

FOUNDATIONS OF PARENT ADVOCACY

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A Parent's Opinion

“When I arrived at court that morning, I was told this is my lawyer. My lawyer sat down with me five minutes, asked me a couple of things, and told me to admit my drug addiction. I didn't know anything about a fact finding hearing. I wasn't told what my rights were. I wasn't told the procedure of the court. I didn't have any idea what was happening, and I was very much afraid, because the important thing in my life had just been lost.”

We are here to:

- Protect Civil Liberties
- Empower Parents
- Produce Better Outcomes for Children

Safeguard Civil Liberties

- Fourteenth Amendment protects a parent's right to direct the care, custody and control of their children
- Don't have to be model parents
- Described as “perhaps the oldest of the fundamental liberty interests” recognized by the Supreme Court

Protect this right against the awesome power of the State

Santosky v. Kramer, 455 US 745 (1982)

“The State’s ability to assemble its case almost inevitably dwarfs the parents’ ability to mount a defense. No predetermined limit restricts the sums an agency may spend in prosecuting a given . . . proceeding. The State’s attorney usually will be an expert on the issues contested and the procedures employed at the factfinding hearing, and enjoys full access to all public records concerning the family. The State may call on experts in family relations, psychology, and medicine to bolster its case. Furthermore, the primary witnesses at the hearing will be the agency’s own professional caseworkers whom the State has empowered both to investigate the family situation and to testify against the parents.”

Burdens Imposed By The Constitution

- State must prove parental unfitness prior to removing a child from a parent's custody. *Stanley v. Illinois*, 405 US 645 (1972)
- State must prove grounds for termination of parental rights by **clear and convincing evidence**. *Santosky v. Kramer*, 455 US 745 (1982); In certain situations, State must provide counsel for parents in termination of parental rights proceedings. *Lassiter v. Dep't of Social Services*, 452 US 18 (1981)
- “Few consequences of judicial action are so grave as the severance of natural family ties.” *M.L.B. v. S.L.J.*, 519 US 102 (1996). “Unique kind of deprivation.”

Empower Parents

- Give parents a voice
- Make sure the system gives them a fair shake
- Make sure they are treated with respect. Preserve their dignity
- Procedural Justice: The fairer the process, the more likely it is that the parent will engage with the system

We do that by:

- Translating the process to the client so that the parent can understand the risks and consequences of each stage and what she needs to do
- Advocating in court for the client
- Advocating out of court ensuring that services and parenting time are available
- Keep the client involved in his/her child's life

Effective Advocacy = Better Outcomes for Children

- Parents more likely to engage and collaborate
- Improve quality of decisions made by courts by testing information. The agency gets its wrong sometimes.
- Increase options for the court through creative advocacy
- Inject a sense of urgency in the process. Impatience is a GOOD thing. Don't be complacent

Results of Washington State Pilot Program

- During pilot period, attorneys had lower caseloads, higher salaries.
- 50% higher rate of reunification
- In over half of cases in which termination of parental rights resulted, consent order was entered preserving some relationship between parent and child post termination.
- Expedited the proceedings.
- Conclusion: “The enhancement of parents’ representation has the potential to save increasing millions in state funding on an annualized basis.”

Four Essential Principles

I. Know your client

Our clients have no reason to trust us.

We are:

- Privileged
- Member of the “lawyer class”
- Someone who will be going home to children at night
- Someone who doesn’t know how they feel
- Someone appointed by the same system that authorized the removal
- Yet another person who is going to tell them what to do

Our clients are:

- Poor
- From disadvantaged communities
- Primarily women
- Individuals who've just had their children taken away from them
- Confused, frightened, upset, angry, hostile
- Individuals who may have serious problems: drug use, domestic violence, mental illness, etc.

How do we earn that trust?

Words alone will not engender trust

- Do something to demonstrate that you are different from the others.
- Define your role through your actions to opposing counsel, the judge. Your client is watching.
- Avoid your cell phone
- Stand with your client (instead of “the club.”)
 - When you have extra time at the courthouse, make it client focused.

