

How to Support a Kin-First Culture

ABA Center on Children and the Law

National Council of Juvenile and Family Court Judges

Quick Overview

This Judge's Action Alert highlights:

- The value of kinship care
- The critical role judges play in engaging and supporting kinship families
- New federal rules adopted to support a kin-first culture
- How to foster a kin-friendly courtroom
- Attorneys responsibility to facilitate kinship placements and family connections

Nationally, more than 2.4 million children are being raised by kin, relatives, or close family friends, without a parent in the household.¹ According to the Adoption and Foster Care Analysis and Reporting System (AFCARS) FY 2022 data, 34% of children in foster care on September 30, 2022, were placed with a relative.²

Social science confirms children do best in kinship foster care and family connections are critical to healthy child development and a sense of belonging.³ Maintaining connections with kin helps preserve children's cultural identity and relationship to their community. These connections are especially important for youth aging out of care. For a successful life after foster care, older youth need help developing permanent connections to significant adults, knowledge of their family history, and relational as well as legal permanence. Additionally, kinship is a strategy for achieving race equity by honoring tradition of communities of color, helping to limit the trauma of family separation, and decreasing group care placement and overrepresentation of youth of color in group care.

In order to create and support a kin-first culture — a child welfare system that promotes and supports kin placement and the maintenance of connections with kin — all stakeholders must take an active role. As a judge, your role is crucial to ensure those with an important relationship with the child, such as relatives and close family friends, are provided the opportunity to stay involved in the child's life. For the judge to make informed decisions that best support the family, stakeholders must provide the judge a list of all identified supportive kin, as well as share the efforts made to identify and place children with kin.

What can the judge do to support a kin-first culture?

Identification and engagement of kin early and throughout a case is the best way to make sure children stay connected to their family. Under the Fostering Connections to Success and Increasing Adoptions Act of 2008, relatives must be notified within 30 days of a child's removal. Efforts to identify and, more importantly, engage kin to take an active role in supporting the family are best undertaken by all professionals working with the family to fulfill the intent behind this law. However, efforts cannot stop at notification alone. Whenever possible, children should be placed with kin, and if they cannot safely return home, exit care permanently to kin.

To support a kin-first culture as a judge, you can:

- Review efforts by both caseworkers and attorneys to identify and notify kin and facilitate kinship placements. This should include asking both parents and child, from the bench, to identify kin (relatives or people with a significant relationship with the child or family) during the hearing, as well as making appropriate ICWA inquiries.
- If the child is not with kin, ask what prevents the child from being placed with kin. Ask the agency if they have requested waivers to non-safety licensing requirements or helped eliminate licensing barriers to placement with willing and qualified kin. It is also helpful to ask the placement resource if they are in fact interested in being a licensed kinship foster parent.

Kin-Specific Licensing Rule

On September 28, 2023, the U.S. Administration for Children and Families (ACF) published a [rule](#) granting title IV-E agencies flexibility to respect the unique circumstances of kin caregivers.

This optional rule allows states and tribes to streamline their licensing or foster home approval processes for kin, thereby increasing the number of children safely cared for by people who know and love them.

This rule also paves the way for providing children with the same level of financial assistance when living with relatives and kin caregivers as they would receive when placed in nonrelated foster homes.

Visit [this page](#) for more information and to track which states and tribes have implemented the rule.

- Explore reasonable efforts made to place siblings together and if the siblings are not placed together, ask why not. Additionally, order frequent visitation if siblings are not placed together.

- Help maintain family connections by exploring ways to include non-placement kin in the child's life, such as ordering visitation between the child and any relative or person to whom the child has a strong attachment. For children in congregate care, ensure participation of kin in the child's treatment and as a possible step-down placement when the child is ready to exit the facility.
- Support kin-based efforts to achieve permanency for the child. Determine from the beginning of the case if the kin caregiver is supportive of the parents' efforts to reunify or alternatively if they are willing to permanently care for the child?
- As the case progresses, inquire about efforts by the agency and all attorneys to discuss all permanency options with the kin, child, and parent, including eligibility, benefits, legal rights and responsibilities.
- Ask questions to determine if kin understand the impact of the chosen permanency option, whether they have what they need to make an informed decision, if they have met with a lawyer or advocate to review their options, and if they felt pressured (i.e., threat of removal) to select this option.

IV-E Rule

On May 9, 2024, the U.S. Administration on Children, Youth, and Families (ACYF) published a rule aimed at improving child welfare legal representation by expanding reimbursable expenses to include legal representation for the agency, child, parent(s), child's relative caregiver(s), and Indian child's tribe.

These allowable expenses may now also include legal representation in "other civil legal proceedings" to support remaining in stable housing, accessing public benefits, meeting a child's educational needs, or otherwise keeping families together. The rule provides flexibility to title IV-E agencies to use an expansive definition of who qualifies for representation as a "relative" caregiver and strives to address some of their legal needs when caring for children.

