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Report of the Judiciary and the Courts Working Group

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Report of the Judiciary and the Courts Working Group

Cover Page Footnote

This report was authored by Nanette Schorr (reporter). The other working group members were Bernadette Blount, Joseph Cardieri, Monica Drinane (facilitator), Laurel Eisner, Paula Fendall, Karen Freedman, Woody Henderson, Dorothy Henderson, John Hunt, Caroline Kearney, Jessica Marcus (student secretary), Brian Maxey, Sara Rios, Jayne Roberman, Sara P. Schechter, Nancy Thomson, Ernst VanBergeijk, Karen Walker-Bryce, and Harriet Weinberger.

REPORT OF THE JUDICIARY AND THE COURTS WORKING GROUP¹

CHARGE

What should the Conference recommend to the judiciary and the courts to better achieve justice for parents in the child welfare system?

What models within the existing court structures can be implemented to best ensure justice for parents in the child welfare system?

INTRODUCTION

The working group met over a two-day period and was composed of a diverse mix of individuals including lawyers for parents and children, representatives of the Administration for Children's Services ("ACS"), parent advocates, a researcher, an expert in child development, members of the Family Court judiciary, and other judicial staff within the Family Court system.

The group explored various themes related to the Family Court judiciary in the context of whether it was possible for the Family Court system to improve the quality of its services in striving to provide just adjudication for parents and their children, who are involved in child protective cases. Group members discussed the fact that, unlike most other judicial processes, all litigants in the Family Court system (i.e., the State, parents, children) are presumed to share a commitment to advancing the well-being of the family. Themes discussed by the working group included the following:

- Does the working group need to agree on a substantive definition of "justice" for parents before reaching a consensus on systemic changes?
- What level of involvement should Family Court judges maintain in active child protective cases? If a higher level of judicial involvement is contemplated, what are its potential positive consequences?

1. This report was authored by Nanette Schorr (reporter). The other working group members were Bernadette Blount, Joseph Cardieri, Monica Drinane (facilitator), Laurel Eisner, Paula Fendall, Karen Freedman, Woody Henderson, Dorothy Henderson, John Hunt, Caroline Kearney, Jessica Marcus (student secretary), Brian Maxey, Sara Rios, Jayne Roberman, Sara P. Schechter, Nancy Thomson, Ernst VanBergeijk, Karen Walker-Bryce, and Harriet Weinberger.

- If process-oriented reforms are presumed to improve the quality of justice, what types of process-oriented reforms appear to need change?

I. THE JUDICIARY

At the outset, the group discussed the role of the Family Court judge. Members of the group appeared to agree generally that the judge ought to ensure that all voices are heard in the courtroom; that there is an ongoing process of inquiry into efforts to keep families together or reunite families; and that parents understand their rights in the legal process. The group felt that the legal process should be understandable, empowering, and fair from the perspective of parents.

The group emphasized improving the quality of justice through process-oriented changes, despite the differences of opinion expressed by individuals related to the definition of substantive "justice" for parents in the Family Court system. In discussing various recommendations for changes in the legal process, New York County's Model Permanency Planning Part² was often used as a benchmark.

The group discussed the qualities Family Court judges should bring to the adjudication of child protective cases. The general sense of the group was that judges should be involved and active in child protective cases and that they should identify, highlight and, where possible, address decisions, considerations, and agency policies apparently influenced by inappropriate biases (e.g., biases related to factors such as the economic status, race, or immigration status of parents). It was felt that judges should highlight the role poverty plays in the child welfare system and the predominance of low-income parents and children of color in the system. It was agreed that judges would be best equipped to sift through cases for hints of bias and fulfill their roles as neutral adjudicators when they are fully independent, well-trained in skills that would strengthen their ability to identify situations of potential bias, and committed to addressing identified instances of bias with those powers available to them.

II. THE JUDICIAL PROCESS

Possible reforms to the judicial process that were discussed by the group included those related to calendaring, judicial involvement in cases, the courthouse's physical plant, representation of parents, and support for Family Court judges.

2. See J. Sara P. Schechter, *Family Court Case Conferencing and Post-Dispositional Tracking: Tools for Achieving Justice for Parents in the Child Welfare System*, 70 *Fordham L. Rev.* 427 (2001) (explaining the operation and results of the Model Permanency Planning Part).

