



# Child Law Practice

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Helping Lawyers Help Kids

## IN PRACTICE

### Ex Parte Communications between Children and Judges in Dependency Proceedings

by Jessica R. Kendall

Involving children in their dependency court hearings empowers them and helps them come to terms with decisions made about their lives. It lets them influence a situation that will chart their future and that often feels outside their control.<sup>1</sup>

What happens, however, when a child wishes to share his or her views with the judge but does not want to be in court? For example, the child may not want to face an abuser or share a placement preference in a parent's presence. Can the child still share her opinions and desires with the judge? In these cases, the child, child's attorney, and the court must consider other options that could enable the child to participate in the process, including whether the child can legally and ethically meet with the judge privately.<sup>2</sup>

This article addresses ex parte communications by children and youth with the court by reviewing governing rules and laws. Through three case examples, the article provides tips for judges and attorneys, even in jurisdictions that lack case law or court rules on point.

#### State Laws and Rules Regarding Ex Parte Communication

Many states lack statutory language that dictates how or whether courts can have ex parte communications

with lawyers or parties in dependency cases. More guidance exists in the context of family law/custody cases. However, many state dependency cases and court rules have addressed the issue.<sup>3</sup> A review of numerous state approaches shows that jurisdictions fall into one of two categories:

1. There is no statute, rule, or case on point. Whether ex parte communication is allowed is dictated by practice, which may vary from judge to judge or county to county.<sup>4</sup>
2. There is an applicable court rule or case dictating how or whether ex parte communication can occur.<sup>5</sup>

Whether driven by rule or practice, states that allow ex parte communication generally:

- allow any party, lawyer or the judge to request an ex parte meeting;<sup>6</sup>
- may require the court to make findings that the ex parte communication is warranted under a balancing of interests or that it is necessary to promote a flow of

critical information and/or to prevent the child from suffering emotional harm;<sup>7</sup>

- require that attorneys for all parties be present during the meeting;<sup>8</sup>
- allow the court to exclude parents from the meeting;<sup>9</sup>
- require the meeting be recorded and that a written record be made available to all parties;<sup>10</sup>
- may require a list of questions or topics be made available to the parties before the meeting.<sup>11</sup>

Even if a state's dependency law or rules are silent on whether or how the judge may have ex parte

*(Continued on page 103)*

#### What's Inside:

- 98 CASE LAW UPDATE
- 107 ABA POLICY  
ABA Affirms Right to Legal Representation for Children and Parents in Child Maltreatment Cases and Adopts Other Policies
- 108 RESEARCH IN BRIEF
- 111 BAR INNOVATIONS  
Change is Local: State and Local Bar Projects Help Kids

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**ABA Child Law Practice (CLP)** provides lawyers, judges and other professionals current information to enhance their knowledge and skills, and improve the decisions they make on behalf of children and families. Topics include: abuse and neglect, adoption, foster care, termination of parental rights, juvenile justice, and tort actions involving children and families.

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## **CASE LAW UPDATE**

### **ICPC Did Not Apply to Child's Placement with Noncustodial Father**

*In re D.F.-M.*, 2010 WL 3001848, (Wash. Ct. App.).

**Despite a negative home study under the Interstate Compact on Placement of Children (ICPC), a trial court properly sent a child to live with his out-of-state noncustodial father. ICPC requirements did not apply since the placement was with a parent. Further, the father was considered suitable to parent under agency's and court's standards.**

A child lived in Washington with his mother, who was his custodial parent. Less than a year after the child was born, the state child welfare agency became involved due to allegations that the mother was involved in drugs, domestic violence, and had neglected her son. Although the mother agreed to comply with services, she did not do so.

In March 2008, the child was placed in foster care and a dependency petition was filed. The petition was adjudicated in April. During this time, the agency did not know where the father lived, did not serve him with the petition, and therefore the father had no knowledge of the proceedings.

Once the father found out about his son, he contacted the agency and said he wanted his son to live with him in Oklahoma. The agency contacted Oklahoma and asked that a home study be conducted on the father, under the ICPC.

Oklahoma did not approve of the child's placement with the father citing concerns, including the father's lack of income and employment, driver's license, or a car seat. They also wanted him to complete a parenting class.

The father filed a motion in October 2008 requesting that his son be placed with him. By this time, the father was employed, finishing school, and had child care assistance from his mother. The court

denied this motion.

A later request for placement with the father was made in April 2009 based on his continuous progress. He was living with his mother, had finished school, had weekly phone contact with his son, and was getting his driver's license. Once again, Oklahoma denied placement, now with concerns that the father, his son, and his mother would be living in a two-bedroom apartment, although the social worker never physically saw the living situation.

The father refiled his motion for placement in May 2009. He had obtained a vehicle and insurance. The agency supported placement with the father but indicated without Oklahoma approving the ICPC, the court did not have the legal basis to place the child with his father. The court did so anyway and the mother asked for a stay, which was denied, and discretionary review, which was granted.

The Washington Court of Appeals affirmed the trial court's decision to place the child with his father in Oklahoma. This was based on the requirements in Article III of the ICPC. The court of appeals held that under a plain reading of this article, the ICPC only applies to foster care or preadoptive placements.

Although the ICPC does not state the meaning of "foster care," the general term means "placement of a child in a substitute home, one other than of the child's parents." A "placement" under the ICPC means "nonparental residential arrangements." Thus, sending the child to live with his father was not within the purview of the ICPC.

The court of appeals also focused on Article V, which states that when the ICPC applies, the sending state is responsible for the child and remains obligated to financially support the child. If placement with a

parent was governed by the ICPC, then the sending state would be financially responsible for the child and not the parent.

The court of appeals then addressed the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) regulation that the ICPC is at issue in parental placements. Specifically, the regulation states “foster care includes circumstances where the ‘24-hour a day care is provided by the child’s parent(s) by

reason of a court-ordered placement (and not by virtue of a parent-child relationship).” The regulation not only went beyond the terms of Article III of the ICPC, but the state had not even adopted the regulations, thus it had no bearing in this case.

Finally, the court of appeals discussed the general concerns of potential parental unfitness when placing a child with an out-of-state non-custodial parent without ICPC approval. The court ultimately deter-

mines parental fitness and what is in a child’s best interests.

In this case, the father was considered suitable by both the agency’s and court’s standards. Regardless of the negative ICPC and the Oklahoma social worker’s concerns about the small home, the trial court had discretion and used it wisely to place the child with his father and did not need Oklahoma’s approval under the ICPC to do so.

## Incarcerated Father Denied Meaningful Chance to Participate in Court Proceedings

*In re Mason*, 782 N.W.2d 747 (Mich. 2010).

**Clear and convincing evidence did not exist to terminate an incarcerated father’s parental rights to his two children. The father was not given a meaningful opportunity to participate in the court proceedings, he was not provided reunification services, and the court failed to properly consider that his children were placed with his relatives or evaluate his future ability to care for his children in deciding to terminate his rights.**

Two siblings were born in March 2004 and December 2006 and lived with their mother. The parents were not married, but the father helped care for their children. The state child welfare agency became involved in April 2006. The children were not removed then, but the mother received services while the father did not. The father assisted his family financially until his incarceration in October 2006. The mother took the children to see the father weekly until the children were removed in June 2007.

The children were removed based on allegations that the father neglected and failed to provide for them. At the first hearing, counsel was appointed to represent the father, who was not present. The father’s lawyer assured the court that the father would participate by phone at the next scheduled hearing in July 2007.

At the July hearing, both parents agreed to the petition. The perma-

nency goal was reunification with the mother. The court ordered supervised visits for the father after he got out of jail. The children were initially placed in foster care, but later was placed with the father’s family members.