- Prior to issuing a permanency order such as kinship custody or guardianship, or kinship adoption, the judge should ask if the kin caregiver has what they need to safely care for the child without agency involvement and if they were told about post-permanency supports and services.
- Craft solid kinship permanency orders that include details about parental visitation and contact requirements, including frequency and the need for supervision. Questions about the relationship between the kin caregiver and the parent(s) and willingness and ability of the parent and kin caregiver to respect each other's roles and bond with the child can be helpful, as well as making sure the kin caregiver understands and agrees to all terms and conditions of the permanency order. Keep in mind that permanency with kin may change the family dynamics and cause conflicting feelings for all.

How can judges effectively engage kin and family members in court?

Under federal law,⁴ states are required to institute case review procedures that ensure the foster parents of a child and any pre adoptive parent or relative providing care for the child are provided notice of, and a "right to be heard" in, any proceeding held with respect to the child. Kin caregivers are a useful source of information about the child and the family's needs and can help guide decisions about the child's future.

To get a full picture of the child, judges should ensure meaningful participation in hearings by asking kin about:

- The child's progress and needs,
- Their commitment to the child and whether they are receiving services and supports to take care of the child,
- How this placement has affected the kin caregiver's relationship with the child's parents,
- Their understanding of placement and permanency options to care for the child and if they have received any written materials explaining these options, and

- Any opportunities they have had to meet with a lawyer or get any helpful legal advice.

If the kin caregiver is not present, someone else on the child's team (the agency or child's attorney) may be able to share information on the kin caregiver's behalf, but the judge should hear directly from the caregiver whenever possible.

What do judges need for informed and effective decision making?

Although the agency is tasked with finding the best placement for a child, the court has the responsibility to weigh all information and assess the appropriateness of placement on a case-by-case basis. Judges must balance the following factors when deciding on a placement:

- Requirement that the child be in the least restrictive placement,
- Importance of placement of siblings together, when safe,
- Placement with kin as the first and best placement and maintenance of connections with kin, as supportive resources to the family,
- Necessity for changing schools, only after a best interest decision,
- The child's needs and who can best meet those needs, and
- Proximity to parents, as reunification is the primary goal.

How can attorneys support a kin-first culture?

It is the responsibility of all professionals to help facilitate kinship placements, family connections, and permanency for the child.

Parent attorneys should work with their clients to identify possible placements with people who have a positive relationship with the child, to reduce the trauma of separation. They should make sure to explore their client's wishes regarding specific kinship placements and make the parents' placement preference known to the agency and court.

Remember kin can also play an important role in supporting parents as they work to safely reunite their family, so attorneys should help cultivate that support network for the family.

Children’s attorneys have the important job of helping their clients identify the significant people in their lives and articulate their placement preferences, if they cannot remain with their parents. Talking to children about whom they feel connected to, anyone with whom they have lived in the past or shared holidays and/or special occasions, will help maintain a supportive network of caring adults while the child is in care.

If reunification is no longer an option, attorneys can help parents and children understand the need for permanency and their options to stay connected post-permanency. Both parent and children’s attorneys should fully discuss the impact of the various permanency options with their clients and convey their client’s wishes to the court.

Conclusion

As a judge, you must rely on attorneys, parties, and witnesses to provide all necessary information for successful and effective decision making.

By asking the right questions, engaging families, understanding the importance of family connections for healthy child development and a sense of belonging, and supporting the notion that children do best in kinship foster care, you can play an important role in the creation of a kin-first culture.

Ultimately, however, it is most important to listen to the family, as well-informed and engaged families are their own best expert.

Related Resources

The measures and supporting documents are available online.

- [Judicial Tip Sheet on a Kin-First Court](#)
- [ABA Benefits of Kinship Placement: Social science support for your in-court and out-of-court legal advocacy](#)
- [Kinship Caregiving Options: Considerations for Caregivers](#)
- [Special Kinship Edition of the American Bar Association's Child Law Practice \(CLP\)](#)
- [The Family First Prevention Services Act of 2018: A Guide for the Legal Community](#)

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1. Annie E. Casey Foundation Kids Count Data Center. (2023, September). Children in Kinship Care in the United States, 2021-2023. Source: PRB analysis of data from the U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplement. Estimate represents a three-year average. <https://datacenter.aecf.org/data/tables/10455-children-in-kinship-care?%20loc=1&loct=1#detailed/1/any/false/2479,2097,1985,1757/any/20160,20161>.
2. <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-report-30.pdf>.
3. Generations United. Children Thrive in Grandfamilies. (May 2023). <https://www.gu.org/app/uploads/2023/05/23-Children-Thrive-inGrandfamilies.pdf>.
4. 42 U.S.C. § 675(5)(G).