

State Bar of Michigan Children's Law Section

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The Michigan Child Welfare Law Journal



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Editor's Note

This issue of the *Michigan Child Welfare Law Journal* presents a number of “views from the bench.” Four articles present practice tips from judges who are currently handling a wide variety of cases involving families and children.

Hon. Mark A. Feyen is the Chief Judge of the Ottawa County Probate Court. In this capacity, he handles cases involving decedent estates, guardianships, conservatorships, and the mentally ill. He also hears cases in the Family Division consisting of juvenile delinquency, abuse/neglect, adoptions, and name changes and conducts the juvenile drug treatment court and the adult felony drug treatment court. In his article Judge Feyen presents the “Seven Deadly Sins for Child Welfare Attorneys.” Judge Feyen offers invaluable, common sense suggestions to ensure that your experience in the courtroom will be positive and productive for both you and your clients.

Hon. G. Patrick Hillary was elected to the Kent County bench in 2001 and served as Presiding Judge from 2004 through 2009. He has taught several law related courses and served as a faculty member for the Michigan Institute of Continuing Legal Education, the Supreme Court Administrative Office Child Welfare Services Division and the Michigan Judicial Institute. In his article, Judge Hillary frames a number of crucial questions: How do you begin to discuss the intangibles that make for “good” caseworkers and attorneys in child welfare cases? Do some caseworkers or attorneys present better in court even though they have done the same work as other persons who do not present as well? What is the judge’s perception when the judge is analyzing a case and what is the best way to present the case to the judge? Through his consideration of these and other questions, Judge Hillary describes how your actions can help ensure an effective child welfare court hearing.

Hon. John A. Hohman, Jr. has been a probate judge in Monroe County since 1997. Active in the Michigan Probate Judges Association, he is a former president, current board member, member of the Juvenile Issues Committee, and Chairperson of the Compensation Committee. In 2008 Judge Hohman was selected as Jurist of the Year by the Michigan association of the Court Appointed Special

Advocates. In his article Judge Hohman provides a number of down-to-earth practical tips on effective representation of clients in child protective proceedings. Judge Hohman notes that his tips may seem elementary, but in reality practitioners must constantly bear them in mind if they wish to practice effectively.

Lastly, Hon. Janelle A. Lawless was first elected to the Ingham County Circuit bench in 2002 and currently is serving her second term in the Family Division of the Circuit Court. She was the Presiding Judge of that division for four years and is currently the Court’s Chief Judge Pro Tem. Prior to her election to the bench, Judge Lawless was the Ingham County Probate Court Administrator/Probate Register and also served as an Attorney Referee in the Family Division of the Circuit Court. She currently is an honorary board member of the Lansing Area Safety Council, member of the Paralegal Advisory Committee at Lansing Community College, member of Teen Court Advisory Board, chair of the Community Corrections Advisory Board, member of the Michigan Judicial Institute Family Division Academic Advisory Committee, member of the Michigan Supreme Court Learning Center Advisory Committee and currently presides over the Circuit Court’s Family Dependency Treatment Court. In her article Judge Hillary notes that she has handled child welfare cases “on both sides of the bench” and through the years has seen both excellent and poor client representation in these matters. It is with that experience in mind that she offers specific advice for attorneys handling these proceedings. Judge Lawless reminds us that we must not only advocate on behalf of our clients, but we must also be prepared to counsel them regarding some of the most difficult decisions a parent may ever have to make.

Thanks to each of our authors for taking time out of their busy schedules to contribute to this issue. I am sure you will find their contributions interesting and useful. As always, the editorial board welcomes your feedback on this and future issues to ensure that the *Child Welfare Journal* is of value to you.

—Joseph Kozakiewicz

Message from the Chair

I have forgone my opportunity to rant for this issue to bring our members an article written by one our membership, Karen Cook, for inclusion in *LACHES*, an Oakland County Bar Association publication. It is being reprinted for your edification, here, today. An article I found interesting and thought provoking.

Karen has been practicing children's law in Oakland County since 1987. She received her undergraduate degree from Duke University and her law degree from Wayne State University. She has been an active and well respected member of the Section Council of the Children's Law Section of the State Bar of Michigan for now her third term. I strongly suggest you read; *The Weakest Link: How child-Placing Agencies and the Office of Children and Adult Licensing Fail to Ensure the Physical Safety of Foster Children*, located on the following pages. You may not agree, but you will think about it.

—John Mckaig, Chair

The Weakest Link:

How Child-Placing Agencies and the Bureau of Children and Adult Licensing Fail to Ensure the Physical Safety of Foster Children

by Karen Gullberg Cook

Our mission is to insure protection to vulnerable adults and children who are receiving care from licensed agencies, facilities and homes as required by Act No. 116 of the Public Acts of 1973, as amended, Act No. 218 of the Public Acts of 1979 and other applicable laws.

—Office of Children and Adult Licensing, Michigan Dept. of Human Services

Picture this: You are the lawyer-guardian ad litem for a child, you have just finished advocating for placement of your client with the Department of Human Services (DHS), and you have no knowledge as to where your client will actually be sleeping that evening. Should you be concerned? The answer is definitely. When a juvenile court orders that a child be removed from parental custody in a child protective proceeding, the court must not only find that it is contrary to the child's welfare to remain with his or her parent(s), but the court "shall order the child placed in the most family-like setting available consistent with the child's

needs."¹ Although that language sounds as if it shrouds the child with the court's protection, in reality the court, upon deciding that the child must be removed from home, almost always orders the child placed with DHS and quite often has no idea of the identity of the licensed foster parents with whom DHS will place. Home studies for foster care licensing are supposed to screen for appropriate physical conditions, but the shortage of foster homes and the state's lack of regulatory enforcement for public and private child-placing agencies (CPAs) leaves many children "in the system" exposed to unnecessary physical harm. To explain how

a lawyer-guardian ad litem can hold a child-placing agency accountable for a child's safety in foster care and to understand the bureaucratic bog of the state's child-licensing structure is the purpose of this article.

Sharing an experience of mine in which both DHS and its contract agency ignored state building and health regulations is illustrative of the barriers in the bureaucracy for ensuring a child's physical safety. In 2009, on a routine lawyer-guardian ad litem home visit to a foster home in northern Oakland County, I asked the foster mother for a place where I could speak to my client in private. The client, a teenage girl, led me down some basement stairs to her bedroom in an unfinished basement. The bedroom consisted of free-standing walls with a door, but with no window. The room looked like a fort that children make with a large cardboard box. Despite the room's small dimensions, three girls were crammed into it. My first thought was that my client had no quiet place to study. The foster parents had been licensed for many years with a private child-placing agency and had been licensed previously in that same home. That evening in a casual conversation with a friend, who is a lawyer who has an engineering degree and who represents landlords, I mentioned the room in the foster home as not being conducive to studying and that the basement was depressing. Alarmed, my friend informed me that the room was "not up to code" (meaning that the room violated the Michigan Residential Code of 2006)² and that I needed to "save the children" living in it from further risk of physical harm, such as fire. As the home had been licensed for years as a foster home, I believed that perhaps my friend's response was hyperbolic.

Subsequently, I e-mailed the building inspector for that community to ensure that the bedroom complied with state and local building ordinances. Within a few days and to my astonishment, the local building inspector had posted a sign on the property that read in red ink: "WARNING: NOTICE OF ORDINANCE VIOLATION." This notice also contained the following words in black ink: "THIS IS A LIFE SAFETY ISSUE THAT NEEDS YOUR IMMEDIATE ATTENTION." Between the two warnings, the notice stated the specific ordinance violation for that community, and then the following:

It has been brought to our attention that you have built a bedroom in the basement without obtaining proper permits and inspection. You

are advised to not allow any occupants to use the bedroom until all proper permits and inspections are completed. You will need to bring in 2 complete sets of plans show all construction details meeting with the 2006 Michigan Residential Code.

The notice also contained a warning that the situation had to be corrected within eight days and threatened enforcement through district court including possible fines and/or injunctive relief.

To my knowledge, the building inspector neither sent, nor was obligated under law to send, notice of the ordinance violation to DHS, its contract agency, or the juvenile court. Hence my original e-mail, dispatched for the purpose of verifying that my client and her roommates were sleeping in a room compliant with the state's building regulations, had turned into a project. Either I was going to notify DHS, or be content with the likelihood that DHS and its contract agency would continue to place children in a home that arguably should not have been licensed in the first place.

