

Court Participation By Foster Parents

Foster Parent Rights Under Federal and State Law

Regina Deihl, J.D.

FOSTER PARENT NOTICE AND OPPORTUNITY TO BE HEARD

The federal Adoption and Safe Families Act (ASFA), passed by Congress in 1997, gives foster parents, including pre-adoptive parents and relatives caring for children, the right to be heard in certain court hearings about the foster child in their home. As a requirement of receiving federal foster care funds, juvenile courts in every state must give foster parents “notice of, and opportunity to be heard in, any review or hearing to be held with respect to the child.”ⁱ This means that the child’s current foster parents must be given the chance to let the child’s judge know information they believe will help the court in making decisions about the child. By passing this section of the federal law, Congress recognized that foster parents and relatives caring for children often have valuable information that will help the court make its decisions.

The federal law (and the regulations that implement the federal law) requires that foster parents be given some way to have input into 6-month periodic review and permanency hearings.ⁱⁱ Periodic review hearings generally address how a child is doing in foster care and, in cases where the plan is for the child to return home, how plans for reuniting the family are progressing. In some states, review hearings are held at the child welfare agency rather than in court. Permanency hearings are held in court and address the plan for where the child will permanently live. Most children in foster care return home or are permanently placed with relatives.

Under the federal law and regulations, foster parents must be allowed to have input at periodic review and permanency hearings. However, the federal regulations allow each state to decide how foster parents can participate in court in their state. The regulations

Which Court Hearings?

What Does “Notice and Opportunity to Be Heard” Really Mean?

say that states can meet the requirement of foster parent input in whatever way they see fit.ⁱⁱⁱ States may allow foster parents to attend all or part of the court hearing, to speak to the judge in court, or to send a written report to the court before the hearing. Some states extend to foster parents and relative caregivers *additional* rights to participate in court proceedings—rights that are not limited to those granted to foster parents in ASFA. State laws vary and are constantly changing. Foster parents in each state need to know what their current state law says about how they can participate in court in their state.

Some states allow foster parents to choose how they would like to give their input to the judge. For example, in one state, foster parents have a right to give *oral testimony* (speak to the judge in court) and to *cross-examine witnesses* in the courtroom (ask others questions about what they have said in court) and can submit information in writing to the court as long as they have provided copies to the other people (or their attorneys) involved in the case.^{iv} In another state, foster parents can attend review and permanency hearings or submit information to the court in writing and have a standardized *Caregiver Information Form* they can use to give information to the court.^v In one state, foster parents are required to submit a report to the court about the child’s progress and needs.^{vi}

Does “Notice and Opportunity to be Heard” Mean Foster Parents Are “Parties”?

No. ASFA specifically says that while foster parents have a right to “notice and an opportunity to be heard,” they are not entitled to *party status* solely because of that right. *Parties* are those people designated by the law or the court to participate fully in the court hearings. Parties have rights that non-parties do not. Parties in child welfare cases normally include birth parents, the child welfare agency, and the child. This is in keeping with the law’s emphasis on ensuring that parents and children have full participation in court proceedings when the child welfare agency intervenes to remove a child from her parents.

Although foster parents are not automatically made parties in juvenile court cases under ASFA, they do have a right to provide input for periodic review and permanency hearings using any method allowed by their state law. They do not, however, have the same legal rights as the child welfare agency, the child’s birth parents, or the child. This does not mean that foster parents can *never* become parties in their foster child’s court case – only that ASFA does not require that the court make a child’s foster parent a party.

ASFA does not *require* foster parents to attend court proceedings or to provide input for court hearings. Foster parents who do not wish to provide information to the court or attend court hearings are not forced to do so.

MAXIMIZING THE OPPORTUNITY IN COURT

Most courts hear a large number of cases each day. As a result, judges have very little time to spend at each hearing listening to all the court participants and making decisions about the child and family. Court hearings often last less than ten minutes in total. Foster parents must be prepared to clearly state their comments to the court, usually in less than two or three minutes. If the foster parent will be attending the court hearing, and wishes to speak directly with the judge, she should carefully prioritize a few important issues she would like to bring to the court's attention. Writing down two or three main points on an index card may help remind the foster parent of the most important information to tell the judge.

In general, foster parents should focus on giving firsthand information about the child and not offer opinions about other people involved in the court process; for example, the caseworker, the child's birth parents, and the attorneys involved in the case.

The information foster parents provide to the court for periodic review or permanency hearings is meant to assist the judge in understanding the child's progress and needs and in making decisions about the child's future.

Written reports often contain more specific information than what can be communicated orally in court, and will be read by the judge prior to the court hearing. Written reports should be no more than a few, well-organized pages. Most judges do not like to receive reports longer than three pages.

The following are some types of information that may be useful to the court. Foster parents will not be able to address most or all of these, but should concentrate on providing information only on the categories that are most important to the child's case. It is helpful to provide factual information, describe behavior you have observed in the child, and present information about the child's special needs.

Helpful Information for the Court

Placement Information

- The date the child came to the foster home and a brief description of the child's physical and emotional condition at that time.

Medical Information

- Doctor visits or hospitalizations since the last court hearing, and the result of those visits.
- Any medications the child is taking, and the dosages.
- Any adverse reactions the child has had to medical procedures or medications.
- A brief description of the child's physical development, and any developmental lags the foster parents have observed.

Dental Information

- Visits to the dentist since the last court hearing, and the results of those visits.

Educational Information

- The child's grade in school, and whether the child is performing at grade level.
- The dates of any school conferences foster parents have attended, and the results of those conferences (especially if the child is in special education classes).
- Any educational testing the child has had, who administered the testing, and the results of the testing.

Behavioral Information

- A brief description of the child's behavior in the foster parent's home.
- Any services the child is receiving to address behavioral problems, who is providing the services, and how often the child goes for the services.
- A brief description of how the child expresses his feelings and needs.
- A brief description of the child's eating and sleeping patterns and any problems the child has eating or sleeping.

Child's Adjustment to Living Arrangement

- A brief description of the child's social skills and peer relationships.
- A brief description of how the child is interacting with other members of the foster parent's family.

Child's Special Interests and Activities

- A brief description of any special activities the child participates in (scouts, music lessons, religious groups, etc.) and how often the child participates in them.
- A brief description of any talents, interests, hobbies, or skills the foster parent has observed in the child.

Visitation

- The dates of visits between the child and the child's parents or other family members.
- A brief factual description of the child's behavior (and, where relevant, physical appearance) before and after visits. *Carefully describe only the child's behavior or appearance unless the child welfare agency has specified supervision of birth parent visits as part of the foster parent's role. In that case, follow the instructions of the child welfare agency on reporting child/birth parent interaction. In general, foster parents should not comment on the reason for the behavior/appearance.*
- A brief description of any arrangements for sibling visitation.
- The dates of contacts between the child and the child's parents or other family members, including telephone, letters, and e-mail.

Professional Contacts

- All in-person and telephone contacts between the foster parents and the child's caseworker.
- All in-person and telephone contacts between the foster parents and the child's attorney or guardian ad litem/GAL (a guardian ad litem is also known as a GAL. GALs represent a child's best interests).
- All in-person and telephone contacts between the foster parents and the child's Court Appointed Special Advocate (CASA), if the child has one.

Willingness of the Foster Parent To Adopt or Become a Legal Guardian

- If services to the child's birth parents have not been terminated, the ability of the foster parents to adopt or become legal guardians for the child if he cannot return home. If services to the birth parent have been terminated, the desire of the foster parents to adopt or become legal guardians for the child. *Foster parents should communicate their own ability and desire to care for the child. They should never compare themselves to the birth parents.*

Recommendations for Services That Could Benefit the Child

- The child's need for any specialized services that he is not currently receiving. (For example, independent living services, tutoring, mental health services, disability assessment, etc).

