
Juvenile Law Reader

Youth, Rights & Justice

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"Children's lives
are put on hold...
They are moved
around like a piece
of furniture."

A Quality Lawyer

Litigation Journal Article
Outlines Importance of
Counsel for Children

In the fall 2011 issue of *Litigation Journal*, Lauren Girard Adams, Lourdes M. Rosado, and Angela C. Vigil discuss the difference a quality lawyer can make for a child. All three authors are members of the Children's Rights Litigation Committee of the Section of Litigation. The article is titled: "*What Difference Can a Quality Lawyer Make for a Child?*"

Using a variety of cases as examples, they highlight a few of the myriad ways in which lawyers for children are critical in both abuse and neglect cases, as well as in delinquency cases. One example cites a teenage girl who was an honor student and who had never been in trouble with the law. She was sent to a boot camp by a judge for having

less than a gram of marijuana in her car. Her parents had been asked by a probation officer to sign a piece of paper when they arrived at court for her hearing. Only after the hearing did they learn that what they had signed was a waiver of counsel form.

The authors quote Laurence H. Tribe, professor of law at Harvard Law School and former senior counsel for the Access to Justice Initiative at the U.S. Department of Justice as saying: "The consequences of juvenile adjudications are serious and long term; the lack of representation can reshape a child's entire life. Being found guilty can mean expulsion from school, exclusion from the job market, eviction from public housing, and exclusion from the opportunity to enlist in the military. It can affect immigration status."

Another example cited by the authors is that of siblings without counsel who are separated, the boy placed in a non-relative foster home, and the girl with the maternal grandmother, despite the siblings' desire to

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be together and placed with the paternal grandparents. "A lawyer would have had several attorney-client protected conversations . . .," write the authors, "and would have learned that the maternal grandmother's house is not an appropriate placement . . . because of the sexual abuse inflicted on [the girl] by the maternal grandmother's boyfriend."

Shari F. Shink, founder and president of the Rocky Mountain Children's Law Center in Denver is quoted as saying: "We all want to believe that the Child Protection System is benign, that everybody is looking out for the best interest of those children. Well, that system needs to act like an emergency room and it doesn't. There is no sense of urgency. Children's lives are put on hold. They are denied access to family and siblings. They are denied treatment. They are moved around like a piece of furniture."

The authors urge: "The first critical step to protecting the rights of children facing the consequences of state power is to provide them the same protections afforded adults and require that every child in every dependency or delinquency proceedings be appointed counsel immediately upon the initiation of legal proceedings."

For the full article (subscription required): http://www.americanbar.org/publications/litigation_journal_home.html ●



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Settlement Puts Community-Based Mental Health Services for Foster Care Children on the Medi-Cal Menu of Services

Agreement in *Katie A.* will provide mental health services to California children in, or at risk of entering, nation's largest child welfare system

Los Angeles, CA – Federal District Court Judge A. Howard Matz today approved a landmark agreement between advocates and the state of California that will provide intensive home- and community-based mental health services for children in foster care or at risk of removal from their families. The agreement in the class-action suit *Katie A. v. Bonta* comes nine years after the case was first filed.

Under the ground-breaking settlement, California will make two types of mental health services, "Intensive Home-Based Services" and "Intensive Care Coordination," available to certain children under Medicaid. The state will also determine what parts of "Therapeutic Foster Care" services are covered under Medicaid and provide that service to certain class members.

"These services will ensure that thousands of Medicaid-eligible children obtain access to the mental health services they need to live in a family and succeed in school and later life," said Robert Newman, attorney for the plaintiffs, from the Western Center for Law and Poverty.

The settlement also requires California to improve its system of care for providing mental health services to foster youth by coordinating decision-making among state and local agencies, improving guidance to mental health care providers, and developing a consistent team approach to meeting the needs of eligible children and youth and their families.

"This agreement will improve children's access to mental health care and lower government costs. But, the hard work of doing what is promised in the Agreement remains," stated Patrick Gardner, an attorney with the National Center for Youth Law.

Implementation of the Agreement must be achieved within 3 years, a relatively short period of time for such a large statewide system. "We commend the state for agreeing to an accelerated schedule for getting these services in place," said Kimberly Lewis,

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Youth, Rights & Justice

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Youth, Rights & Justice is dedicated to improving the lives of vulnerable children and families through legal representation and advocacy in the courts, legislature, schools and community. Initially a 1975 program of Multnomah County Legal Aid, YRJ became an independent 501 (c) (3) nonprofit children's law firm in 1985. YRJ was formerly known as the Juvenile Rights Project.

