



Child Law Practice

Vol. 26 No. 9

November 2007

Helping Lawyers Help Kids

This article is a follow up to “Seen and Heard: Involving Children in Dependency Court,” in the December 2006 *CLP*.

With Me, Not Without Me: How to Involve Children in Court

by Andrea Khoury

Youth are the most important part of an abuse and neglect case. Failure to give a child a say in court diminishes the process and prevents judges from having the most information to make the best decision.

—Judge Steven Rideout (ret.),

Alexandria, VA, Juvenile and Domestic Relations District Court

As the child’s advocate or the judge presiding over a child welfare case, you know that involving a youth in court is a key step in the proceedings.¹ The next step is exploring what to do when a youth is in the courtroom. What do you do when a child is in court to ensure her participation is as meaningful as possible to the child and the court? How do you use the child’s participation to dig deeper into what you already know and promote permanency for the child?

Children are a resource in the case and can offer valuable insights to aid decision making. This article offers tips to help lawyers and judges in child welfare cases:

- prepare for children’s involvement in court;
- make courtroom accommodations that help children feel comfortable participating in the court process; and
- ask age-appropriate questions to obtain information from the child that will aid decision making in the case.

The tips that follow are not new or revolutionary. They remind busy practitioners. Choose the tips that relate to your case and use them to make

children’s participation routine practice in every case.

Preparing for Children’s Involvement

Remember that the child welfare proceedings are about the child. A child who comes to court should not be invisible. The child’s involvement should be welcomed and dependency court judges and child welfare advocates should do all they can to prepare and plan for that involvement.

Judges

As the judge, you will not be as intimately involved with the child as the social worker and the child advocate. It’s important to get as much information in advance about the child’s history, current placement, school progress, health issues, child’s relationship with family, and other issues that develop. The information you’ll need will differ based on the type of hearing, the child’s age, and the child’s cognitive and emotional level. The last article² discussed the value *to the child* of being in court. This article focuses on the value *to the judge* of the child being in court, so the court needs to be clear on what kind of

information the child will provide and how best to elicit that information. The following questions can help identify the reason for the child’s involvement and should guide discussions with the child:

- What is the child’s role in the proceedings?
- Does the child have important knowledge about the allegations in the petition?
- Has there been a recent change in the child’s placement?
- Do you need the child’s input about the placement?
- Do you need the child’s reactions to child welfare services he has recently received?
- Is termination of parental rights

(Continued next page)

What’s Inside:

131 CASE LAW UPDATE

139 COURT INNOVATIONS
Expediting Dependency Appeals

141 RESEARCH IN BRIEF
Mothers’ Drinking Shrinks Fetal Brain

142 POLICY UPDATE
ABA Standards Safeguard Domestic Violence, Sexual Assault, and Stalking Victims

ABA Child Law PRACTICE

www.childlawpractice.org

ABA Child Law Practice (CLP) provides lawyers, judges and other professionals current information to enhance their knowledge and skills, and improve the decisions they make on behalf of children and families. Topics include: abuse and neglect, adoption, foster care, termination of parental rights, juvenile justice, and tort actions involving children and families.

CLP is published monthly by the **ABA Center on Children and the Law**, a program of the ABA's Young Lawyers Division, 740 15th St., NW, 9th Fl., Washington, DC 20005-1022.

Director: Howard Davidson

Associate Director: Robert Horowitz

CLP Staff:

Editor & Designer:

Claire Sandt Chiamulera

202/662-1724

chiamulera@staff.abanet.org

Publications/Marketing Director:

Sally Small Inada

202/662-1739

sinada@staff.abanet.org

Case Law Summaries:

Claire Sandt Chiamulera

Kristin Kelly

Subscription Prices:

- \$184 individual rate (**payable by personal check only**)
- \$219 institutional, agency, library, and law firm subscribers

Send check or money order, made payable to the: American Bar Association, 740 15th Street, NW, Washington, DC 20005-1022

Subscription Inquiries &

Address Changes:

Call Amanda Cusick: 202/662-1513;

E-mail: cusicka@staff.abanet.org

Copyright © 2007 American Bar Association, ISSN 0887-896X

The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and accordingly, should not be construed as representing the policy of the American Bar Association.

(Continued from front page)

being considered and, if so, do you need to hear the child's reaction or do you need to make sure the child understand what is going on?

Once the reason for the child's involvement is clear, judges can prepare for the child's permanency or review hearing by taking the following steps:

- Review previous court orders for outstanding issues (e.g., Is the child participating in the mentoring program that was ordered? Is the child happy with the change in visitation ordered at the last hearing? Has the child increased his grade point average as he promised at the last hearing? Has the child welfare agency been facilitating relationships between the child and stable adults in hopes of creating long-term connections for the child?).
- Require the social worker and other service providers to submit their reports at least three days before the hearing on the permanency plan and efforts to achieve that plan.
- Read the reports highlighting the child's strengths and potential weaknesses (e.g., Notice whether the child's grades have improved or the child's behavior has changed. Notice if the child has stopped attending therapy or refuses to go to school. These are the areas the judge should discuss with the child.)
- If the child welfare agency worker or attorneys would like you to address certain issues with the child, ask them to let you know in advance.
- Become familiar with permanent placement options for the child.
- Encourage the child advocate to submit a written statement to the court identifying anything the child wants to discuss.
- Create the presumption that all children will be present for their

hearings unless the court finds it is not in the child's best interest. Require the parties to inform you in advance if they do not want the child present for all or some of the hearing and the reasons it's not in the child's best interests.

Child Advocates

As the child's attorney, you must spend time preparing the child for court involvement. Steps you can take to prepare for the child's involvement include:

- Make sure the child understands who will be present at the hearing and their roles, what will happen at the hearing, and what the child's involvement will entail.
- If the child will testify, provide guidance about how to testify effectively. Advise the child if the judge or other advocates will ask the child questions in court and the nature of those questions.
- Help the child feel comfortable with the questioning process and help him prepare. For example, role play a court hearing in a comfortable environment so the child will know what to expect and has the opportunity to ask questions in advance.

(Continued on page 134)

Getting Kids to Court

Many children do not come to court because they cannot get there. The child is placed too far away. No one has been identified to bring the youth to court. Strategies to address transportation are:

- Set the hearing date and inform all parties well beforehand so they can arrange for transportation.
- Set the hearing at a convenient time for the child and transporter.
- Include transportation in the court order.

Mother Denied Quality Representation in Dependency Proceedings

In re J.Z., 2007 WL 2875166 (Ohio Ct. App.).

An Ohio child welfare agency filed a petition alleging dependency and neglect and sought custody of two children. The trial court appointed an attorney for the children's mother and instructed her to represent the mother zealously.

At the preliminary hearing the mother's attorney was present but the mother was not. The court granted the attorney's motion to withdraw from representing the mother. The hearing continued without the mother or her representative and the children were adjudicated abused and neglected.

At the disposition hearing, only the children's guardian ad litem (GAL), a social worker, and a prosecutor were present. The children were then placed in the agency's temporary custody.

Several months later, the agency moved for permanent custody of the children. At the hearing on that motion, the same attorney who had previously been appointed for the mother was re-appointed and again instructed to zealously represent the mother. The mother and father attended the proceeding and gave the court their contact information.

