



2011 Annual Training Conference



Courts Catalyzing Change: Achieving Equity and Fairness in Foster Care





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The Honorable Nan Waller, Multnomah County Circuit Court Judge

Nan G. Waller is the Chief Family Court Judge in Multnomah County. She was appointed to the Multnomah County Circuit Court in 2001. Her professional career has been primarily devoted to issues of children and families. Prior to her appointment to the bench she worked as a Juvenile Court Referee/Pro Tem Judge, as an attorney with the Metropolitan Public Defender's office, and as a staff attorney with Montana Legal Services.

Judge Waller is actively involved in numerous initiatives to improve outcomes for children and families. She currently chairs Wraparound Oregon, a collaborative community effort to address the needs of children with complex mental health issues and served on the Statewide Children's Mental Health Wraparound Initiative Advisory Committee. She serves as the Statewide Convener for the Casey Partnership in Oregon, an initiative to safely reduce the number of children in foster care. Judge Waller is a member of the National Council of Juvenile and Family Court Judges Courts Catalyzing Change National Call to Action Work Group, an initiative with a goal of reducing disproportionality in the child welfare system. She is a member of the Child Welfare Advisory Committee and the Oregon Youth Authority Advisory Committee.

Judge Waller is a fifth generation Oregonian. She received her BA from Stanford University and graduated from the University of Oregon School of Law. She and her husband have three children and reside in Portland.

The Honorable Patricia Sullivan, Malheur County Circuit Court Judge

Patricia Sullivan has been a Circuit Court Judge for the past ten years in Malheur County, Oregon. Prior to becoming a Judge, she was the District Attorney for Malheur County for twelve years. She graduated from Lewis and Clark College in 1975 with a degree in history, and the University of Oregon School of Law in 1978. Judge Sullivan handles juvenile delinquency and dependency matters, as well as adult civil and criminal cases. Judge Sullivan is married and has two adult daughters, and one grandson.

Benchcard Basics

**Courts Catalyzing Change:
Achieving Equity and Fairness in
Foster Care**

The Hon. Nan Waller and
The Hon. Patricia Sullivan
CRB Every Day Counts Conference 2011

Benchcard Basics

INTERNAL REFLECTION QUESTIONS

Effects of implicit bias,
cultural context, foster care as a last resort

CONDUCTING THE HEARING

Families in their cultural context
Thorough hearings

Internal Reflection Introducing Implicit Bias

- Operates outside of awareness.
- Thought to influence decision-making.
- Historically, not emphasized in efforts to reduce disproportionality.
- Of increasing interest to judicial educators and system improvement organizations.

FROM "INSIDE YOU" TO "INSIDE THE COURTROOM"

- Consider the reflection questions carefully
- Conduct a thorough hearing
- Solicit the perspective of the family on all issues that are raised

The Removal Hearing Key Focus Areas

- Reasonable efforts to prevent placement
- Safety threat: What prevents the child from going home today?
- Cultural considerations: Unique to each family
- Minimally adequate standard: Children are better off with their families when they can be safe

Reviewing the Petition

- Factual information to support any conclusions drawn
- Allegations as to both parents
 - If the petition does not contain allegations against a legal parent or legal guardian, the child should be placed with or returned to that parent or legal guardian unless it is determined that there is a safety threat to the child.

ICWA Determination

- ICWA must be determined as a threshold inquiry
 - Clear and convincing evidence
 - **Likely to suffer serious emotional or physical damage to the child.** 25 U.S.C. § 1912(e).
- NCJFCJ ICWA Checklist are a resource
 - Placement Preference, Active Efforts, etc.
 - ICWA Inquiry at EVERY hearing

Engaging the Family: The Opening Questions

- Race and Cultural Identity
- Never assume
- Courts are encouraged to ask the family with what race and cultural background they identify

Due Process

- Notice to all parties
- Diligent search for parents and/or relatives
- In-depth paternity inquiry
- Separate attorneys
- Certified court interpreters

Can the Child Return Home Today?

Linked with the Safety Threat AND the 'Minimally Adequate' standard of care

Consider In-Home Safety Plan – Use of foster care as a last resort only

Is the answer different if the ICWA applies?

Appropriateness of Placement

- Appropriate placement: First/Last
- Kinship Care: first option if available and safe
- Visitation/Parenting Time is linked to speedier reunification: CAREFULLY evaluate the need for supervision

Services, Interventions, Support

- AVOID bumper to bumper check ups
- Individually tailored for the family's needs
- Culturally appropriate
- Evidence-based

Benchcard Study

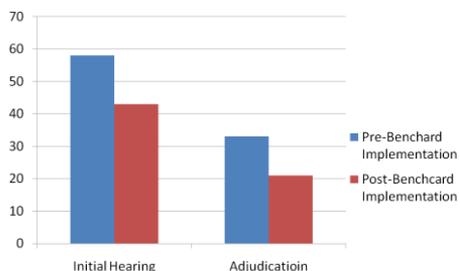
- Pilot and research: Los Angeles, Portland & Omaha
- Immediate effect on hearing *process*
 - More in-depth hearings
- Short term effects on hearing *outcomes*
 - Increased equity in placement and services
 - More children returned home at initial hearing

Promising Findings

- More children returned home at the initial hearing
- Fewer children placed in foster care
- More children placed with family

Promising Findings, cont.

