IN PRACTICE

Representing Parents During Child Welfare Investigations: Precourt Advocacy Strategies

by Elizabeth Fassler and Wanjiro Gethaiga

Seventeen-year-old Ana and her stepfather Roberto immigrated to the United States in early 2008. Shortly after, Ana became pregnant. When Ana was in labor, her stepfather dropped her off at a hospital and abandoned her to return to Mexico. Ana, who speaks only Spanish, and whose only nearby family members lived in an overcrowded apartment, was placed in an English-speaking foster group home for young mothers where she now lives with her son.

Several months after Ana arrived at the foster group home, the staff called in a report against her. During the investigation, an attorney and social worker met with Ana to explain the investigation process and the possible legal consequences that could arise from the investigation. During the investigation, the social worker attended conferences with Ana to work with all parties to determine the appropriate plan for Ana.

At the end of the investigation, the attorney and social worker were able to stave off a court filing so Ana and her son could remain together in the foster group home. The social worker is now working diligently with the foster group home staff to locate a Spanish-speaking foster family for Ana and her son.

This vignette is based on a case handled by the Center for Family Representation, Inc. (CFR), a nonprofit law and policy organization based in New York City. It shows how early intervention and pre-court work can secure needed supports and provide tools to families to help them stay together and avoid going to court.

Using Ana’s case to illustrate, this article describes CFR’s unique Community Advocacy Team approach and how the teams assist parents navigate a child welfare investigation. It also discusses the importance of pre-court advocacy; the legal framework of an investigation; and what an attorney, social work staff member, and parent advocate can do during each investigation stage.

CFR’s Community Advocacy Teams

The investigation phase of a child protective case can be stressful and confusing for parents. To support parents during a child protective case, CFR created Community Advocacy Teams (CAT). CAT aims to (1) prevent foster care whenever possible, and (2) if foster care is unavoidable, to significantly shorten the length of foster care stays for children. CAT provides parents an attorney, social work staff member, and a parent advocate (a parent who has directly experienced the child protective and foster care systems and has successfully reunited with his/her children). Through this model, CFR has worked with families while they are under investigation by child welfare authorities before the court gets involved.

Why Precourt Advocacy is Important

In New York, when someone

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suspects child neglect or abuse and calls the state hotline, a child protective services (CPS) worker employed by children’s services is supposed to investigate the parent and offer the family services. Often parents mistrust the caseworker (who has tremendous power to take their children) and so will not follow up on referrals for services.

Or, frequently parents are asked to attend meetings about their situation, but feel their voices are not heard, are too intimidated to ask questions, don’t understand why they are being investigated, or simply don’t know what questions to ask about the investigation, process, services, etc.

Parents may be asked to attend services that are inappropriate, not culturally sensitive, or that conflict with employment or other obligations. Parents may also be asked to produce their children for interviews with a caseworker or medical professional. This raises many questions about whether they are required to produce their children, whether CPS can speak with their children outside the parent’s presence, and the consequences if a parent refuses to cooperate with these requests.

During these critical, early phases of an investigation, having a strong advocate can prevent misunderstanding and miscommunication and promote positive efforts to keep a family safe and out of the court system. Most people do not wait until they are standing before a judge to consult an attorney. In cases like Ana’s, CFR has created a referral partnership with other legal services agencies and community organizations. The only requirements for the referral are that the parent is currently under investigation by children’s services in New York City and wants help navigating the process.

CFR also gets referrals from partnerships with government agencies, the New York City 311 call line, and direct calls from parents who have found CFR’s information online or received CFR’s phone number from former clients. Once referred, CFR assigns an interdisciplinary team to provide legal representation and advocacy. An advocate can assist the family during the investigation by:

- providing ongoing information and clear explanations regarding the social work and legal aspects of the investigation process;
- advocating for reasonable and realistic service plans that address the family’s identified needs;
- thinking creatively about different ways to address the allegations; and
- identifying resources the family can use to address concerns of the child welfare agency.

