

Five Steps To A Forever Home

by Madison Hatten



It is estimated that on any given day, more than 7,500 children in Kansas are in foster care.¹ And the plight of these foster children is heart-rending. Some report that foster children who never find a permanent family are six times more likely to abuse substances, and forty-three percent will be homeless at some point in their lives.² The flaws in the foster care system are so great, that in December 2019, The Kansas City Star published a six-part series titled “Throw-away Kids” that examined what happens to children who age out of foster care, concluding that “by nearly every measure, states are failing in their role as parent to America’s most vulnerable children.”³

Kansas attorneys can help these powerless children, albeit in a small way, by completing adoption hearings for children in need of care—children who are longing for permanent placement with loving families in stable homes.⁴ Following are the steps to perform a foster care adoption hearing in Kansas:

1. Child in Need of Care (“CINC”) Proceedings

When a child comes into the custody of the Kansas Department for Children and Families (“DCF”), Child Welfare Case Management Providers work with the child and fam-

ily in an effort to allow the child to return home. When a child cannot return home, parental rights may be terminated by the court or voluntarily relinquished. Under Kansas law, termination can occur in conjunction with the filing of an adoption or separately in a termination proceeding under the Kansas Adoption and Relinquishment Act, K.S.A. 59-2112, *et seq.*, or under the Revised Kansas Code for Care of Children, K.S.A. 38-2201, *et seq.*

In a CINC proceeding, “any party or interested party may request that either or both parents be found unfit and the parental rights of either or both parents be terminated or a permanent custodian be appointed.” K.S.A. 38-2266. If parental rights are terminated, or if the birth parents voluntarily relinquish parental rights, the child may then be adopted. The court shall enter one of the following orders:

(1) An order granting custody of the child, for adoption proceedings, to the secretary or a corporation organized under the laws of the state of Kansas authorized to care for and surrender children for adoption as provided in K.S.A. 38-112 *et seq.*, and amendments thereto. The person, secretary or corporation shall have authority to place the child in a family home, and give consent for the legal adoption of

the child which shall be the only consent required to authorize the entry of an order or decree of adoption.

(2) An order granting custody of the child to proposed adoptive parents and consenting to the adoption of the child by the proposed adoptive parents.

K.S.A. 38-2270

If the court enters an order under subparagraph (1), DCF then has the right to place the child for adoption. DCF contracts with various agencies who place children for adoption, including KVC Health Systems,⁵ TFI Family Services,⁶ Cornerstones of Care,⁷ and Saint Francis Community Services.⁸ If an attorney is interested in performing adoptions, the attorney can provide his or her information to these agencies. The agencies can provide that information to proposed adoptive parents, who then select legal counsel. Other times, proposed adoptive parents may contact an attorney directly. When an adoption is ready to proceed, DCF provides an “adoption packet” with documents needed to prepare the pleadings and that serve as exhibits to a Petition for Adoption.

2. Prepare and File Adoption Pleadings

Once the adoption packet is received from DCF, the following pleadings must be prepared:

a. Petition for Adoption and Accompanying Exhibits

The Petition contains important factual information regarding the adoption.⁹ The Kansas statute mandates that the Petition for Adoption state the following information:

- (1) The name, residence and address of the petitioner;
- (2) the suitability of the petitioner to assume the relationship;
- (3) the name of the child, the date, time and place of the child’s birth, and the present address or whereabouts of the child;
- (4) the places where the child has lived during the last five years;
- (5) the names and present addresses of the persons with whom the child has lived during that period;
- (6) whether the party has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child-custody determination, if any;
- (7) whether the party knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(8) whether the party knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons;

(9) whether one or both parents are living and the name, date of birth, residence and address of those living, so far as known to the petitioner;

(10) the facts relied upon as eliminating the necessity for the consent or relinquishment, if the consent or relinquishment of either or both parents is not obtained;

(11) whether the interstate compact on placement of children, K.S.A. 38-1201 *et seq.*, and amendments thereto, and the Indian child welfare act, 25 U.S.C. § 1901 *et seq.*, have been or will be complied with prior to the hearing.

K.S.A. 59-2128

Exhibits to the Petition for Adoption may include the following:¹⁰

- Termination of parents’ rights
- Consent of DCF to adoption
- Birth certificate of child
- Consent of child to adoption (if child is 14 years or older)
- Medical/genetic information of child and birth mother/father
- Affidavit regarding medical/genetic information (if needed)
- Affidavit of non-Indian heritage (or if necessary compliance with Indian Child Welfare Act)
- Home study of adoptive family
- Child social history
- Kansas Bureau of Investigation report
- Child Abuse and Neglect Central Registry report

b. Accounting of Expenses

The Accounting of Expenses itemizes the money paid to facilitate the adoption. Such expenses may include attorney fees and expenses, child placing agency fees, social worker fees, actual medical expenses of the mother attributable to pregnancy and birth, actual medical expenses of the child, and reasonable living expenses of the mother incurred during or as a result of the pregnancy.¹¹ For foster care adoptions, the expenses most often simply include attorney fees and any court filing fee.