A Photograph of the Child

- A photo if the child will not be attending the court hearing.

Challenging Situations

“My caseworker didn’t think I should come to court.”

Agency caseworkers may tell foster parents that they do not need to come to court or that “it is not necessary” for them to be there. There may be any number of reasons why a caseworker may advise a foster parent not to participate in the court process. The caseworker may not be aware that the foster parent has a right to provide input to the court or may believe that the foster parent has no additional information to contribute to the process.

Some caseworkers may believe that the presence of the foster parent will unduly upset the birth parents or that the foster parent may disclose information to the court that the caseworker has not yet heard. Some workers may be concerned that the local court often requires court participants to wait several hours for hearings and may not view the foster parent’s participation as a productive use of the foster parent’s time.

Foster parents who plan to attend court hearings or submit information to the court should explain to their agency caseworker that they are planning to participate in the court process. If the caseworker raises concerns about their participation, foster parents can ask the worker to explain why he or she does not believe it would be beneficial for the foster parent to attend the court hearing. Foster parents should be sensitive to the concerns of the agency worker, but the decision whether to participate in court hearings must be made by the foster parent.

“I wanted to provide input to the court, but I didn’t get a notice of the hearing.”

All states have laws that require agencies or courts to provide notice of upcoming hearings to all the people who have a legal right to provide input to the court. Foster parents who are not receiving notice of hearings should check their state law and local procedures (the form of the notice and the method of giving notice may vary from court to court) to find out how notice must be provided. Since state and local practices vary, foster parents should know what specific hearings they should be receiving notice of, and who is responsible for providing the notice to them.

In some states, the child welfare agency is required to submit proof to the court that the foster parents got notice of the hearing.^{vii} And, in a few states, the hearing must be *continued* (delayed) if the child welfare agency does not provide proof that the foster parent got notice of the hearing. In some areas, the court may

provide notice of hearings to the foster parents if the foster parents live in the same jurisdiction.

Foster parents must also remember that there are some hearings that they are not entitled to attend or provide input for. In many states, court hearings that occur very early on after the child is removed from his parents and hearings for termination of parental rights do not require that the foster parents receive notice.

“The judge in my court told me I wasn’t allowed to be there.”

Some state and local court rules do not require that foster parents be allowed to appear in person at the hearing and speak to the judge, or to be in the courtroom for the entire hearing. In some jurisdictions, foster parents may be permitted to submit information in writing but not be allowed to be present in the courtroom; or foster parents may be permitted to be present only for a portion of the hearing, and then are excused when others are permitted to remain. As a result, in some jurisdictions, judges may not allow foster parents to be physically present in the courtroom for the entire hearing and speak to the judge.

In addition, the federal law that allows foster parents to participate in juvenile court hearings is relatively new. Just like caseworkers, some judges may be unaware that foster parents have a legal right to provide their input to the juvenile court. Foster parents should educate themselves and have a current copy of the section of the federal ASFA and their own state law that relates to foster parent court participation when they attend court hearings or attempt to file any documents with the court. Having a copy of the relevant law often provides information to both the foster parent and to other participants in the juvenile court system about the foster parent’s right to provide input for court hearings and how that information may be provided. Court clerks and other court personnel are often helpful in explaining how local judges prefer to receive information from foster parents.

Very few states have specific laws that set out how foster parents who are denied the opportunity to provide input into the court process can appeal the denial. One state (Illinois), however, allows foster parents who are not allowed to be heard to bring a *mandamus action* (a request to a higher court to issue an order to a lower court to take a particular action) to enforce their opportunity to be heard.^{ix}

In addition, in at least one reported case, foster parents who

did not receive notice of a permanent custody hearing obtained a temporary restraining order from a federal court based on the juvenile court's failure to give them notice and an opportunity to be heard.^x Foster parents who are denied their opportunity to be heard in court may wish to inquire about procedures in their state to appeal the denial, but will probably need to retain an attorney to assist them in doing so.

“I had something to tell the judge, but I didn’t know when I was allowed to talk and she didn’t call on me. It was all over before I knew what happened.”

Court hearings can be intimidating, even for experienced professionals in the child welfare field. Foster parents need to educate themselves about the juvenile court process and learn what to expect in court. Like all professionals, attorneys and judges have a specialized vocabulary that can be confusing at times. Foster parents who regularly attend court quickly learn the “lingo” and many judges learn to rely on them for key insights into how a particular child is faring in their home.

Learning proper courtroom protocol and procedure can assist foster parents in feeling more comfortable with the formalized setting of the courtroom. Attorneys who represent children or child welfare agencies may be willing to assist foster parents by providing training at foster parent association meetings on local court practices and how to participate in court effectively. In addition, attorneys who know individual foster parents are often willing to explain what a particular term means or to clarify what occurred at a particular hearing.

If the foster parent has an important comment to make and has not had an opportunity to speak, she should not assume she will be “called on.” Foster parents may need to assert their right to be heard, especially if there is something urgent to bring to the court’s attention. Most judges will respond to a foster parent who raises her hand and asks to address the court.

“I was afraid to go to court because I thought the child’s birth parents would be mad if I did.”

Foster parents often fear that a child’s birth parents will be upset if they attend court. While it is important to maintain a good relationship with the child’s parents, foster parents also need to understand what the court is ordering to happen for the child so that they can implement the court’s orders. Foster parents who plan to appear in court should let their caseworker and the other system participants know that they are there to offer information

to the court, not to undermine the parent's chances of having the child return home. In cases where the court has ordered that services to the child's parents be terminated, many judges will want to know if the foster parents are willing to make a permanent commitment to the child through adoption or legal guardianship.

“I went to court, but I wasn't allowed to read the caseworker's report. I didn't know what was going on.”

State laws differ on what information foster parents are allowed to have about their foster child's court case. In a few states, foster parents are entitled to receive copies of the *social study report* (the report the caseworker prepares for the court hearing) and at least some portion of the *case plan* (the child welfare agency's plan that lays out what activities the agency, the child's birth parents, the child, and the foster parents are responsible for).

In most states, foster parents are not entitled to receive or read any documents that relate to the child's court case in order to protect the privacy of birth families. Foster parents should check their state law to find out what information (if any) they should be receiving about their foster child's court case.

“I am interested in adopting my foster child if he can't return home. Everybody in court made that seem like a bad thing. I was nervous and didn't know what to say.”

Foster parents sometimes feel uncomfortable when one of the attorneys in the courtroom (typically the attorney for a birth parent) asks the foster parent if he or she is really trying to help the child reunify with his parents, implying that the foster parent is undermining attempts by the birth parents to regain custody of their child. This can be upsetting and confusing to foster parents who feel they are working well with a child's parents, but also wish to remain available as a permanent resource if the child cannot go home.

Foster parents need to understand that attorneys for birth parents have a responsibility to explore every reasonable issue related to their client's ability to have their child returned to them. This should not be interpreted as a personal attack on the foster parent's integrity, but rather as the attorney's efforts to protect his or her client's legitimate legal interests. Foster parents who are willing to adopt or become legal guardians for their foster child should simply remain calm and indicate that they are working well with the child's birth parents, but – for the sake of the child – will remain available as a permanent family in the event reunification does not occur.

Written Reports or Court Attendance?

In many states, foster parents may choose either to attend court hearings or provide written information to the court. A few states have specific formats for foster parents who want to communicate in writing with the court, but most states do not.^{xi} Foster parents need not rely on specialized forms, but can submit simple, written statements of their own.

