

Ethical Challenges for the Juvenile Court Judge

By Judge Leonard Edwards (ret.)

I. INTRODUCTION

Ethical guidelines govern a judge's conduct both on and off the bench. Everyone knows that judges must follow the law, but outside of the legal world, few Americans understand that judges are also bound by ethical rules. The Model Code of Judicial Conduct, promulgated by the American Bar Association in 1924, forms the basis of these ethical rules. All state legislatures adopted various versions of these rules into their statutes in the years following their creation. Revised versions of the Model Code were written in 1972, in 1990, and again in 2007.¹

The Model Code is not just a set of rules. It embodies "those principles which our system of justice articulates as essential ingredients to preserve the rule of law."² The Code is not meant to force judges into monastic isolation, but to give direction about how to conduct themselves appropriately both on and off the bench. The Code does not provide judges concrete guidance about specific fact patterns, but does discuss general issues that, if not carefully addressed, might cast doubt upon the integrity of the judiciary.

This article will address issues relating to the ethics education, training, and support provided to judges, especially juvenile court judges. It will conclude that state supreme courts, court administrators, and state judicial councils should provide all judges with continuing education and support in judicial ethics, including specialized ethics training for juvenile court judges.

¹ There are six canons within the Code of Judicial Ethics as well as a section on terminology. Each canon includes sub-parts and Advisory Committee Commentary.

² DAVID M. ROTHMAN, CALIFORNIA JUDICIAL CONDUCT HANDBOOK 7 (3d ed., 2007, California Judges Association, West).

Judge Leonard Edwards is the Judge-in-Residence at the Center for Families, Children & the Courts at the California Administrative Office of the Courts in San Francisco. He served on the Santa Clara County Superior Court for 26 years, retiring in 2006. Correspondence: Leonard.Edwards@jud.ca.gov

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II. ETHICS TRAINING

Most judges pay careful attention to the Code of Judicial Conduct. Violation of a rule can result in a public reprimand, the loss of their position,³ or—for severe violations—even criminal prosecution. Judges learn about judicial ethics in various ways. Some state judicial branches provide education including classes on ethical issues. In states that provide no formal ethics training, judges must learn about the Code on their own, perhaps by reading one of the standard texts.⁴ Typically ethics courses include reviews of the rules, examples of difficulties that judicial colleagues encounter, and cautions derived from decisions and opinions regarding appropriate judicial behavior. Many states do not require judges to participate regularly in ethics training. In California, judges participate in five hours of approved ethics training every three years; participation then entitles judges to insurance covering costs of defense in proceedings initiated by the Commission of Judicial Performance.⁵

Most judicial ethics writings and trainings focus on the problems faced by most judges—those who hear criminal and general civil cases—without discussing ethics issues that juvenile court judges encounter. In one standard text, for example, the authors make no mention of the special problems facing juvenile court judges.⁶ The work of trial courts has changed dramatically over the past 50 years to include large numbers of cases involving families and children. Juvenile and family court matters now comprise a large portion of the judicial workload, yet the standard texts and trainings say little or nothing about the unique problems encountered by the judges who hear and decide them.

This article focuses on some ethical issues unique to juvenile court judges. National policy makers and commentators recommend that juvenile court judges be proactive in their efforts to improve outcomes for the children appearing in their courts.⁷ These voices urge juvenile court judges to get off the bench, convene meetings, engage stakeholders,

3 B. Torpy & B. Rankin, *Rash of Judges Stepping Down After Misconduct*, THE ATLANTA-JOURNAL CONSTITUTION, Aug. 22, 2010, available at <http://www.ajc.com/news/rash-of-judges-stepping-596966.html?printArticle=y>.

4 For example, J. SHAMAN, S. LUBET, & J. ALFINI, JUDICIAL CONDUCT AND ETHICS (3d ed., Matthew Bender, 2000).

5 The insurance is purchased by the Administrative Office of the Courts. The ethics training must be approved by the AOC, the California Supreme Court, the Courts of Appeal, the superior courts, or the California Judges Association.

