

Judges who hear child welfare cases struggle to comply with “reasonable efforts” and the Adoption and Safe Families Act mandates. The National Court Appointed Special Advocate Association and the National Council of Juvenile and Family Court Judges have partnered to give you the tools necessary to best meet the needs of the children and families affected by abuse and neglect. Together, we believe we can make a difference in the lives of children by helping you be the best judge you can be.

—Judge J. Dean Lewis, Editor

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Editor's Page— Welcome Letter from Editor Judge Lewis



J. Dean Lewis, Judge (retired), Member of the National CASA Association Board and Past President of NCJFCJ

Welcome to the inaugural issue of *The Judges' Page* newsletter, a quarterly e-publication developed to provide juvenile and family court judges with information about child welfare topics, thought provoking opinion articles written by their peers, and access to information about the National Council of Juvenile and Family Court Judges (NCJFCJ) and the National Court Appointed Special Advocate Association.

Throughout my career as a judge, NCJFCJ and National CASA have provided tools and resources to help me in my courtroom. *The Judges' Page* is the result of a partnership between these two organizations and provides resources, research, best practices and programs to help improve outcomes for neglected and abused children. Now in semi-retirement, I am dedicating my time to foster relationships between CASA programs and juvenile and family court judges. I hope that you find this publication helpful, and I look forward to your feedback.

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Larson Named National CASA Judge of the Year

Summary

Judge John W. Larson of Missoula, Montana was selected the 2003 National CASA Judge of the Year at the National Court Appointed Special Advocate Association's annual conference in Boston. The award recognizes judges who demonstrate exceptional leadership, make significant contributions on behalf of children's issues and support and promote CASA programs and volunteers. Judge Larson currently presides over Montana's first juvenile drug court and is known for his commitment to Native American youth.

Judge John W. Larson of Missoula, Montana was selected the 2003 National CASA Judge of the Year at the National CASA Association's annual conference in Boston. The award recognizes judges who demonstrate exceptional leadership, make significant contributions on behalf of children's issues and support and promote CASA programs and volunteers.

Appointed to the Montana state trial bench in 1993, Larson was instrumental in establishing the Missoula CASA program and has spoken to the Montana legislature about the important work of and need for CASA programs. In his current post, he presides over Montana's first juvenile drug court.

"Judge Larson has proven himself to be one of the most intelligent, progressive and fair-minded judges in our state, especially in the area of child welfare," says former Montana Governor Marc Racicot. "Children involved in dependency cases in the 4th Judicial Court have a strong ally and a compassionate advocate in District Court Judge John Larson."

Montana CASA program State Director Ellen Bush agrees. "Judge Larson always recognizes the CASA volunteers when they appear in his court and thanks them for their help. Montana kids are really lucky to have him on their side," Bush adds.

Fans of Larson also comment on his commitment to Native American youth. Larson works collaboratively with Tribal Courts and Tribal CASA programs displaying sensitivity to Native American youth involved with the juvenile court system. He involves affiliated tribes, encourages familial and sibling ties through court initiated visitation, promotes available cultural opportunities, and ensures that Native American children leaving the court system are enrolled in their respective tribes.

Emancipation planning for youth is also paramount for Larson. Plans, written with assistance and input from CASA volunteers, ensure that the youth leaving his court are launched into adulthood with sufficient resources to meet their individual needs.

"My tenure as a general jurisdiction trial judge has been inextricably tied to our local CASA program," states Larson. "When I was in the process of applying to be a judge, our CASA program was coming into existence. We have progressed, matured and endured now for over a decade. Those volunteers keep standing up in my courtroom providing fresh, detailed insight and suggestions to help improve children's lives. I would be lost without CASA volunteer input and support," he adds.

Larson is a member of the board of trustees of NCJFCJ and serves on the National CASA-NCJFCJ Judicial Liaison Committee.

Judges are nominated for the National CASA Judge of the Year award by CASA volunteers and staff.