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an attorney with the National Health Law Program. "We will be doing what we can to ensure that the state is successful in meeting its deadlines."

Judge Matz also noted the aggressive timetable, and made a commitment to assure that deadlines would be met "without any extension." The first milestone in the Agreement is completion of an implementation plan within 6 months.

"The settlement brings California into line with modern mental health practice," stated Ira Burnim, of the Bazelon Center for Mental Health Law. "We are delighted to see the process begin that will put into place a system that will address the mental health needs of thousands of California's most vulnerable children."

The children in the plaintiff class are represented by the Western Center on Law and Poverty, the National Center for Youth Law, Bazelon Center for Mental Health Law, Disability Rights California, the American Civil Liberties Union of Southern California, and the National Health Law Program. ●

2012 Oregon Legislature

Bills of Interest

We will provide an update on the outcome of the 2012 session in the April issue of the reader. Right now, here are a few bills under consideration that may be of interest

to juvenile practitioners.

HB 4146-A Bill Summary: Requires expungement of juvenile records for contact involving prostitution when subject was under 18 years of age at time of offense without waiting period and, if no objection is filed, without hearing.

This bill was introduced by Rep. Jefferson Smith, who worked with Multnomah County Commissioner Diane McKeel's office, Youth, Rights & Justice and other groups on the legislation. The bill passed the Oregon House on February 16th, by a vote of 57-0.

HB 4016-A Bill summary: Adds employee of organization providing child-related services or activities, employee of higher education institution, coach, assistant coach or trainer of child athlete and individual who provides guidance, instruction or training in youth development activity to list of public and private officials required to report child abuse. Requires school boards to adopt policies and take certain actions related to abuse of students by students. Specifies that duty to report child abuse is personal to public or private official who has reasonable cause to believe child abuse occurred and mandatory regardless of whether entity or organization that employs official or uses official as volunteer has its own reporting procedures.

This bill was introduced largely in response to the sex abuse scandal at Penn State University. At least nine versions of amendments have been considered. Some of the original provisions that have been removed would have required adults who volunteer at schools, youth sports, camps and other youth activities to be mandatory child abuse reporters.

HB 4023-A Bill summary: Creates community guardianships as planning option for ward in substitute care. Requires that ward be notified that ward may not be placed in substitute care after reaching 18 years of age. Authorizes persons seeking appointment as community guardian to seek order for limited participation in juvenile dependency proceeding. Declares emergency, effective on passage.

This bill is promoted by Catholic Community Services of the Willamette Valley and Chief Justice Paul De Muniz. Youth, Rights & Justice drafted amendments that were accepted by the proponents and adopted by the committee which clarify the youth's access to court-appointed counsel prior and subsequent to the guardianship being established. The amendments also require that the court schedule a hearing prior to the youth's 18th birthday to assess whether the guardianship should continue or whether the youth's interests are served by re-entering foster care.

HB 4084-A This bill originally contained a provision that would make an assault of a person age 65 or older a Class C felony offense, but this provision has been removed from the bill through the amendments adopted by the House Human Services Committee.

You can track the status or outcomes of these and other 2012 bills by visiting the Legislature's web site at: http://www.leg.state.or.us/bills_laws/.

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"If someone is going down the wrong road, he doesn't need motivation to speed him up. What he needs is education to turn him around."

– *Jim Robn*

Juvenile Law Resource Center

Poverty, Housing Instability, and the Child Welfare Case

By Rochelle Martinsson, YRJ Law Clerk

Introduction

According to the most recent United States Census Bureau data, the typical Oregonian is earning less now than he or she did in 2007, and there has been a significant decline in Oregon's median household income.¹ Alarming, in 2009, more than 530,000 Oregonians, including 160,000 children, were living in poverty.² Such statistics should be of significant concern to child advocates, as "[r]esearch is clear that poverty is the single greatest threat to children's well-being," indicating that it can impede children's ability to learn, as well as contribute to social, emotional, behavioral and health problems.³ Child and parent advocates should also be aware of the relationship between housing instability, which is often related to and an incident of poverty⁴ and child welfare involvement.