After the July hearing, the social worker drafted a service and treatment plan that included both parents enrolling in a parenting class, visiting with the children, and obtaining housing and work. The court approved this plan at an August 2007 hearing. The father was not present and did not participate. Additionally, the father’s release date had been extended to July 2009.

Between November 2007 and October 2008, the court held five more hearings, which the father did not attend. The father did participate by phone at a December 2008 hearing. He had completed several classes, was attending AA meetings, and was waiting to get into a parenting class. The mother was having difficulty staying drug free and did not have housing for her children. The agency social worker recommended terminating her parental rights.

At the February 2009 termination hearing, the father requested a continuance until March to see if he would indeed be released in July. The court denied this request and went forward. The agency social worker testified that he had never talked to the father and had no proof that he completed any programs. He

thought that even if the father was released in July, it would take him at least six months to reunify with his children, delaying permanency further.

The father testified that he was testing negative for drugs, he was working in jail, had a plan for employment and housing upon release, and he wanted to be a father to his children.

The trial court terminated the father’s parental rights based on his incarceration, failure to participate in services and personally provide for his children. The court agreed with the agency social worker’s conclusion that the children’s permanency would be delayed if the court continued waiting for the father. The father appealed and the trial court’s order was affirmed.

The Supreme Court of Michigan reversed finding the termination of the father’s parental rights was not supported by clear and convincing evidence.

Under state statute, MCR 2.0004, an incarcerated person must have “an opportunity to respond and to participate.” The court must ask “how the incarcerated party can communicate” and “whether the party needs special assistance for such communication.”

In this case, the father participated in court proceedings by phone only twice. He was never told he had an ongoing right to participate in each hearing. He was not given the

*(Continued on page 106)*

**Alabama**

*In re J.C.*, 2010 WL 2885946 (Ala. Civ. App.). DEPENDENCY, RELATIVE PLACEMENT

Trial court's decision to permanently place children with relatives was not an abuse of discretion since children wanted to remain placed, did not want to return to mother who was living with abusive stepfather (whom mother was unwilling to live away from), their psychologist supported relative placement, and mother had ongoing visitation rights.

*In re L.L.*, 2010 WL 2885945 (Ala. Civ. App.). DEPENDENCY, FATHERS

Clear and convincing evidence did not exist to declare child dependent as to father who was willing and able to provide; father had stable employment, could provide a safe home for child, had child care support from relatives, visited with and appropriately bonded with child, had negative drug tests, and completed anger management to address prior domestic violence.

**Connecticut**

*In re Jaiden S.*, 2010 WL 1713793 (Conn. App. Ct.). TERMINATION OF PARENTAL RIGHTS, SEX OFFENDERS

Termination of father's parental rights was not clearly erroneous because evidence indicated father could not "within a reasonable period of time, achieve a degree of rehabilitation sufficient to believe he could resume his role as a parent," including not revealing or acknowledging he was a convicted sex offender, failure to register as a sex offender, and his psychologist's conclusion it could take up to 18 months to start reunification with child.

*In re Matthew F.*, 2010 WL 2900326 (Conn.). DEPENDENCY, YOUNG ADULTS

Trial court improperly ordered child welfare agency to provide services pursuant to motion filed after youth turned 18; although jurisdiction did not automatically end at age 18, youth did not show he received voluntary services through agency before age 18 or was enrolled in an educational or job program, which was statutorily required to qualify for services.

**District of Columbia**

*In re A.B.*, 2010 WL 2604668 (D.C.). DEPENDENCY, SIBLINGS

Adjudicating two older siblings of physically abused infant dependent was not supported by a preponderance of the evidence; although five-year-old stated mother and stepfather used a belt or ruler to hit her, this caused only temporary discomfort and siblings did not have any mental or emotional anxiety, thus evidence did not show they were "without proper parental care or control" or in "imminent danger of abuse."

**Florida**

*In re A.G.*, 2010 WL 2925355 (Fla. Dist. Ct. App.). DEPENDENCY, REPRESENTATION

Trial court improperly denied nonoffending indigent father's request for counsel; state statute clearly and plainly stated that "(p)arents who are unable to afford counsel must be appointed counsel" and there was no basis to treat an offending and nonoffending parent differently.

*In re G.M.*, 2010 WL 2218597 (Fla. Dist. Ct. App.). TERMINATION OF PARENTAL RIGHTS, LEAST RESTRICTIVE MEANS

Trial court should have granted petition to terminate father's parental rights to both children; by consenting to petition, father conceded he was a danger to them and there was no issue termination was the least restrictive means to ensure children's safety.

**Iowa**

*In re D.S.*, 2010 WL 2089354 (Iowa Ct. App.). PERMANENCY, REUNIFICATION SERVICES

Trial court's permanency order maintaining placement with father was in children's best interests; they were with father for most of school year, mother's behavior remained unstable and visitation remained monitored, and there was no basis to delay permanency to give mother six more months of reunification services.

*Doe v. Iowa Dep't Human Servs.*, 2010 WL 2696406 (Iowa). ABUSE, REGISTRIES

Agency's decision to put mother on abuse registry for failing to provide proper supervision was not logical or justified because legislature specifically excluded this failure as a basis for placement on registry; legislature intended to prohibit

agency from placing parent on registry in such circumstances, and agency did not have authority to change intent.

**Louisiana**

*In re C.B.*, 2010 WL 2509636 (La. Ct. App.). DEPENDENCY, ABSENT FATHERS

Trial court did not abuse its discretion when denying father's motion to dismiss petition; although petition did not contain specific counts against father, his absence from child's life entirely and lack of financial, emotional, or educational support was neglect.

**Maine**

*In re Lily T.*, 2010 WL 2612625 (Me.). TERMINATION OF PARENTAL RIGHTS, ABANDONMENT

Termination of father's parental rights based on abandonment was supported by clear and convincing evidence; father never pursued contact or visitation rights with child, asked about her education or development, willingly paid child support, or showed interest in parenting.

**Michigan**

*Foster v. Wolkowitz*, 2010 WL 2629560 (Mich.). CUSTODY, JURISDICTION

Trial court improperly characterized parents' acknowledgment of paternity as an "initial custody determination" to find subject matter jurisdiction over interstate custody dispute; acknowledgment explicitly did not impede either parents' custody rights and was not a judgment or court order.

**Mississippi**

*In re J.E.B.*, 2010 WL 2852314 (Minn.). LIABILITY, FALSE REPORTS

Trial court improperly granted summary judgment for defendant based on statutory immunity since there was "a genuine issue of material fact" regarding defendant's good faith when reporting allegations including evidence defendant reported out of animosity, had no personal knowledge of abuse, took three months to report abuse, and inquired about immunity when making report.

*Green v. Dep't Human Servs.*, 2010 WL 2902252 (Miss. Ct. App.). TERMINATION OF PARENTAL RIGHTS, REPRESENTATION

Mother's lack of representation at termination proceedings did not violate due process; mother had notice, knowingly

proceeded without an attorney, did not inform court of financial inability to hire an attorney, and representation would not have made a “determinative difference” given her ongoing drug abuse, unemployment, unstable housing, and children’s refusal to return home.

### Nebraska

*In re Antonio O.*, 784 N.W.2d 457 (Neb. Ct. App. 2010). TERMINATION OF PARENTAL RIGHTS, FOREIGN NATIONALS

In termination proceeding against father, a Mexican national, where state agency did not contact consulate as required by the Vienna Convention and state law, there was no violation of due process because father was not prejudiced by failure to contact; father did not update the agency on his whereabouts or participate in services, which showed he was unlikely to avail himself of assistance from the consulate even if notified.

