Parent's Guide to the "System"

by Cheryl Barnes

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Dedicated to Taler Corbin Barnes

With the hope that no child will ever again suffer government abuse as Taler did due to his parent's lack of knowledge and understanding of the child welfare system.

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FORMS AND LETTERS

Demand a Copy of the Search Warrant

You do not have to speak with a Government Agent or allow them to enter your home without a search warrant!

When a government agent (social worker, police officer, etc) comes to your door, they are seeking your consent to allow them into your home. Remain calm. Say something like:

> ***I understand your concerns and I'm happy to cooperate. May I see your search warrant please?***

The agent may try to tell you that a search warrant isn't required because

you can give voluntary consent or he may try to make you believe you are *required* to allow him into your home. The agent might say, "I'm required by law to come into your home to investigate." It is true that the agent is required to make an investigation which may include entering your home. However, this doesn't give the agent authority to ignore the law. If the agent needs to enter your home as part of his investigation, he needs to obtain a search warrant.

Remember that the ***agent*** is the one asking you to circumvent the law. You are acting within the law and he is asking you to ignore the law, skip procedure and just do things his way.

Don't be intimidated. Keep a proper perspective of the situation; you are willing to cooperate *within the law*. The law dictates that a search warrant is required before entering a private home. Your position should be:

> ***I do want to cooperate.***
>
> ***I do not want to ignore proper procedure.***
>
> ***Why would you want to circumvent clearly established laws and procedures?***

Do not allow the agent to peer inside of your home or view your children. Do not answer *any* questions without seeing the search warrant and verifying it's authenticity. Even minor questions such as your date of birth, name, number of children, etc. should not be answered without seeing a search warrant.

GAINING ENTRY BY THREAT OR INTIMIDATION

It is unlawful for the agent to coerce entry into your home by threatening or intimidating you. Federal courts are increasingly finding for parents who sue state agents for coerced entry. The 9th Circuit recently ruled:

> **Any government official can be held to know that their office does not give them an unrestricted right to enter peoples' homes at will.**
>
> [It is] settled constitutional law that ... police could not enter a dwelling without a warrant even under statutory authority where probable cause ex-

> isted. The principle that government officials cannot coerce entry into people's houses without a search warrant ... is so well established that any reasonable officer would know it.
>
> …appellants' claim, that "a search warrant is not required for home investigatory visits by social workers," is simply not the law.
>
> [N]owhere is the protective force of the fourth amendment more powerful than it is when the sanctity of the home is involved. … **Therefore, we have been adamant in our demand that absent exigent circumstances a warrant will be required before a person's home is invaded by the authorities.**"
>
> — Calabretta v Floyd 189 F.3d 808 (9th Cir. 1999)

In the above case, a social worker and police officer coerced entry into the Calabretta home by threatening to break the door down. Even though the mother ultimately opened the door and allowed them to enter, she did so by coercion which is unlawful. Thus, the agents were held personally liable.

We recommend that you print the highlights of this case and other "warrantless entry" cases to hand to government agents who attempt to coerce entry into your home. You may find these cases on our website at www.cpswatch.com/caselaw or you can call our office to have them mailed to you.

EVIDENCE REQUIRED TO OBTAIN A SEARCH WARRANT

In order to get a search warrant, the agent needs some sort of evidence. It can't be an anonymous phone call or allegations without any supporting evidence.

Even when the agent has enough evidence to obtain a search warrant, he is restricted to looking for specific things listed on the warrant. As an example, the warrant may give the agent authority to interview one of your children, this wouldn't allow him to interview siblings or look through your home. It also wouldn't require you to answer any questions.

Agents typically do not seek warrants because; a) they don't have enough evidence to obtain one and b) they don't wish to be restricted in their "investigations".

This constitutional protection was put into place to protect families against unwarranted governmental intrusion into their private lives. Don't waive

> **NOTICE TO GOVERNMENT AGENTS:**
> You are hereby informed that I have a right to have my parents present prior to answering any questions. I am now exercising that right and request that you contact my parents immediately.

The back of the card should have the child's name, parents' names and contact information. Several numbers should be listed; home, work, pager and an extra emergency number. Home and work addresses should be given as well. The more contact information, the better. This will eliminate the possibility of the agent claiming he didn't know how to reach you.

By utilizing a written card, the child need only hand it to the agent rather than memorizing what to say. Since it's in writing, the agent can't say the child didn't properly exert his right to have parents present prior to answering questions.

You may be asking; "How do I explain to my child what a government agent is?" Most of us teach our children not to talk to strangers. Government agents are strangers! It's okay to tell your child not to talk to *any adult* unless you've given permission.

The reason we teach our children not to talk to strangers is because we don't know what their motives are; they may be seeking to harm them. This couldn't be more true with government agents. We don't know their motives and we can't presume they are pure because the child welfare system has irreparably harmed many children in the past.

Because children sometimes can't tell the difference between government agents and 'regular' people, it is a good idea to teach children about the *types of questions* they shouldn't answer rather than the *types of people* they shouldn't talk to.

Basically, no person should ask about things that happen at home; what

they eat, who they associate with, who visits, what type of discipline is used, etc. If an adult has a legitimate need to knows these things, he/she should ask the parent, not the child.

INVASIVE SURVEYS

Public and private schools are increasingly requiring children to participate in group surveys that ask intrusive questions about private home life. These surveys are often a fishing expedition to find indicators of abuse.

The so-called indicators aren't what you'd expect them to be. Low income, no telephone, residence outside the city limits, more than three children, use of corporal punishment or grounding, both parents working, single parents, religious practices and other common things are seen as indicators of abuse and could generate a report to a child welfare agency.

By law, children may be excluded from these invasive surveys if the parents have a *Hatch Letter* on file with the school. A sample letter under the Hatch Amendment is on the following page.

The Protection of Pupil Rights Amendment (The Hatch Amendment) to the General Education Provisions Act, which became effective November 12, 1984 allows parents to exclude their children from basically anything that isn't reading, writing or arithmetic.

The Hatch Amendment provides a procedure for filing complaints with the U.S. Department of Education and then withholding of federal funds for those in violation of the law.

