

"With the child's health and safety as the paramount concern, the dependency court judge is required to rule whether or not a child welfare agency has made reasonable efforts toward preventing a child's removal from his home, reunifying the child and family or achieving permanency for the child when reunification is not an option. This issue of The Judges' Page seeks to address the role of the judge in making these reasonable efforts findings."

~ Judge J. Dean Lewis, Editor

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Editor's Page— Reasonable Efforts in the Dependency Court



J. Dean Lewis, Judge (retired), Former Member, National CASA Association Board of Directors and Past President, National Council of Juvenile and Family Court Judges

Summary

Ultimately, it is the judge who must determine whether services offered by the child welfare agency are reasonable based upon the circumstances of the case. In this issue of *The Judges' Page*, authors representing judicial, child welfare and youth perspectives share their experiences of exercising reasonable efforts.

With the child's health and safety as the paramount concern, the dependency court judge is required to rule whether or not the child welfare agency has made reasonable efforts to:

- Prevent the child's removal from the home and placement into foster care
- Reunify the child and family except in limited circumstances set forth in federal and state law
- Achieve permanency for the child if reunification is not the plan

This issue of *The Judges' Page* seeks to address the role of the judge in making reasonable efforts findings, as well as provide the experiences and perspective of others involved in foster-care cases. Articles in this issue include:

- [Judge Leonard Edwards](#) offers the judicial perspective. Judge Edwards is the first juvenile court judge to be awarded the prestigious William H. Rehnquist Award for Judicial Excellence. Both his knowledge and work in the reasonable efforts arena are legendary.
- [Judge Douglas Johnson](#) writes of his experiences in achieving reasonable efforts in cases involving our youngest and most vulnerable children—the zero to three population.
- [Donna Goldsmith, Esq.](#), explains the requirement of active efforts in tribal cases.
- [Nancy Miller](#) shares the Oregon experience in implementing the Indian Child Welfare Act's requirement of active efforts.
- [Julie Gilbert Rosicky](#) guides us through the process for placement of foster children with a parent who resides outside the US.
- [Patricia Van Horn, PhD](#), offers the insight of a mental health professional in addressing reasonable efforts.
- [Stephanie DuRocher](#) shares the personal experiences of Iowa foster youth regarding reasonable efforts services.
- [David J. Herring](#) has written extensively on child welfare issues. He offers a critique and proposal for a new approach to foster care placement decisions.
- [Jacqueline M. Verney, Esq.](#), shares her experiences in the case of "Baby Joshua."
- [Gary I. Shuey](#), MSW, LSW, shares his professional experiences as a child welfare administrator.
- [Danielle Morrison](#), MCP, offers advice regarding implementing reasonable efforts.
- [Judge Chris Melonakis](#) of Broomfield County, CO has been named National CASA's 2007 Judge of the Year. He is profiled in the summer *Connection* magazine.
- [Paula Campbell](#) offers web resources.

Before making reasonable efforts findings, the court should ask questions including the following:

- Are the services being offered targeted to the particular needs of the child and family and focused on the problems that led to the finding of abuse or neglect?
- What services could be rendered that would prevent the child's removal and ensure the child's safety?
- If removal is ordered, what services will promote reunification and maintain child safety?
- If removal is ordered, are there relatives or an absent parent who could care for the child and, if so, what services need to be offered to the caretaker?
- If reunification is not an option, what services need to be in place to achieve permanency for the child?
- Has a professional assessed the child's and the family's mental health, developmental and substance abuse status?
- What barriers exist to the child's and family's use of the offered services? Barriers may include transportation, child care, language skills, hearing impediments, disabilities and educational deficits.
- Are the services being offered culturally competent?
- Are the services needed by the child and family available in the community or can the services be contracted through an outside resource?
- Were appropriate services offered in a timely manner?
- What are the credentials of the service providers and have the outcomes of such services been evaluated?

CASA/GAL volunteers can assist judges by answering many of these questions in their court report and by informing the court of community resources.

Ultimately, it is the judge who must determine whether the services offered by the child welfare agency are reasonable based upon the circumstances of the case. In making this determination, the judge needs to be familiar with the child welfare agency's reasonable efforts policy or regulation, as well as with the state's plan. Each community should have a directory of public, private and charitable resources that are available to the court. If adequate resources do not exist, the judge may need to become an advocate for the development of additional resources to meet the needs of the children and families involved in dependency court cases.

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Reasonable Efforts: A Judicial Perspective



*Judge Leonard Edwards, Judge-in-Residence,
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Summary

Judges must address the reasonable efforts issue. If an agency is to be held accountable for its actions, judges must provide rigorous oversight of agency decisions and actions at critical junctures in each child-protection case.

Juvenile and family court judges have been given significant responsibilities with regards to each state's child welfare system. Pursuant to federal and state laws, judges must oversee many important social-worker decisions in child protection cases. Judges must decide whether an agency acted properly when it removed a child from parental care, whether it provided parents with adequate supportive services during the reunification period and whether it took appropriate actions to ensure a child was placed in a permanent home.

Judges fulfill their responsibilities by finding that the agency either did or did not exercise reasonable efforts in performing its legal duties. For example, at the shelter care hearing or initial hearing, the technical legal findings that a judge might make are either that:

- Reasonable efforts have been made to prevent or eliminate the need for removal.
- Reasonable efforts have not been made to prevent or eliminate the need for removal.

Reasonable efforts is a legal term describing the services and assistance offered by a social service or child protection agency to a child and family members during the life of a child welfare case. It is a term of art, first written into a federal statute—Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980—and modified in 1997 by the Adoptions and Safe Families Act (ASFA)¹. Those laws state that a court must make reasonable efforts findings at several critical junctures in each child protection case. First, when a child has been removed from parental care, did the state provide services to eliminate the need for removing the child from the parent?² Second, did the state agency make reasonable efforts to enable the child to be safely reunited with his family?³ Third, when the child could not be returned to the parent, did the agency make reasonable efforts to ensure a timely, permanent placement?⁴ Additionally, ASFA added a section that permits states to bypass offering reunification services (reasonable efforts) to parents if parental conduct was so egregious that such efforts would be futile.⁵

In each of these situations, the court has a choice. The court can find that the agency fulfilled its legal obligations to provide adequate services and rule that the agency had made reasonable efforts. If the court finds that the agency did not provide sufficient services or assistance to a child or family, the court would make a finding of *no reasonable efforts*. Such a finding would have significant fiscal implications for the agency. If federal audits determine that the juvenile court has made no reasonable efforts findings or similar facts indicating that the agency has failed in its obligations to the child and family,⁶ the federal government will request reimbursement for some of the Title IV-E funding that it provides to each state to support foster children.⁷

There is no definition of reasonable efforts in the federal law.⁸ What is reasonable depends on the time, place, and circumstances. What may be reasonable in one community may not be in another. It is the judiciary that ultimately determines what is reasonable. The first decision is rendered by the trial judge and—if the issue is appealed—the appellate court will review that finding.

Case law from several states indicates that, on occasion, the legal process has been used to address the reasonableness of services. For example, in a Rhode Island case, the agency removed children from two homeless families. The trial court ordered the Department for Children and Their Families (DCF) to provide housing assistance as a part of the family reunification plan. DCF objected, claiming that the court had no authority to make such an order and that the cost would be prohibitive. The Rhode Island Supreme Court affirmed the trial court finding that housing subsidies were consistent with the purpose of family reunification services.⁹ The

supreme court referred to the legislative history and concluded that “[w]ithout the power to remedy inadequacies, this check would be illusory.”¹⁰

In a California case, an incarcerated father was not offered or provided any reunification services after his children had been removed from their mother’s care. When the agency moved to terminate his right to reunification services and moved towards termination of parental rights and adoption, he objected. The court of appeals agreed with the father’s position, stating that “there was no substantial evidence reasonable reunification services were offered or provided to the father at any point during the reunification period.”¹¹ Without such services, the case could not go forward. The court of appeals ordered the case back to the trial court for further proceedings.¹²

For several reasons, judges rarely make no reasonable efforts findings. First, some judges are not aware of the necessity of reasonable efforts findings.¹³ The finding is embedded in the orders that they sign after each court hearing. Second, because the consequences are so severe for the state, many judges are reluctant to make a no reasonable efforts finding. After all, their own state may stand to lose millions of dollars. Third, attorneys rarely raise the issue in court. Many believe the issue will not assist their clients and will only waste court time.

Judges must address the reasonable efforts issue. Simply rubber-stamping approval of the agency’s actions ignores the law. If an agency is to be held accountable for its actions, judges must provide rigorous oversight of agency decisions and actions at critical junctures in each child-protection case. Moreover, careful judicial oversight of the agency does not mean that the judge will make numerous no reasonable efforts findings. Some judges have been known to use the threat of such a finding to great effect. One author refers to it as “the art of the no reasonable efforts finding.”¹⁴ Thus a judge might make a no reasonable efforts finding, but suspend or withhold the finding for a short time period, giving the agency the opportunity to address the failure to provide services. If the agency responds appropriately, the judge can delete the finding. Judges can also assist the agency in its efforts to persuade the legislative branch to increase funding for families. Sending a letter to legislators and other community leaders about the impact of a no reasonable efforts finding can be effective.¹⁵

Effective use of the reasonable efforts finding can let the agency, the parties and the community know what the judge believes standards should be in child protection cases. For example, once a judge announces a community standard, such as a minimum of two parent-child visits a week,¹⁶ the agency understands what judicial expectations are for all cases, not just the one before the court.

