



# Child Law Practice

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Helping Lawyers Help Kids

Developing a new approach to parent representation in child protection cases was the goal of a conference held in South Royalton, VT, October 26-27, 1999. This conference, sponsored by the Annie E. Casey Foundation, joined child welfare experts and practitioners from Vermont and around the nation to create a parent representation model to address current system shortcomings. This article describes the model, the systemic and organizational structure needed to support it, and offers tips for creating an action plan to implement it.

## A Family-Centered Model of Legal Representation for Parents in Child Protection Cases

by Trine Bech

### Parents rating their trust for their lawyers:

[M]any attorneys have no experience, really don't have a clue and you are counting on this person 100%. It scares you to death to get an attorney who does not seem to know or be interested in what you need. 'We are human beings. This is our life and these are our children.' . . . Many times you are told the day before to be at court. You don't even have an opportunity to meet your lawyer beforehand. . . . This kind of lack of notice makes you feel totally hopeless. <sup>1</sup>

Vermont's Court Improvement Project identified inadequate parent representation as one major barrier to achieving better outcomes for abused and neglected children. Experience in Vermont and research of other states' parent representation systems show that representation is inadequate and sometimes harms parents' interests. Parents report that the adversarial nature of the courtroom pits them against their children. Their family histories, strengths and needs get lost in a system bent on finding fault and blame.

Unlike representation for child welfare agencies and for children, many states have no system in place to ensure competence in, and accountability for, parent representation. Although parent representation models vary, many states base them on the criminal defense model where *deny and delay* are seen as effective legal strategies. Such criminal defense tac-

tics rarely meet the parents' objectives for the return of their children to their custody (see sidebar p. 23 for more shortcomings of parent representation models).

### A Family-Centered Model of Legal Representation

This is a system in which the lawyers honor the family's integrity by taking time to understand the family's dynamics and relationships, explain the legal process and options, and engage the family in finding their own solutions. This "family-centered" problem solving representation model has its main focus in a forum outside the courtroom. This model is contrary to the current representation model where the court is often the only place where parents see their lawyers.

In defending the current model, lawyers argue that the courtroom is the appropriate forum when there has been a long history of violence against chil-

dren; the alleged perpetrator is in denial, or shows no remorse; or there are criminal proceedings pending arising out of the same facts. Experience in the use of family-centered tools has shown, however, that parents, if given options, can choose what will work for them if they have competent legal counsel. <sup>2</sup>

A family-centered approach presumes that families have strengths, can change, are able to make responsible decisions, and can be accountable for their actions. When criminal

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proceedings prevent frank discussions or parents deny that they placed their child in jeopardy, the parents will likely choose the courtroom as the more appropriate forum. Thus a family-centered approach includes traditional litigation as the forum.

### **Why Parents Need A Family-Centered Model**

Effective legal representation for parents is crucial because the Adoption and Safe Families Act of 1997 (ASFA)<sup>3</sup> shortens the time parents have to remedy the problems which led to their children's removal. Under ASFA, to receive Title IV-E foster care reimbursement, the child welfare agency must petition to terminate parental rights to every child in custody for 15 of the last 22 months, unless the agency can show a "compelling reason" not to. With these shortened timeframes, the legal strategies for parents involved in child abuse and neglect proceedings need to shift to *consult and create* to assist them make changes needed for their children's *safe* return home.

Parents find that a structured dialogue among themselves, their children (if age appropriate), the social worker, service providers, lawyers and guardians *ad litem*, aimed at creating a *timely* safety plan for the children, is more likely to be successful in achieving the goal. Such dialogue, in contrast to the hurling accusations found in contested litigation, is also more conducive to creating a constructive relationship between the social worker and the family. After a plan is created, either through the dialogue or a contested hearing, the quality of the working relationship between the social worker and the family is crucial to the plan's success.

### **Characteristics of the Family-Centered Model**

The following elements are essential to family-centered legal representation for parents in child abuse and neglect proceedings:

### **Educate and Guide the Parent through the Legal System**

It is the lawyer's job to explain the options available and guide the parent through the legal process. The laws are not complicated, but the interwoven social services designed to change behavior to make children safe are complex and require interdisciplinary understanding and expertise. Understanding which social services program and treatment options work for specific parenting issues is a prerequisite to effective practice.

### **Counsel the Parent about Expectations and Consequences**

The lawyer should counsel the parent about specific expectations and consequences for failing to meet expectations. This role is particularly challenging when parents are struggling with substance abuse and domestic violence.

