. The power of the court to adjudicate custody disputes between parents who are not married to each other stems from the court's general equitable powers. *Ysla v. Lopez*, 684 A.2d 775 (D.C. 1996).

Third-party custody cases – cases brought by non-parents – are governed by "The Safe and Stable Homes for Children and Youth Act of 2007," D.C. Code §§ 16-831.01-.13. The statute addresses relevant issues, including standing requirements and the legal standard and burden of proof in third-party cases.

The Uniform Child Custody Jurisdiction and Enforcement Act, D.C. Code §§ 16-4601.01-4605.03 applies to all "custody determinations." The UCCJEA addresses which state has jurisdiction over a custody case, as well as certain procedural requirements.[2]

The D.C. Superior Court Domestic Relations Rules and the General Family Division Rules apply to custody and divorce cases. In March 2008, the court adopted Administrative Order 08-03 which implemented a new case management plan for domestic relations cases (www.dccourts.gov/am/sites/default/files/2017-03/08-03.pdf). However, this plan is not followed rigorously.

Custody can be awarded through a complaint for divorce or a complaint for custody.[3] The age of majority in D.C. is 18. Thus, in a Family Court proceeding, custody can only be awarded in connection with a child under 18.

D.C. Code § 16-916.03 provides that child support may be requested together with custody in the same case; however, the court must also have jurisdiction pursuant to the Uniform Interstate Family Support Act, D.C. Code §§ 46-301.01-309.01). It is not required that child support be requested. If no request is made, the Court may not inquire further or may advise the parties regarding the right to support and inquire on the record whether the custodial parent is seeking support. Calculation of child support is governed by D.C. Code § 16-916.01, known as the Child Support Guideline. It will usually be ordered that payment be made through the D.C. Child Support Clearinghouse, Child Support Services Division, Office of the Attorney General; wage-withholding will also be ordered when possible. *See* D.C. Code §§ 46-201-31. Although the age of majority is 18, D.C. laws extend the duty to support one's child until the child reaches 21 if D.C. issues the original child support order. D.C. Code § 46-101. Child

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[2] Jurisdictional defects under the UCCJEA may be waivable. *Kenda v. Pleskovic*, 39 A.3d 1249 (D.C. 2012).

[3] Custody can also be awarded in a civil protection order proceeding (also known as a domestic violence or intrafamily offense case). D.C. Code §16-1001 *et seq*. However, orders issued in those cases are time-limited.

support orders can be modified. *See* D.C. Code §§ 16-916.01, 46-204.

Starting a Case

Custody cases (and divorce cases) are filed and heard in the Domestic Relations Branch of the Family Court of D.C. Superior Court.[4] Actions for custody are initiated by the filing of a complaint. SCR-Dom.Rel. 3. A case number will be assigned to the case at the time of filing (*e.g.*, 2018 DRB 1245). Complaints must be signed by the plaintiff and either notarized or signed under penalty of perjury using the language set forth in SCR-Dom.Rel. 2(b)(5). There are technical requirements related to the pleading established in D.C. Code §16-4602.09, SCR-Dom.Rel. 8.[5] Information need only be provided to the best of the plaintiff's knowledge.

All pleadings in Family Court cases are filed or processed through the Family Court Central Intake Center, Room JM-520 (open from 8:30 a.m. to 5:00 p.m.). The court maintains a database called Courtview into which most pleadings and orders are scanned. Courtview is not available to the public and information about Domestic Relations Branch cases is not available on-line. Court files are kept in the Domestic Relations Clerk's Office, Room JM-300.

Parties represented by counsel are required to eFile and eServe in Domestic Relations Branch cases. Parties not represented by lawyers (pro se parties) may, but are not required to, eFile and eServe. Parties represented by lawyers in 501(c)(3) designated organizations are exempt from eFiling but must register to receive eService.

There is an $80 filing fee for complaints and a $20 filing fee for motions. Parties can file a request for a fee waiver by filing an Application to Proceed Without Prepayment of Costs, Fees, or Security (or an application to proceed *in forma pauperis*) pursuant to D.C. Code § 15-712 and SCR-Dom.Rel. 54-II. The application must be accompanied by the complaint/pleading. Unlike other pleadings, which are filed

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[4] Until 2002, custody and other domestic relations cases were heard in the Family Division of Superior Court. The "District of Columbia Family Court Act," enacted by Congress in January 2002, abolished the Family Division and created a new Family Court within Superior Court. Cases originally under the jurisdiction of the Family Division are now under the jurisdiction of Family Court. D.C. Code §§11-902, 11-1101.

[5] ***Practice pointer***: At this time, the clerk's office will require that an address be listed on the complaint for each defendant. If the plaintiff does not have a current address, the last known address, however old, can be listed, with *"(last known address)"* included in the caption. In addition, in third-party custody cases, if a parent is deceased, the clerk's office typically wants that parent listed as a defendant, with "*(deceased)*" included in the caption.

through the Central Intake Center, the *in forma pauperis* application is presented directly to the office of Judge in Chambers, Room 4220, where it will typically be ruled on the same day, on the papers and without a hearing. If the request is granted, filing fees are waived. The order granting *in forma pauperis* status can be picked up from Judge in Chambers and the plaintiff can then proceed to file the complaint through the Central Intake Center.[6] Applications can be obtained at the Central Intake Center or on-line at https://www.dccourts.gov/sites/default/files/2017-05/NEW-IFP-application-fill-in-blanks.pdf.

At the time the complaint is filed, the case will be assigned to one of several "DR-II" calendars. There is also a "DR-I" calendar for more complex cases to which a party can request that a case be certified. All proceedings in a case (initial hearing, status hearings, motions, trial) will be scheduled on the calendar to which the case is assigned, which means the case will be heard by one judge for as long as that judge is assigned to that calendar. Judges rotate periodically (assignments are usually at least a year and may be longer) but the case will remain on the same calendar

At the time the complaint is filed, the clerk will issue a summons for each defendant. The plaintiff is responsible for effecting service of the summons and complaint on the defendant(s). In addition, two dates will be scheduled in connection with the court's Program for Agreement and Cooperation (PAC) program (see below). At the time of filing, the plaintiff will receive a notice with these dates. The court will mail the notice to the defendant, but the plaintiff can also include the notice in the papers served on the defendant. At the time of filing, a date and time for the initial hearing in the case will also be scheduled. As with the PAC notice, the Plaintiff will receive a copy of the notice and the court will mail it to the defendant.

Participation in the court's Program for Agreement and Cooperation (PAC) is required in all non-consent custody matters. The parties must attend a parenting education seminar, and, at the same time, their children attend a separate, age appropriate seminar. Parties must also participate in a mediation session. Under certain circumstances, the mediation requirement may be waived (for example, if there is a history of domestic violence).

A party may file a motion for temporary (*pendente lite*) custody pending a final determination of child custody. The court shall hold a pendent lite hearing no later

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[6] An IFP motion can also be filed by either party at any time during the case. The order is prospective; filing fees already paid will not be refunded.

than 30 days after a party requests a pendent lite custody determination by the court. *See* D.C. Code § 16-911; D.C. Code § 16-831.09. A motion styled as an emergency motion will be presented to a judge the same day, who will decide what action to take.

