

Achieving Timely Permanency in Child Protection Courts: The Importance of Frontloading the Court Process

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ABSTRACT

INTRODUCTION

Since passage of the original federal legislation authorizing intense court oversight of the foster care system in 1980, many courts have been unable to meet the timeframes established by Congress and state legislatures. As a result, many foster children and their parents have waited for resolution of their cases and for permanency for inordinate periods of time.

This paper will suggest ways to attain the elusive goal of timely permanency for foster children. First, it will summarize the legal framework established by federal and state legislatures. Second, it will describe the phases of a child protection case as it proceeds through the juvenile dependency court,¹ including both state statutory guidelines and the federal time frame. Third, it will address the importance of timely permanency for children removed from their homes by the state. Fourth, it will discuss the history of case management in child protection cases, focusing particularly on the ethical canons that address judicial responsibilities relating to timeliness. Fifth, it will discuss the Children and Family Service Review process and its relevance to court oversight of foster children. Sixth, the paper will

Timely permanency for foster children has been an unrealized goal in our nation's juvenile courts. The goal of timely permanency is a legal mandate, it serves the needs of families, it is consistent with evolving case management standards, it is required by the Canons of Judicial Ethics, and it serves the best interests of children. Judges must take a leadership role within their courts to reduce delays in child protection courts. Through a series of changes including legislation, court rules, case management techniques, and judicial control, timely permanency for foster children can be achieved.

discuss data indicating that juvenile dependency courts across the country are failing to meet statutory time limits particularly at the beginning of the court process. Seventh, it will make suggestions to help judges, legislatures, and court systems achieve timely permanency for children.

Finally, the paper will discuss the changing role of the juvenile court judge and how judges must become leaders if foster children are going to achieve timely permanency. Potential delays occur at every stage of a child protection case, but this paper will focus upon the most important stages of these proceedings, the front end of child protection cases.

The paper concludes that the nation's juvenile dependency courts have failed to achieve timely permanency for abused and neglected children. With a few notable exceptions, most juvenile dependency courts do not take early and aggressive steps to address the critical needs of children and their families. Sadly, children's cases languish at every step of the dependency court process. This paper will focus upon the crucial front end of the legal process from the shelter care hearing to the completion of adjudication and disposition. The paper will highlight reasons why delays are detrimental

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to children and families and will propose recommendations for improving practice while following both the spirit and letter of the law.

The paper will also explain why it is important to focus upon the early stages of child protection proceedings. It answers questions often posed about troubled families—Why is it not preferable to allow these cases all the time necessary to resolve the complex legal and social issues before the court? The paper will offer legal, developmental, administrative, ethical, and practical answers. It will explain that early and intensive attention by the juvenile court is the legal standard for both the federal and many state courts, that the developmental needs of children require immediate attention to their care and custody, that court administrative best practices increasingly stress court control of caseload management, that judicial ethics require courts to dispose of cases diligently, and, finally, that early, intensive efforts by the juvenile court will result in better outcomes for children and their families.

I. THE LAW REGARDING TIMELY PERMANENCY

The Adoption Assistance and Child Welfare Act of 1980 (the 1980 Act)² was the first federal law authorizing comprehensive judicial oversight of child protection cases. Enacted in response to widespread criticisms of the country's child welfare system, this federal legislation addressed the need to protect children and the policy of preserving families.³ The 1980 Act attempted to balance child protection with the need to give families fair opportunity to regain custody of their children if removed from parental care. It recognized a child's need to have a permanent home within a reasonable time. Congress designated the nation's juvenile courts to oversee actions taken by social service agencies on behalf of abused and neglected children by intensifying both the frequency and the nature of judicial review. Neither courts nor social welfare agencies welcomed this new arrangement, the former seeing oversight as not being legal work and the latter reluctant to have the court system oversee their actions.⁴

After 1980, legislation in all 50 states implemented some or all of the federal law. The state laws ran parallel to the federal law: Provide child safety, give parents an opportunity to have their children returned to them,

and achieve timely permanency for children who are removed from parental care.⁵ The 1980 Act originally defined timely permanency as a permanent home within 12 months, with a possible extension of 6 months.⁶

In 1997, Congress modified the earlier Act. The lawmakers were concerned that state courts were over-emphasizing parents reuniting with children, no matter how long it took.⁷ This resulted in children not receiving timely permanency.⁸ Congress took significant action, passing the Adoption and Safe Families Act (ASFA) in 1997. ASFA modified the 1980 Act in important ways, stressing that timely permanency must follow federal timelines and emphasizing adoption as the preferred permanent plan when return to the parents could not be accomplished in a timely fashion. ASFA reduced the timelines for permanency to one year, and added new provisions addressing the need for permanency for foster children who had been under the jurisdiction of the juvenile court for 15 of the previous 22 months.⁹ As with the 1980 Act, all state legislatures passed legislation conforming to ASFA.¹⁰

The federal government originally decided to enact legislation regarding foster children for several reasons. Congress found that too often, states unnecessarily removed abused and neglected children from parental care and devoted insufficient resources to preserving and reuniting families. Too often, children not able to return to their parents "drifted" in foster care and never found a permanent home.¹¹ Congress concluded that children need permanent homes, preferably with their own parents, but with another permanent family if return to a parent is not possible within a reasonable time. Under the 1980 Act, a permanent placement could be with a parent, in an adoptive home (after termination of parental rights), with a legal guardian, or with a relative. Congress' clear intent was to end foster care drift and establish a system that ensured that foster children would be provided permanent homes in a more timely fashion.¹² Unfortunately, the numbers of children in foster care between passage of the 1980 Act and 2007 have grown from approximately 250,000 to approximately 500,000.¹³ The well-being and plight of foster children continues to be a national issue.¹⁴ To clarify why more children than ever await permanency, one must examine the path a child protection case takes through the court system.

II. THE LEGAL STAGES OF CHILD PROTECTION CASES

A. State Laws

To understand the legal environment in which timely permanency must occur, this section describes the legal stages of a child protection case, including a summary of the issues the court may have to decide at each stage. Child protection cases usually begin with a child abuse or neglect report from a hospital, a school, or other community source. After receipt of a report, the local child protection services agency must investigate to determine whether state intervention is necessary.¹⁵ In the most serious cases, CPS¹⁶ may remove the child from parental care and initiate legal proceedings in the juvenile dependency court.¹⁷ The filing of legal papers (petitions) starts the legal process.

Many state legislatures have designed an expedited process for child protection cases. After removal, CPS is mandated to file the petition usually within a day or two of removal.¹⁸ The first court hearing (the shelter care hearing) most often is mandated to occur within a day or two of the removal.¹⁹ At that hearing the court must, among other things, appoint counsel for the parents; appoint counsel and/or a guardian *ad litem* for the child; serve the parents with a copy of the petition; explain the proceedings to the parties including the rights that the parents have in a child protection case; inquire about any Native American heritage in the family; determine paternity; determine whether CPS has provided reasonable efforts to prevent removal of the child; determine whether the state has demonstrated probable cause that the alleged abuse or neglect occurred; decide whether the child should be removed from one or both parents and, if so, where the child should be placed; and, finally, decide what contact the parents and other family members may have with the child pending further hearings. With so many important issues to address, it is easy to understand why the shelter care hearing is considered critical in a child protection case.²⁰ In fact, until these issues are resolved, further movement toward resolution of contested issues may not be possible.

Mandating that the shelter care hearing occurs within a day or two from the removal of the child makes it clear that the legislature treats removal as an emergency.²¹ The statutory scheme acknowledges that removal is an extremely serious form of state intervention that demands immediate judicial oversight. The short time frame also

places a great deal of pressure on CPS to locate and give notice to the parents and other family members, to prepare and file the petition, and to collect and prepare the evidence and supporting documentation that will be required at a shelter care hearing. Some of these tasks, in particular locating parents, can be challenging. CPS frequently determines that one or both parents are in custody or are missing, and often the identity of the father is unknown.

The next stage in the legal process is the adjudicatory or fact-finding hearing when a judge determines whether the facts alleged in the petition are true. This is the trial stage of child protection proceedings when the parents and child may demand that evidence be produced to prove that the allegations are true. State laws differ greatly on when the adjudicatory hearing must take place, with some states mandating that the hearing take place within three weeks (15 court days) of the shelter care hearing,²² others permitting the hearing to take place 90 days or more after the shelter care hearing,²³ while still others have no statutory time limits at all.²⁴ At an adjudicatory hearing, the parents have a right to see, hear, and question the witnesses who have knowledge of the facts of the case, to present their own evidence, and to testify. In most cases there is no trial as the parents admit to the facts contained in the petition or some modified version of these facts.²⁵

If the court finds the facts alleged in the petition to be true,²⁶ the next step is the dispositional hearing. Here, the court has the authority to decide what action, if any, to take on behalf of the child. The court's options range from taking no action and returning the child to the parents' care, to placing the child in state care, and removing her from parental care. State laws vary on the timing of the dispositional hearing. Some mandate that it must take place within a few days after the conclusion of the adjudicatory hearing, and others permit it to be held as long as 30 days from the adjudication.²⁷ In practice, the time range is great. Dispositional hearings can take place immediately after the adjudicatory hearing or weeks or even months thereafter.

In many cases petitioned in the juvenile dependency court, the court finds that some version of the facts in the petition are true, places the child under the court's protection, removes the child from parental care and control, places the child in the home of a relative or in foster care, and orders the parents to participate in services to address the issues that brought the child to the attention of the authorities.²⁸ The court must then monitor the progress of

the case until the child is placed in a permanent home. A permanent home can be a reunification with one or both parents, adoption after termination of parental rights, a legal guardianship, or placement with a relative. The child may be placed in a foster home, a group home, or a private institutional placement, but these options are not considered to be permanent homes under the law.²⁹

Legislation and court practice regarding the monitoring of children in out-of-home care varies greatly from state to state. In some states, the court reviews child protection cases frequently after the dispositional hearing. Court hearings may take place within 30 or 45 days after the dispositional hearing and every few months thereafter. In other states, the court will hold a review at 6 and 12 months.³⁰ Still other states rely on Foster Care Review Boards (FCRBs) to monitor the child's case.³¹ FCRBs are federally authorized and statutorily created panels of trained citizens who receive progress reports from the agency and hold administrative hearings to:

“...determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal custody.³²

The purposes of these reviews, whether a court hearing or an FCRB hearing, are to check on the child's well-being and the status of her placement; to review the progress that each parent is making with regard to the plan created by CPS and approved by the juvenile dependency court; to ensure that CPS is providing timely and appropriate services to each parent and to the child; and to check to see that all parties are carrying out other court orders including visitation.

A sense of urgency should prevail throughout these proceedings. A child's future is at stake—parental rights may be lost, and the time is short—one year and possibly only six months.³³

As the name suggests, the hearing that determines the child's permanent placement is the permanency planning hearing. State legislatures have different statutory schemes for when these hearings must take place, but usually they are scheduled 12 or 15 months after the shelter care hearing. In some statutory schemes the

permanency planning hearing can occur as late as 18 months from the shelter care hearing. At the permanency planning hearing the court must adopt a permanent plan for the child. As indicated above, the plan can be return to a parent, adoption preceded by termination of parental rights, legal guardianship,³⁴ or placement with a relative. In practice, the court places many children into foster, group, or institutional care.³⁵

Depending on the outcome of the permanency planning hearing, the court will set the next legal hearing. If the court has returned the child to a parent, the next hearing may be to review the progress of the parent and child. Or the court may dismiss the case, believing that court and agency supervision is no longer necessary. If the court has ordered adoption as the permanent plan, the court will order commencement of legal proceedings to terminate parental rights so that the child is freed for adoption.³⁶ The legal process for guardianship is similar to that for adoption. If the court has ordered that the child be placed permanently with a relative, the court may dismiss the case or continue to review the child's status in that placement depending on state law.³⁷ If the child is placed in foster or group home care, in all states the court or FCRB must monitor the child's progress until the child is placed in a permanent home or emancipated. The court must hold additional permanency planning hearings for any child in foster or group home approximately every 15 or 18 months.³⁸

There may be an additional stage in a child protection case, an appeal or extraordinary writ.³⁹ Each of the parties may challenge trial court rulings at any stage of the case. Additionally, most states confer a right to have appellate counsel represent an indigent party, usually a parent or child.⁴⁰

In summary, a child protection case starts with the filing of a petition on behalf of an allegedly abused or neglected child. In most states, the court holds a shelter care hearing within a few days, an adjudication hearing within a few weeks or months, and a dispositional hearing simultaneously with or a few weeks after the jurisdictional hearing. Review hearings are held thereafter, either by the court or by an FCRB, and a permanency planning hearing is held at 12, 15, or possibly 18 months. Thereafter, legal action is taken to complete the permanent plan, unless the child is placed in foster or group home care, in which case the court must continue

to monitor the child's case until a permanent plan is adopted or the child is emancipated. Final decisions may depend on the results of appellate or extraordinary writ action if taken by one or more of the parties.

B. The Federal Time Frame for Child Protection Cases

Complicating the achievement of timely permanency is the fact that federal law has established separate timelines for some stages of the child protection legal process, and that these timelines differ from those adopted by most states.⁴¹ Under federal law, a child is considered to have entered foster care on the earlier of two dates: (1) the date of the first judicial finding that the child has been subjected to child abuse or neglect (completion of the adjudicatory hearing); or (2) 60 days after the date on which the child is removed from the home.⁴² For courts that complete the adjudication hearing within 60 days of removal, the permanency clock starts at the completion of the hearing, but for the states that complete their adjudication hearings after 60 days, the federal permanency clock has already started running. Future review hearings, including the permanency planning hearing, must be scheduled from the federally established date that the child entered foster care.⁴³

Delayed determination of the jurisdictional facts can profoundly affect the entire child protection process. Parents may still be contesting the factual basis of the state intervention. They may be resistant to participation in services until the facts have been established. Social workers may be continuing their investigations in preparation for an anticipated trial or other contested proceeding. Attorneys may be in a trial mode rather than steering their clients toward services. Most importantly, the child is waiting to learn where she will be permanently placed.

III. THE IMPORTANCE OF TIMELY PERMANENCY

When hearings are delayed, children and families suffer. When hearings are delayed, the courts are not in compliance with the law. But with caseloads averaging 1,000 for judges and 270 for attorneys, delays are far too common.⁴⁴

Timeliness is important in child protection cases because children have a different sense of time than adults.⁴⁵ A week or a month is only a small percentage

of an adult's life, but that same time is a large part, even the majority, of a child's life. Additionally, as we know from our everyday experience, children can't wait. They cannot wait for Christmas, for their birthday, for anything that is important. Since children have not learned to anticipate the future, they cannot manage delay.⁴⁶ An infant or toddler cannot "stretch his waiting more than a few days without feeling overwhelmed by the absence of parents," while for most children under five years of age, the absence of parents for more than two months is "equally beyond comprehension."⁴⁷ Thus, child development experts argue that "procedural and substantive decisions should never exceed the time the child-to-be-placed can endure loss and uncertainty."⁴⁸

It is clear from the legislative history and statutory schemes that the federal and some state legislatures understood some of these child development principles when they wrote the child protection statutes. Language from these statutes emphasizes these considerations. In the federal law, for example, 42 U.S.C. section 675 (5)(f) states that the case must move forward expeditiously.

A child shall be considered to have entered foster care on the earlier of

- (i) the date of the first judicial finding that the child has been subjected to abuse or neglect; or
- (ii) the date that is 60 days after the date on which the child is removed from the home.⁴⁹

Some state laws also emphasize the importance of timely judicial hearings. For example, the Illinois legislature enacted the following language in that state's child protection statute:

Purpose and Policy—The legislature recognizes that serious delay in the adjudication of abuse, neglect, or dependency cases can cause grave harm to the minor and the family and that it frustrates the health, safety and best interests of the minor and the effort to establish permanent homes for children in need.⁵⁰

Most states have time standards for the completion of adjudication at 60 or 90 days from the filing of the petition,⁵¹ but some states have shorter time standards. Nevada,⁵² Idaho,⁵³ Arkansas,⁵⁴ Virginia,⁵⁵ Ohio,⁵⁶ New Hampshire,⁵⁷ and Maryland⁵⁸ legislatures set the adjudi-

catory hearing at 30 days, while California schedules the hearing at 15 court days for children who were removed from parental care at the shelter care hearing, and Texas statutes declare that the “adversary hearing” must take place within 14 days.⁵⁹ Pennsylvania law requires the adjudicatory hearing to take place no later than 10 days after the petition is filed.⁶⁰ Moreover, in Pennsylvania, if the hearing is not held within the 10 days, the child must be returned to the parents.⁶¹ The California legislature enacted laws to hold courts to the strict timelines when it wrote a code section entitled “Continuance of Hearing Under This Chapter”⁶² where the legislature stresses the importance of reaching timely decisions regarding minors removed temporarily from their homes.

...that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor’s interests, the court shall give substantial weight to a minor’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.⁶³

These shorter time standards are consistent with statements in the nation’s most important child abuse and neglect policy document, NCJFCJ’s *Resource Guidelines*.⁶⁴ “Because of the traumatic effect of removal of a child from the home it is essential that the adjudication hearing take place as soon as it is practical.”⁶⁵

Unfortunately, it is necessary to point out that not all states have created time standards for juvenile dependency cases,⁶⁶ and some have statutory timelines beyond 90 days.⁶⁷ Moreover, as will be discussed in Section VI, *infra*, courts in many states with time standards have been unable to meet those standards.

Early and intensive attention to child protection cases will also benefit parents. At the outset of child protection cases, parents are typically distraught over removal of their child and are sometimes amenable at least to consider addressing the issues that led to the removal. They must be given an early opportunity to understand the gravity of the legal situation they are facing, must be given access to competent counsel to advise them of their rights, and must hear from a judge about the urgency of the legal proceedings. Months later, the emotional ties to their children may not be as immediate, parental frustration with the process may

have increased, or the problems with day-to-day living may have replaced their feelings of urgency regarding their children.

I think we can all agree that the longer it takes to engage parents, the less likely family reunification is a viable goal and plausible outcome.⁶⁸

IV. THE COURTS, DELAY, AND CASE MANAGEMENT

A. Delay in the Legal System

One of the most profound and intractable problems in child welfare litigation is that of delay.⁶⁹

Delay is endemic in the legal system. The law is a deliberate process, governed by statutes, rules, traditions, and the legal culture. Legal issues can be complex, and the law expects attorneys to prepare for and present the evidence and arguments for the party they represent. The formal nature of legal proceedings and the numerous parties and their attorneys often means that the case is not ready to proceed. Someone may be ill, someone may be delayed or involved in another legal proceeding, someone may not be prepared to proceed, or someone may not want to proceed and may use tactics to delay the legal process. In all of these situations a party may ask for a continuance of the proceedings. A continuance is a legal order that sets the legal proceedings over or adjourns the case to a different date. It is a primary reason for delay in the court process.