### **Establish Trust**

Parents in child abuse and neglect proceedings often must change their behavior to make their homes safe for their children. This takes time and usually many failed attempts. To be effective, the lawyer must have a trusting relationship with the parents. Establishing trust involves spending time listening and getting to know the parents. Parents appreciate small courtesies, like returning phone calls and promptly responding to requests. Such efforts help establish the trust required for the parent to listen and consider the lawyer's recommendations.

### **Be Accessible**

The lawyer must be accessible to the parent geographically, culturally, and linguistically. A different language, lack of transportation to appointments, lack of access to the *same* lawyer at critical stages of the legal proceedings — all prevent the parent from trusting the help the legal process can provide.

### **Be Competent in the Conventional Legal Role**

In addition to interdisciplinary knowledge and skills, the lawyer needs to have conventional legal skills to protect client confidentiality, and represent the parent's constitutional and other legal rights. The lawyer needs to ensure the legal and social services systems provide the protection and services the parent is legally entitled to receive. This may involve skillful negotiations with the other parties focused on outcomes for the family (i.e., ensuring the child's safety needs will be protected within the family), and conducted in a manner and at a time where choices are meaningful (i.e., not in a crowded courtroom hallway).

### **Be a Compassionate Listener, Interested in the Work**

Representing parents whose children have been taken into state custody, or who are at risk of being taken into custody, involves more than giving advice for a short time. The lawyer needs to understand and show concern for the parent's circumstances, be willing to listen, and be committed to creating hopeful solutions.

At the same time, the lawyer needs to accept the parents for who they are and work from their perspectives. This involves:

- providing options based on the family history and relationships;
- engaging the parent in taking responsibility for making choices;
- sticking with the work through difficult periods while the parent struggles to change behaviors which brought the child into the child protection system;
- looking to other family members who can be resources to the parent in the change process.

### **Engage Family Members and Family Resources**

Engaging family members or other family resources to help the parent find solutions and keep his or her

children safe is the essence of family-centered representation. Courtrooms are not conducive to engaging families, and the solutions they propose usually have limited success addressing long-term behavioral issues and family relationships.

Advocates and social service providers have therefore begun to use tools, such as mediation and family group decision making. These forums let parents, children, and other family members tell their stories and plan for the children's safety.<sup>4</sup> If these tools are not available, the lawyer should help create them so the parents and children (if age appropriate) can choose an alternative to litigation. The lawyer's role may be limited in these settings to ensuring all issues are addressed, and preventing the parents' stories from being used against them in the courtroom if the alternative forum does not produce an acceptable solution.

### **Be Part of a Support Team**

Accomplishing all tasks needed to effectively represent parents is easier if the lawyer works as part of a team with paraprofessionals. For example, helping the parent understand how to maneuver through the legal system, and access social services, are tasks a paralegal or a community-based advocate could perform, leaving the lawyer free to focus on legal strategies, negotiations, case preparation, legal briefs, appeals, etc. These options are explored later in this article as part of the infrastructure needed to support an effective system of parent representation.

### ***How to Ensure Parents Have Family-Centered Legal Representation***

To provide the legal representation described above, the conference participants looked at what systemic support and organizational structure would be needed. Although needs varied across jurisdictions and depended on the type of system in place, conference participants agreed the

### **Shortcomings of Current Parent Representation Models**

- Little specialized interest and commitment to child protection issues.
- Little understanding of family dynamics, child abuse and neglect laws, domestic violence, substance abuse and the community social service system.
- Little legal experience or only criminal defense background.
- Inadequate training, support, supervision, and accountability.
- Low compensation rate.
- High turnover rate (the Vermont Attorney General, responsible for the parent representation system, reported that there is an annual one-third turnover rate for parent attorneys).
- Lawyers practice in both criminal and family courts creating scheduling conflicts between courts.
- Lawyers not appointed until after the first emergency custody hearing.
- Lawyers do not meet with their clients until the adjudicatory hearing.
- Lawyers not available for agency case plan reviews.
- Lawyers relieved of their representation after the disposition, leaving parents unrepresented while they try to meet the requirement of the disposition order.
- Little continuity of representation from the emergency custody hearing through final permanency for the child, causing delays in permanency decisions for the child.
- Lawyers craft solutions which are either unattainable or not understood by the parents.

following systemic elements are essential:

#### **Hiring/Contracting of Lawyers**

Hiring practices for lawyers to perform this work must take into account lawyers' interest, experience, education, and commitment to public service work, family law, and child abuse and neglect proceedings. Since this work is taxing on lawyers, dedication is a needed ingredient to longevity. The family bar may be a better source for recruits than the criminal bar.