The Relationship Between Poverty and Housing Instability, and Child Welfare

Notably, "[m]ost child welfare-involved families are extremely poor."⁵ Indeed, despite policies that bar removal of a child based solely on poverty,⁶ "poverty is a 'well-documented risk factor' for family involvement with the child welfare system,"⁷ and research shows that families experiencing housing instability are particularly likely to be associated with child welfare supervision.⁸ Given the current economic downturn, it should not be surprising to see these tendencies exacerbated,⁹ which has important implications for child advocates.¹⁰ As one commentator puts it, "Unfortunately, the issues of a crisis in affordable housing, a decreasing minimum wage, and an increasing number of families in poverty mean that workers must place many children in foster care primarily because they lack adequate housing."¹¹

Children First for Oregon states, "For people living in poverty, the probability of child abuse and neglect is largely dependent on the extent of one's ability to cope with poverty and its stressors," and that "[t]o improve outcomes for abused and neglected children and reduce spending on foster care, it is imperative that we connect strug-

gling parents to the services they need to be able to provide healthy, safe, and stable environments for their children."¹³ Another perspective on this issue is that families living in poverty and with housing instability are likely to come to the attention of the child welfare agency even in the absence of abuse or neglect. Furthermore, once a family is involved in the child protective services system, that fact, in itself, may jeopardize existing housing arrangements and invite additional scrutiny.¹⁴ Finally, once a family is child welfare involved, the lack of adequate housing can serve as a reason for removal or failure to reunify, even though it would not have been grounds for either in the first place.¹⁵ Thus, it is imperative for child advocates to recognize the interplay between both poverty and housing instability, and child welfare, in order to effectively represent their clients.

To complicate matters further, there is arguably some institutional inertia when it comes to child welfare agencies' efforts to address the poverty related and housing problems of supervised families. One reason for this is that poverty and housing instability are often conflated with arguably legitimate grounds for state intervention.¹⁶ For example, the Oregon Safety Model lists 16 "safety threats" which may justify a

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protective services response. Safety threat number 5 reads: "A family situation or behavior is such that the family does not have or use resources necessary to ensure the child's safety." Examples which follow include: [f]amily has insufficient food, clothing or shelter, affecting child safety and [f]amily finances are insufficient to support needs (e.g., medical care) that, if unmet, could result in a threat to child safety.

Additionally, a lack of cooperation among child welfare and public housing agencies - stemming from their different mandates¹⁷ - can hinder the progress of families with limited resources who might otherwise be able to address the factors triggering state intervention.¹⁸

Suggestions for the Practitioner

A recent issue brief published by Partners for Our Children (a collaboration between the Washington State Department of Social and Health Services, the University of Washington School of Social Work, and members of the private sector), suggests several tools for responding to the relationship between both poverty and housing instability, and child welfare.¹⁹ Among such tools are, for example: (1) understanding the financial and housing circumstances of a client and his or her family, and (2) providing

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guidance as to community and local housing resources.²⁰

For example, the child advocate might counsel a client on the U.S. Department of Housing and Urban Development's (HUD), Family Unification Program (FUP), which issues vouchers "that can be used to provide access to affordable housing for families involved or at-risk of becoming involved with the child welfare system."²¹ These vouchers are available to "families whose inadequate housing is the primary factor in the separation or near separation from their children," and to "young adults . . . who left or are aging out of the foster care system, preventing them from becoming homeless."²² Importantly, "FUP funding allows local public housing authorities to work closely with local child welfare agencies to identify families with children in foster care, or who are at risk of being placed in foster care, and youth at risk of homelessness."²³ In June of 2011, HUD awarded the housing authorities of Portland and Salem, Oregon 50 and 100 FUP vouchers respectively, totaling \$1,256,268 in funding.²⁴ ●

¹ See Oregon Center for Public Policy, *Oregon's Poverty Rate Rises, Median Income Drops: Sobering Data Arrives as Cuts Threaten Projections for Very Poor Families* (Sept. 28, 2010), <http://www.ocpp.org/2010/09/28/oregon-poverty-rate-rises-median-income-drops/>.

² *Id.*

³ See Partners for Our Children, *Poverty Housing*

Instability: The Implications for Families Involved in the Child Welfare System 1 (Aug. 2011), <http://www.partnersforourchildren.org/pocweb/userfiles/August%20Practice%20Brief.pdf>; National Center for Children in Poverty, *Child Poverty*, <http://www.nccp.org/topics/childpoverty.html>. See also Children First of Oregon, *Census Poverty Data Shows Dire Implications for Oregon's Children*, (Sept. 13, 2011), http://www.cffo.org/images/pdf_downloads/CensusReactPressRelease_09132011.pdf.

⁴ Diana Becker Cutts *et al.*, *US Housing Insecurity and the Health of Very Young Children*, 101 *American Journal of Public Health* 1508 (2011).

⁵ Corey S. Shdaimah, "CPS Is Not a Housing Agency"; *Housing Is a CPS Problem: Towards a Definition and Typology of Housing Problems in Child Welfare Cases*, 31 *Children and Youth Services Review* 211 (2009).