Percentage of children placed in foster care at the initial hearing

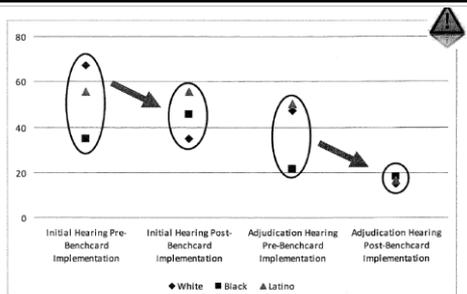


Promising Finding, cont.

- Some differences in race appear to exist in placements
 - These difference may be due to differences in allegation and case types
- Benchcard eliminates existing race differences in foster care placement by adjudication

Promising Findings, cont.

Reduction and convergence of foster care placement rates



GETTING STARTED CCC IMPLEMENTATION STEPS

- Convene Multi-disciplinary stakeholder group
- Participate in training on implicit bias, structural and institutional racism
- Get data
- Develop Strategic Plan – CCC National Agenda

Courts Catalyzing Change

- For More Information:
 - <http://www.ncjfcj.org> for details on the CCC Initiative and to sign up for the Courts Catalyzing Change e-newsletter
 - Email: tcooper@ncjfcj.org – Tracy Cooper, Senior Information Specialist

PERSONS WHO SHOULD BE PRESENT AT THE PPH²

- Judge or judicial officer
- Parents of each child whose rights have not been terminated
 - Mothers, fathers (legal, biological, alleged, putative, named), non-custodial parents – all possible parents
- Parent partners, parent mentors if assigned/available, substance abuse coach, DV advocate
- Relatives – relatives with legal standing or other custodial adults, including adult half-siblings
 - Paternal and maternal relatives
- Non-related extended family, fictive kin (someone who is known and trusted by the families; godparents)
- Assigned caseworker
- Agency attorney
- Attorney for each parent (if conflict exists)
- Legal advocate for the child
- Guardian ad Litem (GAL)
- Court Appointed Special Advocate (CASA)
- ICWA expert (if ICWA applies)
- Tribal representative/tribal liaison
- Treatment and/or service providers
- All age-appropriate children
- Foster parents
- Cultural leaders, cultural liaisons, religious leaders
- Court-certified interpreters or court-certified language services
- Education liaison/school representative
- Court reporter
- Court security

COURTS CAN MAKE SURE THAT PARTIES AND KEY WITNESSES ARE PRESENT BY:³

- Ensuring that the judge, not the bailiff or court staff, makes the determination about who is allowed to be in the courtroom.
- Asking the youth/family if there is someone else who should be present.
- Requiring quick and diligent notification efforts by the agency.
- Requiring both oral and written notification in a language understandable to each party and witness.
- Requiring service/tribal notice to include the reason for removal, purpose of the hearing, availability of legal assistance in a language and form that is understandable to each party and witness.
- Requiring caseworkers and/or protective service investigators to facilitate attendance of children, parents, relatives (paternal and maternal), fictive kin and other parties.
- Facilitating telephonic or video conferencing appearance at hearings.

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¹ The preliminary protective hearing is the first court hearing in juvenile abuse and neglect cases. In some jurisdictions this may be called a “shelter care,” “detention,” “emergency removal,” or “temporary custody” hearing.

² State and federal law determine who must be present for any hearing to proceed. Noted participants may or may not be required by law; however, as many as possible should be encouraged to attend the initial hearing.

³ State and federal law determine who must be present for any hearing to proceed.

REVIEWING THE PETITION

- A sworn petition or complaint should be filed prior to the preliminary protective hearing and served/provided to the parents.
- The petition should be specific about the facts that bring the child before the court.
- The petition should not be conclusory without relevant facts to explain and support the conclusions.
- Petitions need to include allegations specific to each legal parent or legal guardian if appropriate.
- If the petition does not contain allegations against a legal parent or legal guardian, the child should be placed with or returned to that parent or legal guardian unless it is determined that there is a safety threat to the child.
- Petitions/removal affidavits need to include specific language clearly articulating the current threat to the child's safety.

REFLECTIONS ON THE DECISION-MAKING PROCESS THAT PROTECT AGAINST INSTITUTIONAL BIAS:

ASK YOURSELF, AS A JUDGE:

- What assumptions have I made about the cultural identity, genders, and background of this family?
- What is my understanding of this family's unique culture and circumstances?
- How is my decision specific to this child and this family?
- How has the court's past contact and involvement with this family influenced (or how might it influence) my decision-making process and findings?
- What evidence has supported every conclusion I have drawn, and how have I challenged unsupported assumptions?
- Am I convinced that reasonable efforts (or active efforts in ICWA cases) have been made in an individualized way to match the needs of the family?
- Am I considering relatives as preferred placement options as long as they can protect the child and support the permanency plan?