A list of situations which judges, attorneys for parents and children’s attorneys and guardians ad litem should consider raising in court to determine whether reasonable efforts have been offered or provided:

1. An attorney asks the court to order in-home, round-the-clock social services to a family where it is clear that the only way that the child could safely remain in the family home would be with that level of intensive services. The issue before the court is “Is such a level of services reasonable”? If the agency refuses to supply such services, would the court be prepared to make a no reasonable efforts finding?
2. If an attorney argues that the mother is unable to visit her child because the agency has not provided transportation to the visitation center, would that be a denial of reasonable efforts?¹⁷
3. What if the attorney for the teenage mother argues that the agency should find a foster or relative home where she and her baby can live? Would the court be inclined to make a no reasonable efforts finding if the agency refuses?
4. Someone, perhaps the court, asks the agency to provide wraparound services or multi-systemic therapy for the child and family. These are intensive services provided in the home that have proven very successful in safely maintaining children in their homes. The agency may resist such an order, arguing that these services are too costly. This issue is currently being litigated in California.¹⁸
5. Many children come to the attention of CPS because of parental substance abuse. Many juvenile court judges order that the case plan include substance abuse assessment and treatment. If the agency provides no assistance in substance abuse services, has the agency provided sufficient services and support for the parent? Might the court make a no reasonable efforts finding?
6. What if the agency places the child in foster care without locating the father and father’s family members? Does that raise a reasonable efforts issue?
7. Many problems facing families can be resolved with cash payments from the agency. Such cash payments can help the family remain in housing, rent a place to live while they stabilize the family finances and gain control over other temporary crises. Are such cash payments a form of reasonable efforts?¹⁹

In each of these situations the agency might argue to the court that such services are too expensive or that while they could be provided for one family, other equally needy families would be denied adequate services. Some agencies would state that they are providing that service, but there are only so many families eligible for that type of service and that the case before the court must wait until a slot opens up. The parents and possibly the representative for the child (attorney or guardian ad litem) would respond that the service is reasonable and necessary to give the family a realistic opportunity to overcome the problems that led to court intervention and that without these services, the chances for family reunification are poor.

All of these decisions would, of course, depend on the local community, its wealth, its resources and the judge's knowledge of those resources. A decision may also depend on appellate court rulings addressing the reasonableness of particular services. The decision might also turn on the discovery that a neighboring community provides that service, that a community-based organization is prepared to provide that service or that the judge believes that the service is reasonable from his or her own experience.

There will always be tension between what the agency believes is reasonable and affordable and what advocates for parents and children argue is necessary and therefore reasonable. The judge will find that each decision reflects that tension. Shall I hold the agency accountable and make a no reasonable efforts finding or shall I just let it go since I do not want to risk having the state lose federal dollars? The best practice is to set fair (reasonable) standards and hold the agency to those standards. Let the agency know what is appropriate and reasonable in each case. That approach will uphold the intent of the law as well as provide fairness to all parties.

Footnotes:

1. The Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. section 670 et.seq., (1989); The Adoption and Safe Families Act, 42 U.S.C. section 670 et. seq., 2007.
2. Title 42, Section 671(a)(15).
3. *Id.*
4. Title 42, Section 671(a)(15)(C).
5. Title 42, Section 671(a)(15)(D).
6. Other issues included in federal audits include (1) Whether the court has made "contrary to the welfare of the child" findings at the time of removal; (2) Whether the court has signed the orders making the necessary findings for each child; (3) Whether there are case plans for each child; (4) Whether the state provides that every child in foster care receives periodic hearings; and (5) Whether permanent plans have been put in place in a timely fashion. Regarding the last issue, see Financial Review Guide for On-Site Reviews of the Title IV-E Foster Care Program, US Department of Health and Human Services, Office of Human Development Services, May, 1985.
7. 42 U.S.C section 675 (5)(B), 1989. These audits have resulted in financial penalties to states in the millions of dollars. For a lengthier discussion and a list of some of the penalties levied against states, see the discussion in Edwards, L., "Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980," *Juvenile and Family Court Journal*, Vol. 45, No. 3, 1994, at pp 1-28 at pp 5-6; also found in *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*, National Council of Juvenile and Family Court Judges, Reno, 1995, Appendix C. www.ncjfcj.org/vdir/source/Improving.Implementation
8. *Making Reasonable Efforts*, National Council of Juvenile and Family Court Judges, Child Welfare League of America, Youth Law Center and National Center for Youth Law, Edna McConnell Clark Foundation, NY, at p. 8. Some state laws have defined "reasonable efforts," but those definitions have been general. See Minn. Stat. section 260.012(b), West, 1992 and Mo. Rev. Stat. section 211.183, West, 1994.
9. In *re Nicole G., et.al.*, 577 A.2d 248, (R.I. 1990).
10. *Id.*, at p. 250.
11. *Mark N., v Superior Court*, 60 Cal.App.4th 996; 70 Cal.Rptr.2d 603, 1998, at p. 1010.
12. Other cases addressing the reasonable efforts issue can be found in Edwards, *op.cit.*, footnote 7 at pp 8-11. For additional cases from every state, go to the National District Attorney's Association website at ndaa.org/apri/programs/ncptc/ncptc_case_summaries.html
13. *Making Reasonable Efforts, op.cit.* footnote 8 at p. 8.
14. Edwards, L., *op.cit.* footnote 7 at pp. 19-21. Also found in *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*, National Council of Juvenile and Family Court Judges, Reno, 1995, Appendix C, at pp. 155-157. www.ncjfcj.org/vdir/source/Improving.Implementation
15. For an example, see Edwards, L., *Id.*, Appendix A.

16. For a discussion of the use of the “no reasonable efforts” finding when parent-child visitation is at issue, see Edwards, L., “Judicial Oversight of Parental Visitation in Family Reunification Cases,” *Juvenile and Family Court Journal*, Vol. 54, No. 3, Summer 2003, at pp 1-24, at 9-10; and see *In re Joshua M.*, 1997, 56 Cal.App.4th 801, 809, 65 Cal.Rptr.2d 748. www.ncjfcj.org/vdir/source/Judicial.Oversight

17. *Id.*

18. See *Katie A. v Bont*, 433 F. Supp.2d 1065 (D.Cal.2006) and *Katie A. v Los Angeles County*, 481 F.3d 1150 (9th Circuit. 2007).

19. Many agencies consider these cash payments a standard form of service. See Golubock, C., “Cash Assistance to Families: An Essential Component of Reasonable Efforts to Prevent and Eliminate Foster Placement of Their Children,” *19 Clearinghouse Review*, pp 1393, 1294 (1986).

Footnotes also available as PDF

nationalcasa.org/download/Judges_Page/0710_judicial_oversight_of_visitation_0119.pdf)

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Babies Cry for Judicial Leadership: Reasonable Efforts for Infants and Toddlers in Foster Care



*Douglas F. Johnson, Vice President,
National Council of Juvenile and
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Summary

The science of early childhood development informs us that business as usual is unacceptable and harmful to infants and toddlers. By working with all the stakeholders involved in the juvenile and family court system, judges can improve the lives of these most vulnerable children.

Infants and toddlers in foster care look to juvenile and family court judges to make sure their special needs are met through appropriate reasonable efforts services for themselves and their parents. Do you hear their cries for help at your bench?

The science of early childhood development informs us that a child's first three years of life are *the* most formative for cognitive and emotional development. This is the unparalleled time an infant or toddler brain "hard wires" for speech, self-esteem, motor skills and social relationships. Babies must have at least one parent or caregiver who provides consistent love and care.

Sadly, one-of-five foster care placements is an infant. Once in foster care, infants remain twice as long as older children. Babies under the age of one make up 25% of children in the child welfare system; 76% of child abuse fatalities occur to children under four years old (Dicker, S., Gordon, E., Kmitzer, J. [2001] *Improving the Odds for the Healthy Development of Young Children in Foster Care*. New York: National Center for Children in Poverty). Babies experience foster care drift—multiple foster care placements, sometimes eight or ten in a single year. They have many foster parents who provide safe homes and food. But, they do not experience the emotional attachment that only comes from one foster placement with a caregiver who is trained and willing to shower love and affection on the baby. Without that single, stable, emotionally and intellectually nurturing relationship, infants and toddlers suffer brain damage and developmental delays.

So, what reasonable efforts services can help these infants and toddlers? Can a judge do anything to improve the lives of these most vulnerable children?

First, judges must train themselves and others about infant and toddler well-being. Invite early childhood intervention specialists to meet with you about training and best practices. Plan a systems-wide cross training. Have the court and stakeholders assess the system and what can be done to implement improvements. A new DVD *Helping Babies from the Bench: Using the Science of Early Childhood Development in Court* (zerotothree.org/courteams) is an informative call to action.

