



## Adoption Attorneys and Human Service Departments: Working Better Together



The July 2015 Adoption and Foster Care Analysis and Reporting System (AFCARS) report<sup>1</sup> indicates that there were 50,644 children adopted with public child welfare agency involvement during the fiscal year. Many of those adoptions took place with minimal assistance from a private adoption attorney; but in many others a private adoption attorney was significantly involved. How can private adoption attorneys work more effectively with public human service departments? This question was posed to a half dozen seasoned adoption attorneys, all members of the American Academy of Adoption Attorneys. Here are their insights.

### Jeanne Tate, Florida

We need to keep focused on a few important statistics. As of September 30, 2014, there were an estimated 415,129 children in foster care. More than 30,000 children in foster care age out of the system every year. These young men and women leave foster care not because they were reunited

with their families or adopted, but simply because they were too old to remain in care. The percentage of youth that age out of foster care is increasing. In 2000, the percentage of exits due to aging out was 7 percent. In 2009, 11 percent of the children who exited foster care aged out.

Approximately 50,000 children will remain in foster care for 5 years or more.

Of our foster care population:

- 12–30 percent struggled with homelessness;
- 40–63 percent did not complete high school;
- 25–55 percent were unemployed; those employed had average earnings below the poverty level, and only 38 percent of those employed were still working after one year;
- 30–62 percent had trouble accessing health care due to inadequate finances or lack of insurance;
- 32–40 percent were forced to rely on some form of public assistance and 50 percent experienced extreme financial hardship;
- 31–42 percent had been arrested;

- 18–26 percent were incarcerated; and
- 40–60 percent of the young women were pregnant within 12–18 months of leaving foster care.

These numbers tell lots of stories—one at a time.

### Susan Eisenman, Ohio

Families seeking to adopt have a focused and highly personal interest. They are launching off on a brave new adventure. This is the only child or children with whom the family is concerned. They will want to ensure that they have the resources and information necessary to parent the child going forward. They are concerned and anxious. The family may feel a special urgency to move ahead with the placement and finalization. They are future oriented.

The agency sees the adoption as a capstone event. It is the conclusion of its work with the birth family.

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The agency has many children on its caseload and may not feel the same sense of urgency as the family. The agency's focus is less intense. It may be less concerned about long-term issues and more concerned with tying up loose ends. The agency has seen lots of special needs kids and takes special needs as par for the course. It is rooted in the present. Most agencies do not focus on postplacement needs.

Recognizing this difference in perspective will help both parties work together more smoothly and meet each other's expectations and needs. It is helpful for agency staff to allow themselves to experience anew the "miracle of adoption." It is equally helpful for the adoptive parents to realize that adoption is a complex legal process and that patience is necessary.

The adoption attorney can often be of assistance in aligning families and the agency onto the same path as they work through the process. This can be a valuable contribution.

### **Seth A. Grob & Timothy Eirich, Colorado**

We represent many foster parents, relatives, and other third-party caregivers involved in child welfare cases. The types of cases we often handle include contested placement hearings, contested adoptions, adoption subsidy negotiations and administrative fair hearings, and adoption finalizations. Far too often, our clients come to us having been ill-advised by local human service departments that they have no legal rights, should not go to court, and should refrain from retaining private counsel and otherwise participating in the legal process.

From our perspective, these third-party caregivers, who have often cared for children for lengthy periods of time, have critical information regarding the children's care, custody, and protection. Rather than disenfranchising these caregivers, caseworkers should be encouraging them to actively participate in the legal proceedings, including consulting or retaining private counsel. This is particularly

true where these third parties believe the child's interests are not being effectively advocated or that their concerns are not being given sufficient weight or consideration.

In Colorado, as in many states, relatives and foster parents have a statutory right to intervene in the dependency and neglect proceedings. Our State Supreme Court, in *A.M. v. A.C.*, 296 P.3d 1026, 1033 (Colo. 2013), has stated that foster parent intervention means that foster parents are "afforded the same degree of participation as all other parties" and thus may advocate for what they believe is in the child's best interests through filing motions and fully participating in hearings by calling witnesses, making arguments, and questioning other parties' witnesses. The underlying notion is that by allowing all parties equal access to the courts, judges will make better, more informed, and deliberate decisions, often affecting children for the rest of their lives.

Empowering prospective foster parent and relative intervenors to fully participate in legal actions through private counsel of their own choosing is a paradigm shift for many involved in the child welfare system. By encouraging such legal action by third parties, however, these prospective intervenors can: (1) more easily provide current and often important information to the court; (2) object to an imminent and sometimes arbitrary removal of their foster child; (3) better understand and pursue a permanent legal arrangement with their foster child, whether it be an adoption, guardianship, or permanent custody; (4) seek more timely placement with a relative when appropriate; and (5) seek meaningful public benefits, including adoption subsidies for the child. Through better advocacy for foster parents and relatives by private counsel, children will be the ultimate beneficiaries. They will be less subject to being indiscriminately moved, will achieve permanency within a timelier period, and will ultimately receive higher levels of support and benefits.

### **Denise Bierly, Pennsylvania**

With passage and implementation of the Adoption and Safe Families Act of 1997, thousands of adoptions of children and youth from the foster care system are occurring in every U.S. state and territory each year. After parental rights have been terminated, each adoption requires close collaboration between the lawyer finalizing the adoption and the social work team tasked with moving the child to a permanent home. How is this collaboration working? As with any team approach, some cases are smooth and efficient and some choppy and prolonged. Is there a way to achieve a consistently good outcome for children, who are, after all, the beneficiaries of this multidisciplinary work?

