

## CHAPTER THREE



# Ensuring Quality Out-of-Court Advocacy

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# CHECKLIST

## Ensuring Quality Out-of-Court Advocacy

### **Develop a good working attorney-client relationship with your father client.**

- Explain your role in helping him achieve his goals for his child and discuss that he can confide in you.
- Learn about his family, support system, current relationships, and his understanding of the child welfare system, possibly using a genogram.
- Discuss his responsibilities and help him understand how his actions influence case outcomes.

### **Establish an open line of communication with the caseworker.**

- Find out how the agency views your client, influence the caseworker through education and advocacy, and use the relationship as an opportunity to show your client understands his child's needs.
- Use the expertise of social workers in your office to communicate your client's position and needs to the caseworker.
- Do not assume the caseworker is an expert on the issues your client faces. You may have to educate yourself and the social worker on your client's needs relating to substance abuse, mental health, criminal system involvement, etc.
- Share positive stories with the worker about your client's interaction with his child.

### **Participate and prepare for child welfare staffings.**

- Review with your client before the staffing what should or should not be shared.

- Translate acronyms or lingo to your client so he understands what is happening.
- Explain to your client who will attend the staffing and each person's role.
- Be firm when necessary to get needed assistance and to save your client from appearing negative.
- If permitted, encourage your client to bring supportive relatives to the staffing.

Download this and other checklists at [www.fatherhoodqic.org/checklists](http://www.fatherhoodqic.org/checklists)



**W**hen representing nonresident fathers in child welfare cases, your out-of-court advocacy is central to overcoming the challenges your clients face. The challenges may seem obvious. Caseworkers, guardians ad litem, and judges may question the commitment or parenting ability of a father who has not been a significant caretaker for a child. They may also wonder about his involvement in or knowledge of the abuse or neglect that brought the case to court. However, because child welfare proceedings have a goal of finding a safe, permanent home for the child, they provide fathers opportunities to overcome these and other challenges. When a father shows he can play a positive role in the child's life, it increases the chances that the court may place the child with him or a family member.

You can help your client play a positive role in his child's life through three important steps:

- helping him understand the importance of his out-of-court actions;
- working with him and other professionals to allow him to take the positive steps that show his commitment and parenting ability; and
- bringing his progress to the attention of the court.

This chapter explores how your out-of-court advocacy can accomplish these three steps and help achieve your client's goals. By developing a strong lawyer-client relationship, working collaboratively with the agency caseworker, and taking an active role at child welfare meetings and staffings, you will strengthen your advocacy for your father clients.

## The Lawyer-Client Relationship

The first step to successfully representing nonresident fathers in child welfare cases is developing a solid lawyer-client relationship. Begin this relationship by helping the father understand how you, as a lawyer, can help him achieve his goals for his child. This means explaining your role and helping the father clarify his goals. Remember that prior to meeting with you, the father may have talked to caseworkers or others during the investigation of a case. Those conversations may have added to his mistrust of people involved with the child welfare system, especially if a caseworker either misunderstood him or used his statements against him. Because of this, your explanation of lawyer-client confidentiality and its limits is crucial. The father needs to know he can confide in you. This also means you and he need to agree on the circumstances when you will communicate his concerns directly to the caseworker and others, and when you will check with him before making such statements.

Once the father understands the basics of confidentiality, your next step is counseling him on his options and strategies for obtaining his goals. Start this process by developing a basic rapport and getting to know him. A first step in developing this rapport is learning about his family, support system, current relationships, and his understanding of the child welfare and juvenile court systems. Learning this information will also help you begin to understand important factors that will impact the case.

One way to learn many of these things is to work with the father to develop a family tree of his parents, siblings, extended family, children, and significant relationships (a genogram<sup>1</sup>). This diagram gives you a quick resource for understanding the people who may become involved in a case and opens the door, in a nonthreatening way, to discuss family members who can provide support, placement resources, or examples of positive relationships. It can also help the father understand the difference between nonrelative foster care and kinship care, as well as other issues he will face in court. (See *Genogram* box.)

