



# ICNews

NATIONAL QUALITY IMPROVEMENT CENTER  
ON NON-RESIDENT FATHERS AND THE CHILD WELFARE SYSTEM

*Quarterly Newsletter* Spring 2009 Extended Edition

## **IN THIS ISSUE:** Engaging Non-Resident Fathers in the Court Process

### Enhanced Representation for Non-Resident Fathers in Child Welfare Proceedings

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Non-resident fathers face unique challenges when a child enters state care due to allegations of abuse or neglect. Child welfare practices, laws and biases can adversely affect non-resident fathers and hinder efforts to unite children with their fathers. Additionally, non-resident fathers often face ancillary civil legal proceedings that affect their children's cases. This article examines the issues that non-resident fathers face and explores strategies for attorneys to overcome these barriers, engage fathers in their children's cases and enhance representation for non-resident fathers.

#### **System Barriers**

Barriers that can prevent fathers from engaging in the case process or impede them from achieving their case goals include:

- Failure to notify and involve non-resident fathers in the proceedings. While some state statutes specifically include presumed and alleged fathers as named individuals entitled to notice, other statutes only require notice to the parent, guardian or custodian<sup>1</sup>
- Maternal gatekeeping, such as refusing to cooperate with efforts to identify or locate the father
- Caseworker difficulties with or lack of experience in engaging fathers
- Judicial preference for reunification with the (former) primary caretaker
- Family preservation services not being offered to non-resident fathers because of a focus on the deficiencies and needs of the custodial parent.

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*Dear Friends,*

I'm pleased to write my first introduction to an issue of this newsletter. I thank our partner, American Humane, for this opportunity to focus several articles on legal aspects of non-resident father involvement in the child welfare system.

***Dads and your lawyers:*** this is an important issue for you to read!

When we refer to “non-resident” fathers, we mean biological dads who were not living with their children’s mother at the time the children were removed from the mother’s home due to allegations of child abuse or neglect. In the legal system, we’re more likely to use the term “non-custodial” father.

In this issue, you’ll hear from a dad who sought to enhance his fathering capacity. You’ll read about a community coalition aiding dads to be better fathers. In honor of the 100th anniversary of Father’s Day, QIC partner National Fatherhood Initiative shares reflections on fatherhood and the holiday that celebrates it.

Also in this issue are several legally focused articles. Two include useful advice for fathers on what they should do if their children become involved with the child welfare system, and on how to work with their attorneys. We also include a piece on the constitutional rights of non-resident fathers which may be particularly useful for caseworkers and other child welfare professionals. Another article provides strategies attorneys can use to overcome barriers and enhance dads’ case participation.

As an integral part of the QIC’s work, my colleagues and I are committed to further exploring the legal dimensions of the non-resident father issue. This includes the challenges of making prompt father and paternal kin notification after a child’s foster care placement, as is now generally required in the Fostering Connections to Success and Increasing Adoptions Act, which just became federal law (binding on the states) late in 2008. It also means helping those states whose federal Child and Family Services Review disclosed serious weaknesses, statewide, in the engagement of fathers in the child welfare intervention process. As suggested in their state Program Improvement Plans, training may be needed for lawyers, judges and casework staff to better understand how to effectively and promptly identify, notify and engage non-resident dads whenever the state removes a child from home. All of us stand ready to help.

Sincerely,

*Howard Davidson*

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**NATIONAL QUALITY  
IMPROVEMENT CENTER**  
ON NON-RESIDENT FATHERS AND  
THE CHILD WELFARE SYSTEM

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## Enhanced Representation for Non-Resident Fathers in Child Welfare Proceedings *continued from page 1*

### Strategies for Lawyers to Engage Non-Resident Fathers and Overcome Barriers

#### Communication and Establishing an Attorney-Client Relationship

A key component to effectively representing all clients, including non-resident fathers, is establishing a solid attorney-client relationship. Be aware of each client's unique issues, such as incarceration, mental health status, housing needs, employment, child support obligations, immigration status, domestic violence and substance abuse, and consider how these issues affect the father's case goals and ability to participate in proceedings.

The father must have sufficient information to make informed decisions at each stage of the proceedings and adequate time must be dedicated to explaining the child welfare case process and the father's rights and obligations. Particular attention should be paid to requirements of the Adoption and Safe Families Act, permanency, the case plan and the limited time to achieve the father's desired outcome. Non-resident fathers may become involved in the child's case several months after the child entered state care. In these cases, ASFA's requirement to seek termination of parental rights after the child has been in foster care for 15 months drastically limits a non-resident father's opportunity to engage in services and pursue his case goals. Explore whether the agency exercised due diligence to identify, locate and notify the father in a timely manner. The agency's failure to take reasonable steps to locate and notify the father at the beginning of the case could be used later as a compelling reason not to file for termination of parental rights.

