

National Council of Juvenile  
and Family Court Judges

## ***Helping Babies from the Bench***

Judge Douglas F. Johnson

The Separate Juvenile Court of  
Douglas County, NE

2<sup>nd</sup> NYCI

Kearney, NE June 2018

### ***Why Birth To Five?***

- ▶ 1 in 5 foster care placements are infants.
- ▶ Once in care, they remain twice as long as older children.
- ▶ Babies under age 1 make up 25% of the children in the child welfare system.
- ▶ 76% of child abuse fatalities occur to children under age 4.
- ▶ Multiple foster placements.
- ▶ Developmental Delays &/or Damage.
- ▶ WHY NOT help the youngest of the young?



## **Solution Seeking Courts**

**The judge models civility, respect, dignity and requires others to do the same.**


**Emergency Room Response:** Act with a sense of urgency for the child & parent --as if this family is your own!

**Front load services:** Pragmatic, timely, effective response to abuse & neglect.

**Affirmation with accountability** motivates parental improvement/resolution of permanency.

**Alternative Dispute Resolution:** Pre-Hearing Conference, Family Group Conference, Mediation.

**Full parental participation from day one.**



*“Parents and children help each other to grow. In raising their children, parents are also raising themselves. Child rearing gives parents the chance to redo their own childhood and to improve on it.”*

Alicia F. Lieberman, Emotional Life of the Toddler.



## ***Traumatic Relationships CAN Be Repaired!***

- ▶ Young children mental health assessments and treatment:
- ▶ Child Parent Psychotherapy
- ▶ Circle of Security
- ▶ Parent Child Interactive Therapy



## ***Child Abuse Prevention & Treatment Act (CAPTA)***

- ▶ Section 106(b)(2)(B)(xxi) requires that States have provisions and procedures for the referral of children under the age of three who are involved in substantiated cases of child abuse or neglect to early intervention services funds by Part C of the Individual with Disabilities Act (IDEA).



## ***IDEA 2004***

- ▶ Part C, Section 637(a)(6)(A & B)(State Application and Assurances) requires states participating in Part C to refer for early intervention services an child under the age of 3 who is involved in a substantiated case of child abuse or neglect; or is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure.



## ***Nebraska***

- ▶ Early Development Network.
- ▶ Individualized Family Service Plan.



## ***Key Elements of a Solution Seeking Court***

Intense Judicial Oversight.

Front-Load Reasonable Efforts Services.

Intense Case Management.



## ***Goals for Children***

- All early development needs are met.
- Stop foster care drift: Permanency from Day One.
- Achieve a timely, safe, secure, permanent home consistent with ASFA: *12 Month PPH or sooner.*
- *Best interests and safety: nurturing caregiver to meet this child's needs.*





## Goals for Parents

90% abuse/neglect cases:  
*Substance abuse and mental health.*

Active participation & responsibility.

Adequate parenting skills,  
demonstrate the ability to provide  
a safe, healthy family environment  
for their children = reunification.

Due process & fair hearings.