6 SHAMAN ET AL., *op.cit.* note 4.

7 NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES [NCJFCJ], DEPRIVED CHILDREN: A JUDICIAL RESPONSE, 73 RECOMMENDATIONS 10-13 (1986); L. Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge*, 43 JUV. & FAM. CT. J. 1, 25-32 (Spring 1992); NCJFCJ, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES 18-27 (1995); NCJFCJ, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES 23-24 (2005); NCJFCJ, DIVERSION PROJECT MATRIX 6-11 (1998); CALIFORNIA AOC, CFCC, CALIFORNIA JUVENILE DEPENDENCY COURT IMPROVEMENT PROGRAM REASSESSMENT 1-4 (2005); U.S. GENERAL ACCOUNTING OFFICE, JUVENILE COURTS: REFORMS AIM TO BETTER SERVE MALTREATED CHILDREN 2-3 & 21-22 (GAO/HEHS-99-13) (January 1999); David Mitchell, *The Juvenile Court: A View from the Bench*, 6 THE FUTURE OF CHILDREN 126-130 (Winter 1996).

move cases along in a timely fashion, and communicate to the community the challenges facing our most at-risk children.⁸ Juvenile court judges have administrative and collaborative roles not faced by other judges. For example, the law mandates that juvenile court judges oversee the delivery and adequacy of services provided to children and families brought before the court.⁹ In many states, the juvenile court judge hires and fires the chief probation officer and monitors the appointment and qualifications of the attorneys who appear in the juvenile court.

National policy recommendations and various legislative mandates urge the juvenile court judge to provide community leadership, help determine the needs of the children who appear or who may appear in the juvenile court, and obtain and develop resources and services for those children.¹⁰ These policy makers tell juvenile court judges to “take on a new role,”¹¹ to develop “a new way to do business,”¹² to divert “families from traditional child protection services into community-based programs,”¹³ and to be “a case manager, convener, change agent, and system advocate.”¹⁴ This model places the judge in a non-traditional role. Neither law school curricula nor bar examinations address the charge to the juvenile court judge, and these innovative approaches fly in the face of what the public understands as the judge’s role in our legal system. The conventional judge sits on the bench, hears evidence, and decides cases, one by one. The judge never leaves the bench except for a recess, to think about a decision he or she must make, or to go home. The traditional judge makes decisions and does not occupy the role of an active leader, an educator, a convener, or an administrator.

As a result, juvenile court judges face challenges on and off the bench not encountered by other judges. These situations often raise ethical dilemmas not addressed by the standard texts or trainings in judicial ethics. Juvenile court judges need special guidance and support in judicial ethics that will assist them in understanding how they can ethically take the actions recommended by policy makers.

Perhaps more important, juvenile court judges need to be encouraged to follow recommendations and encouragements consistent with their role as a juvenile court judge—actions that are ethical. A frequent response by new or inexperienced juvenile court judges is: “I can’t do that—it’s unethical.” This article also explains, however, that most of the actions recommended by policy makers are consistent with the Code of Judicial Conduct.

8 *Id.*

9 This is the “reasonable efforts” finding that federal and state law require the judge to make at several hearings in child abuse and neglect cases. See L. Edwards, *Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980*, 45 JUV. & FAM. CT. J. 6, 19-21 (Summer 1994).

10 See the policy materials cited in note 7.

11 DEPRIVED CHILDREN, *op.cit.* note 7.

12 NCJFCJ, ABA CENTER ON CHILDREN & THE LAW & ZERO TO THREE, HEALTHY BEGINNINGS, HEALTHY FUTURES: A JUDGE’S GUIDE v & 129-135 (2009).

13 DIVERSION PROJECT MATRIX, *op.cit.* note 7 at 2.

14 NCJFCJ, JUDICIAL LEADERSHIP & JUDICIAL PRACTICE IN CHILD ABUSE AND NEGLECT CASES 4 (1998).

III. HYPOTHETICAL CASES FOR THE JUVENILE COURT JUDGE

- A. The director of a placement facility for children invites you to visit the facility, meet with the staff, eat a meal with the youth at the facility, and generally get to know how the facility operates. The director says that the facility will pay for all of your expenses. He also asks whether you would consider joining the facility's advisory board.
- B. You want to start a CASA (Court Appointed Special Advocate)¹⁵ program in your community, or expand the existing CASA program. You (1) convene a meeting of interested citizens; (2) post announcements for community volunteers throughout the courthouse; (3) appear on a local radio station and talk about the need for volunteers for the CASA program, and (4) at the meeting, explain why the court needs volunteers and how these volunteers would serve children and the court system.
- C. You are concerned that too many cases on your dependency docket take considerable time to resolve and that many children fail to reach permanency in a timely fashion. You believe it is your duty to ensure that children reach timely permanency. To address these problems, you (1) appoint attorneys before the shelter care (initial) hearing and order the children's services agency immediately to provide them with copies of the petition and supporting documents; (2) schedule an informal hearing before the shelter care to permit the attorneys, parties, and social worker to discuss the issues that will come before the court; (3) develop strict rules about granting continuances and issue sanctions to social workers for late court reports; and (4) institute a 45-day review after the dispositional hearing in order to determine whether the case plan is in place, whether the social worker has met with the parents, whether parents are participating in services, and whether visitation is occurring.

