

## CLC PRACTICE POINT

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## What Minnesota's New Legislative Changes Mean for Sibling Advocacy

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The sibling relationship is often cited as not only the longest lasting, but one of the most significant relationships in a person's life.<sup>1</sup> This relationship typically lasts decades longer than relationships with parents, spouses or children, which respectively end with a parent's death, do not begin until adulthood or wane with children reaching adulthood.<sup>2</sup> Sibling research has shown that positive sibling relationships play an important part in the growth of children's understanding of emotions, thoughts and beliefs, increased social functioning, elevated self-esteem, and more opportunities for early cognitive development.<sup>3</sup> Similarly, research has also established the lasting effects that deprivation of the sibling relationship may have on a child's development – be it through a negative sibling relationship or the separation from a sibling.<sup>4</sup> An absence of a positive sibling relationship has been associated with low levels of "prosocial behavior" (caring, empathetic and helpful supportive behavior), low levels of self worth and the development of emotional and behavioral problems.<sup>5</sup>

Moreover, positive sibling relationships have not only been shown to be resilient in light of trauma, but longitudinal research has also documented that children with positive relationships have fewer adjustment problems following negative life events.<sup>6</sup> Studies have documented how the sibling relationship provides children, who suffer a traumatic event, with solace, nurturing, caretaking, and secure emotional attachments; ultimately mitigating the effects of the trauma.<sup>7</sup> Conversely, as mentioned above, the separation of siblings has also been documented to have substantial negative effects on a child, often exacerbating an already traumatic event. Many siblings separated due to adoption speak of the "pain," "sadness," and "complete shock" of separation.<sup>8</sup> The siblings often recount feelings emptiness and incompleteness, and how they "cried [themselves] to sleep over many nights," praying and dreaming to be reunited with their siblings.<sup>9</sup>

As research documents that siblings are most likely to develop and sustain strong bonds if they have early, close, frequent, and extended contact in childhood,<sup>10</sup> there exists concern that disrupting sibling relationships

<sup>1</sup> Jill Elaine Hasday, *Siblings in Law*, 65 Vand. L. Rev. 897, 899 (2012); Judy Dunn, *Sibling Influences*, *Child Psychology and Psychiatry: Frameworks for Practice*, Second Edition. 8, 8; David M. Shumaker et. al., *The Forgotten Bonds: The Assessment and Contemplation of Sibling Attachment in Divorce and Parental Separation*, 49 Fam. Ct. Rev. 46, 48-50 (2011); Meghann M. Seifert, *Sibling Visitation After Adoption: The Implications of the Massachusetts Sibling Visitation Statute*, 84 B.U. L. Rev. 1467, 1487 (2004).

<sup>2</sup> Hasday, *supra* note 1, at 902.

<sup>3</sup> Dunn, *supra* note 1, at 8-11; Shumaker, *supra* note 1, at 49.

<sup>4</sup> Shumaker, *supra* note 1, at 49.

<sup>5</sup> *Id.*; Dunn, *supra* note 1, at 10-11.

<sup>6</sup> Dunn, *supra* note 1, at 9.

<sup>7</sup> Hasday, *supra* note 1, at 901; Shumaker, *supra* note 1, at 49.

<sup>8</sup> Hasday, *supra* note 1, at 903-05.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 901-02.

may lead to an impairment in a child's future ability to form close attachments.<sup>11</sup> Similarly, research also indicates that once siblings are separated, they are less likely to be placed together in permanent placement.<sup>12</sup>

As a result, both federal and state child protection policies have made maintaining sibling relations a priority and only allow for separations when deemed necessary.<sup>13</sup> Moreover, new statutory amendments in Minnesota place the decision of whether it is in a child's best interests to be separated from her siblings with the Court. Thus, attorneys representing child clients are now afforded a greater opportunity to advocate in the courtroom for the preservation of this crucial relationship.