Work with the father to identify case goals and empower him to direct the course of representation. Many fathers may not see themselves as a placement resource for the child because they do not realize that services are available to assist them throughout the case and if they become the child's primary caregiver. Explain that the child welfare agency is required to explore placement options with maternal and paternal relatives. Fathers who have had minimal contact with their children may not understand the importance of their involvement in their children's case. You may



need to explain that establishing a positive relationship with the child can improve the child's long-term well-being.<sup>2</sup>

#### Advocacy for Services

In the absence of aggravating circumstances, federal law requires state child welfare agencies to make reasonable efforts to provide assistance and services to prevent the unnecessary removal of a child from the home and make it possible for a child who has been placed in out-of-home care to be reunited with his or her family.<sup>3</sup> Consistent with the father's goals, you should advocate for the timely provision of services appropriate to meet the father's needs and circumstances. Identify and address barriers that may prevent or limit the father's ability to successfully engage in services. For example, examine whether services are accessible and coordinated with the father's work schedule, and whether transportation and funding issues are addressed.

Once services are ordered, ensure that the agency provides necessary referrals and helps the father engage in services. Communicate with the father regularly and keep apprised of his progress. If services are not offered or provided, set an early review hearing. Any discrepancies between services routinely offered to mothers but not to fathers should be documented and brought to the court's attention. Additionally, when appropriate, enforce the state's duty to provide necessary services by seeking a court finding that the department failed to make reasonable efforts. This also establishes an exception to ASFA's mandate that the state file a petition

to terminate parental rights when a child has been in foster care for 15 of the most recent 22 months.<sup>4</sup>

### Advocacy for Visitation and Participation in Child-Related Events

As father-child contact is usually essential to the successful resolution of the client's case, advocate for frequent, consistent visits in the least restrictive setting possible. Oppose supervised visits unless there is a specific factual basis indicating that supervision is clearly necessary. Advocacy efforts should include the following principles:

- Visitation is the right of the family and necessary to promote the child's well-being;
- Early, consistent and frequent visitation is crucial for strengthening the father-child relationship;
- The maximum amount of father-child contact possible should be encouraged; and
- Visitation should not be limited as a sanction for a father's failure to comply with court orders or services and should only be limited or denied when necessary to protect the welfare or safety of the child.

Also, be familiar with cultural norms that may affect the father's behavior with the child and how others perceive the father's interactions with the child.

Even though the child is placed in state care, you should also advocate for non-resident fathers to engage in normal parental responsibilities and decision making to the greatest extent possible. For example, non-resident fathers should have the opportunity to participate in parent-teacher conferences, attend the child's extracurricular events (sports, dance, music recitals, etc.) and accompany the child to medical and dental appointments.

### Collaborative Case Efforts and Concurrent Planning

Although non-resident fathers face numerous barriers, the child welfare system also presents opportunities for fathers to engage in their children's cases. For example, practices such as case conferences and family group decision making encourage collaboration with fathers and paternal relatives and provide a non-adversarial setting where the father's voice can be heard. Concurrent planning requires the agency to consider and pursue multiple case outcomes and can be used effectively to advocate for the father's case goals.

Encourage and help non-resident fathers participate in family group decision making meetings and case conferences. These are opportunities for you and your

client to present information about him and address issues concerning the child's placement, visitation, delivery of services and permanency for the child. When possible, service providers who have been working with the father and can describe the father's progress should attend or provide written reports. By engaging with the caseworker and other involved professionals in a collaborative setting, a non-resident father can minimize the risk of bias against fathers.

Concurrent planning allows an attorney representing a non-resident father to advocate for a permanent plan, identified by the father, even if the department is pursuing a different plan. If the court accepts the father's plan as an alternative, the agency is required to pursue and support both options simultaneously. For example, instead of sequentially seeking to reunite the child with the mother, then, only if that fails, pursuing placement with the father, the agency and the court would pursue and support both case plans of reunification with the mother and reunification with the father at the same time. Although one case plan would be identified as the primary plan, both options should be equally supported.

### Ancillary Civil Legal Actions

Finally, many non-resident fathers must address civil legal issues related to the child's case, including family court matters such as parenting plans and non-parental guardianship. You should have a general understanding of these proceedings and be able to advise the father as to the impact on the dependency case and refer him to an available civil legal aid program.

Non-resident fathers frequently face issues related to establishment of paternity and child support obligations. Discuss child support issues with a non-resident father and be able to refer him to available resources or employment and work training programs.

<sup>1</sup>Sonenstein, F., Malm, K., Billing, A. "Literature Review: Non-Resident Fathers, Paternal Kin and the Child Welfare System." July 2007. 8 April 2009 <[www.abanet.org/child/fathers/QICNRFLLiteratureReview.pdf](http://www.abanet.org/child/fathers/QICNRFLLiteratureReview.pdf)>.

<sup>2</sup>Studies show that children with involved fathers display better cognitive outcomes, even as infants; higher self-esteem and less depression as teenagers; higher grades, test scores and overall academic achievement; lower levels of drug and alcohol use; and higher levels of empathy and other social behavior. National Responsible Fatherhood Clearinghouse. "The Importance of Fathers." 8 April 2009 <[www.fatherhood.gov/faq/importance.cfm](http://www.fatherhood.gov/faq/importance.cfm)>.

<sup>3</sup>The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272); ASFA (P.L. 105-89).

<sup>4</sup>ASFA (P.L. 105-89).