In child protection proceedings, the likelihood of a continuance is greater than in most legal proceedings. With four or more parties (the parents, the child, and the agency), and complex legal and social issues, often one party will ask for a continuance.⁷⁰ A continuance by definition delays the timely advancement of the case. Furthermore, it makes the hearings more stressful for those coming to court. Issues concerning the care, custody, and control of children are highly charged, and dealing with delays takes its toll emotionally.

One study indicated that the five most frequent reasons for a continuance request are a late or missing report by the social worker, an incarcerated parent who has not been transported, the lack of notice or late notice to a parent or legal caretaker, a stipulation or agreement among the parties, and an unavailable attorney.⁷¹ Often new information arrives just as child

protection proceedings are scheduled to take place, and one or more of the parties will ask for a continuance to read the new report and prepare a response to the statements and information contained in it. In few other types of cases are there so many factors that can disrupt and delay the timely movement of cases.

B. Caseflow Management, Ethics, and the Courts

1. Caseflow Management

Only in the past few decades has the judicial branch addressed issues relating to caseflow management and delay reduction.⁷² Caseflow management concerns the scheduling of cases within the court system, the allocation of judicial resources to cases, and the procedures used by the court to dispose of cases.⁷³ In spite of the adage “justice delayed is justice denied,” the common law view was that trial judges should have no interest in the pace of civil litigation; instead the parties should control the progress of the litigation.⁷⁴ Roscoe Pound stated this passive judicial concept in 1906:

[I]n America we take it as a matter of course that a judge should be a mere umpire, to pass upon objections and hold counsel to the rules of the game, and that the parties should fight out their own game in their own way without judicial interference. We resent such interference as unfair, even when in the interests of justice.⁷⁵

In the past 30 years, leaders in the judicial branch have concluded that the courts need to be actively involved in the management of all cases that come before them.⁷⁶ Although it was once considered no part of the judicial duties of the “dispassionate magistrate,” caseflow management has now become an accepted aspect of court administration.⁷⁷ In the 1980s, the National Center for State Courts and the American Bar Association wrote a number of case processing time standards.⁷⁸ Central to these standards is the notion that delay reduction is a goal for court systems, and that “the leading cause of delay has been the failure of judges to maintain control over the pace of litigation.”⁷⁹ Thus, a new role for judges has evolved: To become active administrators who deal with the expanding caseloads facing the modern judiciary.⁸⁰

Eradicating delay depends on adherence to this one axiom: The court must take the initiative to eliminate the causes of delay.⁸¹

Underlying the judicial concern for case management are several principles:

First, judges have taken control of the movement of cases through the court system. This commitment includes the concomitant growth of the role of the court administrator and other court staff who focus on case management, calendaring, and data collection.

Second, courts and legislatures have developed time standards for the completion of different types of cases.

Third, court systems have developed administrative rules describing the ways in which cases will be managed within the court system including the filing of legal actions, the timing of appearances, trial dates, continuances, and sanctions for those who do not follow the rules.

Fourth, courts are committed to monitoring the cases under court jurisdiction. This has led to the development of information and case management systems that are able to inform the court about the numbers of cases within the court system, the time that each case has been in the system, and the status of each case.

Fifth, courts have begun to experiment with different court structures in order to better manage caseloads. For example, courts have used individual calendaring, unified family courts, specialized court divisions, and other structures in an effort to manage cases more effectively.

When first created, case processing time standards in most states focused upon the dockets that took most of the court’s time, criminal and general civil matters. Smaller civil dockets, such as matters relating to divorce and juvenile court, were sometimes added, but often as an afterthought. Matrimonial and juvenile cases had to do with “family matters” and did not receive much attention.

It took juvenile court experts approximately 10 years to weigh in with their own time standard policy recommendations for juvenile dependency cases. The National Council of Juvenile and Family Court Judges first published time standard recommendations with the *Child Dependency Benchbook*⁸² in 1994 followed

by the *Resource Guidelines*⁸³ in 1996.⁸⁴ These publications stressed the importance of time standards in juvenile dependency cases, noting that these procedures will “bring cases to disposition within a short time period with relatively few court appearances.”⁸⁵

Some states responded to the recommended standards by adopting administrative or judicial rules for the completion of different types of cases. Such rules are binding on trial judges.⁸⁶ On the whole, however, states were slow to adopt time standards for juvenile dependency cases.

Caseflow management of juvenile dependency cases presents complex issues far beyond those of typical civil cases. Disposition in typical civil and criminal cases refers to the conclusion of the case—the judgment in a typical civil case or the sentencing in a criminal matter. Disposition in a juvenile dependency case marks the completion of one of the earlier stages in the life of a case and the beginning of a process to achieve a permanent home for the child, whether permanency occurs through rehabilitation of the parent and return of the child or by the court establishing an out-of-home permanent plan such as adoption, guardianship, or other permanent placement. Moreover, as we saw in Section III, the purpose of juvenile dependency proceedings—to address the needs of abused and neglected children—is child focused, unlike mainstream civil cases.

2. Ethical Considerations Regarding Delay Reduction

Paralleling the development of caseflow management rules and protocols have been the Canons of Judicial Conduct, and, in particular, Canon 3,⁸⁷ which states “[a] judge shall perform the duties of judicial office impartially and *diligently*” (emphasis added). The sub-parts of Canon 3 instruct judges to “dispose promptly of the business of the court,”⁸⁸ “promptly dispose of their court’s business,”⁸⁹ and ensure the diligence of other court officials subject to the judge’s direction and control.⁹⁰ Judges, then, have both administrative and/or legislative rules regarding caseflow management as well as ethical imperatives regarding their administrative oversight duties.

Several states refer to the Canons of Judicial Conduct regarding the prompt resolution of cases. West Virginia Rule of Court 16.01 refers both to its state constitutional

mandate that “justice shall be administered without sale, denial or delay” and Canon 3-(8) of the Code of Judicial Conduct, “[a] judge shall dispose of all judicial matters promptly, efficiently, and fairly,” and mandates that the state courts adhere to the time standards declared by the West Virginia State Court Rules.⁹¹ The Utah Judicial Conduct Commission and the Utah Supreme Court relied upon Code of Judicial Conduct Canon 2A in finding that a judge failed to hold child welfare adjudication hearings in a timely manner and holding cases under advisement for more than two months thus bringing “judicial office into disrepute.”⁹²

V. THE CHILDREN AND FAMILY SERVICE REVIEWS AND PROGRAM IMPROVEMENT PLANS

Still another reason to be concerned with timely permanency and other issues relating to the outcomes for children in the child protection system is the federal effort to monitor progress by each state welfare agency to achieve the goals of safety, permanence, and well-being for all children in the child protection system.⁹³ The Department of Health and Human Services (HHS) Administration for Children and Families (ACF), through its Children’s Bureau, has primary responsibility for administering laws passed by Congress relating to child welfare and, in particular, for oversight of federal funding to states for child welfare services under Titles IV-B and IV-E. ACF has identified five basic principles guiding child welfare services in the states:

- The child’s safety is the paramount concern.
- Foster care is a temporary setting, not a place for children to grow up.
- Permanency planning efforts for children begin as soon as a child enters care and are expedited by providing services to families.
- The child welfare system must focus on results and accountability.
- Innovative approaches are necessary to achieve the goals of safety, permanency, and well-being.⁹⁴

ACF intends to determine whether these goals are being achieved through a process known as the Children and Family Service Reviews (CFSRs) and Program Improvement Plans (PIPs). The CFSRs examine state child welfare outcomes on a variety of scales intended

to determine the how children under the supervision of state child welfare agencies are faring. Beginning in 2001, the CFSR process has examined outcomes for children in every state using national data measures focusing on safety, well-being, and permanency.⁹⁵ Each state responded to its CFSR results by writing a Program Improvement Plan designed to address the weaknesses in its child welfare system. Now, in 2007, a second round of CFSRs is beginning. In the second round the hope is that each state has made progress through the implementation of its PIP. Penalties may be assessed for failures to meet the CFSR minimum standards,⁹⁶ but the process will be ongoing with the Children's Bureau continuing to monitor deficiencies in agency performance in future years.

One challenge for state agencies involves measures that are beyond their control. For example, timeliness of reunifications, timeliness of adoptions, and timely permanency are all measures that depend, in part, on court performance. The agency may perform well in accessing services, locating placements, and providing support for children and families, but the "timeliness" outcome may not meet federal standards and the state agency may stand to be penalized if the child's case is delayed in the court process.

It has been somewhat ironic that in most of the literature describing the CFSR and PIP process, courts have not been mentioned.⁹⁷ With significant legislative responsibilities overseeing the child protection system and a court process each child and family experiences, courts should have been an integral part of CFSRs from the beginning. Juvenile judges have been involved in the CFSR process in some states, but judges generally have not participated in the CFSRs.⁹⁸ One reason has been a lack of understanding about how the executive and judicial branches are intertwined in the CFSR process. Many judges wonder why the judicial branch should be involved with executive branch activities. There are several answers. This paper has explained that the goal of achieving timely permanency for children is a legal mandate, that it serves needs of families, that it is consistent with case management standards, that it is required by the Canons of Judicial Ethics, and, above all, that it serves the best interests of children. Additionally, states face economic penalties for failure to achieve timely permanency goals. If courts do not follow the law and

meet federal timeliness standards, the federal government may sanction the state's executive branch. Thus, efficiently operated juvenile courts are necessary for child welfare agencies to succeed in their PIPs. As one commentator said, "[i]t makes no sense to penalize the child welfare system for what courts can or can't accomplish with no funding."⁹⁹ Joan Ohl, Commissioner of the Administration for Children, Youth and Families,¹⁰⁰ has taken steps to engage the courts in the CFSR/PIP process.¹⁰¹ The results of these efforts will be seen in the years to come.

VI. DELAYS IN THE NATION'S JUVENILE DEPENDENCY COURTS

Data nationwide indicate that many juvenile dependency courts are failing to achieve timely permanency for foster children.¹⁰²

One of the main reasons that permanency is not being achieved timely is that often these hearings are simply not being held within twelve months.¹⁰³

Even though some states have rigorous statutory time frames for completing the adjudication, these statutes do not appear to be enough. It seems that either the local legal culture or overwhelming caseloads result in delayed proceedings in most courts. Legal proceedings are delayed at each stage of the case leading to longer times before children reach a permanent home. Many state and local court systems have delays built into the statutory framework that governs these cases, and other courts do not move these cases along expeditiously.

Some of the most significant delays occur between the shelter care hearing and the adjudicatory hearing.¹⁰⁴ Much of the delay occurs because state statutes authorize the holding of the adjudicatory hearing months after the shelter care hearing,¹⁰⁵ while some states have no statutory guidelines.¹⁰⁶ In some states, regardless of the statutory mandates, the court views the statute as a goal, not as a mandate.¹⁰⁷

Close examination of some state court operations reveals that timeliness varies greatly from district to district or county to county even within the same state. For example, a California study found that courts vary widely in the timeliness of their adjudicatory hearings. In the three juvenile courts examined in one study the percentage of adjudicatory hearings completed

within statutory timelines varied from 26% to 46% to 83%.¹⁰⁸ The statutory time limit for completing an adjudicatory hearing in California is 15 court days when a child has been removed from home.¹⁰⁹ In the state of Washington, a study revealed that juvenile courts were averaging from 35 to 91 days for completion of the adjudicatory portion of the case.¹¹⁰ The statutory time limit for completing the adjudicatory hearing in Washington is 75 days as of 2007.¹¹¹

It should come as no surprise that juvenile courts in the same state operating under the same statutory framework have widely different results when measuring the timeliness of hearings and other issues relating to how long foster children remain in the legal system. The administration of the law determines how quickly hearings will take place. The legal culture determines whether children's cases are treated as emergencies or as just another sub-category of civil cases. From observations of many juvenile courts across the United States, it is clear that the wide variations in timeliness are determined by the leadership of the judge, the resources available to the court, the importance placed on children's cases by the judge and court administration, and similar factors.

Failure to resolve the adjudicatory issues in a timely fashion is a major barrier to timely permanency. Because the adjudicatory hearing addresses whether the state has proven facts that would authorize intervention in the family, the longer the resolution of those factual issues takes, the longer a child remains out of parental custody with no legal determination of the truth of those facts. The parents sometimes disagree with the allegations in the petition and wish to contest the matter. Psychologically, they are "fighting the case" rather than engaging in services that might ameliorate the issues that brought their child to the attention of CPS. Until the issues raised in the petition are resolved, they will not be ready to engage in rehabilitative services and cooperate with CPS. Furthermore, the longer the child remains in out-of-home care, the more likely that the parents will give up and assume that the "all-powerful" state has taken their child and they can do nothing about it.

All of this supports the conclusion that the adjudicatory hearing should take place within a 60-day period at the outside, and preferably within 30 days.¹¹² That would meet the federal standard and would put the

case in a timeframe that would give the parents a year to address the problems that brought their child to the attention of CPS. It would mean that the permanency planning hearing would take place after a period of efforts to reunify the child and the parents, but most importantly it would indicate that the court system pays close attention to these cases, recognizes that they are of great importance, and ensures that there are early and intensive efforts to address the child's situation.

VII. MAKING CHANGES IN THE COURT SYSTEM TO ACHIEVE TIMELY PERMANENCY

Timely permanency is an achievable goal. The federal and some state statutory schemes may be challenging, but they can be met, as those states with short timelines to adjudication have demonstrated. Moreover, even states without statutory or court guidelines can move these cases in a much more timely fashion. However, change is not as easy as it may sound. After all, many courts are out of compliance with their own statutes in case after case. No judge is comfortable participating in a court system where hearings do not comply with statutes. Judges take seriously the command of Canon 3(A)(5) that the "judge shall dispose of all judicial matters promptly, efficiently and fairly."¹¹³ It is the complexities of child protection cases combined with overcrowded calendars and the inherent delays in the legal system that lead ultimately to development of a local legal culture that accepts delays.

Modifying the court system takes considerable effort by the court and the professionals involved in child protection cases. It may also take the assistance of the state's highest court and, on occasion, the state legislature. Jurisdictions that have been able to change local practice to hold hearings early in the court process offer examples of how change can be accomplished.

Achieving timely permanency starts at the beginning of the case. The work accomplished in the first few hours and days will set the pace and tone for all that follows.¹¹⁴ Thereafter, the principles of sound caseflow management will enable a court to adhere to the appropriate timelines and achieve timely permanency.¹¹⁵ The following suggestions and recommendations offer ways for judges and other court leaders to make the changes necessary to achieve timely permanency for foster children.

A. Time Standards and Early Resolution

1. Legislators or court leaders must establish time standards for moving child protection cases through the court system.¹¹⁶ These time standards should encompass a timeline for child protection cases from the first to the last hearing.¹¹⁷ The shelter care hearing should be an emergency hearing that takes place within 24 to 48 hours or less of the physical removal of the child from parental care. The adjudicatory hearing should take place no more than 60 days from the removal, although a time limit of 30 days is preferable. Court leaders must examine the state legislative scheme for any time frame, including completion of adjudication.¹¹⁸ They should encourage the legislature to reduce the time to adjudication to 60 calendar days or less.¹¹⁹ Court leaders should have no difficulty approaching lawmakers on matters involving court improvement. The *Resource Guidelines* and other national policy makers recommend 60 days.¹²⁰ Sixty days is also the federal statutory limit.¹²¹ If no legislation exists, court leaders must work with the state's highest court to develop administrative rules defining time standards.¹²² If that effort is unsuccessful, local court leaders must enact local rules.

In the establishment of time standards, the legislature and/or courts may wish to consider procedural rules that provide incentives for parties to limit the number of continuance requests or sanctions for failure to complete specified tasks within a specified period. Or the Commission on Judicial Performance may consider timeliness in decision making as serious enough to justify a sanction. The Utah Supreme Court removed a juvenile dependency judge from office for failing to adjudicate and decide cases in a timely fashion.

[W]e hold that Judge Anderson has violated his obligations as a judge, specifically in that he failed to hold adjudication hearings in a timely manner, and held two cases under advisement for a period in excess of two months. This action constituted a pattern of disregard and indifference to the law in violation of both Judge Anderson's oath of office and the Code of Judicial Conduct....¹²³

One commentator suggested that the parties be limited to a total number of days of continuances during the pendency of litigation.¹²⁴ Several state legislatures have

passed laws limiting the time for completing adjudication with the sanction of dismissal if the hearing is not completed.¹²⁵ The difficulty with mandatory dismissals, however, is that unless there are other safeguards, the child may be returned to an abusive or neglectful environment. The best interests of the child must prevail.

2. Legislators and court leaders must ensure that any legislation, administrative rule, or local court rule emphasizes resolving the adjudication of cases before the established time standard, whether that is 60 days or a lesser period.¹²⁶ The time standard should be an outer limit for resolving adjudication issues, not a starting point. Kent County (Grand Rapids), Michigan, is an excellent example of a local jurisdiction that sets and enforces stricter timelines than those required by the state statute. Under Michigan law, the adjudication of abuse and neglect cases must be made within 63 days from the date the child was placed outside the home. Kent County has set a 42-day limit and, while the court may grant extensions for good cause, any continuance is for only a week or two. Moreover, the trial judge must make a record of the reasons for any extension.¹²⁷

Whether legislatively mandated or created by court rule, time standards should not be at the expense of quality decision making about family members' rights. The juvenile dependency process should not be a rush to permanency that fails to give the parents a fair chance for reunification. The judge must ensure that parents receive early and appropriate services so that they have a realistic chance to reunify with their children.

3. Juvenile court judges must accomplish as much as possible at the shelter care hearing. The more the court can accomplish at the shelter care hearing, the more meaningful each hearing thereafter will be, and the more likely that the case will be resolved early in the court process.¹²⁸ The *Resource Guidelines* recommend that the shelter care hearing be scheduled for an hour of court time.¹²⁹ Many courts do not have the time available for a one-hour hearing; however, every court must perform the functions outlined by the *Resource Guidelines* and in section II-A of this paper (see page 3) at some time.¹³⁰ Of course, to address most of these issues, the court must appoint counsel for the

parents and counsel/GAL for the child, and must find that reports have been distributed and read by the parties.¹³¹ If all these issues can be addressed at the shelter care hearing, the parties will more likely be in a position to understand the nature of the proceedings and be able to discuss possible resolution at or before the next hearing.

B. Early Procedures for Resolution of Adjudication

Presiding judges and court administrators should implement procedures that enable and encourage resolution prior to scheduled hearings, and, in particular, before the adjudicatory hearing. Several case management tools should be considered. All of these tools are being used by some courts around the nation. All have had a positive impact on finding solutions for children caught in the foster care system. Some of these procedures include identifying extended family members, having group discussions concerning the needs of the children,¹³² and addressing issues while they are still fresh in everyone's mind. Since they all take place early in the legal process, they are also consistent with the children's need for early resolution of the legal matters.

