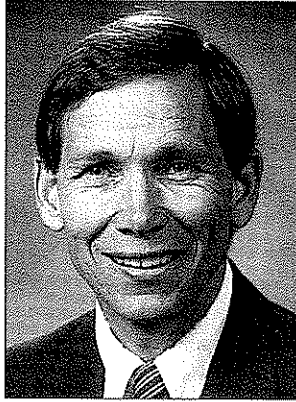


INTAKE DECISIONS AND THE JUVENILE COURT SYSTEM: *Judge Leonard Edwards (Ret.)*

The juvenile court judge decides which cases are permitted through the juvenile courthouse door. The juvenile court judge acts as the gatekeeper and ultimately determines the extent to which the state intervenes in the lives of children and families. The cases that the formal juvenile court system processes set the standards for decisions made throughout the community. Social workers and probation officers know what the judge ultimately decides in their cases, whether the judge dismisses the petition, refers the matter for informal services, or rules that the case will be formally processed through the court system. It is critical, then, that each bench officer understands clearly the impact that court rulings have on the entire juvenile justice system. It is also critical that each juvenile court engage the probation and children's services departments concerning the intake process so that the intake process operates fairly and is consistent with best practices. Consider the following:



California Rule of Court 5.514 states that

It is the duty of the presiding judge of the juvenile court to initiate meetings and cooperate with the probation department, welfare department, prosecuting attorney, law enforcement, and other persons and agencies, performing an intake function. The goal of the intake meetings is to establish and maintain a fair and efficient intake program designed to promote swift and objective evaluation of the circumstances of any referral and to pursue an appropriate course of action.

In your role as a juvenile court judge you encounter the following situations:

1. In a delinquency case, you notice that while this is a first-time offender, the probation report reveals that the youth has 3 prior under the influence of methamphetamine arrests, but each time was released with minimal services and no petition was filed.
2. The Children's Services agency files petitions on every baby born with a positive toxicology screen for drugs or alcohol.
3. The Children's Services agency uses a new method to determine whether to offer voluntary services or take formal action for cases social workers encounter in the community. You believe that children may be at risk because of this new procedure and that some of these cases may need formal court intervention.
4. African American, Latino, and Native American children are disproportionately represented in both your delinquency and dependency calendars.

Should these issues concern you? Is there anything you should do about any or all of them?

The answer to these questions in all four situations is a resounding Yes! These matters should concern you because both the delinquency and dependency systems may not be operating effectively or fairly. You should do something about these matters because it is your job.

In the first hypothetical you learned that, previous to the current petition, a youth had three prior arrests for being under the influence of methamphetamines. You may conclude that probation should have filed on the 2nd or 3rd offense. You may also conclude that whatever informal services were offered were inadequate to address the youth's substance abuse issues. You could call a meeting with probation, the prosecuting attorney, and defense counsel to discuss intake policies. Informal services to youth is the ideal way to handle a minor nonviolent offense such as being under the influence of alcohol or drugs. They could include, for example, substance abuse awareness classes, preferably involving the youth and family. Good informal strategies should be encouraged. However, if you find that these services are no longer effective, service providers may need to update their interventions, probation officers and other staff may require training about current remedies on assisting youth, and probation officers may have to examine whether the appropriate informal oversights are in place. These informal interventions should be age-appropriate and gender informed. Probation must ensure that a youth involved in informal services has no bona fide obstacles preventing him or her from completing the case plan such as transportation or the lack of parent support. Probation should have a protocol which addresses problems that arise when informal services are ineffective. That protocol might include a Team Decision Making Process or a Multi-Disciplinary Team meeting.

All of these options are appropriate discussion topics for the meeting you called pursuant to CRC 5.514(c).

In the second hypothetical, you can call a meeting with the welfare department (Children's Services), and possibly the attorneys representing the county, children, and parents. Again the discussion focuses on the department's intake policies. You may point out that state law does not mandate a filing in every case in which a baby has been exposed to alcohol or drugs in utero. Penal Code section 11165.13 states in part that "for purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect." In other words, you are educating the agency about the value of discretion. You should mention that you dismissed some of these cases with informal services after filing because of insufficient evidence. [see CRC 5.514(b)]. Thus, if the mother received prenatal care, has housing and a support system, the case can easily be handled informally. Additionally, some juris-

dictions provide residential treatment for the mother and her baby where they can reside together for up to six months and receive vital medical and mental health interventions to support the family. This approach comports with Standard of Judicial Administration 5.40(e)(8) which recommends that juvenile court judges:

[e]valuate the criteria established by child protection agencies for initial removal and reunification decisions and communicate the court's expectations of what constitutes "reasonable efforts" to prevent removal or hasten return of the child.

