

Some Thoughts About Judicial Responsibilities

JUDGE LEONARD EDWARDS (RET.), NCJFCJ PAST PRESIDENT



The public understanding of a judge's role is straight forward. Judges hear evidence and make decisions. Then the case is over, and the next case comes into court. This perception does not apply to juvenile court judges.

The role of the juvenile court judge is much more complex than that of a civil or criminal court judge. The California Rules of Court offer an excellent description of the unique role of the juvenile court judge.ⁱ

I have written elsewhere about the role of the juvenile court judge.ⁱⁱ In this article I will address the role of the juvenile court judge after the trial is over and the judge has made a dispositional order.

One purpose of the juvenile court is to redirect the parties, including the child, parents, and caretakers so that they will modify their behavior and make certain the child is safe and can live a productive life. This goal cannot be accomplished simply by judicial orders for services made at a dispositional hearing. There must be judicial oversight of the implementation of the judge's orders.

The reason for this unique role is that when jurisdiction is sustained the judge in juvenile court becomes the legal protector of the child. Under the doctrine of *parens patriae*, the judge acts as the legal parent of each child found in need of protection through court proceedings. Of course, the judge cannot follow the child's life day by day, nor can the judge get off the bench to see if services are being provided or that the child's placement is adequate. The judge must rely on others – social workers, probation officers, attorneys,

service providers, educators, and persons in the community to help fulfill the orders the judge has made.

How does a judge know what is happening to a child placed in foster or congregate care, whether parents are attending services ordered by the court, how the child is doing in school, or whether the child's special needs are being addressed? Some may say what happens to the child is the responsibility of others – the homes where they are placed, social workers, probation officers, and service providers. But that is not true. Legally, the responsibility for the child's well-being resides with the judge. That is what the doctrine of *parens patriae* means.ⁱⁱⁱ

Many judges will ignore or resist this responsibility, perhaps believing that some agency should act. But when all else fails, the legal responsibility ultimately resides with the judge. The juvenile court judge has an ongoing legal responsibility to follow closely the life of a dependent child after the dispositional orders have been made.

There are several ways a judge can learn what is happening to a child after the dispositional hearing. First, the judge can schedule review hearings to receive updates on the child's progress in all areas of life. Federal and state laws often mandate review hearings, usually every six months. Many judges schedule more frequent reviews, particularly when the judge learns of implementation problems.^{iv} Second, the judge can order the attorneys to follow up with progress reports regarding their clients. Third, if there are child advocates (CASA volunteers), the judge can continue to follow the child's progress through their reports to the court. Fourth, the judge can inform the social services agency to monitor the child's life and immediately notify the judge when there has been a change in the

child's placement or other significant event in the child's life. The judge should instruct the agency not to wait until the next scheduled hearing.

Let's consider a frequently reported problem: placement. It is well known that some dependent children end up living in agency offices, hotels, or detention facilities even though the judge has ordered placement with a family. I read about this issue daily in reports from many states. What I do not hear are statements from the judiciary about these problems. I believe judges should be reporting to the other branches of government that more resources are needed for the children under state or county jurisdiction. We are not benefiting these children when their placement is inadequate. We know that foster care and congregate care will create lifetime problems for children. Removal from parental care is traumatic for the child, and placements in hotels or agency buildings are worse.^{vi} Judges should not remain silent when their placement orders are not followed.

Let's go further. When there is a placement change, the judge should learn immediately why the change was necessary, why the new placement will meet the child's needs, whether necessary services are being provided, whether the child's educational needs are being met, and whether any other aspect of the dispositional plan will change and why. A written report addressing these issues should be on the judge's desk immediately.

JUDICIAL ACTION

Given their role as legal parent of these children, judges should speak out about inadequate placements, ineffective or non-existent services, and delays in the permanency planning process. These failures are not necessarily the responsibility of the governmental agencies. They often result from inadequate resources provided by the state or county. Judges should not stand by and permit the children they are responsible for to suffer. They should learn about changes in the child's life immediately and then speak out and advocate for appropriate agency responses including additional resources if

necessary.

The voice of one judge may not be sufficient to get the attention of the legislature. But a statement from the judicial branch or an organization of juvenile court judges is likely to be acknowledged by the legislative and executive branches of government. Silence from judges can be understood as acquiescence.

*The author thanks several judges for their comments regarding this article including Judge Katherine Lucero (ret.), Judge Pat Tondreau (ret.), Judge Michael Nash (ret.), Judge Zeke Zeidler, and Judge Sharon McCully (ret.).

ⁱThe California Rules of Court, Rule 5.40, explain this role clearly: Subdivision (e)(11). A superior court judge assigned to the juvenile court occupies a unique position within California's judiciary. In addition to the traditional role of fairly and efficiently resolving disputes before the court, the juvenile court judge is statutorily required to discharge other duties. California law empowers the juvenile court judge not only to order services for children under its jurisdiction, but also to enforce and review the delivery of those services. This oversight function includes the obligation to understand and work with the public and private agencies, including school systems, that provide services and treatment programs for children and families. As such, the juvenile court assignment requires a dramatic shift in emphasis from judging in the traditional sense.

ⁱⁱEdwards, L., "The Juvenile Court and the Role of the Juvenile Court Judge," *Juvenile and Family Court Journal*, 1992, Vol. 43, No.2, pp 1-45.

ⁱⁱⁱAs one judge wrote me: "I believe that judicial officers do have a responsibility to keep track of children placed in temporary placements and the services they are receiving." (email – available from the author.)

^{iv}Edwards, L., *Reasonable Efforts: A Judicial Perspective*, 2nd Ed. NCJFCJ, Reno, 2022, at pp 120-122.

^vEdwards, L., "The Urgency of Placing Children with Relatives," *The Guardian*, a publication of the NACC, Vol. 42, No. 04, Winter 2020.

^{vi}Edwards, L., "The Trauma of Removal," *The Guardian* a publication of the NACC, Vol. 45, No. 04, Winter 2023.