## Setting goals and responsibilities

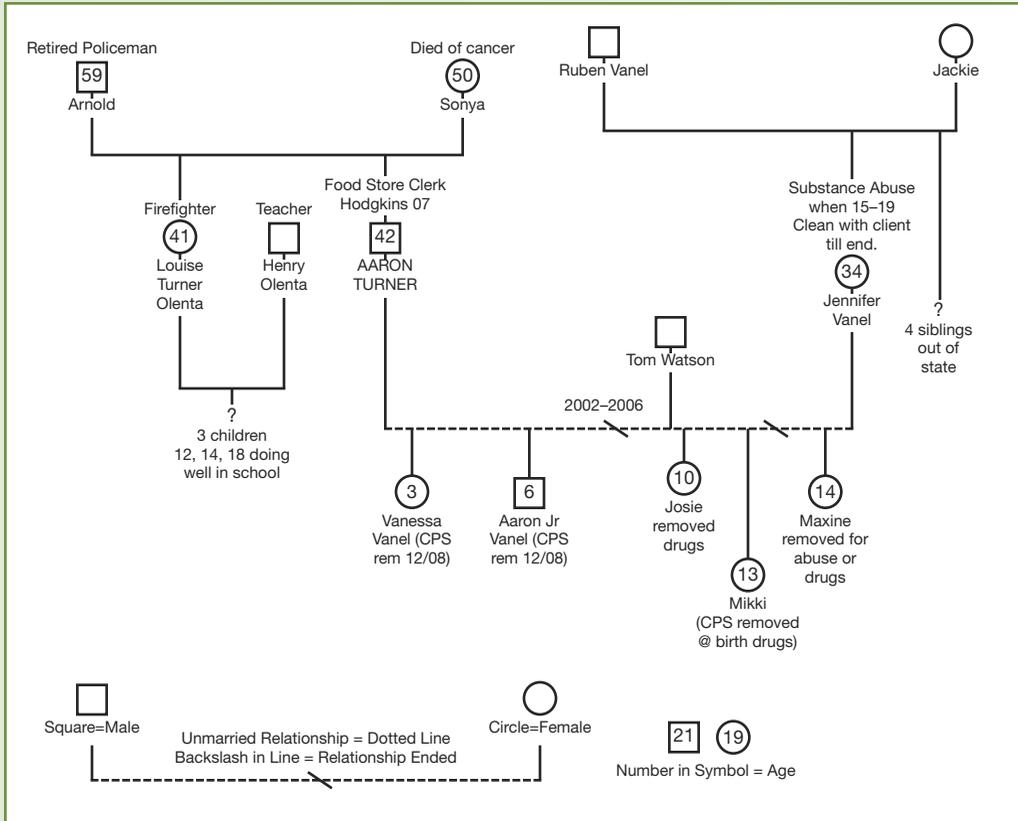
When establishing a lawyer-client relationship, work with the father to set goals and accept responsibilities. Ask questions and give him information to help him define his goals in the case. For example:

- Does he want the child to be placed with him?
- Does he believe return home to the mother is a good idea and, if so, what type of involvement does he want in the child's life?
- Does he know he can ask that the child be placed with a family member?<sup>2</sup>
  - Which family member would he prefer?
  - Are there family members with whom the child has an especially positive relationship?<sup>3</sup>

Discuss what he may have to do to accomplish these goals and explain how you can help him meet them.

When setting goals, remember the goals are not static and you will need to revisit and clarify them often. At a minimum, this should occur at all potential case-changing events. For example, one nonresident father, Aaron (see *Genogram* box), began with a goal that his father (the children's grandfather) obtain custody of his three sons. He was concerned about his long-term health and knew the children's mother had repeatedly failed to recover from substance abuse. As the case went on, however, his health stabilized, he got a job, and he gained confidence in his ability to raise his children. One year after reaching his initial goal

# Genogram



A genogram depicts families and relationships (past and present). It is beyond the scope of this chapter to fully explain how to read a genogram, but once you understand the basic representations, it becomes a valuable tool summarizing pages of information into a one-page chart.<sup>1</sup>

The genogram above represents Aaron Turner, his children, and some of his extended family. It includes the two children he had with Jennifer who are the subject of the juvenile court case. It also includes his parents and sibling, as well as Jennifer's other three children, who have a different father. A more complete genogram would include more extended family and the children's foster placements. Even in this limited scope, it shows several things:

- If Aaron cannot care for his children, at least two relatives are placement possibilities.
- His father and sibling appear to lead stable lives.

- The only children of the mother (Jennifer Vanel) who did not immediately enter the child welfare system were the ones born while she and Aaron were together—demonstrating that he appears to have had a positive impact on the lives of the children he raised even when the mother had a history of substance abuse.