Service of complaint

D.C. Code §16-4602.05 and D.C. Code §16-914(b) address who must be given notice of a custody proceeding. Each defendant must be served with a summons and a copy of the complaint. At the time the complaint is filed, the clerk will issue a summons for each defendant. The plaintiff is responsible for effecting service.

The manner and method for effecting service of a summons and complaint is governed by SCR-Dom.Rel. 4. In addition to other methods defined in the Rule, service can be effected by:

- personal delivery to the defendant by any person over the age of 18 who is not a party to the action or by leaving the summons and complaint at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then living there

- registered or certified mail, with a return receipt that is signed by the defendant or by a person of suitable age and discretion living at the individual's dwelling house or usual place of abode

Pursuant to SCR-Dom.Rel. 4 (l), the plaintiff must file an affidavit demonstrating proof of service of the summons, the complaint, and any order directed by the Court to the parties at the time of filing within 60 days of filing the complaint. This time may be extended prior to the expiration of the 60 day period upon request. The request must be made by praecipe and shall include a certificate of good faith efforts to complete service.

- If personally served, proof of service must be made under oath and specifically state each of the following: the caption and number of the case; the process server's name, residential and business addresses, and the fact that the process server is at least 18 years of age; the date, time and place at which service was effected and on whom it was effected; and if service was effected by delivery to a person other than the party named in the summons, then specific facts from which the Court can determine that the person to whom process was delivered meets the appropriate qualifications for receipt of process

- If mailed by registered or certified mail, the signed return receipt (green card) must be attached to an affidavit from the person doing the mailing. The affidavit must contain the following information: the caption and case number; date when the summons and complaint was mailed and by whom; and, if the return receipt does not purport to be signed the party named in the summons, then specific facts from which the Court can determine that the person who signed the receipt meets the appropriate qualifications for receipt of process. Service is deemed made as of the date the return receipt was signed, or if that date is not indicated, the date stamped by the Postal Service upon delivery.

Personal jurisdiction over, and service on, an individual outside of the District (i.e. long-arm jurisdiction) is governed by D.C. Code §§ 13-421-25 and D.C. Code §§ 13-431-34.

What if the defendant cannot be found?

The Code and the Court Rules permit constructive service through publication or through posting (for the latter, upon a showing that publication would cause a substantial hardship). D.C. Code §13-336 *et seq*.; SCR-Dom.Rel. 4. The Plaintiff must file a motion requesting approval for constructive service. The motion must be supported by an affidavit concerning efforts made to locate the defendant (sometimes called a "diligent search"). See *Cruz v. Sarmiento*, 737 A.2d 1021 (D.C. 1999); *Bearstop v. Bearstop*, 377 A.2d 405 (D.C. 1977). The law is not specific regarding what must be done. The judge will usually want to see "generic" efforts (*e.g.*, checking last known addresses, telephone directories, criminal court case records, D.C. Jail, and the federal Bureau of Prisons) along with any case-specific efforts that can be made (*e.g.*, checking with known family members, providing an explanation as to why the movant cannot find the person). The form pro se motion for publication/posting and "absent parent worksheet" is available at http://www.lawhelp.org/files/7C92C43F-9283-A7E0-5931-E57134E903FB/attachments/959918D5-DB2B-4F1B-A70A-160C074BBD8B/service_of_process_motion_to_serve_by_publication_or_postingsept2011.pdf

The statute appears to require non-residence of the defendant or absence from the jurisdiction for at least six months as a prerequisite to publication/posting. *See* D.C. Code §13-336. However, the court often draws the inference of non-residence or absence from the inability to locate the defendant after a diligent search.

If a motion to publish notice is granted, the plaintiff is responsible for making

arrangements for publication. The judge will usually provide the required notice (signed by the judge) together with the order granting the motion; if not, the movant can submit that proposed notice to the judge. The current practice of the court is to order publication in two newspapers, one of which is the Daily Washington Law Reporter, and the other a newspaper of general circulation selected by the plaintiff. The newspapers should mail the movant an appropriate affidavit of service which the movant then must file. If a motion to post notice was granted, the Domestic Relations Clerk's office will post notice in the Domestic Relations Clerk's office, Room JM-300. This will be done automatically but it is always prudent to confirm that the notice has been posted.

If no responsive pleading has been filed upon the expiration of the time period specified in the notice, plaintiff's counsel may file for default (see below).

What happens after the defendant has been served?

The defendant has 20 days from the date of service within which to file an answer or responsive pleading. SCR-Dom.Rel. 12 (a). Answers must be notarized or signed under penalty of perjury, using the language set forth in SCR-Dom.Rel. 2(b)(5).

What if the defendant has been served and no answer is filed?

The plaintiff can request the entry of a default. SCR-Dom. Rel. 55. The Central Intake Center can provide a default forms packet (it is also on-line on the D.C. Bar website: http://www.lawhelp.org/files/7C92C43F-9283-A7E0-5931-E57134E903FB/attachments/59E3FA6E-BCCD-4854-BA4F-9E701EFDD5A1/affidavit-in-support-of-default-and-scra-compliance-06-2014-fillable.pdf). Upon submission of the appropriate papers, the default will be entered by the clerk (without a hearing). The court can then proceed to make a final determination. Most judges will require a very brief presentation of evidence. A defendant can move to set aside a default. SCR-Dom.Rel. 55.

Consent

A defendant can sign a consent/consent answer. Consent answers can be filed with the complaint or later. A consent answer can be signed under penalty of perjury without notarization. *See* SCR-Dom.Rel. 2. Even when a case is uncontested, the court will usually require a very brief presentation of evidence before entering a custody order.

Settlement

Mediation is available at any time without cost through the court's Multi-Door Dispute Resolution Center. If the parties reach a settlement, the court must accept any custody arrangement that is agreed to by both parents unless clear and convincing evidence indicates that the arrangement is not in the best interest of the child. D.C. Code § 16-914(h); *see also* D.C. Code § 16-831.06(d)(1).

Initial hearings, status hearings/subsequent proceedings; pre-trial and trial

At the initial hearing, the judge will start to familiarize her/himself with the case and set further hearings (status or pre-trial or trial). The judge may also entertain oral motions for temporary relief. If the case is contested and does not settle, a trial will ultimately be held.

A guardian *ad litem*, an attorney for the child, or both, may be appointed by the court for good cause. D.C. Code §§ 16-914(g), -918(b), SCR-Dom.Rel.101(e).

Discovery and trials are governed by the Domestic Relations Court Rules and are comparable in most respects to civil trials generally. The judge will usually require the parties to submit a pre-trial statement.

Parties may request, or the court may *sua sponte* order, a home study or a forensic custody evaluation. Home studies are performed by the Social Services Division of the court; forensic custody evaluations can be done by the Assessment Center of the D.C. Department of Behavioral Health. There is no charge for these services.