A preliminary hearing was set. However, the hearing was continued

and the mother was not informed of the new date. On the date of the hearing, only the prosecutor, children's GAL, and a social worker attended. The mother's attorney appeared at the proceeding and again asked to withdraw from representing the mother. She said she wrote the mother during the temporary custody case, but the mother never responded. She did not say that she contacted the mother in the current permanent custody case, only that the mother had never contacted her. The court granted the attorney's request based on this information alone. The hearing proceeded and permanent custody was awarded to the agency and the parents' rights were terminated. The mother appealed.

The Court of Appeals of Ohio reversed. The mother claimed she was denied her right to effective assistance of counsel when her attorney was permitted to withdraw. She claimed the court improperly permitted the attorney to withdraw on the day of the hearing without notifying her.

Ohio court rules prohibit discharging an attorney before a trial date unless there is good cause that the request is

not the fault of the party or for the purpose of delay. An absent client who hasn't been adequately informed of the trial date by counsel is not "the fault of the party," according to the rules.

Further, Ohio's disciplinary rules prohibit an attorney from withdrawing from representation without notice to the client, sufficient time for appointment of new counsel, delivery of client papers and property, and compliance with laws and rules. The record showed these steps were not taken by mother's counsel. Therefore, her withdrawal was inconsistent with the disciplinary rules.

The state argued that despite the mother's attorney's withdrawal, the mother had to show she was prejudiced by the attorney's withdrawal and she failed to do so. The court found this argument to be disingenuous, citing the lack of evidence in the record showing any cross-examination of the social worker and GAL, and absence of anyone to present evidence on the mother's behalf. The court reversed the termination of the mother's parental rights and remanded the proceeding to allow the mother to be effectively represented.

Father Properly Denied Access to Child's Confidential Communications with GAL

In re Kalil, 931 A.2d 1255 (N.H. 2007).

The unmarried parents of a 10-year-old child entered into a parenting plan that addressed the father's parenting time with the child. When the father later moved to modify the parenting plan, a guardian ad litem (GAL) was appointed for the child.

The child asked the GAL not to share certain information she shared with the GAL with her parents. The GAL told the parents about the child's request and assured the child the confidential information would only be disclosed to the court in a sealed report. Later, the GAL filed a stipulation, which the mother signed and the father orally agreed to, that stated the child's conversations with the GAL would be confi-

dential. The court approved the stipulation.

When the GAL submitted her sealed signed report to the court, the parents only received a copy of the cover letter, not the report. This led the father to request a copy of the sealed report, which the court denied.

At a hearing on the father's motion to modify the parenting plan, the father again requested the sealed report. The court again denied the request, citing the state's confidentiality statute. The father then moved to strike the sealed report from the court file and the court denied the motion.

On appeal, the father raised two issues. He first asked whether the court

can refuse to disclose a sealed GAL report to parents when the child asks the GAL to keep certain information confidential? The court explained that upon a GAL's appointment, the court requires the parties and GAL to file a stipulation addressing such issues as whether conversations between the GAL and child will be confidential. The GAL filed a motion requesting approval of a confidentiality stipulation. Both parents agreed to the stipulation and the court approved it, making it binding on the parties.

The father argued that he was entitled to view the sealed report under a court rule that requires GALs in custody

(Continued on page 138)

Alabama

Ex parte Montgomery County Dep't of Human Resources, 2007 WL 2812432 (Ala. Civ. App.). DEPENDENCY, ATTORNEY'S FEES

Guardian ad litem failed to prove that child welfare agency attorneys acted willfully, maliciously, fraudulently, or beyond their authority to overcome their state-agent-immunity defense in petition for writ of mandamus which they filed in response to trial court's award of attorney's fees to GAL in her action seeking discipline of agency attorney for trying to get her removed from cases; therefore, trial court's award of attorney's fees was vacated.

Arkansas

Devine v. Martens, 2007 WL 2792239 (Ark.). DEPENDENCY, GUARDIANSHIP
Trial court improperly awarded permanent guardianship of child to grandparents after finding mother was unfit to raise child; mother had taken significant steps to correct issues that caused son's removal and was working towards reunification, thus guardianship was not in child's best interests.

Connecticut

In re Anna Lee M., 931 A.2d 949 (Conn. Ct. App. 2007). TERMINATION OF PARENTAL RIGHTS, EVIDENCE
When evaluating mother's ability to have her children returned to her, trial court properly considered evidence of her request for social security disability benefits and her later arrest for social security fraud; court's consideration of this evidence was limited to determining that evidence would support denial of children's return if it was true, not whether mother committed a crime.

Florida

D.B. v. W.J.P., 962 So. 2d 949 (Fla. Dist. Ct. App. 2007). DEPENDENCY, MEDIATION AGREEMENTS
Trial court incorrectly granted grandmother temporary custody of children in a dependency action resulting in a mediation agreement; mother withdrew consent of the agreement prior to order granting temporary custody, and mother was not given a meaningful opportunity to be heard as required by mediation statute.

M.E. v. Dep't of Children and Families, 959 So. 2d 1279 (Fla. Dist. Ct. App. 2007).

TERMINATION OF PARENTAL RIGHTS, ABANDONMENT

Father's incarceration was not sufficient to establish abandonment supporting termination of his parental rights; as soon as father was notified of paternity, he took affirmative steps to assert his parental rights, including filing a motion for paternal grandparent relative care placement or visitation while incarcerated.

Georgia

In re N.S.E., 2007 WL 2265514 (Ga.). TERMINATION OF PARENTAL RIGHTS, ADOPTION
Trial court correctly placed children for adoption rather than with grandmother or aunt; evidence showed the agency considered both relatives for placement, but grandmother had knowledge of abuse while children had been in her care and did not prevent it, and aunt was living overseas and did not know the children, and children had strong bond with preadoptive foster placement.

Louisiana

Martin-Creech v. Armstrong, 2007 WL 2609944 (La. Ct. App.). CUSTODY, JURISDICTION
Where aunt and uncle took child to Louisiana after child's mother was placed in jail in West Virginia and sought custody of child four months later, aunt and uncle failed to satisfy connection requirement under Uniform Child Custody Jurisdiction Law to support custody proceedings in Louisiana; child's best interests would be met by holding custody proceedings in West Virginia since both of child's parents lived there and child's physical custody with aunt and uncle was not result of legal proceedings.

S.J.G. v. A.A.G., 2007 WL 2713270 (La. Ct. App.). CUSTODY, TERMINATION OF PARENTAL RIGHTS

Trial court improperly terminated mother's parental rights in private action brought by father who had previously been awarded custody of child; a parent may not petition to terminate the rights of another parent under any circumstances and strict procedural and evidentiary requirements must be followed in termination proceedings.

Maryland

Fields v. Dep't of Human Resources Howard County Dep't of Soc. Servs.,

2007 WL 2671123 (Md. App.). ABUSE, APPEALS

Man who challenged child welfare agency's finding that he was responsible for indicated child abuse followed substance of statutory requirements for appealing findings by timely notifying administrative hearing officer of desire to appeal, and while he did not comply with second requirement to return form within 60 days, that requirement conflicted with statutory requirements; therefore his appeal was improperly dismissed.

Missouri

In re R.M., 2007 WL 2768240 (Mo. Ct. App.). VISITATION, GRANDPARENTS
Trial court improperly overruled grandmother's motion seeking visitation with child and its finding that grandmother had not been denied visits was against weight of the evidence where record clearly showed mother insulated child from grandmother and made visits impossible; visits were in child's best interests and were supported by evidence showing child needed continuing relationship with grandparents and benefited from visits.