Second, convene a meeting with Health and Human Services, prosecution, parents' defense attorneys, guardians ad litem, CASA volunteers, your foster care review board and other stakeholders to develop a training for appropriate parenting time ("visitation") for parents with their infants and toddlers. Many courts have had such collaborative meetings and developed a parenting time policies, protocols and standards. (See articles in *The Judges' Page* newsletter, June 2006. nationalcasa.org/download/Judges_Page/0606_family_visitation_issue_0036.pdf)

Standard supervised biweekly, one-or-two hour visitation is inadequate, inappropriate and unacceptable. Reasonable efforts in this context means meaningful daily or near daily parenting time to build the infant/parent relationship and achieve permanency. A judge can rule earlier on whether a parent is making progress toward becoming a proper parent when the parent is given a fair opportunity to learn skills and apply them. If Health and Human Services is unwilling to provide such services, the judge could rule that a negative reasonable efforts finding will be issued in 30 days. If so ruled, Health and Human Services will not receive its foster care matching dollars under Federal Title IV-E Foster Care and Adoption Assistance Program. But, Health and Human Services must still provide the services as ordered.

Third, order a developmental evaluation under the Early Intervention Program for children under the age of three years, also known as Part C of the IDEA (Individual Disability Education Act) [20 U.S.C. Section 1431 (2000)]. After assessment, a trained clinician in infant mental health can address any developmental delays as well as train the parent to learn a baby's developmental signals and how to respond. Our court, its infants and toddlers and their parents are fortunate to have clinicians trained by Joy Osofsky, Ph.D. (Louisiana State University Health Sciences Center, 1542 Tulane Avenue, Room 315F, New Orleans, LA 70112) who can now provide therapeutic assessments and dyadic interventions and parenting time for babies and their parents.

Fourth, consider starting an infant and toddler family drug treatment court. Ours started May 5, 2005 (now a zero-to-five family drug treatment court). Parents will have an excellent opportunity to improve their ability to parent an infant or toddler while in recovery through holistic intensive services and court oversight. Our reunification rate is 80% within 12 months. Stability of care and permanency for infants and toddlers in a supportive, affirmative and accountable environment has helped these parents succeed. Timely mental health and substance abuse evaluations and treatment, Part C evaluations, parenting assessments and daily parenting time are essential. The heart of our treatment court is building the relationship between infant and parent. (See also: "Zero-to-Three Family Drug Treatment Court," *The Judges' Page* newsletter, October 2005 nationalcasa.org/download/Judges_Page/0510_child_development_and_parenting_issue_0036.pdf)

A judge working with all the stakeholders involved in the juvenile and family court system can change practices in order to meet the special needs of babies. Cycles of substance abuse, mental health issues, domestic violence and other issues of abuse and neglect can be broken. Permanency and infant well-being are achieved by preventing foster care drift, providing a single foster/adoptive placement as the first placement and providing early parenting skills assessment and appropriate parenting time to build and clarify the parent-child relationship.

The science of early childhood development informs us that business as usual is unacceptable and harmful to infants and toddlers. Judges, you can prevent this through your leadership in convening stakeholders, training, findings and rulings on reasonable efforts. Treat infants and toddlers like your own. Demand no less of yourself and others than you would for your own child.

Editor's Note: Judge Douglas Johnson writes of his experiences in achieving reasonable efforts in cases involving our youngest and most vulnerable children, the zero-to-three population. Judge Johnson completed the 2005-2007 Class of Zero-to-Three's "Leaders for the 21st Century Fellowship" program and is nationally recognized as a judicial leader and lecturer who has shown commitment to this population.

Additional Resources:

ABA Center on Children and the Law Practice & Policy Brief, *Healing the Youngest Children: Model Court—Community Partnerships*, March 2007. In this issue, our zero-to-five family drug treatment court is one of the courts featured.

ABA Center on Children and the Law Practice & Policy Brief, *Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know* (nationalcasa.org/download/Judges_Page/0710_visitation_with_infants_and_toddlers_0119.pdf), July 2007. Can also be viewed at the ABA website. (abanet.org/child/baby-health.shtml)

The National Council of Juvenile and Family Court Judges, *Juvenile and Family Court Journal* (www.ncjfcj.org/images/stories/dept/ppcd/pdf/JOURNALSpring2004/infantstoddlersincourtjournal.pdf) Spring 2004, Volume 55 No. 2. This is a special issue regarding infants and toddlers in court provides numerous in-depth articles regarding this topic.

Shonkoff, J., & Phillips, D. (eds.) (2000) *From Neurons to Neighborhoods: The Science of Early Childhood Development*. Washington, DC: National Academy Press.

The Urban Institute *Vulnerable Infants and Toddlers in Four Service Systems* (urban.org/publications/411554.html) September 2007. This brief compiles the best available data on the characteristics of vulnerable young children in four service systems: Early Head Start, the Special Supplemental Nutrition Program for Women, Infants, and Children, the child welfare system and Part C Early Intervention Programs.

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Active Efforts Under the Indian Child Welfare Act

Donna J. Goldsmith, Esq.¹, Chair, NCJFCJ Tribal Courts/ICWA Committee

Summary

While the Indian Child Welfare Act (ICWA) does not define how active efforts differ from the reasonable efforts required by other federal laws, there seems to be no dispute that active efforts require a higher level of services than reasonable efforts.

Twenty-nine years ago, Congress enacted the Indian Child Welfare Act (ICWA) in an effort to halt the alarmingly high rate of removal of Indian children from their homes and communities and reduce the loss of culture suffered by those children as they remained in permanent placements in non-Indian homes, away from their extended families and tribal communities. ICWA imposes on state child custody proceedings² minimum federal standards intended to prevent the unnecessary removal of Indian children from their homes and communities.³ Section 1912 of the act requires that in any proceeding initiated under state law, a party seeking to effect a foster placement or termination of parental rights relating to an Indian child⁴ must “satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”⁵

State agencies have always been required to provide *some* level of services to *any* family whose child has been removed as a result of child abuse or neglect. In cases involving children not covered by ICWA, caseworkers must offer reasonable efforts to prevent removal of the child from his or her home. Judges often wonder why, then, Congress enacted a federal law that requires those seeking to place an *Indian child* out of his or her home to deliver a higher level of services. The act’s legislative history answers this question. Congressional hearings prior to passage of ICWA were replete with testimony that state agencies throughout the country “rarely provided”⁶ any services to keep Indian families intact. More often than not, Indian children were removed solely because they lived in homes that lacked running water or electricity or because non-Indian caseworkers neither understood nor appreciated the important role that extended families have in childrearing norms within Indian cultures. In response, Congress established the active efforts requirement to ensure that foster care placement or termination of parental rights to an Indian child occurs only *after* the Indian family has received affirmative services designed to eliminate the circumstances that led to the removal hearing, and that the offered services failed to alleviate the situation that threatened the child’s safety and well-being.

While ICWA does not define how active efforts differ from the reasonable efforts required by other federal laws, there seems to be no dispute that active efforts require a higher level of services than reasonable efforts, and that agencies and courts must assess active efforts on a case-by-case basis. Active efforts must be affirmative and timely. In addition, courts have consistently held that ICWA’s active efforts standard requires caseworkers to affirmatively walk the parent or Indian custodian through each step of the case plan, and to assist them in accessing the services and meeting the obligations under the plan. These affirmative efforts may include, but not be limited to, affirmatively assisting the parent or Indian custodian in their efforts to access food, medical treatment, safe housing, parenting classes, emergency phone service, substance abuse treatment, transportation to/from services, day care or whatever other services will assist the parent in retaining custody of the child. It bears emphasizing that there must be a reasonable nexus between the service offered and the issue that caused the child’s removal in the first place: the affirmative effort must be clearly designed to facilitate reunification of the child and the family.

Agency notice to, and consultation with, the child’s tribe at the onset of the case is at the core of the active efforts requirement. Tribal consultation provides the tribal caseworker with all relevant information regarding the family’s case⁷ and assures that the child’s tribe has an opportunity for active and early participation in all case planning and decision-making that will affect the child’s health and welfare. Tribal participation ensures identification of all available culturally-relevant resources, including the child’s extended family, tribe, other members of the Indian community and other Indian social service agencies.⁸ This may greatly expand the relevant rehabilitative services available to the parent or Indian custodian and increase the likelihood of success. It also ensures that the child retains access to his or her culture, which is vital to the best interests and overall health and well-being of the child.

While no single formula exists to help judges assess whether an agency has met the active efforts requirements, ICWA guidelines issued by the Bureau of Indian Affairs provide important assistance in this regard.⁹ In addition, a number of states—including Oregon, Washington, California, Minnesota, Oklahoma, Alaska and Wisconsin—have either amended state law to reflect the principles and requirements established within ICWA,¹⁰ or developed tribal-state agreements, memorandums of understanding or other guiding documents to assist caseworkers and judges in better implementing the requirements of ICWA.