The genogram provides an opening to discuss these issues. At a more detailed level, it outlines the beginnings of a theory of why the children belong in the care of Aaron's family.

**Source:**

1. McGoldrick, M., R. Gerson and S. Shellenberger. *Genograms: Assessment and Intervention*, 2d ed. New York: Norton, 1999. Special software, such as GenoPro ([www.genopro.com](http://www.genopro.com)), is available to create genograms and store them electronically.

of a placement change to his father, he established a new one—placement of the children with him. An ongoing dialogue between Aaron and his lawyer reinforced that his goal could change as the case evolved, and opened the door to Aaron discussing his changing view of his role in the life of his children.

It is also critical to address the father's responsibilities in the initial interview and reinforce them throughout the case. His responsibilities include those he must take to achieve his goals and his responsibilities to you. He may believe legal work alone can "save" his case. However, it is impossible to help a father gain custody of a child unless he shows his caretaking ability and concern for the child.<sup>4</sup> Even if the father's goal is to have the child placed with someone else, he will still need to participate in the case and services to have his voice heard. If your client understands that he can influence the case through his involvement, it can become a source of power and control for him. Help him maintain his sense of responsibility by letting him know that while you may occasionally take the lead talking to agency workers, and mental health treatment and other service providers, his actions are far more important in determining his future role. His interactions with child welfare professionals and his decisions, actions, reactions, or lack of action will greatly affect the case outcome.

Revisit the issue of responsibility repeatedly. One technique is to remind the client of your respective roles as team members seeking to accomplish his goals. When he participates in visitation or other services, use your skills as his lawyer to let the judge know about his progress. On the other hand if he does not follow through in his responsibilities, you have no positive evidence to give the

court. (“John, what are you doing this week that we’ll be able to tell the judge about next month?”)

Finally, discuss when he should contact you. At a minimum, ask him to agree to contact you when he learns of upcoming meetings with caseworkers or when he has a concern about an event. Make sure he understands he can and should call you with questions about issues such as visitation and services. Explain that in your role as lawyer it is important for you to know when he has made a mistake, such as missing a visit, or when he runs into an obstacle such as a scheduling conflict. Make sure he understands that if you know about these issues, you can then work together to resolve them, and that in-court surprises are never helpful. This is also a good time to re-discuss how lawyer-client confidentiality applies to these situations.

## Communicating with the Caseworker

While the lawyer-client relationship provides the foundation for representation, the next element in out-of-court advocacy, working with the social service staff, is just as critical. The court relies on the caseworkers, supervisors, and service providers to learn whether the father has progressed towards his goals. (See *Tips for Working with Service Providers* box.) Because of this, you will also have to establish a working relationship with the primary caseworker, even during the early stages of the lawyer-client relationship. The primary workers and their supervisors greatly influence the direction a case goes and the services parents and children receive. Some judges call them the court’s “eyes and ears.” As the lawyer for the nonresident father, informal advocacy with the worker is crucial to your case.

## Gathering information

The caseworker can be a wealth of information for you and your client. A good working relationship allows you to obtain information about the father’s progress, learn how the agency views him, and influence the agency’s position through education and advocacy.

When you accept a nonresident father as a client, contact the caseworker immediately—before you call with questions, complaints, or any other agenda. This can happen by phone or in the hall outside the courtroom on your first appearance in the case. Introduce yourself and ask if the caseworker has any information she thinks you should know. Let the caseworker know you will be in touch regularly and ask that any concerns about the father or the child be shared as they arise so you can help address them. By establishing a neutral relationship,

## Tips for Working with Service Providers

- Understand confidentiality rules for mental health professionals and make sure you have the appropriate information releases (this could include releases from the child welfare agency if the child is involved in the services).
- In the initial contact, spend more time listening than talking. This will show the service provider you respect their position and lay the foundation for a working relationship. It also allows you to gather valuable information about your client, his family, and the goals of treatment.
- Plan ahead to talk and don't wait until the last minute and then expect information from the provider. You both have very busy caseloads and likely have different schedules; the provider may often work evenings and weekends.
- Do not assume you have the same goals. Ask the provider about the treatment goals. If they conflict with or diverge from the legal case, discuss the perceived conflict and see if there is a way to address it.
- Know the rules of the agency and what will disqualify your client for services if you are helping him get services on his own.
- Remember you have a different frame of reference from service providers. You see what the court expects of your client and want to know why the agency isn't providing services to get him there. The service providers will stress "meeting the client where he is," meaning they will require him to show he wants to be in services and work toward those goals.

you lay the foundation for the caseworker to be receptive to your concerns as the case progresses. If you work together, the caseworker is more likely to return your phone calls, answer your questions, and listen to your client's concerns and progress.

