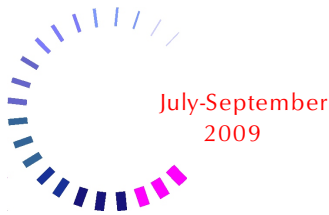


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Liability Issues For Foster Parents And Social Workers

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The issue of the liability of foster parents and social workers for their actions in conjunction with the delivery of foster care services is a highly complex one. To do the subject justice a more elaborate treatment is needed than can be afforded here, nevertheless, it is possible to outline the issue so that a foster parent or worker with a concern over liabilities would be in a better position to make determination as to whether or not it would be necessary to seek additional counsel.

As the issues are complex and interrelated, in addition to the question of whether the worker or foster parent could be the subject of liability action, situations where the foster parent and worker might be the proponent of actions against others are referenced.

This examination is designed as an explanation of the legal issues and not the affording of advise to individuals regarding a personal problems or issues.

Q: As a foster parent when could I be subject to liability of acts committed by the foster child in my care? **A:** The most important fact to note at the outset is that the potential responsibility of a foster parent for acts committed by a foster child is usually not dependant upon the status of the child being in foster care. The only time the foster care status would come into play is in the application of certain state statutes which set a penalty amount for acts committed by one's child. In that case a foster parent would not be held responsible for the actions of the child where the only responsibility would be by virtue of parenthood. However, in most cases, where the issue is responsibility for the negligent acts of the child, the foster parent has no greater or lesser liability than the biological or adoptive parent. The

standard which is applied nationwide is that a parent can only be responsible for the acts of their child which result in harm to others wherein the parent either encouraged the act, furnished the instrument with which the act was committed or failed to take steps to prevent the act where the parent would have been in a position to do so. Barring such circumstance, the parent would not be liable for the acts of their children.

Q: How do those exception to the non-responsibility act apply? **A:** A primary act which would make a parent liable would be the furnishing of a dangerous instrument to a child not capable of handling it. The obvious situations are a gun, or a moving vehicle, whether an automobile or a snowmobile, or something of that nature. Likewise, acts of omission, as opposed to commission, could lead to liability. It would not simply be handing the child the gun or the keys to the car, but merely leaving a loaded gun in an easily accessible place knowing that the child might well do something like that, could lead to liability. Other situations wherein liability might occur are situations wherein the child harms another child and the foster parent is in a position to stop it and does not do so. However, if the child should unexpectedly pick up a stick and hit another child, it would not be a liability on the part of the parent. Only if the parent sees the act occurring would liability occur.

Q: What circumstances could the foster parent be sued for acts done to the child? **A:** If the foster parent physically or sexually abuses the child in their care, then the biological parent would have a cause of action against the foster parent, through the action of a third party or after the child reaches the age of majority. Those are

the easy cases, the harder case is where the foster parent is negligent and injuries occur to the child within their care. Here, specialized questions of immunities provided by various states of inter-family torts come into play. This is a highly complex area of law and one on which the foster parents should not rely upon to eliminate responsibility. Indeed, if anything, the trend in the law is to remove the limits rather than expand them. In a widely publicized from Michigan, the foster parents, along with workers, were successfully sued by the biological parents of the child for circumstances wherein the foster parent left a relatively young child unprotected on the porch and the child was attacked and permanently disabled by a vicious neighborhood dog. Indeed, injuries to foster children around the home present unusual risks for the foster parents; even though the child is removed from the biological parents' care the biological parents still have legal interest in the well being of the child. The biological parents may seize the opportunity to get back at the agency and the foster parents for the removal of the child. The opportunity for the natural parents to bring suit on behalf of their children is an opportunity that is seldom ignored and this is the one area where the foster parents have the greatest exposure and potential for difficulty.

Q: What protection do foster parents have for damage or injuries caused by children in their care? **A:** If there is one area which causes special difficulty it is this one; foster parents are by and large protected from acts done to or by the foster children. The acts done to them by children in their care are often serious, and are often unprotected. While it is difficult to generalize, it is fair to say that the children who come into foster care, by the very fact that they are in foster care, tend to have a greater degree of emotional difficulty. Likewise, even if these kids are no different from your own, you are dealing with the unknown and you are dealing with circumstances which are more likely to trigger unfortunate behavior than otherwise would be expected. Children in care are often more disposed to damage property or personage than they would be in their biological home. Types of actions include: arson, vandalism- such as trashing rooms, and, physical attacks on people including



sexual attacks upon other young members of the foster family.

The difficulty is that while a foster child may be considered not a member of the family for most legal purposes, for purposes of homeowners insurance, the foster child would be considered a part of the family, and every home owners insurance policy excludes intentional acts by members of the family. Thus, if the foster child commits arson or vandalism amounting to substantial losses, unless it was through sheer negligence such as leaving a stove on or something of that kind, the home owners insurance would not cover the loss.

Q: Does a foster parent have any protection against something like this happening? **A:** The protections would be limited to situations where the act committed by the child, whether its arson, sexual or physical attack, or vandalism, was a kind of an act for which the child had a known predisposition, and, where the foster parent was not made aware or that the agency minimized at the time of placement. If the child has had a history of committing acts of arson and the parent was not told and the child does burn down the home, then the agency along with the individual worker could be responsible.

The same would be true of a predisposition to sexual and physical attack. Even in situations where a child has had tendency to accuse men in the home of acts of sexual abuse and unfounded allegations were again made, the legal fees and other damages resulting from the need to defend the charge could also be the subject of a lawsuit by the foster parents against the agency. This is not as uncommon as it seems and the legal doctrine is firmly in place. In an Ohio case, a large damage award was made on behalf of adoptive parents who were misled as to the birth parents of a child placed with them shortly after birth. They were led to believe that their child was the child of a teenage mother who wanted to start a new life in a different state. Actually, the infant was the child of a couple of mental patients and over the years the child had severe mental and physical problems for which the adoptive parents had to assume large medical bills. They were reimbursed for their medical costs, approaching \$100,000, plus damages for wrongful misrepresentation.