I cannot refrain from a Lincoln quote (so said to be): "Whatever you are, be a good one."

I could go on. Suffice it to say that the career has kept me challenged, which is about all one can ask. What else might one hope for, except an unbroken string of correct rulings and appellate court affirmances? This is of course a pipe dream, somewhat akin to a batter expecting to bat .750.

You step up to the plate and take your swings. You are going to get struck out a lot.

But you also get the chance to hit some home runs.

DOMESTIC VIOLENCE & REASONABLE EFFORTS AT THE DETENTION HEARING[1]

Judge Leonard Edwards, Santa Clara Superior Court (Ret.)

HYPOTHETICAL SITUATION:

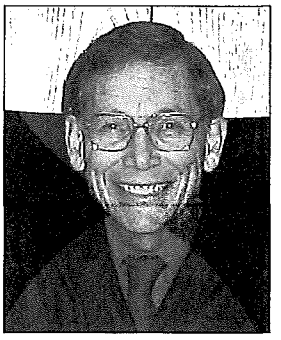
A child has been removed from parental care because the mother and child were the victims of on-going domestic violence by the father. Both parents were under the influence of alcohol when the police arrived at the home. At the detention hearing you have advised the parents of the nature of the proceedings, their legal rights, appointed them counsel, enquired about paternity and notice to relatives, and the Indian Child Welfare Act. The agency recommends that the child remain in protective custody and that the parents receive services. The attorneys for the parents, the guardian ad litem, and the attorney for the agency all say "submitted". What do you do?

(1) Enter orders consistent with the agency recommendations
(2) Order a one day continuance so that the parents' attorneys can investigate the facts of the case further.
(3) Ask some questions of the agency and the parties con cerning reasonable efforts before making the custody findings and orders.

DISCUSSION:

The initial or detention hearing is the most important hearing in the juvenile dependency process. Properly conducted the hearing will address the appointment of counsel, an explanation of the proceedings including reading the petition, advice of legal rights, paternity, the application of the Indian Child Welfare Act, whether the child should be removed from parental care, what services should be offered to the parents, whether relatives have been identified and engaged in the legal proceedings, the amount and conditions of parental contact with the child, and whether the agency has provided reasonable efforts to prevent removal of the child.

Most judges address the majority of these matters without much input from the attorneys. That input could be increased significantly were the parents appointed counsel immediately upon the filing of the petition and before the detention hearing. That issue was discussed in an earlier edition of this column.[2] When no one raises the question of what efforts the agency has performed to prevent removal of the child and the attorneys say "submitted", few judges will start asking questions directed at the agency regarding this issue. This is understandable as many judges believe it is up to the attorneys to raise issues and for the judge to decide the issues presented to them.



However, at a detention hearing the juvenile court judge must become an "enquiring magistrate", one who breaks the silence by asking questions, particularly about the agency's efforts to prevent removal. The term "enquiring magistrate" was coined more than 25 years ago by retired Kentucky judge, Richard FitzGerald, a national leader in juvenile court policy-making. He is not alone. The *Resource Guidelines* agree with the juvenile court's obligation to provide careful oversight of agency actions.[3] "The court should conduct an in-depth inquiry concerning the circumstances of the case."[4] California law goes even further. It requires the court to "examine the child's parents, guardians, or other persons having relevant knowledge and hear relevant evidence as the child, the child's parents or guardians, the petitioner, or their counsel to present",[5] and

> ...make a determination on the record, referencing the social worker's report or other evidence relied upon, as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home, pursuant to subdivision (b) of Section 306, and whether there are available services that would prevent the need for further detention.[6]

The best answer to the question above is (3); the judge should start asking questions. Assuming the advisements have been addressed and the other issues discussed, the judge should question the agency about what actions social workers have taken to prevent removal of the child from parental care. In this case the questions might include:

(1) What steps did you take to remove the abuser from the family home?
(2) Did you consider placing the mother and child in a battered woman's shelter?

