GETTING REAL ABOUT PERMANENT PLACEMENT
Dealing with Competing Preferences
July 2013

I. Who is a Preferred Placement?

A. Non-custodial, non-offending biological parent

This situation occurs when biological parent does not have bond with the child, but there are no allegations of abuse or neglect alleged in the petition. Example is father lives out of state and abusing mother has prevented father from establishing bond.

1. Investigate biological parent – could require filing a separate petition or amending original petition in order to terminate parental rights.
2. Begin establishing bond
3. Does not require adoption or legal guardianship

B. Grandparents – West Virginia Code § 49-3-1(a) requires the DHHR to perform a homestudy on grandparents who request it. If the grandparent is determined to be suitable, then the preference for grandparent placement may be overcome only where it is established that such placement is not in the best interest of the child This preference is not absolute. Best interest of the child always rules!

C. Siblings – West Virginia Code § 49-2-14(e) provides for a "sibling preference" and requires DHHR to place sibling groups together if the placement is appropriate and it is in the best interest of the child. The court must find by clear and convincing evidence that the placement is unfit or that it is not in the best interest of the child.

D. Foster Parents – West Virginia Code § 49-6-8 provides that foster parents have a right to notice an opportunity to be heard at the permanency hearing. Further, "long term" foster parents should be considered for permanent placement. In *Kristopher O. v. Mazzon*, 227 W.Va. 184, 706 S.E.2d 381, the child had lived with foster parents for 22 months.

E. Psychological Parents – Once individual is established as a psychological parent, then he or she should be considered for permanency, but it is not an automatic placement. Best interest of the child always rules!!! *In re N.A.*, 227 W.Va. 458, 711 S.E.2d 280 (2011)

F. Relative Placements – Federal law does not require placement with a blood relative, however, they should be considered.

II. Who wins?

A. Non-offending biological parents unless the facts can fit into a *In re Clifford K.*, 217 W.Va. 625, 619 S.E.2d 138 case. (Did the biological parents consent and encourage the relationship between child and "psychological parent"? This type

of situation may end in a guardianship, not adoption.)

B. At the onset of the case, immediately investigate who may be an appropriate placement. Then determine which placement is in the best interest of the child.

C. Grandparents are not to be compared to other prospects, but must be considered by themselves. However, the best interest of the child controls. (Practice tip: Don't argue that Prospective Adoptive Parent A is a better placement because he or she can provide a better home or more opportunities.)

D. Interesting question: Who wins between an appropriate grandparent placement and a half sibling in an appropriate place?
Answer: The Best Interest of the Child.

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What to do When Permanent Placements go Bad?

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Step 1: Find an temporary placement. (Could be respite care, shelter, or specialized foster care.)

Step 2: Investigate why the placement was disrupted.

> Beware that adults will often blame the children for their decisions to ask for the child to be removed. However, it may the adult's issue and not the child's.
>
> At the same time, it could be the child's cry for help.

Step 3: Go back to the list of preferred placements.

Step 4: Try again!

Remember that adoption is always the preferred permanency plan, but sometimes children from abused and neglected homes must learn how to live in a structured environment like a family.