ICWA does not exempt or excuse the need for active efforts in cases in which the court determines that there are aggravated circumstances or extreme conduct. The active efforts requirement in ICWA is in addition to the reasonable efforts requirement contained within the Adoption Assistance and Child Welfare Act of 1980 (AACWA) and the Adoption and Safe Families Act of 1997 (ASFA). Neither ASFA nor AACWA modify or eliminate any of the requirements established under the ICWA. Thus, judges must now make two independent but parallel findings in proceedings for foster care placement or termination of parental rights under ICWA: whether active efforts *and* reasonable efforts have been made.

Footnotes:

- [1.](#) Goldsmith has represented Indian children, parents, extended families, tribes and foster parents, and has consulted with state and tribal child welfare agencies in ICWA proceedings throughout the country for more than 20 years. She now consults on state-tribal judicial relations.
- [2.](#) The active efforts requirement applies to foster care placements, guardianships and conservatorships where the parent or Indian custodian cannot have the child returned upon demand, and to any action resulting in the termination of the parent-child relationship.
- [3.](#) See 25 U.S.C. § 1902.
- [4.](#) ICWA defines an Indian child as “any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.” 25 U.S.C. § 1903(4).
- [5.](#) 25 U.S.C. § 1912(d).
- [6.](#) H.R. Rep. No. 1386, 95th Cong., 2d Sess. (1978), reprinted in 1978 U.S. Code Cong. & Admin. News 7530, 7545.
- [7.](#) See 25 U.S.C. §1911(d).
- [8.](#) *The Guidelines for State Courts; Indian Child Custody Proceedings* published by the federal Department of the Interior, Bureau of Indian Affairs. 44 Fed. Reg. 67584 (Nov. 26, 1979)
- [9.](#) *Guidelines, supra.*
- [10.](#) See, e.g., California Welfare & Institutions Code §361.7, Oregon Juvenile Code ORS 419B.090, and the Oklahoma Indian Child Welfare Act.

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Active Efforts to Reunify Families: Building Trust and Understanding

Nancy Miller, Director, Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges

Summary

Oregon's *Active Efforts Principles and Expectations*—developed by a coalition that included representatives from all Oregon tribes, the courts, the foster care review board and the state child welfare agency — provides guidance in making active efforts to reunify families.

After a foster care placement, the Indian Child Welfare Act (ICWA) requires that child welfare agencies make active efforts to provide services to return an Indian child to their parent or Indian custodian. While most child welfare professionals are aware of the requirement, many struggle to understand its practical application and meaning. Congress did not define active efforts. Policy groups over the years have also declined to do so. Each case is unique. What may be determined to be active efforts in one case may not suffice in another given the circumstances.

In the state of Oregon, foster care cases are reviewed either by the circuit court or by a citizen foster care review board. Both the courts and the review boards make findings as to whether the child welfare agency made active efforts to provide services to return Indian children to their homes. Training programs for judges and citizen reviewers have stressed the importance of the higher standard required by the active efforts mandates. However, the determinations remained purely subjective. Tribal representatives argued for a higher standard but with no roadmap of common understanding, frustration built.

Ron Hudson, representing the Confederated Tribes of the Grande Ronde in Oregon, led the effort to bring all nine federally recognized Oregon tribes in together with the Department of Human Services and the Oregon Judicial Department—in which the Citizen Review Board is housed—to build a common understanding and consensus around active efforts. Thus began a journey that resulted in the development of Oregon's *Active Efforts Principles and Expectations* (nationalcasa.org/download/Judges_Page/0710_active_efforts_0119.pdf). Each tribe contributed to the effort and after a lengthy process of discussion, negotiation, trust building and respect, all agreed on the basic principles that should guide courts and review boards in making findings and setting expectations that should guide the work of the child welfare agency in their efforts to preserve and protect Indian families.

The principles stress early involvement of a child's tribe in all levels of decision making. They call for the provision of culturally appropriate services in an atmosphere of trust and openness and casework that goes beyond that which is required in agency policy to achieve that which is envisioned by the spirit of the Indian Child Welfare Act. The expectations outline steps that agency staff can take to ensure that Indian families are afforded the protections that form the basis of ICWA in order to protect the bonds between Indian children and their families.

A brief explanation of the principles and expectations could in no way honor the painstaking process taken to build mutual understanding and respect. It is important to review the document in its entirety to appreciate its depth. The success Oregon experienced in finding a common frame of reference can be duplicated. Bringing all tribes and system stakeholders to the table is a beginning. Finding common ground and providing intensive and ongoing training lays the groundwork to ensure that the importance of maintaining tribal and family bonds can be realized.

As the former deputy state court administrator and the director of Oregon's Citizen Review Board program, I was honored to participate in this landmark effort. When I asked Ron Hudson how we were able to succeed in such a difficult undertaking, he said simply, "Because you listened!"

Resources:

The National Council of Juvenile and Family Court Judges (NCJFCJ) has a variety of resources available to judges, court personnel, and other professionals to improve practices in handling dependency cases involving Native American children. In June 2003, with support from the Office of Juvenile Justice and Delinquency Prevention, the Permanency Planning for Children Department (PPCD) published the *Native American Resource Directory for Juvenile and Family Court Judges* with a goal of providing non-tribal jurisdictions with valuable information and resources regarding the Indian Child Welfare Act (ICWA). The PPCD also published a companion *Technical Assistance Brief, Indian Child Welfare Act Checklists for Juvenile and Family Court Judges*, which provides bench-card checklists to assist judges in determining if ICWA applies when reviewing dependency cases.

For the past 11 years, the NCJFCJ has been conducting the Child Abuse and Neglect Institute (CANI), a successful training program for new dependency court judges that covers a variety of topics, with a focus on federal laws and best practices. A session at CANI is devoted to informing judges about effective ICWA implementation strategies. Currently, the NCJFCJ is collaborating with the National Indian Child Welfare Association in developing strategies to effectively support trainings and assist with the development of reform initiatives involving tribal and state courts.

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International Permanency Determinations: The Role of the Home Study in the Placement of Children Outside of the US

*Julie Gilbert Rosicky, Executive Director, International Social Service-United States of America
Felicity Sackville Northcott, Director, the Arthur C. Helton Institute for the Study of International Social Service*

Summary

International Social Service-United States of America branch (ISS-USA) provides international home studies and other services for children separated from their families across borders.

An increasing number of children of immigrants in the US are becoming entangled in the child welfare system. In some cases the children were born here to undocumented parents who have been deported. In others, their parents have been incarcerated or institutionalized. These children may have family members willing to assume custody of them in a foreign country. However, before a child can be reunited with any family member, either within the US or abroad, the court is charged with determining the least restrictive placement that is in their best interest. This determination often requires that a thorough home study be completed on all family members willing to care for the child, including home studies on family members who happen to reside outside the US. In most cases, the child is placed in the American foster care system until a more permanent placement option is found. Because research has shown that the longer a child remains in foster care without a permanent home, the more at risk the child becomes for a host of behavioral and emotional problems later on, it is absolutely vital that a home study or home studies be undertaken quickly so that the child may be reunited with family members as expeditiously as possible.

International Social Service-United States of America branch (ISS-USA) has been instrumental in providing international home studies and other services for children separated from their families across borders for over 80 years. Three crucial partnerships allow ISS-USA to perform international home studies that ultimately enable a court in the US to determine whether there are viable placement options outside the US. First, ISS-USA works with US partners such as the Interstate Compact for the Placement of Children in various states throughout the US, and with state and local child welfare agencies, to provide information about children living in the US to overseas partners. Second, ISS-USA works with its international social work partners, a network of approximately 150 branches, bureaus and correspondents around the world to conduct home studies, placement follow-up, child welfare checks, tracings/family location and to document searches for children and families who are overseas. Third, ISS-USA works in partnership with International Social Service General Secretariat, based in Geneva, Switzerland, to adhere to international standards of reciprocity among branches, bureaus and correspondents, meet basic guidelines for commonly accepted principles of the best practices of international social work and update the body of knowledge about international child welfare laws and social work practices. The international network served close to 29,000 families in 2006. ISS-USA provided international casework services to 660 individuals in 2006.

A comprehensive home study includes an evaluation of the receiving family's financial, social and emotional stability, as well as of the available and accessible resources the child will need for intellectual, emotional and physical growth. A criminal background check is also performed. ISS-USA and ISS affiliates and branches worldwide are staffed with social workers who are familiar with the cultural and social context within which they work. This allows for a thorough and culturally relevant report to be provided to the courts in the US. It is vitally important in any case involving a child with the potential of being returned to a foreign country that a professional and meticulous home study is undertaken. A detailed home study can provide the court with most of the necessary information needed to make a sound determination about the appropriateness of the placement of the child.