From the inception of the licensing application of that foster home to my discovery of the girls in a dangerous bedroom, few safeguards were in place for ensuring physical safety. The first weak link in the chain of events leading to the threatening of the children's safety was the state's granting a license to the foster home years earlier without a thorough inspection of the entire property by someone with knowledge of health and building codes. Three basement bedrooms, two of which had no egress windows, had been there for years. In other words, the question arose as to how and why did this home ever obtain its initial license. The answer is that the licensing process lacks sufficient oversight. Recruitment and application of foster homes for children is not done by one centralized agency in this state, but by either the local DHS office in each county, which is a public child-placing agency, or by a private child-placing agency. Pursuant to the Child Care Organizations Act,³ the statute which governs the licensing of foster homes and residential facilities for children, a child-placing agency is defined as follows:

(c) "Child placing agency" means a governmental organization or an agency organized under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, for the purpose

of receiving children for placement in private family homes for foster care or for adoption. The function of a child placing agency may include investigating applicants for adoption and investigating and *certifying foster family homes and foster family group homes as provided in this act.* The function of a child placing agency may also include supervising children who are 16 or 17 years of age and who are living in unlicensed residences as provided in section 5(4). [emphasis added]⁴

Certification of foster homes involves mandatory training for foster parents, criminal and Children's Protective Services background clearances, and a home study of the property.⁵ The process is done by licensing workers, who have usually been promoted from jobs as foster care workers. In short, an engineer or a building inspector is not likely to be hired to do the home study.⁶

Once the local DHS or private agency approves the potential foster parents and their home, a recommendation is sent to the Bureau of Children and Adult Licensing (BCAL)⁷ to grant a foster care license. If BCAL adopts the recommendation for licensure, the State of Michigan issues a license for foster care.⁸ If the foster parents are licensed through a *private* child-placing agency, such as Lutheran Social Services, *no one employed by the state will have likely ever visited that foster home despite the fact that the license is issued through the State of Michigan.*⁹ To analogize, it is the equivalent of obtaining a state driver's license through a private driving school. The state would take it on word of faith that the paperwork submitted by the potential driver and driving school was valid. Moreover, even those homes that are directly recruited and approved by a local DHS office are not subjected to individual inspection by BCAL, but at least a state employee will have performed an on-site visit.

The apparent "logic" behind this method of recruiting, certifying, and maintaining individual foster homes is that each child-placing agency is also required to have a license pursuant to the Child Care Organizations Act.¹⁰ The State of Michigan issues a license to each child-placing agency, such as Oakland County DHS, which is a public child-placing agency, or Oakland Family Services, which is a private child-placing agency. Then the specific child-placing

agency in turn recruits, recommends licensure, and re-evaluates its foster homes for renewing licenses.¹¹

Administrative Law Rules promulgated from the Child Care Organizations Act¹² govern not only the licensing of the child-placing agency, but in turn the licensing of individual foster homes.¹³ In theory, therefore, a child-placing agency, whether public or private, would want to protect its license by refusing to approve a potential foster home with safety or health violations in the first place, nor would it want to risk recommending a renewal of that home's license if violations currently existed.

In reality, no one from the State of Michigan is minding the store correctly. The state, which should be the security guard in the child welfare system, is asleep. The Administrative Law Rules for foster homes during both the initial licensure and for re-issuance require that certain physical conditions in the home are met, such as an egress window in each bedroom.¹⁴ Thus, the rules for safety exist, but the layers of bureaucracy in licensing hamper enforcement. No one from the contract agency, not the foster care worker or the agency's licensing worker, in the above-related situation had reported the noncompliant basement bedrooms, which had allegedly been in the basement for many years. Yet, the state continued to pay the foster care maintenance payments to the private agency. The state slept on while the store was robbed. Loss prevention to the taxpayers could be implemented by requiring more than a social worker's on-site assessment of the potential foster home's physical structure. The initial issuance of a foster home license does not, however, require an inspection by the local building inspector or fire marshal.¹⁵ All that is required of the child-placing agency as to the initial evaluation is an "on-site visit" to wit:

CPA R400.12310 Initial Evaluation

- (3) The report shall be an assessment of all of the following:
 - (f) Adequacy of the applicant's house, property, neighborhood, schools and for the purpose of fostering as determined by an on-site visit.

The potential foster parent attends orientation, is given a copy of the Foster Home Rules, which are a set of administrative rules separate from the administrative rules for child-placing agencies, and is expected to follow the generalized rule for keeping the property in

good repair pursuant to the vague Foster Home Rule, FHR 400.9301, entitled “Maintenance.”¹⁶

A return of our focus to what happened in the situation of the girls in the basement provides a concrete example that will demonstrate why the strata of rules, enforced primarily by social workers or those acting as social workers,¹⁷ is wholly and disgustingly inadequate to protect foster children. After the building inspector received my inquiry, he involved the local fire marshal. Had the basement bedroom been compliant with local and state building regulations, a permit and final inspection report would have been on file with the building inspector’s office. Verification then could have been sent to me of a proper egress window. No verification existed, however, because a building permit for the bedroom had never been issued, much less approved for final inspection. Consequently, the building inspector called in the local fire marshal, and the foster parents were directed to move the foster girls in the basement to bedrooms upstairs. Eventually, the Oakland County Health Department, apparently contacted by the building inspector, became involved and informed me that the home had been licensed for foster care with an improper septic system – 1,100 feet too short; that violation dated back to 1992.¹⁸

How that home was licensed in the first place with multiple physical safety violations, and then continued to obtain renewal of its license year after year, highlights the lack of commitment the State of Michigan has to the physical quality of its licensed facilities. When all of the violations surfaced in 2009, the state was already under federal court jurisdiction because of a settlement agreement signed in early summer of **2008** in the class action of *Dwayne v. Granholm*.¹⁹ Given the deaths and maltreatment of foster children that precipitated the filing and the settling of that lawsuit by Children’s Rights, we would hope – or maybe even expect – that when DHS was notified in **2009** about a noncompliant foster home with a “life safety” problem, it would have conducted a *thorough investigation of the private agency* responsible. Notably, the Settlement Agreement states:

II. PRINCIPLES

Interpretation of the provisions of this Agreement will be guided by the following principles:

- A. Safety: The *first priority* of the Department of Human Services (“DHS”) child welfare system is to keep children safe.²⁰ (emphasis added)

Despite the lofty language in the lawsuit settlement, the real first priority of DHS appears not to be the safety of children, but the retention of foster homes. That was the conclusion I reached after my informing BCAL of the building code violation and emergency notice posted. Upon receipt of notice from the building inspector of the “life safety issue,” I filled out the online complaint form available on the DHS Web site under the topic “Doing Business with DHS.”²¹ My submitted complaint was not filed directly against the individual foster home, but against the private agency that had certified and overseen that home for years.

Had I filed the complaint directly against the foster home, the private agency that had licensed the home would have been the entity who then investigated the home.²² A child-placing agency has every incentive to mask its malfeasance to protect its license. That agency’s licensing workers, responsible for re-evaluating that foster home for a renewal of its license every two years, had failed to address any of the safety and health violations. In addition, the agency’s foster care workers, who were mandated pursuant to the Foster Care and Adoption Services Act²³ to visit the children *in the foster home* once per month, should have been regularly inquiring as to sleeping arrangements.²⁴ It does not take an engineering degree to ascertain that a bedroom lacks a window. But, between the on-site visits for licensing renewal and the mandated monthly home visits, not one agency worker had brought the situation to the attention of BCAL, the building inspector, the fire marshal, or the health department. Lacking confidence that the private agency would take immediate action to keep the children safe and ultimately to hold the foster parents responsible, I proceeded to file an emergency complaint with BCAL.

E-mailed complaints against child-placing agencies go to the central office for BCAL in Lansing. As I e-mailed my complaint after business hours, I called BCAL the next morning to ensure that the complaint would get prompt attention; the response was that the complaint “had not been logged in yet.” No concern was voiced for the children in the allegedly noncompliant foster home. Down the bureaucracy went my complaint to the local office of BCAL, where I immediately faxed the building inspector’s Notice of Ordinance Violation to the assigned state licensing worker. When I then called that licensing worker, who was *the person in state government* responsible for

the immediate compliance of the private agency with safety regulations, he was rude and unprofessional, and mocked what he assessed had been my improper conclusion that there existed a “dangerous” condition in the foster home that the private agency had failed to correct. I then proceeded to read him the portion of the builder’s inspector’s notice that stated “THIS IS A LIFE SAFETY ISSUE,” as he apparently had not bothered to read his copy.

