

Some Reflections on the Representation of Children in Juvenile Court: A View From The Bench

by Judge Leonard Edwards (ret.)

As an attorney I never represented children in juvenile dependency matters, only in juvenile justice cases. However, my years on the bench and research have led me to conclude that many children's attorneys in dependency court are not as effective as they could be. What follows is a judge's invitation for stronger legal advocacy from attorneys representing children in juvenile court.

First, a child's attorney should be automatically appointed with the filing of a petition and remain on the case until it is dismissed from juvenile court.¹ Some courts appoint an attorney at the time of the shelter care hearing and others relieve the child's attorney when parental rights have been terminated. Some judges may be concerned about fiscal issues; however, appointment should not be delayed until the shelter care hearing. Upon appointment, copies of the petition and supporting documents should be delivered to the child's attorney immediately so that the attorney can be prepared for the shelter care hearing.

Relieving the attorney after parental rights have been terminated ignores the important role the child's attorney plays in finalizing permanency. After termination, the child's attorney is best situated to ensure the child's voice is amplified in the proceedings. The law requires timely permanency, and the child's attorney is in the best position to ensure the social services agency makes reasonable efforts to conclude an adoption, guardianship, or other permanent plan. Moreover, the child may have special needs to be addressed, including mental health issues and educational concerns. The adoption may not be taking place in a timely fashion or the adoptive parents may be hesitant to go through with the proceedings. These are important issues that a child's attorney — who is the only person in the case with a confidential relationship with the child — may be able to resolve.

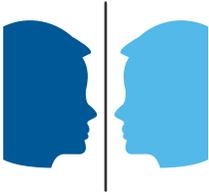
¹ Edwards, L., "Timely Adoptions: An Ignored Issue in Child Welfare." *The Guardian*, Vol. 42, No. 02 (Summer 2020); Edwards, L., "Representation of Parents and Children in Abuse and Neglect Cases: The Importance of Early Appointment." *Juvenile and Family Court Journal*, Vol. 63, No. 2 (Spring 2012) pp. 21-37.



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Second, if the court removes the child from parental care, the child's attorney, after consultation with and input from the child, should be a strong advocate for relative placement. The law is clear — the court must select relative placement ahead of foster or congregate care for placement.² Moreover, studies now show clearly that stranger care can have negative outcomes over the child's lifetime.³ Parents may not be supportive of relative placement, and parent attorneys may actually oppose relative placement, possibly because of family dynamics. But, if supported by the child, the child's attorney should be a strong proponent of such a placement. This means that the child's attorney should monitor the social worker's efforts to notify and engage relatives. Too often the social worker notifies relatives too late for them to be meaningfully involved in the child's case. The protocols used by model jurisdictions include immediate notification, as well as background and housing checks simultaneously with the notification.⁴ They also involve the use of a search engine in a process referred to as family finding. The federal government has recognized family finding as a best practice.⁵

Third, and related to the relative engagement issue, attorneys for children should advocate strongly for identifying and engaging the child's father if he is not already involved in the case. Participation by the father will in most cases benefit the child.⁶ Even if the child is unable to live with their father, identifying the child's father may lead to engagement and involvement of paternal relatives. Data from Los Angeles indicate that children are placed with fathers in 16–19% of removal cases.⁷

Fourth, the child's attorney should be a strong voice on the issue of whether reasonable efforts were provided by the social service agency. The reasonable efforts issue arises throughout each case — first, what efforts did the agency make to prevent removal of the child, then what efforts did the agency make to facilitate reunification, and finally, what efforts did the agency make to ensure timely permanency.⁸ Some children's attorneys believe that it is up to the parents and their attorneys to address the reasonable efforts issue. This is a misunderstanding about how important social worker actions are to the health and well-being of the child.

Most children who have contact with social services or child protective services remain with their parent or are returned to their parents at the conclusion of a dependency case. Whether the parents' rehabilitation takes place in a timely fashion depends a great deal on the actions of the social worker, and that is what reasonable efforts is all about. The child's attorney should be advocating that the social worker assists the parents in fulfilling their

2 See *Fostering Connections to Success and Increasing Adoptions Act*, P.L. 110-351, at sections 102-103; California Welfare and Institutions Code section 366.26(b)(6); and 42 U.S.C. Section 675 (1)(E).

