

# The ACCOUNTABILITY DIALOGUES



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## Recommendations for the Judiciary and Family Courts

In the Fall of 2021, Futures Without Violence, Latinos United for Peace and Equity, The National Center on Violence Against Black Women (Ujima, Inc.), and Women Transforming Families, a project of Ujima, came together with survivors of domestic violence who were impacted by the child welfare system, along with state, tribal, and federal policymakers in the *Accountability Dialogues*. The *Accountability Dialogues* created a platform that elevated the voices of survivors and provided an opportunity for survivors, policymakers, advocates, and judges to listen to one another and advance policy solutions that would prevent further injustice to adult and child survivors of domestic violence. These recommendations and policy solutions offer a new framework: work diligently with care and compassion, and without bias, to keep families together; robustly support survivors and their children, in their community and with the resources and supports that they have identified, to meet their family's needs; and invest in communities and culturally responsive, community-based organizations to help families thrive.

### 1. Ensure that Judges Receive Judicial Education on Domestic Violence

Educate judges on DV in child abuse and neglect proceedings, including the impact of children's exposure to violence, the importance of preserving the child's relationship to a protective parent, the array of supports that mitigate exposure to violence, promising practices for abuser interventions, and exacerbating influences of families in need of support such as poverty, race, substance use, etc.

- Education should allow judges opportunity to consider evidence-based promising practices and reliable research on childhood trauma and resilience and to consider their decision-making within its context.
- Education should explore the ability of judges to engage in improvements to the fair administration of justice within the confines of their ethical rules.

### 2. Ensure that Judges' Actions and Demeanors Reflect a Comprehensive Understanding of Domestic Violence in Child Abuse and Neglect Proceedings

- Apply a contextual understanding of DV to child abuse and neglect proceedings at every stage of the process, from initial hearing through disposition, to enhance children's resilience and safeguard their access to a non-abusive parent.
  - This may include the review of *Nicholson v. Scoppetta*<sup>1</sup> and its progeny.

- Ensure that all DV survivors and children involved with the child welfare system know their rights, have an opportunity to be heard, can ask questions, are represented in all meetings and judicial proceedings, are given the opportunity to present a victim impact statement, and have a workable avenue to seek answers and recourse.
- Make findings of fact that reflect parental strengths as well as areas of concern in every case, including clear findings about responsibility for the violence, if applicable.
- Weigh the harms that exist with the family against the harms of removal in situations where DV is an issue.
- Prioritize the mobilization of supportive resources instead of removal at every stage of the proceedings, including those that allow survivors to maintain stable housing and stable educational settings for children.
- Review actions and inactions of child welfare agencies and compliance with the courts' and agencies' obligations in cases where DV is present and hold child welfare agencies accountable, including the consideration of sanctions and penalties when appropriate.
- Elevate reasonable efforts to active efforts to ensure adult and child survivor safety and well-being.<sup>2</sup> This may include asking survivors what they need and requesting that child welfare agencies articulate their thinking regarding decisions and referrals and how they helped families access resources and supports.
- Enhance survivors' and children's experiences of the court system with an emphasis on trauma-responsive court practices.<sup>3</sup>

### 3. Support Judicial Leadership to Advance Family and Child Well-being Systems

Generally, judges are “encouraged to engage” in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects.<sup>4</sup> Judges are uniquely positioned to influence the court and community practices that impact parties in child welfare cases.

- Encourage judges to use their leadership position to convene stakeholders to improve the policies, practices, and responses to families involved with the court, legal, and child welfare systems and to build a more just and equitable family and child well-being system.

#### Notes

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1. See <https://caselaw.findlaw.com/ny-court-of-appeals/1145205.html>.
2. See [https://www.americanbar.org/content/dam/aba/administrative/child\\_law/reasonable-efforts-tipsheet.pdf](https://www.americanbar.org/content/dam/aba/administrative/child_law/reasonable-efforts-tipsheet.pdf).
3. See [https://www.innovatingjustice.org/sites/default/files/documents/P\\_J\\_Practical\\_Tips.pdf](https://www.innovatingjustice.org/sites/default/files/documents/P_J_Practical_Tips.pdf).
4. *American Bar Association, Model Code of Judicial Conduct, Canon 3, Rule 3.1*