D.C. Code § 16-914(c) provides that the court may order each parent to provide a detailed parenting plan which delineates each parent's position with respect to the scheduling and allocation of rights and responsibilities that will best serve the interest of the minor child or children. There is a non-exhaustive list of provisions that may be included in the proposed parenting plans. In making its custody determination, the court must consider the parenting plans submitted by the parents.

D.C. is a common law evidence jurisdiction, although there are several D.C. Code provisions and Superior Court rules relating to evidence issues. *See* Graae and

Fitzpatrick, *Law of Evidence in the District of Columbia* (5th edition) (LexisNexis).

The legal standard in custody cases is "best interests of the child." D.C. Code § 16-914 enumerates a non-exclusive list of relevant factors that must be considered by the court in making the "best interests" determination. For the standard in third-party custody cases, see D.C. Code §§ 16-831.06–.08.

D.C. Code §16-914(a)(2) provides that in custody cases between parents, there is a rebuttable presumption that joint custody is in the best interest of the child or children, except when a judicial officer has found by a preponderance of the evidence that an intrafamily offense, child abuse, child neglect, or parental kidnapping have occurred. Each of these offenses is defined in the Code. In cases where a listed offense has occurred, there is a rebuttable presumption that joint custody is not in the best interests of the child. *See also* D.C. Code §§ 16-807-831.08 (third-party cases). If the court finds that an intrafamily offense has been committed, any determination that custody or visitation is to be granted to the abusive parent shall be supported by written findings. *See* D.C. Code § 16-914 (a-1); *see also P.F. v. N.C.*, 953 A.2d 1107 (D.C. 2008).

D.C. Code §16-914(k) provides that no person shall be granted legal custody or physical custody of, or visitation with, a child if the person has been convicted of first degree sexual abuse, second degree sexual abuse, or child sexual abuse, and the child was conceived as a result of that violation.

Order

The court must place on the record the specific factors and findings which justify any custody arrangement not agreed to by both parents. The court must also issue written findings of fact, separate conclusions of law and judgment for all actions tried upon the facts. D.C. Code § 16-914(j); SCR-Dom. Rel. 52.

Visitation

Visitation arrangements and orders can range from "reasonable rights of visitation" to more explicit visitation plans (e.g. specific schedules, pick-up/drop-off arrangements, supervised visitation). Visitation and child support are not conditional upon each other. *Mohler v. Mohler*, 302 A.2d 737 (D.C. 1973).

Pursuant to D.C. Code § 16-914, if the court finds that an intrafamily offense has

been committed, the court shall only award visitation if it finds that the child and custodial parent can be adequately protected from harm. *See Wilkins v. Ferguson*, 928 A.2d 655 (D.C. 2007). Further, the party found to have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development. D.C. Code § 16-914(a-1).

The court operates the Supervised Visitation Center that, upon order of the court, can be used for visits or as pick-up/drop-off location (https://www.dccourts.gov/services/domestic-violence-matters/supervised-visitation).

Modification

Although the term "permanent custody" is frequently used, all custody orders are subject to modification. Custody orders may be modified or terminated upon the motion of one or both parents, or on the court's own motion, if a determination is made that there has been a "substantial and material change in circumstances" and that the "modification or termination is in the best interest of the child." D.C. Code § 16-914(f). *See also* D.C. Code 16-831.11. Case law prior to the enactment of §16-914(f) held that at least when the custody arrangement is the result of a written agreement, the change must be unforeseen at the time the agreement was entered. *Foster-Gross v. Puente*, 656 A.2d 733 (D.C. 1995); *See also Galbis v. Nadal*, 626 A.2d 26 (D.C. 1993).

Custody Case Overview

Case Initiation

File Motion and Affidavit to proceed *In Forma Pauperis* (IFP) with the Judge-in-Chambers (with complaint attached) or pay $80 filing fee.

File Custody Complaint (must be signed under penalty of perjury).

File Consent Answer(s) and Waiver of Service (signed by birth parent(s) if you have them) (file with complaint or whenever consents are secured).

The case will be assigned to a Domestic Relations (DR) judge by the clerk at the time of filing (one of four DR judges on calendar).

At the time of filing, the Central Intake Clerk will set an initial hearing date.

If case is not by consent, Program for Agreement and Cooperation ("PAC" – consisting of parenting education seminar and mediation) dates will also be scheduled.

Service of Complaint - SCR-Dom. Rel 4(c)

Each defendant must be served with a **summons** (given to you by clerk at filing) and **complaint**.

The plaintiff is responsible for effecting service (personal, substitute, or by registered mail/return receipt) **within 60 days** (upon request may be extended once without leave of court).

Proof of service (affidavit of service) must be filed with the Court.

What Happens After the Defendant Has Been Served?

Defendant(s) has 20 days from the date of service to file an answer (must be signed under penalty of perjury).

If no answer is filed, plaintiff files for the entry of a default (SCR- Dom.Rel.55); then a final default custody hearing will be held (brief evidentiary hearing).

What if the Defendant Cannot Be Found and Served?

Plaintiff files a motion for constructive service (posting or publication) supported by an affidavit of diligent efforts to locate the defendants.

Once motion for constructive service is granted and notice is posted or published for the required time period and no responsive pleading is filed, plaintiff may file for default. (SCR-Dom.Rel.55).

Settlement OR Trial

- Court must accept a settlement and enter a consent order for custody (unless not in child's best interest by clear and convincing evidence) (DC Code §§ 16-831.06(d)(1), -16-914(h)).
- Discovery and pre-trial disclosures (SCR-Dom. Rel. 26-37), trial (SCR-Dom. Rel. 40-46, 50, 52-53), social service referrals (SCR Dom. Rel. 404).
- Final order (in writing) (SCR-Dom. Rel. 52).
- Modification: "substantial and material change in circumstances" and "in the best interest of the child." (DC Code §§ 16-831.11(a), -16-914(f)(1)).

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
Domestic Relations Branch

____
PRINT YOUR NAME

____
STREET ADDRESS

____
CITY, STATE AND ZIP CODE

☐ SUBSTITUTE ADDRESS: CHECK BOX IF YOU HAVE WRITTEN SOMEONE ELSE'S ADDRESS BECAUSE YOU FEAR HARASSMENT OR HARM.

PLAINTIFF,

v.

____
PRINT OTHER PARTY'S NAME

____
STREET ADDRESS

____
CITY, STATE AND ZIP CODE

DEFENDANT.

____
PRINT OTHER PARTY'S NAME

____
STREET ADDRESS

____
CITY, STATE AND ZIP CODE

DEFENDANT #2.

____________ DRB___________________

RELATED CASES:

____

____

COMPLAINT FOR CUSTODY and/or VISITATION

Action Involving Child Support ☐ yes ☐ no

I,___________________________________, am the Plaintiff in this case.
PRINT YOUR NAME

1. The child(ren) in this case:

Child's Full Name	Date of Birth	Gender

2. **My relationship to the child(ren) in this case:** [CHECK ONE]

☐ I am the biological or adoptive parent.