Foster parent written reports should be concise and factual, and as “objective” in tone as possible. Objective reporting increases the chances that foster parents will be considered a credible source of information by the court. Simple, factual reports are more likely to be seriously considered than those that include a foster parent’s personal opinions.

Foster parents must also adhere to any rules requiring advance mailing (called *service of process*) of copies of reports to parties, and should be sure to provide a copy of the document to the child’s caseworker well in advance of the hearing. Mailing court documents to parties ensures that all the court participants have access to the information the court will use in making decisions about the case.

Basic fairness requires that all parties have access to the information so that they have a chance to challenge it if they believe it is incorrect or incomplete in any way. The court may continue cases unless the foster parent has provided a copy of all written reports to all parties. The child’s caseworker, attorney or GAL should be able to explain how far in advance written reports should be submitted to the court. Prior to going to court, foster parents should make extra copies for the convenience of all parties and keep a copy of any document they provide to the court for their own records.

Foster parents should remember that judges have only a short time to listen to the people attending the court hearing and to make decisions about the child. Some judges prefer to have information from foster parents submitted in writing to the court before hearings. Other judges prefer seeing and hearing from a caregiver in person and extend a warm welcome to those few who take the time to come to court to speak. Some may limit foster parent participation to answering specific questions she has about the child. Most judges will allow the foster parent to make a short statement to the court. Remember, *the court has a limited amount of time, and any comments should be short and to the point.*

Effective Written Reports

- Focus on the child.
- Find out what the court will be deciding at the upcoming hearing and provide information that will assist the court in making those decisions.
- Provide facts, not personal opinions.
- Be brief – a few (two or three) well-organized pages.
- Type or use a word processor, if at all possible.
- Make the information easy to read, with headings or subtitles.
- Use foster parent court forms if your state has them.
- Avoid negative comments about birth parents and others involved in the case.
- All information must be legible.
- Attach supporting documents, if appropriate.
- Use a professional tone, but do not try to appear to be an expert.
- Submit written reports to the court well before the hearing (10 days is usually adequate, but ask about state and local procedures).
- Provide copies to the caseworker and all the attorneys involved in the case, and bring additional copies with you to court.
- Understand that the court may make decisions that you do not agree with.

After Going To Court

Confidentiality

Child abuse and neglect court hearings are confidential in most states. While attending court hearings, foster parents often hear information that cannot be shared with others outside of the courtroom. Foster parents should remember that any information regarding a child or his parents should remain in the courtroom and not be shared with others, including other foster parents. Even in states with more open courtroom laws, foster parents should guard against disclosing matters that affect a child's personal privacy.

Following Court Orders

At each court hearing, the judge makes legal findings and issues court orders that must be followed, such as orders related to visitation, services to be provided to the child and birth parents, and activities that the child welfare agency and the birth parents are ordered to perform. Foster parents should be aware of any court order that requires them to carry out tasks that are assigned to them, but in many places will not receive a copy of the court's orders.

In some states, foster parents will receive a copy of the court-ordered case plan. Even in those states that do not provide foster parents with a copy of the case plan (or the portion of the case plan that sets out the services the agency will provide to the child), foster parents who attend court should listen carefully for any order that affects their care of the child or their family. Foster parents who do not attend court hearings or receive a copy of the case plan should ask their caseworker to specifically relay what tasks the court ordered that may affect the care they provide for the child.

Foster Parents Making a Difference in Court

“Notice and Opportunity to Be Heard” *Making Bobby Safe*

Sharon has been a foster parent for the past five years, but only recently learned that she has a right to provide information about the children in her home to the juvenile court. Sharon loves caring for medically fragile babies and uses her background as a nurse to provide them with the intensive care they need. Most of Sharon's foster children either reunify with their birth families or move on to adoptive homes, although she has adopted one special

needs child from the system. When children leave Sharon's home, she participates in the transition to permanency and her agency considers her a vital part of the child welfare team.

Bobby is a darling seven-month-old little boy with a host of medical problems. During the time Sharon has been caring for Bobby, she has learned a great deal about his medical conditions and would like to provide the court with information on Bobby's day-to-day needs for the upcoming periodic court review. When Sharon asked the caseworker when she could expect notice of the upcoming hearing, the worker mentioned that he expected the judge to order that Bobby be returned to his parents at the hearing. This worried Sharon since she had watched Bobby's birth parents interacting with him during visits, and she was concerned that Bobby's parents may not be up to the challenge of meeting his special medical needs.

Sharon's state law allows her to submit written information to the court, so she prepared a written summary of factual information about Bobby, including the kind of challenges he faces everyday and the kind of round-the-clock care he needs. She contacted her caseworker and Bobby's attorney to let them know in advance that she would be providing the information to the court and sent copies of the document to all the attorneys after she filed it at the courthouse. She decided to attend the court hearing (as her state law allows her to do) just in case the judge had any questions about Bobby's care. She also made certain that Bobby's parents knew that she was attending court to provide information, but was not trying to thwart their efforts to reunify with their son.

At the court hearing, the judge thanked Sharon for the written information she submitted, but wanted to know more about how she cared for Bobby. Sharon explained that Bobby has medical needs that require her to give him medications for seizures and various other conditions and that it is often hard for him to keep the medications down. Sharon has learned to give him the medications in a way that does not seem to aggravate his reflux problem as often.

At the end of Sharon's explanation, the judge asked Sharon if she was willing to teach Bobby's parents about his medical needs and the techniques she knew for making Bobby more comfortable. Sharon replied that it was not currently happening, but that she would be happy to work with Bobby's parents as long as the agency caseworker supervised the training sessions at a local

visitation center, arranged respite care for her other child and allowed her to remain on her agency's special care rate while she cared for Bobby. The judge also asked the agency representative if it was possible to provide a longer transition period so that Bobby's parents could learn more about his care and so that the agency could monitor how well they were able to care for Bobby's special needs before he returned home.

Thanks to Sharon's willingness to share the information about her daily care of Bobby with the court, Bobby returned home to a safer, more secure, permanent situation with his parents. Sharon felt better about Bobby returning home because she knew his special medical needs would be more likely to be met and felt good about providing his parents with the practical assistance they needed to ensure that they could properly care for their son. Her help and her participation in court also helped reduce the chance Bobby will re-enter the child welfare system in the future.

Sample Foster Parent Court Report Format



Foster parents can work within their own associations or with other statewide groups to develop and disseminate simple court forms for use by foster parents throughout the state. Foster parent associations should coordinate their efforts with courts, child welfare agencies and court improvement programs in their state in order to ensure that the forms meet the needs of foster parents as well as the courts that receive them. Below is a suggested format for foster parent court reports that states may find useful.

SUPERIOR COURT OF _____, COUNTY OF _____

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

CASE NUMBER:

HEARING DATE:

FOR COURT USE ONLY

CAREGIVER INFORMATION FORM

To the foster parent or relative caregiver of the child: You can submit written information to the court and you can be heard at periodic review and permanency hearings. This optional form may assist you in providing written information to the court. Please type or print clearly in ink and submit the form well in advance of the hearing. Be aware that other individuals involved in the case have access to this information.

1. Child's name:

Child's date of birth:

Child's age:

2. Name of caregiver (*unless confidential*):

Address:

Phone no.:

Type of caregiver: Foster parent Relative Group home/residential treatment facility Other (*specify*):

3. The child has been living in *my* home for _____ years and _____ months.

4. **Current Status of Child's Medical/Dental/General Physical Condition**

There is no new or additional information since the last court hearing.

There is new or additional information since the last court hearing:

5. **Current Status of Child's Emotional Condition**

There is no new or additional information since the last court hearing.

There is new or additional information since the last court hearing:

6. **Current Status of Child's Education**

There is no new or additional information since the last court hearing.