## My Experiences With Child Welfare and the Legal System

Shaine Yates, as told to Ellen Kinney,  
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*I proved that I was clean and that I was working hard, but they did not even look to me as an option. Even though I wasn't the one in trouble, I was not allowed to care for my son.*

When my son Cassidy was born in 2000, his mother and I were both addicted to methamphetamines. Until Cassidy was about 3 years old, I was in and out of his life as I struggled to get clean. In 2003, I went to my final treatment program, where I met my current wife, Shannon. We have both been clean ever since and regularly attend Alcoholics Anonymous meetings. I was ready to be in Cassidy's life and began to see him and spend weekends with him.

Unfortunately, as I was getting clean, Cassidy's mom fell deeper into her addiction. In 2004, Cassidy pulled a meth pipe out of his pocket at school. The school called the police and the Department of Human Services (DHS). Cassidy, his half-brother and his mom all tested positive for methamphetamines, which meant his mom was doing drugs around the children.

### **Choosing Foster Care Over an Available Non-Resident Father**

DHS called to tell me that Cassidy and his half-brother were being removed from their mother's home. They asked if I was willing to take Cassidy and I said yes. But when I arrived at DHS, the children were crying and Cassidy's mother told the caseworker that she would rather have the children go to foster care together than split them up and give Cassidy to me. DHS did as Cassidy's mother requested. The children were in

foster care for two months, after which they joined their mother in an inpatient treatment facility. I was only allowed to visit once a week. I had a demanding job two hours from where I lived, and I couldn't make the visits in time. I didn't see Cassidy for the nine months he was in the treatment facility with his mother.

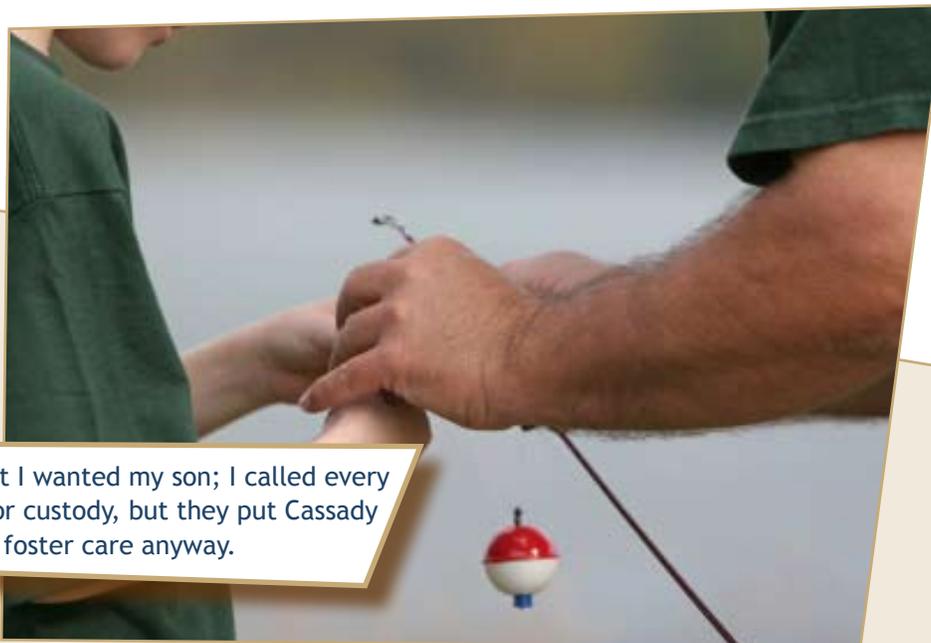
### **In and Out of the System**

DHS closed its case a few months after Cassidy's mom left the treatment facility. But I heard that she had relapsed. I called DHS and they re-opened the case. This time, DHS let her keep the children because her mother was in the home. They never considered me a placement option.

A few months later, and despite DHS' involvement, I learned that Cassidy's mother was using drugs again and had not seen Cassidy recently. Cassidy and his mother both tested positive again. DHS informed me that they were going to put Cassidy in foster care. They claimed that they wanted to keep Cassidy in the same school, and that I wasn't a good placement option because I lived in a different city. I visited every weekend while he was back in foster care.

### **Going to Court**

It wasn't until June 2007 that we went to court and Cassidy was finally allowed to live with me. For the first



I told them that I wanted my son; I called every day begging for custody, but they put Cassidy in foster care anyway.

year he was living with me, DHS was still trying to reunify him with his mom. They encouraged visits between Cassidy and his mom, even though she tested positive for drugs. As she continued to use, she fell out of touch with Cassidy and DHS. She has not seen Cassidy in over a year.

### Ongoing Court Battles

I worked hard to be a responsible, sober, working parent. But I felt that DHS was never on my side. I had to jump through a lot of hoops to even be considered an option for my son, yet his mother kept getting chances and kept putting him in the same dangerous situations. Once I had Cassidy, I received no support or services from DHS and I cannot get child support from his mother.

After DHS stopped visiting my home, I continued to struggle in the court system, trying to gain full custody of my son. I couldn't afford my own lawyer in this process, so I was appointed one. This experience has been negative and confusing.