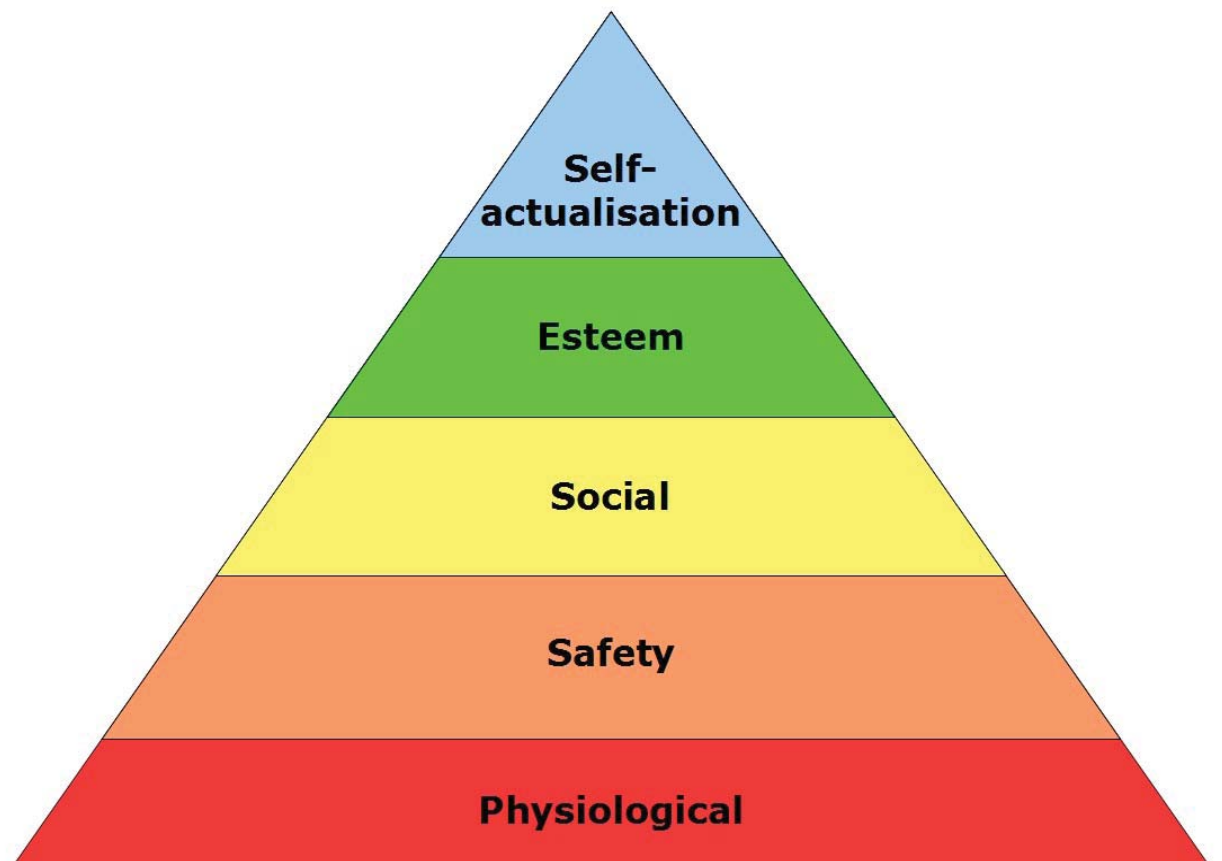
## Key Elements

- ▶ Focus on holistic child/parent well-being.
- ▶ Frequent & meaningful family time with safety plan.
- ▶ Parents and children reside together as soon as safely possible.



# Inability to Comply Is DIFFERENT than “Non-Compliance”

Good Initial & Ongoing Assessment  
Is Essential to Distinguishing the  
Difference





## *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*



## *Enhanced Resource Guidelines*

### **THE PROTECTIVE CUSTODY HEARING**

- ▶ The most important hearing is the first hearing.
- ▶ Sets the foundation for all subsequent hearing.
- ▶ If you get it right at the first hearing, you won't have to address problems down the road that cause unnecessary delays in permanency.



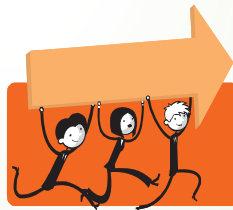
# *The Pre-Hearing Conference:*

Foundation for a  
Good Protective  
Custody Hearing

## *Rationale*

NCJFCJ's Enhanced Resource Guidelines:

- ▶ The PHC should be thorough and meaningful.
- ▶ The PHC should move litigation forward quickly and reduce its frequency.

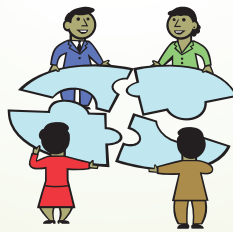


- ▶ The PHC should set the tone for a solution-seeking atmosphere!