New Hampshire

In re Juvenile 2007-084, 931 A.2d 1239 (N.H. 2007). TERMINATION OF PARENTAL RIGHTS, FAILURE TO CORRECT
Termination of father's parental rights based on review of father's conduct over previous 11 months failed to comply with statute permitting termination based on parent's failure to correct conditions causing neglect/abuse adjudication within 12 months of neglect finding.

New Jersey

New Jersey Div. of Youth and Family Servs. v. J.E., 2007 WL 2752347 (N.J. Super. Ct. App. Div.). TERMINATION OF PARENTAL RIGHTS, FINDINGS
Although child welfare agency provided father significant help to address his parenting deficits, he was indifferent and inconsistent in his efforts to improve and clear and convincing evidence supported conclusion that children's health and development would be impaired if they continued in his care; father was homeless, unable to keep a job, uninvolved in children's lives for long periods, and had repeatedly been jailed for committing crimes.

New York

In re John O., 839 N.Y.S.2d 605 (App. Div. 2007). DEPENDENCY, GROUNDS
Evidence that mother hit child with candle during argument and caused bruise to child's hand that did not require medical attention did not establish neglect in dependency proceeding; evidence of mother's other behaviors, including calling child vulgar names, leaving child improperly supervised while she went out at night, and abandoning her at a police station was also insufficient to support dependency finding.

In re Shakima Renee M., 841 N.Y.S.2d 270 (App. Div.). TERMINATION OF PARENTAL RIGHTS, ADOPTION
Trial court incorrectly determined adoption was appropriate for children, thus justifying termination of parental rights; one child refused to consent to adoption and the other child had not yet been asked for consent, so adoption was not a feasible plan and the justification to terminate parental rights was eliminated.

In re Olivia L., 2007 WL 1652568 (N.Y. App. Div.). TERMINATION OF PARENTAL RIGHTS, REASONABLE EFFORTS
Agency did not show reasonable efforts to reunify mother and child in termination proceeding based on permanent neglect; agency did not tailor reunification efforts to the needs of the mother and child as required for termination based upon permanent neglect, and instead should have filed for termination based upon mental retardation.

North Carolina

In re N.G., 620 S.E.2d 45 (N.C. Ct. App. 2007). DEPENDENCY, REUNIFICATION
Court did not abuse its discretion in finding reunification efforts would be futile and terminating parental rights; agency had been involved with parents for seven years, parents failed to cooperate with reunification plans for other children, and parents intentionally concealed their third child's birth to prevent removal.

In re T.H.T., 648 S.E.2d 519 (N.C. Ct. App. 2007). DEPENDENCY, MEDICAL CARE
Awarding custody of child to father was in child's best interests where evidence showed father took steps to seek medical care leading to diagnosis of severe head injury which child suffered while in

mother's care and which formed basis for dependency adjudication.

South Carolina

South Carolina Dep't of Soc. Servs. v. Mother, 2007 WL 2769591 (S.C. Ct. App.). TERMINATION OF PARENTAL RIGHTS, AMERICANS WITH DISABILITIES ACT
The Americans with Disabilities Act (ADA) does not prevent termination of parental rights if the agency has made reasonable efforts to correct conditions leading to child's removal and termination is in child's best interests; termination of parental rights was not based upon disability, but on mother's actions despite agency's attempts to rehabilitate her.

Tennessee

Smith v. Smith, 2007 WL 2851398 (Tenn. Ct. App.). SUPPORT, CREDITS
Trial court properly gave credit to father for child support payments he made directly to son instead of mother since father, mother, and child all knew father made payments to satisfy his support obligation, and mother received payments on child's behalf and exercised complete control over them; allowing mother to collect these payments again from father as arrearage would be unfair.

Texas

In re K.D., 2007 WL 2896566 (Tex. App.). TERMINATION OF PARENTAL RIGHTS, REPRESENTATION
Mother's lawyer was not permitted to withdraw from representing mother in termination of parental rights proceeding since state statute places no limits on length of representation in termination proceedings and order appointing lawyer required her to continue representing mother until suit ended, including representation in the appellate and supreme courts.

Virginia

Lynchburg Div. of Soc. Servs. v. Cook, 648 S.E.2d 328 (Va. Ct. App. 2007). CUSTODY, GRANDPARENTS
According to statute, grandparents were entitled to bring a direct action challenging agency's custody of children rather than intervene as relative foster parents; thus, trial court's use of the best interest standard, rather than the standard for approving relative foster parents for a foster care plan, was appropriate.

FEDERAL CASES

First Circuit

Carter v. Lindgren, 2007 WL 2570135 (1st Cir.). LIABILITY, CHILD WELFARE AGENCIES
Child welfare agency officers' removal of children from home was based on reasonable suspicion that child abuse had occurred or would occur and therefore removal did not violate parent's due process right to familial integrity; removal was based on evidence that father was under indictment for child molestation and was awaiting trial.

Eighth Circuit

Chapa v. United States, 928 A.2d 731 (8th Cir. 2007). LIABILITY, PHYSICIANS
Trial court properly found that physician's negligence in failing to review child's medical records when child was brought into the emergency room did not proximately cause child's injuries arising from later abuse; without any testimony about how agency would have responded to abuse report, it was only "wishful speculation" whether injuries could have been prevented.

Kilpatrick v. King, 499 F.3d 759 (8th Cir. 2007). LIABILITY, CHILD WELFARE AGENCIES

In child abuse acquittee's Section 1983 action against child welfare agency officials claiming they listed his name in child abuse registry in retaliation for his public complaints about agency, acquittee failed to establish retaliatory motive to support claim; agency's file had detailed evidence about acquittee's alleged abuse and son's accusations against him, agency used preponderance standard for listing decision, agency waited nine months before making listing decision, and listing was part of large-scale classification project.

Vaughn v. Wallace, 496 F.3d 908 (8th Cir. 2007). LIABILITY, CHILD WELFARE AGENCIES
Court correctly granted summary judgment in favor of the agency for wrongful death claim following child's death in foster home; agency placed child in foster home that burned down, but mother offered no evidence about cause of fire in the foster home that led to her child's death.

(Continued from page 130)

- Encourage the child to write down what she will say in an outline or notes. Speaking to a judge in court can make a child anxious and forget what she wants to say. Having something written down will jog her memory.
- If the youth doesn't want to speak in court, help the youth write something to give the judge to read.

Accommodating Children in Court

Highlight a child's positive accomplishments first, like congratulating her on how well she is doing in school or how well she is adjusting to a new foster home before delving into any issues that may cause some anxiety. Mention things from the previous hearing (based on your notes) that will make the child feel special. Do not ask the same questions over and over signaling that you have not reviewed the case. Conclude the hearing by setting expectations for the child that you will follow up on during the next hearing.

—Judge Juliet McKenna,
District of Columbia Circuit Court

While the child is in court, the role of the judge and attorneys is twofold: to make the experience a positive one for the child, and to gain as much information about the child and family as possible. The following tips accomplish both tasks for verbal and non-verbal children.

Verbal Children

Children tend to be more accurate and complete in providing information when they are familiar with the questioner, their surroundings, and the purpose for being present.³ When this happens, the child's participation in court is more meaningful to the child and the court. Judges can help make a child more comfortable and familiar

with the court process by making a few easy accommodations.

- Hear cases where children are present first.
- Ask any nonparty to leave the courtroom if a sensitive issue will be discussed.
- Arrange for (or allow) children to have a support person present if they desire.
- Respect the child's family members, especially those that may be present in court.