There is new or additional information since the last court hearing:

The child is is not a special education student. Date of the last Individual Education Plan (IEP) was:

7. **Current Status of Child's Adjustment to Living Arrangement**

There is no new or additional information since the last court hearing.

There is new or additional information since the last court hearing:

CAREGIVER INFORMATION FORM

NAME OF CAREGIVER (*unless confidential*):

CASE NUMBER:

NAME OF CHILD:

8. Current Status of Child's Social Skills/Peer Relationships

There is no new or additional information since the last court hearing.

There is new or additional information since the last court hearing:

9. Current Status of Child's Special Interests/Activities

There is no new or additional information since the last court hearing.

There is new or additional information since the last court hearing:

10. Current Status of Child's Reactions Before/During/After Visits

There is no new or additional information since the last court hearing.

There is new or additional information since the last court hearing:

11. Services That Are Assisting/May Assist the Child

There is no new or additional information since the last court hearing.

There is new or additional information since the last court hearing:

12. Other Helpful Information

There is no new or additional information since the last court hearing.

There is new or additional information since the last court hearing:

13. I am/We are able not able to make a permanent commitment to the child if he/she does not return home.

If you need more space to respond to any section above, please check this box and attach additional pages.

Number of pages attached (*specify*): _____

Date:

(Type or print name)

(Signature of Caregiver)

PARTY STATUS FOR FOSTER PARENTS



As explained above, all current foster parents have a right to provide input for juvenile court hearings under the federal AFSA and their own state law. In addition, some foster parents may be eligible to request full *party status* (those people designated by the law or the court to more fully participate in the proceedings). In most cases, foster parents do not need to apply for party status to provide information to the court about the child's well-being. Only rarely does a foster parent need to request party status to become more fully involved in the court proceedings.

Parties have certain rights that non-parties do not, including expanded rights to gain access to court information, to call witnesses to appear in court, to cross-examine witnesses and to be present at all court hearings in the case. Some individuals and entities, such as the child welfare agency, the child's birth parents, and the child, are automatically parties in juvenile court proceedings. These parties are normally represented by an attorney or some other person charged with their interests (for instance, the child may have a *guardian ad litem*, also known as a *GAL* representing his best interests).

Unlike foster parents, birth parents are automatically afforded rights as parties to ensure that their constitutionally protected interest in raising their own children is protected. As a matter of public policy, and to protect the value of relationships between birth parents and their children, the law requires agencies to show that a child cannot safely remain in his own home before allowing an agency to intervene in a family to separate a child from his parents. The child welfare agency must show the court initially that it is proper to remove a child from his parents and, at subsequent court hearings, to keep the child placed in a foster home.

In contrast, the law does not protect the relationship between foster parents and their foster children in the same way, and as a result, foster parents are not usually automatically made parties and must request party status in most cases to be able to participate more fully in court.

While foster parents are not usually made parties unless they specifically request party status from the court, there are a few states that automatically allow foster parents to participate as parties at permanency hearings under certain circumstances.^{xii} In most situations, the court has *discretion* (meaning it is up to the judge to decide) whether or not a foster parent meets the requirements to be made a party.

In some rare cases, it is possible that a child may have multiple foster parents or other caregivers who are granted party status in the same case. For example, a teenaged foster child who has spent several years in foster care might have had a long-term foster parent who knows the child very well, and later may go to reside with a grandmother. The court might grant both the grandmother and the foster parent party status.

If a foster parent achieves party status, she will have *standing* (the right to have the court listen to her legal claim) to participate in the case more fully than she could without it. Foster parents with party status have enhanced legal rights that foster parents without it do not have.

Philosophical Basis for Requiring and Granting Party Status

Courts do not have the time to hear cases brought by individuals who are not directly affected by the outcome of a specific case. For example, a traffic accident may injure someone in the community, but only the individuals involved in the accident (or sometimes someone close to them) have standing to ask the court to listen to their complaints about who was at fault.

On the other hand, it is the court's job to hear from individuals who are directly affected by their decisions and who have a legal interest of enough importance to allow them to become full parties in the court proceedings. Foster parents who request party status must show that they have a sufficient legal interest in the child's case that could be adversely affected unless they are allowed to fully participate in the case.

Party Status Is Creature of State (Not Federal) Law

Unlike the federal ASFA that requires all states to provide foster parents with "notice and an opportunity to be heard," the right of a foster parent to apply for party status is covered by each state's law. Some states have written *statutes* (specific laws enacted by the state legislature and published as a compilation of

that state's laws in a given subject matter) that relate to party status for foster parents. For example, Illinois and Indiana have statutes addressing the right of a foster parent to *intervene* (get involved) in a juvenile court case involving their foster child.

Most states rely on *case law* (a group of reported cases decided by higher court judges that guide the lower courts in making their decisions) to define and clarify the situations in which a judge will allow a foster parent to participate in court as a party. Courts across the country have issued hundreds of decisions affecting foster parents' rights to participate as parties in court. Some states also have *rules of court* (rules that regulate practice and procedure in various courts) that provide direction on how foster parents may participate more fully in the judicial process.

Names for Party Status Vary

Because state laws vary, states use a variety of names for party status. In many states, courts refer to foster parents who wish to become parties as *intervenors* (individuals who are seeking to "intervene" in an existing court case). In those states, foster parents who are requesting party status may bring a *motion to intervene* (a request to the juvenile court to grant the foster parent *intervenor status*).^{xiii}

Some states refer to individuals seeking party status as *interested persons or interested parties* (individuals who have an interest in a case who are seeking to become a party). In such states, foster parents may file a *motion to participate as an interested person or interested party* (a request to the juvenile court to grant status as a person with an interest in the court case).^{xiv}

In one state (California), foster parents who wish to participate more fully in juvenile court proceedings are referred to as *de facto parents*. Foster parents use standardized court forms to request *de facto parent* status, which include a *De Facto Parent Request* form and a *De Facto Parent Statement* form. These computerized forms are available on the internet for easy access by foster parents and others seeking to become parties within the state.

Rights of Parties

The rights foster parents gain when they become parties in a child's case vary depending on the *jurisdiction* (the geographic area over which a court has authority). In some instances, foster parents may be considered parties for the purposes of

some court hearings, but not others. Since courts interpret party status somewhat differently in each state, foster parents who have party status should educate themselves on their rights and responsibilities under their specific state law.

Notice of All Court Hearings

Current foster parents should be receiving notice of periodic case review and permanency hearings whether or not they are parties. Foster parents with party status will usually receive notice of *all* court hearings once the court grants the foster parent's request for party status. This could include dispositional hearings held prior to the first periodic case review, hearings related to modification of existing court orders, hearings regarding termination of parental rights, and various other court proceedings. Once a foster parent becomes a party, she will usually be allowed to participate in all *dependency* (child abuse and neglect) court proceedings concerning the child.

Right To be Represented By Counsel

Some parties have a right to have an attorney appointed by the court to represent their interests, usually free of charge. Foster parents do not normally have that right. However, foster parents who are parties have a right to hire an attorney of their choice to represent them in court. In rare instances, the court may appoint an attorney at the court's expense to represent a foster parent with party status if the foster parent cannot afford counsel and the court believes the foster parent needs representation to protect her legal rights.

Access To Court Documents

Foster parents who are parties have expanded rights to gain access to legal documents about their foster child's court case, either automatically, or by filing a *motion* (request) with the court asking for access to certain documents. Rules and procedures vary on how foster parents can request access to documents. In some jurisdictions, certain documents (such as caseworker reports) are automatically provided to foster parents who are parties.

