

## Reasonable Efforts in Tough Budget Times

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By Hon. Patricia Sullivan, Malheur County Circuit Court Judge

All of us are aware that Oregon is experiencing a budget crisis that is serious and ongoing. All of us who work in the field of child protection dread the news of the next cuts to programs and services. At every stage of the dependency process, the Court is required to inquire as to whether DHS has made reasonable efforts to prevent foster care placement and achieve permanency for children in care. Increasingly, the response to this questioning is that budget constraints are interfering with, or actually eliminating, the provision of services. Judges are faced with a tacit or outright request by the agency to adjust the standard downward, based on budget limitations.

Not only is there no such exception under federal or state law, creating such an exception would fly in the face of what all of us know to be what children and their families need. It is not acceptable to simply give up and lower the bar for these most needy and vulnerable children. Especially in times of diminished resources, we all have to work together to ensure that reasonable efforts are made to prevent children from entering foster care and to achieve permanency.

“Wait a minute,” you may say. “Isn’t this DHS’s responsibility? How do we ‘all work together’ in an adversarial system?”

Yes, making reasonable efforts is ultimately the responsibility of DHS. However, the days when an advocate can stand back and wait for DHS to either do it or not are long past. To be an effective advocate for either a parent or a child involved in the dependency system, as well as an attorney for the state, means working to achieve this goal: prevent removal and achieve permanency. We can’t simply take the children into care and sort it all out later (which means over the period until the admit/deny hearing), and sit back and do nothing, then attack DHS for lack of reasonable efforts at the next hearing, whether it be the admit/deny, adjudication, permanency or termination trial.

Neither of these approaches avoids removal, nor gets children to permanency in a timely way. And, they waste precious resources, especially time, time that children don’t have to burn.

Assuming that scarcity is going to be a fact of life for the foreseeable future, here are my suggestions for how all of us can better use scarce resources:

1. Front Load: offer services prior to removal. I am seeing this more and more, and it is keeping children out of foster care. By offering pre-removal services, foster care can often be totally avoided, services can often be provided at less expense or in the home with the parent and children together, and parents are more cooperative.
2. Mediated Shelter Care conferences: We are going to try this in Malheur County after hearing a presentation at the Through the Eyes of A Child conference in August 2010. We have located trained mediators who are willing to meet with the parties prior to the shelter care hearing to try and develop a plan to either avoid removal altogether, or at

least place the child in the least restrictive placement through voluntary cooperation of family and other persons involved with the family.

We are hoping to reduce the number and length of shelter care hearings, reduce the number of removals or non-relative placements, and develop plans with more parental and family buy-in. Stay tuned. We hope to start after the first of the year with our first cases.

3. Use the National Council of Juvenile and Family Court Judges (NCJFCJ) bench card. Judges were trained on use of the bench card at the August conference. We began using it here in September and it has already made a difference. Use of the card will result in the focus of the hearing changing, fewer removals and better placements.

4. Use the option of legal custody without physical removal. This can be effective in situations where the family is cooperative, but is not progressing at a good pace, or legal authority has needs for various reasons, such as removing dangerous people from the home or accessing treatment options.

5. Know what services are available in your community. Don't assume that the DHS plan is the best plan or the only plan. No plan should be fixed in stone. Counsel need to actively seek and review the services the client is receiving or DHS is providing, and identify and eliminate barriers to getting your clients the services they need. Look for free, low-cost and non-governmental services. Don't beat a dead horse. If it doesn't work, change it up, try something else. The biggest waste of scarce resources is to keep paying for something that isn't working. Right now, the best referrals may be to employment services, vocational training programs, community colleges, and GED programs. If housing is the problem, learn about what is available in the community, and what isn't. Get involved in local programs to develop the resources your clients need.

6. Meet or at least talk frequently with your client, the CASA, case worker and foster family. It's the only way you'll know what's going on. Attend all the Citizen Review Board, Family Decision and any other meetings that involve your client. It's the easiest way to talk to everyone.

7. Get a good thorough history. It is impossible to know what services are really needed without knowing the history of the child, the parents and the family. The client or family members are often not reliable reporters, and evaluations based on their oral recollections are often fatally flawed from the start. Many, if not most, of the people who appear in dependency court have documented histories in DHS and court files. Always check there.

8. Partner up with local service providers. Nobody is the enemy here. These cases are like a huge puzzle, and solving it is timed. A group of people working together have a much better chance of solving the puzzle than a group fighting with each other or only working on one little part.