In carrying out their responsibility to make determinations about placements of children in safe and permanent homes, the courts must expand their views to consider homes that exist outside of the US. In doing this, courts and all child welfare professionals must recognize that what others consider safe and permanent homes outside the US may be different than what the average American is accustomed to. Ultimately, the courts and all personnel working within the child welfare system must strive for an expanded, culturally relevant view. Most importantly, safe and permanent homes, although they do not look exactly the same from country to country, are what all people want for their children. To learn more about ISS-USA, go to iss-usa.org

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Reasonable Efforts: A Developmental Trauma View

Patricia Van Horn, PhD, Associate Clinical Professor, Child Trauma Research Project, San Francisco General Hospital

Summary

In order for an effort to be reasonable, it must be based on the assessment and the provision of the services that the family needs in order to succeed.

At appropriate stages in a dependency proceeding, judges must determine that the child welfare agency has made reasonable efforts to avoid placement and achieve reunification and permanency (45 C.F.R. 1356.21b). What constitutes a reasonable effort is not spelled out in statute or regulation and is left largely to the discretion of the trial judge. If carefully applied, the reasonable efforts rule should protect the mental health of children at risk for placement or in foster care by protecting the stability of their care-giving relationships. This paper proposes that for an effort to be reasonable, it must be based on the assessment and provision of the services that the family needs in order to succeed.

Belsky¹ asserts that quality of parenting behavior lies on a continuum with maltreatment at one extreme, and that parenting behavior is determined by three primary forces: 1) individual child characteristics; 2) parents' developmental history; and 3) social-contextual sources of stress and support. This suggests that an assessment to determine what supports and services are required for reasonable efforts must cover all three of these domains.

Among individual child characteristics, assessment of the child's history of traumatic life events is critical. Caregivers or other reporters should be asked about potentially traumatic experiences in addition to the incident of abuse or neglect that led to the current referral. Children who have suffered repeated traumas may be dysregulated and more demanding to care for.² It is equally important to assess the child's developmental history, beginning with gestation. Children who were exposed to substances, to overwhelming maternal stress or to maternal malnutrition prior to birth are at risk for low birth weight and developmental problems, both of which increase the risk of abuse.³ As Belsky's model makes clear, there are child characteristics that make children more vulnerable to abuse and neglect. Reasonable efforts should require that these children receive specific services to help them overcome their developmental challenges or their affect regulation difficulties. The specific service that is offered must be tied to the child vulnerability that is noted in the assessment.

A great deal is known about individual parent factors that are linked to child abuse and neglect. Abusing and neglecting mothers are less likely to have completed high school. They are more likely to be unemployed or underemployed, to be depressed, to use substances and to come from abusive or neglectful families of origin.⁴ There is a significant probability that abusing parents are also involved in intimate partner violence.⁵ Each of these risk factors demands a different type of intervention. Multiple risk factors call for multiple interventions, delivered in an order that is designed to maximize their effectiveness. A substance-abusing parent will not make good use of therapy or classes until the substance abuse is brought under control. A case plan that simply calls for individual therapy and parenting class for a mother who is uneducated and suffers from severe depression may miss the mark unless the therapy referral is to a treatment team that can deliver a medication assessment as well as one of the evidence-based psychotherapies shown to be effective for depression. Even with the most expert and effective treatment, the mother may need educational remediation services or job training to escape from poverty, another known risk factor for child abuse and neglect⁶. Even a referral to a parenting class is not likely to be useful unless the case worker understands from the assessment what parenting deficits must be addressed and chooses an appropriate class. For example, a mother who has unrealistic and rigid expectations as to what her child should be able to do would be better served by a parenting class that focuses on education in child development than one that is limited to teaching discipline and limit-setting skills.

If courts are to make valid findings that reasonable efforts have been made to protect children's family relationships and assure permanency, courts may need to take the lead in forming collaborative groups of professionals who can assist the child welfare worker in making the necessary assessments, recommending appropriate interventions for both parents and children and facilitating attendance at the interventions. Court-led models of collaboration exist⁷ that bring multidisciplinary teams together to inform the assessment and intervention process. These collaborative models are not necessarily costly in terms of dollars. The San Francisco Youth Family Violence Court brought together a multidisciplinary team that has now worked together for six years without increasing the budgets of any of the agencies involved. What is central to the process is the court's leadership and inspiration. The outcome is better service for families, better public-private collaboration in the

interest of children's development, and the genuine provision of reasonable efforts to avoid placement, effect reunification and attain permanency.

Footnotes

[1](#) Belsky, J. (1993). Etiology of child maltreatment: A developmental-ecological analysis. *Psychological Bulletin*, 114, 413-434.

[2](#) Webb, N. B. (Ed.) (2006). *Working with traumatized children in child welfare*. New York: Guilford Press.

[3](#) Windham, A., Duggan, A., Fuddy, L., McFarlane, E., Rosenberg, L., & Sia, C. (2004). Risk of mother-reported child abuse in the first 3 years of life. *Child Abuse & Neglect*, 28, 645 – 667.

[4](#) Harden, B. J. (2007). *Infants in the child welfare system: A developmental framework for policy and practice*. Washington, DC: Zero to Three Press.

[5](#) Lederman, C. S., Malik, N. M., & Aaron, S. M. (2000). The nexus between child maltreatment and domestic violence. *Journal of the Center for Families, Children & the Courts*, 2, 129-135.

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[7](#) Osofsky, J. D., & Lederman, C. (2004). Healing the child in juvenile court. In J. D. Osofsky (Ed.), *Young children and trauma: Intervention and treatment* (pp. 221-241). New York: Guilford Press.

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Behind Reasonable Efforts—Thoughts from Foster Youth

Stephanie DuRocher, Communications Coordinator, Elevate

Summary

Current and former foster youth share their experiences of reasonable efforts.

Reasonable efforts is a topic that has been debated among child welfare professionals for many years because of its relative lack of definition and being subject to interpretation by social workers and judicial representatives. According to Iowa Code Chapter 232:

Reasonable efforts means the efforts made to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child or make it possible for the child to safely return to the family's home. If returning the child to the family's home is not appropriate or not possible, reasonable efforts shall include the efforts made in a timely manner to finalize a permanency plan for the child. A child's health and safety shall be the paramount concern in making reasonable efforts. Reasonable efforts may include intensive family preservation services or family-centered services, if the child's safety in the home can be maintained during the time the services are provided.

Regardless of the definition of reasonable efforts, decisions that adults make surrounding those efforts affect the youth involved with the case. What do youth view as reasonable efforts? What is their perspective on how the child welfare system is doing with regard to these efforts?

A program that is giving youth a voice is Elevate, an Iowa based program of Children & Families of Iowa. According to their mission statement, "Elevate is a group of young people who seek to inspire others to new levels of understanding and compassion to the life connection needs of foster care and adoptive teens by sharing their personal stories of hope." This empowering program teaches youth how to advocate for themselves and to advocate for change within the system, as well as to share with the public how their lives are affected by the decisions that are often made for them.

Elevate members were asked to share their opinions of the reasonable efforts that affected their lives. Following are a few of their responses.

Lorisha

Lorisha, age 20, has been involved with the Iowa foster care system since she was eight years old. At the age of 15, she was the youngest teenager to be admitted into her independent living program. Lorisha has two brothers who have also been affected by the system. Lorisha states that she has seen a lot of differences in her brothers' cases. Two years ago, Lorisha felt that no one really attempted to reunite her brother and her mother. Today, Lorisha has noticed that the court systems and the Department of Human Services are making an effort to reunify her younger brother and her mother.

"They're giving her lots of services this time. She has to attend substance class and treatment classes and they've offered visits. My mom isn't choosing to follow through, but the court system is really trying,"



Lorisha has been given custody of her little brother and notes that she is receiving supportive services to sustain the placement, including foster parenting classes and financial assistance.

Kaisa and Natasha

Kaisa, age 15, has been involved with the foster care system for just over a year. **“The courts are doing the best job that they can to reunify myself with my mother.”**

Natasha, age 15, entered the system almost six months ago. **“My worker should let me see my mother more often because it would help make transitioning back home a lot easier.”**



Kaisa and Natasha with their Elevate group

Jackie



Jackie, age 26, became involved in the foster care system because her mother's mental impairment made her incapable of parenting. At the age of 11, Jackie's mother's parental rights were terminated against Jackie's wishes. Jackie now has no legal connection to her mother which prevents Jackie from ensuring that her mother is receiving the best possible care. Jackie refused to be adopted, but she found permanency in a foster family who understood her connection to her mother and continues to be a support system in Jackie's life.

“The state's refusal to listen to what I wanted at the age of 11 was a disservice to myself and my mom.

It is important that parents have the opportunity to be reunited with their children, if that is a feasible option. Children need the chance to be part of their family of origin if that family can be healthy.”

In summary, just like with anything in the child welfare system, nothing can be concrete when dealing with human lives. The youth affected by decisions need to be at the center of the proceedings. For more information about Elevate, visit their web site, elevate2inspire.com.



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Elevate is a program of Children & Families of Iowa.

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The Reasonable Efforts Requirement—A Critique and a Proposal

David J. Herring, Professor of Law, University of Pittsburgh

Summary

The reasonable efforts requirement, though compelling, is seldom exercised by judges. However, we may be able to redirect and possibly salvage the requirement, even within resource-starved systems.