IV. DISCUSSION OF THE HYPOTHETICAL CASES

A. Visiting a placement facility presents no ethical problem. In fact, it makes good sense for a judge to acquaint him- or herself with placements because it enables the judge to make better decisions. California law, for example, encourages the juvenile court judge to "be familiar with all detention facilities, placements, and institutions used by the court."¹⁶

15 For more information on CASA, visit <http://www.casaforchildren.org>.

16 Cal. Standard of Judicial Admin. 5.40(e)(10), and CAL. WELF. & INST. CODE §202(d) (West, 2010).

Financial issues involved in the placement process occasionally raise ethical, legal, and even criminal problems for the juvenile court judge.¹⁷ Those operating placements recognize the judge's importance as a gatekeeper who makes placement orders, and who may make the difference between profit and loss.

Many juvenile court judges have been "courted" by directors of placements. Some judges can develop close relationships with placement providers, relationships that potentially raise ethical issues for the judge. In hypothetical A, visiting the placement facility is ethical, but accepting reimbursement for travel to and from the facility does raise ethical concerns. Canon 1 of the Code of Judicial Conduct states in part that a judge should maintain high standards of conduct "so that the integrity and independence of the judiciary will be preserved." Canon 2A states that a judge shall act at all times "in a manner that promotes public confidence in the integrity and impartiality of the judiciary,"¹⁸ while Canon 2B(1) states that a judge should not ". . . convey or permit others to convey the impression that any individual is in a special position to influence the judge." Canon 4D(5) states "[u]nder no circumstances shall a judge accept a gift, bequest, or favor if the donor is a party whose interests have come or are reasonably likely to come before the judge." You should not accept any reimbursement. Acceptance of expenses gives the appearance of impropriety, that you are beholden to this placement, and may give it some preference in your decisions.

The next part of hypothetical A involves the director's request that you join the advisory board of the placement. Again, this would be unethical. It would give the appearance that you favored the placement over others, a violation of Canons 1, 2 and 4D(5).

B. In this hypothetical situation, forming a CASA program or expanding your existing program will involve you in extrajudicial, off-the-bench activities including convening and speaking at meetings and publicly speaking about juvenile court goals to improve outcomes for the children who appear in your court. Many judges may conclude that such off-the-bench activities are unethical. While not a traditional judicial role, these actions are ethical.

Canon 4 governs extrajudicial behavior. "A judge shall so conduct the judge's quasi-judicial and extrajudicial activities as to minimize the risk of conflict with judicial duties."

¹⁷ The news in 2008 about two juvenile court judges in Luzerne County, Pennsylvania, who received money to place youths in detention facilities shocked the nation. These judges received an estimated \$2.6 million over several years in kick-backs from a private, for-profit program for each child they placed in the facility. Apparently, the scheme started some years earlier when the judges agreed to shut down the local youth detention facility and place youthful offenders in a new facility in a neighboring community. It appears that the judges placed youth in the detention facility for minor offenses. The judges were removed from the bench and face serious criminal charges for which they could serve years in prison. Juvenile Law Center, *Luzerne County "Kids-for-Cash" Juvenile Court Scandal*, <http://www.jlc.org/Luzerne/>; http://en.Wikipedia.org/wiki/kids_for_cash_scandal. Incidentally, Pennsylvania judges are not required to participate in ethics training. Perhaps there will be policy changes as a result of this case.

¹⁸ The commentary to Canon 2 A states that "A judge must avoid all impropriety and appearance of impropriety."

