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Attention: Tammeka Freeman
NYS Office of Indigent Legal Services
Alfred E. Smith Bldg.
80 S. Swan Street
29th Floor
Albany, NY 12210

Re: Public Hearings on Eligibility for Assignment of Counsel Written Testimony – Eligibility of Children Subject to Adoption Contestment

Children Subject to Adoption Contestment in New York Should be Eligible for Court Appointed Counsel

All children under 18 years old who are subject to a birth parent adoption contestment in all New York courts should be eligible for court-appointed counsel. This entitlement should not be limited to children in Family Court cases who are automatically appointed counsel in custody and guardianship challenges pursuant to an adoption, whether it is a private placement, foster care or agency adoption matter.

Children Are Unable to Represent Themselves In Court

It is an unconscionable violation of the rights of vulnerable children who are deemed minors and incapacitated under New York law to be denied counsel eligibility after years of applications requesting such. A child cannot appear in court, draft his or her own pleadings or retain counsel, as can an adult. Nor can a child be expected to understand writs of habeas corpus, adoption-related guardianship orders or any rules pertaining to the adoption filing. Without legal counsel, a child has no voice in court and is prejudiced and disadvantaged. Not being eligible for counsel means that a child is at the whim of a judge's court appointment budget and cannot protect himself or herself from frivolous litigation meant to delay their adoption or to secure safety and permanency through related custody and guardianship with qualified pre-adoptive parents/guardians.

Parents Should Not Represent Children in Court

It should not be the responsibility of the child's legal guardians, be they parents under any definition, to serve as legal representatives for the child. A parent or legal guardian should also not be assumed by a judge to be sufficient legal counsel for a child if the parents or guardians happen to be lawyers, especially if they are not family law/adoption practitioners. Nor would it be a permissible conflict for the parents or guardians themselves or through their own legal counsel, to be representing the child in an adoption contestment matter or related litigation.

Children Subject to Contested Adoption in Surrogate Court are Unfairly Prejudiced without Court Appointed 18-B Counsel as their Counsel Appointment is Subject to Judicial Determination and Not Statute

We are aware of a case in New York County where the child has endured a seven year delayed adoption with no legal counsel eligibility status pertaining to the failed adoption contestment. His birth parents (both of whom were listed on the State Central Register of Child Abuse and Maltreatment and who have adequate family means to retain counsel) were immediately deemed eligible to be appointed free counsel under Section 18-b when they appeared in court before a judge, even though they were already then represented by privately retained counsel. One birth parent chose not to have contact with his court appointed counsel after some time and soon thereafter abandoned his challenge; his counsel withdrew representation after years of trying to do so, failing to properly inform the court of the fact that she no longer represented her client. The other birth parent was permitted for over four years to simultaneously be eligible for both court-appointed and private retained counsel in various matters, who upon observation, motions and filings collaborated, often alternating appearances and correspondence in various courts. This co-counsel approach was a violation of the Appointed Counsel Panel and took advantage of the fact that the child was not eligible for court appointed legal representation in all courts and all matters. In contrast, the child was appointed counsel only for matters in Family Court and Appellate Court actions, but denied representation by two judges in Surrogate's Court, within their discretion.

Birth Parents in Contested Adoption Should Not Have an Unfair Advantage of Court Appointed Counsel While Children are Unrepresented

Appointed counsel eligibility rules should be equally applied, especially when it regards our most vulnerable citizens -- children. Birth parents should not have superior rights to eligibility for legal counsel over their adopted children, many of whom have been abandoned, abused or neglected by their birth parents.

Conclusion

A child's suffering and unnecessary delay in securing permanency with a loving adopted family should not be exacerbated by lack of eligibility to adequate legal counsel. All courts in New York state with jurisdiction over children in adoption related matters should provide immediate and experienced appointed counsel to such children so as to fulfill the standard of acting in the best interests of the child and level the playing field for disadvantage and prejudiced unrepresented children.

Edward Frankel
Former New York State Resident