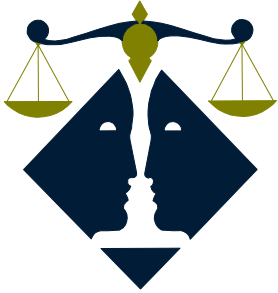


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# *GREENBOOK* INITIATIVE



## 2003 JUDGES' TOOLBOX MEETING



# EXECUTIVE SUMMARY



NATIONAL COUNCIL OF  
JUVENILE AND FAMILY COURT JUDGES

*est. 1937*

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# GREENBOOK INITIATIVE

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## 2003 JUDGES' TOOLBOX MEETING



### EXECUTIVE SUMMARY

#### MEETING OBJECTIVES

- *Examine issues, opportunities, and challenges for the courts related to information sharing within and across the systems;*
- *Explore the concept of reasonable efforts and develop a checklist for judges to use in co-occurrence cases (where both child maltreatment and domestic violence may be present) to ensure that expectations are being met; and*
- *Foster opportunities for peer-to-peer learning, identification of emerging issues, and action planning.*

At the beginning of each *Greenbook* Initiative Judges' Toolbox Meeting (Toolbox Meeting), participating judges reflect on changes they have observed during the past year. This time, they agreed that the *Greenbook* Initiative (the Initiative) has had a powerful effect on system partners and the larger community. It has enhanced communication and collaboration among key systems, fostered a sense of ownership among representatives of individual systems, encouraged outreach, and advanced educational programs. One judge noted:

*The Greenbook is a critical and important project and its potential ripple effect goes way beyond what was intended. It has inspired so many things, like the ability to access local funds and the development of links to other local initiatives. Greenbook also highlights the importance of including other representatives at the table, such as drug and alcohol programs and mental health.*

Another judge said that the *Greenbook* work has altered the way we think about helping families:

*The gray areas are becoming more defined and there is greater emphasis on addressing the needs of families and children in a holistic way.*

Defining gray areas is a primary objective of Toolbox Meetings. Other objectives include ensuring continuity and integration with other system-specific efforts, and with the broader mission of local Initiatives. These meetings also build capacity by promoting in-depth discussions on issues relevant to the court system.

This meeting addressed two key topics that greatly affect outcomes for battered women and their children: the interplay of information sharing and confidentiality; and reasonable efforts findings in child protection cases involving domestic violence. Approximately 20 judges from the six demonstration sites attended the Toolbox Meeting in San Antonio, Texas – the third Toolbox Meeting for the court system.

## A YEAR IN REVIEW

Participants considered accomplishments during the last year, and how communities are addressing the four issues discussed at the last Toolbox Meeting: advocacy; judicial ethics; risk assessment; and cultural competence. They also discussed the challenges that remain.

### Advocacy

In the last year, some sites built infrastructure to support proposed changes in practice. For example, one site hired a domestic violence court-case coordinator to look at how court policies affect outcomes in domestic violence cases, and assigned a deputy juvenile court officer to handle all domestic violence cases and facilitate front-end services. This site also is considering hiring a batterer compliance officer to guarantee that batterer accountability becomes an integral part of its plan to improve victim safety. At another site, *Greenbook* discussions have fostered changes in the way the child welfare partner initiates contact with adult victims. With a domestic violence specialist available to each area office, workers now offer adult victims the option of being interviewed at a shelter or a local child protective services office; some workers have begun to attend protection order and criminal hearings. Sites have also developed tools that can assist with screening, assessment, case planning, and batterer accountability issues.

### Judicial Ethics

At the 2002 Toolbox Meeting, participants drafted a resolution in support of modifying the judicial ethics canons, which were adopted at the National Council of Juvenile and Family Court's (National Council's) 65<sup>th</sup> Annual Meeting. *See Appendix*. Since that time, a group of National Council members have been working to advance the resolution by drafting amendments and supporting statements for consideration by the ABA's Code of Judicial Conduct Model Rules of Judicial Conduct. The current draft emphasizes the following principles:

- ✓ The National Council encourages judicial outreach to the community;
- ✓ Community outreach and education is a critical factor in improving the quality of justice;
- ✓ A judge's responsibility goes beyond fact finder and adjudicator;
- ✓ Judges have an affirmative duty to partner with others to ensure that the community's needs are being addressed in effective and comprehensive ways; and
- ✓ Judges need to be aware of the community context in which they administer justice.