1. Court-Based Mediation

For over a decade many child protection courts have used mediation to resolve cases early and effectively.¹³³ In child protection mediation, specially trained neutral professionals facilitate resolution of child abuse and neglect issues by bringing together, in a confidential setting, the family, social workers, attorneys, and others involved in a case.¹³⁴ Mediation's success in family matters has been acknowledged for years by scholars and practitioners alike.¹³⁵ Mediation can be used at any stage of the proceedings, but it is very effective in the early stages when there is information that has not yet been exchanged among the parties, the parties have not become entrenched in an adversarial stance, and there is an urgency to start working on rehabilitative plans so that children can be safely returned to their parents.¹³⁶ Furthermore, evaluations indicate that cases reach permanency more quickly when they are mediated.¹³⁷

Some commentators have recommended that mediation not be conducted where there has been domestic violence between the parties.¹³⁸ They argue that putting the victim together with the perpetrator will result in an

unfair advantage for the batterer and that the mediation cannot be safely managed by the mediator.

The experience in California and elsewhere indicates that with appropriate procedures in place, mediation can be safely and fairly conducted even when there has been a history of violence between the parties. Twenty-five years of practice in California has led to the development of refined practices and procedures that address the concerns expressed by the critics. These best practices have been built into statutes and court rules.

First, mediators must meet minimum employment and training requirements.¹³⁹ Second, the court process must screen for any history of violence between the parties.¹⁴⁰ If violence is detected, the law mandates that, if detected or if the mediator decides, the mediator shall meet with the parties separately at separate times.¹⁴¹ Further, if the mediator learns of a violent history any time during the mediation, the mediator must ask the victim if he or she would prefer a separate session or other safety precautions during the mediation. Additionally, the victim may have the assistance of a support person throughout the process.¹⁴² Finally, the mediator may terminate the mediation at any time and refer the case back to the formal court process.¹⁴³

National experts agree with the California approach. In 1994, the Family Violence Department of the National Council of Juvenile and Family Court Judges wrote *Family Violence: A Model State Code*.¹⁴⁴ The Model Code recommends that there be no mediation where there has been violence between the parties *unless* the court finds the mediation is provided by a certified mediator trained in the dynamics of domestic violence and the mediation service provides procedures (such as a support person) to protect the victim from intimidation by the alleged perpetrator¹⁴⁵ (emphasis added). Evaluations of the mediation process confirm that victims of violence and victim advocates prefer appropriately conducted mediation to the formal court process.¹⁴⁶

The mediator's expertise, the safety protocols, attorney involvement, and the mediator's ability to return a case to the court process ensures that there is no power imbalance between the parties or other complications that might make the process unfair to one or both parties. This also makes it possible for extended family members to participate in the mediation as well as chil-

dren, depending on their maturity.¹⁴⁷ When the process is refined as it has been in some jurisdictions, the judge decides whether the parties participate in mediation. The mediator working with the parties and attorneys determines who will participate in the mediation.

Strong judicial leadership is critical for the establishment, growth, and maintenance of a successful mediation program.¹⁴⁸ Many commentators mention that judicial leadership is necessary to overcome the opposition to mediation from some professionals within the child protection system, who often prefer the traditional adversarial process and resist non-adversarial alternatives.¹⁴⁹

There was considerable resistance by all professional groups when dependency mediation was introduced into the system, but this resistance was short lived.¹⁵⁰

Related to this resistance has been the reluctance of some judges to refer cases to mediation, believing that traditional courtroom methods are adequate and mediation unnecessary.¹⁵¹

In many jurisdictions the major drawback to full implementation of mediation has been the lack of funding.¹⁵² Since child protection proceedings are state initiated, no money is generated by filing fees. Moreover, most parents who appear in these cases are poor and unable to pay for mediation services, so that the court must bear the full cost. Severe court budget cutbacks in several child protection mediation programs in California and other states have led to reductions in the service, while other programs have simply closed down.¹⁵³

These financial problems are counter-productive since child protection mediation evaluations are unanimous that mediation settles cases, produces satisfactory results, is preferred by clients, and provides cost avoidance.¹⁵⁴ Moreover, mediation also results in cases resolving earlier and children reaching permanency more quickly than non-mediated cases.¹⁵⁵

2. Second Shelter Care Hearings

Second shelter care hearings are an innovation developed in the Multnomah County Model Court (Portland, Oregon)¹⁵⁶ in 1998.¹⁵⁷ These hearings take place from 7 to 14 days after the initial shelter hearing which by state statute is held within 24 hours of removal of the child. Court leaders developed the second shelter care hearing because they were unable

to collect important information at the initial shelter care hearing and thus were unable to identify and locate parents and resolve many of the issues that needed to be addressed at the initial hearing.¹⁵⁸ Under the court's new protocol, those present at the initial shelter care hearing identify the issues that will be addressed at the second shelter care hearing. Those usually include locating parents, obtaining service, clarifying paternity issues, ICWA (Indian Child Welfare Act) issues, ensuring that all parents and children are represented by counsel, and obtaining assessments or developing safety plans for the return or placement of the children. It is the practice in the Multnomah juvenile court that the same parties, attorneys, social worker, and hearing officer appear at both hearings. The judicial officer is assigned to hear all further proceedings in the case.¹⁵⁹

Another result of the implementation of second shelter care hearings is that the court can now accomplish what was intended when the *Resource Guidelines* authors outlined what should be accomplished at the initial shelter care hearing.¹⁶⁰ The *Resource Guidelines* recommended that the court devote one hour to fully address the issues that needed to be resolved at the initial shelter care hearing.¹⁶¹ The expanded second shelter hearing has enabled the Multnomah juvenile court to prepare adequately for and address these issues.

One result of the second shelter care hearing has been increased judicial continuity through completion of adjudication. Additionally, more fathers have been identified and in less time than before implementation, and more extended family members have been involved earlier in the case process than before.¹⁶² There has been more participation by parents at the adjudication hearing, and the time for ICWA determinations has been shortened. Finally, professionals working in the court system are generally satisfied with the results of the second shelter hearing, although they state that these hearings should be held on a case-by-case basis, indicating that they believe in some cases they were unnecessary.¹⁶³

3. Family Team Meetings (FTM) and the District of Columbia

In 2005, the District of Columbia developed a unique early process that brings extended family members together immediately after a child has been removed

from parental care by the government and engages them in the court process from the start of a child protection case.¹⁶⁴ The Family Team Meeting (FTM) program has eight guiding principles:

- a. Family Inclusive Philosophy: Meaningful family participation in planning and decision making.
- b. Strength- and Need-Based Planning: Strengths-based assessment and plans are vitally important.
- c. Ongoing Assessment and Planning: Plans are flexible for changing family needs.
- d. Team-Based Approach: Providing assistance to children and families requires a family inclusive team.
- e. Multi-Systemic Intervention: Crucial to assessing, planning, and providing suitable resources to children and their families.
- f. Cultural and Community Responsiveness: Promote involvement of the community of origin in the planning with the families and children.
- g. Brief Strategic Solution Focused Intervention: Use of flexible and easily accessible resources used to support those solutions.
- h. Organizational Competence: Committed, qualified, trained, and skilled staff, supported by an effectively structured organization.¹⁶⁵

Pursuant to the protocol, Family Finding¹⁶⁶ techniques are used immediately after a child is removed from parental custody and before any court hearings, and extended family members are contacted and convened to address the problems facing the child and family members.¹⁶⁷ The family members work with agency representatives to come up with a plan for the children, often including placement with one of the same family members. Evaluations indicate that the process results in faster placements, increased placement with family members, and fewer entries into foster care.¹⁶⁸ The FTM process includes legislative authorization for the court to extend the time for the initial (shelter care) hearing from 24 to 72 hours from removal of the child. The extra time permits the extended family to meet and devise a plan which is then presented to the court.¹⁶⁹ It does not appear that the time extension prejudices the parents—indeed, the evaluations indicate that the parents appreciate the extra time to meet with their attorney and to prepare for that hearing.¹⁷⁰ Judicial officers are also pleased with the results of the program.¹⁷¹

4. Settlement and Pretrial Conferences

Some courts use more traditional methods such as settlement and pretrial conferences to manage child protection cases prior to adjudication.¹⁷² In 1997, the Pima County (Tucson), Arizona, juvenile court implemented a pilot project intended to improve court practice relating to abused and neglected children.¹⁷³ One critical area for innovation was the court's effort to "front-load" the system between removal of the child and the dispositional phase.¹⁷⁴ In 1997, the Arizona legislature had shortened the time frame for child protection cases such that the initial shelter hearing was to be held within 5 to 7 days from the filing of the petition (reduced from 21 days). The most important innovation was the requirement that the court conduct a formal pre-hearing conference immediately prior to the shelter care hearing.¹⁷⁵ At the pre-hearing conference, the parents are advised of the initial shelter care hearing and their rights; attorneys appear with the parents, and the GAL appears on behalf of the child (appointed at the time the petition is filed), and issues such as placement, services, and visitation are discussed.

One of the results of the Pima County Juvenile Court innovations is a shorter time to the completion of adjudication—from 78 days to 57 days.¹⁷⁶ Cases are getting to court earlier, and the court process has become more substantive.¹⁷⁷ Parents are feeling more empowered and have a better understanding of what is expected of them in the reunification process.¹⁷⁸ Other results include increased family reunifications, shorter times in out-of-home care for children, and shorter times under juvenile court jurisdiction.¹⁷⁹ The Arizona state legislature was so impressed with the work of the Pima County juvenile court that they passed legislation in 1998 that required the juvenile courts to front-load the court process in ways similar to what Pima County had instituted.¹⁸⁰

A number of states have implemented pre-trial hearings in child protection cases. The Utah legislature has mandated pre-trial hearings in every child protection case.¹⁸¹ They must occur within 15 days of the shelter care hearing and result in a high percentage of settlements.¹⁸² The Connecticut juvenile courts have instituted a case management project that brings the parties and attorneys together with a trained facilitator at the time of the first hearing to determine whether the case can be resolved. The results of this project have been

successful in resolving a high percentage of cases.¹⁸³

In Philadelphia, Pennsylvania, court improvement efforts have included a pre-hearing conference before every adjudicatory hearing.¹⁸⁴ The hearings have been successful in that agreements have been reached regarding petition allegations, placement, visitation, and services in over 70% of cases where parents appeared.¹⁸⁵ In the District of Columbia, the presiding judge has required that all family court judicial officers schedule the mediation, pre-trial hearing, and trial dates within the 45-day period following the initial hearing.¹⁸⁶ In Cook County, Illinois, Judge Nancy Salyers (ret.) created a “55 Day” hearing after the temporary custody hearing and before adjudication in order to address all issues facing the child and family. This was a critical part of her efforts to reduce the time to adjudication.¹⁸⁷ Minnesota court rules require a pretrial conference in every case where a denial has been entered so that settlement may be attempted and/or issues narrowed for trial.¹⁸⁸

Local Santa Clara County, California, rules require a settlement conference before any contested hearing.¹⁸⁹ This practice brings the parties and their attorneys together usually before a judicial officer to discuss the issues, to attempt to resolve some or all of the contested matters, and, if resolution is unsuccessful, to clarify time estimates and identify any problems that might interrupt or slow down the trial.¹⁹⁰

C. Judicial Leadership in Court Management

1. Cases will move along more expeditiously only if judges make movement a priority.¹⁹¹ As the leader of the court, the judge’s attitude toward resolution of cases will set the tone for the court system. For example, judges should stress that child protection cases are similar to a medical emergency at a hospital, and urge all professionals to treat each case as such.¹⁹² Such leadership is necessary to avoid judges being part of the problem.¹⁹³

2. The court, not the attorney or the parties, must control the pace of litigation.¹⁹⁴ As one commentator put it, “If the court does not establish and control the pace at which cases proceed, then who does?”¹⁹⁵ This means that the court must know where cases are in relation to the time standards set by the court.¹⁹⁶ Some courts use case management systems while others have developed their

own means of keeping track of cases, particularly those that exceed statutory timelines.¹⁹⁷ Whatever the system employed, courts need to ensure that the case management system that they have established tracks cases and can inform them if they are out of compliance.

Traditionally, attorneys have controlled the pace of litigation—prosecutors in criminal cases and plaintiffs in civil actions. In many juvenile dependency courts the agency has controlled movement of cases through the system. Factors such as how long it takes a social worker to complete a report and agency policies have set the pace. The court can accommodate the legitimate needs of the parties, the attorneys, and the social workers, but ultimately, the court runs the court system including case management. That is its responsibility.¹⁹⁸

One method of ensuring that the court can control the pace of litigation is to assure that judicial officers directly control their own calendar and scheduling of their own cases.¹⁹⁹ This assurance gives the judicial officer full control and responsibility for the flow of cases in his or her courtroom.

3. Judges must ensure that timeliness is a guiding principle in the juvenile dependency court.²⁰⁰ To realize this principle, judges must enforce a strict continuance policy and avoid unnecessary continuances (set-overs) or delays of court proceedings.²⁰¹ Judges should not permit stipulated continuances by the attorneys or other agreements that the case will be set-over without individualized reasons, carefully reviewed by the court.²⁰² This can be a burdensome and unpopular judicial task, but when the attorneys know that the judge is strict about granting continuances, they will be less likely to ask for them and more likely to resolve issues in a timely fashion. One important reason why judges need to control continuances is that there is a correlation between the number of times a case is continued and the time a child’s case remains in the court system.²⁰³

It is also true that some attorneys attempt to delay the proceedings believing that their clients benefit from slowing down the process. This is a carry-over from the criminal courts where delay is a tactic often employed effectively by defense counsel. However, in child abuse and neglect proceedings, delay will probably not help the parents as it may persuade them that the proceedings are not urgent. Instead, the attorneys

should be insisting on the early delivery of services to the parents.

Some state legislatures have begun to impose mandates on the juvenile court's discretion to grant continuances.²⁰⁴ The California legislature has discouraged the granting of continuances, outlined the procedures that must be followed to have a continuance motion heard, and legislated that no dispositional hearing shall be continued beyond 60 days from the date the child was removed from the parent.²⁰⁵

One effective means of controlling a calendar is to schedule hearings so that they are heard on the scheduled date.²⁰⁶ To establish realistic trial dates, the court must set aside enough time so the trial can start as scheduled and allow sufficient time to complete the trial without a continuance.²⁰⁷ It is well known that once attorneys know that the trial will take place, the chances of settlement are enhanced both at the settlement conference and on the day of trial.

D. Careful Attention to Each Case—Some Nuts and Bolts

To achieve timely permanency, trial court judges must pay attention to the details of each case and of the court process. By examining these details, judges can significantly reduce the time to resolution of adjudication and disposition.

1. Courts must assure that timely notice has been served on all parties, particularly potential fathers and Indian tribes.²⁰⁸ A frequent delay in child protection proceedings occurs when a father appears after six months of court hearings or when the court learns late in the case that the child is a member of an Indian tribe.²⁰⁹ These late discoveries may cause the court process to start over again. In some states the notice procedures are so stringent that the case does not move forward for months.²¹⁰ A number of best practices have been developed for locating fathers.²¹¹ Consultants at the National Center for State Courts have recommended creating a juvenile court-based "Diligent Search Office" with one person assigned to locate and make service on absent parents in child protection cases. This person would soon develop the expertise necessary to permit the court to make predictable expectations about the time necessary to complete service of process.²¹² In Kent

County, Michigan, continuances for noticing of parents are minimized because a senior attorney has trained children's agency staff to complete timely reasonable efforts searches for missing parents.²¹³

Additionally, courts should inquire about each parent's address each time a parent appears in court. Many parents change addresses during legal proceedings, complicating the court's efforts to notify them of court hearings. California requires a parent to fill out an address form that is placed in the court file. That address is considered to be the parent's legal address until a new form is filled out.²¹⁴

2. Judges should not continue a child protection case because of a pending criminal case.²¹⁵ On occasion the conduct that brings the child to the attention of child protection authorities also results in criminal charges against one or both of the parents. In many court systems, criminal cases proceed more slowly than child protection cases. This often occurs because defense counsel needs time to prepare and believes that delay will be an advantage to the defendant. The fact that criminal proceedings are pending is not sufficient reason to delay the child protection case. Parents can be offered some protections. In some states, the law does not permit statements by the parent made in the child protection proceeding to be used in the criminal proceeding.²¹⁶ In states with no such statutory protection, the parent may decide not to make any statements in or out of court in the child protection proceeding, but CPS still must prove its case. The possible prejudice to the parent in having the child protection case proceed before the criminal case is outweighed by the prejudice that would attach to the child who must wait for months and possibly years for completion of the criminal case before her case can be heard in juvenile court.

3. Judges should adopt a policy that whenever an adjudicatory hearing commences, it will continue to be heard on successive days until completion.²¹⁷ Hearings heard piecemeal create multiple problems for the court, the attorneys, and the parties. Between hearings memories fade, new evidence is discovered, and unanticipated scheduling conflicts arise. Parents become frustrated with prolonged hearings, and children wait to learn

about their future. Such a practice can also lead to tragic results. As one appellate court noted,

This case presents a dramatic example of the vital importance of timeliness in the early stages of dependency proceedings. The petitions were filed in early June 1999, and the minors were detained. It was not until late September that the matter was finally concluded with a finding that the petitions were not meritorious. Thus for nearly one-third of this year petitioner's family was split apart and doubtless the relationships among family members damaged. DHHS can and must do better.²¹⁸

Criminal and civil courts do not permit such delaying procedures—and neither should juvenile dependency courts. Establishing a panel of pro-tem or retired judges to substitute in emergency situations is one way of addressing this need.²¹⁹

4. When a case must be continued, judges should make the continuance as short as possible, particularly when the issue is the truth of the petition's allegations. This is an extremely challenging issue, but one that can be effectively addressed with careful planning. The first problem is that the court calendar (docket) is already crowded with other cases. The second problem is that the attorneys, social workers, and parties all have other obligations. Simply setting a new calendar date can be one of the most frustrating and complex hearings any court will encounter. Nevertheless, to "give up" and set the case out four to five months is a result that will be detrimental to the child and family.

Court practices around the country offer possible solutions to this problem.

- a. Some courts set aside one day or an afternoon a week for such emergencies.
- b. Some courts have worked with the attorneys representing the parties to ensure that counsel is dedicated to one courtroom and, therefore, always available.
- c. Some larger courts have teams of attorneys representing parties so that if one team member is unavailable, the other attorney-member is ready to proceed.
- d. Many courts have hearings to determine the status of each case before setting the matter for trial (see

the discussion at VII B 4 *infra*). Since a trial will take more time than an uncontested hearing and court time is a scarce and valuable commodity, these earlier hearings can explore settlement, determine the numbers of witnesses and whether any experts are to be called, exchange expert reports, indicate how long the attorneys believe it will take to present their cases, whether some testimony can be received in a documentary form (or by offer of proof), what stipulations the parties are prepared to make, and whether the court needs to make special accommodations for any witnesses. In other words, after such a status hearing, the court has a good knowledge of the time necessary to complete the adjudication and that there will be no "surprises" to upset this estimate.

