

# Chapter 2 - The Role of Judges and Hearing Masters

## 2.1 Role of Judges

The *Mission and Guiding Principles for Pennsylvania's Dependency System* reproduced in Chapter 1 articulates three major roles for judges in the dependency court: (1) Oversee and manage the progress of individual cases; (2) Demonstrate commitment and leadership in efforts to improve the system as a whole; and (3) Promote collaborative efforts with the child welfare agency and the community (PA Children's Roundtable Initiative, 2009, p.15).

### 2.1.1 Oversight and Management of Individual Cases

As the *Resource Guidelines* emphasize, child welfare cases — because of their length, their scope, and continuous nature of the determinations that they require — involve the court in the lives of the parties and the operations of the child welfare agency to a degree that is unlike any other court case. Because the decisions are “interlocking and sequential,” the court must perform a more managerial and directive function than in other litigation (NCJFCJ, 1995, p. 14). Subsequent sections of this Benchbook highlight various best practices related to judicial oversight of cases in the context of individual hearings, as well as overall operations. They include:

- **Communicating the expectations** of the court regarding adherence to a timely court process and the need for proper preparation by all parties for all court events.
- Establishing rigorous **case flow management** policies and practices, such as timetables/deadlines for the various stages of case processing, strict continuance policies, setting the next hearing date, distributing orders at the conclusion of each hearing, and requiring that all reports be submitted and distributed to all parties in advance of hearings or in accordance with established timelines.
- **“Front-loading”** the court process in order to set the stage for expedited proceedings and avoid later delays. In practice, “front-loading” means doing all of the following at the earliest possible point: appointing counsel for the child and parents/guardians; conducting inquiry into paternity issues; finding and notifying absent parents; identifying any domestic violence issues and, if appropriate, issuing protective orders; identifying potential relative placement options; considering the educational needs of the child; and establishing visitation schedules.

- Conducting **expedited review hearings** at critical stages of the case.
- **Taking the initiative** to solicit pertinent information if it is not otherwise presented during the hearing.
- Setting aside **sufficient time for hearings** to ensure that all parties have an opportunity to be heard and all issues can be addressed.

**\*Best Practice – Court Scheduling\***

In dependency cases, it is important that court administration, not the child welfare agency, control the scheduling process and manage all court hearing dates and times. The Common Pleas Case Management System (CPCMS) Dependency Module allows this to be done easily.

The scheduling of multiple cases during a single large time slot (or “cattle calls”) is discouraged. Hearings should be scheduled based on “time-specific scheduling” or “block scheduling,” with sufficient time allotted for each hearing. The court should be sensitive to everyone’s time schedule with special consideration given to children and parents.

Finally, while each case must be approached individually, national standards regarding the adequate time needed for each type of dependency court proceeding were articulated in the NCJFCJ Resource Guide (1995, pg. 42 - 104) as follows:

- Shelter.....60 minutes
- Adjudication.....30 minutes
- Disposition.....30 minutes
- Review.....30 minutes
- Permanency Review.....60 minutes
- Termination of Parental Rights.....60 minutes
- Adoption.....30 minutes

- Encouraging the use of Family Group Decision Making and other methods of **alternative dispute resolution** to allow family members to become active participants in the decision-making process.
- Ensuring that **case plans address the specific needs** of the child and family and hold the child welfare agency and other parties accountable for the delivery of services.

- Identifying **Indian Child Welfare and Interstate Compact on the Placement of Children** issues at an early stage of the case to avoid delay and disruptions in efforts to achieve permanency.
- Ensuring that a **proper record** is made at each and every hearing, starting at shelter care and throughout the life of the case. All written documents and reports introduced and admitted should be used as evidence during the hearing.

In addition to these managerial functions, the Judge should ensure that: (1) all parties are treated with courtesy and respect, both inside and outside of the courtroom; (2) the family understands the judicial process and the timelines that apply to the case; and (3) the court's written findings of fact and conclusions of law are written in easily understandable language that allows the parents and all parties to fully understand the court's order.

Finally, at the core of all dependency proceedings is the issue of safety. Judges and hearing masters have the ultimate responsibility for conducting a thorough analysis of child safety at each proceeding and making orders necessary to ensure safety. A legal framework for making such determinations and orders is presented in the following section.

### **2.1.2 Legal Safety Analysis for Judicial Decision-Making**

Judges and Hearing Masters overseeing child dependency proceedings have the core responsibility of child safety. This includes ensuring due process, evaluating evidence, asking questions when needed and making an independent determination of a child's physical and emotional safety.