## A good Pre-Hearing Conference does all of this...

...and is a form of

## Alternative Dispute Resolution



## The PHC Mediator

### ESSENTIAL FUNCTIONS:

- Mediates Pre-Hearing Conference to lead to mutual understanding & agreement on issues.
- Applies good judgment and analytical skills.
- Models respect, civility, dignity.
- *Is neutral and takes pressure off others by leading the problem solving conversation.*



## Knowledge

- ▶ Court organization, procedure, operations, rules.
- ▶ Child neglect & abuse issues.
- ▶ Time management.



## Skills

- ▶ Mediation, facilitation, high conflict resolution, neutrality.
- ▶ Effective communication.
- ▶ *Professional interaction with the stakeholders in high-pressure situations.*
- ▶ Good judgment and problem solving skills.



## *Preparation*

- ▶ Read petition, affidavit, and CPS information.
- ▶ Prepare form to be given to the judge.



## *PHC Agenda*

- ▶ Introduction--ideally by the **Judge**:

**Your family is important.  
Set the Problem Solving Tone.  
State Goals of the PHC.  
State Ground Rules.**

## Agenda

- ▶ Discuss procedural questions (taking care of business):
  - ▶ Problem solving process.
  - ▶ Off the record.
- ▶ Introductions and relationship to child(ren)/sign-in sheet.
- ▶ No admission against interest via statements, agreements, or participation in services—confidential (NRS 43-247.01 2016).



## Address 5 Issues

- 1) Identify Parents—birth cert./paternity.
- 2) Indian Child Welfare Act.
- 3) Placement of Children: “Can the child safely return home? If not, why not?” “Relative placement?”
- 4) Family time.
- 5) Reasonable efforts services-child & parent.



***It's the Law!***

## Roadblocks!



- Setting the tone.
- “We don’t know enough . . .”
- Managing strained relationships.
- “This won’t work. The parents are upset!”
- Defense Attorneys who haven’t met their client . . .
- “But, there’s a TPR filed!!”
- *Check list compliance vs. meaningful best practice.*

## Always Ask:



How are the children doing?

How are the parents doing?

What can we/you do to make it better?

What special things do your children need?

--Stuffed animal? --PJs? --Special blanket?

--Bedtime story? --Favorite song?



## *Take time to explore relative placements!*



## *Roadblocks & “hot-button” issues*

- Short time frame.
- Tendency for naysayers to undermine, reluctantly participate, or prefer to have an informal discussion without parents.
- Overwhelming parents with unintelligible case plan tasks—so k.i.s.s.!



## Roadblocks & “hot-button” issues

- Mediator records agreements and confirms all agreements with participants.
- A crisis is the best opportunity for parental “buy in” that lasts and works better than any court order.



## Closing

- Ask for other questions & issues—tie down loose ends
- Ask parties to sign case plan
- Thank participants and tell bailiff PHC has been completed
- Now go do the Protective Custody Hearing





## ***Protective Custody Hearing***

- ▶ An informed judicial decision concerning whether or not a child can be safely returned home pending adjudication
- ▶ Day one parental participation—avoid hallway “professional” chitchats
- ▶ Early identification of parental strengths, relative support, and timely reasonable efforts services



## ***Protective Custody Hearing***

Required Judicial Findings:

1. Reasonable efforts to (a) prevent removal (b) reunify: specific facts based on the evidence.
2. Contrary to the welfare, safety, and best interests: specific facts based on the evidence.



## ***Protective Custody Hearing - Key Decisions***

- ▶ Should child be returned home or kept in foster care prior to adjudication?
- ▶ What services will allow the child to remain at home safely? Safety plan?
- ▶ Has HHS made reasonable efforts to avoid out-of-home placement? Reunify?
- ▶ Parents? Stepparents?



## ***Protective Custody Hearing - Key Decisions***

- ▶ Will parents voluntarily (NAAI) participate in services? Exception: mandatory child abuse reporting. NRS 43-247.01 (Reissue 2016)
- ▶ Are responsible relatives available if needed? Fos-adopt?



## ***Protective Custody Hearing - Key Decisions***

- ▶ Is placement proposed by HHS the least disruptive and most family-like setting?
- ▶ Does ICWA apply? Who will send notice? When?
- ▶ Will implementation of the service plan be monitored? By whom?