The reasonable efforts requirement reflects the best hopes and aspirations of public child welfare systems. The idea that public agencies would make focused, tailored, extended and hopefully, successful efforts to prevent removal of children from their family home is both ambitious and compelling. The same can be said for the idea that agencies will work hard to reunify children with their families if removal is necessary. The concept of reasonable efforts is compelling not only from the perspective of child well-being, but also from a racial and social justice perspective. It reflects and reinforces a vital aspect of associational and cultural respect through support for the family association.

But despite its compelling quality, the concept of reasonable efforts may be too ambitious in the context of resource starved public child welfare systems. An examination of practices in the field and of court decisions reveals a requirement that is largely undefined and unenforced. Attorneys involved in child dependency matters often fail to litigate the reasonable efforts issue in any meaningful way. It often appears to be an unspoken rule that one does not seriously challenge agency efforts until the agency seeks to terminate parental rights. As a result, numerous trial judges fail to make negative reasonable efforts findings on a regular and principled basis despite frequently inadequate agency responses to family situations that call for vigorous support services. In fact, judges often address the requirement by adopting court order forms that include a preprinted statement that the agency has made reasonable efforts. With this type of enforcement approach in the trial courts, it is no wonder that the appellate courts have had few opportunities to define and enforce the requirement.

The points that I make about our failure to implement the reasonable efforts requirement are nothing new. This record of failure continues even as Congress has seen fit to extend the reasonable efforts requirement to the post termination of parental rights context. But there is no evidence that the requirement will fare any better at this stage—and it would be troubling if public actors implement it more vigorously in this context, effectively working hard to create new permanent families after making anemic efforts to preserve children's original families.

Viewed in conjunction with a similar record of failure in achieving timely permanent placements for many children in foster care, our failure to vigorously implement the reasonable efforts requirement exposes as a mere mirage the best hopes and aspirations of public child welfare systems. However, we may be able to redirect and possibly salvage the requirement, even within resource starved systems.

First, we have to recognize the reality for many children who become involved in public child welfare systems. There is a low hurdle to their entry into foster care. Once in foster care, they cannot easily leave. Some of these children benefit from an increased emphasis on adoptive placements, but many remain in foster care placements for a significant portion of their childhood.

Once we recognize this reality, it becomes apparent that efforts to improve conditions in foster care may provide significant benefits. Such a focus may offer an opportunity for agencies to make efficient, effective efforts through the use of scientific knowledge and research—efforts that may provide more tangible benefits than the current reasonable efforts approach.

An example may help bring this idea to life. In deciding where to place a child who is entering foster care, an agency should seek to identify foster parents who will invest in the child at a high level. Behavioral biology research on kinship cues provides insights into how to achieve a relatively high parental investment placement. For example, making the effort to place children with certain types of close kin, with adult caretakers of the same race (in spite of the approach mandated by the Multiethnic Placement Act), and with adult caretakers who share a child's facial features and attitudes may provide more positive outcomes. An agency should make the effort to learn about the relevant research and to use it when placing children in foster care, while also collecting data that allows for rigorous testing of the agency's operational hypotheses.

Judges could play an important, but radically different role in this reasonable efforts initiative. They would demand that the agency use state of the art research and knowledge that guides decisions on where to place children or that is otherwise relevant to improving conditions in foster care. More specifically, a judge would ask if the agency in the case before her had made an effort to harness the best scientific knowledge and existing resources in order to secure a high parental investment placement. And if the agency did not have adequate resources to secure such a placement, the judge would closely examine the agency's plan to closely monitor and adequately support a seemingly inferior foster care placement. Through this process of judicial inquiry and examination, and the research such a process would spawn, judges could make a significant contribution to the improvement of conditions in foster care. This approach offers the hope of an effective and efficient, if not optimal, form of reasonable efforts requirement.

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Above and Beyond Reasonable Efforts: The Case of Baby Joshua

Jacqueline M. Verney, Esquire

Summary

The case of “Baby Joshua” illustrates the importance of making reasonable efforts in pursuit of a successful permanent placement.

“All reasonable efforts have been made to prevent this placement.” This statement routinely appears in every court order in a dependency matter.¹ In the case of Baby Joshua, reasonable efforts meant much more.

Baby Joshua was born at home. He was full term but was immediately admitted to the neonatal unit of the local hospital for observation. His mother reported that she did not know she was expecting a baby and had not received any prenatal care. She had previously given birth to a still-born fetus at home, also unaware that she was pregnant. The mother reportedly had an IQ of 59; she was living with Joshua’s father who was a founded perpetrator of sexual abuse against two daughters he had with another woman. The father also had cerebral palsy and had lost the use of his right arm.

At the emergency hearing, Joshua was placed in foster care. At the time of the adjudicatory hearing, the counsel for the parents, Children & Youth (C&Y), the guardian ad litem (GAL), and the caseworker’s supervisor agreed to place Joshua with the father’s parents, who would let the parents move in so they could learn essential parenting skills.

Unfortunately, one week later, citing frustration over the level of interest of the parents and their own medical issues, the paternal grandparents asked that the baby be removed from their home. The parents acknowledged that they were unable to care for the baby and the court placed the child back with the original foster parents.

Services for the parents were ordered, including parenting-skills training. Supervised visitations—twice-weekly, one-hour visits—were also ordered by the court, although state regulation only requires one-hour, biweekly visitation.

At the six-month permanency review hearing, there was concern over the mother’s lack of cognitive ability to learn and apply parenting skills. Concerns regarding the father centered on his physical disability; he was unable to pick up and hold the baby independently.

At the 12-month review hearing, C&Y and the GAL recommended a goal change from “return home” to “adoption.” The mother, her attorney and her mental health advocate requested additional in-home parenting training. The father argued that his physical handicap should not be used against him, insisting that he would be capable of raising his son once Joshua became a toddler. The court declined to change the goal and ordered several hours of in-home supervised visitation with a parenting trainer every week.

At the 15-month permanency review, again the GAL and C&Y recommended a goal change. At that time, the parents were receiving twice-weekly, three-hour supervised visits in their home. The supervisors reported that the parents were still unable to safely care for the child alone. The juvenile master supported a goal change to adoption. The court, however, continued the goal of returning Joshua to his home and ordered C&Y to “redouble” its efforts to teach the parents appropriate parenting skills and determine whether they would ever be able to learn to parent Josh safely.

Shortly thereafter, a CASA volunteer was appointed.

Three months later, apparently frustrated over the drain of resources caused by the intensive in-home services being offered—and consistent with its mandate of concurrent permanency planning—C&Y identified a paternal aunt and uncle to be an adoption resource for the baby.² They were exceptionally appropriate to adopt Josh, but due to an estrangement between them and the parents, they had never met him even though they lived in the same county.

One looming problem existed. For the first 18 months of Josh’s life, he had lived with his foster parents and was bonded to them. He only knew his biological parents through the parent training visits. It was reported consistently by all involved that Josh looked to his foster parents for his primary care and nurturing.

Nevertheless, C&Y forged ahead without order of court and started visits with the aunt and uncle, including overnight visits. The CASA volunteer, GAL and counsel for the foster parents went into action.³ A judicial conference was scheduled, during which the CASA volunteer detailed the separation anxiety that Josh experienced each time he was removed from the foster parents. The court slowed the visitation schedule with the aunt and uncle to give the CASA volunteer more time to observe the situation and ordered a bonding study with parents, aunt and uncle and foster parents.

It seemed that the case would languish in this legal quagmire while Josh was torn between three homes. But several things happened shortly before the 24-month permanency review hearing. The superior court handed down *In the Interest of C.J.R.*, 782 A.2d 568, 2001 Pa. Super 237 (2001) which was squarely on point, holding that the regulation that C&Y relied upon did not create a priority in permanency planning. There was a falling-out between the aunt and uncle and the biological parents. The biological parents and the foster parents, through the Herculean efforts of the CASA volunteer, established a relationship.

Yes, there is a happy ending to this case. Baby Joshua was adopted by the foster parents shortly after his second birthday. His biological parents consented to the adoption. To this day, he sees his biological parents regularly; they are invited to the foster home for birthdays and other family holiday gatherings.

“Reasonable efforts to prevent this placement” is not just a routine phrase to be added to every court order. To Baby Joshua and to the participants in his case it meant much more.

Footnotes

¹. Section 6332 of the Pennsylvania Juvenile Act provides: “Informal hearing. If the child is alleged to be a dependent child, the court or master shall also determine whether reasonable efforts were made to prevent such placement....” 42 Pa.C.S. §6332.

Section 6351(b)(2) of the Pennsylvania Juvenile Act provides: “Disposition of dependent child. Prior to entering any order of disposition under subsection (a) that would remove a dependent child from his home, the court shall enter findings on the record or in the order of court as follows:... (2) whether reasonable efforts were made prior to the placement of the child to prevent or eliminate the need for removal of the child from his home.”

². C&Y justified its action based on Pennsylvania Regulation 55 Pa. Code 3130.67 that provides for various goals for the child’s permanency planning. The section lists the following: (i.) return home, (ii.) placement in the home of another relative, (iii.) adoption, (iv.) placement with a legal guardian, (v.) independent living, (vi.) long-term placement. C&Y interpreted the regulation as requiring each goal to be attempted in the priority in which it was listed.

