



HABEAS CORPUS

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PRESIDENT'S MESSAGE

Greetings! In the nineteen years since I was first admitted to practice law, I have developed an enormous amount of respect for the valuable work and countless underpaid hours that are the hallmark of the indigent defender. For ten of those years I worked in the trenches in the DeKalb County Public Defenders Office in Atlanta. Upon my return to Nebraska nine years ago, I continued to serve the needs of indigent defendants through my work for the Nebraska Commission on Public Advocacy. The Commission was created over ten years ago to ease the extraordinary financial burden on communities struggling to pay court appointed attorneys in major cases where there was no local public defender or where there was a conflict of interest necessitating outside counsel or where the complexity of the case dictated the need for a criminal attorney with more experience.

Given my background, it is with some interest that I have watched the unfolding of the case of the State of Georgia v. Brian Nichols. Mr. Nichols was charged with the murder of a Fulton County Superior Court judge and three others in 2005. Private counsel was appointed to represent Mr. Nichols with the funding provided by the Georgia Public Defender Standards Council (hereinafter "GPDSC"). In the most recent twist (as of the writing of this article November 7th), the Fulton County District Attorney's Office filed a motion in the Georgia Supreme Court asking that the trial judge and the defense attorneys be removed from the case! The cause of this outrageous display of political arm-twisting can be boiled down to three things: a) money, b) money and, 3) money. The defense needs it, the judge thinks they should have it and the prosecutors don't want them to have it. In the midst of trial preparation, the Georgia State Assembly cut the budget for the GPDSC, thereby cutting the legs out from under, not only the Nichols defense team, but also every other indigent defendant in Georgia. Jury selection in the Nichols trial was halted when defense counsel were denied any more money from the GPDSC in violation of the trial court's order for additional funds. The GPDSC responded that there was no money to give. A threat of legislative committee investigation and possible impeachment now hang over the head of the trial judge who was simply trying to ensure that Mr. Nichols' defense team was funded to the extent that they are able to provide constitutionally protected effective representation.

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Through The Eyes of The Child Initiative

By Hon. Lawrence D. Gendler and Kelli Hauptman

Judge Gendler is Judge of the Separate Juvenile Court in Sarpy County. Kelli Hauptman is Staff Attorney with the Through the Eyes of the Child Initiative.

Overview

As defense attorneys, hearing the words "through the eyes of the child" may raise suspicion as to the protection of your client's rights in an abuse/neglect case. However, for many parents' attorneys, the Through the Eyes of the Child Initiative has been a benefit to their clients because of the changes it has made in the abuse/neglect court system. In many jurisdictions, by focusing on seeing a case "through the eyes of the child", courts and stakeholders are viewing abuse/neglect cases in a different light. Through procedural and systemic changes made by local teams, anecdotal evidence suggests that parents are accessing a greater number of services and are receiving them sooner, case plans are more thoughtful and on point to the parents needs, the case is progressing more quickly, and children, when reunified, are being returned to the parents' care sooner.

The Through the Eyes of the

Child Initiative is a system of top-down leadership led by Chief Justice Michael Heavican and Project Chair Larry Gendler, a Sarpy County Separate Juvenile Court judge. The initiative is comprised of 25 local teams across Nebraska that are led by local judges with juvenile court jurisdiction and which include team members who represent a variety of stakeholders involved in abuse/neglect cases. Each team determines which stakeholders to invite as members, but almost every team includes at minimum a parents' attorney, a guardian ad litem, a county attorney and a DHHS representative.

Modeled off of other states' collaborative structures, the theory behind the initiative was that local stakeholders understand local problems better and are better able to fix those problems. Local teams are provided with the Nebraska County and Juvenile Court Practice Guide containing a grid of best practices for abuse/neglect court systems.

What issues or problems local teams choose to address is their decision and the content of teams' "action plans" varies widely across the state. Some teams have made children

attending court hearings a priority, where the team may develop a protocol that establishes guidelines for children's attendance (for instance, which hearings the children should attend, any age limitations, and any situations where children would be excused from the courtroom). Other teams have focused on timeliness of court hearings. Another common practice among teams has been to work on eliminating or reducing the frequency of continuances in court hearings. Still other teams have established a procedure where a parent is automatically appointed an attorney prior to the first hearing so that the parent is represented at every stage in the hearing and the case proceeds without delay.

Pre-hearing Conferences

One practice adopted by a substantial number of local teams is pre-hearing conferences. A pre-hearing conference is an informal, facilitated meeting outside the presence of the judge that is typically held before the first hearing. Its general intent is to gain the cooperation of all parties, to discern and offer services or treatment to children and parents, to share

and gather important information, and to better develop a problem-solving atmosphere. This "front-loading" of the court process is meant to ensure that permanency for the child is reached quicker, which often means that the child is returned to the parents' care sooner.

