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## The Adoptive and Foster Family Coalition of New York Wins Groundbreaking Increase in State Foster Family Support

### ***Foster Parents to See Increase in Foster Care Subsidy Payments, Children Benefit***

New York State, December 22, 2021 - The Adoptive and Foster Family Coalition of New York (AFFCNY), with the pro bono team at Morrison & Foerster (MoFo), has won increases of up to 46% in the financial support provided to foster parents by New York State through settlement of a lawsuit filed 11 years ago. Under the settlement, New York's Office of Children and Family Services (OCFS) will, for the first time, determine foster care rates by applying a methodology that accounts for the costs that are delineated in the federal Child Welfare Act.

A key issue was whether the Child Welfare Act provides a private right of action, empowering foster parents to sue when a state's foster care payments are inadequate to cover the costs of caring for children, including items such as food, clothing, and shelter, as well as supervision during out-of-school hours, travel for family visits, and school supplies.

Sarah Gerstenzang, AFFCNY board president and foster/adoptive parent, states, "Caring for children who have been traumatized is both an extraordinary challenge and a joy to see them heal. And while we know that families will still cover extra expenses, this increase will go a long way in making it possible for many more New Yorkers to volunteer their time to care for these vulnerable children. We are very grateful to our attorneys that more children will have the opportunity to live in a family rather than an institution because of their expertise and hard work."

Key provisions in the settlement include:

- An initial increase of more than 46% in the monthly reimbursement of expenses for children in foster care in the New York City area.
- An increase of 20%–40% in the monthly reimbursement of expenses for children in foster care in the rest of the state, depending on the child's age.
- An increase of, on average, 25% in support for the care of children with special needs, and implementation of a new "extraordinary" rate for children who require full-time care, such as those with the most serious medical conditions.
- Annual adjustment of all rates to keep them in line with inflation.

- OCFS-proposed legislation mandating that the state rates are minimums that must be provided to foster parents.
- A meeting between OCFS and plaintiffs one year before the agreement expires to discuss continued use of the new rate-setting methodology.

The focus of the suit was on the rates. New York Litigation Partner Grant Esposito and Of Counsel Adam Hunt led the yearslong case, which included two trips to the Second Circuit Court of Appeals and one to the U.S. Supreme Court. The team then defeated the state’s petition for certiorari review at the U.S. Supreme Court and settlement discussions began in earnest.

“In addition to helping so many deserving New York foster families gain access to vital financial resources needed to adequately care for their foster children, this case is special to me because it is one of the first matters I took on when I joined the firm,” said Adam Hunt, who has been working on the case throughout his more than 10 years at MoFo. “In many ways, I learned how to be a lawyer through my work on the case and this positive outcome is not only extremely gratifying to me as a lawyer, but it also serves as a great example of why MoFo encourages and supports the critical pro bono work we do here.

A study conducted by the advocacy group Children's Rights in partnership with the University of Maryland had determined that New York’s rates were woefully inadequate to pay the costs mandated by the Child Welfare Act. Greg Eastman, from Cornerstone Research—who provided his services as an expert economist in the case pro bono—then adapted that study to calculate the specific amounts by which New York fell short. Another issue was a peculiarity of New York’s social service law, which sets the state’s foster care rates as maximums and allows local social service districts, which actually administer the foster care system, to make even lower payments to local foster parents.

### About the Adoptive and Foster Family Coalition of New York



Founded in 1975, The Adoptive and Foster Family Coalition of New York provides support, information and advocacy for foster, kinship and adoptive families and related professionals in New York State. AFFCNY is the direct service provider of post-adoption and post-guardianship services in nineteen counties, has almost 80 affiliated parent and youth support groups throughout the state, is the host of the state’s annual Foster Care and Adoption Conference and offers a free, 24/7 HelpLine for foster, kinship and adoptive parents and families. The Coalition’s vision and ultimate goal is that no foster, kinship or adoptive family feel alone or unsupported and that all such families have the tools and resources they need to nurture the children they love and to be role models for others.

### About Morrison & Foerster



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