

# OPPORTUNITY TO BE HEARD PROJECT

## **PART ONE: GENERAL SUGGESTIONS**

Remember, under federal and state law you have **A RIGHT TO BE HEARD IN COURT** in permanency hearings, care and protection trials, termination of parental rights and adoption trials. This does not mean that you have full rights as a party (without the Court's permission, you cannot call or cross examine witnesses, for example) or a free lawyer, but you can proceed "pro se", that is, without a lawyer.

As soon as you get the notice of the hearing, you need to do three things:

1. Ask your social worker who the DCF attorney is (if you don't know who she/he is, send the attached letter to Regional Counsel). Call the DCF lawyer and tell him or her you would like to testify.
2. Prepare and finalize your Affidavit (form attached).
3. Prepare your Notice of Intention and Certificate of Service (form attached) and send it out with the Affidavit to the Court and all the lawyers on the case, keeping a copy of the entire package for yourself.

Regardless of whether the DCF attorney is or is not going to call you as a witness, go to Court on the appointed day and time.

Once the case is "called", meaning that it is about to begin, you can stand up when the lawyers do and politely introduce yourself to the judge as the foster/pre-adoptive parent of the child.

***"Your Honor, my name is \_\_\_\_\_. I am the foster/pre-adoptive parent of this child, who has been in my care for \_\_\_ months. I contacted the DCF attorney as soon as I received notice of this hearing and asked to be called as a witness. I have evidence based on my observations of the child which is relevant to his/her best interests. Under federal and state law I have a right to be heard. May I testify or file this Affidavit which contains my observations?"***

The judge may ask the attorneys to respond to your request and some or all of them will probably object. They are likely to say, for example, that any evidence you have can be provided instead by the social worker or other witnesses.

Remember, it is up to the judge to decide if you will be allowed to testify, not the lawyers.

Once the attorneys are finished making their objections, say:

***"I respectfully request that I be heard. No one but me has lived with this child day and night for the past \_\_\_ months. I believe my observations are relevant"***

If you are NOT allowed to testify, ask again if instead your Affidavit can be filed. Hand extra copies to the attorneys present and the original signed affidavit to the clerk who sits in front of the judge.

If the Judge refuses to accept your Affidavit and refuses to allow you to testify, you may be told to leave the courtroom. You should do so quietly and politely.

Make sure to write down the date, time, case number, and names of the Judge and the lawyers before leaving.

**Take notes immediately afterward so you can remember the details.**

**If you have difficulty preparing your affidavit or otherwise preparing for Court, you can seek out free legal help by visiting [www.vlpnet.org/partners](http://www.vlpnet.org/partners) to request a pro bono lawyer, or by contacting the pro bono or reduced fee panel of your county bar association.**

## PART TWO: OPPORTUNITY TO BE HEARD PROJECT: LAW

### *Adoption and Safe Families Act (Federal law)*

'foster parents of a child and any pre-adoptive parent or relative providing care for the child (be) provided with notice of, **and an opportunity to be heard in, any review or hearing to be held with respect to the child**". 42 USC Section 675(5)(G)

### *Code of Federal Regulations: (Federal regulations implementing ASFA)*

"Notice and right to be heard. The title IV-E agency must provide the foster parent(s) of the child and any pre-adoptive parent or relative providing care for the child with timely notice of **and the opportunity to be heard in any proceedings held with respect to the child** during the time the child is in the care of such foster parent, preadoptive parent, or relative caregiver. ... "45 CFR 1356.21(o)

### *Code of Massachusetts Regulations:*

"During the period of a specified child's placement in a foster/pre-adoptive home, the Department shall:..

- (i) Provide the foster/pre-adoptive parent with notice of a review or hearing held pursuant to M.G.L. c. 119 Sections 26 and 29B and c. 210 Section 3. The notice shall include notice of the time and place of the hearing and notice of **the foster/pre-adoptive parents' right to be heard at the proceeding.** 110 CMR 7.112 (2)(i)

**LETTER TO DCF REGIONAL COUNSEL**

Regional Counsel  
DCF  
(your regional office address)

Dear Attorney:

I am the foster/pre-adoptive parent of the child (name) who is the subject of a care and protection petition pending before the \_\_\_\_\_ Court.

