

PRESENTING BONDING IN COURT
from Adoption in Child Time, www.adoptioninchildtime.org
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“We have had Briana for 19 months, since she was five weeks old,” related Jan Craft, foster mom. “We asked our caseworker if we could adopt her, but the caseworker told us that the parental rights had not yet been terminated. As soon as that happens, an elderly grandmother from several states away has expressed an interest in adopting Briana. Grandmother has never seen her. We have become very attached to Briana and she to us. She has lived with us for almost her entire life. We love her and want to continue to be her parents.”

The Crafts can pursue their wish to adopt Briana in court. While the termination and adoption may be disputed, bonding is on their side and will be a key issue in the court hearing.

Hiring an Attorney

Foster parents need legal representation when they wish to adopt. Unfortunately, many have been hesitant to speak out for fear of being labeled as troublemakers. The opposite may be true. Foster parents who are appropriately assertive are more apt to be fully heard. They would be wise to hire an attorney as soon as they wish to adopt, before matters get set in cement.

Foster parents know the most about the children in their care and have the most to offer in terms of possible permanence. They must express their own rights and wishes, but more importantly, they must advocate for the children in their home. To accomplish this, a good attorney is essential.

When hiring an attorney, you want someone who is knowledgeable and experienced in the area of your concern. Whether you are incorporating a business, planning your estate, or suing for personal injury, you want to be represented by someone who has expertise in that particular area. The same applies to adoptions from foster care. You want an attorney who is familiar with the state and federal laws, particularly PL 96-272 (1980) and the Adoption and Safe Families Act (ASFA, 1997.) Your attorney should also be familiar with agency and state policies and know the people in the system. Every state has thick policy manuals which cover such topics as bonding, adoption, subsidies, and a definition of special needs. .

Adoption from foster care is different from and much more complicated than the usual uncontested infant adoption. First, more legal parties are involved. The state has wardship, and as the official guardian, has an important voice in what happens. Often, a court-appointed advocate or guardian-ad-litem is appointed to represent the best interests of the child. Further, the birth parents have the right to service, representation, notice, and due process which must be honored during the proceedings.

Your attorney needs to understand bonding. While the varied legal procedures must be followed conscientiously, the presentation and proof of bonding between the child and the foster/adopt parents may be the strongest argument for keeping them together, especially in a contested adoption. Bonding, when it occurs, is critical to a child’s development. The disruption of a demonstrated bonded relationship does considerable damage which may be irreversible.

The problem for an attorney is to present proof of bonding and the consequences of its disruption to the court in a factual and evidentiary way.

Bonding Must Be Clearly Defined

Bonding (a significant attachment) is a key factor in determining the permanent placement of a child. Yet it has too often been ill-defined. Many mental health professionals have been vague and fuzzy, giving opinion rather than data, generalizations rather than facts. As a result, case managers and courts may not have given bonding the critical consideration it deserves.

Bonding must be defined in ways that the court can accept and understand. The dictionary defines bonding as a unique relationship between two people, enduring for a long time, even a lifetime. Based upon a thorough review of the research, we have amplified this definition:

Bonding is a significant reciprocal attachment which both parties want and expect to continue, and which is interrupted or terminated at considerable peril to the parties involved. Humans bond by sharing important daily life events over time, everyday events such as eating, sleeping, and playing together.

Legislation, case law, and research provide more detailed and specific definitions. Any one of the following standards is sufficient to verify bonding.

Welfare policy: *Family identification* is a standard contained in the Indiana Child Welfare Manual (805.12) as well as in many other states. As state policy, this definition carries legal weight. It calls on the collective wisdom of the extended family, the school, neighbors, the church, even the work place. How does the larger community view the relationship? Do they perceive this child as a member of the foster/adopt family?

Federal and state law: *Time in place* is a factual way to measure bonding. In a parent-child setting, bonding is likely after three months, probable after six, and almost certain after 12 months. This definition is reflected in both federal (ASFA) and state laws. (For research documenting this timeline and the following definitions, consult the website: www.adoptioninchildtime.org.)

Case law: Appellate court decisions favoring the preservation of bonded relationships have precise language which the trial court should recognize. For a list of recent appellate court decisions, see “Bonding Is a Vital Issue” in the March/April issue of this magazine or consult the website www.adoptioninchildtime.org

Behavior: The *behavior of the child* is another way to determine whether bonding has occurred. Behaviors such as copying adult mannerisms and habits, interest and attentiveness, physical contact, joy, appropriate protest and anger, and the need to stay close (among many others) have been shown to document the presence of bonding. Developmental and psychological research heavily supports this definition.