- e. Many courts have written local rules outlining how the court expects the attorneys and parties to manage their cases. Santa Clara County, California, offers an example of rules governing juvenile dependency cases.²²⁰

5. Judges should attempt to get at least some decisions or some work completed on the date of the scheduled hearing even though some aspects of the case must be continued. For example, if a report arrives late, ask the attorneys and parties to read the report and confer about whether the court can proceed even with late-breaking information. Often the new information does not bear upon some of the issues that the court can resolve.

The court can also ask the parties to confer and to come back the same day, after a few hours or after the luncheon recess. By stressing the importance of the timely completion of the legal issues before the court, the parties may be able to work out an agreement or agree that the court can make a decision.

6. Courts should implement a practice that the next court hearing is scheduled before the parties leave the courtroom.²²¹ The practice of sending out notices to inform parties of the next hearing date without knowing who is available to attend is inefficient and also runs the risk of not notifying parties, particularly parents, who may change addresses.

7. While it may be necessary to take some issues under advisement to complete legal research and writing before

issuing a decision, nevertheless judges should work with all due diligence to render their decisions as soon as possible. Some state statutes or administrative regulations require that a judge file a decision in certain types of cases within a time limit,²²² and a number of states require that a judge render a decision within a certain time period or be subject to consequences.²²³ In juvenile dependency cases, the urgency to render timely decisions within even shorter limits is compelling. With these considerations in mind, many judges rule from the bench or make their decisions immediately after the trial.

8. Judges should insist that whenever possible, the disposition hearing should follow directly after completion of the adjudicatory hearing.²²⁴ This can be accomplished if the social worker prepares her report for the adjudicatory hearing and includes recommendations for the dispositional phase of the case.²²⁵ If the case must be continued for preparation of the social worker's report, it should be for a short period of time.²²⁶

E. Modifying the Court Structure

Some changes have more to do with the structure of court operations than with what judges should be doing with individual cases.

1. One Judge/One Family and Long Judicial Assignments

Presiding judges will achieve better results for children and families if they ensure that the court's case management policies assign one judicial officer to hear a case from beginning to end.²²⁷ The policy of one-judge/one-family or direct calendaring ensures that the same judicial officer will hear a case from shelter care hearing through the attainment of a permanent plan.²²⁸ The judge who hears all matters relating to a child or family develops expertise about that family, understands their needs, and can develop a productive working relationship with them as new problems arise. Issues that come before the court can be more expeditiously managed since the judge understands which issues have been previously litigated, what the parents have done that brought the child to the attention of the authorities, and what the plans for the family are.²²⁹

Judicial tenure also affects judicial effectiveness. It takes time for judges to understand the complex juvenile dependency system. Judges who remain in the juve-

nile court for extended numbers of years are in a better position to take control of their dockets and move cases along expeditiously.²³⁰ Long-term assignment to the juvenile court bench is a recognized best practice by many policy publications.²³¹

2. Regular Systems Meetings

Judges should convene regular meetings of all participants in the court system, and particularly the Agency Director, to address issues relating to court improvement and other administrative issues including the timely resolution of child abuse and neglect cases.²³² The issues to be addressed at these meetings can include all administrative and legal issues relating to delays in the court process such as notice for hearings, lateness of social worker reports, transportation of prisoners, location of fathers, timely appearances by attorneys, and other barriers to timely completion of hearings.

3. Early Appointment and Involvement of Attorneys

Presiding judges and other court leaders must ensure that the parents are represented by well-trained, effective counsel as early as possible in the court process and throughout the life of a dependency case.²³³ Early assignment of counsel can make a significant difference, particularly if counsel can confer with their clients before the initial hearing.²³⁴ Improved representation for parents has been demonstrated to reduce the amount of time children wait to reach permanency.²³⁵ Moreover, the reduction in time to complete the shelter care and adjudicatory hearings can lead to significant increases in family reunification.²³⁶

Judges must also appoint counsel/guardian *ad litem* for the child as early as possible in the case.²³⁷ The longer the delay in the appointment of counsel, the longer the delay before court work can commence and legal issues be resolved. Additionally, court systems should encourage the creation of attorney teams, serving designated departments (courtrooms). The team concept enables court business to take place even in the absence of one attorney since a team member can speak for the client.²³⁸

4. Borrowing from the Civil Courts

Juvenile courts can borrow some of the techniques developed by civil trial court reduction successes. These include:

Time standards, early screening and disposition of cases, innovative calendaring techniques, alternative dispute resolution, supportive technology to track cases and develop management information, systems analysis to identify bottlenecks, procedural changes, enforcement of deadlines and stringent standards for continuances, forceful judicial leadership, ongoing communication with the various agencies and the bar, case differentiation, discovery controls, [and] pretrial conferences.²³⁹

Congress has passed legislation addressing judicial accountability regarding timely resolution of cases in the federal courts. The legislation requires the Director of the Administrative Office of the United States Courts to prepare a semi-annual report for every federal district judge and magistrate. The report must identify all motions and bench trials that have been pending for more than six months.²⁴⁰

Ideally, time standards and goals should be incorporated into court rules and made legally binding upon the court. Serious breaches of court deadlines should be brought to the attention of the Chief Judge.²⁴¹

The Utah state courts keep meticulous records regarding each judge. One judge was removed from office for failing to adjudicate juvenile dependency cases within the statutory time lines.²⁴²

F. Policy and Resources

1. Legislatures should consider shorter timelines for younger children who are the subjects of child protection proceedings. Several states have recognized the child development principles reviewed in Section III and reduced the reunification period for younger children.²⁴³ In California, six months of reunification services are offered to parents of children who are under three when they enter the child protection system.²⁴⁴ Utah has a similar statute²⁴⁵ as does Colorado.²⁴⁶

2. Legislators and presiding judges must ensure that juvenile courts have adequate resources to effectively address delay reduction. While it is true that the steps outlined above will all have an impact on reducing delays in the juvenile dependency court, in the most impacted courts, adequate resources will be necessary

to complete the task.²⁴⁷ Thus it was necessary for the Cook County, Illinois, courts to work with state and local legislators to add 24 hearing officers in the juvenile dependency court before the court could reduce its enormous caseload of over 55,000 children to its current caseload of under 10,000.²⁴⁸ When the District of Columbia reformed its juvenile dependency court, it discovered that the court needed to add a number of judicial officers.²⁴⁹ The Utah state court system added five judges statewide to address child welfare needs in the courts.²⁵⁰

Appellate courts recognize the challenges of the trial court and encourage them to complete their work despite overwhelming caseloads.

We are mindful that juvenile court judges, while diligent and caring, are overworked and doing their best to juggle ever-increasing caseloads while suffering grossly inadequate resources. The current judge in this case, alone, handles a daily calendar of 40 to 50 cases, including 4 to 5 trials designated as “no time waiver” cases because the minors are detained outside the home. While each division of the court is vitally important to the litigants and to society, there is no division of greater importance than the juvenile court, which deals with the sensitive parent-child relationship and the potential of horrendous damage to children.²⁵¹

VIII. THE CHANGING ROLE OF THE JUDGE

If children are going to reach timely permanency, many courts will have to change the way that business is conducted.²⁵² That responsibility falls to the judges who run the court and each courtroom therein. Judges are responsible for outcomes in court, including whether cases are heard within statutory timelines. The changes that are necessary will have to begin with judicial leadership.²⁵³

For some juvenile court judges, the observations and recommendations in this paper will be familiar. They have been running their courts efficiently, resolving cases within state and federal guidelines, and children have been achieving timely permanency. They understand that reducing delay involves intense efforts regarding court administration and the nuts and bolts of everyday court operations. For others, many of these ideas, while not foreign, will be frustrating and will be resisted. They may believe that adopting the suggested approaches to

caseflow management will turn them into bureaucrats or administrators and will change their role significantly. Moreover, they suspect (correctly) that the responsibilities created by adopting the changes suggested above will create more work and increase job-related pressures for them, and in particular for the presiding or administrative judge.²⁵⁴ Commentators have pointed out that to be successful in court management, the judges will have to work harder and will have to work in teams with court administrators and other staff.²⁵⁵

This is not a new role for the juvenile court judge. For over a hundred years juvenile court judges have broken from the mold of the “neutral magistrate” and have fulfilled their expanded role as judge, administrator, collaborator, and advocate for the court and the children and families who appear therein.²⁵⁶ This is a necessary role for the judge to play if children are to reach timely permanency.

IX. CONCLUSION

Children are different from adults. Their development, their sense of time, and their needs are all different from adults. Sometimes it is difficult for a legal system created and operated by adults to understand these truths. Perhaps years ago some court leaders might have been understandably excused from appreciating and responding to the unique needs of children before the court. The social and medical sciences had

not provided such a rich literature about children and their development as we have today. However, there are no viable excuses today. Today we know that children’s special needs are a powerful justification for the courts to modify their practices to accommodate, or at least be tailored, to meet those needs. A well-known state Chief Justice created an entire court reform with the theme “Through the Eyes of a Child.”²⁵⁷ Her choice of this phrase was significant—it identified the child’s needs as paramount when courts improve their procedures and practices.

Judges can and should modify the way that they do business in their juvenile dependency dockets in order to address the special needs of children and families, to follow the law, and to follow the Judicial Canons of Ethics. We know that it can be done as there are many examples of court systems that have made the necessary changes.²⁵⁸ Now, judicial leaders in every state and every judicial district must take up the cause and make the necessary changes to fulfill their judicial responsibilities. They owe that to the children and families who appear before them. The results will be more court oversight of dependency matters; more monitoring of cases as they move through the system; better policies and practices; more frequent hearings; more and better information available to each judge; and better outcomes for the children and families in the court system.

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END NOTES

- 1 The state court that hears child protection cases is usually referred to as a juvenile or family court. It is also called a child protection court, CHINS (Children In Need of Supervision), CHIPS (Children In Need of Protection), CINC (Children in Need of Care), and other names. The term juvenile dependency court or juvenile court will be used throughout this paper.
- 2 42 U.S.C. §§ 675 et.seq. (1980); P.L. 96-272.
- 3 Leonard Edwards, *Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980*, [hereinafter *Improving Implementation*] 45 JUVENILE AND FAMILY COURT JOURNAL, 3-28, 4 (Summer 1994).
- 4 *Id.* at 16. Moreover, Congress did not appropriate any monies to help the courts respond to these new responsibilities. Many state and local courts have had to request legislative support to add judicial resources in order to address the additional legal work created by The Act. See the discussion at VII-F 2, *infra*.
- 5 One of the principal concerns of the legislatures was the phenomenon of foster care “drift.” This refers to children who, once placed in foster care, become lost in the foster care system, “drifting” from home to home thereafter, never achieving permanency. See M. Garrison, *Why Terminate Parental Rights?*, 35 STANFORD LAW REVIEW, 423 (1983).
- 6 42 U.S.C. § 675(5)(C)(1989).
- 7 “However, there seems to be a growing belief that Federal statutes, the social work profession, and the courts sometimes err on the side of protecting the rights of parents. As a result, too many children are subjected to long spells in foster care or are returned to families that reabsorb them.” H.R. REP. 105-77, H.R., Rep. No. 77, 105th Cong., 1st Session, 1997 U.S.C.C.A.N. 2739, 1997 WL 225672 (Leg. Hist.), at 8; See generally, *Barriers to Adoption: Hearings on S. 104-76 Before the Subcommittee on Human Resources of the House Committee on Ways & Means*, 104th Cong., 2-5 (1996); H. Davidson, 33 FAMILY LAW QUARTERLY, 765-782, 771 (2000).
- 8 “Children are experiencing increasingly longer stays in foster care...The emerging statistical picture shows that young children are spending substantial portions of their childhood in a system that is designed to be temporary.” H.R. REP. 105-77, *id.* at 11; During the hearings on ASFA, David S. Liedermann, Executive Director of the Child Welfare League of America testified that,

[d]espite improvements and progress, the nation’s collective response to abused, neglected and abandoned children is failing to provide both protection and permanency for many children. There are many reasons for this, not the least of which

is the tripling in the number of children reported abused and neglected since 1980, the failure of state, Federal and local targeted resources to keep pace with this rise.

Encouraging Adoption, 1997: Hearings on H.R. 867 Before the Subcommittee on Human Resources of the Ways and Means Committee, 105th Cong., 36 (1997); U.S. GOVERNMENT ACCOUNTING OFFICE, FOSTER CARE: STATES’ EARLY EXPERIENCES IMPLEMENTING THE ADOPTION AND SAFE FAMILIES ACT, [hereinafter FOSTER CARE: STATES’ EARLY EXPERIENCES], GAO/HEHS-00-1 (December 1999), at 4.
- 9 42 U.S.C. § 675 (5)(E). ASFA also extended the “reasonable efforts” requirement to include the agency’s attempts to reach timely permanency after a permanent plan had been established. 42 U.S.C. § 675 (5)(C); “By contrast, ASFA set definitive and relatively short timeframes, including time limits to reunify children with their parents and time-specific mandates for the filing of petitions to terminate parental rights.” M. FREUNDLICH & L. WRIGHT, POST-PERMANENCY SERVICES, Case Family Programs, (2003), at 4.
- 10 42 U.S.C. § 675 et. seq. (2007); S. Christian, *1998 State Legislative Responses to the Adoption and Safe Families Act of 1997*, 24 STATE LEGISLATIVE REPORT, 5, (March 1999); “In response to the passage of ASFA, states enacted their own enabling legislation and developed administrative policies and procedures.” FOSTER CARE: STATES’ EARLY EXPERIENCES, *op.cit.* note 8 at 2.
- 11 143 CONG. REC. S12,670 (daily ed. Nov. 13, 1997) (statement of Rep. Kennelly) (“This legislation we can all agree on is putting children on a fast track from foster care to safe and loving and permanent homes.”), *Id.* at S12,671 (statement of Sen. Rockefeller) (saying the bill would “move children out of foster care and into adoptive and other permanent homes more quickly and more safely than ever before.”); *Improving Implementation, op.cit.* note 3, at 4-6. Foster care drift also resulted in more moves from foster home to foster home and all of the instability associated with multiple placements; STAFF OF HOUSE COMMITTEE ON WAYS & MEANS, 104TH CONG., 1996 GREEN BOOK 692 (Comm. Print 1996).
- 12 The Congressional intent to end foster care drift and achieve timely permanency was a primary reason for The Act as well as for ASFA.

[T]he provision for a dispositional hearing after a set period of time is I believe, of critical importance. One of the prime weaknesses of our existing foster care system is that, once a child enters the system and remains in it for even a few months, the child is likely to become “lost” in the system. Yearly judicial reviews of the child’s placement too often become perfunctory exercises with little or no focus upon the difficult question of what the child’s future placement should be. Foster care, with

END NOTES

few exceptions, should be a temporary placement; unfortunately, under our existing system, temporary foster care becomes a permanent solution for far too many children. This provision requiring a dispositional hearing after a child has been in foster care for a specific time should assist states in making the difficult, but critical, decisions regarding a foster child's long-term placement.

123 CONG. REC. S22684 (daily ed. Aug. 3, 1979), (statement of Sen. Cranston during Congressional hearings.) Note that the dispositional hearing referred to by Sen. Cranston is the hearing that takes place no later than 18 months (now 12 months) after the child has been removed from parental custody. This hearing is more commonly referred to as a permanency planning hearing while the term "disposition" usually refers to the hearing that takes place soon after the court has adjudicated the petition and asserted jurisdiction over the child. See also H.R. REP. NO. 136, 96th Cong., 1st Session, 50, 1979 (remarks of Rep. Ullman).

13 The most recent figure is 517,325 children in foster care. This is based on the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2004 data assembled by Dr. Elliott Smith of Cornell University's National Data Archive on Child Abuse and Neglect, ASPE Claims Reports, 2005, and ACF Budget Reports, 2005. The preliminary estimate as of September 2006 is 513,000 according to the AFCARS Report, http://www.acf.dhhs.gov/programs/cb/stats_research/afcars/statistics/entryexit2005.htm; 534,000 is the number used by the Pew Commission on Children in Foster Care, PEW COMMISSION ON CHILDREN IN FOSTER CARE FOSTERING THE FUTURE: SAFETY, PERMANENCE AND WELL-BEING FOR CHILDREN IN FOSTER CARE, (2004), at 12, available at www.pewfostercare.org [hereinafter PEW COMMISSION].

14 In addition to the considerable federal and state legislative attention, the work of the Pew Commission (*id.*) has given significant national exposure to the plight of foster children. The Commission has sponsored a number of national initiatives to improve outcomes for foster children and asked other national leaders to take action. "We call, in particular, for forceful leadership from Chief Justices and state court leadership to ensure that children's cases receive high priority." PEW COMMISSION, *id.* at 35. The Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) have also taken action to improve outcomes for abused and neglected children. There are far more resolutions adopted by CCJ on child welfare than any other legal topic addressed by that organization. (Resolutions 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 29, 30, and 31). The CCJ and COSCA have also sponsored two national conferences focusing on improving outcomes for foster children. <http://ccj.ncsc.dni.us/>; NORTH AMERICAN COUNCIL ON ADOPTABLE CHILDREN, A FRAMEWORK FOR FOSTER CARE REFORM: POLICY AND PRACTICE TO SHORTEN CHILDREN'S STAYS, (November 1999).

15 Nationally, there are approximately 3,000,000 reports of child abuse or neglect annually. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, REPORTS FROM THE STATES TO THE NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM (1999), at xi-xiii.

16 Technically, child protective services (CPS) and social service or child welfare agencies serve different purposes. While both are a part of the executive branch, CPS responds to child abuse calls and intervenes to protect children. Social Service and Children's Service agencies provide support services to children and families independent of the protective function. In some states, one agency performs both functions, while in others there is a separate child protection and children's services agency. Throughout this paper, CPS will be used to refer to both functions.

17 Nationally, there are approximately 1,000,000 legal proceedings instituted on behalf of abused and neglected children annually, REPORTS FROM THE STATES, *op.cit.* note 15.

18 For example, in California, the petition must be filed within 48 hours of removal and the court must hold an initial hearing within 24 hours of the filing of the petition. CAL. WELF. & INST. CODE §§ 309-315 and California Rule of Court 1442, (West 2007); In Virginia, the Emergency Removal Hearing must take place within 72 hours of removal. VA CODE §16.1-252. Not all states set the shelter care hearing in such a short time frame. In Connecticut, the shelter care hearing can take place up to 20 days from the filing of the petition. See P. McAvay, *Families, Child Removal Hearings, and Due Process: A Look at Connecticut's Law*, 19 QUINNIPIAC LAW REVIEW, at 125-168.

