

## LEGAL LANGUAGE AND THE JUVENILE DEPENDENCY SYSTEM

By Judge Leonard Edwards (ret.)

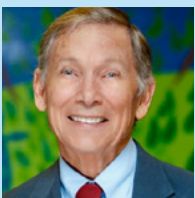
The juvenile dependency system addresses the safety and wellbeing of children. Court proceedings determine whether there is justification for state intervention on behalf of children who have been abused or neglected. Legal phrases such as “reasonable efforts” and “due diligence” reflect critical issues that the court must address in determining whether the social service agency and social workers have followed the law.

These phrases represent actions that the social worker must perform when removing a child from parental care and involving the child and family members in court proceedings. “Reasonable efforts” describe the actions the social worker must take to prevent the removal of the child from parental care, provide services and support to the family if there has been a removal, and provide the child with a permanent home in a timely fashion.<sup>1</sup> “Due diligence” describes the actions the social worker must take in performing some of the tasks mandated by law in dependency proceedings when a child has been removed from parental care. Within 30 days of removal, the social worker must use due diligence to locate, contact, and explain to the child’s relatives the legal proceedings before the court and invite these relatives to participate in the legal proceedings and possibly take custody of the child.

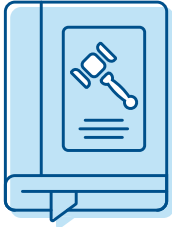
Both phrases are not well defined and are likely not understood by laypersons appearing before the court. Only judges, attorneys, and social workers understand these phrases, and even they will disagree on occasion. Families appearing in dependency proceedings need an attorney to explain the reasonable efforts law and the due diligence requirement. Otherwise, they will not understand the proceedings and will be unable to discuss these issues with the court. Judges must know the law as they must make findings regarding social worker actions in each case.

<sup>1</sup> For a discussion of reasonable efforts, see Edwards, L., *Reasonable Efforts: A Judicial Perspective*, NCJFCJ, 2022, Reno, NV.

### ABOUT THE AUTHOR:



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## REASONABLE EFFORTS

“Reasonable efforts” address social worker actions (1) to prevent removal of the child from parental care, (2) to provide services and support to families should their child be removed from home, and (3) to ensure that the child reaches permanency in a timely fashion.<sup>2</sup> These are critical issues for dependency proceedings, and both judges and attorneys should be prepared to ask questions of the social worker about their actions regarding the child before the court. There are financial consequences should the court find that the social worker has not provided reasonable efforts. A failure to provide reasonable efforts may result in a loss of federal funding for the agency in that case.

There is no accepted definition of reasonable efforts. Most states have statutes defining the term, but these are not specific and only indicate that the social worker should perform professionally and in good faith.<sup>3</sup> The actions the social worker takes may be different depending on the facts of the case and the resources available in the local community.

The reasonable efforts book cited below provides examples of appellate court rulings in every state. Based on these cases, it appears that some juvenile courts take reasonable efforts very seriously with numerous appellate court rulings published. Alabama, California, Connecticut, Oregon, and Pennsylvania have many reported decisions. Other states have very few reported appellate decisions. Florida, Kansas, Nevada, West Virginia, and Wisconsin are examples. A review of all appellate decisions reveals that in most of them, the appellate courts affirm the trial court’s finding that the social worker provided reasonable efforts. When the appellate court reverses the trial court and finds that the social worker did not provide reasonable efforts the agency will lose money and local practice will likely change. With a reversal, the appellate court is informing the agency and its social workers that they have not done enough to comply with the law.

In comments from judges and in studies of judicial behavior, most judges never make a “no reasonable efforts” finding.<sup>4</sup> A growing number of judges adopt an approach suggested years ago in the original Resource Guidelines. These judges inform the parties that the agency has not complied with the law and then continue the case for a few weeks and allow the agency to remedy the situation. It is no surprise when the agency takes the necessary steps to avoid a “no reasonable efforts” finding.<sup>5</sup>

## DUE DILIGENCE

The Fostering Connections to Success and Increasing Adoptions Act of 2008 states in part:

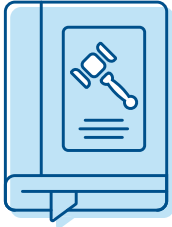
*Within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to all*

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* Appendix B contains a collection of those statutes.

<sup>4</sup> *Id.* at pp 105–120.