☐ I am the caretaker. My relationship to the child(ren) is:______________________ (e.g. grandparent, brother, aunt, etc.).

☐ Other:____.

3. **The other party's relationship to the child(ren) in this case:** [CHECK ONE]

☐ The other party is the biological or adoptive parent.

☐ The other party is the caretaker. His/Her relationship to the child(ren) is ________________________ (e.g. grandparent, brother, aunt, etc.)

☐ Other:____.

4. **This Court is the proper place to decide issues of child custody because:** [CHECK ONE]

☐ **Home State**. The District of Columbia is the child(ren)'s "home state" because the child(ren) currently live(s) in the District of Columbia *AND* has/have lived in the District of Columbia for at least six months immediately before filing this Complaint.

☐ **Home State**. The child(ren) do(es) not currently live in the District of Columbia, *BUT* the District of Columbia was the "home state" *AND* the child(ren) has/have been away from the District of Columbia for less than six months before the filing of this Complaint *AND* a parent or a person acting as a parent continues to live in the District of Columbia.

☐ **Significant Connections**. There is no "home state" or the "home state" has declined to exercise jurisdiction on the grounds that the District of Columbia is the more appropriate forum *AND* the child(ren) and at least one parent or person acting as a parent have a significant connection with the District of Columbia *AND* there is substantial evidence available in the District of Columbia concerning the child(ren)'s care, protection, training and personal relationships.

☐ **More Appropriate Court**. All courts with jurisdiction have declined to exercise their jurisdiction in favor of the District of Columbia because this is the more appropriate Court to determine custody of the child(ren).

☐ **No Other Court**. There is no other court with jurisdiction to determine custody of the child(ren).

☐ **Temporary Emergency Jurisdiction**. The District of Columbia is not the "home state" *BUT* the child(ren) is/are present in the District of Columbia *AND* the child(ren) has/have been abandoned *OR* it is necessary in an emergency to protect the child(ren) because the child(ren), or a sibling or parent of the child(ren), is/are subjected to or threatened with mistreatment or abuse.

5. The minor child(ren) currently live(s) at the following address(es) with the following person(s):

Child(ren)'s Name(s)	Current Address	Since What Date	Child(ren) Live(s) With (names)

6. Over the last five years, the child(ren) have lived in the following places, with the following persons:

Child(ren)'s Name(s)	Previous Address	During What Dates	Child(ren) Lived With (name and current address)

7. The following people, who are not parties to this case, have physical custody of, or claim rights of legal or physical custody of, or visitation with the child(ren):

Name(s)	Current Address(es)

8. I state the following about other cases involving the child(ren): [CHECK ONE]

☐ There are no other cases concerning custody of, or visitation with, the child(ren), and there are no other cases that could affect this proceeding.

☐ The following cases concern custody of, or visitation with, the child(ren), or could affect this proceeding (e.g. divorce, child support, domestic violence, neglect, etc.)

COURT	CASE NO.	CASE TYPE	DATE OF DETERMINATION

9. ☐ I was ☐ I was not a party or witness or participant of any kind in any other proceeding concerning the custody of or visitation with the child(ren).

10. Legal Custody. I am a fit and proper person to have legal custody of the minor child(ren) and make decisions about the well-being of the minor child(ren), and I believe that it is in the best interest of the minor child(ren) that I be awarded: [CHECK ONE]

☐ joint legal custody ☐ sole legal custody

11. Physical Custody. I am a fit and proper person to have physical custody of the minor child(ren) and to have responsibility and control of the minor child(ren), and I believe that it is in the best interest of the minor child(ren) that I be awarded: [CHECK ONE]

☐ joint physical custody ☐ sole physical custody

☐ visitation

12. The presumption in favor of joint custody does not apply in *this* case because:
[CHECK ALL THAT APPLY]

☐ There has been domestic violence.
☐ There has been child abuse.
☐ There has been child neglect.
☐ There has been parental kidnapping.

AND/OR

☐ Joint custody is not in the best interest of the child(ren).

13. I state the following about visitation: [CHECK ALL THAT APPLY]

☐ We can work out a visitation schedule on our own.
☐ We need a specific schedule of visitation
☐ Any visitation should be supervised because

☐ The other party should not receive any visitation because

14. I state the following about child support: [CHECK ONE]

☐ I am ☐ I am not seeking child support on behalf of the child(ren).

Request for Relief

I RESPECTFULLY REQUEST that the Court: [CHECK ALL THAT APPLY]

☐ Grant me: ☐ sole ☐ joint **PHYSICAL CUSTODY**

☐ Grant me: ☐ sole ☐ joint **LEGAL CUSTODY**

☐ Allow______________________to visit with the child(ren).
NAME

☐ Allow only supervised visitation.

☐ Allow no visitation.

☐ Award child support according to the Child Support Guideline of the District of Columbia and other applicable laws, including: [CHECK ALL THAT APPLY]
- ☐ current child support (support starting today and continuing into the future)
- ☐ retroactive child support (support for time before today)
- ☐ health insurance

☐ Hold a hearing on my request for child support within 45 days of filing and issue a Notice of Hearing and Order Directing Appearance (“NOHODA”) to the other party with the date and time of the hearing.

☐ Note that we have a written agreement. I request that the Court: [CHECK ONE]
- ☐ *include* our written agreement as a part of its order.
- ☐ *not include* our written agreement as a part of its order.

I ALSO REQUEST that the Court award any other relief it considers fair and proper.

[CHECK ONE]

☐ I *do not* know of any proceedings in the District of Columbia or in any state or territory involving the same claim or subject matter as this case.

☐ I *do* know of proceedings in the District of Columbia or in any state or territory involving the same claim or subject matter as this case, as listed on the first page of this Complaint ("Related Cases").

I solemnly swear or affirm under criminal penalties for the making of a false statement that I have read the foregoing Complaint for Custody and/or Visitation and that the factual statements made in it are true to the best of my personal knowledge, information and belief.

Respectfully Submitted,

____
SIGN YOUR NAME

____
PRINT YOUR NAME

____
DATE (mm/dd/yyyy)

____
STREET ADDRESS

____
CITY, STATE AND ZIP CODE

____
TELEPHONE NUMBER

____
EMAIL ADDRESS

☐ SUBSTITUTE ADDRESS: CHECK BOX IF YOU HAVE WRITTEN SOMEONE ELSE'S ADDRESS BECAUSE YOU FEAR HARASSMENT OR HARM.

RULE 4 SERVICE

WHEN YOU FILE YOUR COMPLAINT, THE FAMILY COURT CENTRAL INTAKE CENTER WILL GIVE YOU A **SUMMONS** THAT YOU MUST SERVE (ALONG WITH THE COMPLAINT) ON THE OTHER PARTY WITH A COPY OF YOUR COMPLAINT.

YOU MUST SERVE THE OTHER PARTY BEFORE THE SUMMONS EXPIRES IN 60 DAYS.