19 McAvay, *id.*

20 The *NCJFCJ's Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases* recommends that the court devote one hour to a Shelter Care hearing. NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES, (1995), at 42 [hereinafter RESOURCE GUIDELINES]. A full description of all of the hearings in child abuse and neglect cases is contained within the RESOURCE GUIDELINES.

21 There are some exceptions. In Connecticut, for example, if the removal is contested, the preliminary hearing can take place as long as 20 days after the issuance of an ex parte order giving temporary custody of the child to the state. CONN. GEN. STAT. § 49b-129.

22 In California, the adjudication hearing for children removed from parental care is 15 court days (3 weeks); CAL. WELF. & INST. CODE § 334 and Cal. Rule of Court 1447, (West 2007); Texas mandates that the adjudication be completed within 14 days. TEX. FAM. CODE § 262.001.

END NOTES

- 23 The Alaska legislature has set the time limit at 120 days. ALASKA STAT. § 47.10.080(a), (West 2007).
- 24 New York, Connecticut, and New Jersey are examples.
- 25 In Santa Clara County, California, for example, less than 2% of the petitions filed are dismissed without a true finding.
- 26 And in most cases they are. In Santa Clara County, for example, more than 97% of the petitions filed are sustained although there may be amendments during the process.
- 27 For example, in California, the dispositional hearing must be held within ten court days (two weeks) from the conclusion of the jurisdictional hearing. CAL. WELF. & INST. CODE § 358, (West 2007).
- 28 Verification of this statement is the fact that there are approximately 500,000 children placed in out-of-home care under juvenile dependency court jurisdiction in the United States today. Each of these children was removed from his or her home and placed in out-of-home care through a judicial order. “No child enters or leaves foster care without the approval of the court.” PEW COMMISSION, *op.cit.* note 13 at 34.
- 29 *In re Jose V.*, (1996) 50 Cal.App.4th 1792, 1799, 58 Cal. Rptr.2d 684. Further, neither federal nor state laws include any of these as permanent homes. *See also, In re Rosalinda C.*, (1993) 16 Cal.App.4th 273.
- 30 The six and twelve month reviews are required by federal law. 42 U.S.C. § 675 (5)(C).
- 31 For example, the Utah Foster Care Citizen Review Board was established by state law (UCA 78-3g-101-103); In Nebraska, Foster Care Review Boards are authorized by state statute, NEB. REV. STAT., § 43-1303(2)(d) & (3); In Arizona, FCRBs were created in 1978 by the Arizona Legislature, while in Kentucky the Citizen Foster Care Review Boards were created by the legislature in 1987. *See* KY. REV. STAT. 620.270. For a discussion of the use of FCRBs, as well as cautions for judges, see NCJFCJ, CHILD DEPENDENCY BENCHBOOK, (1994), at 214-217 [hereinafter DEPENDENCY BENCHBOOK].
- 32 42 U.S.C. § 675(5)(B).
- 33 California law, for example, permits only six months of family reunification services for children who were under 3 years of age when they were placed under court jurisdiction. CAL. WELF. & INST. CODE § 361.21(e), (West 2007).
- 34 The term “legal guardianship” means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term “legal guardian” refers to the caretaker in such a relationship.
- 42 U.S.C. § 674(7). Some state legislative schemes do not provide for guardianship.
- 35 “In addition, a significant percentage of the cases involve older children for whom the Court has found compelling reasons to plan for an alternative permanent living arrangement.” DISTRICT OF COLUMBIA, FAMILY COURT ANNUAL REPORT: FINAL VERSION, (2006), at 51 [hereinafter D.C. FAMILY COURT REPORT].
- 36 As with many aspects of the movement of a child protection case, state statutes differ on how a termination of parental rights proceeding will take place. In most states, there is a separate legal proceeding to determine whether parental rights will be terminated. In California, the juvenile dependency court retains jurisdiction over the next hearing and will determine whether parental rights will be terminated. *See* CAL. WELF. & INST. CODE § 366 et seq., (West 2007).
- 37 In California, state law requires that the juvenile court continue to monitor the progress of the child in relative care unless the relatives adopt the child or become legal guardians. *In re Rosalinda C.*, (1993) 16 Cal.App.4th 273. In other states, state law may permit the case to be dismissed by the court.
- 38 42 U.S.C. § 675(5)(E).
- 39 An extraordinary writ is a type of emergency appellate review of the actions of a trial court when the ordinary appellate process would not provide the necessary relief in a timely fashion. Writs are utilized in child protection cases in some states because of the emergency nature of the proceedings. In other states, the appellate process is used exclusively to resolve issues decided by the trial courts. For a comprehensive discussion of appellate procedures in juvenile court cases see NCJFCJ, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES, (2005), at 157-164.
- 40 *Id.* at 161. It should be noted that the appellate and writ processes are another part of the legal system that significantly delays permanency for children. Timeframes for the appellate process are addressed at 162-163.
- 41 42 U.S.C. § 675(5)(F)
- 42 *Id.*
- 43 *Id.*

END NOTES

- 44 C. Moreno, & K. Bass, *A Case for Reform*, THE SAN FRANCISCO CHRONICLE, April 8, 2007 at E-5, <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2007/04/08/EDGEBOSDPB1.DTL>
- 45 J. GOLDSTEIN, A. FREUD, & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD*, (Free Press, 1973), at 40-42.
- 46 *Id.*
- 47 *Id.* at 41.
- 48 *Id.* at 42.
- 49 42 U.S.C. § 675(5)(f).
- 50 705 ILCS 405, 2-14 (a) ILL. REV. STAT., (Deerings 2007). The Hawaiian legislature has similar language in its laws:
 The legislature finds that *prompt* identification, reporting, investigation, services, treatment, adjudication, and disposition of cases involving children who have been harmed or are threatened with harm are in the children's, their families', and society's best interests because the children are defenseless, exploitable, and vulnerable.
 The policy and purpose of this chapter is to provide children with *prompt* and ample protection from the harms detailed herein, with an opportunity for *timely* reconciliation with their families where practicable, and with *timely* and appropriate service or permanent plans so they may develop and mature into responsible, self-sufficient, law-abiding citizens. The service plan shall effectuate the child's remaining in the family home, when the family home can be *immediately* made safe with services, or the child's returning to a safe family home. The service plan should be carefully formulated with the family in a *timely* manner. (emphasis added)
 Section 587-1, Hawai'i Code Annotated, Child Protective Act, (West 2007). *See also* Kentucky law where parties are assured "prompt and fair hearings," and "All cases involving children brought before the court whose cases are under the jurisdiction of the court shall be granted a speedy hearing...." KRS § 600.010(g) and KRS § 610.070(1); Some state court appellate judges make reference to the importance of timeliness. "There is a speedy hearing provision designed to minimize a disruption in family unity." *In the Interest of J.P.*, 832 A.2d 492 (Pa. Super. 2003) at 495.
- 51 Utah law requires adjudication no later than 60 days from the date of the shelter hearing; UTAH CODE ANN. § 78-3a-308(2), (West 2007); Minnesota statutes mandate that the trial commence within 60 days of the date of the EPC Hearing or Admit/Deny Hearing, whichever is earlier (RJPP 39.02, subd. 1[a]), but the court may extend the commencement of trial (RJPP 39.02, subd. 2), and trial must be commenced and completed within 90 days of denial (RJPP 39.02, subd. 2[b]). The court must issue its decision within 15 days of trial, although this may be extended for up to 15 days for good cause (RJPP 39.05, subd. 1); Florida sets 60 days as the limit a child can be held in a shelter without an adjudication of dependency, but there are numerous circumstances that permit the court to continue that date. FSA Title V, Ch. 39, Part V, § 339.402 (13) & (14), (West 2007); Wyoming statutes declare the adjudicatory hearing should be held within 60 days with "good cause" to delay the hearing, but "in no case" beyond 90 days after the date the petition is filed. WYO. STAT. ANN. § 14-3-426 (b), (West 2007).
- 52 Section 432B.530, *Michie's Nevada Revised Statutes Annotated*, (LexisNexis 2003).
- 53 Idaho Statutes § 16-1619(1).
- 54 ACA 9-27-315(a)(2)(B) and 9-27-327(a)(1)(A).
- 55 Virginia Statutes § 16.1-252.
- 56 Juv R 29A, Ohio Rules of Juvenile Procedure, *Baldwin's Ohio Revised Code Annotated*, (West 2007).
- 57 RSA Chapter 169-C:16(d)
- 58 MD Code, Article 49D, section 3-815(c)(4) although the adjudication may be extended for an additional 30 days.
- 59 The California legislation permits the adjudicatory hearing to be set within 30 days if the child remains in parental care. CAL. WELF. & INST. CODE § 334 and California Rules of Court 1447, (West 2007). The Texas statute permits a continuance for good cause. TEX. FAM. CODE § 262.001.
- 60 42 Pa.C.S. § 6335(a); However, there are exceptions if the child requests a continuance or material evidence is unavailable.
- 61 *Id.*; *In the Interest of J.P.*, 832 A.2d 492 (Pa. Super. Ct. 2003). Commentators in Pennsylvania state that the court should make every effort to minimize delay when a child is in shelter care to reduce trauma to the child, increase the possibility of reuniting the child with the parents, and increase the possibility of finding a permanent home; A. FIELD, PENNSYLVANIA JUDICIAL DESKBOOK: A GUIDE TO STATUTES, JUDICIAL DECISIONS AND RECOMMENDED PRACTICES FOR CASES INVOLVING DEPENDENT CHILDREN IN PENNSYLVANIA, 4TH ED., (Juvenile Law Center, 2004), at 50. The Pennsylvania statutes do permit continuances under certain circumstances. *See* Pa. CS section 6335(a)(1),(2).
- 62 CAL. WELF. & INST. CODE, § 352, (West 2007).
- 63 *Id.* The statute concludes that "In no event shall the court grant continuances that would cause the hearing pursuant to Section 361 to be completed more than six months after

END NOTES

- the hearing pursuant to Section 319.” See also California Rules of Court 1422 and 1451, (West 2007). Other states have enacted laws and court rules regarding the granting of continuances in child protection cases. New Mexico Children’s Court Rule 10-320 (2007); Minnesota Court Rule 5.01; Missouri Court Rules 119.10-119-11; District of Columbia Code § 16-2330.
- 64 RESOURCE GUIDELINES, *op.cit.*, note 20 at 47; “[T]ime is of the essence” *Id.* at 31 and DEPENDENCY BENCHMARK, *op.cit.*, note 31 at 201.
- 65 RESOURCE GUIDELINES, *id.* at 47; “The earlier stages of the litigation must also occur in a timely manner.” “Courts have had to make timely litigation a high priority.” RESOURCE GUIDELINES, *id.* at 14; “But in every case, the court must assure that progress is being made and the need for quick action...the ‘child’s sense of time’...is respected,” JUVENILE JUSTICE, SPRINGFIELD, ILL., FINAL REPORT OF THE ILLINOIS SUPREME COURT SPECIAL COMMISSION ON THE ADMINISTRATION OF JUSTICE, PART II, (1993), at 9.
- 66 For example, New York, Connecticut, and New Jersey do not have statutory or court rules regarding time standards for the adjudication of juvenile dependency cases.
- 67 The District of Columbia Adoptions and Safe Families Act (D.C.ASFA)(D.C.Code §§ 16-2301 et seq., 2000) sets 105 days to adjudication for a child removed from the home. *And see* D.C. FAMILY COURT REPORT, *op.cit.* note 35 at 43; Alaska statute sets 120 days for the completion of adjudication; ALASKA STAT. § 47.10.080(a), (West 2007). Maine statutes also set 120 days for the resolution of adjudication. Title 22, Subtitle 3, Part 3, Chapter 1071, Subchapter 4, section 4035 4-A.
- 68 E-mail communication from Gregg Halemba, National Center for Juvenile Justice (copy on file with author). Several studies support these conclusions. See DAVID AND LUCILE PACKARD FOUNDATION, BUILDING A BETTER COURT: MEASURING AND IMPROVING COURT PERFORMANCE AND JUDICIAL WORKLOAD IN CHILD ABUSE AND NEGLECT CASES, (2004), at 17-18:
 Establishing and complying with state and federal guidelines for timely case processing are also important court process performance goals. Limiting the time required to bring litigation to a conclusion limits the exposure of families to emotionally charged issues that can have a detrimental effect on children. Long periods of uncertainty and judicial indecision can put pressure on children and families, greatly adding to the strain of foster care....Clearly, the length of time required to resolve family issues needs to be limited and reasonable, given the potential harm from delays. Courts need guideposts to help them determine how well they are meeting performance goals.
- 69 NCJFCJ, FINAL REPORT: WASHINGTON COURT IMPROVEMENT PROJECT RE-ASSESSMENT, (2005), at 57 [hereinafter WASHINGTON COURT IMPROVEMENT].
- 70 “It appeared in some instances that judges really had no choice but to grant continuances grudgingly because certain tasks must be completed for cases to progress.” M. Dolce, *A Better Day for Children: A Study of Florida’s Dependency System with Legislative Recommendations*, 25 NOVA LAW REVIEW 547, (Spring 2001), at 610.
- 71 ADMINISTRATIVE OFFICE OF THE COURTS, CENTER FOR FAMILIES, CHILDREN & THE COURTS, CALIFORNIA JUVENILE DEPENDENCY COURT IMPROVEMENT REASSESSMENT, San Francisco, CA, [hereinafter CALIFORNIA COURT IMPROVEMENT] 2005, at 3-22 - Table 3.13; A study of the Utah juvenile courts indicated that the primary reasons for continuances were: (1) defense counsel not yet appointed/unavailable; (2) scheduling problems; and (3) witness unavailability. NCJFCJ, AN EVALUATION OF UTAH COURT IMPROVEMENT PROJECT REFORMS AND BEST PRACTICES: RESULTS AND RECOMMENDATIONS, (October 2002), at 57-59 [hereinafter UTAH COURT IMPROVEMENT].
- 72 ROBERT TOBIN, CREATING THE JUDICIAL BRANCH: THE UNFINISHED REFORM, (National Center for State Courts, 1999), at 187-191; J. SHAMAN, S. LUBET, & J. ALFINI, JUDICIAL CONDUCT AND ETHICS, (Lexis, 2000), at 177; D. STEELMAN, CASEFLOW MANAGEMENT: THE HEART OF COURT MANAGEMENT IN THE NEW MILLENNIUM, (National Center for State Courts, 2000), at xii-xiii.
- 73 TOBIN, *id.* at 187.
- 74 The Florida Bar Re: Amendment to Rules of Judicial Administration, Rule 2.050 (Time Standards), 493 So. 2d 423 (Fla. 1986)(Ehrlich, J., dissenting).
- 75 R. Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 20 JUDICATURE 178, 182 (1936); Clarence Callender agreed when he wrote that “the paramount objective of the [early] law was to place the machinery [of justice] at the disposal of the litigant.” C. CALLENDER, AMERICAN COURTS, THEIR ORGANIZATION AND PROCEDURE, (1927) at 222.
- 76 As Robert Tobin wrote: “[...]caseflow management was a euphemism for assertion of judicial control over the process of dispute resolution.” TOBIN *op.cit.*, note 72 at 188. ABA NATIONAL CONFERENCE OF STATE TRIAL JUDGES, STANDARDS RELATING TO COURT DELAY REDUCTION, section 2.52 (1984) [hereinafter STANDARDS]. The view of active judicial oversight of case management is consistent with Canon 3-(8) of the Code of Judicial Conduct which provides: “A judge shall dispose of all judicial matters promptly, efficiently, and fairly,” and Section 2.50 of the ABA STANDARDS which provides, “the court, not the lawyers or litigants, should control the pace of litigation.”

END NOTES

- 77 TOBIN, *op.cit.* note 72 at 223-226. The evolution from passive adjudicator to active case manager had its critics. See O. Fiss, *The Bureaucratization of the Judiciary*, 92 YALE LAW JOURNAL 1442 (1983) and R. Moore, *Comment: Time Standards: Changing the Role of Florida Judges by Judicial Fiat*, 15 FLORIDA STATE UNIVERSITY LAW REVIEW 67, (Spring 1987). As Ernest Friesen wrote:
- The study of delay is not the study of inefficiency, but is the study of the very purposes for which courts exist....Justice is lost with the passage of time....No matter how you look at it, whether it's a civil or a criminal matter, time destroys the purposes of the courts. We study case management because case management is the way we get rid of the waiting time, [by] which we control delay, [and by] which we enhance the purposes of courts. Court management is what we're about in controlling delay.
- Ernest Friesen, *The Delay Problems and the Purposes of Courts*, National Center for State Courts, *Caseflow Management Principles and Practice: How to Succeed in Justice* (Institute for Court Management, videotape, 1991) cited in STEELMAN, *op.cit.* note 72.
- 78 CONFERENCE OF CHIEF JUSTICES AND CONFERENCE OF STATE COURT ADMINISTRATORS, NATIONAL TIME STANDARDS FOR CASE PROCESSING, (1984); ABA, NATIONAL CONFERENCE OF STATE TRIAL JUDGES, STANDARDS RELATING TO CASEFLOW MANAGEMENT AND TIME DELAY REDUCTION, (1984).
- 79 STANDARDS, *op.cit.* note 76 at 6.
- 80 “[S]ymbolically it signified that there was another dimension to judging, a dimension of administrative responsibility imposed on every judge: he or she was not only to judge well but to work well, and to do whatever was necessary to assure that the entire system was functioning properly.” *In re Alvino*, 100 N.J. 92, 494 A. 2d 1014 (1985); regarding the development of case management in the federal courts, see J. Resnick, *Managerial Judges*, 96 HARVARD LAW REVIEW (1982), at 417-421.
- 81 STANDARDS, *op.cit.* note 76 at 6.
- 82 DEPENDENCY BENCHBOOK, *op.cit.* note 31 at 201-227.
- 83 RESOURCE GUIDELINES, *op.cit.* note 20.
- 84 Two related publications were also influential in stressing the importance of timely permanency. These were studies of courts that were demonstrating excellent results for children through the adoption of best practices including adherence to time standards. See AMERICAN BAR ASSOCIATION CENTER ON CHILDREN AND THE LAW, JUDICIAL IMPLEMENTATION OF PERMANENCY PLANNING REFORM: ONE COURT THAT WORKS, (1992) [hereinafter ONE COURT THAT WORKS] and M. HARDIN, H.T. RUBIN, & D.R. BAKER, A SECOND COURT THAT WORKS: JUDICIAL IMPLEMENTATION OF PERMANENCY PLANNING REFORMS, (ABA, 1995).
- 85 DEPENDENCY BENCHBOOK, *op.cit.* note 31 at 204;
A court system cannot afford to treat abuse and neglect, termination of parental rights, and adoption proceedings as unrelated matters. Judges and court managers must be prepared from the time children are removed from their homes and placed in shelter to manage cases not only to ensure prompt progress toward adjudication and disposition of abuse or neglect issues but also to provide timely permanency hearings, termination proceedings and adoption proceedings.
STEELMAN, *op.cit.* note 72 at 47.
- 86 SHAMAN et al., *op.cit.* note 72, at 203-204.
- 87 The Canons of Judicial Conduct were developed by the American Bar Association. <http://www.abanet.org/cpr/mcjc/home.html>. Each state has adopted its own set of Canons, although most are closely tied to the ABA's 1990 version of a Model Code of Judicial Conduct. See SHAMAN ET AL., *op.cit.* note 72, at 3-4.
- 88 Canon 3(A)(5) of the 1972 Model Code. In California, the Canon reads as follows:
“A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.” Canon 3C(1).
- 89 “A judge shall dispose of all judicial matters promptly, efficiently and fairly.” 1990 Model Code, Canon 3B(8), *op.cit.* note 87.
- 90 “A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.” Canons 3B(2) of the 1972 Model Code and 3C(2) of the 1990 Model Code, *id.*
- 91 Rule 16.01 Purpose, State Court Rules, Chapter 1, W. VA. CODE ANN., (West 2007). The time frame contained in the West Virginia statutes is found at W.VA. CODE ANN. §§ 49-6-1 through 49-6-5; The Rule also cites the ABA Standards that state “the court, not the lawyers or litigants, should control the pace of litigation,” and directs circuit courts and their officers to comply with the rules of court regarding time standards.
- 92 *In re Anderson*, 2004 UT 7, 28, 82 P3d 1134, 1151 (2004).

