

# **JUDICIAL EXCELLENCE IN CHILD ABUSE AND NEGLECT PROCEEDINGS: PRINCIPLES AND STANDARDS FOR COURT ORGANIZATION, JUDICIAL SELECTION AND ASSIGNMENT, JUDICIAL ADMINISTRATION AND JUDICIAL EDUCATION**

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## **Introduction**

These principles and standards promote judicial excellence in child abuse and neglect proceedings throughout the country. Another set of standards, developed and published by the National Council of Juvenile and Family Court Judges (NCJFCJ), and endorsed by the American Bar Association (ABA) and the Conference of Chief Justices (CCJ) – *the Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*<sup>1</sup> – promoted excellent court processes in such cases.

The standards that follow, if adopted, will describe critical preconditions to achieving the excellent court process envisioned in the *Resource Guidelines*.

The standards were written over a period of three years with the help of a multidisciplinary committee of leading judges and other key professionals and national leaders from different jurisdictions and organizations across the country. With their help, the standards took into account national variations in court organization and procedures. At the same time, the committee kept firmly in mind the goal of improving the quality of the court process.<sup>2</sup>

Each of these standards is aspirational, and it is understood that many courts throughout the United States cannot fully implement them without legislative or other support. Barriers related to court structure, budgets, and statutory provisions, for example, may inhibit immediate implementation of particular standards. In addition, rural courts of general jurisdiction hearing a limited docket of abuse and neglect cases may find it impractical to adopt all aspects of the standards.

The standards are divided into the following categories:

- 1. Principles Supporting the Standards (Preamble)**
- 2. Court Organization**
- 3. Judicial Assignment and Selection**
- 4. Judicial Administration**
- 5. Judicial Education**

The principles supporting the standards outline some of the basic concepts behind the standards as a whole, including the uniqueness of child abuse and neglect proceedings and the rapid changes that have unfolded in this area of litigation. The standards on court organization describe some ways that courts can restructure their operations to address child abuse and neglect litigation more effectively. The standards on judicial assignment and selection discuss ways to help ensure that the best educated and most committed judges will be the ones who actually decide child abuse and neglect cases. The standards for court administration describe administrative principles, regardless of court organization, that can help upgrade the quality of decision making in child abuse and neglect cases. Finally, the standards for judicial education emphasize both the substantive and procedural complexities of these cases that judges need to master, and steps courts should take to ensure that judges do in fact master them.

The standards include “black letter” standards, or recommendations, written in bold.

The commentary that follows the black letter standards discusses and explains the standards.

**SUMMARY: Principles and Standards for Court Organization, Judicial Selection and Assignment, Judicial Administration, and Judicial Education**

*Principles*

**Principle 1: There is a distinctive judicial process in child abuse and neglect cases, which requires special judicial expertise.**

**Principle 2: Only highly committed and specially trained judges should hear child abuse and neglect proceedings. Judicial policies and procedures should be designed to encourage and support the assignment of such individuals to preside over these proceedings. Given the unique characteristics of rural courts, as addressed more fully in Standard A.11, judges and court administrators in rural settings should work to implement the Standards to the fullest extent practical.**

**Principle 3: Due to the specialized and distinctive nature of child abuse and neglect proceedings, judges hearing these cases should participate in continuing education on a wide range of identified special issues.**

**Principle 4: Due to the unique interdependence of the court and a wide range of external groups, organizations, and entities, court leaders need to actively collaborate with other interested agencies and organizations.**

**Principle 5: Court leaders should educate legislators on the unmet needs of courts hearing child abuse and neglect cases and provide them with court performance data and information with the goal of ensuring that legislatures appropriate the resources necessary to make the improvements envisioned in the Standards.**

*Standards for Court Organization*

**Standard A.1 – Every state should have a separate specialized court or a specialized division of a court to hear and administer child abuse and neglect proceedings. These specialized courts or units of courts should be organized and administered to achieve safety, permanency, and well-being for abused and neglected children and to encourage the rehabilitation of families whenever possible and appropriate.**

**Standard A.2 – Specialized courts hearing child abuse or neglect cases should, in whole or in substantial part, control their own administration and operations.**

**Standard A.3 – Persons performing judicial functions such as court filing, recording of documents, scheduling, entering data, and operating data systems should report to presiding judges and court administrators rather than to independently elected or appointed officials.**

**Standard A.4 – Court leaders should seek out judges who are skilled in and committed to child abuse and neglect proceedings.**

**Standard A.5 – Courts and judges hearing child abuse and neglect cases should be on an equivalent level of the judicial hierarchy as the highest level state trial courts and trial court judges.**

**Standard A.6 – Court leaders should ensure that the judicial branch will devote sufficient attention and resources to the quality of child abuse and neglect proceedings.**

**Standard A.7 – Judges hearing child abuse and neglect proceedings should be empowered to authorize or direct the initiation of other proceedings needed to achieve permanency for the child and then to preside over such proceedings.**

**Standard A.8 – Ideally, the same judge should hear all matters related to one family. At a minimum, judges hearing child abuse and neglect proceedings should also hear related proceedings governing legal guardianship, termination of parental rights, and adoption.**

**Standard A.9 – Where necessary, judges hearing child abuse and neglect proceedings should consider subpoenaing or joining agencies that administer public benefits programs affecting the outcomes of the proceedings to ensure that parents and children receive the services and benefits they need.**

**Standard A.10 – Judges and local court administrators responsible for child abuse and neglect cases should be systematically represented in larger decision-making and advisory bodies related to their work.**

**Standard A.11 – Court leaders responsible for child abuse and neglect cases in rural courts should emphasize having a specific time on the court docket to hear these cases, seek out attorneys who can specialize in these cases, and be attentive to courtroom arrangements that will make these cases friendly to children and families.**

### *Standards for Judicial Selection and Assignment*

#### *Judicial Selection:*

**Standard B.1 – Where judges are selected, through appointment, for the primary purpose of hearing child abuse and neglect cases, decision makers responsible for the appointment should take into account the interest, specialized knowledge, experience, and ability of the judges under consideration.**

**Standard B.2 – Where judges are selected for the primary purpose of hearing child abuse and neglect cases, decision makers should design and establish a process to ensure merit-based selection of judges who will preside over child abuse and neglect litigation. In states with judicial elections, such a process should apply to interim judicial appointments.**

**Standard B.3 – Where judges are selected for the primary purpose of hearing child abuse and neglect cases, state or local judicial or nominating commissions should develop a standard format for evaluating judicial suitability for child protection proceedings and, where applicable, other juvenile or family proceedings.**

**Standard B.4 – When judges are selected for the primary purpose of hearing child abuse and neglect cases, judicial nominating commissions, bar organizations, or other appropriate groups should make concerted efforts to recruit persons with outstanding qualifications for hearing such cases.**

**Standard B.5 – In states with judicial elections in which there are judicial positions specifically involving child abuse and neglect, juvenile, and family proceedings, such positions should be identified to the public as such.**

**Standard B.6 – In states with judicial elections in which there are judicial positions specifically involving child abuse and neglect, juvenile, and family proceedings, there should be impartial efforts to inform the electorate regarding the key qualifications for such positions.**

*Judicial Assignment:*

**Standard B.7** – When assigning judges to hear child abuse and neglect cases, court leaders should take into account the interest, specialized knowledge, experience, and ability of the judges under consideration. Only highly qualified and competent judges should be assigned to hear child abuse and neglect proceedings.

**Standard B.8** – In jurisdictions where judges are temporarily assigned or rotated to hear child abuse or neglect cases, the terms of their assignments should be at least three years and preferably more.

**Standard B.9** – In jurisdictions where judges are temporarily assigned or rotated to hear child abuse or neglect cases, it should be possible to extend such assignments after the terms have been completed.

**Standard B.10** – After a judge is assigned to hear a child abuse and neglect case, that same judge should hear all stages of the case until the case is dismissed.

**Standard B.11** – When jurisdictions use subordinate judicial officers to hear child abuse and neglect cases, the same judicial officer should hear all stages of a case until the case is dismissed.

**Standard B.12** – Court leaders should encourage and support competent judges to continue in their assignments hearing child abuse and neglect proceedings.

*Standards for Judicial Administration*

**Standard C.1** – Court leaders should develop and implement state and local plans to enhance the quality of child abuse and neglect proceedings. These plans should include, as appropriate, work and collaboration with other interested agencies and organizations.

**Standard C.2** – Court leaders should articulate a full description of judicial duties consistent with the wide range of court functions in child abuse and neglect cases.

**Standard C.3** – State courts should regularly evaluate the performance measures of local courts in child abuse and neglect cases, focusing on issues such as:

- a. Adherence to judicial rules and legislation providing procedural protections and fairness for parties.
- b. Timeliness of court calendaring, decision making, and preparation of orders.
- c. Treatment of parties and attorneys.
- d. Achievement of safety, permanency, and well-being for children.
- e. Compliance with state and federal law.

**Standard C.4** – State courts should regularly evaluate their own performance in child abuse and neglect cases.

**Standard C.5** – Court leaders should determine what judicial workloads are needed to enable judges hearing child abuse and neglect proceedings to comply fully with the law and to fulfill judicial standards of best practice. Based on such analysis, state courts should plan for the appropriate number of judges.

**Standard C.6** – Court leaders should provide compensation and working conditions for judges hearing child abuse and neglect cases that are comparable to those that apply to judges working in the highest level of state trial courts.

**Standard C.7 – Court leaders should ensure that judges are supported by administrative and support staff and, where necessary, clinical support staff or contractors who are fully qualified and sufficiently compensated to fulfill the special requirements of child abuse and neglect cases.**

**Standard C.8 – Court leaders should determine the appropriate workloads of judicial employees, as needed for efficient but excellent support of judges in these cases. Based on such analysis, court leaders should plan for and provide the appropriate numbers of well-qualified court employees.**

**Standard C.9 – Court leaders should establish and implement effective caseload management to reduce court delays, taking into account problems unique to child abuse and neglect cases.**

**Standard C.10 – Court leaders should ensure judges have access to state-of-the-art technology, including computer support specifically designed for child abuse and neglect proceedings.**

**Standard C.11 – Court leaders should ensure that judges hearing child abuse and neglect cases have adequate space, including well-appointed courtrooms that are appropriately laid out to respect the dignity and privacy of the parties and with comfortable waiting spaces, play areas for children, and private meeting rooms for parents, attorneys, caseworkers, and others involved in the case.**

**Standard C.12 – Judges hearing child abuse and neglect proceedings, as well as court administrators and staff responsible for such proceedings, should be actively involved in important decisions regarding judicial administration of abuse and neglect cases. Furthermore, they should be aware of and, where appropriate, participate in the meetings of advisory and other groups that address issues relating to the administration of abuse and neglect cases.**

### *Standards for Judicial Education*

**Standard D.1 – State law and court rules should require judges to participate in annual judicial education as an integral part of their judicial duties. Judicial education curricula should be organized and provided to ensure that all judges presiding over child abuse and neglect litigation have mastered essential knowledge applicable to such litigation.**

**Standard D.2 - Judicial education curricula should fully address judges' special roles in child abuse and neglect cases.**

**Standard D.3 - Judicial education curricula should be carefully designed to improve current judicial practice, improve compliance with the law, and help judges fulfill national or state judicial best practice standards.**

**Standard D.4 – Court leaders should design a special and comprehensive combination of judicial education and mentoring for judges newly presiding over child abuse and neglect cases.**

**Standard D.5 – Court leaders should ensure that all new judges hearing child abuse and neglect cases receive intensive judicial education and mentoring designed specifically for them. When a new judge is appointed to a specialized juvenile or family court, such judicial education should include at least 80 hours of instruction prior to taking the bench. When a new judge is appointed to a court of general jurisdiction that hears child abuse and neglect cases, such judicial education should include at least 20 hours of instruction specifically about child abuse and neglect related issues prior to taking the bench. Every general jurisdiction judge should complete an additional 60 hours of such training within two years of taking the bench.**

**Standard D.6 – Court leaders should ensure that an appropriate continuing education program is provided each year for all experienced judges hearing child abuse and neglect cases. Such judicial education should include at least 16 hours of instruction per year on child abuse and neglect related issues.**

**Standard D.7 – Court leaders should establish a resource center in which information about abuse and neglect, juvenile, and family court practice is collected and made available to judges.**

**Standard D.8 – Court leaders should permit judges to participate in nationally-recognized education programs promoting best practices in child abuse and neglect cases, even if programs involve out-of-state travel.**

## PRINCIPLES SUPPORTING STANDARDS

### PREAMBLE

It is difficult to overstate the impact of child abuse and neglect proceedings on maltreated children and their families. Statutes governing child abuse and neglect cases direct courts to make sure each child is safe and to ensure that each child is placed in a legally permanent home within a reasonable time. To achieve these goals, judges<sup>3</sup> decide whether and when to remove a child from home; whether and when the child will be returned home; and whether and when the child will be placed in a new permanent home. In addition, depending on state law, judges either decide or oversee the child welfare agency's decisions regarding how often and under what conditions, if any, parent-child visitation will occur (e.g., supervised or unsupervised); what, if any, efforts will be made to reunite the family after the child has been placed in substitute care (e.g., foster, or relative care); and what services and assistance will be provided to meet the special needs of the child while in foster care.

Each of these decisions can determine the course of a child's life and future and the future of the child's family. Judicial missteps can needlessly break up families, deny foster children safe and permanent homes, or result in the injury or death of a child. Besides achieving child safety and permanency, courts are also expected to make decisions that sustain the child's overall well-being. For example, judges are expected to help ensure that foster children receive a proper education,<sup>4</sup> medical care, and mental health treatment.<sup>5</sup>

The quality of judicial oversight of these cases affects whether children ultimately become competent and productive members of society.

Given the broad array of critical decisions faced by judges in child abuse and neglect cases, the following principles provide support for the underlying standards presented within.

### **Principle 1: There is a distinctive judicial process in child abuse and neglect cases, which requires special judicial expertise.**

Judges not only make decisions in these cases; they also oversee the child's situation until a permanent resolution of the case is possible and eventually make the ultimate placement decision for the child. According to the *Resource Guidelines*,<sup>6</sup> the oversight obligation of judges in child welfare cases is necessary because:

- (1) Court involvement in child welfare cases occurs simultaneously with agency efforts to assist the family;
- (2) The law assigns to the juvenile court a series of interrelated and complex decisions that shape the course of state intervention and determine the future of the child and family; and
- (3) Because of the multitude of persons dealing with the child and family, there is increased potential for delay and error.

The national trend toward increased judicial responsibilities in child protection cases has continued from the 1970s to the present. During these years, there have been continuing amendments of federal and state laws and state and local court rules requiring additional judicial responsibilities. As a result of these expanding expectations (and of enhanced procedural protections for parents and children), child protection cases have become increasingly complex. Courts are now far more heavily involved in decision making for foster children than in the past. Judges are now expected to address a greatly expanded range of issues and have many new duties imposed on them by federal and state laws.<sup>7</sup>

At the same time, increasing numbers of advocates and others participate in each case.<sup>8</sup> There are now typically separate attorneys for each parent; attorneys, and court appointed special advocates (CASA), or other lay advocates, or all three, representing children; and attorneys representing the government.<sup>9</sup> Noncustodial parents, putative fathers, foster parents, and relatives are also typically involved in the court proceedings, and they may also have legal representation.

There are now far more court hearings in each case than in the past.<sup>10</sup> Courts conduct periodic review hearings to oversee the agency's case plan,<sup>11</sup> permanency hearings to make timely decisions whether to return children home or to place them elsewhere,<sup>12</sup> and termination of parental rights and adoption proceedings when returning the child to the parents or extended family would be unsafe or after a child has lingered for a long period of time in substitute care.<sup>13</sup>

Furthermore, these cases are factually complex, involving subtle issues of child development, dynamics of abuse and neglect, substance abuse and addiction, mental health disorders, physical and mental disabilities, and multiple types of other evaluations, diagnoses, treatments, and interventions for impaired parents and children. First, parents' problems and pathologies are typically far more serious in child protection cases than in divorce or other family court cases. Child abuse and neglect is not normal parental behavior. Common characteristics of abusive and neglectful parents include, among others, alcohol and drug dependency, emotional disorders, developmental disabilities, character disorders, lack of attachment with their children, and severe deficiencies in parenting skills and knowledge. Still, only the most severe parental behavior leads to child abuse and neglect litigation.

Cases are complicated by the fact that abused and neglected children suffer disproportionately from emotional and other disorders.<sup>14</sup> Emotionally disturbed and developmentally disabled children are often difficult to handle and therefore are more likely to be abused and neglected than other children. In addition, many children are emotionally or developmentally impaired by the abuse or neglect itself and are further traumatized by removal from home and by changes of placement while in substitute care. Judges must also understand that children of color are overrepresented in the child welfare system. Judges must be willing to examine not only their own implicit biases, which affect all human beings, but potential structural and institutional racism which cause children of color and their families to be over represented.

Compounding the complexities of child and family problems is the need for the judge to understand how the child protection agency and key service providers operate, and to know the resources available in the community and their capacity.<sup>15</sup> Because child abuse and neglect courts depend upon the agency to provide most of the information about the case through its petitions, affidavits, reports, caseworker testimony, and witnesses, judges need to participate in meetings (convening them on some occasions) to assure that the agency, court, attorneys, and others understand each other's organizational needs and constraints and maintain open lines of communication to resolve problems unrelated to specific cases.

Judges must learn how to ensure that the agency will fulfill its legal duties. In working with the agency, judges must understand the perspectives and terminology of the agency and its staff as well as its organization and operations. Judges must understand enough about the agency to distinguish excuses from real justifications; to convince the agency to fulfill its legal duties (e.g., making reasonable efforts to prevent placement or to finalize a permanent placement; timely filing of reports); and to know when to use compulsion, either in the form of findings that the

agency failed to make reasonable efforts, which may result in reduced federal funding, or through issuing other court orders designed to assure compliance.<sup>16</sup>

There are many special and complex legal issues that apply in child abuse and neglect proceedings. There are special due process considerations;<sup>17</sup> many complex federal and state privacy laws;<sup>18</sup> and many affected families who rely on services from public benefits programs set forth in complex statutes and regulations.<sup>19</sup> Finally, child abuse and neglect proceedings should be coordinated with other family proceedings such as divorce, domestic violence, child support, custody, paternity, guardianship, and adoption proceedings, and sometimes with criminal prosecutions for the abusive behavior.

