Improving Outcomes for Court Involved Children & Families UTAH August 12, 2020

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TOPICS

- 1. Reasonable Efforts
- 2. Paternity
- 3. Relative Placement
- 4. Drug Exposed Infants
- 5. Treating Trauma
- 6. Other Best Practices
- 7. Role of the Judge

- Have you noticed that the federal Human Services agency has started emphasizing reasonable efforts?
 That is about 40 years since the law was passed.
- They want more specificity in the court records about the , 'reasonable efforts' findings.

• "For the child welfare system to become one that respects the integrity of the parent-child relationship and seeks to minimize trauma, attorneys must use the tools the law provides and judges must make meaningful judicial determinations.

• "Advocating vigorously for reasonable efforts to be made to prevent removal when that is the situation.

• "When removal is necessary, advocating that reasonable efforts be made to finalize permanency plans and, when not made, advocating for a no reasonable efforts finding."

 Jerry Milner, Associate Commissioner Children's Bureau and David Kelly Special Assistant to Court Improvement, US HHS.

1. USING THE REASONABLE EFFORTS TOOL TO ACHIEVE BETTER OUTCOMES

• At a shelter care hearing the social worker recommends that the court remove the children because the mother is homeless.

• Is this a reasonable efforts issue?

• The social worker must provide temporary shelter.

- The states of Washington, Rhode Island, Pennsylvania and New York have appellate cases affirming this statement.
- California has a statute.
- See *Reasonable Efforts: A Judicial Perspective, at pp 38-40.*

- At a review hearing, the mother's attorney asks you to order the department to provide transportation so that the mother can visit her children.
- The agency replies that it does not have the resources to do so.
- Is this a reasonable efforts issue?

• How important is visitation in a case plan?

- What is the typical visitation schedule in your jurisdiction?
- How many times a week?
- Supervised or unsupervised?
- Where does it take place?
- Who provides transportation?

• Not much case law around the country, but a great deal of research.

• See Edwards, *Reasonable Efforts: A Judicial Perspective* at pp, 41-47.

- "Judicial Oversight of Family Visitation in Child Reunification Cases."
- *Reasonable Efforts: A Judicial Perspective* at pp 405-426.

- To read the most up-to-date study of what courts and social service agencies should be doing to increase the quality and quantity of visitation, see Family Time Practice Guide: A Guide to Providing Appropriate Family Time for Children in Foster Care.
- Available on my website at Court Improvement (it's free)

- How do you record a finding of reasonable efforts in the court file?
- (1) Check a box?
- (2) State "reasonable efforts were provided?"
- (3) Write out the actual services provided and then write out your finding?

- "I do not want courts and judges to get to the point where they see their function in determining whether congregate care is appropriate for a child or not to be,
- 'Where do I check the box?'"
- Jerry Milner, Children's Bureau

- There are two kinds of reasonable efforts issues:
- 1. Did the social worker provide adequate services in a timely fashion to the client?
- 2. Were necessary services available in the community?

• What can attorneys do when there are inadequate services?

Superior Court State of California Santa Clara County Superior Court Building 191 North First Street San Jose, California 95113 (4061 299-3949 Chambers of Leonard P. Edwards, Judge

December 6, 1989

Richard O'Neil, Director Department of Family and Children's Services 55 West Younger San Jose, California 95110

Dear Dick:

I am writing to explain why the Juvenile Court Judicial Officers have made several "no reasonable efforts" findings in the past few months and what I believe the findings mean to the Department and the County. I believe these issues are novel and deserving of some detailed explanation.

As you know, pursuant to both state and federal law, the Court is required to make reasonable efforts findings at almost every stage of a dependency action. Reasonable efforts refers to those actions which the Department would reasonably be expected to take to enable children to remain safely at home before they are placed in foster care. It also refers to those actions the Department would reasonably make to reunite foster children with their biological parents.

Two issues have recently resulted in findings of no reasonable efforts. The first is the failure of the Department to provide a placement for teenage mothers and their babies. The second is the failure of the Department to provide intensive in-home services to enable drug abusing mothers and their drug exposed babies to be placed together in the community.