Between July 2007 and November 2010, CFR represented parents in dependency cases, in addition to representing parents like Ana whose cases were not before the court. CFR’s legal and social work staff successfully diverted court filings in 70% of the cases in which they met a client during the investigation. CFR also successfully diverted foster care placements in 90% of the cases in which a dependency case was filed and CFR staff had met the family during the investigation.

Legal Framework

Governing Laws

Federal and state laws generally govern what happens when child protective services (CPS) intervenes in a family’s life when child abuse or neglect is suspected. These laws vary from state to state, so it is important to know your state’s laws and regulations. Knowing and understanding this legal framework for the investigation will make you a more effective advocate.

The legal framework is based on laws and regulations that require child welfare agencies to exercise reasonable efforts to prevent or eliminate the need for placing a child outside their home. Reasonable efforts can include holding family conferences and offering preventive services.

Reporting

In most states an investigation is prompted by a call to a central registry number/hotline that fields calls by anonymous or mandated reporters regarding alleged child abuse and neglect. The central registry is designed to “aid in investigations, treatment and prevention of child abuse cases and to maintain statistical information for staffing and funding purposes.” The information received is compiled and sent to the local child protective agency’s field office.

After CPS receives a report, federal law requires that it take the following investigation steps:

Safety assessment: CPS agencies conduct a safety assessment to determine the risk to the child of staying in the home. If CPS staff members feel the child cannot safely remain at home, they will remove the child immediately and a dependency case will be filed in family court against the person(s) named in the report. If the child can remain at home, the investigation will continue.

At this stage, CFR’s CAT teams first get involved with a family. As stated above, either a parent calls and requests assistance or we receive a referral from one of our community-based partners. Generally this is a parent’s first contact with an attorney. At this stage, an appointment is scheduled for the parent to come to CFR’s office to meet with a team comprised of an attorney and a social work staff member. We prefer that a parent meet with the attorney and social work staff member together and that this meeting occur before the next investigation stage (generally a
home visit).

During the first meeting, parents are advised of their legal rights and given information on the investigative process. In addition to informing the parent of their rights, we have them sign a retainer agreement for investigation purposes only, discuss confidentiality, discuss our individual roles and how we can assist them during their investigation. Parents are given contact information in case CPS comes to their house unannounced. They then have a way to contact a team member to walk them through the visit.

Ana’s case: In the vignette, after a case was called in by the group home, the CFR team met with Ana to discuss the investigation process, her rights, and how the CFR team could help her during this process. When a home visit was scheduled, Ana understood how important it was to contact CFR to inform them so they could be present during the next investigation phase.

Home visit: The local CPS agency’s field office assigns a caseworker to make the initial home visit. The severity of the allegations determines how quickly a home visit is made. A severe/emergency case is usually investigated within 24 hours, and within three-to-five days for nonemergency cases.

During the home visit, the caseworker or law enforcement personnel should identify themselves, inform the person named in the report that a call has been made alleging neglect or abuse of a child, and an investigation has started. The person under investigation is under no obligation to communicate with the investigator. The investigator should explain the option not to communicate as well as the potential consequences (i.e., court intervention, removal of a child). The investigator will want to speak with all people in the home and gather information about others who have regular contact with the subject children (friends, relatives, child care providers, school personnel, etc.) in the event they want to gather further information from collateral sources.

At this visit, the investigator may also ask about school and medical information and may ask the parent to sign releases so they can get information directly from providers. Investigators also routinely check the home for food, confirm all immunizations are current, speak to children, check children for marks and bruises and assess other safety concerns in the home. CFR’s social work staff can attend this visit. Attorneys may also attend but usually the team decides to send a social work staff person.

Before the visit, the social work team member and attorney meet to discuss strategies for making the home visit successful as well as areas that may present problems. In CFR’s experience, social work staff members have been extremely effective at gathering information about the investigation, supporting parents, and diverting the case from court.

Ana’s case: In the vignette, Ana contacted CFR when the CPS worker scheduled a home visit. The social worker was able to attend the meeting and supported Ana. The CPS worker assigned to the case did not speak Spanish so our social worker acted as a translator. If our social worker had not been present, someone else in the home could have been asked to translate, but we have found most people do not know how to translate the child protective issues as clearly as someone who works in the field. Although this sounds like a unique case, it happens often. We have also found that parents understand the process more in their native tongue and that they listen to our social work staff members and attorneys because they take time to build a relationship and explain the details of an investigation.

