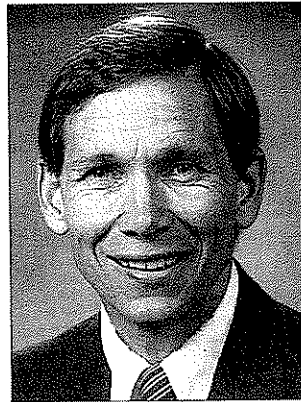


PLACING CHILDREN WITH RELATIVES: *Judge Leonard Edwards, Santa Clara Superior Court (Ret.)*

Child welfare agencies and juvenile courts place thousands of children in out-of-home care every year. Current federal and state policies declare that relatives should be the preferred placement when children must be removed from parental care. Preference for relatives is a recent development. Around the year 1900, most children were placed in orphanages and other forms of congregate care. During the 20th Century federal and state policy turned to foster care as the preferred placement. Policy makers viewed relatives suspiciously. The apple doesn't fall far from the tree was a frequent refrain. Over the past 30 years federal and state policies have shifted again, now favoring relatives over non-relatives and congregate care.



With the passage of The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) federal policy not only firmly declared a preference for placement with relatives, but the legislation mandated that relatives receive notice of child protection proceedings, gave them a voice in those proceedings, and identified best practices for locating extended family members. This legislation singled out Family Finding, Family Group Conferences, and Guardian Navigators as best practices for locating family members and engaging them in the child protection process. The legislation also offered federal grants for local jurisdictions to implement these practices.

WHY PREFER RELATIVES?

Numerous factors contributed to the change in federal and state placement policies. Substantial social science research indicated that relative placement had advantages for the children. The research revealed:

Children in relative care tend to be just as safe, or safer, than children placed in foster care.

Relative placements provide more stability than placement with foster families, and if the child has to move, it is likely he or she will move from the home of one relative to another.

Siblings more often remain together in relative care, and are more likely to visit one another even if they reside in separate relative homes.

Relative caregivers are more likely to continue the ties with the child's birth family.

Children in relative care are more likely to remain connected to their community, including their school. Relative caretakers facilitate parent-child visitation more easily since the caregivers will likely favor reunification

and will be less likely than foster parents to compete with the parents for permanent custody of the child.

Relatives are more likely to invest time and care for a child who shares a blood tie. This includes a willingness to care for the child for as long as needed.

Placement with relatives will generally be less traumatic than placement in an unfamiliar home because the children will be living with someone they know and trust, particularly if the non-relative differs racially or ethnically from the child.

Placement with relatives supports the transmission of a child's family identity, culture, and ethnicity.

Placement with relatives eliminates the unfortunate stigma that many foster children experience.

Children fare better in relative care than in foster care along numerous axes.

The child placed with relatives knows his or her own family, sees family resemblances, and understands how he or she fits into it.

Perhaps the most compelling reason for the policy shift to relative preference has been the actions of American families taken without any state intervention. When parents find themselves unable to care for their children, they naturally turn to relatives for assistance. Currently approximately 2,500,000 children live with relatives, mostly with grandparents, all on a voluntary basis.

REMAINING ISSUES

Relative preference may be the law today, but significant challenges remain. First, fathers must be identified, located, and engaged. Our nation's ambivalence about engaging fathers, particularly those who are not married to the mother, has resulted in fathers being peripheral to the child protection process. Yet the father's side of the family represents on average one-half of the child's relatives. If we are serious about relative placement, we must locate fathers and engage them in the child protection process.

We must also identify, locate, and engage relatives. Relative preference statutes mean little without rigorous social work immediately following removal of the child from parental care. The social worker must learn from the parents who the child's relatives are, contact them, and encourage them to become involved in the child protection case. The sooner this is accomplished, the more likely that the relatives will become engaged.

The law now gives relatives the right to appear before the court and speak on behalf of the child. Just as importantly, relatives have the ability to participate in group decision making processes such as family group conferences, team decision making, family team meetings, and court-based mediation. All of these group

decision making processes have spread throughout the United States and have been recognized as best practices in the resolution of the difficult issues presented in child protection cases.

Delay in relative engagement often means that they will not be selected as placement for the child. The child protection system is notoriously slow. Fact finding hearings may take months to complete. Placement issues may take over a year. Yet in the meantime the child will be living with a family and will naturally become strongly connected to that family. The late-arriving relative often finds that the foster family will be preferred because of the connection between the child and that family.

Relative placement is good social and legal policy. However, effective implementation of relative preference requires early identification and engagement. It requires effective judicial oversight of social worker actions regarding locating and engaging fathers and relatives. It also requires opportunities for relatives to participate in decision making, preferably through group decision-making processes. Engaging relatives is a best practice, one that will serve the best interests of children separated from their parents.

Crazy People...continued

time to time you can find and reflect back one small thing the litigant has said.

10. Make sure your ruling is based on the facts and the law. In trial, this isn't usually a problem, but in ex parte proceedings it is key. These litigants confuse emotional intensity with facts. Make sure you don't.

Of the many things I wish I'd learned early in my career - patience, respectful listening and statements of decision come to mind - personality disorders top the list. Who knew that people with personality disorders behave in predictable, if maddening, ways? Knowing what to expect and how to respond reduces stress and diffuses tension. This way, when fraud-fraud turns up in our courtrooms, we can maintain order and find a way to laugh about it - sooner rather than later.

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Midyear Conference
Renaissance Esmeralda, Indian Wells, CA.

ARTICLES SUPPLEMENTING THIS PAPER

"Relative Placement in Child Protection Cases: A Judicial Perspective," *Juvenile and Family Court Journal*, Vol. 61, No. 2, Spring, 2010, at pp 1-44.

"Engaging Fathers in the Child Protection Process," *Juvenile and Family Court Journal*, Vol. 60, No. 2, Spring, 2009, at pp 1-30.

"The Transition to Group Decision Making in Child Protection Cases: Obtaining Better Results for Children and Families," *Juvenile and Family Court Journal*, Vol. 58, Winter, 2007, at pp. 1-16.

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