

To: NYSBA Committee on Families and the Law and the NYSBA House of Delegates
From: New York County Lawyers Association Family Court and Child Welfare Committee¹
Date: March 31, 2022
Re: Statement in Support of NYSBA “Report and Recommendations on Racial Justice and Child Welfare”

The New York County Lawyers Association’s Committee on Family Court and Child Welfare strongly supports the NYS Bar Association Committee on Families and the Law’s “Report and Recommendations on Racial Justice and Child Welfare,” (“Report”) and urges the New York County Lawyers Association Executive Committee to support it as well. Those of us who practice in the areas of child welfare and in the Family Court know how prevalent racism is. For example, in New York City, the families charged with neglect or abuse are predominantly families of color, and the foster care population is almost entirely minority.

We also urge that the Report address the issue of the Office of Children and Family Services (OCFS) and the Administration for Children’s Services’ (ACS) practice of breaking up kinship foster families, almost all of which are minority, on flimsy grounds. ACS can only remove children from parents or relatives who are custodians or caring for children, even if the custodians only have informal custody, unless ACS obtains a court order and a showing of neglect or abuse and imminent danger. Foster care agencies can remove foster children in their discretion, without showing neglect or abuse. OCFS and ACS take the position that if the relatives become kinship parents, foster care agencies can remove the foster children on the same

¹ This statement of support was approved for dissemination by the NYCLA President as a Committee statement. This statement has not been approved by the NYCLA Board of Directors and does not necessarily represent the views of the Board.

basis as they remove foster children who are living with strangers. Foster parents can have an Administrative Hearing before OCFS to contest the removal, but OCFS uses the standard that it will overturn the removal only if the removal was arbitrary and capricious, an almost impossible standard for a relative to prove.

In addition, OCFS only allows evidence at the hearing regarding the facts that the agency knew at the time it made the removal. Evidence that the facts were later shown to be wrong, or that the children are suffering as a result of the removal, are not admissible. While foster children in New York City are almost all from families of color, the agencies are mostly run by white individuals (who incidentally are also very well paid, with salaries ranging up to \$600,000 per year). OCFS could, within the law, change its standards and keep more children of color with their relatives.