



The newsletter of *The Judges' Page* website – July 2004

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*

Topics in this issue:

[Editor's Page— The Foster Care Reform Issue](#)

Introduction from Editor Judge J. Dean Lewis (retired), Member, National CASA Board of Directors

Page 3

[Members of Pew Commission on Children in Foster Care Give First-Hand Account](#)

Helen Jones Kelley, Past President of the National CASA Association and Executive Director, Montgomery County, Ohio, Children's Services
Judge Patricia Macias, member of the Board of Trustees, National Council of Juvenile and Family Court Judges and Presiding Judge, 388th Judicial District, El Paso, Texas
Judge William Thorne, member of the Board of Directors and Executive Committee of the National CASA Association and Judge of the Utah Court of Appeals

Page 5

[Court Improvement: An Overview](#)

Judge Leonard Edwards, Immediate Past President, NCJFCJ; Supervising Judge, Santa Clara County Superior Court, San Jose, CA; and Member, National CASA Advisory Board

Page 8

[Model Courts: Improving Outcomes for Abused and Neglected Children and Their Families](#)

Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges (NCJFCJ)

Page 10

[NCJFCJ Resources Available for Court Improvement Programs](#)

Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges (NCJFCJ)

Page 13

CASA/GAL Programs: An Integral Part of the Court Improvement Formula

*J. Dean Lewis, Judge (retired) and National CASA Board member
Sally Erny, National CASA Director of Program Development*

Page 15

CASA Program Partners With NCJFCJ Model Court in Charlotte, North Carolina

Nalini Jones, District Administrator, North Carolina Guardian ad Litem Program, Louisiana State University Health Sciences Center, New Orleans, Louisiana

Page 18

Recommended Modification to the Judicial Code of Ethics Re: Extra-Judicial Activities

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

Page 20

The Adoption and Safe Families Act: What Rights Do the Children Have?

*Honorable Stephen M. Rubin, Judge Pro Tempore, Pima County Juvenile Court, Tucson, Arizona
Treasurer/Vice-President of the National Council of Juvenile and Family Court Judges*

Page 22

Online Resources: Educational Issues for Children and Youth in Foster Care

Joey Binard, Manager of Technical Assistance at the National Council of Juvenile and Family Court Judges and Editor of Brevity, a weekly e-newsletter

Page 23



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Editor's Page— The Foster Care Reform Issue



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

Summary

This issue reflects on the need for reform of the foster care system. But it also gives success stories—partnerships among courts, agencies and communities to improve the way children and families fare in the dependency system.

Did you know?

- Every year nearly 300,000 children are abused or neglected, removed from their homes and placed in foster care
- More than 500,000 children are in foster care on any given day
- A child who enters foster care stays in care an average of three years
- A foster child has an average of three different placements while in care
- Each time a child changes foster homes, he or she is set back six months in educational development
- Children who have been abused or neglected are at high risk for developmental delays, educational deficits and poor physical and mental health
- African-American and Native American children are overrepresented in foster care when compared to their representation in the total US child population
- Not one state passed the congressionally mandated Child and Family Services Reviews which examined how well the states meet the educational, health care and mental health needs of children in foster care
- Canons of Judicial Ethics often impede the ability of judges to take the steps necessary to improve the system
- The news is not all bad!

This issue of *The Judges' Page* reflects on the need for reform of the foster care system. But it also reflects upon the success stories — the partnerships among courts, child-serving agencies and communities to improve the way children and families fare in the dependency system. The focus of this issue is on what works. From the Court Improvement Projects which exist in every state to the 25 Model Courts of the National Council of Juvenile and Family Court Judges' Permanency Planning for Children Department, best practices are in place which can be replicated in your jurisdiction.

CASA/GAL programs have shown great success in improving child wellbeing in the nearly 1,000 courts which have partnered with such programs over the past 25 years.

The National CASA Association and the National Council of Juvenile and Family Court Judges offer technical assistance and best practice models which can be implemented by your court. It is our hope that the articles in this issue will help you understand that there are solutions to the problems in the foster care system and that proactive judges are an integral part of the solution.

Let this issue challenge all of us to do more for our children who are in the most vulnerable situation of their lives.

The editorial committee hopes that this issue will be of interest to you as you seek to do what is right and just for our nation's dependent children.

[Back to Top](#)

Members of Pew Commission on Children in Foster Care Give First-Hand Account

Helen Jones Kelley, Past President of the National CASA Association and Executive Director, Montgomery County, Ohio, Children's Services

Judge Patricia Macias, member of the Board of Trustees, National Council of Juvenile and Family Court Judges and Presiding Judge, 388th Judicial District, El Paso, Texas

Judge William Thorne, member of the Board of Directors and Executive Committee of the National CASA Association and Judge of the Utah Court of Appeals

Summary

The Pew Commission on Children in Foster Care issues its final report, bolstering much-needed support for courts in dealing with cases and calling for expansion of CASA.

The Pew Commission on Children in Foster Care was established to develop recommendations to improve outcomes for children in the foster care system. The three of us are proud to have served on this Commission and glad to relate our perspective on the Commission's findings to the many juvenile judges who read this web page.

Of primary importance to those of us on the Commission was expediting the movement of children from foster care into safe, permanent, nurturing families and preventing unnecessary placements in foster care. All children need families that love, protect and guide them. This was the starting point for the work of the Commission and a steady compass throughout our deliberations.

The Commission was supported through a grant from the Pew Charitable Trusts. Congressional veterans Bill Frenzel and W.H. Gray, III served as Chair and Vice Chair, respectively. Our members include some of the nation's leading child welfare experts, heads of local and state child welfare agencies, prominent judges, social workers, foster and adoptive parents and former foster youth.

Foster care protects children who are not safe in their own homes. For some children, it is life-saving. But for too many, what should be a short-term refuge becomes a long-term saga, involving multiple moves from one foster home to another.

