



Judge Leonard Edwards (Ret.)
Santa Clara Superior Court

Parental Visitation in Child Protection Cases

Visitation between parents and children is an essential service in the family reunification process. Some experts argue that visitation is the most important part of any reunification plan.¹ They point out that children who visit frequently are more likely to be reunited with their parents.² Frequent visiting is associated with emotional well-being of both children and parents regardless whether they are reunited.³ Visiting maintains family relationships, it helps families cope with changing relationships, it empowers and informs parents, it enhances children's well-being, it helps families confront reality, and it provides a time and place to practice new behaviors. It also permits others to assess the parent-child relationship and assist parents learn safe and effective parenting behaviors.⁴

Child development experts agree that there should be no standard visitation schedule for all children. A visitation order should be created in light of the child's developmental needs.⁵ For example, infants need frequent and consistent contact with their parents. Separation evokes strong and painful reactions.⁶ According to the American Academy of Pediatrics:

*Weekly or other sporadic "visits" stretch the bounds of a young child's sense of time and do not allow for a psychologically meaningful relationship with estranged biological parents....For parent-child visits to be beneficial, they should be frequent and long enough to enhance the parent-child relationship.*⁷

Some juvenile court judges recognize this principle. For example, one trial judge wrote that

[T]he standard supervised biweekly, one-or-two hour visitation is inadequate, inappropriate and unacceptable. Reasonable efforts in this context means meaningful daily or near daily parenting time to build the infant/parent relationship and achieve permanency. A judge can rule earlier on whether a parent is making progress toward becoming a proper parent when the parent is given a fair opportunity to learn skills and apply them. If Health and Human Services is unwilling to provide such services, the judge could rule that a negative reasonable efforts finding will be issued in 30 days. If so ruled, Health

*and Human Services will not receive its foster care matching dollars under Federal Title IV-E Foster Care and Adoption Assistance Program. But Health and Human Services must still provide the services as ordered."*⁸

A National Council of Juvenile and Family Court Judges publication stresses the importance of "continued and regular contact between family members," and goes so far as to recommend daily visits between a mother and her baby.⁹

Ensuring early and adequate visitation presents significant challenges for social workers. After a child has been removed from parental care, the social worker's immediate tasks include finding a temporary placement for the child and preparing documents for a court hearing that will take place almost immediately. Thereafter, the social worker must decide where the visits will take place, what transportation will be necessary for the parents and child in order to meet at the designated visitation location, how long the visits will last, whether supervision will be necessary and who will provide that supervision, how frequent the visits will be scheduled, and

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whether the social worker will evaluate the child's reactions after the visit. For some of these issues, the social worker will make recommendations to the court. The judge must determine the frequency, duration, and supervision of visitation after hearing recommendations from the social worker and argument from counsel.¹⁰

Adequate visitation between the parents and child has been the focus of reasonable efforts rulings in California. Judges must provide watchful oversight of parent-child visitation to ensure adequate contact.¹¹ In the case of *In re Alvin R.* the agency recommended delaying visitation until counseling sessions for the father and son were initiated. Counseling was delayed for months. In reversing the trial court's termination of parental rights decision, the appellate court stated "[t]he longer parent and child live with no visitation, the less likely there will ever be any meaningful relationship."¹² In the case of *Tracy J. v Superior Court*¹³ the California appellate court held that the agency failed to make reasonable efforts, and that visitation was inadequate given the safety concerns present in the case. The parents were of limited intellectual functioning, but had fully cooperated with services offered, and visits had been reported as positive. Nevertheless the agency only permitted one supervised visit a week. The appellate court held that this was a denial of reasonable efforts and that the visitation should have been increased by the social worker. In another case, the court terminated visits after the mother refused to turn over to the court her medical records. The court of appeals granted a writ, stating that the trial court

erred and that visitation is critical to reunification.¹⁴

Visitation can be challenging when a parent is incarcerated. California courts have found that limited visitation while parents are incarcerated is a violation of the reasonable efforts requirement.¹⁵ They have held that incarceration should not mean the end of a parent-child relationship.¹⁶

While sitting as Presiding Judge of the Santa Clara County Juvenile Court, I became concerned about the quality and quantity of parent-child visitation during the family reunification period. The agency arranged visitation once a week for two hours at a large converted gymnasium. I asked two well-known psychologists to observe the visitation location and to prepare a report addressing the question: is the current parent visitation program supportive of family reunification? Their report indicated that the visitation did not support family reunification, that the environment was too impersonal, and that the frequency of visits was inadequate. In other words, both the quality and quantity of visits were unreasonable given the legal goal of family reunification. I met with the agency director, and he responded by purchasing a house and converting it into a visitation center.

If improvements occur in local visitation practice, the juvenile court judge will have to take a leadership role. The following steps outline the steps a judge should take to ensure that appropriate visitation is provided to children in foster care:

In order to ensure adequate and timely visitation judges should:

+ Recognize that visitation is a critical element of the family

reunification process and be prepared to address visitation at each hearing.

+ Ensure that a visit take place soon after the removal as both the parent and child will be experiencing grief over the separation.¹⁷

+ Oversee the child's initial placement decision to ensure that it supports frequent, meaningful visitation.

+ Encourage placement with relatives or close friends. Visitation can be more frequent and the home is usually well known by the child.¹⁸

+ Develop clear, enforceable, written visitation orders for each case.

+ Ensure that visitation is taking place as ordered by scheduling interim reviews.

