

FCA ARTICLE 6: CUSTODY/GUARDIANSHIP.

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Pursuant to section 384-B of the Social Services Law, a petition may be brought in Family Court under this article to "commit care, custody, and guardianship" of a child. That essentially means to terminate the parents' legal rights and permanently transfer them to an agency, provided that such actually be in the child's best interests.

The relevant cause of action is "permanent neglect": despite diligent efforts by the agency to engage the parent, parent nevertheless failed to contact and/or plan for the child. The time frame is the last year before filing the petition, or a total of 15 out of the last 22 months.

Service can either be in the manner of Surrogates Court Procedures Act (SCPA) for a citation; or CPLR publication once in a single newspaper (DO NOT publish the whole petition!). Notice shall state the date/time/place of hearing; and that failure to appear constitutes denial of interests in the child, which may result in default judgment. If the Resp appears in court, he/she is also then given a copy of the petition.

Fact-finding must be on competent, relevant, and material proof of a "clear and convincing"; only proof of conduct before filing of petition is relevant. Dispositional proof need only be relevant and material; and may include post-petition facts, though such are not sufficient by themselves.

Court may immediately hold a dispositional hearing after concluding fact-finding, or may adjourn on own motion, or that of a party (including the child by representative [LG]). Court may also dispense with a dispositional hearing on own/party motion, if everybody consents.

Dispositional options: Dismissal; Suspended Judgment; Commitment.

If the Court dismisses the action, m ay still nevertheless continue to hear a previously filed motion on the matter.

Suspended Judgment is for up to 1 year; for "exceptional circumstances", it may be extended for only 1 more year. A copy of the Suspended Judgment - together with a Permanency Plan - is given to the Resp. There shall be an adjourn date at least 30 days prior to the expiration; written report to Court and all parties at least 60 days before expiration.

Any motion or OTSC for extension or violation must be filed before expiration; and such tolls the term of suspension until it is determined. If the Suspended Judgment is revoked, and the child committed: permanency hearing should be held immediately, but in no event more that 60 days after the written or oral order (whichever earlier).

Family Court has "original" jurisdiction (NOT exclusive!) over adoptions [DRL 7], together with Surrogates Court.

Family Court has jurisdiction to hear custody and visitation (including by grandparents) when brought by petition and OTSC; as well as Habeas Corpus proceedings. Family Court has the same powers as Supreme Court, in addition to its own. Supreme Court may also refer such cases to Family Court. Family Court can enforce Supreme Court orders; as well as modify on change in circumstances if Supreme did not retain exclusive jurisdiction. Grandparents filing for children in foster care must also serve Social Services and the Law Guardian.

Even "business record" exceptions to hearsay for State Central Registry of Child Abuse/Maltreatment are only admissible herein if "indicated" NOT if unfounded; such must also be corroborated by other evidence to enter a finding.

Court can issue TOP ex-parte, or on notice with warrant; it is NOT a finding of wrong-doing. Court can also enter FOP: stay away from home/business/school/job of party/parent/spouse/child; permit visits; allow re-entry to residence for belongings; refrain from family offense; not endanger child; pay counsel fees, medical expenses for incident; attend education program; don't kill companion animal.

Court can place party on Probation.

Family Court has same powers as County and Surrogates to issue Letters of Guardianship for minors; rules per SCPA.

All in-camera examinations of minors shall be recorded stenographically; only part of appeal record, and even then under seal.

Court can issue a warrant if summons can't be served; would be ineffectual; is disobeyed; or if Petr/child in danger from Resp; Resp would leave jurisdiction; or bail/parole Resp has failed to appear. Clerk's Certificate of warrant expires in 90 days, may be renewed. Court shall record and report on unserved warrants.