In each of these types of cases, the Social Workers who appear in my court are working hard to prevent the removal of children and to provide services to facilitate reunification. They are, however, unable to provide the services on the scale to which I refer. Instead, they report to me in court that they have looked everywhere, that these services do not exist and that, as a result, the baby must be removed from the mother's care.

These are cases in which everyone in the courtroom agreed that the baby and mother should be together and, but for the lack of resources, they would be placed with one another. Moreover, everyone agreed that the provision of these services was reasonable under the circumstances. Indeed, these services have been widely discussed in Santa Clara County as being a necessary part of the effective support of children and families in the County. They are available in many counties both in and out of California.

The finding of "no reasonable efforts" in these cases is important for several reasons. First, it is an indication that certain specified services were all that were necessary to retain a child with a parent. Second, it means that, given the circumstances of the County, the services are not extraordinary or unreasonable. Third, it may mean the Department will be unable to complete permanency planning for

the child. Without a finding of "reasonable efforts," the termination of parental rights may not be legally possible. See Welfare and Institutions Code Section 366.22. Finally, the finding means that the Department cannot be reimbursed for the costs of a child's out-of-home care. See 42 U.S.C. Sections 671(a) (15) and 672 (a) (1).

Pursuant to my duties as Juvenile Court Judge, I am advising you of the consequences of a no reasonable efforts finding and hoping that by working with the Board of Supervisors you will be able to take steps to ensure that such services are available to the children and families in Santa Clara County. Of course, I will do whatever I can to assist you in your efforts.

Thank you for your consideration and attention to this important problem. I look forward to hearing from you about its resolution.

Sincerely yours,

LEONARD EDWARDS Presiding Judge, Juvenile Court

LE: hd cc: Board of Supervisors County Executive Presiding Judge, Superior Court Superior Court Juvenile Court Committee County Counsel District Attorney Public Defender Chief Probation Officer Federal Compliance Officer

• At a permanency planning hearing the social worker recommends that the youth remain in a group home where she has been for 2 years.

• Is that a Reasonable Efforts Issue?

- P.L 113-183 The law states that the court must determine what efforts have been made by the children's services agency <u>and/or</u> <u>probation</u> to place a child in a home-like setting.
- This is the **Preventing Sex Trafficking and Strengthening Families Act of 2014**

 If the plan is APPLA, (Another Planned Permanency Living Arrangement), the plan <u>shall</u> contain:

- (1) Documentation of intensive, ongoing, unsuccessful efforts for family placement;
- (2) Redetermination of appropriateness of placement at each permanency hearing.

The court must make a determination explaining why APPLA is the best permanency plan AND provide compelling reasons why it continues to not be in the best interests of the child to (1) return home, (2) be placed for adoption, (3) be placed with a legal guardian or (4) be placed with a fit and willing relative.

- Moreover, the Family First Act (2018) states that there will be no Title IVE foster care reimbursement for a child starting the third week of placement in a "child care institution."
- That is any public child-serving institution that holds 25 or fewer children.

- What tools does the court system have to encourage and facilitate change in the child welfare system?
- One of the most important is the Reasonable Efforts finding.

The Adoption Assistance and Child Welfare Act of 1980 (AACWA)

The Adoption and Safe Families Act (ASFA) of 1997

The State Plan

Federal Funding of Foster Care

Monitoring the State and Local Welfare Agency

Judges must make and record certain findings:

"Contrary to the Welfare of the Child"
"Reasonable Efforts to Prevent Removal"
"Reasonable Efforts to Facilitate Reunification"
"Reasonable Efforts to Finalize Alternate Permanency Plans"

• What does reasonable efforts mean?

• DEFINITION: "A 'reasonable effort' to provide reunification services is a fair and serious attempt to reunify a parent with a child prior to seeking to terminate parental rights; reasonableness in this context is an objective standard and depends upon a careful consideration of the facts of each individual case." Section 78A-6-314(2)(b).

- Examples of other state definitions are in Appendix B of *Reasonable Efforts: A Judicial Perspective*
- Pages 363-372

• Essentially the court is telling the agency (and the world) whether the agency has done its job and completed its responsibility towards the clients it serves and its promise to the federal government to use the federal money to serve children and families.