Lifetime commitment: Bonding is *reciprocal*. Still another way to measure bonding is to present and evaluate the promise expressed by the actual or potential parents. Foster parents

have already demonstrated their day-to-day commitment. They know what they are getting into, and their wish to become a lifetime parent reflects the “chemistry” that has emerged between the child and the foster/adopt parents.

One final caution on the definition of bonding is indicated. Some naïve persons believe that the child who has bonded well to one family is a “good bonder” and will do equally well if moved. The child appears pleasant and compliant, showing no overt signs of distress. This is correctly called “pseudo-bonding” and reflects the opposite of true bonding. The *Diagnostic and Statistical Manual* of the American Psychiatric Association (DSM-IV-TR, 2005) sees this indiscriminate attachment and sociability as one form of “Reactive Attachment Disorder.” The compliance is often a superficial veneer, covering the absence of attachment, which may well show up as psychopathology in adult life. (See *Fostering Families Today*, July/August, 2004)

The Bonding Evaluation

A thorough objective professional evaluation of bonding can be helpful in supporting the petition of foster parents who wish to adopt. Hire a psychologist to review and document the definitions provided above. A good bonding evaluation will gather information about the child’s daily living from five or more sources.

1. Review all available *documents*, including the foster parents’ journal, child welfare records, court documents, reports from physicians, therapists, and other persons with relevant knowledge. In addition to pinpointing the time in the foster/adopt home, these documents and reports should provide information related to the other definitions of bonding.
2. A detailed *developmental history* provided by the foster parents will offer data on the child’s growth and development, as well as the child’s behavior, family situation, and other circumstances. To start this process, we have used our detailed ten-page open-ended questionnaire (the *Children’s History Answered by Parents*). A detailed history can be offered as evidence on how well the foster/adopt parents know the child, an important demonstration of the *reciprocal* definition of bonding.
3. A *measure of the child’s developmental age* can be important to document the child’s special needs which would qualify the family for post-adoption subsidies. Equally important, when compared with the child’s development at the time of placement, the developmental age can be used to document the child’s progress while in the foster/adopt home. A strong argument can be made in court to “let well enough alone.” We have used the *Vineland Social Maturity Scale* to establish a developmental age. Other equally good checklists and test instruments are available for this purpose.
4. Child behaviors can be documented by various instruments and research-based checklists that demonstrate bonding. I use my own instrument, the *Indiana Bonding and Attachment Checklist (IBAC)*. This checklist was adapted from a variety of sources: the *Randolph Attachment Disorder Questionnaire* (Evergreen Attachment Center in Colorado), Keck’s list of attachment disorders (Ohio Attachment and Bonding Center), the *Indiana Child Welfare Manual*, and personal experience. While the IBAC provides no composite score, it is a good review of those behaviors which the research has shown to be indicative of bonding.

5. Finally, *first-hand observation* of the child in the presence of the foster/adopt family is essential. I meet with the entire family for two hours in my office playroom. While discussing the situation with family members, I have the opportunity to observe the interactions between the child and family members. A visit to the home might be even more informative.

Writing the Report

Judges are readers. The evaluator's report should be available for the judge to review after his or her memory of the oral testimony may have faded. A well-documented, objective, fact-focused, written report to the court is important.

The report should begin with a brief statement of the problem, noting that the family has had the child in the home for a specified period of time, and that the family wishes to provide this child with a permanent home through adoption. A list of the materials reviewed and the procedures accomplished should follow in the next section.

The Bonding Evaluation should define bonding, giving research support for the definition and sub-definitions. The different specific ways to define bonding should be fleshed out with the factual evidence provided by the data obtained. Opinion should be avoided. The facts should be allowed to speak for themselves. At the end of this section, a simple statement may be added as to whether bonding has in fact occurred.