From: (Parent's name), (address).
To: (principal name); Principal of (school name) School, (school address).
Dear _____,
I am the parent of _____, who attends _____ school. Under U.S. legislation and federal court decisions, parents have the primary responsibility for their children's education, and pupils have certain rights which the school may not deny.
Parents have the right to be assured their children's beliefs and moral values are not undermined by the schools. Pupils have the right to have and to hold their values and moral standards without direct or indirect manipulations by the schools through the curricula, textbooks, audio-visual materials or supplementary assignments.
Under the Hatch Amendment, I hereby request that my child NOT be involved in any school activities or materials listed unless I have first reviewed all the relevant materials and have given my written consent for their use:

- Psychological and psychiatric treatment that is designed to affect the behavioral, emotional, or attitudinal characteristics of an individual or designed to elicit information about attitudes, habits, traits, opinions, beliefs or feelings of an individual or group;
- Values clarifications, use of moral dilemmas, discussion of religious or moral standards, role-playing or open-ended discussions of situations involving moral issues, and survival games including life/death decision exercises;
- Contrived incidents for self-revelation; sensitivity training, group encounter sessions, talk-ins, magic-circle techniques, self-evaluation and auto-criticism; strategies designed for self-disclosure including the keeping of a diary or a journal or a log book;
- Sociograms, sociodrama; psychodrama; blindfold walks; isolation techniques;
- Death education, including abortion, euthanasia, suicide, use of violence, and discussions of death and dying;
- Curricula pertaining to drugs and alcohol; Nuclear war, nuclear policy and nuclear classroom games; Globalism, one-world government or anti-nationalistic curricula; Discussion and testing on interpersonal relationships; discussions of attitudes toward parents and parenting;
- Educating in human sexuality, including pre-marital sex, contraception, abortion, homosexuality, group sex and marriages, prostitution, incest, bestiality, masturbation, divorce, population control, and roles of males and females; sex behavior and attitudes of student and family;
- Pornography and any materials containing profanity and/or sexual explicitness;
- Guided-fantasy techniques; hypnotic techniques; imagery and suggestology;
- Organic evolution, including Darwin's theory; Discussions of witchcraft, occultism, the supernatural, and mysticism; Political and/or religious affiliations of students or family; income of family; Non-academic personality tests; questionnaires of personal and family life attitudes.

The purpose of this letter is to preserve my child's rights under the Protection of Pupil Rights Amendment (The Hatch Amendment) to the General Education Provisions Act, and under its regulations as published in the Federal Register of September 6, 1984, which became effective November 12, 1984.
These regulations provide a procedure for filing complaints first at the local level, and then with the U.S. Department of Education. If a voluntary remedy fails, federal funds can be withdrawn from those in violation of the law. I respectfully ask you to send me a substantive response to this letter attaching a copy of your policy statement on procedures for parental permission requirements, to notify all my child's teachers, and to keep a copy of this letter in my child's permanent file.
Thank you for your cooperation.
Signed this _____ Day of _____, 200__ .

Order a Copy of the Agency's Policy Manual

Under federal law (Title IV-B & IV-E of the Social Security Act), state child protection agencies are required to have a policies and procedures manual in place and to make it available to any citizen upon request.

If the agency refuses to honor your verbal request, send a formal written request under the Freedom of Information Act (FOIA). See a sample on the next page.

Under the FOIA, each agency is required to determine within 20 days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a request whether to comply with the request. The FOIA permits an agency to extend the time limits up to 10 days in unusual circumstances.

Sometimes the agency will ask you to come to their office and look at the manual instead of providing you with a copy. Continue to insist on a copy. You need your own copy so that you can read it at your leisure and have it on hand as a reference.

If your written FOIA request is denied or not answered within the time frame allowed, send an appeal letter. A sample appeal letter is on page 13. An agency is required to make a decision on an appeal within 20 days (excluding Saturdays, Sundays, and legal holidays). It is possible for an agency to extend the time limits by an additional 10 days.

If the appeal is denied or not answered within the time frame allowed, you may need to ask the court to compel the agency to provide you with a copy

Sample Freedom of Information Act Request Letter

NOTE: Envelope must be marked "FREEDOM OF INFORMATION ACT REQUEST"

Agency Head
Name and Address of Agency

Re: Freedom of Information Act Request

Dear [Agency Head] :

This is a request under the Freedom of Information Act, 5 USCA §552.

I request that a copy of the your agencies **policies and procedures manual regarding child abuse investigations and foster care** be provided to me.

[Optional] I am willing to pay fees for this request up to a maximum of $**XX**. If you estimate that the fees will exceed this limit, please inform me first.

[Optional] I request that the information I seek be provided in electronic format, and I would like to receive it on a personal computer disk *[or a CD-ROM]*.

Thank you for your consideration of this request.

Sincerely,
[Signature]
Name and Address
Telephone number *[Optional]*

of the manual. If you have an open case involving your children, this can be done by filing a motion to compel within that case. A sample motion to compel the agency to provide you with a copy of the manual is on page 14.

If you don't have an open case, you can file an FOIA appeal lawsuit in the U.S. District Court. This would be more costly and complicated. If you wish to pursue this route, you can get forms and a rulebook from the U.S.

Sample Freedom of Information Act Appeal Letter

NOTE: Envelope must be marked "FREEDOM OF INFORMATION ACT APPEAL"

Agency Head
Name and Address of Agency

Re: Freedom of Information Act Appeal

Dear :

This is an appeal under the Freedom of Information Act, 5 USCA §552.

On (date), I requested documents under the Freedom of Information Act. My request was assigned the following identification number: **XXXX**. On (date), I received a response to my request in a letter signed by (name of official). I appeal the denial of my request.

[Optional] I enclose a copy of that response letter.

[Optional] The documents that were withheld must be disclosed under the FOIA because federal law (Title IV-B and IV-E of the Social Security Act) requires that any child protection agency receiving federal funds maintain a policy manual and make that manual available to any citizen upon request.

[Optional] I also include a telephone number at which I can be contacted during the hours of **XXXX**, if necessary, to discuss any aspect of my appeal.

Thank you for your consideration of this appeal.

Sincerely,
[Signature]
Name and Address
Telephone number *[Optional]*

District Court in which you'll be filing.

Additional information and forms for making requests under the Freedom of Information Act can be found on our website at www.cpswatch.com/forms/foia.

Once you have a copy of the manual, ***read it***! You should become familiar

Sample Motion to Compel

[Court Heading and Caption. Should include the court name, plaintiffs and defendants and case number.]

MOTION TO COMPEL PRODUCTION

[Name], [defendant] in the above-entitled proceeding, moves the court, pursuant to [statute or rule of court], to enter an order compelling [agency] to provide a copy of the agency's policies and procedures manual previously requested by [defendant] on [date].

Said documents are necessary to assist defendants in working with agency.

Dated: _____.

[Signature]

with the agency's policies so that you know what the agency is supposed to do and what they aren't allowed to do.
Bring the manual with you to meetings with social workers and case planning conferences.

When they do violate policy, point it out to them in a calm, non-accusatory manner. Follow-up with a letter outlining the policies that were violated and what you'd like to see done to correct them.

When you first get the manual and discover that past violations have occurred, send the agency a letter pointing out the violations and asking them to make adjustments as soon as possible. Assume the violations were committed inadvertently even if you believe otherwise. When you behave in a friendly and professional manner, the courts will be more likely to agree with your position.

Read All Applicable State Laws and Cases

Find out the exact legal definition of child abuse and neglect in your state. Once you've found the statute, research caselaw to find out how the courts have applied the statutory definition in other cases.

