



Timely Adoptions: An Ignored Issue In Child Welfare

By Judge Leonard Edwards (ret.)

The judge calls the permanency planning hearing to order. Present in court are the adoptive mother without counsel, the social worker, and the county attorney. The judge asks if anyone has any comments on the social worker's report and recommendation, which is to continue the placement and the adoptive process. The adoptive mother stands and inquires:

When will the adoption be completed? We've been waiting and waiting. Every time the social worker comes out to the house, Jimmy thinks he is going to take him to another home. And I don't like coming to court.

The judge turns to the county attorney who replies:

Mrs. Jones, don't worry, the social worker is doing her best to complete the adoption process. She has many cases and the process is slow. We do not intend to remove Jimmy from your care.

So, amid tears from the adoptive mother, the case is continued for another six months.

A juvenile dependency case is not over after parental rights have been terminated. Placement in a permanent home and dismissal of the case is the final goal of both federal and state law.¹ Juvenile court judges are required to monitor this last stage of the dependency process and must make findings that the agency is taking steps to achieve timely permanency for the child.² The judge must make reasonable efforts findings at each review after parental rights have been terminated. If the agency is working to complete the adoption, the court will make a "reasonable efforts" finding. If the agency fails to work on completing the adoption process or the process is too slow, the court may make a "no reasonable efforts" finding and the agency will lose federal money for that case.³

1 45 C.F.R. §1356.21(b)(2)(i); 42 U.S.C. § 675(5)(C) and (F); 45 C.F.R. § 1355.20.

2 42 U.S.C. § 671 (a)(15) (2016).

3 See Edwards, L. *Reasonable Efforts: A Judicial Perspective*, (2014) at pp 70-72. Available at <http://www.judgeleonardedwards.com/> for reading and downloading at no cost.



ABOUT THE AUTHOR:

Judge Edwards is a retired judge from Santa Clara County, California, where he served for 26 years, primarily in the juvenile court. He now works as a consultant. His writings can be seen on his website: www.judgeleonardedwards.com.

▶ **Timely Adoptions** from previous page



Judicial oversight of the post-termination efforts by the agency to complete adoptions has been ignored in the appellate case law. Less than one-tenth of 1% of appellate case law addresses this issue.⁴ Judges, attorneys, and guardians ad litem (GALs) for children do not appear to be taking this aspect of the law seriously.

Commentators have identified the judicial oversight of the adoption process as important for the child and have recommended that judges should determine (1) whether the agency has identified an appropriate strategy to make and finalize a new permanent placement for the child, (2) whether the agency has made a diligent arrangement for the provision of those services, and (3) whether those services have been available on a timely basis.⁵ The judge, attorneys, and GALs for the child should be aware of the child's need for permanency, and judges should be prepared to hold the agency accountable for failing to provide timely permanency for the child.⁶

Some changes should be made. Suggested steps for properly addressing the post-permanency planning hearing are as follows:

First, *the attorney/GAL for the child should be present*. In some courts the attorney/GAL is relieved once parental rights have been terminated (as in the hypothetical situation above). This is a mistake. The attorney/GAL should remain on the child's case until a permanent home has been identified and the case dismissed. In the hypothetical situation above, the child's attorney/GAL would have been able to speak on behalf of the child, object to continuances, explain the trauma the child is suffering, and ask questions of the social worker:

Are you (the assigned social worker) currently working on the child's adoption? If not, who is? What stage of the adoption process are we at? Has the home study been completed? Why not? What is the next step you or the child's adoption worker will take? When will it be completed?

Second, the child's attorney/GAL could ask for a short continuance or an interim review not more than thirty days from the hearing, for a *report on progress made by the agency*. The short continuance has been used in a number of courts around the country to good effect.

Third, if the facts indicate unreasonable delays by the agency, the attorney should ask the court for a *finding of "no reasonable efforts."* This finding could be stayed until the next hearing. The fact that the judge is indicating possible consequences if swift action is not taken by the department has the effect of moving the case forward quickly.

⁴ *Id.*

⁵ Duquette, D., & Hardin, M., (editors) *Guidelines for Public Policy and State Legislation Governing Permanence for Children*, Department of Health and Human Services, ACF, Children's Bureau, Washington, D.C. (1999) at pp III-6 & III-7.

⁶ *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, NCJFCJ, Reno, 2000, at p. 7.

► **Timely Adoptions** from previous page



Fourth, *everyone in the dependency system needs to understand the adoption process*. Only by understanding the step-by-step process can intelligent arguments be put forward in the courtroom. One suggestion is to ask the Social Services Director to provide training to the judges and attorneys.

Fifth, *find out how long it takes to complete adoptions in neighboring jurisdictions*. If you discover a system that has better results, learn about what they do and see if implementing new procedures can improve practice in your dependency court system.

Some believe that when a child is in a pre-adoptive home, everyone can relax and let the process move forward without much concern for how long it takes. That was the practice in my jurisdiction years ago and over 1,000 cases languished with no dismissal of the case. This is an incorrect and illegal position. Children need permanency as soon as possible. They are the ultimate beneficiaries of a court system that reaches timely permanency. Moreover, each permanent placement that results in a dismissal frees up a case off a social worker's caseload and results in savings to the department. The above practice tips can keep permanency at the forefront for judges and attorneys and help finalize adoptions quickly and efficiently. ■



Introducing NACC's Class of 2020 Summer Interns!

Kelli Galaway, Rising 2L, Washington University School of Law

Jenna Jurado, Rising 2L, HOPE Fellow, University of Miami School of Law

Lauren Martin, Rising 2L, University of Denver Sturm College of Law

Kaylin Ronacher, Rising 2L, University of Denver Sturm College of Law

Karuna Srivastav, Rising 3L, Georgetown University Law Center

Melissa Sumner, Rising 2L, University of Denver Sturm College of Law

Jillian Wolons, Rising Senior, The George Washington University

Kate Zilke, Rising Grad Student, Northwestern University