- Reasonable efforts is a term of art.
- There is no fast and firm definition;
- It is the amount of services or social worker effort that the law requires depending on the problem and the resources available within the community.

• What may be "reasonable" in one community, may not be in another.

That means that judges must learn what services are <u>available</u> <u>or should be</u> <u>available</u> to families in their communities.

Attorneys should also know about available community services.

- The parents in a dependency case are opioid addicts. Their child has been removed from their care. The case plan includes:
- (1) Drug treatment classes
- (2) Attend Narcotics Anonymous 4 times a week.
- (3) Do not associate with drug addicts.

• Do you have any comments on this case plan?

This is a plan that will fail.

The plan should include reference to Medication Assisted Treatment (MAT).

Medication Assisted Treatment (MAT) is the use of medications in combination with counseling and behavioral therapies for the treatment of substance use disorders. A combination of medication and behavioral therapies is effective in the treatment of substance use disorders, and can help some people to sustain recovery.

- THE JUVENILE COURT MUST MAKE REASONABLE EFFORTS FINDINGS AT 3 CRITICAL POINTS IN EVERY FOSTER CARE CASE.
- 1. Within 60 days after removal
- 2. At the disposition if the child is removed from the home.
- 3. After a permanent plan has been set.

- There is another finding the court can make.
- "NO REASONABLE EFFORTS"
- This means that the agency has not done its job, and has not provided the services and supports that it should under the circumstances of the particular case.

- A Finding of "No Reasonable Efforts" has substantial consequences for the agency and for the state.
- It means that the agency will not receive federal money for its work on that case.
- That is one reason the "reasonable efforts" finding is such a powerful tool.

REASONABLE EFFORTS: EXAMPLES

A child is removed from a mother's custody after the social worker discovers that the mother has been the victim of repeated domestic violence and that the child has been exposed to that violence.

• Is there a reasonable efforts issue in this case?



• Check out

<u>Nicholson v Scoppetta</u>, 344 F.3d 154 (2003)
 <u>AND</u>

Nicholson v Scoppetta, 820 N.E.2d 840 (2004)

pp 51-56 Reasonable Efforts: A Judicial Perspective

Take-Aways:

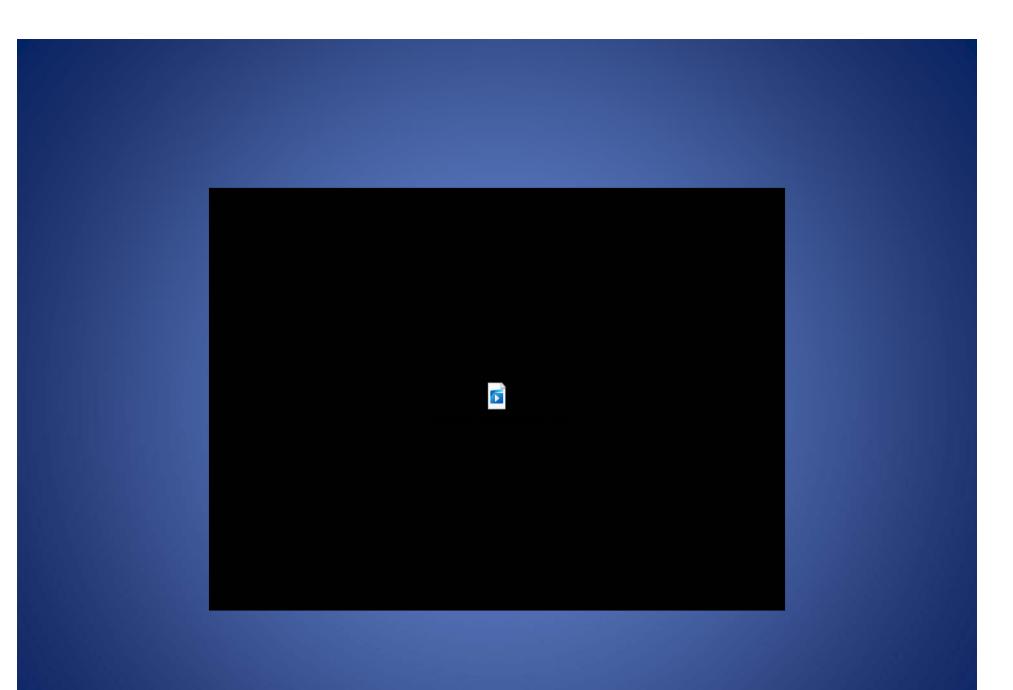
1. Attorneys are necessary so that parents can understand issues at a shelter care hearing.