Courts base their rulings on what higher courts have ruled in the past. A hierarchy of courts is given below:

U.S. Supreme Court—applies to the entire United States
U.S. Court of Appeals—applies to that federal circuit
U.S. District Court—applies to that federal district
State Supreme Court—applies to the entire state
State Court of Appeals—generally applies to the entire state
State Circuit or District Court—applies to that portion of the state

If you find a case from the Second District Court and you are in the Third District, the Judge in your case isn't bound by that ruling. However, these rulings may have a persuasive effect, meaning that you could persuade your Judge to rule your way because the Judge in a neighboring district did.

You can find laws and cases at a law library or on the internet. Findlaw (www.findlaw.com) is a good place to search for state laws.

CPS Watch provides free legal research to parents and pro bono attorneys. To make a research request online, go to www.cpswatch.com/legal. You may also make requests by mail.

Legal research requests return cases and code only, not advice on how to use the information. For parents needing advice, we offer an email service by subscription. You may subscribe to the CPS Watch Group by going to groups..yahoo.com/group/cpswatch. There are currently seven participating attorneys in the email group available to answer parent questions.

Once you have the laws and caselaw, make sure that the case against you remains within that statutory definition.

It is very common for social workers to promulgate a mud-slinging campaign against you by filling the petition with irrelevant information. You should continually require them to show the court how their allegations are connected to abuse.

As an example, the state might put in the petition that the parent's watch x-rated movies. While some people might find this distasteful, it has nothing to do with abuse or neglect. Thus, your task would be to require them to connect the alleged movie-watching to abuse or remove it from the complaint. You'd ask things like, "Are you alleging that the children were neglected or abused as a result of the movie watching?" and "Are you alleging that the children were unattended while the parents watched x-rated movies?" — "How exactly are you connecting the watching of x-rated movies to the alleged abuse or neglect?"

Another common accusation is that of 'spanking'. The state will say that you regularly spank your child or that you use an instrument to administer corporal punishment, but won't allege any injuries from the spankings.

Your focus would be on whether or not "regular spanking" or "spanking with an instrument" amounts to abuse. Again, you'd ask them to show you what law states spankings without injury are abuse? You needn't bother admitting or denying the spankings at this point because it hasn't been established that they would be abuse.

The temptation is to jump in and defend against the mud-slinging; to say that you don't watch x-rated movies or that you use time-outs rather than spanking. However, this will lead you down a path of ridiculous, unrelated accusations and equally ridiculous defenses.

In the end it will burn up all your energy and bring out all your faults—

faults that have nothing to do with child abuse or neglect.

It will also give the state things to use against you. As an example, you might admit that you do spank your child with an instrument but only as a last resort and have never left a bruise. The state will later say something like, "The parents admit to hitting their child with an object but are in denial about it's negative effects."

Social workers are notorious for twisting words and leaving out pertinent facts. The fewer words you give them to twist, the better off you'll be. Here's an example:

> *Worker: Does your husband have an anger management problem?*
> *Mother: No.*
> *Worker: Well does he get angry?*
> *Mother: Of course he gets angry, everyone gets angry.*

The worker states in her report:

> *Mother reports her husband "gets angry" and views this as normal behavior.*

Is this what the mother said? Yes! Is it what the mother meant? No! Will the Judge get the wrong idea from this report? Yes! The worker is implying that the mother knows her husband is a threat but refuses to do anything about it. She's setting the mother up to be accused of 'failure to protect'.

The mother shouldn't have been discussing her husband's "anger" with the social worker before the worker had drawn a clear line between the alleged anger and the alleged abuse or neglect. And that discussion should've taken place inside a courtroom on the record rather than in a social worker's office.

The mother's response to this allegation should be, "While not confirming the accusation, the defendant asserts that the presence of 'anger' doesn't meet the statutory definition of child abuse or neglect."

You should first ask yourself, "Does this meet the statutory definition of abuse?". If it doesn't, you needn't bother defending it. Rather, shift the focus back to the state by requiring them to make that connection.

The mother could take time to explain the whole conversation and the intent of her statements, but this would take the focus off the true legal argument and create a situation where the worker's credibility might be weighed against her own (their word against yours).

The point you want the Judge to see is that the state has failed to meet it's burden of proof. There is no issue of credibility because even if the accusations were true, they don't amount to abuse. If there's no allegation of abuse or neglect, the state has no grounds to intervene and the court has no jurisdiction.

Order Your Records from the Agency

Under the Privacy Act of 1974, any agency that maintains a system of records must make a copy of those records available to the individual they pertain to.

This includes records on your children, even if they are in foster care, unless parental rights have been terminated. Some caselaw to that effect:

> Statements made or information given by a custodial parent of an infant to a certified social worker, bearing adversely upon the health, safety and welfare of the infant, are not privileged within the contemplation of a state statute protecting the confidentiality of communications between a certified social worker and his client, and they are subject to compulsory disclosure.
> — Perry v Fiumano (4th Dept) 61 App Div 2d 512, 403 NYS2d 382

> A father who is accused of committing various sexual offenses against his minor daughter, and who seeks to compel a child welfare agency to release its records pertaining to the daughter so that he can examine them for supposed medical records, names of witnesses, and other exculpatory evidence, is entitled under the due process clause of the Fourteenth Amendment to know whether those records contain information that might have changed the outcome of his trial if they had been disclosed.
> — Pennsylvania v Ritchie, 480 US 39, 94 L Ed 2d 40, 107 S Ct 989, 22 Fed Rules Evid Serv 1

> A statute prohibiting the disclosure of information acquired by social workers from persons consulting them in their professional capacity is not applicable to information obtained by social workers investigating child abuse.
> — In Interest of Pitts (3d Dist) 44 Ill App 3d 46, 2 Ill Dec 652, 357 NE2d 872

We suggest that you try to determine your state's law that allows access to records and make the request under that law. Government agents seem to respond to state laws more readily than to federal law. If you can't find the

state's law or if your state law doesn't permit access to records, send a combined request under the Freedom of Information Act and Privacy Act:

[Agency head]
[Address of agency]

Re: Freedom of Information Act and Privacy Act Request for Access

Dear _____:

This is a request under the Freedom of Information Act, 5 USCA §552, and the Privacy Act of 1974, 5 USCA §552a.

I request a copy of [identify specifically named or numbered records, or any records] about or concerning me maintained by your agency.

[If appropriate, add: I am willing to pay fees for this request up to a maximum of $_____. If you estimate that the fees will exceed this amount please contact me prior to processing this request at the daytime telephone number listed below.

[If applicable, add: Enclosed is a [(notarized signature or other documentary identification)] that will verify my identity.]

Thank your for your prompt consideration of this matter.

[Signature, address, and daytime telephone number]

If the request is denied or ignored, send an appeal letter. Since the Privacy Act is part of the Freedom of Information Act, the appeal letters are very similar. You can use the letter on page 13 by simply changing the words "Freedom of Information Act Appeal" to "Privacy Act Appeal".

If the request is denied or ignored, you can file a Motion to Compel Disclosure with the court (see page 14).

