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**Testimony to the New York State Legislature
Joint Hearings of the Senate Finance and Assembly
Ways and Means Committees**

2023-2024 Executive Budget

Topic:

The Need for Kinship Legal Services in New York State

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Thank you for the opportunity to provide written testimony on the need for \$8 million in funding for kinship legal services in New York State. The Center for Elder Law & Justice (“CELJ”) has been serving the Western New York region for over 40 years, providing free civil legal services to older adults, persons with disabilities, and low-income families. CELJ’s primary goal is to use the legal system to ensure that individuals may live independently and with dignity. CELJ also advocates for policy and systems change, particularly in the areas of elder abuse prevention, nursing home reform, consumer protection, and housing reform. Currently, CELJ provides full legal representation in ten counties of Western New York. CELJ’s Free Senior Legal Advice Helpline is open to all of New York State.

CELJ’s work focuses on fourteen practice areas and has represented kinship caregivers since 2000. Although we provide these services in Erie and Niagara Counties, we are unable to fully meet the need with the funding we have and we are unable to expand these services into the additional Western New York counties where we operate. Despite our limited budget, CELJ and its staff are recognized as state and national experts on kinship legal services. I have presented on the local, state, and national levels, and am a member of the Advisory Council to Congress Supporting Grandparents Raising Grandchildren. We are requesting \$8 million be included in the Fiscal Year 2023-2024 Budget to create a Statewide Kinship Legal Network. As detailed below, these funds are necessary to ensure Kinship Caregivers have the legal resources needed to care for children and for New York to come into compliance with the Federal Families First Prevention Services Act that was adopted by New York in 2021.

Kinship Caregivers are Critical to Child Development

The legislature brought recognition and legitimacy to kinship caregivers in 2021 when the term was formally defined in Social Services Law section 371(22).¹ Kinship caregivers are a large population; it is estimated that 2,741,869 children in the United States are cared for primarily by their grandparents.² In 2018, over 200,000 children in New York State were in kinship care.³

¹ “Kinship caregiver” means a relative or non-relative who is acting as a parent and who: (a) is related to the child through blood, marriage, or adoption; or (b) is related to a half-sibling of the child through blood, marriage, or adoption; or (c) is an adult with a positive prior relationship with the child, a half-sibling of the child or the child’s parent, including, but not limited to, a step-parent, godparent, neighbor or family friend.

² See, “Supporting Grandparents Raising Grandchildren (SGRG) Act, Initial Report to Congress, (November 2021), page 2, available at: <https://acl.gov/SGRG/report>.

³ <https://kincarecoalition.files.wordpress.com/2021/09/estimated-nys-kinship-children-2017-2018.pdf>



Kinship care has been used by all people for millennia; as the adage goes, “it takes a village to raise a child.” This shifted to formal foster care with non-relatives in the 1960s, and over the past several decades, it has been nearly universally recognized that children have improved short- and long-term outcomes when they remain with family. They experience less trauma, have fewer placement changes, maintain sibling and family contacts, have better mental health outcomes, stay in their communities, and keep cultural connections.⁴

The vast majority of kinship care arrangements occur outside of the formal foster care system. Many of these families care for children informally; some establish formal rights through orders of custody or guardianship. A portion of these families receive placement of children by the local department of social services (LDSS) when the children are removed from their parents pursuant to a neglect or abuse filing.⁵ Kin who receive placement of children through the child welfare system have the opportunity to certify as foster parents. This affords them significantly greater benefits to use for the care of the children⁶ and additional permanency outcomes, such as adoption.

Kinship caregivers are 93% female, 23% Black, and 67% have a household income of less than \$50,000.⁷ Notably, one of the grants that allows CELJ to represent kinship caregivers requires clients to be at or below 200% of the federal poverty level; less than twenty (20) clients per year are rejected because they are over the income restrictions.

Kinship Care Families Need Multiple Interventions to be Successful

Only a few jurisdictions in New York State have civil legal service providers with grants allowing them to provide the valuable service of no-cost representation to kinship caregivers. Parents, persons with an order of custody, and persons who are subjects of neglect and abuse petitions have a constitutional right to have counsel appointed to them if they cannot afford such. Kinship caregivers are not afforded this right.

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https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/july-aug-2017/kinship-care-is-better-for-children-and-families/

⁵ NYS Fam. Ct. Act § 1017

⁶ A non-parent caring for a child qualifies for a grant through the Temporary Assistance to Needy Families program. A family caring for one child receives about \$400 per month; each additional child will receive about \$130 per month. A kinship caregiver caring for a child in foster care receives between \$894 and \$2,925 per child, depending on the child’s age, needs, and whether they reside downstate or upstate.

<https://ocfs.ny.gov/main/rates/assets/docs/rates/fc-b/FC-Board-Rates-2022Jul01-2023Mar31.pdf>

⁷ <https://www.albany.edu/chsr/Publications/Kinship%20Needs%20Brief%20Elee%20Final.pdf>



Kinship care families need a whole host of services in order to be successful and legal services are critical, but by no means, the only type of help they need. Our client, “Mary”⁸ is representative of kinship caregivers. Mary’s three grandchildren were placed in her care by the LDSS due to domestic violence between the parents and the mother’s untreated substance abuse and mental health issues. Mary was referred to CELJ by the LDSS caseworker for legal representation.

