Child Law Practice

Vol. 26 No. 9 November 2007 *Helping Lawyers Help Kids*

This article is a follow up to "Seen and Heard: Involving Children in Dependency Court," in the December 2006 *CLP.*

With Me, Not Without Me: How to Involve Children in Court

by Andrea Khoury

Youth are the most important part of an abuse and neglect case. Failure to give a child a say in court diminishes the process and prevents judges from having the most information to make the best decision.

—Judge Steven Rideout (ret.), Alexandria, VA, Juvenile and Domestic Relations District Court

As the child's advocate or the judge presiding over a child welfare case, you know that involving a youth in court is a key step in the proceedings.[1] The next step is exploring what to do when a youth is in the courtroom. What do you do when a child is in court to ensure her participation is as meaningful as possible to the child and the court? How do you use the child's participation to dig deeper into what you already know and promote permanency for the child?

Children are a resource in the case and can offer valuable insights to aid decision making. This article offers tips to help lawyers and judges in child welfare cases:

- prepare for children's involvement in court;
- make courtroom accommodations that help children feel comfortable participating in the court process; and
- ask age-appropriate questions to obtain information from the child that will aid decision making in the case.

The tips that follow are not new or revolutionary. They remind busy practitioners. Choose the tips that relate to your case and use them to make children's participation routine practice in every case.

Preparing for Children's Involvement

Remember that the child welfare proceedings are about the child. A child who comes to court should not be invisible. The child's involvement should be welcomed and dependency court judges and child welfare advocates should do all they can to prepare and plan for that involvement.

Judges

As the judge, you will not be as intimately involved with the child as the social worker and the child advocate. It's important to get as much information in advance about the child's history, current placement, school progress, health issues, child's relationship with family, and other issues that develop. The information you'll need will differ based on the type of hearing, the child's age, and the child's cognitive and emotional level. The last article[2] discussed the value *to the child* of being in court. This article focuses on the value *to the judge* of the child being in court, so the court needs to be clear on what kind of information the child will provide and how best to elicit that information. The following questions can help identify the reason for the child's involvement and should guide discussions with the child:

- What is the child's role in the proceedings?
- Does the child have important knowledge about the allegations in the petition?
- Has there been a recent change in the child's placement?
- Do you need the child's input about the placement?
- Do you need the child's reactions to child welfare services he has recently received?
- Is termination of parental rights

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ABA *Child Law* PRACTICE

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ABA Child Law Practice (CLP) provides lawyers, judges and other professionals current information to enhance their knowledge and skills, and improve the decisions they make on behalf of children and families. Topics include: abuse and neglect, adoption, foster care, termination of parental rights, juvenile justice, and tort actions involving children and families.

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being considered and, if so, do you need to hear the child's reaction or do you need to make sure the child understand what is going on?

Once the reason for the child's involvement is clear, judges can prepare for the child's permanency or review hearing by taking the following steps:

- Review previous court orders for outstanding issues (e.g., Is the child participating in the mentoring program that was ordered? Is the child happy with the change in visitation ordered at the last hearing? Has the child increased his grade point average as he promised at the last hearing? Has the child welfare agency been facilitating relationships between the child and stable adults in hopes of creating long-term connections for the child?).
- Require the social worker and other service providers to submit their reports at least three days before the hearing on the permanency plan and efforts to achieve that plan.
- Read the reports highlighting the child's strengths and potential weaknesses (e.g., Notice whether the child's grades have improved or the child's behavior has changed. Notice if the child has stopped attending therapy or refuses to go to school. These are the areas the judge should discuss with the child.)
- If the child welfare agency worker or attorneys would like you to address certain issues with the child, ask them to let you know in advance.
- Become familiar with permanent placement options for the child.
- Encourage the child advocate to submit a written statement to the court identifying anything the child wants to discuss.
- Create the presumption that all children will be present for their hearings unless the court finds it is not in the child's best interest. Require the parties to inform you in advance if they do not want the child present for all or some of the hearing and the reasons it's not in the child's best interests.

Child Advocates

As the child's attorney, you must spend time preparing the child for court involvement. Steps you can take to prepare for the child's involvement include:

- Make sure the child understands who will be present at the hearing and their roles, what will happen at the hearing, and what the child's involvement will entail.
- If the child will testify, provide guidance about how to testify effectively. Advise the child if the judge or other advocates will ask the child questions in court and the nature of those questions.
- Help the child feel comfortable with the questioning process and help him prepare. For example, role play a court hearing in a comfortable environment so the child will know what to expect and has the opportunity to ask questions in advance.

