Judge Leonard Edwards (Ret.)
Santa Clara Superior Court

Working with Your Director of Children's Services[1]

As Presiding Judge of your juvenile court, it is critical for you to develop and maintain a working relationship with the director of children's services in your county. Both the juvenile court and the children's services agency play crucial roles in the child welfare system, and their relationship will have an impact on the success of efforts to protect children and rehabilitate families. The department of children's services is the designated community agency for protecting children and for delivering preventive and supportive services to families in crisis. The director manages the child protection system including emergency response, dependent intake and investigation, case supervision, permanency planning, and adoptions. The juvenile court provides the legal framework for state intervention into family life. The juvenile court must review agency decisions to remove children from parental care, to provide services to parents, and to ensure that children reach timely permanency by finalizing a permanent plan. To make well-informed decisions about these issues the judge must know how the agency operates and what resources the agency has at its disposal.[2] The agency director, in turn, needs to understand how the court operates and the legal framework in which the court operates.

Judicial Responsibilites

State and federal laws mandate that the juvenile court oversee the actions of the children's services agency.[3] The court's numerous responsibilities include the following:

> 1. The judge must determine whether the children's services agency legally removed a child from parental care. To make that determination, the judge must decide whether the agency has presented a prima facie showing that the child comes within Section 300, that "…continuance in the parent's or guardian's home is contrary to the child's welfare," and that any one of four circumstances exists.[4]
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> 2. At regularly scheduled review hearings throughout the case, the judge must determine whether the agency has provided reasonable efforts to prevent removal of the child, whether the agency has provided reasonable efforts to rehabilitate the parents so that the child can be safely returned to them, and whether the agency has provided reasonable efforts to provide a permanent home for the child.[5] All of these decisions must be made within a strict time frame, one that is sensitive to the needs of a young child.[6]

To make intelligent, informed decisions about these and related issues regarding actions by the children's services agency, the judge needs to understand how the agency operates, what services it provides to families, as well as what services are available in the local community. The Judicial Council of California recognized this when it wrote Standard of Judicial Administration 5.40(e)(8):

> Judges of the juvenile court… are encouraged to
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> (8) Evaluate 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.[7]

Without knowledge of these criteria, the judge will have a difficult time evaluating agency efforts to prevent removal and provide rehabilitative services to parents.

Other matters involving the court and agency impact court operations. These include the content and length of social

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workers' reports, the timely delivery of reports to the court and all parties, court communications to the agency about problems that arise in the context of court hearings, procedures for the approval of the administration of psychotropic medications to foster children, ex parte requests for judicial authorization for certain agency actions, and communications with juvenile courts in other counties and states. Coordination between the court and agency will improve the efficiency of these and other activities that impact both. The judge should also be aware of steps taken by the agency to complete an adoption. Since the court must make a finding that the agency has made reasonable efforts to finalize a permanent plan, the judge must know the details of the adoption process in order to determine whether the agency has taken reasonable and timely steps.[8]

Developing a Relationship

The judge should meet with the director at least monthly. There need not be an agenda and the meeting should only take as long as necessary. However, new legislation, directives from the State Department of Social Services, comparisons of data, management of day-to-day operations, court implementation of interim hearings, new court projects (such as the development of a Family Drug Treatment Court or a dependency mediation program), and new agency projects (such as family finding, family group conferencing, and wrap-around services) require frequent communication between the judge and director. For example, years ago I discovered that the court and the agency were counting cases differently; moreover, each calculated a different number of children currently in the system. After several meetings, the director and I developed a plan for resolving the differences.

In addition to these one-on-one meetings with the director, the court should convene court systems meetings on a regular basis.[9] These meetings should involve representatives from all significant participants in the juvenile dependency system – attorneys, social service leaders, CASA, court administration, mediators, Family Drug Treatment Court staff, court security, and service providers. In some counties these meetings can be convened by the local Blue Ribbon Commission. The topics can include improving court operations, the development of alternative dispute resolution programs, changes to the court calendar, the prompt delivery of court papers to all parties, visitation protocols, concerns about security, consideration of best practices from other jurisdictions, and much more.

Judicial ethics require that at any of these meetings individual cases not be discussed; such discussions would be improper *ex parte* communications.[10] The judge should remind the director and all participants in court system's meeting about the prohibition of discussing individual cases. Of course administrative issues may be discussed as that is the purpose of the meetings – improving the administration of justice.

Trainings

Multi-disciplinary trainings provide an excellent forum for the court and its participants to learn about available services and particularly about agency operations. Trainings should take place every month or quarterly for one or two hours. All participants in the child protection system should be invited. The topics can include new case law, new statutes, new programs instituted by the agency, new court procedures, and services available in the community. The Administrative Office of the Courts can provide guest speakers on occasion, particularly through the Center for Families, Children & the Courts. In addition, attorneys can receive continuing education credits for these trainings.

Conclusion

A juvenile court cannot function efficiently and effectively without a good working relationship with the children's services agency. As long-time Los Angeles Presiding Juvenile Court Judge Michael Nash says:

> *The child protection system cannot work effectively unless the court and the agency work together. This requires communication and a mutual understanding of each other's roles within the framework of the system and vis à vis each other. This generally can't happen unless the agency director and the juvenile court presiding judge work together to make it happen.*[11]

Judges and attorneys cannot intelligently discuss reasonable efforts issues without a solid working knowledge of the child protection system starting from the agency's decision to remove a child and including the decision to decide upon a permanent placement for the child. By fostering a working relationship with the director of children's services, the juvenile court judge will be able to establish the coordination and cooperation necessary for the two branches of government to work well together. By convening regular meetings and trainings of all participants in the juvenile dependency system, the judge will promote the development of cooperative relationships among these participants and educate them about the juvenile court and child welfare processes. These steps will lead to improvements throughout the juvenile dependency system and that will, in turn, improve safety, permanency and well-being outcomes for children and their families.