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Court of Appeals Upholds Use of Derivative Abuse in Severe Abuse Case

Judge Stephen M. Rubin, Pima County Juvenile Court, Tucson, AZ

Summary

In the first of a series of case law articles, Judge Stephen M. Rubin discusses the New York State Court of Appeals' decision "In The Matter of Marino S., Jr., and Others, Infants", which challenged the court to address the use of derivative abuse to terminate parental rights. Judge Rubin argues that the case gives a clear definition of derivative abuse and correctly concludes that a parent is subject to a termination order for children that were not the victims of the severe abuse perpetrated on their sibling.

For my first article, I have chosen the case In the Matter of Marino S., Jr., and Others, Infants. This case was decided in July 2003 by the New York State Court of Appeals. Chief Judge Judith Kaye wrote for the court. The opinion affirms the opinions of the Trial Court and the Appellate Division. The Trial Judge's opinion, which can be found at 181 Misc. 2d 264, is the most thorough and well-written trial court opinion I have ever seen. Authored by Judge Sara Schechter of the New York County (Manhattan) Family Court, the opinion gives a great history of Adoption and Safe Families Act (ASFA) including discussion of the legislative intent. The discussion and holding is illustrative of the kinds of issues faced by courts in these cases on a daily basis.

This case presented the Appellate Court with two main issues: (1) Can the ASFA be applied retroactively and (2) Can a court terminate a parent's rights based upon "Derivative Abuse"? A third issue regarding the ability of the court to relieve the agency of its duty to make diligent efforts to reunify in severe abuse cases was also discussed.

The retroactivity issue is largely moot now because it has been four years since New York became the last state to codify ASFA as required by the 1997 federal legislation.

The case gives a clear definition of derivative abuse and correctly concludes that a parent is subject to a termination order for children that were not the victims of the severe abuse perpetrated on their sibling. The physical and sexual abuse perpetrated on the sibling of the children who are subject of this case was horrific. Both parents were charged criminally. The father was convicted and incarcerated for 15 years. The mother pled guilty and was sentenced to one to three years. The case discusses the agency's obligation to provide services to parents. The court recognizes that ASFA made explicit the constant concern for prompt permanency consistent with New York law prior to ASFA.

The first question I had was what is derivative abuse? It is not a term I had heard before. The Trial Court found severe abuse under ASFA as to one child constituted severe abuse as to the others and found that the state need not provide remedial services and terminated the parents' rights. The court referred to this as "derivative abuse." It is clearly defined by the opinion in this case. Quite simply put, when a child is abused in a home his or her siblings have been abused as well.

Chief Judge Kaye wrote: "It has long been the public policy of this State to keep biological families together and to require foster care agencies to exercise diligent efforts to reunite abused and neglected children with their birth parents, once rehabilitated. (Citations omitted) That critical goal remains, and careful attention must be paid to ensure it is achieved where possible. But when a child's best interests are endangered, such objectives must yield to the State's paramount concern for the health and safety of the child. In such extreme cases, the State's strong interest in avoiding extended foster care limbo and expediting permanency planning may properly excuse the futile exercise of making efforts toward reuniting a family that, in the end, should not and will not be reunited."

The court's holding regarding derivative abuse I think restates the law well. Courts have sustained derivative findings when the abuse of one child is so closely connected with the care of another child as to indicate that the second child is equally at risk. Derivative finding of severe abuse may be, in the words of Judge Schechter "predicated upon the common understanding that a parent whose judgment and impulse control are so defective as to harm one child in his or her care is likely to harm others as well."

The court, in my opinion correctly assessed the legal issues in this case. I think it takes a lot of nerve on the part of the parents and, their lawyers in this case to argue that, since the forcible rape of a young child is not specifically mentioned in the statute when homicide and assault are mentioned, the court could not reasonably find derivative abuse. The court seems to agree with my opinion. "It would be unthinkable to interpret the Social Services Law so that a derivative finding can be made when a parent assaults a sibling but not when a parent rapes a sibling or seriously injures her under circumstances evincing a depraved indifference to human life."