Hearing directly from the child offers a valuable perspective that you won't get from reading reports or getting information secondhand.

- Provide age-appropriate reading material describing the court process to the child.
- Address the child directly using a supportive voice and making eye contact.
- Connect with the child by learning what the child likes/dislikes and commenting on it (e.g., The judge could ask: If you had three wishes, what would they be? If you could change places with anyone in the world for a day, who would you choose and why? Is there something that scares you?).
- Explain your role (and the roles of other adults participating in the hearing) to the child and explain what issues you can address.
- Allow the child to look around and ask questions about her surroundings.
- Provide an age-appropriate list of some legal terms and definitions that may be used during

the hearing.⁴

- Avoid acronyms or legal jargon that a child would not understand.
- If the child submits a letter, read it in the presence of the child.
- Publicly praise the child about her accomplishments.
- Thank the child for coming to court.

Children's advocates can also help children feel comfortable in court. Sometimes during court proceedings the child has planned to speak but changes her mind. She may have become nervous or rethought her decision to speak after seeing her parents in court. Be prepared to continue to be the child's voice and present options to the child:

- Offer to speak on the child's behalf.
- Ask the judge to ask parents to leave the courtroom (perhaps in a side bar at the bench).
- Ask for an in-chambers discussion.

The child will look to you for guidance. Make the court experience positive and thoroughly prepare each child based on his/her unique needs and circumstances.

Infants, Toddlers, and Nonverbal Children

If the child is an infant, toddler, or is nonverbal, it is still important for the child to be meaningfully involved in the court hearing. Judges often can learn valuable information simply by observing the child's appearance, demeanor, and interactions with others.⁵

The younger child's involvement differs from an older child's involvement. By taking the following steps, judges can obtain valuable information to shape decisions and ensure nonverbal children benefit from court hearings:

- Expect the child to be present in court only for short periods (no more than 10-15 minutes if the child is restless).

- Observe the child at hearings. Try to make these hearings low key with minimal stress to the child.
- See the child in-chambers.
- Observe the child interacting with her caregivers (parents, relatives, foster parents) and siblings during the hearing.
- Notice the child's demeanor, behavior, and appearance, but be careful about drawing conclusions based on this one snapshot in time.
- When the child does attend court hearings, ensure someone she trusts is present with her.
- Ask someone who has spent time with and fully knows the child to speak about the child.
- Request an updated picture of the child at each hearing.
- Have toys for the child during the hearing. Observe the child playing with the toys.

Questioning Children in Court

Even young children have the competence to tell adults what they know when they are questioned in age-appropriate ways. Until children have fully developed linguistic skills, the responsibility for getting at what children know rests squarely on the adult, and in particular, on the language of the question, and not on the language of the answer.

—Anne Graffam Walker,
Forensic Linguist⁶

Hearing directly from the child offers a valuable perspective that you won't get from reading reports or getting information secondhand. The child can take you into his day-to-day life, what's going well at home and what's not, how he is doing at school, and what kind of permanent living situation he desires and how to get there. Consider the child's perspective on these and related issues when reviewing and making decisions about services and the child's permanency plan.

Sample Legal Definitions for Children

Dependency case—A family comes to court because a parent has hurt his or her child or the parent has not taken care of his or her child.

Foster family—A temporary family that a child lives with when his or her parents can't take care of the child. A foster family will make sure that you are safe. They will take care of you until you go home.

Social worker—Someone who will help you and your family. You can talk to your social worker about how you are feeling and if you have any questions.

Judge—Works in the courthouse and is in charge of what happens in court. The judge decides what should happen to you. The judge makes sure everyone is doing what they are supposed to be doing.

Reunification—A child goes home to his or her parents when the home is safe for the child.

Abuse—When a child is being hit or touched in bad ways.

Neglect—When a child does not have proper food, clothing, a place to live, or other things a child needs to live.

Lawyers/Attorneys—A person who goes to college and law school. Lawyers/attorneys give advice and speak for people in court. The judge may give you a lawyer to speak for you. You should meet with your lawyer.

Adoption—The way a child legally becomes part of a new family.

Guardianship—Another person acts as the parent for a child.

Court—The court is the building where the judges work, the hearings are held, and all the papers are filed in your case. The court is where all the decisions are made that will affect what happens to you.

Court hearing or trial—A judge listens to the people and attorneys talk about what is happening with your family. After the hearing or trial the judge decides what should happen to you and how to make sure you are safe. The judge also decides how to make sure your family gets the help they need. Tell your caseworker or attorney if you want to talk to the judge.

Guardian ad Litem (GAL)—Helps the judge decide what is best for you. You can meet with your GAL. Your GAL will probably want to talk to you alone to learn more about you.

Court Appointed Special Advocate (CASA)—There may be a CASA in your dependency case. The CASA will talk to you and your family and tell the judge what is best for you.

Sources: New Mexico Supreme Court, Court Improvement Project Task Force. *What's Going On? A Booklet for Children in Foster Care*. New Mexico: Shaening and Associates, 2001; Judicial Council of California. *What's Happening in Court – An Activity Book for Children Who are Going to Court in California*, 2002 <www.courtinfo.ca.gov/programs/children.htm>; North Carolina Court Improvement Services/Resources Subcommittee. *North Carolina Juvenile Court: Child Protection Hearings—A Handbook for Parents, Guardians, Custodians, and Children*, 2001.

Involving Children in Permanency Hearings: Federal Guidance

Section 8.3C.2c TITLE IV-VE, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, permanency hearings

Question: In what way can a state meet the requirement for the court holding a permanency hearing to conduct age-appropriate consultation with the child in section 475(5)(C)(ii) of the Social Security Act (the Act)?

Answer: Any action that permits the court to obtain the views of the child in the context of the permanency hearing could meet the requirement. Section 475(5)(C)(ii) of the Act tasks the state with applying procedural safeguards to ensure that the consultation occurs. However, the statute does not prescribe a particular manner in which the consultation with the child must be achieved which provides the state with some discretion in determining how it will comply with the requirement.

We do not interpret the term ‘consult’ to require a court representative to pose a literal question to a child or require the physical presence of the child at a permanency hearing. However, **the child’s views on the child’s permanency or transition plan must be obtained by the court for consideration during the hearing.** For example, a report to the court in preparation for a permanency hearing that clearly identifies the child’s views regarding the proposed permanency or transition plan for the child could meet the requirement. Also, an attorney, caseworker, or guardian ad litem who verbally reports the child’s views to the court could also meet the requirement. Information that is provided to the court regarding the child’s best interests alone are not sufficient to meet this requirement. Ultimately, if the court is not satisfied that it has obtained the views of the child through these or any other mechanism, it could request that the child be in the courtroom, or make other arrangements to obtain the child’s views on his/her permanency or transition plan.

Source: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau. *Child Welfare Policy Manual*, August 7, 2007. Available online: http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=58

Using Language

Before hearing from the child, give thought to the words you will use when questioning the child in court. Consider the child’s age, developmental level, cultural background, and verbal ability. Use care to match appropriate language to these factors. When preparing to question a child in court:

- Keep questions short and simple. (e.g., How old are you? What is your best friend’s name?)
- Refrain from using pronouns or acronyms. (e.g., “What did Chris do?” instead of “What did she do?”)
- Ask the child to explain what was

just said if you’re concerned that he doesn’t understand a question or statement. Children will often not disclose if they don’t understand.