On any given day in the United States, half a million children and youth are in foster care, removed from their homes because of abuse or neglect. Almost half of these children spend at least two years in care, waiting for the safe, permanent families that should be their birthright. Almost 20% wait five or more years. In fiscal year 2001, nearly 39,000 infants under the age of one entered foster care, where they may lack the stability that promotes attachment and early brain development. That same year, about 19,000 older youth "aged out" of foster care without a permanent family to support them in the transition to adulthood. More about the enormous problem we were looking to ameliorate can be found at pewfostercare.org.

On average, children have three different foster care placements. One young man told us that as a child growing up in foster care, he checked every day to see if his belongings had been packed in anticipation of another move.

The problem of children languishing in foster care is not new. But most of the time it is a quiet crisis, below the radar of most citizens. Discussions of how to respond can quickly bog down in the intricacies of the system and the complexities of the families involved. Where, for example, would reform begin? With workforce improvements and lower caseloads? More and better substance abuse treatment? Less crowded court dockets? Or all of the above?

This seemingly endless list of problems confronted the Commission when we commenced our work in May 2003. We focused reform on two key issues that underlie many of the problems of child welfare today: a federal financing structure that encourages an over-reliance on placement of children in foster care and a court system that lacks sufficient tools, information and accountability necessary to move children swiftly out of foster care and into permanent homes. Reform in these two areas is a critical first step to solving many other problems that plague the child welfare system.

We began our work by developing a set of guiding principles that articulate what we want for children in the child welfare system. We then considered various policy options in light of these principles. The principles were an important touchstone throughout our year of deliberations, focusing consistently on the children at the heart of the child welfare system.

Except on an emergency basis, no child enters or leaves foster care without a judge's decision. Judges in dependency cases are charged with ensuring that children are protected and their parents' rights are respected when children are placed in the custody of the state. Along with child welfare agencies, the courts have an obligation to ensure that children are protected from harm.

Over the last year, the Pew Commission worked diligently to develop recommendations to improve how courts perform the critical work of protecting our nation's children. We realize that the work of dependency judges is profound and far-reaching, yet dependency courts are often undervalued. Our recommendations focus on giving dependency courts the tools they need to fulfill their responsibilities to children and to the public trust:

- The Commission calls on every dependency court to adopt court performance measures. Providing courts with the ability to track children's progress, identify sources of delay in court proceedings and identify groups of children in need of special attention will increase the number of children moving out of foster care and into safe, permanent homes. Performance measures will also provide critical information to Chief Justices, state court administrators and others in leadership positions as they assess the needs and overall performance of their dependency courts.
- The Pew Commission recommends incentives and requirements that encourage collaboration among child welfare agencies and courts. These include required descriptions of how courts and agencies are collaborating in all state plans and Court Improvement Program plans. We also recommend joint court and agency training as well as establishing multidisciplinary commissions or boards to promote this collaboration. Adding these types of requirements and incentives enhances the ability of the courts and child welfare agencies to share information and, ultimately, to respond more effectively to the needs of each child.
- The Commission calls for children and parents to have a stronger voice and more effective representation in dependency court proceedings. For example, we recommend expansion of the Court Appointed Special Advocate (CASA) program, required training for attorneys and judges practicing in this field and organization of courts to allow for direct participation by children and their parents in these often life-altering proceedings.

- For all of this to happen, the Commission calls on Chief Justices and state court leadership to act as the foremost champions for these children in their court systems. Some examples of how we recommend Chief Justices carry out this task include: placing oversight responsibility for dependency courts directly in the Chief Justices' offices; creating dedicated courts or departments to hear dependency cases; building and supporting a cadre of experienced dependency court judges; and promoting dependency court practice and workload standards.

In researching and thoughtfully crafting recommendations in the judicial arena, all of us as Commission members were guided by one principle: all children need safe, permanent families that love, nurture, protect and guide them. We urge policy makers and court leadership at all levels to give the recommendations thoughtful consideration and swiftly act for the sake of the half a million children who are waiting for a permanent family.

Editors' Note: The Pew Commission on Children in Foster Care released its recommendations May 18, 2004. To read the full report, visit pewfostercare.org

[Back to Top](#)

Court Improvement: An Overview

Judge Leonard Edwards, Immediate Past President, NCJFCJ; Supervising Judge, Santa Clara County Superior Court, San Jose, CA; and Member, National CASA Advisory Board

Summary

Judges and courts are reforming practice to achieve better outcomes for children—utilizing the support of federal funds, professional organizations, information exchange among court systems and the added impetus of the Child and Family Services Reviews.

Court improvement is sweeping the country. Judges and courts in every state are making changes in practice in juvenile courts in order to achieve better outcomes for children. Several factors contribute to this trend and to the urgency that judges, court personnel and others in the child protection system are devoting to improving court practice.

1. Ever since the establishment of Congressional support for court improvement as a result of the Family Preservation Act of 1993, each state has been given the resources to improve the ways in which child protection (juvenile dependency) cases are handled in their courts. These federal grants have provided funding for each state judiciary to experiment with new ways of improving court operations. The process has been different in each state, but creative new ideas and successful programs and practices have been well publicized so that courts in other states can replicate them.
2. Several organizations have devoted their time and energy to improving court practice in child protection cases. Most notably, the National Council of Juvenile and Family Court Judges (NCJFCJ) has been providing technical assistance to courts across the country since 1980 when the original federal legislation mandating judicial oversight of child protection cases (P.L. 96-272) was passed into law. The Permanency Planning for Children Department of the NCJFCJ wrote the Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases which identified the resources necessary to conduct child protection proceedings as well as the preferred format for these proceedings. The Permanency Planning for Children Department also oversees the Model Courts Project which since the early 1990s has been bringing together juvenile courts (now 25) from across the country to identify best practices and support each other in promoting change in their courts. This project has been funded by a federal grant since 1992.
Other organizations have provided impetus and assistance to courts seeking to improve practice including the American Bar Association, the Child Welfare League of America, the Pew Charitable Trusts, the Edna McConnell Clark Foundation, the Kellogg Foundation and the David and Lucile Packard Foundation.
3. The Child and Family Services Reviews currently being conducted by the Federal Health and Human Services Department have added some urgency to court improvement. The CFSR process has examined children's services agency practice in the child protection system in all 50 states and the District of Columbia, and the reviews have included some issues that bear directly on juvenile court practice. As of this date, all states have failed these reviews. Should they continue to fail in subsequent reviews even after being given an opportunity to improve practice through their Program Improvement Plans (PIPs), each state is subject to significant financial penalties.