### New Hampshire

*In re Oligny*, 2010 WL 2891085 (N.H.). GUARDIANS AD LITEM, CHARACTER Guardian ad litem (GAL) board did not err in denying prospective guardian ad litem’s application where he reported he had been a party in two domestic violence actions but would not disclose full information requested of him; board has duty to judge character of GAL applicants and GAL failed to cooperate by refusing to provide information to explain restraining order.

### New Jersey

*In re R.V.*, 2010 WL 2836114 (N.J. Super. Ct. App. Div.). DEPENDENCY, VOLUNTARY SURRENDER Trial court properly declined to vacate order terminating parental rights on claim of misrepresentation where mother claimed she surrendered her parental rights on agreement that the agency would not disclose details of her substance abuse; because agreement discussed at trial was that details of her abuse would not be disclosed to her child, later disclosure to her treatment provider and probation officer did not constitute misrepresentation.

### New York

*In re Brooke O.O.*, 2010 WL 2195976 (N.Y. App. Div.). DEPENDENCY, STEPCHILD Where father abused his child, trial court erred in finding that he derivatively abused his stepchild since there was no evidence in the record that she resided

with him or that he was otherwise a person responsible for her care; court cannot find derivative abuse by simply inferring that a child lives with an individual.

*In re Mitchell W.W.*, 2010 WL 2195823 (N.Y. App. Div.). DEPENDENCY, REPRESENTATION

Where trial court correctly found that father knowingly waived right to counsel, several issues were not preserved for appeal because father made no objection below; court allowed father to proceed pro se after questioning him about his education and work experience and advising him that he would be at a significant disadvantage without an attorney.

### North Carolina

*In re D.L.H.*, 694 S.E.2d 753 (N.C. 2010). DELINQUENCY, SENTENCING Juvenile who spent 55 days in detention awaiting adjudication on a probation revocation was not entitled to credit for time served because state statute does not provide for time served credits for delinquents; unlike adult sentences, juvenile detention should support statute’s goal of rehabilitation, not punishment, and detention may be needed for time to assess and evaluate a youth’s needs.

*State v. Pettigrew*, 693 S.E.2d 698 (N.C. Ct. App. 2010). DELINQUENCY, SENTENCING

Trial court did not improperly sentence juvenile as an adult to 32 to 40 years in prison for first degree sexual assault; while case law held that the death penalty was cruel and unusual punishment for offenses committed when an individual was a juvenile, life or other extended prison terms have not be found unconstitutional.

### North Dakota

*In re D.H.*, 783 N.W.2d 12 (N.D. 2010). TERMINATION OF PARENTAL RIGHTS, FAILURE TO IMPROVE

There was no error in court’s finding that father failed to improve conditions that led to foster care and that return of his child would likely result in serious harm; father’s extensive criminal record including a recent violent offense, lack of housing, and lack of visitation supported finding.

### Oregon

*In re K.A.M.*, 2010 WL 2926143 (Or. Ct. App.). DEPENDENCY,

### SUBSTANCE ABUSE

Court erred in finding that mother’s use of marijuana was likely to endanger the welfare of her children where she tested positive for marijuana on one occasion and claimed she never used drugs in their presence; though a behavior need not directly involve children to show endangerment, the state must prove a nexus between the alleged action and harm or potential harm to the children, and no evidence showed marijuana use posed a threat to child safety.

### South Dakota

*In re W.T.M.*, 785 N.W.2d 264 (S.D. 2010). DELINQUENCY, SEXUAL ABUSE

Evidence was insufficient to prove that 11 year old committed sexual contact offense against eight year old because sexual intent was lacking; though he took child out of the park to a more secluded place during truth or dare game, facts could indicate that he believed behavior was wrong, but not that he was sexually aroused or seeking sexual gratification.

### FEDERAL CASES

#### E.D. Pa.

*Fulginiti v. Philadelphia*, 2010 WL 2510369 (E.D. Pa.). LIABILITY, WRONGFUL DEATH

In case in which child tested positive for methadone and was placed on a temporary hold at hospital, there was no violation of due process since agency did not seek custody and child later died in his mother’s care; no special relationship existed without agency taking custody and agency did not raise likelihood of harm to child by its investigation.

#### First Circuit

*Sam M. v. Carcieri*, 608 F. 3d 77 (1<sup>st</sup> Cir. 2010). LIABILITY, CAPACITY TO SUE Individuals, including professor who had not met minor parties, had capacity to represent foster children as next friends in claims against state foster care system because they were committed to representing the best interests of the minors and there was an adequate explanation for why the real parties or other representatives could not prosecute the case on their own behalf; evidence showed that other representatives had potential conflicts of interest or their ties to the children were impaired due to the circumstances surrounding the children’s abuse, neglect, or placement in foster care.

## Select State Cases and Rules

State	Statute, Rule, or Case Citation	Summary of Rule
<b>California</b>	<p>Cal. R. of Ct., R. 5.534(c).                      Cal. Welf. &amp; Inst. Code §350.                      Cal. Fam. Code § 7892.</p>	<ul style="list-style-type: none"> <li>■ Child can testify in chambers outside the parents' presence if the court determines that the child is likely to be intimidated in a formal courtroom setting or is afraid to testify in front of the parent or guardian.</li> <li>■ Parent's counsel must be present.</li> <li>■ Parent has the right to have the court reporter read back the child's testimony or have the testimony summarized by his attorney.</li> </ul>
<b>Florida</b>	<p>Fla. R. Juv. P. 8.255(d)(2).  <i>G.C. v. Dep't of Children &amp; Families</i>,                      791 So. 2d 17, 21-22 (Fla. Dist. Ct. App. 2001).</p>	<ul style="list-style-type: none"> <li>■ Court can interview child outside presence of other parties upon motion filed by any party or the court.</li> <li>■ Interview must be recorded unless otherwise stipulated by the parties.</li> <li>■ Court must make specific written findings to justify decision to privately interview child.</li> <li>■ Attorneys for all parties must be present, but parents may be excluded.</li> </ul>
<b>Maryland</b>	<p><i>In re Maria P.</i>, 904 A.2d 432 (Md. 2006)                      (citing Md. R. 11-110).                      E-mail correspondence in response to NACC list serve request (Apr. 15, 2010, 11:17 EDT)                      (on file with ABA).</p>	<ul style="list-style-type: none"> <li>■ A parent can't be excluded from hearing a child's testimony unless the court enters specific findings on the propriety of the parent's exclusion.</li> <li>■ Courts often provide excluded parties recorded copies of the child's interview.</li> </ul>
<b>Massachusetts</b>	<p><i>In re Adoption of Don</i>, 755 N.E.2d 721 (Mass. 2001).  <i>In re Adoption of Roni</i>, 775 N.E.2d 419 (Mass. Ct. App. 2002).  <i>Adoption of Tina</i>, 701 N.E.2d 671 (Mass. Ct. App. 1998).  <i>Adoption of Arthur</i>, 609 N.E.2d 486 (Mass. Ct. App. 1993).                      E-mail correspondence in response to NACC list serve request (April 15, 2010, 11:48 EDT, on file with ABA).</p>	<ul style="list-style-type: none"> <li>■ Court may only depart from traditional in-court methods for taking a child's testimony if the child will be traumatized.</li> <li>■ Court must make specific findings as to why an alternate method is necessary.</li> <li>■ Courts often grant requests by attorneys to be present at the interview, but some deny the request that they be made part of the record.</li> </ul>
<b>Michigan</b>	<p><i>In re H.R.C.</i>, — N.W.2d —, 2009 WL 4824942 (Mich. App. 2009).</p>	<ul style="list-style-type: none"> <li>■ The right of the court to conduct ex parte interviews with children is not in court rules, statutes, or case law, and thus judges do <i>not</i> have the authority to conduct such interviews</li> </ul>
<b>New Jersey</b>	<p>N.J. R. of Ct., R. 5:12-4(b).  <i>See Div. of Youth &amp; Family Servs. v. R.D.</i>, 2010 WL 431347, at **13-14 (N.J. Super. App. Div. 2010).</p>	<ul style="list-style-type: none"> <li>■ The court may take the child's testimony in chambers or under such protective orders as the court deems appropriate.</li> </ul>
<b>New York</b>	<p><i>Matter of Kim K.</i>, 570 N.Y.S.2d 423 (N.Y. Fam. Ct. 1991).</p>	<ul style="list-style-type: none"> <li>■ The court may interview a child in camera with only the child's attorney present, as long as other counsel are able to submit questions to be asked of the child and the discussion is recorded.</li> </ul>
<b>Ohio</b>	<p><i>In re T.V.</i>, 2005 WL 1983962, at *12 (Ohio Ct. App. 2005).</p>	<ul style="list-style-type: none"> <li>■ No state statutes or rules on point.</li> <li>■ One case implies that the child can be interviewed in chambers.</li> </ul>
<b>Washington</b>	<p>Wash. Laws of 2008, ch. 267 § 12.</p>	<ul style="list-style-type: none"> <li>■ State instituted a pilot project in a few counties allowing ex parte communication between judges and children age 12 or older.</li> <li>■ The youth have the right to request the meeting with the judge, which is on the record but outside the presence of other parties and counsel.</li> </ul>

