

Judicial Council Podcast

Professional Supervised Visitation: A Safety Tool for Judges and Families

(Episode 2 of Supervised Visitation series)

Voices:

Mary: Custodial Parent

Crystal: Visiting parent / Non-custodial parent

Judge Victor Hwang: San Francisco Superior Court

Shelly La Botte: Senior Analyst, Judicial Council

Judge Brooke Blecher: Santa Clara Superior Court

SCRIPT

Welcome to the Judicial Council of California Podcast. I'm Julia Scott. In this episode, we'll explore how courts and supervised visitation providers work together in their respective settings to keep families safe in situations where there has been domestic abuse or child abuse.

In our last episode, the first of this two-part series, we heard from several parents who had to go through supervised visitation, and who told us about parts of the process that DIDN'T work for them.

[MUSIC]

MARY: But I'm not really inside there and I'm not there. Reports of visits is not made available to me. That was another frustrating thing because I don't know what you're talking about. I don't know what's going on.

CRYSTAL: it was the most heartbreaking experience of my life. I felt like everything was against me. The facility that I'm having my visits at are against me, the court system was against me. And even to this day, I mean, it's traumatic even thinking about what I had to go through.

To be honest, family law cases are some of the most challenging cases. No one wants to be told by a judge when they can see their children, especially if it means paying a stranger to supervise visits with them. Here's Judge Victor Hwang, who presides over family law cases in San Francisco Superior Court.

JUDGE HWANG: I have a high respect for all of the judges here, and especially for those who have done family law before. But a lot of judges are folks who predominantly have practiced civil law at big law firms. And so it's a different set of skills to be able to listen to people who are representing themselves, who may not speak English as their first language, who may be under a lot of stress. And so I think those are the things to keep in mind. I myself, I have three kids still in school, and I think that informs my decision making every day in thinking about how I'd want my kids to be treated.

Judge Hwang knows by the time parents get in front of a judge, a lot has already happened. There may even be a restraining order in effect. It's a tense place, even for a judge.

[MUSIC FADES OUT]

It can be even harder if you're a newer judge to family law court. So today, we'll talk to two people for a perspective on some of the ways that two very different professions -- that of family law judges and supervised visitation providers -- intersect. And some of the pitfalls of both the judicial and supervised visitation processes.

We'll talk about how judges use their discretion to make decisions in the middle of a crisis, without a lot of facts in place. And how information flows between parents, providers, and judges.

So first, here's how the process begins.

[MUSIC]

SHELLY: When parents are trying to figure out custody or visitation for their children, then in California, they're required to go to mediation, which is a court connected service.

Shelly La Botte is a grant coordinator and program manager with the Judicial Council of California. She has 27 years' experience working on programs that increase noncustodial parents' access to and visitation with their children through supervised visitation and exchange services.

SHELLY: Those parents will go and meet with what we refer to as a child custody mediator and that individual professional's responsible for working with those parents to come up with an agreement.

And then, the parents go in front of a judge. The judge makes the ultimate decision on what is best for the children. In California, both parents should have frequent and continuing contact with their children... except in domestic violence cases. In these cases, safety is paramount.

SHELLY: The number one reason for referral to supervised visitation exchange services, meaning that when the court is making those orders, the number one reason is around domestic violence... And if the court feels there's a safety concern, meaning if there's been domestic violence or if there's been child abuse or sexual abuse in the case, then the court is balancing the legal visitation right, of that parent versus the safety and protection issue for the family as a whole. And so supervised visitation starts with that judge making a decision about custody and visitation for the family.

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Custody battles involving domestic violence are complex and emotionally fraught. On their side, providers of supervised visitation fulfill a crucial, temporary role for the court and the family in seeking to keep families safe. On behalf of the parents, their job is to ensure visits can happen in a safe, professional environment with trained providers. For the court, the provider's job is to provide judges with as much information as they professionally can.

SHELLY: They will make a report, and those reports will go back to the court to help the judge understand more about what's been happening for those two months under the auspices of supervised visitation or exchange.

Judge Brooke Blecher knows exactly what it's like to encounter a family at what may be the hardest time in their lives. It's going to be a process to find out what's really going on, and it can be frustrating when the judges lack essential information to help guide them.

JUDGE BLECHER: It is difficult when you don't get all the information, and you're generally not going to, on one pleading, or one brief court appearance. So professionally supervised visits are almost like a Band-Aid until you can get to the trial and get all the information. So you're working off of very little information for the most part at the onset of the case and even at the beginning, until you can have that trial. But

that is what super professionally supervised visitation does. It provides the protection for the children.

Judge Blecher is a seasoned family law judge who serves in the Santa Clara Superior Court. She explained that parents on her docket may face multiple hearings while she learns enough to build on the scant details she started with.