Prior to being referred to CELJ, Mary attended one court appearance without an attorney, and was unable to receive direct information as she was not represented. When she tried to speak in court, she was admonished for speaking out of turn. Because she was not a named party in the matter, she did not receive court notices and missed the next appearance. Once Mary was represented by CELJ, she was able to properly participate in court proceedings, appropriately express her concerns, and receive timely and accurate information, counsel, and advice about the matter.

Mary was retired and residing alone in a two-bedroom senior living apartment when her three grandchildren were placed in her care. The first step CELJ took was to assess her needs. CELJ assisted Mary in getting her and the children’s needs met by: obtaining beds for the children,⁹ connecting her with a program that provided diapers,¹⁰ providing information on applying for benefits through the Women, Infants, and Children program,¹¹ linking her with Early Intervention,¹² and assisting her through the foster care certification process. While Mary’s primary need was assistance with obtaining permanency for the children, CELJ’s housing unit assisted her in termination of her lease as her grandchildren were unable to live in the senior community. Those seeking to certify as foster parents are required to submit to a check of the Statewide Central Register; Mary had an indicated report on file due to her daughter refusing to attend school or obey the rules of her home. CELJ filed an appeal and successfully had the report sealed so that Mary was able to complete her foster certification. Prior to certifying as a foster parent, she received \$700 per month in cash assistance through the Temporary Assistance to Needy Families program – an inadequate amount with which to raise three children. While the children were placed in foster care with her, she received a monthly stipend of \$3,024. The case resolved with Mary being granted guardianship of the children and she can continue to receive the stipend until the children are 21 or reunified with their parents.

⁸ All names and identifying information have been changed for privacy.

⁹ <https://shpbeds.org/chapter/ny-buffalo/>

¹⁰ <https://www.everybottomcovered.org/>

¹¹ <https://ccwny.org/women-infants-children-wic/>

¹² [https://www3.erie.gov/health/early-intervention-program#:~:text=Contact%20the%20Early%20Intervention%20Program%20at%20\(716\)%20858%2D6161.](https://www3.erie.gov/health/early-intervention-program#:~:text=Contact%20the%20Early%20Intervention%20Program%20at%20(716)%20858%2D6161.)



In summary, Mary was fortunate to receive not only free legal representation during this time, but also assistance with housing, benefits and obtaining additional income, all as part of her legal case handled by CELJ. CELJ counseled her on the court process and permanency options, assisted with her certification as a foster parent, and represented her on her petition for guardianship with a subsidy when the children were unable to be reunited with their parents. This representation was provided at no cost to Mary, and through this, her attorney was able to assist in maintaining the placement, ensuring she and the children received all the benefits to which they were entitled, and connecting Mary with additional resources through community partnerships which CELJ has cultivated.

A Kinship Legal Assistant Network Will Help New York State meet Federal and State Mandates to Keep Children with Families

The Federal Government has passed several laws strengthening kinship families and ensuring children involved with the child welfare system are afforded every opportunity to be raised by a family, preferably their family of origin. Most recently in 2018, the Families First Prevention Services Act (“FFPSA”) was passed,¹³ and adopted by New York in 2021.¹⁴ Placing children with kinship caregivers is a tenet of this law, and providing representation to kinship caregivers will ensure more children are placed with kin and lessen disruptions in those placements. As represented by Mary’s story, not only do kinship caregivers who are connected with a civil legal services firm receive representation in the child welfare system, they receive holistic representation, and their other legal and social needs are assessed and issued are addressed.

Prior to implementation of the FFPSA, 43.5% of children involved in the New York State child welfare system were placed in kinship foster families – post-implementation that number has decreased 0.4%.¹⁵ Rates are trending in the wrong direction.

Budget Ask: \$8 Million to Create a Statewide Kinship Legal Network

A Kinship Legal Network, housed at the Office of Children and Family Services, will provide kinship caregivers with legal representation, information, and advice to navigate New York’s justice and social services systems. The Kinship Legal Network will utilize an effective model used in other areas

¹³ <https://kincarecoalition.files.wordpress.com/2021/09/aecf-keepingkidsinfamilies-2019.pdf>

¹⁴ <https://ocfs.ny.gov/main/sppd/family-first.php>

¹⁵ <https://ocfs.ny.gov/main/sppd/family-first-dashboard/>



of the law, such as foreclosure and crime victims. It will develop a network of legal services providers who will serve clients, as well as look across the state to collect data and recognize trends. The program will leverage the existing Kinship Navigator, a successful statewide program operated by Catholic Family Center which provides an information and referral network for kinship caregivers across all of New York State. In addition, CELJ and Empire Justice will provide substantive expertise and support to network members to ensure quality control and equal access to services throughout the state.

Currently, civil legal services firms are providing holistic representation to kinship caregivers in only Erie, Niagara, and Westchester counties, as well as the five boroughs of New York City. Every jurisdiction in New York has at least one civil legal services agency ready and able to represent kinship caregivers. But these services cannot be made available to the rest of the state without funding. An investment of \$8 million to develop a statewide Kinship Legal Services Network will be the first step in ensuring that children stay out of non-relative foster care, are raised by kin, and get the services these families need to thrive.

We again thank you for the opportunity to submit this testimony and are available to answer any questions and provide additional information.

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