

Institute of Judicial Administration

American Bar Association

Juvenile Justice Standards



STANDARDS RELATING TO

*Court Organization
and Administration*

Recommended by the
IJA-ABA JOINT COMMISSION ON JUVENILE JUSTICE STANDARDS

Hon. Irving R. Kaufman, *Chairman*

Approved by the
HOUSE OF DELEGATES, AMERICAN BAR ASSOCIATION, 1980

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This book is printed on recycled paper.

Preface

The standards and commentary in this volume are part of a series designed to cover the spectrum of problems pertaining to the laws affecting children. They examine the juvenile justice system and its relationship to the rights and responsibilities of juveniles. The series was prepared under the supervision of a Joint Commission on Juvenile Justice Standards appointed by the Institute of Judicial Administration and the American Bar Association. Seventeen volumes in the series were approved by the House of Delegates of the American Bar Association on February 12, 1979.

The standards are intended to serve as guidelines for action by legislators, judges, administrators, public and private agencies, local civic groups, and others responsible for or concerned with the treatment of youths at local, state, and federal levels. The twenty-three volumes issued by the joint commission cover the entire field of juvenile justice administration, including the jurisdiction and organization of trial and appellate courts hearing matters concerning juveniles; the transfer of jurisdiction to adult criminal courts; and the functions performed by law enforcement officers and court intake, probation, and corrections personnel. Standards for attorneys representing the state, for juveniles and their families, and for the procedures to be followed at the preadjudication, adjudication, disposition, and postdisposition stages are included. One volume in this series sets forth standards for the statutory classification of delinquent acts and the rules governing the sanctions to be imposed. Other volumes deal with problems affecting nondelinquent youth, including recommendations concerning the permissible range of intervention by the state in cases of abuse or neglect, status offenses (such as truancy and running away), and contractual, medical, educational, and employment rights of minors.

The history of the Juvenile Justice Standards Project illustrates the breadth and scope of its task. In 1971, the Institute of Judicial Administration, a private, nonprofit research and educational organi-

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zation located at New York University School of Law, began planning the Juvenile Justice Standards Project. At that time, the Project on Standards for Criminal Justice of the ABA, initiated by IJA seven years earlier, was completing the last of twelve volumes of recommendations for the adult criminal justice system. However, those standards were not designed to address the issues confronted by the separate courts handling juvenile matters. The Juvenile Justice Standards Project was created to consider those issues.

A planning committee chaired by then Judge and now Chief Judge Irving R. Kaufman of the United States Court of Appeals for the Second Circuit met in October 1971. That winter, reporters who would be responsible for drafting the volumes met with six planning subcommittees to identify and analyze the important issues in the juvenile justice field. Based on material developed by them, the planning committee charted the areas to be covered.

In February 1973, the ABA became a co-sponsor of the project. IJA continued to serve as the secretariat of the project. The IJA-ABA Joint Commission on Juvenile Justice Standards was then created to serve as the project's governing body. The joint commission, chaired by Chief Judge Kaufman, consists of twenty-nine members, approximately half of whom are lawyers and judges, the balance representing nonlegal disciplines such as psychology and sociology. The chairpersons of the four drafting committees also serve on the joint commission. The perspective of minority groups was introduced by a Minority Group Advisory Committee established in 1973, members of which subsequently joined the commission and the drafting committees. David Gilman has been the director of the project since July 1976.

The task of writing standards and accompanying commentary was undertaken by more than thirty scholars, each of whom was assigned a topic within the jurisdiction of one of the four advisory drafting committees: Committee I, Intervention in the Lives of Children; Committee II, Court Roles and Procedures; Committee III, Treatment and Correction; and Committee IV, Administration. The committees were composed of more than 100 members chosen for their background and experience not only in legal issues affecting youth, but also in related fields such as psychiatry, psychology, sociology, social work, education, corrections, and police work. The standards and commentary produced by the reporters and drafting committees were presented to the IJA-ABA Joint Commission on Juvenile Justice Standards for consideration. The deliberations of the joint commission led to revisions in the standards and commentary presented to them, culminating in the published tentative drafts.

The published tentative drafts were distributed widely to members of the legal community, juvenile justice specialists, and organizations directly concerned with the juvenile justice system for study and comment. The ABA assigned the task of reviewing individual volumes to ABA sections whose members are expert in the specific areas covered by those volumes. Especially helpful during this review period were the comments, observations, and guidance provided by Professor Livingston Hall, Chairperson, Committee on Juvenile Justice of the Section of Criminal Justice, and Marjorie M. Childs, Chairperson of the Juvenile Justice Standards Review Committee of the Section of Family Law of the ABA. The recommendations submitted to the project by the professional groups, attorneys, judges, and ABA sections were presented to an executive committee of the joint commission, to whom the responsibility of responding had been delegated by the full commission. The executive committee consisted of the following members of the joint commission:

Chief Judge Irving R. Kaufman, *Chairman*
Hon. William S. Fort, *Vice Chairman*
Prof. Charles Z. Smith, *Vice Chairman*
Dr. Eli Bower
Allen Breed
William T. Gossett, Esq.
Robert W. Meserve, Esq.
Milton G. Rector
Daniel L. Skoler, Esq.
Hon. William S. White
Hon. Patricia M. Wald, *Special Consultant*

The executive committee met in 1977 and 1978 to discuss the proposed changes in the published standards and commentary. Minutes issued after the meetings reflecting the decisions by the executive committee were circulated to the members of the joint commission and the ABA House of Delegates, as well as to those who had transmitted comments to the project.

On February 12, 1979, the ABA House of Delegates approved seventeen of the twenty-three published volumes. It was understood that the approved volumes would be revised to conform to the changes described in the minutes of the 1977 and 1978 executive committee meetings. The *Schools and Education* volume was not presented to the House and the five remaining volumes—*Abuse and Neglect*, *Court Organization and Administration*, *Juvenile Delinquency and Sanctions*, *Juvenile Probation Function*, and *Noncriminal*

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Misbehavior—were held over for final consideration at the 1980 mid-winter meeting of the House.

Among the agreed-upon changes in the standards was the decision to bracket all numbers limiting time periods and sizes of facilities in order to distinguish precatory from mandatory standards and thereby allow for variations imposed by differences among jurisdictions. In some cases, numerical limitations concerning a juvenile's age also are bracketed.

The tentative drafts of the seventeen volumes approved by the ABA House of Delegates in February 1979, revised as agreed, are now ready for consideration and implementation by the components of the juvenile justice system in the various states and localities.

Much time has elapsed from the start of the project to the present date and significant changes have taken place both in the law and the social climate affecting juvenile justice in this country. Some of the changes are directly traceable to these standards and the intense national interest surrounding their promulgation. Other major changes are the indirect result of the standards; still others derive from independent local influences, such as increases in reported crime rates.

The volumes could not be revised to reflect legal and social developments subsequent to the drafting and release of the tentative drafts in 1975 and 1976 without distorting the context in which they were written and adopted. Therefore, changes in the standards or commentary dictated by the decisions of the executive committee subsequent to the publication of the tentative drafts are indicated in a special notation at the front of each volume.

In addition, the series will be brought up to date in the revised version of the summary volume, *Standards for Juvenile Justice: A Summary and Analysis*, which will describe current history, major trends, and the observable impact of the proposed standards on the juvenile justice system from their earliest dissemination. Far from being outdated, the published standards have become guideposts to the future of juvenile law.

The planning phase of the project was supported by a grant from the National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration. The National Institute also supported the drafting phase of the project, with additional support from grants from the American Bar Endowment, and the Andrew Mellon, Vincent Astor, and Herman Goldman foundations. Both the National Institute and the American Bar Endowment funded the final revision phase of the project.

An account of the history and accomplishments of the project

would not be complete without acknowledging the work of some of the people who, although no longer with the project, contributed immeasurably to its achievements. Orison Marden, a former president of the ABA, was co-chairman of the commission from 1974 until his death in August 1975. Paul Nejelski was director of the project during its planning phase from 1971 to 1973. Lawrence Schultz, who was research director from the inception of the project, was director from 1973 until 1974. From 1974 to 1975, Delmar Karlen served as vice-chairman of the commission and as chairman of its executive committee, and Wayne Mucci was director of the project. Barbara Flicker was director of the project from 1975 to 1976. Justice Tom C. Clark was chairman for ABA liaison from 1975 to 1977.

Legal editors included Jo Rena Adams, Paula Ryan, and Ken Taymor. Other valued staff members were Fred Cohen, Pat Pickrell, Peter Garlock, and Oscar Garcia-Rivera. Mary Anne O'Dea and Susan J. Sandler also served as editors. Amy Berlin and Kathy Kolar were research associates. Jennifer K. Schweickart and Ramelle Cochrane Pulitzer were editorial assistants.

It should be noted that the positions adopted by the joint commission and stated in these volumes do not represent the official policies or views of the organizations with which the members of the joint commission and the drafting committees are associated.

This volume is part of the series of standards and commentary prepared under the supervision of Drafting Committee II, which also includes the following volumes:

TRANSFER BETWEEN COURTS
COUNSEL FOR PRIVATE PARTIES
PROSECUTION
THE JUVENILE PROBATION FUNCTION: INTAKE AND PRE-
DISPOSITION INVESTIGATIVE SERVICES
PRETRIAL COURT PROCEEDINGS
ADJUDICATION
APPEALS AND COLLATERAL REVIEW

Addendum of Revisions in the 1977 Tentative Draft

As discussed in the Preface, the published tentative drafts were distributed to the appropriate ABA sections and other interested individuals and organizations. Comments and suggestions concerning the volumes were solicited by the executive committee of the IJA-ABA Joint Commission. The executive committee then reviewed the standards and commentary within the context of the recommendations received and adopted certain modifications. The specific changes affecting this volume are set forth below. Corrections in form, spelling, or punctuation are not included in this enumeration.

1. Standard 1.1 D. was amended by deleting "nonjudicial" to conform to *The Juvenile Probation Function* Standard 2.4 D., which bars nonjudicial probation as a permissible intake disposition.

Commentary was revised accordingly.

2. Standard 1.2 was amended by bracketing juvenile intake and probation services, to make administration of such services by the executive branch of government permissive instead of mandatory.

Commentary was revised to indicate the controversy concerning this issue.

3. Standard 2.1 C. was amended by bracketing rotation of judges, as agreed at the ABA House of Delegates meeting in February 1980.

Commentary was revised accordingly.

4. Standard 2.3 was amended by bracketing four as the minimum number of judges in a family court division warranting a full-time court administrator, to make the recommended minimum discretionary with the jurisdiction.

5. Commentary to Standard 1.1 A. was revised by adding a cross-reference to volumes dealing with the jurisdiction of family court.

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6. Commentary to Standard 1.1 B. was revised to add a statement that the same judge should not preside at detention and adjudication hearings, if possible, and a discussion of the problem of a one-judge court.

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Introduction

This volume deals with the organization and administration of the juvenile court. Part I sets forth the basic organizational structure, calling for the creation of a family court to replace the juvenile court, and suggesting the transfer of juvenile intake, probation, and detention services to executive agency administration.

The merger of the historic juvenile court jurisdiction with the domestic relations jurisdiction will join together two major areas of social litigation that have been among the most intriguing, frustrating, and perplexing of the American judicial system. Neither court has been a high status setting for its judges. Yet these courts, in their efforts to alleviate human suffering, deserve and have attracted substantial interest from the judiciary and the public.