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Getting Kids to Court

Many children do not come to court because they cannot get there. The child is placed too far away. No one has been identified to bring the youth to court. Strategies to address transportation are:

- ☑ Set the hearing date and inform all parties well beforehand so they can arrange for transportation.
- ☑ Set the hearing at a convenient time for the child and transporter.
- ☑ Include transportation in the court order.

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- Encourage the child to write down what she will say in an outline or notes. Speaking to a judge in court can make a child anxious and forget what she wants to say. Having something written down will jog her memory.
- If the youth doesn't want to speak in court, help the youth write something to give the judge to read.

Accommodating Children in Court

Highlight a child's positive accomplishments first, like congratulating her on how well she is doing in school or how well she is adjusting to a new foster home before delving into any issues that may cause some anxiety. Mention things from the previous hearing (based on your notes) that will make the child feel special. Do not ask the same questions over and over signaling that you have not reviewed the case. Conclude the hearing by setting expectations for the child that you will follow up on during the next hearing.

—Judge Juliet McKenna,
District of Columbia Circuit Court

While the child is in court, the role of the judge and attorneys is twofold: to make the experience a positive one for the child, and to gain as much information about the child and family as possible. The following tips accomplish both tasks for verbal and nonverbal children.

Verbal Children

Children tend to be more accurate and complete in providing information when they are familiar with the questioner, their surroundings, and the purpose for being present.[3] When this happens, the child's participation in court is more meaningful to the child and the court. Judges can help make a child more comfortable and familiar with the court process by making a few easy accommodations.

- Hear cases where children are present first.
- Ask any nonparty to leave the courtroom if a sensitive issue will be discussed.
- Arrange for (or allow) children to have a support person present if they desire.
- Respect the child's family members, especially those that may be present in court.

Hearing directly from the child offers a valuable perspective that you won't get from reading reports or getting information secondhand.

- Provide age-appropriate reading material describing the court process to the child.
- Address the child directly using a supportive voice and making eye contact.
- Connect with the child by learning what the child likes/dislikes and commenting on it (e.g., The judge could ask: If you had three wishes, what would they be? If you could change places with anyone in the world for a day, who would you choose and why? Is there something that scares you?).
- Explain your role (and the roles of other adults participating in the hearing) to the child and explain what issues you can address.
- Allow the child to look around and ask questions about her surroundings.
- Provide an age-appropriate list of some legal terms and definitions that may be used during the hearing.[4]
- Avoid acronyms or legal jargon that a child would not understand.
- If the child submits a letter, read it in the presence of the child.
- Publicly praise the child about her accomplishments.
- Thank the child for coming to court.

Children's advocates can also help children feel comfortable in court. Sometimes during court proceedings the child has planned to speak but changes her mind. She may have become nervous or rethought her decision to speak after seeing her parents in court. Be prepared to continue to be the child's voice and present options to the child:

- Offer to speak on the child's behalf.
- Ask the judge to ask parents to leave the courtroom (perhaps in a side bar at the bench).
- Ask for an in-chambers discussion.

The child will look to you for guidance. Make the court experience positive and thoroughly prepare each child based on his/her unique needs and circumstances.

Infants, Toddlers, and Nonverbal Children

If the child is an infant, toddler, or is nonverbal, it is still important for the child to be meaningfully involved in the court hearing. Judges often can learn valuable information simply by observing the child's appearance, demeanor, and interactions with others.[5]

The younger child's involvement differs from an older child's involvement. By taking the following steps, judges can obtain valuable information to shape decisions and ensure nonverbal children benefit from court hearings:

- Expect the child to be present in court only for short periods (no more than 10-15 minutes if the child is restless).

- Observe the child at hearings. Try to make these hearings low key with minimal stress to the child.
- See the child in-chambers.
- Observe the child interacting with her caregivers (parents, relatives, foster parents) and siblings during the hearing.
- Notice the child's demeanor, behavior, and appearance, but be careful about drawing conclusions based on this one snapshot in time.
- When the child does attend court hearings, ensure someone she trusts is present with her.
- Ask someone who has spent time with and fully knows the child to speak about the child.
- Request an updated picture of the child at each hearing.
- Have toys for the child during the hearing. Observe the child playing with the toys.