### Risk Assessment

Risk assessment in co-occurrence cases is being addressed at the sites in a variety of ways. One site has developed standards to guide practice, while another is working on universal tools to identify affected families early in the process. Other sites have taken a more traditional approach by developing protocols that emphasize the role of their child welfare partners. Courts are still examining their role in the risk assessment process and the best ways to gather information that can improve judges' decision-making in these complicated cases.

### Cultural Competence

One site shared the ways its community implemented a successful community engagement plan to bring communities of color to the *Greenbook* table. This effort was inspired by a study, which found that communities of color were disproportionately represented in *Greenbook*-related systems. The study concluded that increasing collaboration among systems might, in fact, exacerbate the problem. In another site, the court conducts regularly scheduled community focus groups to gain better insight into the needs and concerns of its consumers.

### Challenges

While judges reported that demonstration sites have seen tremendous progress, some obstacles remain. The most significant are state budget cuts. In some cases, this has meant reduction in – or even elimination of – services that could have been part of the matrix for change. Other challenges include holding batterers accountable, monitoring batterer compliance early and on an ongoing basis, improving court coordination so that victims leave with more than a roadmap to services, and resolving ethical issues that bar judges from realizing the full potential of *Greenbook* collaboration. In addition, because the needs of families experiencing violence are complex and changing, the courts want to continue identifying new and better practices to apply to co-occurrence cases.

## **INFORMATION SHARING: ISSUES, OPPORTUNITIES, AND CHALLENGES**

*Christine Bailey, JD, Permanency Planning for Children Department, National Council*  
*Martha Wade Steketee, JD, National Center for State Courts*

Information sharing and confidentiality go to the heart of many discussions around the *Greenbook*. At the same time judges are considering these issues in the context of *Greenbook* work, they are searching for better ways to share information across criminal, civil, and juvenile courts. At the Toolbox Meeting, judges discussed what constitutes public versus private information and the complex statutory framework that overlays information sharing principles and protocols.

### Definitional Factors

- ✓ What do we mean by privacy, personal information, information privacy, and information quality?
- ✓ Who owns the information and under what conditions do rights of ownership apply?
- ✓ Who has access to and control of the information?

### Contextual Factors

Several federal acts have provided for the expansion of government authority to collect and share information.

- ✓ The Patriot Act of 2001 was signed into law one month after the September 2001 terrorist attacks on the United States. Key provisions include:
  - Expanding use of wiretaps, search warrants, pen/trap orders and subpoenas;
  - Allowing law enforcement to obtain records of internet activity as well as the medical, business, library, and educational institution records of individual citizens; and
  - Providing for new and broader definitions of terrorism that could include protesters and organizations that voice disagreement with the policies of American leadership.<sup>1</sup>
- ✓ *The Health Insurance Portability and Accountability Act (HIPPA)*  
Enacted in 1997, HIPPA aims to protect the rights of employees who may have a pre-existing medical condition when they change jobs. The legislation has several primary objectives:
  - Assuring health insurance portability by eliminating job-lock because of pre-existing medical conditions;
  - Reducing health care fraud and abuse;
  - Enforcing standards for health information; and
  - Guarantying security and privacy of health information.New privacy regulations went into effect April 2003, to ensure a national floor of privacy protections for patients by limiting the ways health plans, pharmacies, hospitals and other covered entities can use patients' personal medical information. The regulations protect medical records and other individually identifiable health information, whether on paper, in computers, or communicated orally. Key provisions address: access to medical records; patient notice of privacy practices; limits on the use of personal medical information; prohibitions on marketing; state laws; provisions for confidential communications; and enforcement through the U.S. Department of Health and Human Services, Office for Civil Rights<sup>2</sup>.
- ✓ *The Identity Theft and Assumption Deterrence Act of 1998* enhances criminal sanctions in identify theft cases and puts into motion strategies to protect victimized consumers by establishing a complaint database, providing informational materials, and making referrals when appropriate.<sup>3</sup>