(Continued from page 97)

contact with a child, state family law may offer guidance. Ex parte communications between judges and children in family law cases is common and many states have case law or rules on point. These cases may guide ex parte communications in dependency cases, where no other law exists.

Like existing dependency cases and rules, family law cases balance parents' due process rights with the desire to protect children from potential harm.<sup>12</sup> Many states allow judges in family law proceedings to meet children in-chambers and most require that conversations be recorded; several allow the parents' counsel to be present.<sup>13</sup> Based on this jurisprudence and existing law in other states' dependency cases, courts in states with no law directly on point should consider:

- telling the child the parents will be notified of his request to meet with the judge;
- notifying the parties of the request and obtaining their positions;
- assessing whether the parties will consent to the private meeting;
- if not all parties consent, encouraging them to discuss the issue outside court to seek a joint resolution. Consider whether mediation or another form of alternative dispute resolution may be appropriate in this instance;
- maintaining a written record of the in-chambers meeting that is then made available to all parties;
- providing the parties, in advance, a written list of questions or topics to be discussed;
- assessing whether ethics rules would allow an in-chambers meeting on the record with counsel present; and
- allowing the child to have a support person (which may be counsel) present during the meeting.

## Can a Child Directly Communicate with a Judge?

Case 1:

*Keisha is 12 and has been in foster care for 11 months. She has appeared at some court proceedings to date, but has not spoken much. Her attorney has contacted the judge's chambers, stating that before the permanency hearing Keisha wants to speak directly with the judge, but doesn't want to do so during the court hearing. She requests that she be allowed to speak to the judge privately. Keisha's mother's attorney objects, stating that if the court is to consider Keisha's position, then his client has the right to know what is said and to cross examine the child.*

- What are some key issues to consider and what rules, cases, or practices guide the analysis of those questions?
- What should the judge, do?
- What should Keisha's lawyer do?

Judge's Tips:

**Consult the state judicial code of ethics.** Although state codes of judicial conduct vary slightly, most are based on the ABA Model Code of Judicial Conduct, which is the basis for discussion here. Rule 2.9 governs ex-parte communications and states:<sup>14</sup>

A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter.

However, several exceptions to this Rule allow ex parte communication, including:<sup>15</sup>

1. When circumstances require ex parte communication for *scheduling, administrative, or emergency purposes*, which does not address substantive matters.
2. The judge may obtain the *written advice of a disinterested expert* on

the law applicable to the proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted, the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice needed.

3. A judge may *consult with court staff and court officials* whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record.
4. A judge may, with the *consent of the parties*, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.
5. A judge may initiate, permit, or consider any ex parte communication when *expressly authorized by law* to do so.

Under the Model Code, the judge can only meet with Keisha if the other parties agree or if the judge is authorized *by law* to speak with her privately. Since the mother's attorney has already objected to the private meeting, it is unlikely that all parties will consent. So, the next question becomes whether state or local law or rule will allow this kind of contact.

The commentary to Rule 2.9(A) sheds light on what the Model Code envisioned as the proper uses for this exception. The commentary notes:<sup>16</sup>

A judge may initiate, permit or consider ex parte communications expressly authorized by law, such as when serving on *therapeutic or problem solving courts, mental health courts, or drug courts*. In this capacity, judges may assume a more interactive role with parties, treatment

providers, probation officers, social workers and others.

While the 2007 revisions to the ABA Model Code of Judicial Conduct generally tightened the restrictions on ex parte communication, this new commentary language indicates an intent to loosen restrictions in particular cases. Although dependency cases are not mentioned in the commentary, various aspects of dependency court practice and court proceeding is consistent with the “therapeutic” or “problem solving” approaches of the referenced courts. As such, the spirit of this language suggests that dependency cases may be an area where ex parte communications would be favored. As noted above, state interpretations of this Rule and the extent to which they allow ex parte communication in dependency proceedings vary and continue to be a developing area.

In considering whether to allow an ex parte conversation with the child, the court may want to consider and balance several factors, including the:

- judicial interest in and need for full and complete information;
- child’s privacy interests, state of mind and welfare; and
- procedural stage the case is at (whether pre or post TPR, etc.);
- due process rights of all parties.

If the court is inclined to allow an ex parte communication, consider the following best practices (as noted above):

- Seek the consent of all parties.
- Keep a written record of the conversation and make that record available to all parties.
- Allow attorneys to be present, even if parties (parents) are excluded.
- Clarify on the record the impact of any information provided by the child on judicial determinations later made by the court.

- Provide the parties with a list of questions and/or topics to discuss with the child in-chambers.

#### *Lawyer’s Tips:*

**Notify other counsel of Keisha’s request.** When Keisha’s lawyer learns that she wants a private meeting with the judge, she should discuss with her client why and counsel her on the possible pros and cons of such an encounter, such as:

#### *Pros*

- may increase the child’s comfort in sharing sensitive information;
- may allow the child to speak more freely without other parties and family members present;
- may be a less formal environment than the courtroom; and
- may allow the judge to consider information she would not have had otherwise.

#### *Cons*

- may later have to share the same information in court, or have the judge share it;
- may prevent other parties, including the child’s social worker and parents from gaining important information about the child;
- judge may not consider what the child says when she decides issues in the case or do as the child wishes; and
- child may not be able to have a support person or her lawyer present during the meeting.

The lawyer should also discuss with Keisha possible alternatives to an ex parte conversation with the court, including preparing a written submission for the court.

If Keisha still requests the private meeting, the lawyer should check court rules, case law, statutes and the ethics codes for both lawyers and judges to see how ex parte communications are handled. To ensure the meeting is not challenged later, Keisha’s lawyer should notify other counsel of Keisha’s request

and ask for their consent. If some parties are unwilling to consent, ask if they would consider:

- Allowing the meeting to go forward, but having the conversation reported and/or recorded (if the child client is informed and gives consent). This would allow all parties an opportunity to learn of, or actually hear, what was said and rebut statements they disagree with in future court proceedings.
- Having the meeting with only the attorneys present during the conversation. If the parties agree, Keisha’s attorney should also ensure that the parties are clear about who can question the child during the meeting and, if the meeting is limited to the judge, whether counsel can submit questions for the judge to ask.

