



Child Law Practice

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Helping Lawyers Help Kids

IN PRACTICE

Representing Parents During Child Welfare Investigations: Precourt Advocacy Strategies

by Elizabeth Fassler and Wanjiro Gethaiga

Seventeen-year-old Ana and her stepfather Roberto immigrated to the United States in early 2008. Shortly after, Ana became pregnant. When Ana was in labor, her stepfather dropped her off at a hospital and abandoned her to return to Mexico. Ana, who speaks only Spanish, and whose only nearby family members lived in an overcrowded apartment, was placed in an English-speaking foster group home for young mothers where she now lives with her son.

Several months after Ana arrived at the foster group home, the staff called in a report against her. During the investigation, an attorney and social worker met with Ana to explain the investigation process and the possible legal consequences that could arise from the investigation. During the investigation, the social worker attended conferences with Ana to work with all parties to determine the appropriate plan for Ana.

At the end of the investigation, the attorney and social worker were able to stave off a court filing so Ana and her son could remain together in the foster group home. The social worker is now working diligently with the foster group home staff to locate a Spanish-speaking foster family for Ana and her son.

This vignette is based on a case handled by the Center for Family Representation, Inc. (CFR), a nonprofit law and policy organization based in New York City. It shows how early intervention and pre-court work can secure needed supports and provide tools to families to help them stay together and avoid going to court.

Using Ana's case to illustrate, this article describes CFR's unique Community Advocacy Team approach and how the teams assist parents navigate a child welfare investigation. It also discusses the

importance of pre-court advocacy; the legal framework of an investigation; and what an attorney, social work staff member, and parent advocate can do during each investigation stage.

CFR's Community Advocacy Teams

The investigation phase of a child protective case can be stressful and confusing for parents. To support parents during a child protective case, CFR created Community Advocacy Teams (CAT). CAT aims to (1) prevent foster care whenever

possible, and (2) if foster care is unavoidable, to significantly shorten the length of foster care stays for children. CAT provides parents an attorney, social work staff member, and a parent advocate (a parent who has directly experienced the child protective and foster care systems and has successfully reunited with his/her children). Through this model, CFR has worked with families while they are under investigation by child welfare authorities before the court gets involved.

Why Precourt Advocacy is Important

In New York, when someone

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ABA Child Law PRACTICE

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CASE LAW UPDATE

Foster Parents Lacked Right to Advocate a Position at Termination Hearing

People v. A.M., 2010 WL 5621076 (Colo. Ct. App.).

A trial court erred when it let foster parents participate as full intervenors in termination of parental rights proceeding. State statute permitting foster parents to fully intervene in dependency proceedings limits foster parents' participation to dispositional hearings, not termination hearings. Foster parents also lacked a constitutional liberty interest in their relationship with foster child and thus could not advocate a position at the termination hearing.

A baby was removed from his parents' care and placed in foster care based on suspected abuse. The local child welfare agency filed a dependency and neglect petition and the trial court approved treatment plans for the parents.

Initial reports to the court about the parents' progress in treatment were positive, but concerns were raised later about their mental health diagnoses and treatment. The foster parents also reported concerns about the parents' visits with the child, including being late to or missing visits, and returning the child from visits hungry or dirty.

Two mediations between the foster parents and parents led to agreements aimed at improving visits. The parents also agreed to continue working with their therapists and treatment providers. Eventually the court ordered the parties to develop a plan for the child's return home.

A week later, the child's guardian ad litem (GAL) filed an emergency motion to restrict the parents' visits with the child based on concerns by the child's CASA and foster mother. The concerns were that the child had lost significant weight, the parents were involved in domestic violence, the father viewed pornography and had left the child alone, and the mother had left the child with an unidentified person. The court ordered supervised visits based on these allegations.

A month later, the foster parents moved to intervene in the proceedings under a Colorado statutory provision that states ". . . foster parents who have the child in their care for more than three months who have information or knowledge concerning the care and protection

of the child may intervene as a matter of right following an adjudication with or without counsel."

The mother objected, citing a conflict of interest because the foster parents wanted to adopt the child. She asked the court to remove the child from the foster parents' home because of the conflict. The foster parents denied the conflict, claiming their only concern was promptly achieving a safe, permanent home for the child.

The GAL then moved to terminate the parents' rights. As the case moved to trial, the foster parents moved to exercise their right to participate in the termination hearing. The agency argued the foster parents should not be permitted to advocate the termination of the parents' rights because the goal of reunification had not yet been abandoned and therefore they lacked a constitutionally protected liberty interest in a continued relationship with the child. The agency argued the foster parents' role should be limited to testifying about facts they personally knew about.

During the seven-day termination hearing, the foster parents explicitly advocated termination of the parents' rights. They also opposed motions, made objections, cross-examined witnesses, and testified about the parents' deficiencies. The agency, caseworker, and treatment providers continued to support reunification as the permanency plan. After hearing the evidence, the court terminated the parents' rights. The parents and agency appealed.

The Colorado Court of Appeals reversed, holding the trial court erred by allowing the foster parents to fully intervene at the termination hearing. The parents and agency argued that under a provision in Colorado statute, the foster parents' role at the termination hearing should have been limited to providing information about the child. The foster parents argued the statutory provision could be interpreted to allow them to fully participate at the termination hearing.

The court of appeals found the statute was ambiguous regarding the scope and timing of permissible foster parent intervention. It explained the statute provides foster parents an unconditional right to

intervene in dependency proceedings “following adjudication.” This language raises questions over whether foster parents may participate fully in all phases of a dependency case, or whether the extent of participation depends on the issues raised at the hearings.

The appellate court held the statute provides a limited right of intervention to foster parents at termination hearings. The court emphasized the right of foster parents to be heard at all proceedings is distinct from their right to intervene in proceedings. The legislative history showed the right of foster parents to intervene was meant to be limited to the dispositional hearing of dependency proceedings.

Over the years, the Colorado legislature has expanded the role of foster parents in dependency proceedings. This has resulted in overlapping statutory provisions that give foster parents rights to be notified of hearings, be heard at hearings or reviews of a foster child’s case, and to intervene in dispositional hearings.

The statutory provision at issue in this case—the right to intervene in depen-

ency proceedings “after adjudication”—falls within a section concerning dispositional hearings only, not a more general section covering dependency proceedings broadly. A Colorado appellate court held this statutory provision limits foster parents’ right to intervene as full participants only in dispositional hearings. While they may exercise their right to be heard during a termination hearing, they may only intervene and participate fully in a dispositional hearing.

In this case, the trial court did not limit the foster parents’ participation at the termination hearing. Rather, it let them testify in favor of terminating the parents’ rights. The court of appeals found this error was not harmless. The foster parent’s testimony, arguments by their attorney, and cross-examination of several witnesses uncovered harmful information about the parents that was not limited to the foster parents’ personal knowledge. It also contradicted the rehabilitative purposes of the termination criteria established in Colorado’s dependency statute by encouraging the court to terminate the

parents’ rights so the foster parents could adopt the child.

