

CLASP

CENTER FOR LAW AND SOCIAL POLICY

To: The Pew Commission on Children in Foster Care
From: Rutledge Q. Hutson, on behalf of the Center for Law and Social Policy
Date: August 1, 2003
RE: Request for Input on Improving Court Oversight of Child Welfare Cases

Thank you for the opportunity to provide input into the Commission's process for developing recommendations to improve court oversight of child welfare cases so that the oversight may facilitate better, more timely decisions related to children's safety, permanence and well-being. CLASP is pleased that you are undertaking this challenge and looks forward to working with you over the coming year.

Our recommendations fall into three general categories.¹ First, it is critical that specially trained, designated judges hear child welfare cases. Second, it is important to ensure that everyone involved in the case has an opportunity to be heard. Third, it is essential that the judges, lawyers, guardians ad litem, Court Appointed Special Advocates and related court personnel have comprehensive training—not only about the legal issues involved in child welfare cases, but also about child development, family dynamics, substance abuse, mental health, and domestic violence.

Mark Hardin, Director of the National Child Welfare Resource on Legal and Judicial Issues, offers the following analogy: “child protection cases are to family law as homicide is to criminal law. Abusive and neglectful parents typically have severe dysfunctions and abused and neglected children typically have acute special needs.”²

Given the complexity of child welfare cases, we believe children's safety and well-being will be best achieved and permanency reached sooner when the cases are heard by judges with special expertise. We recommend exploring ways to help all states develop specialized child welfare courts. In addition to the expertise these courts would offer, they may also provide consistency to a child whose world is very chaotic. Ideally, the caseworker, the foster parent(s) and the judge will remain the same throughout a case. However, if a child has been in several different placements and has had several different caseworkers, seeing the same judge every six months may provide some continuity in the case. Having designated child welfare courts makes it more likely that the same judge will hear the case from start to finish.

¹ Our separately submitted comments about child welfare financing are largely based on our legal and policy analysis, our research, and our work with Congressional staff and state child welfare agencies. The comments about the courts are based more upon the author's personal child welfare experiences—as a foster parent and a member of a foster care review panel.

² Hardin, M. (2003). *Court Improvement for Child Abuse and Neglect Litigation: What Next?* Washington, DC: ABA Center on Children and the Law.

In addition to facilitating the development of specialized child welfare courts, it is worth exploring the development of even more specialized courts, such as drug courts or mental health courts. These sub-specialty courts are relatively new, but there are some encouraging signs about their effectiveness (e.g., Miami-Dade County's drug court) which should be further investigated.

At CLASP, we believe that everyone involved in a child welfare case has information the court must hear to make decisions that promote the safety, permanency and well-being of children. Judges need to hear from caseworkers, mental health professionals, guardians at litem, biological parents, foster parents, and, depending upon the circumstances, the children, in order to have a clear understanding of how the case is progressing. There are a variety of approaches to ensuring that these voices are heard. One tack is to ensure that the parties have legal representation. This is particularly critical for children and biological parents who may be intimidated by the process and who have a great deal at stake in the proceedings. It can be equally important for foster parents who have had a child in their custody for a long period of time and who frequently have the most detailed knowledge about the child's well-being. Finally, it is important that the child welfare agency's workers have legal representation.

However, legal representation alone may not be sufficient to ensure that everyone is heard. As with judges, the lawyers need to have the expertise to handle such complex cases. It is also critical that lawyers (and judges) avoid making the process more adversarial than necessary. In litigation, there are generally winners and losers, and each side is fighting zealously to win. In child welfare cases, there is generally loss for everyone, no matter the final resolution of the case. In part this is because the interests of the various parties are intertwined. In part this is because, by definition, some loss, some trauma, has occurred by the time the family is in court. The question is whether judicial oversight can minimize (or at least not increase) the loss. We recommend that the Commission consider alternative forms of judicial oversight, such as foster care review boards or mediation. One study of a mediation approach in Colorado's Fourth Judicial District indicates that the parties can often work out difficult issues without going to trial.³ Our experience with a foster care review board in DeKalb County, Georgia, suggests that such review boards have the potential to more fully participate in and provide oversight to individual cases. Perhaps these less formal mechanisms can provide appropriate oversight, while also empowering the parties to work together towards the best interests of the child. We believe it is worth evaluating such experiments to determine their usefulness.

Our final recommendation concerns training. Child welfare cases require a great deal of specialized knowledge, both legal and non-legal. On the legal side, there are a unique set of procedures and time frames applicable to child welfare. Many of the time frames are quite short (24-72 hours), so there is little time for someone unfamiliar with the process to get up to speed. On the non-legal side, the complexity of family situations in child

³ Thoennes, N. (1999). *Dependency Mediation in Colorado's Fourth Judicial District*. Denver, CO: Center for Policy Research.

welfare cases necessitates that all players, including judges, lawyers, guardians ad litem, Court Appointed Special Advocates and related court personnel, be familiar with child development, family dynamics, substance abuse, mental health disorders, domestic violence and other significant challenges frequently faced by families in the child welfare system. As a result, we recommend that opportunities for training be expanded for these key members of the child welfare system.

One way to expand training is to permit Title IV-E funds to be used to cover a portion of the cost of training for judges, lawyers, guardians ad litem, Court Appointed Special Advocates and related court personnel. There may be other mechanisms the Commission wants to consider, but enhancing the training of these critical players is essential to improving court oversight of child welfare cases.

Judicial oversight is a critical component of the child welfare system. This oversight can bring new insight and perspective to a case where parents, foster parents, and case workers have become tangled in the day-to-day struggles of the case. Judicial oversight can also ensure that everyone's rights are protected and that the safety, permanence and well-being of children remain foremost in the proceedings. We believe that the oversight function can be strengthened by providing specialization and training and by providing a forum and a variety of mechanisms to ensure that everyone involved in the case has a chance to share their knowledge and voice their opinions.

We would be happy to talk more with you about the ideas raised in this memo and hope you will call upon us if we can assist the important work of the Commission.