What happened next is symptomatic of another weak link in the bureaucratic chain of command at BCAL, the entity that is supposed to oversee the physical safety conditions of foster homes. Within the hour, this State of Michigan employee had called the foster mother, was told that the basement had an egress window, and then informed me that there was apparently not a violation. I then asked the licensing inspector if his telephone call was the end of his investigation. It was apparent from my first telephone call to this local inspector that the state’s focus was not on child protection, but on covering up for its contract agency.

The eventual “investigation” by this particular licensing worker was extremely perfunctory. No comprehensive inspection of the property was ever part of the licensing investigation or report. My complaint was substantiated based on the failure of the agency to “have and follow written policies and procedures for assessing and certifying foster homes for licensure,” based on the use of the basement bedroom and failing to obtain a variance as to a non-foster child sleeping in the parental bedroom, but the agency received only a wrist-slapping through a corrective action plan.²⁵ BCAL finished its investigation within three weeks without ever addressing the sewage issue and prior to any final inspections by the building inspector and health department. Moreover, DHS did not remove the children from the home, but focused on preserving the placements through holding a Team Decision-Making meeting (TDM) for my client after I also complained to the Family Advocate Office of DHS. The local DHS refused to investigate my 3200 filed against the foster parents despite the fact that Children’s Protective Services was mandated to intervene because of the safety factor.²⁶

Ironically, a year earlier in 2008, the Department of Energy, Labor and Economic Growth (DELEG) promulgated an administrative rule that mandated

DHS to comply with building code regulations for *any* facility it licensed under the Child Care Organizations Act, to wit:

R 408.30401a Adult foster care facilities and *child care organizations*.

Rule 401a.

(1) Promulgation authority for fire safety standards for facilities and camps licensed or registered under the adult foster care facility licensing act, 1979 PA 218, being MCL 400.701 et seq., and *the child care organizations act*, 1973 PA 116, being MCL 722.101 et seq., is vested in the department of human services and the bureau of fire services.

(2) Until amended or rescinded by the promulgating authority, the 2003 Michigan building code provisions relative to fire safety standards *for facilities* and camps licensed or registered under the adult foster care facility licensing act, 1979 PA 218, being MCL 400.701 et seq., and *the child care organizations act*, 1973 PA 116, being MCL 722.101 et seq., remain in effect. [emphasis added] History:2008 AACCS

Despite the above-cited administrative law rule promulgated by the DELEG, DHS still does not require a fire safety inspection as part of a home study for an initial evaluation of a potential foster home, nor for renewal of the license for that home. The word “facility” has been interpreted to require inspections of residential facilities, children’s camps, and children’s day care centers, but not foster homes. In 1998, three children burned to death in a home, licensed through a private child-placing agency, which had been granted a licensing variance for extra children with a foster/adoptive mother with a closed head injury.²⁷ Given the carte blanche for recruitment, recommendations, and renewals of foster homes given by BCAL to the child-placing agencies, such a tragedy could easily happen again. Further, despite the existence of foster home rules regarding sewage disposal, BCAL does not appear to have rigorous standards for even requesting that a child-placing agency obtain clearances from the county health department. To date, DHS even refuses to hold foster

care workers to the Binsfeld reform of visiting each child in his or her foster home each month.²⁸

To summarize, a social worker visiting for the initial assessment of a home, for the renewal of the home's license, or to visit the child in the home does not guarantee the physical safety of foster children. The child-placing agency seeks to protect itself, and BCAL seeks to protect the child-placing agency. That is why child welfare licensing is the weakest link in Michigan's child protective system. You as the lawyer-guardian ad litem can strive to become the strongest, or at least ask to see where your client is sleeping.

This article was originally printed in the October 2010 issue of LACHES, an Oakland County Bar Association publication.

About the Author

Karen Gullberg Cook is a graduate of Duke University, magna cum laude, and a graduate of Wayne State University Law School. She is serving her third term on the State Bar of Michigan Children's Law Section Council, which awarded her the Child Advocate of the Year award in 2004. Also licensed in Washington, D.C., she has practiced juvenile law in Oakland County since 1987.

Endnotes

- 1 MCR 3.965(C)(2).
- 2 Enforcement of construction codes by governmental units is based on administrative rules promulgated under 1972 PA 230, the Stille-DeRossett-Hale Single State Construction Code Act, MCL 125.1501 et seq. The 2006 Michigan Residential Code is based on the 2006 International Residential Code. For more information, see the Department of Energy, Labor, and Economic Growth (DELEG) Web site at www.michigan.gov.
- 3 MCL 722.111 et seq.
- 4 MCL 722.111(1)(c). The definition in state law does not hyphenate "child-placing agency." I have chosen to use the appropriate grammar instead of the version as written into the definition of the Child Care Organizations Act. (I believe that this addition is necessary to the footnote because the *legal* definition of "child placing agency" differs from a grammatically correct version as used in this article.)
- 5 Administrative Law Rule for Child-Placing Agencies, CPA 400.12306 to CPS 12312, CPA R 400.12309. CPA 400.12313 governs re-evaluation of the home.

- 6 DHS concedes this in its publication entitled "Technical Assistance of Children's Foster Care," p. 4: "While agency staff generally come from a social work or other human services background, the process of certifying foster home for licensure is based on compliance with the law and promulgated rules." See also CPA 400.12310(f): on-site visit required but only by the agency's worker.
- 7 BCAL has also been called OCAL, Office of Children and Adult Licensing.
- 8 MCL 722.111(1)(h).
- 9 A licensing inspector from BCAL disclosed this to me when I filed a complaint against Judson Center for maintaining a foster home with poor physical safety conditions and from which the court had removed the children for that reason. See also the DHS publication "Technical Assistance Children's Foster Care," pp.7-8, 23-24, 83-84, which requires paperwork to be submitted in the application, but no on-site visit from BCAL.
- 10 MCL 722.112 and MCL 722.115(1).
- 11 MCL 722. 113(3) and MCL 722.115(3); CPA Rule R400.12401.
- 12 *Supra*.
- 13 MCL 722.112(1).
- 14 Foster Home Rule, FHR 400. 9306(f).
- 15 DHS requires a minimum of one on-site visit to a potential foster home.
- 16 FHR 400.9301 **Maintenance**, Rule 301:
 - (1) A foster parent shall ensure that the property, structure, premises, and furnishings of a foster home are constructed and maintained in a clean and safe condition and in good repair.
 - (2) A foster parent shall ensure that the property, structure, premises, and furnishings of a foster home are adequately constructed and maintained to meet the needs of each foster child and each member of the household. (bold in original). See also Footnote 5.
- 17 Michigan law does not require employees of child-placing agencies who work as foster care or licensing workers to have a degree, much less a license in social work. CPA R400.12101(h); CPA 400.12205.
- 18 E-mail from the Oakland Co. Health Dept. to this author on March 3, 2009; letter from Oakland Co. Health Department dated June 1, 2009, to foster parents, regarding permits and inspection.
- 19 United States Federal District Court, E.D. Mich. No. 2:06-cv-13548.
- 20 *Dwayne v. Granholm, supra*, p. 3.
- 21 A form for faxing can also be found on the DHS Web site.
- 22 CPA 400.12316 **Special Evaluations**.