The court of appeals held that letting the foster parents fully participate as intervenors violated the parents’ liberty interest in their parent-child legal relationship. While parents have a fundamental liberty interest in the care, custody, and control of their children, foster parents have limited, if any, constitutional liberty interests. Further, a foster parent’s relationship with a child does not give rise to a protected liberty interest at termination hearings, particularly in this case where reunification with the parents was still the permanency goal, and there was no expectation that the foster parent-child relationship would continue. Without a constitutional liberty interest, the foster parents could not advocate termination of the parents’ rights.

The court found the trial court erred by allowing the foster parents to fully participate as intervenors at the termination hearing and that error was harmful and required reversal of the order terminating the mother’s parental rights.

Siblings of Deceased Child Could Not Recover on Wrongful Death and Survival Claims

Beggs v. State Dep’t of Social & Health Servs., 2011 WL 543817 (Wash.).

Adoptive children whose sibling died due to foster mother’s neglect could not recover on wrongful death and survival claims against health care providers. Siblings were unable to show they were dependent on child, and although health care providers are subject to civil claims under mandatory reporting statute, court upheld lower court’s partial summary judgment order dismissing claims against health care providers.

The child and six other children were placed in a foster home between 1997 and 2002. Later, the child and three other children were adopted by the foster mother, despite 23 referrals to child protective services alleging physical or sexual abuse and neglect in the foster mother’s home. At least three of the referrals involved allegations of physical abuse of the child. The child also lost significant weight while in the foster mother’s care.

On his seventh birthday, the child died of dehydration and starvation due to his adoptive mother’s neglect and abuse. He weighed 28 pounds. The child welfare agency then removed the other children from the foster/adoptive mother’s home

and ended her support payments.

The child’s siblings and personal representative filed wrongful death and survival actions against the child welfare agency and its employees, the deceased child’s health care clinic and two of its doctors, and the child’s primary care physician and his psychiatrist. They argued the primary care doctor and psychiatrist knew of the child’s severe weight loss, stunted growth, and behavioral problems, and the CPS referrals.

The health clinic and doctors moved for partial summary judgment, arguing first that the wrongful death and survival actions should be dismissed since the siblings were not dependent on the child. They also moved for dismissal of any civil action under the mandatory reporting statute because the medical malpractice statute precluded it. The trial court granted these motions.

The child’s personal representative appealed. The court of appeals granted review and certified the case to the state supreme court.

The Supreme Court of Washington agreed to decide if (1) Washington’s mandatory reporting statute implies a cause of action against health care providers apart

from the medical malpractice statute; and (2) the deceased child’s adoptive siblings were dependent on him for support under the wrongful death and survival action statutes based on adoption support payments the adoptive mother received for the child.

Regarding the first issue, the court found that child abuse victims are within the class for whom the legislature enacted the mandatory reporting statute and that the statute implicitly supports a civil remedy for failing to meet that duty. Further, it found an implied cause of action was consistent with the statute’s underlying purpose to prevent further abuse and safeguard children.

The doctors claimed that a civil remedy implied by the mandatory reporting statute did not apply to them because the legislature created a separate liability scheme for negligent health care in Washington’s medical malpractice statute. They further claimed their duty to report only arose during the course of their employment and in the context of a doctor-patient relationship.

The medical malpractice statute provides remedies for claims against doctors

(Continued on p. 26)

Alabama

D.B. v. K.B., 2011 WL 190049 (Ala. Civ. App.). VISITATION, RELATIVES
Juvenile court properly awarded visitation to maternal aunt and uncle with children who were in custody of paternal aunt even though they lacked close relationship with children until after parents' death; evidence showed continued contact between children and maternal family was in their best interests.

M.J.C. v. G.R.W., 2011 WL 190047 (Ala. Civ. App.). TERMINATION OF PARENTAL RIGHTS, CRIMINAL CONVICTIONS

Juvenile court properly considered father's prior convictions and imprisonment for five felonies as ground for termination of his parental rights; under Alabama case law, a juvenile court may rely on a felony conviction and resulting imprisonment as basis for termination, regardless of when the conviction and imprisonment occurred.

Alaska

Pravat P. v. Dep't of Health & Social Servs., 2011 WL 563184 (Alaska). TERMINATION OF PARENTAL RIGHTS, INDIAN CHILD WELFARE ACT
Superior court correctly found that agency made active efforts to reunify Indian child with father by actively assisting him, including providing a hearing aid, visitation support, therapy, an interpreter, assisting with potential cultural differences, providing a class on fetal alcohol exposure, and arranging psychological evaluations.

Ralph H. v. Dep't of Health and Social Servs., 2011 WL 338044 (Alaska). TERMINATION OF PARENTAL RIGHTS, REASONABLE EFFORTS

In termination trial, superior court properly found the agency made reasonable efforts to preserve the family through numerous referrals made to several service providers; court could consider efforts made before removal in analysis of reasonable efforts by the agency to preserve the family.

California

In re Daisy H., 120 Cal. Rptr. 3d 709 (Ct. App. 2011). DEPENDENCY, EMOTIONAL ABUSE
Evidence was insufficient for dependency

jurisdiction based on emotional harm where father called mother derogatory names and children reported not being afraid of father; jurisdiction based on emotional harm requires showing that a child is suffering or at risk of suffering severe anxiety, depression, or aggression.

Colorado

In re C.L.S., 2011 WL 724780 (Colo. Ct. App.). TERMINATION OF PARENTAL RIGHTS, VOLUNTARY RELINQUISHMENT

Judgment terminating father's parental rights was void due to fraudulent statements by mother indicating she did not know identity of father; mother's false statement that she did not know father's name or contact information resulted in termination via publication and default denying father opportunity to challenge termination petition.

Connecticut

In re Dylan C., 10 A.3d 100 (Conn. App. Ct. 2011). TERMINATION OF PARENTAL RIGHTS, REPRESENTATION

There was no evidence of ineffective assistance of counsel where mother's appeal did not argue how she was prejudiced by counsel and evidence of her failure to comply with case plan or complete services showed that termination would have resulted regardless of the level of legal advocacy at trial.

In re Jessica M., 2010 WL 5129129 (Conn. App. Ct.). DEPENDENCY, JURISDICTION

Where 17-year-old youth alleged she was dependent, but turned 18 before adjudication, court properly dismissed her petition for lack of subject matter jurisdiction; statute did not provide for retroactive commitment to the department.

State v. Farah, 2011 WL 341657 (Conn. App. Ct.). ABUSE, RECORDS

In criminal trial for sexual assault, trial court properly denied defendant's request that the court conduct an in-camera review of child welfare agency records where he made only a general assertion that the records might contain exculpatory information; a request for production of confidential child welfare records requires a preliminary showing that records will be material and favorable to the defense.

Delaware

Brown v. Div. of Family Servs., 2011 WL 767095 (Del.). TERMINATION OF PARENTAL RIGHTS, INCARCERATION
Family court did not improperly terminate mother's parental rights solely due to incarceration; court considered a number of factors in failure to plan analysis including that mother failed to visit consistently even when not incarcerated and failed to take advantage of services offered in prison that were required on case plan.