**Principle 2: Only highly committed and specially trained judges should hear child abuse and neglect proceedings. Judicial policies and procedures should be designed to encourage and support the assignment of such individuals to preside over these proceedings. Given the unique characteristics of rural courts, as addressed more fully in Standard A.11, judges and court administrators in rural settings should work to implement the Standards to the fullest extent practical.**

These standards follow and extend a basic rationale of the *ABA Standards for State Judicial Selection*:<sup>20</sup> “[W]hatever the system for selection of state trial and appellate judges, there is an implied covenant with the people that the judges selected will be persons who have demonstrated by well-defined and well-recognized qualifications their fitness for judicial office.” The *Standards for State Judicial Selection* add that these qualifications should include, when applicable, judges’ specific fitness to preside over child abuse and neglect cases.<sup>21</sup>

In view of both the high stakes for children and families and the complexity and subtlety of child abuse and neglect proceedings, it follows that the need for highly committed and specially trained judges is particularly acute in this distinct category of cases. Judges hearing these cases should have the desire and temperament to handle them and be receptive to obtaining the special knowledge required to become well-qualified to preside over them.<sup>22</sup>

In many states, it is not easy to ensure that judges who preside over child abuse and neglect cases are well-qualified to do so. In spite of significant changes brought about by state and federal legislation and implementation of the *Resource Guidelines*, some states and localities still appoint less experienced judges to hear child abuse and neglect proceedings. Newly appointed judges are often unfamiliar with child protection cases. In courts that rotate judicial assignments, judges are often assigned to hear child abuse cases for a year or less before being rotated to another assignment. Even judges who are well-qualified to hear other kinds of litigation will need additional training and experience to master these cases.

Furthermore, many judges – especially those working in less populated local jurisdictions – are unable to gain the special skills needed for child abuse and neglect proceedings. Because such proceedings represent a small proportion of those judges’ overall caseloads, the judges are unable to take the time and gain the practice experience to enable them to acquire and maintain the special skills and knowledge these cases require.

Finally, judges who are assigned to hear child abuse and neglect cases may not consistently receive training and mentoring by judges who have special knowledge and experience in child abuse proceedings. As a result, judges may struggle to understand and master these cases. Overcoming all of these barriers to judicial excellence requires major efforts and commitment at all levels of state court systems.

**Principle 3: Due to the specialized and distinctive nature of child abuse and neglect proceedings, judges hearing these cases should participate in continuing education on a wide range of identified special issues.**



As discussed in the commentary to Principle 1 above, judges hearing child abuse and neglect cases need to understand a wide range of special issues. The most critical among these issues are listed and described in detail in the commentary to Standard D.1 of these standards.

**Principle 4: Due to the unique interdependence of the court and a wide range of external groups, organizations, and entities, court leaders need to actively collaborate with other interested agencies and organizations.**

The unique challenges in child abuse and neglect cases require judges to carefully balance the need to work collaboratively with other organizations and individuals who are regularly involved in these proceedings with the ethical obligation to maintain judicial impartiality in the individual cases coming before them. The *Resource Guidelines* speak to the importance of judicial outreach and leadership:

Juvenile and family court judges can be leaders in their communities, state capitals, and at the national level to improve the administration of justice for children and their families. Judges can be active in the development of policies, laws, rules and standards by which the courts and their allied agencies and systems function. Judges can inform the community of the unique and diverse needs of troubled children and their families. Judicial responsibility for impartiality does not preclude judicial leadership. The very nature of the office mandates that the judge act as an advocate and convener to assure that needed services for children and families are available and accessible.<sup>23</sup>

Fulfilling these roles, however, can be difficult due to the large number of entities involved in these cases. Because there are so many entities, there is often poor coordination among the participants, and inter-organizational logjams arise. Overcoming challenges to improve coordination and cooperation requires diligent efforts and a strong spirit of commonly shared general goals.

Shared key goals related to achieving permanency and safety for abused and neglected children include the following:

- Timely court hearings that comply with statutory requirements, and start and finish on schedule;
- A thorough inquiry by the court into the facts of the case, with oral findings on the record that will be incorporated into the court's written order;
- Timely and complete court decisions and written orders during court hearings or soon afterwards;
- Complete and accurate information (evidence) presented to the court; and
- Full and timely compliance with court orders.

Each of the above goals is, of course, closely intertwined with the *improvement of the administration of justice*, an area in which judicial activities outside the courtroom are approved or required by the Code of Judicial Conduct. For example, time limits for court hearings are required by law in child abuse and neglect cases and also vital to achieving timely permanency, a universal statutory goal assigned to judges in child abuse and neglect cases. Further, relevant to the achievement of timely hearings are the availability and presence of counsel for all parties, and the timely submission of agency and other reports required by law.

State and federal laws also call for timely court decisions regarding the permanent plan for each child in foster care. Because achievement of this goal requires the timely provision and completion of services for the family and child, the court must lead these efforts with a variety of service providers. Still another critical issue related to collaboration is timely compliance with court orders by all parties. Such court orders may include, for example, providing identified services to children and families, completing evaluations of parents or children, and refraining from specific conduct dangerous to the child. When parties repeatedly fail to timely comply with such orders, the achievement of permanency for children is delayed and the risks to child safety are increased. Through collaboration, the court, agencies, advocates, and other stakeholders can identify and attempt to correct typical barriers to compliance.

Because there are many ways to delay court hearings, court decisions, and the implementation of court orders – and because there are so many ways in which information that is vital to each case might be missed – there must be a strong mutual desire among key participants in the court process to work together toward their achievement. Judges, court employees, and participants in the court process must be prepared to work together to achieve these goals, even while often facing disagreements in the course of specific litigation. Moreover, judges must lead this effort by encouraging and convening these meetings with court personnel, attorneys, caseworkers, or service providers when necessary. In some communities, the judge may be the only person able to convene such meetings, persuade everyone to actively participate, and sustain their ongoing participation.

Judicial meetings should not only involve advocates and parties who frequently come before the court, but also other stakeholders. Stakeholders are a much broader group, including a wide range of critical service providers to children and families, such as educators and domestic violence, substance abuse, and mental health providers. Other stakeholders include age-appropriate children or youth recently involved in the system (“alumni”), and parent alumni. These stakeholders frequently have information that is vital to the court and may provide services that can help ensure child safety and timely permanency that judges by law must seek in their decisions.

At the same time, judicially-led meetings must not compromise either the appearance or the reality of the impartiality of the judge and the neutrality of the court. Meetings with advocates, parties, and/or stakeholders must not be allowed to interfere in any way with the fairness of court proceedings. There should be an utter exclusion of all case-specific business in any meetings in which the judge is present. There should be clear, explicit, and frequent warnings about discussing specific cases in such meetings.

The court should make it clear that forming a cooperative attitude in meetings does not limit the rights and protections of the parties in the court process. Participants should understand that whenever, as part of a court case, an advocate for a party believes that a contested hearing is necessary to advance the interests of the advocates’ clients, legal ethics not only permit but also require that such a hearing take place. It is the responsibility of the court to ensure that the spirit of collaborative meetings does not contradict the rights and protections of the parties in the court process. If the court plans to discuss a topic that will involve many stakeholders, e.g., report templates to be submitted to the court by a party or parties, it should urge representatives of all parties to be present during that meeting.

**Principle 5: Court leaders should educate legislators on the unmet needs of courts hearing child abuse and neglect cases and provide them with court performance data and information with the goal of ensuring that legislatures appropriate the resources necessary to make the improvements envisioned in the Standards.**

Specialized courts, and courts hearing specialized types of cases that demand access to resources that might not otherwise be available in courts of general jurisdiction, need to receive from funding from legislatures that will support the challenges faced by judges who hear child abuse and neglect cases. Measurement or evaluation of court performance, for example, may disclose that individual judicial workloads are so high that mandates within state and federal law related to abused and neglected children, particularly those in foster care, cannot be met in a timely way. The court may then be dependent upon the new allocation, or a reallocation, of funds, so that additional judicial positions can be created to hear these cases. The individual courts that have been recognized for their leadership in handling abuse and neglect cases also have financial resources to help assure quality legal representation for children and parents, the provision of court-based or otherwise court-supported child/family evaluation, and other services.

It is important that judges and court administrators interested in improving court handling of child abuse and neglect cases have a relationship with key county and state legislators, including those responsible for appropriation of funds to the state or county judicial system, through which the child maltreatment case-related needs of the courts can be expressed. Judges and court administrators should also be aware of the importance of the role of the federal government in programs that enhance work on abuse and neglect cases, such as the Court Improvement Project

administered through the U.S. Department of Health and Human Services, so Congress will continue to appropriate funding for this Program and similar ones in the future.

Furthermore, child abuse and neglect cases constitute a new breed of litigation. The first federal law regarding them was enacted in 1973. Since then there have been numerous additional legislative dictates regarding child maltreatment. Across the country, funding for courts and agencies has been increased and intense scrutiny of court and agency performance and child-centered outcomes have been emphasized. It is imperative that both federal and state funding be maintained and expanded, to meet the needs of the courts responsible for these children's cases.

### *Standards for Court Organization*

Court organization encompasses such matters as which courts hear particular types of cases, the place of such courts in the judicial hierarchy, the basic structure of such courts, and the impact of this structure on judges and court employees. While judicial organization is largely set forth in the state constitution and state statutes, it may also be governed, in part, by court rules.

In addition, local jurisdictions often have their own rules governing these proceedings. For details about how each state court system is organized, see the Bureau of Justice Statistics, *State Court Organization 2004*, compiled by the Conference of State Court Administrators and the National Center for State Courts and available at: <http://www.ojp.usdoj.gov/bjs/pub/pdf/sco4.pdf>.

**Standard A.1 – Every state should have a separate specialized court or a specialized division of a court to hear and administer child abuse and neglect proceedings. These specialized courts or units of courts should be organized and administered to achieve safety, permanency, and well-being for abused and neglected children and to encourage the rehabilitation of families whenever possible and appropriate.**

### *Commentary*

As explained in the commentary to the principles of these standards, child abuse and neglect proceedings are a highly distinctive, complex, and challenging area of litigation. To gain mastery over child abuse and neglect proceedings, both the judges presiding over them and the court employees supporting the judges must gain extensive and specific knowledge and skills. Gaining such knowledge and skills requires that these judges and judicial employees receive extensive specialized instruction in child abuse and neglect issues, and also that they devote a substantial portion of their efforts to child abuse and neglect proceedings over a sustained period.

Obtaining such education and learning these skills is only practical in the context of a specialized court or subdivision of a court that hears other matters. Judges cannot achieve the competence they need and that these cases require if they are also required to hear a wide range of other types of court proceedings. It is also not practical for them to gain the requisite experience, knowledge, and know-how that these cases require within a brief period of time, or to maintain those skills unless abuse and neglect cases are a substantial and consistent component of their judicial workload. The same principles also apply to court employees.

Standard A.1 allows for different judicial structures within which courts can become specialized to hear child abuse and neglect cases. For example, states may establish semiautonomous judicial units within courts of general jurisdiction to hear only juvenile matters or perhaps even only child abuse and neglect matters. States with statewide family courts<sup>24</sup> may create semiautonomous units within the family courts specifically for child abuse and neglect matters. Finally, states may establish free standing, specialized courts that hear only juvenile matters such as child abuse and neglect, delinquency, and status offense cases, as in Utah and Massachusetts.<sup>25</sup>

On the other hand, while judicial specialization may exist within each of the above overall structures, certain features of judicial specialization are important irrespective of the larger court structure. Thus, regardless of the type of court within which specialization exists, the court should be organized to achieve the following:

- Judges and court employees will hear and administer child abuse and neglect cases over a sufficient period of time to learn to handle these cases well.
- The courts or judicial units of courts hearing child abuse and neglect cases have the degree of autonomy needed to develop and enforce judicial procedures conducive to positive outcomes for dependent children and their families.
- The courts or judicial units of courts hearing child abuse and neglect cases have a position within the court system as a whole that will facilitate their receipt of the resources, oversight, and support needed from the judicial system to facilitate positive outcomes for abused and neglected children and their families.

Accordingly, given the differences between a specialized unit within a court of general jurisdiction, a specialized unit or docket within a family court, and an independent juvenile court, there are particular organizational requirements and concerns that apply to each.

For example, in states in which child abuse and neglect cases are heard by the court of general jurisdiction, it is common for urban areas having a high volume of child abuse and neglect proceedings to establish a specialized juvenile subdivision for juvenile cases. In such states, however, there may be a lack of specialization in rural areas. To address this challenge in rural areas, where it may be impractical to establish specialized subdivisions within a single county or judicial district, courts should consider establishing multi-county specialized judicial subdivisions of the court or general jurisdiction, as Texas has done by creating its “Child Protection Courts” (CPCs, also formerly known as “cluster courts.”)<sup>26</sup> While Texas CPCs hear only child abuse and neglect cases, another option would be for equivalent courts to also hear juvenile justice cases.

In an approach roughly similar to that of Texas, Louisiana adopted “Rule XXXIII: Special Rules for Child Abuse and Neglect Cases.” Rule XXXIII authorizes reassignment within courts having juvenile jurisdiction to specialized divisions to ensure a one-family, one-judge policy. In addition, the Rule sets forth attorney qualifications and standards.<sup>27</sup> Finally, Cook County, Illinois has also adopted rules to govern specialized juvenile proceedings,<sup>28</sup> which, in effect, establish both a specialized child abuse and neglect court and a separate juvenile delinquency court within the court of general jurisdiction. Establishing the specialized juvenile courts within courts of broader jurisdiction, particularly in large urban areas such as Chicago, is the most frequently used method for specialization.

Another challenge in states where a specialized juvenile or child abuse and neglect unit exists within the court of general jurisdiction is that the presiding judges and the top court administrators, who are responsible for multiple case types including juvenile matters, may not be fully informed and sensitive to the unique skills and knowledge that judges who hear child abuse and neglect case must have. In this case, it might be helpful to strengthen the authority of the local presiding judges and administrators assigned to manage child abuse and neglect or juvenile proceedings. At the same time, it may help to establish within the office of the state court administrator a special and high level focus on child abuse and neglect proceedings.

The key is to provide an effective “seat at the table” where child abuse and neglect specialists can participate in discussions and decisions affecting them. This focus can help ensure that there are sufficient judicial and staff resources, computer and other infrastructure support, and effective oversight for child abuse and neglect proceedings.

The existence of a statewide family court can – but may not – support excellence in child abuse and neglect proceedings. Judges and staff employees responsible for child abuse and neglect proceedings can lose in the competition *within* a family court for judicial system resources, attention, and oversight.<sup>29</sup> They may or may not have

a “seat at the table” within the state Supreme Court administrative office, as discussed above. Further, a statewide family court’s general organizational features may or may not be strongly supportive of judicial excellence for child abuse and neglect proceedings.<sup>30</sup>

Likewise, the existence of an independent juvenile court<sup>31</sup> probably will – but might not, alone – support excellence in child abuse and neglect proceedings. These courts, which hear only child abuse and neglect, delinquency, and status offense cases, are administratively separate from other courts in their selection and retention of judges and court staff. An important potential barrier to excellence is that there may be competition for resources with other types of state courts. Among other organizational factors affecting the juvenile court’s success in this competition may be whether the juvenile court is on a judicial level equivalent to that of the trial court of general jurisdiction, the juvenile court’s place in statewide judicial decision-making and advisory bodies, and the juvenile court’s authority over the selection and retention of its judges and court staff.

In any of these types of court organizations, there may also be competition for resources between those responsible for child abuse and neglect proceedings and others. Regardless of the organizational structure, a statewide joint judicial-executive commission focused on child abuse and neglect issues – as recommended by the Pew Commission<sup>32</sup> and endorsed by the Conference of Chief Justices and the Conference of State Court Administrators – will be an important ally in making clear the unique prerequisites for achieving excellence in child abuse and neglect proceedings.<sup>33</sup>

**Standard A.2 – Specialized courts hearing child abuse or neglect cases should, in whole or in substantial part, control their own administration and operations.**

*Commentary*

An important factor contributing to the effectiveness of specialized courts responsible for child abuse and neglect proceedings is their degree of control over their own administration and operations. Their autonomy helps ensure that they will be able to take into account the distinctive features of child abuse and neglect cases in the way that they operate. While these specialized courts or units of courts need not control all dimensions of their own administration, judicial specialization is needed for child abuse and neglect proceedings.

The following are some of the important features of such autonomy for these courts or units of courts:

- The specialized court or judicial unit should have substantial control over its calendar, judicial assignments, and key staff.
- There should be a presiding judge and court administrator who have primary responsibility for the unit or court's operations.
- The court or unit should have control or major influence over hiring, promotion, and retention of support staff, especially over those who work specifically or primarily on child abuse and neglect proceedings.
- The court or unit should control or strongly influence work rules for such employees.
- The court or unit should substantially influence the selection and retention of judges assigned to it.

**Standard A.3 – Persons performing judicial functions such as court filing, recording of documents, scheduling, entering data, and operating data systems should report to presiding judges and court administrators rather than to independently elected or appointed officials.**

*Commentary*

In some states elected court clerks and law enforcement officials (e.g., county sheriffs) perform functions that are important to the quality and effectiveness of judicial child abuse and neglect proceedings. The existence and responsibilities of these elected officials may be set forth, in part, by a state’s constitution or within the broad statutory scheme governing the organization and operations of the judicial branch. Such elected officials may be responsible, for example, for the maintenance of case files, the operations of judicial computer systems, and the service of pleadings and summonses.