3 Edwards, L. "The Urgency of Placement with Relatives," *The Guardian*, Vol. 42, No. 04 (Winter 2020).

4 Edwards, L., "Relative Placement: The Best Answer for Our Foster Care System," *Juvenile and Family Court Journal*, Vol. 69, No. 3, (2018), National Council of Juvenile and Family Court Judges.

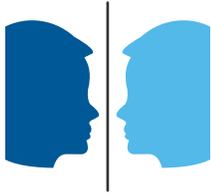
5 See *Fostering Connections to Success and Increasing Adoptions Act*, P.L. 110-351, at sections 102-103.

6 Edwards, L., "Engaging Fathers in the Child Protection Process: The Judicial Role," *Juvenile and Family Court Journal*, Vol. 60, No. 2 (Spring 2009) at pp 1-29.

7 Data provided by Michael Nash, Executive Director, Los Angeles Office of Child Protection and available from the author.

8 See, *supra*, footnote 3.

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obligations under the case plan, ensures that regular visitation (family time) takes place, monitors parental participation in services, and watches for problems such as transportation and services with a long waiting period. Good social work will either prevent removal or hasten parental recovery and return of the child.

Fifth, most children's attorneys do not appeal decisions that are contrary to their client's interests. In my review of appellate law in 51 jurisdictions, it is rare to find a case in which the child's attorney has appealed a trial court's decision. One attorney told me that dependency proceedings were about the state and the parents, not the child before the court. The appellate law seems to confirm this view. Most appeals are taken by parents after a termination of parental rights decision by the juvenile court. Perhaps the lack of the child's voice on appeal is an economic issue — the attorney does not have the time and resources to file an appeal. Larger attorney offices should set aside time for appeals, possibly creating an appellate attorney or team of attorneys.⁹ It is well within the role of the child's attorney to appeal cases from juvenile court. The child has a significant interest in the outcome of each case, and if the child would benefit from and supports appellate review, it is the obligation of the attorney to take the case to the appellate court.

Sixth, the child's attorney should consider the impact of adverse childhood experiences (ACEs) on their clients. ACEs can have a lifetime impact on children and addressing them as soon as possible will serve the child well.¹⁰ Many states are devoting significant resources to the identification and treatment of ACEs.¹¹ It is clear that no group of children deserve special attention more than those who come before the juvenile court, both in dependency and juvenile justice courts.¹² Children's attorneys should be aware of legislative initiatives regarding treatment of ACEs and should insist that their clients are screened and treated for the trauma they have experienced. This approach may reduce the possibility of lifetime adversities.

Representing children in juvenile court is a high calling for attorneys. Following the suggestions in this article will increase the impact of the child's voice in court and improve outcomes for the child and the child's family. ■

9 The Children's Law Center (CLC) that represents children in Los Angeles and Sacramento Counties, California, is an exception. That office has 5 attorneys working in their appellate division. They frequently appeal cases to challenge what the juvenile court has ordered. Their practice is a strong argument for representation of children by a law office with several attorneys rather than a panel of solo attorneys representing clients one by one.

10 Felitti, V. J., Anda, R.F., Williamson, D.F., Spitz, A.M., Edwards, V., Koss, M.P., Marks, J.S., "Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults. The Adverse Childhood Experiences (ACE) Study," *Am. J. Prev. Med.* 14(4):245-58 (May 1998); Sacks, V., Murphey, D., "The Prevalence of Adverse Childhood Experiences, Nationally, by State, and by Race or Ethnicity," *Child Trends*, February 12, 2018; See also Burke Harris, N., *The Deepest Well*, Houghton Mifflin Harcourt, N.Y. 2018.

11 Bradford, K., "Reducing the Effects of Adverse Childhood Experiences," *LEGIS BRIEFS*, National Conference of State Legislatures. Vol. 28, No. 29 (August 2020). "More than 35 states introduced legislation on ACEs this year." <https://www.childhealthdata.org/docs/drc/arizona-aces-efinal.pdf>; <https://letsgethealthy.ca.gov/goals/healthy-beginnings/adverse-childhood-experiences/>; <https://www.ruralhealthinfo.org/rural-monitor/adverse-childhood-experiences/>

12 Baglivio, M., Wolff, K., Jackowski, K., and Howell, J., "Support and Resiliency in the Face of Extreme Adversity: Implications of Adverse Childhood Experiences (ACEs) and Positive Childhood Experiences (PCEs) for Juvenile Justice System Enhancement," *Juvenile Justice Update*, Spring 2021, at pp. 3-4, 17-22.