### Technology Factors

Technological advances increase the likelihood that personal information will be collected, disseminated, and used or misused. How the information is used depends on how collaborating agencies address privacy and information quality issues. For example, a court clerk may view placing court records on the Internet as a way to make them more accessible to the public, while

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<sup>1</sup> For additional information, please visit [http://www.lifeandliberty.gov/patriot\\_overview\\_pversion.pdf](http://www.lifeandliberty.gov/patriot_overview_pversion.pdf).

<sup>2</sup> For additional information go to the U.S. Department Health and Human Services at <http://www.hhs.gov/news/facts/privacy.html>.

<sup>3</sup> For additional information, visit <http://www.ftc.gov/os/2000/09/idthfttest.htm>.

a judge may need to consider how making the records so accessible will affect victims and whether it will impede the safety of any person.

### **IMPLICATIONS FOR *GREENBOOK* WORK**

This is a major issue for *Greenbook* demonstration sites because one way to increase victim safety and improve outcomes is to communicate, collaborate and share resources, space, people – and information. Toolbox Meeting participants explored the implications of new federal laws, including how to protect individual privacy in the face of increased information sharing among agencies, how *Greenbook* sites are addressing this issue, and what challenges remain. Issues and questions raised by this discussion included:

#### *Due Process Issues*

*At what point should a judge use available information?* This depends on the judge’s role. At trial, impartiality is critical and judges play a “dispassionate” role. At sentencing, the judge may want information and be an “inquiring” magistrate. In a shelter or detention hearing, the judge may want as much information as available and play an “initiative” role. What does impartiality mean? Judges are required to establish a clear basis for their ruling. This goes back to their judicial role in the case before them.

#### *Indicators to Link Families and Cases*

This issue is about identifying family members who have different surnames and developing protocols as to when and how to gather information. Some efforts to protect a victim’s identity, such as deleting a social security number from the case file, conflict with federal law.

#### *Information Sharing between Criminal and Dependency Courts*

Many jurisdictions would like to prevent courts from generating conflicting orders. What is the implication to the victim when the civil information goes to the criminal court? To what extent should civil information be kept from the criminal court? While judges must share information regarding their respective orders, how would it affect the criminal case if the judge knew that the children were under the jurisdiction of the dependency court? Admissions in dependency proceedings cannot be used in criminal cases except as offered for impeachment or rebuttal. Information sharing between jurisdictions seems like a tremendous hurdle to overcome. It means balancing the right to due process with the safety of victims.

#### *Public Access Issues*

At what point should information be made available to the public and who is responsible for initiating the process?

#### *Agency Relations Concerns*

The domestic violence community is concerned about the confidentiality of victims’ records and broad information sharing by unified court systems. Whose job is it to protect and obtain the information?

#### *Training Issues*

Judicial training is needed on how to determine the validity of information and decide what is the appropriate way to use it.

### Benefits

Information sharing can be beneficial; it can address the need for consistent orders or at the very least prompt a conscious decision of what the changes mean in terms of victim safety. The ability to share information can improve coordination, ensure that everyone who needs to be at the table is there, and improve outcomes for families and the quality of life in a community.

### Strategies

Some of the strategies identified by Toolbox Meeting participants included developing protocols to address both information sharing and confidentiality, involving attorneys in the change process, determining the value of guides for those caught in multi-court cases, and establishing the importance of engaging parents with parent advocates early so parent advocates can interpret the process. A court coordinator could serve this function and provide a link to resources within the community. Participants also emphasized that parties have a right to know and be informed about what judges know. Strategies should also establish criteria to determine at what point information should be shared, e.g. civil information, criminal file, subsequent to adjudication, etc.

### **CRITICAL AND EMERGING ISSUES**

Participants discussed policy issues related to the *Greenbook* Initiative that have affected the legal community in the past year.

