

FROM THE CHIEF

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PROTECTING OUR CHILDREN

Before joining the Supreme Court, I practiced law for 26 years without ever being exposed to child abuse and neglect cases. I know now that these are some of the most important and difficult cases in our court system. I am writing this article so that more West Virginia lawyers are aware of the challenges we face as the number of these heartbreaking cases steadily increases, in large part as a result of the opioid crisis in our state.

Child abuse and neglect cases are civil proceedings brought in circuit court under Chapter 49 of the West Virginia Code against parents (or guardians) when circumstances suggest that children in their care are being neglected or abused. These are separate cases from any criminal charges that may result from the conduct of the parents. The safety of the children is a primary concern in an abuse and neglect case,

so often the children are placed in the care of relatives or foster parents while the case is litigated.

During the course of an abuse and neglect proceeding, the parents are given opportunities to remedy the situation of abuse or neglect. If they are unable or unwilling to do so, their parental rights may be terminated. If that happens, permanent placement of the children with relatives or foster parents who will adopt them is the goal. But placement may not be all that permanent in the most difficult cases. Children who have been abused and neglected may start exhibiting emotional and behavioral problems when they reach puberty because of the trauma they experienced as young children.

The number of abuse and neglect cases being handled by circuit judges has increased at an alarming rate in recent years. According to

the annual reports available on the Supreme Court's website, between 2011 and 2017, abuse and neglect filings in circuit courts rose 70 percent, from 3,391 to 5,770. A very large number of these cases have a substance abuse factor.

And our Supreme Court now handles more abuse and neglect cases than any other type of case on appeal. Abuse and neglect appeals annually have increased from 229 filed in 2011 to 284 filed in 2018. These appeals must be handled expeditiously so that unnecessary delays in achieving permanency of placement for the children can be avoided.

Handling the volume and complexity of child abuse and neglect cases has been a hot topic of discussion in the judiciary since I took the bench. Whether at our twice-yearly judicial conferences or in other settings, we are constantly discussing

how we can make sure these cases are handled fairly, correctly and efficiently while protecting the safety of the children and the rights of parents and other family members who may be involved. I applaud our circuit judges for their commitment to these difficult, often gut-wrenching cases. But I worry about the emotional toll that these cases take on everyone involved in the process.

Of course, the greatest impact is on children, who are now more often placed in foster care. The number of West Virginia children in out-of-home care at the end of the fiscal year doubled between 2000 and 2017, from 3,388 to 6,633. Because addiction to opioids and other substances affects both women and men, many children are being removed from both parents. It also is not unusual for multiple generations to be addicted, so family placements for children are not as available as they once were.

“There is a huge jump in the number of cases because of the opioid crisis. Most of our cases are opioid cases,” says Twenty-Third Judicial Circuit (Berkeley, Jefferson and Morgan Counties) Judge Bridget Cohee. “The babies are being born, drug-affected, to parents who are not able to take care of children, and we have to intervene to keep the babies safe.”

The Court Improvement Program Oversight Board (CIP), which is made up of judges and representatives from the Department of Health and Human Resources (DHHR), studies all parts of the abuse and neglect system. The CIP is focusing on making the multidisciplinary team process more meaningful by including more community stakeholders in meetings and developing more community-based interventions. The CIP also is working to make court hearings more substantive by addressing all issues a family faces and making sure everyone who needs to address those issues appears at every court hearing.

“There are so many moving parts to the system right now because the numbers have exploded across the state,” explains Cindy Largent Hill, Director of the Court Improvement Program and the Supreme Court’s Division of Children and Juvenile Services. “We need to be creating new interventions while strengthening

those existing services. As a Division, we work closely with involved stakeholders, looking at ways to make current interventions more accessible, more efficient and more effective.”

The situation we face requires creative, innovative solutions. We are looking forward to implementing House Bill 3057, which allows the Supreme Court to establish and oversee Family Treatment Courts. Successful in many other states, Family Treatment Courts are designed to protect children and help parents found guilty of abuse and neglect overcome substance abuse disorders before they permanently lose custody of their children. The first three Family Treatment Courts will be in Boone, Randolph and Ohio counties and should begin taking referrals shortly after Sept. 1 of this year.

Each of the Family Treatment Courts will have its own local advisory committee made up of the supervising Family Treatment Court Judge, the county prosecutor, a defense attorney who regularly represents people in child abuse and neglect cases, the Community Service Manager of the Bureau of Children and Families of DHHR, and a court appointed special advocate. DHHR is dedicating a Child Protective Services Worker to each Family Treatment Court, a big commitment and an indicator of the agency’s belief in the potential benefits.

Lawyer representation is another critical piece of this complex puzzle. I encourage lawyers to serve as guardians ad litem or represent the children and parents in these cases. The CIP provides excellent training for guardians ad litem, child and parent attorneys and circuit judges. These annual training conferences are offered throughout the state each year. The CIP partners with various stakeholders, like child advocacy centers and emergency shelters, to strengthen relationships and provide training on current issues.

As my colleagues and I discussed during a recent forum on the future of the judiciary, our attention is squarely focused on these cases and improving the system in cooperation with DHHR and other stakeholders. All of us have a responsibility to work together in serving West Virginia’s children and families who have been impacted by substance abuse in general and the opioid crisis in particular. **WVL**