#### **Training**

Lawyers need substantial training in family law, substantive and procedural child abuse and neglect laws, and the social service delivery system. Ongoing training is necessary to address specific aspects of child abuse and neglect (e.g., sexual abuse of and by children; multiple victims of domestic violence; timing of substance abuse

recovery in contrast to ASFA timelines; concurrent planning), good practice, and innovations (e.g., family group decision making, pre-adjudication service "front loading").<sup>5</sup>

#### **Lawyers as Specialists**

To give this work priority, lawyers should dedicate full time to representing parents in child abuse and neglect cases. Just like specialized lawyers who represent child welfare agencies and children, parents' lawyers should specialize in engaging parents in child protection, holding agencies accountable, and finding creative solutions to complicated family dynamics. Specialization will also foster continuity of representation where the same lawyer is available from the first custody hearing until permanency is achieved for the child, including the child welfare agency case plan reviews. Thus the lawyer becomes invested in

the long-term solutions for the family.

Depending on the jurisdiction, to achieve specialization in rural areas, a regional model may be necessary to create full attorney caseloads. Neighboring counties can combine their caseloads and share the same lawyer in much the same way as some states have created “cluster” courts where one specialized juvenile judge travels from court to court.<sup>6</sup>

Better parent representation should decrease children’s length of stay in out-of-home care, thus reducing foster care costs.

### **Capacity to Support a Parent Representation System**

To ensure adequate compensation, training, supervision, and accountability, a supportive organizational structure must be in place. The organi-

and the consequences for not following through. Because they have been through the system, family advocates are better able to form trusting relationships with parents.

The family advocate explains, supports, and assists/insists on communication between the parents and the other parties to the legal proceedings. The family advocate has equal status to the other “players” and helps educate the lawyers about family needs and perspectives, acts as a buffer or “simultaneous translator” for the parents, and ensures out-of-court tools like mediation and family group decision making are available. Once a case plan is approved by the court, the family advocate helps the family implement it.<sup>8</sup> The family advocate has immunity from being subpoenaed for court proceedings.

The cultural acceptance within the jurisdiction for paying parents who have previously been involved in the system is a factor to consider when deciding whether to use a family advocate.<sup>9</sup>

2. *Paralegals* fill many of the roles identified for the family advocate, but work within the lawyer’s office, are available to parents, arrange for alternative dispute resolution options and monitor social service delivery.

### ***Creating an Action Plan***

Your jurisdiction may already have some of the elements for a family-centered model of legal representation for parents. If not, you will have to start from scratch. A good place to start is with your Court Improvement Project’s Advisory Committee. If your state does not have one, consider forming a special task force consisting of child welfare agency leaders, representatives from the state/county court, the public children’s and parents’ representative, social service agencies, lawyers, and parents who have been involved with the child protection system. If consensus can be reached, such a collaborative group, despite its unwieldy nature, is power-

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### **Compensation**

Lawyers for parents should be paid at the same level as lawyers for the state and for children in child abuse and neglect proceedings. This is a challenge in systems where the lawyers come out of the chronically underpaid public defense system.

One approach is to have separate appropriations for criminal defense and children, youth and families, even if both are housed under the same public defense system. Experience shows that legislators are more apt to want to support families than accused criminals.

Another approach would be to connect the system with specialized law school clinics, where a shared pool of blended state/county/university and private foundation funding could meet the need while training new lawyers in this work.

The funding could also come from Title IV-E through some creative application, such as the child welfare agency identifying parent representation as an essential child welfare service and contracting for these services.

Adequate compensation, including benefits, enables lawyers to choose this work as a career with upward mobility. It permits them to increase their skills and improve their representation, which ultimately benefits children.

zation must establish performance measures that ensure goals are met.<sup>7</sup> A case management and performance-based system will help achieve results, such as shortened timeframes between legal events, successful reunification, and successful use of alternative dispute resolution tools. It will also help managers analyze system improvements.

The organization will also be responsible for setting attorney caseloads that give lawyers enough time with each parent to create a trusting relationship, represent the parent in court, and follow up on social service delivery and effectiveness. The organizational structure should be linked either to a family advocate in the community or include paralegal support for the lawyer.