If the parties agree to the private meeting, the judge would then be able to consider this information as he would any other information or evidence shared at a court proceeding. Limiting how the court uses information gained during the ex parte communication may not be possible unless mutually agreed to by the court and parties before the meeting or shortly thereafter. The tips noted above, however, can help ensure any ex parte meeting the court is inclined to allow is conducted in the best manner possible.

### **Can a Lawyer Accompany a Child In-Chambers?**

#### *Case 2:*

*Upon thinking about her upcoming meeting with the judge, Keisha asks her lawyer to join her. She is nervous about meeting with the judge alone and would like to have someone she knows with her.*

- Can the lawyer attend if no other counsel are going to be present?

### Lawyer's Tips:

#### Check state rules of professional conduct for attorneys, as well as court rules and case law.

They may limit the lawyer's ability to have ex parte communication with the court and may, therefore, prohibit the lawyer from being present during the meeting without other counsel present. Although some states may vary, many follow the ABA Model Rules of Professional Conduct addressing ex parte communication with the court. Rule 3.5(b) states that a lawyer: "shall not . . . communicate ex parte with [a judge] during the proceedings unless authorized to do so by law or court order."<sup>17</sup>

Like the judicial code, the Model Rules for attorneys allow ex parte communication, if expressly authorized by law. They also allow for ex parte communication when the court orders it. This may be more likely to occur in problem-solving courts or dependency court where evidentiary rules are often relaxed at many stages of the case and courts are encouraged to work closely with parties to resolve problems. This may also be feasible in "benchmark hearings," which focus on youth aging out of foster care and promote stronger direct communication between the youth and judges as well as other parties.

Otherwise, if the relevant court rules or case law are silent, the state professional rules of conduct may, like the Model Rules, prevent Keisha's lawyer from participating in the private meeting with the judge. In the face of silence, Keisha's lawyer may want to raise with the court Keisha's desire for the lawyer to be present and seek court authorization to participate.

#### Can a Judge Communicate with a Child in an Emergency?

##### Case 3:

*The judge receives a call late Saturday afternoon from Keisha. In her message she informs the judge*

*that she has run away from her foster home after an altercation with her foster parent. The judge is in chambers that day preparing for Monday hearings. In her message, Keisha says she has nowhere to go and doesn't have her social worker's or attorney's contact information. She has taken the subway downtown, but is now lost and not sure where she is. Upon hearing the message, the judge is able to determine where she is.*

- Can the judge call Keisha back to help her find her way?
- Can the judge e-mail or call the social worker or Keisha's attorney?
- Can the judge contact the foster parent and find out whether Keisha can or should return home?

### Judge's Tips:

#### Call Keisha and give her

**directions.** It is probably permissible for the judge to return Keisha's call to provide her directions so that she is not lost. The first exception under Rule 2.9 allows the judge to have ex parte communication with parties for "emergency purposes" as long as the conversation does not address substantive issues relating to the case. Simply telling Keisha how to get to the subway or elsewhere does not relate to a substantive matter of the case and can be considered an emergency given the time of day, Keisha's inability to reach someone else, and her unfamiliarity with her surroundings.

#### Alert the social worker and/or attorney of Keisha's message.

Similarly, under the same exception, the judge may contact Keisha's social worker or attorney to tell them about Keisha's call and provide information about her location.

#### Do not conduct your own

**investigation.** The judge cannot, however, contact the foster parent and find out why Keisha may have

run away. Doing so would violate Model Judicial Code Rule 2.9(C):<sup>18</sup>

A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

The comments to the Rule further suggest that the prohibition on the judge conducting an independent investigation extends to doing online searches or using an "electronic" medium.<sup>19</sup>

### Conclusion

Whether children in dependency cases can meet with judges privately depends largely on local practice, court rules, statutes and case law. Attorneys and judges faced with this situation must also review their ethics codes to assess whether and under what circumstances these meetings are allowed. Although states' rules, cases, and laws vary widely, those jurisdictions that allow ex parte communications between the judge and child also build in safeguards to protect the parents' rights, such as requiring all counsel to be present and/or recording all private meetings between judges and children. Over time, judges and advocates may wish to consider seeking further guidance—via rule or case law—in this important and developing area.

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Thanks to the following people for reviewing this article and sharing their expertise: Justice Bobbe Bridge (ret.); Judge Joanne Brown (ret.); Professor Miriam Krinsky, ABA Commission on

Youth at Risk; Andrea Khoury, project director, ABA Bar-Youth Empowerment Project; and Jennifer Renne, director, National Child Welfare Resource Center on Legal and Judicial Issues.

## Endnotes

<sup>1</sup> To access other articles or tools regarding youth participation in court proceedings, visit the ABA Bar-Youth Empowerment Project Web site at: [www.abanet.org/child/empowerment/youthincourt.shtml](http://www.abanet.org/child/empowerment/youthincourt.shtml).

<sup>2</sup> Another option to consider so that the child can participate is to have her write a letter to the judge.

<sup>3</sup> *Cf.*, *Athens v. Athens*, 165 P.3d 1048 (Haw. Ct. App. 2007) (unpublished opinion) (the court concluded, in a family law proceeding, that decisions made by the judge based on ex parte communication with the child had to be reversed where the purpose for the off-the-record meeting was ambiguous, the judge considered the child a witness and met with her out of the presence of parties or counsel).

<sup>4</sup> *See, e.g.*, *Ohio – In re T.V.*, 2005 WL 1983962 (Ohio Ct. App.) (discussing practice of judges interviewing children in chambers without reference to a state law or rule); *Virginia – E-Mail Correspondence in response to NACC list serv request* (Apr. 15, 2010, 11:11 EDT) (on file with ABA) (explaining that Virginia has no specific statutes on point, but rather the decision is left to each individual judge’s discretion); *Nevada – E-Mail Correspondence in response to NACC list serv request* (Apr. 15, 2010, 13:52 EDT) (on file with ABA) (explaining that Nevada has no statute or rule on point, but that trial courts in one region of the state have agreed on some basic rules regarding ex parte communications).

<sup>5</sup> *See, e.g.*, *California – Cal. Welf. & Inst. Code §350*; *Florida – Fla. R. Juv. P. 8.255(d)(2)*; *New Jersey – N.J. Rules of Ct., Rule 5:12-4*.

<sup>6</sup> *See, e.g.*, *Fla. R. Juv. P. 8.255(d)(2)(B)* (“The motion may be filed by any party or the trial court on its own motion.”).

<sup>7</sup> *See, e.g.*, *In re Maria P.*, 904 A.2d 432 (Md. 2006) (finding that the court must make specific factual findings about the propriety of the parent’s exclusion); *In re Adoption of Roni*, 775 N.E.2d 419 (Mass. Ct. App. 2002) holding that judges can only depart from traditional in-court methods for taking a child’s testimony if the child will suffer trauma from testifying).

<sup>8</sup> *See, e.g.*, *Cal. R. of Ct., Rule 5.534(c)* (“[A] child may testify in chambers and outside the presence of the child’s parent or guardian if the parent or guardian is represented by counsel who is present . . .”).

<sup>9</sup> *See, e.g.*, *Cal. Welf. & Inst. Code § 350* (“The testimony of a minor may be taken in chambers and outside the presence of the minor’s parent or parents . . .”); *G.C. v. Dep’t of Children & Families*, 791 So. 2d 17, 21-22 (Fla. Dist. Ct.

App. 2001) (holding that a child could testify outside the presence of her parents in a dependency hearing).

