

# Chapter 3 – The Role of Judges and Juvenile Court Hearing Officers

## 3.1 Role of Judges

The *Mission and Guiding Principles for Pennsylvania’s Dependency System* reproduced in Chapter 1 articulates three major roles for judges in dependency court: (1) Oversee and manage the progress of individual cases; (2) Demonstrate commitment and leadership in efforts to improve the system as a whole; and (3) Promote collaborative efforts with the child welfare agency and the community (*The Mission and Guiding Principles for Pennsylvania’s Dependency System*, 2009, p.15).

“Judging in juvenile and family court is specialized and complex, going beyond the traditional role of the judge. Juvenile court judges, as the gatekeepers to the foster care system and guardians of the original problem-solving court, must engage families, professionals, organizations and communities to effectively support child safety, permanency and well-being. Judges must encourage the court system to respond to children and their families with both a sense of urgency and dignity. These key principles provide a foundation for courts to exercise the critical duties entrusted to them by the people and the laws of the land,” (NCJFCJ, *Enhanced Resource Guidelines*, 2016, p. 14).

### 3.1.1 Oversight and Management of Individual Cases

As the *Enhanced Resource Guidelines* emphasize, child welfare cases — because of their length, complexity and continuous nature of the determinations that they require, involve the court in the lives of the parties and the operations of the child welfare agency to an extent unlike any other court case. Because the decisions are “interlocking and sequential,” the court must perform a more managerial and directive function than in other litigation (NCJFCJ, 2016, p. 25).

“Congress’s main purpose in involving judges in the oversight of child protection cases was to ensure that the social service agency was doing its job; that children were not removed from their family unless they were endangered, that the agency provided reasonable efforts to prevent removal, reasonable efforts to help parents reunify with their children, and reasonable efforts to achieve permanency for the child,” (NCJFCJ, 2016, p. 25).

Subsequent sections of this Benchbook highlight various best practices related to judicial oversight of cases in the context of individual hearings, as well as overall operations. They include:

- **Communicating the expectations** of the court regarding adherence to a timely court process and the need for proper preparation by all parties for all court events.

- **Establishing rigorous case flow management** policies and practices, such as timetables/deadlines for the various stages of case processing, strict continuance policies, setting the next hearing date, distributing orders at the conclusion of each hearing and requiring that all reports be submitted and distributed to all parties in advance of hearings or in accordance with established timelines.
- **“Front-loading”** the court process in order to set the stage for expedited proceedings and avoid later delays. In practice, “front-loading” means doing all of the following at the earliest possible point: appointing counsel for the child and parents/guardians; conducting inquiry into paternity issues; finding and notifying absent parents; identifying any domestic violence issues and, if appropriate, issuing protective orders; identifying and involving the relative/kinship support network in service planning and delivery; creating a network of extended family support to remedy concerns; identifying potential relative and kinship placement options; considering the educational needs of the child; and establishing visitation schedules.

Because there are so many interrelated parts to a dependency case, the assigned judge must be actively involved in each case. In effect, the judge must set and monitor the direction of case progress, including both action and inaction that all other parties may recommend. For example, the court may have to ask questions like: 1) why faster movement toward family reunification is not occurring; 2) why visitation has not increased; 3) how visitation with incarcerated parties is proceeding; and 4) the steps being taken to progress from supervised to unsupervised visitation.

If there are issues or the case is not moving forward the judicial officer should schedule a status review hearing as soon as possible to hear why progress is not occurring. A status review hearing allows the judicial officer to address one or two very specific issues prior to the next permanency review. Status review hearing findings and orders should be documented on the CPCMS Status Review Order. Of course, the judicial officer may also schedule an early permanency review hearing as well. The judicial officer has the power and the responsibility to order vital changes, often sooner than bureaucratic rules and policies would allow. **Unlike the child welfare agency, the court is not bound by agency rules, regulations or bulletins.**  The judge should consider making any orders needed to facilitate the permanency plan including orders to increase visitation or amend visits from supervised to unsupervised. No one can guarantee with certainty that all risks to the child will be minimized or eliminated. A healthy balance must be achieved at the earliest possible time and sometimes only the judge has the power to so order.

