

## CLC PRACTICE POINT

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### What the Child's Attorney Should Know About Relative Searches

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For children who have suffered the trauma of being removed from their homes and placed in foster care, being placed with a relative can prevent the additional trauma of multiple moves to unfamiliar homes. Studies of foster care outcomes have shown immense benefits from children being placed with relatives, including fewer placement disruptions, better preservation of contacts between children and their parents, and preservation of relationships to familiar adults and the child's culture and environment.<sup>1</sup> Placement with relatives also serves to protect the child's self-esteem and sense of identity.<sup>2</sup>

Recognizing the importance of relative placements, our child welfare system imposes numerous requirements on social services agencies to conduct searches for relatives who may be placement resources for children in foster care. As attorneys for these children, it is important to understand the laws related to relative searches so we can help ensure that everything possible is done to find relatives who may be resources for our clients. This Practice Point addresses the key relative search requirements that exist at various stages in the life of a foster care case, and provides tips for approaching this issue.

#### I. WHO ARE YOUR CLIENT'S RELATIVES?

Relative searches need not be limited to blood relatives. According to Minn. Stat. § 260C.007, subd. 27, a "relative" is defined as any "person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact."

**ATTY TIP:** Keep this definition in mind when talking to your client about family and kin who might be a placement resource for them. Children are often an excellent resource for identifying family, friends, neighbors and others who could be good foster care and/or permanent placement options. Have this conversation early in your representation of your client, and return to it periodically as your client's placement needs evolve.

#### II. RELATIVE SEARCHES DURING THE CHIPS STAGE

When a child initially enters the child protection system, social services agencies are mandated to use "reasonable efforts" to prevent placement and reunite the family, and also to finalize an alternative placement plan.<sup>3</sup> Such efforts must involve due diligence by the social services agency to conduct a relative

<sup>1</sup> Minnesota Department of Human Services Relative Search Best Practice Guide (DHS-4558A-ENG 8-06) (citing to the United States Department of Health and Human Services 2001-04 Children and Family Service Review Findings).

<sup>2</sup> *Id.* (citing to *Relatives Raising Children: An Overview of Kinship Care*, Joseph Crumbley & Robert L. Little, (1997), Child Welfare League of America).

<sup>3</sup> MINN. STAT. § 260.012(a).

search to identify and provide notice to adult relatives in accordance with § 260C.212, subd. 5, the statute which describes the details of the search required.<sup>4</sup>

#### GENERAL SCOPE OF THE INITIAL RELATIVE SEARCH:

The relative search is to be reasonable and comprehensive in scope, which means:

- i The search must include both maternal and paternal relatives, if paternity is adjudicated.
- i The agency must notify relatives that the child needs a foster home, and that the relative has an option to become a placement for the child.<sup>5</sup>

"Special efforts" must be made "to recruit a foster family from among the child's relatives."<sup>6</sup> In order to satisfy special efforts, the agency MUST:<sup>7</sup>

- i Question the child, parent/guardian, and GAL about the child's relatives and preferences regarding relatives.
- i Contact relatives, and in doing so:
  - o Divulge only information necessary for relatives to consider possible placement.
  - o Request names of other relatives if necessary.
- i If given parental consent for release of information (or by court order) the agency must consult with persons who know the child's family, including non-agency persons providing services to the child or the child's family.
- i If the child is an Indian child, the agency must:
  - o Request that the child's tribe provide names of the child's extended family.<sup>8</sup>
  - o Defer judgment to the tribe as to suitability of the relatives' home if the tribe has intervened pursuant to ICWA

**ATTY TIP:** Attorneys should ensure that the efforts mandated under the rules are completed before the agency is relieved of its duty. Confirm with your client that they have had the chance to identify relatives and kin they may like to live with, as well as the opportunity to express their preferences about where they would like to live. Report this information to the court at review hearings and ensure that all relatives are being contacted and considered, even paternal relatives. If necessary, ask the court to order the agency to provide documentation of the efforts it has made. If it appears that "special efforts" are not being made to search for relatives, raise your concerns in court and ask that increased efforts be made.

The "special efforts" requirements are satisfied on the earlier of these two occasions:<sup>9</sup>

- i The child is placed with a relative who is interested in providing a permanent placement for the child.
- i The agency has made "special efforts" for 6 months following the child's placement in a residential facility, and the court approves of the agency's efforts.

**ATTY TIP:** If it appears that the court intends to relieve the agency's duty after six months of "special efforts," CLC attorneys should ensure that special efforts truly were taken in accordance with administrative rules and that the definition of relative applied was broad enough to encompass all

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<sup>4</sup> MINN. STAT. § 260.012(e)(3).

