

Approaching the Issue of Sibling Contact

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As the holiday season begins, many of us are planning family gatherings, meals and celebrations; however, if you are a child in foster care, your holiday plans may be very different. Can you imagine what it would be like to be a child in foster care for the holidays and separated from your parents and your siblings? What would it be like to be in a new place far away from those family members who have known you since you were very young? What if you had been separated from your siblings and had not spoken to them or seen them in months?

The relationship between siblings is often the longest lasting relationship a person will experience throughout their lifetime. This relationship often begins at or very near birth and continues until the death of the one of the siblings.¹ Dealing with extremely stressful situations such as the death of a parent, or being removed from the custody and care of a parent by the State, drastically increases the importance and benefits derived from a child's relationship with their siblings.² Some have argued that sibling visitation rights should be recognized as a fundamental constitutionally protected right.³ Although the United States Supreme Court has not recognized sibling visitation rights as a constitutionally protected right, every state now considers sibling association between emotionally connected children an important governmental interest.⁴

Sibling Visitation in Minnesota

Minnesota provides that siblings should be placed together for foster care placement or adoption at the earliest time possible unless it is documented that such placement would be contrary to the best interest of any of the siblings or, after reasonable efforts by the social services agency, such placement is not possible.⁵ In cases where siblings are not placed together, the child placing agency is required to develop a plan to provide frequent visitation or other interaction between siblings unless the agency documents that such visitation would not be in any of the siblings' best interest.⁶ The court shall review and either modify or approve the plan for visitation between siblings, which shall be detailed in the out-of-home placement plan as prepared by the social services agency within 30 days after any child is placed in foster care.⁷

Importance of an Early Inquiry

Visitation between siblings does not always occur, even though Minnesota requires the relevant social services agency to develop a visitation plan between siblings who are separated within the foster care system.

¹ See, William Wesley Patton & Dr. Sara Latz, Severing Hanzel from Gretel: An Analysis of Sibling Association Rights, 48 U. Miami L. Rev. 745, 761 (March, 1994).

² Id. at 765.

³ Angela Ferraris, Sibling Visitation as a Fundamental Right in *Herbst v. Swan*, 39 New Eng. L. Rev. 715, 754 (2004-2005); Barbara Jones, Do Siblings Possess Constitutional Rights?, 78 Cornell L. Rev. 1187, 1213 (September, 1993). Both authors argue that because the Supreme Court has recognized children are afforded protection under the First Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment and has held that certain aspects of the family relationship are afforded protection under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, siblings could potentially seek protection of their familial relationship under these provisions as well. In addition, siblings have successfully argued their visitation rights are protected under the associational rights guaranteed by the First Amendment. The Supreme Court has also found that the family relationship is especially important in times of adversity or need, when family members tend to draw more support from each other.

⁴ William W. Patton, The Status of Siblings' Rights: A View to the New Millennium, 51 DePaul L. Rev. 1, 20 (Fall, 2001).

⁵ MINN. STAT. § 260C.212, subd. 2(d) (2010).

⁶ Id.

⁷ MINN. STAT. § 260C.201, subd. 5 (2010); MINN. STAT. § 260C.212 subd. 1 (2010).

While the social services agencies are required to keep siblings placed together, or at least in contact with each other, certain factors work to separate siblings. For example, siblings enter the system at different times, they are placed with different family members or foster homes, and limited adoptive resources keep siblings apart.

Consequently, it is important that you as the child's counsel obtain as much information as possible regarding your client's relationship with her siblings in the past and what her wishes are for any future relationship. If your client's file does not contain sibling information, request the whereabouts of any existing siblings and whether a visitation plan has been developed from the relevant social services agency or county attorney's office. If the information is not readily provided to you, request that the court order the agency to produce the information.

TIP → It is important that you receive all information available and are aware of the relationship status between your client and her siblings so that these relationships can be maintained. Informing your client about her options for maintaining her sibling relationships as early as possible can prove to be vital in finding relatives and potential permanent connections for your client that will help preserve these relationships.

Your client is often the best source of information regarding her siblings. Discuss and verify with your client her present and past sibling relationships.