- 23 MCL 722.954b(3).
- 24 DHS promulgated a licensing rule in violation of the Foster Care and Adoption Services Act, which does not have an exception for monthly home visits to the foster home, by requiring the foster care worker to visit the child in the home every other month.
- R 400.12419 Visitation.
- Rule 419. (1) An agency shall develop a plan of visitation for each child in foster care consistent with the child's service plans, as required by R 400.12418.
- (2) An agency social service worker shall personally visit each foster child at least once each month.
- (3) An agency social service worker shall visit the foster child and the foster parent in the foster parent's home at least once every other month.
- (4) An agency may reduce visits to a child to once every 90 days if there is documentation in the service plan that a child's placement in a foster home is a permanent placement. Visits shall occur in the foster home.
- History:** Eff. January 1, 2001 (bold in original; underlining added).
- 25 The investigative report and letter to the agency's director is available online at http://www.dleg.state.mi.us/fhs/brs/reports/CB250201108_SIR_2009C0115019.pdf.
- 26 The CPS Investigation Manual, CFB 713-1, pp.11-12, attached to my 3200, stated, "A protecting intervention is a safety response taken by staff or others to address the unsafe situation identified in the assessment. These interventions help protect the child from present or imminent danger. **A protecting intervention must be deployed if any safety factor is indicated.**" (bold in original). p. 11. "Child physical living conditions are hazardous and immediately threatening" was considered a safety issue, including conditions of plumbing and electrical problems, and missing windows. *Supra*, p. 12.
- 27 "Kids' Death In House Fire Stir Up Regret: Birth Parents Wrestle With Anger," *Detroit Free Press*, Dec. 16, 1998, by Jeffrey Granham, Pauline Lurens, and Jack Kresnak. Also, "Fire Hit As Ailing Mom of 9 Recovered, She Had Head Injury But Still Cared for Kids," *Detroit Free Press*, Dec. 17, 1998, by Jack Kresnak. The children who died were adopted; the state had recently terminated the license for that foster home.
- 28 The settlement agreement in *Dwayne v. Granholm*, *supra*, p. 31, requires a certain amount of contact between worker and child, but does not require the visits to be in the foster home.

Seven Deadly Sins for Child Welfare Attorneys

by Honorable Mark A. Feyen

All trial attorneys understand instinctively, if not through experience, that it is not a good idea to anger your trial judge. While certain trial judges have peccadilloes which can make your practice difficult if you fail to understand them, most trial judges just want a basic level of competence and performance from attorneys. If you have noticed your trial judge rolling his eyes at you lately, or sighing deeply as you begin your argument, you may be running afoul of some basic expectations which judges have of lawyers. Violation of basic standards of practice can certainly alienate the trial judge and will poorly serve your client. In this article, I highlight my personal list of the top seven sins for lawyers handling child welfare cases.

1. **Know the basic legal rules.** The legal rules that pertain to child welfare are generally straightforward and well understood by at least 90 percent of attorneys practicing in this area. However, all judges have experiences with lawyers who have little experience in this area, and assume that trying a child welfare case is no different than trying a child custody case. They file pleadings captioned as Plaintiff versus Defendant, rather than in the name of the child. They don't understand that this is not a criminal case, and the client may be called as a witness for the State (unless answering questions would create criminal liability). They don't understand that Section 19b of the Juvenile Code constitutes a finite list of the permissible grounds for termination of parental rights. In short, they assume that because they have tried criminal cases or domestic relations cases that handling a child welfare case cannot be that much different. No lawyer should represent anyone in a child welfare case unless he has at least read Section 2 of the Juvenile Code and skimmed subchapter 3.900 of MCR.
2. **Avoid endless cross examination.** There is a senior practitioner in my county who seldom cross-exam-

ines any witness more than 15 minutes. He is also one of the best trial counsels I have encountered. If you have cross examined a witness in excess of 40 minutes, chances are you are not getting anywhere, and you should give up. Any cross examination should attempt to score about three or four important factual points and then end. Beyond that, you are just digging yourself into a hole. The witness is telling you that you are the person who represents the other side and she is not giving you anything. After 45 minutes, endless objections for "argumentative question" and "asked and answered" become the rule. Score your points, and sit down.

3. **Failure to prep a client for a plea.** One of the most frustrating moments for trial judges is the botched plea. After spending weeks and months negotiating a resolution to a case, and the parties appear in court to enter a plea after an advice of rights, the client responds to the court's factual inquiry by saying he didn't do anything, or he can't remember. Every attorney should advise his client regarding the questions the court will ask, and make sure he is prepared to give proper answers to those questions. He may believe he is not morally culpable, but he at least needs to muster a few facts from which the court can adjudicate the petition and accept the plea. Failure to do this derails the process.
4. **Don't subpoena numerous witnesses to dispositional hearings and review hearings.** As a sub-text to part one of this list of deadly sins, all competent counsel should know that the hearsay rule does not apply to dispositional hearings and review hearings in child welfare cases. Thus, reports and letters from counselors, friends, grandmothers, and the like are admissible as long as the preparer of the report is available for cross examination. Nobody ever wants to cross examine a grandmother. It is much more efficient and less time-consuming for trial courts

to receive information in written form than in the form of testimony. Your judge will appreciate your consideration for her time demands, and will understand that in trials and termination hearings you will need to call witnesses. Don't abuse the privilege by regularly calling witnesses at review hearings when this is generally unnecessary.

5. **Don't pump 'em full of sunshine.** Good lawyers are skeptics and pessimists. They appreciate the difficulties of their case and make preparations to meet those difficulties. They do not present an overly optimistic view of the case to the client, promising to charge up the hill and get justice on each and every point. Lawyers who do this generally obtain a large retainer and represent the client until about two weeks before trial, at which time they file a motion to withdraw. The court then adjourns the trial and appoints counsel who will speak the hard truth to the client. Good lawyers have to give their clients bad news at times. Sometimes this results in the lawyer walking away from a client interview with singed eyebrows and broken eardrums. In these instances, however, counsel should take solace in the knowledge that you have done your client a service by not sugar-coating it for them. Generally, they will settle down and respect you for your honesty later on. Even if they don't, you are not helping your client by making matters seem better than they are. Tell them the truth, warts and all, or you will set them up for disappointment later on.
6. **Know your opponent's case.** Law students spend most of the first year of law school learning an essential fact of our profession: that there are two points of view on every issue. For some reason, once some of these students graduate and pass the bar they forget this, and assume that the only reasonable position is the one espoused by their client. They seem incapable of understanding that others have a different view of the facts, and become strident in failing to see the strength of their opponent's case. A good lawyer cannot only evaluate his own case, but also that of the opposition. Don't become deluded into believing that truth and justice is on your side with every issue just because your client tells you so.
7. **Be nice to witnesses.** The immortal Patrick Swayze, in the movie *Road House*, once articulated the cardinal rules for work as a bouncer in a sleazy bar. The final and most important rule was "be nice." This

didn't work out for him too well in that movie, but it generally does work well when attorneys address witnesses. There is at least one attorney I know who beats up on 75 percent of all witnesses she questions, including a number of her own. I don't know what she thinks she is accomplishing. In short order, the witness understand that this is a lawyer I don't like, and who doesn't like me. The witness will disagree with every assertion the lawyer makes. Contrary to popular belief, nice guys do not finish last. In the case of nice attorneys, they often prevail. Even if a hostile witness has given facts on direct examination contrary to the client's views, you will find that if you treat the witness with respect, do not attempt to cut off their answers, or distort their views, that they will acknowledge the legitimacy of some of the points you are trying to make. My own experience suggests that about one witness in ten or twenty is the one you need to get tough with. The rest will loosen their tongues more readily to lawyer who shows respect for what they have said on direct examination, but is attempting to re-shape it subtly to be less harmful to his client's interests. The all out attack seldom works unless it really was the butler, in the library, with the candlestick, and you have the pictures to prove it.

Avoiding these seven deadly sins for trial practitioners in child welfare cases won't turn you into Perry Mason, Johnny Cochran, or whoever your legal hero might be. It will, however, help you avoid most of the moments which exasperate your trial judge, and turn a close case into a loss. ©

About the Author

Judge Feyen is the Chief Judge of the Ottawa County Probate Court. In this capacity, he handles cases involving decedent estates, guardianships, conservatorships, and the mentally ill. He also hears cases in the Family Court consisting of juvenile delinquency, abuse/neglect, adoptions, and name changes. He also conducts the juvenile drug treatment court and the adult felony drug treatment court. Judge Feyen is a lifelong resident of Western Michigan. He received his Bachelors degree from Calvin College and graduated from the College of Law at the University of Illinois in 1980. He then worked in private practice with Scholten and Fant in Grand Haven. After that, he joined the Ottawa County Prosecutor's Office and specialized in cases involving children. He was elected to the Probate bench in November, 1988.