The importance of the family court's work, at the least equals that of any other court. Joined within the jurisdiction of tomorrow's family court will be additional family-related matters presently distributed throughout the justice system.

One objective of this forum is to avoid the judicial fragmentation of the family that results when various courts deal with the diverse legal issues that relate to family matters. Another objective is to significantly expand the constructive and continuing influence of one judge in responding to the recurrent litigation problems of one family.

The family court, within the organization of courts, would be placed within the highest court of general trial jurisdiction. A family court division would be created, and its judges assigned from the prestigious jurists of the trial court. Assignment to this division would be on a modified rotation basis.

This scheme coincides with the interest in many states in reordering the organization of their judicial systems to remove duplication, fragmentation, and structural inefficiencies.

Executive agency rather than judicial system administration of juvenile intake, probation, and detention services should reduce the fragmentation of social services provided to juveniles and families,

and increase the independence of the judge and the time available to the judge in fulfilling the primary judicial role of case decision making. This will place a particular responsibility upon the division to further its efforts to obtain effective collaboration from executive branch agencies.

Part II deals with judicial and administrative personnel. The need for increased competency of family court judges and increased quality of judicial decisions in family court is emphasized.

This improvement in the quality of family court judges will be difficult to achieve without elevating the general status of that court and its judges. In achieving these objectives, the practice of using referees (masters, commissioners) to perform judicial functions should be ended.

Part III deals with the functions of the court. Formalized rules of procedure, rules of administration, and written guidelines and policies are seen as essential for the family court. The primary responsibility for their preparation and implementation should be borne by the judiciary.

The court's decision-making role is extended to include enforcement of judicial orders. The court must have adequate information that not only the subject of the court proceedings but also the social service agency is abiding by its orders, and must take appropriate action if they are not.

Time standards for processing cases are included to achieve greater court efficiency and compliance with speedy trial rules, and because juveniles, particularly, are seen as benefiting from more immediate court and social service action.

The current need for effective court management is recognized, and extensive responsibility is granted to court administrators, working under the supervision of the division's presiding judge, to regularize the court's internal functioning and to facilitate the court's liaison with community agencies.

Part IV sets forth the powers and duties of the court to fulfill its responsibilities. Approaches for obtaining adequate resources are presented together with the extraordinary, and seldom used, remedy of "inherent powers," which the court should consider only when its integrity as a separate branch of government is threatened.

Despite the turmoil that surrounds contemporary family life, the family remains the primary American model for the day-to-day living environment. It is the duty of the judicial system to seek to enhance the strengths of individual family members, and thereby the family unit, when legal intervention is necessary.

Despite the extensive criticism to which the juvenile court has been and continues to be subjected, few would abandon its basic tenets. It is the separate and inferior status of the juvenile court that we would abandon. Its goals and objectives can more nearly achieve fruition in a new and enlarged forum, the family court.

Standards

PART I: ORGANIZATIONAL STRUCTURE OF COURTS OF JUVENILE JURISDICTION

1.1 Organizational structure: general principles.

The traditional juvenile court jurisdiction should be included in a family court division of the highest court of general trial jurisdiction.

A. The exclusive original jurisdiction of this division should encompass: juvenile law violations; cases of abuse and neglect; cases involving the need for emergency medical treatment; voluntary and involuntary termination of parental rights proceedings; adoption proceedings; appointment of legal guardians for juveniles; proceedings under interstate compacts on juveniles and on the placement of juveniles; intrafamily criminal offenses; proceedings in regard to divorce, separation, annulment, alimony, custody, and support of juveniles; proceedings to establish paternity and to enforce support; and proceedings under the Uniform Reciprocal Enforcement of Support Act. Mental illness and retardation commitment proceedings concerning juveniles and adults should be governed by the law of the jurisdiction applicable to such proceedings for nonadjudicated persons.

B. Calendaring methods should follow the general principle that the same judge should consider the different legal issues that relate to all members of the same family. Further, the judge who presides at an adjudicatory hearing should conduct the disposition hearing of the case.

C. General intake procedures to determine the need for formal judicial consideration of juvenile delinquency referrals should be adapted and applied to the different types of cases within the jurisdiction of the family court division.

D. The court should encourage probation and social service agencies working with court clientele to maximize single staff member responsibility for an entire family.

1.2 Juvenile intake, probation, and detention services.

The [juvenile intake function, juvenile probation services,] and

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juvenile detention programs should be administered by the executive branch of government.

**PART II: JUDICIAL AND CHIEF ADMINISTRATIVE
PERSONNEL PERFORMING COURT FUNCTIONS**

2.1 Judges.

Judges of the family court division should be assigned from among the judges of the highest court of general trial jurisdiction. Their assignment to the family court division should be:

A. by appointment of the presiding judge of the highest court of general trial jurisdiction;

B. with special consideration given to the aptitude, demonstrated interest, and experience of each judge;

C. [on a modified rotation system,] with indefinite tenure discouraged;

D. if at all practical, on a full-time basis; and

E. accompanied by the supporting personnel, equipment, and facilities necessary for effective functioning.

2.2 Referees; judicial officers.

Only judges should perform judicial case decision-making functions.

2.3 Court administrator.

A. Each family court division with [four] or more judges (and, where justified by caseload, in divisions with fewer judges) should have a full-time court administrator. This official should be an assistant to the general trial court administrator. The division administrator should be appointed by the general trial court administrator with the concurrence of the presiding judge of the general trial court, but should function under the supervision of the presiding judge of the family court division.

B. In less populous jurisdictions, the general trial court administrator should direct the staff members of the family court division.

PART III: COURT FUNCTIONS

3.1 Rule making.

The family court division should operate under formally adopted:

A. rules of procedure;

- B. rules of administration; and
- C. guidelines.

3.2 Case decision making.

A judge should render all judicial decisions on cases before the court. No judicial proceedings should be heard by nonjudicial personnel. Adjudicatory proceedings should be conducted in a formal manner. The monitoring of its orders is an essential function of the family court division. Provision should be made for party-initiated and agency-initiated review of court orders.

3.3 Case processing time standards.

Time standards for judicial hearing of juvenile cases should be promulgated and monitored. These should include:

- A. detention and shelter hearings: not more than twenty-four hours following admission to any detention or shelter facility;
- B. adjudicatory or transfer (waiver) hearings:
 - 1. concerning a juvenile in a detention or shelter facility: not later than fifteen days following admission to such facility;
 - 2. concerning a juvenile who is not in a detention or shelter facility: not later than thirty days following the filing of the petition;
- C. disposition hearings: not later than fifteen days following the adjudicatory hearing. The court may grant additional time in exceptional cases that require more complex evaluation.

3.4 Management responsibilities.

Under the supervision of the presiding judge of the family court division, the court administrator should administer or perform the following functions:

- A. caseflow management;
- B. budget and fiscal control;
- C. records management;
- D. implementing legal procedures;
- E. personnel systems management;
- F. space facilities, equipment, and library materials;
- G. management information system;
- H. training program coordination;
- I. planning and development;
- J. jury management;
- K. procurement of supplies and services;
- L. monitoring and liaison responsibility with probation, detention, and social service agencies;

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- M. public information; and
- N. secretariat for meetings of division judges.

3.5 Community relations function.

A. The family court division should develop and implement a program of community relations and public information to include:

1. regular written and oral public presentations of data and experience concerning the functions, progress, and problems of the court and the juvenile justice system;
2. advocacy for law reform and improved agency services and facilities;
3. development of close working relationships with community agencies serving court clientele;
4. leadership in effectuating a juvenile justice council composed of representatives of key juvenile justice agencies.

B. A representative family court division citizens' advisory committee should be appointed by the presiding judge of the general trial court. The advisory committee should advise, critique, and assist the division in achieving a more effective family court.

**PART IV: RESPONSIBILITY OF THE FAMILY COURT DIVISION
TO EFFECTUATE ITS DUTIES AND ORDERS**

4.1 General principles.

The family court division should have available those personnel, facilities, and services necessary for the effective discharge of its responsibilities. The doctrine of inherent powers should be employed only when the court can show all of the following:

- A. all possible approaches to obtain the necessary resource have been tried and have failed;
- B. the expense in question is a necessary as opposed to a desirable expense; and
- C. failure to obtain this resource would render the court unable to fulfill its legal duties.

Standards with Commentary

PART I: ORGANIZATIONAL STRUCTURE OF COURTS OF JUVENILE JURISDICTION

1.1 Organizational structure: general principles.

The traditional juvenile court jurisdiction should be included in a family court division of the highest court of general trial jurisdiction.

A. The exclusive original jurisdiction of this division should encompass: juvenile law violations; cases of abuse and neglect; cases involving the need for emergency medical treatment; voluntary and involuntary termination of parental rights proceedings; adoption proceedings; appointment of legal guardians for juveniles; proceedings under interstate compacts on juveniles and on the placement of juveniles; intrafamily criminal offenses; proceedings in regard to divorce, separation, annulment, alimony, custody, and support of juveniles; proceedings to establish paternity and to enforce support; and proceedings under the Uniform Reciprocal Enforcement of Support Act. Mental illness and retardation commitment proceedings concerning juveniles and adults should be governed by the law of the jurisdiction applicable to such proceedings for nonadjudicated persons.

B. Calendaring methods should follow the general principle that the same judge should consider the different legal issues that relate to all members of the same family. Further, the judge who presides at an adjudicatory hearing should conduct the disposition hearing of the case.

C. General intake procedures to determine the need for formal judicial consideration of juvenile delinquency referrals should be adapted and applied to the different types of cases within the jurisdiction of the family court division.

D. The court should encourage probation and social service agencies working with court clientele to maximize single staff member responsibility for an entire family.

Commentary

This standard urges the replacement of the juvenile court by a family court structured as a division of the highest court of general trial jurisdiction. This is the family court division structure that exists today in the District of Columbia and in Hawaii and was recommended for the future by the National Advisory Commission on Criminal Justice Standards and Goals, "Courts" § 14.1 (1973) (hereinafter cited as National Advisory Commission, "Courts"), and by the U.S. Department of Health, Education and Welfare, "Model Acts for Family Courts and State-Local Children's Programs" § 3 (1975). This standard rejects the separate and independent family court structure that presently exists in New York, Rhode Island, and Delaware.

The strength of the juvenile court can be extended by broadening its jurisdiction to include a wider array of family-related legal problems. Certain obstacles that have fragmented judicial system effectiveness with the family would be eliminated. This would aid the juvenile court's historic goals of strengthening the family and of maintaining the child in his or her own family.

In most states today, a marriage is dissolved in one court and a child custody award is decreed. Subsequently, this same child, if neglected or delinquent, may be the subject of a dispositional determination in a different court resulting in a custody order inconsistent with the first.

One court lacks knowledge of the jurisdiction and orders of another court concerning the same child. Precious probation and social service time is wasted when one judge calls for an investigation and report on a given case when the family may be well known already to a different court and a different social agency.

The general public is confused by the various courts that deal with family-related matters, and even lawyers are unsure of the proper legal forum for particular legal actions.

The difficulties associated with jurisdictional fragmentation of family law problems are nearly endless. A family court division would eliminate many of these problems. See Arthur, "A Family Court—Why Not?" 51 *Minn. L. Rev.* 223 (1966).

Certain organizational and management principles underlie this standard.