<sup>5</sup> See MINN. STAT. § 260C.212, subd. 5(a) for a complete list of information that must be included in the relative notification.

<sup>6</sup> MINN. STAT. § 260C.215, subd. 1.

<sup>7</sup> MINN. RULE 9560.0535, subp. 4(A-D).

<sup>8</sup> In accordance with Indian Child Welfare Act (ICWA), 25 U.S.C. Ch. 21, subchapter I, § 1915.

<sup>9</sup> MINN. STAT. § 260C.215, subd. 1(1, 2).

options. If you feel such efforts were not made, request that the court order a continuance of the relative search, and make a finding that "special efforts" have not been made.

#### WHEN MUST THE INITIAL RELATIVE SEARCH BEGIN?

The social services agency must "exercise due diligence to identify and notify adult relatives" either prior to placement, or within 30 days after the child's removal from the parent.<sup>10</sup> The social services agency is to first consider placement with a relative without delay, based on the best interest of the child.<sup>11</sup>

#### LENGTH OF THE RELATIVE SEARCH:

Minnesota law gives conflicting mandates as to how long the relative search must last.

- i MINN. STAT. § 260C.212, subd. 5: The search MAY extend up to six months, or "until a fit and willing relative is identified."
- i MINN. RULE 9560.0535, subp. 3: The search MUST last for the first six months following the child's first placement, even if that placement is with a relative, and may continue if doing so is in the best interest of the child or by court order.

**ATTY TIP:** CLC attorneys should do their best to ensure the search lasts as long as necessary to serve their client's interests. Request that the search continue after six months if that is consistent with your client's wishes and best interests. You may also suggest that renewing the search at any point would be a "continuance," as authorized under this rule. Also, ensure that search efforts are thoroughly documented, as mandated by Rule 9560.0535, subp. 3, Rule 9560.0545, and Rule 9560.0603.

#### PARENTAL OBJECTION TO THE RELATIVE SEARCH:

A parent of a child placed in foster care may object to a search for and placement with one or any of his or her relatives. Upon a parent's objection to the search, the agency **MUST** evaluate and address the parent's concerns, without contacting the relatives, by considering:<sup>12</sup>

- i Reasons for the child's and parent's preferences about relatives,
- i Whether there are other relatives who may be contacted,
- i Whether any relatives have offered to care for the child,
- i Whether placement with relatives would interfere with a parent's ability to follow a placement plan, and
- i The tribe's position on contacting the relative, if it is an Indian child.

If a parent still explicitly requests that relatives or a specific relative neither be contacted nor considered for placement, the agency **MUST** alert the court to the parent's request and his or her reasons.<sup>13</sup> The court then must determine whether the request is consistent with the child's best interests, and if so, the court shall honor the request.<sup>14</sup> If the court orders them to do so, the agency may contact such relatives over the parent's objections.<sup>15</sup>

**ATTY TIP:** When a parent objects to a relative search, stay involved and informed of the status of the agency's evaluation and response to the parent's concerns. Make sure the parent's objection is fully considered by the agency and the court before the parent's wishes are honored. In particular, be

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<sup>10</sup> MINN. STAT. § 260C.212, subd. 5(a).

<sup>11</sup> MINN. STAT. § 260C.212, subd. 5(a).

<sup>12</sup> MINN. RULE 9560.0535, subp. 2.

<sup>13</sup> MINN. RULE 9560.0535, subp. 2; § 260C.212, subd. 5(b).

<sup>14</sup> MINN. STAT. § 260C.212, subd. 5(b); § 260C.193, subd. 3(c).

<sup>15</sup> MINN. RULE 9560.0535, subp. 2; § 260C.212, subd. 5(b).

sure that the child's wishes with respect to contacting relatives are known to the court so it can fully evaluate the child's best interests.

### III. RELATIVE SEARCHES AT THE PERMANENCY STAGE

#### IN ANTICIPATION OF FILING OF A TERMINATION OF PARENTAL RIGHTS (TPR) PETITION:<sup>16</sup>

If a TPR petition is forthcoming, or when the agency determines it is necessary to prepare for the permanent placement determination hearing, the agency MUST send notice<sup>17</sup> to:

- i The child's relatives,
- i Any adult with whom the child is currently residing,
- i Any adult with whom the child has resided for one year or longer in the past, AND
- i Any adults who have maintained a relationship or exercised visitation with the child as identified in the agency case plan.