<sup>5</sup> *Id.* see footnote 620 on page 124 for a partial list of judges who have used this approach.



adult grandparents, and other adult relatives of the child (including any other adult relatives suggested by the parents, subject to exception due to family or domestic violence), that:

1. specifies that the child has been or is being removed from the custody of the parent or parents of the child;
2. explains the options the relative has under Federal, State, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;
3. describes the requirements under paragraph (10) of this subsection to become a foster family home and the additional services and supports that are available for children placed in such a home; and
4. If the State has elected the option to make kinship guardianship assistance payment under paragraph (28) of this subsection, describes how the relative guardian of the child may subsequently enter into an agreement with the State under section 472(d) to receive the payments.<sup>6</sup>

Implementation of this statute has been difficult. The national percentage of relative placement is approximately 35% with many states placing children at a much lower rate.<sup>7</sup> One reason for the slow growth of relative placement is that the process is complex and time-consuming. The court and social worker must locate and engage relatives, some of whom may be unknown to the parents. There must be contact with those relatives and an explanation of the court proceedings, and, if the relatives show interest in accepting custody, the social worker must perform background checks and an evaluation of their home. All of this MUST occur within 30 days of the removal. This means more work for the social worker as well as more complex court hearings. These extra efforts are worth the time and effort expended by the child welfare system since they serve the best interest of the child.<sup>8</sup>

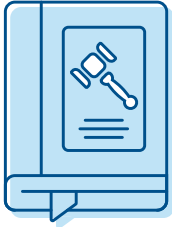
This statute significantly adds responsibilities to the social worker's duties when a child is removed from parental care. One difficulty may be that the father is not before the court or that paternity has not been established. Another difficulty may be that the parents are reluctant to identify relatives for various reasons.

Again, these extra efforts are worth the time and effort expended by the child welfare system since they serve the best interests of the child. Moreover, agencies now have tools to identify and locate relatives. Search engines such as Family Finding can locate and provide contact information for relatives in a few hours.

<sup>6</sup> Public Law No. 110-351, Section 103.

<sup>7</sup> Edwards, L., "The Urgency of Placing Children with Relatives," *The Guardian*, a publication of the National Association of Counsel for Children (NACC), Vol. 42, No. 04, Winter 2020.

<sup>8</sup> *Id.* This article reviews the studies demonstrating the benefits to the child who is placed with relatives.



Both federal and state law require that the agency contact relatives within 30 days of removal from parental care. The agency must use 'due diligence' to accomplish this task. California legislation requires the agency to use Family Finding if other efforts prove fruitless.<sup>9</sup> A recent California appellate case demonstrates how seriously some courts take the due diligence mandate. In the case of *In re K.B. v. D.B.*,<sup>97</sup> Cal. App. 5th 689, 315 Cal. Rptr. 3d 537 (Nov. 2023), the baby had been born exposed to several illegal drugs. At no subsequent hearing was the due diligence issue raised by the parties or by the court. No relative was asked about placement by the social worker. Nevertheless, the court found that the social worker had exercised due diligence to identify, locate, and contact relatives about placement. The mother challenged the court's conclusion that the social worker exercised due diligence when the social worker contacted two relatives but did not speak to them about placement. The trial court sustained the allegations of the petition and entered a dispositional finding that the agency had exercised due diligence to give notice to the minor's relatives. The child was removed from the mother's custody. The appellate court agreed with the mother's argument that the agency had not complied with the law and rejected the agency's assertions that she had forfeited her challenge, that due diligence findings were supported by substantial evidence, and that any error was harmless. The appellate court also suggested that the judge should have been aware of the statute and taken appropriate action.

Few juvenile courts have addressed the due diligence issue in juvenile dependency proceedings.<sup>10</sup> However, courts have paid careful attention to the location and engagement of Native American tribal affiliations pursuant to the Indian Child Welfare Act.<sup>11</sup> Thus, the due diligence issue is frequently tried in dependency proceedings involving an Indian child. This case demonstrates that courts may be examining agency efforts in non-ICWA cases to locate, notice, and engage relatives in child welfare proceedings. The court has a heavy responsibility with the task of finding and evaluating due diligence and reasonable efforts. Careful examination and learning from best practices elsewhere, such as in ICWA cases, will surely benefit children before the dependency court. ■

<sup>9</sup> California Welfare and Institutions Code section 309(e)(3)(B).

<sup>10</sup> The numerous cases cited in the Reasonable Efforts book (see footnote #1) have no cases addressing this issue.

<sup>11</sup> 25 USC Ch. 21 section 1915.