A. The first relates to the breadth of family court jurisdiction. The scope of jurisdiction for the family court division should include juvenile law violations; cases of abuse and neglect; adoption proceedings and their legal antecedents; voluntary or involuntary termination of parental rights proceedings; the establishment of paternity; the

ordering and enforcing of child support; the total range of divorce or dissolution of marriage issues, including property division, custody, visitation, and support; intrafamily criminal offenses, with family defined as including members of the same household—see Note, “Jurisdiction over Intra-Family Offenses: A Plea for Legislative Action,” 45 *N.Y.U.L. Rev.* 345 (1970); guardianships of minors; and miscellaneous additional matters such as consents to marriage, enlistment into the armed forces, and proceedings involving relevant interstate compacts. See the *Abuse and Neglect*, *Juvenile Delinquency and Sanctions*, and *Rights of Minors* volumes.

The incorporation of intrafamily criminal offenses, including felonies, may appear to be a unique suggestion, but is consistent with the overall objective of the family court to strengthen the family. Intrafamily offenses represent a breakdown of the family structure with unique legal ramifications. A family court division can provide traditional criminal remedies as well as integrated social services for the entire family. The judges of this division should be among the most competent of trial court jurists, fully capable of administering jury trials for these and other cases.

B. Information systems need to be designed so that calendaring officials have knowledge of the different court actions relating to the same family. Calendar management should follow the general principle of scheduling all legal matters involving the same family before the same judge. Such continuity should permit improved decision making with less duplication and with greater familiarity and ease. The family, and its individual members, should receive more consistent and more individualized attention. However, provision should be made to permit case transfer to another judge when judicial over-familiarity with a family may lead to prejudgment. See ABA Standards of Judicial Administration, *Trial Courts* § 2.32 commentary (Approved Draft 1976), which recommends, for all courts, that a party should be permitted a peremptory challenge of the judge to whom a matter has been assigned.

Whenever possible, the judge who presides at the detention hearing, or other pretrial proceeding in which social information has been considered, should not preside at the adjudication. However, in one-judge courts or situations in which it is otherwise not possible to schedule different judges for such pretrial proceedings, the judge should make certain that the record and his conduct of the trial demonstrate that all decisions were based solely on the evidence properly before the court at the adjudication hearing and not on extrinsic information introduced at other proceedings.

C. General precourt intake procedures used by countless juvenile courts and probation organizations can be adapted to apply to other

legal proceedings, such as domestic relations cases and intrafamily criminal offenses. See N.Y. Family Ct. R. 8.1; Rules of the Family Division for the Superior Court of the District of Columbia, Intra-Family Proceedings, Rule 2.

D. Probation and social services should strive for one staff member service per family unit where possible, although individual family members may require certain supplementary services. Training in family intervention methods will be necessary. Nonetheless, some staff members will find their expertise in one specific area and experience difficulties in others. For example, a probation officer may be skilled in the group counseling of delinquent youth, but unfamiliar with family counseling. Conversely, a staff member may be excellent with adults, but may have no common communication ground with their children and may experience difficulty in working with youngsters. At a minimum, coordinated assistance to the family unit remains the desirable goal.

Standard 1.1 D. was amended to delete "nonjudicial" as a modifier of "probation and social service agencies," to be consistent with the terminology in *The Juvenile Probation Function* Standard 2.4 defining and barring nonjudicial probation as a permissible intake disposition.

Certain elements of the family court division concept require comment.

The combining of the heavily trafficked juvenile and domestic relations courts, plus the additional jurisdiction recommended here, will present problems in management and organization. What should be avoided is the simple structure of specialized subdivisions, such as juvenile offenses, domestic relations cases, and neglect, abuse, and intrafamily cases, which fails to meet the objective of calendaring the same family before the same judge for all family-related legal matters. Adjudicatory and dispositional hearings in a given case should be conducted by the same judge who initiated these hearings, even if, in the interim, this judge has been reassigned to another division of the court.

Judges and staff members of present juvenile courts or juvenile court divisions that perform reasonably well may prefer not to take on additional responsibilities that appear to them to offer fewer intrinsic rewards than do their current functions. They may also be concerned that the individualized juvenile justice they may have achieved will become diluted and depersonalized in an enlarged family court division. Yet the reality is that children live in families, and families are unnecessarily fragmented when they encounter today's judicial system.

Changes in compliance with this standard should allow for local and state feasibility studies and planning processes, programs of partial implementation accompanied by assessment, and modifications to meet the special conditions or concerns of a particular jurisdiction. In any event, the development of strong court management capability is essential to minimize the problems that will develop and to strengthen the potentials of the family court.

The status of the court of juvenile jurisdiction in the hierarchy of courts should be at least equal to that of those courts that consider adult felony defendants, rule on divorce or the dissolution of marriage, decide who is the rightful owner of real property, or determine personal property or personal injury issues that concern larger money claims. The specialized division status would also grant to this division the full inherent powers of a court, including the authority to review habeas corpus petitions. See *Donald R. v. Whitmer*, 30 U.2d 206, 515 P.2d 617 (1973). The vestiges of the juvenile court as an inferior or lower court need to be removed, but its special strengths maintained. U.S. Department of Justice, "National Survey of Court Organization" (1973); J. Dineen, "Juvenile Court Organization and Status Offenses: A Statutory Profile" (National Center for Juvenile Justice 1975).

As a specialized division rather than a specialized and separate court, the family court division would be an organic part of the most prestigious of the trial courts, and its judges would be drawn from the bank of general trial court judges rather than being elected or appointed to exclusive tenure on a juvenile court.

The desired structure for the administration of juvenile courts must also be seen within the context of what benefits the administration of all courts. The National Conference on the Judiciary in 1971, the National Advisory Commission on Criminal Justice Standards and Goals in 1973, and the American Bar Association Commission on Standards of Judicial Administration in 1974, all recommended that there be one trial court, and that this, preferably, be a single tier rather than a double tier court, with judges rotating among the different divisions of the single trial court.

The District of Columbia Superior Court and the Illinois Circuit Court illustrate such an organizational structure. See National Conference on the Judiciary, "Justice in the States" 265 (1971); National Advisory Commission, "Courts" § 8.1; ABA Standards of Judicial Administration, *Court Organization* §§ 1.10, 1.11 (Approved Draft 1974); District of Columbia Court Reform and Criminal Procedure Act of 1970; Constitution of Illinois, art. VI, § 1.

The structure of a juvenile court as a specialized division of the

general trial court would follow this concept and would strengthen the coordination and overall management potential of the total trial court. See Pound, "The Place of the Family Court in the Judicial System," *N.P.P.A.J.* (1959).

There is no need for a juvenile court to maintain its own separate personnel system when the juvenile jurisdiction is included within the general trial court. And it is preferable that there be one job classification and pay scale system, and one recruitment, screening, selection, promotion, and termination of employment system, for the entire court.

The budget requirements for a juvenile court should be seen within the overall budgetary needs of a trial court system. In terms of monitoring budget allocations and shifting monies across budget line items, there are further advantages in the unitary budgeting of a single, overall court budget. See G. Hazard, M. McNamara, and I. Sentilles, *Court Finance and Unitary Budgeting* (ABA Standards of Judicial Administration, Supporting Studies—1, 1973), which goes beyond a single trial court budget to urge state financing of all courts through a unified judicial system budget. A unified trial court administration permits centralization of a greater amount of expertise and planning to meet the needs of all the courts in that district.

As part of the general trial court, economies may be effected through central pool arrangements concerning court reporters, court auxiliary personnel, and court transportation needs, and through centralized purchasing. Personnel should be paid from one central payroll; sick leave and vacation leave can be centrally monitored.

Family court division objectives may be achieved more easily when supported by all of the judges and the administration of the overall trial court.

This court structure presents the opportunity for an easier method of assigning substitute judges from other divisions when the family court division judge must be away from the court.

A further advantage would be the elimination of de novo and "on the record" appeals, in many states, from an inferior juvenile court to the highest court of general trial jurisdiction. M. Levin and R. Sarri, "Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States," 38-39 (National Assessment of Juvenile Corrections 1974). An appeal from the family court division of the general trial court would be taken to the state appellate court system.

The family court jurisdiction could be created in most states by statute, although some states will require constitutional amendments. A family division can then be created by rule of the supreme court, judicial council, or general trial court.

1.2 Juvenile intake, probation, and detention services.

The [juvenile intake function, juvenile probation services,] and juvenile detention programs should be administered by the executive branch of government.

Commentary

Juvenile courts, far more than criminal courts, administer a wide variety of social service programs, ranging from shelter care to half-way houses and moderate size institutions. Most commonly it is juvenile intake and probation services, and, secondarily, juvenile detention centers, that are administered within the judicial branch of government under the superintending responsibility of the presiding judge of the juvenile court. These services have made notable contributions to youth and community welfare, although court-administered services have probably never been uniformly adequate throughout any state.

There has long been some question as to the general capability of judges to demonstrate both the administrative skills and the breadth of knowledge of the applied social sciences necessary for effective social service program administration and for the careful guidance of professional probation and detention personnel. Too often the judicial superintending responsibility has been abdicated, or, when exercised, has excessively dominated probation and detention programming.

Training in law and the practice of law are correlated with the primary judicial role of ruling on the law and entering the most appropriate decisions under law, not with organizational management and program management. The impact of *In re Gault*, 387 U.S. 1 (1967), joined with the increased number of juvenile delinquency, neglect, and child abuse referrals to juvenile courts, has led to necessary judicial preoccupation with more lengthy and more formal court proceedings and hearings. The more adversarial and more regularized due process approach in juvenile court has taken its toll on judicial time that in past years could be applied more generously to probation-detention administration and program planning. The movement toward trial court unification and the implementation of family court divisions will result predictably in a still greater monopolization of judicial time in fulfilling judicial hearing responsibilities.

There are other reasons for urging the transfer of all program functions to the executive branch of government. Judges of juvenile courts increasingly seek enforcement of the orders they have entered through judicial review of the procedures used by intake, probation, detention, and social service organizations, and of the quality of those

services and their adherence to principles of constitutional and statutory law. Judgments are made more independently when the services assessed are not within the legal-administrative responsibility of the reviewing judge. Nevertheless, the intake and probation services functions of the probation department have been bracketed in the standard to reflect the opposition of juvenile and family court judges and others to removal of those functions to the executive department.

A family court division's invocation of the inherent powers of court doctrine, seeking to compel legislative funding of judicially administered program services considered necessary for the court's discharge of its responsibilities, places severe burdens on independence of judgment and the appearance of justice. Judicial independence is increased when reviewing the individual case reports and recommendations of executive agency officials as contrasted with those of the court's own employees. Further, executive agency probation officers may well assert more objective and independent recommendations at the critical juvenile justice processing stages.

The unionization of court probation departments in a growing number of jurisdictions has involved judicial system officials in negotiations and contracts with employee groups. Subsequent contract disputes may lead to litigation before judges who are the ultimate employers of these personnel.

In some courts today, due process has been jeopardized when judges confer informally with their intake officers in deciding whether a case should be judicially or nonjudicially handled. Through other informal interchanges, judges learn of the progress or lack thereof in the adjustment of juveniles upon whom they will later sit in judgment.

Public recognition and understanding of the removal of program services from judicial administration should, in time, alleviate public anger toward the judiciary for shortcomings in program service efficacy.