Even in states where court clerks or county sheriffs are established by the state constitution, however, it may be possible to improve the quality of child abuse and neglect proceedings by making small scale adjustments in the responsibilities of these elected officials. For example, it may or may not be possible to enact statutes or adopt court rules that transfer the following types of responsibilities to the courts:

- Filing of pleadings in child abuse and neglect or juvenile cases.
- Authority to conduct or contract for the service of summons and service of process.
- Provide notice of hearings.
- Maintain automated data systems specifically for juvenile or child abuse and neglect cases.
- Supervise and direct security personnel.
- Produce annual reports regarding the work of the court.

In addition, these officials should be included whenever possible on relevant court teams and committees responsible for policy recommendations to secure their cooperation and improve their effectiveness.

**Standard A.4 – Court leaders should seek out judges who are skilled in and committed to child abuse and neglect proceedings.**

*Commentary*

A court may be considered “specialized” without actually having specialized judges, e.g., when judges rapidly transfer in and out of specialized family courts or even out of independent juvenile courts (those hearing both child abuse and neglect and juvenile justice cases) or specialized units of courts of general jurisdiction. While judicial policies for the selection, assignment, retention, and education of judges – addressed in other sections of these standards – affect the specialization and expertise of judges, court structure is also important. For example, if a specialized court (or specialized unit of a court) plays an important role in the assignment of judges, it can choose those with special skill in, and commitment to, child abuse and neglect proceedings and those who are less likely to want to leave.

To say that courts should have judges who are skilled in and committed to child abuse and neglect proceedings does not necessarily mean that such judges must hear nothing but abuse and neglect cases. First, there are other case types that are similar in important ways to child abuse and neglect cases, such as delinquency cases and other cases affecting the custody, placement, support, and care of children, as well as the status of families. The fact that judges hearing child abuse and neglect cases spend some of their time hearing these other types of cases does not preclude them from gaining and sustaining expertise in child abuse and neglect matters, but it is important that a large proportion of time be focused on child abuse and neglect proceedings.

**Standard A.5 – Courts and judges hearing child abuse and neglect cases should be on an equivalent level of the judicial hierarchy as the highest level state trial courts and trial court judges.**

*Commentary*

The position of courts in the judicial hierarchy is important for a number of reasons. First, it affects the salaries and working conditions of the judges. It is easier to attract and retain excellent judges when salaries and working conditions are superior. Second, if the court hearing child abuse and neglect cases is not equal to the court of general jurisdiction, judges are more likely to seek other assignments. Third, courts on a level equal to the court of general jurisdiction often have better facilities, equipment, and other resources, as well as more and higher qualified employees. Fourth, such courts have a greater voice in decision making within the court system, thereby helping to ensure that their needs will be met. Finally, having this status within the judiciary heightens the respect judges have for child abuse and neglect litigation, which is also important to the recruitment and retention of excellent judges.

Therefore, for all the reasons stated above, judges hearing child abuse and neglect cases should have “equal status within the judicial hierarchy as judges of the highest ranked trial court.”<sup>34</sup> Such treatment will help ensure that these courts and judges receive the resources they deserve, resulting in increased continuity and better outcomes for affected families.

**Standard A.6 – Court leaders should ensure that the judicial branch will devote sufficient attention and resources to the quality of child abuse and neglect proceedings.**

*Commentary*

The purpose of this standard is to help ensure, within the statewide court administration, that there will be frequent and careful attention to child abuse and neglect proceedings. This attention should be in proportion to the high impact of these cases on human lives, rather than merely based on the fact that there may be a relatively small number of child abuse and neglect judicial case filings per year compared to other cases. In addition, even if child abuse and neglect cases are heard by courts low in the judicial hierarchy, the needs of these courts should be given careful attention.

Even in court systems in which the state Supreme Court has relatively limited authority over the trial courts, the Administrative Office of the Courts (AOC or the state equivalent) can make an important contribution to the quality of child abuse and neglect proceedings. The AOC can provide essential oversight, technical aid, and education to support child abuse and neglect proceedings. And – to a greater or lesser degree depending on the state – the AOC can influence or even control the amount and types of personnel, services, and funding provided for child abuse and neglect proceedings.

To ensure that child abuse and neglect proceedings receive such support, it is important to have a juvenile or child abuse and neglect unit that is appropriately staffed and situated within the AOC. The leader of such a division, office, or program should be highly knowledgeable about child abuse and neglect proceedings and should be senior enough within the AOC to be involved in decision making at a high level.

There is no single organizational solution that will work for all state court systems. Specific organizational solutions must depend on how the court system is organized overall. Depending on state court organization, some possibilities might include the following:

- A juvenile department located within the state court administrator’s office, as in Arkansas.
- Judicial hiring and retention practices ensuring that those state court employees having full-time responsibility for child abuse and neglect cases are provided stable and high level judicial positions.
- Systematically frequent contacts between the state court administrator and state court employees responsible for supporting high quality child abuse and neglect proceedings.

Toward those ends, it is important that each state accept each of the grants provided under the federal Court Improvement Project, created by Title IV-B Subpart 2 of the Social Security Act.<sup>35</sup> In addition, establishing an effective federally-supported Court Improvement Project (CIP) requires highly qualified staff, strong support within the AOC, and a position of importance within the AOC structure. Title IV-B Subpart 2 has now existed for 15 years, and state court administrators should not only operate on the assumption that this funding will continue, it should allocate state court resources beyond the federally-required matching funds.

**Standard A.7 – Judges hearing child abuse and neglect proceedings should be empowered to authorize or direct the initiation of other proceedings needed to achieve permanency for the child and then to preside over such proceedings.**

*Commentary*

Judges presiding over child abuse and neglect proceedings should be empowered to initiate ancillary proceedings, when necessary, to achieve permanency for children in foster care.

Thus, the child abuse and neglect judge should be empowered to initiate and then consolidate such types of proceedings as “legal guardianship”<sup>36</sup> (to establish legal guardianship as a permanent placement), termination of parental rights (to legally free a child for adoption), and adoption. Other possibilities might include paternity (to establish or foreclose parental rights in conjunction with a plan for reunification with a father) and child support (to reinforce a plan for reunification or to make it more financially practical that a child be permanently returned home to a parent receiving the support). When there are no other court proceedings pending, there should be flexible and simplified procedures for initiation and consolidation of proceedings.<sup>37</sup>

In states where court orders governing custody lose effect when child abuse and neglect jurisdiction ends, courts may need to be empowered to initiate and consolidate other types of custody proceedings where a change of custody is needed as part of the child’s permanent plan.

Thus, this standard is intended to provide that, whenever needed to achieve permanency, the judge hearing child abuse and neglect cases should be empowered to initiate and then consolidate relevant court proceedings determining the legal status of the child or family unit. Permitting or directing the court hearing a child abuse and neglect case to also hear such related proceedings helps reduce delays, economizes use of judicial resources, and ensures consistent and better quality judicial decisions.

**Standard A.8 – Ideally, the same judge should hear all matters related to one family. At a minimum, judges hearing child abuse and neglect proceedings should also hear related proceedings governing legal guardianship, termination of parental rights, and adoption.**

*Commentary*

While Standard A.7 would empower courts hearing child abuse or neglect proceedings to initiate other proceedings to achieve permanency, this standard would establish a blanket rule. Specifically, when there are open child abuse and neglect proceedings, it would require that other proceedings to achieve permanency be heard by the same judge. To achieve this goal, state legislatures, supreme courts, and judicial leaders should work to modify legislation and judicial rules so judges hearing abuse and neglect cases are empowered to hear related proceedings.

The concept of unified family courts includes the presumption that children are best served when the same judge hears all matters affecting a family. There are a variety of approaches to achieving this goal.



**Standard A.9 – Where necessary, judges hearing child abuse and neglect proceedings should consider subpoenaing or joining agencies that administer public benefits programs affecting the outcomes of the proceedings to ensure that parents and children receive the services and benefits they need.**

*Commentary*

A common major barrier to achieving safety and permanency for children is that services or cash benefits to a family have been delayed or refused. For example, a previously neglectful parent may have improved yet be unable to reclaim custody of a child solely because of the parent's financial ability to arrange housing. This outcome might be avoided with the help of the child support agency by obtaining support payments from the child's other parent. Yet, according to the testimony of the child's caseworker, the child support agency has failed to conduct paternity testing, initiate support proceedings, or take action to enforce existing support obligations, all of which are clearly required by law. In this instance, the judge hearing child abuse and neglect cases should consider subpoenaing the child support agency and, perhaps, directing it to follow its own explicit regulations regarding timely paternity testing, initiation of child support proceedings, and child support enforcement.

Of course, this standard does not exclude less formal solutions to such problems, which often are better and more efficient than using the power to issue subpoenas. For example, courts might work with agencies to establish a routine protocol in all abuse and neglect cases for identifying and locating absent parents, establishing paternity, and setting and enforcing child support. Some courts have child support offices in close proximity to the abuse and neglect courts for that very purpose. Another possible solution is to join the agencies as interested parties, which California provides for by statute.<sup>38</sup>

Attorneys and judges already have the power to subpoena witnesses, but do not often do so for the purpose of clarifying the availability and nature of benefits and services that can affect whether, when, and under what conditions a child might be placed safely at home. Making this practice more common, especially when there are benefits in question that could affect the outcomes of the proceedings, may encourage the appropriate use of this power.

**Standard A.10 – Judges and local court administrators responsible for child abuse and neglect cases should be systematically represented in larger decision-making and advisory bodies related to their work.**

*Commentary*

Given the high impact of child abuse and neglect proceedings on human lives, judges hearing these proceedings should be well represented on key advisory and decision-making bodies. This involvement should include representation on committees focused on administrative rule making, resource allocation, technology, and personnel issues. In addition, they should be represented on judicial workload and court technology committees. Likewise, local court administrators or lead staff responsible for child abuse and neglect cases should be represented in such committees and advisory bodies, as appropriate.

**Standard A.11 – Court leaders responsible for child abuse and neglect cases in rural courts should emphasize having a specific time on the court docket to hear these cases, seek out attorneys who can specialize in these cases, and be attentive to courtroom arrangements that will make these cases friendly to children and families.**

*Commentary*

Many judges serve in rural courts. In some states, there are no courts large enough to support specialized judges for abuse and neglect cases, while every state has some rural districts. Judges in rural areas may ride a circuit, appearing in different jurisdictions or courthouses on a periodic basis.

Judges in these rural settings often hear all types of cases that come before the court, with abuse and neglect cases a small percentage of the court's caseload. Judges in rural areas tend to be generalists who must stay current with legal developments in all matters coming before the court, including criminal, civil, family, probate, juvenile delinquency, and abuse and neglect. Therefore, while these standards are intended to apply to all judges hearing abuse and neglect cases, special consideration must be given to judges sitting in these rural courts.

- Rural judges should ensure that child abuse and neglect cases are scheduled for a specific time on the court's docket, to ensure that all parties and service providers will be able to attend.
- Rural judges should seek attorneys in the community who can specialize in abuse and neglect cases.
- Rural judges often have little or no experience with abuse and neglect cases when they take the bench. Training for rural judges must emphasize the importance of these cases, as well as the complex issues involved in them. Since rural judges must stay current in many areas of the law, the training requirements for these judges may be less than those for specialized judges.
- Rural judges should participate in continuing education regarding abuse and neglect cases, at least several hours every year.
- Rural judges should be aware that the ordinary courtroom may not be configured in a way to maximize participation and should be attentive to the courtroom arrangement so that all family members, attorneys, and other parties can participate in the proceedings.
- Rural judges often collaborate with colleagues in other rural jurisdictions. State court leaders should encourage collaboration in abuse and neglect cases.

### *Standards for Judicial Selection and Assignment*

Standards B.1 through B.6 set forth principles to ensure the judges selected to hear child abuse and neglect cases, either through appointment or election, have the highest possible level of relevant skills, commitment, and knowledge. Judicial selection here refers to how judges are chosen, in the first instance, to serve on the bench typically through (1) an appointment process where a governmental entity or official (usually the Governor) appoints an individual to be a judge or (2) a judicial election.

Standards B.7 through B.12 address the assignment of judges to hear child abuse and neglect cases after being appointed or elected to the bench.

#### *Judicial Selection:*

The following standards apply to the selection of judges to hear child abuse and neglect cases, i.e., judicial selection in jurisdictions in which judges are appointed or elected specifically to hear child abuse and neglect and other family-related cases such as delinquency and domestic relations proceedings. In such jurisdictions, it is practical for judges to be initially selected in a manner that takes into account judges' competence to handle child abuse and neglect proceedings.

There are major differences in the ways that judges are selected in different states. Some state and local jurisdictions appoint judges, others select them by partisan or nonpartisan elections, and still others select them through a combined process of appointment and election. Even in states where judges are elected, most judges who leave office before the end of their terms are replaced by appointment. Further, some but not all states use special commissions to review judicial appointments and/or to consider their retention. Accordingly, most standards in this section are phrased not as universally applicable statements, but rather as principles to follow *where they are applicable*.

Thus, the following standards discuss how to improve the choice of those judges who are specifically appointed or elected to hear, in large part, child abuse and neglect proceedings. These standards are intended to recommend

methods for improvement that are consistent with a given state's overall methods of choosing judges to hear child abuse and neglect cases. It is not the intention of the following standards to provide general guidance or to urge states to recast their methods of choosing judges. Such methods have already been addressed through the *American Bar Association Standards on State Judicial Selection*<sup>39</sup> and the *American Judicature Society Model Judicial Selection Provisions*.<sup>40</sup>

**Standard B.1 – Where judges are selected, through appointment, for the primary purpose of hearing child abuse and neglect cases, decision makers responsible for the appointment should take into account the interest, specialized knowledge, experience, and ability of judges under consideration.**

*Commentary*

Depending on the state and locality, judges may be appointed by governors, legislators, or mayors. There may be a special commission to assist in the appointment decision or to actually make the appointment. As with all judicial appointments, those making the recommendations and decisions should take into account such factors as the applicant's integrity, knowledge of the law, and demeanor. In addition, they should take into account the judge's specialized knowledge and experience in the area of the law in which she or he will serve. As explained by the American Judicature Society (AJS) in its Model Judicial Selection Provisions: "Each judicial vacancy should be treated individually to the greatest extent possible. If the positions to be filled require specialized knowledge and legal experience (i.e. family law, juvenile matters), individual consideration of applicants for each vacancy becomes even more important."<sup>41</sup>

As explained in the standards on judicial education, judges need to learn not only the applicable law but also the other important principles that apply to decision making in child abuse and neglect cases. Further, as explained in Principle 4, courts need to exercise leadership and to collaborate with community agencies and organizations to further the administration of justice. Accordingly, their motivation, mastery, and willingness to master social and community issues and needs and to engage community organizations should be factors in their selection.<sup>42</sup>

These standards take the AJS position to its logical conclusion: where a judge is to be selected for a specialized judicial position, the candidates' interest, specialized knowledge, experience, and ability should routinely be taken into account.

**Standard B.2 – Where judges are selected for the primary purpose of hearing child abuse and neglect cases, decision makers should design and establish a process to ensure merit-based selection of judges who will preside over child abuse and neglect litigation. In states with judicial elections, such a process should apply to interim judicial appointments.**

*Commentary*

Both the *American Bar Association Standards on State Judicial Selection* and the *American Judicature Society Model Judicial Selection Provisions* call for a merit-based judicial selection process. This standard reaffirms those positions and calls for their specific application when judges are selected for specialized positions in child abuse and neglect cases.

**Standard B.3 – Where judges are selected for the primary purpose of hearing child abuse and neglect cases, state or local judicial or nominating commissions should develop a standard format for evaluating judicial suitability for child protection proceedings and, where applicable, other juvenile or family proceedings.**

*Commentary*

Jurisdictions with state or local judicial nominating commissions may have developed a standard format for evaluating judicial suitability. In addition to using the standard format for the selection of all judges, additional items should be considered when a judge is to be appointed specifically to hear child abuse or neglect proceedings.

Commentary accompanying Standard B.7 sets forth a set of criteria for the assignment of judges to hear juvenile and family cases. Such criteria apply, if anything, with even more force in decisions regarding judicial selection.

**Standard B.4 – When judges are selected for the primary purpose of hearing child abuse and neglect cases, judicial nominating commissions, bar organizations, or other appropriate groups should make concerted efforts to recruit persons with outstanding qualifications for hearing such cases.**

*Commentary*

In many states, it is a normal function of judicial nominating commissions to recruit outstanding members of the bar to apply for judicial positions. In others this function may be performed by bar organizations or other groups. In any case, it is important that these groups seek out and encourage those who would make outstanding judicial candidates to apply. These groups should also educate the appointing authority about the importance of choosing candidates who have both interest and ability in child abuse and neglect matters. Some particular recruitment strategies may be helpful:

- Special steps to announce to the judicial and legal communities the existence of new judicial positions involving child abuse and neglect cases, including announcements to bar and judicial groups specifically focusing on child abuse and neglect proceedings.
- Publicizing the processes used for the selection of judges, including, if applicable, those specifically relevant to child abuse and neglect litigation.
- Outreach to identify and recruit attorneys or judges who have shown excellence in litigating child abuse and neglect cases, including interviewing judges and practitioners.
- Issuing announcements that describe training and education requirements after judges take the bench, for the purpose of letting them know in advance that they will be expected to master (or further master) child abuse and neglect proceedings.

**Standard B.5 – In states with judicial elections in which there are judicial positions specifically involving child abuse and neglect, juvenile, and family proceedings, such positions should be identified to the public.**

*Commentary*

In some jurisdictions judges are elected to judicial positions that are known in advance to involve the hearing of child abuse or neglect proceedings and, possibly, the hearing of other related proceedings such as delinquency cases and other types of family matters. In such jurisdictions, the public should be informed of the judicial duties of the judge to be elected to be better informed when casting their ballot.

**Standard B.6 – In states with judicial elections in which there are judicial positions specifically involving child abuse and neglect, juvenile, and family proceedings, there should be impartial efforts to inform the electorate regarding the key qualifications for such positions.**

Where judges are elected largely to hear child abuse and neglect proceedings, there should be efforts to inform the electorate regarding the types of qualifications generally appropriate for such judges. These qualifications, in addition to the usual desirable qualifications for judges, might include the items listed under Standard B.7.