Conference: The CPS team—caseworker, supervisor, manager—may call a meeting to gather more information, clarify information and/or discuss services for the family. Usually conferences are held in the CPS field office.

An attorney rarely attends conferences. In fact, in New York they are generally prohibited from attending. This is where preparation is most important for both the parent and the social work staff member of the team. A good support at this meeting can mean the difference between having a case go to court or not. During the conference, the social work staff is in contact with the attorney to inform them of decisions. If a decision is made to go to court, the attorney meets the parents at the courthouse. The parents and CFR social worker bring the documents that were prepared at the conference including any written decisions.

Ana’s case: In Ana’s case, the social worker attended several conferences with Ana. She was able to present documentation to the child welfare organization on the positive steps (e.g., parenting class, ESL classes) that Ana had been taking to address their and the foster group home’s concerns. The social worker also helped foster a positive working relationship between Ana and the staff at the foster group home and the CPS worker. Creating a positive working relationship with all parties helped them see Ana as an individual and address her needs.

Case Closure: The CPS caseworker/team should send a closing letter stating the outcome of the investigation within 60 days from the start of the investigation.

The investigation will be closed with the case either “indicated” (some credible evidence for found) or “unfounded” (no credible evidence found).

If a case is indicated or founded but no court case is filed, the team
Preparing Your Client for a CPS Investigation

Parent clients often have many questions during a CPS investigation. Advocates can help parents prepare for the investigation and alleviate their concerns by thinking through common questions in advance.

- How is neglect defined in your state?
- What is the Child Protective Services (CPS) protocol for the length of the investigation in your state?
- Should they expect a CPS worker to do home visits school visits, etc.? If so, how often?
- Will CPS speak to other people regarding the investigation? If so, who? Babysitters? Neighbors?
- What privacy rights do parents have?
- When does CPS have the right to remove my child?
- When does CPS have to file a case in court?
- If my child is removed, what are my immediate rights?
- Should they expect a CPS worker to do home visits school visits, etc.? If so, how often?
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- When does CPS have the right to remove my child?
- When does CPS have to file a case in court?
- If my child is removed, what are my immediate rights?

Attorney helps the parent through an administrative process where a parent can challenge the finding. This process differs in every state. In New York, it involves writing a letter to request expungement, or if that is denied then a hearing.

Ana’s case: Although the team was able to stave off a family court case, Ana’s case was indicated. The social worker and attorney helped Ana craft a letter to the state central registry to ask for the case to be expunged and are awaiting a reply. If denied, the team will help prepare Ana for a hearing.

Court Intervention

In many states, the legal framework allows child welfare agencies to ask the court to intervene when there is reasonable cause to believe a child’s life or health may be in danger. A request for a court order gaining access to a child and a family’s home is held to a higher standard than “imminent risk” and can only be made in very specific circumstances, such as when a CPS worker has been unable to gain access to a child or a home during an investigation. The inability to access the family can be for many reasons, but generally orders to gain access are sought when a family is refusing access. To protect the rights of the family, child protective workers in some states must inform the parent or guardian that they will ask the court to intervene if the family refuses to cooperate.

Legal Representation

States vary over whether a parent may have an attorney or other advocate represent them or be present for any meeting or investigative interviews during a child welfare investigation. Because of this ambiguity, it is important to look at your state’s dependency or child welfare statute and regulations. Remember, even if you cannot attend these meetings or interviews, you can prepare your client for them.

Removal

At any point in the investigation, the investigating team can decide to file a court case and ask for the child(ren) to be removed from the home. In some states, the child welfare agency may remove a child for a specific period before asking the court to intervene.

Supporting a Family during an Investigation

During an investigation, many professionals can perform the same roles in helping a client. For example, both an attorney and a social worker/advocate can explain the stages of an investigation to a parent. The following tips, compiled from CFR’s work with precourt cases, are designed to help attorneys, social work professionals, and parent advocates think about steps each professional can take.