District of Columbia

In re A.O.T., 10 A.3d 160 (D.C. 2010). TERMINATION OF PARENTAL RIGHTS, JUDICIAL OFFICERS

Where parent did not consent to termination trial before magistrate, court should have assigned case to an associate judge per court rule; the Family Court Act's "one family one judge" rule was not meant to be absolute and thus does not conflict with the prior court rule indicating that magistrates could only hear terminations with the consent of the parties and may be appropriate in some cases for judicial impartiality.

Florida

In re C.N., 51 So. 3d 1224 (Fla. Dist. Ct. App. 2011). TERMINATION OF PARENTAL RIGHTS, CRIMINAL VIOLATIONS
Father's case plan that required that he have no further law violations was not a valid basis to terminate his parental rights as it impermissibly expanded enumerated list of crimes that constituted termination grounds and conflicted with rule against termination based primarily on incarceration.

Wade v. Dep't of Child and Families, 2011 WL 362412 (Fla. Dist. Ct. App.). EDUCATION, ROAD TO INDEPENDENCE PROGRAM

Agency hearing officer's order terminating youth from road to independence program, an educational program for former foster youth, was not final for the purposes of judicial review since administrative appeal procedures were not exhausted; state statute required further review by the agency secretary.

Winters v. Brown, 2011 WL 222321 (Fla. Dist. Ct. App.). CHILDREN'S RIGHTS, HEALTH CARE

Award of power to make health care

decisions to father over mother where she refused to allow child to be immunized due to her religious beliefs was supported by evidence; multiple experts testified about benefits and risks of immunization, and court could have reasonably found that failing to immunize child was harmful based on the testimony.

Idaho

In re Doe, 2011 WL 322365 (Idaho).

ADOPTION, GRANDPARENTS

Where children were removed from physical custody of grandparents by child protective services and parents consented to termination, trial court did not err in denying grandparents' petition to adopt grandchildren where child welfare agency would not consent because consent of the custodian is required for adoption under state law.

Louisiana

In re L.M., 2011 WL 230328 (La. App.

DEPENDENCY, HOME

CONDITIONS

Record supported conclusion that mother failed to provide children with necessary food, clothing, shelter, and care and placed children's health and safety at risk; home conditions were alarming as evidenced by children's lack of personal hygiene, clean clothes, food, supervision, and unsanitary home.

Maryland

In re Nancy H., 2011 WL 669117

(Md. Ct. App.). DELINQUENCY,

CRIMINAL RECORDS

Juvenile who pled guilty in trial court to second degree assault and was transferred to juvenile court for disposition was entitled to have criminal record expunged; statute authorizing expungement of criminal records when case involving a child is transferred to juvenile court applies to juveniles who are waived after a plea is entered but before disposition.

Minnesota

In re M.R.P.-C., 2011 WL 206200 (Minn.

Ct. App.). DEPENDENCY, INDIAN

CHILD WELFARE ACT

Trial court abused its discretion by granting paternal grandparents' custody petition without inquiring whether ICWA applied to custody proceedings or conducting evidentiary hearing to determine whether grandparents met statutory requirements of de facto

custodians; trial court has a duty to determine if ICWA applies when facts suggest subject child may be an Indian child.

Mississippi

K.K. v. N.F., 2011 WL 386818 (Miss. Ct.

App.). TERMINATION OF PARENTAL RIGHTS, ADOPTIVE PARENTS

In proceeding in which first set of adoptive parents who consented to child's adoption by second set of adoptive parents filed motion to set aside second adoption and terminate second adoptive parents' rights, evidence did not support termination of second adoptive parents' rights and chancellor's decision granting second adoptive parents' requests for protection order was not an abuse of discretion.

New Jersey

New Jersey Div. of Youth & Fam. Servs. v.

P.W.R., 2011 WL 222125 (N.J.). DEPENDENCY, CORPORAL PUNISHMENT

Stepmother's occasional slaps of 16-year-old teen's face as discipline measure did not constitute "excessive corporal punishment" within meaning of statutory definition of abused or neglected child; use of "excessive" in statutory definition recognized need for some parental autonomy in child rearing that may involve need for punishment.

New York

Ferguson v. Skelly, 2011 WL 102549 (N.Y.

App. Div.). CUSTODY, GRANDPARENTS

Trial court properly found that extraordinary circumstances did not exist to support allowing grandfather to retain custody of children whom he cared for while children's mother and father were abusing drugs; despite father's shortcomings, he had turned his life around and completed substance abuse classes, underwent counseling, secured a job and stable home, and was living a healthy lifestyle free from drugs.

North Carolina

In re D.H.H., 2010 WL 5421477 (N.C. Ct.

App.). TERMINATION OF PARENTAL RIGHTS, FAILURE TO IMPROVE

Termination of father's parental rights was supported by evidence showing he left child in foster care for over 12 months and failed to make progress to address issues that led to child's removal; father continued to use drugs, had not secured stable

housing that was suitable for child, and was recently criminally convicted for larceny and marijuana possession.

Oregon

In re A.L. A., 2011 WL 521259 (Or. Ct.

App.). TERMINATION OF PARENTAL RIGHTS, REUNIFICATION

Evidence did not show that child's reintegration into mother's home within reasonable period would be improbable due to conduct or conditions that would likely not change; expert testimony established mother might be able to resume caring for child in 6-to-18 months and no evidence established that this timeframe was unreasonable based on child's needs.

Texas

In re D.O., 2011 WL 173555 (Tex. App.).

TERMINATION OF PARENTAL RIGHTS, EVIDENCE

Trial court properly admitted foster mother's testimony regarding child's placement of a swastika on one of his school textbooks; evidence was relevant to determining if child's mother endangered his physical or emotional well-being and evaluating child's best interests and record failed to show that admitting the evidence unfairly prejudiced mother.

Vermont

In re K.M.M., 2011 WL 748145 (Vt.).

CUSTODY, PARENTAL PRESUMPTION

Trial court's order denying father's motion to end guardianship arrangement that placed child in care of grandfather unfairly placed burden of proof on father to show why returning custody to him was in child's best interests; grandfather should have had burden to overcome parental presumption favoring custody with father.

Washington

In re Akon, 2011 WL 450236 (Wash. Ct.

App.). PATERNITY, PRESUMPTIONS

Stepfather was not presumed father of children born during mother's first marriage, despite his claim that mother's first marriage in Sudan was invalid because her husband failed to pay her dowry; evidence showing that first husband was legal and biological father of children overcame presumption of paternity.

(Continued from p. 17)

suspects child neglect or abuse and calls the state hotline, a child protective services (CPS) worker employed by children's services is supposed to investigate the parent and offer the family services. Often parents mistrust the caseworker (who has tremendous power to take their children) and so will not follow up on referrals for services.

Or, frequently parents are asked to attend meetings about their situation, but feel their voices are not heard, are too intimidated to ask questions, don't understand why they are being investigated, or simply don't know what questions to ask about the investigation, process, services, etc.