My lawyer rarely asks my opinion or what I hope to see happen during a hearing. If I do tell her something that I think should happen, it usually doesn't happen. In general, it feels like all decisions are made before we even get to court.

Everyone always seemed worried about what Cassidy's mom wanted, even though she got Cassidy involved in the system. For me, it seems like DHS and the lawyers are just doing what's easiest for them, and everyone tells me different versions of what is happening. They have made

me feel pressured to close the case, even though I don't have full custody yet.

I have a permanency hearing coming up. The judge is supposed to rule where Cassidy will live. I have not been contacted by my attorney, the caseworker, the guardian ad litem or anyone connected to the case and I am not sure where they stand. I don't think the court will award full custody to me, but I think DHS wants to close our case. If this happens, then both parents can continue to be involved in Cassidy's life. I worry about sharing joint custody of Cassidy, since his mom has repeatedly put him in dangerous situations. Despite this, DHS refuses to terminate her rights and won't help me get full custody.

### New Beginnings

Since Cassidy has been with me, he is clean and healthy. He went from being a child who couldn't count to 10 to a second grader who reads at a fifth grade level. He is involved in wrestling and baseball. My wife and I have overcome our own struggles with addiction to do what is best for our family. We are raising four other boys and know that we provide the best, safest place for Cassidy. We hope that DHS and the court system will recognize that soon.

**To Dads in a Similar Situation:** Don't ever give up. Keep fighting for your child. Ask questions, talk to people and let them know your opinions. One of the best things that happened to me was being able to share my story at a statewide judges' conference. Keep telling your story and get help from whomever you can.

# My Kids Are in State Custody, What Do I Do Now



Angela Greene, Alaska Public Defender Agency, [angela.greene@alaska.gov](mailto:angela.greene@alaska.gov)

You are a happily married father of two children. Due to an accident, you are hospitalized with permanent and life-threatening injuries and the financial and emotional strain of the accident causes your wife to find relief in alcohol.

After your wife arrives drunk at the hospital with your two children, hospital staff call the police, who call child protective services, and your children are placed in an emergency shelter. No one asks if you, as the father, have any input into placement for the kids, or even tells you where your children are going.

The next day, the state files a petition to declare your children in need of aid. You are notified by phone. For the next year, your family is supervised by the court, you are monitored by social workers, and you must submit to home visits. Even after you go home and the children are with you, the state says it has the right to make home visits, question you and make you appear in court to give status reports about your children. All this, even though you never harmed your children, and have shown that you and your extended family can care for your kids despite your wife's alcohol issues and the fact that you are bedridden from your accident. It takes a year of litigation before you are allowed to live with your family on your terms.

Sadly, this is a true story. It was the plight of Peter A., a very real, gravely disabled, non-offending parent in rural Alaska who fought for two years to win his children back, free of state interference.<sup>1</sup> He did eventually succeed, but not without significant emotional cost to himself and his family.

The purpose of this article is to provide guidance learned from Peter's case to non-offending, non-resident fathers when their children are involved in the child welfare system. Many non-offending fathers are not in regular contact with their children when they enter the child welfare system, and may not have seen their children for a long time. For these reasons, many are not in a position to assume care of their children right away. Nonetheless, this is not a reason to give up on the relationship; even previously absentee dads can be united with their children.

The law gives a fit, non-offending father the right to make key decisions about the care of his children and gain custody of them from the state.<sup>2</sup> The key to successfully navigating the court system and child welfare agency process is asserting that right in a way that is effective and shows that the father is capable of protecting the children. While that sounds simple enough, no amount of litigation — no matter how expensive, creative, or dramatic — will force a court to release a child to someone whom the court feels will not safely and competently supervise his children.

With all this in mind, here are some practical and specific legal steps a non-offending parent can take when he learns his children are in state custody:

- **Don't wait.** If you are the "legal father" you are entitled to formal notice that your children are in custody (see "Constitutional Rights of Non-Resident Fathers" on page 13). The particulars of this notice will vary state by state; however, if the only notice you have is from someone other than your lawyer, the court or the child welfare agency, call the local child welfare agency immediately. Do not wait; every day you delay can be seen as a day you don't care enough to call, even if it is the agency's job to notify you.
- **Be professionally persistent.** To gain custody of your children, the state must file a document in state court saying that your children need protection. You are entitled to a copy of that document. The social worker assigned to work with your children should give it to you. If you do not know who the social worker is, keep calling the agency until you get a name. If no one answers, leave a message. Repeat daily until you get a response, but always be polite. Keep a written list of every phone call you make and to whom you spoke.
- **Do not give up your rights.** You have a constitutional right to an individualized court hearing on your fitness as a parent.<sup>3</sup> In most states, before this hearing, the court will appoint a lawyer

to assist a parent who can't afford one. If you do not meet the income requirements, you should hire a lawyer to guide you through the system. Do not agree that your children should remain in state custody if you feel you are fit, or can soon be fit, to parent them. Demand your hearing, and ask for a delay if you need time to gather resources to prove to the court that you can safely care for the children. Even though the state must prove you unfit to raise your children, you also need to satisfy the judge that your children will be safe and secure with you.