IF YOU ARE UNABLE TO SERVE THE OTHER PARTY WITHIN THE 60 DAYS, YOU CAN ASK THE FAMILY COURT CENTRAL INTAKE CENTER TO GIVE YOU ANOTHER SUMMONS. THE SECOND SUMMONS IS CALLED AN "ALIAS SUMMONS." YOU **MUST** ASK FOR THE ALIAS SUMMONS **BEFORE** THE FIRST SUMMONS EXPIRES.

HERE ARE THE WAYS YOU CAN SERVE THE COMPLAINT AND SUMMONS:

- **by having someone else** (NOT you)**,** who is over 18 years old and not a party to the case,
  - **hand it to the other party;** or
  - **leave a copy at the other party's home** with a person of suitable age and discretion who lives there

  -AFTER THE OTHER PARTY IS SERVED, THE SERVER MUST COMPLETE AN AFFIDAVIT OF SERVICE AND FILE IT WITH THE FAMILY COURT CENTRAL INTAKE CENTER ("CIC"). AFFIDAVITS ARE AVAILABLE AT THE CIC.

OR

- **by mailing it to the other party** by certified mail, return receipt requested.

  -AFTER THE RETURN RECEIPT ("GREEN CARD") COMES BACK TO YOU, FILE IT WITH THE CIC ALONG WITH A COMPLETED AFFIDAVIT OF SERVICE. THESE AFFIDAVITS ARE ALSO AVAILABLE AT THE CIC.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA
FAMILY COURT - DOMESTIC RELATIONS BRANCH
JUZGADO DE FAMILIA- DIVISIÓN DE RELACIONES DOMÉSTICAS
500 Indiana Avenue, N.W., Washington, D.C. 20001

A Complaint for:
Demanda de:

☐ **Divorce** *Divorcio*　☐ **Legal Separation** *Separación Legal*　☐ **Annulment** *Anulación*　☐ **Other:** *Otro* ______

☐ **Custody** *Tutela*　☐ **Standby Guardianship** *Tutoría de Reserva*　☐ **Visitation** *Visitas*

In the Matter of:
En la causa de:

____
Plaintiff
Demandante

Jacket Number
Número del expediente ______________________

vs.

____

Defendant
Demandado

SUMMONS
NOTIFICACIÓN

TO:
A:

____
Name
Nombre
____
Address
Dirección
____

You are hereby SUMMONED to the Family Court of D.C. Superior Court and required to Answer the attached Complaint. Your Answer must be filed with the Clerk of this Court in the Family Court Central Intake Center, D.C. Superior Court, Room JM-520, 500 Indiana Avenue, N.W. Your Answer must be properly filed within twenty (20) days after service of this Summons and Complaint upon you. This 20-day period does not include the day on which you were served. A copy of your Answer must be served upon the plaintiff's attorney or plaintiff, whichever is indicated below. If you do not file your answer on time, the court may make orders affecting your marriage, your property, and custody and visitation of your children. You may be ordered to pay support and attorney fees. It is recommended that you seek the advice of an attorney to assist you in this case.

Por medio de la presente se le ORDENA comparecer en persona al Juzgado de Familia en el Tribunal Superior del Distrito de Columbia y se le exige su contestación a la demanda adjunta. Debe presentar su contestación con el actuario de este tribunal en el "Family Court Central Intake Center" Tribunal Superior del Distrito de Columbia, Oficina JM-520, 500 Indiana Avenue, N.W. La contestación debe presentarse de manera adecuada dentro del plazo de veinte (20) días después de que este citatorio y demanda se le hayan entregado formalmente. Este plazo de 20 días no incluye el día de la notificación formal. Debe entregarse una copia de la contestación formalmente al indicado, ya sea el abogado del demandante o el demandante,

PLAINTIFF'S ATTORNEY OR PLAINTIFF
ABOGADO DEL DEMANDANTE O DEMANDANTE

Name: ***Nombre:***	**Address:** ***Dirección:***

Witness, the Honorable Chief Judge of the Superior Court of the District of Columbia and seal of said Court.
Doy fe, el Honorable Juez Presidente del Tribunal Superior del Distrito de Columbia y el sello de dicho tribunal.

SEAL
Sello

Clerk of the Superior Court
of the District of Columbia
Actuario del Tribunal Superior del Distrito de Columbia

Date of Issue:
Fecha de emisión: ______________________

By:
Por: ______________________
Deputy Clerk
Actuario Auxiliar

***This summons expires 60 days from the date of issue noted above. This case will be dismissed if the Plaintiff fails to comply with Rule 4 (l). (See back)**
**** Este citatorio se vence 60 días después de la fecha de emisión. Esta causa será sobreseída si el demandante no cumple con la Regla 4(1).***
Please note that additional information is available on the reverse side of this form.
Favor de notar la información adicional al dorso de este formulario.

FD(10)　WHITE-LEGAL RECORD COPY *BLANCO- COPIA DE REGISTRO JURÍDICO*　GOLDENROD-SERVER'S COPY ORO- OFICIAL NOTIFICADOR　YELLOW-SERVICE COPY (ENGLISH) AMARILLO- COPIA DE NOTIFICACIÓN (inglés)　GREEN-SERVICE COPY (SPANISH) VERDE-COPIA DE NOTIFICACIÓN (español)

Superior Court of the District of Columbia
Family Court

Cross Reference Intake Form

Party	Name	Address	Date of Birth	Social Security Number	Driver License Number
Plaintiff/Petitioner[1]					
Co-Plaintiff/Co-Petitioner					
Defendant/Respondent[2]					
Co-Defendant/Co-Respondent					
Child					
Child					
Child					
Child					
Child					
Household Members					
Household Members					

1. What type of case are you filing today? ____
2. Do you have any other court cases in this court? ______ If yes, please list the name, type, and case number: ____
____
3. Do you have any other court cases in another court? ______ If yes, please list the name of the court, case, type, and number: ____
____
4. Are you *pro se* (representing yourself)? ______ If yes, please visit the Family Court Self-Help Center in Room JM-570.

[1] The person who is filing the case is the plaintiff/petitioner
[2] The person against whom the case is filed is the defendant/respondent

Disclaimer: This form will not be kept in the official court jacket. After your information has been entered into the system, this form will be destroyed.

Revised December 15, 2014 by the D.C. Bar Pro Bono Program

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
Domestic Relations Branch

____
PRINT YOUR NAME

____
STREET ADDRESS

____
CITY, STATE AND ZIP CODE

☐ SUBSTITUTE ADDRESS: CHECK BOX IF YOU HAVE WRITTEN SOMEONE ELSE'S ADDRESS BECAUSE YOU FEAR HARASSMENT OR HARM.

PLAINTIFF,

v.

____
PRINT OTHER PARTY'S NAME

____
STREET ADDRESS

____
CITY, STATE AND ZIP CODE

DEFENDANT 1.

____
PRINT OTHER PARTY'S NAME

____
STREET ADDRESS

____
CITY, STATE AND ZIP CODE

DEFENDANT 2.