One approach with caseworkers is to ask them to identify your client's strengths and areas for improvement. You can also ask what the caseworker's goal is for your client. If the worker wants your client to go to a certain service and you know a reputable provider, ask if the worker knows the provider. ("Has your agency ever worked with the North Benton Counseling Agency that Walter Evans coordinates?") While the first meeting may not be the time to demand a particular service provider, discussing the issue generally lets the worker know you are listening and you have knowledge that may be useful in crafting a solution.

Discussions with caseworkers also provide an opportunity to show your client understands his child's needs. If you and your client have talked about assessing the child's needs through special education or early intervention services, share his ideas with the caseworker or have the father do so when you meet with the caseworker. This shows that your client can focus on the child's needs. The next time the case is in court, this is a positive fact to bring up. ("After court last month Aaron asked you if Vanessa could be evaluated for an IEP.") If the father goes to an IEP meeting, bring that to the attention of the caseworker and the court.

## **Helping the worker understand your client**

Historically, nonresident fathers have played a small role, if any, in child welfare cases.<sup>5</sup> Caseworkers are often not used to working with fathers. As a result, they may resist placement with the father or may not be used to listening to a father's wishes regarding placement and services.<sup>6</sup> If you have social workers in your office, use their expertise to communicate your client's position and needs to the caseworker. (See *Social Work—Lawyer Teams* box.) In one situation, a nonresident father wanted his mother to be the placement for his infant son who was originally placed in a nonrelative home. The agency did not want to consider moving the child. Through several conversations with the caseworker, the social worker was able to address each of the agency's concerns—attachment, stability, space in the grandmother's home, contact with other family members—from a social work perspective and was able to show the agency that placement with the grandmother was clinically the best decision for the family.

## **Getting to know the caseworker**

It helps to understand the caseworker's expertise on issues in a case. Child welfare cases often involve such issues as substance abuse, developmental delays, and mental health treatment. Do not assume the caseworker is an expert in these issues. Caseworkers have a variety of education and experience, so learning their backgrounds can help you decide how to approach them. Is the worker skilled and knowledgeable about the issues specific to your client's child welfare case? If so, seek the caseworker's input on those issues. If not, you or someone with this knowledge may need to educate the worker. If your office has a social worker with expertise in this area, she can discuss these issues with the worker in a non-threatening way. This can be an asset especially if your client is dealing with an issue like mental illness or substance dependency, which agencies can see as barriers for your client.

## Social Work—Lawyer Teams

When representing nonresident fathers, it can be advantageous to have a social worker in your office who can:

- provide insight into the mental health and social service needs of your client;
- assist in advocacy with the agency;
- participate in staffings; and
- help your client develop and clarify goals.

A social worker can assist you:

- 1) **when working with a difficult client or when you need to try a different approach.** For example, in one case Michael was repeatedly venting his frustrations to the caseworker and then calling his lawyer with a crisis when the agency reacted negatively toward him. Michael’s lawyer consulted the social worker in his office. The social worker recommended calling Michael at the beginning of each week to discuss the case instead of waiting for Michael to call in crisis. The lawyer developed a lawyer-client relationship based on planning instead of crises. The father, feeling supported and empowered, was then able to make progress toward his goal of having the child placed in his care.
- 2) **when participating in case staffings.** For example, a lawyer was attending a staffing regarding a psychological assessment of her client, John. The assessment concluded John had no capacity to care for himself or others. A social worker attended the staffing with the lawyer. She explained to the clinical reviewer some problems with the original testing, such as how John’s anxiety interfered with the results, the unreliability and inappropriateness with some of the tests performed, and basic questions or observations the psychologist should have made that contradicted some information in her report. She successfully advocated for a parenting capacity assessment as the more appropriate evaluation.

These two examples show how having a social work-lawyer team can benefit the representation the lawyer provides the client.

### Sources:

Washington State Office of Public Defense Parents Representation Program. *Social Worker Practice Standards*, found at [www.opd.wa.gov/PRP-home.htm](http://www.opd.wa.gov/PRP-home.htm); Anderson, Alexis, Lynn Barenberg and Paul R. Tremblay. “Professional Ethics in Interdisciplinary Collaboratives: Zeal, Paternalism and Mandated Reporting.” *Clinical Law Review*, Spring 2007, Boston College Law School Research Paper No. 101, NYLS Clinical Research Institute Paper No. 06/07-4. Available at SSRN: <http://ssrn.com>.