If this request is denied or ignored, file a Writ of Mandamus with the state court of appeals to compel disclosure of the records. Mandamus has been used successfully to compel disclosure of records even in states where the parent's aren't allowed access to records under state law.

Since the Privacy Act is a federal law, all states must make records available regardless of state law. Just like with FOIA requests, you have the

option of filing a lawsuit in federal court for denial of access to records.

The Privacy Act can also be used to force the agency to make amendments or correct errors in your records if they are inaccurate. Whether you receive your records through a state law request, Privacy Act request or court order, you should send a letter outlining any errors or omissions and request the agency to amend those errors. Below is a sample letter using the Privacy Act:

[Agency head]
[Address of Agency]

Re: Privacy Act Request to Amend Records

Dear _____:

Pursuant to 5 USCA §552a, and relevant regulations, I request that records pertaining to me be amended as set forth below.

I believe that the following is not correct:

[Describe the incorrect information as specifically as possible].

The information is not (accurate) (relevant) (timely) (complete) because (provide details you would want an agency official to consider when reviewing your request.)

[Optional] Enclosed are copies of documents that show that the information is incorrect.

[Optional] I also include a telephone number at which I can be contacted during the hours of **XXXX**, if necessary, to discuss any aspect of my request.

I respectfully request that the information be amended as set forth above.

Thank you for your consideration of this request.

[Signature, address, and daytime telephone number]

Additional information and forms regarding the Privacy Act may be found on our website at www.cpswatch.com/forms/pa.htm and the remedy of Mandamus at www.cpswatch.com/forms/mandamus.

Document all Interactions

Keep a journal detailing all interactions with state agents.

In addition to the journal, give the agent an opportunity to confirm or deny your version of events by sending a documentation letter after each phone call or verbal conversation. A documentation letter should be in the following form:

Dear _____:

This letter is to confirm our verbal conversation (or meeting, phone call, etc) which took place on [date]. Because this is such an important issue and we are supposed to be working together in matters pertaining to my family, it's imperative that we fully understand and document all interactions so as to eliminate any miscommunication between us.

At the [meeting, phone call, etc], [name all who were present] were present.

[Detail all conversation and actions. Include any promises made or dates agreed upon. Include what time the agent arrived and left, details about attitude, etc.]

If this is not your understanding of the conversation and events that took place, please respond in writing, outlining in detail any discrepancies you may find within 10 days. Failure to respond will indicate your agreement with my version of events.

<signature>

A documentation letter similar to the one above should also be used to document visits with your children if they are in state care. A visitation letter would be in the following form:

Dear _____:

This letter is to document my [supervised or unsupervised] visitation with my child[ren] on [date]. As we are all working together toward the return of my child[ren], it is imperative that we have a mutual understanding of activities that have taken place during visitation.

[List all who were present.]

I arrived at [time - if early, say so]. [Tell when everyone else arrived. If your child was late, say so, etc.]

[Describe the condition your child arrived in; dressed appropriately, clean, dirty, any marks, bruises, etc. List everything.]

[Detail all interactions between you and your child, if you read a book, changed a diaper, fed him, etc. Everything should be *clearly* detailed.]

[Describe any interactions between the child and any other person present; foster caregiver, social worker, etc.]

[Describe your child's behavior upon termination of the visit.]

If your version of events varies from mine in any way, please outline in detail any discrepancies you may find in writing within 10 days. Failure to respond will indicate your agreement with my version of events.

<signature>

This letter should be sent to all persons present at the visit as well as the worker managing your case. A copy will be filed with your court report (outlined in another chapter).

If you get responses to either the documentation letters or visitation letters and their version of events doesn't match yours, continue writing back and forth hashing out the discrepancies. All letters should be sent by certified mail.

Sometimes government agents will not respond to your letters. That's okay. They will have a hard time going into court later with a different set of events when they failed to respond to your letters. Your letters will be-

come part of the court records and can be used as evidence.

We recommend that you tape all interactions in both audio and video. If a state agent refuses to be taped, don't speak to them without your attorney present. Agents with pure motives will want the record preserved just as carefully as you do. Unless they plan to act illegally or unethically, recorded meetings are more to their advantage than yours.

In most states you can audio tape the agent with the consent of only one participant (you). You'll need to check your state's law on eavesdropping prior to audio taping without consent. Failure to do so could result in a criminal arrest. Tapes made without the consent of all parties may not be admissible in court as evidence, but they will serve to aid you in writing follow-up documentation letters and in eliciting the support of others (attorneys, legislators, liaisons, etc.).

Some behavior needs to be seen as well as heard. If you can afford to, you should equip your home and person with hidden video cameras.

Hidden cameras are very small and unnoticeable. Some can be hidden in your home, while others can be worn on your person, such as a jean jacket, backpack, baseball cap or tie. A catalog of surveillance equipment is available by calling or writing our office.

Don’t Sign a Safety Plan or Stipulation

The state agent may ask you to sign a "safety plan" or voluntarily agree to home visitation as a means of either keeping your children now or having them placed back home on a trial basis. The purpose of these programs is to gather enough evidence (real or imagined) to build a case to take your children. Remember, states only get federal money when they put your children in foster care, not when they leave them with you under a home visitation program.

These plans often require parents to agree not to use corporal punishment or other legal methods of child rearing. For a family that has been using corporal punishment to suddenly stop creates frustration and confusion and increases the likelihood that the parent will react out of anger. It also sends a message to the child that he doesn’t need to obey his parents to avoid a spanking because a state agent will come out and tell them they can’t spank him. If the original report had to do with problems with the child’s behavior and the parent’s use of discipline; this safety plan would create chaos.

Another tactic is to impose restrictions that are outside the parent’s control, such as requiring that a child do well medically even though the child has a diagnosed condition that would prevent this. The child’s illness leaves a high probability that he will be sick, thus the parents have no control over compliance with the safety plan and are simply counting the days until their child is removed.

In one such case, the child was diagnosed with a brittle bone disease and had even fractured while in foster care. The parents were asked to sign a

safety plan which required the child not to have another fracture. The chances that he would re-fracture were very high and totally outside the parents' control.

In another case, a child had a weight disorder and had gained an additional five pounds during a short foster care stay. The parents were asked to sign a safety plan which required the child to lose weight. The parents had been taking their child to doctors for years to no avail. Even foster care couldn't make the child lose weight. How could the parents be expected to control their child's weight when doctors and the state had failed?

In yet another case, the parents of a child with a seizure disorder were asked to sign a safety plan which required their child not to have seizures.

Sometimes the plan is simply to have the child's grades improve, yet this is still outside the parents' control. The parents can do everything in their power to facilitate good grades, but it's ultimately up to the child to perform.

All of these plans will fail and the child will end up in state custody. The fact that the parents have failed one plan gives the state grounds not to offer another plan. Thus, they will move for permanency (termination and adoption).

Safety plans are intentionally vague and therefore impossible to follow. The plan might read, "parent's will maintain a home appropriate for children". This is subjective; you may think you home is excellent for children, but the agent might think that because you don't have safety plugs in your electrical outlets, the home isn't appropriate.

