

LAW

IDENTIFYING THE BEST INTERESTS OF THE CHILD IN PROTECTION PROCEEDINGS: NINE GUIDELINES FOR THE CHILD ADVOCATE

—by Donald N. Duquette

Increasingly, judges appoint court appointed special advocates (CASAs) to represent children in child abuse and neglect proceedings. Like lawyers, CASAs are charged with looking out for the "best interests" of the child. Unfortunately, although the phrase "best interests" sounds noble, it provides little practical guidance for the child advocate.

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Identifying the best interests of any particular child is difficult because there is no universal standard for "best." A cross-cultural view reveals a variety of parenting practices around the world, and a variety of views about what constitutes good and bad treatment (Korbin, 1987). One of the few universal standards of child rearing is that children should not be harmed. That is, children should be protected from maltreatment considered *in that culture* to be physically or psychologically harmful. But when the focus of attention shifts from the relatively clear goal of preventing harm toward the goal of achieving the best interests of the child, difficulties abound. The difficulties multiply with older children, whose wishes must be given serious consideration.

Rather than strive to realize an abstract goal such as best interests, the advocate should focus on meeting concrete needs shared by most children.

1. Protect the child from harm. This is the goal of the entire child protection system, and must always be at the forefront of the advocate's mind.

2. Assure minimally adequate food, clothing, and shelter. The child's need for food, clothing, and shelter is hardly ambiguous. The advocate should ensure that wherever the child lives, the youngster's basic needs are fulfilled.

3. Preserve the family—if it's safe for the child. Children face a risk of over-intervention when removed unnecessarily from the family home, and of under-intervention when those responsible fail to act decisively when necessary. An advocate can help ensure that all reasonable efforts are taken to protect the child at home. But the child's interests in protection from harm should not be sacrificed for the sake of giving the family a chance. The increasing emphasis on family preservation is appropriate; but the child advocate must be vigilant for the safety and interests of the individual child.

4. Disrupt the daily living pattern of the child as little as possible. The child has an interest in continuity of placement. If the child must be placed out of the family home, disrupt the child's daily living pattern as little as possible. Place the youngster in the most familiar and most family-like setting available. Ordinarily, maintain family, neighborhood, church, and school ties as much as possible.

5. Inform the child and consider the child's views. An independent advocate for the child can play an important counseling role by humanizing the process for the youngster and making court proceedings less mysterious, and therefore less stressful (Oran, 1989; Oran & Oran, 1990). The advocate's "client counseling" role is distinct from that of the psychological counselor, caseworker, or big brother or big sister. The youngster may need assistance of these sorts, and the advocate should secure such services. But the advocate's job is not to be the support system for the child, but to see that one is in place.

The advocate counsels the young client in several ways: first, by explaining the child protection process. The advocate should explain the legal process and the advocate's role in terms the child can understand, inviting and answering questions at every stage.

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The advocate's second counseling responsibility is to listen to the child. The child's wishes are often not clear initially. The advocate can help clarify the child's thinking. What would the youngster like to happen? What are the child's concerns? "What can I tell the judge for you?" "What do you want to tell the judge?" Such consultation is a form of empowerment for the child. When an older child takes an initial position that seems unreasonable, the advocate discusses the consequences of such a position—much as a lawyer does with an adult client. With a young child, the advocate may tell the court the child's preferences and then advocate another position.

Howard Oran's work shows that these steps serve to reduce the child's anxiety about court and foster care experiences (Oran, 1989; Oran & Oran, 1990).

6. Coordinate, coordinate, coordinate. The child has an interest in the coordination of the various social services and courts that may be involved in his or her life. Sometimes criminal proceedings or divorce/child custody actions proceed without coordination with child protection proceedings.

Sometimes one agency adopts a strategy inconsistent with that adopted by another. The school system may not be talking with the foster care worker or the mental health agency. The advocate needs to have authority to enter all proceedings on the child's behalf and to discuss the child's needs with all relevant social, educational, law enforcement, and judicial organizations.

7. Attend to the child's sense of time. "Placement decisions should reflect the child's, not the adult's, sense of time" (Goldstein, Freud, and Solnit, 1973, p.40). As well-accepted as this concept is, judges, lawyers, social workers, and others forget it in the pressure of handling many cases. Overburdened caseworkers may not be as sensitive, as careful, or as skilled as they would be under less taxing circumstances.

It is difficult to defeat the "culture of acceptable delay." Do not let such lapses occur to the detriment of a child. Perhaps the most critical decision in the child protection process is whether to place the child outside the home in the first place. If the child is to be removed from the family, removal should usually be for the shortest time possible. If services to the child and the family are necessary before reunification, the services should be identified accurately and provided promptly. Do not let time slip away.

8. Expedite permanency planning decisiveness. The ultimate permanency planning goal is to provide the youngster—*as soon as possible*—with a stable and secure home environment in which to grow to adulthood. If, despite all therapeutic efforts, parents prove unable to establish a suitable home for the child in a reasonable period of time, the advocate should act decisively to seek an alternative permanent placement for the child.

9. Be sure the professionals follow through. The child has an interest in making sure adults keep promises. Busy agency professionals may see periodic calls from advocates as helpful reminders or unrelenting nagging. Whatever the reception, however, the advocate's job is to keep reminding: "Is that psychological exam arranged yet?" "Are the home visits organized?" "Is that petition filed yet?" "Who is going to do what, when?" Ensuring follow-through is often the advocate's most vital role.

Conclusion

Although the interests of any particular child may be subjective and unclear, the nine interests identified above are common to the vast majority of children. The child advocate who operates with these interests in mind serves the child's best interests well.

References

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