



Judge Leonard Edwards
Santa Clara Superior Court (Ret.)

Reasonable Efforts And Timely Adoptions

A Hypothetical Case

At the first post permanency planning hearing, six months after the court had terminated parental rights and established the permanent plan as adoption, the judge received a social report indicating that the case was moving towards the permanent plan of adoption. The report indicated the 11 year-old dependent child was happy in his pre-adoptive home, that he was loved by his adoptive parents, and he liked his new school. The attorneys submitted the matter and the court made orders following the social worker's recommendation. The orders and findings included one that stated that the children's service agency had made reasonable efforts to finalize an alternative permanency plan. The case was then continued for six additional months for review.

All dependency judges regularly conduct post permanency hearings. These hearings are rarely contested, no one asks any questions, few are appealed, and they usually take less than 5 minutes to complete. The court makes the "reasonable efforts" finding in each and every case.

What is that finding all about? What evidence does the court have that the agency has provided reasonable effort to finalize an alternative permanency plan?

Are the courts and the attorneys following the law?

Discussion

The reasonable efforts findings required by federal and state statutes apply from the beginning of a juvenile dependency case all the way to the time the case is dismissed from court jurisdiction. There are three times when the court must make a reasonable efforts finding: (1) Early in the case - reasonable efforts to prevent removal; (2) During the reunification period - reasonable efforts to facilitate reunification, and (3) After a permanent plan has been established - reasonable efforts to finalize an alternative permanency plan. Reported litigation does not focus on numbers (1) and (3). Almost all of the appellate case law focuses on whether the agency provided sufficient services and support to the family to facilitate reunification. A quick review of the cases cited in the book *Reasonable Efforts: A Judicial Perspective*¹, reveals more than 98% of the state appellate cases address this issue. There are no reported California appellate decisions regarding reasonable efforts to finalize an alternative permanency plan.

The permanent plan most relevant for this discussion is adoption. When parental rights have been terminated by the court, the

preferred permanent plan by both federal and state law is adoption. Once the adoption has been finalized, the court dismisses the case. With dismissal all juvenile court contacts with the family end and the child and family can live their lives without a social worker and without court hearings.

The reasonable efforts in #3 above relates to how long it takes for the adoption to be completed so that the case can be dismissed. I confess I did not understand the adoption process, what steps the agency and the adoptive parents had to take to complete the adoption, and how long that should take. In fact, when I took over the dependency assignment many years ago I discovered that many cases had been in the system for years awaiting permanency. Off the record one social worker told me that the workers did not do much work in these cases because the child was in a good home and supervision was easy.

All of this changed in 1997 with the Adoption and Safe Families Act (ASFA). Congressional hearings found that many children languished in foster care and were not receiving timely permanency. Among other changes that legislation added a third issue for the courts to review – whether the agency was making reasonable efforts to make

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and finalize alternate permanency plans for each foster child in a timely fashion².

I realized that the court had a duty to find out what efforts the agency was making to achieve permanency and whether they were reasonable. I asked the Director of Family and Children's Services to educate the judicial officers and the attorneys about the adoption process. What followed was a series of trainings organized and presented by the agency. They explained in detail what the agency and the adoptive parents had to do in order to complete the adoption process. The discussion at these meetings included how long each part of the process should take, who was responsible for each step, and what would happen if a particular social worker was sick or on leave. We learned that the adoptive process could take only a few months if every step was completed efficiently.

We also discussed delays. On occasion one or both of the adoptive parents changed their minds about the adoption. The adoptive parents may be difficult to find or are tardy in filling out the necessary paperwork. The adoptive parents may decide to get a divorce during the process. Any of these problems could result in significant delays in the process. We discussed the agency responses to these issues.

As a result of these meetings the post permanency hearings changed significantly. First, the social worker reports explained the steps taken and the remaining steps necessary before the adoption would be completed. The attorney for the child was prepared to ask further questions as was the court. All of the long-delayed cases were cleared out and each new case received careful attention.

We also implemented review hearings, when necessary. Two

publications by the National Council of Juvenile and Family Court Judges recommended that

*"When parental rights have been terminated, the court must commit to frequent review of the case until the child has been placed in an adoptive home and the adoption has been finalized."*³

We took that recommendation to heart. No longer were cases continued for six months with no interim reviews. The court often had 60 day reviews and, on occasion, 30 day reviews to determine whether specific steps had been taken to move the case along.

The agency understood the court's message – these are important cases. Permanency was a critical goal for each child, and the court was going to ensure that the adoption took place as soon as possible. Finally, the court's finding that reasonable efforts to finalize an alternative permanency plan had some meaning. 🍌

Endnotes:

- 1 Edwards, L., Reasonable Efforts: A Judicial Perspective, available for download at judgeleonardedwards.com
- 2 42 U.S.C. §§672(a)(2)(A)(ii), & 675; 45 CFR 1356.21(b)(2) (2006).
- 3 NCJFCJ, Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases, 2000, Reno, Nevada, at p. 7. Forever Families: Improving Outcomes by Achieving Permanency for Legal Orphans, Technical Assistance Bulletin, NCJFCJ, Reno, NV 2013.