## **Sharing positive stories**

Another way to help a caseworker understand your client is sharing a positive story about your client's interactions with his child. Stories have two advantages over attempts to persuade by argument. First, they reflect an event that actually happened and are client-focused instead of lawyer-focused. They tell what your client did with his child, not his lawyer's view of him. Caseworkers expect you to argue on behalf of your client. A story is less adversarial, in part because it relates an event that occurred, rather than a legal argument. Stories also create a lasting image in the minds of caseworkers and other professionals who hear them.

To use stories, begin by making sure the client knows and consents to what you are going to share. Let him know why you are telling the story to the worker. Choose a story that exemplifies a critical issue in the case such as attachment despite separation, or the ability to focus on what is important for a child. For example, one father had been separated from his children for 10 months without visitation because of his confusion about the role he could play and administrative bungling. When he finally had a chance to visit with his children, he brought the toy trucks the boys had liked to play with before the separation. He walked in the office and the boys saw the trucks and shouted, "Daddy, daddy, you remembered our favorite trucks!" as they ran up and hugged him. The lawyer shared that story with every new caseworker or therapist after they became involved in the case as an example of the attachment the boys and their father shared. The story told the worker more about the parent-child relationship than a three-hour dissertation defense in court.

## **Communicating client concerns**

You can help resolve barriers to your client's goals by communicating his concerns to the caseworkers. This requires more than listening to fathers and passing along complaints to caseworkers. It involves clarifying with the client what he wants, then proposing solutions to him and the caseworker.

## **Listening and clarifying information**

Parents in child welfare cases often complain to their lawyers about their case. Listening to the client is critical in a child welfare case because you are often the only person the father can talk to without fear that venting frustrations will hurt or sabotage his case. When a client complains for 10 minutes about visitation, first listen. Then show you understand by framing what he has said: "So you are saying that you want the visit at a location you can get to on one bus instead of three." Next ask the client if he wants to find a solution to the problem, or if he was just expressing anger about the situation. This step is important to ensure the

father really wants to solve the problem and will work with the caseworker. It also involves the father in devising the solution, rather than relying on you and the caseworker to solve it for him. It also helps him assume responsibility in a positive, nonthreatening way.

Working with a father to develop solutions also avoids problems. If he was just expressing frustration with visitation, he may have left out important details, such as his not calling the caseworker ahead of time to confirm a visit. If you simply relay the father's frustration to the worker without checking the details, you may later learn from the caseworker that the client has not taken the steps he agreed to—missing an appointment or failing to schedule a visit. When you sound surprised, the worker may believe the father misled you. When you then call the father to express your frustration with the confusion, he may become defensive or believe that rather than helping him, you are yet another “member of the system” siding with the caseworker. Clarifying what the father wants and developing a plan together forces you to discuss the issues in more detail, and avoid these dangers.

When you call the caseworker, focus your conversation on the solution rather than the complaint. This helps the caseworker feel like part of the solution. Suggest solutions your client agrees with, but be prepared to listen to the caseworker's response and ideas first. You do not need to agree with the caseworker, but listening and acknowledging you understand goes a long way. In addition to the caseworker being more willing to listen to your proposed solutions, it lets you gather information about the case and the agency's view of your client.

While solution-based problem solving is a good start, it will not always lead to success. Some caseworkers will be defensive no matter what you say. Sometimes the agency's view of your client will be shaped by prejudices about fathers, or the client's past mistakes. Other times, the caseworker will ignore your attempts to communicate or will refuse to work with you. In these situations, you may need to speak to the caseworker's supervisor. When going up the administrative ladder, it is important to know both who is in the chain of command and the written rules or procedures that govern the agency. Some child welfare agencies (especially those administered statewide) will have written rules that govern the services agencies are required to provide. Other states list them in statutes. Finally, some state court systems allow you to bring complaints to the court either through motions on issues like visitation or specific services, or through motions asking the court to find the agency has failed to make reasonable efforts.