This focus on physical and emotional safety begins immediately upon the verbal or written request for court involvement and is re-visited at every subsequent judicial determination. It is the cornerstone issue for all dependency proceedings.

Judges and Hearing Masters are required to make findings regarding safety and order services to mitigate or eliminate safety threats. Even so, there can be confusion regarding what constitutes a real "threat" to the safety of a child as opposed to what may be considered "risk".

In life, every person experiences "risk". Risk can never be completely eliminated. When risk rises to a level where it immediately or within the foreseeable future seriously jeopardizes life, it becomes a safety threat. Ensuring that safety threats to children are eliminated or, at the very least, mitigated, is the responsibility of the Juvenile Court.

"If a threat of danger is present, presume the child is vulnerable and therefore unsafe. If however, the child possesses certain strengths, the child may not be vulnerable to that particular threat."

- Renne & Lund, 2009

While the Juvenile Act allows for an adjudication of dependency based upon factors that are more likely risk than safety (i.e. truancy, ungovernability, etc.), decisions related to removal and placement of a child should be based upon an analysis of safety. This is an important legal distinction. While removal and placement of children may mitigate a safety threat it is likely to simultaneously create some level of emotional trauma for the child and parents. This potentiality necessitates a methodical legal safety analysis by the Judge and Hearing Master.

Clearly when a child's safety cannot reasonably be assured, placement is warranted. When out-of-home placement is necessary, the Judge and Hearing Master can take specific steps to minimize any potential emotional trauma experienced by the child. The Judge and Hearing Master should consider orders that:

- Place the child with safe kin;
- Place siblings together or in close proximity;
- Ensure early, frequent, meaningful visitation with parents and siblings (if not placed together);
- Secure special items for the child (i.e. blankets, toys, clothing, etc...);
- Minimize school disruption; and
- Minimize extra-curricular activity disruptions

#### **\*Best Practice – Ice Breaker Meetings\***

Many counties have begun the practice of “ice breaker” meetings. These meetings occur within days of placement. The meeting brings together the parent or guardian and the resource caregiver. During the meeting parents have an opportunity to share information regarding the child's routine, likes/dislikes, activities and other important information to minimize disruptions to their daily routine. Foster parents have an opportunity to ask questions and provide feedback. The meeting helps parents stay connected and involved with the care of their children while providing critical information to the foster parent, all aimed at minimizing trauma to the child.

Understanding the legal analysis which leads to the conclusion that a child is unsafe and must therefore be placed into out-of-home care is critically important. In this legal analysis child safety rests upon three critical factors which include the actual safety threats, the child's level of vulnerability and the parent or guardian's protective capacity.

Threats of danger or “safety threats” are specific, observable or describable, out-of-control, immediate or likely to happen soon and contain severe consequences. Because safety threats can increase or decrease over time, evidence regarding the current safety threat or threats should be presented at each hearing.

A child's level of vulnerability is impacted by a number of factors including: age, physical ability, cognitive ability, developmental status, emotional security and family loyalty. Evidence regarding the child's level of vulnerability should be provided at each hearing.

As outlined in *Child Safety: A Guide for Judges and Attorneys* (2009), the following help reduce or increase a child's vulnerability:

- A child's capacity to self-protect
- A child's susceptibility to harm based on size, mobility, social/emotional state
- Young children (0-6)
- A child's physical or mental developmental disabilities
- A child's isolation from the community
- A child's inability to anticipate or judge the presence of danger
- A child consciously or unknowingly stimulates threats and reactions
- A child's poor physical health, limited physical capacity or frailty
- A child's emotional vulnerability
- A child's attachment, fear, insecurity or security to a parent
- A child's ability to articulate problems or danger
- Impact of prior maltreatment

Finally, within the legal analysis is the issue of parental protective capacity. Judges and hearing masters need current information regarding the protective capacity of each parent or guardian. This information can then be used by the Judge and Hearing Master to weigh the level of capacity against the level of threat and child vulnerability. Protective capacities are those cognitive, behavioral and emotional capabilities that help parents or guardians provide adequate safety and care for their child.

"Protective capacities are fundamental strengths preparing and empowering a person to protect...if threats are present with a vulnerable child but sufficient protective capacity exists the child is safe...if threats are present, the child is vulnerable and protective capacity is insufficient, the child is unsafe."