State courts, bar organizations, or other impartial organizations should inform the public regarding the key qualifications for such judges, including providing this information to the news media and, where applicable, including the information in voters' pamphlets. In addition, qualifications should be listed on the ballot statements. Candidates for judicial positions should be encouraged to emphasize their suitability for a specialized judgeship addressing child abuse and neglect issues in any pre-election exchanges with the public.

***Judicial Assignment:***

In some states child abuse and neglect cases are heard by courts of general jurisdiction, i.e., courts that hear a wide range of cases including serious crimes and large scale property cases. Thus, a judge located in a rural court of such a state may hear child abuse or neglect cases only occasionally, e.g., once or twice a month or less.

By contrast, presiding and chief judges of many urban courts of general jurisdiction assign certain judges to temporarily hear *only* child abuse and neglect cases. Thus, it is standard practice in urban courts of general jurisdiction that judges are given temporary *assignments* to hear child abuse and neglect cases until their period of "rotation" is over and they are assigned to another category of cases. While the judges themselves are not specialized, they are placed in temporary assignments to hear a specific case type.

In many other states and localities, non-specialized courts of limited jurisdiction hear child abuse and neglect cases. (Courts of limited jurisdiction are lower in the judicial hierarchy compared to courts of general jurisdiction and may, for example, hear misdemeanors (minor crimes) and cases involving relatively small amounts of property.)

Depending on the exact breadth of their jurisdiction, similar patterns may exist regarding judicial assignments for non-specialized courts of limited jurisdiction as those described above for courts of general jurisdiction. For example, a given rural judge in a court of limited jurisdiction may hear a wide variety of cases including comparatively few child abuse and neglect cases. In an urban area, by contrast, a chief or presiding judge may assign individual judges within the court of limited jurisdiction to serve periods of rotation, and such periods of rotation may include temporarily hearing only child abuse and neglect cases.

Specialized or semi-specialized temporary assignments may also exist in middle-sized non-specialized courts. It is not unusual, for example, in a court of five or six judges for one judge to hear all or most of the family and juvenile cases. Such an assignment might be based on judicial preference, seniority, or abilities.

For the purposes of these standards, whether a court is a court of general or limited jurisdiction, the key concern is how judges are assigned to hear child abuse and neglect cases. These standards encourage chief and presiding judges to make such assignments, to the extent practical, in a manner that serves the interests of families and children.

Where the judiciary itself is not specialized, it is worth noting that in many areas, (especially, but not always, in heavily populated areas), court staff and facilities are divided into family or juvenile subparts. Although judges may rotate in and out of such subparts of the court, they may be known, for example, as "juvenile courts" or "juvenile divisions." While such "courts" or divisions may have separate and stable employees who serve as clerks, bailiffs, data processors, receptionists, and in various other positions, judges rotate through such courts or divisions based on assignments by the chief or presiding judge of the court of general or limited jurisdiction.

In many courts, particularly those in urban areas, presiding judges who have limited familiarity with child abuse and neglect proceedings exercise the authority to decide which judges shall be assigned to hear such cases. In such courts, it is especially important that the presiding judge understand the special needs of child abuse and neglect proceedings.

Some of the key issues related to judicial assignments include the *length of assignments*; *judicial rotation* (whether judges are routinely “rotated” out of assignments to hear child abuse and neglect cases, as explained above); the use of *individual calendars* (one judge for the life of the case), hybrid calendars (periodic reassignment of cases), or master calendars (random assignment of cases at each hearing); the *criteria for assignment* to dependency cases (e.g., lack of seniority as a judge vs. relevant prior experience); and *retention* (persuading skilled judges to continue to serve). This section will discuss how to improve judicial assignments to enhance the expertise and overall quality of judicial performance in hearing child abuse and neglect cases.

**Standard B.7 – When assigning judges to hear child abuse and neglect cases, court leaders should take into account the interest, specialized knowledge, experience, and ability of the judges under consideration. Only highly qualified and competent judges should be assigned to hear child abuse and neglect proceedings.**

#### *Commentary*

The assignment of judges to preside over child abuse and neglect proceedings should be based on the judges’ combination of demonstrated skills, knowledge, and personal commitment to this type of litigation. Thus, the Committee or individual judge responsible for the assignment should be strongly discouraged from assigning child abuse and neglect cases based on judges’ *lack* of seniority. Rather, everything else being equal, judges who have courtroom or other relevant experience should be assigned to preside over child abuse and neglect proceedings.

In deciding when to assign judges to hear child abuse and neglect cases, the Committee or individual judge responsible for the assignment should consider, above all else, their ability to effectively serve the children and families affected by such cases. In making such a decision, the Committee or individual judge responsible for the assignment should consider a range of factors, including experience, commitment, and personality. The following are some possible items to consider:

- Demonstrated interest in and willingness to learn about child abuse and neglect, juvenile, and family-related proceedings.
- Knowledge of laws and procedures specifically relevant to child abuse and neglect litigation and to whatever other areas of law, if any, are applicable to the judicial position.
- Skills at problem solving and community leadership.
- Experience and skills related to child abuse and neglect, juvenile, and family litigation.
- Education and training specifically related to child protection and family proceedings or commitment to receiving such education.

The above list is not intended to exclude inexperienced but particularly well qualified judges from being assigned to hear child abuse and neglect proceedings. There are a number of ways that inexperienced judges can rapidly acquire competence to hear such cases, including, for example:

- Mentorship (temporarily second chairing and consulting on child abuse and neglect cases) with other judges.
- Being assigned to hear other categories of family cases before hearing child abuse and neglect cases.
- Intensive early training and education such as that provided annually by the National Council of Juvenile and Family Court Judges.

**Standard B.8 – In jurisdictions where judges are temporarily assigned or rotated to hear child abuse or neglect cases, the terms of their assignments should be at least three years and preferably more.**

*Commentary*

Lengthy judicial assignments allow judges to gain and maintain the expertise needed to do a good job in child abuse and neglect cases. As explained at length in Part D of these standards (Standards for Judicial Education), a great deal of special knowledge is needed to master the complexities of child abuse and neglect cases. Long judicial assignments to hear child abuse and neglect cases encourage judges to commit themselves to excellence in this specific area of law and to participate in needed educational programs.

In some jurisdictions, judges serve terms of rotation as short as one year. Rapid judicial rotation makes it impossible for judges to gain other types of needed expertise in child abuse and neglect cases, such as how to work with the community and how cases progress, and generally inhibits the processing of these cases. Rapid judicial rotation, in fact, is one of the greatest problems facing juvenile courts.<sup>43</sup> Therefore, given the series of concerns raised by the practice of rotation, judges hearing abuse and neglect cases ideally would not rotate.

**Standard B.9 – In jurisdictions where judges are temporarily assigned or rotated to hear child abuse or neglect cases, it should be possible to extend such assignments after the terms have been completed.**

*Commentary*

Many judges who are assigned to hear child abuse and neglect, juvenile, and family cases find such types of cases rewarding and prefer to avoid being reassigned to hear another case category. So long as they are performing well, there is no need to have inflexible policies requiring their rotation. Repeated terms can contribute to judicial excellence for the same reasons that lengthy judicial assignments can do so.

In addition, when judges do rotate out of assignments in which they have heard child abuse and neglect cases, there may be some cases that are so complex or exceptional that consideration should be given to allowing the judge to continue with the case. When a judge has heard such cases over an extended period of time and has gotten to know the families involved, a judge may feel that a case is too complicated to responsibly pass on to another judge. In addition, judges should have the assistance of court employees supporting the child abuse and neglect cases (the appropriate unit of the family or juvenile court) in continuing to hear such cases.

In jurisdictions where assignments to hear child abuse and neglect cases are temporary, the court should provide an opportunity for an appropriate transition when new judges come onto the bench. A transition period will allow for the new judge to assume responsibility for cases with the least amount of disruption.

**Standard B.10 – After a judge is assigned to hear a child abuse and neglect case, that same judge should hear all stages of the case until the case is dismissed.**

*Commentary*

A judge assigned to hear a child abuse and neglect case should do so for the life of the case. That is, each case should encompass all court proceedings from the moment a child is removed from home until the case is dismissed, based on the child's placement in a safe and permanent home or the dismissal of court proceedings.

There are a number of reasons why a single judge should hear all stages of the same case.<sup>44</sup> First, judges gain a sense of responsibility and ownership in each case. Knowing that his or her involvement will extend beyond the immediate hearing motivates the judge to invest the time, thought, and commitment to reach the best possible decision in each hearing and the best ultimate case result.

Second, a single judge is likely to provide the parties with a greater sense of consistency in each case. With one judge, subsequent case decisions are more predictable and parties are less likely to recycle rejected arguments and excuses for their lack of progress. On the positive side, with a single judge serving as an authority figure, the parties are less likely to feel that uninterested strangers are controlling their lives.

Third, when judges hear all stages of the same case, they may learn about and continue to gain insight into how the system works. By hearing all of each case, they learn how the different hearings knit together in a case sequence, how the agency services unfold, and how families respond to state intervention over time. By contrast, when cases are transferred from judge to judge, judges get a fragmented and highly limited picture of the court process, agency case work, and family responses.

Finally, the practice of hearing every stage of each case helps judges prepare for each hearing. Agencies typically file lengthy written reports prior to review and permanency hearings. If the judge has heard all of the hearings leading up to that proceeding, it should be easier for the judge to absorb the new reports prior to each hearing, to become reacquainted with the case facts, and to prepare for the hearing.

**Standard B.11 – When jurisdictions use subordinate judicial officers to hear child abuse and neglect cases, the same judicial officer should hear all stages of a case until the case is dismissed.**

#### *Commentary*

Some courts use subordinate judicial officers to hear child abuse and neglect cases, often due to budgetary restraints that prevent the hiring of additional judges. Use of subordinate judicial officers occurs in both specialized courts and non-specialized courts, especially in their juvenile or family divisions. Subordinate judicial officers may be called, for example, magistrates, commissioners, hearing officers, or referees. Subordinate judicial officers are often selected by and serve at the pleasure of a presiding judge.

Some courts use subordinate judicial officers to hear all stages of a case, which is consistent with Standard A.8, Standard B.10, and the overarching goal of one judge/one family. By contrast, others assign subordinate judicial officers to hear only certain stages of the case such as emergency removal hearings or periodic reviews that would otherwise come before the judge. Still others assign subordinate judicial officers to form “teams” with judges and to hear routine or uncontested hearings. Some states are moving away from the use of these judicial officers. For example, California decided that only judges should hear these cases and is replacing subordinate judicial officers with judges as they retire.

Ideally, only judges would hear child abuse and neglect cases. However, since many states use subordinate judicial officers, the following practices should be adopted when using them:

- Judges responsible for selecting subordinate judicial officers should identify and recruit individuals skilled in and committed to child abuse and neglect proceedings.
- Subordinate judicial officers should participate in continuing education programs. If these officers are hired to hear cases on a full-time basis, they should be required to participate in the same training required for judges.
- Subordinate judicial officers should be hired for significant periods of time and not be rotated between assignments.
- Subordinate judicial officers should not be assigned to hear one part of a case, while a judge hears a different part of the case. This arrangement prevents the court from holding parties accountable because there can be a lack of coordination between the subordinate judicial officer and the judge. If it is impossible to implement a strict one judge/one family policy, a team of a judge and a subordinate judicial officer should be jointly responsible for a case from start to finish.



**Standard B.12 – Court leaders should encourage and support competent judges to continue in their assignments hearing child abuse and neglect proceedings.**

*Commentary*

Many of the principles related to encouraging competent judges to continue to hear child abuse and neglect cases over time are addressed above in other standards. These include, among others:

- Improved judicial education, including the opportunity to travel and meet with judges from other areas of the state and country (Standard D.9 and Standards for Judicial Education generally);
- Hearing all stages of the same case (Standards B.10 and B.11);
- Compensation equivalent to the court of general jurisdiction and equivalent stature in the judicial hierarchy (to discourage judges hearing child abuse and neglect cases from seeking promotion to another court and to help them to feel respected within the judicial system) (Standards A.5 and C.6);
- Reasonable workloads to enable judges to do good work and not to be overwhelmed (Standard C.5).

Other ideas include:

- Special educational programs regarding judicial impact on the lives of children – how judges can best make a difference for children.
- Programs on avoiding judicial burnout.
- Programs regarding collaboration with child welfare agencies to achieve better outcomes for children.

*Standards for Judicial Administration*

Judicial administration, as described in this portion of the standards, involves how courts actually operate within their organizational structure. Court administration addresses, for example, how courts plan their activities, schedule hearings and otherwise manage cases, enter and distribute orders, appoint counsel for parents and children, calculate their needs for judges and staff, and set staff compensation and working conditions. It also addresses technology support and facilities. Judicial administration requirements generally appear in judicial administrative rules, court management directives, judicial personnel policies, and other similar sources. In these standards, the term “court leaders” generally refers to chief judges, administrative judges, presiding judges, and where relevant, court administrators.

**Standard C.1 – Court leaders should develop and implement state and local plans to enhance the quality of child abuse and neglect proceedings. These plans should include, as appropriate, work and collaboration with other interested agencies and organizations.**

*Commentary*

In nearly every state court system there is a state “Court Improvement Project” (CIP),<sup>45</sup> supported by federal funds, specifically to improve child protection proceedings. Each CIP works to improve the quality of legal proceedings involving child abuse and neglect, foster care, and adoption, as well as to help achieve better outcomes for children and families involved in such proceedings.

CIP projects develop and implement “strategic plans” to achieve their goals. As explained in the commentary to Principle 4 and Standard D.2, because of the importance of logistical issues involving the court, the child welfare agency, and major service providers, courts hearing child abuse and neglect cases must work with such entities outside of court proceedings. Accordingly, CIPs generally are – and should be – developed and implemented with the support and involvement of such groups as bar associations, state child welfare agencies,<sup>46</sup> other child welfare

organizations, and providers of important services to abused and neglected children and their families. The participation of such entities is important to the success of CIP strategic plans.

Likewise, it is important for local courts<sup>47</sup> to establish their own goals, activities, and timelines to improve child abuse and neglect proceedings. Local courts should adopt written plans to organize their efforts to improve child abuse and neglect proceedings and to collaborate with other organizations and professionals.

Both statewide and local court improvement plans should have similar purposes: to ensure that highly qualified judges and staff are assigned to child abuse and neglect proceedings; to provide sufficient qualified staff and financial resources for such cases; to make sure that the cases are heard effectively and fairly; to provide high quality legal representation for all parties; to maintain effective relationships with other entities; and generally to help bring about positive outcomes for children and families. To measure and ensure the accomplishment of these goals, state and local plans should provide for the evaluation of success in meeting their goals, including the data collection and analysis.

A number of state child abuse and neglect Court Improvement Projects (CIPs) have encouraged states to establish local court improvement plans focusing on child abuse and neglect proceedings. For example, California holds an annual “Beyond the Bench” conference, in which local judicial-multidisciplinary teams meet and plan for the following year. Wisconsin periodically evaluates the performance of local courts and, in connection with the evaluations, develops local plans to improve court performance.

**Standard C.2 – Court leaders should articulate a full description of judicial duties consistent with the wide range of court functions in child abuse and neglect cases.**

#### *Commentary*

As explained and described in Standard D.2, courts have a wide range of judicial responsibilities in child abuse and neglect cases. Central to these responsibilities is to ensure that each type of specialized hearing is conducted in a manner that will fulfill its purpose as intended by the legislature. For example, if a shelter care hearing is supposed to determine whether a child can safely be placed at home, find whether there have been reasonable efforts to prevent placement, identify possible missing parents and relatives, and consider the appropriateness of early evaluation of the child. It is the judge’s responsibility to ensure that such hearings are conducted in a manner to actually achieve these purposes as directed by law. The judge should also seek the assistance of court staff to organize hearings, preparation of parties, submission of documents and schedules, and other factors to ensure that the hearing fulfills all of its legal functions. The same should be true for the other hearing types as they are defined by law, such as adjudication, disposition, review, permanency, termination of parental rights, and adoption hearings.

Courts must also address the various logistical issues among the court, the child welfare agency, and major service providers. These issues come up both inside and outside the courtroom. Thus, courts hearing child abuse and neglect cases must devote additional time outside of court proceedings to address such issues.

Courts must work with public child welfare agencies regarding a range of practice areas that may interfere with timely or informed judicial decisions, such as services to children and families, visitation, and how to deal with relatives from the extended family. Courts must also work with other public and private agencies regarding such issues as appearances in court and delivery of services in compliance with court orders and the law.

Further, juvenile court judges need to provide leadership in the community to improve the justice process and establish liaisons with authorities frequently appearing in the court. They have a teaching role, and must evaluate not only their own performance but also observe the performance of others in the community. Particularly where they have a role in the appointment of attorneys, judges have an obligation to oversee and support the performance of such

attorneys. Other important areas of judicial involvement include setting up special projects on issues of concern, such as drug courts, domestic violence protocols, and procedures to work with school districts to assure that accurate educational information is provided to the court regarding school age children.

Considerable judicial attention is needed to make sure that needless court delays are avoided, as explained in detail in the commentary to Standard C.9, below. Finally, the judge should review and consider any evaluation data regarding the court and the community. See the commentary to Standards C.3 and C.4 for more details. There are certain tasks critical to efficient court operations that court staff should, but often do not, perform. These tasks include the following: (a) setting up and coordinating stakeholder meetings; (b) participating at the judge's direction in agency and stakeholder meetings; (c) ensuring the court has regular access to credible data to monitor system performance; (d) helping the judge to analyze and understand the data; (e) preparing templates for routine court orders prior to hearings; (f) identifying cases failing to meet legal deadlines and bringing them to the attention of the judge; (g) reviewing court orders to ensure that they fulfill federal and state requirements; (h) monitoring whether court orders are implemented and reporting to the judge when they are not;<sup>48</sup> (i) performing case management tasks, such as producing quarterly and annual reports; (j) serving as liaison with agency staff to help avoid logistical problems with the child welfare agency and other entities; and (k) assisting with evaluation of the court and community's performance for abused and neglected children and their families.