For desperate parents, the plan might seem like an easy way to get your child home or keep him home. In the long run, however, signing a safety plan could cost you your child ***permanently***.

Bottom line - If you're not guilty of abuse or neglect, don't tolerate an unwarranted government assault and don't "settle" by agreeing to services you don't need. If the agency believes you are guilty of abuse or neglect, make them prove it in court.

Request Placement with a Relative

The states get more money for placing children in foster care than they do for placing them with relatives. Thus, they are reluctant to place with relatives and when they do, they often require the relative to become a licensed foster care provider so the agency can get federal money.

Relative placement shouldn't be confused with relative foster care. A relative foster home is just like any other foster home, except the caregiver happens to be related. They are bound by all the same restrictions as other foster homes and the agency can remove the children at any time without cause just as they could from a foster home that wasn't a relative. Foster caregivers do not have a right to have a child placed in their home and they are not interested parties to the court case.

With relative *placement*, however, the agency doesn't license the relatives as foster caregivers. The relatives aren't bound by the restrictions of a foster home. A child placed under these circumstances couldn't be removed from the home without cause.

Federal law requires that relatives be given preference for placement. The law doesn't allow the agency to impose restrictions on relative placements, such as foster care training or a home study, although most states require a background screen to be certain the relative doesn't have a prior record of child abuse. Placement with relatives should be immediate without any delays.

Grandparents have the option of gaining interested party status by filing a

Motion to Intervene with the court. With a Motion to Intervene, the grandparent can force placement when the agency refuses.

A Motion to Intervene gives the grandparent legal standing as a party to the case. This allows them to make motions to the court and to have the court hear their side before any decision is made. They can write court reports at each hearing to give the court their version of what has transpired as well as make recommendations about what should be done in the future.

** Note to Parents - Federal law does **not** require or even allow placement with a relative that is working against reunification. Further, a relative who continually makes false reports shouldn't be rewarded with placement of the child. If your child has been placed with a relative that is working against reunification, file a Motion to Change Placement with the court and cite the reason as the current placement is a hindrance to reunification.*

Assert Your Parental Rights

As your child's parent, you still retain all your parental rights. Removing your child from your care is based on the child's need for protection. It does not modify or revoke your parental rights.

You have all the same rights you always did, expect the right to have your child live in your home. This includes the right to medical records, educational records, the right to consent to medical care and to choose the doctor your child sees, the right to decide what church your child should attend, what type of environment he should reside in, etc.

Generally government agents sometimes pretend like you have no rights or fail to consult you before making decisions concerning your child's care. If you don't assert your parental rights, the government agent most likely will not honor them.

When your child is placed in state care, you should send a letter preserving your parental rights and outlining the type of care you want your child to receive. A sample letter is on page 33.

MEDICAL RECORDS BELONG TO PARENTS

Sometimes medical providers wrongly believe that if your children are in state care, you don't have any parental rights. Because of this false assumption, they will withhold medical records or refuse to speak to you about your child's care. If the medical provider has made a report against

you or is alleging abuse, he may be very reluctant to turn over records pertaining to your child, knowing those records might also incriminate him.

However, the records belong to you, as your child's legal parent. The medical provider is simply a "custodian" of those records. This is why you need to sign a release form before the records can be sent to another doctor or given to a state agent.

In rare circumstances, medical records may be withheld as part of a criminal investigation. In this case, a court order is required to withhold the records.

If you don't have any luck in getting the records yourself, you can pay an attorney a small fee to write a letter for you. The attorney wouldn't be representing you, just drafting a letter. For some reason, doctors tend to respond better to letters from attorneys than to letters parents.

We suggest that you send a letter to your child's medical providers to preserve and clarify your parental rights. An example letter is on page 34.

PARENTAL CONSENT REQUIRED FOR MEDICAL CARE

The medical provider needs your consent prior to treating your child. This is true even if your child is in state care.

The 9th Circuit Federal Court recently decided a case which greatly emphasizes the parental right to govern medical care, even when children are in state custody:

> [43] The right to family association includes the right of parents to make important medical decisions for their children, and of children to have those decisions made by their parents rather than the state.
> … it is in the interest of both parents and children that parents have ultimate authority to make medical decisions for their children...
> — Wallis v Spencer, 202 F.3d 1126 (9th Cir. 2000)

In the above case, the Wallis children were picked up and taken to a clinic for an invasive vaginal and anal sexual abuse examination. The court held such exams even for investigative purposes are unlawful when administered without parental consent or a court order. Parental consent is always

[Date]

[Agency Name and Address]

Re: Preservation of Parental Rights

Dear [Government Agent]:

This letter is to inform you that I am the traditional and legal parent of [child's full name], born on [date of birth]. My parental rights have not been terminated.

As my child's legal parent, I wish to continue making all decisions pertaining to the rearing and upbringing of my child. I have not, nor do I intend to forfeit any legal right afforded to me as a parent.

I wish to be consulted and given an opportunity to consent to all medical care my child should need. My child's physician is [name, address, phone]. All my child's medical needs should be handled through [him/her].

I desire the following care for my child:

[List all requests. Items might include needed medication, religious upbringing, non-smoking or non-violent environment, etc. This should be very detailed but reasonable. If you child has an IEP or other educational needs, be sure to list those and request your direct participation in any modification of that plan.]

If at any point you are unable to provide the desired care, please consult me immediately.

Sincerely,
<signature>

required.

> … the "Constitution assures parents that, in the absence of parental consent, physical examinations of their child may not be undertaken for investigative purposes at the behest of state officials
> … the state is required to notify parents and to obtain judicial approval before children are subjected to investigatory physical examinations.
> — Wallis v Spencer, 202 F.3d 1126 (9th Cir. 2000)

The full text of this case may be found on our website at www.cpswatch.com/caselaw/wallis.htm.

[Date]

[Medical Provider Name and Address]

Re: Preservation of Parental Rights

Dear [Medical Provider]:

This letter is to inform you that I am the traditional and legal parent of [child's full name], born on [date of birth]. My parental rights have not been modified or terminated.

As my child's legal parent, I am entitled to manage [his/her] medical care, consent to such care, be present at all appointments and to have a copy of all medical records.

[Optional] I am now requesting that a complete and correct copy of my child's medical file be sent to me.

[Optional] I wish to be present at all medical appointments and require [##] hours notice prior to the appointment.

No other person holds parental rights or the right to consent to medical treatment of my child.

My child is currently detained in foster care. Foster caregivers do not have parental rights and cannot consent to medical care under any circumstances. State agents may consent to medical care in a true emergency only if the parents can't be located and every effort to contact them has been made.

In an emergency, I may be reached at [give plenty of ways to contact you].

I am requesting that a copy of this letter be placed in my child's medical file.

Sincerely,
<signature>

State agents and foster caregivers do not have the power to consent to medical care. Even if the parent refuses to give their consent, the state agent must obtain a court order for medical care. In this case, the parents have a right to go before the Judge and tell their reasons for not wanting to give consent.

