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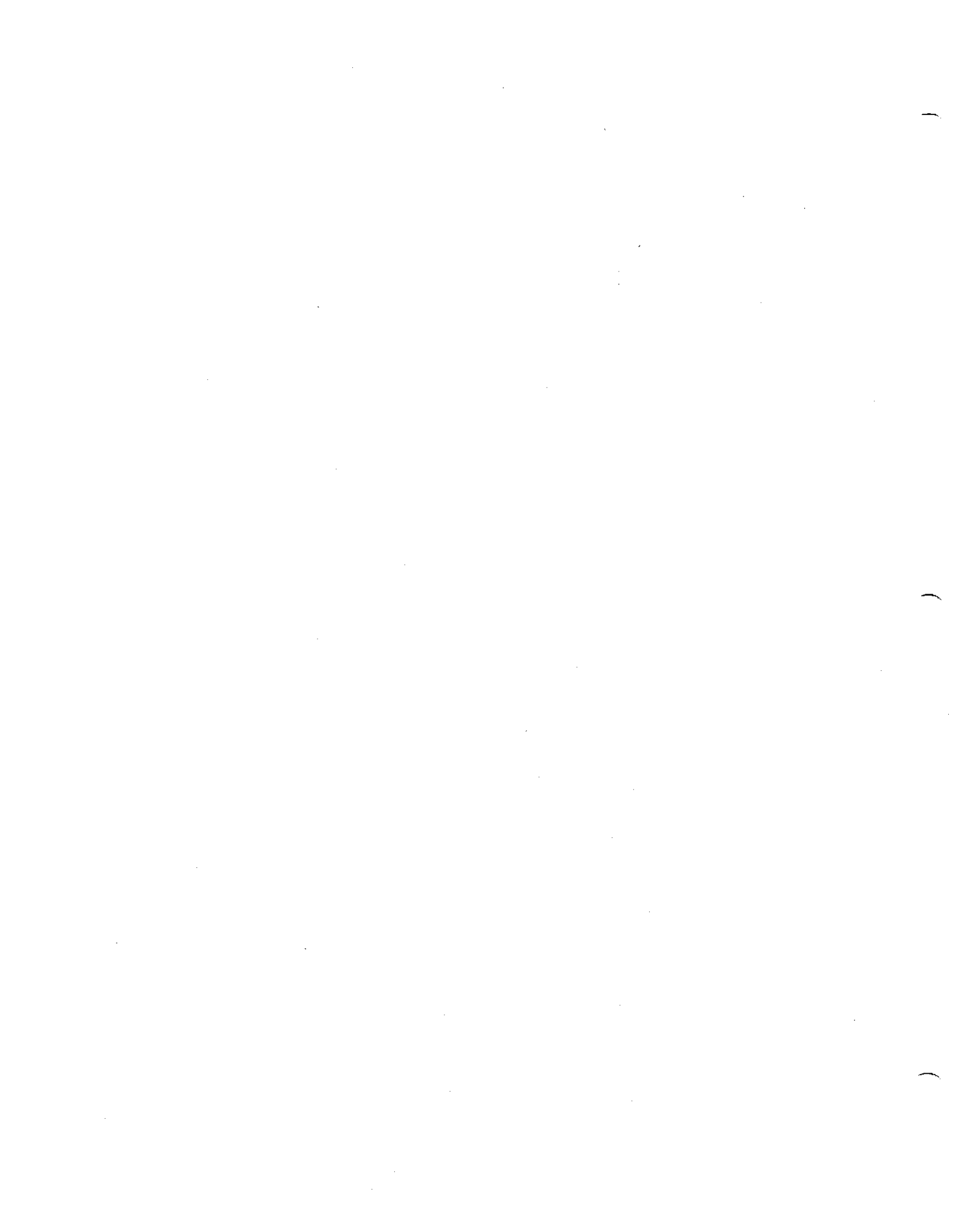
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WILLIAM MITCHELL LAW REVIEW

A CRITICAL LOOK AT CHILD PROTECTION

**Anne Tyler Gueinzus
and Julia Hillel**

PERMANENCY BEST PRACTICES FOR MINNESOTA'S FOSTER CARE YOUTH



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FOSTER CARE YOUTH***

Anne Tyler Gueinzius[†] and Julia Hillel^{††}

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I. INTRODUCTION

This article defines permanency as it relates to youth in foster care in Minnesota. It defines the general term permanency and provides a summary of what legal permanency means within Minnesota's Juvenile Code. Last, it provides recommendations for how to successfully approach and advocate the issue of permanency for youth in foster care.