Practice Tips from Judge Hillary

by Honorable G. Patrick Hillary

Introduction

How do you begin to discuss the intangibles that make for a “good” caseworker or attorney in child welfare case? Are there practical specific activities that cause one caseworker or attorney to provide a better service than the others? Do some caseworkers or attorneys present better in court even though they have done the same work as the other person who did not present as well? What is the judge’s perception when the judge is analyzing a case and what is the best way to present the case to the judge? This article will attempt to articulate the actions of attorneys and caseworkers that contribute to an effective child welfare court hearing. I seem to use the terms “Child Welfare” “Abuse and Neglect” or “Neglect” cases interchangeably, in part, because I began my practice referring to these cases as “Abuse and Neglect” rather than “Child Welfare” cases. I will continue to use these terms interchangeably throughout this article and I believe the various readers will all relate to the different terms being used. As stated later in this article, I have great respect and admiration for the individuals who work with abuse and neglect cases on a daily basis. I am hopeful that this summary will help all of us better serve the parents and children who come into our court for these specialized cases.

Don’t Filibuster, But Don’t Fold Either

Delay of a hearing by an attorney through protracted questions, stalling and inane tactics does not promote justice or help a client; it simply prolongs a hearing and sometimes hurts the client. Without fail, the attorneys who are known to be the “good attorneys” are the ones who represent a client zealously by bringing up every relevant factor and bringing forward the best persuasive argument on behalf of the client in a *timely* fashion. These attorneys never wade into the obtuse or obscure simply to bring out more testimony with the apparent attempt to have the trier of fact think that more is better. The judge hearing the neglect case knows what is pertinent and what is not.

He or she also will take note of the fact that an attorney asked many questions about a particular topic and then never tied it into anything positive for the client. Asking many questions that are not productive leaves the judge with the impression that the attorney is either inadequate, unprepared, “fishing”, or stalling for some reason. Either way it doesn’t bode well for the client and the attorney is certainly not making a favorable impression with the judge.

The other side of this issue is having an attorney come into court who just allows everything to happen because he either thinks that is ultimately what is going to be the result or is just too burned out to fight a tough battle. The attorney needs to make all necessary objections and bring forth the best defense. The attorneys that do the best job seem to understand the necessity of fighting hard but not dragging something out ostensibly as a form of representing a client.

Substitute Like You Mean It

When an attorney substitutes for another attorney she needs to take the time to familiarize herself with the case. The quickest way of becoming familiar with the case is to get an update from the attorney of record. The substituting attorney needs to also obtain the complete file and read the reports for the next meeting. It doesn’t do any good in court for the attorney to say on the record that “The appointed attorney, Mr. Smith, might have that report in his file but I am just covering for him today so I haven’t seen it.” It is also imperative that the substituting attorney make sure the client understands that they are still getting the same level of representation that they would receive if the appointed attorney were present. Studies indicate that substitution of counsel is a concern in the adequate representation of clients in our court system. The only way to alleviate those fears is to be prepared and make sure the client knows you are prepared. Substitute attorney or not, the client needs the best possible representation and it does not instill confidence to hear the attorney say in court: “well, I’m just covering, your honor.”

Be Prepared, Be Prepared, Be Prepared

I don't think I have ever read an article about being a good lawyer that didn't stress the importance of the attorney being prepared. However, if counsel does not look ahead at the cases scheduled in the future there is no way of knowing how to be prepared. Therefore, timely review of the file is an extremely important part of being prepared. With a busy schedule it is very easy to take the cases as they are scheduled without looking ahead. It is hard enough to put out the fires that you see in a law practice on a daily basis without anticipating other possible problems. However, a quick review of a hearing coming in the future can cause the attorney to look into matters long in advance to avoid the problems that occur at time of the hearing. It's too late if the attorney waits until the time the hearing is scheduled and then realizes that she should have taken some additional actions like sending out a subpoena, interviewing a witness, or perhaps bringing a motion. A simple example of this is the preparation involved in having a client enter a plea. The attorney should prepare the client in advance for a plea or admission to the petition. When the client understands what will happen at the time of the plea, he or she is less likely to be stumped by questions such as: "Has anyone promised you anything in exchange for your admission to the petition?"

It is also especially important to make certain the attorney properly prepares for a no contest plea. Many times a parent wants to admit an adjudication petition, however, because of possible criminal or civil charges, the parent needs to enter a no contest plea. It is important if you are the attorney attempting to have your client enter the no contest plea that you obtain the written information needed for the judge to read to establish the factual basis for the admission. I have had numerous occasions whereby the attorneys indicate that the factual basis is established by the CPS report. However, when they are asked to specifically find every section of the report that establishes each element of the petition they are not able to find the necessary language. The CPS reports are many times a 40 to 60 page document. It makes sense to review the report with other attorneys and have the sections highlighted for the judge to read to establish the factual basis. If this is not done, the only alternative is for the judge to delay or adjourn the proceeding and read the document to find all of the language that satisfies the petition. If the judge doesn't read the entire docu-

ment and takes the no contest based upon assurances from the attorney that a factual basis is indeed established, that judge risks not having an exact factual basis and therefore not a proper plea to some of the allegations in the petition.

Talk and Listen to the Children

If you are a caseworker assigned to a neglect case, then you should be obtaining relevant information regarding the children and their particular situation. The child's attorney should also be speaking with his client, determining what is in the child's best interest and listening to the problems and issues of the client so that they can be addressed to the judge. The attorney also needs to determine if the child desires to come to court to talk to the judge. A large majority of the neglect wards over the age of 12 desire to talk to the judge about their case.

I will usually talk to the children in chambers provided the parties have no objection. Since doing this more frequently in the last couple of years I have had several things explained to me by the kids in chambers. Many things explained are not of major significance, ... *except* to the children.

For instance:

After listening to testimony about the child being old for her grade and not ready to graduate on time, the child told me the following in chambers.

Child's response: *"I've never been held back and I am getting good grades. I'm 16, not 17 and am on track to graduate on time."*

In another instance the worker testified that the girl would be moving to another school very soon because of a change in placement.

Child's response: *"Before you consider moving me to the other home can you please make sure I stay in the same school. I'm in cheerleading and sports and have lots of friends in the school I am at."*

In another case the testimony by the agency was that the child was being provided extra help at school and they expected with what has been put in place that her grades should be improving:

Child's response: *"I'd really like a tutor. The teacher stays after for 7th hour, but it's only an*

hour and there are lots of kids. I'm just not getting anything out of it."

The above instances don't reveal any significant issues regarding the final outcome of the case, however, these are very important issues to the children caught in the middle of a neglect hearing. By talking and listening closely to the children, the worker and the attorney can help to make certain all of the child's needs are being addressed. Furthermore, by bringing the child to court and allowing him or her to have a discussion with the judge, the child will be able to relay information that is important to the child. Most importantly, when children come to court and talk to the judge they feel that someone is actually listening to them and their voice is being heard.

Dress for Success (Kind Of)

I really don't subscribe to the belief that a person needs to spend a lot of time and money on clothes, shoes and other items of personal attire to make a good impression. However, it *is* necessary to look well kempt. For instance, when a male attorney appears in court it is certainly obvious if his top shirt button is undone and the tie is loose. This gives an impression that the attorney either is absentminded or just really doesn't care too much about that particular case before the court. It is also important for case workers to be dressed appropriately to appear in court. I realize that agency professionals working on a neglect case have many roles and may need to be making a home visit or doing something similar on the same day they appear in court. However, a simple change of clothes could accomplish both tasks and the court appearance will not be compromised. Another important aspect is how everyone is perceived by the clients of the court proceeding. If the professionals are underdressed or inappropriately dressed then what does that say to the clients? So, dress for success... in the courtroom.

Almost equally important as one's appearance and maybe more important, depending upon who you are *talking* to, is a person's breath. Although this topic isn't brought up very often it is a necessary consideration when trying to leave a good impression in court, or anywhere else for that matter. That's right, I'm talking *halitosis*. This is not something that is encountered very often, however, when it is present it is noticeable. In cases where the attorneys are seated at counsel table, instead of right in front of the judge, this is

probably not an issue for the judge (although it might be for others at the counsel table). This is always a consideration for anyone testifying in court. No judge is going to make a ruling contrary to the testimony of a person because of halitosis. However, it can be mighty distracting, and thus take away from the great weight of the testimony if you are fighting to stave off bad breath while trying to listen to someone. There is definitely a reason why my recorder chose in my courtroom to put a big bowl of mints on the ledge directly in front of the witness stand.