(3) Did you consider having the mother and child reside with a relative?
(4) Did you consider in-home services to support and protect the mother?
(5) Did you assist the mother secure a temporary restraining order?[7]
(6) Since the time of removal what steps have you taken to secure safe housing for the mother?
(7) Is it safe to return the child to the mother today?
(8) What would be necessary in order to make it safe to return the child to the mother?
(9) Are you prepared to provide the mother support temporarily for housing and food?
(10) Have you referred the mother to a domestic violence advocacy organization?

These were the types of questions asked by judges in three juvenile courts across the country, Omaha, Nebraska, Portland, Oregon, and Los Angeles, California. The results were stunning. Fewer children were removed from parental care, there were more family placements, and fewer children were placed in non-relative foster homes.[8] These outcomes resulted from judges spending a little extra time questioning the parties about the actions taken by the agency and the current situation for the child and parents.

Asking these questions will also permit the judge to make more informed "reasonable efforts" findings. The court will better understand what services the agency provided to the family, what services might assist the family, and what services might make it possible for the child to safely return to a parent or to a relative. If the court is not satisfied with the services provided to prevent removal, it can consider making a "no reasonable efforts" finding. Such a finding will make a strong and clear statement to the agency that it is not fulfilling its legal obligations.[9] Some judges have been reluctant to make a "no reasonable efforts" finding because it penalizes the agency by reducing the dollars the agency receives from the federal government. There are strategies the court can use, however, to get the attention of the agency without a loss of revenue. The court could make a "no reasonable efforts" finding, and continue the case for a few days to give the agency the opportunity to provide the proper services.[10]

The inquiry concerning reasonable efforts at the detention hearing becomes more meaningful the more that the judge knows about available services in the community. The judge will be in a better position to make the reasonable efforts determination if the judge has followed the recommendation contained in Standard of Judicial Administration 5.40(e) to

> (2) [i]nvestigate and determine the availability of specific prevention, intervention, and treatment services in the community for at-risk children and their families.

Furthermore, the same Standard of Judicial Administration emphasizes the importance of this determination by telling the judge to

> 8. [e]valuate the criteria established by the child protection agencies for initial removal and reunification decisions and communicate the court's expectations of what constitutes "reasonable efforts" to prevent removal or hasten return of the child.[11]

The enquiry whether reasonable efforts have been provided to prevent removal arises in every juvenile dependency case where a child has been temporarily removed from parental care. This article focuses on a case involving domestic violence and substance abuse, but other types of cases deserve the same approach. The juvenile court judge can make a significant difference in the life of a child by making the enquiries suggested in this article.

Endnotes:

1. The initial/detention hearing is the first hearing in a juvenile dependency case. The main difference is that at an initial hearing the child has not been removed from parental care while at a detention hearing the child has been placed in temporary custody. See Welfare & Institutions Code §311 and CRC 5.670(a) & (d).

2. Edwards, L. "Representation of Parents and Children in Abuse and Neglect Cases," The Bench, Spring, 2012, pp 12-14 (a copy is available online at judgeleonardedwards.com - publications blog)

3. "Juvenile and family court judges must have the authority by statute or court rule to order, enforce, and review delivery of services and treatment for children and families. The judge must be prepared to hold all participants accountable for fulfilling their roles in the court process and the delivery of services." *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*, NCJFCJ, Reno, 1995, at p. 18. The *Resource Guidelines* have been approved of by the California Judicial Council as best practices. See SJA 5.45.

4. Id., at p. 30

5. Welfare & Institutions Code §319(a)

6. Welfare & Institutions Code §319(d)(1).

7. The judge also has the power to issue a temporary restraining order based upon the petition, supporting documents and any evidence produced at the hearing. Welfare and Institutions Code §213.5.

8. Miller, N., & Maze, C., Right From the Start: The CCC Preliminary Protective Hearing Benchcard: A Tool for Judicial Decision-Making, NCJFCJ, 2011.

9. For a lengthier discussion regarding reasonable efforts, see Edwards, L., "Reasonable Efforts", The Bench, Summer, 2011, pp. 8-10 available at Judgeleonardedwards.com (publications blog)

10. Id.

11. Standard of Judicial Administration 5.40(e) has been incorporated into Welfare & Institutions Code §202(d). The arguments in this article parallel the policy recommendations in "Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice, NCJFCJ, Reno, 1999 (recommendations #56).

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