### Legislative Amendment Changes

On August 1, 2012, several new amendments to Minnesota's Juvenile Code go into effect.<sup>14</sup> These amendments focus on the adoption and child welfare provisions of the code under Chapters 259, 260, and 260C. Several of these amendments will result in significant changes to proceedings<sup>15</sup> and dispositions.<sup>16</sup> Judicial oversight and the duties and responsibilities of the Commissioner of Minnesota's Department of Human Services (hereinafter "Commissioner") have also been modified by the new legislation and these statutory changes will affect the placement and separation of siblings.

In cases where there is no parent or guardian qualified to consent to an adoption, the new legislation places authority to consent in the hands of the responsible placement agency and requires it to make every effort to place siblings together.<sup>17</sup> For children under the guardianship of the Commissioner, adoptive placement decisions are now under the "exclusive" authority of the responsible agency.<sup>18</sup> It is also the responsibility of the agency to make every effort to place the siblings together for foster care and adoption, unless otherwise determined by the Court.<sup>19</sup>

Minnesota's new legislation has significantly narrowed the purview of the Commissioner of Human Services regarding state wards. In contrast to all duties not specifically delegated to local agencies falling to the Commissioner under former authority,<sup>20</sup> the new law provides that all duties, obligations, and consents not specifically reserved to the Commissioner are delegated to the responsible social services agency.<sup>21</sup> The

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<sup>11</sup> Shumaker, *supra* note 1, at 49.

<sup>12</sup> Minnesota Department of Human Services, Sibling Placement, Separation, and Visitation: Policies and Procedures, 2008, [http://www.dhs.state.mn.us/main/groups/children/documents/pub/dhs16\\_166182.pdf](http://www.dhs.state.mn.us/main/groups/children/documents/pub/dhs16_166182.pdf) (last visited July, 13, 2012).

<sup>13</sup> Shumaker, *supra* note 1, at 49; U.S. Department of Health and Human Services Administration for Children and Families, 2008.

<sup>14</sup> CLC is awaiting the Revisor's official version of the amended code. As such, citations to revised statutes are based on the 2012 Session Laws of Minnesota Chapter 216 (2012 Minn. Laws ch. 216). For simplicity, citations to these legislative changes shall herein be cited to as MINN. STAT. § x.x, subd. x. (2012).

<sup>15</sup> Permanency proceedings formerly under MINN. STAT. § 260C.201, subd. 11 (2010) have been shifted to MINN. STAT. § 260C.503-521(2012). Proceedings under the guardianship of the Commissioner of Human Services are shifted to MINN. STAT. § 260C.601-631 (2012).

<sup>16</sup> Permanency dispositions, formerly under MINN. STAT. § 260C.201, subd. 11 (2010) have been moved to MINN. STAT. § 206C.515 (2012). The disposition for "Long Term Foster Care" under MINN. STAT. § 260C.201, subd. 11(d)(3) (2010) has been repealed and replaced by "Permanent Custody to Agency" under MINN. STAT. § 260C.515, subd. 5 (2012).

<sup>17</sup> MINN. STAT. §§ 259.24, subd.1(b), 260C.617 (2012).

<sup>18</sup> MINN. STAT. § 260C.613, subd.1(a) (2012).

<sup>19</sup> MINN. STAT. §§ 260C.613, subd.3, 260C.617 (2012).

<sup>20</sup> MINN. R. 9560.0450, subp. 2 (2007); MINN. STAT. §259.24, subd.1 (d)&(e)(2010); MINN. STAT. § 260C.325, subd.4(b)(2010).

<sup>21</sup> MINN. STAT. § 260C.615, subd.2 (2012).