In Kansas, DCF administers the Adoption Assistance program, provided to “families adopting children with special service, support and/or resource needs.”¹² A child may qualify for “non-recurring adoption expenses”—“a reimbursement

of up to \$2,000 for expenses directly related to the process of adopting a child with special needs, such as attorney fees and pre-placement visits.¹³ Under DCF guidelines, the maximum amount for attorney fees is \$900. At Shook, Hardy & Bacon, L.L.P. the fees are donated to the Kansas Foster and Adoptive Children Scholarship Fund, which provides scholarships to students who are or who have been in foster care in Kansas, including foster children who have been adopted.¹⁴

c. File Pleadings with Court

After the Petition and Accounting of Expenses are prepared and signed, they should be filed with the district court.

Next, the court will set a hearing date. Once a date is selected and the Order for Hearing is prepared and entered, the attorney must notify all interested parties, which would typically only be DCF at this point. If DCF provides a waiver of notice with its consent to adopt, the Order of Hearing can show that notice is waived, and therefore no Affidavit of Mailing is required. Regardless, the case manager should be notified in a child in need of care case, and the case manager should also let the district attorney and guardian ad litem know the hearing date and time. If DCF does not provide a waiver of notice with its consent to adopt, the attorney should complete an "Affidavit of Mailing." A copy of the Order should be sent to DCF, and a courtesy copy sent to the case manager, the guardian ad litem, and the state attorney involved in the child in need of care proceedings. The affidavit should then be filed with the court.

The attorney is then ready to contact the proposed adoptive parent(s) and notify him/her/them when and where the adoption hearing will be held and what to expect during the proceeding.

3. Prepare for Hearing

In preparation for the hearing, the attorney should prepare both a Decree of Adoption and Report of Adoption. The Decree generally reiterates the allegations from the Petition – e.g., that the Petition is true and correct, that the parental rights of the biological parents have been terminated, that DCF consents to the adoption, and that jurisdiction is proper. The Report¹⁵ is a form created and required by the state.¹⁶

Finally, during the hearing a brief, informal examination of the proposed adoptive parent(s) is appropriate. The attorney may wish to prepare an outline in advance. Sample questions for the witness examination could include the following:

- You are here today asking the Court to grant the adoption of [child]?
- Before you signed the Petition for Adoption under oath, you reviewed the Petition?
- Everything as stated in the Petition is true and correct?
- You understand that if the Court grants this adoption,

you will have the same rights and responsibilities as if you were the birth parent?¹⁷

- Understanding that, you are asking that the Court grant this adoption?
- And you are also asking that the Court change the child's name to [new name]?

4. Complete Adoption Hearing

Now for the very best part, helping a foster child with being placed in a forever home. Adoption hearings are typically brief and informal. The proposed adoptive parent(s) and adopted child(ren) sit at counsel table, with any other immediate family members (i.e., other siblings). The judge typically suspends the rules of decorum, allowing for guests to move around the courtroom for photographs during the hearing.

The case is called, appearances are made by the attorney, case manager, and guardian ad litem (if present), and the judge will ask if there are any witnesses. If two proposed adoptive parents, call both. The first parent can answer, *inter alia*, the questions outlined above. The second parent (if applicable) can simply agree with the testimony of his or her partner. If the adopted child is over the age of 14, that child must testify that he or she consents to the adoption. K.S.A. 59-2129.

The judge will usually ask if there are additional documents or evidence in support of the adoption, at which time the Decree and Report of Adoption should be presented to the court. Consider asking the adoptive child to approach the bench with these documents if the child is willing and not too shy – this adds to the fun!

It is good practice to conclude the testimony by suggesting that "based on the verified Petition, the documents, the testimony of the witnesses, and the other evidence submitted to the court, we ask that the court grant this adoption."

Typically the judge will then provide the court's findings and statement about the adoption and then grant the adoption, indicating that the court has reviewed all relevant documents, listened to the testimony, and has determined that the adoption is in the best interest of the child(ren).¹⁸ A thunderous round of applause is usually welcomed and encouraged!

The judge may then ask the child(ren) to come to the bench to also sign the Decree of Adoption with the child's new name and to pose for photographs – a joyous memento of a happy court hearing.

5. Post-Adoption Tasks

Various district courts have different procedures following the hearing. In Johnson County, after the Decree and Report of Adoption are signed by the judge, these documents must be presented to the Probate Clerk. The Clerk will then make

certified copies of the Decree. Two copies of the Decree are usually given to the adoptive parents, a copy is given to the case manager if the case manager is present, and the attorney will retain a copy for the file.

