

## **USING REASONABLE EFFORTS TO ACCESS TIMELY, QUALITY SERVICES**

### **Nebraska Children's Summit – August 2012**

Presented by Judge Constance Cohen

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### **ADOPTION ASSISTANCE AND CHILD WELFARE ACT OF 1980**

Introduced the concept of “reasonable efforts”

States receiving federal funding must make reasonable efforts to prevent the removal of children from their homes and, whenever possible, reunify.

### **ADOPTIONS AND SAFE FAMILIES ACT OF 1997 (Regs enacted in 2000)**

Modified the reasonable efforts requirements

Shifted focus from family preservation to safety, permanency, and well being

R/E must be case specific and child specific

Expanded the application of reasonable efforts:

R/E 1: Prevent the need for removal

R/E 2: Make it possible for the children to return home safely (finalize CPP)

R/E 3: Place the children in a new and permanent home

The agency must document and the Court must find R/E by deadlines

*Failure to make the first R/E finding within 60 days of removal will result in the loss of IVE reimbursement for the entire episode of care...including adoption subsidies. 45 C.F.R 1356.2(b)(3).*

ASFA Requirement Timelines:

Requirement	Deadline (from date of removal)
Case Plan	60 days
R/E 1	60 days
R/E 2	6 months
Permanency Hearing - R/E 2	12 months
Mandatory Filing of TPR	15 of the last 22 months

***Failure to provide required R/E may result in an exception to TPR even if the child has been out of the home for 15 of 22 months.***

ASFA demands meaningful judicial oversight

No paper reviews - No ex parte reviews Sec 475(5)(C) of Act

Examples of R/E:

Housekeeping services – transportation assistance – child care - budget training – parent skill training – mental health and substance abuse evaluations - therapy – treatment – attachment assessments – dyadic therapy – housing referrals

R/E 1 Issues at PPH and Adjudication:

What were the dangers?

Is agency providing services relevant to address family's needs and past and current problems?

Have caseworkers diligently arranged these services?

Did caseworkers make services available in a timely manner?

If no services were made available or provided, why not?

R/E 1 Issues at Disposition:

What is being done to eliminate or prevent the need for removal?

What is being done to preserve and reunify the family? Neb. Rev. St. Sec. 43-283.01 and 283.04

Are the parents satisfied with the services they are receiving?

Are additional available services requested?

Is the Case Plan acceptable?

R/E 2 Issues at Reviews:

What is being done to finalize the permanency plan within six months of entry to foster care?

R/E 2 Issues at Permanency:

What is being done to finalize the permanency plan within twelve months of entry to foster care and assure the child has a safe and permanent home?

R/E 3 Issues after Permanency:

What is being done to finalize a new and permanent home?

Waiver of R/E

The judge decides when and if to waive R/E

Neb. Rev. St. Sec 43-283.01(4)

- a. Parent has subjected child or other child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;
- b. Parent has committed first or second degree murder to another child of the parent, committed voluntary manslaughter to another child of the parent, aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the child or another child of the parent, or a comparable crime in another state; or
- c. Parental rights of sibling have been terminated involuntarily.

Neb. Rev St. Sec 430283.01(5)

If reasonable efforts to preserve and reunify the family are not required under subsection 4, a permanency hearing shall be held within 30 days.

Neb. Rev St. Sec 430283.01(6)

Concurrent planning does not undermine R/E

*In re the Interest of Jac'Quez N*, Nebraska Supreme Court No. S-02-1381, Sept. 26, 2003.

An infant sustained life-threatening injuries consistent with shaken baby syndrome on June 10. Travis and Selina delayed seeking treatment until June 12. On August 5, the state filed a petition to terminate parental rights, asserting that reasonable efforts were not required due to aggravated circumstances. The trial court terminated the parental rights of Travis, who had been the caretaker of the child at the time of the injury, but declined to waive R/E or terminate parental rights of Selina.