Commissioner no longer retains the exclusive right to consent to a child's adoption or to a sibling separation request for adoption. The Commissioner's exclusive consents are now limited to consents regarding the medical care of a child who is at imminent risk of death and donation of a body parts to another while the child is living.<sup>22</sup> Thus, in addition to the Court's authority over sibling placement considerations, the Court will now have jurisdiction to the review sibling separation requests.<sup>23</sup>

#### ATTORNEY TIP

- i Although the exclusive authority to make placements based on individualized determinations of the best interests of the child may initially rest with the responsible agency, agency's decisions are subject to judicial review. Therefore, it is critical to remember that it is ultimately the Court that ensures the best interests of your clients are being met through its review the agency's placements and placement proposals.

#### Best Interests

Regardless of changes presented by the new legislation, the paramount consideration and the policy of the state of Minnesota remains that of ensuring the best interests of children throughout all<sup>24</sup> placement proceedings. These "best interests" – and the responsible agency's "reasonable efforts" to address those "best interests" – are based on individualized determinations of a child's needs.<sup>25</sup>

Whenever possible, siblings should be placed together unless it is determined not to be in their best interests.<sup>26</sup> In the event that siblings are not placed together, the responsible agency has a duty to report to the Court the efforts made to place the siblings together and why the efforts were not successful.<sup>27</sup> It then falls to the Court to determine whether those efforts are "reasonable."<sup>28</sup> If the Court determines that reasonable efforts were not made, or that more efforts could have reasonably been made, the Court must<sup>29</sup> order the responsible agency to make further reasonable efforts to place the siblings together.<sup>30</sup> In addition, the Court shall continue to inquire at each subsequent hearing of the agency's reasonable efforts to place the siblings together, until it determines otherwise.<sup>31</sup>

#### ATTORNEY TIPS

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<sup>22</sup> MINN. STAT. § 260C.615, subd.1 (2012).

<sup>23</sup> MINN. STAT. §§ 259.57, subd.1(c), 260C.193, subd.3, 260C.613, subd.3, 260C.617 (2012).

<sup>24</sup> According to the amendment of MINN. STAT. § 260C.193, subd.3, "the best interests of the child" now apply not only to children in foster care, but to Transfer of Legal Custody and adoption proceedings as well. See also, MINN. STAT. §§ 260C.601, subd.2, 260C.212, subd.2 (2012).

<sup>25</sup> See MINN. STAT. §§ 259.57, subd.2, 260C.001, 260C.193, subd.3, 260C.212, subd.2(a), 260C.511, 260C.613, subd.1(a) (2012). A specified list of factors to be considered are cross referenced and enumerated in MINN. STAT. § 260C.212, subd.2 (2012). Determining the "best interests" of a child in regards to sibling separation generally involves considering the child's relationship to current siblings and relatives, and the child's reasonable preferences.

<sup>26</sup> MINN. STAT. §§ 259.57, subd.2(c), 260.012(e)(4), 260C.193, subd.3(g), 260C.212, subd.2(d) (2012).

<sup>27</sup> MINN. STAT. §§ 260C.193, subd.3(g), 260C.301, subd.8 (2012).

<sup>28</sup> MINN. STAT. §§ 260C.178, subd.1(k), 260C.193, subd.3(g), 260C.201, subd.2(a)(4)(v), 260C.607, subd.4(a)(2)(ii) (2012).

<sup>29</sup> Note the change in verbiage from the permissive "may" to imperative "must" in the legislative revision of MINN. STAT. § 260C.193, subd.3(g).

<sup>30</sup> MINN. STAT. § 260C.193 subd.3(g) (2012).

<sup>31</sup> MINN. STAT. §§ 260C.178, subd.1(k), 260C.201, subd.10(a), 260C.519, 260C.521 subd.1 (2012).

- i Ensure that the Court reviews your clients' sibling relationships, contact and placement at every hearing. If your clients have been separated, request a written explanation of the rationale for the decision to separate the children in light of the statutory preference against sibling separation, the specifics of the agency's plan to reunite the siblings and the frequency and nature of the contact between the siblings.
- i Always examine the agency's stated reasonable efforts to keep your client's family together and request the Court immediately order the siblings placed together if the agency's efforts are not reasonable.
- i If your client is unhappy with her placement and believes it is not in her best interests, request the Court reject the agency's placement proposal in favor of a different placement consistent with her best interests. Always remember to discuss and counsel your client regarding her reasons to change her placement as multiple moves are disfavored under the Juvenile Code. Do not hesitate to contact CLC with any questions regarding your client's request for a change in placement.