2. It is important to appoint attorneys early enough so they can prepare for the shelter care hearing.

3. The judge can issue a temporary restraining order *sua sponte*.

Take-Aways:

- 4. Circumstances can change quickly after a removal. The court must be ready to respond to changed circumstances.
- 5. If there are no attorneys or if the attorneys do not address the issue, it is up to the judge to ask questions of the social worker.





REASONABLE EFFORTS: EXAMPLES

- A prospective adoptive mother comes before the court at a review hearing and asks why the adoption has not been completed?
- The agency says that it is too busy and that home studies take a long time.
- Is this an issue deserving a "no reasonable efforts" discussion and possible finding?

REASONABLE EFFORTS: EXAMPLES

- Your homework:
- (1) Find out how long it takes to complete an adoption after a termination of parental rights.
- (2) Find out how the department conducts a home study and how long it takes.

REASONABLE EFFORTS AND COURT IMPROVEMENT

• The third reasonable efforts mandate is to ensure that a child reaches a permanent home as soon as possible.

• What is a permanent home?

REASONABLE EFFORTS AND COURT IMPROVEMENT

- Parents, relatives, adoption, guardianship.
- Not foster care or congregate care.
- Reasonable Efforts to finalize alternate permanency plans. 42 U.S.C. § 671(a)(15)(C); 45 CFR §1356.21(b)(2)

- If the court made a "no reasonable efforts" finding in one of these cases, would the agency lose money?
- Then why should the judge make such a ruling when the agency (and the state) will have less resources?
- Shouldn't the judge just go along with the state and find that what the agency provides is reasonable?

REASONABLE EFFORTS: A NATIONAL PERSPECTIVE

Unfortunately, many state court judges have ignored the reasonable efforts findings required by federal law.

Appellate case law indicates that the reasonable efforts issue is not often tried in juvenile courts.

REASONABLE EFFORTS: A NATIONAL PERSPECTIVE

Studies indicate that judges are reluctant to make "no reasonable efforts" findings. Some judges say:

(1) Social workers are the experts – "I respect their expertise."

REASONABLE EFFORTS: A NATIONAL PERSPECTIVE

(2) "I do not want to take money away from an already financially-strapped agency."
(3) "I don't know enough to make a judgment about reasonable efforts."
(4) "There is no specific definition of reasonable efforts."

• Is it the role of the judge to rubber stamp what the agency recommends?

• Is it the role of the judge to rubber stamp what the district attorney in a criminal prosecution recommends?

• How might you suggest that the court use the "no reasonable efforts" finding strategically?

- I suggest a strategic use of the No Reasonable Efforts finding.
- Suggest to the judge the following:
- "Tell the agency you are about to make such a finding, but then continue the case for a week or two to give the agency an opportunity to take action."

• I call this "The Art of a No Reasonable Efforts Finding"

- I believe that attorneys and judges should be attempting to improve the child protection system at every opportunity.
- Raising the reasonable efforts issue may improve the system for all clients.
- It also will be addressing the reason for the federal and state legislation: holding the children's services agency accountable.

• In many states attorneys working in juvenile dependency court are the newest and least experienced attorneys.

• I encourage that judges should take steps to encourage and reward attorneys to remain in this court.

• IN MOST STATES ACCORDING TO THE APPELLATE CASE LAW THE REASONABLE EFFORTS ISSUES ARISE AT THE TERMINATION OF PARENTAL RIGHTS HEARING.

Refer to Appendix A in *Reasonable Efforts: A* Judicial Perspective.

- In Utah that is true in the appellate cases I reviewed.
- I should also note that the Utah appellate courts have no reversals of reasonable efforts failures by the department.

• Judges should be overseeing case plan implementation and parent participation early and throughout the life of each case.

REASONABLE EFFORTS

• That means frequent interim reviews.