Your actions are commendable because they address “matters concerning the law, the legal system, or the administration of justice,”¹⁹ and are intended to improve outcomes for children appearing in the court system. So long as your actions do not “(1) cast reasonable doubt on the judge’s capacity to act impartially, (2) demean the judicial office, or (3) interfere with the proper performance of judicial duties,”²⁰ your conduct falls within ethical boundaries.²¹

In fact, Judge David Soukoup pioneered this work when he founded the first CASA program in 1977 in King County (Seattle), Washington.²² He asked the members of his community to meet with him on a weekend to discuss how better to serve the abused and neglected children appearing in his juvenile court. The participants concluded that trained citizen volunteers could provide support and assistance both to individual children and to the juvenile court judge, and they started a local program.²³ Over the past 30 years, this program has expanded and now serves abused and neglected children and juvenile court judges throughout the United States. In over 1,050 programs, more than 70,000 CASA volunteers currently represent over 237,000 children throughout the United States.²⁴

C. The first two hypothetical situations involved juvenile court judge activities off the bench. In this hypothetical situation, you are considering innovative and perhaps radical changes in your juvenile court operations which may draw the opposition of some judges and other professionals in the child welfare system. One Alaskan trial judge stated that “[i]n the adversary system, it is not the court’s responsibility to move the case along. The judge in the adversary system is passive. The contestants develop the facts and the judge makes a decision.”²⁵

19 Canon 4C(1).

20 Canon 4(A).

21 T. Hornsby, *Ethical Considerations for Judges Involved with CASA Programs*, JUDGES’ GUIDE TO CASA/GAL PROGRAM DEVELOPMENT 53-62 (National CASA, 2004).

22 Over the past decades, hundreds of juvenile court judges have followed Judge Soukoup’s lead. “The very nature of the office mandates that the judge act as an *advocate and convener* to assure that needed services for children are available and accessible.” (emphasis added). RESOURCE GUIDELINES, *op.cit.* note 7, at 18. The *Resource Guidelines* have been endorsed by the Conference of Chief Justices and the American Bar Association.

23 Some judges may be more comfortable simply playing the role of a convener—that is, convening the meeting, stating the problem, and having others take the lead in organizing and implementing. However, it is clear that a CASA or guardian *ad litem* program will not succeed without the support of the judiciary.

24 Refer to Casanet.org for the most current statistics.

25 ALASKA JUDICIAL COUNCIL, IMPROVING THE COURT PROCESS FOR ALASKA’S CHILDREN IN NEED OF AID 82 (1996). Roscoe Pound stated this passive judicial concept in 1906:

[I]n America we take it as a matter of course that a judge should be a mere umpire, to pass upon objections and hold counsel to the rules of the game, and that the parties should fight out their own game in their own way without judicial interference. We resent such interference as unfair, even when in the interests of justice.

R. Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 20 JUDICATURE 178, 182 (1936).

However, over the past 20 years this has become a minority position in state and federal systems alike.²⁶ Federal trial judges, for example, understand that they can maintain their dockets only by taking the initiative in settlement and similar matters.²⁷ Juvenile court judges also have increasingly involved themselves in case management and have modified the way they manage their dockets so that cases proceed more expeditiously.²⁸ State juvenile law statutes track federal statutory guidelines closely such that initial hearings are held a day or two after removal of a child, and the law mandates that the court establish a permanent plan for children within a year. Federal law also requires that judges make findings in juvenile dependency cases regarding whether the agency has made reasonable efforts to reach timely permanency.²⁹

Your changes in local court practice are consistent with the law and with national policy makers.³⁰ Your actions will likely disrupt attorney and social worker practice, but many juvenile court judges have changed local court culture by instituting these types of case management modifications and thus achieved timely permanency for children before their courts.³¹

Moreover, your conduct is ethical. The Code of Judicial Conduct requires a judge to “perform the duties of judicial office impartially and diligently,”³² “dispose promptly of the business of the court,”³³ “promptly dispose of the court’s business,”³⁴ and “ensure the diligence of other court officials subject to the judge’s direction and control.”³⁵ At least one state has taken these canons further. West Virginia Rule of Court 16.01 refers both to its state constitutional mandate that “justice shall be administered without sale, denial or delay” and Canon 3(8) of the Code of Judicial Conduct, “[a] judge shall dispose of all judicial matters promptly, efficiently, and fairly,” and mandates that

26 DAVID STEELMAN, CASEFLOW MANAGEMENT: THE HEART OF COURT MANAGEMENT IN THE NEW MILLENNIUM, (National Center for State Courts, 2000); J. Berg, *Judicial Interest in Administration: The Critical Variable*, in HANDBOOK FOR JUDGES 140-150 (G. Winters ed., American Judicature Society, 1975); ROBERT TOBIN, CREATING THE JUDICIAL BRANCH: THE UNFINISHED REFORM (National Center for State Courts, 1999). “The court must demonstrate an unmistakably strong commitment to timely decisions in child abuse and neglect cases.” RESOURCE GUIDELINES, *op.cit.* note 7 at 20.