- Conducting **expedited review hearings** at critical stages of the case. Most Pennsylvania courts hear dependency matters every three months, at a minimum. This enhanced review helps ensure services are delivered in a timely manner and

the case is progressing as envisioned by the parties. “Through frequent and thorough review, judges must exercise their authority to order and monitor the timeliness, quantity, quality, and cultural responsiveness of services for children and families. Judges must oversee families’ progress and permanency progress for children.” (NCJFCJ, 2016, p. 27).

- **Taking the initiative** to solicit pertinent information if it is not otherwise presented during the hearing. Unlike some other court proceedings, dependency judges and hearing officers have an obligation to solicit facts needed to ensure child safety, well-being and permanence, if such facts are not provided by the parties. In practice, this means judges and hearing officers are free to ask questions and make requests for additional information, reports and testimony as they deem appropriate for the matter at hand. “In child welfare cases, the judge is not merely the arbiter of a dispute placed before the court, he or she also sets and repeatedly adjusts the direction for state intervention on behalf of each abused and neglected child.” (NCJFCJ, 2016, p.26).
- Setting aside **sufficient time for hearings** to ensure that all parties have an opportunity to be heard, all issues can be addressed and findings and orders can be communicated immediately, in open court. In the rare event that a case is taken under advisement, a date certain time should be set to give the findings/decision. Given the complexities of the court schedule, it may be better to take a recess and consider the issue than take the entire case under advisement. In any event a judge should be mindful of the urgency needed in dependency proceedings and make decisions as expeditiously as possible.

### **\*Best Practice — Court Scheduling\***

In dependency cases, it is important that court administration or the judge, not the child welfare agency, control the scheduling process and manage all court hearing dates and times. Special consideration should be taken when scheduling cases including the number of children in the family, as well as the complexity of issues to be decided. The Common Pleas Case Management System (CPCMS) Dependency Module allows this to be done easily.

The scheduling of multiple cases during a single large time slot (or “cattle calls”) is highly discouraged. Hearings should be scheduled based on “time-specific scheduling” or “block scheduling,” with sufficient time allotted for each hearing. The court should be sensitive to everyone’s time schedule with special consideration given to children and parents.

- Encouraging the use of **Family Group Decision Making** and other methods of **alternative dispute resolution** to allow family members to become active participants in the decision-making process.
- Ensuring that **case plans address the specific needs** of the child and family and hold the child welfare agency and other parties accountable for the delivery of services.
- Identifying **Indian Child Welfare and Interstate Compact on the Placement of Children** issues at an early stage of the case to avoid delay and disruptions in efforts to achieve permanency.
- Ensuring the child welfare agency has reasonably engaged in **family finding**. Act 55 of 2013, Pennsylvania’s family finding law, requires a three pronged analysis which includes locating family/kin, involving them in service planning and delivery and creating or strengthening the network of extended family support to assist in remedying the concerns that led the child to be involved with the county agency. All three elements should be sufficient for a finding of reasonable efforts. This issue is expanded upon in Chapter 2: Act 55 of 2013: Family Finding.
- **Recognizing and minimizing additional trauma**. “Courts and judges are uniquely positioned to identify those suffering from traumatic stress, help create safe and engaging courts and court’s practices, and help coordinate and monitor the provision of effective treatment.” (NCJFCJ, 2016, p. 79).

**\*Best Practice — Trauma\***

Recognizing that the impact of words and expressions has become increasingly important to many judicial officers, some have fine-tuned their motivational interviewing skills. Some come off the bench and greet the child and family. Some look specifically for strengths and comment on such. Some insist on beginning and ending each hearing with strengths. Some employ court dogs. And others make a concerted effort to commend parties on a job well-done, when warranted.

Whatever technique is used, it must fit the individual personality and style of the judicial officer so as to be seen as supportive and authentic. Recognizing the impact of trauma, the court environment, the seriousness of the decisions being made and the potential impact on all parties, it is incumbent upon each judicial officer to develop and employ strategies that minimize trauma and support a safe courtroom experience.