> … unless a judicial officer has determined, upon notice to the parents, and an opportunity to be heard, that grounds for such an examination exist
> — Wallis v Spencer, 202 F.3d 1126 (9th Cir. 2000)

Parents have the right to be present with their child during all medical examinations and appointments.

> Parents have a right arising from Fourteenth Amendment liberty interest in family association to be with their children while they are receiving medical attention, or to be in a waiting room or other nearby area if there is a valid reason for excluding them while all or a part of medical procedure is being conducted.
> — Wallis v Spencer, 202 F.3d 1126 (9th Cir. 2000)

Children have a corresponding right to have their parents present during medical exams and appointments.

> Under Fourteenth Amendment right of family association, children have right to the love, comfort, and reassurance of their parents while they are undergoing medical procedures, including examinations, particularly those that are invasive or upsetting.
> — Wallis v Spencer, 202 F.3d 1126 (9th Cir. 2000)

PARENTS ENTITLED TO DIRECT CHILD'S EDUCATION

You have all the same parental rights concerning your child's education that you did before he/she was placed in foster care. Teachers, like doctors sometimes wrongly believe that having a child in foster care means you have no parental rights. Worse, they believe the foster caregiver inherits your parental rights. To preserve and clarify your parental rights with your child's teachers, we suggest you send a letter similar to the one on the following page.

You may attend parent-teacher conferences. No other person should attend these conferences in your place, particularly not the state agent or foster care provider. If they desire to be present, it should be to observe only.

The state agent's only role should be to observe how you act as a parent, how you relate with your child's teacher, handle his educational needs, etc. The state agent should not make educational recommendations, as she is

[Date]

[Teacher Name and Address]

Re: Preservation of Parental Rights

Dear [Teacher]:

This letter is to inform you that I am the traditional and legal parent of [child's full name], born on [date of birth]. My parental rights have not been modified or terminated.

As my child's legal parent, I am entitled to direct [his/her] education, be present at all conferences and meetings, be informed of my child's progress and to have a copy of all educational records.

[Optional] I am now requesting that a complete and correct copy of my child's educational file be sent to me.

[Optional] I wish to be present at all conferences and meetings and require [##] hours prior notice.

No other person holds parental rights to my child.

My child is currently detained in foster care. Foster caregivers do not have parental rights. Under no circumstances should a foster caregiver be allowed access to my child's records without my written consent or a court order. My child's education should not be discussed with the foster caregiver without me being present.

Any papers that my child would bring home should be mailed to me at [address] rather than sent to the foster caregiver.

I may be reached at [give plenty of ways to contact you].

I am requesting that a copy of this letter be placed in my child's school file.

Sincerely,
<signature>

unqualified to do so. The agent shouldn't answer questions about your child's performance or behavior, as she hasn't spent enough time with him to render an accurate opinion.

The foster caregiver may have a genuine interest in the meeting because it will be partly her responsibility to facilitate an environment that will help

your child get good grades. However, the foster caregiver should be respective of your role as a parent and her role as a temporary care provider. Any questions pertaining to goals for your child should be answered by you, the parent, not the temporary caregiver.

The foster caregiver should honor your goals and wishes for your child's educational future even if she might have set different goals for her own child. This is not her child, but yours. She should provide an environment that will facilitate *your* goals. If the foster caregiver refuses to honor your parental goals and wishes for your child's education, you should request a change of placement in court.

INDIVIDUAL EDUCATION PLAN

If your child has an Individual Education Plan (IEP) or 504 Plan, you should participate in the designing of the plan. Sometimes when you arrive at these planning conferences, the plan is already drawn up and they simply 'discuss' it with you. However, federal law requires that these plans be drawn up with the full *participation* of all parties. Politely ask that blank forms be brought out so that all parties may actively participate in the planning. You might say:

> *I understand that you are trying to save time, however, my child's education isn't an area I wish to cut corners in. This plan will direct my child's education for quite some time. Thus, I want to put every effort into it's planning. It's better to spend additional time in planning now than to be dissatisfied with the results later.*

Although others (state agent or foster caregiver) may attend the planning, you will be the person that outlines educational goals for your child. Make certain that all your concerns are heard and noted.

If a plan is developed that you didn't participate in, demand another planning conference. If you don't agree with a plan, don't sign it. You have the right to a due process hearing if you don't agree with an IEP or 504 plan. At such a hearing, the school would need to justify their unwillingness to heed your suggestions on the plan.

Don’t Waive Your Right to a Trial

Parents do ***not*** have Constitutional Rights in the Juvenile Court. There is no right to due process or other protections, except at trial (adjudication). This is because the presiding Judge in the Juvenile court is supposed to make decisions in the best interests of the child as he/she interprets that to be. For over 40 years, no form of due process was required in the juvenile courts; attorneys weren't even allowed.

In 1966, the Supreme Court ruled that *some* due process was required in the juvenile court, but not all Constitutional protections.

> ...the purpose of the court's decision is ***not to require*** in the juvenile process all of the ***constitutional rights*** now mandatory in the criminal or even administrative process, but rather simply *to require in adjudicatory hearings* those rights required by the notions of fundamental fairness and due process under the fourteenth amendment.
> — Kent v United States 383 U.S. 541, 562 (1966)

Thus, the ***only*** time parents have any due process rights is at the adjudication.

Adjudication is referred to as a trial, due process hearing, fact-finding hearing, jurisdictional hearing, etc. in various states. Going under different names makes it difficult for parents to determine which hearing is the adjudicatory hearing.

Whatever the state chooses to call it, it's the hearing where the state would present evidence and witnesses to prove their claim that you abused or neglected your child and you would present evidence and witnesses to the contrary. You can also cross-examine the state's witnesses. ***This is the only time the state is required to prove their case and the only time the parents may present evidence in their defense.***

It's also the first time you can appeal to a higher court. Even if the juvenile court finds against you, you can appeal to the state court of appeals. The appellate court *is* bound by due process of law and appellate court judges are commanded to look to the law and interpret it exactly as written.

The juvenile court judge is only commanded to act in the best interests of the child, regardless of what the law may say. They are given very liberal discretion to loosely interpret the law or even ignore it if they believe it to be in the child's best interests. Thus, it's in your best interests to get into the appellate court at the earliest possible point.

Because the adjudication is the only time the state is required to prove their case and the only time parents have due process rights, state agents make extreme efforts to get the parents to "stipulate" or "waive" the adjudication.

The stipulations can be worded in such a way that it doesn't sound like you've abused your child. For example, it might say that your child was injured and the injury was non-accidental but it doesn't say that you did it.

A stipulation might say the child has a medical condition and the parents are unable to manage it. This means neglect, the parents can't or won't meet their child's needs. Wording doesn't matter. Signing *any* stipulation, regardless of wording is an admission that you ***are guilty of abuse or neglect*** and as such the state was justified in removing your child.