Understanding the intake decision process will also inform your rulings regarding whether the agency exercised reasonable efforts to prevent removal from parental custody, a federal and state law requirement in every case where a child has been removed from parental care.

The third scenario presents you with the difficult situation where you have no direct oversight of the decision made by child welfare to offer voluntary services to a family instead of filing a petition. The new procedure used by the department concerns you, but you question how best to review their decisions. First, you could call a meeting regarding intake, and ask the director to bring copies of cases the department settled informally which demonstrate how the new protocol works and what standards the department uses. Second, you could examine carefully every new petition and social report to learn whether the department previously offered voluntary services to the family in order to discover "failed voluntary services" cases similar to the "failed informal supervision" cases discussed in scenario #1. In either of these approaches, you could examine the records and make further inquiries. You may find yourself satisfied as to the effectiveness of the department's approach and that cases are being safely resolved with informal services. You may also find their approach unsatisfactory and express your concerns to the agency. Either option provides you with the opportunity to meaningfully discuss the intake standards used by the department.

The fourth scenario presents a judicial concern with the over-representation of certain minority populations in the juvenile dependency and delinquency systems. Your concern may be that the disparity is unfair, but over-representation also derives from the Canons of Judicial Ethics which stress the integrity of the judiciary (Canon 1), the appearance of impropriety in the judge's activities (Canon 2), and performing judicial duties impartially (Canon 3). Some judges might respond that disproportionality is not their fault. And it is not their fault. However, as the juvenile court judge, your duties involve oversight of the intake process, and your discussions and analysis might involve long term structural and societal barriers faced by the family. These barriers may force our systems to respond in a more tailored manner to families of color that continue to be brought into the child welfare and delinquency systems at disparate rates. Examine the petition language carefully for phrases and conclusions based on stereotypes rather than facts. Ask yourself and the social worker or probation officer if cultural beliefs or traditions exist that may account for any of the allegations or contribute in a positive way to solutions to the current family crisis. Ask whether the probation department and children's service agency have "culture

brokers", ethnic resource centers, or Team Decision Making, Family Group Conferencing models or other resources that would work with the family to design solutions that probation/children's services or the court can monitor and facilitate.

Convene the stakeholders and discuss whether culture-specific services for the over-represented populations exist, services that would facilitate informal case resolutions pursuant to CRC 5.514(b) and (c). Once you and the stakeholders identify those services, you might consider extending an invitation to the next meeting to a member of the Board of Supervisors. County Supervisors across the state have expressed an interest in the over-representation issue, and some have mandated the creation of the recommended services.

Meetings addressing the intake process are not new to the juvenile court. W & I section 241.1 mandates a meeting between welfare and probation to determine which status serves the best interest of the child and the protection of society. These meetings and your intake meetings should include the obvious stakeholders such as probation, children's services, and the lawyers appearing in these cases, but you could be creative and invite drug and alcohol, domestic violence, and mental health service providers, FIRST 5, group home providers, schools, medical service providers, and law enforcement. Building broad stakeholder collaboration serves families and children better, keeps communities informed, and all but ensures the use of best practices. This approach is also consistent with Standard of Judicial Administration 5.40(e) subsections (1), (2), (3), (4), (5), and (8).

Just because a case is filed does not mean it should have been filed. It may have been appropriately settled out-of-court with services. Every juvenile court judge must understand the array of informal services for juvenile justice and juvenile dependency. At your meetings you should periodically discuss the effectiveness of these services. Are they evidence based? Is the community satisfied with their impact? Convening these meetings will assist you in these determinations.

These suggested meetings emphasize an important point. Probation departments and welfare agencies are experts in what they do. Their decisions to remove a child or to settle a case absent a petition derive from careful analysis by an experienced professional. Nevertheless, ultimately all such decisions rest with the court. The judge sets the community's standards for removal and for informal resolutions whether the judge knows it or not. If we allow a youth 3 arrests prior to filing a case in court, all those in the probation system understand that the judge has sanctioned that approach, tacitly or otherwise. If the judge hears every case involving a positive toxicology screen at birth, then that policy becomes the status quo, and if the judge ignores over-representation, nothing changes.

The juvenile court judge occupies a role unlike any other judge. Perhaps nowhere is this unique role more evident than in the intake decision. We set the tone for family justice in our communities - we are the gatekeepers. In order to respond to our duty, we must follow the mandate of CRC 5.514 and become experts on the intake process.