- Ensuring that a **proper record** is made at each and every hearing, starting at the emergency protective custody order or the shelter care hearing (whichever comes first) and throughout the life of the case. All written documents and reports introduced and admitted should be used as evidence during the hearing and given the proper weight as determined by the judicial officer.
- **Minimizing or eliminating the use of continuances.** “A child’s sense of time requires timely permanency decisions. Research supports that a child’s development of trust and security can be severely damaged by prolonged uncertainty in not knowing or understanding if they will be removed from the home, or when and whether they will return home. The shorter the time a child spends in foster care, separated from his or her family, the less likely there will be prolonged damage to the child’s development of trust and security.” (NCJFCJ, 2016, p.15). One tool courts can use to monitor continuances is CPCMS report 3934, Continued Dependency Cases by Date, a **court specific continuance report**. This report provides information regarding the number of continuances and the reasons for each continuance. In courts with multiple dependency judges or hearing officers, the report can be run by judicial officer creating a useful tool to help the lead dependency judge identify system strengths and challenges.

In addition to these managerial functions, the judge and hearing officer should ensure that: (1) all parties are treated with courtesy and respect, both inside and outside of the courtroom; (2) the family understands the judicial process and the timelines that apply to the case; and (3) the court’s written findings of fact and conclusions of law are written in easily understandable language that allows the parents and all parties to fully understand the court’s order.

Finally, at the core of all dependency proceedings is the issue of safety. Judges and hearing officers have the ultimate responsibility for conducting a thorough analysis of child safety at each proceeding and making orders necessary to ensure safety. Judges and hearing officers should not base their safety determinations solely on the analysis of physical safety. **Special attention should also be given to the emotional well-being or emotional safety of a child.** A legal framework for making **safety** determinations and orders is presented in the following section.



### **3.1.2 Legal Safety Analysis for Judicial Decision-Making**

Judges and hearing officers overseeing child dependency proceedings have the core responsibility of child safety. This includes ensuring due process, evaluating evidence, asking questions when needed and making an independent determination of a child’s physical and emotional safety.

This focus on physical and emotional safety begins immediately upon the verbal or written request for court involvement and is re-visited at every subsequent judicial determination. It is the cornerstone issue for all dependency proceedings.

Judges and hearing officers are required to make findings regarding safety and order services to mitigate or eliminate safety threats. Even so, there can be confusion regarding what constitutes a real “threat” to the safety of a child as opposed to what may be considered “risk”.

In life, every person experiences “risk”. Risk can never be completely eliminated. When risk rises to a level where it immediately or within the foreseeable future seriously jeopardizes life, it becomes a safety threat. Ensuring that safety threats to children are eliminated or, at the very least, mitigated, is the responsibility of the Juvenile Court.

While the Juvenile Act allows for an adjudication of dependency based upon factors that are more likely risk than safety (i.e. truancy, ungovernability, etc.), **decisions related to removal and placement of a child should be based upon an analysis of safety.** This is an important legal distinction. While removal and placement of children may mitigate a safety threat it is likely to simultaneously create some level of emotional trauma for the child and parents. This potentiality necessitates a methodical legal safety analysis by the judge and hearing officer.



Clearly when a child’s safety cannot reasonably be assured, placement is warranted. When out-of-home placement is necessary, one should assume potential emotional trauma for the child and the parent. The judge and hearing officer can take specific steps to minimize any potential emotional trauma experienced by the child and the parent as a result of removal and placement. The judge and hearing officer should consider orders that:

- Place the child with safe kin;
- Place siblings together or in close proximity;
- Ensure early, frequent, meaningful visitation and contact with parents and siblings (if not placed together);
- Maximize contact with other supportive persons within the child’s network (i.e. aunts, uncles, grandparents, cousins, best friends, pastors, coaches, etc.);
- Secure special items for the child (i.e. blankets, toys, clothing, etc...);
- Minimize school disruption; and
- Minimize extra-curricular activity disruptions.

“If a threat of danger is present, presume the child is vulnerable and therefore unsafe. If however, the child possesses certain strengths, the child may not be vulnerable to that particular threat.”

- Lund & Renne, 2009

### \*Best Practice — Ice Breaker Meetings\*

Many counties have begun the practice of “ice breaker” meetings. These meetings occur within days of placement. The meeting brings together the parent or guardian and the current caregiver. During the meeting parents have an opportunity to share information regarding the child’s routine, likes/dislikes, activities and other important information to minimize disruptions to their daily routine. Caregivers have an opportunity to ask questions and provide feedback. The meeting helps parents stay connected and involved with the care of their children while providing critical information to the caregivers, all aimed at minimizing trauma to the child.