At what point does advocacy go beyond the appropriate line? Is it appropriate to advocate a position that one could reasonably expect the court to find unthinkable?

Stay tuned next time for the case of "In re the Guardianship of J.H." Has the Supreme Court of New Jersey set permanency planning back 50 years?

Editor's note: This is the first article in what I hope will be a series of articles highlighting a recent case of general interest to Juvenile and Family Court Judges. The comments and opinions about the cases are my own. They are not necessarily the opinions or the positions of the National Council of Juvenile and Family Court Judges, the National Court Appointed Special Advocate Association, the Pima County Juvenile Court or the authors of the court opinions.)

About the Author: Judge Stephen M. Rubin serves in the Pima County Juvenile Court, Tucson, AZ. He is the Vice-President/Treasurer of NCJFCJ.

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Children's Bureau Completes 32 State Child and Family Service Reviews

Summary

The Children's Bureau is currently conducting Child and Family Service Reviews (CFSR) to assess the quality of services provided to at-risk children and the outcomes for children in cases of neglect and abuse. Thirty-two state reviews have been completed. To date, no state has passed the review process, which focuses on two specific areas. States found to be substantially out of compliance with federal regulations are required to submit Program Improvement Plans (PIPs).

In 1997, Congress passed the Adoption and Safe Families Act (ASFA). The legislation brought about major changes in the laws and procedures governing the delivery of child welfare services. The Department of Health and Human Services' (HHS) Administration on Children, Youth and Families issued regulations to guide states in the implementation of ASFA and other federal child welfare laws. Currently, a thorough state-by-state Child and Family Service Review (CFSR) process measures the quality of services provided to at-risk children and the outcomes for children.

The two-stage review process, which includes an assessment followed by an onsite review of systems and outcomes, is being implemented by the Children's Bureau. Among the core stakeholders who should be involved in onsite interviews are a state court representative, juvenile court judge, and individual(s) appointed to represent the child's best interest. To date, the Children's Bureau has completed reviews in 32 states.

The reviews focus on two areas: outcomes for children and families in terms of safety, permanency and child and family well-being; and administration of state programs that directly affect the capacity to deliver services leading to improved outcomes. Reviews include interviews with children, parents, foster parents and service providers.

The outcomes being assessed in the child welfare reviews include:

- Children are, first and foremost, protected from abuse and neglect and safely maintained in their own homes whenever possible and appropriate.
- Children have permanency and stability in their living situations.
- The continuity of family relationships and connections is preserved for children.
- Families have enhanced capacity to provide for their children's needs.
- Children received appropriate services to meet their educational, physical and mental health needs.

To date, no state has passed the review process. States found substantially out of compliance with federal requirements must develop and implement Program Improvement Plans (PIPs). The Children's Bureau provides technical assistance and monitors implementation of the PIPs. Each state's Court Improvement Project proposal should also address the courts' role over the next several years in the PIP.

For more information about your state's review, visit the following sites:

acf.hhs.gov/programs/cb/cwmonitoring/results/index.htm

ncsl.org/statefed/humserv/cwregs1.htm

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Judges Challenged to Support CASA Volunteers Yet Maintain Neutrality



Judge Douglas F. Johnson, Separate Juvenile Court of Douglas County, Omaha, Nebraska

Summary

In the first of a series of judicial ethic discussions, Judge Douglas F. Johnson states that judges must carefully balance their relationship with CASA programs and volunteers in order to maintain neutrality during court proceedings.

CASA programs would not exist without the cooperation of CASA volunteers and the judiciary. Oftentimes, months or years of interdisciplinary planning and collaboration are required to start a CASA program. The results are not only excellent CASA volunteers for children in care, but also lasting friendships among CASA staff, volunteers and judges.

