



2011 Annual Training Conference



Keynote Address:

Reasonable Efforts and Diminished Resources





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The Honorable Patricia Sullivan, Judge, Malheur County Circuit Court

Patricia Sullivan has been a Circuit Court Judge for the past ten years in Malheur County, Oregon. Prior to becoming a Judge, she was the District Attorney for Malheur County for twelve years. She graduated from Lewis and Clark College in 1975 with a degree in history, and the University of Oregon School of Law in 1978. Judge Sullivan handles juvenile delinquency and dependency matters, as well as adult civil and criminal cases. Judge Sullivan is married and has two adult daughters, and one grandson.

Paulette Sanders, Juvenile Court Referee, Judge Pro Tem, Lincoln County Circuit Court

The Honorable Paulette Sanders was appointed as a Circuit Court Judge Pro Tem in 2008. She is the juvenile judge for Lincoln County, and handling both dependency and delinquency cases. Judge Sanders attended the University of Oregon School of Law, and became a prosecutor in Lane County immediately following her graduation from law school. She later worked as an Assistant District Attorney in the Lincoln County District Attorney's Office. In 1999 She became the Chief Deputy District Attorney, and held that position until her appointment to the bench.

Michael Livingston, Juvenile Law Staff Counsel, Juvenile Court Programs

Michael C. Livingston, began his work for the Oregon Department of Justice in 1984 in the General Counsel Division, moved to the Appellate Division in 1987, and returned to the General Counsel Division in December 2007. He retired from the Department of Justice in June 2008. For a number of years, he administered the Appellate Division's termination-of-parental-rights case load, and from 1999 to 2005, he served as a member of the Oregon Law Commission's Juvenile Code Revision Workgroup. He is the author of the chapter on Appeals in *Juvenile Law* (Oregon CLE 2007). In 2006 and 2007, he worked with Chief Judge David Brewer of the Court of Appeals and Judy Henry of the Appellate Settlement Conference Program and others to implement the termination-of-parental-rights appellate court mediation pilot project. From September 2008 to January 2011, he served as a Circuit Court Judge Pro Tem and referee in the Marion County Juvenile Court. He is now Juvenile Law Staff Counsel for the Juvenile Court Programs office of the Oregon Judicial Department.

Reasonable Efforts in Tough Budget Times

By Hon. Patricia Sullivan, Malheur County Circuit Court Judge

All of us are aware that Oregon is experiencing a budget crisis that is serious and ongoing. All of us who work in the field of child protection dread the news of the next cuts to programs and services. At every stage of the dependency process, the Court is required to inquire as to whether DHS has made reasonable efforts to prevent foster care placement and achieve permanency for children in care. Increasingly, the response to this questioning is that budget constraints are interfering with, or actually eliminating, the provision of services. Judges are faced with a tacit or outright request by the agency to adjust the standard downward, based on budget limitations.

Not only is there no such exception under federal or state law, creating such an exception would fly in the face of what all of us know to be what children and their families need. It is not acceptable to simply give up and lower the bar for these most needy and vulnerable children. Especially in times of diminished resources, we all have to work together to ensure that reasonable efforts are made to prevent children from entering foster care and to achieve permanency.

“Wait a minute,” you may say. “Isn’t this DHS’s responsibility? How do we ‘all work together’ in an adversarial system?”

Yes, making reasonable efforts is ultimately the responsibility of DHS. However, the days when an advocate can stand back and wait for DHS to either do it or not are long past. To be an effective advocate for either a parent or a child involved in the dependency system, as well as an attorney for the state, means working to achieve this goal: prevent removal and achieve permanency. We can’t simply take the children into care and sort it all out later (which means over the period until the admit/deny hearing), and sit back and do nothing, then attack DHS for lack of reasonable efforts at the next hearing, whether it be the admit/deny, adjudication, permanency or termination trial.

Neither of these approaches avoids removal, nor gets children to permanency in a timely way. And, they waste precious resources, especially time, time that children don’t have to burn.

Assuming that scarcity is going to be a fact of life for the foreseeable future, here are my suggestions for how all of us can better use scarce resources:

1. Front Load: offer services prior to removal. I am seeing this more and more, and it is keeping children out of foster care. By offering pre-removal services, foster care can often be totally avoided, services can often be provided at less expense or in the home with the parent and children together, and parents are more cooperative.
2. Mediated Shelter Care conferences: We are going to try this in Malheur County after hearing a presentation at the Through the Eyes of A Child conference in August 2010. We have located trained mediators who are willing to meet with the parties prior to the shelter care hearing to try and develop a plan to either avoid removal altogether, or at

least place the child in the least restrictive placement through voluntary cooperation of family and other persons involved with the family.