END NOTES

- 93 “Each state” includes the District of Columbia and Puerto Rico.
- 94 CENTER FOR THE STUDY OF SOCIAL POLICY, IMPROVING THE PERFORMANCE AND OUTCOMES OF CHILD WELFARE THROUGH STATE PROGRAM IMPROVEMENT PLANS (PIPS), (2003), at 1-2.
- 95 These outcomes are: (1) Reduce recurrence of child abuse and/or neglect; (2) Reduce the incidence of child abuse and/or neglect in foster care; (3) Increase permanency for children in foster care; (4) Reduce time in foster care to reunification without increasing re-entry; (5) Reduce time in foster care to adoption; (6) Increase placement stability; and (7) Reduce placements of young children in group homes or institutions. U.S. DEPT. OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, CHILD WELFARE OUTCOMES 2002: ANNUAL REPORT TO CONGRESS: EXECUTIVE SUMMARY, *available at* <http://www.acf.hhs.gov/programs/cb/pubs/cwo02/chapters/executive2002.htm>.
- 96 Financial penalties have been assessed against many states. The GAO estimated that the financial penalties thus far range from a total of \$91,492 for North Dakota to \$18,244,430 for California. Statement of Cornelia Ashby, Director, Education, Workforce, and Income Security Issues: GAO-04-781T, May 13, 2004, at 13.
- 97 For example, ADMINISTRATION FOR CHILDREN AND FAMILIES, CHILD WELFARE OUTCOMES 2002: ANNUAL REPORT TO CONGRESS, (2002). To read this report, one would assume that the courts were not a part of the child welfare process and had no bearing on outcomes for children in foster care.
- 98 In one comprehensive review of the efforts of six states to improve outcomes for children through the CFSR/PIP process, only two states even mentioned judicial involvement and in each case, the involvement was minimal. CENTER FOR THE STUDY OF SOCIAL POLICY, *op.cit.* note 94 at 57, 64.
- 99 *Id.* at 57.
- 100 Her official title is Commissioner of the Administration for Children, Youth and Families in the Administration for Children and Families, Health and Human Services.
- 101 Some of her outreach activities are outlined in her Testimony of Joan E. Ohl, Commissioner, Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services before the Committee on Finance, U.S. Senate, May 10, 2006, at 8-11. The ACF has also funded a joint project through the ABA Center on Children and the Law, the NCJFCJ and the National Center for State Courts, entitled the Toolkit Project. One of the components of this project is to establish and calculate court performance measures. By focusing on these performance measures in state courts, the goal is to improve outcomes for children and families including timely permanency. Additionally, Commissioner Ohl has made significant efforts to work with the nation’s juvenile courts collaboratively to achieve the state child welfare goals. Her office has funded three national organizations, the ABA, the NCSC, and the NCJFCJ, to work together to improve court/agency relationships, and her office has also hired two distinguished retired judges to meet with state Chief Justices across the nation to impress upon them the importance of court-agency collaboration.
- 102 E. Stawicki, & D. Gunderson, *How Long are Minnesota Children Waiting?* (Minnesota Public Radio broadcast, Feb. 19, 2007); “In New York City, the average length of stay in foster care is now 4.2 years....” J. Chaifetz, *Listening to Foster Children in Accordance With the Law: The Failure to Serve Children in State Care*, NEW YORK UNIVERSITY REVIEW OF LAW AND SOCIAL CHANGE, (1999), at 4, citing materials from *Marisol A. v. Giuliani*, 185 F.R.D., 151 (S.D.N.Y. 1999); WASHINGTON COURT IMPROVEMENT REPORT, *op.cit.* note 69, at 80. Connecticut is an example of a state where overwhelming caseloads prevented the juvenile court from completing the preliminary hearing (shelter care hearing) within the state statutory time frame. The Court Improvement Report in 1996 noted that removal hearings once begun were often not completed for weeks or months. NATIONAL CHILD WELFARE RESOURCE CENTER FOR ORGANIZATIONAL IMPROVEMENT, STATE OF CONNECTICUT COURT IMPROVEMENT PROJECT REPORT (1996) at 39; Philadelphia, Pennsylvania, is an example of a dependency court that was not until recently reaching adjudication within statutory time limits; “Adjudication on cases could be deferred not for months, but years, and no one could really tell for sure how many deferred cases there were because these cases were not consistently recorded in the court’s automated database.” NATIONAL CENTER FOR JUVENILE JUSTICE, PENNSYLVANIA COURT IMPROVEMENT PROJECT: ASSESSMENT OF 2001 INITIATIVES IN THE PHILADELPHIA DEPENDENCY COURT, (2002), at 66 [hereinafter PENNSYLVANIA COURT IMPROVEMENT].
- 103 Dolce, *op.cit.* note 70 at 576. “Adjudications were not occurring within twenty-eight days and the Department was seeking extensions of time to do so.” *Id.*
- 104 “What Courts Need to Measure: 1. Average or median time from filing of the original petition to adjudication.” D. Will, A. Hirst, & A. Neustrom, *Information Needs in Juvenile Dependency Court*, 5 JOURNAL FOR THE CENTER FOR FAMILIES, CHILDREN & THE COURTS 71, (2004), at 45.
- 105 For example, in Florida the time standard is 88 days from shelter care hearing to disposition for a child in shelter care, Rule 2.250(a)(1)(F), Florida Rules of Judicial Administration, (West 2007); in Alaska the time to CINA (Children in Need of Assistance) adjudication is 120 days. 25 THE ALASKA BAR RAG, (2001), at 8; in Illinois, the statute requires that the “adjudicatory hearing shall be commenced within 90

END NOTES

days of the date of service of process upon the minor, parents, any guardian and any legal custodian..." 705 ILCS § 405/2-14(b), (West 2007); Montana statutes require the adjudication to be held within 90 days of a show cause hearing, but, pursuant to section 41-3-437, this date can be continued if newly discovered evidence, unavoidable delays, stipulations by the parties pursuant to section 41-3-434, and unforeseen personal emergencies; MONT. STAT., § 41-3-321, (West 2007); in Nebraska, the statutory time frame mandates that the adjudication take place in 90 days (NRS Section 43-278, West 2007). According to a lead juvenile court judge, some judges grant liberal continuances beyond that date while in other courts the trial may start within 90 days, but it has to be continued because of heavy dockets (e-mail communication with Judge Douglas Johnson, on file with author).

- ¹⁰⁶ There are no statutory guidelines for the timing of the adjudicatory hearing in child protection cases in New York. One judge from upstate New York indicated that there is a court rule (outside of New York City) that there must be a resolution of adjudication within six months. He stated that the majority of cases are resolved from six to eight weeks from filing and 95% within six months, and that there are no consequences for a failure to meet the six-month time limit. In New York City, the clock does not start until the respondent first appears. The same judge indicated that cases may be extended indefinitely if there are pending criminal charges against one of the parents (e-mail interview with Judge Dennis Duggan, on file with author). In Erie County (upstate New York), the local court developed its own time standards for hearings (e-mail interview with Judge Sharon Townsend). In New Jersey, there are no statutory guidelines for the time to adjudication, either. There is an administrative directive (non-statutory) requiring the adjudication to take place within four months of the date of filing of the complaint. A Newark judge indicates that it is usually within 20 days, as to the fact finding and dispositional hearing (title 9:6-8:45) (e-mail communication with Judge Thomas Zampino, on file with author).
- ¹⁰⁷ Stawicki et al., *op.cit.* note 102.
- ¹⁰⁸ California Court Improvement, *op.cit.* note 71 at 3-10—3-13.
- ¹⁰⁹ CAL. WELF. & INST. CODE § 334, (West 2007).
- ¹¹⁰ WASHINGTON COURT IMPROVEMENT, *op.cit.* note 69 at 80-81.
- ¹¹¹ RCW 13.34.070, (West 2007).
- ¹¹² California law mandates that the jurisdictional hearing take place 15 court days (three weeks) after the shelter care hearing; CAL. WELF. & INST. CODE § 334, (West 2007); Texas Family Code section 262.001 states that in emergency removals the "adversary hearing" must take place in 14 days with good cause to extend that time. Participants in the El Paso Juvenile Court indicate that they have been able to keep within those time limits for the adjudication. "The Vermont statute requires a merits (adjudication) hearing 15 days from the date the petition is filed if the child has been removed (33 V.S.A. § 5519) and that a disposition hearing be held no later than 30 days after adjudication (33 V.S.A. § 5526(b)). However, in 2006, adjudication was completed within 90 days in only one-half of the abuse/neglect cases disposed that year." (e-mail from Vermont Administrative Judge Amy Davenport, on file with author). Many states have statutes that mandate 60 days: Colorado (C.R.S. § 19-3-501(2) but section 19-3-123 indicates 90 days), Iowa (Rule of Civil Procedure 8.11, but the Supreme Court has indicated that 30 days is best practice), New Mexico (N.M. Laws § 32A-4-19 - Chapter 15 15.2.1, West 2007), North Carolina (§ 7B-801 et seq, West 2007), Oregon (ORS 419B.305, West 2007), and Utah (UCA section 78 78-3a-308, West 2007). The *Resource Guidelines* recommend 60 days. RESOURCE GUIDELINES, *op.cit.* note 20 at 47.
- ¹¹³ 1990 Model Code, Canon 3B(8), *op.cit.* note 87. The language from the 1972 Model Code, Canon 3(A)(5) is for judges to "dispose promptly of the business of the court."
- ¹¹⁴ RESOURCE GUIDELINES, *op.cit.* note 20 at 14. James Payne, former Presiding Judge of the Marion County (Indiana) Juvenile Court and now Director of the Indiana Department of Human Services, stresses the importance of 30-30-30—the first 30 minutes, the first 30 hours, and the first 30 days in order to accomplish child protection goals in a timely fashion.
- ¹¹⁵ *Id.* at 47.
- ¹¹⁶ "Court rules or guidelines need to specify a time limit within which the adjudication must be completed." *Id.*; STEELMAN, *op.cit.* note 72 at 47.
- ¹¹⁷ D. STEELMAN, J. ARNOLD, & K. GOTTLIEB, NEW ORLEANS COLLABORATIVE ON TIMELY ADOPTIONS: REMOVING BARRIERS TO PROMPT COMPLETION OF CHILD PROTECTION CASES: FINAL REPORT, (National Center for State Courts, April 1998), at 18-19 [hereinafter NEW ORLEANS FINAL REPORT].
- ¹¹⁸ "One means of establishing court control and court accountability to the public as the use of time standards." "A court that cannot move cases is a court that lacks management credibility and is prone to interference from outside the judiciary." TOBIN, *op.cit.* note 72, at 18; "Establish mandatory hearings and time frames for hearings in abuse/neglect cases filed in juvenile court and address other barriers to permanency in the court process." THE JUVENILE COURT IMPROVEMENT PROJECT STEERING

END NOTES

- COMMITTEE, IMPROVING MISSOURI'S COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES: 10 RECOMMENDATIONS, (Jefferson City, MO, January 2000), at iv, 9-11.
- 119 The difference between 60 calendar days and 60 court days is approximately three to four weeks. The DEPENDENCY BENCHMARK, *op.cit.* note 31 recommends 45 days from removal to completion of adjudication, at 204.
- 120 WASHINGTON COURT IMPROVEMENT, *op.cit.* note 69 at 57.
- 121 42 U.S.C. § 675(5)(f).
- 122 Vermont offers an example of how the courts can develop their own standards for the completion of adjudication. The Vermont Supreme Court recently (2006) adopted as an Administrative Directive standards for adjudication of merits and disposition as well as time standards for a number of other parts of abuse/neglect and delinquency proceedings including termination of parental rights. These standards include timelines for "normal" cases (60 days to completion of adjudication) and for "complex" cases (90 days to completion of adjudication). This is a creative way to set a flexible standard for trial judges.
- 123 *In re Anderson*, 2004 UT 7, 34, 82 P3d 1134, 1153 (2004).
- 124 Dolce, *op.cit.* note 70 at 610.
- 125 For example in Illinois the period is 90 days. See 705 ILCS 405, section 2-14; *In re S.G.* 214 Ill. Dec. 583, 277 Ill. App. 3d 803; 661 N.E. 2d 437 (1997). However, the dismissal is without prejudice.
- 126 "Court rules or guidelines need to specify a time limit within which the adjudication must be completed." RESOURCE GUIDELINES, *op.cit.* note 20 at 47. "Ideally, time standards and goals should be incorporated into court rules and made legally binding upon the court. Serious breaches of court deadlines should be brought to the attention of the Chief Judge," WASHINGTON COURT IMPROVEMENT, *op.cit.* note 69 at 57. See also Pima County discussion *infra* in section VII-C, 3.
- 127 HARDIN ET AL., *op.cit.* note 84 at 58.
- 128 Refer to the discussion and references in section VII-B, 4.
- 129 RESOURCE GUIDELINES, *op.cit.* note 20 at 29-44, 42-43.
- 130 *Id.*
- 131 STEELMAN, *op.cit.* note 72 at 47-8.
- 132 On the movement toward group decision making in child protection cases, see Leonard Edwards & Inger Sagatun-Edwards, *The Transition to Group Decision Making in Child Protection Cases: Obtaining Better Results for Children and Families*, 58 JUVENILE & FAMILY COURT JOURNAL 1 (Winter 2007).
- 133 Evaluations of child protection have been reported in a number of states. See THE CENTER FOR POLICY RESEARCH, ALTERNATIVES TO ADJUDICATION IN CHILD ABUSE AND NEGLECT CASES, EXECUTIVE SUMMARY, (1992); N. Theonnes, *Dependency Mediation: Help for Families and Courts*, 51 JUVENILE AND FAMILY COURT JOURNAL 2, (Spring 2000) at 13-22; Leonard Edwards, *Mediation in Child Protection Cases*, 5 JOURNAL FOR THE CENTER FOR FAMILIES, CHILDREN & THE COURTS, 57-70, at 62 (2004) [hereinafter *Mediation in Child Protection Cases*]; Leonard Edwards et al., *Mediation in Juvenile Dependency Court: Multiple Perspectives*, 53 JUVENILE AND FAMILY COURT JOURNAL 4, (2002), at 52 [hereinafter *Multiple Perspectives*]; N. THEONNES & J. PEARSON, MEDIATION IN THE SANTA CLARA COUNTY DEPENDENCY COURT: A REPORT TO THE CALIFORNIA LEGISLATURE IN COMPLIANCE WITH SB 1420, (Center for Policy Research, December 1995), at 31-33 [hereinafter *MEDIATION IN SANTA CLARA*]; D.C. FAMILY COURT REPORT, *op.cit.* note 35 at 31-2; G. ANDERSON, & P. WHALEN, PERMANENCY PLANNING MEDIATION PILOT PROGRAM: EVALUATION FINAL REPORT, (Michigan State University School of Social Work, Ann Arbor, 2004), available at <http://courts.michigan.gov/scao/resources/publications/reports/PPMPEvaluation2004.pdf>.
- 134 *Mediation in Child Protection Cases, id.* at 62.
- 135 J. Liebow, *The Need for Standardization and Expansion of Nonadversary Proceedings in Juvenile Dependency Court With Special Emphasis on Mediation and the Role of Counsel*, 44 JUVENILE AND FAMILY COURT JOURNAL 3, (1993); N. THEONNES & J. PEARSON, MEDIATION IN FIVE CALIFORNIA DEPENDENCY COURTS: A CROSS-SITE COMPARISON, (Center For Policy Research, November 1995) [hereinafter *MEDIATION IN FIVE CALIFORNIA COURTS*]; "There is, however, a strong counterargument that alternative dispute resolution is the best means of tailoring justice to the nature of each case to provide more timely and lest costly decisions." TOBIN, *op.cit.* note 72 at 211; "The fourth principle is to maximize the use of non-adversarial methods of family dispute resolution." Robert Page, *Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes*, 44 JUVENILE & FAMILY COURT JOURNAL 1, 30 (Winter 1993); ANDERSON & WHALEN, *op.cit.* note 133, at 5.
- 136 "Conduct mediation as early in process as possible." THE CENTER FOR PUBLIC POLICY DISPUTE RESOLUTION, EVALUATION OF THE CHILDREN'S JUSTICE ACT CHILD PROTECTION SERVICES MEDIATION PILOT PROJECTS, (University of Texas at Austin School of Law, November 1998), at 30; K. Olson, *Lessons Learned From a Child Protection Mediation Program: If at First You Succeed and Then You Don't...*, 41 FAMILY COURT REVIEW 4, 480-496, 489, (October 2003) [hereinafter *Lessons Learned*]; "Most cases do get resolved at the

