



Judge Leonard Edwards
Santa Clara Superior Court (Ret.)

Judges and Social Workers

At a recent juvenile dependency law conference, a judge said to me that she was uncomfortable telling social workers what to do. After all, she said, they are experts in social work and judges certainly are not. Yet, we are asked to make reasonable efforts determinations several times during the pendency of each juvenile dependency case as well as many other decisions about social worker actions.

The judge was correct about our responsibilities. Federal and state law require us to make numerous decisions regarding the adequacy of social worker behavior throughout the pendency of a dependency case. The list is long: we must make at least three reasonable efforts determinations. First, did the social worker make reasonable efforts to prevent removal of the child from parental care. Second, did the social worker make reasonable efforts to help the parents address their problems and thus make it possible to reunite them with their child, and third, did the social worker make reasonable efforts to ensure that the child reached timely permanency. Additionally, we must decide whether the social worker used due diligence to identify, notice, and engage the child's relatives within 30 days of the removal, must make a determination regarding the social worker's efforts to find

out whether the child is a child covered under the Indian Child Welfare Act, and must decide at many hearings whether it would be contrary to the interests of the child to be returned to his or her parents. There are other decisions such as the quantity and quality of visitation between parents and a child removed from their care, who the father of the child is, whether relatives can visit that child, and whether mental health evaluations would be helpful for the child or parents.

Perhaps it would be easier for the judge if these decisions were made by the social worker. The judge would only have to say "so ordered" and stamp the file with the judge's signature. But that is not the law. The law is clear that it is the judge who must make these decisions, and the judge must explain the basis for these decisions. It is the judge who must hold the agency accountable for its behavior in child protection cases, and it is the judge who must make the critical decisions regarding the protection of children.

The judge's oversight responsibility of executive branch agencies is not new. For example, judges are called on to monitor the actions of law enforcement personnel when they arrest a suspect, search a suspect's premises and person, and interrogate a suspect. Judges are not trained in police procedures, yet we are required to know

in minute detail what police officers can and cannot do. The result is that judges sometimes suppress evidence improperly obtained by the police as well as suppress statements made by defendants. Perhaps judges are more comfortable in this role since there are so many appellate decisions regarding lawful and unlawful police conduct, and some law schools offer classes in criminal procedure.

Judges have much less exposure to social work in their legal education. Juvenile law has only come recently to many law schools, and that law often focuses primarily on juvenile justice and not on juvenile dependency. Moreover, the United States Supreme Court has had almost no cases dealing with juvenile dependency law.

Nevertheless, it is possible to educate judges in social work practices. It is not difficult to take steps to make judges competent in fulfilling their role of monitoring social work conduct in these important cases.

First, the judge should meet the Director of Social Services. The judge can let the director know that he or she is very interested in social service practice.¹

Second, the judge can suggest that the director authorize training sessions for judges hearing these cases and for the attorneys and

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advocates who represent children, represent parents, and represent the department. The trainings can include what are the duties of different workers including those who respond to reports of abuse and neglect, the investigators who write reports for the court, those who supervise families whose children are under court supervision, and those who work on adoptions.

Third, the judge can invite the director or his or her representative to attend meetings that the judge holds with attorneys and others in the dependency court system. These meetings of the professionals and service providers are useful to familiarize participants in the dependency process about operations and address problems that may arise in the movement of papers, courtroom security, and new projects the court is considering such as the creation of a mediation service, the creation of a family drug treatment court, and the scheduling of court calendars.

Fourth, the judge should ask the director for a list of available services in the community. Which services does the social service agency provide internally with existing staff and which services are provided by community agencies? Follow-up questions could include whether there are waiting lists for these services, costs to clients, and language capabilities of each service.

Fifth, the judge should ask about the department's visitation policies for children removed from parental care. What are the department policies regarding the frequency of visitation between children and their parents? Where do they visit? What type of supervision, if any, is provided during those visits.²

Sixth, the judge should ask about how the agency identifies, notices and engages potential fathers of the child before the court. Does

the agency work with alleged fathers? If not, why not?³

Seventh, the judge should enquire about social worker practice regarding the identification, notice, and engagement of the child's relatives in dependency cases.⁴ Does the agency use family finding? How long does it take the agency to approve of a possible relative placement? How long does it take to conduct a background check of a relative, and if the relative has a criminal conviction, how long does it take to clear that conviction assuming it is minor or too old to be relevant?

Eighth, the judge should enquire about the creation of service plans for cases in which the court has taken jurisdiction over a child. How individualized are these plans? Are the plans developed with the parents?

Ninth, the judge should enquire about the agency's approach to the 'reasonable efforts' requirement contained in both state and federal law. What do social workers do to prevent removal of a child? What is standard practice for a social worker assisting a parent to complete a service plan? How often is a social worker expected to monitor the parent's participation in services? After all, judges are expected to understand the agency's criteria

"...for initial removal and reunification decisions and communicate the court's expectations of what constitute 'reasonable efforts' to prevent removal or hasten return of the child."⁵

Conclusion:

It is understandable that some judges are uncomfortable monitoring social service actions regarding children who may have been abused or neglected. Nevertheless, judges must take this responsibility seriously. It is the law. Following the actions

suggested above, the judge can quickly become knowledgeable about social worker practices and services in the community. Attorneys can also learn about these practices, and they can participate in meaningful discussions in the courtroom. The result will be that children and their families will be better served. 🍷

Endnotes:

- 1 Edwards, L., "Working with Your Director of Children's Services," Winter 2014, The Bench, available online at no cost from judgeleonardedwards.com.
- 2 Edwards, L., "Judicial Oversight of Parental Visitation in Family Reunification Cases," Summer 2003, Juvenile and Family Court Journal.

- 3 Edwards, L., "Engaging Fathers in the Child Protection Process: The Judicial Role," Spring 2009, Juvenile and Family Court Journal
- 4 Edwards, L., "Relative Placement: The Best Answer for Our Foster Care System," Winter 2018, The Bench, the official magazine of the California Judges Association.
- 5 California Judicial Council Standards of Judicial Administration, Standard 5.40(e)(8)