### Sibling Separation Requests for State Wards

Pursuant to the legislative revisions, responsibilities attributed to the adoption of children under the guardianship of the commissioner will be governed by Minnesota Statute §§ 260C.601-635.<sup>32</sup> As previously noted the responsible agency has a duty to make reasonable efforts to place siblings together and is required to document its reasonable efforts.<sup>33</sup> The Court shall review the responsible agency's reasonable efforts at least every 90 days as well as review any proposal to separate siblings for the purpose of adoption.<sup>34</sup> Moreover, the responsible agency may not cease reasonable efforts to place siblings together for final adoption until an adoption is finalized or the Court approves a sibling separation request.<sup>35</sup> In order to approve a sibling separation request, the Court must determine that either further reasonable efforts would be futile or that placement together for purposes of adoption is not in the best interests of one of the siblings.<sup>36</sup>

Decisions to separate siblings must be based on an individual determination of the best interests of the children. Thus, the reasons for separation will vary depending on the individual needs of the siblings. Minnesota's Department of Human Services (DHS) in August of 2008 issued its sibling placement guidelines.<sup>37</sup> The guidelines listed the following as previous reasons to request a sibling separation:

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<sup>32</sup> MINN. STAT. § 260C.601(b) (2012).

Adoption proceedings for children not under the guardianship of the commissioner will be governed by under MINN. STAT. § 259 (2012).

<sup>33</sup> See also MINN. STAT. §§ 260C.613, subd.3, 260C.605, subd.1(b)&(d)(9), 260C.607, subd.4(a), 260C.617 (2012).

MINN. STAT. § 260C.605 subd.1(b) (2012), requires placements to be made according to § 260C.212, subd.2. This section requires that the agency consider the child's relationships with his/her siblings, and that siblings be placed together and § 260C.605(d)(9)(2012) specifically requires siblings to be placed together.

<sup>34</sup> MINN. STAT. §§ 260C.317 subd.3(c), 260C.607, subd.1(a), 260C.613, subd.3, 260C.617 (2012).

<sup>35</sup> MINN. STAT. §§ 260C.605, subd.1(d)(9), 260C.613, subd.3, 260C.617 (2012).

<sup>36</sup> MINN. STAT. §§ 260C.605, subd.1(d)(9), 260C.613 subd.3, 260C.617(d) (2012).

<sup>37</sup> DHS, supra note 12.

- i After exhaustive recruitment efforts, the county social services agency has been unsuccessful in locating an appropriate adoptive home for the siblings together.
- i Not separating siblings would unduly impede the adoption of one of the siblings<sup>38</sup>
- i One sibling is physically, emotionally, or sexually abusive toward another sibling and therapeutic interventions have been unsuccessful in ameliorating the behavior.
- i Siblings will be "legally" separated [i.e. one sibling will be legally adopted, but another will remain in foster care], but remain in the same physical location.
- i A child is in placement for treatment.
- i A child is placed with a previously noncustodial parent who is not parent to all siblings.<sup>39</sup>

#### ATTORNEY TIPS

- i Keep the above guidelines in mind when talking with your clients about any agency request to separate siblings and possible permanency options.
  
- i Most siblings want what is best for each other and many will agree to a request for a sibling separation so that one sibling may be adopted. Such a sacrifice by a youth also deserving of an adoptive home, should not automatically warrant a separation. If your client is willing to agree to a sibling separation request, ensure that the agency's efforts to place the siblings together are truly futile. Review the agency's recruitment efforts to locate an adoptive home for your client and his or her siblings. If the efforts to place all siblings together are not exhaustive, request the Court deny the request and order the agency to provide the Court and parties a detailed explanation of its recruitment efforts for your client.
  