JUDGE BLECHER: I'm looking at things like what happened in front of the kids. How long has this domestic violence been going on? I'm looking at the lethality chart. It's almost like issue spotting. You're just looking for the severity and the immediate order for a restraining order, may be no visitation. It may be, you know, we're going to have a cooling off period for a couple of weeks until you get into court, because I'm concerned about the safety of the children and I'm concerned about your reaction to getting served with this domestic violence restraining order and how your conduct may be after that. And then when they come in, usually we're talking about how to have visitation with the children and supervised visitation is one of the options in that situation.

Judge Blecher has a deep appreciation for the impact domestic violence has on children.

JUDGE BLECHER: I will tell you, in terms of empathy, one of the most impactful things that happened to me, it's part of our judicial college and all the judges in California go through that... We go to San Quentin for the afternoon and meet with inmates and talk to them... Just asking different questions. And they were so honest. And one of the women in my group said, you know, we always hear that kids who are exposed to domestic violence have trouble later in life. Did any of you have domestic violence growing up in your family? And all four of them raised their hands and told their stories about how they saw their mom being abused or they were abused.

[MUSIC transition]

JUDGE BLECHER: And I think about that constantly when these cases are before me about this is a family in crisis, how are we going to get them out of crisis? And then what are they going to do when they're done coming before me once a month? You know, how are we going to get them on the road to recovery? What services can I offer? What can be done to help them?

And if judges are the ultimate decision-makers on that path out of crisis, supervised visitation providers are one option that can help everyone get there with safety protections in place. But sometimes there are pitfalls and points of confusion between those two professional spheres.

For instance, according to Shelly La Botte, California law makes it clear what kinds of notes visitation providers should forward to judges about the meetings they witness. But sometimes, judges will ask for something they shouldn't.

SHELLY: By definition, the professional provider is a neutral person. And so if they are making recommendations, or are stating opinions, this actually would be in conflict with their role as a provider. And I think oftentimes the courts, you know, sometimes don't quite understand that.

Providers are not supposed to state their opinions about the behavior they observe during visits or advocate for one parent over another , which parents sometimes want them to do. The challenge arises when not everyone is clear about their role, says La Botte. And it can be dangerous, too, for everyone involved.

SHELLY: I think it's important that the judges also understand and know that when the provider acts outside of that neutral role, it will actually increase the possibility of not only their own personal liability, business liability, but it will set them up to be subpoenaed, you know, possibly by the other parent's attorney where they're going to challenge whether the provider is acting as an evaluator or making assessments, which is totally outside of the scope of their role.

Judge Blecher hasn't seen that happen in her courtroom.

JUDGE BLECHER: Most of them I have found to do a pretty good job of writing reports or coming to testify as necessary. You know, in the event that there was a situation where a provider is acting inappropriate or or maybe aligning with one parent too much that the judge can order that they need to use a different provider.

That said, she does look for something very specific when she reads those supervised visitation reports.

JUDGE BLECHER: A hot button issue for me is when I hear people talking about fights or arguments they're having in front of the children or just that they can't get along. And so to hear mom saying bad things about dad or vice versa is really harmful to children. And that's one of the things also with professionally supervised visits is they will take notes, extensive, extensive notes, several pages for a couple hour visit detailing conversations. So I'd really expect everyone to be on their best behavior. And so during the visits, if they're saying bad things about the other parent, it's a huge red flag for me

because I think, well, what's going on when there's not somebody watching and what's going on when you're not on your best behavior?

All of this points to a central issue: everyone needs to work together to make the process efficient and humane, so families can move on with their lives. Be safe, and feel safe. But sometimes family law judges lack the full picture on the supervised visitation system in California, the role providers play, and the system they operate in, according to La Botte.

SHELLY: They're just unfamiliar with sometimes what other resources might be out in the community. So, for example, the judges are aware of the concept of supervised visitation and exchange, but they're not sometimes fully informed in relationship to how those services operate in their community.

To take a small but important example, when the court makes an order, there are two required forms to fill out. But sometimes it doesn't get done correctly, and that has consequences.

SHELLY: So, for example, possibly the judge forgot to say how often the visits were going to happen or forgot to indicate what the hours of the visit were going to be. Is it going to be a one hour visit or two hour visit or a three hour visit? Or another huge challenge for the providers in relationship to the judge's order is, who's going to pay? And then again, most importantly, that parameter of why the court's making the order, you know, what is the reason for referral? What's the safety concern that the court has identified, that the providers need to be aware of in providing services?

La Botte says that sometimes judges will accidentally order visits during off hours or without consideration of what's convenient for the parents.