Know What You Are Talking About

This seems pretty obvious but you need to know and understand the law before coming into court. The area of child welfare law has many different burdens and standards of proof and can be very confusing once one begins practicing in the area. It is a common mistake to think that because the court is considering the best interests of a child that therefore the neglect practice is more about feelings and emotions than law and specifics. I have worked in many areas of the law, including civil, administrative, state/federal criminal, real estate, business/corporate, pension, estate planning, delinquency and child welfare/family law. The child welfare practice is one of the most difficult areas of the law for a person to *completely* understand and comprehend the nuances and complexities. After one reads the law and the treatises, then is the time to find a knowledgeable experienced attorney in this area and ask questions to learn the finer points of the practice. I have implemented a mentor program in the Kent County abuse and neglect court so that new attorneys have someone to talk to about the difficult questions. Many times the more involved questions will come up after an attorney has been practicing for a while because you don't know what you don't know when you first start. In our county we also implemented brown bag lunches to offer seminars on various topics to better educate attorneys and case workers who work in the areas of abuse and neglect. It is extremely important for everyone involved in these cases to stay abreast of the laws and the changes taking place in the agencies. Department of Human Services is constantly updating forms, amending policies and creating new policies in an effort to stay current with the necessary changes in laws and funding requirements. Attorneys must be aware of agency changes and new laws as they

apply to this practice of law. It is difficult to stay current with all of the new laws and changes unless the attorney is interacting with other attorneys and involved with additional education. I have created a new law section in our county specifically relating to attorneys working in the areas of abuse/neglect and delinquency. The law section will allow educational development as well as the opportunity to share ideas and best practices with colleagues. Hopefully, attorneys can gain additional knowledge and enhance skills by benefitting from the luncheon speakers, seminar presentations and interaction with others working in the same area of the law.

Timely Current Reports are Very Important

In our Court we are to receive abuse/neglect court reports at least 5 days prior to the hearing. It is very important for reports to be received in a timely fashion and to be current. The attorneys rely on these reports to obtain current information and to develop questions to be asked at the upcoming hearing. Without the information provided in the reports the judge cannot even make meaningful reasonable efforts findings if the children are outside of the home. Also important is to not only include updated information in the report but to omit the outdated information. Many times in my hearings the attorney will point out that according to the current information the parent should actually be rated as better accomplishing a listed goal. This usually occurs when the parent is improving and the updated information reflects the improvement, however, the other portions of the report have not been updated. Of course, the report is not expected to necessarily coincide with an addendum or amendment to a report that has been submitted to keep the court apprised of recent developments that have occurred since the date of the most recent report. Addendums, amendments, attachments or updates are always a good idea if the most recent report is going to be more than two weeks old at the time of the hearing. A simple one or two page update informs everyone of the current status of the case so that no one is guessing if anything else occurred.

Caseworkers Need to Call Them Like They See Them

Although an agency worker may be contracted by the Department of Human Services (DHS) to perform the task of monitoring the case and providing services,

it is necessary for that worker to be independent and state what is in the best interest of the child; even if that conclusion is contrary to the opinion of DHS and perhaps the other professionals participating in the case. If a caseworker feels compelled to state conclusions that are in keeping with the contracting agency or others involved in the case, then a great injustice can occur either by a child being kept from a parent longer than necessary or a child being returned to a parent too soon. This is a larger concern for new agency workers as they might not feel that they are qualified to say something contrary to the other professionals in the case. I consider it a professional growth achievement when a worker feels strong enough in her convictions and understanding of the case to disagree with the contracting agency and others. Of course when this is done the worker better be able to reasonably support her conclusions or a good attorney will pick apart her reasoning. A new caseworker's confidence will increase as she is more prepared. It is necessary not only to know the facts of the case before the court, but to also know *how* to testify. It is advisable for any new professional who will be testifying in court to undergo training that teaches her how to testify. I have many times watched attorneys bend a caseworker's testimony through skilled cross-examination. This article cannot be expansive enough to delve into the intricacies of trial testimony. However, I strongly advise anyone who will be testifying in court to complete training on the subject.

Don't Take It Personal

It is imperative that attorneys and workers all understand that everyone has a job to do and there might never be an agreement by all parties in a case. True professionals will go into court, complete the assigned tasks to the best of their abilities, do battle if necessary, and still be civil and friendly to their in court adversaries. In my county our attorneys represent parents and children on a randomly appointed basis. With our system of appointing attorneys one might be advocating for the child at one hearing and the parents in the next hearing. I think this system leads to a better understanding of the tasks of each attorney in each case.

One caveat to remaining civil and friendly is to not let the clients or their family members see overt friendliness in a highly contested case or a termination hearing. I have observed attorneys who are good friends talking, smiling and joking in court before beginning a

termination hearing with the parents present witnessing the obvious friendly collegiality. This is not to say the attorneys did not perform well, however, it brings doubt into a parents mind about possible collusion in the court system at a time when the parent is trying to deal with many other issues, including the termination of parental rights. True professionals can, and should be able to wage all out legal war against each other in court, even though they might be best of friends out of the courtroom. However, non-attorney participants in a trial do not always understand this dichotomy.

Client Control

An attorney's duty in representing his client is not just to do what the client suggests, or to "dig in" and fight regardless of the facts. If the case is possibly winnable, then the attorney should perhaps encourage the client to litigate. Also, if somehow favorable facts will be exposed regarding the client as a result of a trial, then it may be beneficial to litigate. However, if the trial will be nothing more than a vivid detailed display of abuse or neglect of a child by a parent, the attorney for the parent should perhaps consider convincing the client to admit the petition and direct efforts toward showing early parental accountability and compliance with the Parent Agency Agreement. A Child Welfare case is very unique type of case. If an adjudication has been proven, the parents then need to come back into court every three months and demonstrate to the court they are making progress on the parent agency agreement. If, in the attorney's opinion, the parent's case is not "winnable", then it might be appropriate for that attorney to convince the parent to admit the petition and begin working as soon as possible on complying with what is to be expected for reunification. The attorney is ultimately appointed to represent a parent in an abuse and neglect case to make certain that the best result is obtained for that parent and that the parent's rights are protected. If the best result is to admit to an adjudication and begin working on a treatment plan, then that client needs to be firmly told that information, even if it is not what the parent wants to hear.

Address Parents Concerns

The worker assigned to the neglect case needs to be certain that the concerns brought forth by a parent are properly addressed. Most of the workers that I work with do a wonderful job and are attentive to the needs

of the children and the parents. However, a case will always proceed more smoothly if the concerns of a parent are appropriately addressed. This is a good idea for several reasons. First, the parent will feel you are working with them for the good of the child. Second, there is a record made, for future court hearings, if necessary, that actions have been taken to alleviate concerns regarding the child's best interests. Third, following through and addressing a parent's concerns will show additional proof of reasonable efforts being made. Fourth, if a parent brings up several issues, all of which are found to be meritless, this can be further proof of a parent's inadequacies. Fifth, it is best to follow through on parents concerns as sometimes there is a valid issue that should be alleviated for the best interest of a child.

It is extremely important for a parent's attorney to bring a parent's *valid* concerns to the attention of the worker and the Court. It is also necessary for the attorney to dissuade the client from asserting inaccurate and invalid concerns. I recall a case several years ago in private practice when I was representing the mother on an abuse/neglect case. The children were in foster care, in part, because the parents were not transporting the children to necessary medical and counseling appointments. My client informed me that the foster parents were not transporting the children to the medical and counseling appointments and this fact was not indicated in any of the reports presented by the agency. After reviewing this matter it was determined the children were *not* being brought to the necessary appointments by the foster parents and my client was exactly correct. Changes were made and the children attended the appropriate appointments. Thereafter, my client gained some credibility for bringing forth a valid issue that was in the best interest of her child.