- Use concrete (simple and familiar) nouns and verbs. (e.g., use words like “in the back yard” instead of “area”)
- Recognize cultural differences in language. (e.g., A long pause is socially acceptable in Native American cultures but may be seen negatively in American culture. In some cultures kinship terms can refer to nonrelatives.⁷)
- Avoid abstract questions. (e.g., “How well do you get along with

your family?”)

- Recognize that children usually respond to questions literally (e.g., Q: Are you in school? A: No. The child is referring to where she is right now (in the courtroom) not the broader question of whether she attends school.)
- Be alert for miscommunication. Ask follow-up questions to ensure both people are speaking about the same topic.⁸

Questioning Children in Child Welfare Proceedings

You are the one who makes the decisions, and I need to be heard so people may understand how I feel or what I need. Listen to me, since no one else will, and try to understand where I’m coming from. Maybe I am a child, but I’m not dumb; I know right from wrong. I need to know that you will make the right decisions for me, so that I can live life the way it’s supposed to be.

—Foster youth⁹

The nature of the proceeding will govern what questions you ask the child in court. Several common areas of focus in child welfare proceedings are discussed below with suggested questions for each.

Placement and Permanency

If you don’t ask foster children what they want, how can you make an informed decision about their lives?¹⁰

Although permanency involves much more than where the child will live, the child’s placement, and whether that placement is permanent are important to the child. How the child feels about the placement often determines whether the placement will succeed. It is important to seek the child’s opinion and thoughts on current and anticipated placements, including whether changes can be made in the current placement that will resolve a child’s

concerns, thereby saving the placement. Children can often find their own placement if the decision makers take the time to talk with them. Too often the child's wishes are ignored. In some cases, they aren't even consulted on this issue which is so central to the quality of their lives.

Aside from questions that will be answered in the social worker's report about whether the child likes her placement, number of placements since the last hearing, and plans for future housing, judges should ask about potential permanent placements. Some questions are obvious but others can reveal information that the court and agency may not have considered. This list of questions is not comprehensive and will vary from case to case but are worth considering.

- Who do you spend most of your time with?
- Is there a relative to whom you are especially close?
- Is there a close family friend with whom you like to spend time?
- Over the holidays, where do you eat dinner?
- If you could take three people to Disney World, who would you take?

The answers to these questions may lead to people who have not already been formally involved in permanency decisions. The child welfare agency should investigate the child's answers to these questions for potential permanent placements or for permanent connections in a child's life.

Education

Children spend many of their waking hours in school. Judges can gain a great deal of information about school from the social worker and educational records. However, the child's well-being is shaped by more than academics. Judges should go beyond the basics available in the social worker's report or the educational records. Certain questions can elicit school-related issues that may not be appar-

ent to the social worker such as relationships with teachers and peers, or participation in extracurricular activities. The child's representative should prepare the child to answer these questions and the judge should be comfortable posing them.

If the child is in regular education and thinking about postsecondary education opportunities, the judge should ask questions about the child's intended

Children can often find their own placement if the decision makers take the time to talk with them. Too often the child's wishes are ignored.

field of study and what schools the child is considering. The judge should also ask if anyone is helping the youth consider education options, fill out applications, visit schools, and navigate the complex maze of financial assistance. Children see judges as highly educated people and may be interested in the judge's perspective on higher education and attending a four-year college. Even a short conversation with the judge on this issue can boost a young person's confidence and desire to pursue higher education.

If the child is having problems in his sixth grade class (e.g., suspensions, bad grades) the judge should not focus on the negative but discuss such issues as the following:

- What classes do you like and why?
- Who are your friends and are they in your classes?
- Are there kids at school who are mean?
- What do you do after school?
- Do you have trouble following along in your classes?

These questions help uncover the cause of school problems and can help to build a relationship and trust between the judge and the youth. The youth may need a special education referral, specialized tutoring, or intervention if he's being harassed by his peers. These questions also show the youth that the court is interested in helping to solve his problems, and can help to boost the youth's self esteem.

Services

Most children and families require services to facilitate permanency. Services for parents may include parenting classes, substance abuse treatment, and mental health evaluations and treatment. Services for children may include therapy, mentoring, and facilitated visitation. In most cases children should have input into what services will be ordered. The questions the judge should ask are aimed at discovering the child's view on what the issue is and how best to solve it. When the services are in place the questions should be:

- Are the services helpful?
- Are the services provided at a convenient time and place?
- Are the services addressing the issue?
- Do you like the service provider?
- Has anything changed as a result of the services?
- What still needs to be improved?

The answers to these questions (along with any service provider reports) may make services more meaningful and effective.

Transitioning out of the system

For youth who "age out" of foster care, there are a number of important questions to ask to help prevent later homelessness due to the lack of proper transition planning. In addition to the above questions about placement and permanency, judges should ask the child:

- Have you been formally involved in your discharge planning

(attending case planning sessions, providing input about housing, health, and other long-term needs)?

- What is your plan for health care after you are discharged?
- What are your plans for education or employment?
- If the child is currently in treatment for substance abuse, mental health, or other reasons: Do you know how to continue that treatment?
- Who are the adults in your life that you will rely upon after your case is closed?

Ending Proceedings

Before the child leaves the courtroom, take time to engage the child and ensure his participation has been meaningful. Judges should address the following when closing hearings:

- Ensure the child understands what was ordered and why.
- Ask the child what she wants to accomplish before the next court hearing.
- Encourage the child to attend the next hearing.
- Consult with the child when setting the time for the next hearing.
- Tell the child what she has to do before the next hearing.
- Invite the child to submit report cards, letters, or other personal items periodically to signal interest and concern.
- Review or ensure that someone will review the outcome of the hearing with the child and answer any questions.
- Thank the child for coming to court.
- Finally, ask whether the youth has any questions in a manner that invites questions.

Conclusion

A child can meaningfully participate in

her court hearings or she can be left out. The decision is up to the judges and child advocates. Taking the time to prepare for a child's involvement, using proper language, asking good questions, and talking about the right issues will lead to more productive hearings. Through these efforts, everyone benefits.

Andrea Khoury, JD, is an assistant director of child welfare for the National Child Welfare Resource Center on Legal and Judicial Issues, a project of the ABA Center on Children and the Law.

Endnotes

¹ See Khoury, Andrea. "Seen and Heard: Involving Children in Dependency Court." *ABA Child Law Practice* 25(10), December 2006, 145. This article discussed why to include youth in dependency proceedings, including:

- empowering the youth,
- giving them a sense of understanding and control of the process, and
- providing valuable information to the court.

It also discussed how to involve youth, including:

- in-chambers discussions,
- bifurcated hearings,
- full participation in all hearings,
- strategies for practitioners, and
- systems changes to make participation meaningful to the youth.

² Ibid.

³ Walker, Anne Graffam. *Handbook on Questioning Children: A Linguistic Perspective*, 2d edition. Washington, DC: ABA Center on Children and the Law, 1999, 22.

⁴ Jones, Judge William G. (ret.). "Making Youth a Meaningful Part of the Court Process." *Juvenile and Family Justice Today*, Fall 2006, 20.

⁵ Krinsky, Miriam Aroni. "The Effect of Youth Presence in Dependency Court Proceedings." *Juvenile and Family Justice Today*, Fall 2006, 16.

⁶ Walker, 1999, 24.

⁷ Ibid., 71.

⁸ Ibid., 91.