Questioning Children in Court

Even young children have the competence to tell adults what they know when they are questioned in age-appropriate ways. Until children have fully developed linguistic skills, the responsibility for getting at what children know rests squarely on the adult, and in particular, on the language of the question, and not on the language of the answer.

—Anne Graffam Walker, Forensic Linguist[6]

Hearing directly from the child offers a valuable perspective that you won't get from reading reports or getting information secondhand. The child can take you into his day-to-day life, what's going well at home and what's not, how he is doing at school, and what kind of permanent living situation he desires and how to get there. Consider the child's perspective on these and related issues when reviewing and making decisions about services and the child's permanency plan.

Sample Legal Definitions for Children

Dependency case—A family comes to court because a parent has hurt his or her child or the parent has not taken care of his or her child.

Foster family—A temporary family that a child lives with when his or her parents can't take care of the child. A foster family will make sure that you are safe. They will take care of you until you go home.

Social worker—Someone who will help you and your family. You can talk to your social worker about how you are feeling and if you have any questions.

Judge—Works in the courthouse and is in charge of what happens in court. The judge decides what should happen to you. The judge makes sure everyone is doing what they are supposed to be doing.

Reunification—A child goes home to his or her parents when the home is safe for the child.

Abuse—When a child is being hit or touched in bad ways.

Neglect—When a child does not having proper food, clothing, a place to live, or other things a child needs to live.

Lawyers/Attorneys— A person who goes to college and law school. Lawyers/attorneys give advice and speak for people in court. The judge may give you a lawyer to speak for you. You should meet with your lawyer.

Adoption—The way a child legally becomes part of a new family.

Guardianship—Another person acts as the parent for a child.

Court—The court is the building where the judges work, the hearings are held, and all the papers are filed in your case. The court is where all the decisions are made that will affect what happens to you.

Court hearing or trial—A judge listens to the people and attorneys talk about what is happening with your family. After the hearing or trial the judge decides what should happen to you and how to make sure you are safe. The judge also decides how to make sure your family gets the help they need. Tell your caseworker or attorney if you want to talk to the judge.

Guardian ad Litem (GAL)—Helps the judge decide what is best for you. You can meet with your GAL. Your GAL will probably want to talk to you alone to learn more about you.

Court Appointed Special Advocate (CASA)—There may be a CASA in your dependency case. The CASA will talk to you and your family and tell the judge what is best for you.

Sources: New Mexico Supreme Court, Court Improvement Project Task Force. *What's Going On? A Booklet for Children in Foster Care.* New Mexico: Shaening and Associates, 2001; Judicial Council of California. *What's Happening in Court – An Activity Book for Children Who are Going to Court in California*, 2002 <www.courtinfo.ca.gov/programs/children.htm>; North Carolina Court Improvement Services/Resources Subcommittee. *North Carolina Juvenile Court: Child Protection Hearings—A Handbook for Parents, Guardians, Custodians, and Children*, 2001.

Involving Children in Permanency Hearings: Federal Guidance

Section 8.3C.2c TITLE IV-VE, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, permanency hearings

Question: In what way can a state meet the requirement for the court holding a permanency hearing to conduct age-appropriate consultation with the child in section 475(5)(C)(ii) of the Social Security Act (the Act)?

Answer: Any action that permits the court to obtain the views of the child in the context of the permanency hearing could meet the requirement. Section 475(5)(C)(ii) of the Act tasks the state with applying procedural safeguards to ensure that the consultation occurs. However, the statute does not prescribe a particular manner in which the consultation with the child must be achieved which provides the state with some discretion in determining how it will comply with the requirement.

We do not interpret the term 'consult' to require a court representative to pose a literal question to a child or require the physical presence of the child at a permanency hearing. However, **the child's views on the child's permanency or transition plan must be obtained by the court for consideration during the hearing.** For example, a report to the court in preparation for a permanency hearing that clearly identifies the child's views regarding the proposed permanency or transition plan for the child could meet the requirement. Also, an attorney, caseworker, or guardian ad litem who verbally reports the child's views to the court could also meet the requirement. Information that is provided to the court regarding the child's best interests alone are not sufficient to meet this requirement. Ultimately, if the court is not satisfied that it has obtained the views of the child through these or any other mechanism, it could request that the child be in the courtroom, or make other arrangements to obtain the child's views on his/her permanency or transition plan.