The National Advisory Commission on Criminal Justice Standards and Goals advanced additional arguments: "Probation staff may be assigned functions that serve legal processes of the court and are unrelated to probation, such as issuing summonses, serving subpoenas, and running errands for judges . . . [A]s long as probation remains part of the court setting, it will be subservient to the court and will not develop an identity of its own." National Advisory Commission on Criminal Standards and Goals, "Corrections" 314 (1973). (Hereinafter cited as National Advisory Commission, "Corrections.")

With executive organization of these functions, fragmentation of service delivery is substantially reduced and integration of a wider

variety of program services to assist the individual is substantially increased. In states such as Maryland and Florida, which by statute have organized juvenile detention, intake, probation, institutions, aftercare, and community-based services within the same executive agency, effective service integration is possible on a statewide basis, along with comprehensive planning, and program and personnel flexibility. Where these executive agencies are housed within a larger human resources department, delivery of additional services to youth, such as vocational rehabilitation, mental health, and employment services, may be facilitated.

From a pragmatic standpoint, state legislatures are showing growing interest in providing greater state funding for probation and detention services, and a concomitant interest in a unified delivery of these services. Unified service delivery is currently hampered by judicially organized probation and detention programs.

While the Arizona Supreme Court has held that judicially organized intake and probation services do not violate a juvenile's right to due process and equal protection of the law—*In re Appeal in Pima County, Anon.*, Juvenile Act. No. J24818-2, 515 P.2d 600 (1973)—the New York Court of Appeals has held that legislative transfer of probation services from judicial to county executive responsibility is constitutionally permissible. *Bowne v. County of Nassau*, 37 N.E.2d 75, 371 N.Y.S.2d 449 (1975).

The ABA Standards for Criminal Justice, *Probation* (Approved Draft 1970) and *Court Organization* (1974) do not take a direct position on the organization of probation services, although the latter volume includes probation officers within the staff services responsible to a trial court administrator. Standard 1.41 (b) (ii) (2). Standard 1.2 of these standards departs from the National Advisory Commission, "Corrections" §§ 16.4, 8.2, which, while recommending executive administration of probation supervision functions, preferred judicial organization of juvenile intake services.

But constitutional issues still remain when intake decisions are made by employees selected by a judge to carry out his or her policies. Further, the authority to make the ultimate intake determination is increasingly vested through statute in the office of the prosecutor, in order to make the decision as to whether to prosecute independent of judicial control.

Juvenile courts freed of administrative control over probation and program functions can cooperate effectively with the executive agencies performing these functions. Executive probation officers performing social studies can implement judicial suggestions for the general content and outline of their reports. Executive officials can

provide the courts with research studies and followup information on the outcome of youthful responses to judicial orders and executive services. Interagency agreements between judicial and executive branches can guide probation and detention agency responsibilities to the courts. Judicial advocacy for improved executive agency services can be advanced without defending vested interests, and court officials can monitor and inspect executive agency services to ensure compliance with legal and constitutional requirements.

Executive agencies can encourage citizen interest in their programs and invoke the support of local public officials in seeking local solutions to community social problems. Further, the judge can serve more effectively as a check and balance on executive agency officials, maintaining an objective and independent posture as the most important decision maker in the juvenile justice process.

The principles underlying this standard apply, as well, to counselors presently utilized by domestic relations courts.

PART II: JUDICIAL AND CHIEF ADMINISTRATIVE PERSONNEL PERFORMING COURT FUNCTIONS

2.1 Judges.

Judges of the family court division should be assigned from among the judges of the highest court of general trial jurisdiction. Their assignment to the family court division should be:

A. by appointment of the presiding judge of the highest court of general trial jurisdiction;

B. with special consideration given to the aptitude, demonstrated interest, and experience of each judge;

C. [on a modified rotation system,] with indefinite tenure discouraged;

D. if at all practical, on a full-time basis; and

E. accompanied by the supporting personnel, equipment, and facilities necessary for effective functioning.

Commentary

The fulcrum of the general trial court is its presiding judge, who is elected by his or her colleagues in many jurisdictions (*e.g.*, Illinois, California, Florida), and appointed by the chief justice in others (*e.g.*, Colorado, Kansas, New Jersey). "The presiding judge should be selected on the basis of administrative ability rather than seniority." National Advisory Commission, "Courts" § 9.2. Observation sug-

gests that this criterion for selection is increasingly adhered to throughout the country.

The presiding or chief trial judge generally holds the power to assign his or her colleagues among the various branches or divisions of the trial court. This is a difficult task. The presiding judge must first look for the qualities that make a good judge for any court. "All persons selected as judges should be of good moral character, emotionally stable and mature, in good physical health, patient, courteous, and capable of deliberation and decisiveness when required to act on their own reasoned judgment. They should have a broad general and legal education and should have been admitted to the bar." See ABA Standards of Judicial Administration, *Court Organization* § 1.21 (a).

In addition, family court division judges should have demonstrated special interest in the social and legal problems of children, youth, and families; should possess special sensitivity toward minority groups who may come before the court; and should have an appreciation of divergent lifestyles. Judges with rigid moral standards, who are prone to excessive moralizing, should not be assigned to the division. A basic knowledge of sociology, psychology, psychiatry, children and their wide ranges of behavior, and the "community" are further desirable qualifications, along with the capability of evaluating the testimony of children and of expert witnesses concerning children. The ability to listen to and communicate with children and families is critical.

The judge should have not only an interest in the work of the division but also experience gained in the other divisions—civil, criminal, and probate. At a minimum, the judge should have served a year in a trial division. For this reason, assignment to the family court should not go to the judge with the least seniority.

Trial courts most frequently assign judges to a particular division for a term of one year. Renewal of the assignment is based on the year's performance, the performance of other judges in other divisions, the overall needs of the court, and individual judicial preferences.

Judicial assignment to the family court division should follow a modified rotation system; indefinite tenure is opposed. Assignment should be for a period of one year, with renewal for no longer than two additional years. See ABA Standards of Judicial Administration, *Trial Courts* § 2.35 (a) (Approved Draft 1976). After a year away, a judge could be reassigned to the family court division.

Assigning judges to specialized departments should achieve stability and efficiency through specialization while avoiding the stagnation and

departmental isolation that can result when specialization is overdone. Assignments of less than one year have little practical utility. They result in administrative discontinuity and the costs of reorienting judges and staff to new working relationships; they may result in court staff exercising, by default, dominant influence on policy and practice in the department. Rapid rotation of assignments also can lead to "judge shopping" by litigants through the mechanism of delaying a case until judicial assignments have been rotated. If any judicial assignment is so burdensome or unattractive that judges are unwilling to accept it for as long as a year, then the nature of the assignment itself should be re-examined and revised. (For example, an assignment that involves mostly case rollcalling may be entirely unnecessary if caseflow management is improved.) On the other hand, assignments for long terms tend to create departments that are in effect courts of specialized jurisdiction, with their attendant limitations. See Commentary, Section 1.11 (b), Standards Relating to Court Organization. The three year upper limit on assignments is designed to prevent this consequence. The interval at which assignments are rotated should in any event be prescribed and regular. *Trial Courts, supra*, commentary to § 2.35.

The modified rotation system prescribed in Standard 2.1 C. has been bracketed in accordance with the instructions of the ABA House of Delegates at its Midwinter 1980 meeting to acknowledge the preference of some members for the concept of a specialized family court judiciary.

The importance of assigning qualified judges to this division must be stressed. Methods to evaluate judicial performance in this division, and in courts generally, should be encouraged. Experimentation with peer group review, adapted from the medical profession's experience, may be one useful form. Another approach has been used in Utah, where each juvenile court is visited by a nonresident juvenile court judge who evaluates that district's court system and personnel, and is in turn evaluated by local court staff as to the hearings he or she has conducted during the visitation.

This system has many advantages. It will engender concern for this division from the entire bench of the general trial division. The more experienced judges will bring with them their background in other areas of law. All will take with them the added dimension of juvenile law. The juvenile court will become a part of the judicial mainstream.

It will also eliminate one of the most pressing problems present in many juvenile courts—the formation of "one man empires." This results in a court that may be operated in a paternalistic manner with the legal safeguards of due process substantially ignored. A juvenile court founded upon the doctrine of *parens patriae* is no longer legally

valid. The transition, however, to a court of law is often difficult. Inclusion of the family court as a division of the general trial court, with rotation of judges, is thought to be the most effective remedy.

On balance, the possible disadvantages of long-term tenure greatly outweigh the one major disadvantage of rotation, which is the length of time necessary to acquaint a new judge with the law and the dispositional alternatives. A judge appointed for the first time to the family court should routinely receive special training. Today's greater availability of national, regional, and in-state training programs for judges of juvenile jurisdiction makes it possible for a newly appointed family court division judge to acquire a beginning and a continuing knowledge of applicable law and procedure, of the rehabilitative goals of juvenile justice, of the behavioral sciences, and of dispositional alternatives. Through such programs or through specialized consultation, a judge should achieve skills in understanding and interacting with small groups that expand judicial competencies. State court systems should establish guidelines for specialized education for family court judges.

In multi-judge divisions, the presiding judge of the general trial court should appoint a presiding judge for the family court division to handle administrative matters. This selection should be based on administrative ability. Preferably, the judge will have served in this division prior to such appointment, although such service need not have been immediately prior to the appointment. It may be desirable for the division's presiding judge to serve more than one year in this administrative role.

Extensive discussion of judicial assignments has little relevance to sparsely populated districts where, by virtue of necessity and geography, a general trial court judge hears all cases of all types and forms in his or her district. In certain of these areas, the juvenile jurisdiction is presently in a lower trial court; in others it is in the highest court of general trial jurisdiction. Implementation of Standard 1.1, which combines a wide array of family-related causes in the latter forum, should enable a qualified judiciary and support personnel to organize themselves to achieve a higher quality administration of juvenile and family justice. Also see ABA Standards of Judicial Administration, *Court Organization* § 1.12(c) (ii), which urges: "Districts having a single judge should not be established or continued. Insofar as practicable, court districts should have not less than three judges. . . ."

Courts must have adequate supportive personnel and equipment to function properly. Use of law clerks to aid in legal research, for example, leads to more enlightened and legally accurate rulings upon the complicated issues coming before the judge.

Judges also require additional assistance: a certified court reporter, or a competent technician who manages an alternative recording system for transcribing court hearings; courtroom personnel to insure order and the effective transfer of children to other settings, when so ordered. Certain of these personnel should not be assigned to a specific judge, while others may more advantageously be considered personal employees except for times when the judge is away from the court. ABA Standards of Judicial Administration, *Trial Courts* § 2.42.

To perform their judicial functions effectively, these judges will also require ready access to a specialized library containing legal and interdisciplinary works relevant to the scope of their jurisdiction, and a courtroom designed to enhance the quality of the particular types of judicial hearings conducted in this division.

Adaptations and simplifications of these and other considerations set forth in this volume will be needed in less populous jurisdictions. Providing a judge with the necessary tools for effective performance should, however, be a goal for all jurisdictions.

2.2 Referees; judicial officers.

Only judges should perform judicial case decision-making functions.

Commentary

The referee-judicial officer is a nonjudge authorized in certain states to act in a limited judicial capacity. In some juvenile courts he or she is known as a commissioner (Seattle), a referee (Denver), or a master (Baltimore). While such personnel have been used as judicial hearing officers for several decades in some juvenile courts, many states require that juvenile court hearings be heard only by judges. In certain jurisdictions, referees hear the bulk of juvenile court cases. They may also hear other types of cases, although some statutes limit the cases they may consider. See Colo. Rev. Stat. Ann. § 19-1-110 (1973).