<sup>10</sup> *See, e.g.*, *Cal. Welf. & Inst. Code §350* (“After testimony in chambers [by the child], the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.”).

<sup>11</sup> *See, e.g.*, *Matter of Kim K.*, 570 N.Y.S.2d 423 (Fam. Ct. 1991).

<sup>12</sup> Atkinson, Jeff. “Interview of the Child by the Judge.” In *Modern Child Custody Practice*, 2009, § 12-33.

<sup>13</sup> *Ibid.*

<sup>14</sup> ABA Model Code of Judicial Conduct, Rule 2.9(A) Ex Parte Communication (2007). <[www.abanet.org/judicialethics/](http://www.abanet.org/judicialethics/)

[ABA\\_MCJC\\_approved.pdf](http://www.abanet.org/judicialethics/ABA_MCJC_approved.pdf)>

<sup>15</sup> *Ibid.*

<sup>16</sup> ABA Model Code of Judicial Conduct, Rule 2.9(A), Comment 4 Ex Parte Communication (2007). <[www.abanet.org/judicialethics/ABA\\_MCJC\\_approved.pdf](http://www.abanet.org/judicialethics/ABA_MCJC_approved.pdf)>

<sup>17</sup> ABA Model Rule of Professional Conduct 3.5(b) (2009). <[www.abanet.org/cpr/mrpc/mrpc\\_toc.html](http://www.abanet.org/cpr/mrpc/mrpc_toc.html)>

<sup>18</sup> ABA Model Code of Judicial Conduct, Rule 2.9(C) Ex Parte Communication (2007) <[www.abanet.org/judicialethics/ABA\\_MCJC\\_approved.pdf](http://www.abanet.org/judicialethics/ABA_MCJC_approved.pdf)>.

<sup>19</sup> ABA Model Code of Judicial Conduct, Rule 2.9, Comment 6 Ex Parte Communication (2007) <[www.abanet.org/judicialethics/ABA\\_MCJC\\_approved.pdf](http://www.abanet.org/judicialethics/ABA_MCJC_approved.pdf)>.

(*In re Mason*, *cont’d from p. 99*)

opportunity to participate during the year-long reunification review period and the court did not have full information when making its decisions during these hearings. Thus, under state statute, the court could not grant the state’s motion to terminate the father’s parental rights.

The second issue the supreme court addressed was whether the father was permitted to participate in the service plan, as provided in MCL 712A. The service plan in the court file was not signed by the father and there was no indication that the father ever received a copy. The agency social worker did not provide proof he ever spoke to the father or the jail staff about services for the father.

The father never knew of the service plan or had an opportunity to meet the requirements before the court terminated his parental rights based on his failure to comply. Due to the agency’s and court’s failures, the father would have been entitled to more time to complete the services upon his release from jail. Both the trial and appellate courts ignored this.

Finally, the supreme court addressed whether terminating the father’s parental rights under MCL 712A.19b(30)(h) was appropriate. It was questionable whether the children would “be deprived of a normal home for a period

exceeding two years” given that termination was not sought until December 2008 and, at that time, the father’s expected release date was July 2009. There was no basis to find “the parent has not provided for the child’s proper care and custody.” The parent is not required to be the person caring for the child. The children were with the father’s relatives for most of the case while the father was in jail.

The supreme court questioned whether the facts showed there was “no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.” Instead, it appeared the father would be able to care for his children in the near future based on his progress and expected release date. Even if he personally could not take care of his children, his relatives could.

The trial court also requested termination based on his criminal behavior and the chance that he would harm the children if they were returned to his care. There was no past or present evidence to support this contention.

In sum, due to the father’s inability to meaningfully participate in the proceedings, the trial court lacked significant information in making its decision and the agency did not meet its burden to provide sufficient evidence to terminate the father’s parental rights.

# ABA Affirms Right to Legal Representation for Children and Parents in Child Maltreatment Cases and Adopts Other Policies

by Howard Davidson

The American Bar Association, at its August 2010 annual meeting of its House of Delegates, approved several policy resolutions on involvement of children and parents in the justice system. Notably, a policy calls child custody a “basic human need” in access to justice. A new “ABA Model Access Act” makes it clear that there should be a right to legal representation for children in any proceedings initiated by government to protect a child.

The Model Act further says that same “right to counsel” should be afforded at public expense to low-income parents when parental rights to residential custody of their children are threatened with severe limitations or supervision, or are at risk of termination. In Commentary, the ABA also clarifies that in child abuse and neglect related proceedings, the child’s legal representation should extend “as long as jurisdiction continues.” And in a related approved policy, the ABA urged providing legal counsel to children and youth at all stages of juvenile status offense proceedings, also “as a matter of right and at public expense.”

## Fostering Connections Act Older Youth Provisions

In another new policy, the ABA urges states to fully and quickly implement the “older youth provisions” of the federal *Fostering Connections to Success and Increasing Adoptions Act*, including:

- extending foster care, transitional living, adoption/guardianship subsidy assistance, and dependency court jurisdiction/oversight at least until a youth turns 21;
- providing a mechanism for youth to re-enter foster care between ages 18 and 21;
- promoting active youth participation in agency planning and court

proceedings affecting them, including having help of client-directed attorneys;

- calling for new *pro bono* programs to help ensure effective support and services for transitioning youth, both before and after foster care exit; and
- implementing new federal policy that provides broad and expansive definitions of eligible youth and their permissible residential settings, and clarifying that court jurisdiction and youth representation be maintained through age 21 as part of *Fostering Connections*’ implementation.

## National Dependency Court Standards

Finally, the ABA approved the first comprehensive set of national standards for state courts hearing child abuse and neglect civil proceedings. These standards focus on court organization and administration, as well judicial selection, assignment, and education. These *Judicial Excellence Standards*, developed over three years by a multidisciplinary committee of leading judges and other professionals, were earlier endorsed by the National Council of Juvenile and Family Court Judges. They are organized as “Principles” and “Standards.”

Among the key principles are:

- Only “highly committed and specially trained judges” should hear child abuse/neglect cases.
- Judges should participate in “continuing education on a wide range of identified special issues.”
- Judicial leaders should “actively collaborate” with related outside agencies and organizations.
- Judges should educate legislators on the “unmet needs” of the courts in these cases, including sharing court performance data, so resources are provided to make improvements.

The standards include the following provisions:

- Every state should have, on the same level as the highest state trial court, a specialized court or division that controls its administration and operations. This court will hear and administer child maltreatment cases focusing on child safety, permanency and well-being, and family rehabilitation.
- Judges in these courts will also hear related proceedings governing legal guardianship, termination of parental rights, and adoption. Where appropriate, they will use a subpoena or join public agencies to help ensure parents and children receive services and benefits they need.
- Judges for these courts will be selected based on their interest, knowledge, experience, and merit. Only “highly qualified and competent judges” will be assigned to hear these cases. Rotating judges may occur only after at least three years hearing abuse/neglect proceedings. Judges

initially assigned to a case must continue to hear that case until its final dismissal.

- Judges' performance and workloads should be regularly evaluated. Their compensation and working conditions/court support services must match those of judges working at the highest level state courts. Effective caseflow management processes must be in place to reduce case delays, including state-of-the-art computer technology support. Each court should have comfortable and dignified waiting areas, children's play areas, and private meeting rooms for parents, attorneys, and case-workers.

- An annual 16-hour judicial education curricula is needed to assist judges develop and master essential knowledge in these cases and improve their compliance with child welfare laws and best practice standards. In addition, judges assigned to a specialized abuse/neglect court should complete additional instruction before hearing these cases. A mentoring system for new judges, a state "resource center" to collect information on good judicial practices, and opportunities to participate in national education programs are also encouraged.