⁶ See, e.g., Wendy A. Walsh, *Hard Times Made Harder: Struggling Caregivers and Child Neglect*, Carsey Institute (Fall 2010) (noting that several states "bar the removal of children for poverty-related reasons like homelessness or a person's financial ability to meet a child's basic needs").

⁷ Mark E. Courtney, Steven M. McMurty & Andrew Zinn, *Housing Problems Experienced by Recipients of Child Welfare Services*, 83 *Child Welfare League of America* 393, 394 (2004).

⁸ Courtney, McMurty & Zinn, *supra* n. 7 at 415. See also Shdaimah, *supra* n. 5.

⁹ See, e.g., Deborah S. Harburger & Ruth A. White, *Reunifying Families, cutting costs: Housing-Child Welfare Partnerships for permanent Supportive Housing*, 83 *Child Welfare League of America* 493, 497-8 (2004) (explaining that "[h]omelessness and foster care are inextricably linked, as families across the country report putting their children into 'limbo care' (foster care, kinship care, or informal care with relatives or friends) after losing welfare benefits or becoming homeless").

¹⁰ See, e.g., Children First of Oregon, *Census Poverty Data Shows Dire Implications for Oregon's Children*, (Sept. 13, 2011), [\[ages/pdf_downloads/CensusReactPressRelease_09132011.pdf\]\(http://www.cffo.org/images/pdf_downloads/CensusReactPressRelease_09132011.pdf\). \(stating, "A financially stable family gives children the best chance at a healthy, safe and successful life."\); Harburger & White, *supra* n. 9 at 504-505 \(stating, "Parents and their children should not be penalized for poverty or circumstances into which they were born."\).](http://www.cffo.org/im-</p></div><div data-bbox=)

¹¹ Harburger & White, *supra* n. 9 at 494.

¹³ Children First for Oregon, *Status of Oregon's Children: County Data Book 2010* 11, http://cffo.com/wio.net/site/DocServer/2010DataBook_v03_EmailSize.pdf?docID=1861&AddInterest=1741.

¹⁴ Shdaimah, *supra* n. 5.

¹⁵ *Id.* (citing Harburger & White, *supra* n. 9); Mary Keegan Eamon & Sandra Kopels, "For Reasons of Poverty": *Court Challenges to Child Welfare Practices and Mandated Programs*, 26 *Children and Youth Services Review* 821 (2004). See also Shdaimah, *supra* n. 5 (noting that inadequate housing is consistently correlated with failed reunification).

¹⁶ See, e.g., Shdaimah, *supra* n. 5.

¹⁷ See, e.g., Harburger & White, *supra* n. 9 at 494.

¹⁸ In response to this problem, some have advocated for stronger partnerships between child welfare and public housing agencies. See, e.g., Harburger & White, *supra* n. 9 at 502; Courtney, McMurty & Zinn, *supra* n. 7 at 417-418.

¹⁹ See Partners for Our Children, *supra* n. 3 at 2-3.

²⁰ *Id.*

²¹ *Id.*

²² United States Department of Housing and Urban Development (HUD), *Two Oregon Housing Authorities Awarded \$1.2 Million in Rental Assistance to Help 200 Families Stay Together* (June 2, 2011), <http://portal.hud.gov/hudportal/HUD?src=/states/oregon/news/HUDNo.2011-06-02>.

²³ *Id.*

²⁴ *Id.*

Advocacy in Dependency Cases for Parents Diagnosed with Personality Disorders

By Del Webb, M.A., Social Work intern

Representing a parent or parents in a dependency case often presents many significant challenges. These challenges are exacerbated when a client has been diagnosed with a personality disorder. Parents with mental health issues are far more likely to be investigated by child protective services for allegations of abuse or neglect than parents without such issues, and are far more likely to have their children permanently removed.¹ Personality disorders in particular can be particularly vexing for all parties involved, as the symptoms of these disorders can create significant disruption in the entire legal process.

This article provides a general overview of personality disorders, and the particular

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challenges they bring to a child welfare case. The current states of treatment for personality disorders are examined, and legal arguments for counsel are outlined. Finally, some general recommendations are given for how attorneys and other legal representatives can more successfully create a working alliance with clients with personality disorders.

What is a Personality Disorder?