END NOTES

- pre-trial stage of the process. Difficult issues of proof, concern for trauma to the family, and recognition of the likely disposition, may facilitate a settlement, but not before parties are entrenched in adversarial processes.” J. Wiig, Pre-trial Resolution of Child Protective Proceedings, (Unpublished manuscript, 1984, Los Angeles, Calif., Superior Court, Juvenile Division), cited in N. Theonnes, *Child Protection Mediation: Where We Started*, 35 FAMILY AND CONCILIATION COURTS REVIEW 2, 136-142, 136 (1997), [hereinafter *Where We Started*]; SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, FAMILY COURT 2006 ANNUAL REPORT, (2006), at 21-23.
- 137 ANDERSON & WHALEN, *op.cit.* note 133 at 5-8.
- 138 Karla Fisher, Neil Vidmar, & Rene Ellis, *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU LAW REVIEW 2117 (1992); ONTARIO ASSOCIATION OF INTERVAL AND TRANSITION HOUSES, STOP THE VIOLENCE AGAINST WOMEN, BACKGROUND REPORT, (Toronto, Ontario, 1989); Nancy Ver Steegh, *Yes, No and Maybe: Informed Decision Making About Divorce Mediation in the Presence of Domestic Violence*, 9 WILLIAM & MARY JOURNAL ON WOMEN & LAW, 145 (Winter 2004).
- 139 Cal. R. Ct. 5.210(f) and (g), (West 2007); *Mediation in Child Protection Cases*, *op.cit.* note 133 at 62.
- 140 Cal. R. Ct. 5.215(f), (West 2007). Other courts have developed screening tools that are used in different parts of the country. L. Girdner, *Mediation Triage: Screening for Spouse Abuse in Divorce Mediation*, 7 MEDIATION QUARTERLY 365, (Summer 1990).
- 141 CAL. FAM. CODE § 3181, (West 2007); Cal. R. Ct. 5.125(g)(1), (West 2007). In practice, California Family Court Service mediators use this procedure regularly. One California county conducted over 1,000 mediations in 2005. (author’s discussion and e-mail communication with Cathy Harmon, Manager, Orange County Family Court Services, on file with author).
- 142 Cal.R.Ct. 5.215, (West 2007).
- 143 CAL. FAM. CODE § 3183(c), (West, 2007).
- 144 NCJFCJ, MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE (1994).
- 145 *Id.* section 408(B).
- 146 J. Kelly, *Family Mediation Research: Is There Empirical Support for the Field?*, 22 CONFLICT RESOLUTION QUARTERLY 3, (Fall-Winter 2004), at 28; B. Davies, & S. Ralph, *Client and Counselor Perceptions of the Process and Outcomes of Family Court Counselling in Cases Involving Domestic Violence*, 36 FAMILY & CONCILIATION COURTS REVIEW 227, (April 1998), at 242; *Multiple Perspectives*, *op.cit.* note 133 at 61.
- 147 *Mediation in Child Protection Cases*, *op.cit.* note 133 at 62.
- 148 L. Edwards, *Dependency Court Mediation: The Role of the Judge*, 35 FAMILY AND CONCILIATION COURTS REVIEW 2 (1997), at 160-163; OFFICE OF THE EXECUTIVE SECRETARY OF THE SUPREME COURT OF VIRGINIA, CHILD DEPENDENCY REPORT, (November 2002), at 10, 21, available at http://www.courts.state.va.us/publications/child_dependency_mediation_report.pdf. [hereinafter VIRGINIA REPORT].
- 149 Edwards, *id.* at 160; “Each site indicated that the main program challenge was obtaining the endorsement or ‘buy-in,’ from all the parties necessary to have a successful child dependency mediation program.” VIRGINIA REPORT, *id.* at 17.
- 150 Theonnes, *op.cit.* note 133 at 20.
- 151 VIRGINIA REPORT, *op.cit.* note 148 at 19; *Lessons Learned*, *op.cit.* note 136 at 489.
- 152 “Funding for these programs will be a major factor in developing stable and successful programs for mediation in dependency cases.” G. Firestone, *Dependency Mediation: Where Do We Go From Here?* 35 FAMILY AND CONCILIATION COURTS REVIEW 2, 223-238, 234 (April 1997); M. Orlando, *Funding Juvenile Dependency Mediation Through Legislation*, 35 FAMILY AND CONCILIATION COURTS REVIEW 2, 196-201 (April 1997); the author has also learned that some of Michigan’s very successful child protection mediation programs had to be reduced or cancelled because of a lack of funding (e-mail from Judge Michael Anderegg, on file with author).
- 153 For example, in 2002, the Los Angeles Juvenile Dependency Mediation program lost more than one-half of its mediators due to budget cutbacks. The program went from ten full-time to four full-time and one part-time mediator. This resulted in severe reductions in the capacity of the program to meet the needs of the court and hundreds of scheduled mediations were never held. (Communication with Meghan Wheeler, Director of the Los Angeles Juvenile Court Mediation Program, on file with author); see also VIRGINIA REPORT, *op.cit.* note 148 at 10, and *Lessons Learned*, *op.cit.*, note 136 at 489.
- 154 The estimated savings in the San Francisco mediation program were \$2,505 per case. CENTER FOR POLICY RESEARCH, DEPENDENCY MEDIATION IN THE SAN FRANCISCO COURTS: EXECUTIVE SUMMARY, (March 1998), at 66; NCJFCJ, MEDIATION IN CHILD PROTECTION CASES: AN EVALUATION OF THE WASHINGTON, D.C. FAMILY COURT CHILD PROTECTION MEDIATION PROGRAM, (2005), at 6, 11, 16-17 [hereinafter DC MEDIATION

END NOTES

- EVALUATION];Theonnes, *op.cit.* note 133 at 21; MEDIATION IN FIVE CALIFORNIA COURTS, *op.cit.* note 135 at 3-7, 12; Edwards, *Mediation in Child Protection Cases*, *op.cit.* note 133 at 63, 64.
- 155 VIRGINIA REPORT, *op.cit.* note 148 at 4; In the Arkansas child protection mediation project, the average time for finding a permanent placement in mediated cases was 295 days while in non-mediated cases, it took 553 days, *Lessons Learned*, *op.cit.* note 136 at 489; In Washington, D.C., mediated cases completed adjudication on average in 49 days as compared to an average of 86 days for non-mediated cases, DC MEDIATION EVALUATION, *id.* at 16; MEDIATION IN FIVE CALIFORNIA COURTS, *op.cit.* note 135, at 3-7.
- 156 Model Courts are courts selected by the National Council of Juvenile and Family Court Judges to participate in its Child Victims Act Model Courts Project. This national project, funded by the Office of Juvenile Justice and Delinquency Prevention, was created to promote improvements in juvenile and family courts handling civil child abuse and neglect cases. It was inspired by the publication of the RESOURCE GUIDELINES, *op.cit.* note 20 and now includes over 30 courts nationwide. Multnomah County was one of the earliest participants in the Model Courts program.
- 157 NCJFCJ, *The Portland Model Court Expanded Second Shelter Hearing Process: Evaluating Best Practice Components of Front-Loading*, VI TECHNICAL ASSISTANCE BULLETIN 3, (July 2002) [hereinafter *Portland Model Court*]. Hamilton County (Cincinnati), Ohio also uses an expanded initial hearing with similar results. See ONE COURT THAT WORKS, *op.cit.* note 84.
- 158 *Portland Model Court*, *id.* at 5.
- 159 *Id.* at 6.
- 160 RESOURCE GUIDELINES, *op.cit.* note 20 at 29-44.
- 161 The RESOURCE GUIDELINES refer to the hearing as the “preliminary protective hearing.”
- 162 *Portland Model Court*, *op.cit.* note 157 at 8.
- 163 *Id.* at 8-9.
- 164 This protocol was developed after passage of the “Child in Need of Protection Amendment Act of 2004,” Section 4-1301.02 et. seq., (West 2007). It is fully described in M. EDWARDS, & K. TINWORTH, FAMILY TEAM MEETING (FTM): PROCESS, OUTCOME, AND IMPACT EVALUATION, (American Humane Association, October 2005). FTMs are defined as “structured planning and decision-making meetings that use skilled and trained facilitators to engage families, family supports, and professional partners in creating plans for children’s safety and inlaying the groundwork for permanency.” The legislative history is also discussed at 28-30; FTMs are further described as a court innovation in D.C. FAMILY COURT REPORT, *op.cit.* note 35 at 63.
- 165 EDWARDS, & TINWORTH, *id.* at 2-3.
- 166 Family Finding is a philosophy that emphasizes the importance of family members as a solution to the problems facing abused and neglected children. Family Finding stresses the value of extended family members as a resource for governmental agencies seeking support for these children. Using advanced technology from 100 to 300 extended family members can be located in a short period of time. Some of these may be able to provide support, even a home for the child in question. See generally, B. Boisvert, G. Brimmer, K. Campbell, D. Koenig, J. Rose, & M. StoneSmith, *Who Am I? Why Family Really Matters*, 16 FOCAL POINT 1, 25-27, Spring 2002; Edwards & Sagatun-Edwards, *op.cit.* note 132; M. Shirk, *Hunting for Grandma*, YOUTH TODAY, February 2006; L. Edwards, *Finding Foster Kids’ Families Must Become Our Mandate*, SAN JOSE MERCURY NEWS, April 14, 2005; *Loneliest: Children in Foster Care Being Reunited with Birth Families*, CBS News Transcripts, Dec. 17, 2006; L. Clemetson, *Giving Troubled Families a Say in What’s Best for the Children*, THE NEW YORK TIMES, Dec. 16, 2006.
- 167 The identification of extended family is critical in many child protection cases. Kinship care often is the best answer for children who cannot return to their parents. R. Hegar, *The Cultural Roots of Kinship Care*, in KINSHIP FOSTER CARE: POLICY, PRACTICE, AND RESEARCH, (R. Hegar, & M. Scannapieco, eds., Oxford University Press, 1999).
- 168 EDWARDS & TINWORTH, *op.cit.* note 164 at 23-56.
- 169 Chapter 23 of Title 16 of the District of Columbia Official Code, (a) Section 16-2312 (a)(1)(1) & (a)(2) as amended by the “Child in Need of Protection Amendment Act of 2004,” *op.cit.* note 164.
- 170 EDWARDS & TINWORTH, *op.cit.* note 164 at 3-5, 45-47.
- 171 *Id.* at 3-5; “It has been extremely helpful in pulling together family members who are willing to share in the responsibility for keeping children safe and the process avoids unnecessary removal of children who can be otherwise safely maintained in the community. We really like the idea of getting family members involved in the case on the front end.” (e-mail to the author from Judge Anita Josey-Herring, Supervising Judge, Child Protection Division, Superior Court, District of Columbia, Dec. 6, 2006, on file with author).

END NOTES

- ¹⁷² This is the recommendation of the National Council of Juvenile and Family Court Judges, *DEPENDENCY BENCHBOOK, op.cit.* note 31 at 165-166, 203; and see Leonard Edwards, *Alternatives to Contested Litigation in Child Abuse and Neglect Cases, Appendix B, RESOURCE GUIDELINES, op.cit.* note 20 at 131-133.
- ¹⁷³ G. Halemba, G. Siegel, R. Gunn, & S. Zawacki, *The Impact of Model Court Reform in Arizona on the Processing of Child Abuse and Neglect Cases*, 53 *JUVENILE AND FAMILY COURT JOURNAL*, 1-20, at 1 (Summer 2002).
- ¹⁷⁴ *Id.* at 3.
- ¹⁷⁵ Arizona uses the term “preliminary protective hearing.”
- ¹⁷⁶ *Id.* at 9.
- ¹⁷⁷ G. HALEMBA, & G. SIEGEL, *PIMA COUNTY JUVENILE COURT: SUMMARY OF FOLLOW-UP ASSESSMENT*, (National Center for Juvenile Justice, 1999) at 13.
- ¹⁷⁸ *Id.*
- ¹⁷⁹ Halemba et al., note 173 at 13-16.
- ¹⁸⁰ *Id.* at 1.
- ¹⁸¹ UTAH COURT IMPROVEMENT *op.cit.* note 71, at 3-38, 3-39, 4-20.
- ¹⁸² *Id.* at 4-20 - 4-23.
- ¹⁸³ McAvay, *op.cit.*, note 18 at 164-5.
- ¹⁸⁴ PENNSYLVANIA COURT IMPROVEMENT, *op.cit.* note 102 at 13-15. Evaluations of this process note that it encourages parents to attend early hearings and keep attending hearings, identifies relatives as alternatives to placement in substitute care, helps give children a voice in the proceedings, builds a foundation for communication and cooperation at the outset of the proceedings, encourages innovative solutions to family problems that engage support networks of relatives, friends and service providers and improves the relationship between the caseworkers and family members. *Id.* at 15.
- ¹⁸⁵ *Id.* at 47.
- ¹⁸⁶ D.C. FAMILY COURT REPORT, *op.cit.* note 35 at 45.
- ¹⁸⁷ E-mail from Judge Nancy Salyers (ret.), on file with author.
- ¹⁸⁸ RJPP 36.02. The conference must be held at least 10 days prior to the trial (RJPP 36.01).
- ¹⁸⁹ Settlement conferences shall be held prior to every contested hearing, unless expressly deemed unnecessary by the judicial officer setting the contested hearing. The trial attorneys and all parties shall be present at the settlement conference unless expressly excused by the Court. Prior to the calling of the case the parties or their attorneys shall meet in order to determine the issues to be tried and any areas of agreement.
- SCC Local Juvenile Court Rule IG, Superior Court, Santa Clara County, 2007.
- ¹⁹⁰ Accord, NEW ORLEANS FINAL REPORT, *op.cit.* note 117 at 55.
- ¹⁹¹ The court must “establish and control the pace at which cases proceed...” NEW ORLEANS FINAL REPORT, *id.* at 21. “It is up to judges to ensure that children reach permanency.... If the judge emphasizes the importance of these cases, they will reach conclusion and be dismissed from the system.” *Improving Implementation, op.cit.* note 3 at 15. “The two most frequently given strengths pertaining to the judiciary were:... (2) commitment to timely decision-making.” NCJFCJ, *Judicial Leadership and Judicial Practice in Child Abuse and Neglect Cases*, II TECHNICAL ASSISTANCE BULLETIN 5, (July 1998) at 21 [hereinafter *Judicial Leadership*]; STEELMAN, *op.cit.* note 72, at 47, 61.
- ¹⁹² “Court enforcement of a time limit within which adjudication must take place compels court clerks, attorneys, investigators, and social workers to adjust to a quicker pace of litigation.” RESOURCE GUIDELINES, *op.cit.* note 20 at 47; “Judges and all other participants in the juvenile abuse and neglect process should treat each case as though it were an emergency.” L. Edwards, *Improving Juvenile Dependency Courts: Twenty-Three Steps*, 48 *JUVENILE AND FAMILY COURT JOURNAL* 1, 10 (Fall 1997) [hereinafter *Improving Juvenile Dependency Courts*].
- ¹⁹³ “...28% believed that poor judicial practices often resulted in case delays. Specifically, the majority of these specialists complained that judges are granting continuances much too often.” *Judicial Leadership, op.cit.* note 191 at 29.
- To have a court that is responsive to the needs of children and families I am convinced the system must have: 1. leadership. This must come from judges, but it can be shared with and can emerge from a working partnership with social service administration, the bar (including prosecuting attorneys), and community (including funders.) But it must have an activist judiciary.” (emphasis in the original).
- (Letter to the author from Judge John P. Steketee, former Chief Judge, Kent County Juvenile Court, April 14, 1997, on file with author). Several juvenile courts have written mission statements outlining the goals of their court. The Cook County Mission Statement has as #1 of its guiding parameters as “We will not permit children to remain in foster care due to delay of decisions necessary to achieve permanency or to bureaucratic concerns.” Cook County Juvenile Court, Chicago, Illinois Mission Statement, found

END NOTES

- in NCJFCJ, COURT, AGENCY AND COMMUNITY COLLABORATION, Chapter 2, (2000), worksheets.
- 194 “[T]he court, not the lawyers or litigants, should control the pace of litigation.” Section 2.50, ABA STANDARDS, *op.cit.* note 76; And see W. VA. CODE § 49-6-5(a). “The prevalent view is that the judge most controls the pace of litigation. About 3 out of 4 corporate counsel, 7 out of 10 public interest litigators, the majority of plaintiff’s litigators and a near majority of defense litigators feel that judges are not forceful enough in their case management. “Study of Louis Harris and Associates,” found in C. Geyh, *Adverse Publicity as a Means of Reducing Judicial Decision-Making Delay*, 41 CLEVELAND STATE LAW REVIEW 511, at 517. “Court enforcement of a time limit within which adjudication must take place compels court clerks, attorneys, investigators, and social workers to adjust to a quicker pace of litigation.” RESOURCE GUIDELINES, *op.cit.* note 20 at 47.
- 195 NEW ORLEANS FINAL REPORT, *op.cit.* note 117 at 21.
- 196 “Judges should have a complete list of all children over whom the court has jurisdiction. The list should include the status of each case and how long it has been in the system. . . . If the judge emphasizes the importance of these cases, they will reach conclusion and be dismissed from the system.” *Improving Implementation*, *op.cit.* note 3 at 15.
- 197 One judge keeps track of her cases on her own computer, another has her clerk remind her of cases that are out of compliance, while still a third uses a “tickler” system to identify cases that exceed timelines.
- 198 *Judicial Leadership*, *op.cit.* note 191 at 4, 25-34. One remedy for controlling the timeliness of court reports is to sanction social workers for late reports. Judge Michael Nash, the Presiding Judge of the Los Angeles Juvenile Court, reports that before 1996 social worker reports were late in 20%-25% of all cases, thus requiring continuances. He instituted a program of monetary sanctions for late reports and reduced the number of late reports to approximately 3.5%. Further, Judge Nash met with the Director of the Children’s Services agency and informed him what the contents of a social worker report should be. Once the agency understood what the court needed in its reports, the number of cases continued to obtain additional information was also reduced. His efforts resulted in reducing the time to adjudication from 143 days to 60 days. (Interview with Judge Michael Nash, on file with author).
- 199 WASHINGTON COURT IMPROVEMENT, *op.cit.* note 69 at 65.
- 200 HARDIN ET AL., *op.cit.* note 84 at 64; “Time is an important part of the equation that produces justice.” DEPENDENCY BENCHMARK, *op.cit.* note 31 at 201. The Court Improvement Program has helped improve the timeliness of court proceedings. See M. HARDIN, COURT IMPROVEMENT FOR CHILD ABUSE AND NEGLECT LITIGATION: WHAT NEXT?, (ABA Center on Children and the Courts, 2003) at 2-3. Some courts have written timely permanency into their mission and goal statements.
- The mission of the Family Court of the Superior Court of the District of Columbia is to protect and support children brought before it, strengthen families in trouble, provide permanency for children and decide disputes involving families fairly and expeditiously while treating all parties with dignity and respect. GOALS: 1. Make child safety and prompt permanency the primary considerations in decisions involving children.
- D.C. FAMILY COURT REPORT, *op.cit.* note 35, at 2.
- 201 “Local juvenile courts should closely monitor the granting of continuances and only grant continuances for good cause. Reasons must be stated on the record. Good cause does not include ‘stipulation by the parties.’ Attorneys should be on time for hearings and notify the court when they are going to be late.” Recommendation 3, CALIFORNIA COURT IMPROVEMENT, *op.cit.* note 71 at 1-12, 3-8; *Judicial Leadership*, *op.cit.* note 191 at 6; “The juvenile court must assure that judicial determinations are made in a timely fashion.” 42 U.S.C. § 675 (5)(C) (1989) cited in *Improving Implementation*, *op.cit.* note 3 at 5; found also in RESOURCE GUIDELINES, *op.cit.* note 20, Appendix C, at 139-168, 141; “The court must have a firm and effective policy on continuances,” RESOURCE GUIDELINES, *op.cit.* note 20 at 21; “Continue and enforce strict no-continuance policies.” WASHINGTON COURT IMPROVEMENT, *op.cit.* note 69, at 65; UTAH COURT IMPROVEMENT, *op.cit.* note 71, at 3-58 - 3-59;
- Too often, the system tolerates continuances to accommodate the schedules of lawyers, case workers and others, very often without reflection on the harm that such delay may have on the precious, limited commodity which we call childhood. Judges can and must be the gatekeepers of the system.
- M. Landrieu, & J. Adams, Jr., *On Behalf of Our Children*, 46 LOUISIANA BAR JOURNAL, 469, 472; STEELMAN, *op.cit.* note 72, at 80.
- Judges should make certain that their courts are well-managed, accessible to the public and safe. Judges should conduct timely calendars, ensure that all reports are filed on time, and that all parties are present, and avoid unnecessary continuances or delays of court proceedings.
- Improving Juvenile Dependency Courts*, *op.cit.* note 192 at 6; DEPENDENCY BENCHMARK, *op.cit.* note 31 at 203.
- 202 Sitting as a judge, the author has had attorneys come to court and announce that they understood that the case was going to be continued and thus had done no preparation on it. The response from the court has always been that the court knows of no such “understanding,” that there are