Source: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. *Child Welfare Policy Manual,* August 7, 2007. Available online: http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=58

Using Language

Before hearing from the child, give thought to the words you will use when questioning the child in court. Consider the child's age, developmental level, cultural background, and verbal ability. Use care to match appropriate language to these factors. When preparing to question a child in court:

- Keep questions short and simple. (e.g., How old are you? What is your best friend's name?)
- Refrain from using pronouns or acronyms. (e.g., "What did Chris do?" instead of "What did she do?")
- Ask the child to explain what was just said if you're concerned that he doesn't understand a question or statement. Children will often not disclose if they don't understand.
- Use concrete (simple and familiar) nouns and verbs. (e.g., use words like "in the back yard" instead of "area")
- Recognize cultural differences in language. (e.g., A long pause is socially acceptable in Native American cultures but may be seen negatively in American culture. In some cultures kinship terms can refer to nonrelatives.[7])
- Avoid abstract questions. (e.g., "How well do you get along with your family?")
- Recognize that children usually respond to questions literally (e.g., Q: Are you in school? A: No. The child is referring to where she is right now (in the courtroom) not the broader question of whether she attends school.)
- Be alert for miscommunication. Ask follow-up questions to ensure both people are speaking about the same topic.[8]

Questioning Children in Child Welfare Proceedings

You are the one who makes the decisions, and I need to be heard so people may understand how I feel or what I need. Listen to me, since no one else will, and try to understand where I'm coming from. Maybe I am a child, but I'm not dumb; I know right from wrong. I need to know that you will make the right decisions for me, so that I can live life the way it's supposed to be.

—Foster youth[9]

The nature of the proceeding will govern what questions you ask the child in court. Several common areas of focus in child welfare proceedings are discussed below with suggested questions for each.

Placement and Permanency

If you don't ask foster children what they want, how can you make an informed decision about their lives?[10]

Although permanency involves much more than where the child will live, the child's placement, and whether that placement is permanent are important to the child. How the child feels about the placement often determines whether the placement will succeed. It is important to seek the child's opinion and thoughts on current and anticipated placements, including whether changes can be made in the current placement that will resolve a child's

concerns, thereby saving the placement. Children can often find their own placement if the decision makers take the time to talk with them. Too often the child's wishes are ignored. In some cases, they aren't even consulted on this issue which is so central to the quality of their lives.

Aside from questions that will be answered in the social worker's report about whether the child likes her placement, number of placements since the last hearing, and plans for future housing, judges should ask about potential permanent placements. Some questions are obvious but others can reveal information that the court and agency may not have considered. This list of questions is not comprehensive and will vary from case to case but are worth considering.

- Who do you spend most of your time with?
- Is there a relative to whom you are especially close?
- Is there a close family friend with whom you like to spend time?
- Over the holidays, where do you eat dinner?
- If you could take three people to Disney World, who would you take?

The answers to these questions may lead to people who have not already been formally involved in permanency decisions. The child welfare agency should investigate the child's answers to these questions for potential permanent placements or for permanent connections in a child's life.

Education

Children spend many of their waking hours in school. Judges can gain a great deal of information about school from the social worker and educational records. However, the child's well-being is shaped by more than academics. Judges should go beyond the basics available in the social worker's report or the educational records. Certain questions can elicit school-related issues that may not be apparent to the social worker such as relationships with teachers and peers, or participation in extracurricular activities. The child's representative should prepare the child to answer these questions and the judge should be comfortable posing them.

If the child is in regular education and thinking about postsecondary education opportunities, the judge should ask questions about the child's intended field of study and what schools the child is considering. The judge should also ask if anyone is helping the youth consider education options, fill out applications, visit schools, and navigate the complex maze of financial assistance. Children see judges as highly educated people and may be interested in the judge's perspective on higher education and attending a four-year college. Even a short conversation with the judge on this issue can boost a young person's confidence and desire to pursue higher education.

Children can often find their own placement if the decision makers take the time to talk with them. Too often the child's wishes are ignored.

If the child is having problems in his sixth grade class (e.g., suspensions, bad grades) the judge should not focus on the negative but discuss such issues as the following:

- What classes do you like and why?
- Who are your friends and are they in your classes?
- Are there kids at school who are mean?
- What do you do after school?
- Do you have trouble following along in your classes?

These questions help uncover the cause of school problems and can help to build a relationship and trust between the judge and the youth. The youth may need a special education referral, specialized tutoring, or intervention if he's being harassed by his peers. These questions also show the youth that the court is interested in helping to solve his problems, and can help to boost the youth's self esteem.