⁹ Foster youth quoted in *My Voice, My Life, My Future*, 2006, prepared by Home at Last and the Children's Law Center of Los Angeles. Available at http://www.pewtrusts.org/our_work_ektid19876.aspx

¹⁰ Lockett, Veronica. "Right to Speak in Court Vital to Cases of Foster Children." *The University Star*. www.star.txstate.edu

Plan to Attend Beyond the Bench XVIII: Access and Fairness

December 12-14, 2007

Sheraton San Diego Hotel & Marina

Sponsored by the California Administrative Office of the Courts, Center for Families, Children & the Courts

This nationally acclaimed, multidisciplinary conference brings together over 1100 juvenile dependency and delinquency professionals from California and other states. The conference addresses issues of juvenile justice, child welfare, mental health, substance abuse, education, community engagement and much more.

To register online, visit: <http://www.courtinfo.ca.gov/programs/cfcc>, or call 415/865-4530.

(In re Kalil, Continued from p. 131)

cases to place confidential reports in a sealed envelope that is available only to the "parties in the action and their attorneys." The court explained that the court rule describes general procedures for filing GAL reports but does not prevent the court from keeping portions of the GAL report confidential if there is a stipulation and confidentiality is in the child's best interests.

The father's second issue was whether his due process rights were violated when the court refused to let him view the GAL's report? The court explained that while parents have a due process right to be heard, examine witnesses, and to be informed of and challenge adverse evidence, these rights are not absolute. Since the trial court approved the parents' stipulation limiting their right of access to the child's confidential communications, they waived their right to review the report. Therefore, the trial court properly denied the father's request to access the sealed report.

Expediting Dependency Appeals

by Judge Gayle Nelson Vogel

The trial is over. In the crowded and very public hallway outside the courtroom, the attorney carefully explains that it may take a year or more for the decision to be final, because of something called “the appeal.” The adults sigh with disappointment and frustration, but accept the projected timeframe; the child is simply confused.

Sadly, this scenario is repeated each day, in some fashion, all over the country. Why does it take so long for a final decision in the trial court to be tested and disposed of on appeal? This was my frustration as a trial attorney.

However, all that would change, when after being appointed to the Iowa Court of Appeals in 1996, I was asked to be part of the Court Improvement Project. This was the perfect vehicle to develop and propose change. I gathered a small, but dedicated group of people to help create an alternate appellate procedure. Knowing there would be some opposition, all those with a stake in the process had to be represented to offer suggestions for their concerns. However, regardless of their objections to the process, all members of the task force agreed on one fundamental and driving principle: **Once the juvenile court hearing has concluded and the record has closed, both parents and children would benefit from a more timely appellate decision.**

The 90-Day Appeal

Our task was to create a parallel, expedited appellate process limited to dependency appeals. We needed a simple way of putting the issues on appeal before an appellate court so a final decision could be made, giving children and families more timely permanency.¹ To accomplish this, we met once a month for the next nine months, resulting in the drafting of proposed rules, forms, and enabling legislation. After approval from our

supreme court, and a small statutory change,² we worked to educate attorneys and judges statewide. The new expedited appellate procedure was then implemented, reducing the time from juvenile court dispositional order to finalized appeal to about 90 days.

How Expedited Appeals Work

The most dramatic change in the appellate rules was moving from a traditional narrative briefing to a formatted petition on appeal.³ Fill-in-the-blank forms are provided to simplify the process and guide even the inexperienced attorney through the expedited appellate process. A full transcript of the trial court proceeding is ordered, but not relied on for line-by-line references as is the case in traditional briefing.

Key to understanding the expedited appellate process is this concept: **Rather than writing a brief *arguing* issues, counsel drafts a petition *raising* issues.**

This concept incorporates these basic steps:

1. A notice of appeal must be filed with the clerk of the trial court within 15 days of the final order in juvenile court.⁴ As with all other appeals, if counsel fails to file a notice of appeal within this timeframe, the appellate court is without jurisdiction to hear the case.
2. The notice of appeal must be signed by both counsel *and the client*.⁵ The expedited rules

require the appellant client to be involved with the appeal at least to the extent that the client consults with the attorney and signs the notice of appeal *following* the juvenile court ruling.

3. Within 15 days of filing the notice of appeal, the appellant must file a petition on appeal with the clerk of the appellate court.⁶ This formatted, fill-in-the-blank petition replaces the traditional appellate brief.
4. The petition on appeal must be filed by *trial* counsel for the appellant.⁷ Trial counsel may only be relieved of this obligation by an order of the trial court after a showing of extraordinary circumstances, such as a conflict of interest. Trial counsel who do not normally work in the appellate arena need to anticipate their obligation to see a juvenile case through the appellate process.
5. The petition on appeal may be up to 15 pages long. The petition (form included in the rules) must include:⁸
 - a statement of the nature of the case and the relief sought;
 - the date that the juvenile court judgment was entered;
 - a “concise” statement of the relevant facts of the underlying case;
 - a statement of the legal issues presented for review on appeal including a statement of how each issue was preserved;
 - a statement of relevant supporting statutes, case law, and other legal authority including authority contrary to the appellant’s case; and,
 - attachments to the petition on appeal, which shall include the

juvenile petition, the juvenile court order, and any post-trial motions and ruling.

6. Within 15 days of the filing of the petition on appeal, any appellee *may* file a response to the petition on appeal.⁹ The response is optional. A form is included in the rules. The contents of the response to the petition on appeal is similar to the petition on appeal.

- *Guardians ad litem*: It is helpful when the GAL files a short statement that he/she agrees with the state's, mother's, or father's position.

7. The record for review by the appellate court shall include the following, all of which must be filed within 30 days of the Notice of Appeal:¹⁰

- the trial court transcript
- the portions of the juvenile court file that were received into evidence or judicially noticed.

8. After receiving the petition on appeal, any response, and the record for review, the appellate court may do any of the following:¹¹

- affirm the trial court;
- reverse or remand to the trial court; or,
- set the case for oral argument and/or full briefing.

As a safety net in the expedited process, the appellate court may set the case for traditional, full briefing. Although not frequently used, full briefing is most helpful when more complex legal issues require extensive presentation and arguments of the law.

Our full briefing orders tend to be specific about what issue(s) we want addressed. Because we retain the discretion to direct full briefing, generally these rules will apply:

- No new issues may be briefed.
- Page length is set.

- Date certain is set for submission of briefs.
- No extensions of time granted.

9. Within 10 days, following the filing of the court of appeals decision, any party may seek further review to our supreme court.¹² The further review process generally adds about 15-17 days for the parties to seek and the court to rule on granting or denying the review. If further review is granted, which is rare, the time on appeal is extended by the time the supreme court reviews the case and files its own opinion.

Challenges

Iowa's rules for expediting appeals in termination of parental rights cases became effective on January 1, 2002 and were expanded to include all juvenile court dependency appeals on July 1, 2003.

Anticipated challenges to the new rules inevitably were made.¹³ In *In re C.M., Jr.*, 652 N.W.2d 204 (Iowa 2002), a mother asserted the expedited appeals, using an abbreviated format, restricted her access to the appellate courts, thereby violating her equal protection rights under the Fourteenth Amendment of the United States Constitution. Our supreme court, held that even if strict scrutiny were applied, the state's interest in obtaining permanency is a compelling governmental interest, which the rules are narrowly tailored to address. It stated:

And, while the appellate procedure under the new rules is streamlined, the reviewing court's ability to thoroughly appraise the legality of the termination order is not compromised. The appellant is given a full opportunity to identify issues for review. The reviewing court has the entire juvenile court record and transcript before it when evaluating the merit of the issues raised by the appellant. And, finally, if additional analysis

by the parties would be helpful, the appellate court has the ability to order full briefing. *In re C.M.*, 652 N.W.2d at 211.