27 J. Resnik, *Managerial Judges*, 96 HARVARD L. REV. 374 (1982).

28 L. Edwards, *Achieving Timely Permanency in Child Protection Courts: The Importance of Frontloading the Court Process*, 58 JUV. & FAM. CT. J. 1-37 (Spring 2007); RESOURCE GUIDELINES, *op.cit.* note 7 at 19-21; NCJFCJ, CHILD DEPENDENCY BENCHMARK 201-227 (1994).

29 42 U.S.C. §675(5)(C).

30 “The court must design explicit processes to ensure timely hearings and must make sure they are implemented by all judges and administrative staff.” RESOURCE GUIDELINES, *op.cit.* note 7 at 18.

31 Attorneys should not complain. They have an independent ethical obligation to move expeditiously in domestic cases involving children, who may face particular harm from undue delay. *See In re Dougherty*, 83 P.3d 789 (Kansas, 2004). *See also* ABA STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES, sections B4 & B6 (1996); ABA STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES, section 5, (2004); ABA STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING CHILD WELFARE AGENCIES, sections 2 & 11 (2004).

32 Canon 3.

33 Canon 3A.

34 Canon 3(A)(5).

35 Canon 3B(8).

the state courts adhere to the time standards declared by the West Virginia State Court Rules.³⁶

A judge's failure to move juvenile cases along expeditiously can result in public reprimand or even in the loss of the judge's position. In Utah, the Judicial Conduct Commission and the Utah Supreme Court relied upon Code of Judicial Conduct Canon 2A in finding that a juvenile court judge failed to hold child welfare adjudication hearings in a timely manner and held cases under advisement for more than two months thus bringing "judicial office into disrepute."³⁷

All of your suggested actions are ethical. In your efforts to improve outcomes for children you are following both legal and ethical guidelines. You need not fear these actions—indeed, you should approach them with energy and determination.

CONCLUSION AND RECOMMENDATIONS

Many other situations faced by juvenile court judges need similar analysis regarding the ethical implications of judicial action or inaction. Those include working with service providers, questions about accepting gifts to the juvenile court, managing juvenile court-sponsored events (Adoption Saturday, Family Reunification Day, etc.), appointing attorneys, maintaining the confidentiality of juvenile court proceedings and records, conducting facility inspections, collaborating with agencies, communicating with children, creating mediation programs, working with schools, public speaking, interacting with media, and collaborating with faith-based organizations.

Clearly, much more needs to be done regarding ethical training for trial judges throughout the United States, and, in particular, for juvenile court judges. All judges should participate in ongoing ethics training, and juvenile court judges should be offered ethics training that addresses the unique issues that they face in fulfilling their role as a judge. Specifically, each state judicial council and administrative office of the courts should take the following steps to address these important tasks.

1. Provide all judges with ongoing ethics training.
2. Provide juvenile court judges with ongoing ethics training specific to the special tasks they face in fulfilling their judicial roles.
3. Provide a "hot line" that permits judges to make contact with judicial ethics experts on short notice in order to ask about the ethical implications of specific situations.³⁸

³⁶ Rule 16.01 Purpose, State Court Rules, Ch. 1, W.VA. CODE ANN., (West, 2007). The Rule also cites the ABA Standards that state "the court, not the lawyers or litigants, should control the pace of litigation," and directs circuit courts and their officers to comply with the rules of court regarding time standards.

³⁷ *In re Anderson*, 2004 UT 7, 28, 82 P.3d 1134, 1151 (2004).

³⁸ Such consultation must not be about a pending or impending case as that would be a violation of Canon 3B(7) of the Code of Judicial Conduct regarding *ex parte* communications. However, the Code permits the judge to confer with another judge about law and procedure.

4. Provide specialized judicial ethics literature and texts, online courses, and videos that help educate all judges, particularly those serving in juvenile court.

A judge's ethical obligations are legal requirements that reflect upon the quality of our judicial system. Our legal system and the rule of law are best served if judges understand ethical constraints and act consistent with them. State supreme courts, judicial councils, and court administrators must ensure that judges receive the educational support and technical assistance necessary to perform their judicial tasks ethically. In so doing, they must remember to include the ethical situations faced by juvenile court judges.