While every adoption is unique and special, the above steps outline what generally needs to be done to complete a foster care adoption hearing in Kansas. Hopefully this information will empower and encourage you to take time from your everyday practice of law to help a child in need. ■

About the Author



Madison Hatten, with Gene Balloun, manages the Kansas Foster Adoption Program at Shook, Hardy & Bacon, LLP. She has personally handled 23 adoption hearings for 42 children. Madison earned her law degree at the University of Missouri–Columbia School of Law. She was recognized with the KBA's Pro Bono Publico Award in 2017 and was a member of the KCMBA Bar Leadership Academy in 2016.

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1. *Foster Care*, KVC KANSAS, <https://kansas.kvc.org/services/foster-care/> (last visited Dec. 19, 2019).

2. See FOSTERADOPT CONNECT, <https://www.fosteradopt.org/> (last visited Dec. 19, 2019).

3. See Laura Bauer & Judy L. Thomas, 'We are sending more foster kids to prison than college,' THE KANSAS CITY STAR, Dec. 15, 2019 available at <https://www.kansascity.com/news/special-reports/article238206754.html>; Judy L. Thomas & Laura Bauer, *As U.S. spends billions on foster care, families are pulled apart and forgotten*, THE KANSAS CITY STAR, Dec. 15, 2019 available at <https://www.kansascity.com/news/special-reports/article238243099.html>; Eric Adler, *Frequent moves don't just harm foster kids' emotions – they hurt their brains*, THE KANSAS CITY STAR, Dec. 15, 2019 available at <https://www.kansascity.com/news/special-reports/article238204784.html>; Laura Bauer & Judy L. Thomas, *Graduation rate of 35 percent? Many foster children 'robbed of a good education'*, THE KANSAS CITY STAR Dec. 15, 2019 available at <https://www.kansascity.com/news/special-reports/article238246264.html>; Laura Bauer & Judy L. Thomas, *Aging out: Thousands of foster youth graduate to the streets every year*, THE KANSAS CITY STAR, Dec. 15, 2019 available at <https://www.kansascity.com/news/special-reports/article238226224.html>; Judy L. Thomas & Laura Bauer, 'The state that neglected me as a kid is the same state that wants to kill me,' THE KANSAS CITY STAR, Dec. 15, 2019 available at <https://www.kansascity.com/news/special-reports/article238280638.html>.

4. Generally speaking, there are two types of adoptions: (1) private adoptions and (2) adoptions arising from foster care. This article focuses only on the adoptions of children out of the foster care system.

5. KVC HEALTH SYSTEMS, <https://www.kvc.org/> (last visited Dec. 19, 2019).

6. TFI FAMILY SERVICES, INC., <https://tfifamily.org/> (last visited Dec. 19, 2019).

7. CORNERSTONES OF CARE, <https://cornerstonesofcare.org/> (last visited Dec. 19, 2019).

8. SAINT FRANCIS COMMUNITY SERVICES, <https://sfcstl.org/> (last visited Dec. 19, 2019).

9. Note that a separate Petition for Adoption must be filed for each child if the adoption involves multiple children.

10. See also K.S.A. 59-2130.

11. See K.S.A. 59-2121.

12. See *Adoption Assistance: A Resource for Families Adopting Children with Special Needs*, KANSAS DEPARTMENT FOR CHILDREN AND FAMILIES http://www.dcf.ks.gov/services/PPS/Documents/PPM_Forms/Appendices/Appendix_6B.pdf (last visited Dec. 19, 2019).

13. *Id.*

14. See *Kansas Foster and Adoptive Children Scholarship Fund*, GREATER KANSAS CITY COMMUNITY FOUNDATION, <https://www.growyourgiving.org/scholarships/kansas-foster-and-adoptive-children-scholarship-fund> (last visited Dec. 20, 2019). If you are interested in supporting the Kansas Foster and Adoptive Children Scholarship Fund, please contact Madison Hatten at mhatten@shb.com. Shook, Hardy & Bacon, L.L.P. has partnered with many Kansas attorneys in completing these adoptions, and is happy to help in any way.

15. See K.S.A. 59-2119 ("The district court shall report the adoption to the state registrar of vital statistics.")

16. See *Report of Adoption*, http://www.kdheks.gov/vital/download/report_of_adoption.pdf. Other forms related to adoptions may be found at <http://www.kansasjudicialcouncil.org/legal-forms/child-need-care>.

17. See K.S.A. 59-2118 ("When adopted, a person shall be entitled to the same personal and property rights as a birth child of the adoptive parent. The adoptive parent shall be entitled to exercise all the rights of a birth parent and be subject to all the liabilities of that relationship.")

18. See K.S.A. 59-2134 ((a) Upon the hearing of the petition, the court shall consider the assessment and all evidence, including evidence relating to determination of whether or not the court should exercise its jurisdiction, offered by any party in interest. If the adoption is granted, the court shall enter a final decree of adoption, which terminates parental rights if not previously terminated.)