Among mental health professionals, the subject of personality disorders is one that creates a significant amount of disagreement and distress. Clients who are diagnosed with personality disorders can be among the most difficult to join with in a working relationship, and even seasoned providers can find themselves at a loss. There is even some controversy in the methods used to diagnose and categorize personality disorders.²

The current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM IV-TR) defines personality disorders as "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable

over time, and leads to distress or impairment."³ In laymen's terms, this means that the person displays personality traits that are no different from those experienced by anyone else, but the disorder causes these traits to become rigid and inflexible. The person acts and reacts to their environment from this distorted world-view, lacking the ability to reflect on their own behaviors, emotions, or motivations, and similarly lacking the ability to appraise these qualities in others. This can lead to situations where the client creates significant turmoil in their life and the lives of others because of their inability to adapt. One significant feature of personality disorders that distinguishes it from other mental health conditions (such as depression or schizophrenia) is that people who suffer from personality disorders often lack awareness that the chaos and distress they create stems from their own behavior. They are more likely to see the problem as lying with others; they don't see themselves as the problem.

There are currently ten recognized types of personality disorder (as well as a 'Personality Disorder Not Otherwise Specified' category, for those who display the traits of a personality disorder but don't meet the criteria to fit into one of the other diagnoses). Regardless of type, all personality disorders have four core features⁴ – a person who displays two or more of these features often meets the criteria for a diagnosis:

1. *Extreme and distorted thinking patterns* – individuals may believe that others are out to do them harm, or believe that others are talking about them, or see every situation and relationship in extreme black-and-white terms.
2. *Problematic emotional response patterns* – individuals may have emotional reactions far in excess of what a situation warrants, or may have little to no reaction to even highly upsetting events.
3. *Impulse control problems* – individuals may engage in risky behaviors such as drug use or unprotected sex, or even engage in self-mutilation or suicide-like behavior. They may be obsessed with ideas of rules and control, or may act as though the rules do not apply to them.
4. *Significant interpersonal problems* – individuals may engage in patterns of manipulation of others, or may be overly dependent on others to make choices for them. They may avoid social contact altogether, or they may see the relationships they have as far more intense and intimate than they really are.

Though prevalence rates vary by type, the chance for a person in the general population to meet the diagnostic criteria for a personality disorder is around 9-15% - in a social service setting, such as a mental health clinic or a child welfare office, the rate is likely much higher.

Treatment

Unfortunately, the options for treatment of a personality disorder are very limited. Because of their pervasive nature and the fact that many who suffer are unaware that their way of interacting with the world is dysfunctional, most of the personality disorders have no effective form of treatment. The Oregon Health Plan only recognizes (and reimburses for) treatments for three of the ten personality disorders; Antisocial, Borderline, and Schizotypal. The others fall below the funding level line on the Prioritized List because they do not have treatment protocols that have proven effective. The use of psychiatric medication with personality disorders varies, and is typically aimed at managing specific symptoms rather than treating the disorder itself. For example, a person diagnosed with Borderline Personality Disorder who has trouble with emotional reactivity might be prescribed a mood stabilizer; a person diagnosed with Avoidant Personality Disorder might be given anti-anxiety meds to help mitigate fears of social contact.

The only personality disorder treatment program which has consistently been shown to be effective is Dialectical Behavior Therapy, or DBT. Initially created as a program to treat Borderline Personality Disorder, DBT is still the most recommended form

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of treatment for this disorder, though it has been shown to be effective with other mental health disorders as well. DBT is an intensive, structured treatment program in which people learn to embrace the duality of both accepting the behaviors caused by their disorder (rather than being afflicted with guilt and shame which can lead to self-harm) and seeking ways to change those behaviors. The program teaches skills in mindfulness (awareness of the present, rather than reliving the past or projecting into the future), regulating emotions, tolerating distress, and more effectively interacting with others.

A diagnosis of a personality disorder, even one that does not have a recognized form of treatment, does not necessarily preclude a client from being involved in mental health care. Roughly two-thirds of individuals who are diagnosed with a personality disorder also meet the criteria for another primary mental health disorder (e.g., depression, anxiety, substance abuse, etc.) It is far more common to see people in services for these other disorders, and to have the personality disorder addressed as a secondary concern. Clients with a personality disorder may also be far more willing to engage in treatment for a condition like depression.

