



POLICY BRIEF

Center for Public Policy Priorities

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JUDICIAL LEADERSHIP AND CHILD PROTECTION

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INTRODUCTION

Across the nation, child welfare judges are taking on a new role—participating in collaborations designed to strengthen the child welfare system, such as multi-disciplinary task forces or court improvement projects.¹

Experience has shown that the “exercising of a proper judicial leadership role within the community to provide for better services for children and their families,”² promotes change and improvement in the child welfare system. In July 2006, the National Council of Juvenile and Family Law Judges (NCJFCJ) adopted a resolution regarding judicial leadership in juvenile and family courts.³

This resolution “encourages judges to be leaders and to take action”⁴ – recognizing a judge’s unique role in motivating change. Because judges see cases from all perspectives, they can often provide a clear vision of how the child welfare system needs to be improved. Moreover, judges have the influence to bring all the necessary stakeholders to the table.

The Pew Commission on Children in Foster Care, a national blue-ribbon panel of child welfare experts, supports judicial leadership in child welfare:

Chief Justices and state court leadership must take the lead, acting as the foremost champions for children in their [child welfare] court systems.⁵

As judicial leadership increases, however, questions have arisen regarding the limits on judicial leadership. When does exercising leadership to improve the system compromise impartiality in individual cases? This policy brief addresses the limitations on judicial leadership in Texas and discusses where judicial leadership is not only appropriate, but also necessary.

THE ISSUES

Why is judicial leadership important?

Everyday in the courtroom, hundreds of Texas judges make decisions regarding Texas foster children. Once the Department of Family and Protective Services (DFPS) decides to file a lawsuit regarding a child and their family, the court system takes over—holding reviews and making decisions that ultimately determine what happens to the family.⁶ Because the Texas Family Code mandates that DFPS legal cases end with permanent, safe homes for children within a year,⁷ courts must quickly move cases through the system while carefully balancing parents' rights and children's safety.

Texas judges face many challenges when hearing child welfare cases—inaccurate data, crowded dockets, insufficiently trained staff and not enough qualified attorneys for parents and children. To address these challenges, the Texas judiciary must lead the child welfare system, including encouraging multi-disciplinary training, bringing the stakeholders to the table to discuss improvements, sharing data, promoting collaboration, exhibiting good judicial practice on the bench, increasing judicial knowledge of child abuse and neglect issues and effective court practices, and committing to timely decisionmaking. By improving the system, judges can improve outcomes for children within it.

Are Texas judges already acting as judicial leaders?

Texas judges are very committed to child welfare issues. In fact, in September 2005, Texas sent a delegation, including members of its judiciary,⁸ to the National Judicial Leadership Summit for the Protection of Children. The purpose of the summit was the development of state action plans to improve child welfare systems across the country. Texas' plan, like the other states, promotes judicial leadership as a way to improve the lives of the state's foster youth.

Judges also work collaboratively through the Texas Supreme Court Task Force on Foster Care, which houses our state's federally funded Court Improvement Project. Recently, the Texas Supreme Court appointed the Task Force on Child Protection Case Management and Reporting, to work on better case management. The task force included judges, court clerks, court administrators, lawyers, and others.

What are the limitations to judicial leadership in Texas?

In November 2005, however, the State Commission on Judicial Conduct issued a public statement that raised questions about judicial leadership activities in Texas.⁹ Judges have long served on the board of directors for Texas CASA, a statewide, nonprofit organization devoted to the recruitment, training, and oversight of volunteers who serve as court-appointed special advocates for abused and neglected children.

However, the Commission on Judicial Conduct determined that judges, "in order to avoid the appearance of impropriety and partiality should be cautious about serving an organization, even one as noble and praiseworthy as CASA, when such an organization

advocates a particular legal philosophy or opinion.”¹⁰ Based on the commission’s public statement, five out of seven judges resigned from the Texas CASA board.

Some argue that the commission got it wrong. To begin with, Texas CASA is an umbrella organization to create and support local organizations of Court Appointed Special Advocates. Texas CASA does not advocate or litigate in any court. Moreover, if being on a CASA board is impermissible for a judge hearing child protection cases, how is it permissible for a judge hearing juvenile delinquency cases to sit on a juvenile board, which hires the chief juvenile probation officer and determining the juvenile department’s policies and budget?

Nonetheless, the judicial commission’s public statement concluded that judicial membership on the Texas CASA board could be improper, though it left no clear line regarding the limits of judicial leadership. Certainly, judges must be mindful of limitations on ex parte communications and extra-judicial activities.¹¹ At the same time, judges should not shy away from exercising appropriate judicial leadership. So where does a judge draw the line?

