



SUMMER 2011

Commissioner Column: Judge Leonard Edwards (Ret.) on Engaging Fathers



Judge Leonard Edwards (Ret.) is the Judge-in-Residence at the Administrative Office of the Courts' Center for Families, Children & the Court. Before retiring, he served for 26 years on the Superior Court of Santa Clara County, primarily in juvenile court. He now spends his time working with courts around the state and around the country. He has been a commissioner of the California Blue Ribbon Commission on Children in Foster Care since its inception in 2006, and also serves as a member of the Child Welfare Council.

Non-custodial fathers infrequently appear in child protection proceedings. Some fathers cannot be found; others do not want to participate; some state laws make it difficult for the father to know about the proceedings or participate; some mothers do not want the father to know of the proceedings; and social workers sometimes are ambivalent about engaging the father. Many observers consider juvenile dependency court a "Mother's Court," focusing on reuniting children with their mothers while fathers remain on the periphery. In spite of all of these barriers, from a judicial perspective and from a child's perspective, fathers should be involved in the child protection process.

There are many reasons for this. A father's involvement may result in better outcomes for the child. The father may provide placement for the child; he may be able to develop a positive relationship with the child; he may be able to provide resources for the child; and his relatives may be available for placement if neither parent is able to do so. Children need to know who their fathers are, and, if possible, have meaningful connections with them. Fathers' engagement in the child protection process will enable this to happen.

Unfortunately, our nation's history and laws seem to devalue and punish unmarried parents and their children. Children of unmarried parents have been given names such as "bastard," "son of a bitch," and "illegitimate," while their mothers are called "whores." These terms come from medieval times when marriage was important for purposes of inheritance, and the Christian religion emphasized marriage as the proper and exclusive setting for having children. Our laws still reflect a prejudice against unmarried parents. In modern child protection proceedings, however, the child's best interests are the focus of the proceedings. The child does not know or care (at least early in life) whether his parents are married. The child wants to know his family, the entire family, and that includes the father and his relatives.

If courts are truly going to serve the best interests of children, fathers and their families need to be identified and engaged early in the proceedings. Judges have a significant role to play in the identification of fathers and can greatly influence whether a father will participate in child protection proceedings.

A judge can do the following:

1. **Identify all possible fathers as soon as possible.** While this inquiry can begin with the social worker or other state official who brings the child's case to the court, the judge should also question

the mother and other relatives about the identity of the father.

2. **Question the mother under oath regarding the identity of the father.** By asking questions in a formal court setting and stressing the importance of the inquiry, the judge is more likely to gain information than anyone else in the court system.
3. **Determine where the father or potential fathers are located.** This inquiry will place responsibility on the social worker to investigate jails, prisons, motor vehicle records, child support records, and many other places where the father may be located or where information about his location may be obtained. The degree of success in such a search will be related to the standards that the judge sets for the investigating social worker and the emphasis the judge makes on addressing this issue.
4. **Order the social worker to follow up on any information regarding the father that is produced at court hearings.** The social worker should be taking notes when the judge is questioning the mother (or other family members) concerning the identity and location of the father. The social worker should also be ordered to report back to the court on the results of any search.
5. **Order the social worker to personally serve all possible fathers with notice of the court proceedings and take reasonable steps to make it possible for these men to attend the court hearings.**
6. **Insist that caseworkers use good faith efforts to identify, locate, and support the father throughout the child protection process.** In the United States the judge should be prepared to use the “no reasonable efforts” finding should the social worker not carry out these judicial orders.
7. **Revisit the questions of identity and location of the father at all subsequent court hearings.**
8. **When a potential father comes to court, let him know that the court is pleased that he has appeared because he is an important person in the child’s life.** Inform the father that once his paternity is established that he will be treated as a parent in all subsequent court proceedings.
9. **Order that paternity testing be completed as soon as possible at state expense.** The payment for the testing should be provided by the children’s services agency, the child support agency, or other appropriate state agency.
10. **Appoint counsel for the father at state expense immediately or at least as soon as paternity has been established with the possibility of reimbursement considering his financial means.**
11. **Order visitation between father and the child.** Make it clear to the father and all participants in the court process that the father will be considered for placement. If the father is incarcerated, consider alternative means of contact such as telephone calls and letters.
12. **Take steps to identify the father’s extended family and ensure that they know about the legal proceedings and know that they will be considered as possible placement if placement is necessary.**
13. **Permit the extended family to participate in group decision-making processes, visitation, and court hearings.**
14. **Determine if the father is a danger to the mother or to the child and make appropriate protective orders.**
15. **Encourage the development in the community of services that will meet the needs of fathers.** These could include parenting classes for fathers, parent coaching, fathers mentoring fathers, and other gender-based programs.

Children need to know who their fathers are. They need to know who all of their relatives are, not just those on the mother’s side of the family. Children will fare better in life when they are connected to their entire family. This is particularly true in child protection proceedings when the state has to intervene on behalf of a child. The identification and engagement of fathers and their families can be greatly enhanced by the leadership and actions of the juvenile court judge.