END NOTES

- no continuances without court approval, that the court expects the attorneys to be prepared, and that some work might be completed even though there are compelling reasons for a continuance.
- 203 NEW ORLEANS REPORT, *op.cit.* note 117 at 5; “The court must not continue a hearing beyond the time set by statute unless the court determines the continuance is not contrary to the interest of the child.” California Rule of Court 5.550(a)(1), (West 2007).
- 204 In Minnesota the legislature has mandated that in child abuse and neglect matters “...hearings may not be continued or adjourned for more than one week unless the court makes specific findings that the continuance or adjournment is in the best interests of the child.” MINN. STAT. ANN. § 260C.163(b).
- 205 CAL. WELF. & INST. CODE § 352 and California Rule of Court 5.550, (West 2007). In this same statute the legislature further added “[i]n no event shall the court grant continuances that would cause the hearing pursuant to Section 361 to be completed more than six months after the hearing pursuant to Section 319.” Of course, one difficulty is that there is no remedy for a failure to follow the statutory mandates.
- 206 RESOURCE GUIDELINES, *op.cit.* note 20, at 20.
- 207 “Trials should commence on the first date scheduled.... Having reasonably firm trial dates is a key feature of a successful caseload management improvement program.” STEELMAN, *op.cit.* note 72 at 6-7. One technique to ensure there is enough judicial time to provide a credible trial date is to have a “backup judge,” a judge available to hear a trial if there is an unexpected overload of judicial work. STEELMAN, *id.*, at 10-11.
- 208 “The court must also enquire of the child’s mother and of any other appropriate person present as to the identity and address of any and all presumed and alleged fathers of the child;” California Rule of Court 5.668(b), West, 2007; “[W]hen a noncustodial parent or putative father is first notified after efforts to work with the custodial parent are exhausted, new efforts must be initiated to work with the noncustodial parent or putative father.” RESOURCE GUIDELINES, *op.cit.* note 20, at 46. “When noncustodial parents and putative fathers are brought into the litigation late, children often remain in foster care longer than necessary.” RESOURCE GUIDELINES, *id.* at 49.
- 209 Lack of service of process on parents is noted as a reason for delay in the District of Columbia. D.C. FAMILY COURT REPORT, *op.cit.* note 35 at 45.
- 210 This was the case in Illinois when Judge Nancy Salyers (ret.) took over as Presiding Judge of the Child Protection Division in 1995. She worked with the Sheriff and the Clerk to eliminate “slippages” in the noticing process and eventually went to the state legislature to change the law so that if due diligence is shown on the original petition, the court can move directly to the termination of parental rights hearing, as long as the parents were personally served the first time (e-mail communication with Judge Nancy Salyers (ret.), on file with author.)
- 211 U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, WHAT ABOUT THE DADS?, (2006). The Parent Locator Service has proven effective in many jurisdictions.
- 212 NEW ORLEANS FINAL REPORT, *op.cit.* note 117 at 51-52.
- 213 HARDIN ET AL., *op.cit.* note 84 at 111.
- 214 (a) Upon his or her appearance before the court, each parent or guardian shall designate for the court his or her permanent mailing address. The court shall advise each parent or guardian that the designated mailing address will be used by the court and the social services agency for notice purposes unless and until the parent or guardian notifies the court or the social services agency of a new mailing address in writing.
CAL. WELF. & INST. CODE § 316.1, (West 2007). The court form developed to implement this statute is California Judicial Council Form JV-140, (West 2007).
- 215 “Juvenile court proceedings generally should go forward when related criminal proceedings are pending. Delays in adjudication delay progress toward family rehabilitation and reunification.” RESOURCE GUIDELINES, *op.cit.* note 20 at 47. *In the Interest of J.P.*, 832 A.2d 492 (Pa. Super. Ct., 2003).
Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance.... Further, neither a pending criminal prosecution nor family law matter shall be considered in and of itself as good cause.
CAL. WELF. & INST. CODE § 352(a), (West 2007).
- 216 CAL. WELF. & INST. CODE § 355.1(f), (West 2007).
- 217 “It is recommended that the Judicial Council consider adopting a rule of court requiring that longer dependency matters be set and heard as a continuous proceeding.” CALIFORNIA COURT IMPROVEMENT, *op.cit.* note 71 at 8-4; *Resource Guidelines*, *op.cit.* note 20 at 51; *Jeff M. v Superior Court*, 56 Cal.App.4th 1238 (1997) and *Renee S. v Superior Court*, 76 Cal.App.4th 187, 197 (1999); *Continuous Trial Setting in Juvenile Dependency Cases*,

END NOTES

- Rule 5.51, Proposed California Rule of Court, copy on file with author.
- 218 *Renee S. v Superior Court, id.* at 198. Furthermore, it seems clear that the court should do better.
- 219 DEPENDENCY BENCHMARK, *op.cit.* note 31 at 203.
- 220 Superior Court, County of Santa Clara, Local Rules of Court and Internal Policies, San Jose, CA 2007.
- 221 This is standard practice in the Utah juvenile courts. UTAH COURT IMPROVEMENT, *op.cit.* note 71, at 57; NEW ORLEANS FINAL REPORT, *op.cit.* note 117 at 53; HARDIN ET AL., *op.cit.* note 84 at 110.
- 222 In cases involving physical or sexual abuse, the Minnesota legislature mandates that the court file the decision with the court administrator “as soon as possible but no later than 15 days after the matter is submitted to the court.” Section 263.163(b) MINN. STAT. ANN., (West 2007).
- 223 SHAMAN, ET AL., *op.cit.* note 72, at 180-4. For example, in Utah a trial judge must decide all matters submitted for final determination within two months of submission. UTAH CODE § 78-7-25(1). A Utah juvenile dependency court judge who failed to render timely decisions was removed from office. *In re Anderson*, 2004 UT 7, 82 P3d 1134 (2004); In California, a judge must render a decision on a case taken under advisement within 90 days or his or her judicial salary will not be paid. Other states have similar rules, although in some of these attempted legislative mandates have been overruled as unconstitutional by the state supreme courts. In North Dakota, where a court rule states that reporting an overdue case to the Judicial Qualifications Commission “must be treated as a complaint against the judge assigned to the case.” North Dakota Supreme Court Administrative Rule 4(j).
- 224 Disposition should occur quickly. Often a decision on disposition is necessary before significant case planning can begin.... [B]ut it may be appropriate to allow the disposition hearing to follow in a bifurcated manner immediately after the adjudicatory phase of the process if: (a) all required reports are available and have been received by all parties or their attorneys at least five days in advance of the hearing; and (b) the judge has had the opportunity to review the reports after the adjudication.
- RESOURCE GUIDELINES, *op.cit.* note 20 at 55. Also see HARDIN ET AL., *op.cit.* note 84 at 110.
- 225 This practice is followed in many states. MINN. STAT. § 260C.201; See HARDIN ET AL., *op.cit.* note 84 at 86, and RESOURCE GUIDELINES, *id.* at 55; PENNSYLVANIA COURT IMPROVEMENT, *op.cit.* note 102 at 54.
- 226 The California statutes mandate that the dispositional hearing be heard no later than 10 court days after completion of adjudication if the child has been removed from parental care. CAL. WELF. & INST. CODE § 358, California Rule of Court 5.686, (West 2007); MINN. STAT. § 260.201, (West 2007).
- 227 RESOURCE GUIDELINES, *op.cit.* note 20 at 20; PORTLAND MODEL COURT, *op.cit.* note 157, at 49; “State court leadership and state court administrators should organize courts so that dependency cases are heard in dedicated courts or departments, rather than in departments with jurisdiction over multiple issues.” PEW COMMISSION, *op.cit.* note 13, at 44; STEELMAN, *op.cit.* note 72 at 47; DEPENDENCY BENCHMARK, *op.cit.* note 31 at 203.
- 228 RESOURCE GUIDELINES, *id.*, at 20, this is standard practice in most Model Courts including Utah. See UTAH COURT IMPROVEMENT, *op.cit.* note 71, at 3-3 - 3-4; See also PENNSYLVANIA COURT IMPROVEMENT, *op.cit.* note 102 at 12-13.
- 229 Preferably one judicial officer will hear a child welfare case from start to finish. When more than one judge hears a case, each successive judge must go back to the beginning to understand the case’s procedural and factual history. Having multiple judges hear a case increases the possibility that facts will be forgotten. It reduces accountability. It can turn judicial review into an exercise of paper movement and can result in poor judicial decisions concerning the placement of children.
- Improving Implementation, op.cit.* note 3 at 13. See also NORTH AMERICAN COUNCIL ON ADOPTABLE CHILDREN, JEFFERSON FAMILY COURT: ONE JUDGE, ONE STAFF, ONE FAMILY, SHORTENING CHILDREN’S STAYS: INNOVATIVE PERMANENCY PLANNING PROGRAMS, (April 1997), at 45-48.
- 230 *Improving Juvenile Dependency Courts, op.cit.* note 192 at 5-6; RESOURCE GUIDELINES, *op.cit.* note 20, at 19; *Improving Implementation, op.cit.* note 3 at 149; Leonard Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge*, 43 JUVENILE AND FAMILY COURT JOURNAL 1-43, 36-37 (Spring 1993) [hereinafter *The Role of the Juvenile Court Judge*].
- 231 *Id.*
- 232 This has been a recognized best practice for years. “The court should regularly convene representatives from all participants in the child welfare system so as to improve the operations of the system.” NCJFCJ, KEY PRINCIPLES FOR PERMANENCY PLANNING FOR CHILDREN, #11 (October 1999) [hereinafter KEY PRINCIPLES]; NCJFCJ, COURT, AGENCY AND COMMUNITY COLLABORATION, (2000); *Improving Implementation, op.cit.* note 3 at 18; HARDIN ET AL., *op.cit.* note 86 at 109-110; Judge Nancy Salyers (ret.) found that these meetings were critical to court improvement when

END NOTES

- she took over the Cook County Juvenile Court in 1995 and initiated changes that resulted in a reduction of children under court supervision from over 55,000 to under 10,000 (e-mail communication from Judge Nancy Salyers to author; copy on file with author).
- 233 “All parties in child welfare proceedings should be adequately represented by well-trained, culturally competent and adequately compensated attorneys and/or guardians *ad litem*.” KEY PRINCIPLES, *id. Improving Juvenile Dependency Courts*, *op.cit.* note 192 at 7.
- 234 “The impact of expedited appointment of counsel is muted if attorneys fail to contact their clients prior to the first court appearance.” PENNSYLVANIA COURT IMPROVEMENT, *op.cit.* note 102 at 10.
- 235 NCJFCJ, *Improving Parents’ Representation in Dependency Cases: A Washington State Pilot Program Evaluation*, TECHNICAL ASSISTANCE BRIEF, (2003), at 6-7.
- 236 “[C]ases in Pilot Sample B that had a previous history with the court were 6.9 times more likely to have an outcome of reunification than cases in the Pre-Pilot Sample. *Id.* at 7.
- 237 RESOURCE GUIDELINES, *op.cit.* note 20 at 22-24; UTAH COURT IMPROVEMENT, *op.cit.*, note 71, at 9-15; *Improving Juvenile Dependency Courts*, *op.cit.* note 192 at 8. In Santa Clara County, California, attorneys/guardians *ad litem* for children are appointed before the shelter care hearing so that they can meet and confer with their client before the initial hearing. Attorneys for the parents are appointed at the initial hearing; however, they receive copies of the petition and other documents before that hearing so that they can meet with their clients and be prepared for the initial hearing.
- 238 The State of Utah and Los Angeles and Santa Clara counties in California, among many other Model Courts, use this arrangement. UTAH COURT IMPROVEMENT, *op.cit.* note 71, at 3-16 - 3-21.
- 239 TOBIN, *op.cit.* note 72, at 188; on the importance of controlling discovery as a means of case management, see DEPENDENCY BENCHMARK, *op.cit.* note 31, at 203.
- 240 18 U.S.C. § 476(a)(1)-(2) (Supp., II 1990).
- 241 WASHINGTON COURT IMPROVEMENT, *op.cit.* note 69 at 57.
- 242 Judge Anderson’s failure to hold the nine adjudication hearings in a timely manner, and his holding of the two cases under advisement for a period in excess of two months, constitutes a pattern of disregard and indifference to the law and thereby violated Code of Judicial Conduct 2A, which requires judges to respect and comply with the law....
- In re Anderson*, 2004 UT 7, 26-27, 82 P.3d 1134, 1150 (2004).
- 243 The law should treat children differently at different ages. This differential treatment would help assure that young children do not suffer psychologically or lose adoption opportunities due to needless delays, and that older children do not suffer terminations for which they are not ready and from which they may not benefit.
R. Gordon, *Drifting Through Byzantium: The Promise and Failure of the Adoption and Safe Families Act of 1997*, 83 MINNESOTA LAW REVIEW 637, 695 (Feb. 1999).
- 244 CAL. WELF. & INST. CODE § 366.21(e), (West 2007). However, if the court finds there is a substantial probability that the child may be returned to a parent within six months, the case will be continued to the 12 month hearing. *Id.* For information regarding the special developmental needs of children from 0 to 3, see *Protecting Children: Children Birth to Three in Foster Care*, 16 AMERICAN HUMANE ASSOCIATION, CHILDREN’S SERVICES, 1, (2000).
- 245 UTAH CODE ANN., Title 78, Part I, Chapter 3A, Part 3, § 78-3a-311(2)(g), 2007.
- 246 CRS 19-1-102(1.6), 2006.
- 247 The principal idea behind writing the RESOURCE GUIDELINES, *op.cit.* note 20, was to identify the resources necessary to operate an effective juvenile dependency court. Many juvenile dependency courts have been inadequately resourced. In Connecticut, the judicial resources for hearing juvenile dependency cases were so inadequate that preliminary removal hearings were taking weeks and months to complete. When a mother appealed because the court system could not hear her child’s case within the statutory timelines, the state took the position that the delay was justified by the juvenile courts’ inability to address the high volume of cases before it. See *Pamela B. v Ment*, 244 Conn. 296, 709 A.2d 1089 (1998).
- 248 The 55,000 figure is taken from “In the Best Interests of the Court, Children Come First: Improvements in the Juvenile Court System of the Circuit Court of Cook County, Illinois 1989-1997,” State Justice Institute, on file in the Circuit Court of Cook County, Illinois. Judge Salyers sets the number at 58,000 as of her start-up date of January 1995. (e-mail from Judge Nancy Salyers (ret.) to author, copy on file with author).
- 249 The District of Columbia added 14 judicial officers, L. Satterfield, *The New District of Columbia Family Court - Only the Beginning*, 37 FAMILY LAW QUARTERLY (Fall 2003); D.C. FAMILY COURT REPORT, *op.cit.* note 35 at 431-439. *D.C. Family Court: Additional Actions Should be Taken to Fully Implement Its Transition*, GAO, GAO-02-584, (May 2002), at 11-12.

END NOTES

- 250 E-mail from Judge Sharon McCully of the Salt Lake City Juvenile Court. In 1994, the Utah legislature created an entire division of attorneys in the Attorney General's office to represent the state in child welfare cases and a statewide office of guardian *ad litem* attorneys to represent children (on file with author).
- 251 *Renee S. v Superior Court*, *op.cit.* note 221 at 195-6 citing *Jeff M. v Superior Court*, *op.cit.* note 221 at 1243.
- 252 "The fate of foster care children in Louisiana and across the nation rests, in part, on the ability of our court system to competently and diligently process child abuse and neglect cases." Landrieu & Adams, *op.cit.* note 201, at 469.
- 253 Judges must never forget that changes in the juvenile court must come from them. No one else has the responsibility for day-to-day operation of the court progress including adequate representation, ensuring necessary papers get to all parties, collecting data on court operations, providing oversight of social service activities, ensuring that children reach permanency in a timely fashion and more. True judicial leadership is the appreciation that in addition to calendar management other issues must be addressed and that judges must take responsibility to see that they are. *Judicial Leadership*, *op.cit.* note 191 at 19; NCJFCJ DIVERSION PROJECT MATRIX, A REPORT FROM FOUR SITES EXAMINING THE COURT'S ROLE IN DIVERTING FAMILIES FROM TRADITIONAL CHILD WELFARE SERVICES INTO COMMUNITY-BASED PROGRAMS, (1998), at 6-10.
- 254 TOBIN, *op.cit.* note 72 at 190.
- 255 *Id.*
- 256 *The Role of the Juvenile Court Judge*, *op.cit.* note 230 at 25-32; California Standard of Judicial Administration 5.40, (West 2007).
- 257 Chief Justice Kathleen Blatz of the Minnesota Supreme Court, now retired, made this phrase famous within court systems across her state and the country when she led the creation of The Children's Justice Initiative: Through the Eyes of a Child. This statewide judicial branch initiative is intended to improve outcomes for children in the child protection system. Other commentators have also used the phrase; "[T]here is an attitudinal problem that goes along with the view of the judge as impartial adjudicator—they need to see the problems from the eyes of the child." *Judicial Leadership*, *op.cit.* note 191 at 30. *See also*, Bobbe Bridge, *View Foster Care Through Their Eyes*, SEATTLEPI.COM, May 30, 2006, available at http://seattlepi.nwsourc.com/opinion/272000_fostercarebobbe30.html
- 258 A few examples of the many courts that have made significant changes to improve their juvenile dependency courts and to reach timely permanency are Philadelphia (PENNSYLVANIA COURT IMPROVEMENT *op.cit.* note 102), The District of Columbia, (D.C. FAMILY COURT REPORT, *op.cit.* note 35), and the Model Courts mentioned throughout this paper (*see* note 156).