4. In the past decade, juvenile courts throughout the United States have begun to communicate better with one another. Improved technology has resulted in the rapid exchange of information about the way that court systems operate. National and local conferences bring new ideas to judges and others who work in the child protection system, and publications such as the Juvenile and Family Court Journal published by the NCJFCJ communicate best practices to court personnel on a regular basis. A Google search by this author under "court improvement" produced over 2,700,000 "hits," including references to court improvement projects in all 50 states. No wonder best practices are spreading fast.

Court improvement efforts are making a difference. In the 1980s, it was a few jurisdictions that identified some best practices, and then the word began to spread. Judges learned that Hamilton County in Ohio and Kent County in Michigan had implemented reforms and that the results for children and families were better in those jurisdictions. Both of those counties were featured in books highlighting courts that worked. Then other counties and states developed innovations that quickly spread across the country. Santa Clara County in California developed juvenile dependency mediation and family group conferencing; Honolulu, Hawaii, introduced the Ohana Model of family decision-making; Louisville, Kentucky, brought the community into the juvenile dependency process as partners in the delivery of services to families. Hamilton County taught the rest of the country how to create a case management system that collected data about cases, including how long children had been in care, how many placements they had experienced and how long cases remained in the juvenile court before permanency was reached.

Court improvement has been driven by still another factor. Judges, CASA volunteers, attorneys, social workers and service providers all want better results for the children and families with whom they work. Never before have opportunities for improvement been so readily available as they are today. In the decades to come, we anticipate that juvenile court practice will improve dramatically, and the results will be reflected in the outcomes for children. Children will be safer, families will be strengthened and children will reach permanency in a more timely fashion.

[Back to Top](#)

Model Courts: Improving Outcomes for Abused and Neglected Children and Their Families

Permanency Planning for Children Department

National Council of Juvenile and Family Court Judges (NCJFCJ)

Summary

Twenty-five juvenile and family courts have exposed themselves to a critical review of court structures and practices and implemented practice improvements resulting in substantially improved outcomes for children.

Right now, thousands of children in this country are in court-ordered foster care, not knowing when or if they'll go home or ever have a permanent placement. Many remain in foster care for years. Since 1992, jurisdictions participating in the Model Courts Project have been striving to improve outcomes for these children and their families. The Office of Juvenile Justice and Delinquency Prevention supports the Model Courts Project, which provides judges, attorneys and numerous other professionals who work in the courts and child welfare agencies with practical, concrete and effective tools for creating court improvements in the handling of child abuse and neglect cases. [The Child Victims Act Model Courts Project is funded under Section 223(a) of Public Law 101-647 (104 Stat. 4797), the Victims of Child Abuse Act of 1990, as amended in Title III, Section 1302 of the Violence Against Women Act of 2000.]

The Model Courts are 25 juvenile and family courts committed to making a difference (see the article, [NCJFCJ Resources Available for Court Improvement Programs](#) on page 13 of this issue of *the Judges' Page*) They work with the National Council of Juvenile and Family Court Judges' Permanency Planning for Children Department (PPCD) and use the acclaimed best practices bench book *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases* as a guide to systems reform. The Model Courts identify impediments to the timeliness of court events and delivery of services for children and families in care and then design and implement court- and agency-based changes to address these barriers. With technical assistance and training from the PPCD, dependency practices and innovations are pilot-tested and refined as part of ongoing court and multi-agency systems change efforts.

Believing that it is in children's best interest to be raised in a safe, permanent and loving family, the Model Courts have rejected "business as usual" and are opening themselves up to a critical review of how well their court structures and practices are meeting the needs of their most vulnerable charges. Through focused training and technical assistance, PPCD staff collaborate with the Model Courts to identify key stakeholders; include them in strategic planning processes; begin assessing systems' functioning; target specific, attainable goals; provide the information, materials, faculty and mentors necessary to reach these goals; and support ongoing efforts to effect substantive, sustainable change.

Practice improvements pioneered by the Model Courts:

- Establishing one judge/one family calendaring
- Implementing more substantive preliminary protective hearings
- Scheduling hearings at a specific time ("time certain")
- Implementing strict no-continuance policies
- Disseminating copies of orders to all parties at the end of each hearing
- Setting the date and time of the next hearing at the end of each hearing
- Improving advocacy for children and representation for parents
- Developing data information systems specifically focused on dependency case processing

Improved outcomes associated with the model courts:

- In Chicago, the backlog of children under court jurisdiction in out-of-home, long-term foster care was reduced from an estimated 58,000 to fewer than 20,000 during a three-year period. The number is now less than 16,000 children.
- In Los Angeles, the Model Court lead judge and team made significant improvements in achieving permanency for children through the Adoption Saturday program, which has since become a national model. The number of children under court supervision was reduced to 36,000 from a recent high of 50,000, and more than 3,000 children found permanent homes in 2000.
- In Tucson, the implementation of improved practices in the juvenile courts between 1996 and 1999 reduced the average length of time a child remained under the jurisdiction of the juvenile court by 50% and reduced the average time children remained in out-of-home care from 400 to 178 days. Savings were estimated at \$5 million.
- In Des Moines, through the utilization of mediation programs, the number of contested removal hearings has been reduced by more than 50%.
- In Alexandria, the Model Court is cooperating with the Virginia Director of Court Improvement to establish "Best Practice Courts" throughout Virginia.
- In San Jose, the adoption rate doubled. San Jose also created one of the first child welfare mediation and family group conferencing programs in the United States, becoming a nationally recognized model.
- In several Model Court states, such as Utah and Arizona, best practices have been mandated statewide through statutory changes.