Use of referees is extremely varied. In 1974, the Wayne County Juvenile Court in Detroit utilized one judge and eight referees, although two additional judges were statutorily mandated later that year. The juvenile division of the Hennepin County District Court, Minneapolis, employed one judge and at least four referees, while the Denver Juvenile Court had three judges and two referees. The juvenile division of the Los Angeles Superior Court, which earlier in this decade utilized two judges and up to twenty referees or com-

missioners, altered this balance and in 1975 was utilizing five or more judges. Further, it is not uncommon for chief probation officers to preside over detention hearings.

Many, but not all, referees are licensed attorneys. This has not always been true, and, historically, chief probation officers or other nonjudicial personnel functioned part-time or full-time in this capacity. See Gough, "Referees in California's Juvenile Courts: A Study in Sub-Judicial Adjudication," 19 *Hastings L.J.* 3 (1967).

Most states that authorize referees require this person to advise the parties, prior to any hearings, that they have the right, in the first instance, to be heard by a judge rather than a referee. Ga. Code Ann. § 24A-701 (1974 Supp.). Similarly, a provision frequently requires, subsequent to the referee's decision at a hearing, that the parties be advised of their right to seek a judicial review of referee findings. Utah Code Ann. § 55-10-75 (1974).

Juvenile court utilization of referees seems to symbolize the lowered status of that court. Rather than add an additional judge as a caseload increased, a nonjudge was employed, part time or full time, at less public cost. This was convenient, cheap, and consistent with the *parens patriae* model of juvenile justice, where judicial conduct of hearings and formal legal requirements for hearings were low priority in an informal, nonadversary system. Despite high level skills, legal and social, demonstrated by a number of referees, it must be concluded that even the modest use of qualified lawyer referees is demeaning to the juvenile court, and should be ended.

In addition, the use of referees causes many problems to the efficient operation of the court. The requirement in many states that referee recommendations be reviewed by a judge would place an impossible burden on the judge, were he or she to carefully review each referee decision.

Accordingly, pro forma judicial approvals are common. A California district court of appeals ruled that pro forma judicial ratification of referee recommendations violated that state's constitutional provision banning commissioner performance of other than "subordinate judicial duties." In effect, the referee was functioning as a judge. *In re Moreno*, Ct. App., Second Appellate District, 2d Cr. 25050 (1975) (rev'd on other grounds). *In re Edgar M.*, 14 Cal. 3d 727, 537 P.2d 406, 122 Cal. Rptr. 574 (1975). Judges may be unable to resist the temptation to support their referee's findings in order to avoid rehearings that occupy more time than they wish to allocate.

A holding of violation of due process where non-attorney judges preside over criminal trials of offenses punishable by jail sentences raises constitutional concern over the utilization of non-attorney

referees in juvenile proceedings. *Gordon v. Justice Court*, 525 P.2d 72 (Calif. 1974). A federal court ruled that double jeopardy attached at a master's hearing in a Maryland juvenile court where, following a finding of innocence, the prosecutor sought to retry his case de novo before the juvenile court judge. *Aldridge v. Dean*, 395 F. Supp. 1161 (1975). A further problem has been that, at least in California, a referee commitment to the youth authority results in a transportation delay until the time to file a request for judicial review has expired.

In certain juvenile courts, referees conduct substantially more hearings than judges. Rubin, *Three Juvenile Courts: A Comparative Study* 455 (Institute for Court Management 1972). Yet referees are less accountable than judges. Judges, unlike referees, are in general accountable to an official judicial disciplinary body and to the electorate or a nonjudicial reappointive authority.

Increased legal representation of juveniles may present an overwhelming problem to those courts utilizing even lawyer referees. An organized defender or prosecutor system can render a court docket unmanageable by demanding judicial hearings in all cases in which they are involved.

This standard, opposing juvenile court utilization of referees, is consistent with the National Advisory Commission, "Courts" 166, but is at variance with ABA Standards of Judicial Administration, *Court Organization* § 1.26 (Approved Draft 1974), which does not disapprove the use of legally trained "judicial officers assisting judges." In fact, those standards see the referee-judicial officer position as a training ground "for possible subsequent promotion to the office of judge," and encourage reasonable judicial officer rotation, from division to division, to broaden their knowledge and experience.

But different considerations apply to the juvenile court. The juvenile court is striving to overcome the inferior rank it has held for so long within the family of courts, and its use of referees has symbolized its inferior status. Competent referees should become judges.

2.3 Court administrator.

A. Each family court division with [four] or more judges (and, where justified by caseload, in divisions with fewer judges) should have a full-time court administrator. This official should be an assistant to the general trial court administrator. The division administrator should be appointed by the general trial court administrator with the concurrence of the presiding judge of the general trial court,

but should function under the supervision of the presiding judge of the family court division.

B. In less populous jurisdictions, the general trial court administrator should direct the staff members of the family court division.

Commentary

The heavy caseload, recurrent litigation, extensive interagency involvement, and complex hearings that characterize family court division jurisdiction require that a full-time administrator should be employed where there are four or more division judges. These factors suggest a downward modification of the National Advisory Commission standard of a full-time court administrator where there are five or more judges. See National Advisory Commission, "Courts" § 9.3.

The administrator should receive the approval of the presiding judge of the division for policies and procedures used in the administration of the court. He or she should administer his or her responsibilities—see Standard 3.4—under the general supervision of the presiding judge of the division, who should set aside sufficient time for the supervision of the administrator and be easily accessible for consultation. This official will require sufficient and qualified staff assistance to perform effectively.

The preferred minimum standard of formal education required for this position should be a bachelor's degree, preferably in public administration or business administration. This should be accompanied by supervisory or administrative experience in a court setting or other organization. Specialized training, or a commitment to undertake training, in court administration should also be required.

A graduate degree in public administration, business administration, or law, and certified training in court management or a graduate degree in judicial administration, are added prerequisites desirable in family court divisions with heavy volume. The salary should be on a par with positions in private industry and other governmental agencies that require equivalent training, experience, and responsibilities.

The administrator should be selected and appointed by the general trial court administrator, with the concurrence of the presiding judge of the general trial court. The administrator should function as an assistant to the general trial court administrator, although the administrator's primary responsibility is to the presiding judge of the division.

PART III: COURT FUNCTIONS

3.1 Rule making.

The family court division should operate under formally adopted:

- A. rules of procedure;
- B. rules of administration; and
- C. guidelines.

Commentary

Rules of procedure are, essentially, a formally adopted body of regulations that govern the procedural aspects of legal actions processed in a court. Courts would seem to have the inherent power to pass their own rules. See Standard 4.1 and *People v. Jones*, 40 Ill. 2d 62, 237 N.E.2d 495 (1968). Yet, in practice, differences have arisen between the judicial and legislative branches concerning the exercise of the rule-making power. Wright and Miller, *Fed. Prac. and P. Civil* § 1001 (1969). There are three basic variations in promulgating statewide rules of procedure.

In one, the judicial branch has the authority to establish rules of procedure as long as the rules are not inconsistent with statutory law. The legislature has the power to review and alter rules, and to pass its own procedural rules, but, until it does, judicially promulgated rules have the power of law.

In the second model, states have limited this legislative power by allowing legislators only a veto or amendment power over court-made rules or by requiring more than a majority of the legislature to override court rules. The third method has given the judiciary plenary control over procedural court rules either by statute or through the doctrine of inherent powers.

These standards make no recommendations as to how state rules of procedure should be promulgated; they do, however, advocate that statewide rules of juvenile procedure be adopted, as in Colorado, Florida, and Utah.

Historically, the unique functions of the juvenile court, along with the doctrine of *parens patriae* that dominated its existence for so long, made the need for formalized rules appear less necessary than in adult court. However, with the affirmation of the juvenile court as a court of law during the past decade, it is apparent that rules of procedure are necessary in order to ensure uniformity, fairness, the protection of the rights of all who come before it, a just determina-

tion without undue delay, and the enhancement of the ability of attorneys to represent their clients effectively.

In all states it is assumed that the primary responsibility to prepare such rules shall rest upon the judiciary. As the body most intimately concerned with these rules, it should initiate and provide the leadership for the preparation and drafting of the rules. The judiciary should involve those parties and agencies that work with the juvenile court in this preparation. This will help ensure a broad consideration of the various ramifications of the rules and will facilitate the cooperation and mutual concern necessary for the successful operation of the court.

Prior experience in developing and promulgating procedural rules in other subject areas should be utilized in the formulation of rules of juvenile procedure, with appropriate provisions adapted from both civil and criminal rules together with original provisions to treat the unique problems of the juvenile court. This was basically the model used in the District of Columbia with some success. D.C.C.E. Sup. Ct. Rules, Family Division, Neglect Proceedings, Rule 1, Juvenile Proceedings, Rule 1 vol. 8 (1973-74 Supp.).

Local rules not inconsistent with state rules may be promulgated by local courts to meet special case processing needs. However, in order to obtain and maintain maximum uniformity, local rules should be kept to a minimum, with the goal of adopting exclusive, statewide rules whenever possible. When local rules are needed by a family court division, they should be prepared by the judges of that division, with the assistance of collaborative justice system agencies, for review and promulgation by the judges of the general trial court.

Administrative rules, as distinguished from procedural rules, govern a court system's internal operations. On a statewide basis, these rules should be formulated by a council of judges headed by the chief justice of the supreme court—see ABA Standards of Judicial Administration, *Court Organization* § 1.32—or by the supreme court sitting as a body for administrative purposes. They should be written and be readily accessible to judges, court officials, and other interested parties. They should be consistently complied with, and an orderly procedure should be set forth for any violations thereof.

Local rules of administration should be promulgated by the presiding judge of the family court division after approval by the presiding judge of the court of general trial jurisdiction. Local rules should be kept to a minimum in favor of statewide rules.

In addition, guidelines should be adopted on both local and statewide levels. Guidelines set forth criteria to be considered in formu-

lating decisions; guidelines are policies that direct courses of action in particular situations. They should be written with the aim of aiding personnel involved in the juvenile justice process in their day-to-day operations.

Guidelines dealing with decisions and actions of court personnel should be judicially adopted following a consultative process with relevant court and collaborative agency officials. The more significant guidelines should receive the concurrence of the presiding judge of the general trial court. Statewide guidelines should receive the concurrence of the chief justice, the supreme court, or the state judicial council.

Guidelines dealing with decisions and actions of executive branch personnel involved in the juvenile justice system should be prepared with the active participation of family court division judges. Although the ultimate responsibility for a particular decision must rest with the agency or official to whom the law has delegated that decision, the participation by key juvenile justice system agencies in the development of guidelines can increase the effectiveness of the system as a whole, and can help promote an attitude of understanding and cooperation between the various agencies.

Rules of procedure, rules of administration, and guidelines are work products not easily achieved. Yet, their completion is, in essence, only the beginning. They should be followed conscientiously, with regular monitoring of their effectiveness. The task of review and revision should be kept constantly in mind while evaluating their operation.

3.2 Case decision making.

A judge should render all judicial decisions on cases before the court. No judicial proceedings should be heard by nonjudicial personnel. Adjudicatory proceedings should be conducted in a formal manner. The monitoring of its orders is an essential function of the family court division. Provision should be made for party-initiated and agency-initiated review of court orders.