_______DRB __________

RELATED CASES:

____

____

____

COMPLAINT FOR THIRD PARTY CUSTODY and/or VISITATION
Action Involving Child Support ☐ yes ☐ no

I, ______________________________, am the Plaintiff in this case, and I am asking the
PRINT YOUR NAME
Court for [CHECK ONE] ☐ custody (I want responsibility for raising the child(ren))
☐ visitation (I want the opportunity to visit with the child(ren))

1. **The child(ren) in this case:**

Child's Full Name	Child's Date of Birth	Gender

2. **My relationship to the child(ren) in this case:** [CHECK ONE]

☐ I am or seek to be the caretaker. My relationship to the child(ren) is:______________________ (e.g. grandparent, brother, aunt, etc.).

or

☐ Other ____.

3. **The other party's/parties' relationship to the child(ren) in this case:**

____: [CHECK ONE]
PRINT FIRST OTHER PARTY'S NAME

☐ The above party is the biological or adoptive parent.

or

☐ The above party is the caretaker. His/Her relationship to the child(ren) is ___________________________. (e.g. grandparent, brother, aunt, etc.)

or

☐ Other ____.

____: [CHECK ONE]
PRINT SECOND OTHER PARTY'S NAME (IF APPLICABLE)

☐ The above party is the biological or adoptive parent.

or

☐ The above party is the caretaker. His/Her relationship to the child(ren) is ___________________________. (e.g. grandparent, brother, aunt, etc.)

or

☐ Other ____.

4. **I have standing to bring this action because:** [CHECK ALL THAT APPLY]

☐ The parent who is or has been the primary caretaker of the child within the past 3 years consents to my complaint.

☐ I have lived in the same household as the child for at least 4 of the last 6 months or, if the child is under the age of 6 months, for at least half of the child's life; and I have primarily assumed the duties and obligations for which a parent is legally responsible, including providing the child with food, clothing, shelter, education, financial support, and other care to meet the child's needs.

☐ I am living with the child and I need custody to prevent harm to the child, because, [PROVIDE SPECIFIC REASONS]:

☐ Other:

5. **This Court is the proper place to decide issues of child custody because:** [CHECK ONE]

☐ **Home State**. The District of Columbia is the child(ren)'s "home state" because the child(ren) currently live(s) in the District of Columbia *AND* has/have lived in the District of Columbia for at least six months immediately before filing this Complaint.

☐ **Home State**. The child(ren) do not currently live in the District of Columbia, *BUT* the District of Columbia was the "home state" *AND* the child(ren) has/have been away from the District of Columbia for less than six months before the filing of this Complaint *AND* a parent or a person acting as a parent continues to live in the District of Columbia.

☐ **Significant Connections**. There is no "home state" or the "home state" has declined to exercise jurisdiction on the grounds that the District of Columbia is the more appropriate forum *AND* the child(ren) and at least one parent or person acting as a parent has a significant connection with the District of Columbia *AND* there is substantial evidence available in the District of Columbia concerning the child(ren)'s care, protection, training and personal relationships.

☐ **More Appropriate Court**. All courts with jurisdiction have declined to exercise their jurisdiction in favor of the District of Columbia because this is the more appropriate Court to determine custody of the child(ren).

☐ **No Other Court**. There is no other court with jurisdiction to determine custody of the child(ren).

☐ **Temporary Emergency Jurisdiction**. The District of Columbia is not the "home state" *BUT* the child(ren) is/are present in the District of Columbia *AND* the child(ren) has/have been abandoned *OR* it is necessary in an emergency to protect the child(ren) because the child(ren), or a sibling or parent of the child(ren), is/are subjected to or threatened with mistreatment or abuse.

6. The minor child(ren) currently live(s) at the following address(es) with the following person(s): [USE ONLY ONE ENTRY FOR MULTIPLE CHILDREN LIVING AT THE SAME ADDRESS]

Child(ren)'s Name(s)	Current Address	Since What Date	Child Lives With (names)

7. Over the last five years, the child(ren) have lived in the following places, with the following persons: [USE ONLY ONE ENTRY FOR MULTIPLE CHILDREN WHO PREVIOUSLY LIVED AT THE SAME ADDRESS]

Child(ren)'s Name(s)	Previous Address	During What Dates	Child(ren) Lived With (name and current address)

8. The following people, who are not parties to this case, have physical custody of, or claim rights of legal or physical custody of, or visitation with the child(ren):

Name	Current Address

9. I state the following about other cases involving the child(ren): [CHECK ONE]

☐ There are no other cases concerning custody of, or visitation with, the child(ren), and there are no other cases that could affect this proceeding.

☐ The following cases concern custody of, or visitation with, the child(ren), or could affect this proceeding (e.g. divorce, child support, domestic violence, neglect, etc.)

COURT | CASE NO. | CASE TYPE | DATE OF DETERMINATION

10. ☐ I was ☐ was not a party or witness or participant of any kind in any other proceeding concerning the custody of or visitation with the child(ren).

11. Legal Custody. I am a fit and proper person to have legal custody of the minor child(ren) and make decisions about their well-being, and I believe that it is in the best interest of the minor child(ren) that I be awarded: [CHECK ONE]

☐ joint legal custody with: ____
PRINT NAME OF PARTY/PARTIES

☐ sole legal custody

12. Physical Custody. I am a fit and proper person to have physical custody of the minor child(ren) and to have responsibility and control of the child(ren), and I believe that it is in the best interest of the minor child(ren) that I be awarded: [CHECK ONE]

☐ joint physical custody with: ____
PRINT NAME OF PARTY/PARTIES

☐ sole physical custody

☐ visitation

13. I state the following about visitation: [CHECK ALL THAT APPLY]

☐ We can work out a visitation schedule on our own.
☐ We need a specific schedule of visitation
☐ Any visitation should be supervised because ______________________________.
☐ The other party should not receive any visitation because

14. I state the following about child support: [CHECK ONE]

☐ I am ☐ I am not seeking child support on behalf of the child(ren).

Request for Relief

I RESPECTFULLY REQUEST that the Court: [CHECK ALL THAT APPLY]

☐ Grant me: ☐ sole physical custody
☐ joint physical custody with ____________________________________
PRINT NAME OF PARTY/PARTIES

☐ Grant me: ☐ sole legal custody
☐ joint legal custody with____
PRINT NAME OF PARTY/PARTIES

☐ Allow ____to visit with the child(ren).
PRINT NAME OF PARTY/PARTIES

☐ Allow only supervised visitation for ____.
PRINT NAME OF PARTY/PARTIES

☐ Allow no visitation for ____.
PRINT NAME OF PARTY/PARTIES.

☐ Award child support according to the Child Support Guideline of the District of Columbia and other applicable laws, including:
☐ current child support (support starting today and continuing into the future)
☐ retroactive child support (support for time before today)
☐ health insurance

☐ Hold a hearing on my request for child support within 45 days of filing and issue a Notice of Hearing and Order Directing Appearance (“NHODA”) to the other party with the date and time of the hearing.

☐ Note that we have a written agreement.
Please: ☐ *include* our written agreement as a part of its order.
☐ *do not include* our written agreement as a part of its order.