To prepare a comprehensive list of such duties it is helpful not only to review the law itself but also to review key judicial standards such as the *Resource Guidelines* and the *Adoption and Permanency Guidelines*.<sup>49</sup> And once courts have articulated their full range of duties in these cases, they need to select the most appropriate person to perform each identified duty. Next, they should prepare more precise and complete job descriptions to match different job types and link them to critical court functions. After those steps are complete, the court can determine its workload needs and allocate staff time.

**Standard C.3 – State courts should regularly evaluate the performance measures of local courts in child abuse and neglect cases, focusing on issues such as:**

- a. Adherence to judicial rules and legislation providing procedural protections and fairness for parties.**
- b. Timeliness of court calendaring, decision making, and preparation of orders.**
- c. Treatment of parties and attorneys.**
- d. Achievement of safety, permanency, and well-being for children.**
- e. Compliance with state and federal law.**

*Commentary*

Courts need to review performance measures for a number of reasons. Such monitoring is critical to determine whether the court is meeting federal and state timelines, whether children are achieving permanency, and what might be causing delays in a case. Courts should adapt carefully defined performance measurements such as those included in the performance measurement “Toolkit” developed by the ABA, National Center for State Courts (NCSC), and NCJFCJ.<sup>50</sup> They should also review and consider measures used or being developed by other state court systems. Additional discussion of performance measurement is found in the commentary to Standards C.7 and C.10.

There are two basic types of data (information) courts need for evaluation. The first is qualitative data, meaning that it cannot be quantified and analyzed statistically. Qualitative data can be gathered from interviews (individual and group) as well as court observations and reviews of case files. From qualitative data, it is possible to produce vivid and specific descriptions of the court process and to describe why there is compliance or noncompliance with judicial rules, statutes, and judicial performance standards.

Quantitative (numerical) data, while less flexible, is easier and cheaper to analyze and can cover wider geographic areas for the same cost. Quantitative data may be collected through such means as questionnaires (surveys) and through case file reviews (in which time between events is calculated, or the occurrence or nonoccurrence of events is counted). Where there is a statewide judicial information system capable of measuring relevant events, it also may be used for evaluation.

Both qualitative and quantitative information should be combined to provide a vivid and broad picture of court performance throughout the state. Because it is expensive and time consuming to measure performance qualitatively in each jurisdiction, such evaluation in any given court may be possible only once every several years.

Thus, state courts should conduct periodic in-depth evaluations of local court performance, using a full range of research techniques such as carefully designed interviews, court observations, file reviews, and other approaches. Because the federally funded Court Improvement Projects require state assessment and subsequent reassessment of this area of practice, these are not new practices for state court systems.

The ABA, NCSC, NCJFCJ, and other national organizations have developed forms and instructional materials that state courts can use for such evaluation, and can also provide technical help in using them. Further, some states' CIPs have become sophisticated at evaluation in child abuse and neglect cases and are willing to share information and provide assistance to each other.

Finally, there is a separate annual CIP grant to state courts to collect and evaluate data to improve court performance. Although these grants are modest, they can be used for periodic evaluation. It may also be possible to coordinate with state child welfare agencies' quality assurance and quality improvement efforts (QA and QI) to coordinate visits to local courts and share data. Child welfare agencies systematically collect data that is helpful to courts and may be willing to share it with the state court system. A nonprofit organization, Fostering Court Improvement, can inexpensively put agency data on a website and usually break it down by court or judicial district.

With regard to using both automated data and non-automated performance evaluations, it is important to exercise sensitivity and discretion. Local courts should be given the full opportunity to respond and correct evaluation results before they are released, particularly those based on computerized measurement. Where evaluations show that local courts have areas needing improvement, state courts should make specific suggestions for improvement and should provide concrete assistance.

It is also important to evaluate individuals' performance in court, including attorneys, caseworkers, judges, and court staff. State courts need to develop materials and programs to make this effort possible. The results of such individual evaluations should be confidential with occasional exceptions for extreme cases.

#### **Standard C.4 – State courts should regularly evaluate their own performance in child abuse and neglect cases.**

##### *Commentary*

Courts can improve their performance in child abuse and neglect proceedings through regular self-evaluations and improvement efforts. State child welfare agencies collect data regarding abused and neglected children and typically break that data down by county. Where agency data is available by judicial district, as in most states, local courts can use it to help them understand either their own impact on the community or the issues and problems faced by abused and neglected children there. For example, information often available from state child protection agencies may include the time it takes for foster children to reach permanency (such as by return home or adoption), the proportion of such children who are adopted, and the rate of abuse or neglect while in foster care.

In addition to information obtained from the child welfare agency, local courts may have access to data from the state court system or even its own local judicial automated “management information system” (MIS). Increasing numbers of state courts are using CIP funds to build an MIS capable of creating data that will help courts manage their own performance, including in some jurisdictions evaluations of individual judicial performance.

Finally, in addition to carefully reviewing the data available from the child welfare agency and state court system to compare their own performance with others, local courts can seek to discover what is behind the data, i.e., figure out the precise nature of their own strengths and weaknesses. They can adapt and use evaluation instruments from the court system as a whole, conduct studies of their own operations, and convene groups to seek solutions. They can enlist available local colleges and universities in these efforts.

Data should shed light not only on the local court itself but also on agency and community performance. Sometimes it can be difficult to tease out which is which, for example, with data on the length of time to achieve permanency. Courts must take care neither to be defensive nor accusatory in the use of such data.

This process may generate data that will cast light on the performance of specific staff. For example, where data comes from the court system and can address such matters as the time counsel is appointed, notice to foster parents, and even the timeliness of specific types of hearings, it sometimes might be possible to use this information in staff evaluations. If it is within the job description of a court employee to address certain types of practices, as discussed in the commentary to Standard C.2, information regarding the court’s success with that practice may be pertinent to an employee’s evaluation.

**Standard C.5 – Court leaders should determine what judicial workloads are needed to enable judges hearing child abuse and neglect proceedings to comply fully with the law and to fulfill judicial standards of best practice. Based on such analysis, state courts should plan for the appropriate number of judges.**

#### *Commentary*

As described in the Commentary accompanying Principle 1 and Standard D.1, the demands on courts hearing child abuse and neglect cases have expanded dramatically over the past 30 years. Due to changes in state and federal law, there are now many more court hearings and parties involved in each case. Court hearings must be longer to enable judges to address the increasingly complex factual and legal issues and to complete their deliberations under tighter time frames. In addition, judges need to engage in far more extensive out-of-court activities to ensure compliance with the law,<sup>51</sup> effective court operations, and more timely decisions.<sup>52</sup>

These increased demands on judicial time have often led to overloaded courtrooms and calendars. This overload, in turn, can erode procedural protections for parties; interfere with timely decision making; prevent judges from paying proper, individualized attention to the parties and to the files, reports, and other documents they submit; and make it difficult or impossible to fully comply with legal requirements, particularly timely permanency.

To ensure that every judge has a realistic workload that allows for adequate time and energy for each case, courts should assess judicial workloads and determine how much time judges and courts need to fully perform their legal functions and – operating efficiently – to achieve excellence in the performance of their duties.

The publication *Building a Better Court* states the case for such assessments:

Establishing workloads objectively will strengthen courts’ requests for resources needed to appropriately resolve child abuse and neglect cases. Objective methods and measures for determining judicial workloads enable courts to approach their legislatures with well-supported funding requests for child welfare cases and to demonstrate objectively the consequences of a lack of resources on specific areas of performance. Objective workload assessment also will help child advocates determine whether courts are able to meet the needs of

children and families, thus helping to ensure the safety, permanency, and well-being of children and, at the same time, fulfilling the letter and spirit of the federal Adoption and Safe Families Act (ASFA).<sup>53</sup>

Child abuse and neglect cases are the only example of litigation in which both the state and federal governments have a stake in the outcome of every court proceeding. Both contribute funding to the child protection process, establish legal dictates related to the cases, and are responsible for evaluation of children's outcomes. If judicial workloads are far too high leading to statutory targets being missed, the federal government may financially penalize the state.

A methodical approach to measuring judicial workload is possible, and it is essential that the methodology take into account the time needed to fulfill standards of practice such as those described in the *Resource Guidelines*.<sup>54</sup> Once a court completes such an assessment, an appropriate plan can be developed to achieve the desired result. A particularly important step in linking workload measurement with judicial standards is to prepare a clear statement of judicial duties, something akin to a judicial "job description." Such a job description can generally describe what *should* occur in each type of judicial hearing; how the judge should prepare for and follow up after each type of hearing; the various organizational responsibilities of the judge within the court; and how the judge is to work with the community, including the full range of specified topics and types of organizations.

Such a detailed judicial job description can go a long way toward an accurate measurement of the amount of time required to do so. Workload analysis can measure the time needed for the full accomplishment of each task set forth in the job description, multiplied, when applicable, by the number of cases, hearings, and organizations in the community. For more details about the types of duties that might be included, see the commentary to Standard C.2.

It is essential to conduct workload analysis on job descriptions that are based on best practices because many judges currently are unable to fulfill all tasks required by law or called for by accepted judicial standards. Judicial workload studies that are limited to what judges actually do will necessarily exclude much of the time actually needed to achieve excellence in child abuse and neglect proceedings.

Given the numbers of judges who are currently unable to fulfill standards of best practices, states realistically may need additional funding for more judicial positions. Therefore, an organized effort will be required to educate the legislature or local governments making funding decisions regarding the need for these additional positions.<sup>55</sup>

**Standard C.6 – Court leaders should provide compensation and working conditions for judges hearing child abuse and neglect cases that are comparable to judges working in the highest level of state trial courts.**

#### *Commentary*

As explained in the commentary to Principle 1, Standard D.1, and Standard D.2, judges hearing child abuse and neglect cases require a particularly high level of specialized expertise and skills. For courts to be able to consistently recruit, assign, and retain highly competent judges for these cases, it is important that their compensation and working conditions be equal to that of judges serving in the highest level of the trial court. One cause of the low judicial prestige in this practice area – and the resulting unwillingness of many judges to be involved – is that judges hearing these cases often have inferior salaries, courtrooms, facilities, staff support, and working conditions compared with judges hearing other case types.

**Standard C.7 – Court leaders should ensure that judges are supported by administrative and support staff and, where necessary, clinical support staff or contractors who are fully qualified and sufficiently compensated to fulfill the special requirements of child abuse and neglect cases.**

*Commentary*

Many courts are short staffed for child abuse and neglect proceedings, even for the performance of the routine duties of all court employees. Shortages of qualified staff represent a particularly acute problem for juvenile courts because they need employees to perform important special duties in child abuse and neglect cases. As explained in the commentary to Principle 1 and to Standards D.1 and D.2, courts hearing child abuse and neglect cases must actively work with the public child welfare agency and other entities in the community on issues such as coordination and logistics; scheduling of hearings; timely filing of reports and pleadings; information exchanges about services for children; service of process and notice to parties and foster parents; establishment and compliance with rules, processes, and procedures; and local training.

Juvenile court judges need the services of administrative staff that, in addition to performing the other typical duties of judicial administration, can serve as liaisons, arrange and help coordinate community meetings under judicial direction, and represent judges at agency and community meetings as needed. Judges also need administrative staff that can help develop and implement forms and procedures in cooperation with such outside organizations and groups.

Further, courts need staff to perform the following specialized tasks:

- Help the court improve its legal process to comply with federal and state child welfare law.

To ensure that court proceedings fully comply with complex and frequently changing federal and state child welfare requirements, courts hearing child welfare cases must develop or adapt forms for court orders for a wide range of hearing types; adopt standard procedures to ensure the timely filing of agency pleadings and reports; establish a process to immediately prepare and distribute court orders at the end of each hearing;<sup>56</sup> and organize the hearing process to efficiently fulfill changing legal requirements. Judges need staff help not only to implement such improvements, but also, in some cases, to help judges design them.

- Ensure that all people coming before the court have equal access to justice.

As noted in Standard D.2, the *American Bar Association Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*<sup>57</sup> recommend that attorneys are provided with interpreters when needed to properly represent their clients. Similarly, courts must ensure that all parties coming before them have the appropriate accommodations necessary to allow for equal access to justice, e.g., interpreters or accommodations under the Americans with Disabilities Act.

- Operate or coordinate special projects.

Court employees are needed to help the court work with other community organizations on specific problem areas and case types affecting court operations in the local community. Subjects might focus, for example, on locating absent parents or other relatives, dealing with substance abuse in child welfare cases, determining and collecting child support for children in foster care, addressing domestic violence in child welfare cases, meeting educational needs of children in foster care, and dealing with children and parents involved in the child welfare system that have disabilities and special needs.

Each of the subjects listed above involves a different set of organizations, laws, and logistics, and each can create special complications in the court process. By working on projects to address these subjects and serving as liaisons to

other community organizations, court employees can help deal with such complications and improve court proceedings. They can also help the court perform its leadership role in the community.

- Help judges avoid missing deadlines and overcome delays in specific cases.

Court staff can identify cases that are about to miss legal deadlines, promptly bring such cases to the attention of the judge, and intercede when parties have failed to meet requirements such as the timely filing of court reports or other documents.

- Adapt and use court automation to meet the unique needs of child welfare proceedings.

Like staff in other courts, judicial staff working on child abuse and neglect cases needs to make routine computer entries and to maintain the court's automated case "management information system" (MIS). In addition, however, expert court staff is needed to help the court adapt its larger MIS to meet the specific needs of child welfare proceedings. It is the distinctiveness of child welfare proceedings as described in Principle 1 that requires substantial modifications of the MIS. The MIS in child abuse and neglect cases must, among other things, take into account the unique series of court hearings in these cases, the special procedural requirements, and the wide range of parties and special participants in these proceedings.

In different states, judges and court administrators have varying degrees of control over the hiring and retention of various administrative and support staff. For example, in states where clerks are elected and do not report to judges, they may sometimes decline to follow the instructions of the local presiding judge or even the state Supreme Court regarding data entry, information systems, performance measurement, and court forms. Likewise, in some states, law clerks, data entry staff, or security personnel may not report to presiding judges and court administrators.

Where judges and courts do not have administrative authority over persons performing important judicial functions, courts must develop effective ways to cooperate with those who do perform or administer such functions. For example, to strengthen this cooperation, local courts might want to convene periodic meetings to discuss mutual concerns with county clerks and sheriffs, perhaps also including other stakeholders and community representatives. State child abuse and neglect Court Improvement Projects (CIPs) might choose to work closely with organizations representing court clerks, sheriffs, etc. In some states, statutory amendments and revisions in court rules may improve such cooperation.

- Monitor data regarding the court's performance.

As explained in the commentary to Standards C.3 and C. 4, courts need to actively participate in the evaluation of their own performances and their impact on the community. This evaluation includes interpreting the data provided by the state and conducting additional data collection. Courts must hire and retain staff capable of gathering and interpreting such data.

**Standard C.8 – Court leaders should determine the appropriate workloads of judicial employees, as needed for efficient but excellent support of judges in these cases. Based on such analysis, court leaders should plan for and provide the appropriate numbers of well-qualified court employees.**

#### *Commentary*

Just as it is necessary to clarify judicial duties in child abuse and neglect cases, it is essential to do so for court employees. To provide proper support for judges (including administrative judges) court employees need not only



appropriate levels of skill, knowledge, and experience, but also enough time to perform their duties. To set forth appropriate duties for their employees, courts need to do the following:

- Methodically analyze, list, and describe the necessary duties of court staff specifically in child abuse and neglect cases;
- Describe a range of configurations of non-judicial positions based on different sizes of child abuse and neglect caseloads;
- For each type of position, describe appropriate job duties and types of skills and experience required;
- Set the compensation of judicial employees at the level needed to employ persons qualified to perform the duties; and
- Provide alternative job descriptions based on different demographics and on courts' child abuse and neglect caseloads.

Because there are great variations in the size of courts' child abuse and neglect (and other) caseloads, it is not realistic for state courts to prepare uniformly applicable job descriptions for this case category. For example, in rural courts, it is often necessary to consolidate positions that are more specialized in urban areas. Nevertheless, depending on the state, it should be possible to prepare a number of court employee position descriptions specifically for child abuse and neglect cases – perhaps for large, middle-sized, and rural courts and allowing for some local customization.

In addition, as part of the analysis of job duties and positions, courts should determine the appropriate workloads associated with such positions. Workload analysis of any position, of course, should be based on the time required for the different specific duties associated with each type of job. Analysis of time required for different specific job tasks will be also helpful for courts that have configured their specific positions differently.

As with judicial positions, the duties and job descriptions associated with judicial employees should be based on what is needed to fulfill legal requirements and meet judicial standards. To do so, as discussed above, states may need funding for additional administrative positions. Therefore, an organized effort may be required to educate the state legislature and any local governments responsible for court funding regarding the need for these additional positions.

**Standard C.9 – Court leaders should establish and implement effective caseload management to reduce court delays, taking into account problems unique to child abuse and neglect cases.**

#### *Commentary*

Effective judicial control of court delays not only requires skill and sufficient numbers of judges and staff, but also the application of accepted principles of judicial caseload management. The basic elements of effective caseload management are the same regardless of case type. These elements include:

- Timely scheduling of court hearings.

Courts rather than lawyers should be responsible for the scheduling of hearings. Attorneys may be busy, place low priority on child abuse and neglect cases, or have tactical reasons to support delays. Among other things, judges should schedule the next court date at the conclusion of each hearing. Judges should set and enforce strict policies governing requests for continuances, as discussed below in further detail.

- Time-certain hearings.

Time certain hearings – hearings scheduled for specific times of day rather than within larger blocks of time – make it easier and more convenient for parties, witnesses, and attorneys to be present in court. Parties and witnesses who do not appear in court are a key cause for delays and their absence also degrades the quality of the court process.

- Pretrial proceedings as needed.

Pretrial proceedings can eliminate needless time in court by identifying and eliminating issues and by estimating the time needed for hearings. Since pretrial hearings themselves take time, courts have to balance their advantages and disadvantages and set policies accordingly.

- Strict rules governing continuances.