#### Batterer Accountability

Working in small groups, participants drafted a model policy to address batterer accountability by focusing on the court's role in ensuring compliance. The proposed policy seeks to strike a balance between a perpetrator's right to due process and a victim's need for safety. Research has suggested that compliance is higher with court monitoring. Judges came up with guidelines for developing a model policy that addresses legal issues as well as other barriers, and proposed that an effective policy should:

- ✓ Provide statutory authority to enforce batterer compliance with court orders;
- ✓ Allow for continuing jurisdiction;
- ✓ Provide statutory authority to use or initiate contempt powers;
- ✓ Establish jurisdiction of cases it will extend to;
- ✓ Enhance batterer accountability;
- ✓ Expand the remedy beyond the criminal process;
- ✓ Avoid putting the onus of enforcement on the victim;
- ✓ Prevent future battering;
- ✓ Ensure a quicker response; and
- ✓ Be consistent with standards of judicial performance.

#### Coordination of Cases

Lack of coordination is a significant barrier to victim safety. The most common occurrence is dangerous and inconsistent orders, i.e. ordering mediation or conjoint counseling (orders should be based on best practices). Participants developed a list of recommendations to improve coordination:

- ✓ Build an infrastructure to facilitate coordination of cases and create the capacity to disseminate information to the court on pending matters;
- ✓ Work with the bar, the community and pro se litigants;
- ✓ Require disclosure by clients regarding existing restraining orders;
- ✓ Address public agency involvement; and
- ✓ Protect information and limit dissemination where the judge agrees that such limited access is appropriate and necessary.

**REASONABLE EFFORTS DETERMINATIONS IN CO-OCCURRENCE CASES:  
A POLICY DISCUSSION**

*Hon. Richard FitzGerald, Senior Judge  
Kentucky District Court, Louisville, Kentucky*

It is also essential that judges can interpret and assess the reasonableness of state action in child protection cases involving domestic violence. The federal class action (still under appeal), *Nicholson v. Williams*, in which battered mothers sued New York City’s child protection agency for removing their children simply because the mothers had been abused, has inspired discussions around the country on what constitutes reasonable efforts in domestic violence cases. Courts are the final arbiters in such matters and are expected to provide the checks and balances first envisioned by the federal Adoption Assistance and Child Welfare Act of 1980 and subsequently clarified by the Adoption and Safe Families Act of 1997.

Using presentations, large group discussions, and small group work, participants identified and developed a framework for an instrument to support judges in making findings of reasonable efforts in co-occurrence cases. The tool will focus on structural readiness issues at the institutional level and provide questions that can be used to assess the appropriateness of agency intervention in individual cases. The tool will reflect issues relevant to *Greenbook* cases, guiding principles, structural readiness issues and expectations of practice in individual cases. These issues are summarized below.

*Considerations in Greenbook Cases*

Reasonable efforts in domestic violence cases should focus on the development of individualized case plans for each caretaker, safety planning, linkages of services with needs and risks identified, and the provision of services that meet the “goodness of fit” standard, i.e. accessible, available, appropriate, and culturally competent. Services should address the specific needs of the child, the parent victim and the batterer. Success should be clearly defined and serve as proof that the agency has met its burden of showing that “reasonable efforts” have been or are being made.

Participants were also concerned about documenting judicial findings. Judges can use negative findings (i.e. where judges find that reasonable efforts were not made) to inform and improve agency practice. However, many participants were concerned about the impact this would have on services for the child and the family. An alternative strategy would be to defer negative



findings, which would give the agency time to take corrective action. To minimize fallout, judges, as well as other partners, need to work with agency staff members to increase their comfort level with negative findings.