-Lund & Renne, 2009

To accomplish this legal analysis information is needed. This includes information regarding:

- the nature and extent of the maltreatment [or threat of maltreatment];
- the circumstances accompanying the maltreatment [or threat of maltreatment];
- how the child functions day-to-day;
- how the parent disciplines the child;
- the overall parenting practices; and
- how the parent manages their own life.

(Renne & Lund, 2009)

As stated earlier, this legal analysis occurs during every dependency proceeding. The analysis helps identify the need for protective action on the part of the agency and court.

**Threat + Vulnerability – Protective Capacity = Unsafe Child**

The safety analysis can also be helpful in making judicial determinations related to reunification, other permanency options and eventual termination of court supervision. For more information regarding this legal safety analysis framework please see the Pennsylvania Dependency Benchbook Resource Companion - Chapter 10: Safety & Risk.

Finally, services ordered by the court or included in a Family Service Plan should aim to minimize an identified safety threat, reduce a child’s level of vulnerability or increase a parent’s or guardian’s protective capacity. When ordering services aimed at reunifying a child and parent or guardian, the Judge and Hearing Master should be able to clearly link each service to one of these three child safety elements. Judicial determinations related to removal, reunification and permanency should be governed by safety.

This is not to say that other court ordered services are not warranted. Indeed many services ordered by the court focus on child well-being and are very important. However, completion of these well-being services, in most cases, is not generally the primary consideration as to when and whether safe reunification can occur.

**2.1.3 Commitment and Leadership in System Improvement Efforts**

Judges should be active participants in the development of policies, rules, and standards by which the court and related agencies and systems function (NCJFCJ, 1995, p. 18). Judicial impartiality does not preclude a judge from acting as an advocate for additional resources or more opportunities for training and education, or serving as a convener of committees or working groups devoted to identifying systemic problems and developing solutions. In addition, as one of the key principles the Adoption and Permanency Guidelines points out, judges should “ensure that the court has the capacity to collect, analyze, and report aggregate data relating to judicial performance,” including compliance with requirements related to outcomes for children and families, compliance with statutory timelines, overall compliance with goals, and historical trends (NCJFCJ, 2000, p. 6). Such data provides useful information for ongoing monitoring of operations, evaluating programs and other initiatives over time, and assessing the need for judicial and other resources. These analyses can be shared with other stakeholders to both encourage progress toward common goals and identify areas in need of improvement (PA Children’s Roundtable Initiative, 2009, p.15).

Judges can also play an important role in ensuring competent representation for parents and children who appear in dependency proceedings. They can join in efforts

to establish initial training and experience thresholds, standards of practice, and ongoing specialized training requirements for court-appointed counsel. They can communicate the expectation that hearings will proceed as scheduled, barring exceptional circumstances, and that all parties will be prepared to proceed. Finally, judges can contribute to the training of attorneys, as well as other system stakeholders by participating in seminars and conferences (NCJFCJ, 1995, p. 22).

**\*Best Practice – Legal Representative Practice Standards\***

In May 2014, the Pennsylvania State Roundtable unanimously approved and adopted a set of dependency practice standards for *Guardians ad Litem* and Parent Attorneys. These best practice standards focus on enhancing legal representation and advocacy for parents and children in the dependency system. Areas of practice covered within the standards include:

- client contact
- expertise & knowledge
- case preparation
- collateral contacts & collaboration
- advocacy
- appellate advocacy
- ethical considerations

The standards can be utilized by judges and hearing masters to ensure competent legal representation for children and parents. A complete narrative of each standard can be found in the 2014 State Roundtable Legal Representation Workgroup Report at

[http://www.ocfcpacourts.us/assets/upload/2014%20Legal%20Representation%20Report\(1\).pdf](http://www.ocfcpacourts.us/assets/upload/2014%20Legal%20Representation%20Report(1).pdf)

#### **2.1.4 Collaboration with the Child Welfare Agency and the Community**

Judges should encourage and promote collaboration and mutual respect among all participants in the child welfare system (NCJFCJ, 2000, p. 6). Judges should initiate or participate in meetings with child welfare agency representatives at the state and local level. They should encourage greater cooperation in the development of training, including multi-disciplinary training, which addresses issues of mutual interest, such as improving court reports and in-court testimony, expanding access to services, and making more efficient use of court time (Hardin, 2002, p. 13).

The Children’s Roundtable is an example of this collaborative effort to engage all stakeholders. Supported by the Office of Children and Families in the Courts (OCFC) within the Administrative Office of Pennsylvania Courts (AOPC), it was established by

the Supreme Court of Pennsylvania in 2006. The Children's Roundtable is convened by the courts and collaboratively operated with judges as leaders. Judicial leadership in this area encompasses developing the mission/vision, setting the agenda, managing subcommittees/workgroups, effectuating the decisions made at meetings, and participating in Leadership Roundtables (PA Children's Roundtable Initiative, 2009, p.15).