- **Be proactive.** Even before the court hearing, request visitation; you have a right to it. If you do not know your children very well or at all, suggest bringing extended family members or other mutual contacts to the visit to help introduce yourself to the children and ease their discomfort.
- **Be there.** Do not miss visits under any circumstances for any reason. Also, do not use alcohol or drugs before, during or after a visit. Never talk badly about the other parent during the visit. As time goes on, request more natural contact with your children, like going to school activities, sports events or restaurants. If this is denied by the child welfare agency, seek help from the court by asking for a hearing.
- **Protect the children from the offending parent.** A fit father who finds out that the mother of his children neglected or abused them must protect the children from her. Do not, for any reason, leave the children alone with the neglectful or abusive parent, or even visit her with the children, without prior approval of the social worker. Keep any contact with the offending parent minimal and supervised. You must show that your relationship with the children and their safety is more important than any issues you have with the mother. Otherwise, the failure to protect the



children from the offending parent can be used to show that you are unfit to care for them, and they will remain in state custody.

- **Go to every court hearing.** You have a right to be at every court hearing about your children. Do not miss them for any reason; court hearings are an opportunity to show the judge that you care and you are doing everything you can to parent your children. If transportation is a problem, talk to your attorney about it.
- **Just do it.** If you had little or no contact with your children in the past and now want to be a parent to them, the court will want to see that you can do it. The court will make the agency visit your home, make sure you can support the children and make you submit to a background check, etc. For the sake of your children, just do it. These are minimally intrusive measures designed to protect the children from further abuse or neglect, and, if successfully completed, leave the court with very little choice but to reunite you and your children.

For parents like Peter A., who had more extensive contact with his children, it is an open constitutional question whether the state could subject them to this type of scrutiny when they have already shown they can be, and are, active parents. Unfortunately, the Peter A. case did not settle that question. Hopefully, another fit parent will take on that battle and proven fathers like Peter A. will not have to undergo years of litigation and heartache to be respected as individuals with rights to their children.

<sup>1</sup>Peter A. v. State, Dept. of Health and Soc. Serv., OCS, 146 P.3d 991 (Alaska 2006).

<sup>2</sup>Troxel v. Granville, 530 U.S. 57, 68-69 (2000); Stanley v. Illinois, 405 U.S. 645, 656-58 (1972).

<sup>3</sup>Stanley, 405 U.S. at 652 (“What is the state interest in separating children from fathers without a hearing designed to determine whether the father is unfit in a particular case?”)

# 100 Years of Father's Day



Fathers play a unique and irreplaceable role in their children's lives, and there is no better time than Father's Day to show dads just how valuable they are to the strength of our children, our neighborhoods and our nation.

As we come upon the 100th anniversary of our nation's annual celebration of fathers, it is a useful time to reflect on where our culture is and where it needs to go in its support of fatherhood.

As the first decade of the 21st century comes to a close, we face the best of times and the worst of times for fatherhood in America. It is the worst of times because a record number of children — over 25 million — live without their biological fathers. It is the best of times because the fathers who are involved in their children's lives are more involved than ever.

There is a revitalization taking place in the commitment that good dads are making in their children's lives. They are not only providing financially for their children like their fathers and grandfathers did, but they are emotionally and spiritually involved in their children's day-to-day lives. They are "fathering deeply."

Let's use this opportunity to celebrate those fathers. At the same time, let's not lose sight of the fathers who, for a multitude of reasons, are not as involved in their children's lives as they need to be. As we celebrate 100 years of great dads, let us remember the importance of providing the encouragement, support and resources those other dads need.

Let us hope that 100 years from now, we can say that the worst of times are behind us, and that it is simply the best of times for fatherhood in America.

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## What's New With the QIC-NRF?

Stefanie Vincent, American Humane, stefaniev@americanhumane.org



The QIC-NRF continues to work with its sites, partners and other professionals to improve the lives of children and families through the involvement of non-resident fathers. The subgrantees, located in Seattle, Fort Worth, Indianapolis and Colorado Springs, are conducting research by piloting a model intervention with non-resident fathers who have children involved in the child welfare system. Outcomes are being tracked in order to determine the impact non-resident father involvement has on child safety, permanency and well-being. The sites are creatively refining procedures to identify, locate and contact non-resident fathers to participate in the study. We are excited to announce that all the sites have model intervention sessions up and running!

The project partners, American Humane, American Bar Association Center on Children and the Law and National

Fatherhood Initiative, continue to support the sites and their programmatic, research and legal needs. The QIC-NRF has commissioned a six-part article series that is currently appearing in the American Bar Association's monthly journal, *Child Law Practice (CLP)*, which can be accessed at [www.childlawpractice.org](http://www.childlawpractice.org). After articles appear in CLP, they will be available on the QIC-NRF's website ([www.fatherhoodqic.org](http://www.fatherhoodqic.org)). To complement this series, the QIC-NRF has developed a training curriculum for parents' attorneys representing non-resident fathers. No such module exists on a national level and very few, if any, communities offer specialized training to attorneys representing fathers. Furthermore, the QIC-NRF has developed a training curriculum for caseworkers that will help them understand the value of father involvement as well as the importance in understanding male socialization, perceptions and behaviors. To learn more about the project's products, findings and events, please visit [www.fatherhoodqic.org](http://www.fatherhoodqic.org).