Commentary

Only a judge should consider all judicial questions before the juvenile court. These should include:

- A. detention and shelter hearings;
- B. probable cause hearings;
- C. plea and advisement hearings;
- D. consent decrees;

- E. motions of all types, including suppression, discovery, new trial, jurisdictional, appointment of expert witnesses, and various others;
- F. adjudicatory hearings;
- G. disposition hearings;
- H. transfer or waiver motions;
- I. review hearings;
- J. all common law and statutory writs, including the writ of habeas corpus,
- K. enforcement of all statutory and common law powers;
- L. revocation or modification of probation; and
- M. review of the institutional status of children.

Some states presently require a judicial determination of certain of these matters. For instance, D.C. Ct. Reform and Criminal Procedure Act of 1970, § 16-2312, requires a detention or shelter hearing within a limited number of hours when a child is detained. This hearing is to be conducted by a judge—as distinguished from detention screening, which may be conducted by a probation officer. Case law may also dictate judicial hearings, as in *Cooley v. Stone*, 134 U.S. App. D.C. 317, 414 F.2d 1213 (1969), in which the court decided that a detained youngster was entitled to a judicial determination of probable cause raised by a writ of habeas corpus.

Under no circumstances should the administrator or any nonjudicial personnel function in a judicial capacity in hearing any of the above matters. Nor should referees make such determinations. See Standard 2.2.

Processing decisions such as an initial determination of admission to detention or whether a case referral requires formal judicial consideration should be made by executive agency personnel. Determinations as to whether a juvenile probationer should be brought back before the court for a probation violation are executive agency functions as well.

The judge's primary function is to hear juvenile matters and, in the case of the presiding judge, to oversee the administration of the court. It is important that priority be placed on these duties in relation to the other opportunities inherent in this position, such as community, state, and national activities that offer potential for improving juvenile justice effectiveness. A judge, circumspect about the most efficient allocation of time and energy, can select those broader opportunities most useful to facilitating the court's objectives without jeopardizing judicial hearing responsibilities. See *ABA Code of Judicial Conduct* Canon 3, 4 (Approved Draft 1972).

The juvenile court judge is constantly striving to balance appropriate degrees of formality and informality. It is difficult in this arena

to offer firm prescriptions, for a judge performs best in his or her own style. However, certain guidelines may be useful.

Hearings should be dignified without being austere. The judge should translate legal concepts into language that the parties involved are capable of understanding. The hearing should be unhurried. A judge should wear robes when conducting hearings. All hearings where any findings of fact are entered or where any formal decision is made should be recorded by court reporters, electronic systems, or other acceptable and approved recording methods. The judge should not operate any recording device; this is the role of a staff assistant.

The judge is the guardian and not the opponent of constitutional protections for the juvenile. All parties should be treated with courtesy and dignity. Judges must curtail their desire for the court to directly intervene in the life of a child or family when a jurisdictional basis is lacking.

Judicial hearings must guard against the unprepared attorney, prosecution or defense, and the temptation for the judge to assume either the defense or the prosecution role. The judge, rather, should do everything possible to ensure effective counsel.

The disposition hearing should involve active participation by the child, parents or guardians, respective counsel, probation and social agency staff, the victim (when appropriate), the judge, and other relevant parties. The greater the consensus that develops around the direction the judicial orders may take, the more likely it is that a child, parents, and probation staff will comply with the orders and judicial expectations. L. Arthur and W. Gauger, "Disposition Hearings: The Heartbeat of the Juvenile Court" 48 (National Council of Juvenile Court Judges 1974).

A well-conducted juvenile court hearing, with its foundation in law and its disposition based upon the considered viewpoints of a variety of participants working toward the goal of fairness and rehabilitation, has much to contribute to the proceedings in other courts. See Rubin, "Now to Make the Criminal Courts More Like the Juvenile Courts," 13 *Santa Clara Lawyer* 104 (1972).

The days of the legendary Judge Ben Lindsey—who saw the juvenile court judge as an educator, a physician conducting juvenile diagnosis and prescribing treatment, and an artist—have been superseded by the concept that the law must come first, and a juvenile court judge is first and foremost a judge. Paulsen, "The Juvenile Court and the Whole of the Law," 11 *Wayne U.L. Rev.* 597 (1965).

Where nonjudicial decisions are made by noncourt personnel, such as police, prosecuting attorney, intake, probation, or detention per-

sonnel, or others, it is recommended that the juvenile court judge take as active a role as can be tactfully assumed in encouraging other agencies to prepare and review guidelines governing their decisions. The court's attitude should be one of cooperation and education with a goal toward increased understanding and improved inter-agency relationships.

Compliance with major guidelines should be monitored by the court administrator. The administrator should obtain accurate records as to executive agency decisions and their compliance with promulgated guidelines. Noncompliance with these guidelines should be brought to the attention of administrative personnel in the executive departments and to the division's presiding judge. R. Sarri, "Under Lock and Key: Juveniles in Jails and Detention" 73 (National Assessment of Juvenile Corrections 1974).

Further, orders issued by a court that require the provision of actions or services by probation and other community agencies should be monitored for compliance. The facts of compliance or noncompliance need to be brought to the attention of relevant officials. This can be achieved through the regular monitoring of such orders by the court administrator and by further court hearings requested by the court or counsel, by the child or parents, or by probation or other agencies.

Review of family court division care, custody, and supervision orders should be available to the person affected when he or she contends that the intent of the order has not been fulfilled, or that he or she is not receiving at least minimum standards of care.

Such a need arises for youngsters who consider that they have benefited from institutional care and can now return to parental custody. The court procedure should require that a request on behalf of the child be directed initially to the institutional authority. See D.C. Ct. Reform and Criminal Procedure Act of 1970 § 16-2323. The institutional authority should attend the court hearing, which should be held after adequate notice. Cal. Welf. & Inst'n's Code § 778-779 (West 1972).

Provision for review of hearings should extend to youngsters on probation, in detention, and in foster or group homes, and to those ordered to receive other community-based services. However, see the *Corrections Administration* volume for the specific procedures that must be followed for the modification of dispositions.

Statutes and rules should permit orderly access to the courts, on the initiative of court clientele. Not all such complaints will be meritorious, but they should receive careful attention. An additional benefit is that a grievance or redress procedure can be useful in en-

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hancing the court's knowledge as to the efficacy of its orders and the standards of care given by executive and private agencies.

3.3 Case processing time standards.

Time standards for judicial hearing of juvenile cases should be promulgated and monitored. These should include:

A. detention and shelter hearings: not more than twenty-four hours following admission to any detention or shelter facility;

B. adjudicatory or transfer (waiver) hearings:

1. concerning a juvenile in a detention or shelter facility: not later than fifteen days following admission to such facility;

2. concerning a juvenile who is not in a detention or shelter facility: not later than thirty days following the filing of the petition;

C. disposition hearings: not later than fifteen days following the adjudicatory hearing. The court may grant additional time in exceptional cases that require more complex evaluation.

Commentary

Processing time standards should be promulgated by supreme court-judicial council rule. In the absence of such standards, the presiding judge of the general trial court should promulgate juvenile processing standards on the recommendation of family court division judges. See ABA Standards for Judicial Administration, *Trial Courts* commentary to § 2.52.

Judicial hearing priorities should favor the child in detention or shelter, cases of child abuse and serious neglect, and emergency matters that may require protective orders.

3.4 Management responsibilities.

Under the supervision of the presiding judge of the family court division, the court administrator should administer or perform the following functions:

A. caseflow management.

Commentary

Caseflow management has been defined as "... management of the continuum of processes and resources necessary to move a case from filing to disposition, whether that disposition is by settlement, guilty plea, dismissal, trial or other method. It is concerned with active attention by the court to the progress of each case once it has been filed with the court." See M. Solomon, "Caseflow Management

in the Trial Court," ABA Standards for Judicial Administration, Supporting Studies—2 (1973).

The juvenile court system requires extension of the caseflow management concept to the prefiling stages in order to include the decisions to admit to detention, to retain in detention following a detention hearing, and the intake or prosecution determination whether or not to file, as well as to monitor the time required for the transmission of referral and complaint information by law enforcement, prosecution, and intake personnel.

A central principle of caseflow management is that responsibility for the movement of cases is within the administrative prerogatives of the court, and more particularly, of the presiding judge. National Advisory Commission, "Courts" § 9.4. ABA Standards for Criminal Justice, *The Prosecution Function* § 5.1 (Approved Draft 1971).

Caseflow management is best done through a central scheduling office, directed by a court administrator in the medium- and larger-sized courts, regardless of whether the particular court utilizes an individual calendar system, a master calendar, a hybrid, or a team calendar. See Solomon, *supra*.

Calendaring in a family court division should have as a goal the continuity of judicial hearing officers, and should give priority to scheduling cases involving detained juveniles. National Advisory Commission, "Courts" § 4.11.

Courts should have clear, strictly enforced policies restricting continuance requests by parties, by court personnel, and by counsel. "Report of the Court Management Study to the Committee on the Administration of Justice of the Judicial Council: A Program for Improved Management in the District of Columbia Courts" 65 (1970); President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts* 86 (1967). The decision as to whether to grant a continuance should be made by a judge.

Caseflow management also encompasses determination of the number of judges needed to preside over court hearings and the most efficient scheduling of those judges. Effective caseflow management requires systematized data on case movement. See Standard 3.4 G.

B. budget and fiscal control.

Commentary

A family court division budget is part of the larger budget of the general trial court. It is the role of the division administrator to prepare the budget; it is the role of the division's presiding judge to

approve the budget prior to its submission to the general trial court. For effective budget development there must be close cooperation between the administrator and the presiding judge.

Other judges of the division should review the budget prior to its submission.

The administrator is the central figure in budget control. He or she must construct a sound system for fiscal management and provide regular reports concerning income and expenditures to the presiding judge.

Fiscal control requirements are particularly acute when a court serves as fiscal center for the payment of court-ordered child support, alimony, and related payments. The importance of careful monitoring of monies received and disbursed cannot be overemphasized.

Court policies must be set forth concerning purchases, bonding procedures for staff handling funds, reimbursement for court staff use of automobiles, and other like expenditures.

C. records management.

Commentary

The goal in records management is to develop, implement, and monitor a program for the preparation of all court records, ensuring record storage, retrieval, and security. Records management must provide for the confidentiality of records in compliance with statutory and rule requirements, and administer the schedule for the retention and destruction of records. "Report of the Court Management Study to the Committee on the Administration of Justice of the Judicial Council: A Program for Improved Management in the District of Columbia Courts" 118 (1970).

The presiding judge should issue policies and procedures, consistent with statute and with state court system rules and directives, governing records management, including the sealing and expungement of records. Court policy should regulate the personnel authorized to handle legal records. The presiding judge should set forth policy on the court's response to the requests it receives for record information, and should centralize this responsibility in a single court official.

The administrator should be responsible for the implementation of court record policies and systems. While this approach is at variance with the elected clerk system in certain states, it is nonetheless recommended as vital to the judiciary's control of its own processes.

Administrators of larger courts will probably find automated data processing necessary. See National Council of Juvenile Court Judges, "Computer Application in the Juvenile Justice System" (1974). Whatever computerized system is selected should be capable of integration with any automated system used by the general trial court and the state court systems. Microfilming has been found useful in many courts to reduce storage costs.