In some courts, that relationship can cross the line and put a judge in violation of the Judicial Code of Conduct. Based on their friendship, a CASA volunteer may expect the judge to always follow CASA recommendations or to visit off-the-record about a child. So too, a judge may think ex parte communication with the CASA volunteer is permissible. After all, the judge appointed the CASA volunteer and isn't the idea for the volunteer to speak for a child? However, the ABA Model Code of Judicial Ethics and individual state codes require a judge to maintain neutrality so that judicial decisions are based solely on the law and the evidence at a hearing in court on the record.

Good cross training will help promote understanding regarding how information and recommendations from CASA volunteers can properly get into evidence. Children and parents are entitled to an impartial finder of fact who upholds Constitutional rights, due process and fair hearings. CASA volunteers and the judiciary have unique roles in the court process, yet they have the same goal of meeting a child's best interest and safety.

Once a CASA program begins and a child has a CASA volunteer assigned to his or her case, the judge must step back from his or her former role as co-planner of the CASA program and maintain neutrality and impartiality as required by Canon 3*. The CASA volunteer also must abide by the court process. In so doing, regardless of the judge's decision, everyone involved in the case will respect the CASA volunteer, the judge and the experience of justice in court.

About the Author: *Judge Douglas F. Johnson is a juvenile court judge in Douglas County, Nebraska. Johnson is a member of the NCJFCJ Permanency Planning for Children Department Advisory Committee and a member of the NCJFCJ board of trustees.*

**Canon 3: "A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently" and 3(7) read in part: "...A Judge shall not initiate, permit or consider ex parte communications or consider other communications outside the presence of the parties concerning a pending or impending proceeding..."*

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Nation Doubles Adoptions From Foster Care

Jess McDonald, Executive Director, Fostering Results

Judge Nancy Salyers, Director of Judicial Outreach, Fostering Results

Mark Testa, Director of the Children and Family Research Center at the School of Social Work, University of Illinois at Urbana-Champaign

Summary

Judge Nancy Salyers, Mark Testa and Jess McDonald of Fostering Results argue that incentive payments outlined in the Adoption and Safe Families Act of 1997 helped push states to achieve adoption targets sooner than projected. Testa, Salyers and McDonald contend that the incentive payments illustrate the positive results that can be achieved when government aligns financial incentives with measurable outcomes.

The United States Department of Health and Human Services (HHS) recently announced that adoption incentive payments totaling \$14.9 million were awarded to 25 states and Puerto Rico for increasing the number of children adopted from state-supervised foster care in fiscal year 2002. The incentive payments were part of a sweeping set of reforms outlined in the Adoption and Safe Families Act of 1997, and were joined by a call from the White House to double the number of adoptions from the nation's child welfare system by 2002.

Our nation's foster care systems have delivered sooner than projected on this challenge by doubling the average number of adoptions finalized in each state over baselines established by performance from 1995 to 1997. Results from 2001 show that the national target was achieved a year ahead of schedule. A majority of the states (27) and the District of Columbia doubled adoptions over their state-specific baselines before the 2002 target. Over 56,500 foster children were adopted in 2001, more than double the 1997 established baseline of 28,000 adoptions nationwide.

What lessons can be learned from the achievement of this significant milestone? First, it illustrates what can happen when government aligns financial incentives with measurable outcomes it hopes to achieve. Public systems can deliver. This is a lesson that is being widely replicated across the country through performance contracting (linking resources to the achievement of quantifiable results), federal IV-E waiver demonstrations (allowing states to reinvest savings from scientifically-proven innovations that reduce costs) and results-oriented accountability (investing in programs that produce the outcomes valued by clients and society at large).

Second, the variation in state performance suggests that much can potentially be learned from states sharing successful lessons as well as unsuccessful ones. Illinois' success in boosting adoptions was bolstered by research that discovered that relatives were willing to adopt when offered a choice between private guardianship and adoption. In Massachusetts, efforts to boost adoptions through mediation programs have highlighted the need for fast-track alternatives to lengthy court trials and appeals of court decisions. Other strategies include adding staff to develop capacity around permanency work (Texas and Illinois), expanded recruitment activity (Iowa) and cross-jurisdictional collaborations to facilitate court hearings (Wyoming).