Model Courts are selected based upon their agreement and ability to carry out the following:

- Identifying a lead judge who will guide the process and who has sought and received the support of the Presiding Judge or Chief Justice
- Establishing a collaborative group or team with key stakeholders who work in the system
- Assessing court practice and identifying challenges, goals and improvements based upon the Resource Guidelines and the Adoption and Permanency Guidelines
- Agreeing to serve as a "laboratory" for systems change by implementing new practices and sharing experiences with others
- Opening the court process to PPCD staff and evaluators
- Tracking improvements through a data information system or by other means
- Agreeing to mentor other jurisdictions by hosting site visits, serving as presenters at conferences and developing publications

Becoming a Model Court is a long-term commitment. Systemic improvement is a multi-year, multi-phase, multi-systems change process that evolves through leadership, legislation, policy and personnel. Working closely with each other and with the PPCD, the Model Courts continually assess their child abuse and neglect case processing, examine barriers to timely permanency, develop and institute court improvement plans and collaborate within their jurisdictions to bring about meaningful and sustainable systems change.

Perhaps the most valuable overall resource offered to Model Courts is access to and collaboration with representatives of other Model Courts. Model Court lead judges and members of their teams develop experience in a wide variety of areas related to improved court and systemic practice in the handling of child abuse and neglect cases. Often Model Court team members are called upon to share their expertise with others. They regularly are invited to travel to conferences and to other Model Courts to conduct trainings, serve as resources and assist as the voice of experience in the continuum of systems change efforts. Model Court lead judges and members of their teams are the “brain trust” for those who will follow these efforts and pioneer new best practices.

For more information on the Model Courts Project or the Resource Guidelines, visit [ncjfcj.org/content/view/81/145/](http://ncjfcj.org/content/view/full/81/145/).

If you are interested in becoming a Model Court or implementing the principles of the Resource Guidelines in your jurisdiction, please contact Christine Bailey, J.D., M.A., Assistant Director for Training, Technical Assistance, and Special Projects, at (775) 784-6675.

[Back to Top](#)

NCJFCJ Resources Available for Court Improvement Programs

*Permanency Planning for Children Department
National Council of Juvenile and Family Court Judges (NCJFCJ)*

Summary

The PPCD Department at NCJFCJ provides a wealth of resources to assist Court Improvement Programs across the country.

State Court Improvement Programs (CIPs) play a critical role in court reforms to improve the timeliness and quality of decision-making as well as achieved outcomes for abused and neglected children. By facilitating the implementation of best practices outlined in the NCJFCJ's Resource Guidelines supporting training at the local and state level, as well as by evaluating reforms and outcomes, state CIPs serve as a centralized mechanism for state reform [*Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases* (1995). National Council of Juvenile and Family Court Judges. Reno, NV].

The Permanency Planning for Children Department (PPCD) of the NCJFCJ has a long and successful history of working with state CIPs across the country. Examples of this partnership:

- PPCD publications are often used as teaching tools, and copies of publications are made available at local, regional and national CIP training sessions and conferences. The best practices of the *Resource Guidelines* and reforms and innovations from Model Courts are integrated into all of these publications and teaching tools. Many Court Improvement Programs throughout the country are using the *Resource Guidelines* as a basis for improving the processing of child protection cases and the outcomes for abused and neglected children.
- CIP programs frequently call upon lead judges and system professionals from our Model Court project sites to serve as faculty for local, regional and national training seminars and conferences. Presentations have covered a wide range of topics including: implementing best practices, using Child and Family Services Reviews (CFSRs) to guide development of Program Improvement Plans (PIPs), Indian Child Welfare Act, infant and toddler wellbeing, court/agency collaboration, Interstate Compact on the Placement of Children and meeting ASFA timelines when working with families affected by substance abuse.
- The PPCD Training and Technical Assistance Resource Division responds to training and technical assistance requests from CIPs in all 50 states and the District of Columbia. The PPCD also maintains a resource library which houses an array of articles addressing issues faced by professionals working in the dependency system. Topics recently explored by various CIP programs include: confidentiality in child protection cases, education issues faced by youth in foster care, permanency planning, dependency mediation and family group conferencing and kinship care.
- The PPCD Research and Development Division is working with a number of state CIPs to complete their court improvement reassessment process as mandated by the Children's Bureau. This Division works with several CIPs in an advisory capacity, offering guidance and feedback on their reassessment process (e.g., priority setting, instrument development and data collection and analysis). In other states, PPCD research staff are conducting the reassessment in close collaboration with the state CIPs. Additionally, CIPs have frequently accessed PPCD research staff to assist in efforts to evaluate best practice implementation, timeliness and quality of hearings, sources of court delay and so forth.

- Our 25 Model Court sites are actively working with their state CIPs to diffuse innovations beyond their Model Court jurisdiction—to take best practices statewide. In several states, CIPs are supporting site visits to Model Court jurisdictions and providing opportunities for system professionals to observe innovations and best practices first-hand. By serving as site visit hosts, faculty and resources, the Model Courts have operated as a laboratory, implementing innovative practices to improve services to at-risk children and their families. Barriers have been identified, and strategic planning has ensued to overcome these barriers.
- Because federal funding does not allow for the addition of jurisdictions into the Model Courts Project, several CIP administrators are working with their Administrative Office of the Courts and negotiating with the PPCD to enter into a contract to pay for the staff, training and technical assistance support required for participation. The Ohio Supreme Court entered into a contract with the PPCD, and Lucas County Juvenile Court, Toledo, OH became the 25th Model Court in April 2003.

For additional information or to access training, technical assistance or research support, please contact the PPCD at (775) 327-5300 or e-mail: ppcd@ncjfcj.org. PPCD publications are also available to download at no cost through our website at ncjfcj.org/content/blogcategory/131/169/

Editors Note: There are 25 courts currently participating in the NCJFCJ national Child Victims Act Model Courts Project, including juvenile and family courts from Alexandria, VA; Buffalo, NY; Charlotte, NC; Chicago, IL; Cincinnati, OH; Des Moines, IA; El Paso, TX; Honolulu, HI; Indianapolis, IN; Los Angeles, CA; Louisville, KY; Miami, FL; Nashville, TN; New Orleans, LA; New York City, NY; Newark, NJ; Omaha, NE; Portland, OR; Reno, NV; Salt Lake City, UT; San Jose, CA; Toledo, OH; Tucson, AZ; Washington, DC; and the Tribal Court in Zuni, NM.