As the director of adoption for the American Academy of Adoption Attorneys and a lawyer with a private adoption practice for more than 25 years, it is clear that we, as a community of adoption professionals, can do much more to ensure children and families in foster and adoption cases benefit from a consistent and streamlined process. One way to standardize the melded services required to reach the court finalization day is to create a basic checklist. While the checklist is likely to vary from state to state, here are some uniform ideas:

1. Hold an in-person meeting between the lawyer and social worker, ideally with the adoptive family present for half of the meeting. This meeting should occur prior to the court case being filed.
2. Establish, in writing, hard and realistic deadlines for filing legal documents, and for delivering home studies, post-placement reviews, and signatures on Adoption Subsidy Agreements.
3. Hold brief check-in calls or emails every three weeks until the adoption is finalized.
4. Have honest conversations with the child, his or her therapist, and the adoptive family resource about the pace of finalization. Should it be slowed down?

5. Use a plain-word explanation of the process of testifying in a court of law. Review and practice the questions (and answers) with the social worker, the parent(s), and especially the child if he or she will testify.

At a minimum, this short checklist will increase the quality of services to youth and their adoptive families. As the lawyer and social worker teams engage in intense collaboration in multiple cases, a natural outcome should be an increase in trust and collegiality among the professionals processing an adoption finalization.

### **Harvey Schweitzer, Maryland**

A skilled, experienced private adoption attorney can be helpful to public child welfare agencies involved in seeking permanency through adoption of foster children and, at the same time, serve as an effective and zealous advocate for the adopting foster parents or, in some cases, the child or adoptee.

Two issues come readily to mind. First, ensure that the foster parents (and by extension the child) obtain the best possible adoption subsidy. The services and benefits embraced by a subsidy can be complex and the needs of children are so different it would seem that the agency would welcome the presence of a knowledgeable advocate who can guide the adopters during the negotiations. Second, assist the adopters and the child in adoptions of older children, when discussing “post-adoptions contact” issues, including whether to even consider it and, if so, how it will be implemented.

Another role that a private attorney can play concerns strategic planning in unusual or contested adoptions. Private attorneys can be expected to bring an outside-the-box mentality to such situations, whereas the agency lawyer may be constrained with regard to the options available. For example, in some states the law allows the agency to seek dismissal of the foster case so that the (former) foster parents can seek a private adoption. Although rare, this approach can be useful in nonsubsidy intrafamily adoptions or

in situations in which the agency is pressing the adopters to accept post-adoption visitation to avoid a trial.

### **Genie Miller Gillespie, Illinois**

As an adoption attorney representing foster parents, it is imperative to have a good relationship with the “front-line” caseworkers and their supervisors in the case. It is the attorney’s job to ensure that the Adoption Assistance Agreement (subsidy)—the contract entered into between the adoptive parents and the child welfare agency—completely and accurately describes the child’s background and unique needs, all current services, and the potential need for future services. The only way to do this well is to work with the family’s caseworker and gather as much information and documentation as possible so any potential future needs of the child can be “tied back” to the current or pre-existing needs. This will allow the adoptive family to go back to the child welfare agency to request additional services, should the child need a service that is not covered by the medical card or available through the school. Often, the caseworker does not have all of the necessary documents (medical records, therapy reports, education plans, etc.), and sometimes does not share what they do have with the prospective adoptive parents for fear of “scaring” the adoptive parents. It is unacceptable for prospective adoptive parents to be missing any information that will help them provide the best care and be a strong advocate for their adopted child. The attorney and the caseworker must work together to make sure the family gets all of the tools necessary to make the adoption a success. 📄

#### **Reference Note**

1. <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport22.pdf>; This report reflects all AFCARS data received as of July 9, 2015 related to AFCARS reporting periods through September 30, 2014.

**Daniel Pollack** is a professor at the School of Social Work, Yeshiva University, in New York City. He can be reached at [dpollack@yu.edu](mailto:dpollack@yu.edu), (212) 960-0836.

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can take in with life’s stresses. If we constantly portray our work through the lens of a crisis, the default thinking of most Americans will be that there is nothing that can be done to fix it.

*Effective framing leads to thematic storytelling to show how “connected communities” have better outcomes and helps us ask the right questions from the start.*

### **What Can Reframing Do for Us?**

Framing can help us provide a wide-angle view of human services that brings policymakers together and involves everyone in shaping solutions that are focused on health and well-being for all Americans. It can help create an understanding of the ecosystem that shapes the interconnectedness of systems and services in a community and connect all of us who live there (like tracks connecting a rail system). It can help us focus on the structural and systemic causes of poor health and lack of well-being and address issues of inequity. Effective framing leads to thematic storytelling to show how “connected communities” have better outcomes and helps us ask the right questions from the start—How are our children doing in school? How connected are families to their community?

Check our Blog at [www.aphsa.org](http://www.aphsa.org) and upcoming issues of *Policy & Practice* for more tips, including how to create an effective frame. We also encourage you to check out the FrameWorks Institute website at [www.frameworksinstitute.org](http://www.frameworksinstitute.org). 📄

*Tracy Wareing Evans*