³. In Pennsylvania, foster parents are agents of the county agency and do not have standing as a party in a dependency action. Ruling that the foster parents did not have standing as a party, the court nevertheless ruled that they could have counsel participate in hearings. An appeal to superior court on the issue of foster parent standing was filed but ultimately withdrawn.

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The Practical Side of Reasonable Efforts

Danielle Morrison, MCP, CASA Program Director, Allegheny County, PA

Summary

From the perspective of a child welfare professional, exercising reasonable efforts is a process that includes providing accurate assessments, early intervention and culturally-competent services to families.

There is little doubt that the child welfare system has come to the aid of many children. However, the system is under constant public scrutiny as it advocates for the rights of children. Despite this scrutiny, overworked and underpaid system professionals continue to be creative with their limited resources while making reasonable efforts to either reunify families or prevent children from entering foster care.

In practice, exercising reasonable efforts includes the following: (1) making accurate assessments; (2) providing families with culturally competent services and consistent visitation; and (3) identifying and meeting the needs of the child and parents and utilizing early intervention and supportive services. The use of a CASA volunteer, who is dedicated to one or two children or sibling groups, can provide the court with access to thorough, critical information, enabling the bench to make informed decisions regarding reasonable efforts and the child's best interests. CASA volunteers can also assist the family and professionals in multi-system navigation while challenging all involved to address critical issues with appropriate, culturally competent services.

Culturally Competent Assessment

Assessment is critical to making reasonable efforts. It involves actively listening to and observing the child and family, reading collateral information and interviewing collateral contacts. A culturally competent assessment should be implemented with every family. Being culturally competent requires skills in thinking cross-culturally and in considering differences within class, ethnic and racial groups. Dennis Dillion (1994) stated, "...one must operate from a knowledge base that is grounded in reality and addresses itself to the plethora of ideas, values, and lifestyles of their particular group....Therefore, in family foster care (and other practice arenas), assessment and measurement instruments must consider intra-cultural diversity if they are to be most accurate." It is the system's role to recognize that children and families deserve more than "cookie cutter" services.

Identifying and Meeting Needs of Families

Identifying and meeting the needs of children in foster care placements is critical to the reunification process and is a cornerstone of exercising reasonable efforts and in helping a child to reach his full potential. Reasonable efforts require that immediate services are offered to a child. Parents should be provided with and encouraged to attend educational and medical appointments in an effort to maintain parental ties and gain parenting skills related to the child's specific needs.

One fact that must be considered when discussing service provision and reasonable efforts is that the number of relatives caring for children has increased in attempts to preserve the family unit, community and cultural ties. While kinship care may reduce the trauma to the children when they are removed from their parents, it may also place children at risk of receiving fewer support services. This occurs when children are placed with relatives before the relatives are certified as foster care providers and are able to tap into state-funded support. To fulfill the reasonable efforts requirement of preserving the family, some jurisdictions have responded to the increase in relative placements with entire foster care agencies that focus on relative placements.

Family Preservation Programs

Family preservation or crisis in-home services are provided by county child protective services agencies to serve both families who are at risk of having their children removed from their care or are working toward reunification after a child has been placed into foster care. Theoretically, family preservation programs are strengths-based programs that encourage families to utilize their strengths in times of crisis. Family preservation programs also empower the family through education regarding where to turn to for support in their community. Such empowerment would include the family's ability to direct their own life and to assume its inherent power to make necessary changes (Logan, 2001). One common strengths-based practice is the concept of "family group decision making" whereby the family invites all those who are a support system in creating a plan towards prevention and reunification. In best case practice, a strength-based program will look at the glass as half-full instead of half-empty.

Editor's Note: Danielle Morrison has spent 17 years in the child welfare field serving as a child and youth caseworker and a foster parent.

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Reasonable Efforts: A Child Welfare Administrator's Perspective

Gary Shuey, MSW, LSW

Summary

As society's definitions of what is reasonable shift, so has the way that our child welfare system responds.

In child welfare, we are guided by the reasonable efforts language of PL 96-272. The word *reasonable* begs for a definition or interpretation. Upon my retirement as a county children and youth administrator in Cumberland County, PA, and in preparation for my new part-time position with the Penn State Dickinson School of Law Children's Advocacy Clinic, I have been reflecting on the changing meaning of reasonable efforts over my 40-plus years of child welfare practice.

I remember when reasonable parents entertained children on car trips with games of counting cows or cars. The other day, I was following a new minivan with the DVD/LCD screen pulled down and saw the kids busy watching a favorite cartoon. I guess a reasonable parent today needs a DVD/LCD screen to assist with those car trips.

As time moves forward, so does our concept of what is reasonable. As we have more research or new tools and technologies available to us, the meaning of reasonable changes. Such is the case in modern child welfare practice. The problem with reasonable efforts to prevent placement (as outlined in the original 1980 federal Legislation PL 96-272) is that child welfare programs throughout the US failed to achieve the key provisions of the law (CFR 2002 report). So, here we are today, post-Adoption and Safe Families Act PL 105-89, still trying to get it right.

The good news is that we have better research and technology to address the issues. As a result of State Adoption & Child Welfare Information Systems (SACWIS), at least some states are better able to count and identify the children and youth they serve. We finally have computer databases to keep track of and assist in measuring results. While this is generally a positive outcome, some would argue that it highlights the deficiencies in the child welfare system. So be it! We have to know the truth about what is happening to America's foster children. We also have evidence-based practice models and better research to help guide us in selecting appropriate treatments for these children.

So, we have the research and technology, but what about the human side of the equation? Child welfare still finds itself under-staffed and overwhelmed. One glimmer of hope is the CASA (Court Appointed Special Advocate) program. Judges are able to appoint trained volunteers to work with select children to obtain additional information to assist the court and child welfare systems in better planning to meet children's needs. This certainly helps with the youth in placement.

What about the youth living in their own homes? What kind of efforts are child welfare agencies making to assist families to avoid out-of-home placements? When budgets are cut, preventative services are generally the first to go. Conventional wisdom holds that this will result in more placements.

The second round of child and family system reviews has begun. We will be anxiously waiting to see if our child welfare system has improved since the first round. Were we able to maintain that which was good and improve that which was not? We will have to wait and see. But the key issue remains: How do we take some of the pressure off the child welfare practitioner and allow for more in-field time to make those reasonable efforts?

Solutions to the problem lie in taking creative steps. For example, I suggest that we need to advance a mobile computing strategy to promote family involvement in case planning and permit one-time field entry of information and synchronization with agency databases. We simply cannot continue with caseworkers doing field visits and then returning to the agency to enter pertinent information into agency databases and printing service plans to be mailed to clients. The time spent in the office reentering information takes away from time in the field protecting children. When my county experimented with a SACWIS-like database, we found that our caseworker time in the field dropped approximately 30%. This translates into the need to hire 30% more caseworkers just to perform the tasks we were currently performing—no growth! If our SACWIS systems permitted field entry of data and automatic synchronization, it would provide a needed tool to help assess outcomes and provide better services to children and families. Caseworkers would be freed to remain in the field and provide those reasonable efforts.

In the meantime, we continue to work with children and families—assessing safety, providing and referring for services and hoping to avoid unnecessary placements.

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Awards of Excellence Winners Honored at National Conference

Extraordinary people in the CASA and volunteer GAL network help provide hope to abused and neglected children in communities across the country. The Awards of Excellence are presented each year at the National CASA annual conference to recognize the exceptional contributions and dedication of child advocates, program directors, judges, board members and CASA/GAL programs excelling in diversity efforts. Awards were presented during the conference banquet held on June 10.

Evelyn Gibson

G.F. Bettineski Child Advocate of the Year
CASA of Orange County
Santa Ana, CA



Having served 33 children and teens in 18 years, Evelyn Gibson is not only CASA of Orange County's longest-serving volunteer but also one of its most dedicated advocates. With incredible energy, integrity and warmth, Gibson exemplifies the ideal volunteer. Her patience, persistence and respect enable her to build strong rapport with

social workers, attorneys, parents and the children she serves.

Gibson's style of supportive advocacy enhances the healing process: working primarily with difficult sexual abuse cases, she brings comfort, support and consistency into lives that have known far too much pain and turmoil. Accepting her award, Gibson quietly brought everyone's attention to the reason for CASA volunteers' work: "It's not lost on me that in order for me to be standing here, children have been abused. It's a very poignant thing, and it impacts me greatly."

Gibson then told the story of how a terribly abused child she served gained confidence, became emancipated from the system and now credits CASA for how much she has gained. Gibson reflected that "everyone who is an advocate understands that we are not the heroes. The heroes are outside of here: the hundreds of thousands of children who have been abused and neglected. And we have the privilege to work with those incredible kids."

Connie Stephens

Kappa Alpha Theta
Program Director of the Year
Hall-Dawson CASA Program
Gainesville, GA

When the Hall-Dawson CASA Program began in 1989, Connie Stephens served as the sole staff person for three years until she was able to hire additional staff. She has played an integral role in the program's growth and expansion from three CASA volunteers to 120 volunteers who serve every abused and neglected child entering their local courts.

