

National Council of Juvenile and Family Court Judges

The Facilitated Pre-Hearing Conference, the
Resource Guidelines and Adoption and
Permanency Guidelines: Improving Court
Practice in Abuse & Neglect Cases.

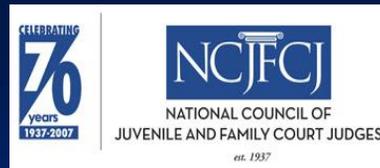
“Through the Eyes of a Child XIII”

August 9, 2010

Judge Douglas F. Johnson, Immediate Past Pres. NCJFCJ
The Separate Juvenile Court of Douglas County, NE



**Respect. Security.
Safety. Justice.
Love. Responsibility.**



A few of the things
the **National Council of
Juvenile and Family
Court Judges** has been
working on since 1937.

Join NCJFCJ today and be a part of
our efforts to improve justice for children
and families. Visit www.ncjfcj.org.

Education, publications, research, and policy development to improve court systems
and to raise awareness of the issues that affect children and families including **child
abuse, delinquency, custody, substance abuse, and family violence.**



RESOURCE GUIDELINES:
Improving Court Practice in Child
Abuse and Neglect Cases
Est.?

National Council of Juvenile and
Family Court Judges (Est.?)

NCJFCJ'S Adoption and
Permanency Guidelines:
Improving Court Practice in
Child Abuse & Neglect Cases?

Problem Solving Courts

- ***The judge models civility, respect, dignity and requires others to do the same***
- ***Emergency Room Response: Act with a sense of urgency for the child & parent --as if this family is your own!***
- ***Front load services:*** Pragmatic, timely, effective response to abuse & neglect
- ***Affirmation with accountability*** motivates parental improvement/resolution of permanency
- ***Alternative Dispute Resolution:*** Family Group Conference, Mediation
- ***Full parental participation from day one.***

Goals for Children

- Achieve a safe, secure, permanent home in a timely fashion according to ASFA guidelines: *12 Month PPH or sooner*
- *Best interests and safety: nurturing caregiver to meet this child's needs*
- Permanency from Day One
- Stop foster care drift

Goals for Parents

- Active participation & responsibility
- Achieve adequate parenting skills, demonstrate the ability to provide a safe, healthy family environment for their children=reunification
- *80%+ of abuse/neglect cases=SA/MH+*: Early SA/MH dual diagnosis evals, TX (gender specific), AA/NA (depending), sponsor with 5 years sobriety, aftercare, ongoing sobriety, support, & counseling, dental and medical care, exercise, diet, smoking cessation, legal source of income, housing.
- Due process & fair hearings

Inability to Comply
Is DIFFERENT than
“Non-Compliance”

Good Initial & Ongoing **Assessment**

Is Essential to Distinguishing Difference

Key Elements

- Focus on holistic child/parent well-being
- Frequent & meaningful family time with safety plan
- Parents and children reside together as soon as safely possible
- Parent/Child Relationship assessments and therapy
- Early intervention: access to immediate evaluations and services

RESOURCE GUIDELINES

THE PROTECTIVE CUSTODY HEARING

- The most important hearing is the first hearing
- Sets the foundation for all subsequent hearings
- If you get it right at the first hearing, you won't have to go back over problems in the future

The Facilitated Pre-Hearing Conference:

Foundation for a Good Protective
Custody Hearing



Separate Juvenile Court of Douglas
County: Facilitated PHC (7-28-04)
~spreading throughout NE & USA
via NCJFCJ's Child Victims Model
Court Project & Permanency
Planning for Children Dept.

(Thanks Pima Model Court!)



Rationale

From the NCJFCJ's Resource Guidelines:

The Facilitated PHC should be thorough and meaningful

The PHC should move litigation forward quickly and reduce its frequency



The Facilitated PHC should set the tone for a problem-solving atmosphere

A good Facilitated Pre-Hearing Conference does all of this...

...and is a form of

Alternative Dispute Resolution



The PHC Facilitator

ESSENTIAL FUNCTIONS:

- Mediates Pre-Hearing Conference to lead to mutual understanding & agreement on issues
- Applies good judgment and analytical skills
- Models respect, civility, dignity
- *Is neutral and takes pressure off others by leading the problem solving conversation*

KNOWLEDGE and SKILLS

Knowledge:

- Court organization, procedure, operations, rules
- Child neglect & abuse issues
- Time management

Skills:

- Mediation, facilitation, high conflict resolution, neutrality
- Effective communication-- written and oral
- *Professional interaction with the stakeholders in high-pressure situations*
- Ability to concentrate in a potentially tense environment
- Good judgment and problem solving skills

Preparation

- Read petition, affidavit, and CPS information
- Prepare forms to be given to the judge (attendance sheet, case plan summary, checklist)
- Prepare the courtroom or conference room

PHC Agenda

- Introduction--ideally by the *Judge*:

**Your family is important
Set the Problem Solving Tone
State Goals of the PHC
State Ground Rules**

- Introductions and relationship to child(ren)/sign-in sheet
- Discuss procedural questions (taking care of business):



- Problem solving process
- Off the record
- No admission against interest via statements, agreements, or participation in services—confidential (NRS 43-247.01 2008)

- **Problem solve 5 issues:**

- 1) Identify Parents—birth cert./paternity
- 2) Indian Child Welfare Act
- 3) Placement of Children: “Can the child safely return home? If not, why not?”
“Relative placement?”
- 4) Family time/visitation
- 5) Reasonable efforts services



Roadblocks!