The state only has the power to intervene when parents have abused or neglected their child or there is a substantial risk that they will abuse or neglect their child. They don't have the power to intervene when children are sick or have a medical condition *unless* the parents are neglecting the child by failing to provide adequate care. Therefore, when you stipulate (which means to agree), you are saying the state was correct to intervene, which is admitting abuse or neglect.

The agency will often resort to extreme measures, such as withholding

visitation to extract a stipulation from parents. Some examples:

> *In our community CPS takes the position that a parent must acknowledge both the abuse of their children and take responsibility for the abuse before the parent can have unsupervised visits with their children.*
> — Bart Rubin, PhD

> *… the child protection community is virtually united behind the concept that the parent must acknowledge responsibility for the abuse and must clarify that abuse with the child before visitation or contact can be re-established.*
> — Frampton Durban, Jr, Chief Legal Counsel, Charleston County DSS, Charleston, SC

Full text of these letters and other such letters may be found on our website at www.cpswatch.com/proof.

Do not succumb to these terrorist tactics! It's better to forego visitation for a short time while you make your case in court, than to lose your child forever in a termination of parental rights proceeding (under federal law, states must petition for termination of your parental rights at 15 months regardless of the progress you've made).

The best way to get your child home *permanently* is by requiring the state to prove their allegations against you in a court of law. If they fail to prove the allegations, the case is closed. The state is very aware of this fact, which is why they work so hard to get parents to waive their right to a trial.

From the Chief Legal Counsel above:

> *… therapeutic denial reduction work and eventual clarification counseling is far more effective in reducing risk than litigation.*
> *— Frampton Durban, Jr, Chief Legal Counsel, Charleston County DSS, Charleston, SC*

In other words, it's easier to withhold visitation and coerce parents into signing a stipulation than to proceed with litigation. The state knows they stand a good chance of losing at trial by failing to prove conclusively that you are guilty of the allegations.

If you sign a stipulation or waive your right to a trial, you're giving up your constitutional rights and can never again argue that you didn't abuse or ne-

glect your child. This is perhaps the most important suggestion in this book!

File Court Reports and Affidavits

COURT REPORTS

At each court hearing, all parties to the case may file a report with the court to give the judge information about what has transpired from one hearing to the next. The judge is required to read these reports prior to the hearing.

Generally only social workers write court reports because parents aren't informed of their right to do this. Parents are "parties" to the case and have the right to file a court report. If a grandparent has gained interested party status through a Motion to Intervene, they too may file a court report.

Each court report should outline what has transpired since the last court hearing, including all interactions with the agency, visitations, and any other events associated with the case (psych evals, medical appointments, etc). Attach to the court report all the documentation letters you've been sending to state agents to confirm phone conversations, visitations, etc. (See Document all Interactions).

When this report is completed, take two copies to the Clerk of the Court and ask her to file them. She will file stamp each copy; place one in the file and give the other to you. You must get a file stamped copy as proof the document was filed.

Filing court reports is the only way for you to get your version of events into the written record. Should your case ever result in an appeal, the appellate court will get the court file and read everything it contains. When

filing an appeal, you generally don't get a hearing, the court simply makes their ruling based on what's in the court record and your appellate brief. It's imperative for the appellate court to find your version of events in this written record.

AFFIDAVITS

In the beginning of your case, you should file a notarized affidavit of facts with the court. This affidavit is sort of a "for the record..." document. Often the petition contains many erroneous errors and omissions. Your affidavit will contain the truth to correct the state's petition. Some common examples are:

petition reads - "there's a hole in the kitchen floor"
truth - "there's a tear in the linoleum"

petition reads - "child was covered in bruises"
truth - "the child has minor bruises and scrapes on chins from climbing trees"

petitions reads - "the home was piled to the ceiling in clutter"
truth - "parents were packing to move"

Other things might include incorrect name spellings, birth dates, address, etc. Your affidavit should directly address all errors, inconsistencies and omissions found in the petition.

Sometimes the Affidavit will accompany a Motion to Dismiss if the affidavit shows there is no legal basis for state custody.

This affidavit should not be confused with the Answer that is filed in response to the petition. The Answer will simply confirm or deny the allegations in the Petition. It generally needs to be filed very quickly, in some states as little as 10 days.

Do Everything by Court Order

You should require a court order before complying with any "demands" the agency might make. When the agent starts saying you need to do this or that, your response might be:

> *Mrs. Government Agent, I'm happy to do all that is asked of me by the court. Do you have a court order for the things you are asking?*

The agent might say, "No I don't have a court order, but the court will require you to do the things I'm asking anyway and it will please the judge if you have them completed early."

Your response to the above statement might be:

> *I'm thankful that you are trying to assist me in completing things you believe the court might require of me. I appreciate your concern.*
>
> *However, I wish to follow the legal channels set in place for matters such as these. I know the court will base requirements imposed on me on specific findings of abuse or neglect. I prefer to wait for my day in court to defend the allegations made against me rather than acting as a guilty person by complying with demands put on child abusers now.*
>
> *I'm confident the evidence will support my innocence and the court*

will not impose conditions on me intended for child abusers.

You do not need to take child rearing (parent training) classes or have a psychological evaluation until it is court ordered. It shouldn't be court ordered until the court has adjudicated you guilty of abuse or neglect.

Sometimes, however, courts get in the habit of ordering all parents to complete child rearing classes, psychological evaluations and drug screens as part of the temporary orders. They believe it is an easy (and lazy) way of moving cases through the system more quickly.

However, federal courts have held that such restrictions can't be imposed on parents without first finding that abuse or neglect did occur and second, finding some cause that the requirements are actually needed.

Even after abuse or neglect has been adjudicated; before a psychological evaluation can be ordered, there needs to be some justification for it, rather than simply ordering them for all parents.

The same applies to drug screens. There must be some reason to suspect drug use and it's relationship to child abuse before a drug screen can be imposed. Likewise, there needs to be some judicial finding of parental unfitness before child rearing classes can be imposed.

If a Judge orders these things in the temporary orders in your case, you should object orally in open court while they are being ordered. Your response might be:

Your Honor, we object to these requirements being imposed without a judicial finding that creates a need for them.

The court is so accustomed to doing everything with a rubber-stamp and herding families through like cattle, that you'll need to show them you're a little different; you're actually going to insist on compliance with the law.

The Judge may ignore your objection and impose the requirements anyway. If this happens, you should file an appeal to the state court of appeals. Contact our legal department for assistance in finding caselaw to use for the appeal.

If you aren't in open court when the orders are made, but they are simply

provided to you later, you'll need to file a Motion to Reconsider (below) with the court asking them to remove the restrictions imposed before you appeal. In other words, you need to give the Judge an opportunity to voluntarily rescind the orders before going to the appellate court.

Sometimes it may be to your advantage to voluntarily complete some things outside of a court order. If this is the case, it should be done completely on your own, because you want to or need to, and without the advice or assistance of the state agent.