Understanding the legal analysis which leads to the conclusion that a child is unsafe and must therefore be placed into out-of-home care is critically important. In this legal analysis child safety rests upon three critical factors which include the actual safety threat, the child’s level of vulnerability and the parent or guardian’s protective capacity.

Threats of danger or “safety threats” are specific, observable or describable, out-of-control, immediate or likely to happen soon and contain severe consequences. Because safety threats can increase or decrease over time, evidence regarding the current safety threat or threats should be presented at each hearing.

A **child’s level of vulnerability** is impacted by a number of factors including: age, physical ability, cognitive ability, developmental status, emotional security and family loyalty. Evidence regarding the child’s level of vulnerability should be provided at each hearing.

As outlined in *Child Safety: A Guide for Judges and Attorneys* (Lund & Renne, 2009), the following help reduce or increase a child’s vulnerability:

- A child’s capacity to self-protect
- A child’s susceptibility to harm based on size, mobility, social/emotional state
- Young children (0-6)
- A child’s physical or mental developmental disabilities
- A child’s isolation from the community
- A child’s inability to anticipate or judge the presence of danger
- A child consciously or unknowingly stimulates threats and reactions
- A child’s poor physical health, limited physical capacity or frailty
- A child’s emotional vulnerability
- A child’s attachment, fear, insecurity or security to a parent
- A child’s ability to articulate problems or danger
- Impact of prior maltreatment

Finally, within the legal analysis is the issue of **parental protective capacity**. Judges and hearing officers need current information regarding the protective capacity of each parent or guardian. This information can then be used by the judge or hearing officer to weigh the level of capacity against the level of threat and child vulnerability. Protective capacities are those cognitive, behavioral and emotional capabilities that help parents or guardians provide adequate safety and care for their child.

To accomplish this legal analysis information is needed. This includes information regarding:

- the nature and extent of the maltreatment [or threat of maltreatment];
- the circumstances accompanying the maltreatment [or threat of maltreatment];
- how the child functions day-to-day;
- how the parent disciplines the child;
- the overall parenting practices; and
- how the parent manages their own life.

(Lund & Renne, 2009)

“Protective capacities are fundamental strengths preparing and empowering a person to protect...if threats are present with a vulnerable child but sufficient protective capacity exists the child is safe...if threats are present, the child is vulnerable and protective capacity is insufficient, the child is unsafe.”

-Lund & Renne, 2009

As stated earlier, this legal analysis occurs during every dependency proceeding. The analysis helps identify the need for protective action on the part of the agency and court.

### **Threat + Vulnerability – Protective Capacity = Unsafe Child**

The safety analysis can also be helpful in making judicial determinations related to reunification, other permanency options and eventual termination of court supervision. For more information regarding this legal safety analysis framework please see the *Pennsylvania Dependency Benchbook Resource Companion* - Chapter 10: Safety & Risk.

Finally, services ordered by the court or included in a Family Service Plan should aim to minimize an identified safety threat, reduce a child’s level of vulnerability or increase a parent’s or guardian’s protective capacity. When ordering services aimed at reunifying a child and parent or guardian, the judge and hearing officer should be able to clearly link each service to one of these three child safety elements. Judicial determinations related to removal, reunification and permanency should be governed by safety.

This is not to say that other court ordered services are not warranted. Indeed many services ordered by the court focus on child well-being and are very important. However,

completion of these well-being services, in most cases, is not generally the primary consideration as to when and whether safe reunification can occur.

### 3.1.3 Accountability

The judge and hearing officer has a responsibility to hold all parties accountable to the orders of the court. This includes the child welfare agency and other providers of services, as well as children and parents receiving services. Judges and hearing officers must do this in a manner fitting the Judicial Code of Conduct, which highlights the expectation of judicial fairness, impartiality and civility. What a judge and hearing officer says or doesn't say matters and will greatly impact what occurs pending the next proceeding. Finally, while there are many ways in which to encourage parties to comply with court orders, judges and hearing officers should **NEVER** use visitation as an accountability tool. **Visits between children and parents is a right NOT a privilege.** The frequency and level of supervision should be based upon safety not compliance.



#### \*Best Practice — Eliminating/Reducing Sidebars\*

Because the court process needs to retain integrity, fairness and impartiality, many courts have reduced or eliminated their use of “sidebar” conversations. If a parent is unrepresented, the court cannot have a sidebar unless the parent is included in the sidebar.