Parents may be asked to attend services that are inappropriate, not culturally sensitive, or that conflict with employment or other obligations. Parents may also be asked to produce their children for interviews with a caseworker or medical professional. This raises many questions about whether they are required to produce their children, whether CPS can speak with their children outside the parent's presence, and the consequences if a parent refuses to cooperate with these requests.

During these critical, early phases of an investigation, having a strong advocate can prevent misunderstanding and miscommunication and promote positive efforts to keep a family safe and out of the court system. Most people do not wait until they are standing before a judge to consult an attorney. In cases like Ana's, CFR has created a referral partnership with other legal services agencies and community organizations. The only requirements for the referral are that the parent is currently under investigation by children's services in New York City and wants help navigating the process.

CFR also gets referrals from partnerships with government

agencies, the New York City 311 call line, and direct calls from parents who have found CFR's information online or received CFR's phone number from former clients. Once referred, CFR assigns an interdisciplinary team to provide legal representation and advocacy. An advocate can assist the family during the investigation by:

- providing ongoing information and clear explanations regarding the social work and legal aspects of the investigation process;
- advocating for reasonable and realistic service plans that address the family's identified needs;
- thinking creatively about different ways to address the allegations; and
- identifying resources the family can use to address concerns of the child welfare agency.

Between July 2007 and November 2010, CFR represented parents in dependency cases, in addition to representing parents like Ana whose cases were not before the court. CFR's legal and social work staff successfully diverted court filings in 70% of the cases in which they met a client during the investigation. CFR also successfully diverted foster care placements in 90% of the cases in which a dependency case was filed and CFR staff had met the family during the investigation.

Legal Framework

Governing Laws

Federal and state laws generally govern what happens when child protective services (CPS) intervenes in a family's life when child abuse or neglect is suspected. These laws vary from state to state, so it is important to know your state's laws and regulations.¹ Knowing and understanding this legal framework for the investigation will make you a more effective advocate.²

The legal framework is based on laws and regulations that require child welfare agencies to exercise

reasonable efforts to prevent or eliminate the need for placing a child outside their home.³ Reasonable efforts can include holding family conferences and offering preventive services.

Reporting

In most states an investigation is prompted by a call to a central registry number/hotline that fields calls by anonymous or mandated reporters regarding alleged child abuse and neglect. The central registry is designed to "aid in investigations, treatment and prevention of child abuse cases and to maintain statistical information for staffing and funding purposes."⁴ The information received is compiled and sent to the local child protective agency's field office.

After CPS receives a report, federal law requires that it take the following investigation steps:

Safety assessment: CPS agencies conduct a safety assessment to determine the risk to the child of staying in the home. If CPS staff members feel the child cannot safely remain at home, they will remove the child immediately and a dependency case will be filed in family court against the person(s) named in the report.⁵ If the child can remain at home, the investigation will continue.

At this stage, CFR's CAT teams first get involved with a family. As stated above, either a parent calls and requests assistance or we receive a referral from one of our community-based partners. Generally this is a parent's first contact with an attorney. At this stage, an appointment is scheduled for the parent to come to CFR's office to meet with a team comprised of an attorney and a social work staff member. We prefer that a parent meet with the attorney and social work staff member together and that this meeting occur before the next investigation stage (generally a

home visit).

During the first meeting, parents are advised of their legal rights and given information on the investigative process. In addition to informing the parent of their rights, we have them sign a retainer agreement for investigation purposes only, discuss confidentiality, discuss our individual roles and how we can assist them during their investigation. Parents are given contact information in case CPS comes to their house unannounced. They then have a way to contact a team member to walk them through the visit.

Ana's case: In the vignette, after a case was called in by the group home, the CFR team met with Ana to discuss the investigation process, her rights, and how the CFR team could help her during this process. When a home visit was scheduled, Ana understood how important it was to contact CFR to inform them so they could be present during the next investigation phase.

Home visit: The local CPS agency's field office assigns a caseworker to make the initial home visit. The severity of the allegations determines how quickly a home visit is made. A severe/emergency case is usually investigated within 24 hours, and within three-to-five days for nonemergency cases.

During the home visit, the caseworker or law enforcement personnel should identify themselves, inform the person named in the report that a call has been made alleging neglect or abuse of a child, and an investigation has started. The person under investigation is under no obligation to communicate with the investigator. The investigator should explain the option not to communicate as well as the potential consequences (i.e., court intervention, removal of a child). The investigator will want to speak with all people in the home and gather information about others who have regular contact with the subject children

(friends, relatives, child care providers, school personnel, etc.) in the event they want to gather further information from collateral sources.

At this visit, the investigator may also ask about school and medical information and may ask the parent to sign releases so they can get information directly from providers.⁶ Investigators also routinely check the home for food, confirm all immunizations are current, speak to children, check children for marks and bruises and assess other safety concerns in the home. CFR's social work staff can attend this visit. Attorneys may also attend but usually the team decides to send a social work staff person.

Before the visit, the social work team member and attorney meet to discuss strategies for making the home visit successful as well as areas that may present problems. In CFR's experience, social work staff members have been extremely effective at gathering information about the investigation, supporting parents, and diverting the case from court.

Ana's case: In the vignette, Ana contacted CFR when the CPS worker scheduled a home visit. The social worker was able to attend the meeting and supported Ana. The CPS worker assigned to the case did not speak Spanish so our social worker acted as a translator. If our social worker had not been present, someone else in the home could have been asked to translate, but we have found most people do not know how to translate the child protective issues as clearly as someone who works in the field. Although this sounds like a unique case, it happens often. We have also found that parents understand the process more in their native tongue and that they listen to our social work staff members and attorneys because they take time to build a relationship and explain the details of an investigation.

Conference: The CPS team—caseworker, supervisor, manager—may call a meeting to gather more information, clarify information and/or discuss services for the family. Usually conferences are held in the CPS field office.

An attorney rarely attends conferences. In fact, in New York they are generally prohibited from attending. This is where preparation is most important for both the parent and the social work staff member of the team. A good support at this meeting can mean the difference between having a case go to court or not. During the conference, the social work staff is in contact with the attorney to inform them of decisions. If a decision is made to go to court, the attorney meets the parents at the courthouse. The parents and CFR social worker bring the documents that were prepared at the conference including any written decisions.

Ana's case: In Ana's case, the social worker attended several conferences with Ana. She was able to present documentation to the child welfare organization on the positive steps (e.g., parenting class, ESL classes) that Ana had been taking to address their and the foster group home's concerns. The social worker also helped foster a positive working relationship between Ana and the staff at the foster group home and the CPS worker. Creating a positive working relationship with all parties helped them see Ana as an individual and address her needs.

Case Closure: The CPS caseworker/team should send a closing letter stating the outcome of the investigation within 60 days from the start of the investigation.

The investigation will be closed with the case either "indicated" (some credible evidence for found) or "unfounded" (no credible evidence found).

If a case is indicated or founded but no court case is filed, the team

Preparing Your Client for a CPS Investigation

Parent clients often have many questions during a CPS investigation. Advocates can help parents prepare for the investigation and alleviate their concerns by thinking through common questions in advance.