How can Texas judges provide effective judicial leadership in child protection cases?

For guidance, judges must turn to the Texas Code of Judicial Conduct, particularly Canons 2, 3, and 4. Generally, the code states that judges must uphold the integrity and independence of the judiciary, avoid impropriety and the appearance of impropriety in all of the judge’s activities, perform the duties of judicial office impartially and diligently, conduct the judge’s extra-judicial activities to minimize the risk of conflict with judicial obligations, refrain from inappropriate political activity, and comply with the code of judicial conduct.¹²

What Might Be Some Permissible Judicial Leadership Activities?

- Establishing standards of practice for courts, court staff, and attorneys
- Encouraging multi-disciplinary training for judges and lawyers
- Participating in data collection, management, and analysis
- Assessing court resources, including training and workloads
- Ensuring competent and adequately trained representation by attorneys
- Participating in a multi-disciplinary study or work group as long as the group is focused solely on system issues, includes all stakeholders, and excludes any ex parte communications regarding specific cases
- Engaging in collaborative efforts regarding improvements to the child welfare system, such as the Supreme Court Task Force on Foster Care
- Speaking, writing, lecturing, teaching, and participating in activities concerning child welfare law, the legal system and other child welfare-related issues
- Reporting to the county commissioner’s court about the needs of the system
- Reporting to the state legislature about the needs of the system

What Might Be Examples of Impermissible Activities?

- Engaging in ex parte communications about a case whatever the reason
- Commenting extra-judicially about a particular case, for example, in a news story

- Sitting on the board of a local organization which regularly appears before the court, such as a local foster care network or a local CASA organization

Judges will continue to work to define the precise line between permissible and impermissible judicial leadership. In the meantime, judges should not hesitate to do the clearly permissible work that will strengthen the child welfare system.

CONCLUSION

Judges are in a position to bring about positive changes to child welfare systems. Although judges must consider the propriety of any extra-judicial activities, there are numerous ways to appropriately exercise judicial leadership in child welfare. Improving the child welfare system in Texas in turn improves the lives of children within it. Texas judges should be leaders in child welfare.



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¹Increasingly, federal legislation requires more collaboration between courts, agencies, and communities in order to access federal funding streams.

² National Judicial Curricula Series, “Judicial Leadership and Ethics: Focused on Improved Outcomes in Dependency Cases”, NCJFCJ Permanency Planning for Children Department, December 2006, p 24.

³ National Council of Juvenile and Family Court Judges, Resolution No. 6 – Resolution Regarding Judicial Leadership in the Juvenile and Family Courts, adopted July 19, 2006. See: <http://www.ncjfcj.org/images/stories/dept/publications/resolution%20on%20judicial%20leadership.pdf>

⁴ Edwards, Judge Leonard (ret.), “Some Thoughts on Judicial Leadership,” *Juvenile and Family Justice Today*, Fall 2006, p. 11.

⁵ *Fostering the Future: Safety, Permanence, and Well-Being for Children in Foster Care*, Executive Summary, Pew Commission on Children in Foster Care, May 2004.

⁶ Texas Family Code chapters 262 and 263 guide judicial decisionmaking and monitoring of child protective services litigation.

⁷ Texas Family Code § 263.401.

⁸ The Texas delegation included: Judge Alfredo Chavez, 65th Family District Court, Carole Hurley, Director of the Texas Children’s Justice Act and Court Improvement Project, Chief Justice Wallace Jefferson, the Supreme Court of Texas, Laurel Lindsey, Director of Investigations, DFPS, Judge Patricia Macias, 388th Judicial District Court and member of the Pew Commission on Children in Foster Care, Colleen McCall, Director of Field Operations, DFPS, Justice Harriet O’Neill, the Supreme Court of Texas, Carl Reynolds, Administrative Director, Texas Office of Court Administration, and Judge John Specia, 225 Judicial District Court.

⁹ Texas State Commission on Judicial Conduct, Public Statement No. PS-2006-1, November 18, 2005.

¹⁰ *Id.*, p. 1.

¹¹ For further direction, judges can look to the American Bar Association (ABA) Model Code of Judicial Conduct. Please see American Bar Association Model Code of Judicial Conduct, at <http://www.abanet.org/cpr/mcjc/toc.html>

¹² Texas Code of Judicial Conduct, Canons 1 to 6.