Full Access to the Court

Some state statutes only allow foster parents without party status limited access to court hearings. For example, in some states foster parents who are not parties are only allowed in the courtroom during the time they are speaking and may be excluded when others are permitted to remain. In some places, foster parents

may only be allowed to submit written information rather than being allowed to attend court hearings. In most instances, party status allows a foster parent full access to the court proceedings.

While the federal ASFA allows foster parents the right to provide input to court hearings under the “notice and opportunity to be heard” provision, it does not require that courts allow foster parents to request court orders. In contrast, foster parents who are parties have the ability to request court orders requiring other parties in the case to perform certain tasks, such as requiring the child welfare agency to provide services to the child. Foster parents should keep in mind that courts may not grant every request a foster parent makes and that all requests for services should be made to the child welfare agency before resorting to the court. In some instances, child welfare agencies may not have the resources to respond to all requests a foster parent makes.

Foster parents who are parties have a right to *cross-examine* (ask questions of witnesses under oath), just like other parties in court. Additionally, foster parents who are parties and present evidence to the court may be more likely to be cross-examined by attorneys for the birth parents, the caseworker, the child and others involved in the case.

Cross-examination can be an intimidating experience. In cases where one of the attorneys already involved in the case has requested that a foster parent testify for his or her client, that attorney will usually prepare the foster parent for cross-examination by the other attorneys. In cases where the foster parents themselves are presenting evidence and anticipate being cross-examined, the foster parents may need to retain an experienced attorney to assist them in presenting their evidence and in preparing for cross-examination by other parties’ attorneys.

Foster parents who are denied party status by the court may wish to appeal the denial to a higher court. In general, parties that are negatively impacted by a court’s order may appeal (often referred to as an *aggrieved party*). In order to be an aggrieved party, the denial of party status must affect a substantial interest the foster parent has in becoming a party to the case. Foster parents who wish to appeal a denial of party status should contact an experienced attorney in their state to learn appropriate procedures to appeal a denial of party status, and should be aware that there are strict time deadlines for appeals.

Filing Motions to Request Court Orders

Cross-Examination

Appealing a Denial of Party Status

*Procedures for
Requesting Party Status
Vary By State*

Court procedures vary from state-to-state, and sometimes between courts within states. In most states, foster parents who wish to request party status must file a motion with the court. In some places, courts accept fairly informal motions and foster parents need not retain an attorney to file the legal documents.

There are some instances where foster parents are granted party status after making a simple verbal request for it in open court. In some courts, the child’s attorney or the agency’s attorney typically tells the judge, on behalf of the foster parent, that the foster parent would like to have party status.

In some courts, judges will even consider hand-written letters and home-made “motions” by foster parents, so long as they are respectfully worded and have been provided to the other parties in the case. In other courts, a more formalized written motion is required, there are certain time deadlines and procedures that must be followed, and foster parents need to retain an attorney to assist them in filing for party status. In one state, there are simple, standardized court forms for foster parents and others who wish to request party status.^{xv}

HOW FOSTER PARENTS CAN ASSIST ATTORNEYS WHO REPRESENT THEM

Foster parents who hire an attorney to represent them in court do not always know what to expect. Attorneys cannot guarantee a particular outcome in a case, and foster parents need to understand what their attorney will do for them and how they can help. Attorneys rely on information provided by their clients (and others) to decide what actions will most benefit their client. Foster parents who plan to retain an attorney should provide her with any documentation or paperwork related to the situation they sought help for. Being organized and prepared for meetings with the attorney saves time and money.

Foster parents who hire an attorney have an attorney-client relationship with their attorney. Because of this relationship, attorneys cannot reveal the substance of their conversations with clients to others without the client’s consent. Therefore, foster parents who have retained an attorney (and have a signed retainer agreement) should feel free to disclose all relevant information to their attorney to obtain his or her best possible legal opinion.

Tips on When and How To Hire An Attorney

Deciding if, when and how to hire an attorney depends on many factors, including the nature of the case, the specific issues currently involved in a case, the foster parents' ability to represent their own views and interests, and whether or not the foster parents' views are already being put forth by another party in the case. No two factual situations are the same and foster parents should carefully assess whether their individual circumstance requires the assistance of an attorney. Some general tips on retaining counsel are:

- Make a point of staying up-to-date on the general laws and regulations relating to foster parents and foster parenting.
- Hire an attorney well-versed in dependency (child abuse and neglect) law when you need to know how the general law applies to your specific situation.
- Merely providing information to the court about the child does not usually require the services of an attorney.
- Requesting party status may (in some jurisdictions) require the assistance of an attorney.
- Consider consulting an attorney any time a child is involuntarily removed from your home because you have been accused of abusing or neglecting him/her.
- Consult with and select an attorney you trust before the need to hire one arises.
- If you do not know an experienced dependency attorney in your area, contact your local bar association, legal aid office, foster and adoptive parent association, your foster family agency, or a non-profit attorney referral service for a referral.
- Hire an attorney with substantial experience in dependency cases.
- Interview any attorney before you hire her.
- Make sure you understand what services your attorney will perform.
- Be clear on the attorney's rate of compensation and billing practices, and request this information in writing.
- If you use a pre-paid legal services plan, be certain you know the extent of the services they offer and whether they can adequately handle issues that are likely to arise in foster care cases.
- Work with local foster and adoptive parent organizations to compile a list of attorneys experienced in dependency cases in your area.

FACTORS AFFECTING WHEN COURTS MAY GRANT PARTY STATUS

State courts have taken a number of different factors into account in deciding if and when to grant party status to foster parents. Some of the more common factors courts have considered are listed below. It is important to remember that, in most instances, it is up to the court to decide whether the foster parent will be a party and there may be any number of other factors a court may consider.

Time Period the Child Has Resided With the Foster Parents

Some states have statutes that require courts to automatically allow foster parents who have had a child in their home for a specified period of time to participate in certain hearings as parties. In New York, for example, foster parents whose foster child has lived with them for 12 months or more must be allowed to participate in the permanency hearing as a party.^{xvi} In Hawaii, foster parents are entitled by statute to participate in review hearings as a party and no review hearing can take place until the foster parents are served with notice.^{xvii}

Other states have statutes that give foster parents a right to intervene in a child's case as a matter of right within a specified time period. For instance, in Colorado, foster parents who have had a child in their care for more than three months may intervene as a matter of right with or without an attorney once an *adjudication* (a determination whether the allegations of abuse or neglect against the parents are true) has taken place.^{xviii}

By statute, some states have a list of factors a court must consider in determining whether or not a foster parent meets the criteria for party status. Such lists usually contain a reference to the period of time the child has resided with the foster parent. For example, Kansas law states that "the court shall take into consideration the length of time the child has resided with the person" as one of the factors to be considered when deciding whether or not to grant a person status as an interested party.^{xix}

At least one state has a statewide *rule of court* (a rule that regulates practice and procedure in courts) that provides guidance to judges when they are considering whether or not to grant standing to a foster parent. In California, courts may grant foster parents standing as de facto parents when they meet certain criteria and have had the child in their care for a "substantial period."^{xx} Determination of what time period constitutes a "substantial period"

for purposes of requesting the status varies depending on the facts of the case and is left up to the judge.

In most states, the characteristics necessary to qualify for party status are described in case law. Judges look to published decisions of higher courts to determine what set of circumstances entitle a foster parent to participate in the legal proceedings as a party. Cases in most states usually make reference to the period of time a child has lived with the foster parent.

