

Foster Parent Rights: A Review
NYSCCC 26th Annual Conference
Uniting Families • May 9, 2015

A Foster Parent Asks:
Do Foster Children Come to Court for Permanency Hearings?

By Margaret A. Burt, Esq. Copyright 4/08

Q. I heard that my foster child is going to come to court when the permanency hearings happen, is that true?

A. There is a new federal requirement that says that a Judge must “consult” with the child in an age appropriate way regarding their permanency plan and goal on every permanency hearing. The federal government has **NOT** said that this means all children must come to court – they have said it means the Judge must know the child’s position from some source. The child could come to court or the child’s position could be simply told to the Judge by someone like the child’s attorney (law guardian) or the caseworker. Because of this new federal law, lots of Judges in NYS are talking and thinking about their position regarding children actually coming to court. Some judges have always done this, some have not. More Judges are considering doing it, especially for older children.

Q. So, how will I know if my foster child is supposed to come to court?

A. It will be different in different counties and even with the same Judge; it may depend on the child’s age or the case. You should talk to the caseworker and the child’s attorney about what the expectations are for your child.

Q. What if my foster child wants to go to court but no one is saying that he/she will or can go?

A. Bring this up to the caseworker and the child’s attorney. If the child is old enough, help them call their attorney to ask. Although it is the Judge’s decision, it is likely that if the child wants to be there, the child will be allowed to come.

Q. What if I am told that the child has to come but he/she does not want to or does not want to on a particular date?

A. Contact the caseworker and the child’s attorney about the child’s concerns and reasons. Even if the Judge is one who usually wants children in court, it is unlikely that a Judge would require a child to come if he/she did not want to appear. It will be helpful

for you to be able to say why they child does not want to come and of course it will be important for the child's attorney to know the child's position to be able to tell it to the Judge.

Q. Am I allowed to contact the child's attorney? He/She does not seem to want to talk to me and/or does not keep in contact with the child.

A. There is no rule that says you cannot contact your foster child's attorney and let them know of issues. Most law guardians will want and welcome this. However, the child's lawyer is not your lawyer and they are under no obligation to speak with you, It is best if you can let the attorney know of your willingness to communicate and of the information you have that may be relevant. If you feel that the attorney is not keeping in contact with the child, you should let the caseworker know that. But only a Judge can decide if a child's attorney is doing their job effectively.

Q. If I think my child's attorney is not meeting with and/or listening to the child, can I do something about it?

A. There are no absolute rules that attorneys who represent children must follow as to when and how frequently they meet with and talk the child. This is something that each attorney has discretion about based on their perception of what legal help the child needs at any particular time. Of course, any attorney should met with their client and if the child is old enough help the child to tell them what they want so that the child's wishes are made known to the Judge as is required. You can tell the Judge in a permanency hearing if you think there is a serious problem.

Q. But isn't the law guardian/child's attorney supposed to be doing what is in the child's "best interests"?

A. No, that is not true. The primary responsibility of a child's attorney is to tell the judge what the child wants and to try to advance the child's position – lawyers say "zealously advocate the child's position". If the child is so young or limited that they are incapable of a "knowing, voluntary and considered judgment" then the child's attorney can promote what they believe to be in the child's best interests – as they would if a child were say 2 years old. This means that where a child is older and can tell the attorney what they want, then the attorney's job is to tell the Judge that and to try to obtain that result even if what the child wants may not be the best thing. In an unusual case where the attorney is convinced that the child wants something that would "likely result in a substantial risk of imminent, serious harm to the child" then the attorney can advocate a position different from the child's, but must tell the Judge that they are doing that and must still tell the judge what the child wants.

Q. I have been told that my foster child will be expected to come to court for their permanency hearing? How can I prepare the child?

A. Talk to the child about what court is like and tell the child that the Judge will want to know how he/she is doing and if they have any questions about what is happening to them. Talk to the child's attorney about any concerns the child might raise about the process.

Q. What if my foster child wants to talk to the Judge alone or wants to write a private letter to the Judge?

A. In most cases, a judge is not allowed to talk alone to anyone involved in a case before them or read any private letters because all parties have a right to hear all the evidence that a Judge is considering. Do not tell the child that the Judge will talk to them in private unless you have been specifically told that this is going to happen. If the child is concerned about wanting to say something and not wanting other people – like parents or a caseworker – to hear, tell the child's attorney about this so that the attorney can consider what options might be available.