As pointed out above, without court management, attorneys, parties, and service providers (mental health evaluators for example) often cause considerable court delays. Each continuance or other delay sought by a party not only delays the individual case, but may also contribute to a generally lax attitude toward being prepared and ready for court. Furthermore, delay can result in a failure to meet federally-mandated deadlines, causing the child welfare agency to lose critical funding. Most important, however, is the fact that unnecessary delay causes continued uncertainty for the child and prolongs the instability of the child's placement.

Judges should therefore implement strict rules governing continuances. Judges should make clear to attorneys that child abuse and neglect cases take precedence over all other cases, with the possible exception of criminal cases involving requirements for a speedy trial. Effective anti-continuance policies include tightened criteria or additional procedural barriers for continuances, such as requiring written motions supported by statements of reasons for continuances and by requiring court orders with written findings. Strengthening the criteria and procedural barriers for continuances typically requires substantial work and communication with agencies, attorneys, and others.

- Avoidance of nonconsecutive court days.

Nonconsecutive court days for contested hearings still occur in many courts. Nonconsecutive court days most typically occur when more than one contested hearing is scheduled simultaneously and when a pretrial hearing has not been effective at narrowing or resolving issues or accurately estimating trial times. Another important factor may be the failure of the court to leave open sufficient time for contested hearings on its calendar, as discussed above, a practice which might be affected by excessive judicial workloads.

One way to avoid nonconsecutive court days is to require thorough pretrial preparation and proceedings. For example, one court requires a joint pretrial memorandum from all attorneys in the case. In this court, there is a pretrial conference following the receipt of the memo, in which the judge hears motions to redact exhibits, pare down the witness list if repetitive, narrow the issues before trial, and decide on the number of trial days needed.

- Maintenance of statistics regarding delays.

Another key element of case flow management is the keeping of statistics regarding the timeliness of hearings and case outcomes, as well as for key factors contributing to their timeliness. Measuring time assesses progress and provides reinforcement for good work.

Producing and disseminating statistics on court delays helps establish accountability. Statistics can be used to compare local court performance with that of other courts and also to measure whether or not performance has been

improving in the local court. Knowing that one's delay reduction projects will be measured and evaluated motivate court staff who want to excel and do not want to be subject to criticism for having failed to do so.

In addition, statistics can be used diagnostically to trace and eliminate the causes of court delays. If the worst delays occur in connection with a particular hearing, with a particular population of children, or in a particular courtroom, this information provides invaluable clues to developing a remedy for the problem.

While time measurement can be done to a limited extent without computer support, it is far better with a computerized performance measurement system as discussed below in the commentary to Standard C.10.

In addition to employing the types of techniques described above, courts need to focus on special causes of delays often associated with child abuse and neglect cases. Some of these include:

- Court reports, motions, and petitions not filed within times specified by law and court rules.
- Untimely delivery of services to families and children, making it difficult for judges to make permanency decisions as required by law.
- Frequent disputes about specific issues, such as parent-child visitation or specific types of services.
- Time consuming processes for the appointment of attorneys and the initiation of attorney-client contacts.
- Attorneys with scheduling conflicts that interfere with their availability to schedule timely hearings in child abuse and neglect cases.
- Shortages and inefficiencies in arranging ancillary judicial services, such as simultaneous translation and transportation to court.
- Protracted appeals that interfere with trial courts' ability to meet reasonable permanency planning decision deadlines.<sup>58</sup>
- Attorneys and caseworkers who appear late in court.<sup>59</sup>

Regardless of the cause, it is essential that courts overcome delays so that children who have been removed from their homes can achieve timely permanency. Overcoming delays in the court process not only requires judicial management, but also close communication between the court, the child welfare agency, attorneys, and others frequently appearing before the court.

**Standard C.10 – Court leaders should ensure judges have access to state-of-the-art technology, including computer support specifically designed for child abuse and neglect proceedings.**

*Commentary*

As discussed in the commentary to Standard C.3, performance measurement is critical to ensuring compliance with statutory mandates and achieving permanency for children. Furthermore, advanced computer support is especially important for courts in child abuse and neglect cases. Special computer programming is needed in these cases because of the distinctiveness of child abuse and neglect proceedings, as explained in Principle 2.

For reasons also explained in part of the commentary to Standard C.3, it is important for courts to produce automated judicial performance measures specifically tied to child welfare requirements and concerns.<sup>60</sup> Automated performance measures can produce invaluable information on the court's success in complying with best practices in these cases. For example, with proper automation, objective court data can become readily available regarding judicial timeliness; important elements of procedural fairness (e.g., timely appointment of counsel, notice of hearings, and presence of attorneys in court); child safety (related to court decisions to remove children from their homes, return them home, etc.); and child permanency (e.g., the achievement of permanency and the disruption of court-ordered permanent placements).

A number of state and local courts throughout the United States automatically generate data through their computer systems to evaluate how well they are handling child abuse and neglect cases. In developing such data, courts should consider using carefully defined performance measurements such as those included in the performance measurement

“Toolkit” developed by the ABA, NCSC, and NCJFCJ.<sup>61</sup> Courts should also review and consider measures used or being developed by other state court systems.

Other critical types of technology, now or in the near future, include the capacity for video conferencing (especially for out-of-state parties); automated preparation of transcripts; videos of court hearings; the use of closed circuit television for the testimony of child witnesses; and remote translation services for court proceedings. Recently enacted federal law calls upon courts to implement some of these technologies (in addition to certain other reforms) to improve interstate litigation.<sup>62</sup>

In addition, child abuse and neglect proceedings require advanced computer support that (a) is specifically adapted to the unique sequence of hearings and the specific functions courts are expected to perform at hearings; (b) supports not only electronic filing of pleadings and motions but also a variety of reports regarding other issues that the court must address; (c) automatically informs court staff when hearings are due and when they are overdue; (d) helps to schedule hearings based not only on child abuse and neglect litigation deadlines, but also on the scheduling needs of the child welfare agency, the court, attorneys, and other parties; (e) electronically transmits the calendar to the child welfare agency, attorneys, parties, and witnesses; (f) reminds court staff of the various legal steps required for each hearing;<sup>63</sup> and (g) automatically exchanges limited data with the child welfare agency to reduce duplicative data entry and eliminate needless court-agency telephone calls and emails.<sup>64</sup>

Thus, courts hearing child abuse and neglect cases need strong technology support. Local and state chief information officers should devote significant staff attention to this support and ensure that large scale system design takes thoroughly into account, from the beginning of the design process, the needs of courts hearing abuse and neglect cases.

Other types of technology courts need are not computer related. Courts should have access to cameras and monitors in the courtroom, not only to allow the recording of hearings but to facilitate video conferences and permit hearings with parties in remote locations. Courts should also have speaker phones in the courtroom for telephonic hearings and conferences.

The key point is that child abuse and neglect proceedings are high impact cases and the specific courts or judges hearing such cases should have the best available technology. Regardless of their place in the judicial hierarchy, these proceedings should not be given a low priority for technological supports.

**Standard C.11 – Court leaders should ensure that judges hearing child abuse and neglect cases have adequate space, including well-appointed courtrooms that are appropriately laid out to respect the dignity and privacy of the parties and with comfortable waiting spaces, play areas for children, and private meeting rooms for parents, attorneys, caseworkers, and others involved in the case.**

#### *Commentary*

Historically, child abuse and neglect cases have ranked low on courts’ priority list. While that perception is changing as the result of statutory mandates, improved training and education, and federal grant programs such as the Court Improvement Project, many courts still do not have adequate and appropriate spaces in which to conduct abuse and neglect cases.

In particular, appropriate areas and meeting spaces are in short supply to enable children, parents, attorneys, and child welfare agency caseworkers to comfortably wait for hearings or meet and hold conferences before and after hearings. Appropriate waiting and meeting areas for these participants should be taken into account in the renovation of old courtrooms and the design of new courthouses and courtrooms where child abuse and neglect cases will be heard.

In addition, courts need to provide adequate, dignified, and properly equipped courtroom space for judges hearing these cases. Counsel tables should be available for the agency, children, parents, and when needed, other parties with conflicting interests. Courtroom design should also allow for adequate security. And, if the court proceedings in child abuse and neglect cases are open to the public, or have others not involved in a specific case present in the courtroom, the courtroom layout and seating should be consistent with the critical nature of such proceedings and the need to treat all parties with dignity. For example, conversations among attorneys, clients, and others in the courtroom who are not involved in the instant case should be kept to a minimum. If they must be seated in the courtroom, there should be no business conducted in the courtroom that presents a distraction to those involved in the instant case.

**Standard C.12 – Judges hearing child abuse and neglect proceedings, as well as court administrators and staff responsible for such proceedings, should be actively involved in important decisions regarding judicial administration of abuse and neglect cases. Furthermore, they should be aware of and, where appropriate, participate in the meetings of advisory and other groups that address issues relating to the administration of abuse and neglect cases.**

*Commentary*

Judges and local court administrators should be involved not only in general decision making and advisory budget and planning committees, but also in specialized groups affecting court operations such as court technology, judicial workload committees, and amending local court rules as necessary.

*Standards for Judicial Education*

These standards address the education needs of judges who are new to hearing child abuse and neglect cases, as well as experienced judges. As addressed extensively throughout these Principles, Standards, and accompanying Commentary, the knowledge needed to adjudicate these cases is deep and diverse. While the training and education goals might not be immediately attainable in all jurisdictions, especially rural courts, their aim is to provide judges with the tools needed to ensure all children achieve permanency in a timely fashion.

**Standard D.1 – State law and court rules should require judges to participate in annual judicial education as an integral part of their judicial duties. Judicial education curriculum should be organized and provided to ensure that all judges presiding over child abuse and neglect litigation have mastered essential knowledge applicable to such litigation.**

*Commentary*

As noted in the Commentary accompanying Principle 1, the adjudication of child abuse and neglect cases has changed dramatically over the past 30 years. For example, there are more and longer court hearings. Courts now typically conduct the following hearings or their equivalent under state law: shelter care or emergency removal; pretrial; adjudication (trial or fact finding); disposition (separate from adjudication in many courts); review; permanency; termination of parental rights; post-termination review; guardianship; and adoption.

These cases are factually complicated and involve issues of child development, dynamics of abuse and neglect, substance abuse and addiction, mental health disorders, physical and mental disabilities, and multiple types of other evaluations, diagnoses, treatments, and interventions for impaired parents and children. In addition to more hearings and complex cases, judges must be knowledgeable about the operations and legal duties of the child welfare agency, as well as the resources available in the community to meet the needs of abused and neglected children and their parents.

Finally, judges must know and understand many complex legal issues that apply in child abuse and neglect proceedings, such as unique due process considerations, complex federal and state privacy laws, and public benefits programs on which many affected families rely. Judges also need to know when and how to coordinate child abuse and neglect proceedings with juvenile delinquency and status offense proceedings as well as other family proceedings such as divorce, domestic violence, paternity, child support, division of marital or community property, visitation, custody, guardianship, adoption, and in some jurisdictions, criminal prosecutions for child abuse and domestic violence. A judge hearing a child abuse or neglect case needs to be aware of and take into account such other proceedings when they involve the same family or child, even if the judge lacks jurisdiction over those proceedings. As noted in Standards A.7 and A.8, judges should be empowered to authorize, initiate, and preside over related proceedings, ideally with the same judge hearing all matters related to one family.

Given the complexity of this litigation, it is essential that judges assigned to the child abuse and neglect docket know and understand the numerous state and federal laws affecting these cases. Among others, judges should be knowledgeable about state statutes, court rules, or regulations addressing the following proceedings:

- Child abuse and neglect;
- Delinquency;
- Proceedings for status offenders, including truants and runaways;
- Definitions of child abuse and neglect, delinquency, and status offenses, including when courts can intervene in such cases;
- General rules of evidence and special provisions affecting child abuse and neglect cases;
- Civil procedure;
- Criminal procedure;
- Privilege and confidentiality;
- Public benefits, education, and disabilities;
- Rules of professional responsibility or other relevant ethics standards;
- Domestic violence proceedings;
- Domestic relations proceedings;
- Mental health commitment proceedings and mental health treatment;
- Substance abuse treatment; and
- General court rules and standing orders.

In addition to state laws, judges must be familiar with numerous federal laws, not only for the benefit of children and families, but also because these laws affect funding and benefits available to states. The failure to comply with certain laws can result in the loss of federal funding or services that are vital to the state. In addition, states are held accountable for compliance with these laws through various reviews, such as Title IV-E eligibility reviews and the Child and Family Services Reviews. The following are some key federal laws affecting child welfare proceedings:

- Titles IV-B and IV-E of the Social Security Act, including the Adoption and Safe Families Act (ASFA) and later amendments, 42 U.S.C. §§ 620-628 and 670-679, and their regulations, 45 C.F.R. Parts 1355, 1356, 1357;
- Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272, 42 U.S.C. §§ 620 - 628 and 670 - 679;
- Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. § 5106a;

- Indian Child Welfare Act (ICWA) 25 U.S.C. §§ 1901-1963, the ICWA Regulations, 25 C.F.R. Part 23, and the Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67, 584 (Nov. 26, 1979); State Indian Child Welfare Act laws;
- Multi-Ethnic Placement Act (MEPA), as amended by the Inter-Ethnic Adoption Provisions of 1996 (MEPA-IEP), 42 U.S.C. § 622 (b)(9) (1998), 42 U.S.C. § 671(a)(18) (1998), 42 U.S.C. § 1996b (1998);
- Interstate Compact on the Placement of Children (ICPC)(technically an interstate compact rather than a federal law);
- Foster Care Independence Program (FCIP), 42 U.S.C. § 677;
- Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1412, 1417;
- Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g;
- Health Insurance Portability and Accountability Act of 1996 (HIPPA), P. L. 104-192 § 264, 42 U.S.C. § 1320d-2 (in relevant part); 45 C.F.R. Parts 160, 162, 164;
- Public Health Act, 42 U.S.C. Sec. 290dd-2 and 42 C.F.R. Part 2;
- Federal and state benefits programs affecting children in foster care, e.g., SSI, SSA, Medicaid;
- Immigration laws relating to child welfare and child custody, including Special Immigrant Juvenile Status, in the Immigration and Nationality Act at §101(a)(27)(J), 8 U.S.C. §1101(a)(27)(J) as amended in 2008;
- Fostering Connections to Success and Increasing Adoptions Act of 2008.

Besides the various state and federal laws, judges presiding over child abuse and neglect cases need to be familiar with the child protection agency and the role of the court in relationship to the agency.<sup>65</sup> The agency provides most of the information about the case through its petitions, affidavits, reports, caseworker testimony, and witnesses.

For example, the judge should insist that the agency submit important reports and pleadings on time. To achieve this result, judges need to establish clear deadlines and impose reasonable consequences for failure to meet them. Establishing a good working relationship with agency administrators is also essential.

Further, the court depends on the child protection agency to obey court orders, including implementing the court-approved case plan for the child. For example, when the agency fails to do timely case work or arrange timely service delivery as provided in the case plan, it is more difficult for the court to make permanent placement decisions within the times prescribed by law.<sup>66</sup> When an agency has failed to deliver services within times specified by the court, it may not be possible for a court to return the child home because the parent has not had the opportunity to improve. At the same time, since the agency has not yet offered services, there may be no ground for the termination of parental rights to legally free the child for adoption. As judges gain experience, they learn how to hold the child protection agency accountable to fulfill its legal responsibilities.

In addition to understanding the agency itself, judges must understand principles related to child abuse and neglect affecting the lives of children and families coming before the court. As discussed in the commentary accompanying Principle 1, there are many government entities involved in these cases and parents' problems and pathologies are typically far more serious in child protection cases than other family-related cases. Many abused or neglected children themselves have suffered from profound trauma or disabilities.

Accordingly, judges should also receive education on the following areas:

- Agency policies and procedures;
- Community resources;
- Legal permanency options;
- Adoption and permanent guardianship subsidies;
- Child development, from infancy to adolescence;
- Basic principles of attachment theory;

- Domestic violence and how it may or may not impact children in the child welfare system;
- Child-centered communication;
- Understanding mental illness and its treatment, including commonly prescribed medications;
- Substance abuse issues and treatment modalities, and their impact on parenting;
  
- Understanding the impact of out-of-home placement on children, including separation anxiety;
- Constitutional options for presenting children’s testimony;
- Sexual abuse, including how children disclose, the effects of intra-familial dynamics on the child, assessment and treatment needs of offenders and victims, and the range and quality of interventions and services available to resolve these cases;
- Overrepresentation and disparate treatment of children of color and their families in the child welfare system;
- Short-term and long-term impact of multiple placements; and
- Dynamics and typical evidence of physical abuse and neglect, including shaken baby syndrome, spiral fractures and other broken bones, scalding, burns, failure to thrive, and Munchausen's syndrome by proxy.

Finally, judges must also receive training on potential ethics issues that may arise. Judges have unique responsibilities in these cases and a special role in the community, as discussed extensively in Principle 4. Judges often question this role. Ethics training is critical to help new judges understand the responsibilities that come with hearing child abuse and neglect cases and ensure that they can comfortably embrace those responsibilities.

The amount and quality of training received by judges varies greatly. Some factors affecting both the quantity and quality of training include state size, the organization of state and local courts, and whether judges preside over specialized courts or non-specialized courts of general jurisdiction. Training can be obtained through established state programs, e.g., through the state Court Improvement Project, the Administrative Office of the Courts, State Judicial Colleges, other state government agencies, or private entities. Training is also available through nationally recognized programs, e.g., through the NCJFCJ, ABA, National Judicial College, NCSC, National Association of Counsel for Children (NACC), and American Judges Association (AJA). These organizations may also provide local and state training.

**Standard D.2 - Judicial education curricula should fully address judges’ special roles in child abuse and neglect cases.**

*Commentary*

As recently as the 1970s, judges merely conducted adjudications of child abuse and neglect petitions in the vast majority of cases. There were no review or permanency hearings, and court proceedings did not focus on ensuring permanent placements for foster children or on meeting their other needs. Thus, the role of the court in these cases was similar to other types of litigation.