[Back to Top](#)

CASA/GAL Programs: An Integral Part of the Court Improvement Formula

J. Dean Lewis, Judge (retired) and National CASA Board Member

Sally Erny, National CASA Director of Program Development

Summary

CASA/GAL volunteers have a proven track record of time, energy, training, focus and longevity to help the court make a difference in the lives of foster care children.

Court Appointed Special Advocate (CASA) and volunteer guardian ad litem (GAL) programs are one of the success stories in the foster care system. For over 25 years, CASA/GAL programs have existed as a partnership between courts and communities. These programs provide court-based child advocacy through the efforts of trained citizen volunteers. The goals of CASA advocacy include the safety, permanency and wellbeing of children. Reflecting back, youth often tell us that their CASA volunteer was the one consistent person in their lives while in foster care. Children frequently change social workers, attorneys, foster parents, schools and even judges as their case navigates through the system. But once a CASA volunteer agrees to take the child's case, that volunteer is committed to stay on the case until the child achieves permanency. This partnership between the judiciary and community volunteers has helped over a million children who have been in court because they were abused or neglected.

To a child, having a volunteer working for them can make all the difference. Children across the country often show their emotion when asking: "you don't get paid to do this?" It demonstrates to them the level of concern and commitment being made by a volunteer. No, it's not part of their "job." Volunteers are ordinary citizens doing extraordinary work for children, and along the way they bring passion and dedication to their work.

CASA/GAL programs originated in part to meet the federal mandate under the Child Abuse Prevention and Treatment Act (CAPTA) to provide a guardian ad litem for each dependent child involved in court proceedings. But CASA programs have expanded rapidly because judges making decisions on the cases of abused and neglected children have been frustrated with the quality and quantity of information they receive from those within the system and have sought assistance from those outside of it. These judges recognize that courts, agencies and attorneys cannot do all that dependent children need as they wait for a permanent home.

Why CASA?

The volunteer has the time, energy, training, focus and longevity to help the court make a difference in the lives of foster care children. The volunteer is assigned to advocate for no more than two children or sibling groups at one time. In 1988, the Department of Health and Human Services published the results of a study which evaluated those serving as guardians ad litem in dependency proceedings. The study stated: "CASA volunteers are excellent investigators and mediators, remain involved in the case and fight for what they think is right for the child.... We give the CASA models our highest recommendation."

In addition, the Conference of Chief Justices and the Conference of State Court Administrators passed a joint resolution in 2003 recognizing and expressing appreciation for CASA volunteers who work with the court to assist our nation's most at-risk children.

Finally, the Pew Commission on Children in Foster Care recently released its recommendations, including expansion of CASA programs nationwide (see the article [Members of Pew Commission on Children in Foster Care Give First-Hand Account](#) on page 5 of this issue of *the Judges' Page*).

What role and responsibility does the CASA/GAL volunteer have in the case of a dependent child?

1. The CASA volunteer conducts an independent fact-finding mission to gather information about the child and his/her family and ascertain first-hand the child's needs, wishes and best interest. The volunteer interviews everyone who may have information about the child. As appropriate, the CASA volunteer participates in a search for the child's relatives to bring them into the process as potential caretakers for the child. Then the advocate sets forth the information gathered during this process in a court report, making recommendations to the court about the child's best interests.
2. The CASA volunteer facilitates communication and encourages consensus in decision-making among child-serving agencies, parents, foster parents, attorneys and all who are involved in the child's life.
3. The CASA volunteer is an advocate for the child and the child alone. The CASA volunteer is not a rubber stamp of agency or parental opinions about what is in the child's best interest. As an advocate, this caring adult is not bound by agency policy or budgets in recommending what services the child needs. As a member of the community, a CASA volunteer often has access to charitable resources which the agencies and parents may not know about and brings these resources to the table. The CASA volunteer also brings the community's standards for its children to the decision-making process and holds all accountable for meeting the child's needs.
4. The CASA volunteer monitors the case - overseeing whether all parties are in compliance with the court's orders and observing whether the child's safety, wellbeing and permanency are being implemented in a timely manner. In addition, the advocate makes the court aware of noncompliance or the need for additional court intervention. Finally, the CASA/GAL volunteer keeps the case on track toward permanence and is sensitive to the child's sense of time.

Does CASA work?

The National CASA Association has pursued several independent evaluations of the effectiveness of CASA/GAL programs. National CASA also provides guidance for member programs to analyze the effectiveness of local programs. To this end, the National CASA Association has published a manual for programs entitled *Measuring Child Outcomes: A Guide to Determining CASA Effectiveness*.

Most recently, the National CASA Association worked with Caliber Associates to review records of CASA programs and match them with data collected through the *National Survey of Child and Adolescent Wellbeing*. The Packard Foundation-funded *Evaluation of CASA Representation* found that children and families in which a CASA/GAL volunteer was appointed received more services, and the services received positively impacted permanency outcomes for children in care. CASA volunteers were found to be highly effective in making recommendations to the court, and the courts accepted all or almost all of the CASA recommendations in more than four out of five cases. The study also found that the types of child welfare cases to which CASA/GAL volunteers are assigned are the most difficult cases on the court's foster care docket. Nonetheless, children for whom a CASA volunteer advocated did not spend more time in care even though their cases were more serious. The *Evaluation of CASA Representation* also found that CASA volunteers spend a large amount of their time in direct contact with the children they represent.