The State appealed the order regarding Selina. The Supreme Court, in reversing the trial court, clarified that the standard of proof required to prove an exception to providing R/E under Sec 43-283.01(4) was clear and convincing, not preponderance of evidence. The Court also found that Selina had subjected Jac'Quez to aggravated circumstances by clean and convincing evidence, and the lower court's ruling directing continued efforts at reunification was in error. Although Selina had not personally inflicted the injuries, her delay in obtaining treatment for 48 hours constituted severe neglect of his medical needs, exacerbating permanent disabilities. This was an unacceptable risk to the baby's health.

The Court went on to find that Selina's failure in the past indicated that any attempt to reunify her with a child who now had heightened needs would jeopardize and compromise his safety and engender an unreasonable risk that his needs would again be ignored. Following their de novo review, the Supreme Court terminated Selina's rights.

## **FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008 (P.L.110-351)**

*Siblings:* Reasonable efforts must be made to place siblings together unless joint placement would be contrary to the safety or well-being of the siblings. For siblings not jointly placed, the state must provide for frequent visitation unless contrary to safety or well-being. 42 U.S.C. Sec. 671(31)

*Notice to Relatives:* Within 30 days after removal the state must use due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child, excluding those with histories of family or domestic violence along with requirements necessary to become a foster home and available supports. 42 U.S.C. Sec. 671(29)

## **CHILD ABUSE PREVENTION AND TREATMENT ACT (CAPTA) Reauthorized 2010**

### **Public Law 108-36 Sec. 114(b)(1)(B)(vii)**

Pre-Appointment Training Requirements for Lawyers Representing Children (in pertinent part):

Relevant federal and state laws, agency regs, court decisions, court rules;

Court process and key personnel;

Child development, needs, abilities;

Multidisciplinary input, including info on local experts who can provide consultation and testimony on reasonableness and appropriateness of efforts made to safely maintain the child in the home;

Family dynamics and dysfunction including substance abuse and kin care; and

Accessible child welfare, family preservation, medical, educational, mental health resources.

## **IOWA STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS (Proposed Draft)**

## **PRACTICE TIPS**

Demand (nicely!) a court record and meaningful hearing;

Meaningfully participate in ADR events, e.g., Family Team Meetings;

File Motions to require R/E services;

Address the sufficiency of services at each hearing;

Document requests for service requests in between hearings;

Failure to complain about the sufficiency of services may be deemed a waiver of any complaint;

Understand the local court and agency culture and structure, e.g. formal? Informal?

Seek a productive working relationship with agency whenever possible;

Minimize needlessly contentious relationships between parents and agency;

Evaluate clients' cognitive skills (FAS? ADD?) and adjust accordingly;

Be unmistakably clear and concrete regarding deadlines: Permanency is not just another review;

Determine what services are exemplary and help develop / support them (e.g., Parent Partner)

Avoid delays. Remember that on the average, a child is moved to a less restrictive placement 9 days prior to the next hearing date, regardless of when the last hearing was held;

Explore services available in jail or prison, e.g., evaluations, treatment, classes, family interaction opportunities; participation at hearings by phone;

Demand developmentally appropriate and frequent parenting time – explore appropriate family resources to augment professionally supervised contact;

Seek specific approval from Court for client to attend appointments, games, recitals, etc.;

Familiarize yourself with evolving services and evidence-based practices in your community, and help grow the good ones, e.g., attachment assessments, trauma-informed care, dyadic therapy, theraplay, infant massage, transportation assistance, etc.;

Connect your client to the best providers whenever possible;

Choose and fight the right battles

Immediately inform agency and Court of ADA needs;

Encourage timely signing of releases when appropriate;

Continually evaluate needs;

Carefully review each order in preparation for the next hearing;

Ask Court to reject the Case Permanency Plan if it includes activities that are contrary to law, recommendations are not supported by credible evidence, the plan is “one size fits all”, or the plan is futile.

Demand clarity with respect to barriers to reunification;

After adjudication, support a problem-solving approach.

**“Isn’t it true that we judge ourselves by our best intentions and others by their worst faults?”**

**“Persons of good judgment seldom rely wholly on their own”**