When all attempts to work with the agency have failed and the problem is negatively affecting your client's ability to work toward his goals, you may need to consider administrative approaches or request court intervention. You should

also use a solution-based approach in drafting and presenting a motion. Rather than just asking a judge to make a negative finding to slap an agency's wrists, your motion should propose a way to fix the problem. When you ask for a finding of no reasonable efforts because an agency failed to provide adequate visitation services, you should also show what your client wants—visitation scheduled around his work hours.

## Setting boundaries

One final thing to keep in mind as you are working with your client's caseworker is setting appropriate boundaries. It will help you gather information about the case and the agency's view of your client if you are friendly with the caseworker. But you must be careful not to compromise your relationship with your client. Do this by being a good listener without sharing your client's confidences. Similarly, you may need to tell the caseworker about how your client's mental health impacts his daily living without revealing detailed personal information that the agency doesn't already know. This can often be accomplished by discussing general expectations for a person in recovery from alcoholism, for example, and what supports have helped others in similar situations.

## Child Welfare Staffings

The term “child welfare staffing” refers to the numerous meetings between caseworkers, clients, service providers, and sometimes lawyers that occur throughout the child welfare case. Some occur informally among child welfare agency staff alone, such as when a worker meets with her supervisor to discuss case issues. Some are required by state law or rules, such as meetings to decide major issues in a case such as return home.<sup>7</sup> Agencies use staffings to develop case plans with parents and to develop special education plans for children. Remind your client throughout the case to tell you about any upcoming meetings he has with agency staff and be sure to regularly ask his caseworkers about upcoming meetings. You can also suggest a meeting to discuss issues. When you learn about a meeting, ask if you can attend. If the child welfare agency has rules outlining meetings, such as child and family team meetings or case reviews, find out whether lawyers can attend. Many of the skills lawyers need at these staffings are similar, regardless of the type of staffing.

## Preparing for staffings

While staffings can appear to be “one more thing” for you to do, they provide opportunities to advocate for your client and move the case toward his goals.

Once you learn about a staffing, prepare for it by learning its purpose, who requested it, and who will be present. Obtain this information from the agency caseworker or the child's lawyer. Before any staffing, review your client's goals with him and discuss what information you may or may not share.

Plan what information you will communicate at the staffing, how you respond to information presented, and when you will argue and when you will listen. It is empowering for your client to understand this ahead of time. It helps him know that if you choose not to bring up a concern it does not mean you will never bring it up. Instead, it simply means that one set point in the meeting is not the most advantageous time to do so. Make a list of the client's key concerns, as well as ones you think are important. Then discuss the list with the client and prioritize them. Alert the client that you may bring up issues or stories that you think will help his case. ("I know you have heard the toy truck story many times, but it is important for this group to hear it so they understand how focused you are on your children.") Finally, develop a way for your client to let you know if he wants to talk to you alone during the meeting. The social service staff at the meeting might interpret a client's request to talk to his lawyer negatively ("What is he hiding?"). Because of this, if your client gives you a signal indicating he wants to talk, tell the staff that *you* want to talk to your client. ("I need to talk with Aaron about something; could you give us a minute?") Better that they draw mistaken inferences about you than your client.

Additionally, if the staffing allows the father to bring other supportive relatives, encourage him to do so. In one case, a father received emotional support and consistent feedback from his girlfriend, a leader of a neighborhood community organization. She came to every staffing with him, never saying more than one or two things. Her presence, however, helped the father in two ways. First, her being at the meeting made him more at ease, which in turn helped him to speak more clearly and calmly about his concerns. Second, it told the caseworkers that he was able to have a healthy relationship with a woman who was a positive force in the community.

## Defining your roles

When the staffing begins, make a simple diagram of the names and titles of everyone at the table. That way you will know who the players are and their roles without repeatedly asking. Have a notepad, but don't take detailed notes—record only what is important.

Advocating for the father's position requires you to move beyond being a mouthpiece for your client. While you remain an advocate at the staffing, the roles you play differ from those in court. No rules of evidence or procedure govern

the staffing, so you can ask leading or open-ended questions. Remember that your role can be flexible, and that you can wear different hats during a meeting. These include being a sounding board for your client's concerns, developing plans the client can follow, and serving as a translator by explaining the child welfare system's rules and requirements to the father and explaining the father and his relationship to his child to those in the system.