Practice Tips—Attorneys

- Research your state’s child protection statutes and regulations. This may sound basic, but you need to understand what CPS is empowered to do when investigating a family.

  - Develop a “know your rights” checklist for parents that explains what is supposed to happen.

  - Learn how to explain the investigation process and keep track of frequently asked questions (see Preparing Your Client for a CPS Investigation).

  - Ask the parent about any meetings they are asked to attend. If you can accompany the parent, find out who is convening the meeting and contact that person about coming. Be clear that you are an attorney. If you are told attorneys are not permitted, consider putting in writing (letter) that you were told this and that you have advised your client to bring another support person to the meeting (relative or community member).

  - Determine when parents are entitled to representation. If your state has a procedure that permits the protective service agency to seek a court order to either take children into temporary custody during an investigation OR to enter a home, learn whether parents are entitled to representation. Tell the parent to notify you if they are served with any official papers directing them to appear in court. Even if the parent is not entitled to representation, if you...
can appear with a parent on the court date, your presence may help the court and the protective services agency be more attentive to reasonable efforts obligations owed to the family.

- Develop a conflicts procedure for investigation clients. Remember, even at this early stage, you cannot be sure what case may end up in court and you cannot counsel two parents or adults involved with the children.

- Set clear boundaries from the first discussion about confidentiality and other policies you have in your office. For instance, it is important to inform your client what types of case you are able to represent them on if the case goes to court (i.e., custody, visitation, administrative hearings regarding sealing/expunging CPS records, dependency cases).

- Develop a referral network. If you do not work or contract with social workers, establish connections with local community-based or social services organizations that have a track record for supporting parents. Your clients may need referrals outside of the CPS process and you want them to have quick access to these supports.

- Be prepared to meet with the client and/or your own social work staff member to assess the likelihood of a case being filed as the investigation proceeds. Keep track of what the agency is or is not doing so that if the case proceeds to court you have begun to develop both a theory of “reasonable efforts” and can anticipate the allegations. This early work by the attorney during the investigation can also make it more likely that if children are removed as a result of the filing of a formal neglect allegation, the attorney is prepared to proceed to an emergency hearing to get the children returned home.

- Be prepared if a parent chooses not to cooperate. Remember there is no requirement that a parent must cooperate with a CPS investigation. Know the legal remedies that CPS has and the legal consequences in your state if a parent refuses to allow access to the child or to their home so you can counsel your client accordingly.

Practice Tips—Social Workers and Parent Advocates

- Inform the client about the investigation stages. The more information the client has the more prepared he/she will be for questions that the CPS worker may ask. It helps to understand the actual (versus published) practices of the CPS agency during an investigation. Despite how you feel about investigations, it is important to know exactly how they work so you can advise parents.

- Attend meetings with the client. Generally social work staff, parent advocates, and other advocates may attend meetings, conferences, home visits, etc. When possible, attend as many of these meetings with clients. If you cannot attend, take time to prepare the client for the meeting, answer questions, and follow-up afterwards.

- Learn the agenda and format of meetings administered by the CPS agency. Look at the county Web site for information about meetings/conferences that your clients may be invited to attend. This will help you understand the process and prepare the client on what to expect during the meeting.

- Encourage the client to organize all medical and school information (i.e., evaluations, immunizations, report cards) for all children. Tell the client never to give original documents to the caseworker, only photocopies, and to bring any relevant documents to meetings.

- Encourage the client to keep important numbers readily available. For example, the number of their child’s pediatrician or health clinic, prevention agencies the family has worked with, or a relative who could support or be a resource for the child.

- Keep an updated list of important resources for clients. If your local child welfare agency has an ombudsman’s office or parent hotline, parents can call them directly with a complaint or question(s). For example, New York has both an Office of Advocacy and a parent hotline, Michigan has an Office of Children Ombudsman, and Arizona has a Parent Assistance Program (24-hour hotline), Family Advocate Program, and a Client Advocate’s Program.

- If the client has a positive working relationship with any service providers, encourage the client to ask their service providers to contact the CPS worker, attend any meetings or conferences, or send a letter about the client’s progress and compliance with services.