For example, in an Illinois case, the court considered the amount of time the foster parents had cared for the child in finding that they were interested parties in the case. (In that case, the foster parents had cared for the child for two years informally as friends of the child’s mother before a petition for neglect was adjudicated and as foster parents after the court found that the child had been neglected in his mother’s care.)^{xxi}



Foster parents who are caring for a child often have more knowledge about the child’s current day-to-day activities and experiences than anyone else involved in the case. Some courts have granted foster parents party status in order to ensure that their information is available to the court. For example, an Ohio court allowed a child’s foster parent to participate in an adjudicatory hearing, citing an earlier case where the court said that “[i]n many instances, it is the foster parents who know the most about the child’s present situation and circumstances, and who also are likely to be concerned about the child’s welfare.”^{xxii}

The court emphasized that because the participation of the foster parent helped the court to develop all the available information, the foster parent should be allowed to participate as a party. Likewise, courts in California have recognized that the juvenile court can only benefit from having as much information about the child as possible.^{xxiii}



Some courts look at whether the foster parents have assumed a parental role toward the child. Under Kansas law, for instance, the court must look at “the degree to which the person has been standing in the place of or assumed the obligations of the child’s parent.”^{xxiv} In California, a de facto parent is defined as “a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling the child’s physical and

The Foster Parent Has Knowledge or Information About the Child That May Assist the Court

The Foster Parent Has Assumed the Obligations of Parenting

psychological needs for care and affection, and who has assumed that role for a substantial period.”^{xxv}

Nature of the Relationship Between the Foster Parent and the Child

Courts frequently look to the nature of the relationship between the foster parent and the child in deciding whether to grant party status. In a Florida case, the court explained that “. . . as the nature of the foster parent/child’s ‘familial relationship’ becomes closer and stronger, so as to approach the level of the relationship between natural parents and their offspring, so too do the rights of the foster parents to preserve that relationship.”^{xxvi}

Some states have statutes that specifically mention the relationship between the foster parent and the child as a factor. For instance, Kansas requires the court to consider “the nature of the custody, the relationship between the child and the person. . . .”^{xxvii}

Best Interests of the Child

In many states, the foster parent must show that it is in the best interests of the child to allow the foster parent to participate in the court proceedings as a party. For example, foster parents in Indiana may intervene in a case “if the court determines that intervention of the [foster parent] is in the best interest of the child.”^{xxviii}

The best interest of the child is a concept that is interpreted by the court based on the facts of the specific case. Foster parents who are thinking about requesting party status will want to consider how the child’s best interests will be enhanced by their participation in the case as a party.

Foster Parents Have Siblings of the Child

As maintaining sibling ties has received more attention from child welfare agencies and courts, a few courts have looked favorably at requests by prospective adoptive parents to intervene in adoption proceedings for a sibling of their foster child. In a case where the prospective adoptive parents already had the child’s three siblings living with them, a Florida court found that they had an interest in the outcome of the case that was sufficient enough to allow them to intervene as parties when other foster parents with whom a fourth sibling was placed also filed an adoption petition.^{xxix}

In contrast, other courts have held that foster parents who wanted to intervene in a case where the child was placed

elsewhere, and where the siblings had no personal relationship, were not allowed to do so.^{xxx}



A few courts have limited the rights of foster parents who are parties to doing only the things necessary to protect their interest in the child, and have stopped short of granting them all the rights of other parties. For example, in a recent case, a Colorado court held that while a foster parent was entitled to participate in the child's permanency planning hearing as a party, her participation was limited to her own direct testimony as to the child's physical, mental, and emotional condition. The foster mother was not allowed to present other witnesses or evidence, examine or cross-examine any witnesses, or make any motions, objections, or legal arguments.^{xxxi}



There are many legal and non-legal considerations to weigh when deciding whether or not to request party status. In most cases, foster parents do not need to request party status and do not need to hire an attorney to represent them. Simply providing information to the court for regularly scheduled court hearings does not require party status. Foster parents who wish to provide information to the court on the child's progress and needs may do so under the "notice and opportunity to be heard" provision in ASFA discussed earlier in this chapter.

Foster parents who are considering applying for party status will need to reflect on the individual circumstances of their foster child's case in determining whether (and when) to bring a motion for party status before the court. Many foster parents find it useful (and in some states, necessary) to speak with an attorney experienced in child abuse and neglect cases to advise them if party status is proper in their individual situation.

Factors to consider include whether or not the foster parent meets the legal criteria for the status in their state, whether it is the right time in the case to bring the motion, whether the local court has specific protocols or practices about when the status will be granted, whether there is a special application process, and whether the foster parent needs party status to accomplish her goals in the case.

Foster parents should also be aware that foster parents who

Limiting Foster Parent Rights as Parties

Deciding Whether or Not to Request Party Status

Legal Considerations

are parties are expected to attend every court hearing, and are more likely to be asked to testify and be available for cross-examination. Foster parents who wish to become parties should inquire about specific protocols and procedures for making a request to the court for party status in their own jurisdiction.

Non-Legal Considerations

Foster parents who anticipate bringing a motion for party status should consider its effect on their relationships with others involved in the case. Communication with other system participants is important to ensure that there is no misunderstanding about why a foster parent is requesting the status.

Foster parents should take care not to create an adversarial relationship with a child's birth parents, especially when reunification is the case plan goal for the child. Foster parents should contact their caseworker prior to bringing the motion to explain why they are requesting party status and to reassure the worker of their intent to work together in a collaborative partnership.

Likewise, the child's attorney or guardian ad litem may be interested in knowing that a foster parent plans to request party status prior to the actual filing of the court documents.

Courts vary in their perceptions of foster parents who request party status. In some instances, judges appreciate the unique perspective foster parents who are parties bring to the proceedings. Other judges are concerned, however, that foster parents who are parties may thwart the efforts of birth parents to have their child returned to them. Especially in cases where the foster parent has a long-term emotional bond with the child, courts may be more inclined to grant party status.

Weighing the Pros and Cons

Foster parents seeking party status should never do so prematurely and only where the child's situation clearly warrants it. On the other hand, it may appear clear to the foster parent that, without party status, she will be hindered in participating fully in the court proceedings in a manner that she deems critical to a child's well-being. Courts recognize the interest birth parents and relatives have in keeping the child within his birth family, but in some cases, may also acknowledge the importance of the foster parent's relationship with the child. This is especially true in situations where the child has resided with the foster parent for an

extensive period of time or has a strong bond with the foster parent. Courts generally look at the best interests of the child in making all determinations about the welfare of children.

Foster parents who request party status generally do so to indicate to the court that they have a substantial interest in the child in their home. Other common reasons for requesting party status include gaining access to information about a child's court case, and ensuring that the court considers the foster parent's perspective on the child's safety and permanency needs. A foster parent who would like to become the permanent caregiver for the child might request party status if the case appears to be stalled, especially where delays are affecting the child's well-being. Ultimately, foster parents will need to carefully examine the pros and cons of requesting the status before going forward with the application.

Foster Parents Making a Difference in Court

“Party Status” *Permanency Plus*

Nancy and Fred became foster parents after deciding that fostering might be a step toward adding a child to their family through adoption. They agreed with their child welfare agency to support reunification efforts fully, but also understood that they would be expected to provide a permanent home in the event a child placed in their care could not return to his or her parents.

After several months, two half-sisters, eleven-year-old Anna and seven-year-old Nora came to live with Nancy and Fred as foster children. Anna and Nora had just been removed from their mother, Carol because she needed help to cope with some drug problems and found it difficult to adequately care for her daughters. Although the sisters initially experienced some difficult behavioral challenges, they quickly adjusted to the routines in their new environment.

When they received notice of the first periodic court review hearing, Fred decided to attend so that he would understand what was happening in the girls' legal case and what court orders might affect the care he and Nancy were providing for the children. He was particularly interested in any visitation orders, since he and Nancy were responsible for transporting the girls to visits with Carol and wanted to be sure to follow all the court's orders.