### **Translator**

As a translator, you will often have to explain some of the staff's language to the client so he can understand. At one staffing, the social work staff kept wondering if the client had "anecdotal" about his son. Neither the father nor his lawyer understood what the agency wanted, so the lawyer asked. Doing so made the lawyer look confused, not the client. The agency was looking for stories that exemplified the child's problems with attention deficit disorder. The client was then able to rattle off story after story of the child's previous problems with staying on task, and how the client sought help for the child. Similar instances occur when agency staff use agency jargon. A caseworker asks, "Do you understand all the issues in your 600?" The father needs to know that the "600" is the case plan the workers are asking him to follow.

### **Advocate**

In your advocacy role, sometimes you will find yourself playing the bad lawyer with good intentions. The goal of this role is to take the agency's heat for demanding things, instead of the client. If you know the agency should be following a visitation rule that requires it to arrange visitation weekly, say so. If the agency makes excuses, empathize while stressing it must follow the rules. As your client's lawyer, you need to take the legal steps available, administratively or in court, to compel them to follow the rules. Once again, it is better that the agency get angry with you for pushing the rules, than at your client.

### **Facilitator**

You may also be a facilitator. Look for opportunities for your client to explain his concerns to the agency staff. You can respond to a worker's concerns by asking your client to talk about a particular issue. For example, when a worker says she wants your client to attend family therapy at a specific time, and you know the client's work schedule is inflexible that night, you can ask the client to explain. "Andre, could you tell Ms. Munson why you have to stay late on Wednesdays?"

Similarly, if a staffing is focusing on why a father wants his brother to be the children's placement, asking the father to tell the worker about how the brother

and his wife successfully raised their own children can accomplish several goals. It empowers the father, who is able to speak positively about his family, and tells the social service staff that the client can describe what positive parenting looks like. It also describes the family's ability to care for children. Finally, it creates another opportunity for you to bring your client's out-of-court work into the courtroom when you question the worker. ("Do you remember Aaron being at the April 6 staffing? On that date, he said he could not do therapy on Wednesday afternoons because he had to work late.")

### **Storyteller**

Sometimes it helps to return to your role as a storyteller at the staffing, using vignettes about the client and child to make points, show a skill the client has learned, or highlight his ability to advocate for his child's needs. In addition to you directly telling a story, you can also ask the caseworkers who have responded to your client positively to tell the group what they have seen on visits or at other parent-child interactions. For example, a therapist had heard the foster parents tell a story about how a three-year-old child showed attachment by letting her father (and not anyone else) sit with her on her favorite blanket. When the therapist told the story to those at the staffing it showed far more about their relationship than merely saying the father and daughter had a positive attachment.

### **Negotiator**

The lack of formal rules at a staffing lets you, at times, get to a point you want to reach and negotiate a desired outcome. In Aaron's example, discussed earlier, the agency wanted a meeting to convince him to sign consents to adoption. Aaron brought his father (a retired police officer) and his lawyer to the staffing. When the agency started with its goal, the lawyer, Aaron, and his father were able to bring the conversation around to the grandfather's availability as a placement option and a state requirement that the agency consider relatives. When a worker later discovered concerns about the nonrelative foster parents, Aaron's father became the logical and safe place for the children to live.

### **Closing the staffing**

At the end of the staffing, if an agreement has been reached, confirm it verbally at the meeting then promptly follow up with a letter. Confirm other important issues such as work/therapy conflicts. The letter should not be confrontational. ("Thank you for agreeing to increase Mr. Wilson's visits to twice a week and understanding that his work conflicts with scheduling therapy on a Wednesday.")

Such language confirms the end result better than legalese and supports a positive long-term relationship between your client and the agency.

If a meeting is designed to create or amend a case plan or other written document, be sure your client and you agree that the case plan tasks further your client's goals and the well-being of the child. Also be sure that the client can meet the tasks. If you disagree with a proposal, frame your disagreements in terms of the child's interests as well. ("From a three year old's perspective, the visit should be in a place where he can have fun and play with his dad, not at a table in a busy McDonald's.") Before signing the plan, ask to talk with your client to review the proposed plan. Ask him if he is sure he can take the steps the agency is asking him to take. Tell him this is the time to ask for other changes if he wants them.

## Bringing Information to the Court

Each time you go to court, have a list of things you want the court to hear about your client. These might include his attendance at school events, his new insight into an issue in therapy, his plan to present his father as a placement option, or his clean drug screens. Because child welfare cases can occur over a long period, it is important to let the judge know the positives about your client every chance you get.