Treat them with respect

- Listen. Let them tell their story. Avoid unnecessary interruptions.
- Give them your business card. Establish the professional relationship.
- Arrange for follow up meeting(s) after court. Meet at convenient locations.
- Respond promptly to their phone calls.
- Bottom line: The fact that you are court-appointed should not alter your relationship with your clients. The Rules of Professional Conduct still apply.

II. Determine what the case is about? The Past or the Future

Goals: Is it to fight about the past or to show change for the future.

- If this the issue is whether s/he did it, then this resembles a traditional criminal trial set up so
- If it's a recovery case then talk about limiting damage and using adjudication as a step forward.
 - What can you do to show that your client is making some progress. Do this at every hearing

Past v. Future

- **How You Explain things to the Client**
 - “You may be wronged, but you are going to have to make it right.”
 - What the client will need to do to make progress.
 - Do they start participating in services immediately?
- Recovery is powerful & universal.
- Where you put your efforts:
 - Courtroom vs. Outside the courtroom

**III. Keep your clients
involved in their children's
lives.**

Importance of Keeping Parents Engaged

- After removal, parents are likely to hit rock bottom.
- Easy for them to feel frustrated, alienated and want to drop out of the process.
- They are scared that their child is living with a stranger. Think about what you've heard (and what you know to be true) about foster care.
- Their anger and fear may prevent them from making sound decisions.
- The system will want to shut them out.

We need to keep them engaged in their child's life.

- Parenting Time. Make sure they understand the importance of making each visit
- Attend school/IEP meetings
- Attending case planning meetings
- Attend medical appointments
- Talk to foster parents about the child
- Receive updated information about the child (report cards, evaluations, etc.)
- We get them information about their child and the case, including court orders, court reports, etc.

We need to help them build a relationship with the caseworker

- Transform anger into cooperation. Let them vent to you. Acknowledge, validate and normalize their emotional response.
- We can model good behavior.
- “Fight” in court, cooperate and problem-solve outside of court.
- Remind the client that they will get their day in court (if they want it).
- Until then, they need to show the caseworker that they are different than “the typical parent.”

How do clients do this?

- Return phone calls
- Provide information (relevant documents)
- Be on time
- Keep notes/track of everything.
- Demonstrate that they are the expert regarding the child. Get them a notebook or a planner
- Be consistent
- The little things matter and first impressions will shape the entire relationship
- Remind them that the agency always has the upper hand. Constant bickering will only make things worse

We need to help clients establish relationships with the court.

- Be on time
- Dress professionally
- Proper decorum (i.e. no verbal outbursts)
 - Give them pen and paper to note concerns.
- Remind client that you are there to speak on their behalf. If they want to speak, ask court for permission.
- Don't assume that your clients know all of this. You know the rules of the game, they don't.
- Don't underestimate the "likeability factor."

IV. Relationships, relationships, relationships

Relationships with who?

- Relationship with your client
- Relationship with the court
- Relationship with the other players

How do I establish a relationship with the court?

- Competence, Professionalism and Trust
- Know the facts (and the law) better than anyone else in the courtroom. Anticipate each question and know the answer.
- Be on time.
- Be courteous [to the judge, to the other lawyers and to the staff]
- Be truthful (i.e. don't overstate your case, acknowledge your weaknesses)
- Know when to stay quiet

“The real art of conversation is not only to say the right thing at the right place but also to leave unsaid the wrong thing at the tempting moment.”

Relationships with other actors

- Case worker
- Guardian ad litem
- Other attorneys
- Service providers (parenting coordinator, therapist, drug treatment providers)
- Extended family

How to form these relationships

- Treat everyone (yes, even nonlawyers) with respect.
- Learn to disagree without being disagreeable.
- Communicate outside of the courtroom. Work on issues in non-emergency situations.
- Need to offer them something
 - Information
 - Potential solutions to problems
 - Action

Benefits of relationships

- Get up to date information from others
- Convey better image of your client. Show others that your client cares
- Creative problem-solving
 - Going to court should be the last resort. Try to solve problems in other ways. Too often, we don't think about cases until we're at a hearing. Attend staffings

Resources

- ABA Center for Children and the Law: Parent Representation Project-
http://www.americanbar.org/groups/child_law/what_we_do/projects/parentrepresentation.html
- National Conference – July 10-11, 2013, Washington, DC.
- Parent Attorney Listserv