Fred had also heard that the girls had an attorney, but did not

know whether the attorney knew the girls lived with Fred and Nancy, and thought she might like to know that he and Nancy were available to provide a permanent home for them if they were unable to return home to Carol.

At the hearing, Fred introduced himself to all the attorneys, and spoke cordially with Carol, as he often did when he dropped the girls off for visits. He listened to the hearing but did not ask to speak and did not volunteer any information. He didn't quite understand all the court orders, but found the girls' attorney helpful in explaining that the court ordered visits with Carol should continue, and that the court would decide on a permanent plan for the girls at a future hearing.

As time went on, the agency caseworker began to talk to Fred and Nancy more and more about the possibility of them keeping the girls permanently. A month before the scheduled permanency hearing, the caseworker confided to Fred and Nancy that Carol had been unable to comply with the agency's case plan for return of the girls and that his recommendation to the court would likely be termination of services to Carol, termination of parental rights and placement of the girls for adoption.

When Fred and Nancy arrived at court for the permanency hearing, they were surprised to find that the hearing had been continued (delayed) for six weeks. After Anna found out that no decision had been made about where she and Nora would live permanently, her grades in school started to suffer and she began to withdraw from her usual activities.

At the next scheduled hearing, the agency attorney requested another continuance because proper notice of the hearing had not been provided to Carol and she was not present. This time, the next available court date was two months later. At this point, both girls began to regress to some of their earlier troubling behaviors and Fred and Nancy became concerned that further delays would have a negative effect on the girls.

Shortly before the next hearing, the girls' caseworker was contacted by Lucy, a paternal great aunt of Anna's who didn't realize Anna was in foster care, but who had had a close relationship with her when Anna lived close by in another state. Since no one had previously told the agency or the court that Lucy existed, this was the first time the worker had heard that placement of Anna with Lucy might be a possibility.

Nancy and Fred were initially confused and afraid that the girls might be separated, but when Anna spoke fondly of her “Auntie Lucy,” they passed that information on to the caseworker. The caseworker thought it would be helpful for Anna to have telephone calls with Lucy. At first Fred and Nancy weren’t sure about the phone calls. They didn’t know Lucy and weren’t sure if continuing contact with Lucy would be good for Anna.

When Lucy called to talk to Anna, though, Fred or Nancy would often engage in small talk and within a few weeks were persuaded that it was important for Lucy to somehow stay involved in Anna’s life. They worried, however, that because Lucy was nearing seventy and had several health issues to contend with, Lucy might not be the best permanent placement for Anna. In addition, Fred and Nancy had assumed they would be making a permanent commitment to both children and believed the girls should stay together, especially since they were now settled into school, and had finally begun to trust that Nancy and Fred would be there when they needed them.

When the caseworker raised the possibility with the girls of Anna living with her aunt, both girls were upset and Anna’s schoolteacher began calling Nancy to report that her behavior at school was deteriorating.

By this time, Fred and Nancy had had the girls in their home for well over a year and had grown to love them as their own. They decided that they had an ongoing interest in the children and wanted the opportunity to participate fully in their court case. They also discussed this with their caseworker and made sure Lucy understood that they were asking the court to allow them to become parties in order to be included in the process, but did not want Anna to lose contact with Lucy.

After a consultation with an attorney familiar with dependency law, Nancy and Fred decided to file a motion to intervene in the children’s court case. Nancy and Fred’s motion explained to the court that the children had lived in their home for over a year, that they felt very attached to the girls and the girls seemed to reciprocate that affection, and that they had been meeting the children’s daily needs in a variety of ways. The girls’ attorney, who remembered Fred well from the previous hearing, also supported the motion. When the court granted their motion, Nancy and Fred were able to have full access to the court proceedings and their own attorney was in the courtroom to help them express their thoughts to the court on the relationship they had established

with the girls.

Nancy and Fred understood that the court would be adopting a permanent plan for the girls at the upcoming hearing. Since both girls were doing well in their home, Nancy and Fred felt that the girls' permanent plan should be adoption by them. They were also worried that if Anna moved to another state, neither of the girls would fare well without the other. On the other hand, Anna clearly loved Lucy and wanted to maintain a relationship with her.

When Anna and Nora's case came before the judge at the permanency hearing, he quickly ordered the parties to mediation to see if some arrangement could be worked out. With the help of a trained mediator, the parties and their attorneys agreed that adoption was still the best plan for both children, but that liberal telephone and letter contact between Anna and Lucy would safeguard their relationship while ensuring that Anna remained placed with her sister. In addition, Fred and Nancy stated that they were open to summertime visits so that Anna could have personal contact with her aunt.

Fred and Nancy felt pleased to be included in the discussions. They were relieved that their attorney was there to help them think through the ramifications of agreeing to post-adoption contact between Anna and Lucy. Though they knew, as foster parents, that hiring an attorney was optional and not required, Fred and Nancy believed that their attorney helped them participate effectively in the legal proceedings as parties.

After the mediation, the parties and their attorneys returned to court for a continued permanency hearing. Based on the agency's recommendation, the court ordered adoption as the permanent plan for Anna and Nora. In compliance with their state law, which allows adoptive families to enter into post-adoption agreements, Fred and Nancy's attorney drafted the post-adoption contact agreement and, in time, the adoption was finalized with everyone agreeing that it was the best plan for the girls.

WHAT FOSTER AND ADOPTIVE PARENT ASSOCIATIONS CAN DO TO HELP

Training

Child welfare agencies and the courts are increasingly asking foster parents to provide information to help them make decisions about foster children. Understanding how different decision making procedures work can ensure better quality decisions for children and ease any concerns foster parents have about participating in the process. Statutes in a few states already require that foster parents be trained on legal topics and many other states seek to provide training to implement the ASFA requirements.

In Ohio, for instance, pre-placement training programs for foster parents must consist of certain courses, including one that addresses the legal rights and responsibilities of foster caregivers.^{xxxii} In Illinois, foster parents have a responsibility to receive training regarding the purpose of administrative case reviews, client service plans, and court processes, as well as any filing or time requirements associated with those proceedings; foster parents also have the responsibility to actively participate in a designated role in the proceedings.^{xxxiii}

Foster and adoptive parent associations should actively seek training for their members on how to participate effectively in these processes, including how to interact with others on the child welfare protection team. All members of the team have important information to share and foster parents are no exception. Foster parents must remember that they have a unique perspective on the child's day-to-day needs and that others on the team can benefit from their insights.

Procedures and Forms

Legal and administrative processes can be confusing to even the most well-intentioned foster parent. Foster and adoptive parent organizations should assist their members by working with other professionals to develop and disseminate "plain English" informational brochures and court forms that are easy and convenient for foster parents to use. Some states already provide their foster parents with standardized court forms. Kansas, for instance requires their foster parents to submit a report regarding the child's adjustment to the court at least every six months. The child welfare agency must notify foster parents of their duty to submit the report and Kansas state law includes a format for use

by foster parents.^{xxxiv}

Likewise, California has an informative pamphlet for foster parents, explaining how to participate in court,^{xxxv} and also makes available an optional statewide *Caregiver Information Form* for foster parents to use in submitting written information about a child to the court. The form is available online at California's Administrative Office of the Courts website. In addition, California utilizes simple, user-friendly statewide court forms for use by foster parents and others who wish to apply for party status in a specific case.^{xxxvi}

Administrative and Legislative Advocacy

Licensure, financial subsidies, training, grievance procedures, procedural and adoptive rights, liability for injuries to or caused by a foster child, and many other aspects of foster parenting are governed by state and federal statutes and regulations. Although most foster parents are aware of the requirements governing the care of the children in their homes, few participate in the discussions and drafting of regulations, laws, and court rules and forms.