The court also concluded there was no due process violation as an appellant has the opportunity to raise issues on appeal, with the full record available to the appellate court. Balancing the relative interests of the parent and the state, and considering the procedural safeguards, the court found no due process violation inherent in the expedited rules. *Id.* at 212.

Moreover, the Iowa Supreme Court has emphasized the importance of expediting the appellate process in dependency appeals. *See, e.g., In re T.R.*, 705 N.W.2d 6, 12 (Iowa 2005) ("In the event of an appeal from the termination decision, that appeal would be given expedited review and accorded the highest priority at all stages of the appellate process.")

Iowa's Appellate Timeframe

For most dependency and termination of parental rights appeals, Iowa holds to these timeframes:

- 15 days from juvenile court ruling to filing of notice of appeal;
- 15 days from notice of appeal to filing petition on appeal;
- 15 days from petition on appeal to filing optional response;
- 22 days from response to court of appeals ruling;
- 10 days to request further review to supreme court;
- 7 days for supreme court to grant or deny further review.

Cases often move along even quicker if one filing occurs before its deadline, as each filing then triggers the timeframe for the subsequent event or filing. In addition, our supreme court, fully supporting the need to attain permanency for children, has taken the position that requests for continuances

shall rarely be granted. *See In re C.M.*, 652 N.W.2d at 211 (stating delays in termination of parental rights cases are “antagonistic” to the child’s best interest).

Reflecting on the Expedited Appellate Procedure

The expedited appellate procedure has served Iowa’s children and families well. In a climate of increasing juvenile caseloads and limited resources, the expedited process also has many side benefits. It allows juvenile court judges to close case files sooner, eliminating interim review hearings. It reduces social workers’ courtroom time, eases their reporting and allows them to also close their case files much sooner. It saves attorney time, and often witness time, in preparing for and participating in additional hearings. However, the

primary benefit of the expedited appellate process is what the task force set out to accomplish—more timely permanency for children and families.

Judge Gayle Nelson Vogel is a judge in the Iowa Court of Appeals. She is a member of the Iowa Judges Association and serves on its juvenile law committee. She also co-chairs the Iowa Court Improvement Project.

Endnotes

¹ Time standards for court proceedings stem primarily from the Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, and are measured and monitored. The National Council of Juvenile and Family Court Judges, *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, 2000, 40, recommends a maximum 150 days from juvenile court ruling to appellate finality.

² Iowa Code § 232.133(2) (2002) (excepting from the usual appellate process appeals from dependency and termination of parental rights).

³ The Iowa Rules of Appellate Procedure with Forms can be found through the Iowa legislature’s website. <http://www.legis.state.ia.us/Rules2.html>

⁴ Iowa R. App. p. 6.5(2); 6.6(3).

⁵ Iowa R. App. p. 6.6(3).

⁶ Iowa R. App. p. 6.6(4). In Iowa, all appeals are to the supreme court, where they are screened and either retained by the supreme court, or transferred to the court of appeals.

⁷ Iowa R. App. p. 6.6(4).

⁸ Iowa R. App. p. 6.151(2).

⁹ Iowa R. App. p. 6.152.

¹⁰ Iowa R. App. p. 6.153.

¹¹ Iowa R. App. p. 6.154(1) (allowing full briefing under rules 6.13 and 6.17 or “as directed by the court”).

¹² Iowa R. App. p. 6.154(2); 6.402.

¹³ *See In re L.M.*, 654 N.W.2d 502 (Iowa 2002); *In re R.K.*, 649 N.W.2d 18 (Iowa Ct.App. 2002).

RESEARCH IN BRIEF

Mothers’ Drinking Shrinks Fetal Brain

Routine ultrasounds show that heavy drinkers who continue to imbibe after learning they are pregnant may carry fetuses with reduced skull and brain growth compared to those of abstainers or quitters, says a new study.

Although the alcohol-exposed babies’ growth remained within normal range, the findings reveal effects of drinking on the developing human brain. The study appeared in the May 2006 issue of *Alcoholism: Clinical and Experimental Research*.

“What this tells us is that the earlier you abstain in a pregnancy, the better the outcome,” said lead author Nancy Handmaker, a University of New Mexico clinical psychologist and expert in maternal-fetal health.

Alcohol use during pregnancy is a leading preventable cause of birth defects and developmental disabilities in the United States, according to the Centers for Disease Control and Prevention (CDC). Fetal Alcohol Spectrum Disorder—which includes a range of cognitive, emotional and behavioral problems—may be present

in one of every 100 births.

The study authors obtained routine ultrasound data from 167 pregnant women who had reported a history of hazardous drinking before pregnancy. Of these, 97 were classified as heavy drinkers. The study compared the fetal growth measures among drinkers who quit after learning of their impending motherhood to those among women who continued to drink.

Within the heavy drinking group, the ultrasounds revealed that fetuses of the continuing drinkers had a smaller ratio of head-to-abdominal circumference, which indicates reduced skull growth. They also had smaller measures of the cerebellum, a region of the brain involved in many mental, motor and sensory tasks.

Fetal growth measures were nearly the same among nondrinkers and those who quit when they learned of their pregnancy. “There may have been measures that were not part of routine ultrasound examinations that would have been more sensitive to the pre-recognition drinking,” said Handmaker.

The authors say that while women’s own reports of their drinking habits may not be entirely accurate, the study findings are consistent with other research on fetal alcohol exposure in animals and humans.

“The provision of feedback on fetal development as revealed in ultrasonography may be a strategy to encourage heavy drinkers to seek treatment during pregnancy,” concludes the study.

CDC would like to see intervention efforts start earlier. “The best opportunity to identify and intervene with women at high-risk for an alcohol-exposed pregnancy is prior to pregnancy,” says Louise Floyd of the Fetal Alcohol Prevention Team.

The Study: Handmaker N.S., et al. “Impact of Alcohol Exposure after Pregnancy Recognition on Ultrasonographic Fetal Growth Measures.” *Alcoholism: Clinical and Experimental Research* 30(5), 2006.

© 2007 Newswise. Reprinted with permission.

ABA Standards Safeguard Domestic Violence, Sexual Assault, and Stalking Victims

by Robin R. Runge

Obtaining a civil protection order is often the first step a victim takes in seeking safety from a violence perpetrator. However, most victims seek a protection order without an attorney.

Those who obtain legal assistance are often represented by legal services attorneys or pro bono attorneys, many of whom lack knowledge of the law, the impact of violent crimes, or the procedures in civil protection order cases. New Standards, adopted by the ABA in August 2007, are meant to help these attorneys, although they apply to all attorneys who represent victims seeking civil protection orders.

On August 13, 2007, the American Bar Association House of Delegates adopted *Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases* (Standards) after two years of collaborative work by the ABA Commission on Domestic Violence and other partner organizations.

Background

The Standards have three goals:

- Improve the quality of legal representation of victims of domestic violence, sexual assault and stalking.
- Enable lawyers to effectively, ethically, and holistically represent victims in civil protection order cases.
- Raise awareness about the need for high-quality representation for victims of domestic violence, sexual assault, and stalking in civil protection order cases.