## 3.2 Judicial Commitment and Leadership in System Improvement Efforts

“The leadership of the judiciary is a crucial and necessary component in implementing reforms...Judges must engage the community in meaningful partnerships to promote the safety, permanency, and well-being of children and to improve system responses to our most vulnerable citizens. The juvenile court must model and promote collaboration, mutual respect, and accountability among all participants in the child welfare system and the community at large.” (NCJFCJ, 2016, p. 17).

Judicial impartiality does not preclude a judge from acting as an advocate for additional resources or more opportunities for training and education, or serving as a convener of committees or working groups devoted to identifying systemic problems and developing solutions. In addition, as one of the key principles the *Adoption and Permanency Guidelines* points out, judges should “ensure that the court has the capacity to collect, analyze, and report aggregate data relating to judicial performance,” including compliance with requirements related to outcomes for children and families, compliance with statutory timelines, overall compliance with goals, and historical trends (NCJFCJ, 2000, p. 6). Such data provides useful information for ongoing monitoring of operations,

evaluating programs and other initiatives over time, and assessing the need for judicial and other resources. These analyses can be shared with other stakeholders to both encourage progress toward common goals and identify areas in need of improvement (*The Mission and Guiding Principles for Pennsylvania's Dependency System*, 2009, p.15).

Judges can also play an important role in ensuring **competent representation for parents and children** who appear in dependency proceedings. "Judges are responsible for ensuring that parties, including each parent, are vigorously represented by well-trained, culturally responsive, and adequately compensated attorneys." (NCJFCJ, 2016, p. 42). They can join in efforts to establish initial training and experience thresholds, standards of practice and ongoing specialized training requirements for court-appointed counsel.

### **\*Best Practice — Attorney Training\***

A number of Pennsylvania jurisdictions require specific, annual training sessions for all dependency attorneys within their jurisdiction. These training sessions are often created by the judge with input from others and are considered mandatory. If a listed attorney does not attend the session, without exceptional circumstances preventing such attendance, the attorney is removed from further case assignments. In these jurisdictions, this enhanced requirement has led to clearer expectations from the court and advanced attorney skills. Some jurisdictions compensate attorneys for their time, some do not; however all typically provide low-cost Continuing Legal Education (CLE) credits.

Other jurisdictions utilize strategies such as lunch & learns offering CLE credits...some led by the local Bar Association, some by the local Children's Roundtable and some by the court.

In addition, judges can communicate the expectation that hearings will proceed as scheduled, barring exceptional circumstances, and that all parties will be prepared to proceed. Finally, judges can contribute to the training of attorneys, as well as other system stakeholders by participating in seminars and conferences (NCJFCJ, 2016, p. 30).

**\*Best Practice — Legal Representative Practice Standards\***

In May 2014, the Pennsylvania State Roundtable unanimously approved and adopted a set of dependency practice standards for Guardians *ad Litem* and Parent Attorneys. These best practice standards focus on enhancing legal representation and advocacy for parents and children in the dependency system. Areas of practice covered within the standards include:

- client contact
- expertise & knowledge
- case preparation
- collateral contacts & collaboration
- advocacy
- appellate advocacy
- ethical considerations

The standards can be utilized by judges and hearing officers to ensure competent legal representation for children and parents. A complete narrative of each standard can be found in the 2014 State Roundtable Legal Representation Workgroup Report at [http://www.ocfcpacourts.us/assets/upload/2014%20Legal%20Representation%20Report\(1\).pdf](http://www.ocfcpacourts.us/assets/upload/2014%20Legal%20Representation%20Report(1).pdf)

Finally, judges and hearing officers should routinely examine their own practice, thought processes and actions to protect against bias. The *Enhanced Resource Guidelines* provide a set of self-reflection questions designed to assist judicial officers in examining potential **implicit biases** that may affect their decisions. A list of these questions follows:

- What assumptions have I made about the cultural identify, genders, and background of this family?
- What is my understanding of this family’s unique culture and circumstances?
- How is my decision specific to this child and this family?
- How has the court’s past contact and involvement with this family influenced (or how might it influence) my decision-making process and findings?
- What evidence has supported every conclusion I have drawn, and how have I challenged unsupported assumptions?
- Am I convinced that reasonable efforts (or active efforts in ICWA cases) have been made in an individualized way to match the needs of the family?
- Am I considering relatives (kin) as a preferred placement option as long as they can protect the child and support the permanency plan?  
(NCJFCJ, 2016, p.67)