Foster and adoptive parent associations should educate themselves on how to advocate with agencies and lawmakers on how to meet the needs of foster children and parents. Associations should assign capable, articulate representatives to participate on statewide task forces and groups designed to propose and implement new laws, regulations, and policies that affect their members.

Foster parents need to be aware of pending legislation that affects their families. In many states there are legislators who have particular expertise or interest in foster care, child welfare, and/or adoption. Foster and adoptive parent organizations should identify and build relationships with such legislators. They should reach out to newly elected officials to educate them on issues. Associations also need to be able to mobilize their members to contact their legislators when they have concerns about a proposed piece of legislation or regulation.

Working With Other System Professionals

Foster parent organizations in every state need to develop professional relationships with other groups interested in child welfare law and policy. Being seen as an indispensable part of any serious discussion about the welfare of children in foster care

provides foster and adoptive parent organizations with the forum they need to express their views.

Being “at the table” when decisions are made about when and how foster parents can participate in decision-making activities is essential so that practical strategies can be crafted that take into consideration the foster parent perspective. Participation by foster parents in such groups ensures that policies can be implemented in ways that foster parents find helpful. Foster and adoptive parent organizations can accomplish many of their policy goals by making sure that they have competent representation at every major meeting that affects their interests and the interests of the children in their homes.

LOOKING FORWARD: CHANGING THE CULTURE OR FUELING THE FIRE

Foster parents who participate in the court process, either under their right to “notice and an opportunity to be heard” or by achieving party status, have a unique opportunity to help the children in their care and, at the same time, change the child welfare system for future children.

Foster parents who provide temporary care for children are sometimes viewed as paid care workers lacking real interest in, or insight into, a child’s feelings and needs. Foster parents interested in providing a permanent home to a child through legal guardianship or adoption are sometimes viewed as intruders into a realm meant only for biological parents. Neither characterization is true, but since most foster parents have not participated in court in the past, other court participants sometimes rely on stereotypes that are not accurate portrayals of the real foster parents who care for vulnerable children.

Contemporary foster parents respect the rights and protections afforded to a child’s birth family and the importance of maintaining relationships with other important people in the child’s life while, at the same time, working to ensure that each child finds a permanent, loving home by returning home to his parents or relatives or by placement with an adoptive or guardianship parent.

Foster parents who participate in the court process must understand that other system professionals may, at times, view their participation as exceeding the scope of the foster parent’s proper role. The historical importance of the birth family in law

and policy may give rise to a perception that inclusion of foster parents in the court process diminishes the protections enjoyed by a child's birth parents and relatives. Foster parents, many of whom have raised biological as well as foster children, know that their foster children benefit when foster families and biological families work together for the well-being of the child.

The definition of the foster parent's role is changing and will continue to evolve through public policy debate and changes in law. In the past, some agencies and courts have focused on the "uniquely limited and subordinate, state-created, agency-maintained foster parent/child relationship,"^{xxxvii} while others believed that "if we exclude foster parents from the hearing process, we needlessly leave out an important source of information about the child, and in the end, it is the dependent child who suffers."^{xxxviii}

Foster parents should be sensitive to the reluctance of others who may, for a variety of reasons, not always welcome their participation in court. Today's foster parents should stay focused on ensuring that the court has all the relevant information necessary to make the most well-informed decisions about each child's case.

Foster parents who conduct themselves in a professional, polite manner will quickly garner the respect of others involved in the case and will contribute to a change in the way foster parents are perceived and valued. Foster parents who participate appropriately in court, will not fuel the fire of exclusion, but instead will support a fundamental shift in the way foster parents are treated in the future.

ⁱ 42 U.S.C. § 675(5)(G).

ⁱⁱ 45 C.F.R. § 1356.21(o). There is some ambiguity as to which hearings the “notice and opportunity to be heard” applies. While the federal statute (ASFA) refers to “any review or hearing,” the federal regulations interpret the statute to refer only to six-month review and permanency hearings. H.R. 4504 passed the United States House of Representatives on October 5, 2004 and is currently pending in the United States Senate. If enacted in its current form, it would amend the federal statutory language to clarify that foster parents have a right to be heard at any proceeding regarding the child in their home.

ⁱⁱⁱ 65 FR 4065.

^{iv} Burns Ind. Code Ann. § 31-34-21-4.

^v Cal Welf. & Inst. Code § 293(f); www.courtinfo.ca.gov/forms/fillable/jv290.pdf.

^{vi} K.S.A. § 38-1565(b).

^{vii} NY CLC Unif Rules, Family Ct. § 205.17.

^{viii} Burns Ind. Code Ann. § 31-34-21-4(e).

^{ix} 705 ILCS § 405/1-5.

^x In the Matter of Austin Mayle, 2000 Ohio App. LEXIS 3379 (2000).

^{xi} See K.S.A. § 38-1569; www.courtinfo.ca.gov/forms/fillable/jv290.pdf.

^{xii} New York and Hawaii, for example, have laws that automatically permit foster parents to participate as parties under certain circumstances at some hearings.

^{xiii} Examples of states that use the term *intervenor* for party status are: Illinois, Florida, New York, Ohio, Indiana, Colorado, and Georgia.

^{xiv} An example of a state that uses the term *interested person or interested party* is Kansas.

^{xv} www.courtinfo.ca.gov/forms/fillable/jv295.pdf; www.courtinfo.ca.gov/forms/fillable/jv296.pdf

^{xvi} NY CLS Soc.Serv § 392(4).

^{xvii} HRS §587-72.

^{xviii} C.R.S. § 19-3-507(5).

^{xix} K.S.A. § 38-1541.

^{xx} CA Rules of Ct. 1401(a)(8) & 1412(e).

^{xxi} In re Scott Michael Dively, 79 Ill.App.3d 428, 398 N.E.2d 635, 1979 Ill.App. LEXIS 3722, 34 Ill.Dec.812 (1979).

^{xxii} In re Noah and Matthew Parsons and Timothy Nelson, 1996 Ohio App. LEXIS 2268 (1996) citing In re Spears (Dec. 10, 1984), Athens App. No. 1200, unreported.

^{xxiii} In re Rachael C., 235 Cal. App. 3d 1145, 1 Cal. Rptr. 473 (1991).

^{xxiv} K.S.A. § 38-1541.

^{xxv} CA Rule of Ct. 1401(a)(8).

^{xxvi} Berhow v. Crow, 423 So.2d 371, 1982 Fla.App. LEXIS 21365 (1982).

^{xxvii} K.S.A. §38-1541.

^{xxviii} Burns Ind. Code Ann. § 31-34-21-4.5(c).

^{xxix} J.R. and A.R. v. R.M. and S.M. and Dept of Health and Rehabilitative Services, 679 So. 2d 64; 1996 Fla.App.LEXIS 9292 (1996).

^{xxx} Florida Dept. of Health and Rehabilitative Services v. Doe, 659 So.2d 697, 1995 Fla.App LEXIS 8486 (1995).

^{xxxi} In the Interest of A.W.R., 17 P.3d 192, 2000 Colo.App. LEXIS 1634, 2000 Colo. J. C.A.R. 5397 (2000).

^{xxxii} ORC Ann. § 5103.039; ORC Ann. § 5103.0311.

^{xxxiii} 20 ILCS 520/1-20(13).

^{xxxiv} K.S.A. § 38-1565; K.S.A. § 38-1569.

^{xxxv} <http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/caregive.pdf>

^{xxxvi} <http://www.courtinfo.ca.gov/cgi-bin/forms.cgi>

^{xxxvii} In the Interest of G.C., 558 Pa. 116, 735 A.2d 1226, 1999 Pa. LEXIS 2246 (1999).