A 21-year-old father in Fort Worth, Texas, unemployed, struggling to provide for his 2-year-old daughter, and interested in learning how to be a better father, was referred to the Fatherhood Coalition of Tarrant County for assistance. An email describing his situation went out to about 15 Fatherhood Coalition members. That day, the young man received several job leads, information on applying for emergency financial assistance, a list of free parenting classes in his area and two offers from Coalition members willing to meet with and mentor him on a regular basis. Less than two weeks later, the young man called to thank all the coalition members who had come to his rescue. He had followed up on every lead, found a job, received financial assistance and was looking forward to starting a parenting class for young fathers.

This is just one example of the effective work of the Fatherhood Coalition, which meets monthly in Fort Worth, Texas. It is a nonprofit association of social service agencies and concerned citizens working together to promote responsible fatherhood. The coalition's work began as a fatherhood

initiative about eight years ago, spearheaded by the local workforce development board (Workforce Solutions) and a local mayor (Charles Scoma, who continues to serve as the coalition's chairman). Today, the coalition has evolved into an effective collaboration of volunteers affecting the lives of thousands of fathers, children and their families in Tarrant County.

## Collaborative Case Management: A Texas Model

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The Noncustodial Parents project includes collaborative partners Workforce Solutions, the Office of the Attorney General, NewDay Services and child support family court judges. Fathers who have fallen behind in their child support payments are mandated to participate in a coordinated case-management program, which provides them with employment assistance and other supportive services to enhance their capacities to provide for their children. Participating noncustodial fathers had a greater than 70 percent increase in child support payments. Recently, the program has expanded to include a legal clinic, at which local attorneys assist participants with legal issues and concerns and specialized employment training opportunities for chronically unemployed noncustodial parents. Judges recently secured additional office space in the court for workforce counselors meeting with program participants. Judge Steve Owens, a strong advocate for the program, recently stated that this partnership "has been a great asset to our courts... and to our efforts to enforce and collect child support. The presence of the workforce counselors ensures accountability when we [the judges] or Community Supervision send [noncustodial] parents to them for assistance."

With a history of successful collaborative efforts like these, the Fatherhood Coalition is proving to be a valuable partner with the Texas Department of Protective Services in the implementation of the QIC-NRF project in Tarrant County. As the first year of the grant gets underway, significant linkages and improved procedures have already been established and are expected to significantly contribute to fathers' positive engagement with their children who have been placed in foster care. Learn more about the Fatherhood Coalition at [www.tcfatherhood.com](http://www.tcfatherhood.com).



# 10

## Tips on How to Work With Your Lawyer

Jessica Kendall, [kendallj@staff.abanet.org](mailto:kendallj@staff.abanet.org) and Lisa Pilnik, [pilnikl@staff.abanet.org](mailto:pilnikl@staff.abanet.org)  
ABA Center on Children and the Law

**1 Be honest:** Your lawyer cannot tell anyone what you share with him unless you say it's OK. So, you should not be afraid to be open and honest with your lawyer about the facts of your case and be sure to share with him any information that may be brought up against you in court. Telling your lawyer everything that happened and relevant information about yourself, good and bad, will help him give you the right advice and make the best case for you in court. This may include information you have about how or whether your child was abused or neglected, whether you have a criminal history or if you live with someone whom the agency may not think is appropriate to be around kids, if you are asking for custody of your child.

**2 Be prepared:** Take notes on the events that brought your child into the system and what happens during your case to share with your lawyer so she knows what is happening and can advocate for you. Before each time you meet with your lawyer, write down questions or issues you want to discuss with her. This will help your lawyer understand what is going on and what you want. Your lawyer is probably very busy with a lot of cases, so writing things down before you meet will give you a chance to discuss everything you want to cover.

**3 Tell your lawyer what you want to happen:** It is your lawyer's job to help you get what you want from the court and agency. This can include whom you want your child to live with, how often you want to visit her while she's in foster care and what help or services you or your child need (e.g., transportation, job training, health care, etc.). Take your time and think about what you want for yourself and your child and share these goals with your lawyer. When you first meet with your lawyer, tell him what your expectations are and ask him what he will be able to do for you. He will ask you questions about your goals and give you advice on how best to achieve them. He will also give you feedback on whether your goals can be met and if not, what else you should try to accomplish.

**4 Ask questions:** Ask your lawyer questions if you don't understand something. The court and child welfare systems can be confusing. It is important that you understand these systems so you can achieve the result you want for you and your child.

**5 Listen:** Your lawyer will analyze the law and the information you provided to give you legal advice on what she believes you should do. Listen carefully to this advice and decide if you want to follow it. Your lawyer provides you advice with your best interests in mind. If you don't agree, tell your lawyer why, so the two of you can talk about your options.