• Attorneys should ask for interim reviews where it will assist your clients.

REASONABLE EFFORTS

My practice was to set an Interim Review in almost every case.

- The issues that I would address include:
- Paternity
- Visitation
- Services in place
- ICWA
- Receipt of psychological evaluations
- Many others depending on the individual case₇₄

NATIONAL PRACTICE

 The reasonable efforts issue should be examined carefully at the shelter care hearing, at the jurisdiction/disposition, at review hearings, and at the permanency planning.

NATIONAL PRACTICE

• Judicial oversight of the department of social services was a fundamental purpose of the federal law.

BUILDING BETTER COURT SYSTEMS

Once you and your colleagues let members of your court system know that you are paying careful attention to the reasonable efforts issue, practice will improve and children and families will be better served.

REASONABLE EFFORTS LET'S RAISE THE BAR

1. FAILURE IMMEDIATELY TO LOCATE, NOTICE AND ENGAGE FATHERS.

2. FAILURE IMMEDIATELY TO LOCATE, NOTICE AND ENGAGE RELATIVES.

3. FAILURE TO ADDRESS THE MISSING OR INADEQUATE SERVICE.

4. FAILURE TO ADDRESS THE SERVICE THAT HAS A LONG WAITING PERIOD.

5. FAILURE TO ADDRESS THE NEEDS CHILDREN PLACED IN LONG TERM FOSTER OR CONGREGATE CARE.

I mentioned relative preference for placement in the video.

Studies show that children in relative care have a more stable placement, are more likely to remain in their same school, and experience less trauma than children placed in foster care or congregate care.

In fact, congregate care is the least effective placement.

Studies also demonstrate that youths who "age out" of foster and congregate care have poor outcomes as adults.

That is why federal and state legislatures have paid special attention to these youths.

What percentage of children removed from home are placed with relatives in the United States?

What percentage of children removed from home are placed with relatives in Utah?

UNITED STATES = 32%

UTAH = 19%

- On relative preference, notice, and engagement, see
- Fostering Connections to Success and Increasing Adoptions Act of 2008 (PL 110-351)

RELATIVE PREFERENCE

• P.L. 110-351; Section 103:

• Within 30 days after the child is removed from his or her parents' custody, Fostering Connections requires state agencies to exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of a child (including any other adult relatives suggested by the parents).

How long does it take to place a child with a relative in Utah?Consider background checks, fitness of the house, resources to support the relative.If there is a criminal conviction of a household member, how long does it take to secure a waiver?

If this process could take place in substantially less time, would that benefit the child removed from parental care and needing a placement?

An experiment in Los Angeles involves 10 of their regions (out of 19)

Over the past several years they have placed 84% of children removed from home into relative care.

In most cases on the same day.

Pennsylvania has several counties with similar statistics.

Omaha has similar results.

In Allegheny County (Pittsburgh), the placement rate with relatives is about 65%.

See the articles I have written on my webpage Judgeleonardedwards.com.

This is a solution to an enduring problem: finding good homes for children in a timely fashion.

But what can a judge or attorneys do to influence the agency to adopt best practices?

Invite leaders from jurisdictions that are using best practices.

Ask about whether the agency is using "Family Finding."

Ask whether the agency has invited Kevin Campbell to speak to its workers.

3. FATHERS

• At the dispositional hearing, the social worker writes in her report that she has not located the father or any relatives.

- Is that an issue that the court should examine?
- Could that be a "reasonable efforts" issue?

FATHERS

- Engaging fathers means that the child's relatives will be increased by approximately 50%.
- Relative placement will usually be beneficial to the child and parents.

FATHERS

• Our statistics from the model counties I have shown you that 16-19% of all placements are with non-custodial parents – usually fathers.

- A baby is born with a positive toxicology screen for drugs.
- After an assessment by the hospital staff, the social worker concludes that a petition should be filed on behalf of the baby.

• What steps should the agency take to comply with the federal Comprehensive Addiction and Recovery Act of 2016 (CARA)?

• What questions should you be asking when the case comes to court?

• HAS THE AGENCY:

- 1. Identified the needs of the child and parents
- 2. Created a Plan of Safe Care (POSC). This is a family plan, not just a plan for the child.
- 3. Identified which community partners will participate in the POSC?