States successful in doubling their adoption performance also recognized the importance of building partnerships with the courts. In Idaho, a partnership with the state's supreme court led to more adoptions, while Arizona pushed a model court practice emphasizing one judge for each family. Both Arkansas and Georgia beat the federal target by a year by fostering collaborations with the court, Court Appointed Special Advocates (CASA) programs and the not-for-profit service sector.

Even though evidence suggests that improvements in adoption were already underway before Congress authorized bonuses, there is consensus that the program helped to reinforce state initiatives. Aligning incentives with desired outcomes is a formula that powerfully communicates public priorities. Unfortunately, the bulk of federal financing of child welfare is out of whack with this simple principle. Federal funding continues to favor placing children in long-term foster care over offering services that could prevent the unnecessary removal of children from their homes or facilitate safe placement with a permanent family.

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Zero to Three and NCJFCJ Launch Babyjudge Listserv

Victoria Youcha, EdD, Director, Leadership Development Initiative

Summary

The National Council of Juvenile and Family Court Judges (NCJFCJ) recently partnered with Zero to Three, a national nonprofit that provides information about the emotional, social and intellectual changes that occur in very young children. Together, NCJFCJ and ZERO TO THREE created the Babyjudge listserv and are working to develop multidisciplinary court teams.

While information detailing the physical development of infants and toddlers abounds, Zero to Three, a national nonprofit organization based in Washington D.C., specializes in educating judges, medical and social work professionals, parents and the general public about the corresponding emotional, social, and intellectual changes that occur in very young children. Zero to Three disseminates this information through publications, trainings and direct technical assistance.

Zero to Three recently launched the Babyjudge listserv, an email group of juvenile and family court judges and other professionals who are interested in exploring ways to better meet the needs of infants, toddlers and their families who are involved in the judicial system.

Babyjudge is the result of discussion during an interest group at the 2003 National Council of Juvenile and Family Court Judges (NCJFCJ) Annual Conference in San Antonio. Together, NCJFCJ and Zero to Three are working to develop multidisciplinary court teams to address the unique needs of babies and their families who are involved with the courts. In addition to serving as an important communication linkage, Babyjudge is a first step toward the development of these court teams.

The "Court Team" concept is based on the work of Judge Cindy Lederman and Dr. Joy Osofsky who collaborated on the development of an infant mental health court in Miami-Dade County, Florida. In Miami-Dade all infants, toddlers and their mothers receive screening and assessment services. Babies are screened for developmental delays and referred for services, and a parent-infant psychotherapy intervention is available to select mothers.

The Miami-Dade court is also connected with the Early Head Start program. The Early Head Start program was designed specifically to meet the needs of maltreated children and provides enhanced services which are supported by federal and state grants. One of the long-term goals of the "Court Team" project is to bring additional infant mental health knowledge, skills and services to juvenile and family courts around the country.

Zero to Three produces educational materials for medical professionals such as pediatricians and child psychologists as well. The just-launched Zero to Three Press publishes the most up-to-date research findings into practical applications for professionals and practitioners in the field including the latest insights into children's emotional, social and intellectual development.

In addition to creating resources for the courts and medical professionals, Zero to Three publishes materials for parents including *Learning and Growing Together*, a guide that helps parents and caregivers develop flexible, adaptable and effective strategies for supporting and promoting healthy development; *Healthy Minds*, a set of reproducible handouts about brain development that are distributed by pediatricians and other professionals who work with young children; and *The Magic of Everyday Moments*, booklets that show how daily routines are great learning and bonding opportunities between children and their parents or caregivers.

Zero to Three also has an award-winning website, zerotothree.org, which together with videos, posters and Spanish-language publications, help the organization reach an even wider audience.

Note: To subscribe to Babyjudge, contact Victoria Youcha, EdD, Director, Leadership Development Initiative by phone at (202) 638-1144.

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