Keep Doing This Work and Keep a Sense of Humor

We are blessed in Kent County to have what I consider an outstanding group of case workers, attorneys and other professionals involved with our child welfare system. This type of work leads to burn out and the people who have been doing it a long time need to keep a balance to maintain objectivity and perspective. None of the individuals performing tasks relating to abuse and neglect cases are earning huge sums of money. The attorneys are working at the lower end of the hourly rate and most of the agency workers have

a Masters Degree or higher and do not necessarily receive compensation commensurate with their level of education. So why do all of these talented people work in this area of the law? I think it is because they feel a sense of commitment to the children and families coming into the court system. This is a chance to take action for altruistic reasons. These people put in long hours, sometimes in poor conditions, for the purpose of attaining a better life for a child while hopefully helping a parent who is in desperate need of professional assistance. This isn't the type of case that is finalized by a person getting a money judgment. Nor do they result in a well drafted trust agreement successfully distributing the property to all of the heirs. A neglect case is a balancing act of protecting children while helping the parents. At one period of time we might be prohibiting parenting time with a child and later reuniting with that same parent. Participants in the process find themselves cheering for the parents' victory and then reluctantly realizing the parent's failure will result in termination of parental rights. These same emotions flow through everyone involved with the case. Because of the nature of the work it can erode your psyche and tear away at your emotional balance if you let it. Ultimately we must remember that whatever the outcome, our actions in a neglect case result in a better outcome for the children involved. As a judge I have the benefit of seeing children being adopted after the biological parent's rights have been terminated. The adoptions allow me to observe a positive conclusion to the previous neglect case that resulted in termination of parental rights.

Everyone involved with this important work needs to understand that for us to do our best work we must stay fresh, keep our mind clear and maintain our motivation to perform the job at the highest level possible. In my opinion, we need to purge the negativity and sadness that inevitably seeps into our head after one of these difficult cases. By taking the proper actions to maintain a positive and refreshed attitude, we ensure that we will preserve the highest level of performance for the children and families coming into this court. Whether we are meditating, exercising, delving into a hobby, immersing our self into our family or have another coping mechanism, it is important for us to have some method of dealing with the issues arising from the neglect court. Whatever your method is a coping, I believe that civility between attorneys, caseworkers and other professionals along with main-

taining a sense of humor is a good place to start in our attempt to maintain a healthy balance. It is important to walk away from each case knowing you did your very best, regardless of the outcome. Also remember that because of what you and others did in the neglect court, a child is in a better place and parents have been properly represented.

It is a pleasure to share thoughts about the work that I love. For those of you who are involved in the abuse and neglect courts, I want to extend a heartfelt thank you for the work that you perform. After the next child welfare hearing give yourself a pat on the back and give one to the person next to you working on the same case. You might find that the other person was in desperate need of your reassurance that a job was well done; and if you know a good joke (that you can tell), then share it and put a smile on someone's face. Your kind words might be just the thing needed to keep your comrade coming back the next day. ☺

About the Author

Judge Hillary was elected to the Kent County bench in 2001 and served as Presiding Judge from 2004 through 2009. He earned a Bachelor of Science Degree in Business Administration and received his Juris Doctor degree in 1983. Judge Hillary has taught several law related courses and served as a faculty member for the Michigan Institute of Continuing Legal Education, the Supreme Court Administrative Office Child Welfare Services Division and the Michigan Judicial Institute. He also has participated as an editorial advisor for the Michigan Judicial Institute Lawyer Guardian Ad Litem Protocol publication and Academic Advisor for other Michigan Judicial Institute programs. He is involved in many community organizations, and is a member of the State Bar of Michigan, Grand Rapids Bar Association (also Family Law Section), Probate Judges Association, and the National Council of Juvenile and Family Court Judges.

Judge Hillary also served on many boards including the Kent County Families and Children's Coordinating Council, Kent County Community Corrections Advisory Board and Kent County Alternative Dispute Resolution Plan Oversight Committee. He also participated on the National Child Welfare Advisory Board in Washington D.C., created for development of standards applicable to the treatment of unaccompanied alien children in the United States.

Tips for Parents Attorneys

by Honorable John A. Hohman, Jr.

Here are a few tips on effective representation of clients in child protective proceedings. I acknowledge that these tips are elementary, but based on my experience, they are worthy of publication.

1. **Read the Court Rules and Statutes.** An attorney in a child protective proceeding must be familiar with the court rules and statutes. Both are organized in a chronological order, and are easy to reference. No one is expected to have memorized the content of the statutes and court rules, so you should bring a copy of each with you to the hearing. There are some publications that include the pertinent court rules and statutes in one volume.
2. **Prepare for the Hearing.** Familiarize yourself with the findings that must be made at each stage of the proceeding. Those requirements are stated in the Court rules. Read the reports and be prepared to cross-examine the authors of those reports at scheduled review hearings. Be prepared to offer contrary evidence, if necessary. Review hearings should not to be a one-way freight train. The Court needs evidence on both sides of an issue to make the best decision.
3. **Be on Time.** In our court, we schedule each hearing in 15 or 30 minute intervals. This method is more convenient to the attorneys and parties, and saves taxpayer money because it minimizes wait time. If you practice in a court that schedules in this way, it is imperative that you be present and prepared to go **on the record** at the scheduled time. If your hearing is at 9:00, don't arrive at 8:58 and begin talking to your client or the Department about the case service plan. Arrive early enough to be prepared when the case is called at the scheduled time.

The importance of being timely can't be overstated. A child protective proceeding typically has at least four attorneys in attendance. Each of those attorneys has set their schedule relying

on the hearing to begin and end on time. If one attorney is late, it throws off everyone's schedule, which affects not only the child protective court, but other local courts as well. Be on time.

4. **Develop Trust (for parents' attorneys only).** Parents in a child protective proceeding commonly do not trust their attorney at the outset. Their children have been taken from them by the "State." A "State" judge is going to decide their case. Their attorney has been appointed by the "State", and will be paid by the "State." Parents' attorneys must be conscious of this attitude, and be vigilant of their clients' perceptions. Attorneys for parents should avoid private conversations with the other attorneys in the case. If a private conversation is necessary, make sure that the need for the conversation has been fully explained to the client. If one of the other attorneys requests a conference in chambers, ensure that the DHS worker is not allowed in chambers, or insist that the parents also be allowed to participate in the off the record conversation. If you must meet with your client in the courthouse, find a setting that provides you with the privacy necessary to conduct a meaningful meeting.
5. **Communicate With Your Client.** Communicating with a respondent parent can be a challenge. The attorney must set up a reliable and regular method of communication (e-mail, telephone, office, visit, etc.) with the client at the outset of the case. Without effective communication, hearings become a waste of time and resources. Judges are frequently frustrated when attorneys appear at a hearing and state that they have not had an opportunity to review the DHS report or recommendations with their clients.

Representation of parties in a child protective proceeding is particularly challenging. Resources are limited, communication is difficult, and the stakes

high. Clients are emotional and frustration is common. I commend those attorneys who regularly appear in child protective proceedings. ©

About the Author

Hon. John A. Hohman, Jr., has been a probate judge in Monroe County since 1997. Active in the Michigan Probate Judges Association, he is a former president (2008-2009), current board member, member of the Juvenile Issues Committee, and chairperson of the Compensation Committee. Judge Hohman is also a member of the State Bar of Michigan, where he is chairperson and board member of the Judicial Conference and serves on the Judicial Crossroads Task Force's Court Structure and Resources Committee. A regular faculty member of the Michigan Judicial Institute, he has served on editorial advisory committees for many publications. Judge Hohman serves on the Michigan Supreme Court Committee on Model Civil Jury Instructions. In 2008, he was selected as Jurist of the Year by the Michigan Association of Court Appointed Special Advocates.

Practice Tips from Judge Lawless

by Honorable Janelle A. Lawless

I would like to begin by thanking all of you who practice in the area of family and child welfare law. I find this to be one of the most challenging arenas for attorneys. It is very difficult to represent someone during one of the most traumatic and stressful times of their lives. It is even more difficult to get them to be rational about very emotional and very personal issues. In my experience, I find that the role the attorney plays can be critical in the outcome of the case and not just from a legal standpoint. It can also influence the relationship between not just the parties, but also the parties and their children. I also recognize that many attorneys that represent parties in these cases are appointed by the court and often do not receive adequate compensation.

I have had experience in child welfare cases by sitting on both sides of the bench and through the years have seen both excellent and poor client representation in these matters. It is with that experience in mind that I offer the following advice for attorneys representing parents in child protection proceedings:

Read the law, this includes not just going through the statutes and court rules but also of being aware of any significant cases in child welfare law. Get familiar

with the terminology. Understand the different burdens of proof involved in different stages of the proceedings as well as when legally admissible evidence is required. Always have the court rules available to you during hearings in case a legal issue comes up such as adequate notice, etc.