- How is neglect defined in your state?
- What is the Child Protective Services (CPS) protocol for the length of the investigation in your state?
- Should they expect a CPS worker to do home visits school visits, etc.? If so, how often?
- Will CPS speak to other people regarding the investigation? If so, who? Babysitters? Neighbors?
- What privacy rights do parents have?
- When does CPS have the right to remove my child?
- When does CPS have to file a case in court?
- If my child is removed, what are my immediate rights?

attorney helps the parent through an administrative process where a parent can challenge the finding. This process differs in every state. In New York, it involves writing a letter to request expungement, or if that is denied then a hearing.

Ana's case: Although the team was able to stave off a family court case, Ana's case was indicated. The social worker and attorney helped Ana craft a letter to the state central registry to ask for the case to be expunged and are awaiting a reply. If denied, the team will help prepare Ana for a hearing.

Court Intervention

In many states, the legal framework allows child welfare agencies to ask the court to intervene when there is reasonable cause to believe a child's life or health may be in danger.⁷ A request for a court order gaining access to a child and a family's home is held to a higher standard than "imminent risk"⁸ and can only be made in very specific circumstances, such as when a CPS worker has been unable to gain access to a child or a home during an investigation. The inability to access the family can be for many reasons, but generally orders to gain access are sought when a family is refusing access. To protect the rights of the

family, child protective workers in some states must inform the parent or guardian that they will ask the court to intervene if the family refuses to cooperate.⁹

Legal Representation

States vary over whether a parent may have an attorney or other advocate represent them or be present for any meeting or investigative interviews during a child welfare investigation.¹⁰ Because of this ambiguity, it is important to look at your state's dependency or child welfare statute and regulations. Remember, even if you cannot attend these meetings or interviews, you can prepare your client for them.

Removal

At any point in the investigation, the investigating team can decide to file a court case and ask for the child(ren) to be removed from the home. In some states, the child welfare agency may remove a child for a specific period before asking the court to intervene.

Supporting a Family during an Investigation

During an investigation, many professionals can perform the same roles in helping a client. For

example, both an attorney and a social worker/advocate can explain the stages of an investigation to a parent. The following tips, compiled from CFR's work with precourt cases, are designed to help attorneys, social work professionals, and parent advocates think about steps each professional can take.

Practice Tips—Attorneys

■ *Research your state's child protection statutes and regulations.* This may sound basic, but you need to understand what CPS is empowered to do when investigating a family.

■ *Develop a "know your rights" checklist for parents that explains what is supposed to happen.*

■ *Learn how to explain the investigation process and keep track of frequently asked questions (see *Preparing Your Client for a CPS Investigation*).*

■ *Ask the parent about any meetings they are asked to attend.* If you can accompany the parent, find out who is convening the meeting and contact that person about coming. Be clear that you are an attorney. If you are told attorneys are not permitted, consider putting in writing (letter) that you were told this and that you have advised your client to bring another support person to the meeting (relative or community member).

■ *Determine when parents are entitled to representation.* If your state has a procedure that permits the protective service agency to seek a court order to either take children into temporary custody during an investigation OR to enter a home, learn whether parents are entitled to representation. Tell the parent to notify you if they are served with any official papers directing them to appear in court. *Even if the parent is not entitled to representation, if you*

can appear with a parent on the court date, your presence may help the court and the protective services agency be more attentive to reasonable efforts obligations owed to the family.

- *Develop a conflicts procedure for investigation clients.* Remember, even at this early stage, you cannot be sure what case may end up in court and you cannot counsel two parents or adults involved with the children.

- *Set clear boundaries* from the first discussion about confidentiality and other policies you have in your office. For instance, it is important to inform your client what types of case you are able to represent them on if the case goes to court (i.e., custody, visitation, administrative hearings regarding sealing/expunging CPS records, dependency cases).

- *Develop a referral network.* If you do not work or contract with social workers, establish connections with local community-based or social services organizations that have a track record for supporting parents. Your clients may need referrals outside of the CPS process and you want them to have quick access to these supports.

- *Be prepared to meet with the client and/or your own social work staff member to assess the likelihood of a case being filed as the investigation proceeds.* Keep track of what the agency is or is not doing so that if the case proceeds to court you have begun to develop both a theory of “reasonable efforts” and can anticipate the allegations. This early work by the attorney during the investigation can also make it more likely that if children are removed as a result of the filing of a formal neglect allegation, the attorney is prepared to proceed to an emergency hearing to get the children returned home.

- *Be prepared if a parent chooses not to cooperate.* Remember there is no requirement that a parent must cooperate with a CPS investigation. Know the legal remedies that CPS has and the legal consequences in your state if a parent refuses to allow access to the child or to their home so you can counsel your client accordingly.

Practice Tips—Social Workers and Parent Advocates

- *Inform the client about the investigation stages.* The more information the client has the more prepared he/she will be for questions that the CPS worker may ask. It helps to understand the actual (versus published) practices of the CPS agency during an investigation. Despite how you feel about investigations, it is important to know exactly how they work so you can advise parents.

- *Attend meetings with the client.* Generally social work staff, parent advocates, and other advocates may attend meetings, conferences, home visits, etc. When possible, attend as many of these meetings with clients. If you cannot attend, take time to prepare the client for the meeting, answer questions, and follow-up afterwards.

- *Learn the agenda and format of meetings* administered by the CPS agency. Look at the county Web site for information about meetings/conferences that your clients may be invited to attend. This will help you understand the process and prepare the client on what to expect during the meeting.

- *Encourage the client to organize all medical and school information* (i.e., evaluations, immunizations, report cards) for all children. Tell the client never to give original documents to the caseworker, only photocopies, and to bring any relevant documents to meetings.

- *Encourage the client to keep important numbers readily available.* For example, the number of their child’s pediatrician or health clinic, prevention agencies the family has worked with, or a relative who could support or be a resource for the child.

- *Keep an updated list of important resources for clients.* If your local child welfare agency has an ombudsman’s office or parent hotline, parents can call them directly with a complaint or question(s). For example, New York has both an Office of Advocacy and a parent hotline, Michigan has an Office of Children Ombudsman, and Arizona has a Parent Assistance Program (24-hour hotline), Family Advocate Program, and a Client Advocate’s Program.

- *If the client has a positive working relationship with any service providers,* encourage the client to ask their service providers to contact the CPS worker, attend any meetings or conferences, or send a letter about the client’s progress and compliance with services.

- *If a conference or meeting is scheduled and you cannot attend,* encourage the client to invite people to the conference who will support him/her. Remind clients to bring someone who will be supportive. Someone who is adversarial may change the tone of the meeting and unwittingly put the client in a difficult position or taint the CPS team’s view of the client.

- *Ask the client what services would benefit the family most.* The client should discuss what issues they believe led to the current situation and think about services that may help avoid the situation in the future. For example, if the parent needs help getting a special education evaluation for the child, would she be open to working with someone who could help her navigate the educa-

tional system? It is important for the client to think about what he/she will agree to regarding services. The client does not have to agree to everything that is proposed. It is important for the client to have thought about why he or she may not want certain services and be able to state that clearly to the CPS team. The client needs to be viewed as cooperative, but not overwhelmed with unnecessary services.