• How will you determine if the agency is following the federal law?

- Are you keeping track of the numbers of drugexposed infants in your jurisdiction?
- How many of these families are coming before your court?

• The law (CARA) requires that these statistics be collected and maintained.

• I understand Utah has opted into the Family First Prevention Act.

• Is it possible that the POSC includes placing the mother and baby in a residential treatment facility?

• Do you have that resource in your community?

• What is the role of the judge and attorneys with regards to CARA and substance exposed infants?

- 1. Learn how the agency is dealing with drug exposed infants?
- 2. Get a copy of the Plan of Safe Care along with the petition in each case.
- 3. Learn how many drug exposed infants are born in your community.

- 4. Learn what services are available for substance abuse treatment for parents.
- 5. Learn what services are available for the baby and how quickly those services will be available.

• How can you do that?

• Have a training in which hospital, social services and community service providers explain to the court and attorneys what is available in you community.

• For the Social Services agency, failure to take steps to follow the law may be a violation of the 'reasonable efforts' requirement.

• These steps may prevent removal or facilitate reunification.

5. TREATING TRAUMA

• Find out if children entering the child welfare and juvenile justice systems have been screened for ACEs.

• Find out what treatment they are being provided.

TREATING TRAUMA

- Sponsor trainings in ACEs
- Make your community familiar with ACEs.
- Read *The Deepest Well* by Dr. Nadine Burke Harris.
- Watch Dr. Harris' Ted Talk.
- Urge others to learn about Dr. Harris.

TREATING TRAUMA

• We, along with most health care and human service systems, do not routinely or comprehensively inquire about the trauma that may have been or currently experienced by our clients.

1. Dependency Mediation

2. Wrap-Around Services

These services are now a right that all children in California have as a result of a federal court order.

3. One Judge-One Family

4. Family Reunification Day

7. THE ROLE OF THE JUVENILE COURT JUDGE

Juvenile court judges must be leaders both in their courtrooms and in the community.

We are the community's most important voice for at-risk children and their families.

6. THE ROLE OF THE JUVENILE COURT JUDGE

We convene the community around issues involving children and families.

We bring together agencies and groups that do not have a good relationship.

6. THE ROLE OF THE JUVENILE COURT JUDGE

There are so many new best practices. Juvenile court judges must learn of those and implement them.

"Judges in the juvenile court are charged with keeping children safe, mentoring families, finding permanency for children, and holding youth, families, and service providers accountable. Every day, hundreds of judges make thousands of decisions regarding children in crisis....

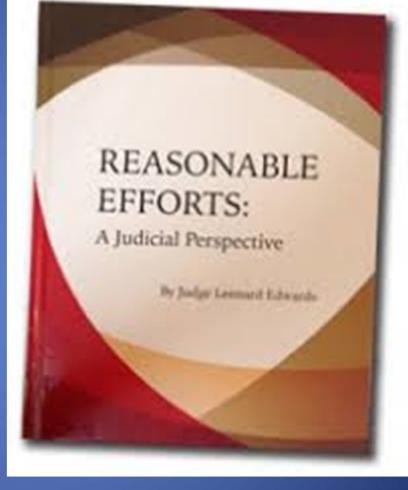
"We decide whether a child should be removed from parental care, whether a child has committed a delinguent act, whether a child should be committed to the state for correction, whether parental rights should be terminated, and similar issues. When parenting fails, when informal community responses are inadequate, our juvenile and family courts provide the states' official intervention in the most serious cases involving children and families....

"...We are the equivalent of the emergency room in the medical profession. We intervene in crises and figure out the best response on a caseby-case, individualized basis. In addition, we have to get off the bench and work in the community.

"We have to convene child- and familyserving agencies, schools, and the community around the problems facing our most vulnerable and troubled children. We have to ask these agencies and the community to work together to support our efforts so that the orders we make on the bench can be fulfilled. We have to be the champions of collaboration."

-Judge Leonard Edwards (Ret.)

Another Important Resource.



The best time to plant a tree is 20 years ago . . . The second best time is today . . .

Chinese Proverb



"The Child's Name is Today" . . . Gabriela Mistral

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