SHELLY: So, for example, again, a court can make an order for supervised visitation. And if they're not having this collaboration or they're not having this discussion with their what we call like their other community service providers, then they could be making an order, say, to go over to, say, Shelly's Supervised Visitation Agency, you know, and that order's for the weekend. But I don't operate on the weekend. You know, I only operate Monday through Fridays.

Here's how Judge Blecher handles that stage of the process.

JUDGE BLECHER: So normally, if there's not professionally supervised visits, I would be specific as to the day in time of when the visit is so that everybody's clear on what's

going to happen. But with professionally supervised, it needs to be a little more vague because you don't know what the agency has available. So these orders are written to say, for example, visits will be two times a week for two hours per visit, because it's up to the provider to accommodate that. I generally order that the parent being supervised initiates contact and pays for the visits. I always make an order about that. And again, with as much information as you have about this family, to be careful that you're not actually making a no-visit order, because at two hundred dollars an hour it adds up pretty quickly. And so you want to make sure that there is enough money to pay for these visits or to look for funding where you can.

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Funding for court-ordered visits is a huge, ongoing issue. The federal Child Access and Visitation Grants do not get anywhere close to making visits affordable across California, and that can keep children and parents apart. Santa Clara County, where Judge Blecher presides, has an in-house provider centrally located inside the courthouse... and sometimes there is additional funding provided through First Five, a program that supports families with children aged 0-5. But not all counties are in the same position.

JUDGE BLECHER: What I would like to see changed about the area of domestic violence and professionally supervised visitation and family law is funding and availability and access. It would be great if professionally supervised visitation was completely funded by grants, that the visits could be in the evenings and weekends, that the services were provided throughout the county so that it wasn't too far for someone to drive. That providers spoke all different languages to accommodate everyone, and that all of the classes and therapy, therapy for kids, conflict and accountability classes, co-parenting class were all funded or offered in different languages and available in the evening and weekend to just really accommodate the entire community, because it costs a lot and and that can limit the access for so many people.

Having a provider located inside the courthouse also eliminates a major, ongoing blind spot for judges who sometimes order that an exchange take place at a police station. Not only do police stations actively discourage the practice, it overlooks the context of historical systemic racial trauma and distrust associated with police encounters among people of color... and particularly within the African American community and undocumented families.

SHELLY: If a program, for example, has, you know, security mechanisms in place, like using security guards or using security wands, I think providers also have to be very

aware of how people of color may feel very uncomfortable... uncomfortable in the context of just the relationship between people of color and police.

And ordering parents to visit their children at facilities where they, as people of color, are treated as potentially dangerous... can risk re-traumatizing families.

SHELLY: You know, often we hear a lot of children asking their parents, like, you know, mom or dad, why are we at the police station? Did you do something wrong, you know, or are we bad?

[MUSIC]

While we've seen that there are many inconsistencies within this area of family law and how supervised visitation is carried out, there's no shortage of ideas to improve the system. One suggestion is to require that visitation providers get certified by the state.

SHELLY: What I do hear from some of those courts is that they're concerned that there's no certification, which gives them some assurance about the skill level and competency of the providers that are out there. So I think certification would help on both sides.

Supervised visitation in more family law trainings for judges would help too.

SHELLY: And so if we could put supervised visitation, like how we put implicit bias as a required, you know, subject area that they have to be trained on. I think that would help immensely.

In the end, La Botte wants to ensure the best outcomes for families, and above all, keep them safe.

SHELLY: I want to see the judges at that table and helping implement best practices in their jurisdictions around supervised visitation, because we all work with only one goal, and that's in keeping families safe.

For Judge Blecher, doing the job right means getting as much information as possible... so her orders reflect what is best for the children and safe for their families.

JUDGE BLECHER: It's so important to look at as much information as you can, whether that's pretrial services, reports, declarations from the parties, from third parties,

any other information that you have to try to make an order that's best for the child. These aren't easy orders to make, and you're juggling the safety concerns for the child with ensuring this ongoing relationship between the parents and the child, and, while professionally supervised visits may be a little unnatural because there's someone else in the room with them taking notes, you are still allowing that relationship to continue and that sometimes such an order is necessary again to ensure the child's safety and allow some sort of contact between the parent and the kids.

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Thanks for joining us for this episode of the Judicial Council of California Podcast.

For more information on professionally supervised visitation in your area, check with your Family Court Services Director. If you're interested in funding opportunities for supervised visitation programs the Judicial Council has information on their website at courts.ca.gov - search for "Access to Visitation." And if you work with victims and survivors and want to find resources in your area, you can contact the National DV Hotline at thehotline.org.

This episode was co-produced by me, Julia Scott, and Chris Hoff, who is also our sound engineer. Special thanks to Judge Brooke Blecher of the Family Justice Center Courthouse in Santa Clara County and Shelly La Botte at the Judicial Council of California for speaking with us so candidly.

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