**\*Best Practice — Feedback Strategy\***

Feedback on performance is important in any profession. It is critically important for judicial officers but finding ways to get honest, productive feedback may present challenges. To address this issue, judges and hearing officers are encouraged to take advantage of feedback from court observations conducted by the AOPC's Office of Children and Families in the Courts' judicial analysts. The judicial analysts are knowledgeable in procedural rules, the *Dependency Benchbook* and statewide judicial practice. In addition, some judges invite a trusted friend or family member to observe court with the permission of parties as dependency court proceedings are presumed closed. These trusted persons, who know the judicial officer personally, can provide feedback regarding demeanor, tone, facial expressions, etc...and general practice.

### **3.3 Judicial Collaboration with the Child Welfare Agency and the Community**

Judges should encourage and promote collaboration and mutual respect among all participants in the child welfare system (NCJFCJ, 2016, p. 32). Judges should initiate or participate in meetings with child welfare agency representatives at the state and local level. They should encourage greater cooperation in the development of training, including multi-disciplinary training, which addresses issues of mutual interest, such as improving court reports and in-court testimony, expanding access to services and making more efficient use of court time (Hardin, 2002, p. 13).

“Judges are uniquely positioned to motivate system change. Because judges see cases from all perspectives, they can often provide a clear vision of how the child welfare system needs to be improved. Judges have the influence to bring all necessary stakeholders to the table to collaborate.” (NCJFCJ, 2016, p. 30). The Children's Roundtable is an example of this collaborative effort to engage all stakeholders. Supported by the Office of Children and Families in the Courts (OCFC) within the Administrative Office of Pennsylvania Courts (AOPC), the Children's Roundtable Initiative was established by the Supreme Court of Pennsylvania in 2006. The local Children's Roundtable is convened by the judge and collaboratively lead with the child welfare administrator. Judicial leadership in this area encompasses developing the mission/vision, setting the agenda, managing subcommittees/workgroups, effectuating the decisions made at meetings and participating in Leadership Roundtables (*Mission and Guiding Principles for Pennsylvania's Dependency System*, 2009, p.15).

The *Adoption and Permanency Guidelines* encourage judges to help the community understand that child protection is a community responsibility (NCJFCJ, 2000, p. 31). This can be accomplished by appearing regularly in the community to inform citizens about the child welfare system and to encourage volunteer participation (*Mission and Guiding Principles for Pennsylvania's Dependency System*, 2009, p.16). The community can also be an effective partner in advocating for greater availability and access to services for children and families when there are gaps.

Judges must convene and engage the community in meaningful partnerships to promote safety, permanency, and well-being of children and to improve system responses. The juvenile court must model and promote collaboration, mutual respect and accountability among all participants in the child welfare system and the community at large. (NCJFCJ, 2016, p. 32).

### **3.4 Juvenile Court Hearing Officer Authority**

Ideally, a dependency case should be heard by a judge at each stage of the proceeding, and all parties will be better served if the same judge presides over the case from start to finish (NCJFCJ, 2016, pp. 34-35). However, in Pennsylvania as in many other jurisdictions across the nation, judge-supervised judicial officers (referred to hereafter as “hearing officers”) are appointed to handle certain hearings or stages of a case. The *Pennsylvania Rules of Juvenile Court Procedure – Dependency Matters* view this as an acceptable practice and clearly articulate the authority of hearing officers (Pa.R.J.C.P. 1187). In fact, the judicious use of hearing officers has several potential advantages. It is generally more cost-effective and affords each case more time and focused attention, allowing for closer monitoring and fewer delays. Moreover, as long as there are clear policies and guidelines governing the handling of these cases, a judge/hearing officer team can maintain consistency in case processing and outcomes. Finally, a hearing officer who is appointed to hear dependency cases exclusively or predominantly can develop a level of specialization and expertise that would be difficult for a judge handling a general docket (NCJFCJ, *Resource Guidelines*, 1995, p. 21).