Look for opportunities to bring information about the father to the court's attention. Give details at the hearing, such as at a permanency hearing where a client's positive visitation and follow-through with services are relevant. If it is not directly relevant, such as at a status hearing on procedural issues, mention it quickly and ask the court if it wants testimony. For example, if a case is just up for discovery status you can say, "Judge, I just wanted to let you know that Mr. Wilson was at his son's IEP meeting last week. Because he was not the foster parent, he did not have final say on the plan, but could provide input. If you want testimony on the issue he can provide it. . . ." As noted earlier, you can use the information gathered at staffings, such as discussions or agreements about visitation or services, in court. Since your client was present, he can confirm conversations even if agency staff balk at it. You can also use your confirming letter or written agreements.

Court dates are also important for fathers who are not making progress. They become the first step in revisiting the issue of responsibility. When a judge hears a father has not followed through on visitation or treatment, schedule a meeting with the client to figure out his future relationship with his child and the future of the case. This needs to be more than words in passing in the hall as you leave the court. Remind him directly that when you began working together, you told

him that it was his responsibility to take steps to visit the child. Tell him again that when a judge hears he is not visiting, it tells the judge he doesn't want to be involved in the child's life. When he protests, tell him that your job as a lawyer is to tell him what he needs to do to persuade the judge—and not showing up at visits or therapy sends the wrong message. Remind him that part of your job is to bring all the positive steps he has taken to the judge's attention, and that when he has not taken those steps, you have nothing good to tell the judge.

Next, give him a reality check. Ask him what he wants. Does he really want custody? Let him know that he is free to take another path. If he wants custody, he needs to change. Whatever his goal, explore the concrete steps needed to achieve that goal, and have him decide if he is committed to taking those steps. If he says he wants custody, or increased visitation, ask him what he thinks he has to do to achieve that goal. If he wants his mother to become the child's substitute care provider, discuss steps to achieve that goal. Ask him if he is going to take those steps. If he says he will attend visitation, go to a doctor's visit with the child, or call his mother, tell him to call you immediately after the event. When he calls after following through, give positive feedback. ("Now that's something we can let the judge know.")

"I've never felt how I felt when ...my son was born...he's changed my life.... I got this second shift job when he was born, and I've had it for almost three years now. It's changed my life a lot.... He's really shown me what love is."

—*Nonresident father*

## Conclusion

As a lawyer for a nonresident father you can help your client and his children in a number of ways. If your work helps him achieve custody of his child, you may believe that you have accomplished a victory. But custody is just one possible positive outcome. A father may be happy to see his child raised by a grandparent or supportive foster parent. A father of an adolescent in residential care may decide it is better to support his child through visitation, and as a placement resource for the future. What remains consistent throughout your work, however, is your role: helping your client explore and choose from his legal options, working together to identify the steps he needs to achieve those goals, and bringing his progress to the attention of the court and other decision makers.

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## Endnotes

1. For a discussion of genograms in child welfare cases, see Koh Peters, Jean. *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions*, 3d ed. Lexis Law Publishing, 2007, 114-119.
2. Recent research shows that children in kinship care have significantly fewer placement shifts than children in nonrelative foster care, are less likely to remain in foster care or to have additional allegations of abuse or neglect, and are more likely to achieve reunification. Winokur, M. et al. "Matched Comparison of Children in Kinship Care and Foster Care on Child Welfare Outcomes." *Families in Society: The Journal of Contemporary Social Sciences* 89, 2008, 338-346.
3. Section 103 of the Fostering Connections to Success Act, P.L. 110-151 (2008), now requires that "within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child . . . subject to exceptions due to family or domestic violence." Notice must be provided of the child welfare case and how relatives can become involved in the care of the child.
4. "Arguably . . . the most significant and central question in most dependency cases is not whether a parent committed "neglect" but whether and when a child can return home safely." Cohen, J. and M. Cortese. "Cornerstone Advocacy in the First 60 Days: Achieving Safe and Lasting Reunification for Families." *ABA Child Law Practice* 28(3), May 2009, 34.
5. Malm, K., J. Murray and R. Geen. *What about the Dads? Child Welfare Agencies' Efforts to Identify, Locate and Involve Nonresident Fathers*. Washington, D.C.: U.S. Department of Health and Human Services, Office of the Assistant Secretary of Planning and Evaluation, 2006.
6. *Ibid.*
7. In some circumstances, these staffings include mediation, case reviews, clinical reviews, case plan reviews, and staff decision-making meetings. They can even be child and family team meetings, and family decision-making meetings. States and agencies have different names for staffings and use them for various purposes.