I have been notified that a hearing has been scheduled on this case for (date) at the (name of court).

I have been given notice of this hearing and want to exercise my right to be heard at the hearing.

I would appreciate hearing from the DCF lawyer assigned to this case and being called as a witness.

I also intend to file a Notice of my intention to appear and testify and would very much appreciate your providing me with the names and addresses of the attorneys for the parents, the child, and the DCF attorney assigned to the case.

This is to request that you advise the DCF attorney assigned to this case that I plan to attend the hearing, and I am available at the email address and phone number below should he/she wish to contact me.

Thank you.

Yours truly,

Your name, email address and phone number

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

JUVENILE COURT       PROBATE AND FAMILY COURT

SUFFOLK, SS. \_\_\_\_\_  
(county where case is pending)

DOCKET NO. \_\_\_\_\_  
(case number)

In the Matter of \_\_\_\_\_  
(child's name)

**NOTICE OF INTENTION TO ATTEND HEARING AND PRESENT TESTIMONY**

I, \_\_\_\_\_, the foster/pre-adoptive parent of the subject child, hereby move that I be allowed to attend the hearing now scheduled for \_\_\_\_\_. I further request that I be allowed to present testimony at that hearing.

In support of my Motion, I hereby state as follows:

1. I have had this child in my care for the following period of time: \_\_\_\_\_.
2. During that time I have directly observed this child and have critical firsthand evidence of his/her needs.
3. I have attached hereto an Affidavit outlining my observations concerning this child.
4. Under federal and state law I am entitled to be heard with respect to this child in any review or hearing or other proceedings with respect to the child. 42 U.S.C. 675(5)(G); 45 CFR 1356.21(o); 110 CMR 7.112(2)(i).

WHEREFORE, I hereby request that I be allowed to attend said hearing and further be allowed to testify at said hearing.

\_\_\_\_\_(SS)

(sign here)

Name: \_\_\_\_\_(print)

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that I provided notice of this Motion by hand delivery or first class mail, postage pre-paid, to all counsel of record this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

(print)

(sign)

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

JUVENILE COURT       PROBATE AND FAMILY COURT

SUFFOLK, SS. \_\_\_\_\_  
(county where case is pending)

DOCKET NO. \_\_\_\_\_  
(case number)

In the Matter of \_\_\_\_\_  
(child's name)

AFFIDAVIT OF PRE-ADOPTIVE (OR FOSTER) PARENT

I, \_\_\_\_\_ do hereby swear and state as follows:

1. I am the (pre-adoptive or foster) parent of the subject child, who has resided in my care since \_\_\_\_\_. I have had the opportunity to observe this child on a daily basis since placement with me. The following statements are based on my personal knowledge and observation of this child.
2. (Child's name) attends school at the \_\_\_\_\_ where he/she is in Grade \_\_. Here describe grades, behavior before going to school and after arrival home; any afterschool activities, groups, special services, teams, etc. Describe relationship with teachers and classmates. Describe IEP, schedule of meetings to discuss special ed. plan and reviews.
3. On weekends and holidays, (here describe activities and behavior generally while not in school; before during and after sports, church, socializing, homework, etc.)
4. Here describe sleep behavior, eating habits, discipline issues, for example, and how you deal with them. What is and is not effective.
5. Here describe medical issues, psychological issues, how you deal with them, what is and is not effective. List and describe the professionals (counselors, coaches, medical and psychological services, etc.) who see the child and where they are located, what schedule is with each in general.
6. Here describe behavior pre and post visits with parents. Be factual, do not exaggerate or speculate.

7. *Here describe relationship of child to other children and adults in your home, friends at school and relationship with you.*
8. *Here add any other observations you have made which you believe are relevant to the health and safety of the child. Stick to your direct observations.*
9. *Here describe development of child since in your care, whether positive or negative. Provide examples of behavior, etc.*

**Subscribed and sworn to this\_\_day of\_\_, year.**

***Here print and then sign your name***