All state court systems should provide directives to all courts of juvenile jurisdiction concerning a program for the systematic destruction of specified record information after a defined period of time. See the *Juvenile Records and Information Systems* volume.

D. implementing legal procedures.

Commentary

Legal procedures required by statute, rule, decision, and court policy should be followed rigorously. The presiding judge, as the supervisory head of the family court division, must be the guarantor that court procedures and practices meet all legal requirements and court policies.

Proper legal forms are necessary. While these should be prepared by legal counsel, the family court divisions may need to be responsible for a limited preparation of petitions, for instance in certain neglect matters.

The court must ensure that summonses, petitions, and other legal documents are timely served, that court materials are properly placed before the appropriate judge, and that judicial orders are entered efficiently.

Effective prosecution and defense counsel representation are essential. The presiding judge might need to use his or her position to achieve these. Strong leadership from a presiding judge is required so that all personnel dealing with court clientele adhere rigorously to legal requirements. The judge's demonstrated respect for the law will influence court and related agency personnel.

E. personnel systems management.

Commentary

The court should administer its own personnel system. A judicial personnel system is necessary to the integrity of the court as an independent agency. Judges should be involved in the design and super-

vision of state and local judicial merit systems, but judges should not personally participate in screening, selecting, and promoting non-critical court personnel.

The National Advisory Commission recommended that all court systems establish personnel policies and procedures governing recruitment, hiring, removal, compensation, and training of all non-judicial employees of the courts. See "Courts" §§ 9.1.2, 9.3.4; Institute for Court Management, "Courts and Personnel Systems" (1975).

The family court division personnel system should be part of the personnel program of the general trial court. Individual judges should select their own personal staff, but certain positions that constitute personal staff require evaluation. Efficiency might indicate that court reporters, bailiffs, and law clerks should be assigned to a personnel pool responsible to the general trial court. ABA Standards of Judicial Administration, *Trial Courts* § 2.42 (Approved Draft 1976).

Personnel policies and procedures should be readily available to court employees. Notice of personnel openings should be widely circulated. All efforts should be made to ensure that "court personnel are representative of the community served by the court." National Advisory Commission, "Courts" § 10.4.

When county or state executive branch merit systems determine the recruiting and screening of court personnel, the presiding judge, assisted by the administrator, should participate in the development of policies and procedures related to court employees. The judge and administrator should also approve all testing methods, ensure that personnel qualifications are relevant, and that recruitment, screening, and testing procedures do not discriminate against applicants on the basis of sex, or of racial or ethnic background.

All personnel systems should provide grievance procedures and conform to constitutional requirements.

F. space facilities, equipment, and library materials.

Commentary

The division administrator should facilitate the provision of court hearing rooms that are adequate, appropriate, and safely maintained; provide for the effective maintenance and utilization of court space; obtain and maintain appropriate court equipment; develop plans for the acquisition of necessary court facilities; and assist in arranging leases and construction and furnishing contracts. An administrator is best equipped to manage space and to obtain specialist consultants to

design improvements in existing facilities or new construction.

Courtroom security responsibility includes the provisions for the safety of judges, court personnel, and persons attending court hearings; the supervision of the presence of juveniles in court; and the transfer of juveniles to other locations when ordered by a judge.

Library management is best handled by the administrator who should provide for obtaining, storing, and maintaining statutes, appellate court decisions, legal encyclopedias, professional books, and journals.

G. management information system.

Commentary

A management information system is a systematic gathering of data related to the workload and the caseflow of the court, and the use of this data as a managerial tool with which to analyze and improve the court's effectiveness. Such a system provides the presiding judge and court administrator with periodic information as to how long cases take to move through the court process. This facilitates a court's development and monitoring of time processing standards. E. Friesen, E. Gallas, and N. Gallas, *Managing the Courts* 210-211 (1971).

The administrator should be responsible for the court's management information system, manual or automated. Consultants, judges, and court and related agency personnel should participate in determining system design and utilization.

An additional evaluation of the court should be conducted through a periodic performance audit. Such an audit should ascertain how effectively the division is performing its responsibilities, and the internal and external obstacles to more effective performance. Data supplied by the management information system should be included within the measures of court performance. Appraisals of the care and supervision of children who are within the court's jurisdiction but are serviced by noncourt agencies should be within the scope of the audit. The audit should be conducted by an independent organization initially and may be performed subsequently by court administration staff.

These evaluations should be widely distributed, and the family court division and its advisory committee, funding bodies, the general trial court, criminal justice planning agencies, executive branch agencies, community social service organizations, the media, and other concerned groups should review the findings intensively.

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H. training program coordination.

Commentary

The division administrator should be the central coordinator for arranging funds for training, obtaining expense reports, and facilitating reimbursements. A court should budget regularly for training purposes. Full advantage should be taken of relevant, externally sponsored conferences that reimburse participant expenses, and of grants that are available for other training programs. Appropriate in-service and out-service training programs for all judicial system employees should be provided or obtained in order to improve functional skills.

A growing number of state court systems now employ an educational coordinator with responsibility for arranging training programs for groups such as the judiciary, clerks and clerical assistants, and other nonjudicial employees. The court administrator should establish a close liaison with this state coordinator.

It is necessary to recognize the importance that good training programs can have for an effective juvenile court, even in the smallest courts.

I. planning and development.

Commentary

Planning and development suggests a deliberate and organized written program to improve a court over a period of time, with a staggered plan for implementation. Planning and development by court administrative staff is best done with strong court personnel and interagency participation. Planning and development should be applied to training, library, space facilities, personnel procedures, and many of the court functions set forth elsewhere in these standards.

J. jury management.

Commentary

The jury system should be managed primarily by the general trial court administrator.

Jury trials have not been a hallmark of juvenile courts. Fewer than a third of our states provide jury trials for juvenile delinquency petitions, and even in these states jury trials are only sparingly used. See *McKeiver v. Pennsylvania*, 402 U.S. 528 (1971). It is anticipated that in the broadened jurisdiction of the family court division there will be more jury trials. See Cuyahoga County Court of Common Pleas, Cleveland, Ohio, "Juror Utilization Study" (1972); Stover, "The Expendable Resource: Studies to Improve Juror Utilization," 1 *Justice System Journal* 39-53 (1974). See the *Adjudication* volume.

A family court division should use the jury array assigned to the general trial court, and the division's administrator should maintain close contact with the jury commissioner. Early notification of jury need, detailing an employee to superintend a jury's movement to the division, the provisions for waiting rooms, food, deliberation rooms, overall security, and comfort should be programmed and monitored by the administrator.

K. procurement of supplies and services.

Commentary

In conjunction with the general trial court administrator, the division administrator should be responsible for all court purchases. Family court procedures and practices should comport with the administrative rules and procedures of the state and local court system.

L. monitoring and liaison responsibility with probation, detention, and social service agencies.

Commentary

The major responsibility for monitoring and liaison should be assigned to the administrator, who should regularly utilize all channels of communication between the court and the agencies. This function should include analyzing all relevant data processed by the court and by individual agencies, determining the problem areas and possible solutions, and bringing this information to the attention of the presiding judge for further direction.

It should be remembered that the court has influential though limited power in this area. The effectiveness of its influence will turn on the accuracy of the data, the skill and clarity of the analysis, and the diplomacy of its presentation.

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M. public information.

Commentary

The public needs to know of the work of the family court division, and of its experience in assisting families and the community. This information should be provided by the judges and administrative staff, in concert with the division's citizens' advisory committee. See Standard 3.5 B. Printed materials, personal presentations, and all media forms should be used.

N. secretariat for meetings of division judges.

Commentary

Regular meetings of division judges are necessary for effective court operations. The court administrator should assist the presiding judge in determining the agenda and content of such meetings, should provide necessary information and data, and should attend such meetings, except when an executive session is indicated.

3.5 Community relations function.

A. The family court division should develop and implement a program of community relations and public information to include:

1. regular written and oral public presentations of data and experience concerning the functions, progress, and problems of the court and the juvenile justice system;
2. advocacy for law reform and improved agency services and facilities;
3. development of close working relationships with community agencies serving court clientele;
4. leadership in effectuating a juvenile justice council composed of representatives of key juvenile justice agencies.

B. A representative family court division citizens' advisory committee should be appointed by the presiding judge of the general trial court. The advisory committee should advise, critique, and assist the division in achieving a more effective family court.

Commentary

The juvenile court more than any other court has taken its case to the community to urge a wide variety of social and legislative re-

forms, and the expanded funding of detention, probation, and health and welfare services to better meet the needs of children.

Annual juvenile court reports are promulgated in many jurisdictions, typically presenting statistical differences from the prior year or years, programmatic advances during the past year, and a description of still unresolved problems. These reports, and other communications methods utilized by these courts, including interpretations and information presented through the media and to a wide variety of individuals and community groups, can make a positive contribution.

Community relations approaches used by juvenile courts have often been spontaneous and without any substantial planning, although a number of courts have expanded such efforts around certain issues: the need for a new detention center, interpretive efforts to neutralize unfavorable press coverage, tactics to gain support for improved staffing patterns, and statutory changes.

The *ABA Code of Judicial Conduct* (1972) authorizes judicial involvement in broader community activity, subject to certain restrictions. Judges may participate widely in activities related to the improved administration of justice, though subject to the priority of the proper performance of their in-court judicial duties. They may serve as directors of charitable organizations, though they should not solicit funds for these groups. They may serve as directors of organizations devoted to improving the administration of justice, and may endorse their efforts to raise funds. Judges may write and speak on nonlegal subjects if this does not detract from the dignity of their office or interfere with their judicial duties. See *ABA Code of Judicial Conduct* Canons 3, 4 (1972); and R. Garff, "Handbook for New Juvenile Court Judges" 12 (National Council of Juvenile Court Judges 1973).

Juvenile courts do and should work extensively with other agencies, citizen groups, and governmental bodies to develop and strengthen delinquency prevention, control, and treatment programs. The division should enter into a cooperative role with other community agencies as to shared clients and interagency service agreements.

In order to combine major juvenile justice agencies into a more coordinated system, the presiding judge of the division should provide leadership in the formation and implementation of a juvenile justice council. Many communities should benefit from such a forum for the regular interchange of concerns and data among the court, probation and detention, police, prosecution and legal defense organizations, the welfare department, and other important agencies. The

council should work together to remove malfunctions, clear up misunderstandings, clarify interagency boundaries, secure multi-agency review of individual agency policies and practices, assess problems and progress, and collaborate in determining system needs and in supporting efforts to fill these needs.

This standard urges that family court divisions structure a representative advisory committee to facilitate communication between the division and the community, to increase accountability, and to supply important assistance to the court. Its functions should include: providing information to the presiding judge of the general trial court on division needs, including the type of judge best suited for workload responsibilities; furnishing the division with the advice and criticism that it needs; helping to buffer it against ill-founded criticism; facilitating more adequate appropriations and making the case for service needs not currently available in the community for court clientele; and serving as a reaction panel for judicial concerns and actions.

A number of juvenile courts have citizens' advisory committees, authorized by statute or rule and given broad mandates, such as the juvenile justice commissions and the delinquency prevention commissions in California. See Cal. Welf. & Inst'n's Code art. 11, §§ 525, 526, 535.5 (West 1972).

