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ABA Approves Standards for Judicial Excellence in Child Abuse and Neglect Proceedings

In August 2010, the American Bar Association (ABA) House of Delegates approved *Judicial Excellence in Child Abuse and Neglect Proceedings: Principles and Standards for Court Organization, Judicial Selection and Assignment, Judicial Administration, and Judicial Education*.¹ These *Principles and Standards* describe critical preconditions to achieving the excellent court process envisioned in *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*.²

The *Principles and Standards* are divided into the following categories:

- ❖ **Principles Supporting the Standards (Preamble).** The Principles outline basic concepts behind the Standards, emphasizing the uniqueness of child abuse and neglect proceedings.
- ❖ **Court Organization.** The standards addressing court organization describe ways courts can restructure their operations to address child abuse and neglect litigation more effectively.
- ❖ **Judicial Selection and Assignment.** The judicial selection and assignment standards address ways to ensure the best educated and most committed judges hear child abuse and neglect cases.
- ❖ **Judicial Administration.** Judicial administration standards detail administrative principles, regardless of court organization, that can improve the quality of decision making in these cases.
- ❖ **Judicial Education.** Finally, the standards for judicial education emphasize the substantive and procedural complexities of these cases that judges need to master, and steps courts should take to ensure that judges achieve mastery.

The *Principles and Standards* take into account national variations in court organization and procedures. Each standard is aspirational, and many courts will not be able to fully implement them without legislative or other support. Barriers related to court structure, budgets, and statutory provisions may impede implementation of particular standards. Furthermore, rural courts of general jurisdiction hearing a limited docket of abuse and neglect cases may find it impractical to adopt all aspects of the standards.

Preamble and Principles Supporting the Standards

As noted in the Preamble to the Standards, judges presiding over child abuse and neglect cases are tasked with difficult and important decisions. Primarily, these decisions include whether and when to remove a child from the home; whether and when to return the child to the home; and whether and when the child will be placed in a new permanent home. Each decision will determine the course of a

child's life and the future of the family. The quality of judicial oversight affects whether children ultimately become competent and productive members of society. Listed below, the Principles provide support for the recommendations of the Standards:

- **There is a distinctive judicial process in child abuse and neglect cases, which requires special judicial expertise.**
- **Only highly committed and specially trained judges should hear child abuse and neglect proceedings. Judicial policies and procedures should be designed to encourage and support the assignment of such individuals to preside over these proceedings. Given the unique characteristics of rural courts, judges and court administrators in rural settings should work to implement the Standards to the fullest extent practical.**
- **Due to the specialized and distinctive nature of child abuse and neglect proceedings, judges hearing these cases should participate in continuing education on a wide range of identified special issues.**
- **Due to the unique interdependence of the court and a wide range of external groups, organizations, and entities, court leaders need to actively collaborate with other interested agencies and organizations.**
- **Court leaders should educate legislators on the unmet needs of courts hearing child abuse and neglect cases and provide them with court performance data and information with the goal of ensuring that legislatures appropriate the resources necessary to make improvements envisioned in the Standards.**

Court Organization

Court organization encompasses which courts hear particular types of cases, the place of courts in the judicial hierarchy, the basic structure of courts, and the impact of this structure on judges and court employees. There are 11 Standards that address how court organization can be optimized. Some of these "black letter" Standards include the following:

- **Every state should have a separate specialized court or specialized division of a court to hear and administer child abuse and neglect proceedings.**

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- Courts and judges hearing child abuse and neglect cases should be on an equivalent level of judicial hierarchy as the highest level state trial courts and trial court judges.
- Ideally, the same judge should hear all matters related to one family. At a minimum, judges hearing child abuse and neglect proceedings should also hear related proceedings governing legal guardianship, termination of parental rights, and adoption.
- Judges and local court administrators responsible for child abuse and neglect cases should be systematically represented in larger decision-making and advisory bodies related to their work.

Judicial Selection and Assignment

Standards addressing judicial selection are intended to recommend improvements consistent with a state's overall methods of choosing judges to hear child abuse and neglect cases, i.e., through appointment, election, or some combination of both. Standards addressing judicial assignment consider issues regarding the length of the assignment to hear cases, judicial rotation, calendaring, and retention. There are 12 standards addressing judicial selection and assignment, some of which include the following:

- Decision makers responsible for the appointment of judges hearing abuse and neglect cases should take into account the interest, specialized knowledge, experience, and ability of judges under consideration.
- Decision makers should design and establish a process to ensure merit-based selection of judges who will preside over child abuse and neglect litigation.
- State or local judicial or nominating commissions should develop a standard format for evaluating judicial suitability for child protection proceedings.
- Judicial nominating commissions, bar organizations, or other appropriate groups should make concerted efforts to recruit persons with outstanding qualifications.
- In jurisdictions where judges are temporarily assigned or rotated to hear child abuse or neglect cases, the terms of their assignments should be at least three years and preferably more.
- After a judge is assigned to hear a child and abuse neglect case, that same judge should hear all stages of the case until the case is dismissed.
- When jurisdictions use subordinate judicial officers to hear child abuse and neglect cases, the same judicial officer should hear all stages of a case until the case is dismissed.

Judicial Administration

Judicial administration addresses how courts plan their activities, schedule hearings and otherwise manage cases, enter and distribute orders, appoint counsel for parents and children, calculate their needs for judges and staff, and set staff compensation and working conditions. There are 12 Standards addressing judicial administration, some of which include the following:

- Court leaders should develop and implement state and local plans to enhance the quality of child abuse and neglect proceedings.
- State courts should regularly evaluate the performance measures of local courts in child abuse and neglect cases.
- Court leaders should determine what judicial workloads are needed to enable judges to comply fully with the law and to fulfill judicial standards of best practice.
- Court leaders should provide compensation and working conditions for judges hearing child abuse and neglect cases that are comparable to judges working in the highest level of state trial courts.
- Court leaders should establish and implement effective caseflow management to reduce court delays.
- Court leaders should ensure judges have access to state-of-the-art technology.

Judicial Education

While training and education goals may vary depending on the size and location of the court, the judicial education standards aim to provide judges with the tools needed to ensure all children achieve permanency in a timely fashion. Some of the eight judicial education standards include the following:

- State law and court rules should require judges to participate in annual judicial education as an integral part of their judicial duties.
- Judicial education curricula should be carefully designed to improve current judicial practice, improve compliance with the law, and help judges fulfill national or state judicial best practice standards.
- Court leaders should design a special and comprehensive combination of judicial education and mentoring for new judges.
- Courts should ensure that an appropriate judicial education program is provided each year for all experienced judges hearing child abuse and neglect cases.

This article is adapted from *Judicial Excellence in Child Abuse and Neglect Proceedings: Principles and Standards for Court Organization, Judicial Selection and Assignment, Judicial Administration, and Judicial Education* (August 2010), available online at http://new.abanet.org/child/PublicDocuments/judicial_excellence_standards.doc.

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¹ These *Principles and Standards* were drafted by the ABA Center on Children and the Law's National Child Welfare Resource Center for Legal and Judicial Issues, through a grant from the Children's Bureau of the US Department of Health and Human Services, and with the assistance of a multidisciplinary committee of leading judges, key professionals, and national leaders from different jurisdictions and organizations across the country. They were endorsed by the National Council of Juvenile and Family Court Judges in July 2009, and presented to the ABA House of Delegates at its August 2010 meeting by the ABA Judicial Division's National Conference of Specialized Court Judges.



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² National Council of Juvenile and Family Court Judges,
*Resource Guidelines: Improving Court Practice in Child Abuse
& Neglect Cases* (1995).



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