I ALSO REQUEST that the Court award any other relief it considers fair and proper.

[CHECK ONE]

☐ I *do* ☐ I *do not* know of any proceedings in the District of Columbia or in any state or territory involving the same claim or subject matter as this case. Please list state, court, and docket number for cases involving the same claim or subject matter.

____

____

I solemnly swear or affirm under criminal penalties for the making of a false statement that I have read the foregoing Complaint for Custody and/or Visitation and that the factual statements made in it are true to the best of my personal knowledge, information and belief.

Respectfully Submitted,

____
SIGN YOUR NAME

____
STREET ADDRESS

____
CITY, STATE AND ZIP CODE

____
TELEPHONE NUMBER

____
EMAIL ADDRESS

☐ SUBSTITUTE ADDRESS: CHECK BOX IF YOU HAVE WRITTEN SOMEONE ELSE'S ADDRESS BECAUSE YOU FEAR HARASSMENT OR HARM.

RULE 4
SERVICE

WHEN YOU FILE YOUR COMPLAINT, THE FAMILY COURT CENTRAL INTAKE CENTER WILL GIVE YOU A **SUMMONS** THAT YOU MUST SERVE (ALONG WITH THE COMPLAINT) ON THE OTHER PARTY WITH A COPY OF YOUR COMPLAINT.

YOU MUST SERVE THE OTHER PARTY BEFORE THE SUMMONS EXPIRES IN 60 DAYS.

IF YOU ARE UNABLE TO SERVE THE OTHER PARTY WITHIN THE 60 DAYS, YOU CAN ASK THE FAMILY COURT CENTRAL INTAKE CENTER TO GIVE YOU ANOTHER SUMMONS. THE SECOND SUMMONS IS CALLED AN "ALIAS SUMMONS." YOU **MUST** ASK FOR THE ALIAS SUMMONS **BEFORE** THE FIRST SUMMONS EXPIRES.

HERE ARE THE WAYS YOU CAN SERVE THE COMPLAINT AND SUMMONS:

- **by having someone else** (NOT you), who is over 18 years old and not a party to the case,
  - **hand it to the other party;** or
  - **leave a copy at the other party's home** with a person of suitable age and discretion who lives there

-AFTER THE OTHER PARTY IS SERVED, THE SERVER MUST COMPLETE AN AFFIDAVIT OF SERVICE AND FILE IT WITH THE FAMILY COURT CENTRAL INTAKE CENTER ("CIC"). AFFIDAVITS ARE AVAILABLE AT THE CIC.

OR

- **by mailing it to the other party** by certified mail, return receipt requested.

-AFTER THE RETURN RECEIPT ("GREEN CARD") COMES BACK TO YOU, FILE IT WITH THE CIC ALONG WITH A COMPLETED AFFIDAVIT OF SERVICE. THESE AFFIDAVITS ARE ALSO AVAILABLE AT THE CIC.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA
FAMILY COURT - DOMESTIC RELATIONS BRANCH
JUZGADO DE FAMILIA- DIVISIÓN DE RELACIONES DOMÉSTICAS
500 Indiana Avenue, N.W., Washington, D.C. 20001

A Complaint for:
Demanda de:

☐ **Divorce** *Divorcio*	☐ **Legal Separation** *Separación Legal*	☐ **Annulment** *Anulación*	☐ **Other:** *Otro* ______
☐ **Custody** *Tutela*	☐ **Standby Guardianship** *Tutoría de Reserva*	☐ **Visitation** *Visitas*	______ ______

In the Matter of:
En la causa de:

____
Plaintiff
Demandante

Jacket Number
Número del expediente ______________

vs.

____
Defendant
Demandado

<u>SUMMONS</u>
<u>*NOTIFICACIÓN*</u>

TO:
A:

____
Name
Nombre

____
Address
Dirección

____

You are hereby SUMMONED to the Family Court of D.C. Superior Court and required to Answer the attached Complaint. Your Answer must be filed with the Clerk of this Court in the Family Court Central Intake Center, D.C. Superior Court, Room JM-520, 500 Indiana Avenue, N.W. Your Answer must be properly filed within <u>twenty (20) days</u> after service of this Summons and Complaint upon you. This 20-day period does not include the day on which you were served. A copy of your Answer must be served upon the plaintiff's attorney or plaintiff, whichever is indicated below. If you do not file your answer on time, the court may make orders affecting your marriage, your property, and custody and visitation of your children. You may be ordered to pay support and attorney fees. It is recommended that you seek the advice of an attorney to assist you in this case.

Por medio de la presente se le ORDENA comparecer en persona al Juzgado de Familia en el Tribunal Superior del Distrito de Columbia y se le exige su contestación a la demanda adjunta. Debe presentar su contestación con el actuario de este tribunal en el "Family Court Central Intake Center" Tribunal Superior del Distrito de Columbia, Oficina JM-520, 500 Indiana Avenue, N.W. La contestación debe presentarse de manera adecuada dentro del plazo de veinte (20) días después de que este citatorio y demanda se le hayan entregado formalmente. Este plazo de 20 días no incluye el día de la notificación formal. Debe entregarse una copia de la contestación formalmente al indicado, ya sea el abogado del demandante o el demandante,

PLAINTIFF'S ATTORNEY OR PLAINTIFF
ABOGADO DEL DEMANDANTE O DEMANDANTE

Name: ***Nombre:***	**Address:** ***Dirección:***

Witness, the Honorable Chief Judge of the Superior Court of the District of Columbia and seal of said Court.
Doy fe, el Honorable Juez Presidente del Tribunal Superior del Distrito de Columbia y el sello de dicho tribunal.

SEAL
Sello

Clerk of the Superior Court
of the District of Columbia
Actuario del Tribunal Superior del Distrito de Columbia

Date of Issue:
Fecha de emisión: ______________

By:
Por: ______________
Deputy Clerk
Actuario Auxiliar

***This summons expires 60 days from the date of issue noted above. This case will be dismissed if the Plaintiff fails to comply with Rule 4 (l). (See back)**
**** Este citatorio se vence 60 días después de la fecha de emisión. Esta causa será sobreseída si el demandante no cumple con la Regla 4(1).***
Please note that additional information is available on the reverse side of this form.
Favor de notar la información adicional al dorso de este formulario.

WHITE-LEGAL RECORD COPY *BLANCO- COPIA DE REGISTRO JURÍDICO* — GOLDENROD-SERVER'S COPY ORO- OFICIAL NOTIFICADOR — YELLOW-SERVICE COPY (ENGLISH) AMARILLO- COPIA DE NOTIFICACIÓN (inglés) — GREEN-SERVICE COPY (SPANISH) VERDE-COPIA DE NOTIFICACIÓN (español)

Superior Court of the District of Columbia
Family Court

Cross Reference Intake Form

Party	Name	Address	Date of Birth	Social Security Number	Driver License Number
Plaintiff/Petitioner[1]					
Co-Plaintiff/Co-Petitioner					
Defendant/Respondent[2]					
Co-Defendant/Co-Respondent					
Child					
Child					
Child					
Child					
Child					
Household Members					
Household Members					

1. What type of case are you filing today? ____
2. Do you have any other court cases in this court? ______ If yes, please list the name, type, and case number: ____
3. Do you have any other court cases in another court? ______ If yes, please list the name of the court, case, type, and number: ____
4. Are you *pro se* (representing yourself)? ______ If yes, please visit the Family Court Self-Help Center in Room JM-570.