■ *Discuss the client's strengths.*

During an investigation, the parent is constantly bombarded with his or her negative attributes. Help the client identify his/her strengths so the client can highlight them at any meetings or conferences.

Conclusion

Regardless of whether the law allows attorneys or social workers to actively participate in an investigation or meeting, you can still prepare your client on what to expect and how to best prepare. Preparing clients to work with CPS in a successful and productive way promotes positive outcomes for families. As in Ana's case, it can also help avoid a court filing and keep the family together.

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Involved in the Child Welfare System. Plan to attend the second national conference this July 13-14, 2011 in Arlington, VA. Learn more at www.abanet.org/child/parentrepresentation/home.html.

Endnotes

¹ <www.childwelfare.gov/systemwide/laws_policies/statutes/resources.pdf>

² *E.g.*, in certain states a child can be removed from their parents for up to 48 hours (California, www.ccrwf.org) or up to 72 hours (Arizona, www.egov.azdex.gov) without court intervention.

³ See Adoption and Safe Families Act (ASFA) of 1997, 42 U.S.C. § 675; Title 18 New York Comp. Codes Rules and Regulations §§ 423.2, 423.4, 430.9 et seq.; <www.dss.state.la.us/>; La. Child Code Art. 612-615; 390 Neb. Admin. Code § 1-003; Ohio Rev. Code Ann. § 2151.421; 23 Pa. Cons. Stat. Ann. § 6373(b).

⁴ <www.childwelfare.gov/systemwide/laws_policies/statutes/centregall.pdf>

⁵ Through our research, we found that in all

states except Hawaii the children can be removed by the CPS agency. In Hawaii only law enforcement can remove a child from the home (www.hawaii.gov).

⁶ In our experience, most people will sign releases without reading them thoroughly or asking for them to be filled out completely. It is important for the person to read the petition/have someone read it to them, make sure it is filled out completely, and an expiration date is provided.

⁷ See N.Y. Fam. Ct. Act § 1034 and La. Child Code Art. 612-615; Mass. Ann. Laws ch. 199 § 51A-51F; 110 Mass. Regs. Code 4.20, 4.27, 4.32.

⁸ *E.g.*, in New York, the applicable standard for a court to enter an order requiring cooperation with entry to a home is probable cause. See N.Y. Fam. Ct. Act §1034.

⁹ N.Y. Fam. Ct. Act § 1034.

¹⁰ See D.C. Code § 4-1301.09; Neb. Rev. Stat. § 28-710-728; 390 Neb. Admin. Code § 1-100 et seq. For example, in Hawaii an attorney can attend a child protective meeting, whereas in New York attorneys may not attend these meetings.

(Beggs v. State, continued from p. 19)

for injuries resulting from health care, defined as the process of using skills in examining, diagnosing, treating or caring for a patient. The court explained that the doctors' duty to report did not necessarily arise while they were providing health care. Rather, doctors and health care professionals are among those professionals who must report when they have "reasonable cause to believe a child has suffered abuse or neglect." They do not have to provide health care or exercise their special skills in examining, treating, or diagnosing a child to form this reasonable cause. The suspicion can arise during the course of professional employment and the threshold of suspicion is lower.

The court found the medical malpractice statute did not preclude a civil claim against the doctors in this case under the reporting statute. However, because a claim for failure to report suspected abuse could only be brought as a survival action, the court affirmed the trial court's partial summary judgment order dismissing the claim.

Regarding the second issue—whether the adoptive siblings were dependent on the deceased child—

Washington's wrongful death statute creates two kinds of beneficiaries. First tier beneficiaries need not show dependency to recover because of the nature of their relationship to the deceased. Second tier beneficiaries may only recover if there are no first tier beneficiaries and must show dependency to recover.

The adoptive siblings were second tier beneficiaries who had to show they were either dependent on the deceased child financially or for services. They claimed they were dependent on the child because the child welfare agency provided \$717 per month in adoption support payments to the adoptive mother for his care; the household was dependent on the adoption support payments; and the adoptive mother pooled the support money she received with other family resources that benefited them.

The court rejected the siblings' claims, finding the agency provided separate support payments to supplement their support and that they were not dependent on the deceased child's support payments. The court therefore affirmed the trial court's partial summary judgment dismissing these claims.

Support for Kin Caregivers of Children Whose Parents Are Incarcerated

by the Council of State Governments Justice Center

The following material is drawn from an action plan designed to raise awareness of the needs of children of incarcerated parents and inform policies and practices. The action plan was developed by the Council of State Governments Justice Center, with support from the Annie E. Casey Foundation and the Open Society Institute.

The Problem

A large percentage of children of incarcerated parents are cared for by the other parent or other relatives during parental incarceration; these caregivers face multiple challenges.

- While most children with an incarcerated parent in state prison live with the other parent, more than one-fifth of children live with grandparents or other relatives¹—who are considered kinship caregivers.²
- According to a 2008 Bureau of Justice Statistics report, 67 percent of incarcerated mothers reported having a child placed with a grandparent or other relatives.³ Nonparental caregivers face multiple challenges, such as enrolling children in school and obtaining government services for them.
- About one-quarter of all children in foster care are living with relatives.⁴

Kinship caregivers encounter many difficulties, particularly when the child has an incarcerated parent.

- On average, kinship caregivers are older,⁵ poorer,⁶ more likely to be single, and less educated than nonrelative caregivers.⁷
- Kinship caregivers need assistance accessing a range of services and supports, for themselves and the children in their care. Common service needs include legal services, physical and mental health care, child care, housing, education, and financial services.⁸

- Kinship caregivers of children with a parent in prison face a range of distinct challenges, including arranging transportation for prison visits, paying for collect calls from the incarcerated parent, helping children cope with the emotional trauma associated with parental incarceration, and confronting the stigma associated with a relative's incarceration, especially when the caregiver is also the parent of the incarcerated individual.⁹

Despite the challenges, research suggests that kinship placement can result in better outcomes for children than non-kinship placements.

- Kinship care provides an alternative to institutional and non-familial foster care. Children in kinship care generally experience greater stability than those in foster care.¹⁰
- Research suggests that they experience fewer placement changes than children placed with foster parents with whom they are unrelated.¹¹
- Compared with children in nonfamilial foster care, children in kinship care have better attachments to their caregivers and fewer behavior and school problems.¹²
- Children removed from their homes after reports of maltreatment have significantly fewer behavior problems three years after placement with relatives than children put into non-familial foster care.¹³
- Children in foster care are more

likely to live with their siblings if they are placed with relatives.¹⁴

Promising Practices

There are a number of services and supports that can assist children of incarcerated parents and their kinship caregivers.

- Kinship navigator programs are designed to provide these caregivers with referrals to needed services and information. In Washington State, for example, policymakers have expanded funding to support navigator programs, which help facilitate linkages with local resources such as caregiver support groups, training, and respite care.¹⁵
- Financial assistance is available, including subsidized guardianship, one-time cash payments, and federal benefits such as Temporary Assistance for Needy Families (TANF), to defray the costs of integrating a child into the caregiver's home.¹⁶
- Legal assistance can be accessed to help caregivers obtain the authority to make educational and medical decisions on behalf of the children in their care.
- Resource or 211 directories, navigator systems, or libraries may provide listings of respite care, support groups, counseling, child care, and other services for caregivers.