*Howard Davidson, JD*, is the director of the ABA Center on Children and the Law, Washington, DC.

To view the text of these policy recommendations and their supporting reports, visit [www.abanet.org/child](http://www.abanet.org/child).

The ABA House of Delegates is the ABA policymaking body comprised of over 500 members. They meet twice a year at the ABA midyear and annual meetings. Except in rare cases, only the House can pass/approve ABA policy. Once approved, it can be cited as official policy of the ABA.

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## Research in Brief

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### Tips on Handling Cyberbullying, Sexting

Cyberbullying and sexting have become major problems facing school-age children, their parents, and school personnel, according to Bridget Roberts-Pittman, Indiana State University assistant professor of counseling.

"With the increase in technological devices, children are now using such to harass and harm other children," said Roberts-Pittman. "Many children have personal cell phones making it very easy to use these devices in that way. Communication in cyberspace also seems more anonymous and seems to require less responsibility on the part of the child committing the behavior."

While bullying has long posed problems for children, it has now

Cyberbullying can be defined as the use of technological devices to deliberately harass or harm another person such as through e-mail, text messaging, instant messaging, cell phones, and Internet social networking sites.

Sexting refers to sending sexually explicit photographs typically via a cell phone. At least 20 percent of teens said they have sent a sexually explicit photo through a cell phone.

"Teens and their parents are not aware of the serious nature of such an act and the potentially life-long consequences," Roberts-Pittman said of sexting.

In responding to cyberbullying and sexting issues, Roberts-Pittman

adolescence. However, a significant change could mean the child is dealing with a serious issue such as cyberbullying," she said. "Parents should be aware of signs such as anxiety, depression, their child not wanting to attend school or making a drastic decision such as quitting a sports team."

Parents also need to be aware of what their children are doing in cyberspace. While 93 percent of parents said they knew what their children were doing online, 52 percent of children said they do not tell their parents what they do online, according to Roberts-Pittman.

"Parents have a right to check their child's phone and Internet use," she said and suggested using software packages such as Spectorsoft or I Am Big Brother. "Parents need to talk to their children about cyberbullying and sexting. Children today are so saturated with technology that they might not even recognize the behavior as a serious problem."

Teens caught sexting can be charged with possession of or

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Surveys show as many as 25 percent of children are reporting being cyberbullied.

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moved to cyberspace. Surveys show as many as 25 percent of children are reporting being cyberbullied.

said parents need to be aware of major changes in a child's behavior.

"Behavior change is a part of

distribution of child pornography and be required to register as a sex offender for many years, up to 20 in Indiana.

“The Legislature has not caught up with technology,” she said. “The best message for children is ‘Don’t do it.’”

Roberts-Pittman said parents can take steps to help their children if they are involved in sexting or cyberbullying. The first is to listen.

“It is critical that children feel heard and understood,” she said. “Keeping an open dialogue about issues such as peers is not easy, but very important for children to know that they can talk to their parents.”

She said children often do not talk to their parents because they are afraid of their parents revoking their

cell phone or computer privileges. They also don’t believe their parents have the technical knowledge to understand. They also fear their parents will say “I told you so.”

A second step for parents to help their children is to know they have options, especially in responding to cyberbullying.

“They can and should talk to the police about harassment,” Roberts-Pittman said. “If the information is posted on a social networking site, they can contact the site to have the information removed.”

The third step is to save all of the texts and emails sent to the child.

“It seems to be the parent’s natural tendency to encourage their child to ignore the information and delete

but that is the opposite of what we want children to do,” she said. “Information can be tracked and traced.”

Also, parents of the child being bullied may want to address the cyberbullying with the parents of the child committing the bullying.

“I only encourage parents to do this if they have the saved information to share with the other parents,” she said.

As a fourth step, Roberts-Pittman said parents should share the information with school personnel. “The collaboration between parents and school officials is critical to address the cyberbullying and sexting,” she said.

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## Childhood Abuse, Adversity May Shorten Life, Weaken Immune Response

The emotional pains suffered in childhood can lead to weakened immune systems later in life, according to a new study.

Based on this new research, the amount of this immune impairment even enhances that caused by the stress of caregiving later in life.

“What happens in childhood really matters when it comes to your immune response in the latter part of your life,” explained Janice Kiecolt-Glaser, professor of psychology and psychiatry at Ohio State University. She explained her work at the annual meeting of the American Psychological Association in San Diego.

The study showed that for some children who experienced serious abuse or adverse experiences as kids, the long-term effect might be a lifespan shortened by seven to 15 years.

Along with research partner Ronald Glaser, director of the Institute of Behavioral Medicine Research, she looked at 132 healthy older adults who averaged 70 years old. Forty-four percent of them served as primary caregivers for

family members suffering from dementia, while 56 percent were non-caregivers.

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“What happens in childhood really matters when it comes to your immune response in the latter part of your life.”

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The researchers took blood samples from each person measuring the levels of two cytokines known to be stress markers – interleukin-6 (IL-6) and tumor necrosis factor (TNF).

They also used a series of surveys to determine the participants’ level of depression, health status, health behaviors and whether they had experienced childhood abuse or neglect. The surveys also looked for adverse events as kids such as the loss of a parent, serious marital problems between parents, or mental illness or alcoholism within their family.

Lastly, from the blood samples they were able to measure the lengths of telomeres, bits of DNA on the ends of chromosomes.

“Every time a cell divides, it loses a little bit of its DNA at the ends,” explained Glaser, also a pro-

fessor of molecular virology, immunology and medical genetics. “So the faster that process takes place, the more DNA is lost, and that’s significant.” Shortened telomeres have been linked with aging, age-related diseases and death in the elderly.

Nearly one-third of the people in the study said they’d experience some form of physical, emotional or sexual abuse during childhood. Participants who said they’d either been abused or suffered adverse experiences as kids showed higher levels of IL-6 than did those who didn’t. Caregivers in that group also had higher IL-6 levels than did those who were not caregivers.

Caregivers who had been abused as children showed higher

*(Continued on page 110)*

(Continued from page 109)

levels of TNF than nonabused caregivers or controls, whether they were abused or not. Individuals who faced adverse experiences as children showed no significant increase in TNF levels this late stage of life, the study showed.

As might be expected, participants who reported being abused showed greater levels of depression than those who weren't. But those who faced childhood adversity showed no significant increase in depression.

Lastly, the study showed that those participants who had experienced two or more kinds of childhood adversity had telomeres

significantly shorter than those who had not. Moreover, caregivers showed "significantly shorter telomere length than did non-caregiving controls," according to the report.

Earlier research by the research team has shown that caregivers already suffer ill effects from their activities. They have higher rates of depression and poorer health, their wounds heal more slowly, they respond poorly to influenza and pneumonia vaccines, they suffer more inflammation and have higher mortality rates compared to people who are not caregivers.

Kiecolt-Glaser said that the study's findings showed that "differences may be measurable in

older adults, and of sufficient magnitude to be discernible even beyond the effects of a notably chronic stressor—dementia caregiving."

That these incidents weakened the immune response even more than the stress of caregiving is very significant, given that the inflammation caused by high levels of IL-6 and TNF have been linked to health problems such as cardiovascular disease, arthritis, type 2 diabetes, osteoporosis, cancers and Alzheimer's disease, they said.

"Childhood adversity casts a very long shadow," she said.

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## Mentoring, Skills Development Improves Mental Health in Foster Children

Incorporating mentoring and group skill-building intervention programs for children in foster care may help improve mental health outcomes in this population, according to a report in the August 2010 issue of *Archives of Pediatrics & Adolescent Medicine*.