9. Be wary of formulaic plans. One size does not fit all. The tendency is to move toward standard-type plans when resources are tight because they are easier to write and

follow, but they actually waste resources by having people do programs they don't really need. Any plan must be individual and fluid, specific, easy to understand and realistic. Read the conditions for return. Does the plan match the conditions for return? Will the goals be achieved if the person follows the plan? If the average fifth grader couldn't read it and be able to tell what the person has to do, it probably isn't being understood by the parents.

10. Think outside the box. Tough times are opportunities for innovation. People are more open to making changes when those changes have budget or time advantages. For example, we are experimenting with pre-trial settlement conferences in termination cases, to see if we can either settle the cases or narrow the issues, to cut the number of trials or the length of trials. We are also working on a parenting time project to take the visits out of the DHS office and into the community in more family-friendly places and involving more activities for parents and children. Perhaps the biggest area where lack of resources is being cited now as a reason for service cutbacks is parenting time. Unfortunately, we know that increasing the quantity and quality of parenting time is often the most important factor in whether reunification is possible. No one can argue that an hour a week in the DHS office is enough to help parents and children stay or become bonded. This is one area where we need to fight back with a new model for parenting time. This is our local Juvenile Court Improvement Project for this year in Malheur County, and we are looking to partner with local churches, the Boys and Girls Club, and other community resources to increase parenting time opportunities.

11. Be involved in searching for relatives, especially if you represent the child or parents who are struggling. Advocate for continued relative search, throughout the entire life of the case, not just at the beginning.

12. Get real with people. Being a good advocate means knowing when to pick your battles. Attorney time is a precious resource, too. If the plan is return to parent, it really needs to be a return to parent case. If this is a sham, and everyone knows it, the waste is enormous. And remember, sometimes the best advocacy involves getting real with a client. An attorney may do the best for a client by helping a parent, maybe for the first and only time, make a decision that is truly in the best interests of a child.

13. Do your homework. Know the Oregon Safety model and the applicable law. Learn something about childhood trauma, neuroscience, child development and substance abuse. Get training any time you can. Then, as an advocate, you can knowledgeably evaluate whether the services offered are appropriate and if more or less is needed.

Tough times force change. While change can be scary, there are good aspects to constantly looking for ways to improve the process to reduce trauma and help families. It isn't a solution to give up and end up with either lack of reasonable efforts findings, or lower the bar for what are reasonable efforts. Rather, now is when we need to try harder to come up with new and innovative plans to get the services we know our families need, and be smarter about using the resources we have.

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# JUDICIAL RESPONSIBILITY IN A BUDGET CRISIS ENVIRONMENT

## POLICY STATEMENT

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*The National Council of Juvenile and Family Court Judges' (NCJFCJ) Well-Being Committee met in January 2009 and discussed its deep concern that the well-being of children and families will suffer during times of budget reductions. This statement was adopted as a policy of the NCJFCJ by its Board of Trustees in January 2009.*

Juvenile Court Judges are vested under federal and state law with significant responsibility to the children and families involved in our courts. We must ensure that children and their parents receive appropriate services designed to support safe placement of children with their families, return of children to their families, or, when that is not possible, placement in safe, stable and permanent homes. At all stages of a juvenile proceeding, Judges are required to determine whether or not a child welfare agency has made reasonable efforts to prevent foster care placement and to achieve permanency for children in foster care. This inquiry is case specific and requires the court to vigorously explore the efforts made to keep families together or to find permanent homes for children who cannot live safely with their parents. During times of budget crisis, it is often asserted that budget reductions relieve a child welfare agency of making reasonable efforts to provide services. Federal law does not make such an exception.

The National Council of Juvenile and Family Court Judges affirms that when the government intervenes to protect children from harm, those children and their families must receive the services necessary to ameliorate the conditions causing government intervention. State and Federal governments must continue to meet their lawful obligation to protect and improve the lives of children involved in juvenile court proceedings throughout our nation. The NCJFCJ encourages judges to insist on appropriate service delivery for these, the most vulnerable, of our nation's children. Judges must also exercise all available authority to ensure that the needs of families involved in juvenile proceedings are adequately addressed. Reasonable efforts findings are a powerful tool to ensure children and families get the services they need even in a difficult budget environment.

