

Concurrent Planning and the Legal and Court Processes

Why should Judges and Lawyers
care about concurrent planning?

Margaret A. Burt, Esq.
American Bar Association



What about the court and legal
process?

Does the legal system have a fear of
concurrent planning?

During the Earlier Presentation – Did You Have These Thoughts?



- “Concurrent planning really means fast track to TPR”
- “Caseworkers who say they are doing concurrent planning are not sincerely working on reunification”
- “It’ s just not fair to parents”
- “Parents/ foster parents/ child will be confused as to what the goal is”

Or these thoughts?

- “Why is this MY problem? – this is something for the caseworkers”
- “Judges don’ t like this and it is best not to even mention it in court”
- “This gives the Parent’ s Attorneys something to argue about and claim that the caseworker is not really trying to have the children returned” .

IS IT just social work Mumbo-Jumbo?



- Can this really help children?
- Does it make sense for courts?
- Will it help timely permanency?

Can this concept help us in court?

1. The concept is not that foreign to how we do things in legal proceedings.
2. If we keep the legal processes moving so that more than one permanency option is being pursued for children, we are less linear and time should be saved for all
3. Lawyers and Judges need to be concurrent as well as urging concurrent planning as a reality for caseworkers

What does this look like?

What do we actually “do” in court
to think and be concurrent in our
planning for children’s
permanency

Front Door Legal Questions

- Who's Your Daddy?
- Where's Your Granny?
- Where has everyone gone?
- Is there any Native American ancestry in the family?

“Who’s Your Daddy?”

- ID of fathers critical – largest time bomb
- Right of the child to identity, support, possible permanency resource
- Right of the father to information, option to parent, right to services
- Importance re ICWA, relatives
- Late arrival of Dad = loss of permanency option, loss of relationship, legal delays

Ideas

- Court should ask mother directly
- Agency should have known extensive diligent search process including using child support units/ parent locator process
- Court should order agency to look and report
- All Attorneys should ask
- Court should continue to ask at every hearing until father ID' ed, located, involved

More Ideas

- Do paternity testing
- Don't accept "there is no father"
- Fathers deserve services too – specialized?
- Fathers need to know if permanency plan is not going to work – give them a chance
- Even a father who cannot be a resource may have something to offer a child
- Incarcerated does not mean ignore

“Where’s Your Granny?”

- Relatives are good resources
- Keep sibs together
- Use extended family support
- Provide “extra” for kids/parents – contact, visitation, modeling, less trauma
- “Save the foster beds!”
- Can develop into permanency if needed

Ideas

- Court should ask parents directly – use power of the court to get the info ASAP
- Relatives should be brought to court
- It might be helpful for agency to have specific process and recording – booklet to provide to relatives re options
- EVERYONE should understand the legal options and make sure relatives are told of same – custody, guardianship, foster parent status, adoption

More Ideas

- Consider ICPC requests right away
- Placement relative resources should be at every hearing
- “Relatives” is a relative thing
- Avoid the “pop up”
- Do relatives understand “stepping up to the plate”, timeliness and bonding?
- Ask relatives about fathers and ICWA status

“Where did everybody go?”

- Are there any parents or relatives outside of Nebraska ?
- Consider ICPC requests right away
- Would out of state placement help or hurt current goal?
- Is anyone incarcerated?
- Do parents understand options?
- Do non-Nebraskans understand permanency needs and likely bonding?

“Do we have an ICWA child?”

- Court must ask – and ask- until there is an answer
- Agency must have process and documentation
- All Attorneys should ask
- More hands = more help, more services, more options
- Tribe/Indian Nation should be involved as quickly as possible

Courts and Attorneys Should:



- Consistently follow & enforce time limits for hearings & judicial decisions
- Minimize delays by notifying appropriate parties, limiting/denying continuances
- Ensuring diligent efforts & determining paternity early in case
- Address other procedural problems
- Take steps to encourage or require TPR petitions or other permanency options when appropriate

Courts and Attorneys should

- Disclose ASFA time frames, expectations and consequences
- Explain child's need for permanency and role in that
- Review all objectives – stressing reunification is number one objective
- Open communication with placement resources
- Draft court orders that reflect expectations

Courts Should be Able to:

- Support collaboration with tribal courts on transfers of cases of Native American children and/or ensure placement provisions of ICWA are being met.