We are hoping to reduce the number and length of shelter care hearings, reduce the number of removals or non-relative placements, and develop plans with more parental and family buy-in. Stay tuned. We hope to start after the first of the year with our first cases.

3. Use the National Council of Juvenile and Family Court Judges (NCJFCJ) bench card. Judges were trained on use of the bench card at the August conference. We began using it here in September and it has already made a difference. Use of the card will result in the focus of the hearing changing, fewer removals and better placements.

4. Use the option of legal custody without physical removal. This can be effective in situations where the family is cooperative, but is not progressing at a good pace, or legal authority has needs for various reasons, such as removing dangerous people from the home or accessing treatment options.

5. Know what services are available in your community. Don't assume that the DHS plan is the best plan or the only plan. No plan should be fixed in stone. Counsel need to actively seek and review the services the client is receiving or DHS is providing, and identify and eliminate barriers to getting your clients the services they need. Look for free, low-cost and non-governmental services. Don't beat a dead horse. If it doesn't work, change it up, try something else. The biggest waste of scarce resources is to keep paying for something that isn't working. Right now, the best referrals may be to employment services, vocational training programs, community colleges, and GED programs. If housing is the problem, learn about what is available in the community, and what isn't. Get involved in local programs to develop the resources your clients need.

6. Meet or at least talk frequently with your client, the CASA, case worker and foster family. It's the only way you'll know what's going on. Attend all the Citizen Review Board, Family Decision and any other meetings that involve your client. It's the easiest way to talk to everyone.

7. Get a good thorough history. It is impossible to know what services are really needed without knowing the history of the child, the parents and the family. The client or family members are often not reliable reporters, and evaluations based on their oral recollections are often fatally flawed from the start. Many, if not most, of the people who appear in dependency court have documented histories in DHS and court files. Always check there.

8. Partner up with local service providers. Nobody is the enemy here. These cases are like a huge puzzle, and solving it is timed. A group of people working together have a much better chance of solving the puzzle than a group fighting with each other or only working on one little part.

9. Be wary of formulaic plans. One size does not fit all. The tendency is to move toward standard-type plans when resources are tight because they are easier to write and

follow, but they actually waste resources by having people do programs they don't really need. Any plan must be individual and fluid, specific, easy to understand and realistic. Read the conditions for return. Does the plan match the conditions for return? Will the goals be achieved if the person follows the plan? If the average fifth grader couldn't read it and be able to tell what the person has to do, it probably isn't being understood by the parents.

10. Think outside the box. Tough times are opportunities for innovation. People are more open to making changes when those changes have budget or time advantages. For example, we are experimenting with pre-trial settlement conferences in termination cases, to see if we can either settle the cases or narrow the issues, to cut the number of trials or the length of trials. We are also working on a parenting time project to take the visits out of the DHS office and into the community in more family-friendly places and involving more activities for parents and children. Perhaps the biggest area where lack of resources is being cited now as a reason for service cutbacks is parenting time. Unfortunately, we know that increasing the quantity and quality of parenting time is often the most important factor in whether reunification is possible. No one can argue that an hour a week in the DHS office is enough to help parents and children stay or become bonded. This is one area where we need to fight back with a new model for parenting time. This is our local Juvenile Court Improvement Project for this year in Malheur County, and we are looking to partner with local churches, the Boys and Girls Club, and other community resources to increase parenting time opportunities.

11. Be involved in searching for relatives, especially if you represent the child or parents who are struggling. Advocate for continued relative search, throughout the entire life of the case, not just at the beginning.

12. Get real with people. Being a good advocate means knowing when to pick your battles. Attorney time is a precious resource, too. If the plan is return to parent, it really needs to be a return to parent case. If this is a sham, and everyone knows it, the waste is enormous. And remember, sometimes the best advocacy involves getting real with a client. An attorney may do the best for a client by helping a parent, maybe for the first and only time, make a decision that is truly in the best interests of a child.

13. Do your homework. Know the Oregon Safety model and the applicable law. Learn something about childhood trauma, neuroscience, child development and substance abuse. Get training any time you can. Then, as an advocate, you can knowledgeably evaluate whether the services offered are appropriate and if more or less is needed.

Tough times force change. While change can be scary, there are good aspects to constantly looking for ways to improve the process to reduce trauma and help families. It isn't a solution to give up and end up with either lack of reasonable efforts findings, or lower the bar for what are reasonable efforts. Rather, now is when we need to try harder to come up with new and innovative plans to get the services we know our families need, and be smarter about using the resources we have.

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