

## Comments on Proposed Host Home Regulations (18 NYCRR § 444.1 et seq.)

### COMMITTEE ON MANDATED REPRESENTATION

MR #1

June 11, 2020

To: Hon. Sheila J. Poole, Commissioner  
New York State Office of Children and Family Services  
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Rensselaer, New York 12144  
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These comments are submitted on behalf of the Committee on Mandated Representation of the New York State Bar Association in opposition to the proposed Host Home regulations (18 NYCRR § 444.1 et seq.). We oppose the regulations because they fail to protect the constitutional and statutory rights of children and parents, resulting in prolonged separations.

The Committee on Mandated Representation works to uphold the highest standards of legal representation by those who serve clients who cannot afford an attorney, including parents who face the loss of their children as the result of allegations of neglect or abuse. We are deeply concerned that the Host Home regulations do not incorporate due process safeguards against prolonged separation of families. Well established New York State constitutional, statutory and case law all affirm that parents have a right to counsel when executing voluntary placement agreements. Parents are entitled to and need counsel to ensure that agreements are knowing and voluntary; reunification services are provided; and court intervention is available if needed whenever a child is removed from their care and custody. New York State law has also established that children have the right to counsel in voluntary placement matters.

The proposed regulations have no provision for notice of these rights to parents, nor any mechanism to ensure the provision of counsel or the right to be heard in court upon what can only be characterized as the placement of children contrary to established law. In many cases, this will unnecessarily result in the prolonged separation of parents and children who could have been reunited sooner had they been the recipient of state and federally mandated services required by law for the reunification of families based upon the legal presumption that it is in the best interests of the child to be raised by a parent. The lack of court oversight may initially seem like a welcome alternative to parents who are having difficulty and believe they cannot currently care for their children. But the unintended consequence of these regulations will be the creation of a “back door foster

care system,” which will almost certainly and disproportionately affect poor families of color, resulting in further victimization.

We would appreciate the opportunity for a member of our committee to participate in the round table discussion you have planned for June 18 or separate opportunity to discuss the proposed regulations with you or a member of your staff accordingly.