Sample Questions for your client:

- What are the names of your siblings? How old? Where do they live? Who do they live with?
- What kind of memories do you have about your brother[s] or sister[s]? What is your best memory of your sibling[s]?
- When was the last time you saw your brother[s] or sister[s]? Where did you visit? What did you do?
- When was the last time you talked with your brother[s] or sister[s]? What did you talk about?
- Have you been in contact with your brother[s] or sister[s] via email or text messaging? Have you ever contacted your brother[s] or sister[s] on Facebook?
- Have you ever lived with your brother[s] or sister[s]? If so, how did you like living with them? If not, why not?
- Did your brother[s] or sister[s] ever take care of you? Did you ever take care of any of your brother[s] or sister[s]? Which ones?
- What kind of contact would you like to have with your siblings? How often?

Ensuring Sibling Visitation

As your client's attorney, you can challenge a request to separate your client from her siblings for placement. If your client is separated from her siblings, you can request the court ensure your client has sibling contact. In some cases, a child's siblings are not parties or participants to the case before the court, but they are still in the care and control of the child's parents who are parties to the matter. In such cases, the court can order the custodial parents of the foster child to bring the other siblings to visits or make them available for visitation at a specified time. As your client's advocate, you can explain to the court why sibling contact is important to your client and request the court order your client's parents to comply with the visitation plan so your client may see her siblings.

If your client is a state ward, Minnesota provides that an adoptive parent, a birth relative or foster parents may enter an agreement regarding communication with or contact between an adopted minor, adoptive parents, and a birth relative or foster parents.⁸ Prior to the finalization of a child's adoption, Minnesota law

⁸ MINN. STAT. § 259.58 (2010).

provides an option for, but does not mandate, a sibling contact agreement to be executed by the adoptive parents and signed by the court. Thus, it is important that you advocate for sibling contact early in the adoption process so that all parties-including adoptive families - are discussing and planning for a sibling contact agreement. Early advocacy to ensure continued contact between your client's siblings can provide a basis for overcoming future enforcement problems.⁹

Additionally, as counsel, you are entitled to information regarding the adoption plan for your client, including but not limited to requests to separate siblings for adoptive purposes.

TIP → If your client is a state ward and a sibling separation request is made or is about to be made regarding your client, remember there is a short time period (10 days) to respond to such a request. It is important that you demand notice of and an opportunity to respond on behalf of your client(s) to the sibling separation request by the social services agency. If the sibling separation request is granted, a written visitation plan should be prepared as soon as possible. Contact CLC if you have any questions regarding submitting your client's sibling separation response.

Visitation and Contact Plans

After discussing the issue with your client, if it is determined that sibling visitation is appropriate, you should specifically request a court order requiring a written sibling visitation plan be developed by the social services agency which provides for frequent face-to-face visits between siblings. If one or more of the siblings are not in an out-of-home placement, a written visitation plan between the siblings or their custodial parents should be sought.

TIP → If face-to-face visits are not feasible due to geographic distance or other barriers, consider other types of contact such as video or webcam conferencing, phone calls, e-mails or letters.

It is important that the visitation plan or sibling contact agreement specifically address certain logistics of the visits, but not every detail needs to be addressed. Some factors to consider for inclusion are as follows: who is responsible for providing transportation and supervision if necessary, where will the visits or contact occur, and what is the frequency of the visits. In addition, visitation should not be contingent on one of the children requesting a visit. Contact CLC if you need guidance in preparing a visitation plan or sibling contact agreement.

Conclusion

As your child clients attempt to navigate through their difficult and stressful foster care experiences, it is important that they maintain and develop strong connections to their siblings. This single relationship can provide your client with a level of support and identity that may be missing in the ever changing world of child protection. Although sibling visitation rights are still a developing area of the law, the level of priority placed on these relationships by statute and state agency policies demonstrate a growing acknowledgment of the importance of sibling relationships. As an attorney representing your child client, it is crucial that you not rely on others to give your client's relationship with her siblings the priority it deserves. It is up to you to request any and all relevant information from the social services agency, discuss the matter thoroughly with your client and, where appropriate, advocate vigorously for a contact agreement or visitation plan to be made in writing to guarantee your client's right to visitation with their siblings now and in the future.

⁹ See generally, Christopher D. Vanderbeek, Oh Brother! A California Appeals Court Reaffirms the Denial of Necessary Access for Separated Children to Build and Maintain Sibling Relationships, 13 U.C. Davis J. Juv. L. & Pol'y 349, 361-362 (Summer, 2009) (discussing problems in enforcing sibling visitation rights).