[1] The person who is filing the case is the plaintiff/petitioner
[2] The person against whom the case is filed is the defendant/respondent

Disclaimer: This form will not be kept in the official court jacket. After your information has been entered into the system, this form will be destroyed.

Revised December 15, 2014 by the D.C. Bar Pro Bono Program

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
Domestic Relations Branch

____
PRINT YOUR SPOUSE'S NAME

____
STREET ADDRESS

____
CITY, STATE AND ZIP CODE

PLAINTIFF,

v.

____
PRINT YOUR NAME

____
STREET ADDRESS

____
CITY, STATE AND ZIP CODE

☐ SUBSTITUTE ADDRESS: CHECK BOX IF YOU HAVE WRITTEN SOMEONE ELSE'S ADDRESS BECAUSE YOU FEAR HARASSMENT OR HARM.

DEFENDANT.

_______DRB ___________

RELATED CASES:

____

____

CONSENT ANSWER TO
COMPLAINT FOR CUSTODY and/or ACCESS TO CHILDREN

I, ____ , am the Defendant in this case.
PRINT YOUR NAME

1. I agree with ALL of the statements regarding custody, numbered 1 - 13 in Plaintiff's Complaint for Custody and/or Access to Children.

2. (*If applicable*) I agree with ALL of the statements regarding child support, numbered 14 - 17 in Plaintiff's Complaint for Custody and/or Access to Children.

3. I also state that THERE ARE NO CONTESTED ISSUES for this Court to decide.

Request for Relief

I RESPECTFULLY REQUEST that the Court grant ALL the relief requested in Plaintiff's Complaint for Custody and/or Access to Children.

I ALSO REQUEST that the Court award any other relief it considers fair and proper.

[CHECK ONE]

☐ I *do not* know of any proceedings in the District of Columbia or in any state or territory involving the same claim or subject matter as this case.

☐ I *do* know of proceedings in the District of Columbia or in any state or territory involving the same claim or subject matter as this case, as listed on the first page of this Consent Answer ("Related Cases").

I solemnly swear or affirm under criminal penalties for the making of a false statement that I have read the foregoing Consent Answer to Complaint for Custody and/or Access to Children and that the factual statements made in it are true to the best of my personal knowledge, information and belief.

Respectfully Submitted,

____
SIGN YOUR NAME

____
DATE (mm/dd/yyyy)

____
STREET ADDRESS

____
CITY, STATE AND ZIP CODE

____
TELEPHONE NUMBER

____
EMAIL ADDRESS

☐ SUBSTITUTE ADDRESS: CHECK BOX IF YOU HAVE WRITTEN SOMEONE ELSE'S ADDRESS BECAUSE YOU FEAR HARASSMENT OR HARM.

dc's CHILDREN'S LAW CENTER family. health. education.

APPLA Primer

Updated February 2018

APPLA stands for "another planned permanent living arrangement". D.C. Code § 16-2323 (c)(4) (2001). It is one of the permanency goals that the court can set for a child adjudicated neglected. A child with the goal of APPLA remains committed to the custody of the Child and Family Services Agency (CFSA) and can reside in foster care, with kin, in a group home, or in an independent living facility. In order to set a goal of APPLA, the court must find "compelling circumstances." *Id.* APPLA is generally viewed as the least preferred of the permanency goals, and is often set as a goal when all other options (reunification, adoption, guardianship, and/or custody) have been ruled out.

CFSA has a policy around what is required in order for the social worker to recommend a goal change to APPLA. *See* http://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/Program%20-%20Establishing%20A%20Goal%20of%20Alternative%20Planned%20Permanent%20Living%20Arrangement%20%28APPLA%29%20%28final%29_2.pdf. Part of that policy is to request and convene a "Listening to Youth and Families as Experts" (LYFE) meeting before requesting a goal change to APPLA. During this meeting, permanency options and life-long connections are explored. In practice, CFSA, through the government, will often oppose a goal change to APPLA before such a meeting occurs. However, note that there is no legal requirement for such a meeting to take place before the goal is changed to APPLA.

In practice, APPLA is often set as a goal for older clients in care – generally teenagers and above. Often, APPLA is synonymous with aging out of foster care, and clients with goals of APPLA are working on independent living skills, such as housing, employment, and higher education/vocational training. Most youth with a goal of APPLA are connected to CFSA's Office of Youth Empowerment (OYE), which houses the staff and resources to work with youth on achieving independence.

Until recently, attorneys were able to argue compelling circumstances and request the goal of APPLA for a young child when in the child's best interests. Such a situation may arise when it is in the child's best interests to remain in foster care instead of exiting the system through reunification, custody, guardianship, or adoption. There may be services and benefits that commitment to CFSA, foster care, and court

monitoring may provide that cannot be obtained through the other permanency goals. *See, e.g., In re Melinda J.*, 2008 D.C. Super. LEXIS 1 (June 1, 2008).

Recently, the federal "Preventing Sex Trafficking and Strengthening Families Act of 2014" amended the Adoption and Safe Families Act (ASFA) and made some changes to child welfare laws, including the goal of APPLA. Most notably, Section 112 eliminates Another Planned Permanent Living Arrangement (APPLA) as a permanency goal for children under the age of sixteen, as of September 29, 2015. In addition, the Act requires the agency, at each permanency hearing, in order to request/support a goal of APPLA, to (1) document the intensive, ongoing and unsuccessful efforts for family placement, adoption, or placement with a guardian, including efforts to locate biological family members using search technologies (including social media); and (2) specify the steps the agency is taking to ensure that the child's placement is following the "reasonable and prudent parent standard,"[1] and that the child has regular, ongoing opportunities to engage in age- or developmental-appropriate activities. Further, at each such permanency hearing, procedures must be put in place to ensure that the court (1) asks the child about the child's desired permanency outcome; and (2) makes a judicial determination that APPLA is the best permanency plan for the child, and provides compelling reasons why no other permanency plan is in the child's best interests.

[1] The "reasonable and prudent parent standard" is defined by the Act as "the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities."

APPLA LAW AND POLICIES

1. **Preventing Sex Trafficking and Strengthening Families Act of 2014**
   a. https://www.congress.gov/bill/113th-congress/house-bill/4980/text

2. **CFSA Program Policy, Establishing the Goal of APPLA**
   a. https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/Program%20-%20Establishing%20A%20Goal%20of%20Alternative%20Planned%20Permanent%20Living%20Arrangement%20%28APPLA%29%20%28final%29_2.pdf

3. **CFSA Quick Reference Guide, APPLA**
   a. https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/QRG%20-%20APPLA(H)_0.pdf