Chapter 8: Working with the Courts

Working with the Courts in Child Protection

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Just as judges have power to initiate improvements in court practice and performance, they also can be formidable roadblocks to such improvements. Some judges may be intentional in their determination to continue operating in familiar ways; others simply may be unaware of alternatives, their power to make changes, or the resources that are available to inform and to support efforts to improve court operations. The ability of child protective services (CPS) and of individual caseworkers to improve the court process depends on their understanding judges and knowing how to work with them, to support them, and to provide them with the information and tools they need to do their job better. This chapter deals with measures agencies and individual caseworkers can pursue.

Understanding Judges

Almost all judges are lawyers. Most are politicians who had to win election or were appointed through a process that was at least partly political. Judges vary widely in terms of their values, experience, intelligence, skills, knowledge, work ethic, receptivity to change, and personalities, but like other lawyers, many tend to be analytical thinkers. Judges focus on facts and look for cases that are presented, or problems addressed, in logical progression. They expect witnesses to answer questions directly, and they want people who testify or make oral presentations to "get to the point" and to express themselves succinctly. Most are practical and decisive, and nearly all are impatient to some degree, particularly with delays, poor performance, dramatic behavior, and excessive detail.

Judges' personalities are revealed over time, as are their work habits, knowledge, skills, commitment to doing the work well, and their proclivities regarding particular issues or circumstances. Caseworkers who appear regularly in the juvenile court will learn quickly which judges are the easiest and hardest to work with and which ones are most likely to be receptive to improving court practice.

In some States, judges are elected or appointed to the juvenile court bench and sit only in that court. In most States, however, the juvenile court is part of a larger court system. In these jurisdictions, judges occasionally may remain in the juvenile court assignment for extended periods of time, but the most common practice is for judges to be assigned to that court on a periodic rotation. The length of the assignment may vary from as little as 1 day to as much as a few years. Generally, 3 to 5 years is considered optimal because it takes time to learn about the laws governing the court's proceedings; the complexities and dynamics of child maltreatment; the availability and quality of the services, resources, and interventions at the court's disposal; the administrative responsibilities of the role; and the myriad professionals who appear before the court. This is particularly true for the majority of judges who had no juvenile court experience as lawyers.

Ideally, judges and judicial officers will be assigned to the juvenile court only after substantial training on the unique responsibilities of a judge in that court, the problems and needs of the court's clientele, and the human services systems on which it relies. Court improvements are less likely to occur without the leadership and the support of a knowledgeable and experienced judge. Indeed, some States have extensive training programs for both new and experienced juvenile court judges and formal certification procedures to ensure that they are well-prepared for the difficult work of that court. Much of the knowledge that juvenile court judges acquire, however, is gained by sitting in the juvenile court on a consistent basis over a significant period of time.
What Caseworkers Can Do To Effect Change in the Court

CPS caseworkers who practice in a court that has good judicial leadership are encouraged to find ways to participate in the collaborative efforts underway in the work of that court. Doing so will enhance their knowledge and enrich their work experience. Of course, some judges are friendlier and more approachable than others, and some will be more receptive to suggestions than others. Judges are more likely to respond to an individual caseworker’s suggestion if the caseworker has established credibility and earned the judge’s respect by the quality of her performance in individual cases. Some judges also may respond more favorably if approached by a caseworker who is accompanied by a child’s advocate or a parent’s attorney, so the caseworker is not suspected of seeking favored treatment.

Interacting and Building Positive Working Relationships With Judges

In taking steps to build positive working relationships with judges, CPS caseworkers can:

- Introduce themselves to the judge at each court appearance or other encounter;
- Speak and write as clearly and plainly as possible;
- Be concise and to the point;
- Learn as much as possible about the judge’s tendencies, personality, and likes and dislikes and be guided by that knowledge;
- Determine the history of the judge’s interactions with CPS and how it may affect the judge’s handling of particular issues or dealings with caseworkers;
- Build relationships with clerks, bailiffs, and court reporters;
- Follow local practices and protocols regarding appropriate dress for the courtroom, for addressing the court, and for approaching the bench;
- Be polite and respectful, but when the opportunity presents itself, do not hesitate to assert strongly held opinions about what the judge should order or decide in regard to a case;
- Not display emotion, especially anger or disdain, if the judge makes a decision with which CPS or the caseworker disagrees.

Judicial Training Programs

Numerous training programs for juvenile court judges who hear child maltreatment cases are available at various locations through the National Council of Juvenile and Family Court Judges (NCJFCJ) and other legal, judicial, and social services organizations. Judges who are interested in improving court practices and their own knowledge and skills can be referred to those organizations or to a nearby lead judge in one of the 25 NCJFCJ model court sites across the country. NCJFCJ, the National Center for State Courts, the American Bar Association’s Center on Children and the Law, the National Association of Counsel for Children, and the Youth Law Center also are excellent sources of information about child maltreatment litigation. (See Appendix B, Resource Listings of Selected National Organizations Concerned With Child Maltreatment, for more information on these organizations.)

