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## Legal tools for addressing substance abuse in Family Court cases

**Substance abuse issues can exponentially complicate family court cases, requiring judges to have specialized knowledge and of the legal tools available to protect children's safety while facilitating their parent's recovery.**

By Harry L. Powazek

Family courts are already struggling with a lack of resources and rapid judicial turnover. Expecting judges to identify and address substance abuse matters while trying to put out family fireworks may be wishful thinking. But it is not impossible.

Drug problems may have clear markers. Someone may have gotten a DUI or been the subject of a criminal intervention; someone may have lost a job or a home; family members or friends may have been concerned enough about someone's mental health or substance abuse to contact the court. The focus should be whether these issues substantially affect the person's ability to effectively parent. The law gives judges many tools for identifying and dealing with substance abuse issues.

But the majority of family court judges are new on the bench, and few have sufficient life experience to spot latent substance abuse issues. Unless those issues are salient, they may not get the attention they deserve. Children of broken families – and society at large – then end up paying the price.

The bad news is that today's drugs are far more potent and prolific than they were 20 years ago. The good news is that support is available within the legal system and that the professionals providing it are trained and knowledgeable about substance abuse.

### Drug Court

When I joined the family law bench approximately three decades ago, substance abuse looked starkly dif-



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ferent than it does today. There was no substance abuse accreditation; the most common offenses were sniffing glue and smoking relatively weak marijuana. How things have changed. Today, there are designer drugs, fentanyl, and potent marijuana that is vaped. But there are also accredited substance abuse personnel working within the legal system.

In a serendipitous stroke of luck, I was asked many years ago to serve on the San Diego County Diversionary Adult Drug Court. I occupied that position for 15 years while also serving as a family law judge. I witnessed the difficult path traversed by drug users, as well as

the power of focused intervention to turn things around.

Participants were required to undergo counseling, get jobs, attend weekly court and support meetings such as Alcoholics Anonymous, and maintain their sobriety. If they were able to honor this commitment, they eventually graduated from the program – free from probation, fines and arrest warrants. They would no longer be subject to stop and search unless there was probable cause. Almost all of my drug court participants graduated within two to six years; a small number were terminated because of a significant wrong turn taken at some point.

The graduates, surrounded by friends and family, would look with amazement at their before and after photos: pale nobodies at booking, colorful somebodies at graduation. As the one who had shepherded them through the drug court process, I would often find myself wiping away tears. I had been a parent figure to them, and I continued to care for and stay connected with many of them.

Drug court was probably the most rewarding career assignment I've had. I saw firsthand the power of self-redemption. I also learned to identify and understand the hallmarks of addiction. I did not see my drug court participants in my family court, but I developed a keen ability – unlike many of my family court colleagues – to spot substance abuse issues during family law proceedings over which I presided.

### Family Court

Substance abuse destroys lives and families; family court is often the place where abusers finally confront their inner demons while they battle partners over houses, pets, children, and betrayal of trust. The substance abuse component of the family puzzle is a moving target, and every case will be different.

Whenever one parent is a substance abuser, there is a good chance the other will also have substance problems. Older children may also be part of the substance abuse equation. A judge trying to sort these things out and put the pieces back together can really be caught between a rock and a hard place.

Because the parental relationship is a priority in family cases, the judge

must balance the parent's right to be with a child against the child's need for safety. Is the child a teenager or a baby? What are the parents taking? How does drug use affect them and their parenting abilities? Does drug use happen only when children are not present? Should that even matter? If neither parent is capable of parenting, what happens to the children?

### **Legal tools for addressing substance abuse**

Judges are given a number of tools for dealing with substance abuse in the family law setting, but working through these cases without a fundamental understanding of substance abuse can be complicated. Family Code Section 3190 requires courts to act in the best interest of children, but determining what is in their best interests isn't always easy.

