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Reasonable Efforts: Let's Raise the Bar

By **Judge Leonard Edwards (ret.)***

Federal and local statutes detailing reasonable efforts requirements can be a powerful advocacy tool. When used effectively, such legal advocacy will ensure that children can remain at home with their parents or be reunified quickly should they be removed. It is critical that attorneys and judges be familiar with these requirements and discuss them in juvenile court proceedings. Judges and attorneys can raise reasonable efforts in a way that will improve the supports and services parents need to be successful in reunifying with their children and in assuring permanency for children. This article addresses a number of issues that are frequently overlooked by attorneys and judges. It is hoped that the reasonable efforts law will do as it was intended — give parents a fair chance to retain their children and provide permanency for children.

1. **Failure to locate, notice and engage fathers:** Using social media, investigators, Family Finding, child support information, and other procedures, social workers can identify fathers, engage them, and bring them into the juvenile court process. But, too often, these efforts aren't happening. This failure is both a lack of reasonable efforts to prevent removal of the child and to facilitate reunification. The father and his relatives are often the answer — an important alternative to foster care.¹
2. **Failure to locate, notice, and engage relatives:** Family Finding can identify and gain contact information for scores of relatives in a few hours. Indeed, Family Finding is recommended in federal law as a best practice.² Federal law prefers relative placement to both foster care and congregate care as relative placement is a permanent plan.³ Relatives are often able to provide a home for the child. It is a violation of the reasonable efforts mandate to prevent removal and facilitate reunification when relatives are ignored or brought into the case weeks and months after a child has been removed.
3. **Failure to support a relative/kinship provider:** When the permanency plan is guardianship/custody with a kinship provider, the agency has an obligation to support the established goal of relative placement. Just as the state provides financial support for adoptive parents, it should assist relatives who have received a child into their care. Failure to do so is a violation of the reasonable efforts mandate to prevent removal and to achieve timely permanency.

1 Edwards, L., "Engaging Fathers in the Child Protection Process: The Judicial Role," *Juvenile and Family Court Journal*, Spring 2009, at pp. 1-29. Available free for download at judgeleonardedwards.com

2 See the Fostering Connections to Success and Increasing Adoptions Act of 2008. Public Law No. 113-183.

3 Edwards, L., "Relative Placement: The Best Answer for Our Foster Care System," *Juvenile and Family Court Journal*, Vol 69 No 3 (2018). [<http://judgeleonardedwards.com/docs/Relative-Placement-JFCJ-69-3-2018.pdf>]

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4. **The missing or inadequate service:** On occasion the parent is required to complete a service that is either unavailable or is structured in such a way that it does not promote reunification.

An example occurred in my juvenile court years ago. The agency provided visitation once a week for two hours on a Saturday morning in a large gymnasium. Parents would come and meet their children in this large room. I attended one of these visitation sessions and was concerned about the quality and quantity of visits in the context of the reunification goal. The large gymnasium meant that many families were visiting at the same time and this made personal exchanges among family members difficult. The once-a-week visitation schedule seemed inadequate to maintain family connections. I hired two psychologists to follow one family from the beginning of a case and, in particular, their visitation experience. I asked if the visitation at the gymnasium promoted reunification.

I received the report a few months later. The report made many recommendations including the following:

Families for whom reunification services are recommended should not be using this facility in this manner. As stated before, this type of visitation cannot be seen as playing any part in a reunification plan. Visitation for the purposes of reunification requires much more parent-child interaction time, with much more focused guidance and supervision of this interaction.

The report added that the visitation program should be augmented by more staff and families should have individualized visitation plans. Several other recommendations addressed the visitation issue. I gave the Director of Family and Children's Services a copy of the report along with a statement that I would consider making "no reasonable efforts" findings were he not to make substantial changes in the visitation program. He made significant changes including the purchase of a house and setting up several rooms for private family visits.⁴

This is only one example of how a judge can work with the agency to make significant changes in the service delivery system in a particular jurisdiction.

5. **Services with a long waiting line:** The law does not give parents a long time to complete services. As a result, the available reunification period is short. Parents need to get involved in services as soon as possible, and a waiting list of months will frustrate their efforts. The court should consider such delayed services to be unavailable and hold the agency accountable by making a "no reasonable efforts" finding.

4 The entire report from the psychologists is available in Appendix E of *Reasonable Efforts: A Judicial Perspective*, by Judge Leonard Edwards (2014). The entire report is available online at judgeleonardedwards.com at pp. 410-418.

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This practice represents a failure of the agency to provide timely services to facilitate reunification.

The agency's response may be that the service provider is the problem not the agency. This is incorrect. It is the agency that is responsible for providing the services. The fact that it contracted with a provider that cannot provide timely services is the fault of the agency.

Attorneys and juvenile court judges need to raise the reasonable efforts issue when either services are unavailable or have long waiting lines. Attorneys should let the judge know that the service must be provided in a timely fashion and that failure to do so is a violation of the reasonable efforts to reunify mandate.

6. **Delay in completing the permanency plan:** Children need permanency.

Developmental experts inform us that children can't wait.⁵ They need permanency now. But when a permanent plan has been set and is delayed for weeks and months (even years), the child suffers, and the law is violated. Attorneys and judges must take steps to understand the adoption, guardianship, and relative placement processes so that delays can be avoided. A failure to achieve timely permanency should result in a "no reasonable efforts" finding as required by law.⁶

7. **Children who linger in foster or congregate care:** Many children are placed in foster or congregate care and remain there for years. In these cases, each time the case comes up for review, the report indicates that the child remains in the same placement or that he or she has been moved to a new placement. The usual court order is to continue the child in the same foster or congregate care placement. However, neither of these placements is a permanent plan. Because the placement seems like the only alternative, the child will remain there until aging out of care. Some professionals refer to them as "cold cases" since it appears that no one is paying attention to the child's situation.

But the agency should be taking steps to finalize a permanent plan as required by federal and state laws.⁷ Several jurisdictions have addressed this issue by using Family Finding and identifying relatives who can become a part of the child's life. The New Jersey Post-Termination Project has identified and connected hundreds of children to their extended families.⁸

Judges and attorneys need to be aggressive about finding relatives. They must hold the agency accountable to complete the permanency process. Once again, however, it appears that this "reasonable efforts" issue is not being litigated. There are no

5 Goldstein, J., Freud, A., & Solnit, A., *Beyond the Best Interests of the Child*, Free Press, 1973.

6 Adoption and Safe Families Act, 42 U.S.C. §671(a)(15)(C); 45 CFP §1356.21(b)(2).

7 Preventing Sex Trafficking and Strengthening Families Act of 2014; P.L.113-118.

8 Floria, Judge S., "More Good Than Harm: Legal Orphans and the New Jersey Post-Termination Project," *Juvenile and Family Court Journal*, Vol. 59, No. 2, Spring 2008, pp. 1-13.

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appellate cases questioning agency efforts to search for a permanent home for these children. The failure to make progress toward the permanency goal is unacceptable under the law and should be raised in the legal proceedings.

Conclusion:

The reasonable efforts mandate in federal and state laws was intended to give the court tools to monitor the actions of the social service agency and improve the lives of children and their families. Attorneys and judges should use these tools to ensure the parents have a fair opportunity to reunite with their children and that children reach permanency in a timely fashion. The examples in this article are some of the issues that could and should be raised in court. If addressed, they will improve outcomes for children and their families. ■