



### ***DEPENDENCY COURT REFORMS***

Our courts are an integral part of attending to the needs of dependent children and youth we collectively undertake to "parent." No child enters foster care or leaves this system absent court order, and every significant decision in between in the child's life is overseen by the court. Priority must be given to initiatives designed to support and enhance the functioning of the dependency judicial system.

#### **1. Support of Dependency Hearing Officers**

Qualified hearing officers are an essential component of that system. We need to adequately fund the third branch of government and support the recruitment and retention of the highest caliber bench officers.

Dependency court hearing officers can and should play a meaningful role in ensuring that children are not languishing in foster care, that case specific services are provided in a timely fashion, that families are reunited as quickly as possible, and that measurable outcomes and indicators of child well-being (such as academic performance) are tracked. Without this focused tracking of and attention to outcomes, there will never be either an acceptable standard of accountability or the types of outcomes these youth deserve.

Moreover, given the complex nature of the many issues children and families face, collaborative multidisciplinary training must be provided to hearing officers in conjunction with lawyers, social workers and other parts of the system. Yet, the recently released Fostering Results survey (*VIEW FROM THE BENCH: Obstacles to Safety and Permanency for Children in Foster Care*) of over 2,200 judges who hear dependency cases found that barely half (49%) of all judges received any specialized training in child welfare issues prior to hearing child abuse or neglect cases. A dependency court judge must have mastery of a complicated set of federal and state laws, an awareness of available community resources, as well the ability to identify and rule on issues ranging from appropriate use of psychotropic medications to whether a child's sibling relationship should be severed in order to facilitate an adoption. Both substantive study areas and child welfare practice should be included in curriculum development.

Finally, bench officers must be armed with outcome-focused data tracking that enables the court to manage their cases and meaningfully track the progress of children through the system. Communication networks that enable stakeholders and data systems to "talk" to each other need to be explored and developed.

## 2. Adequate and Effective Legal Representation for Every Child

While recent changes to CAPTA requiring that each child be represented by either an attorney or a Guardian Ad Litem (“GAL”) represent an important first step toward giving children a voice in court, these provisions fail to ensure that all foster children have an effective and capable voice in the legal process. Without adequate legal representation, the child is not on an equal footing with the other parties in a dependency case. The child welfare agency and parents – including the alleged perpetrator – are generally represented by attorneys. Yet in many states the child, if represented at all, is represented by a lay GAL. A GAL may or may not have special expertise or training in issues related to abuse and neglect. As a non-lawyer, the GAL has little ability to use the process of the court to the child’s advantage. The end result is that the child is relegated to second-class status. The agency, the non-offending parent, and the abuser have a legal voice in court, while the child in some states has no voice at all and in others has only limited access to the legal process and protections. In short, children brought into the dependency system should receive the benefit of effective legal counsel.

The goal of assuring effective legal counsel for children cannot be achieved without minimum training, competency standards, and reasonable caseloads. Appointed counsel in dependency cases should be expected to have a working knowledge not only of the relevant law, but also of related areas including child development, cultural competency, health, mental health and education laws. Without mandates as to training and reasonable caseload standards, the dedicated and passionate attorneys who choose this work will continue to swim upstream against an ever stronger current.

No matter how well trained, counsel who are forced to take on hundreds of cases, either due to overly burdensome staffing levels or because the rate paid per case is too low to afford an acceptable standard of living, cannot perform optimally or even effectively. Maximum caseload standards must be set by each jurisdiction within a framework which takes into consideration the geographic size of the area served, the type and quantity of support staff, and whether the attorney is a sole practitioner or works within an organization or agency. Federal funding should be used to reward and support jurisdictions that seek to put in place standards relating to reasonable caseloads, training, and minimum qualifications for dependency counsel.

## 3. Attracting and Retaining Quality Lawyers

If we wish to attract the best and the brightest to what many believe is the most important work done in our legal and judicial system, attorneys who choose this professional discipline must receive reasonable and adequate compensation; they must be valued and supported. Serving as legal counsel for abused and neglected children is without a doubt rewarding and fulfilling, but it is also emotionally, intellectually and physically draining, and at times completely overwhelming. Creating standards for compensation -- including salaried payments for lawyers in this practice area rather than the inherently problematic approach of payment per case -- should be encouraged.

Unless and until attorneys are fairly compensated, this specialized practice will continue to be viewed as less important and less worthy than other areas of law.

Mechanisms including loan forgiveness for attracting and maintaining committed attorneys should be developed and encouraged. The benefit to be derived from such programs span many layers. Nonprofit organizations and county agencies will be far better able to attract the most qualified new lawyer. Moreover, there will be a greater willingness and motivation to devote the necessary time and resources to training when here is a greater likelihood of longevity of newly hired staff. It is critical that any loan forgiveness initiative include not just new attorneys entering this practice area, but also existing attorneys who have developed irreplaceable relationships with their clients and whose expertise over time should be supported and needs to be retained. The cost of hash turnover can be measured not only in dollars and cents, but in human costs as well. For an abused or neglected child, building trusting relationships is no simple task. Often the child's lawyer is the only stable and consistent person in his or her life, the only person the child can confide in, and the one person he or she trusts. With each abandonment and each severed relationship the child finds it that much more difficult to trust again, to move beyond his or her victimization, and to develop healthy relationships in the future -- whether it be with a caregiver, family member, or his or her own child someday.

Cost saving measures that result in poorly compensated counsel and excessive caseloads will result in greater expense over time through poor quality representation, decreased efficiency, high turnover, and poor outcomes for children.

#### 4. Reinforcing and Empowering The Child's Voice in the System

Dependency court systems across the Country need to redouble their efforts to ensure that the youth whose lives we seek to protect have the opportunity to attend and be part of court proceedings in their own cases. In too many jurisdictions, children are not made aware of or encouraged to attend court proceedings and all parties (including the bench officer) are stripped of the ability to hear from the youth whose interests are at the core of the decision making.

For many youth, being present at their dependency case proceedings enables them to understand and come to terms with decisions that will impact the rest of their life. Inconvenience, a desire to keep cases moving, and/or the view that we need to "protect" children from hearing about the very events that they lived through, should not stand in the way of involving youth of a requisite age -- when they desire to be present -- in these court hearings. Even the most skilled judges and attorneys with the best intentions cannot and should not be making life changing decisions and recommendations about a child they have never met or a family they know only as a case number. Youth should be afforded the respect and be granted the dignity of expressing their own views in regard to decisions that will alter their lives in the most significant and lasting ways imaginable.

Children have keen insight and deep understanding of their own families and their own challenges. Their view of the future is essential to the development of meaningful, effective and functional case planning. As the Pew Commission recognized, “children, parents, and caregivers all benefit when they have the opportunity to actively participate in court proceedings, as does the quality of decisions when judges hear from key parties.” For all these reasons, federal law should not only recognize, but also encourage, the presence of children at their own hearings.

Similarly, advocates for children -- whether they be CASAs, Guardians Ad Litem or court appointed counsel -- must meet with their young clients face to face and must do so with enough frequency to ensure that the advocate has current independent knowledge of the child’s living situation, educational and mental health status, general well-being, and wishes and desires regarding the issues before the court at any given hearing.