+ Develop local rules that address visitation issues.

+ Determine the frequency and duration of visitation by measuring the child and family's needs and not the capacity of the agency.

+ Encourage cross-systems training for all participants in the juvenile dependency court system to address child development principles and strategies to improve the quality and quantity of visitation.

+ Examine best practices and draw from model programs from around the country to improve visitation practices.

+ Facilitate collaborative community efforts to improve visitation practices and overcome barriers to successful visitation.¹⁹

+ Discuss visitation at local Blue Ribbon or court system's

meetings so that attorneys and service providers can contribute their ideas and resources.

+ Work with the agency and community members to make transportation available so that frequent visitation is possible. Enquire about transportation for visitation and learn about agency resources including bus passes and other assistance.

+ Set an interim review 45 or 60 days after the dispositional hearing to check to see if visitation is taking place as ordered by the court.

Children and their parents benefit from visitation whether reunification will be successful or not. Yet policies and practice reveal that in many counties visitation is inadequate both in quantity and quality. Visitation is a critical element in the family reunification process, one that judges should pay particular attention to in order to ensure better outcomes for children and their families.²⁰

Endnotes

- 1 Fanshel, D., *On the Road to Permanency*, CWLA, New York, 1982; Hess, P. & Proch, K.O., *Family Visiting in Out-of-Home Care: A Guide to Practice*, Child Welfare League of America, Washington, D.C., 1988; Hess, P. "Case and Context: Determinants of Planned Visit Frequency in Foster Family Care". CWLA, N.Y. Vol. LXVII, No. 4, July/August 1988; and see the sources cited in Edwards, L., "Judicial Oversight of Parental Visitation in Family Reunification Cases," *Juvenile and Family Court Journal*, Vol. 54, No. 3 Summer 2003 at pp 2-5, available at judgeleonardedwards.com, publication's blog.
- 2 Fanshel, D. "On The Road to Permanency," CWLA, N.Y. 1982.
- 3 Weinstein, E., *The Self-Image of the Foster Child*, Russell Sage Foundation, N.Y. 1960; "Final Report," Michigan Parent-Child

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- Visitation Task Force, March 2013 at pp 14-15; McWey, L., & Mullis, A. "Improving the Lives of Children in Foster Care: The Impact of Supervised Visitation," *Family Relations*, Vol. 53, No. 3, April, 2004, at pp. 293-300.
- 4 "Visitation between parents and their children in foster care is generally considered to be the most important factor contributing toward timely family reunification, a major feature of permanency planning for children in foster care." Roemer, L., "Information Packet: Visiting with Family in Foster Care," April, 2008.
- 5 See the chart explaining appropriate visitation for different age groups written by Dr. David Arredondo, "Guidelines to the Developmental Needs of Children According to Age," found in Edwards, L., *op.cit.*, footnote 1 Appendix A.
- 6 Goldsmith, D.F., Oppenheim, D., and Wanlass, J., "Separation and Reunification: Using Attachment Theory and Research to Inform Decisions Affecting the Placement of Children in Foster Care," *Juvenile and Family Court Journal*, Vol. 55, No. 2, 2004, at pp. 1-13, at p. 6.
- 7 American Academy of Pediatrics Committee on Early Childhood, "Adoption and Dependent Care," 2000, 1148.
- 8 Johnson, Hon. Douglas, "Babies Cry for Judicial Leadership: Reasonable Efforts for Infants and Toddlers in Foster Care, The Judge's Page, Online publication of National CASA, October, 2007.
- 9 NCJFCJ, *Protocol for Making Reasonable Efforts to Preserve Families in Drug-Related Dependency Cases*, Reno, 1992) at pp. 4, 20-22.
- 10 "There is no question but that the power to regulate visitation between minors determined to be dependent children and their parents rests in the judiciary." *In re Jennifer G.*, 270 Cal.Rptr. 548, 327 (Cal. Ct. App. 1990); *In re Shawna M.*, 24 Cal.Rptr. 2d 126 (Cal.Ct.App.1993).
- 11 Edwards, L., *op.cit.*, footnote 1 at pp. 9-12.
- 12 *In re Alvin R.*, 134 Cal.Rptr.2d 210, 217.
- 13 202 Cal.App.4th 1415 (Cal. Ct. App. 2012)
- 14 *In re David D.*, 28 Cal. App. 4th 941 (1994).
- 15 *In re Brittany S.*, 17 Cal. App.4th 1399; 22 Cal. Rptr.2d 50 (1993) (agency did not provide visitation while mother was incarcerated); See also *In re David D.*, 28 Cal. App.4th 941 (agency and court placed an unreasonable burden on mother thus preventing her from visiting –TPR reversed); *In re Precious J.*, 42 Cal.App.4th1463 (1996) (agency did not follow court order to provide an incarcerated mother with visitation).
- 16 Or as the court put it, "Go to prison, lose your child" is an unacceptable maxim." *Id.* at p. 1402.
- 17 Fahlberg, V., *A Child's Journey Through Placement*, Jessica Kingsley, London, 2012, at pp. 141-175.
- 18 Edwards, L. "Relative Placement in Child Protection Cases: A Judicial Perspective," *Juvenile & Family Court Journal*, Vol. 61, No. 2, Spring, 2010 , pp 1-60.
- 19 Edwards, L., *op.cit.* footnote 1 at pp. 11-12.
- 20 *Id.* ☺