Legal Arguments

A parent diagnosed with a personality disorder may come to the attention of the child welfare system due to concerns that the behaviors associated with the disorder place the client at risk. Allegations of neglect or emotional abuse are more common for parents with a mental illness than are allegations of physical or sexual abuse. However, the literature indicates that a diagnosis of a mental illness in and of itself is a poor predictor of a person's parenting capacity (or lack thereof).⁵

In considering a defense, counsel should bear in mind the precedent that has been set in Oregon regarding mental illness and termination of parental rights. ORS 419B.504 specifies that the court may terminate rights when parents are found to be "unfit by reason of conduct or condition seriously detrimental to the child and integration of the child into the home of the parent or parents is improbable within a reasonable time due to conduct or conditions not likely to change." Subsection (1) of this statute states that the mental illness of the parent(s) may be considered by the court; however, the mere presence of a diagnosis (establishing the "conduct or condition") is insufficient; the State must also establish (by clear and convincing evidence - ORS 419B.521(1)) that the disorder led to "seriously detrimental" conditions [*State ex rel SOSCF v. Stillman*,

333 Or 135, 145, 36 P3d 490 (2001); upheld in *State ex rel DHS v. Squiers*, 203 Or.App. 774, 789, 126 P.3d 758 (2006)].

Working with Personality-Disordered Clients

It is beyond the scope of this article to include specific advice on how best to work with clients who have personality disorders; each disorder encompasses a wide range of symptoms, and each individual will manifest their disorder in different ways. However, some general guidelines can be followed which will improve your chances of having an effective working relationship with your client:⁶

1. *Maintain a professional demeanor.* It is not unusual for clients with personality disorders to misinterpret social cues; they may see efforts at friendliness as intrusive and off-putting, or may go to the other extreme and believe it signals that the relationship is far more deep and intimate than what you intend. Some clients may also try to manipulate those they work with, either unconsciously or deliberately, in order to receive special treatment (e.g., calls outside of office hours or requests for *pro bono* advice). The best approach to take is to maintain a cordial but professional relationship, with firm boundaries. In extreme cases, an attorney or their staff may need to make arrangements so

that they are not meeting with a client alone.

2. *Be aware of your own emotions.* Clients with personality disorders are quite adept at creating intense, negative emotional reactions in others, usually without any deliberate intent or malice. Monitor your own emotional state, and if you find yourself getting upset or angry, do what you need in terms of self-care to alleviate those emotions.

3. *Tolerate the unusual.* Clients may present with emotional reactions that seem disconnected from the situation. They may also present with bizarre ideas about being able to see the future or read minds, or beliefs that they have a standing in society much higher than is realistic, or insisting that others in the office are talking about them or wishing them harm. It is generally not advisable to try and challenge or dispute these beliefs; instead, focus the client's attention back on specific tasks. An attorney may need to set appropriate boundaries, however, if the client's beliefs begin to involve their counsel on a more personal level (such as believing that the client and their attorney are now lovers, or that the attorney is the father of their child).

4. *Seek professional advice.* If possible, consult with any mental health provider(s)

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that your client is working with, to get more specific insight and advice into how best to work with them. If the client does not have mental health services, one can also consult with a mental health professional for general information about the disorder – but be careful to protect the client's confidential information.

For more detailed information about personality disorders, as well as other mental health conditions, there are a number of articles available on the Mental Help Net website (www.mentalhelp.net) which have been written with the intent of educating the general public about mental health. ●

¹ Westad, C., & McConnell, D. (2011). Child Welfare Involvement of Mothers with Mental Health Issues. *Community Mental Health Journal*, 1-9.

² Hoermann, S., Zupanick, C., & Dombeck, M. (2011, January). *Personality Disorders: Problems with the Current Diagnostic System*. Retrieved November 10, 2011, from www.mentalhelp.net. It should be noted that the next edition of the DSM (DSM V), currently in review and projected for publication in 2013, proposes significant changes in the diagnostic methods used for personality disorders; this revision has itself created significant controversy.

³ American Psychiatric Association. (2011). *Personality Disorders*. In *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision*. American Psychiatric Publishing, Inc.

⁴ Hoermann, et al. (2011, January). *Personality Disorders: The Definition of a Personality Disorder*. Retrieved November 10, 2011, from www.mentalhelp.net.

⁵ Westad, et al.

⁶ Derived from Ward, R. K. (2004, October 15). Assessment and Management of Personality Disorders. *American Family Physician*, 70(8), 1505-1512.

Case Summaries

Dept. of Human Services v N.T., __ Or App __, __ P3d __ (January 25, 2012) (Duncan, J.) (Lane Co.) <http://www.publications.ojd.state.or.us/A148730.pdf>

Parents appealed from a judgment changing the permanent plan for their two children from return to parent to adoption, arguing that the juvenile court relied on "facts extrinsic to the jurisdictional judgment."

The parents argued on appeal that they had no opportunity to contest those allegations, nor an opportunity to ameliorate them with remedial services, if true.