Finally, the psychologist should summarize the research on what happens when bonded relationships are severed. The younger the child is, the more lasting and destructive the consequences of termination can be. Removing a child from bonded relationships has been compared to the loss of a spouse, brain surgery, the death of a parent. The research is unequivocal in documenting a dramatic increase in childhood and adult psychiatric disorders following the loss of a bonded relationship. Reactive attachment disorder, developmental delay, oppositional defiant disorder, AD/HD, and learning disorders have all been linked to disruptions of bonding and may occur soon after such a loss. Sometimes, however, the impact is delayed and shows up in later life with an increase in the likelihood of adult mental illness, homelessness, crime, and poverty. A good review of this research can be found in the article "What Happens When Bonding Is Interrupted." (www.adoptioninchildtime.org)

In Court

Your attorney will obviously have issues other than bonding to address during the adoption hearing. The following remarks relate only to the presentation of bonding. Collecting excellent evidence of bonding is meaningless if it is not presented effectively and persuasively to the court.

Presenting the appropriate standard for determining whether a bonded relationship exists is a critical first step. The bonding standard may be spelled out in the manual used by family case managers in a state's child welfare division. In other states bonding may be defined by state law. If a bonding standard does not exist in your locale, your attorney may choose to borrow the definition from another state that has a clear and specific definition.

For example, Indiana, in its Child Welfare Manual (805.12), employs a standard based on family identification. The key components for Indiana's definition are: (1) Does the child identify as a member of the family? (2) Is the child perceived to be a member of the family by the larger community (school, friends, neighbors, extended family members)? (3) Does the child avoid attaching in a significant way to another family?

Your attorney may choose to call members of the community who have observed first-hand the day-to-day interactions between child and family. While these witnesses cannot offer an expert opinion, they can be led through the bonding standard point by point.

The federal Adoption and Safe Families Act (ASFA, 1997) provides a strong legal argument in favor of bonding, even over blood kinship. Bonding, when it can be proven, outweighs kinship. In his or her brief, the attorney can cite all the three-, six-, and 12-month timelines contained in federal and state laws as evidence of the legislative concern that bonded relationships be honored. Further, he or she can make the point that the law is designed to protect the most vulnerable party, in this case, the child. The right of the child to physical and mental health and safety supercede all other rights, including the right of the birth parents to possession. "The new statute now stresses that **the child's health and safety shall be the paramount concern** in determining what is reasonable, and consistent with the plan for timely permanent placement of a child." (ASFA Summary, www.casanet.org). The child's best interest comes first.

Appellate courts throughout the nation have increasingly supported bonding in disputed permanent placements. "Appellate Courts Choose Bonding" (*Fostering Families Today*, May/June, 2004) lists seven appellate court rulings. Three more are provided in "Bonding Is a Vital Issue." (*Fostering Families Today*, Jan/Feb, 2006) Actual federal legislation and/or appellate court language may be used as a standard

While the other definitions of bonding carry weight, it may be best to use the policy and legal definitions as a primary definition. Have the actual written standard, once it has been determined, displayed on a poster for everyone in the courtroom to see while your witnesses go through their testimony point by point. This can be quite effective.

Relevant written materials should be entered as evidence. Of particular interest would be portions of the foster parents' daily journal. Keeping a journal is the number one way foster parents can help their attorney present a compelling argument.

When the foster/adopt parents take the stand, the attorney should ask for a declaration of their commitment. Ideally, they might say something similar to the following:

I want this child to be my forever child. I will always be there for him. As long as I live. Even after he is 18. He will never be emancipated from my concern. The poet says: "Home is the place where when you have to go there, they have to take you in." When life hits him hard, and he needs a place, I will be there. When he needs money. When he goes through a divorce. An illness. Or a death. My home is his home. And when I die, my worldly goods will be his inheritance.

Scholarly articles on bonding can and should be presented to the court to educate the judge about these matters. Your attorney should carefully study the rules of evidence in your

jurisdiction to ensure that such articles can withstand anticipated objections and be admitted into evidence. These articles should include research on the harm done when bonded relationships are interrupted.

You may wish to hire a psychologist or other expert witness on bonding to testify. The attorney should qualify the evaluator as an expert witness on bonding, then walk him or her through the report, detailing each proof of bonding, asking specifically if the child exhibits the types of behavior which would satisfy the definition's components, presenting the statistics on what happens when bonding is interrupted, and asking the expert for an opinion as to whether bonding has occurred.

A case for bonding which employs solid research and written documentation AND is presented to the court in a clear and persuasive manner can and increasingly DOES influence the court's decision on what is in the child's best interests.

Conclusion

While bonding is a vital issue and its disruption can cause serious problems, its presence must be well described in court. Judges make the final decision on permanence based upon sound evidence, and their decisions can be reviewed by a higher court based upon the same evidence. Foster/adopt parents facing a disputed adoption should assure themselves that their case will be well heard.