Services

Most children and families require services to facilitate permanency. Services for parents may include parenting classes, substance abuse treatment, and mental health evaluations and treatment. Services for children may include therapy, mentoring, and facilitated visitation. In most cases children should have input into what services will be ordered. The questions the judge should ask are aimed at discovering the child's view on what the issue is and how best to solve it. When the services are in place the questions should be:

- Are the services helpful?
- Are the services provided at a convenient time and place?
- Are the services addressing the issue?
- Do you like the service provider?
- Has anything changed as a result of the services?
- What still needs to be improved?

The answers to these questions (along with any service provider reports) may make services more meaningful and effective.

Transitioning out of the system

For youth who "age out" of foster care, there are a number of important questions to ask to help prevent later homelessness due to the lack of proper transition planning. In addition to the above questions about placement and permanency, judges should ask the child:

- Have you been formally involved in your discharge planning

(attending case planning sessions, providing input about housing, health, and other long-term needs)?

- What is your plan for health care after you are discharged?
- What are your plans for education or employment?
- If the child is currently in treatment for substance abuse, mental health, or other reasons: Do you know how to continue that treatment?
- Who are the adults in your life that you will rely upon after your case is closed?

Ending Proceedings

Before the child leaves the courtroom, take time to engage the child and ensure his participation has been meaningful. Judges should address the following when closing hearings:

- Ensure the child understands what was ordered and why.
- Ask the child what she wants to accomplish before the next court hearing.
- Encourage the child to attend the next hearing.
- Consult with the child when setting the time for the next hearing.
- Tell the child what she has to do before the next hearing.
- Invite the child to submit report cards, letters, or other personal items periodically to signal interest and concern.
- Review or ensure that someone will review the outcome of the hearing with the child and answer any questions.
- Thank the child for coming to court.
- Finally, ask whether the youth has any questions in a manner that invites questions.

Conclusion

A child can meaningfully participate in her court hearings or she can be left out. The decision is up to the judges and child advocates. Taking the time to prepare for a child's involvement, using proper language, asking good questions, and talking about the right issues will lead to more productive hearings. Through these efforts, everyone benefits.

Andrea Khoury, JD, is an assistant director of child welfare for the National Child Welfare Resource Center on Legal and Judicial Issues, a project of the ABA Center on Children and the Law.

Endnotes

[1] See Khoury, Andrea. "Seen and Heard: Involving Children in Dependency Court." *ABA Child Law Practice* 25(10), December 2006, 145. This article discussed why to include youth in dependency proceedings, including:

- empowering the youth,
- giving them a sense of understanding and control of the process, and
- providing valuable information to the court.

It also discussed how to involve youth, including:

- in-chambers discussions,
- bifurcated hearings,
- full participation in all hearings,
- strategies for practitioners, and
- systems changes to make participation meaningful to the youth.

[2] Ibid.

[3] Walker, Anne Graffam. *Handbook on Questioning Children: A Linguistic Perspective,* 2d edition. Washington, DC: ABA Center on Children and the Law, 1999, 22.

[4] Jones, Judge William G. (ret.). "Making Youth a Meaningful Part of the Court Process." *Juvenile an Family Justice Today,* Fall 2006, 20.

[5] Krinsky, Miriam Aroni. "The Effect of Youth Presence in Dependency Court Proceedings." *Juvenile and Family Justice Today,* Fall 2006, 16.

[6] Walker, 1999, 24.

[7] Ibid., 71.

[8] Ibid., 91.

[9] Foster youth quoted in *My Voice, My Life, My Future,* 2006, prepared by Home at Last and the Children's Law Center of Los Angeles. Available at http://www.pewtrusts.org/our_work_ektid19876.aspx

[10] Lockett, Veronica. "Right to Speak in Court Vital to Cases of Foster Children." *The University Star.* www.star.txstate.edu

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*(**In re Kalil,** Continued from p. 131)*

cases to place confidential reports in a sealed envelope that is available only to the "parties in the action and their attorneys." The court explained that the court rule describes general procedures for filing GAL reports but does not prevent the court from keeping portions of the GAL report confidential if there is a stipulation and confidentiality is in the child's best interests.

The father's second issue was whether his due process rights were violated when the court refused to let him view the GAL's report? The court explained that while parents have a due process right to be heard, examine witnesses, and to be informed of and challenge adverse evidence, these rights are not absolute. Since the trial court approved the parents' stipulation limiting their right of access to the child's confidential communications, they waived their right to review the report. Therefore, the trial court properly denied the father's request to access the sealed report.