Several state and federal laws have been enacted to improve support for all kinship caregivers.

- In Washington, Kentucky, New York, and Connecticut, lawmakers have appropriated funds for

Fostering Connections to Success and Increasing Adoptions Act

Signed into law on October 7, 2008, the federal Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351) helps children in foster care by promoting permanent families for them through relative guardianship and adoption and improving education and health care.

- **Subsidized Guardianship Payments for Relatives.** Helps children in foster care leave care to live permanently with grandparents and other relative guardians when they cannot be returned home or adopted. Includes federal support to states to assist with subsidized guardianship payments to these families.
- **Notice to Relatives When Children Enter Care.** Increases opportunities for relatives to step in when children are removed from their parents and placed in foster care by ensuring they are notified of a removal.
- **Kinship Navigator Programs.** Creates grants for Kinship Navigator programs, through new Family Connection grants, to help connect children living with relatives, both in and out of foster care, to supports and assistance they need.
- **Commitment to Keeping Siblings Together.** Preserves the sibling bond for children by requiring states to make reasonable efforts to place siblings together when they must be removed from their parents' home, provided it is in the children's best interests. In the case of siblings not placed together, states must make reasonable efforts to provide for frequent visitation or other ongoing interaction.

Excerpted from *Fostering Connections to Success and Increasing Adoptions Act Summary*, Center for Law and Social Policy. (Reprinted with permission.)

kinship navigator programs to assist kinship caregivers with service referral and support.¹⁷

- As of 2008, school enrollment laws have been enacted in 30 states that allow kinship caregivers to enroll a child in school.¹⁸

Recommendations

1. Ensure adequate funding and effective implementation of the initiatives included in the Fostering Connections to Success law (see box above) and provide assistance to grantees to implement promising or evidence-based programs.
2. Identify promising examples of kinship navigator programs and disseminate this information to the field.
3. Develop and implement mechanisms and effective practices for connecting relative caregivers who are not involved in the child welfare

system with the community supports and services they need. Establish policies and fund programs that permit kinship care agencies to serve families that are not in the child welfare system.

4. Adopt model policies and practices concerning notification of relatives when a child enters foster care to assist with implementation.
5. Reevaluate arbitrary age limits placed on potential kinship caregivers; make case-by-case determinations and reconsider restrictions based on age alone.
6. Identify and expand housing opportunities for relative caregivers and their children, especially for senior caregivers who may live in senior public housing that does not permit children to live on the premises.
7. Implement a dissemination strategy to reach various caregivers and provide information about

available resources, such as navigator systems, respite care, support groups, counseling, legal services, and child care. Employ various types of media, including public service announcements through radio and television, 211 information directories, Internet sites, and through partner service providers.

Reprinted with permission from *Children of Incarcerated Parents: An Action Plan for Federal Policymakers*, published by the Council of State Governments, Justice Center. View the full action plan at: www.justicecenter.csg.org

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(Continued on page 32)

Tools for Preventing Youth Violence

There are a dizzying number of youth violence prevention programs. Knowing which ones work can be a challenge. At a recent teleconference, *Preventing Youth Violence in Communities*, hosted by the Chapin Hall Center for Children on February 24, 2011, youth violence experts shared the following resources to help make sense of what works—based on science—in preventing youth violence.

Blueprints for Violence Prevention

www.colorado.edu/cspv/blueprints/

The University of Colorado's Center for the Study and Prevention of Violence began the Blueprints for Violence Prevention project to identify programs that are proven to work. Blueprints has systematically reviewed over 900 violence and drug prevention programs. By applying a rigorous experimental design, it determines if a program meets criteria showing effectiveness in reducing violence, delinquency, substance abuse, or other violence-related risk factors for at least one year.

Among the 900 plus programs studied to date, 11 were identified as "model," which means they have a high level of evidence showing their effectiveness and have been replicated successfully in other communities. These 11 programs are:

- **Midwestern Prevention Project (MPP)**—comprehensive, community-based adolescent drug abuse prevention program.
- **Big Brothers Big Sisters of America (BBBS)**—community and school-based mentoring program for at-risk children and youth.
- **Functional Family Therapy (FFT)**—family-based prevention and intervention program used to

treat at-risk youth and their families in a variety of contexts.

- **Life Skills Training (LST)**—adolescent substance abuse prevention program that targets social and psychological factors that promote substance use and other risky behaviors by youth.

- **Olweus Bullying Prevention Program (BPP)**—school-based program that works to reduce bullying and improve peer relationships among school children.
- **Promoting Alternative Thinking Strategies (PATHS)**—program designed to help at-risk and special needs students develop social and emotional skills to successfully manage their feelings, relationships, and work.
- **The Incredible Years: Parent, Teacher and Child Training Series (IYS)**—program that reduces children's aggression and

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- **Homicide is the second leading cause of death among youth.**
 - **Minority youth are disproportionately affected by homicide deaths. Among black youth, homicide is the leading cause of death.**
 - **For every youth homicide, 98 youth are treated medically for nonfatal injuries.**
 - **\$7.7 billion is lost per year due to medical costs of youth homicide (does not include such costs as treating victims' families).**

—Statistics cited by Tom Simon, PhD, Centers for Disease Control

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- **Multisystemic Therapy (MST)**—intensive family/community-based treatment program focusing on chronic and violent juvenile offenders.
 - **Nurse-Family Partnership (NFP)**—provides maternal and early childhood support to vulnerable, first-time parents to promote healthy futures.
 - **Multidimensional Treatment Foster Care (MTFC)**—cost-effective alternative to regular foster care, group or residential treatment, and incarceration for youth who have problems with chronic disruptive behavior.

behavior problems and increases social competence at home and at school.

- **Project Towards No Drug Abuse (Project TND)**—drug abuse prevention program targeting at-risk high school-aged youth.

Nineteen programs were deemed "promising," which means they have demonstrated good results but still need to be replicated in their communities, or need more time to demonstrate effectiveness.

The 30 Blueprints programs span many areas—school-based supports, mentoring, treatment of

high-risk youth, supports for parents, treatment for mental health disorders, bullying prevention, anger management, among others. View these programs and descriptions at the web site above.

Centers for Disease Control and Injury Prevention (CDC) National Center for Injury Prevention and Control: Violence Prevention

www.cdc.gov/ViolencePrevention/index.html

The CDC has studied youth violence as a public health issue since the early 1980s. The CDC's National Center for Injury Prevention and Control has five strategic areas for youth violence prevention:

- monitoring and researching the problem,
- developing and evaluating prevention strategies,
- supporting and enhancing prevention programs,
- providing prevention resources, and
- encouraging research and development.

The CDC pursues work in these areas through several initiatives, including:

■ **STRYVE—Striving to Reduce Youth Violence Everywhere**

www.safeyouth.gov/Pages/Home.aspx

STRYVE works to identify and support approaches that reduce youth violence and guide communities' efforts to implement evidence-based violence prevention approaches.