KEY INQUIRIES, ANALYSES AND DECISIONS THE COURT SHOULD MAKE AT THE PRELIMINARY PROTECTIVE HEARING

INDIAN CHILD WELFARE ACT (ICWA) DETERMINATION

The court should require that the applicability of the ICWA be determined before proceeding with the preliminary protective hearing. If the court has reason to believe ICWA applies, the court should proceed accordingly.

- If Yes – different standards apply, refer to the ICWA Checklist.
- If Yes – determine whether there was clear and convincing evidence, including testimony of a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e).

ENGAGE PARENTS

- What language are you most comfortable speaking and reading?
- Do you understand what this hearing is about?
- What family members and/or other important people should be involved in this process with us?
- Do you understand the petition? (review petition with parties)

DUE PROCESS

- Who are the child's parents and/or guardians?
- How was paternity determined?
- What were the diligent search efforts for all parents?
- Have efforts to identify and locate fathers been sufficient? What has been done?
- How were the parents notified for this hearing?
 - Was the notice in a language and form understandable to parents and/or guardians?
- Do the parents understand the allegations?
- Are the parents entitled to representation? Are there language issues to consider when appointing attorneys?
- Are there issues in the case that are covered by the Americans with Disabilities Act?

LEGAL THRESHOLD FOR REMOVAL

- Has the agency made a prima facie case or probable cause showing that supports the removal of the child?
- Have the family's cultural background, customs and traditions been taken into account in evaluating the event and circumstances that led to the removal? Have the parent(s) cultural or tribal liaison/relevant other(s) been asked if there is a culturally-based explanation for the allegations in the petition?

REASONABLE EFFORTS (TO PREVENT REMOVAL)

- Were there any pre-hearing conferences or meetings that included the family?
 - Who was present?
 - What was the outcome?
- What services were considered and offered to allow the child to remain at home? Were these services culturally appropriate? How are these services rationally related to the safety threat?
- What was done to create a safety plan to allow the child to remain at home or in the home of another without court involvement?
 - Have non-custodial parents, paternal and maternal relatives been identified and explored? What is the plan to do so?
- How has the agency intervened with this family in the past? Has the agency's previous contact with the family influenced its response to this family now?

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KEY INQUIRIES, ANALYSES AND DECISIONS THE COURT SHOULD MAKE AT THE PRELIMINARY PROTECTIVE HEARING

WHAT IS PREVENTING THE CHILD FROM RETURNING HOME TODAY?

- What is the current and immediate safety threat? Has the threat diminished? How do you know that? Specifically, how can the risk be ameliorated or removed?
- What is preventing the child from returning home today? What type of safety plan could be developed and implemented in order for the child to return home today?
 - What specifically prevents the parents from being able to provide the minimally adequate standard of care to protect the child?
 - Will the removal or addition of any person from or in the home allow the child to be safe and be placed back in the home?
- If the safety threat is too high to return the child home, how have the conditions for return been conveyed to the parents, family and child, and are you satisfied that they understand these conditions?

APPROPRIATENESS OF PLACEMENT

- If child is placed in foster care/shelter, have kinship care options been fully explored? If not, what is being done to explore relatives? If so, why were the relatives deemed inappropriate?
- If child is placed in kinship care, what steps have been taken to ensure the relative is linked with all available training, services, and financial support?
- How is the placement culturally and linguistically appropriate?
 - From the family and child's perspective, is the current placement culturally and linguistically appropriate?
- How does the placement support the child's cultural identity? In what way does the placement support the child's connection to the family and community?
- How does the placement support the family/child's involvement in the initial plan?
- What are the terms of meaningful family time with parents, siblings and extended family members?
 - Do the terms of family time match the safety concerns? Is it supervised? Specifically, why must it be supervised?
 - Is the time and location of family time logistically possible for the family, and supportive of the child's needs?

REASONABLE EFFORTS TO ALLOW THE CHILD TO SAFELY RETURN HOME

- What services can be arranged to allow the child to safely return home today?
- How are these services rationally related to the specific safety threat?
- How are the parents, extended family and children being engaged in the development and implementation of a plan for services, interventions, and supports?
- How will the agency assist the family to access the services?
 - Does the family believe that these services, interventions and supports will meet their current needs and build upon strengths?
 - Has the family been given the opportunity to ask for additional or alternate services?
- How are the services, interventions and supports specifically tailored to the culture and needs of this child and family?
 - How do they build on family strengths?
 - How is the agency determining that the services, interventions and supports are culturally appropriate?
- What evidence has been provided by the agency to demonstrate that the services/interventions for this family have effectively met the needs and produced positive outcomes for families with similar presenting issues and demographic characteristics?

CLOSING QUESTIONS TO ASK PARENTS, CHILDREN AND FAMILY MEMBERS

- **Do you understand what happened here today?**
- **Do you understand what are the next steps?**
- **Do you have any questions for the court?**