### **Family Advocates or Paralegal Support**

Two different models of ancillary parental support were proposed:

1. *Community-Based Family Advocates/Resource Consultants* are parents who have gone through the system and are familiar with what works. They mentor parents from their first involvement with the child protection system to ensure they understand what is expected of them

ful with the legislature or other body responsible for appropriations. An outside facilitator may help the group reach consensus.<sup>10</sup>

The action plan should:

identify why the current system acts as a barrier to safety and permanency for children;

outline what steps will be taken to create an administrative structure which ensures parents' attorneys are trained, supervised, supported, and held accountable;

identify possible funding sources;

develop budgets;

establish timeframes;

identify who is responsible for each step of the plan.

## Conclusion

Parent representation in child protection cases in most states does not meet parents' needs, is not accountable for results, and is a barrier to permanency for children. Systemic changes are needed to improve outcomes for children, meet ASFA timelines, and ensure fairness. Incorporating a family-centered model with the characteristics described in this article will raise the quality and fairness of representation parents receive, and hopefully shorten the time children spend in foster care.

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## Endnotes

1. St. Albans Consumer Advisory Board Meeting Minutes, November 5, 1998; see also William McGrath, MA and John Burchard, PhD, Process Characteristics of the Chittenden County Family Court, November 19, 1999 where 10 families were extensively interviewed and rated their trust for their lawyer as 1 on a scale from 0-4.

2. Casey Family Services, Vermont Division, currently facilitates Making Action Plans (MAPS) in court-related child protection cases in four Vermont counties. MAPS is a voluntary process for parents that consists of six steps that are facilitated by a neutral person: history, who you are, dreams, fears, current and future needs, and creation of a plan. An evaluation is in progress, but so far no type of case has been found categorically inappropriate.

3. The Adoption and Safe Families Act, P.L. 105-89, signed into law in November 1997. It amended the federal foster care law, Titles IV-B and IV-E of the Social Security Act, making safety and permanency the primary focus of the law.

4. For a description of mediation and family group decision-making tools, see National Council of Juvenile and Family Court Judges. *Technical Assistance Bulletin 2:7*, November 1998; Hon. Leonard Edwards. "Dependency Court Mediation." *Family and Conciliation Courts Review* 35:2, April 1997, 160-163; American Humane Association, Children's Division. "The Practice and Promise of Family Group Decision Making." *Protecting Children* 12:3, 1996; National Council of Juvenile and Family Court Judges, Permanency Planning for Children Project. *Diversion Project Matrix: A Report from Four Sites Examining the Court's Role in Diverting Families from Traditional Child Welfare Services into Community-Based Programs*, 1998.

5. For training sources, contact the the ABA Center for Children and the Law, 202/662-1720, the National Council of Juvenile and Family Court Judges, 775/327-5300; and the Child Welfare League of America, 202/638-2952.

6. ABA Center on Children and the Law. "Cluster Courts: Innovative Court Reform for Rural Areas." *ABA Child Court Works* 3:2, July 1999.

7. Friedman, Mark. *A Guide to Developing and Using Performance Measures in Results-Based Budgeting*. Washington, DC: The Finance Project, May 1997, for an example of a framework for establishing performance measures.

8. For further information, contact the Rutland County Family Court, 83 Center Street, Rutland, VT 05701, 802/786-5856.

9. For another example of effective use of ex-clients of the child welfare system, contact the Annie E. Casey Foundation, 410/547-6600, about the Sobriety Treatment and Recovery Team (START) project at the Cuyahoga County Department of Child and Family Services, Cleveland, OH.

10. In Vermont, the facilitated conference broke a longstanding impasse among the stakeholders and created consensus for a proposal for reform. This proposal includes all elements described in this article, and is now being considered by the Vermont Legislature.



## New On the Web

### Child Protection Law Reform Bulletin Board

This new addition to the ABA Center on Children and the Law's web site is a forum for sharing thoughts about fundamental child protection systemic reforms. Discussions focus on how laws, as well as government agency practices and procedures, can better address prevention and intervention in child abuse and neglect cases. You need not be a lawyer or judge to view, create, or react to bulletin board messages.

To access the bulletin board:

1. Go to the Center's web site: <http://www.abanet.org/child>
2. Click "Child Protection Law Reform Bulletin" from the menu.
3. Read and agree to the bulletin board's ground rules.
4. After agreeing to the rules, you'll enter the bulletin board.