- i If your client opposes the sibling separation request, submit your written objection to the Court and the parties and request a hearing on the matter. Contact CLC for assistance on submitting such pleadings to the Court on your client's behalf.

#### SIBLING VISITATION

In the event that a state ward is not placed with his sibling, the agency is required to create a visitation plan between the siblings as part of the out-of-home placement plan pursuant to Minn. Stat. §260C.212.<sup>40</sup> It is only upon the Court's ruling that visitation would be contrary to the safety and well being of a sibling that the Court would not require the responsible agency to develop and facilitate visitation.<sup>41</sup> Thus, ensure that a visitation plan is in place for any clients that are separated from their siblings.

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<sup>38</sup> MINN. STAT. § 260C.617(d) (2012).

<sup>39</sup> MINN. STAT. § 260C.178 subd.1(k) (2012).

<sup>40</sup> See, MINN. STAT. §§ 260C.607, subd.4(a)(2)(ii), 260C.613, subd.3 (2012).

MINN. STAT. § 260C.607 subd.4 (2012) specifically references the visitation plan required for an out of home placement plan under § 260C.212 subd.1. MINN. STAT. § 260C.613, subd.3 (2012) specifically references § 260C.012(e)(4) which references § 260C.212 subd.2. The requirements of MINN. STAT. § 260C.212 subd.2(d) (2012), require that, in cases where siblings cannot be placed together, frequent and ongoing visitation must be ensured.

<sup>41</sup> Id.

Even if the sibling separation request is granted, the Court may still order communication and contact among the siblings pursuant to a communication or contact agreement of the parties that is entered prior to the one sibling's adoption.<sup>42</sup> The new statutory revisions restate the current policy of contact agreements under Minnesota Statutes section 259.58, but make two significant changes for state wards. First, the venue for enforcement and/or modification of the contact agreement and subsequent court order for contact will no longer be family court, but instead the juvenile court that the entered the order.<sup>43</sup> Second, a party to the contact agreement who wants to file a motion to enforce or modify the order is not required to attempt mediation to resolve the contact dispute prior to filing a motion with the Court.<sup>44</sup> The Court must still determine that the contact agreement is in the child's best interest and is agreed to by all relevant parties.<sup>45</sup> Further, once established, the contact order may not be modified unless it becomes necessary to serve the best interests of the child and the modification is agreed to by the parties or exceptional circumstances justify modification.<sup>46</sup>

#### ATTORNEY TIPS

- i If your clients agree to the sibling separation request, ensure there is reasonable contact between the siblings through a sibling contact agreement pursuant to the provisions of 260C.619.
  
- i Ensure that your clients' visitation plans or sibling contact agreements address certain logistics of the visits such as who is to be responsible for providing transportation and supervision, where will the visits or contact occur, and what is the frequency of the visits
  
- i Be creative in your advocacy by considering other types of contact such as video conferences, telephone calls, or email if in person visits are not always feasible. In addition, remember that sibling contact should not be contingent on one of the children requesting a visit. The responsibility for the sibling contact should not be the child's. Contact CLC if you need guidance in preparing a visitation plan or sibling contact agreement.

Minnesota's new statutory changes provide many changes to addressing permanency for foster care youth. As a child advocate representing siblings or a child with younger siblings, it is important to ensure the Court has received relevant information regarding your clients' sibling connections and the agency's efforts to ensure their best interests are met to in their placements and contact with each other.

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<sup>42</sup> MINN. STAT. § 260C.619 (2012).

<sup>43</sup> MINN. STAT. § 260C.619 (h) (2012).

<sup>44</sup> Id.

<sup>45</sup> MINN. STAT. § 260C.619 (f) (2012).

<sup>46</sup> MINN. STAT. § 260C.619(i) (2012).