Family Code Section 3041.5 says that a court may order a parent to undergo testing if there is evidence of "habitual, frequent, or continual use" of illegal controlled substances or alcohol abuse. The standard for such a finding is low - a preponderance of the evidence - and a conviction for controlled substance use or possession within the past five years can be considered as evidence. If the court deems it appropriate, hair follicle testing can be done if the parties so stipulate.

California Rules of Court Standard 5.220 establishes guidelines under which a court may order child custody evaluations, investigations, and assessments to assist with determining the health, safety, welfare, and best interests of children with regard to disputed custody and visitation issues.

Family Code Section 3150 authorizes family courts to appoint private counsel to represent minors in custody and visitation proceedings. California Rules of Court Standard 5.242 provides that such counsel

must act in the best interest of the child. This includes recognizing, evaluating and understanding "evidence of child abuse and neglect, family violence and substance abuse," among other things.

### **Supervision, training, accreditation**

Whenever there are concerns about substance abuse, mental health, or other potentially volatile issues that can affect children, the law requires that professionals interacting with the parties have special qualifications to deal with those issues. The profusion of laws and standards now addressing substance abuse speaks to the significant problems impacting families at all income and education levels.

When substance abuse is a concern, visitation is customized to allow parents to see a child while protecting the child from danger. "Once safety is assured, the best interest of the child is the paramount consideration at all stages and particularly in deciding the manner in which supervision is provided."

Family Code Sections 3200 and 3200.5 require that providers of supervised visitation meet standards designed to protect the safety of children, adults and supervisors. California Rules of Court Standard 5.20 lays out requirements that apply to "all providers of supervised visitation, whether the provider is a friend, relative, paid independent contractor, employee, intern, or volunteer operating independently or through a supervised visitation center or agency." Among other things, supervisors must be trained in "issues relating to substance abuse, child abuse, sexual abuse, and domestic violence" and must have "basic knowledge of family and juvenile law."

Child custody evaluators must also meet educational and experience standards under Family Code Section 3110.5. California Rules of Court Standard 5.225 specifies licen-

sing, education, training, and experience requirements for evaluators who are appointed to conduct full or partial child custody evaluations under the Family Code, Evidence Code, and Code of Civil Procedure.

Finally, family court judges are also expected to be knowledgeable on substance abuse issues. California Rules of Court Standard 5.30(f) acknowledges the unique role of the family court, encouraging judges to support "the development of community services and resources to assist families and children in the family court system, including self-help information; supervised visitation; substance abuse and drug prevention, intervention, and treatment; services for families with domestic violence issues; counseling; parenting education; vocational training; mediation; alternative dispute resolution options; and other resources to support families."

### **Intervention can work**

Getting abusers into treatment is an admirable goal, but the law recognizes that there are many steps on the road to sobriety. In addition to the SoberLink band, a court can order the use of medicated assisted treatments such as Vivitrol or other medications that block opiate receptors.

Parties may be ordered to attend inpatient or outpatient counseling sessions provided by licensed mental health professionals - in person, not over video - as well as AA or other meetings. If both parents are incapable of parenting their child, the court might seek a referral to juvenile court, but budget constraints could make this impossible.

My drug court graduates simply wanted normality. They wanted their lives back, their jobs back, their families back. They were ready to move back into the world. But most judges are understandably cautious. The family court will slowly remove restrictions as judges see graduates

easing their way back and accepting responsibility for the damage they have done. Graduates who want to see their children again have to rebuild trust with former partners; sometimes that just doesn't happen.

Substance abuse is an insidious and tragic disease, but it can be overcome. In my 15 years on the drug court, I watched hundreds of graduates celebrate their release from its clutches. A parent facing the prospect of never seeing their children again may be willing to do whatever it takes to change the picture. The legal system, and the professionals working within that system, can help.

But the priority for the family court should always be the best interests and safety of minor children. When and how the shackles attached to parental visitation become "normalized" is, unfortunately, not something that will appear on an X-ray. Instead it will become visible through a parent's serious and well-considered path to sobriety.

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