The Adoption and Permanency Guidelines encourage judges to help the community understand that child protection is a community responsibility (NCJFCJ, 2000, p. 6). This can be accomplished by appearing regularly in the community to inform citizens about the child welfare system and to encourage volunteer participation (PA Children's Roundtable Initiative, 2009, p.16). The community can also be an effective partner in advocating for greater availability and access to services for children and families when there are gaps.

## **2.2 Role of the Hearing Master**

Ideally, a dependency case should be heard by a judge at each stage of the proceeding, and all parties will be better served if the same judge presides over the case from start to finish (NCJFCJ, 1995, p. 20). However, in Pennsylvania as in many other jurisdictions across the nation, judge-supervised judicial officers (referred to hereafter as "hearing masters") are appointed to handle certain hearings or stages of a case. The *Pennsylvania Rules of Juvenile Court Procedure – Dependency Matters* view this as an acceptable practice and clearly articulate the authority of hearing masters (Pa.R.J.C.P. 1187). In fact, the judicious use of hearing masters has several potential advantages. It is generally more cost-effective and affords each case more time and focused attention, allowing for closer monitoring and fewer delays. Moreover, as long as there are clear policies and guidelines governing the handling of these cases, a judge/hearing master team can maintain consistency in case processing and outcomes. Finally, a hearing master who is appointed to hear dependency cases exclusively or predominantly can develop a level of specialization and expertise that would be difficult for a judge handling a general docket (NCJFCJ, 1995, p.21).

In Pennsylvania, the President Judge (or designee) may appoint hearing masters to hear designated dependency matters. Following appointment, hearing masters may not practice before juvenile courts in the judicial districts where they preside over dependency matters (Pa.R.J.C.P. 1185). By rule, a hearing master does not have the authority to preside over Termination of Parental Rights hearings, adoptions, or any hearing where any party seeks to establish a permanency goal of adoption or change a permanency goal to adoption. However, once a permanency goal of adoption has been approved by a judge, all subsequent reviews or hearings may be heard by the Hearing Master unless a party objects. Hearing masters may not issue contempt orders or orders for emergency or protective custody (Pa.R.J.C.P. 1187). They may not issue warrants, but may recommend that a judge do so if the circumstances make it necessary. The President Judge may place other restrictions on the classes of cases to be heard by the Hearing Master.

The parties to a case retain the right to have a hearing before a judge, rather than a hearing master. Rule 1185 directs the Hearing Master to inform all parties of this right before beginning the hearing. If a party objects to having the matter heard by the Hearing Master, the case should be scheduled for an immediate hearing before a judge.

Under Pa.R.J.C.P. 1190, hearing masters may accept stipulations in any class of cases that they are permitted to hear, subject to the usual stipulation requirements of Pa.R.J.C.P. 1405, including the requirement that the court take whatever additional corroborating evidence is necessary to support an independent determination that a child is dependent. At the conclusion of the hearing, Pa.R.J.C.P. 1191 requires that the Hearing Master's findings and recommendation to the Judge be announced in open court and on the record, and submitted in written form to the Juvenile Court Judge within two business days of the hearing. Upon request, a copy of the findings and recommendation is to be given to any party.

A party may contest the Hearing Master's recommendation by filing a motion with the Clerk of Courts within three days of receipt of the recommendation, requesting a rehearing before a judge, and stating the reasons for the challenge. A copy of the findings and recommendation may be attached to the motion for rehearing.

The Hearing Master's decision is subject to approval by the Judge. Within seven days of receipt of the Hearing Master's findings and recommendation, the Judge is to review the findings and recommendation of the Hearing Master and: (1) accept the recommendation by order; (2) reject the recommendation and issue an order with a different disposition; (3) send the recommendation back to the Hearing Master for more specific findings; or (4) conduct a rehearing (Rule 1191). When the Judge, in rejecting the Hearing Master's recommendation, modifies a factual determination, a rehearing is to be conducted. The Judge may reject the Hearing Master's findings and enter a new finding or disposition without a rehearing if there is no modification of factual determinations (See *In re Perry*, 313 Pa.Super. 162, 459 A.2d 789 (1983)). Rule 1191 does not prohibit the court from modifying conclusions of law made by the hearing master.