Local teams were introduced to pre-hearing conferences at the Nebraska Children's Summit in 2006 by a juvenile judge from Arizona whose courts were the first to develop the practice. Local teams then developed their own protocol and procedure, and approximately 70% of local teams are now conducting pre-hearing conferences.

To address pre-hearing conference issues and reach consensus on practice, the protocol development committee was also developed under the initiative in 2007. The committee continues to meet regularly and has developed a standardized protocol for pre-hearing conferences. The committee is also addressing issues of confidentiality, immunity and privilege in pre-hearing conferences.

Anecdotal evidence suggests that pre-hearing conferences are achieving their goals. According to Matthew Headley, assistant public

defender with the Madison County Public Defender and parents' attorney, his office's cases that have had pre-hearing conferences are experiencing faster case progression. When all parties involved are fulfilling the cooperative spirit of the pre-hearing conferences and a quality facilitator is leading the conference, Headley says, more successful case plans are being developed, more information is being shared, services are started sooner and cases are proceeding faster. By getting early cooperation, interaction and services, Headley adds, his clients have been more willing to acknowledge issues and work towards reunification with their children sooner.

Claude Berreckman, a parents' attorney and guardian ad litem in Cozad, says that although he has not considered the abuse/neglect court system as formally adversarial and has rarely been involved in contested adjudications, pre-hearing conferences have provided an early opportunity to collaborate on what the parties need to do to reunify the children with the parents. Berreckman notes that pre-hearing conferences provide the infrequent opportunity of having a roomful of people whom he can ask to provide a variety of services to his client. Pre-hearing conferences have assisted in his duty to address

his client's concerns as quickly as possible.

"This flow of information can provide challenges for 'defense' attorneys," says Roger Harris, a parents' attorney in Gage County, "but we should remember that we are the parents' attorneys and in most of my initial consults with the parents, they agree that they are willing to address almost any reasonable request in order to get their children back as quickly as possible." Harris notes that his duties as parents' attorney are to promote reunification of the family and help identify areas of concern that can be addressed with available resources and services. With full cooperation and trust from all parties involved, pre-hearing conferences have assisted parents' attorneys in fulfilling their duties. Harris feels that children are returned to their parents quicker, services are implemented sooner, and cases tend to get resolved and dismissed faster.

Although all evidence is currently anecdotal, the initiative is developing a data study to be conducted in 2008 that will analyze whether data supports the anecdotal evidence that pre-hearing conferences are helping children to be returned home sooner.

Other Projects

The initiative is also involved in several other projects statewide to improve court processing and assist local teams in their activities. The initiative has been working with the court data system JUSTICE to extract performance measurements relating to abuse/neglect cases. Courts and teams can then use this data to evaluate the strengths and weaknesses of the court system in their communities. The initiative has also been involved with DHHS and Fostering Court Improvement (FCI), a national service organization that analyzes state data and works with states in understanding the meaning of the data, in analyzing DHHS data.

The initiative also recently completed and submitted template court order forms for judges to use in abuse/neglect cases. The order forms, which will be available on the Supreme Court website and the initiative website, contain the language required for federal foster care reimbursement to states, as well as other considerations unique to abuse/neglect cases. The initiative has also created audiovisual instructions on the court order forms that will be available on its website. Court order forms for cases involving the Indian Child Welfare Act

(ICWA) are also being developed.

To assist teams in their activities and provide stakeholders with training opportunities, the initiative hosts annual regional conferences each fall and is planning a spring traveling lecture series for 2008. All conferences and lectures will also be available online. One goal of the lecture series is to provide stakeholders with quality training in subjects important to them in the least restrictive way. Therefore, not only will lectures be held in various locations across the state but they will also become available online to allow the viewer to access it at a convenient time. The lecture series is free of charge and is intended to be eligible for CLE credits for attorneys.

Conclusion

Having just celebrated its first year anniversary, the Through the Eyes of the Child Initiative is continuing to expand its efforts on the local team level and statewide to achieve its goal of improving the permanency, well-being and safety of children in the Nebraska court system. Substantial changes have already been made by many local teams but active involvement by all

stakeholders in the abuse/neglect court system continues to be vital for teams' continued successes.

For more information about the initiative and its activities, please visit

www.throughtheeyes.org,

or contact Kelli Hauptman at khauptman2@unl.edu.

Two of the parents' attorneys quoted in the article are NCDAA members. They are Roger Harris of Beatrice and Matthew Headley of Madison. If you would like to contact them, Roger Harris can be reached at (402) 228-8900 and Matthew Headley at (402) 379-2199.