- Setting the tone
- Attempts to re-order the agenda
- Managing strained relationships
- Addressing emotional state of parents
- TPR should not preclude discussion
- Unrealistic expectations of this hearing
- Large number of family and friends
- *Check list compliance vs. meaningful best practice*

Ask:

How are the children doing?

How are the parents doing?

What can we/you do to make it better?

What special things do your children need?

Stuffed animal? PJs? Blanket?



Take time to explore relative placements!



Roadblocks & “hot-button” issues

- Short time frame
- Tendency for naysayers to not participate or prefer to have an informal discussion without parents
- Overwhelming parents with unintelligible case plan tasks—so k.i.s.s.!



- Facilitator records agreements and confirms all agreements with participants
- Best chance for parental “buy in” that lasts and works better than any court order



Closing

Ask for other questions & issues—tie down loose ends

Ask parties to sign case plan

Thank participants and tell bailiff PHC has been completed

Now go do the Protective Custody Hearing



Protective Custody Hearing

An informed judicial decision concerning whether or not a child can be safely returned home pending adjudication

Day one parental participation—avoid hallway “professional” chitchats

Early identification of parental strengths, relative support, and timely reasonable efforts services

Protective Custody Hearing Key Decisions

- Should child be returned home or kept in foster care prior to adjudication?
- What services will allow the child to remain at home safely? Safety plan?
- Will parents voluntarily (NAAI) participate in services? New NE law: 7/1/08—exception mandatory child abuse reporting. See: NRS 43-247.01 (Reissue 2008)
- Has HHS made reasonable efforts to avoid out-of-home placement? Reunify?
- Are responsible relatives available?

Protective Custody Hearing Key Decisions

- Is placement proposed by HHS the least disruptive and most family-like setting?
- Does ICWA apply? Who will send notice and when?
- Will implementation of the service plan be monitored?

Protective Custody Hearing Key Decisions

- Restraining orders?
- Examinations, evaluations, or other services? **When? Payment source?**
- Terms/conditions for parenting time and sibling time?
- Child support referral/hearing?
- Absent parties/future hearings?
- Set the next hearing in court

Judges/ Others

- Do **not** delegate parenting time to HHS, the therapist, the GAL, and CASA “when they are in agreement” or EVER!
- Parenting time decisions are based on the evidence and made only by the judge.
[See: In re Interest of C.A, 235 Neb. 893, 457 N.W.2nd 822 (1990), In re Interest of Teela H., 3 Neb. 604, 529 N.W.2nd 134 (1995): majority view of the states]

Presume reasonable rights of parent-child family time. Require evidence of a safety concern to alter the presumption.

Reasonable Efforts?

- Do not accept a recommendation for a “parenting class”. Certificate based on attendance or competency?
- Do not accept “supervised visitation”
- Do not accept “visitation once (or twice) a week for an hour or two”
- Do not accept family time at McDonald’s, the HHS office, the mall, etc., etc. . . .

If you want to kill a relationship

- Infrequent contact
- Brief contact
- Artificial/counterproductive environment
- Supervise the family time by a person with no expertise and who cannot offer help to improve the relationship or parental role

Require Reasonable Efforts

- Meaningful and ample family time in a context rich environment
- Provide for family time in a natural setting, doing normal family things: cook a meal, play, homework, games
- Parent training by an expert if oversight or training is appropriate
- NB: Each family time over 1x per week triples the chances of achieving permanency (Brenda Jones Harden, Ph.D.)

Do your homework! Read & Lead!

- NCJFCJ'S Model Court Status Reports, guidelines, protocols, etc. on family time
- CASA Judge's Page Newsletter Family Visitation Issue (June 2006) & other volumes
- NCJFCJ's Resource & Permanency Planning Guidelines: Improving Court Practice in Abuse & Neglect Cases

Protective Custody Hearing

Required Judicial Findings:

Reasonable efforts to (1) prevent removal & (2) reunify: specific, tied to evidence

Contrary to the welfare, safety, and best interests: specific, tied to the evidence

Evidentiary Findings

REMEMBER: Just because NDHHS, DCA, GAL, or Defense Attorney recommends a particular finding and order DOES NOT MAKE IT SO.

Judges have an *independent* duty to consider the evidence and make a judicial decision.

Adoption & Safe Families Act [P.L. 96-272 (1980)], ASFA [P.L. 105-89 (1997)], NCJFCJ's RESOURCE GUIDELINES: Pgs. 42-3.

“It’s about the evidence!”

Judges do not (hopefully) work in a vacuum.....

The quality of a judge’s decision about children and their families is directly related to the quality of information the judge receives.

Outcomes

- Good information=good judicial decisions
- Timely services=front loading
- More early admissions/Cont. Anticipation of Dismissal because parents are self-correcting issues
- Disposition Hearing with Adjudication—parents already doing the rehabilitative case plan
- Children & parents' needs met: reunification or adoption through fair process/meaningful hearings
- Timely Permanency--stop prolonged foster care

Training, training, training . . .

Collaboration, collaboration,
collaboration . . .

74th NCJFCJ
Annual Conference
New York City, NY
July 2011

Thank you!

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You are invited to do court observation—
please stop by for coffee!