These children and their families face some of the most enduring and perplexing challenges of our time. Mental illness, drug and alcohol addiction, sexual and physical abuse, domestic violence, incarcerated parents, and neglect are part and parcel of the lives of children we see in our courtrooms each and every day. How we address those issues for these children while they are in our care, in part, determines their ability to choose an adult life free from those challenges. The NCJFCJ encourages judges to provide information on the federal and state level to help officials making budgetary decisions understand both the profound need for appropriate services for children and families in our juvenile courts, and the long-term costs and consequences of our failure to provide those services.

***For further information, please contact:  
The National Council of Juvenile and Family Court Judges, University of Nevada, Reno  
P.O. Box 8970, Reno, Nevada 89507, [www.ncjfcj.org](http://www.ncjfcj.org)***

***January 2009***

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## **M E M O R A N D U M**

**TO:** Judge Daniel R. Murphy  
**FROM:** Kelsey Meredith  
**DATE:** July 19, 2011  
**RE:** Reasonable efforts and DHS resource limitations

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### **QUESTION PRESENTED**

Whether there is a legal basis for the Court to consider the limited resources of the Oregon Department of Human Services (DHS) when evaluating if that agency met its obligation to make reasonable efforts in dependency cases.

### **BRIEF ANSWER**

Following repeated searches of Oregon and federal case law and statutes, no definitive statement on whether resources limitations of DHS should be considered was found.

### **METHODOLOGY**

In researching this issue Westlaw, LexisNexis, Google Scholar and Google were searched. In addition, I spoke to a Westlaw research assistant to assure my searches were appropriate and I spoke with Prof. Leslie Harris to determine if she had any additional insight. Prof. Harris was contacted because she authored a memorandum on reasonable efforts that was found during the researching process. The findings of this memorandum mirrored the conclusions of Prof. Harris. Following multiple searches and many hours of research, none of these sources were able to provide information that directly addressed the question presented.

### **DISSCUSSION**

No federal or Oregon statutes, administrative regulations, or case law were found that discuss whether a court should consider the resources of DHS in evaluating if DHS made

reasonable efforts in dependency cases. This appears to be a subject where there is no definitive answer. The following discussion cannot provide an answer to the question presented.

### **I. Oregon case law, statutes and administrative regulations**

In Oregon statutes and administrative regulations there is no mention of the standard of reasonable efforts being dependent upon the obligated agency's available resources. Moreover, the phrase "reasonable efforts" does not appear to be defined in Oregon statute or administrative regulations. Rather the standard of reasonable efforts can only be inferred from applicable statutes and regulations. Based on this statutory analysis, reasonable efforts appear to be considered on a case by case basis, with family specific factors being considered in each case. Changes in the DHS funding do not appear to be considered when evaluating reasonable efforts.

To make reasonable efforts DHS must consider the needs and resources of the child and family in each case and, in the context of those needs and resources, provide services that bear a rational relationship to the reason for the court to take jurisdiction. ORS 419B.343(1)–(2). *See* also OAR 413-040-0000 to 413-040-0032. The application of this interpretation of reasonable efforts can be seen in the case law. Specifically in *State ex rel. SOSCF v. Hammons* the court stated "in determining whether SCF (services to children and families) has made reasonable efforts to assist father in making a lasting adjustment, we examine the particular circumstances of each case." 12 P.3d 983, 990 (Or. App. 2000). *See* also *State ex rel. Department of Human Services v. C.L.* 180 P.3d 39 (Or. App. 2008); *State ex rel. SOSCF v. Frazier*, 955 P.2d 272 (Or. App. 1998).

No cases were found that discussed whether the court should consider DHS resources when evaluating reasonable efforts in general.

### **II. Federal case law, programs, and statutes**

As it concerns federal sources, no information on point was found. It should be mentioned that, in general some federal programs, such as the Adoption Assistance and Child Welfare Act, require that a state agency make reasonable efforts if they received federal funding from the act. In this, what constitutes reasonable efforts is specific to the act. Therefore, one cannot say for certain that no federal programs take the state's operating agency resources are taken into account. However, with that said, no information was found that would indicate the standard for reasonable efforts would be dependent upon the resources of the operating agency. If the Oregon DHS is operating under a federal program then the reasonable effort requirements of that program should be evaluated.

In terms of federal case law, no relevant cases are apparent. At the federal level the cases generally concern civil rights and constitutional issues concerning the provision of services to individuals. The focuses of federal cases are distinct from the question presented. Simply put, no relevant cases were found and therefore none are cited in this memorandum.

### **CONCLUSION**

Currently Oregon and federal case law, statues and administrative regulation do not definitely state whether the court should consider the resources of DHS when evaluating if that agency made reasonable efforts.