The court of appeals agreed and reversed and remanded the case.

The court of appeals found that allegations that father sexually abused one of the children were part of the basis for the juvenile court's judgment changing the plan. The court rejected the state's arguments that the

allegation did not play a part in the decision or, alternatively, that the permanency statute did not prevent the court from addressing factors beyond the grounds for jurisdiction. With respect to the latter argument, the court reaffirmed its holding in *Dept. of Human Services v G.E.*, 243 Or App 471, 260 P3d 516 *adh'd as modified on recons*, 246 Or App 136, 265 P3d 53 (2011) and noted that similar arguments were rejected in the later decided (after briefing in the instant case was completed) case, *Dept. of Human Services v N.M.S.*, 246 Or App 284, __ P3d __ (2011).

Dept. of Human Services v C.L.C., 247 Or App 445, __ P3d __ (December 29, 2011) (Ortega, P.J.) (Lane Co.) <http://www.publications.ojd.state.or.us/A147897.pdf>

Mother appealed a judgment terminating her parental rights to three children on the grounds of unfitness. The court of appeals affirmed. Although mother presented evidence of improvement in her conduct and conditions by the time of trial, the trial court found that much of that evidence was either introduced in mother's own testimony or through witnesses (treatment providers) who relied on mother's statements. The trial court found that many of mother's statements were, "flat-out bald-faced lies"

and therefore disbelieved all of her testimony. The court of appeals also gave no weight to mother's statements and reviewed the case to determine whether, on the other evidence, DHS met its burden.

The trial court also heard, and the court of appeals recounted at some length, detailed evidence about the children's individual needs and concluded that mother's mental illness was seriously detrimental to her children and that they could not be reintegrated into her home in within a reasonable time.

Dept. of Human Services v B.L.J., 246 Or App 767, __ P3d __ (December 7, 2011) (Duncan, J.) (Jackson Co.) <http://www.publications.ojd.state.or.us/A148452.pdf>

Mother appealed a jurisdiction judgment arguing that the state had failed to meet its burden where, although mother conceded that her cognitive limitations prevented her from parenting independently, she had made arrangements to live with a couple who could and did help her. The court of appeals agreed and reversed the judgment, noting that the issue is current risk of harm to the child and that there is "no legal requirement that a parent be able to care for his or her children independently," citing to *State ex rel Dept. of Human Services v Smith*, 338 Or 58, 86, 106 P3d 627 (2005). ●

Case Summaries

State v. Reed, Or App (12/14/11).

Waiver of Counsel

In this appeal of an adult in a probation hearing that resulted in an extension of probation, the defendant raised the validity of his waiver of the right to counsel. Defendant claimed that the waiver had been voluntary but that the record did not reflect that he had waived his right to counsel "knowingly."

Observing that the record in this case "approaches silence" on the defendant's knowledge of the risks of self-representation, that the defendant is young and lacking criminal justice system experience and the court did not ward defendant of potential problems with self-representation, the Court concluded that the record did not reflect, based on the totality of the circumstances that the defendant knowingly waived his right to counsel at the probation hearing. In considering the totality of the circumstances, the trial court must consider "the defendant's age, education, experience, and mental capacity; the charge (whether complicated or simple); the possible defenses available; and other relevant factors." A waiver will not be presumed where the record is silent.

State ex rel Juv. Dept. v. S.J.P., ___ Or App ___ (January 25, 2012).

Compensatory Fine

In this juvenile delinquency appeal, the youth challenges the trial court's order to pay, as a compensatory fine, the cost of the victim's airline ticket from North Carolina to Oregon. The victim had not been served with a subpoena and had voluntarily incurred the cost of the ticket to testify against the youth.

Analyzing ORS 419C.459, which permits a compensatory fine to be imposed on a delinquent under the same circumstances as a court may impose a fine on a criminal defendant, and ORS 137.101 (1) governing compensatory fines in criminal cases, the Court found that to receive a compensatory fine, the victim must have suffered "economic damages" (ORS 31.710 (2)(a)). Finding that proof a person has suffered economic damages as a result of a crime requires more than evidence of a "but for" connection between a monetary loss and the crime, it requires evidence that the loss could be recovered against the defendant in a civil action. The Court vacated the compensatory fine and remanded for a new dispositional judgment. ●



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Resources and Announcements

Oversight of Psychotropic Medication Use Among Children in State Foster Care

Psychotropic medications can be a help to children in foster care who may struggle with mental health disorders, trauma and other mental and emotional impairments. Children who are not properly diagnosed and appropriately prescribed such medications as part of a comprehensive intervention and treatment plan can also be seriously damaged and delayed in healing by psychotropic medications. There is serious concern that children are too often unnecessarily prescribed psychotropic medications to manage their behaviors, or prescribed psychotropic medications without making and delivering a comprehensive treatment plan.