As explained in the Commentary to Standard D.1, the judge’s role has changed dramatically. Judges must understand and master their added responsibilities. They must ensure that all parties, including children, have competent legal representation. They share the responsibility for permanency planning, which includes efforts to (a) prevent unnecessary foster placement, i.e., help parents, when possible, to provide safe and proper care at home; (b) safely reunify the family soon after a child is placed in substitute care; and (c) secure a new permanent home if reunification efforts fail to succeed within a reasonable time. Furthermore, judges must understand the need to locate missing family members who may be able to care for the child, as well as opportunities to consider strategies outside traditional litigation, e.g., mediation and Family Group Decision Making, that could achieve permanency for the child in the timeliest fashion.



Because of the frequency and importance of logistical issues among the court, the child welfare agency, and major service providers, courts hearing child abuse and neglect cases must devote additional time outside of court proceedings to address such issues. Courts must work with public child welfare agencies, both inside and outside of court, regarding such critical issues as repeated failure to notify parties, late or incomplete court reports and case plans, workers absent from court, and failure to deliver timely services as ordered by the court or required by law. Courts must also work with other public and private agencies regarding such issues as appearances in court and delivery of services in compliance with court orders and the law.

Recognizing the need for courts to work with outside organizations to improve the quality of child protection proceedings, the California Rules of Court call upon juvenile court judges to do the following: (1) provide active leadership in determining the needs of and resources for at-risk children and families; (2) investigate and determine availability of specific services in the community; (3) exercise authority by statute or rule to review, order, and enforce delivery of specific services and treatment; (4) exercise a leadership role in development and maintenance of permanent programs of interagency cooperation and coordination among court and public agencies; (5) take active part in the formation of community-wide networks to promote and unify private and public sector efforts and focus attention and resources on at-risk children and families; (6) maintain close liaison with school authorities; (7) educate community and institutions concerning the role of the juvenile court; (8) evaluate criteria established by child protection agencies for initial removal and reunification decisions and communicate the court's expectations of what are reasonable efforts; (9) encourage development of community services and resources to assist homeless, truant, runaway, and incorrigible children; (10) be familiar with facilities and placements used by courts; and (11) act consistent with public safety and welfare.<sup>67</sup> This Rule is worthy of consideration by courts wishing to clarify the role of juvenile court judges.

Further, judges, particularly those appointed to administer the juvenile court and its ancillary services, must also understand the responsibilities of court staff in this type of proceedings. In some courts, important functions go unfulfilled because both judges and court staff do not realize the tasks that staff can and should perform.

The *American Bar Association Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*<sup>68</sup> urge courts to do the following:

1. Recognize the important role of parents' attorneys.
2. Establish uniform standards of representation for parents' attorneys.
3. Ensure the attorneys who are appointed to represent parents in abuse and neglect cases are qualified, well trained, and held accountable for practice that complies with these standards.
4. Ensure appointments are made when a case first comes before the court, or before the first hearing.
5. Ensure that the same attorney handles all stages of the case.
6. Ensure parents' attorneys receive fair compensation.
7. Ensure timely payment of fees and costs for attorneys.
8. Provide interpreters, investigators, and other specialists needed by the attorneys to competently represent clients. Ensure attorneys are reimbursed for supporting costs, such as use of experts, investigation services, interpreters, etc.
9. Ensure that attorneys who are receiving appointments carry a reasonable caseload that would allow them to provide competent representation for each of their clients.
10. Ensure all parties, including the parent's attorney, receive copies of court orders and other documentation.
11. Provide contact information between clients and their attorneys.
12. Ensure child welfare cases are heard promptly with a view towards timely decision making and thorough review of issues.

Likewise, the *American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse or Neglect Cases*,<sup>69</sup> adopted in 1996, calls upon courts to take on similar responsibilities to enhance the legal representation of children. These standards of practice adopted for children, as well as the *American Bar Association Standards of Practice for Lawyers Representing Child Welfare Agencies*,<sup>70</sup> all hold attorneys to standards of excellence similar to those listed above.

The ABA standards recognize that the judges' role in the appointment of attorneys vary from jurisdiction to jurisdiction. Where outside bodies oversee legal representation or where government agencies represent children, judges have diminished responsibility to help ensure competent representation.

In all cases, judges must address incompetent performance by attorneys should it occur. In child protection cases where so much is at stake, however, judges have a heightened responsibility to ensure representation is adequate.<sup>71</sup>

Children and parents are typically not educated consumers of legal services. Children and most parents do not pay for their attorneys, and court-appointed attorneys often receive low pay and carry high caseloads. These facts, however, do not diminish the attorneys' obligation to provide the highest standard of representation. As shown in recent reassessments of state court performance in child abuse and neglect cases, required as part of the federal Court Improvement Project grant and conducted by state Court Improvement Projects, the level of performance of attorneys falls seriously short in many courts.<sup>72</sup> Without high quality representation, not only are parents and children less effectively represented, but insufficient and inaccurate information is presented to the court or is unchallenged.

To support quality representation, judges should remind attorneys of their ethical duties to their clients when they appoint them. In turn, attorneys should be cognizant that their duties extend beyond the minimum expectations of judges or social workers.

**Standard D.3 - Judicial education curricula should be carefully designed to improve current judicial practice, improve compliance with the law, and help judges fulfill national or state judicial best practice standards.**

#### *Commentary*

Judicial education should not only address identified areas of knowledge, but also should take into account the judicial skills and practices currently existing in the state. State child abuse and neglect Court Improvement Projects have conducted statewide assessments and reassessments of judicial practice, typically based on court observations and judicial case file reviews, as well as surveys and interviews with judges, attorneys, court staff, agency staff, and others. These studies generally are reviewed and approved by state court administration and the chief justice (or equivalent) of the highest state court. Among other things, judicial curriculum design should take into account the findings from these and other studies and, based on the information collected, should be used to enhance the areas of judicial knowledge, skills, and behaviors identified as most needed in such analyses.

To help achieve actual improvement in judicial performance, judicial education must be interactive and must include use of case scenarios and exercises, examples of mediocre and excellent orders and findings, structured discussions, voluntary self-testing, and online materials, in addition to traditional lectures.

**Standard D.4 – Court leaders should design a special and comprehensive combination of judicial education and mentoring for judges newly presiding over child abuse and neglect cases.**

*Commentary*

Because of the special knowledge and unique roles of judges hearing child abuse and neglect cases, new or newly assigned judges need a distinctive educational program to help them quickly learn how to deal with these types of cases. Such an educational program should be intensive and should include the most essential areas of knowledge for new judges. An example of such judicial education is the program for new judges provided by the National Council of Juvenile and Family Court judges at its facilities in Reno, Nevada. States might also, of course, provide such programs themselves, including the use of online materials, videos, and other aids, to avoid delay between the time the judges take the bench and when they receive such education and training.

In addition to judicial education programs, courts should provide mentoring for new judges. Such mentoring should include programs to introduce new judges to those who are more experienced, actual experience sitting in with such experienced judges during cases, and the opportunity to seek advice and assistance from experienced judges. In Massachusetts, where newly appointed judges receive judicial appointments lasting until they reach the age of 70, new judges spend a month co-chairing cases with more experienced judges. While such lengthy and intensive mentorships may not be possible in every state, some form of mentorship is important to the quality of new judges' work.

Finally, in many jurisdictions, the judge rotates or is reassigned to the child abuse and neglect docket from another assignment. These judges also need a transition period, with the sitting judge meeting with the incoming judge on a regular basis and introducing the new judge to key courtroom participants, agency leaders, and community groups critical to the operation of the court. The sitting judge has an obligation to educate the incoming judge regarding ongoing projects and advise on their continuation.

**Standard D.5 – Court leaders should ensure that all new judges hearing child abuse and neglect cases receive intensive judicial education and mentoring designed specifically for them. When a new judge is appointed to a specialized juvenile or family court, such judicial education should include at least 80 hours of instruction prior to taking the bench. When a new judge is appointed to a court of general jurisdiction that hears child abuse and neglect cases, such judicial education should include at least 20 hours of instruction specifically about child abuse and neglect related issues prior to taking the bench. Every general jurisdiction judge should complete an additional 60 hours of such training within two years of taking the bench.**

*Commentary*

Special efforts are required to ensure that all new or newly assigned judges presiding over child abuse and neglect cases receive needed education before taking the bench. Without such efforts, new judges will learn the unique characteristics of practice in the area unevenly and haphazardly. Accordingly, educational programs should be systematically provided to new judges and, to the extent possible, provided prior to the time the judge actually takes the bench. Such programs should also be mandatory.

Because of the difficulty of immediately providing educational programs for judges who take the bench when a judge unexpectedly retires or resigns, arranging early mentorship is particularly important.<sup>73</sup> Also important is making available online, video, and written materials, along with voluntary self-testing, to enable judges to quickly review, test, and master essential knowledge.

The challenges to fulfilling this standard are far more formidable in some jurisdictions than in others. Among the key factors are the specialization (or lack thereof) of the courts in juvenile and family cases and the general educational requirements for judges in the state. With regard to the number of hours of education prior to taking the bench, it is worth noting that some states require judges to take the bench soon after having been elected. Such states need

educational programs on demand, such as web-based programs or DVDs, perhaps supplemented by the opportunity to second chair cases without delay.

While what is realistic will vary depending on how state courts are organized, each state should mandate a minimum number of hours of early educational instruction for judges newly assigned to hear child abuse and neglect cases, and should specify that the mandatory instruction include a specifically designed curriculum. State courts should establish a mechanism for ensuring the judges comply with these requirements.

**Standard D.6 – Court leaders should ensure that an appropriate judicial education program is provided each year for all experienced judges hearing child abuse and neglect cases. Such judicial education should include at least 16 hours of instruction per year on child abuse and neglect related issues.**

*Commentary*

Based on the list of required areas of knowledge in Standard D.1, it should be obvious that newly appointed judges cannot receive a full education prior to taking the bench. Rather, it takes years to become fully knowledgeable and competent to hear child abuse and neglect proceedings.

Further, refresher education and education focusing on new developments in law and practice is needed to enable judges to keep up their skills and knowledge in this area. Finally, ongoing education is needed to focus on areas commonly needing improvement, based on statewide analyses of judicial performance.

The challenges to fulfilling this standard are far more formidable in some jurisdictions than others. Among the key factors are the specialization (or lack thereof) of the courts in juvenile and family cases and the general educational requirements for judges in the state.

While what is realistic will vary depending on how state courts are organized, each state should set a minimum amount of ongoing educational instruction specifically for experienced judges hearing child abuse and neglect cases and should specify the content. State courts should establish a mechanism for ensuring that judges comply with these requirements.

**Standard D.7 – Court leaders should establish a resource center in which information about abuse and neglect, juvenile, and family court practice is collected and made available to judges.**

*Commentary*

Judicial access to up-to-date research and practice resources is essential to best judicial practice. This standard is based on the California rule, which states that the presiding judge of the Juvenile Court should “promote the establishment of a library or other resource center in which information about juvenile court practice can be collected and made available to all participants in the system.”<sup>74</sup> It is also worth noting the California Judicial Commission has established the statewide Center for Children, Families, and the Courts to perform this function.

**Standard D.8 – Court leaders should permit judges to participate in nationally-recognized education programs promoting best practices in child abuse and neglect cases, even if programs involve out-of-state travel.**

*Commentary*

While most training should occur within the state, there are additional important educational opportunities elsewhere. For example, state court systems might encourage their judges to attend national or regional educational programs

conducted by the NCJFCJ, ABA, and NCSC. They might encourage and pay for judges to join NCJFCJ, the ABA Judicial Division, organizations affiliated with NCSC, and other organizations such as NACC.

In addition, while the principal educational goal of state court systems under these standards should be to develop and implement systematic training for judges hearing child abuse and neglect cases, courts should also be flexible enough to allow judges the opportunity to take advantage of special educational opportunities. For example, judges can participate in multidisciplinary training and then present the information they learned to larger groups of judges within the state.

## Notes

<sup>1</sup> National Council of Juvenile and Family Court Judges, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES (1995) (hereinafter RESOURCE GUIDELINES). The RESOURCE GUIDELINES have been endorsed by the Conference of Chief Justices, American Bar Association, and National Council of Juvenile and Family Court Judges.

<sup>2</sup> These standards are not intended to apply to judges and judicial officers in Tribal Courts.

<sup>3</sup> In these standards the term “judge” encompasses all judicial officers, including magistrates, referees, associate judges or others who function as judges, including those appointed and serving at the pleasure of judges.

<sup>4</sup> 42 U.S.C. § 675(5)(D). This issue is critically important because foster children face far greater educational risks than the general population of children. See, e.g., Wendy Blome, *What Happens to Foster Kids: Educational Experiences of a Random Sample of Foster Care Youth and a Matched Group of Non-Foster Care Youth*, CHILD AND ADOLESCENT SOCIAL WORK JOURNAL 14(1), February 1997. For additional statistics and discussion regarding the educational risks of foster children, see generally Kathleen M. McNaught, LEARNING CURVES: EDUCATION ADVOCACY IN FOSTER CARE (ABA 2004).

<sup>5</sup> 42 U.S.C. § 675(5)(D). Children in the foster care system today continue to have far higher than average rates of serious medical, emotional, and mental concerns. See American Academy of Pediatrics, Committee on Early Childhood, Adoption, and Dependent Care, *Health Care of Young Children in Foster Care*, 109 PEDIATRICS 536 (2002); Edward L. Schor, *The Foster Care System and the Health Status of Foster Children*, 69 PEDIATRICS 521 (1982).

<sup>6</sup> RESOURCE GUIDELINES at 14.

<sup>7</sup> The following chart illustrates the scope of these changes during the last 30 years.

## ISSUES TYPICALLY RESOLVED BY JUVENILE COURTS IN ABUSE AND NEGLECT CASES

<b>1978</b>	<b>2008</b>
Validity of allegations	Need for emergency placement
Custody, if allegations proven	Sufficiency of efforts to prevent placement
	Necessity of emergency relief other than placement (e.g., removal of perpetrator)
	Validity of allegations
	Custody, if allegations proven
	Visitation
	Conditions of visitation
	Sufficiency of case plan
	Sufficiency of efforts to implement case plan
	Sufficiency of efforts to reunify family
	Whether efforts to reunify family are required
	Child's long-term legal status (permanency hearing)
	Termination of parental rights
	Legal guardianship
	Sufficient efforts to place the child for adoption
	Adoption

The following chart shows some of the those judicial duties imposed just by the federal government in the last eleven years alone, beginning with enactment of the Adoption and Safe Families Act of 1997 (ASFA).

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**NEW FEDERAL DUTIES IMPOSED ON JUVENILE COURTS IMPOSED SINCE  
ENACTMENT OF THE ADOPTION AND SAFE FAMILIES ACT (ASFA)**

- Decisions whether services to preserve or reunite families are required.
- Case specific findings regarding the need to remove children from their homes.
- Case specific findings of reasonable efforts to prevent placement, reunify families, and achieve permanency for children unable to be returned home.
- Earlier and more tightly structured permanency hearings.
- Mandatory petitions for termination of parental rights under specified circumstances.
- Rights of foster parents to appear in court and participate in hearings.
- Efforts to ensure timely interstate placements.
- New procedures to facilitate interstate litigation in foster care cases.

<sup>8</sup> The following chart illustrates this change.

**TYPICAL PARTICIPANTS IN CHILD PROTECTION CASES**

<b>1978</b>	<b>2008</b>
Caseworker	Caseworker
Custodial parent(s)	Custodial parent(s)
	Noncustodial or putative parent
	Separate attorney for each parent
	Child*
	Child's attorney or guardian ad litem*
	Agency attorney
	CASA volunteers*
	Foster parents
	<i>*In some states or jurisdictions, they do not frequently participate in hearings</i>

<sup>9</sup> Attorneys representing the government may, for example, be employees of elected local prosecutors such as district or county attorneys, employees of the government agencies they represent, employees of the state attorney general, employees of private law firms, or sole practitioners. In some cases, these attorneys do not technically represent the agency, but rather function as independent prosecutors representing the “people” just as local prosecutors are not directed by police in criminal cases. In some jurisdictions, both local prosecutors and agency attorneys are sometimes involved in the same case.

<sup>10</sup> For a detailed description of the complexity of child abuse and neglect proceedings, see M. Hardin, *Child Protection Cases in a Unified Family Court*, 32 FAM. L. Q. 147 (1998) (hereinafter *Child Protection Cases in a Unified Family Court*). While a dependency case typically consisted of only one noncontested adjudication hearing 30 years ago, the typical sequence of hearings today includes the following: shelter care or emergency removal; pretrial; adjudication (trial or fact finding); disposition (separate from adjudication in many courts); review; permanency; termination of parental rights; post-termination review; guardianship; and adoption. While the names for these hearings vary from state to state and even within states, they are essentially similar across the country. Several states, however, have distinctive hearing types not included in this list. See also RESOURCE GUIDELINES for a complete description of these hearings and the specific issues to be addressed by judges during these hearings.

<sup>11</sup> 42 U.S.C. § 675(5)(B).

<sup>12</sup> 42 U.S.C. § 675(5)(C).

<sup>13</sup> 42 U.S.C. § 675(5)(E).

<sup>14</sup> See *supra* note 3.

<sup>15</sup> As used here “child protection agency” means the agency that brings evidence before the court, organizes services for the child and family, and that either has legal custody or court-ordered supervision of the family. While the child protection agency is a public agency in most cases, some states transfer much of the casework to private agencies, often after the completion of a child abuse or neglect investigation.

<sup>16</sup> Equivalent advice applies to child welfare agency administrators. Compare, M. Hardin & D. Rauber, HOW TO WORK WITH YOUR COURT: A GUIDE FOR CHILD WELFARE AGENCY ADMINISTRATORS (ABA 2005).

<sup>17</sup> For a discussion of some of these constitutional issues, see *Child Protection Cases in a Unified Family Court*, *supra* note 8, at 178-180; see also Amanda George Donnelly and Ann M. Haralambie, *Child Welfare Constitutional Case Law*, in CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES (Martin Ventrell & Donald N. Duquette eds. 2005).

