



Judge Leonard Edwards
Santa Clara Superior Court (Ret.)

Should Judges Ask Questions? The Enquiring Magistrate

A colleague recently asked me if she could ask questions in juvenile dependency proceedings. She said that one of the attorneys took her aside and said that the attorneys would do the questioning, and that it was not the role of the judge to interfere with the attorneys.

The attorney was giving the judge bad advice. The juvenile dependency court judge has a clear mandate to ask questions at almost every juvenile court hearing. Dependency cases are distinctively different from all others in the court system. The judge has oversight of a complex process involving issues of treatment, rehabilitation, family preservation, and permanency planning in addition to traditional legal issues. Moreover, the judge is a case manager, overseeing the progress of the case and the timeliness of hearings with an eye towards the developmental needs of the children who are the subject of the proceedings.¹

The California legislature has passed numerous laws requiring the judge to be an active participant in all dependency proceedings. For example, the judge has a continuing duty to enquire as to possible Native American heritage for all children who

appear in the juvenile court (W & I §224.3) and to take steps to notify and engage tribal authorities for any Native American children [CRC rule 5.644(d)]. The judge has a duty to inquire and determine the parentage of each child who is the subject of a petition pursuant to W & I sections 300, 601, and 602 [CRC rules 6.635 and 5.667(b); W & I §316.2]. If a person appears at a hearing pursuant to W & I §300 and requests a judgment of parentage on form JV-505 of the Judicial Council forms, the court must determine whether the person is the biological parent of the child and whether that person is a presumed parent of the child if that finding is requested. [CRC rule 6.635(h)].

Some might argue that the social worker's report and questioning from the attorneys will adequately address these issues. However, the legislature concluded that it is the judge who must make enquire about these issues. The attorneys may assist the court, but the ultimate responsibility resides with the judge.

There is good reasoning supporting the law. Social workers may not be able to determine parentage. Some mothers may not want to

disclose the name of the biological father. He may be a violent person or she may have established a new relationship. The mother may not have a good relationship with the social worker and be unwilling to answer her questions. The judge is in the best position to elicit information from a party before the court.²

The court must also make a number of critical findings regarding the social worker's efforts to provide services to the family. These include a finding whether the agency provided reasonable efforts (appropriate services or actions) to prevent removal of a child, reasonable efforts to facilitate reunification of a child to a parent or parents should the child be removed from parental care, and reasonable efforts provided by the agency to achieve timely permanency.³ The social worker may state what actions have been taken to fulfill their legal responsibilities, but the judge must make the decision whether reasonable efforts have been provided and must state the facts on which the decision was made.⁴

Unfortunately, the fact is that many attorneys do not question the social worker

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about whether reasonable efforts have been provided. The judge will likely hear “submitted” from the attorneys, meaning that the attorneys are permitting the judge to decide the issue on social worker reports. The judge should ask questions about those services before making any ruling. The appellate courts have been providing oversight of these findings and have often reversed trial court findings.⁵

A similar problem arises in many cases involving the ICWA. The parents may be willing to discuss the issue, but may not know family history well enough to give the court an adequate answer. Often it is up to the judge to enquire about relatives or ask relatives who may be present at the hearing. A judge’s failure to take the lead in either of these situations can lead to a disruption later in the case when the biological father is identified and comes before the court for the first time or when a parent or relative finally remembers that the child has ties to an Indian tribe.

There are additional responsibilities for the judge. Recent federal law requires social workers to take extraordinary steps to move foster children from congregate to family care.⁶ Social workers must document for the court “intensive, ongoing and unsuccessful efforts for family placement, including efforts to locate biological family members using search technologies.” The court must review those efforts and make a judicial decision “why APPLA is still the best permanency plan for the child and why it is not in the child’s best interest to be returned home, adopted, placed with a legal guardian, or with a fit and willing relative.” Attorneys may or may not be present for these hearings, but in either case, it is up to the court to examine the efforts expended by the agency and make specific findings.

The juvenile court judge must approve and authorize the use of any psychotropic medications administered to a child under court jurisdictions. Judges must make enquiries about the appropriateness of requests and that may involve investigation and questioning. The juvenile court judge must also adhere to the mandates of Standard of Judicial Administration

5.40(e) incorporated into W & I §202(d). Subsection 5.40(e)(3): Juvenile judges are encouraged to

Exercise their authority by statute or rule to review, order, and enforce the delivery of specific services and treatment for at-risk children and their families.

Juvenile judges must ensure that children receive the educational benefits they are entitled to under state and federal law. This includes ensuring that the educational needs of the child are met whenever the child’s school placement changes.⁷ Juvenile judges must approve the service plan developed by the social services agency pursuant to W & I §16501.1. The court must also ensure that the plan was developed jointly by the parents and the social worker.⁸

It is true that social workers may provide much of the information required by the statutes and Standards of Judicial Administration. It is also true that attorneys may ask questions and develop information to assist the judge in making decisions about the issues listed in this article. However, the court has the ultimate responsibility for determination of these issues. The court should make certain that it has the information needed for an accurate decision, and that comes from making enquiries. To this end judges must be prepared to ask questions of the parties and the professionals. 🗣️

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Endnotes:

- 1 See W & I §§ 352 & 354 and CRC rule 5.550.
- 2 For a video of a judge asking a reluctant mother about information concerning the father of her child, go to the website, judgeleonardedwards.com to the video section.
- 3 Edwards, L., Reasonable Efforts: A Judicial Response, (2014); at pp. 14-17. A copy of the book is available on line for free download at judgeleonardedwards.com
- 4 See *In re Ashly F.*, (2014) 225 Cal.App.4th 803, 810.
- 5 For example see *In re Ashly F.*, 225 Cal.App.4th 803 (2014), *In re G.S.R.*, 159 Cal.App.4th 1202; *Christopher D. v Superior Court*, 210 Cal.App.4th 60 (2012); *In re K.C.*, 212 Cal.App.4th 323 (2012).
- 6 P.L.113-183, Preventing Sex Trafficking and Strengthening Families Act, Section 112.
- 7 Welfare and Institutions Code §§362(a), 727(a), and SJA 5.40(h).
- 8 45 Code of Federal Regulations §1356.21(g)(1).