As a result of these concerns, the federal government is stepping up oversight of psychotropic medication use among children in foster care. Advocates for children can learn more about the federal government's efforts in two recent documents:

- A November 2011 letter by the Department of Health and Human Services (HHS) to state child welfare directors asks them to "strengthen their systems of prescribing and monitoring psycho-

tropic medication use among children in foster care." [http://www.youthtoday.org/doc/State_Director_Letter_-_Joint_ACF_CMS_and_SAMHSA_November_23_2011%20\(1\).pdf](http://www.youthtoday.org/doc/State_Director_Letter_-_Joint_ACF_CMS_and_SAMHSA_November_23_2011%20(1).pdf)

- FOSTER CHILDREN: HHS Guidance Could Help States Improve Oversight of Psychotropic Prescriptions (U.S. G.A.O. December 2011) raise concerns about the risks of overmedicating children in foster care. This Report indicates that in five states studied, one of which was **Oregon, foster children were prescribed psychotropic medications at rates 2.7 to 4.5 times higher than non-foster children.** In 2008, Medicaid paid \$14,326,756 for psychotropic medications administered to foster children and non-foster children covered by Medicaid in Oregon. <http://www.gao.gov/new.items/d12270t.pdf>

For more information about Oregon's statute governing psychotropic medication of foster children and DHS's rules applying the statute, see: Psych Meds and Foster Children by Mark McKechnie, The Juvenile Law Reader, Volume. 7, Issue 1. <http://www.jrplaw.org/Documents/jrpreaderv7i1.pdf>

Improvements Everyone Can Make to Help Foster Youth Succeed in School

The Congressional Coalition on Adoption Institute & Fostering Media Connections has published: *Rescuing Forgotten Futures:*

Continued on next page »

« Resources continued from previous page

An Action Guide to the Improvements Everyone Can Make to Help Foster Youth Succeed in School. The Action Guide is available at: http://fosteringmediconnections.org/wp-content/uploads/2011/10/Rescuing-Forgotten-Futures-FINAL_@-Oct.-18.pdf

Study Shows Maternal Nurturing Linked to Changes in Critical Region of Children's Brains

New research at Washington University School of Medicine validates the importance of nurturing parents to proper brain development in young children. In the children who were studied, where the parents were evaluated to be "nurturers" the hippocampus was found to be 10% larger than in children whose parents were not "nurturers." The hippocampus is the main brain structure involved in releasing stress hormones when the body faces stresses. For more on the study go to: <http://www.pnas.org/content/early/2012/01/24/1118003109>



"History, despite its wrenching pain, cannot be unlived, but if faced with courage, need not be lived again."

— Maya Angelou

Save the Date

NCJFCJ

National Conference on Juvenile and Family Law

March 21-24, 2012

Las Vegas, Nevada

<http://www.ncjfcj.org/content/view/1471/315/1/3/>

Juvenile Law Seminar: Advanced Skills for Complex Cases

April 20-21, 2012

Hallmark Resort

Newport, Oregon

Waiver of counsel, psychosexual evaluations, how to get DHS to see things your way, appellate law and preservation issue, child abuse reporting in light of Penn State, sex offender relief, and more. If even a tiny fraction of your practice is dedicated to juvenile law, then dedicate yourself to doing your very best for the most vulnerable clients. Attend this seminar. See program and register here.

3rd Annual Juvenile Justice Symposium

April 27, 2012

Loyola Law School

Los Angeles, CA

Ineffective Assistance of Counsel: Systemic Causes, Systemic Solutions. Free. Registration required: <http://www.lls.edu/juvenilelaw/events/2012/April27IntroSheet2012.htm>

35th National Child Welfare, Juvenile, and Family Law Conference

August 14-16, 2012

Historic Palmer House Hilton

Chicago, Illinois

Conference brochure available May 2012. www.NACCchildlaw.org



"Education is not a private good, it's a public good . . . we all benefit and we all hurt, depending on the quality of education other people's kids get. We're building now a school to prison pipeline. We've quadrupled the number of young people in prison. We are spending 900% more on corrections than we were 30 years ago, while our public school dollars have gone up much less."

— Linda Darling-Hammond, Professor of Education, Stanford University

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If you have any questions about who we are and what we do, please email Janeen Olsen at: Janeen.O@youthrightsjustice.org.

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