Effecting Change in the Court

Judges often are perceived as omnipotent, and the idea that CPS, much less an individual caseworker, could influence them to change practice may seem fanciful. Indeed, some judges are impervious to change, regardless of the source of the suggestion or the pressure to do so. Many others, however, understand that good outcomes in child maltreatment cases require the cooperative efforts of CPS, service providers, and the court. In several urban and small communities, judges meet regularly with CPS representatives to improve procedures, policies, and practices, and to enhance services. The State Court Improvement Program and the National Council of Juvenile and Family Court Judges (NCJFCJ) Model Court Project have contributed to this development. (See Chapter 9, Court Improvement and Best Practices, for more information on these important initiatives.)

For those child maltreatment courts that lack strong judicial leadership, the following list offers suggestions for informing and motivating promising juvenile court judges to take leadership in constructive ways:

- Provide information about particular “best practices” that could constitute significant improvement in how the court operates. Offer to help plan and implement the practice locally or to set up a meeting of stakeholders to discuss it.
- Invite the judge to make a presentation at a training for CPS caseworkers on a topic that the judge knows well. Preparing a presentation can be a good learning experience, particularly if the judge is provided with good resource materials for that purpose.
- Recognize the judge’s accomplishments in some way that does not appear to be curryng favor but, instead, may be motivational. Joining with child and parent advocates for this purpose would lessen any appearance of impropriety. A Child Abuse Prevention Month event might be a good opportunity to honor a judge.
- Devise a strategy for motivating the judge to endorse the development of a mission and goals statement by a multidisciplinary group if the court has none. Do the same if the court has no rules that
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Some of these suggestions may be undertaken by individual caseworkers; others may require involvement by CPS lawyers or administrators, depending on the size of the community and the culture of the court and CPS.

CPS caseworkers also may direct judges to valuable resources. For example, they can provide the judge with literature regarding judicial training from the NCJFCJ, the ABA Center on Children and the Law, the National Center for State Courts, and the National Association of Counsel for Children.

Similarly, caseworkers may refer judges who are interested in improving court practices and enhancing their own knowledge and skills to the above-referenced organizations for publications and technical assistance. They also can be referred for technical assistance to a nearby lead judge in one of the 25 model court sites across the country or to a State Court Improvement Project judge who has effectively addressed particular issues. Other valuable sources of training, information, and technical assistance sponsored by the Children's Bureau are the eight National Resource Centers, including one on legal and judicial issues, two clearinghouses, and four Technical Assistance Support Systems. (See Appendix B, Resource Listings of Selected National Organizations concerned with Child Maltreatment, for more information on these organizations.)

Working With Problem Judges

Unfortunately, there are judges who are verbally abusive; unreasonably demanding; habitually late starting court, preparing orders, or reading reports; biased; or incompetent. If a pattern of any of these behaviors or some other significant deficit is identified in multiple cases by more than one caseworker, the caseworker or CPS should not feel powerless. Caseworkers should request assistance from CPS administrators and attorneys when confronting challenging judges. Actions that can be taken to address such problem behaviors include:

- Asking the CPS attorney, supervisor, or administrator to speak to the judge on behalf of CPS or the caseworkers or to file a complaint with the State's Judicial Standards Commission, depending on the nature of the problem behavior;
- Speaking out in any reappointment, retention, or re-election process in which the judge must participate, as well as identifying and encouraging alternative candidates. Joining with children’s advocates or parents’ attorneys would make these suggested actions more credible than if they come just from CPS.

- Suggest a training event and secure the judge's endorsement. Invite the judge to help plan it, and elicit the judge's suggestions for topics. Ask the judge to make a presentation, and involve a multidisciplinary group to design the training, secure presenters, and arrange for a site. NCJFCJ and the American Bar Association (ABA) Center on Children and the Law (and its National Child Welfare Resource Center on Legal and Judicial Issues at http://www.abanet.org/child/rcjl/home.html) are able to provide quality training on a variety of topics at no charge to State or local forums.
- Encourage State judicial educators to address topics of particular importance at their periodic judicial training events and then encourage a local judge to attend.
- Keep informed of local, State, and national grant opportunities. The State Court Improvement Program is perhaps the best such opportunity. Collaborating on a grant application can be a very good learning experience that promotes understanding and strengthens working relationships, even if a grant is not awarded.
- Suggest that an ad hoc, multidisciplinary committee be formed to consider implementation of some of the recommendations of:
  - About the Pew Commission on Children in Foster Care at http://pewfostercare.org/about;
  - Promote the creation of a multidisciplinary child abuse and neglect committee that can identify problems and devise and implement solutions.
  - Identify needed, but insufficient or nonexistent, services and enlist the judge’s assistance in securing or developing them. Examples might be a visitation center, a program for child observers of domestic violence, or a parenting course specifically for fathers with a history of violence toward their child’s mother.
  - Provide the court with periodic reports on the status of its cases.
There is the risk with each of these strategies, however, that nothing will change and that the judge will be vindictive toward CPS or the caseworkers. Legitimate complaints must nevertheless be voiced because it is quite common for problem judges to be reassigned or not to be retained or re-elected when well-documented grievances are made known to authorities or the public.