[Court Heading and Caption. Should include the court name, plaintiffs and defendants and case number.]

MOTION TO RECONSIDER

[Full Name], [plaintiff or defendant] in the above captioned cause, moves the court to reconsider its opinion and order in this cause dated [date].

Grounds for this motion are as follows:

[List reasons for asking the court to reconsider.]

WHEREFORE, [plaintiff or defendant] respectfully moves the court to reconsider its opinion and order in this regard and to modify the order to reflect that [state fully the relief now sought].

Dated: _____.

<signature>
[Name & Address]
[Attach exhibit(s)]

As an example, if the state is alleging that you were "high" at the time the children were taken, you may want to rush to the hospital for a drug screen to prove you weren't. Or the allegations might be that you are "often stoned" and leave the child to fend for himself. In this case, you might choose to get a drug evaluation to offer as evidence in your defense.

There might be an allegation that you are mentally unstable because your

mother committed suicide or some other reason. You could choose to get a psychological evaluation to combat these accusations.

If you have an evaluation or take child rearing classes, either by court order or by choice, choose your own therapist. Do not go to the person the state agent recommends. When interviewing therapists or counselors, ask them if they contract with the state. If they do, go elsewhere. If you have reason to distrust the state, it doesn't make much sense to trust those that do business with the state.

When choosing a therapist or counselor, question them closely to make certain they share or respect your closely-held convictions. If you are Christian, choose a Christian counselor or enroll in a Christian-based child rearing class. If you are a vegetarian, choose a counselor that will respect the choice you've made for your family. If you homeschool, chose a counselor that understands and respects homeschooling.

Do not sign a release of information for the state agent to speak with your therapist or obtain records. If you've gone voluntarily prior to a finding of abuse or neglect, you will bring the information to court with you to use in your defense. There's no reason for the state agent to have it unless they have a court order.

If the agent has a court order for the information, it should be limited to the diagnosis or findings, not the entire file. The agent should not get a court order for the information prior to an adjudication of abuse or neglect. If such an order has been made, you'll want to file a Motion to Reconsider or an appeal.

Be sure to get a clear order for visitation and not something like, "parents will get regular visits". The order should outline exactly how often visits should occur and what type of restrictions will be imposed on them. If you don't have a clear order for visitation or anything else, you can file a Motion to Clarify with the court. See a sample on page 50.

In summary, before you *do* anything, require a court order. If you *want* something, seek a court order.

If the state fails to comply with any court order, you can file a Motion to Show Cause (above) to hold the agency in contempt of court. If you disagree with an order, file a Motion to Reconsider or an appeal. If you'd like

[Court Heading and Caption. Should include the court name, plaintiffs and defendants and case number.]

MOTION FOR ORDER TO SHOW CAUSE FOR CONTEMPT

[Full Name], [Plaintiff or Defendant] in the above entitled matter, in pro per, respectfully moves this court that an order issue, citing and summoning [Agency Name] to appear and show cause, if any he has, why he should not be punished for contempt of court for having failed to comply with the provisions of the judgment heretofore entered, such judgment requiring [list requirement - visitation/access to records/manual, etc].

This motion is made on the grounds that [specify grounds with particularity that indicate non-compliance].

WHEREFORE, [plaintiff or defendant] prays for the relief as set forth above and for such other and further relief as the court deems just and proper.

<signature>
[Full Name & Address]

a court order explained more clearly, file a Motion to Clarify.

[Court Heading and Caption. Should include the court name, plaintiffs and defendants and case number.]

MOTION TO CLARIFY

COMES NOW, [full name], [father/mother/parents] of the above named minor child[ren], and moves this Court to clarify the language in the Journal Entry of [hearing], dated [date] in the following manner:

1. [Quote the phrases needing clarification and then the manner in which you'd like them clarified.]

An example:

1. The Journal Entry reads as follows:
   "more frequent and monitored visits between mother and child will occur"

   Movant requests that this language be clarified to include:

   A. Exact days, times and locations the visits should occur.

   B. Date visitation will commence.

WHEREFORE, movant prays for the relief as set forth above and for such other and further relief as the Court deems just and proper.

<signature>
[Full Name & Address]

Request an Administrative Hearing

If the agency substantiates you for abuse or neglect, you may request an administrative hearing to overturn the substantiation.

An administrative hearing is separate from juvenile court. You can be substantiated for abuse or neglect by the agency but not adjudicated through the court. Or, you could be unsubstantiated by the agency and still be adjudicated through the court. Thus there are two findings to fight; the agency's and the court's.

If you are substantiated by the agency, your name will be placed on the Child Abuse Registry forever. This will prevent you from taking any job involving children. Most states list unsubstantiated reports on the Child Abuse Registry for several years, up to 10 years in some states. You can ask for an administrative hearing to remove your name from the Registry even if you are unsubstantiated by the agency.

The procedure for seeking an administrative hearing is different in each state. Generally, the procedure is outlined in the finding you receive from the agency; usually in the small print.

If an administrative hearing isn't settled to your satisfaction, you may appeal that decision and get another administrative hearing. If you're not happy with the results there, you may file a judicial appeal to have the matter heard in court.

Remember that an agency finding has little to do with the return of your

children. Only the court's finding determines whether or not they remain in foster care. In fact, nationally, 18% of the children placed in foster care were unsubstantiated by the agency.

However, it is very important to fight BOTH findings; the agency's and the court's to ensure that your name won't be listed on the Child Abuse Registry. Additionally, if you ever get entangled with the agency in the future, a previous substantiation will be used to create a "risk of harm" to justify removing your child again or to remove future children.

To learn more about administrative hearings, see www.cpswatch.com/admin.

Make Your Attorney Work for You

Make sure that your attorney is on your side. Send a letter to him/her in the beginning outlining exactly what you expect from the representation. This letter should clearly outline all details of the representation, including the time frame in which they should return phone calls or answer letters.

You should request that your attorney immediately mail you a copy of everything he/she receives involving your case.

You should require that your attorney read everything in the court file and become familiar with it so that he/she is adequately prepared to defend you.

You should require your attorney to present all possible legal options to you in a clear and concise manner, then tell you which option he/she recommends and why. Since you are the one that stands to lose your child, you should make the final decision.

Above all, require that your attorney believe in your innocence and ability to rear your child. If the attorney has doubts about your innocence and abilities, he/she has no business representing you.

Document all interactions with your attorney the same way you do for state agents (see Document All Interactions). If the attorney consistently fails to heed your requests or provide an adequate defense, you may file a formal complaint against him/her with the bar association or attorney disciplinary

board in your state.

If the representation is so bad that it severely impacts the outcome of your case, the attorney can be sued for malpractice. In order to do this, you must be able to prove your claims and this is done through documentation letters.

Suing an attorney for malpractice will not effect the outcome of your case, it will simply require the attorney to compensate you for the damage he's caused. This mean you've lost something needing compensation (your child). Thus, it's better to ensure that the attorney is doing a good job through proper communication and documentation.

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