Recently, in collaboration with the board and community partners, Stephens spearheaded a capital campaign that will soon provide a "Casa for



Kappa Alpha Theta Foundation President Wendy Sears Goshert presents award to Connie Stephens (right).

CASA" and make Hall-Dawson the first CASA program in Georgia to own its facility.

The key to success, Stephens said in her acceptance speech, is "to do whatever it takes to protect these innocent children. If that means working overtime, just do it. ...If it means joining civic organizations and speaking to whoever will listen, just do it. You know our children will be better because you cared enough to give of yourself. You know every single child on this earth deserves to be wanted and loved, and every single child deserves a family. No child deserves less."

Martin Crimmins

National CASA Association
Board Member of the Year
CASA of Allegheny County
Pittsburgh, PA

Allegheny County CASA was in steep decline when Martin Crimmins was elected board president in 2003. Staff reduction was underway for the first

time ever; the number of volunteers had dropped; and there was no clear plan to reverse the situation. Crimmins put to work his professional experience resurrecting failing companies and his personal passion for the CASA cause to help save the program.

After taking stock of the remaining assets the program possessed and working to create and execute a plan to first stabilize and ultimately expand the program, he collaborated with others to ensure that the program's service to children never diminished and that no child experienced an interruption in advocacy. By 2005/2006, the program was serving more children than in any other two-year period in its history.



Martin Crimmins

While Crimmins was unable to attend the award ceremony, his thanks were expressed in a letter read by Melissa Protzek, executive director of CASA of Allegheny County: "All organizations go through changes when they grow. Or they don't grow. Changing management and rules is a difficult and painful process—especially for a group of totally dedicated people. Open communication, physical presence and a commitment from board members...helped us be successful."

The Honorable Chris Melonakis
National CASA Association
Judge of the Year
District Court Judge, 17th Judicial District
Broomfield, CO



Judge Chris Melonakis has made significant contributions toward advancing children's issues and bettering the systems that serve them. His passion for helping the children whose lives he touches is unequalled, as are his organizational skills to create systems to improve their futures. As a friend of CASA of Adams & Broomfield Counties, Judge Melonakis promotes the program in the judicial community and the public arena by making presentations to civic and community organizations, by participating in every CASA volunteer training session and swearing-in ceremony and by joining foundation site visits.

In his remarks after receiving the award, Judge Melonakis noted that the court often loses "the opportunity to reunify families, [thus not] serving the best interest of the children and in the long run the best interest of our communities." He also expressed appreciation of volunteer advocates: "When CASA volunteers come into my court, I welcome them with open arms; I welcome them with an open heart; and I welcome them with an open mind because I know they are going to bring me better information so that I can make... better decisions for the children and the families which come to my court."

Richland County CASA
National CASA Association
Diversity Leadership Award
Columbia, SC



Richland County CASA Director Paige Jones

In 2004, when Paige Jones became executive director of Richland County CASA, 85% of the children served by the program were of color and 53% were male. By contrast, almost all of the CASA volunteers, board and program staff members were Caucasian women. To better reflect the ethnic and gender characteristics of the population served, the program created a diversity plan to recruit new volunteers, board and staff members.

Realizing that volunteers themselves are the greatest promoters of the CASA program, staff members changed their volunteer recruitment methods and adopted a peer-recruitment model. Through these and other efforts, significant changes have taken place in just three years: the number of male volunteers has increased from 13 to 80, and the ethnic composition of staff members has shifted from 14% people of color to 55%.

Accepting the award, Jones reflected on the importance of being open to change in order to improve: "There's a saying that I can be accused of running into the ground: 'If you always do what you have always done, then you'll always get what you've always gotten.'" 🗨️

Online Resources: Reasonable Efforts

Paula Campbell, Permanency Planning for Children Department, NCJFCJ

Summary

A listing of online resources regarding reasonable efforts requirements and findings as well as other resource documents.

Dependency Case Law Rulings

courtnfo.ca.gov/programs/cfcc/resources/caselaw/depend/09.htm

Judicial Council of California, Administrative Office of the Courts, Center for Children, Families and the Court website: *Shawn S. v. Superior Court* (1998) 67 Cal.App.4th 1424 [80 Cal.Rptr.2d 80]. Court of Appeal, Fourth District, Division 1

courtnfo.ca.gov/programs/cfcc/resources/caselaw/depend/101.htm

Marshal M. V. Superior Court of Kern County (1999) 75 Cal.App.4th 48 [88 Cal.Rptr.2d 891]. Court of Appeal, Fifth District

courtnfo.ca.gov/programs/cfcc/resources/caselaw/depend/100.htm

Dawnel D. v. Superior Court of Orange County (1999) 74 Cal.App.4th 393 [87 Cal.Rptr.2d 870]. Court of Appeal, Fourth District, Division 3

courtnfo.ca.gov/programs/cfcc/resources/caselaw/depend/169.htm

Francisco G. v. Superior Court of Santa Cruz County (2001) 91 Cal.App.4th 586 [110 Cal.Rptr.2d 679]. Court of Appeal, Sixth District

Reasonable Efforts Information

childwelfare.gov/systemwide/laws_policies/statutes/reunify.cfm

Child Information Gateway, State Statutes Series

childwelfare.gov/systemwide/laws_policies/statutes/reunifyall.pdf

Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children: Summary of State Laws

casanet.org/library/reasonable-efforts/reason.htm

Reasonable Efforts to Preserve Families and Achieve Permanency for Children Requirements

Articles and Publications Concerning Reasonable Efforts

nda-a-pri.org/publications/newsletters/reasonable_efforts_volume_1_number_6_2004.html

National District Attorneys Association, A Call to Clarify Child Protection Law (2004), Jodi Furness, *Reasonable Efforts*, (Vol), (Number 6).

familyrightsassociation.com/bin/white_papers-articles/reasonable_efforts/

Making Reasonable Efforts: A Permanent Home for Every Child (2000), Youth Law Center

nationalcasa.org/download/Judges_Page/0710_model_questions_for_defining_reasonable_efforts_0119.pdf

Model Questions for Defining Reasonable Efforts (1990), Youth Law Center

www.ncjfcj.org/content/blogcategory/369/438/

Resource Guidelines: *Improving Court Practice in Child Abuse & Neglect Cases* (1995), National Council of Juvenile and Family Court Judges, Reno, Nevada.

www.ncjfcj.org/content/blogcategory/369/438/

Adoption and Permanency Guidelines: *Improving Court Practice in Child Abuse and Neglect Cases* (2000), National Council of Juvenile and Family Court Judges, Reno, Nevada.

www.ncjfcj.org/content/blogcategory/361/430/

Technical Assistance Brief: Indian Child Welfare Act Checklists (2003), National Council of Juvenile and Family Court Judges, Reno, Nevada.

<http://www.ncjfcj.org/content/blogcategory/361/430/>

Technical Assistance Bulletin: Native American Resource Directory (2003), National Council of Juvenile and Family Court Judges, Reno, Nevada.

[Edwards, Leonard, Finding Families for Foster Youth \(Summer 2005\)](#), *TODAY Magazine*, National Council of Juvenile and Family Court Judges.

futureofchildren.org/usr_doc/vol8no1ART4.pdf

McCroskey, Jacquelyn & Meezan, William (Spring 1998), Family-Centered Services: Approaches and Effectiveness, *The Future of Children*, Protecting Children from Abuse and Neglect (Vol. 8, No. 1).

The article explains the characteristics of family support and family preservation services and discusses how these services are accessed and financed. It reviews available evaluation findings regarding the effectiveness of the two types of family-centered services, and considers the challenges faced when evaluating such services.

childwelfare.com/kids/fampres.htm

Lindsey, Duncan (2005). Preserving Families and Protecting Children: Finding a Balance, Child Welfare Review
Littell, Julia H. & Schuerman, John R. (May 1995). A Synthesis of Research on Family Preservation and Family Reunification Programs Report, part of the National Evaluation of Family Preservation Services for the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.

Finding Relatives to Satisfy Reasonable Efforts

aspe.hhs.gov/hsp/06/CW-involve-dads/index.htm

What About Dads? Child Welfare Agencies' Efforts to Identify, Locate and Involve Nonresident Fathers Final Report (2006), Malm, Karin, Murray & Geen, The Urban Institute for the DHHS Office of the Assistant Secretary for Planning and Evaluation.

abanet.org/child/fathers/

National Quality Improvement Center on Nonresident Fathers and the Child Welfare System Collaborative Project Report

cwla.org/articles/cwjabstracts.htm

Mapp, Susan C. & Steinberg, Cache: Birth Families as Permanency Resources for Children in Long-Term Foster Care, *Child Welfare* (Jan./Feb. 2007).

This project explored the potential permanency option of birth families and extended kin for children who languished in foster care while being free for adoption.

cwla.org/pubs/subjsearch.asp

Child Welfare League of America publications about family preservation and reunification

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