To their credit, juvenile courts have used advisory committees far more than other courts, but they could utilize these instruments still more effectively. Occasionally, these committees represent little more than a political support organization for the juvenile court judge, or an award system for the judge's personal friends. In recognition of the validity of the advisory committee concept, to counteract any personalized exploitation of such a committee and to further strengthen the family court division's relationship with the general trial court, it is urged that appointments to such a committee be made by the presiding judge of the general trial court. He or she should receive nominations from family division judges and administrators, from officials of other key agencies within or related to the juvenile justice system and to the division's other jurisdictional responsibilities, and from interested citizen groups. The advisory committee should be broadly based, have both lay and professional representation, cross economic and racial lines, and include independent and critical views.

The National Advisory Commission has recommended that all courts "should establish a forum for interchange between judicial and nonjudicial members of the court's staff and interested members

of the community." "Courts" § 9.6. An advisory committee should help meet this recommendation.

To make the advisory committee effective, it is important that the court administrator provide necessary supportive staff services to the committee.

PART IV: RESPONSIBILITY OF THE FAMILY COURT DIVISION TO EFFECTUATE ITS DUTIES AND ORDERS

4.1 General principles.

The family court division should have available those personnel, facilities, and services necessary for the effective discharge of its responsibilities. The doctrine of inherent powers should be employed only when the court can show all of the following:

A. all possible approaches to obtain the necessary resource have been tried and have failed;

B. the expense in question is a necessary as opposed to a desirable expense; and

C. failure to obtain this resource would render the court unable to fulfill its legal duties.

Commentary

Prior standards have placed important housekeeping responsibilities upon the judiciary. While juvenile court judges in 1973 ranked their need for court administration in the last place in a rank order listing of fourteen pressing problems—see Smith, "A Profile of Juvenile Court Judges in the United States," 25 *Juvenile Justice* 2, 37 (1974)—administrative personnel and procedures merit a far higher priority.

Administrative capability must be developed so that judicial system money requests are well documented and receive judicial approval before presentation for legislative branch funding. See Connors, "Inherent Power of the Courts—Management Tool or Rhetorical Weapon?" *Justice System Journal* 64 (1974).

A vigorous and well-documented assertion of the court's needs should be made through negotiation, advisory committees, the media, understandings with agencies as to respective responsibilities, and agreements with funding bodies and executive agencies for purchases of service for court clientele.

An attempt to provide these additional services prompted the adoption in New York of an amendment to the Family Court Act

that gave to the family court, or a judge thereof, the power to *order* "any state, county and municipal officer and employee to render such assistance and cooperation as shall be within his legal authority, as may be required to further the objects of this act." 1972 S.L. of N.Y. ch. 1016, § 255.

Generally, the object and purpose of the juvenile court is to strengthen the child's adjustment to his or her own home and, whenever possible, to protect society through rehabilitative services. Where it is necessary to remove the child from the home environment, the court should provide the care, guidance, and control necessary to the child's proper development. N.Y. Family Court Act; Utah Code Ann. § 55-10-63 (1974); Fla. Stat. Ann. § 39.001 (1974); Colo. Rev. Stat. Ann. § 19-1-102 (1973).

As a constitutionally established, separate, independent branch of government, the judiciary has been held to have "inherent powers." These powers "consist of all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective." Carrigan, "Inherent Powers of the Court," 24 *Juvenile Justice* 1, 40 (1973).

Case law has upheld this doctrine of inherent powers of the court to command the resources necessary for its proper functioning, including the authority to provide reasonable space within which to work, employees and other assistants, equipment, supplies, and incidental services. However, in general, the inherent powers doctrine has been quite narrowly applied, and a court, before contemplating such an action, should be prepared to prove that: (A) all possible approaches to obtain the necessary resources have been tried and have failed; (B) it is a *necessary* as opposed to a *desirable* expense; and (C) failure to obtain this resource would impair the functioning of the court in fulfilling its judicial duties. Carrigan, *supra* at 40; Connors, *supra* at 64; *O'Coins, Inc. v. Treasurer of the County of Worcester*, 287 N.E.2d 608 (Mass. 1972); *State ex rel. Weinstein v. St. Louis County*, 451 S.W.2d 99 (Mo. 1970); *Commonwealth ex rel. Carroll v. Tate*, 274 A.2d 193 (Pa. 1971); *Smith v. Miller*, 384 P.2d 738 (Colo. 1963).

The standing of the particular court as a constitutionally created court is not material, and the inherent powers doctrine still applies. *Carlson v. State ex rel. Stadola*, 220 N.E.2d 532 (Ind. 1966). The essence of the doctrine is that the judiciary, as a whole, is constitutionally created and should be protected as an independent branch although its finances are authorized by the legislature.

The most common method pursued in enforcing the inherent

powers doctrine is the writ of mandamus. Carrigan, *supra* at 40; *Commissioners v. Stoddart*, 13 Kan. 157 (1874); *Judges for Third Judicial Circuit v. County of Wayne*, 190 N.W.2d 228 (Mich. 1971). Other methods of enforcement are by declaratory judgment, *Milburn v. Burns*, 400 P.2d 354 (Ariz. 1965); contempt proceedings, *State ex rel. Gentry v. Becker*, 174 S.W.2d 181 (Mo. 1943); *Smith v. Miller*, 384 P.2d 738 (Colo. 1963); and *Dahnke v. People*, 48 N.E. 137 (Ill. 1897); a debt action brought by an employee, *Noble County Council v. State*, 125 N.E.2d 709 (Ind. 1955); debt action by the supplier to the court, *Schmelzel v. Bd. of Co. Commissioners*, 100 P. 106 (Idaho 1909); a direct *ex parte* order, *In re Courtroom and Officers of the Circuit Court*, 134 N.W. 490 (Wis. 1912); *quo warranto*, *State ex inf. Anderson v. St. Louis County*, 421 S.W.2d 249 (Mo. 1967); and an eviction order, *Zangerle v. Court of Common Pleas*, 46 N.E.2d 865 (Ohio 1943).

When litigation to enforce the inherent powers doctrine is necessary, a court should retain and compensate private counsel. The governmental entity sued has been required to pay for all necessary attorney's fees and expenses incurred by the court in such an action. See post-appeal order of the district court in and for El Paso County, Colorado, in *Miller v. Smith*, Civ. No. 41914 (1963). While other decisions have rejected the payment of counsel fees in such suits on the basis that the private bar owes a public duty to freely assist the court, the trend appears to be toward approving counsel fees. Any other result would place an unfair burden on the private attorney selected to represent the court in its suit. Payment should be a balancing requirement since the opposing state or local governmental body will be provided legal services at public expense.

Suit should be brought in the name of all of the judges of the general trial court. Suit initiated by all judges is preferable to that brought only by family court division judges.

Dissenting View

Statement of Commissioner Justine Wise Polier

I agree in large part with the standards proposed in this volume. There are, however, several major points on which I must dissent.

Part I recommends the separation of probation from the administration of a comprehensive family court. Such separation in New York resulted in reduced training for dealing with families' and children's problems, a diminution of accountability for information needed by the court, and a steady deterioration of the quantity and quality of services to the court.

Part II includes a recommendation for the frequent rotation of judges. While appreciative of the desire to prevent empire building of judges, I regard the assumption that any judge can quickly learn to achieve expertise in the complex field of children's and family problems and in regard to the services available or needed, as unrealistic.

I also do not agree with the conclusion that "a juvenile court founded upon the doctrine of *parens patriae* is legally no longer valid." This position is clearly in conflict with decisions of the Supreme Court. (See *McKeiver v. Pennsylvania*, 403 U.S. 528 [1971].)

In Part III, the proposals in the commentary under Standard 3.2 would transfer powers to an executive agency without clearly defining or restricting such powers or adequately clarifying the continuing responsibility of the judiciary for appropriate care and treatment following disposition. I also find the notion that robes make the judge both wrong and untimely.

Bibliography

BAR PUBLICATIONS, COMMISSION AND LEGISLATIVE REPORTS, MODEL LAWS

- ABA Standards of Judicial Administration, *Court Organization* (Approved Draft 1974).
- ABA Standards of Judicial Administration, *Trial Courts* (Approved Draft 1976).
- ABA Standards of Judicial Conduct, *Code of Judicial Conduct* (Approved Draft 1972).
- National Advisory Commission on Criminal Justice Standards and Goals, "Courts" (1973).
- National Advisory Commission on Criminal Justice Standards and Goals, "Corrections" (1973).
- National Conference on the Judiciary, "Justice in the States" (1971).
- The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (1967).
- The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts* (1967).
- U.S. Department of Health, Education and Welfare, "Model Acts for Family Courts and State-Local Children's Programs" (1975).

BOOKS, MONOGRAPHS, AND REPORTS

- L. Arthur and W. Gauger, "Disposition Hearings: The Heartbeat of the Juvenile Court" (National Council of Juvenile Court Judges 1974).
- J. Dineen, "Juvenile Court Organization and Status Offenses: A Statutory Profile" (National Center for Juvenile Justice 1975).
- E. Friesen, E. Gallas, and N. Gallas, *Managing the Courts* (1971).
- R. Garff, "Handbook for New Juvenile Court Judges" (National Council of Juvenile Court Judges 1973).
- Institute for Court Management, "Courts and Personnel Systems" (1975).
- M. Levin and R. Sarri, "Juvenile Delinquency: A Study of Juvenile Codes in the U.S." (National Assessment of Juvenile Corrections 1974).
- National Council of Juvenile Court Judges, "Computer Application in the Juvenile Justice System" (1974).
- T. Rubin, *The Courts: Fulcrum of the Justice System* (1976).

50 COURT ORGANIZATION AND ADMINISTRATION

- T. Rubin, "Three Juvenile Courts: A Comparative Study" (Institute for Court Management 1972).
D. Saari, "Modern Court Management: Trends in the Role of the Court Executive" (National Institute of Law Enforcement and Criminal Justice 1970).
M. Solomon, *Caseflow Management in the Trial Courts*, ABA Standards of Judicial Administration, Supporting Studies—2 (1973).

ARTICLES, NOTES, AND COMMENTS

- L. Arthur, "A Family Court—Why Not?" 51 *Minn. L. Rev.* 223 (1966).
J. Carrigan, "Inherent Powers of the Court," 24 *Juvenile Justice* 40 (1973).
J. Connors, "Inherent Power of the Court: Management Tool or Rhetorical Weapon?" *Justice System J.* 63 (1974).
A. Gough, "Referees in California's Juvenile Courts: A Study in Sub-Judicial Adjudication," 19 *Hastings L.J.* 3 (1967).
Note, "Jurisdiction over Intra-Family Offenses: A Plea for Legislative Action," 45 *N.Y.U.L. Rev.* 345 (1970).
R. Pound, "Principles and Outline of a Modern Unified Court Organization," 23 *J. Am. Judicature Soc'y* 225 (1940).
T. Rubin, "Now to Make the Criminal Courts More Like the Juvenile Courts," 13 *Santa Clara Lawyer* 104 (1972).
K. Smith, "A Profile of Juvenile Court Judges in the United States," 25 *Juvenile Justice* 37 (1974).

CASES, STATUTES, AND CODES

- Colorado Rules of Juvenile Procedure 1975.
District of Columbia Court Reform and Criminal Procedure Act of 1970.
Florida Rules of Juvenile Procedure 1973.
New York Family Court Act of 1962, as amended.