<sup>18</sup> Failure of government agencies to share information can be a significant barrier to the safe and successful resolution of child abuse and neglect proceedings. The federal Child Abuse Prevention and Treatment Act, Family Educational Rights and Privacy Act, Health Insurance

Portability and Accountability Act, and Public Health Act all have provisions that are often inappropriately cited as reasons inhibiting interagency information sharing (see Commentary to Standard D.1 for citations to these laws). See also, *Solving the Data Puzzle: A How To Guide on Collecting and Sharing Information to Improve Educational Outcomes for Children in Out-of-Home Care*, produced by the ABA Center on Children and the Law's Legal Center for Foster Care and Education, on the internet at <http://www.abanet.org/child/education/publications/solvingthedata puzzle.pdf>.

<sup>19</sup> For a fuller discussion of some of the relevant public benefits laws, see *Child Protection Cases in a Unified Family Court*, supra note 8, at 178-180.

<sup>20</sup> American Bar Association Standing Committee on Judicial Independence, STANDARDS ON STATE JUDICIAL SELECTION 1 (ABA 2000).

<sup>21</sup> *Id.*

<sup>22</sup> Thus, it is sometimes appropriate to appoint otherwise fully qualified judges with abilities that strongly suit them to this type of litigation even if they lack specialized experience in this type of litigation, but only if they will hear this type of litigation on a long-term basis and are willing and able to receive the specialized training they need.

<sup>23</sup> RESOURCE GUIDELINES at 18.

<sup>24</sup> As used in these standards, the term "family court" means a specialized and separately administered court with jurisdiction over a wide range of family-related cases, possibly including divorce, child custody proceedings, guardianship, adoption, delinquency, domestic violence, mental health commitments of children, paternity, and child support. The key features of a "family court" are the specialization of its judges and staff, the breadth of its jurisdiction (a wide range of family-related cases), and its separate administration.

<sup>25</sup> The Massachusetts Juvenile Court Department "has general jurisdiction over delinquency, children in need of services (CHINS), care and protection petitions, adult contributing to a minor cases, adoption, guardianship, termination of parental rights proceedings, and youthful offender cases." See <http://www.mass.gov/courts/courtsandjudges/courts/juvenilecourt/index.html#Jurisdiction>. Similarly, the Utah Juvenile Court is a court of special jurisdiction that has equal status with the District Court. "The Juvenile Court has exclusive jurisdiction over youths under 18 years of age, who violate any federal, state or municipal law, and any child who is abused, neglected or dependent." See <http://www.utcourts.gov/courts/juv/overview.htm>.

<sup>26</sup> Child Protection Courts are located in the state's rural areas. Each court serves a group of surrounding counties. A judge travels within the group of counties to hear child welfare cases. As described in <http://www.pal-tech.com/cip/txCase.cfm>, "[t]his reform changed the manner in which dependency cases were heard in rural areas of the state, resulting in improved tracking and documentation of these cases by courts, and more active and informed participation of both parents and judges."

<sup>27</sup> A complete copy of Rule XXXIII can be found at <http://www.lasc.org/rules/supreme/RuleXXXIII.asp>.

<sup>28</sup> See Rules of the Circuit Court of Cook County, Part 19 (Juvenile Proceedings), available online at <http://www.cookcountycourt.org/rules/rules/rulespart19.html>.

<sup>29</sup> *Child Protection Cases in a Unified Family Court*, supra note 8, at 185-191, 191-197; University of Southern Maine & ABA, MICHIGAN COURT IMPROVEMENT PROGRAM REASSESSMENT 21-23 (Michigan Supreme Court Administrative Office 2005)(comparing judicial workloads in Kent County, Michigan before and after the establishment of a family court).

<sup>30</sup> This support depends, for example, on the state and local autonomy of the family court and the authority of the family court over the selection and retention of judges and court employees. It depends on whether judges serve lengthy terms in the court. The separateness of the family court's administration enables the unified family court to adapt itself to the special needs and characteristics of family cases. Without separate administration, the unified family court cannot, among other things, control its own dockets and calendars and cannot influence the selection of judges to serve on its bench.

<sup>31</sup> An "independent juvenile court," as the term is used in these standards, should be distinguished from the more general term "juvenile court," as it appears in many state statutes. Many state statutes use the term "juvenile court" to refer to any court that is hearing dependency, delinquency, and status offense proceedings. The term "juvenile courts," when used in this way, largely refers to the distinctive court processes that apply to dependency, delinquency, and status offense cases. However, while statutory "juvenile courts" are often part of other courts responsible for a broad range of case types, there may some court employees assigned only to assist in juvenile proceedings, most notably court employees who provide executive-like functions such as operating juvenile probation and detention programs. The existence of such judicial employees alone does not provide the expertise and administrative independence associated with fully independent juvenile courts.

<sup>32</sup> The Pew Commission was funded by the Charitable Trusts based in Philadelphia and included state Supreme Court judges and administrators, among others.

<sup>33</sup> The Pew Commission has recommended that the U.S. Department of Health and Human Services "require states to establish broad-based state commissions on children in foster care, ideally led by the state's child welfare agency director and the Chief Justice." The Pew Commission on Children in Foster Care, FOSTERING THE FUTURE: SAFETY, PERMANENCE AND WELL-BEING FOR CHILDREN IN FOSTER CARE 17-18; 38-40 (2004)(available online at <http://pewfostercare.org/research/docs/FinalReport.pdf>). The Pew Commission recommendations were endorsed by the Conference of Chief Justices and the Conference of State Court Administrators. See RESOLUTION 15: IN SUPPORT OF THE RECOMMENDATIONS MADE BY THE PEW COMMISSION ON CHILDREN IN FOSTER CARE (adopted July 29, 2004)(available online at <http://ccj.ncsc.dni.us/ChildWelfareResolutions/PewCommissionChildrenFosterCare.pdf>). To start to implement the recommendations of the Pew Commission, the Conference of Chief Justices, Conference of State Court Administrators, the National Center for State Courts, and the National Council of Juvenile and Family Court Judges sponsored "Justice for Children: Changing Lives by Changing Systems – The National Judicial Leadership Summit on the Protection of Children." A report of the summit and follow-up activities is detailed at:

[http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/News/Press\\_Releases/Foster\\_care\\_reform/justice\\_for\\_children.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/News/Press_Releases/Foster_care_reform/justice_for_children.pdf). As a result of these activities, a number of states have developed commissions devoted to children in foster care, e.g., the California Blue Ribbon Commission on Children in Foster Care, the Minnesota Children’s Justice Initiative, and the Washington Commission on Children in Foster Care.

<sup>34</sup> See L. Edwards, *Improving Juvenile Dependency Courts: Twenty-Three Steps*, JUV. & FAM. CT J., Vol. 48, No. 4, 1997, at 1, 3.

<sup>35</sup> Social Security Act § 438, Public Law 107-133, Sec. 107(e), amended and re-designated §13712 of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. 670 note) as section 438 of the Act.

<sup>36</sup> “Legal guardianship,” which is recognized as a permanent plan under federal law, is defined as follows by 42 U.S.C. §675(7): “The term ‘legal guardianship’ means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term ‘legal guardian’ means the caretaker in such a relationship.” Thus, “legal guardianship,” as so defined, can also encompass certain types of custody.

<sup>37</sup> The issue is more complicated, on the other hand, when other proceedings have already been opened. These standards do not address how to resolve conflicts in a jurisdiction or to consolidate multiple pending proceedings involving the same family and child. For example, should child abuse and neglect judges be able to consolidate and reopen cases that are currently closed? To effect a permanent change of custody from one parent to another (e.g., where the parent losing custody abused or neglected the child), a judge might want to reopen a currently closed divorce or other custody case, or at least some aspects of that case. This power is important in states where court orders in child abuse and neglect cases do not remain in effect after the child abuse and neglect case is closed.

<sup>38</sup> CAL. WELF. & INST. CODE § 362(a)(West 2009).

<sup>39</sup> See *supra* note 18.

<sup>40</sup> American Judicature Society, *Model Judicial Selection Provisions* (AJS 2008)(available at [http://www.ajs.org/selection/docs/MJSP\\_web.pdf](http://www.ajs.org/selection/docs/MJSP_web.pdf)).

<sup>41</sup> *Id.* at 1.

<sup>42</sup> See M. N. Greenstein and K. M. Sampson, HANDBOOK FOR JUDICIAL NOMINATING COMMISSIONERS 75 (AJS 2<sup>nd</sup> Ed. 2004) (discussing community contacts and social awareness as core evaluative criteria for the selection of judges; available at [http://www.ajs.org/selection/sel\\_jnc\\_handbook.asp](http://www.ajs.org/selection/sel_jnc_handbook.asp)).

<sup>43</sup> See L. Edwards, *The Juvenile Court Corner*, 48 THE BENCH 13 (California Judges Association, Spring 2008).

<sup>44</sup> For a more detailed statement of these reasons see RESOURCE GUIDELINES at 19.

<sup>45</sup> While most states use the title “Court Improvement Project” or “Court Improvement Program,” some have created new titles for their projects, such as “Children’s Justice Initiative” (Minnesota) and “Child Placement Project” (Georgia).

<sup>46</sup> 42 U.S.C. § 438(b)(1).

<sup>47</sup> The term “local courts” can refer to county courts, district courts, or circuit courts, depending on the particular state court structure. While local courts should conform to and implement specified statewide rules and plans, state plans should allow for local innovation that goes above and beyond the statewide plan. It may also be appropriate to allow waivers of particular statewide requirements for the purpose of carefully designed experimentation.

<sup>48</sup> See generally MINNESOTA’S COURT PERFORMANCE IN CHILD PROTECTION CASES: A REASSESSMENT UNDER THE FEDERAL COURT IMPROVEMENT PROGRAM (December 2005).

<sup>49</sup> National Council of Juvenile and Family Court Judges, ADOPTION AND PERMANENCY GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES (2000).

<sup>50</sup> See, e.g., Hardin, et al., COURT PERFORMANCE MEASURES IN CHILD ABUSE AND NEGLECT CASES: GUIDE TO JUDICIAL WORKLOAD ASSESSMENT (Office of Juvenile Justice and Delinquency Prevention 2008).

<sup>51</sup> Judges need to educate others about legal requirements and help make logistical arrangements so parties can comply. Examples of such legal requirements include time limits for filing court reports, compliance with court orders (including general discussions with agency leaders and counsel for all parties), obligations of the education organization regarding the educational rights of children in foster care, and the contents of “reasonable efforts” requirements connected to court findings.

<sup>52</sup> Among other things, judges hearing child abuse and neglect cases must participate in educational programs, organize the court process, evaluate their own operations, and meet with child welfare agencies, professional groups, service providers, and others on a wide range of issues. Among the issues courts need to address in such meetings are the timely filing and proper completion of reports and other legal documents; timely and consistent appearances of parties in court; the reliable availability and presence of witnesses; consistent compliance with court orders; courtroom decorum; legal requirements regarding provision of services; the availability and nature of services in the community (pertinent due to the court’s oversight of case planning); compliance with reasonable efforts requirements; case scheduling and calendars; management of continuances; and overall outcomes for foster children, as measured by local statistics regarding the safety, permanency, and well-being of the children before the court. For more details about judges’ out of court responsibilities, see the Commentary to Principle 1, Standard A.1, and Standard A.2.

<sup>53</sup> M. Hardin, et al., COURT PERFORMANCE MEASURES IN CHILD ABUSE AND NEGLECT CASES: GUIDE TO JUDICIAL WORKLOAD ASSESSMENT (Office of Juvenile Justice and Delinquency Prevention 2008); BUILDING A BETTER COURT: MEASURING AND IMPROVING COURT PERFORMANCE AND JUDICIAL WORKLOAD IN CHILD ABUSE AND NEGLECT CASES 28 (ABA Center on Children and the Law, National Center for State Courts, and National Council of Juvenile and Family Court Judges 2004).

<sup>54</sup> RESOURCE GUIDELINES at 125 (Appendix A, “Time Resource Calculations to Implement Resource Guidelines”).



<sup>55</sup> These standards are intended not only for appropriate categories of judges and court administrators, but also, where relevant, for those who make funding decisions affecting courts.

<sup>56</sup> See RESOURCE GUIDELINES at 40 – 41.

<sup>57</sup> Available at <http://www.abanet.org/child/clp/ParentStds.pdf>. The standards were adopted in August 2006.

<sup>58</sup> Among the typical major points of delay in child welfare appeals are (a) preparation of findings by trial court judges (particularly in termination of parental rights appeals), (b) production of transcripts by court reporters, (c) lengthy briefing schedules, (d) scheduling of oral arguments, and (e) preparation and release of appellate opinions. A number of states have conducted research measuring appellate delays, tightened time requirements for different stages of the appellate process, eliminated specific causes of delay, and streamlined the appellate process. An ABA online list and summaries of a number of the most recent or current state projects to reduce appellate delays in child welfare cases may be found at <http://www.abanet.org/abanet/child/natsum/nationalcat.cfm?catid=8&subid=27>.

<sup>59</sup> In some courts attorneys appear late because of scheduling conflicts in which other courts, such as criminal courts, demand and get priority regarding their time. Caseworkers often appear late because the court permits it and because the court schedules large numbers of hearings at the same time.

<sup>60</sup> M. Hardin and S. Koenig, COURT PERFORMANCE MEASURES IN CHILD ABUSE AND NEGLECT CASES: TECHNICAL GUIDE (Office of Juvenile Justice and Delinquency Prevention 2008).

<sup>61</sup> The following publications are products of the “Toolkit” project, a joint effort of the Department of Justice, Office of Juvenile Justice and Delinquency Prevention and the Department of Health and Human Services, Children’s Bureau: V. Flango & N. Kauder, COURT PERFORMANCE MEASURES IN CHILD ABUSE AND NEGLECT CASES: KEY MEASURES (Office of Juvenile Justice and Delinquency Prevention 2008); S. Gatowski & L. Portune, COURT PERFORMANCE MEASURES IN CHILD ABUSE AND NEGLECT CASES: IMPLEMENTATION GUIDE (Office of Juvenile Justice and Delinquency Prevention 2008); S. Gatowski & S. Dobbin, COURT PERFORMANCE MEASURES IN CHILD ABUSE AND NEGLECT CASES: USER’S GUIDE (Office of Juvenile Justice and Delinquency Prevention 2008); M. Hardin & S. Koenig, COURT PERFORMANCE MEASURES IN CHILD ABUSE AND NEGLECT CASES: A TECHNICAL GUIDE (Office of Juvenile Justice and Delinquency Prevention 2008); M. Hardin, Y. Yuan, J. Larsen, S. Gatowski, & D. Rubio, COURT PERFORMANCE MEASURES IN CHILD ABUSE AND NEGLECT CASES: GUIDE TO JUDICIAL WORKLOAD ASSESSMENT (Office of Juvenile Justice and Delinquency Prevention 2008).

<sup>62</sup> Social Security Act § 438, 42 U.S.C. § 629h.

<sup>63</sup> Such steps include, among other things, various special orders and judicial findings as required at different types of hearings and compliance with notice requirements of parties, attorneys, and foster parents.

<sup>64</sup> Such automated information data exchange must be carefully designed to avoid improper ex parte communication.

<sup>65</sup> As used here “child protection agency” means the agency that brings evidence before the court, organizes services for the child and family, and either has legal custody or court-ordered supervision of the family. While the child protection agency is a public agency in most cases, some states transfer much of the casework to private agencies, often after the completion of a child abuse or neglect investigation.

<sup>66</sup> Adoption and Safe Families Act of 1997, Public Law 105-89.

<sup>67</sup> California Standard of Judicial Administration 5.40 (2007).

<sup>68</sup> Available at <http://www.abanet.org/child/clp/ParentStds.pdf>. The standards were adopted in August 2006.

<sup>69</sup> Available at <http://www.abanet.org/child/repstandwhole.pdf>.

<sup>70</sup> Available at <http://www.abanet.org/child/agency-standards.pdf>. These standards were adopted in 2004.

<sup>71</sup> For example, in the case of *Kenny A.*, a federal class action lawsuit filed in Georgia, the parties entered into a consent decree that requires, in part, the establishment of an independent Fulton County Child Advocate Attorneys’ Office and the employment of at least twelve full-time attorneys. Another requirement of the Consent Decree was the completion of a workload study, which indicated that the existing Child Advocate Attorneys’ Office did not have the time or the staff to implement the principles and guidelines of the Consent Decree. The workload study concluded that the appropriate number of cases for each Child Advocate Attorney would be 120 cases if the court, the child welfare agency, and the Child Advocate Attorneys’ Office made specific practice changes that would enable them to operate at optimal efficiency; 100 cases per Child Advocate Attorney if each entity made some changes; and 80 cases per attorney if none of the recommended changes in practice improvements were made by any of the three. None of the three has accomplished all the required practice improvements, with the result that the current caseload standard is 90 cases per attorney and four additional Child Advocate Attorneys have been hired. More will be necessary, however, because the actual caseload count per attorney was 126. Further litigation is pending.

<sup>72</sup> See, e.g., REASSESSMENT OF ILLINOIS’ COURT PROCEEDINGS FOR FOSTER CARE AND ADOPTION AGGREGATE REPORT 66 (2005) (the roles of individual attorneys in the courtroom were not clear; GALs failed to fulfill the mandate to meet with clients); MICHIGAN COURT IMPROVEMENT PROGRAM REASSESSMENT 148, 155 (2005) (L-GALs not consistently meeting with children prior to hearings; parental representation fell short of ABA standards).

<sup>73</sup> For example, Massachusetts requires that newly appointed juvenile judges sit with or “shadow” an experienced juvenile judge for four weeks before actually hearing their own cases. Typically, half of these cases will be child abuse and neglect cases and half will be juvenile justice cases. Judges are provided relevant reading material and are sent to two additional relevant conferences. Similarly, New York City requires its juvenile judges to have four weeks of mentoring and three days of training specifically regarding juvenile and family issues before taking the bench. In Illinois, judges hearing child abuse and neglect cases are general jurisdiction judges. They must have 40 hours of training before taking the bench, some of which will be on various Family Court issues. In Cook County, Illinois, judges receive an additional three days of training strictly on Family Court issues.

<sup>74</sup> See CA Rules of Court, Sec. 24, Juvenile Matters, subsection (d).