In September 2003, the National CASA Association received the results of a Consumer Satisfaction Survey which was independently conducted by Pat Litzelfelner, PhD of the University of Kentucky, School of Social Work. The survey instrument was sent to 2,465 participants. Surveys went to stakeholders impacted by the role of CASA/GAL volunteers including biological parents, grandparents, relatives, foster parents and adoptive parents. The greatest response rate

was from judges, attorneys and social workers. Judges and attorneys expressed the highest overall satisfaction with CASA programs. Child welfare workers and parents scored most items a bit lower than judges and attorneys. Parents in general spoke highly of CASA volunteers and CASA programs.

Another CASA/GAL study by Janet Chiancone was funded through the National Resource Center on Legal and Court Issues, a project of the U.S. Dept. of Health and Human Services. This study shows that the involvement of a CASA volunteer can have important positive effects on child abuse and neglect cases. Results of this study indicate CASA programs which provide high-quality screening and training produce volunteers who are effective in assessing children's needs and advocating for children's best interests.

The National CASA Association has a goal to provide a CASA/GAL volunteer to advocate for every abused and neglected child. With nearly 300,000 volunteers and almost 1,000 programs, National CASA is well on its way to meeting that goal. For a dependency court judge to provide the best results for the children of his or her court, a CASA/GAL program is essential.

If you are interested in establishing a CASA/GAL program in your jurisdiction, contact:

National CASA Association
Program Services
100 West Harrison Street, North Tower, Suite 500
Seattle, WA 98119
800-628-3233
staff@nationalcasa.org

[Back to Top](#)

CASA Program Partners With NCJFCJ Model Court in Charlotte, North Carolina

Nalini Jones, District Administrator, North Carolina Guardian ad Litem Program, Louisiana State University Health Sciences Center, New Orleans, Louisiana

Summary

Mediation and family drug treatment court are two key strategies of this model court both to provide services early on to parents and to promote timely permanence for the child. The GAL team of volunteer and attorney have integral roles in each.

The North Carolina Guardian ad Litem (GAL) program was established by the General Assembly in 1983 to provide mandatory legal representation to abused and neglected children. The statewide program is a part of the Administrative Office of the Courts and is regarded as a core court function. When a petition alleging neglect or abuse is filed, a volunteer GAL and an attorney advocate are appointed by the court to advocate for the child. The program is mandated by statute to protect and promote the best interest of the child. The model of the joint appointment of an attorney advocate and a citizen volunteer has proven to be highly effective. Last year, 3,824 GAL volunteers and 101 attorney advocates represented 15,607 abused or neglected children in the state of North Carolina.

The North Carolina Guardian ad Litem program is a member of the National CASA Association. In addition, Mecklenburg County is a National Council of Juvenile and Family Court Judges Model Court site. Mecklenburg County has the highest judicial caseload of dependent children of any county in the state, and in the past fiscal year volunteers and attorneys represented 1,478 children in 1,724 court hearings. The county is hailed as a leader in initiating and implementing court reform in North Carolina. GAL volunteers are actively involved in reform efforts that include mediation and family drug treatment court.

In light of ASFA timelines and mandates, the GAL volunteer helps to move the child's court case through the system expeditiously by participating in court-ordered mediation. Mediation is a process that allows the GAL, the family, treatment providers for the family, the attorneys for the parents and the Department of Social Services to come together in a non-adversarial setting to discuss the petition and the facts of the case. During mediation, case plans are formulated with the involvement of all parties. Because a four-hour block of time is allocated for this process, mediation reduces the time spent in court. Mediation expedites permanency efforts, allowing children to reunify with their families or become free for adoption in a shorter time frame.

Judge Louis Trosch has been instrumental in spearheading and encouraging all court reform efforts, in particular the mediation program. He has this to say about recent innovations: "Our system now tries to use judicial leadership to collaborate with partnerships in the community in order to better meet the needs of our children and families. In the old model, the judge would wait for a case to be brought before him and he was working in a vacuum. We now strive to work with all agencies that are involved in that child's life - we have to because of ASFA requirements and our goals of permanence. We do everything we can to cut down on contested litigation, and we try to put a case plan in place that is tailored to meet the needs of the family. Mediation is a wonderful tool and allows us to do just this."

Another successful component of the court reform effort is family drug treatment court, which has been in place in Mecklenburg County since 1995. The family drug treatment court assists children in moving through the system in accordance with the ASFA timelines. Studies show that if the same court that works with a child and family works with the parent's substance abuse issues, children are reunified or guided towards permanence in a shorter timeframe. Parents identified as substance abusers are given the option to participate in drug treatment at the very first hearing. At the adjudicatory hearing, the parents can be ordered into drug treatment by the court.

Throughout this process, the GAL focuses on the short- and long-term best interests of the child. The Mecklenburg County family drug treatment court is one of only two in North Carolina, and it has served as a model to the state and nation.

Ondine Dinice, a GAL representative who serves on the family drug court team, has this to say about the family drug court treatment program: “Our court system has changed its focus—we are not a punitively oriented court system as much as a rehabilitative court system. By taking on a more holistic approach, we are changing people’s lives rather than just their immediate conditions. Eighty-five to ninety percent of the cases that come through juvenile court are in need of some type of substance abuse treatment. Because we are able to provide this treatment promptly, we are providing the parents of our children with immediate incentives to get well quickly and obtain custody of their children in a timely manner.”

Mediation and family drug treatment court are two examples of innovative court reforms in child abuse and neglect proceedings. The Guardian ad Litem team of community volunteer and attorney advocate has been a key player in focusing on the needs of the child and moving the child out of the court system and into a safe and permanent home in a timely manner. The focus of the GAL team, the collaboration of the parties in the court system and strong judicial leadership help to meet the demands and achieve the promise of the Adoption and Safe Families Act.

[Back to Top](#)

Recommended Modification to the Judicial Code of Ethics Re: Extra-Judicial Activities



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

Summary

Recommendation by the NCJFCJ to allow judges to be more proactive in developing “reasonable efforts” services and programs to meet the needs of children and families.