Don't forget the basics. The allegations in the petition must be proven by a preponderance of evidence for the court to take jurisdiction of the children and must meet one of the statutory basis. Occasionally, the allegations are very vague and don't support any of the statutory grounds for jurisdiction. If that is the case, move to dismiss the petition, however, also remember the petitioner may request to amend the petition to satisfy one or more of the statutory grounds. But, at least you tried.

If you are able to meet with your client at the preliminary hearing and your client admits to you that the allegations in the petition are true, you may want to consider having your client enter a plea at the preliminary hearing. This will allow services to be put in to place more quickly and may allow for the children to remain in their home safely or avoid a lengthy out of home placement for the children.

If you are not able to meet with your client at the preliminary hearing, make sure you meet with them before the pre-trial. Send a separate letter to them with a general description of the nature of your representation and how important it is for them to meet with you in advance of the hearing. They should plan to meet with you approximately thirty minutes before the hearing to avoid backing up the schedule of the court. I am very aware that many times clients do not participate, don't respond to their mail even when they get it, or return phone calls. However, the more prepared you can be, the better it is for your client, the other parties and the court.

Don't be afraid to explore the possibility of avoiding the necessity of court jurisdiction in the first place, be creative. Sometimes jurisdiction may not be necessary. Perhaps a resolution could be explored in the domestic case, if there is one. A power of attorney may be able to resolve a placement issue. Your client could voluntarily participate in services to negate the risk of harm. There may be many alternatives to court jurisdiction that you may be able to put in place.

If your client is going to enter a plea, make sure you go over the rights that they have regarding the petition, including the petitioner's burden of proof before they enter their plea. Also, advise them about the possible consequences of the plea. It is important that they know that the court can decide where their children will live, that they can possibly go to jail for failure to comply with a court order and that their plea may be used to terminate their parental rights in the future, even though the current goal is reunification. Don't let the judge be the first person to give them that information. Also, if your client can admit to one or more of the allegations giving the court jurisdiction of the children, don't focus on individual allegations that may not be accurate. Again, the petition can be amended to be more factually accurate.

Don't forget that the children have an attorney too. It is very important to keep their attorney in the loop regarding pleas, services, parenting time and placement issues. A parent that works with the attorney for the children can often garner cooperation and support from them as the case progresses.

If your client has significant mental health issues or cognitive limitations, ask to have whatever appropriate and available accommodations there may be put in place. If the limitations are such that they aren't able to adequately assist you with their representation, you

can request that the court appoint a guardian-ad-litem on behalf of your client.

If the children are placed out of home, try to get information regarding appropriate relatives to the caseworker as soon as possible. All parties prefer appropriate relative placements, but these placements sometimes go unknown for months. The sooner these possible placements are known the better so that the required home studies may be conducted. If the potential relative placement is out of state, the quicker interstate compact requests can be made the better as well. These often times take months to complete.

Treat the caseworkers like professionals. Even though they are not lawyers they have a great deal of power over the course of the case. Make sure your clients are cooperative with their case workers and treat them with respect. Within the framework of court orders, the caseworkers have broad discretion and it is human nature to try to help cooperative parents and attorneys. However, if a caseworker is not adequately performing their duties, don't hesitate to call them on it or to bring it to the court's attention. It is also important for attorneys and their clients to be cooperative and respectful to other professionals and service providers they will come in contact with as the case moves forward.

Become familiar with the different agency and service providers in the area. If you know of a program that would benefit your client, let the caseworker know and it is very likely that they will support your client's participation in the program and DHS may also pay for it. If you understand what the different programs have to offer you can help insure that your client is involved in the rights services for their needs.

Don't be afraid to file motions. I rarely have motions filed in child protection proceedings; however, there may be times when they are appropriate. You do not have to wait for a scheduled statutory review to request increased parenting time, custody or to bring up any other issue that may arise. If you believe that an independent psychological evaluation or other type of expert would be of benefit to your client and your client is indigent, you may also request the court to approve of your expert and pay for the fees involved.

Don't be afraid to try a case. There are times when that will be necessary. Trials are most common regarding requests to terminate the parental rights of one or both of the parents. Make sure you know the

difference in the burden of proof for jurisdiction and termination of parental rights and what the statutory grounds are for each. Also, timely submit any requests for subpoenas for witnesses.

If you are the Laywer Guardian Ad-Litem for the children in a child protection proceeding, it is imperative as well as required by law, that you visit the children. Many LGALs observe the children during parenting time so that they can get a feel for the relationship that exists between the children and parent. It also gives them a first hand view of the parenting skills and assists them in considering whether or not to support changes in parenting time and placement. It is also important to visit them in their placement, whether that is with a parent or out-of-home. You can receive valuable information by meeting with the child in their daily environment. This also helps you better understand the needs of the children.

Make sure you talk with the children and include them in the proceedings. Encourage them to attend the court hearings, unless you believe that may be harmful to them. Many children feel powerless in these types of cases and that their feelings are rarely considered. You are their connection to the court and should make their concerns known. It is your job to represent the best interest of the children and sometime you and the children may not agree on what is in their best interest. If that does occur, you can request that the court appoint an attorney to represent the children if that type of serious conflict arises.

It is also important to ensure that all the children's needs are being met in their current placement. If the children have counseling, educational or medical needs that are not being met, make sure you contact the case worker and follow up with them to make sure that these needs are being addressed. If there are some unmet needs of the children while they are under court jurisdiction, don't hesitate to bring those to the court's attention.

Please remember to use common courtesy in these types of proceedings, just as you would in other matters before the court. If you are going to miss a hearing, let your client know. Obtain someone to take your place and make sure your client and the court know who that is. You should inform your replacement about the circumstances of the case. Don't over book or double book your day with different cases/courts/judges at the same time. If you are going to be late, call. There is nothing more aggravating for the court and all the par-

ties involved than to be ready to go on a case and one of the attorneys is not present with no courtesy phone call to the court or explanation.

Last, but certainly not least, remember that you are not just an attorney but you are also a counselor at law. Clearly, it is your duty to be an advocate on behalf of your client, but you will often be called upon to counsel them as well. This counseling will involve very challenging issues and may very well be regarding one of the most difficult decisions a parent may have to make and that is whether it is in their children's best interest for them to give up their parental rights to their children.

I hope you find some of the above helpful to you if you represent parents or children in child protective proceedings. Remember it is the children that truly do benefit when all the parties involved in these challenging cases perform each one of their roles to the best of their ability. ©

About the Author

Hon. Janelle A. Lawless was first elected to the Ingham County Circuit bench in 2002 and currently is serving her second term in the Family Division of the Circuit Court. She was the Presiding Judge of that division for four years and is currently the Court's Chief Judge Pro Tem. Prior to her election to the bench, Judge Lawless was the Ingham County Probate Court Administrator/ Probate Register and also served as an Attorney Referee in the Family Division of the Circuit Court. Judge Lawless was in private practice as a solo practitioner focusing on Probate and Family Law before going to work for the court system. Judge Lawless is a graduate of Thomas M. Cooley Law School. She currently is an honorary board member of the Lansing Area Safety Council, member of the Paralegal Advisory Committee at Lansing Community College, member of Teen Court Advisory Board, chair of the Community Corrections Advisory Board, member of the Michigan Judicial Institute Family Division Academic Advisory Committee, member of the Michigan Supreme Court Learning Center Advisory Committee and currently presides over the Circuit Court's Family Dependency Treatment Court.

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The editorial board of *The Michigan Child Welfare Law Journal* invites manuscripts regarding current issues in the field of child welfare. The *Journal* takes an interdisciplinary approach to child welfare, as broadly defined to encompass those areas of law that directly affect the interests of children. The editorial board's goal is to ensure that the *Journal* is of interest and value to all professionals working in the field of child welfare, including social workers, attorneys, psychologists, and medical professionals. The *Journal's* content focuses on practice issues and the editorial board especially encourages contributions from active practitioners in the field of child welfare. All submissions must include a discussion of practice implications for legal practitioners.

The main text of the manuscripts must not exceed 20 double-spaced pages (approximately 5000 words). The deadline for submission is May 31, 2011. Manuscripts should be submitted electronically to kozakiew@msu.edu. Inquiries should be directed to:

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