Statutory language suggests this notice would be in addition to the initial relative search already completed when the child initially entered the CHIPS system. Now that a permanent placement is sought, a subsequent relative search may be necessary to ensure all essential persons are notified.

#### WHEN A PERMANENT PLACEMENT HEARING IS DEEMED NECESSARY:<sup>18</sup>

If a permanent placement hearing is deemed necessary because it is unlikely the child will return to a parent's care, the agency has a number of options it may pursue, so long as the actions ordered by the court are consistent with the best interests, safety, and welfare of the child. First, the agency may send notice to relatives as mandated in Minn. Stat. § 260C.212, subd. 5(d) (discussed above). However, the agency may also ask the court to modify the requirements of sending such notice, or ask the court to completely relieve the agency of the requirements of sending such notice. Under the statute, the court may relieve the agency of the relative notification requirements if the child has been placed with an appropriate relative or foster home committed to being the permanent legal placement for the child, AND THE AGENCY APPROVES of such a permanent placement.<sup>19</sup>

ATTY TIP: Because families who have been identified and approved by the agency as permanent legal placements may change their minds, and because circumstances may have significantly changed for relatives since they were originally contacted, CLC encourages its attorneys to oppose relieving the agency of this notification duty so that all relatives are notified and can be available as alternative placements if needed.

#### REVIEW, EXTENSION AND RENEWAL OF THE RELATIVE SEARCH

GENERALLY, in order to ensure that the best interests of the child are met, the court MUST review whether the social services agency made proper efforts to conduct the relative search as required under § 260C.212, subd. 5.<sup>20</sup> If the court finds the agency did not make proper efforts, and there is a relative who qualifies to be licensed to provide family foster care, the court may order that the child be placed with the relative, if that is consistent with the child's best interests.<sup>21</sup> There is no time limit on the court's ability to do so.

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<sup>16</sup> MINN. STAT. § 260C.212, subd. 5(d).

<sup>17</sup> See MINN. STAT. § 260C.212, subd. 5(d) for notice content requirements.

<sup>18</sup> MINN. STAT. § 260C.212, subd. 5(c).

<sup>19</sup> MINN. STAT. § 260C.212, subd. 5(c).

<sup>20</sup> MINN. STAT. § 260C.193, subd. 3(b).

<sup>21</sup> MINN. STAT. § 260C.193, subd. 3(b).

ATTY TIP: There is no time limit by which this review must be done; thus, at any point an attorney may request that in order to protect the child's best interest, the court should review the agency's efforts to conduct a proper relative search.

Within the first six months of the initial search, the court MUST review the agency's efforts pursuant to § 260C.212, subd. 2, which includes the requisite consideration of placement with a relative and then with an individual with whom the child has had significant contact.<sup>22</sup> The court must order that such efforts continue if the agency failed to properly perform its duties.<sup>23</sup>

After the initial six month search, the agency is permitted to continue the search only by court order or if doing so would be in the best interests of the child.<sup>24</sup> The county may request such a continuance on its own, or the child's attorney may move to do so by requesting a court order. The court must also review the out-of-home placement plan and may make modifications if necessary.<sup>25</sup>

ATTY TIP: Stay aware of the agency's relative search efforts. Have they located and contacted all relatives identified by your client or by your client's parents? If you are not satisfied that the agency has done a thorough search for relatives, request that the court order it to continue.

If subsequent placement is necessary and other relatives may be available as foster care placements, the agency MUST renew the search for those relatives. While this mandate refers specifically to the initial six month relative search for foster care placements, there is no language prohibiting such a renewal if necessary following TPR, especially if doing so would be in the child's best interest. There is also no limit on the court's ability to review the out-of-home placement plan and make modifications if necessary.<sup>26</sup>

ATTY TIP: If an initial permanency placement is unsuccessful, CLC attorneys should request that the court order a new search, particularly if there may be relatives who could be potential placements.

#### IF THE CHILD NEEDS AN ADOPTIVE PLACEMENT:

The agency must make "special efforts" to recruit an adoptive family from among the child's relatives. These efforts include utilizing community resources, religious organizations, and local media, as well as other outreach activities.<sup>27</sup> "Special efforts" in this section are satisfied if:<sup>28</sup>

- i "Special efforts" to complete the initial relative search were made when the child was first placed in out-of-home care OR
- i "Special efforts have been satisfied and approved by the court" according to the periodic out-of-home placement review under § 260C.201, subd. 10.

Thus, a court may find that "special efforts" to find an adoptive placement among relatives may cease if the initial relative search was performed to the court's satisfaction. However, attorneys should urge the court to ALSO mandate the following efforts, in addition to the "special efforts," and should argue that a previous relative search is not sufficient to waive the following requirements:

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<sup>22</sup> MINN. STAT. § 260C.201, subd. 10(b).