Judges Provide Leadership

by:

- Actively monitoring cases;
- Setting clear expectations for all parties and stakeholders;
- Asking appropriate questions at hearings ;
- Having adequate hearing time to monitor cases;
- Setting, enforcing, and engaging in a courtroom environment of respect, cultural, and community sensitivity; and
- Holding stakeholders accountable within their roles and responsibilities in the case.



To Achieve the Recommended Leadership, Some Courts Have:



- Held stakeholder trainings , set clear expectations for types of hearings.
- Implemented systems to issue orders at the end of each hearing so that all parties are immediately clear on what their responsibilities are.
- Where stakeholders have failed to perform at the standard set by the court for conduct, ordered stakeholder supervisors to appear at hearings, issued no reasonable efforts rulings or orders for sanctions

Other Ideas for Judges



- Supporting Family Meetings/Group Conferencing or Mediation
- Asking for Family Tree information
- Clarifying financial options and custodial options for relatives and fictive kin
- Assisting in Full Disclosure to birth parents and placement resources
- Ordering specific aspects of concurrent planning



Role of Judges at Hearings

- Ensure that referrals are made early and that they are targeted to the individual family
- ***Ask about concurrent planning*** and WHAT specifically is being done to achieve it
- Make sure the concurrent planning process is expressly stated in open court
- Remind everyone that the timeframe is child centered

Judge's Role at Hearings

- Fully explore all possible placement resources, including maternal & paternal relatives & their viability as a permanent option
- Establish and/or approve specific permanency objectives for foster children understanding when TPR petitions are required and the exceptions to such requirements.

Role of Judges at Hearings

- Address visitation in court orders
- Request information about the nature and quality of foster children's visits, contacts, and relationships with parents and siblings
- Review case plans and objectives submitted to the courts by the child welfare agency
- Address barriers to services



Also.....



- Consider more frequent perm hearings
- Support foster parent involvement at hearings
- Aggressive efforts to keep sibs together; sib visitation
- Review educational and medical needs of each child
- Input from the child!!!
- Do not “reset” the bar



County Attys Should Consider:

- If objective not going well, consider bringing it back to court
- Should return case to court if agency wants to have change in objective
- Remember reasonable efforts are to be assessed based on the objective that has been in effect
- Have court orders specify behavioral changes, not just attendance

Role of Parent's Attorney



- Explain to their clients the benefits to them and their children of concurrent planning
- Help clients feel comfortable participating in Family Group conferences or mediation
- Help clients have a better understanding of the system and the court process
- Request evaluations of the quality of visits with parents: ensure progress is being noted; front loading of services

Role of Parent's Attorney

- Help client develop an alternative objective if appropriate
- Urge parent to identify and involve relatives asap and help client understand rationale for that
- Urge mothers to identify fathers early in the case and to disclose relevant information regarding the father



Benefits To the Parents

Creates sense of urgency which motivates
Early accessible services and inclusion in
decisions

Allows parent to determine what role they
will play in child's permanency outcome

Lays the groundwork for openness with
permanent caregiver for providing on
going support or even ongoing
involvement with child after permanency

Role of GAL



- Meet with children, family members foster parents and other relevant players to assure an accurate, independent assessment of the family
- Ensure permanency needs have been assessed and placement resource matches these needs
- Ensure that the Judge has all the information needed to make informed decisions

Role of GAL

- You may be a real advocate for concurrent planning
- In Nebraska you are both “best interests” and attorney/client directed
- Role re court’s “consultation” with the child
- Keep focus on the child

Benefits To the Child

- Reduced number of placements, reduces attachment difficulties
- Earlier permanency through reunification or other permanency option.
- Reduces loyalty issues
- Less identity issues in adolescence and adulthood



Contact Info

- Margaret A. Burt, Esq.
American Bar Association
mburt5@aol.com
585-385-4252