**6 Attend out-of-court meetings:** Ask your lawyer to go with you to important case planning and other meetings with the child welfare agency and other service providers. Your lawyer can advocate for you in these meetings and help make sure that the agency provides you services you need and asks you to complete them within a reasonable time. Try to get your lawyer's advice before you agree to participate in and complete services.

### Things to Bring When You Meet With Your Lawyer

- A list of questions to ask or issues you want to discuss with your lawyer.
- Your notes about what has happened in your case since you last spoke with your lawyer. Your notes may cover things like your progress in finding housing, your contact with your children and your attendance at agency meetings.
- Documents you have received since you last met with your lawyer (e.g., certificate from a parenting class, a letter from a caseworker, etc.).
- Your calendar, to schedule future meetings and confirm upcoming court dates.

## Questions You May Want to Discuss With Your Lawyer

*What rights and responsibilities do I have as the child's father? What are my rights to see my child? What are my rights to know about and participate in court hearings for the abuse/neglect case?*

*How long does my child have to stay in foster care? Can my child stay with me or one of my relatives?*

*Is what I tell you kept secret? What information should I give you?*

*What will you be able to help me with in the abuse/neglect case (placement, visitation, services, etc.)? Will you help me with other legal matters as well, like child support or a criminal case?*

*How much can (or should) I talk to other people involved in the case (caseworker, mom's attorney) when you aren't with me?*

*How will becoming involved in the abuse/neglect case affect my child support obligations? How will getting partial custody or increased visitation affect them?*

## PLEASE SHARE WITH US

*Do you have pictures of your activities or a great father-and-child picture?*

*A story you want to share about your program?*

*Creative artwork from someone involved with your program?*

*Other items to share in the newsletter? Send your items to Stefanie Vincent, QIC-NRF site coordinator at [stefaniev@americanhumane.org](mailto:stefaniev@americanhumane.org)*



**7 Keep in touch:** Make sure you have your lawyer's name, phone number and address so you can contact him when there are new developments in your case or when you have questions or concerns you want to discuss. Try to meet with your lawyer before each court hearing to update him on what is happening in your case, the progress you have made with your case plan and what you want to happen during the court hearing, and to give him important documents you have received from other parties since your last meeting. Make sure that your lawyer has all of your contact information (address, cell phone, etc.), and make sure to let him know if you move or get a new phone number.

**8 Keep your own file and share important documents with your lawyer:** Keep copies of all the papers you get from anyone involved in your case. This includes orders from the court, any papers you get from your lawyer and any documents you get from the agency or other service providers, like a substance abuse program, parenting class or job training program. When you start, make progress in or complete a class or program, make sure you get a written record of this progress and share it with your lawyer.

**9 Follow-up:** If you have called your lawyer, but she has not responded after a few days, don't be afraid to follow up. Leave her another message with your phone number asking for a call back within a certain amount of time or write her a letter. If you are not happy with how your lawyer is representing you, ask to meet with her to discuss your concerns. If you are still not happy with your lawyer's representation of you, ask your lawyer to withdraw as your counsel and request that the court appoint you a new lawyer. Child welfare cases move quickly and a parent may be required to do a lot in a short time. If you are not happy with the representation you are getting in court, it is important that you express your concerns and resolve these problems quickly.

**10 Speak the same language:** If you are assigned a lawyer who speaks a different language than you do, make sure you ask for an interpreter to be present at all meetings between you and your lawyer so that you can communicate and your lawyer can properly advise you.

# Constitutional Rights of Non-Resident Fathers

*Adapted from Vivek Sankaran. "Advocating for the Constitutional Rights of Nonresident Fathers." Child Law Practice (2008): 129-130, 134-137. Available at <http://www.fatherhoodqic.org/nov08.pdf>. [vss@umich.edu](mailto:vss@umich.edu)*

The Supreme Court has recognized a birth parent's right to direct the upbringing of his or her child as a fundamental liberty interest protected by the 14th Amendment of the United States Constitution.<sup>1</sup> Described as "one of the oldest of the fundamental liberty interests,"<sup>2</sup> this right has been applied to protect many parental decisions. For example, it empowers the parent to direct a child's religious upbringing,<sup>3</sup> choose with whom the child should associate,<sup>4</sup> and make medical decisions for the child.<sup>5</sup> These holdings rest on the premise that the "natural bonds of affection lead parents to act in the best interests of their children."<sup>6</sup>

## Parents' Constitutional Rights in Child Welfare Proceedings

In child welfare cases, this right has fueled constitutionally based procedural protections for parents. If the state seeks to remove a child from the home, an emergency hearing must be held promptly and the state must prove why removal is necessary. Before the state assumes extended custody of the child, a finding of unfitness is required. The parent must receive adequate notice and a meaningful opportunity to be heard at the hearing where this finding is made.<sup>7</sup> Before the state terminates

parental rights, it must prove parental unfitness by clear and convincing evidence<sup>8</sup> at a hearing. In most cases, the court will appoint counsel to represent the indigent parent at this hearing.<sup>9</sup>