## ***Protective Custody Hearing - Key Decisions***

- ▶ Restraining orders?
- ▶ Examinations, evaluations, family support, or other services? When? Payment source?
- ▶ Terms/conditions for parenting time and sibling time?
- ▶ Child support referral/hearing?
- ▶ Absent parties/future hearings?
- ▶ Set the next hearing in court.





## ***Judges/ Others***

- ▶ Do not delegate parenting time to HHS, the therapist, the GAL, and CASA “when they are in agreement” or EVER!
- ▶ Parenting time decisions are based on the evidence and made only by the judge. See: *In re Interest of C.A.*, 235 Neb. 893, 457 N.W.2nd 822 (1990), *In re Interest of Teela H.*, 3 Neb. 604, 529 N.W.2nd 134 (1995)



## ***Presume reasonable rights of parent-child family time.***

Require evidence of a safety concern to alter the presumption.

NE Supreme Court Parenting Time Guidelines (2009).





## ***Reasonable Efforts?***

- ▶ Do not accept a recommendation for a “parenting class”. Certificate based on attendance or competency?
- ▶ Do not accept “supervised visitation”.
- ▶ Do not accept “visitation once (or twice) a week for an hour or two”.
- ▶ Do not accept family time at McDonald’s, the HHS office, the mall, etc., etc. . . .



## ***If you want to kill a relationship***

- ▶ Infrequent contact.
- ▶ Brief contact.
- ▶ Artificial/counterproductive environment.
- ▶ Supervise the family time by a person with no expertise and who cannot model the parental role.



## **Require Reasonable Efforts**

- ▶ Meaningful and ample family time in a context rich environment.
- ▶ Provide for family time in a natural setting, doing normal family things: cook a meal, play, bathe, change diaper, hold/rock baby, floor time, read/sing to baby.



## **Require Reasonable Efforts**

- ▶ Parent modeling by a qualified person if oversight, modeling or training is needed.
- ▶ NB: Each family time over 1x per week triples the chances of achieving permanency (Brenda Jones Harden, Ph.D.).



## *Do your homework! Read & Lead!*

- ▶ NCJFCJ's Enhanced Resource Guidelines: Improving Court Practice in Abuse & Neglect Cases.
- ▶ Family Violence, Juvenile & Family Law Depts: [www.ncjfcj.org](http://www.ncjfcj.org).
- ▶ Through the Eyes of a Child Initiative website: [www.throughtheeyes.org](http://www.throughtheeyes.org)
- ▶ CASA Judge's Page Newsletter Family Visitation Issue (June 2006) & other volumes: [www.casaforchildren.org](http://www.casaforchildren.org)



## *Evidentiary Findings*

- ▶ Judges have an independent duty to consider the evidence and make a judicial decision.
- ▶ REMEMBER: Just because NDHHS, DCA, GAL, or Defense Attorney recommends a particular finding and order DOES NOT MAKE IT SO.
- ▶ Adoption & Safe Families Act [P.L. 96-272 (1980)], ASFA [P.L. 105-89 (1997)]



## ***“It’s about the evidence!”***

- ▶ Judges do not (hopefully) work in a vacuum.
- ▶ The quality of a judge’s decision about children and their families is directly related to the quality of information the judge receives.



## ***Outcomes***

- ▶ Good information = good judicial decisions.
- ▶ Timely services = front loading.
- ▶ Early Admissions; Cont. in Anticipation of Dismissal because parents are correcting issues.



## *Outcomes*

- ▶ Disposition Hearing with Adjudication—parents already doing the rehabilitative case plan.
- ▶ Children & parents' needs met: reunification or adoption through due process/meaningful hearings & ADR.
- ▶ Timely Permanency--stop prolonged foster care.



## *Training, training, training . . .*

Collaboration, collaboration,  
collaboration...



# *Thank you!*

- ▶ [douglas.Johnson@douglascounty-ne.gov](mailto:douglas.Johnson@douglascounty-ne.gov)
- ▶ 402-444-7881
- ▶ You are invited to do court observation—  
please stop by for coffee!