<sup>23</sup> MINN. STAT. § 260C.201, subd. 10(b); see also Rule 9560.0535, subp. 3.

<sup>24</sup> MINN. RULE 9560.0535, subp. 3.

<sup>25</sup> MINN. STAT. § 260C.201, subd. 10(c).

<sup>26</sup> MINN. STAT. § 260C.201, subd. 10(c).

<sup>27</sup> MINN. STAT. § 259.77.

<sup>28</sup> MINN. STAT. § 259.77.

### The Agency Must Revisit its Initial Relative Search

Agencies must ensure that the adoptive placement will serve the best interests of the child through an individualized determination of the child's needs.<sup>29</sup> Such a determination MUST involve agency consideration of factors specified in 260C.193, subd. 3(b), which are those considered in the initial relative search.<sup>30</sup> Thus in order to make an individualized determination of the child's needs in an adoptive placement, the agency MUST revisit and consider those factors considered in the original relative search.

### The Agency Must Consider Adoptive Placement First with a Relative

The agency MUST consider adoptive placement first with a relative of the child, and then with an important friend with whom the child has resided or had significant contact, consistent with the child's best interest.<sup>31</sup> Similar to the initial relative search, this requirement need not be followed if the child's parent explicitly requests such placement not be considered, and the court determines the request to be consistent with the child's best interest.<sup>32</sup>

### Adoption Must Be Encouraged if the Child has a "Permanent Family Relationship" with a Relative

Within 90 days after a child becomes a ward, the agency MUST develop a social service plan which includes the aim of establishing a permanent family relationship for the child.<sup>33</sup> If such a relationship already exists between the child and a relative as defined under the broad definition of § 260C.007, subd. 27, then adoption MUST be encouraged, but is not required.<sup>34</sup>

ATTY TIP: At the adoption stage, be sure that a satisfactory relative search was completed when the child was first placed in out-of-home care, and make sure the agency is appropriately revisiting that search as it makes determinations about adoptive placements. Ask those questions in court, if necessary, to get a response and dialogue about the agency's search process in the presence of the judge. These efforts may not be needed if your client is happy with his or her current pre-adoptive placement or does not wish to have relatives considered. Do not hesitate to contact CLC with questions.

## IV. RELATIVE SEARCH REQUIREMENTS FOR INDIAN CHILDREN

There are additional relative requirements if the client is an Indian child. The agency MUST seek relative placement, "unless the court has determined there is good cause under [ICWA] not to do so."<sup>35</sup> For foster care, pre-adoptive placements, and adoptive placements, preference MUST be given to a member of the Indian child's extended family, unless there is good cause to the contrary.<sup>36</sup> However, the order of preferences may be changed if the tribe establishes a different order of preference by resolution, and "the placement is the least restrictive setting appropriate to the particular needs of the child."<sup>37</sup>

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<sup>29</sup> MINN. STAT. § 259.29, subd. 1(a).

<sup>30</sup> MINN. STAT. § 260C.193, subd. 3(b), citing § 260C.212, subd. 2,5.

<sup>31</sup> MINN. STAT. § 259.29, subd. 2, and § 259.57, subd. 2(c).

<sup>32</sup> MINN. STAT. § 259.29, subd. 2, and § 259.57, subd. 2(c).

<sup>33</sup> MINN. RULE 9560.0440, subp. 3.

<sup>34</sup> MINN. RULE 9560.0440, subp. 3, citing 9560.0430, subp. 8.

<sup>35</sup> MINN. RULE 9560.0535 subp. 2.

<sup>36</sup> Indian Child Welfare Act, § 1905(a,b).

<sup>37</sup> Indian Child Welfare Act, § 1905(c).

## V. CONCLUSION

Relative foster care and permanent placements with relatives should be the first consideration when placement decisions are being made. Relative placements increase stability and preserve children's history and sense of family identity. It also helps children avoid the feeling of being abandoned again by family after already being let down by their parents. Children's Law Center of Minnesota interprets Minnesota laws to generally allow a search whenever it is in the child's best interest, such as if a new placement is needed or a new foster or adoptive resource is discovered. CLC encourages volunteer attorneys to advocate for conduct in keeping with that reading, even when you encounter resistance. Using the arguments above when applicable in a given case, CLC volunteer attorneys can help the county workers and courts recognize that there is minimal law prohibiting the continuance or renewal of a relative search, and numerous ways relative searches achieve positive outcomes for children.