Presently, the American Bar Association (ABA) Model Judicial Code of Conduct (amended 1993) limits extra-judicial activities. Consider Canon 4(A):

A judge shall conduct all of the judge’s extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

At the same time, the commentary to Canon 4(A) provides: “Complete separation of a judge from extra-judicial activities is neither possible nor wise. Judges should not become isolated from their community.”

What can a judge do to be more proactive in developing services and programs demonstrating “reasonable efforts” to meet the needs of children and families?

Canon 4(B) provides: “A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice, and non-legal subjects, subject to the requirements of this Code.” The commentary to Canon 4(B) notes that: “As a judicial officer and person specially learned in the law, a judge is in a unique [emphasis mine] position to contribute to the improvement of the law, the legal system, and the administration of justice . . . To the extent that time permits, a judge is encouraged [emphasis mine] to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.”

In reviewing Canon 4(A), its commentary, Canon 4(B) and its commentary, there appears to be a conflict about what exactly a judge can do in terms of extra-judicial activities without violating the Canons. In fact, throughout the country, many judges feel constrained from participating in certain extra-judicial activities due to the current Judicial Code of Conduct, numerous ethics advisory opinions and disciplinary decisions in their respective states. Please note that each state’s Judicial Code of Conduct varies. However, in all states, each judge knows that if he or she violates one of the Canons, then he or she is subject to discipline which may include admonishment, reprimand, censure, suspension with or without pay or removal from office.

Recognizing these issues, the membership of the National Council of Juvenile and Family Court Judges (NCJFCJ) passed a resolution in support of the modification of the Judicial Code of Conduct. The goal is to assure that a juvenile and family court judge can engage in community outreach, foster the effective administration of justice and implement comprehensive court-ordered service plans without unreasonable fear of judicial discipline.

A key proposed revision is to Canon 3D. The NCJFCJ recommends that this section be modified as follows:

Civic Responsibilities:

- (1) Subject to the requirements of this Code, a judge should provide leadership in:
 - (a) identifying and resolving issues of access to justice;
 - (b) developing public legal education programs;
 - (c) engaging in community outreach activities to promote the fair administration of justice;
 - (d) convening, participating or assisting in advisory committees and community collaboratives devoted to the improvement of the law, the legal system, the provision of services and/or the administration of justice.
- (2) A judge may publicly or individually endorse project goals concerning the law, the legal system, the provision of services or the administration of justice, in principle, and actively support the need for funding of such an organization or governmental agency.

The NCJFCJ has long held that the juvenile and family court judge has a unique leadership role. If the NCJFCJ's proposed revisions to the ABA Model Code of Judicial Conduct are approved, and subsequently approved by each state's supreme court, then juvenile and family court judges will be able to enhance their leadership role in the community without fear of judicial discipline.

As noted in *The Future of Children* published by the David and Lucile Packard Foundation, Vol. 6, No. 3, Winter 1996, Executive Summary, several recommendations reflect the acute need for judicial leadership: (1) "every juvenile court in the country should work with local welfare agencies to improve their effectiveness in providing abused or neglected children safe and permanent homes in a timely manner...." (Recommendation 11); (2) "Juvenile court judges should be educators and spokespersons in their communities on behalf of abused and neglected children. Judges should advocate for adequate court resources and community systems to respond properly and appropriately to child abuse and neglect." (Recommendation 12) (futureofchildren.org/pubs-info2825/pubs-info.htm?doc_id=77761)

Modifying the Judicial Code of Conduct will allow judges to act on these recommendations. In the meantime, a judge is well advised to ask for an ethics advisory opinion for guidance prior to acting if one is unsure whether the proposed action may result in judicial discipline. If your state has an ethics advisory committee, check its index of published opinions. For those judges and states who do not issue ethics advisory opinions, consult other states.

For further information, please consider the following resources:

- Your own state's ethics advisory opinions, if available. If not, consider other states.
- The website abanet.org/judicialethics/resources/comm_code_ncjfcj_051904.pdf. There you will find the Resolution in Support of the Modification of Canons of Judicial Ethics and NCJFCJ Canons with commentary and the NCJFCJ Model Rules of Court.
- The website ajs.org/ethics. The American Judicature Society's Center for Judicial Ethics, where, among other things, you will find information and research support for organizations that investigate complaints of judicial misconduct, judicial ethics advisory committees, resources on judicial ethics, the Judicial Conduct Reporter and judicial ethics disciplinary opinions which are updated weekly.
- Comments by Justice Michael D. Zimmerman, Utah Supreme Court, regarding the increasing demand for judicial leadership to participate in and help coordinate addressing social problems and social services: Michael D. Zimmerman, "A New Approach to Court Reform," 82 Judicature 108 (1998).

[Back to Top](#)

The Adoption and Safe Families Act: What Rights Do the Children Have?

*Honorable Stephen M. Rubin, Juvenile Court, Tucson, Arizona
Treasurer/Vice-President of the National Council of Juvenile and Family Court Judges*

Summary

The Adoption and Safe Families Act has impacted dependency courts more than any other legislation. Recent case law examines what rights, if any, foster children have against state child welfare agencies when the agency fails to comply with ASFA requirements.

There have been very few pieces of legislation, if any, that have impacted the work of dependency courts more than the Adoption and Safe Families Act (ASFA) of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified in scattered sections of 42 U.S.C.). (Note: Readers can search the United States Code at thomas.loc.gov. Since the passage of ASFA, there have been many cases interpreting its meaning. Most have upheld the provisions of ASFA that focus on permanency and timely decision making. Recently, the case law focus has shifted to examine the issue of what rights, if any, foster children have against state child welfare agencies when the agency fails to comply with ASFA requirements.

The United States Court of Appeals for the 11th Circuit decided a case in May 2003 that could have widespread negative impacts upon foster children. There are several issues raised in this case. There is no substitute for actually reading the opinion in its entirety. The case is: 31 Foster Children vs. Bush, 329 F.3d 1255 (11th Cir. 2003).

One issue presented in this case is whether the ASFA requirement that the state file a petition to terminate parental rights on behalf of a child who has remained in foster care for 15 out of the past 22 months, or under the other statutory requirements, gives rise to a cause of action on behalf of the child for a violation of the Civil Rights Act under 42 U.S.C. §1983.