STRYVE Online offers how-to information to help local communities plan, implement, and evaluate youth violence prevention programs. It provides access to the latest evidence-based tools, training opportunities, and online "community workspaces" that assist communities with each stage of implementing a

violence prevention program.

■ **UNITY—Urban Networks Increasing Thriving Youth**

www.preventioninstitute.org/unity

UNITY works with representatives from 13 of the largest U.S. cities to implement research-based, sustainable youth violence prevention efforts. It focuses on school-based violence, gang-related violence, and street/neighborhood violence. It fosters public-private partnerships and supports local planning and implementation through training and capacity-building efforts.

The *Unity Roadmap* outlines nine components of an effective urban violence prevention program organized around three main themes—partnerships, prevention, and strategy. These components are based on a review of effective city prevention efforts, a literature review, and expert interviews.

■ **Academic Centers of Excellence on Youth Violence Prevention**

The CDC funds several Academic Centers of Excellence (ACEs) throughout the country. These centers involve partnerships between a local community, research universities, and community-based organizations to combat youth violence at the local level. ACEs study youth violence in the community and then plan, implement, and evaluate violence prevention approaches. ACEs support multidisciplinary collaborations that integrate science and prevention. Some ACEs focus on a specific aspect of youth violence, like gangs, while others take a broader approach. Specific populations may also be a focus, such as Latino or Asian/Pacific Islander youth.

In the last 5-6 years, the CDC has funded the following ACEs:

- **Philadelphia Collaborative Violence Prevention Center**
<http://phillyviolenceprevention.org/>

- **Columbia University Center for Youth Violence Prevention**
www.cdc.gov/violenceprevention/ACE/centers/Columbia_University.html

- **Harvard Youth Violence Prevention Center**
www.hsph.harvard.edu/hyvpc/

- **Johns Hopkins University Center for the Prevention of Youth Violence**
www.jhsph.edu/preventyouthviolence

- **MeHarry Medical College, Nashville Urban Partnership Academic Center of Excellence**
<http://nupace.mmc.edu/index.html>

- **University of California, Berkeley, Center on Culture, Immigration, and Youth Violence Prevention** (Oakland)
www.yvpcenter.org/

- **University of California, Riverside—Southern California Academic Center of Excellence on Youth Violence Prevention**
<http://stopyouthviolence.ucr.edu/>

- **University of Hawaii, Asian/Pacific Islander Youth Violence Prevention Center**
<http://apiyvpc.org/Default.asp>

- **University of Chicago, Chicago Center for Youth Violence Prevention**
<http://ccyvp.chapinhall.org/>

- **Virginia Commonwealth University Clark-Hill Institute for Positive Youth Development**
www.clarkhill.vcu.edu/

The work of the Blueprints program and the CDC to identify youth violence prevention programs and approaches that work based on rigorous scientific review is invaluable to advocates trying to make sense of the many available programs.

—Claire Chiamulera
CLP Editor

Ethical Consideration: Model Rule 1.7 Conflict of Interest

A baby is born cocaine exposed and is removed from the mother at the hospital. The baby, now three months old, has minor medical issues related to her cocaine exposure. The mother, who is 25, has two other children, 11 and 13 years old, placed temporarily with the maternal grandmother. The baby's father has a substance abuse problem as well and is not in treatment. Although the maternal grandmother has been able to care for the older siblings, she did not pass a home study for placement of the baby due to concerns about her ability to handle the baby's special medical needs and that she would not likely become a permanent placement for the baby due to her age (68). The baby is placed in foster care since no other relatives are able and willing to care for her. Mom is requesting that the baby be placed with her in a residential treatment facility.

You represent all of the children. The older children have clearly expressed a strong interest in having their baby sibling placed with them; however, you have determined the baby's short- and long-term interests are best served by remaining in foster care until the mother makes some progress in drug treatment and the baby can be placed back in her care.

Attorneys must be loyal to their clients, use independent judgment, maintain client confidences, and zealously pursue the client's objectives. The Model Rules prohibit lawyers from representing multiple clients when representing one will compromise the duties owed to the other(s). This is considered a conflict. Model Rule of Professional Conduct 1.7 states that:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk

that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

However, the analysis does not end with the mere presence of a conflict. MR 1.7 addresses situations in which pursuing one client's objectives prohibits the lawyer from pursuing another client's interests. Part (b) of the rule explains:

- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
- (1) the lawyer reasonably believes that the lawyer

will be able to provide competent and diligent representation to each affected client;

- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

To determine whether a conflict exists, you can ask the following questions:¹

- Does representing one client foreclose alternatives for the other?
- Will confidential information from one client be compromised in representing the other(s)?
- Can the attorney comply with duties owed to each client, including the duty to pursue the client's position?
- Will the client "reasonably fear" that the attorney will pursue her case less effectively because the attorney is deferring to the other client?
- Can the lawyer ask for consent?

The scenario here presents a conflict. As the child's attorney, you cannot possibly zealously advocate for the siblings to be placed together (older children's position) while also advocating for the baby to remain in a foster home. How would you proceed now that a legitimate conflict of interest exists?

In this case, because your older clients and baby client have different positions, it would not be reasonable to believe that you could provide

competent and diligent representation to all clients. Thus, you have two choices: (1) withdraw from representation of either the older two children or the baby, or (2) withdraw from representing all children. Although continuity of representation is important for a baby, in this case your best approach is to withdraw from representing the baby and continue to represent the older children. If you choose to withdraw from the older children's representation and continue to represent the baby, you may face more ethical issues. If you represent the baby, you will likely need to disclose confidential information provided by the older siblings. You may also violate your duty of loyalty to the older siblings, who will very possibly feel abandoned and confused by your withdrawal from their case.

What would the ethical considerations be, however, if the facts were slightly different and the older siblings do not have an opinion regarding placement with their baby sibling? Does a conflict of interest exist? No. Under these circumstances, the position of the older siblings and baby are not directly adverse and there is no significant risk that representing the baby will be materially limited by representing the older sibling. MR 1.7(a)(1-2). In fact, in this modified scenario,

one attorney for all children may actually serve the goal of sibling contact and family connection for both the baby and the older siblings.

Source

¹ Renne, Jennifer L. *Legal Ethics in Child Welfare Cases*. Washington, DC: ABA Center on Children and the Law, 2004.

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This ethics scenario was adapted from: *Practice & Policy Brief: Advocating for Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation*, October 2010, by Candice L. Maze, JD, available at http://www.americanbar.org/groups/child_law/projects_initiatives/health_of_infants_toddlers_preschoolers_iumch.html.

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17. Casey Family Programs, 2008.
18. *Educational Consent and School Enrollment Laws: Why They Matter*. Washington, DC: ABA Center on Children and the Law, 2006. <www.abanet.org/child/summarymemo3.pdf> The 30 states are CA, CT, DE, HI, IN, IA, LA, MD, MI, MO, MT, NE, NJ, NM, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, and WY. <www.ncsl.org/default.aspx?tabid=16371>



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