The Supreme Court has said that in order to determine whether a father has rights protected by the Constitution,

one must look at the level of involvement of the non-resident father in his child's life. "When a father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child, his interest in personal contact with his child acquires substantial protection under the Due Process Clause."<sup>10</sup> For example, in *Lehr v. Robertson*, the Supreme Court upheld a New York law that did not require a father to be notified of his child's impending adoption because the father did not take meaningful steps to establish a parental relationship with his child.<sup>11</sup> In this and other similar cases, the Supreme Court has prevented fathers who had not made efforts to establish a relationship with their children from using the Constitution

to disrupt the child's permanent placement.<sup>12</sup>

But when the father has such a relationship, the Court has prevented states from infringing on the father-child bond without providing adequate legal protections. In *Caban v. Mohammed*, the Court struck down a New York law that denied a father the right to object to an adoption

## Respecting Fathers' Rights

Child welfare professionals have an important role to play in ensuring that fathers' constitutional rights are protected. You can:

- Ensure the non-resident father is identified and located early in the case and receives notice of all child-welfare proceedings.
- Arrange for paternity testing and other services to help the father establish that he is the legal father.
- Ensure your agency begins working with non-resident fathers (and any paternal relatives who express interest) immediately after they request custody or visitation.
- Include the father in his child's case plan, focus on his strengths and offer him appropriate services.
- If no evidence of parental unfitness exists, remember that the father has a constitutional right to see and request custody of his child.
- Ensure agency practices do not hinder the father's right to visit with his child without proof that it may harm or endanger the child's safety or well-being.

to which the biological mother had already consented.<sup>13</sup> The Court held that since the father was as involved in the children's upbringing as was their mother, they both had to be treated equally.<sup>14</sup> Although the Supreme Court has never listed the specific actions a non-resident father must take to establish his constitutionally protected interest in his child, its rulings clarify that the rights of fathers who have established relationships with their children are constitutionally protected from state interference, lacking proof of unfitness. Courts may look at a number of factors to determine if a father has established a relationship with the child, including whether he:

- paid child support or provided other assistance to the mother;
- visited or lived with the child;
- sent the child cards or gifts;
- attended school meetings or took the child to doctor appointments; or
- listed his name on the birth certificate.

## Paternity Establishment

Additionally, the Supreme Court has said that states must give all fathers the opportunity to establish parental relationships by allowing them to claim their interest in the child soon after the child's birth.<sup>15</sup> States have created several ways for fathers to assert parentage. In some states, fathers have to file an affidavit of paternity jointly with the child's mother or institute a paternity suit. Others use paternity registries to let fathers assert their interests. State practices vary on this issue, but professionals who work in this area should know the options available to fathers in their state. Most courts have found that a father's failure to comply with state procedures constitutes a permanent waiver of the father's rights to his child.<sup>16</sup>

## State Law

In many circumstances, state law provides non-resident fathers with specific rights in child welfare cases. Most states provide non-resident fathers rights to:

- notice of proceedings and opportunity to participate in hearings;
- visitation with children; and
- court-appointed counsel if indigent.

States vary, however, on whether the child must be placed with the non-resident father lacking proof of unfitness, and whether the court can order a fit non-resident father to comply with services it deems are in the child's best interests. Caseworkers should consult with their agency's legal department to determine what their state's law says.

## Know Your State's Law

A number of states have strong presumptions that the husband of the child's mother is the legal father if the child was born during the marriage. In these states, even if another man claims to be the child's birth father, he may not be able to assert his rights in court since the law recognizes someone else as the child's legal father. Some states, like Louisiana, have allowed courts to permit dual paternity in limited situations.<sup>17</sup> Make sure you know your state's law on this issue.

<sup>1</sup> Meyer v. Nebraska, 262 U.S. 390 (1923).

<sup>2</sup> Troxel v. Granville, 450 U.S. 57, 65 (2000).

<sup>3</sup> Wisconsin v. Yoder, 406 U.S. 205 (1972).

<sup>4</sup> Troxel, 450 U.S. at 57.

<sup>5</sup> Parham v. J.R., 442 U.S. 584, 603 (1979).

<sup>6</sup> Ibid. 603.

<sup>7</sup> Stanley v. Illinois, 405 U.S. 645 (1972).

<sup>8</sup> Santosky v. Kramer, 455 U.S. 745 (1982).

<sup>9</sup> Lassiter v. Dep't of Social Services, 452 U.S. 18 (1981).

<sup>10</sup> Lehr v. Robertson, 463 U.S. 248, 261 (1983).

<sup>11</sup> Ibid. 248.

<sup>12</sup> Quilloin v. Walcott, 434 U.S. 246, 255 (1977).

<sup>13</sup> Caban v. Mohammed, 441 U.S. 380 (1979).

<sup>14</sup> Ibid. 389.

<sup>15</sup> Lehr, 463 U.S. at 262-263.

<sup>16</sup> See Marco C. v. Sean C., 181 P.3d 1137 (Ct. App. Az. 2008); Hylland v. Doe, 867 P.2d 551 (Or. Ct. App. 1994); Sanchez v. L.D.S. Social Services, 680 P.2d 753 (Utah 1984) (all refusing to permit fathers to assert parental rights where they did not comply with statutory requirements).

<sup>17</sup> Smith v. Cole, 553 So. 2d 847 (La. 1989).