Reforms given particular attention by the group included the following: the negative impact that multiple adjournments had on families and the need to reduce such adjournments through mechanisms like “time-certain” calendar calls; the importance of frequent conferencing of child protective cases by judges and the need for Family Court judges to have a social worker on their staff to assist in this process; the need of parents for quality legal representation; the need of parents and their counsel for meeting places available in the courthouse, as well as the need for time for them to meet before court appearances; the need of parents for more information about their rights in the judicial process; the need for attorneys and professional parties to appear in court ready to proceed with the case; the need to ensure that testimony heard by the court has the quality and detail the court needs to formulate orders that are specific and clear; the need for family service plans that are developed collaboratively and monitored by the court through frequent calendaring of cases; the need for pre-removal conferences and early exploration of family support resources; the need for greater utilization of preventive services; the need for shorter periods of placement and longer periods of post-discharge monitoring; and the need for increased judicial resources, including more judges, to accomplish all of these goals.

The group discussed ways in which the conferencing process could be helpful. Service plans and trial schedules could be set up, and questions could more easily be raised and answered in the less structured and less adversarial setting of a conference. New York’s Model Permanency Planning Part had a social worker on staff who conducted frequent conferences related to service planning. Some group members expressed concerns that this model could indirectly cause the court to assume the role of “super social worker”—a role that is supposed to be fulfilled by the agencies.

The group took some time to discuss the detrimental consequences to parents caused by lack of preparedness by attorneys and professional parties working on their cases. In combination with crowded court dockets, this lack of preparedness has led to the frequent adjournment of cases. Adjournments can be extremely frustrating and demoralizing for those parents who are investing great effort to ameliorate painful circumstances in their lives. It was noted that assignment of caseworkers for court appearances is haphazard, and there is currently no one centrally placed to bear the responsibility for knowing who will be attending court on any given day on behalf of ACS and/or a voluntary foster care agency. ACS staff noted that they are planning to institute a caseworker appearance system, through which the timeliness and preparedness of caseworkers could be tracked.

The group periodically turned away from its aspirations for devising new strategies and programs to consider how to improve the existing

system based on its current configuration. This discussion addressed some of the following issues: limited judicial resources; risks to parents of information exposure at case conferences in the context of an adversarial system; predominant practice of initiating emergency removals before court review and case conferencing; and under-utilization of preventive services both before placement and after care.

Group members identified a need for conferences to be held before removal and for early exploration of family resources. The group recommended that the Model Permanency Planning Part's practice of giving out a form at intake for parents to list, in order of preference, the persons with whom they would like to see their children placed, would be helpful in this regard. It was also thought that children are often removed without prior court review in non-emergency situations, where there has been a period of ACS contact.

The group also noted that, in cases heard in the Model Permanency Planning Part, ACS and agencies seemed more willing to leave or return children to their parents when the case was being closely monitored by the court and by preventive services agencies. A short adjourn date increases the likelihood that service plans will be implemented by all parties, since they know the court will make inquiries as to the compliance of parents with service plan obligations. It was also felt that the court should be actively involved in overseeing the implementation of orders to discharge children and maintain contact with families in the post-dispositional phase of child protective proceedings.

The group discussed the expansion of supports available to parents as a central component of efforts to improve the quality of services rendered in the Family Court process. There was a strong feeling that the compensation rates of assigned counsel (18-B attorneys) should be significantly increased and that there also should be community-based institutional legal representation for parents. It was deemed essential that litigants be properly represented throughout the process.

The group also discussed the question of whether judges should play more significant roles in monitoring the quality of parent representation. This provoked some differences of opinion, as the panel overseeing assigned counsel already has in place quality control mechanisms, including the solicitation of evaluations of assigned counsel from Family Court judges.

There was some discussion about the need of parents to have independent social workers assigned to work with them, although this generated additional concerns as to whether assigning social workers to parents would lead to a war between experts. In general, there was strong sentiment in favor of assigning social workers to parents, recognizing that social workers could assist in reuniting families by providing information about parents' strengths to child welfare

workers and by providing parents with important advocacy and counseling services. Group members noted that social workers for parents could be extremely helpful at pre-removal and seventy-two hour removal conferences, and suggested that a list of social workers willing to work with parents be compiled. Regarding parent representation, the group discussed how lawyers representing parents in child protective cases need access to legal practitioners knowledgeable on housing, benefits, and other issues, which directly impact child welfare cases.

III. JUDICIAL RESOURCES, TRAINING, AND APPOINTMENT

The need for additional judicial resources in the form of more Family Court judges and additional training for Family Court judges was also addressed by the group. The group was unclear as to the best mechanism for fulfilling this need, but the discussion included proposals to amend the state constitution to add more Family Court judges, requests to the administrative judge to assign more sitting judges to Family Court, and assignment of additional judges to Family Court to handle child protective cases.

The group discussed a variety of areas for enhanced judicial training. The group did not cover, but felt it important to discuss, methods of promoting judicial independence and assess whether the current process of judicial appointment best ensured this outcome.

Notes & Observations