Endnotes:

[1] The author wishes to thank Corby Sturges at the Center for Families, Children and the Courts and Ken Borelli, former Deputy Director of the Santa Clara County Department of Family and Children's Services for their help in the preparation of this paper.

[2] "The relationship between the responsibility of the agency and the actions of the court makes a close working arrangement crucial to the effectiveness of the system." Deborah Ratterman, Diane Dodson, & Mark Hardin,, *"Reasonable Efforts to Prevent Foster Placement: A Guide to Implementation,"* Amer. Bar. Ass'n, 1987)

[3] Welf. & Inst. Code §§ 300 *et.seq.* Adoption Assistance and Child Welfare Act , Pub. L. No. 96-272 (1980) and Adoption and Safe Families Act, (ASFA), Pub. L. no. 105-89 (1977).

[4] Welf. & Inst.Code §319 and Cal. Rules of Court. No. 5.676. The federal law underlying California statutory requirements is found at title IV-E of the Social Security Act, at 42 U.S.C. §672(a)(2)(A)(ii) (2006); and the implementing regulations at 45 CFR 1356.21(b)(1) (2006).

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[5] 42 U.S.C. §§ 671(a)(15)(B)(ii), 672(a)(2)(A)(ii); 45 CFR §1356.21 (b)(1), (c) (2006)

[6] Leonard Edwards, "Achieving Timely Permanency in Child Protection Courts: The Importance of Frontloading the Court Process," (Spring 2007) Juv.& Fam. Ct. J,. 1-37,

[7] Standard 5.40(e) of the California Standards of Judicial Administration is incorporated into the juvenile court statutory scheme at section 202(d) of the Welfare and Institutions Code..

[8] ASFA, Pub..L.No. 105-89; 42 U.S.C. §672(a)(2)(A)(ii), 45 C.F.R. §1356.21(b)(2). The juvenile court retains dependency jurisdiction over the child until the adoption is finalized.

[9] Leonard Edwards, "Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980", (Summer, 1984), 45(3) *Juv. & Fam. Ct J,* 1-28 at pp. 18-19,

[10] Cal. Code of Jud. Ethics, canon 3B(7); Leonard Edwards, *The Role of the Juvenile Court Judge: Practice and Ethics*, Cali. Judges Ass'n, 2012, pp. 261-265,

[11] Email from Judge Michael Nash, September 22, 2013. A copy can be obtained from the author.

Trial and Error – *continued from page 5*

"Demeanor isn't everything. But it comes close." Judge Greg O'Brien wrote this in a smart piece he published in The Bench years ago, and I have been quoting him ever since. As a new judge, nothing seemed easier that maintaining a pleasant demeanor. How effortless it was to feel patient and cheerful! On the other hand, it was effortful to pick a jury, conduct a hearing, rule on evidence objections. Yet as these important skills were acquired, demeanor took a serious hit. Instead of thinking, "This is so fun!" I began to think, "The lawyers are unprepared! The witnesses are late! The documents are disorganized!" Ay yi yi! At the end of the day, nothing is as important as demeanor. I have learned to take a deep breath, take a recess, reset the hearing – do whatever it takes to regain patience and neutrality. As Greg puts it, who would you rather hear from, the court of appeal or the CJP?

"It's a new year. Let's make some new mistakes." Mark Simons kicked off a January Evidence course years ago with this exhortation. I took it as a dare to try something new, as well as an admonition to solve my chronic errors. It turns out that complaining about my least favorite parts of the job didn't help one bit, but changing my attitude, experimenting with new approaches, and learning how other judges handled the problem did. Every January, I inventory my strengths and my struggles, and I commit to challenging myself to try a new approach to recurring problems. I dare myself to make some brand new mistakes – which, hopefully, Mark will fix when the case appears before him on appeal.

"Do the right thing." Judge Richard Breiner said this to me my first day on the job, and, really, doesn't this sum it all up? Regardless of what the problem is, the best and simplest solution is to do the right thing. And we always know what that is if we but take the time to consider it.

Happy 2014, Friends! I wish you a joyful year, filled with big cases, deep listening, and brand-spankin' new mistakes.

Lynn Duryee can be reached at *lynn_duryee@marincourt.org*

Family Law Update – *continued from page 9*

Although Georgiou was decided on a technical interpretation of family law set-aside statutes, the connection of Georgiou with Hibbard and Campi is that trial courts will enforce the words dictated by the parties and will not lightly grant "do-overs" to effect something that in retrospect may appear to be more equitable. Furthermore, at least in Georgiou, wife's argument was diminished by the fact that she had had the opportunity to discover the uncertainties in husband's contract regarding his class action and either knew or should have known that the $33 million figure was not absolute. From the perspective of the trial court, she may have voluntarily relinquished the right to recover a higher amount in return for the guarantee it would not go lower.

When litigants and attorneys reach agreements in family law matters, there may be a myriad of reasons why a stipulation that appears unequal on its face may be perfectly acceptable to both parties. In addition to the customary reasons for settling cases, i.e. the cost of litigation and the risk of a less favorable result, family law parties may also settle cases: 1) because of feelings of guilt about something that happened in the marriage, 2) in order to negotiate an unrelated benefit in support or other property or 3) in order to achieve an unrelated but desired child custody/visitation order. Rather than descend into the "sausage making" intrinsic to many agreements, trial courts rely on the fact that the parties themselves are the folks best able to evaluate their own objectives and that they have carefully chosen the words that precisely reflect their intentions.