In these ways, the Standards will help to ensure that survivors of this group of crimes, which predominantly affect women and children, are better able to access justice and safety

The Standards help attorneys handling these cases navigate the complicated and sometimes conflicting criminal and civil issues and ensure they take a victim-centered approach that incorporates safety at every step of their representation.

through the legal system.

Every jurisdiction in the United States has adopted a civil protection order statute for domestic violence victims. Increasingly, states are adopting statutes to provide protection orders for victims of sexual assault and stalking. A civil protection order typically contains civil and criminal components; for example, a survivor must allege a crime has occurred to obtain a civil protection order. However, a victim must affirmatively go to civil court to obtain a civil protection order. The court may order civil remedies including temporary custody, child support, and restitution, as well as require the respondent to refrain from further criminal contact. Moreover, violations of the order may be criminally or civilly enforced.

Survivors who are disabled, Deaf or hard of hearing, Native American, immigrant, elderly, teen or lesbian, gay, bisexual or transgender are entitled to protections in many jurisdictions. Although sexual assault, stalking, and domestic violence occur separately, they

frequently co-occur, requiring attorneys to be well-versed in the variety of protection order statutes available in their jurisdictions to address these crimes.

Moreover, many victims have children with their perpetrators. In most jurisdictions, domestic violence victims may seek temporary custody of their children, raising the impact the violence has on the children and the need for their safety as well as their mother's safety.

The Standards help attorneys handling these cases navigate the complicated and sometimes conflicting criminal and civil issues and ensure they take a victim-centered approach that incorporates safety at every step of their representation.

The Standards include "black letter" standards, which the ABA has adopted, as well as "commentary" that provide examples and discuss how to implement the standard. Several standards relate to sections of the Model Code of Ethics. The Standards are divided into the (1) ethical duties of lawyers representing victims of domestic violence, sexual assault, and stalking and (2) the procedural duties of lawyers representing victims.

Ethical Duties of Lawyers

The Standards describe basic obligations of lawyers who represent victims in civil protection order cases. They include possessing knowledge and understanding of civil protection order laws in their jurisdiction as well as the nature and impact of domestic violence, sexual assault, and stalking on its victims. Additional black letter Standards in this section include:

- Understanding the potential risk of escalated violence due to litigation and how the experience of domestic violence, sexual

assault, and/or stalking may impact the client-lawyer relationship and case development.

- Being aware of the culture of the client and how violence is understood within that culture, as well as understanding how the client's culture may affect client-lawyer communications and trust, presentation of evidence and remedy selection.
- Consulting privately with the client before representation and court proceedings.
- Ensuring equal access to representation, including clients with disabilities, and those who are Deaf and/or hard of hearing.
- Employing a neutral, professional, qualified interpreter where a client is not proficient in English or is Deaf or hard of hearing.
- Advising the client about applicable rules and laws regarding confidentiality of communications with third parties.
- Conducting a lethality assessment with the client and ensuring a safety plan exists.
- Being sensitive to the effects of trauma in their clients and aware of the effects of vicarious trauma on themselves or their staff.
- Advising the client about legal options and consequences and deferring to the client regarding decisions.
- Determining whether the potential client has the legal capacity to enter into and or sustain the client-lawyer relationship.
- Clearly disclosing his or her role in the client's matters including communicating the limits of the lawyer's role and the anticipated time the lawyer will fulfill that role.
- Referring the client to suitable nonlegal professionals for support, advocacy, and treatment when necessary, and seeking to

holistically represent the client.

Procedural Guidelines

The Standards contain guidance for attorneys about their procedural obligations when representing victims of domestic violence, sexual assault, and stalking in civil protection order cases, including:

- Conducting intake by personnel trained to work sensitively with victims. Intake typically includes a conflict check, safety assessment and identification of accommodations.
- Informing the client of all available remedies and ensuring the client understands the legal implications of not seeking a civil protection order as well as assisting the client with a plan for self-sufficiency.
- Thoroughly interviewing the client to identify case theory, strategy, and evidence, engaging in the appropriate discovery and gathering and investigating evidence as appropriate.
- Identifying potential related legal issues and consequences for the client, such as interjurisdictional enforcement of the order, the effect of the order on current or future immigration status, how the civil proceeding intersects with criminal prosecution, and crime victim rights.

Obtaining the Standards

Download the Standards from the Commission's website: www.abanet.org/domviol.

Charts of current civil protection order statutes for domestic violence, sexual assault, and stalking are also available at the Commission's website.

The Standards were developed collaboratively by the ABA Commission on Domestic Violence, the Washington Coalition of Sexual Assault Programs, Texas RioGrande Legal Aid, and the National District Attorneys Association's National Center for the Prosecution of Violence Against Women, with generous funding from the Office of Violence Against Women at the U.S. Department of Justice.

- When children are involved, discussing the client's possible remedies regarding temporary custody and visitation through the protection order process, keeping jurisdictional issues in mind.
- Carefully considering the pros and cons of having children offer witness testimony in light of current law and scholarship on childhood development.

Common Themes

Throughout the Standards, several common themes emerge:

- **Representation should be client-centered.** The lawyer should advise the client about legal options and consequences, but ultimately must defer to the client about legal decisions. (See Section III. D. 1 and Section III. F. 1)
- **Assessing safety and lethality must be done continuously throughout representation.** The lawyer should ensure that comprehensive lethality assessment and safety planning occur with the client. (See Section III. E. 1, Section IV. B. 5, Section IV. E. 2 and Section IV. E. 3)
- **Meaningful access to justice must be provided for all victims of violence.** Victims of domestic violence, sexual assault and stalking may face many legal and

nonlegal issues that intersect with their civil protection order matters. Lawyers should strive to provide meaningful access to justice for all these matters through representation or referral. (See Section III. A. 2, Section III. C., Section III. D. 2, and Section III. D. 3)

- **Training on the law and on the impact of these crimes is essential before undertaking representation**—the crimes of domestic violence, sexual assault, and stalking can have far-reaching effects on the lives of victims. Lawyers should have competent knowledge of civil protection order law and related matters. (See Section III. A. 1, Section III. A. 2, Section III. B, Section III. F, 4)

- **Understanding the unique legal issues faced when representing a minor victim in a protection order case or a client who has minor children is key.** Minors face additional obstacles when trying to obtain civil protection orders and victims with children may face complicated issues regarding custody, visitation and parental kidnapping. (See Section III. A. 1, Section III. A. 2, Section IV. B. 4, Section IV. B. 6, Section IV. C. 3)

Conclusion

The Standards improve the practice of law in civil protection order cases and thus increase access to justice and safety for victims by providing guidance to attorneys representing victims of domestic violence, sexual assault, and stalking.

Robin R. Runge, JD, is the director of the Commission on Domestic Violence at the American Bar Association. She manages all aspects of Commission programming with the mission of improving access to justice for domestic violence victims by mobilizing the legal profession. Robin speaks nationally, provides trainings, and writes articles on various aspects of the legal response to domestic violence, including the employment rights of domestic violence victims.

The ABA Commission on Domestic Violence provides technical assistance and training to offices or jurisdictions seeking to adopt the Standards in whole or in part. For more information, visit its website: www.abanet.org/domviol

LGBTQ Youth in Foster Care Webcast Recording Now Online: www.abanet.org/child/lgbtq.shtml



**American Bar Association
Center on Children and the Law
740 15th Street, NW, 9th Floor
Washington, DC 20005-1022**

Presorted First Class U.S. Postage PAID Permit #163 Annapolis, MD
--