"Children who have been maltreated and placed in foster care are at risk for significant mental health problems including depression, posttraumatic stress, dissociation, social problems, suicidal behavior, attention-deficit/hyperactivity disorder and conduct disorders," according to background in the article. "Studies of Medicaid claims suggest that as many as 57 percent of youths in foster care meet criteria for a mental disorder."

Additional background information suggests that although children in foster care are in significant need of mental health services, the majority of these children do not receive the necessary treatment. Heather N. Taussig, Ph.D., and Sara E. Culhane, Ph.D., J.D., both of the University of Colorado School of Medicine in Aurora, Colo., studied 156 children ages 9 to 11 years in the Denver area who were maltreated and

placed in foster care. Participants were randomly placed in a control group (77 children) or intervention group (79 children). Children and their caregivers were interviewed before randomization, immediately following the intervention, and again six months later.

The study was conducted from July 2002 to January 2009 in two Colorado counties, and included a nine-month Fostering Healthy Futures (FHF) preventive intervention program. The FHF program consisted of two components: skill development groups and one-on-one mentoring by graduate students in social work. The skills group followed a standardized curriculum that combined traditional cognitive-behavioral skills group activities with process-oriented materials and included weekly activities that encouraged children to practice newly learned skills with their mentors. The curriculum worked to build skills in specific areas including emotion recognition, problem solving, anger management, healthy relationships, peer pressure and abuse prevention.

"After adjusting for covariates, intent-to-treat analyses demonstrated

that the treatment group had fewer mental health problems on a multi-informant factor six months after the intervention," the authors write. Additionally, children in the treatment group reported fewer symptoms of dissociation six months after the intervention and also reported better quality of life immediately following the intervention. There was also a trend suggesting youths in the treatment group were less likely to report symptoms of posttraumatic stress than those in the control group.

"Despite the cluster of risks associated with maltreatment, including poverty, high-risk neighborhoods, parental psychology, substance use and domestic violence, this study suggests that the Fostering Healthy Futures intervention promotes greater life satisfaction and better mental health functioning among maltreated youths placed in foster care," the authors write. "These are important findings given the dearth of evidence-based treatments for this vulnerable population."

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## Change is Local: State and Local Bar Projects Help Kids

What needs to change for kids in your community? Three state/local bar associations answered this question and acted. Online child victimization, disproportionality in the juvenile justice system, and children of prisoners were their concerns. The responses—all of which were awarded LexisNexis Community and Educational Outreach Awards at the ABA’s Annual Meeting in August 2010—are as follows:

**Texas Young Lawyers Association,  
State Bar of Texas**

**R U Safe? Protecting Yourself  
in Cyberspace**

Keeping young people safe online is the goal of “R U Safe?” a set of online videos prepared by the Texas Young Lawyers Association. Cyber bullying, social networking, chat rooms, sexting, and online predators create new territory for communities in Texas to keep kids safe. The videos help children learn the risks and dangers online and how to protect themselves.

The videos are geared to three age groups (elementary, middle, and high school) and one video is for parents. Excerpts from interviews with law enforcement and child advocacy experts share the latest online threats to children, safeguards children and parents can take, and strategies to intervene when online victimization occurs.

The videos sensitize children about the risks and consequences of poor or uninformed choices online. For example, many young people do not know that threatening, harassing, or bullying behavior can be a criminal offense and they can be held accountable, even if they are not directly involved. Or, youth may assume only “friends” have access to personal information. They may not know tactics online predators use to target and get close to victims or that revealing certain information

puts them at risk of becoming victims.

The videos teach children simple steps to protect themselves online, such as:

- avoiding rumors or joining in mean behavior
- protecting passwords
- using care when posting pictures and identifying information
- not sharing e-mails or information received that makes someone look bad
- treating others the way they would want to be treated
- avoiding posting full names, addresses, schools and other identifying information

The video for parents addresses safety plans, parental controls, privacy settings and child-safe browsers, and other tools they can use to create a safer online environment for children.

**Indiana Bar Association**

**Addressing Racial Disparities in the Juvenile Justice System**

Indiana, like many states, has struggled with disproportionate representation of minorities in its juvenile justice system. A January 2009 report by the Indiana Youth Institute reported that while children of color comprise 18.6% of Indiana youth under age 18, they represent 42% of juveniles who are arrested.

Seeking solutions, the Indiana Bar Association, in collaboration with the Commission on Disproportionality in Youth Services, presented the “Summit on Racial Disparities in the Juvenile Justice System: A Statewide Dialogue” in Indianapolis on August 27, 2009. The summit followed the release of the commission’s report to the governor and the Indiana General Assembly recommending reforms. The reforms provided a framework for the summit, which brought together 200 judges, lawyers, legislators, social workers, police officers, educators and others connected to juvenile justice.

Summit participants were joined by national experts and juvenile justice leaders in other states to learn about positive changes aimed at reshaping the numbers of minority youth entering Indiana’s juvenile

**Resources**

**Indiana Summit on Racial Disparities**

[www.inbar.org/ISBALinks/RacialDisparitiesSummit/tabid/354/Default.aspx](http://www.inbar.org/ISBALinks/RacialDisparitiesSummit/tabid/354/Default.aspx)

**R U Safe? Protecting Yourself in Cyberspace**

[www.tyla.org/index.cfm/projects/r-u-safe/](http://www.tyla.org/index.cfm/projects/r-u-safe/)

**Amachi Texas**

[www.amachi-texas.org/](http://www.amachi-texas.org/)

justice system. Teens who had been through the system also participated in roundtable discussions to share their firsthand experiences.

Participants discussed best practices and strategies to ensure all youth are treated fairly in the justice system. They explored how minority confinement practices, school zero tolerance policies, juvenile court referral protocols, and juvenile risk assessment strategies affect disproportionality and needed changes. After the summit, a working group prepared a final report outlining action steps to make reforms.

***Dallas Bar Association  
Amachi Texas Program***

Seeking to reduce the high numbers of children with an incarcerated parent in Dallas, the Dallas Bar Association joined with the Amachi Texas program in 2009. Amachi provides adult mentors for children of prisoners to help break the intergenerational cycle of incarceration.

In an article introducing the program, Christina Melton Crain, the 2009 president of the Dallas Bar Association, stated, "In the Dallas-Fort Worth area alone, the Bureau of Justice reports there are about 70,000 children that have an incarcerated parent. Programs such as Amachi Texas address these children's specific needs and make a difference in the potentially negative direction of their lives." Nationally, more than seven million children are estimated to have a parent under some form of criminal justice supervision, she said.

Amachi has operated in Texas since 2006 through the joint efforts of the Texas Department of Criminal Justice, the Office of the Texas Governor, Big Brothers Big Sisters of North Texas, and the One Star Foundation, a nonprofit organization. By joining the effort, the Dallas Bar Association is the first bar association in Texas to become an Amachi partner.

Amachi Texas reports that children of incarcerated parents are

five times more likely to commit a violent crime and that without intervention, 70% of these children will follow their parents to prison. Mentoring is a proven intervention for reducing the risk factors that contribute to criminal behavior among youth.

The Dallas Bar Association's participation has focused on recruiting lawyers, judges, and other legal professionals to participate as Amachi mentors. They serve as positive role models, working to help keep youth in school and educating them about the risks of criminal justice system involvement.

Change *is* local. These three efforts show how state and local bar associations can help address community-level problems that affect children. How is your state or local bar association helping children and families in need? Tell us and we'll share it in a future *CLP* issue. Send an e-mail to Claire Chiamulera, [chiamulera@staff.abanet.org](mailto:chiamulera@staff.abanet.org)

—*Claire S. Chiamulera, CLP* editor



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