- If a conference or meeting is scheduled and you cannot attend, encourage the client to invite people to the conference who will support him/her. Remind clients to bring someone who will be supportive. Someone who is adversarial may change the tone of the meeting and unwittingly put the client in a difficult position or taint the CPS team’s view of the client.

- Ask the client what services would benefit the family most. The client should discuss what issues they believe led to the current situation and think about services that may help avoid the situation in the future. For example, if the parent needs help getting a special education evaluation for the child, would she be open to working with someone who could help her navigate the educa-
tional system? It is important for the client to think about what he/she will agree to regarding services. The client does not have to agree to everything that is proposed. It is important for the client to have thought about why he or she may not want certain services and be able to state that clearly to the CPS team. The client needs to be viewed as cooperative, but not over-whelmed with unnecessary services.

- Discuss the client’s strengths.
  During an investigation, the parent is constantly bombarded with his or her negative attributes. Help the client identify his/her strengths so the client can highlight them at any meetings or conferences.

Conclusion
Regardless of whether the law allows attorneys or social workers to actively participate in an investigation or meeting, you can still prepare your client on what to expect and how to best prepare. Preparing clients to work with CPS in a successful and productive way promotes positive outcomes for families. As in Ana’s case, it can also help avoid a court filing and keep the family together.

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Endnotes
1 <www.childwelfare.gov/systemwide/laws_policies/statutes/resources.pdf>
2 E.g., in certain states a child can be removed from their parents for up to 48 hours (California, www.ccrwft.org) or up to 72 hours (Arizona, www.egov.azdex.gov) without court intervention.
4 <www.childwelfare.gov/systemwide/laws_policies/statutes/centregall.pdf>
5 Through our research, we found that in all states except Hawaii the children can be removed by the CPS agency. In Hawaii only law enforcement can remove a child from the home (www.hawaii.gov).
6 In our experience, most people will sign releases without reading them thoroughly or asking for them to be filled out completely. It is important for the person to read the petition/have someone read it to them, make sure it is filled out completely, and an expiration date is provided.
8 E.g., in New York, the applicable standard for a court to enter an order requiring cooperation with entry to a home is probable cause. See N.Y. Fam. Ct. Act §1034.
10 See D.C. Code § 4-1301.09; Neb. Rev. Stat. § 28-710-728; 390 Neb. Admin. Code § 1-100 et seq. For example, in Hawaii an attorney can attend a child protective meeting, whereas in New York attorneys may not attend these meetings.

(Beggs v. State, continued from p. 19)
for injuries resulting from health care, defined as the process of using skills in examining, diagnosing, treating or caring for a patient. The court explained that the doctors’ duty to report did not necessarily arise while they were providing health care. Rather, doctors and health care professionals are among those professionals who must report when they have “reasonable cause to believe a child has suffered abuse or neglect.” They do not have to provide health care or exercise their special skills in examining, treating, or diagnosing a child to form this reasonable cause. The suspicion can arise during the course of professional employment and the threshold of suspicion is lower.

The court found the medical malpractice statute did not preclude a civil claim against the doctors in this case under the reporting statute. However, because a claim for failure to report suspected abuse could only be brought as a survival action, the court affirmed the trial court’s partial summary judgment order dismissing the claim.

Regarding the second issue—whether the adoptive siblings were dependent on the deceased child—Washington’s wrongful death statute creates two kinds of beneficiaries. First tier beneficiaries need not show dependency to recover because of the nature of their relationship to the deceased. Second tier beneficiaries may only recover if there are no first tier beneficiaries and must show dependency to recover.

The adoptive siblings were second tier beneficiaries who had to show they were either dependent on the deceased child financially or for services. They claimed they were dependent on the child because the child welfare agency provided $717 per month in adoption support payments to the adoptive mother for his care; the household was dependent on the adoption support payments; and the adoptive mother pooled the support money she received with other family resources that benefitted them.

The court rejected the siblings’ claims, finding the agency provided separate support payments to supplement their support and that they were not dependent on the deceased child’s support payments. The court therefore affirmed the trial court’s partial summary judgment dismissing these claims.