In Pennsylvania, the President Judge (or designee) may appoint hearing officers to hear designated dependency matters. Following appointment, hearing officers may not practice before juvenile courts in the judicial districts where they preside over dependency matters (Pa.R.J.C.P. 1185). By rule, a hearing officer does not have the authority to preside over termination of parental rights hearings, adoptions, or any hearing where any party seeks to establish a permanency goal of adoption or change a permanency goal to adoption. However, once a permanency goal of adoption has been approved by a judge, all subsequent reviews or hearings may be heard by the hearing officer unless a party objects. Hearing officers may not issue contempt orders or orders for emergency or protective custody (Pa.R.J.C.P. 1187). They may not issue warrants, but may recommend that a judge do so if the circumstances make it necessary. The President Judge may place other restrictions on the classes of cases to be heard by the hearing officer.

The parties to a case retain the right to have a hearing before a judge, rather than a hearing officer. Pa.R.J.C.P. 1185 directs the hearing officer to inform all parties of this right before beginning any hearing. If a party objects to having the matter heard by the hearing officer, the case should be scheduled for an immediate hearing before a judge.

"The Hearing Officer understands life and sees I am trying hard and I love my kids even though I'm not perfect."

- Pennsylvania Parent

Under Pa.R.J.C.P. 1190, hearing officers may accept stipulations in any class of cases that they are permitted to hear, subject to the usual stipulation requirements of Pa.R.J.C.P. 1405, including the requirement that the court take whatever additional corroborating evidence is necessary to support an independent determination that a child is dependent. At the conclusion of the hearing, Pa.R.J.C.P. 1191 requires that the hearing officer's findings and recommendation to the judge be announced in open court and on the record, and submitted in written form to the juvenile court judge within two business days of the hearing. Upon request, a copy of the findings and recommendation is to be given to any party.

A party may contest the hearing officer's recommendation by filing a motion with the clerk of courts within three days of receipt of the recommendation, requesting a rehearing before a judge, and stating the reasons for the challenge. A copy of the findings and recommendation may be attached to the motion for rehearing.

The hearing officer's decision is subject to timely analysis and approval by the judge. Within seven days of receipt of the hearing officer's findings and recommendation, the judge is to review the findings and recommendation of the hearing officer and: (1) accept the recommendation by order; (2) reject the recommendation and issue an order with a different disposition; (3) send the recommendation back to the hearing officer for more specific findings; or (4) conduct a rehearing (Pa.R.J.C.P. 1191). When the judge, in rejecting the hearing officer's recommendation, modifies a factual determination, a rehearing is to be conducted. The judge may reject the hearing officer's findings and enter a new finding or disposition without a rehearing if there is no modification of factual determinations. Pa.R.J.C.P. 1191 does not prohibit the court from modifying conclusions of law made by the hearing officer.

### **3.5 Qualifications of Juvenile Court Hearing Officers**

In order to preside as a hearing officer in dependency matters, an individual must be a member, in good standing, of the Pennsylvania Bar and have been licensed to practice law for at least five consecutive years (Pa.R.J.C.P. 1182(A)(1-2)). A hearing officer must complete six hours of instruction, approved by the Pennsylvania Continuing Legal Education Board, prior to presiding over any hearings. This instruction must specifically address the Juvenile Act, the Pennsylvania Rules of Juvenile Court Procedure, the Child Protective Services Law, evidence rules and methodology, as well as child and adolescent development (Pa. R.J.C.P. 1182(A)(3)). While not required, an on-line Rule 1182 educational session is available to all newly appointed hearing

officers. This course meets the initial six hour instruction requirement for hearing officers found in Pa.R.J.C.P. 1182.

Once the initial six hours of instruction have been completed, a hearing officer must thereafter complete six hours of instruction in juvenile dependency law, policy or related social science research designed by the Office of Children and Families in the Courts, every two years (Pa. R.J.P.C. 1182(B)). These requirements are additional requirements to the Pennsylvania Rules of Continuing Legal Education as the mandate is for specific training in juvenile dependency law. The credit hours received do count towards the total credits required under the Continuing Legal Education requirements.

It is the responsibility of the court to ensure that the hearing officer meets these requirements initially and on an ongoing basis. The *Pennsylvania Rules of Juvenile Court Procedure – Dependency Matters* require hearing officers submit an affidavit to the court confirming compliance with the mandated training. Courts should establish a local process for this.