



WHEN FOSTER PARENTS NEED AN ATTORNEY

Foster parents need legal representation when their rights are being threatened and/or when they wish to adopt. Unfortunately, foster parents have been hesitant to speak out for fear of being labeled a troublemaker and blackballed. The opposite may be true. Foster parents who are appropriately assertive are more apt to be fully heard.

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. The foster children depend on their foster parents for this advocacy. When important disagreements with the agencies arise, foster parents need the help of an attorney to see that laws and policies are followed. Indiana laws and Division of Families and Children (DFC) policies guarantee foster parents a full voice in decisions affecting their foster children.

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 area. The same applies to foster care and adoptions from foster care. You want someone who is familiar with the agency policies, the state and federal laws, and who knows the people in the system.

ADOPTION FROM FOSTER CARE IS COMPLICATED

Adoption from foster care is different from and much more complicated than the usual uncontested infant adoption. First, more parties are involved in the matter. The Indiana DFC has wardship and, as the official guardian, has an important voice in what happens. Often a Court Appointed Special Advocate (CASA) or guardian-ad-litem is appointed to represent the best interests of the child. Further, the birth parents have rights to services, representation, notice, and due process which must be honored throughout the process.

Second, conferences and hearings are involved during wardship where foster parents need to be fully heard. The DFC case manager is required to meet with the foster parents at least once every three months. Case conferences are required to develop a case plan and whenever there is a disagreement about how best to provide for the child's welfare.

Finally, courts and the judge play the crucial part from start to finish. In the beginning the child is declared in need of services (CHINS), made a ward of the DFC, and placed in a foster home. Still to come, before an adoption can be filed are regular six-month review hearings,

permanency hearings, and, perhaps, termination of parental rights (TPR) hearings.

HIRE AN EXPERIENCED ATTORNEY

Attorneys representing foster parents must be familiar with federal laws, state laws, and the policies of the DFC. PL 96-272 (1980) and the Adoption and Safe Families Act (ASFA, 1997) are federal laws which define the best interests of the child, state clear deadlines to shorten the time in foster care, and provide for post-adoption subsidies in the case of children with special needs. PL-35 (1998) and Senate Bill 330 (2000) are Indiana laws which implement the federal legislation.

Finally the Indiana DFC has lengthy policy manuals for both case managers and foster parents which cover such topics as licensing, discipline, bonding, adoption, subsidies, and a definition of special needs. Of particular interest is the 1997 Case Conference Policy which guarantees that foster parents can have their opinion heard through at least two appeals before a child can be removed from their home.

WHEN SHOULD I HIRE AN ATTORNEY?

Hire an attorney as soon as you decide that you want to adopt your foster child. Hire an attorney whenever you find that you should be heard and you are not being heard. Hire an attorney before a situation reaches the crisis point.

Sometimes foster parents wanting to adopt are told to wait until after the TPR to hire their attorney. Wrong. Your attorney can help you move matters more quickly and smoothly and often circumvent problems before they occur.

If you are concerned that your foster child is not being well served and your voice is not being heard, hire an attorney to assist you. An attorney can evaluate the situation, advise you of your rights and accompany you to a case conference or court hearing.

If in doubt, talk to an attorney to find out whether he/she can assist you.

HOW MUCH WILL AN ATTORNEY COST?

Fees vary. Most attorneys will ask for a retainer in advance. If the child you are adopting is eligible because of special needs, you or your attorney can apply for reimbursement up to \$1500.

DOESN'T THE DFC FURNISH AN ATTORNEY AT NO COST?

So-called "free" attorneys provided by the County Office of Families and Children are merely attorneys who are paid by the same fund which would pay an adoption attorney YOU select. Further DFC-appointed attorneys may have a built-in conflict of interest when a disagreement arises between you and the DFC. Long delays are also a common problem when accepting a DFC appointed adoption attorney.

EIGHT WAYS YOUR ATTORNEY CAN HELP YOU WITH AN ADOPTION

Your attorney can help represent your advocacy for the child and your wish to provide a permanent home through adoption. Here are some things an attorney can do after you have had your child for six months or more.

1. Review the Indiana DFC Case Conference Policy with you. You can call a case conference anytime you believe the current caseplan is not serving the best interest of your foster child.
2. Accompany you to the case conference and through any subsequent appeals.
3. Consult with the child's CASA and guardian-ad-litem about the child's best interests and the permanency plan.
4. Advise you about the federal laws, the state laws, and DFC policies related to foster care and adoption, including your eligibility for continuing subsidies after the adoption.
5. Consult with county and state officials to help resolve any disagreement between your concern and the position of the DFC.
6. Attend court hearings with you to help you have your full say.
7. File for adoption. Certain circumstances may warrant this action without a TPR.
8. Apply for all post-adoption subsidies for which you are eligible.

WHEN ELSE MIGHT FOSTER PARENTS NEED AN ATTORNEY?

Two other times when legal representation may be advisable are: when you have been accused of abuse or neglect and/or when the agency has scheduled a hearing to revoke your license.

The Child Protection Office (CPS) of the DFC is required to investigate all allegations of abuse or neglect. That requirement protects foster parents against frivolous or mean-spirited charges levied by an angry child or birth parent. You want CPS to hear your side.

Many such complaints are found to be unsubstantiated. If, however, CPS substantiates a charge of abuse, you may want to go to court to have the charges investigated more thoroughly and to defend yourself. For this you need an attorney.

Another time you may need an attorney is at a license revocation hearing. Some foster parents have felt that threats to revoke their licenses were made in retaliation for disagreeing with the agency. Your foster parent license is a property right and not something that you can be deprived of by whim. An attorney who knows the laws and policies related to licensing and the appropriate penalties for violations, which may well be less severe than revocation, may save your foster parent license.

HOW DO I FIND AN ATTORNEY?

There are two good ways to find an experienced foster parent attorney. Check with other foster parents who have been through the process you face, and ask if they were satisfied with their attorney. The best recommendation will come, not from a family friend or your family attorney but from someone who has been helped through the same process you face.

The second way is to call ACT's toll-free number (877-ACT-4KIDS) and get the names of three attorneys in your area who have taken our ACT seminars.

The purpose of ACT is to promote early permanence for foster children. One of the main ways that ACT tries to achieve this purpose is by training attorneys in the area of foster parent adoption. ACT has offered seminars and provided literature for attorneys throughout Indiana on foster care adoptions.

Adoption in Child Time

A.C.T. Inc.
P.O. Box 305
Rensselaer, IN 47978-0305

<http://www.adoptioninchildtime.org>
1-877-ACT-4KIDS (Toll-free in Indiana)
1-812-339-7403 (Outside Indiana)
act4adoption@hotmail.com