#### Reasonable Efforts Determinations in Domestic Violence Cases: Framework

Participants developed a list of guiding principles and questions to address structural readiness and individual case practice:

##### Guiding Principles:

- ✓ Systems need to recognize the autonomy of the non-offending parent and the right to be free from unnecessary state interference;
- ✓ Interventions for adults can reduce risks to children;
- ✓ Overlap cases involving domestic violence and the welfare of children demand special considerations in making reasonable efforts determinations;
- ✓ Interventions need to be supportive in keeping the non-offending parent and child(ren) safely together and should build on the strengths of the non-offending parent and be the least intrusive alternative;
- ✓ Interventions need to be targeted toward removing the risks caused by the batterer;
- ✓ The agency should engage the adult victim in ways that assist in articulating needs and goals, and in fostering a working relationship between the adult victim and the agency; and
- ✓ Judges should be knowledgeable about the array of services identified in the state plan and in the community.

##### Structural Readiness:

- ✓ Determine community context and expectations;
- ✓ Examine the capacity of the court, community and social service agencies, and other partners to assist families;
- ✓ Examine the impact of state plans;
- ✓ Examine the ability to provide counsel for both children and parents; and
- ✓ Examine overall other potential and available resources.

##### Expectations of Practice:

- ✓ What constitutes good practice in the community?
- ✓ What is the array of services available?
- ✓ What are the underlying assumptions about domestic violence?

Participants used this meeting to make progress on issues critical to improving outcomes for battered women and their children. The information sharing discussions highlighted the need for better coordination among systems and a greater emphasis on batterer accountability and compliance. In addition, the reasonable efforts discussions emphasized the need for system and community accountability to ensure that appropriate resources, both human and material, are available and accessible to adult victims, their children and the batterers. It is essential to reinforce the batterer's culpability, making him visible and accountable to involved systems and the community.

## APPENDIX

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES  
65th Annual Conference  
July 14-17, 2002  
Boston, Massachusetts

No. 4

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### RESOLUTION IN SUPPORT OF THE MODIFICATION OF CANONS OF JUDICIAL ETHICS

**WHEREAS**, the National Council of Juvenile and Family Court Judges has a long established policy of encouraging the judiciary to engage in community outreach to foster the effective administration of justice; and

**WHEREAS**, the Conference of Chief Justices, at their Annual Meeting in August 2000, passed a resolution recognizing and encouraging judges to become involved in their communities to improve the quality of justice; and

**WHEREAS**, the role of juvenile and family court judges involves much more than fact-finding and adjudication; and

**WHEREAS**, judges are increasingly expected to take on the role of case management, overseeing the successful implementation of comprehensive court-ordered services plans; and

**WHEREAS**, to serve the public effectively, judges must be aware of services in the community and must educate the public about issues coming before the courts to encourage community support of the work of juvenile and family court judges; and

**WHEREAS**, judges taking on such roles still experience conflicting response and confusion as to the propriety of their activities; and

**WHEREAS**, the Canons of Judicial Ethics vary from state to state, and may not reflect the realities of being an effective juvenile and family court judge; and

**WHEREAS**, judges would benefit from a comprehensive set of appropriate guidelines and model rules, in efforts to bring about change and clarity regarding their roles as juvenile and family court judges both on and off the bench; and

**NCJFCJ ANNUAL CONFERENCE**

**RESOLUTION NO. 4**

**July 17, 2002**

Page two

**WHEREAS**, the National Council of Juvenile and Family Court Judges should take a leadership role in modifying canons of judicial ethics to assure that juvenile and family court judges can actively work toward the improvement of outcomes for children, individuals, and families who appear in our courts, without unreasonable fear of censure.

**NOW THEREFORE, BE IT RESOLVED** that the Board of Trustees directs the development, in collaboration with other interested organizations, of a committee to draft specific canons for the affirmative ethical implementation of the aforementioned resolution;

**FURTHERMORE**, that the proposed canons be presented to the National Council of Juvenile and Family Court Judges and the Conference of Chief Justices for review and approval at their 2003 annual conferences, and other appropriate bodies as may be helpful in implementing these new canons.

Signed: \_\_\_\_\_  
Honorable Stephen Rubin,  
Secretary

Signed: \_\_\_\_\_  
Honorable Leonard Edwards,  
President

Adopted this 17<sup>th</sup> day of July, 2002  
By the Membership Assembled in Conference  
In Boston, Massachusetts