The 11th Circuit held that ASFA did not create an enforceable right for children in foster care to seek relief under 42 U.S.C. §1983 for the state's failure to file an action to terminate parental rights (TPR) within the statutory time frame. The court recognized that ASFA, Pub. L. No. 105-89 §103(c), does mandate that states comply with the requirement of initiating the TPR petition under 42 U.S.C. §675 (5)(E). The court, however, found that this section of ASFA and the Adoption Assistance and Child Welfare Act, Pub. L. No. 96-272, 94 Stat. 500 (1980) [codified in scattered sections of 42 U.S.C. (1994)], taken together are ambiguous and fail to establish a right enforceable under section 1983. The court found that Congress failed to unambiguously grant such a right to foster children, and therefore they have no actionable claim.

This case is an example of the scrutiny to which ASFA is being subjected by federal appellate courts. We as trial judges are asked to hold child welfare agencies to very high standards. To date, no state child welfare agency has passed Title IV-E Child and Family Services Review audits (nationalcasa.org/download/JudgesPage/0310_child_and_family_services_review_0011.pdf). It appears, however, that the federal appellate courts are reluctant to allow a cause of action for damages for those most affected by the failure of child welfare agencies to comply with the law.

Editors Note: The opinions stated by Honorable Stephen M. Rubin are his own. They do not necessarily reflect the opinions of the NCJFCJ or the Pima County Juvenile Court.

[Back to Top](#)

Online Resources: Foster Care Reform, Research and Reference



Joey Binard, Manager of Technical Assistance at the National Council of Juvenile and Family Court Judges and Editor of Brevity, a weekly e-newsletter

Summary

The following sites are recommended for your research of court and foster care reform issues.

American Academy of Adoption Attorneys

adoptionattorneys.org

A national association of attorneys who practice in the field of adoption law. The Academy promotes the reform of adoption laws and disseminates information on ethical adoption practices. Their site includes a code of ethics for adoption attorneys.

American Bar Association Center on Children and the Law

For a national Court Improvement progress report and catalog, go to abanet.org/child/cipcatalog

Casey Family Resources

- Casey Family Programs home page: casey.org/Home
- Casey Family Services - Publications, research and support for parents, youth and professionals. See the "Publications" page entries for good materials. caseyfamilyservices.org/n_rec_publications.html
- Casey Life Skills - Easy to use assessments provide instant, confidential feedback on the life skills every young person needs. Customized learning plans give learners and mentors a clear outline of next steps. casey.org/Resources/Tools/CaseyLifeSkills.htm

Child Welfare League of America (CWLA)

cwla.org

CWLA is the nation's oldest and largest membership-based child welfare organization. Its web site contains a wealth of information.

- The Child Welfare Section—Listings here include adoption, child protection, family preservation, foster care and child welfare standards. All include best practice guidelines and caseload standards. cwla.org/childwelfare/default.htm
- *A Family's Guide to the Child Welfare System* - A resource manual that answers many of the questions families face when they become involved with the child welfare system. Can be downloaded in its entirety or section by section. cwla.org/childwelfare/familyguide.htm

Children's Bureau Resources

www.acf.hhs.gov/programs/cb

The Children's Bureau is the oldest federal agency for children and is located within the United States Department of Health and Human Services' Administration for Children and Families, Administration on Children, Youth and Families. It is responsible for assisting states in the delivery of child welfare services—services designed to protect children and strengthen families. The agency provides grants to states, tribes and communities to operate a range of child welfare services. For state Child and Family Services Review reports, go to www.acf.hhs.gov/programs/cb/cwmonitoring/index.htm. For information on state Program Improvement Plans, go to basis.caliber.com/cwig/ws/cwmd/docs/cb_web/SearchForm

Connect for Kids: Better Policies for Kids

connectforkids.org

Go to this web site and click on "Topics A-Z." Link to any of the topics listed there to find resources, web sites and other information. At the same location, take a look at the Reports and Data, Public Opinion and Book Review sections..

Fostering Results

www.fosteringresults.org/

Survey shows that lack of services available to troubled parents frustrates efforts of juvenile court judges to keep families together. The *Fostering Results* survey was carried out by the Children & Family Research Center at the University of Illinois at Urbana-Champaign and financed by the Pew Charitable Trusts.

National CASA Association Resources

- Go to casanet.org for voluminous resources and links related to technical assistance and training in child welfare and child advocacy.
- See the archive of past issues of the Judges' Page for other important child welfare topics nationalcasa.org/JudgesPage/index.htm, in particular the past article on Child and Family Services Reviews nationalcasa.org/download/JudgesPage/0310_child_and_family_services_review_0011.pdf

Packard Foundation Resources for Children, Families, and Foster Care

This issue of the Packard Foundation The Future of Children Journal is also the last issue to be available in hard copy. The Journal and executive summary are available for download at futureofchildren.org/pubs-info2825/pubs-info.htm?doc_id=209538

The Foundation also commissioned a survey of foster care alumni to be released concurrently with this issue of the Journal. Ninety-four foster care alumni were interviewed in depth to add their voices to the discussion about needed changes in the foster care system.

Pew Commission on Children in Foster Care

The Pew Commission on Children in Foster Care released its final report pewfostercare.org/docs/index.php?DocID=47 on May 18, 2004. The report contains recommendations for the courts in foster care matters. These include a recommendation for the adoption of court performance measures to ensure that courts can track and analyze their caseloads, increase accountability for improved outcomes for children and inform decisions about the allocation of court resources.

Other reports/information pewfostercare.org released by the Commission and available online include the following:

- *Demographics of Children in Foster Care* -This paper highlights basic demographic information of children in foster care.
- *Familiarity with Foster Care Issues* -This poll shows the public is not engaged on the issue of foster care. Only one-third of Americans are highly familiar with the issue.

Editors Note: Visit the National Council of Juvenile and Family Court Judges website ncjfcj.org

[Back to Top](#)