While it is important to be respectful of a child client's views on permanency, a lawyer for a foster child must be adequately informed about all the options available so the child client can become a real player in the judicial process. Research shows that legal representation of children can have a positive effect on permanency outcomes.¹ Engaging clients in real conversations about permanency and describing to them what each option entails

1. Lily Dorman-Colby, *Study Shows Legal Representation of Children Expedites Permanency*, CHILD CT. WORKS (ABA Ctr. on Children & the Law, Wash., D.C.), June 2008.

Studies have shown that providing an attorney to youth in dependency proceedings can significantly improve outcomes: children represented by attorneys have been shown to move to permanent homes (and out of foster care) at a rate about 1.5 times higher than unrepresented children, reducing foster care and court expenditures by an average of 32%.

Legal Counsel for Youth and Children Programs, SEATTLE FOUND., <http://www.seattlefoundation.org/npos/Pages/LegalCounselforYouthandChildren.aspx> (last visited Jan. 11, 2014).

is an important part of working with and advocating for children in the foster care system.

II. UNDERSTANDING THE IMPORTANCE OF PERMANENCY FOR YOUTH IN FOSTER CARE

“Permanency is both a process and a result” wherein children locate and create a lifelong supportive, secure, safe, and stable parenting relationship with at least one unconditionally committed and caring adult.² It is a loving, parenting relationship in which there is mutual participation and understanding that the “relationship is intended to last forever.”³ In general terms, permanency is a sense of belonging—it refers both to children’s membership in a family and to their attachments to the individuals who matter most to them.⁴

In legal terms, permanency refers to the child’s permanent familial status created by a court order. Minnesota courts recognize the following permanency dispositions: reunification; termination of parental rights followed by adoption; transfer of guardianship to the commissioner of human services with a voluntary consent to adopt followed by adoption; transfer of legal custody to a relative; and, in rare cases, permanent custody to the agency, or temporary legal custody to the agency for a specified period of time no longer than a year.⁵

For foster children who have been placed in out-of-home care, the instability of multiple, prolonged, or unsteady foster care placements can have lasting effects upon a child’s sense of belonging and emotional well-being.⁶ “Finding permanency that is safe and secure for a child is crucial to a child’s development.”⁷ It

2. *Definition of Permanency*, SENECA FAM. AGENCIES, http://www.senecacenter.org/perm_permanency_def (last visited Jan. 20, 2014).

3. Sue Hoag Badeau, Casey Family Programs, *Permanency Values Training: Who Wouldn't Want a Family*, WIS. DEP'T CHILD. & FAMILIES 6 (2009), http://dcf.wisconsin.gov/children/foster/permanency_roundtables/pdf/permanency_values_training.pdf.

4. *See id.*

5. MINN. STAT. §§ 260C.513, .515 (2012).

6. *Achieving Permanency for Children and Youth in Foster Care*, ISSUE BRIEF (R.I. Kids Count, Providence, R.I.), May 2008, at 1, available at [http://www.rikidscount.org/matriarch/documents/Permanency IB%281%29.pdf](http://www.rikidscount.org/matriarch/documents/Permanency%281%29.pdf).

7. Suriya Khong & Julia Hillel Larsen, *Approaching and Advocating the Issue of Permanency*, CLC PRAC. POINT (Children’s Law Ctr. of Minn., St. Paul, Minn.), Feb. 10, 2011, available at <http://www.clcmn.org/wp-content/uploads/2009/06>

also is extremely important because those who age out of the system without permanency fare much worse than their peers in many aspects of life.⁸ Planning for permanency should begin the moment children are placed into out-of-home care and continue until the very end of their involvement in the foster care system.⁹ Informing a child client about her permanency options, engaging her in real conversations about permanency, ensuring her express wishes are heard in court, and building support for a client's position through investigation of facts are all essential to effectively advocate for a child client in foster care.¹⁰

III. LEGAL PERMANENCY IN MINNESOTA

A. *Reunification*

Reunifying a child with her legal custodian is often the preferred outcome for children in out-of-home placements.¹¹ In Minnesota, family preservation is a paramount goal for families in the child protection system.¹² In most cases in Minnesota, reunification must be the primary permanency plan for the first six months to a year in child protection cases.¹³ However, reunification is not always a real option, so it is important to concurrently engage in contingency planning with your client regarding other permanency options.¹⁴

/Practice-Point-13-Feb-2011.pdf. Portions of this article are derived from this practice point.

8. A Chapin Hall study showed that of the twenty-three- or twenty-four-year-olds surveyed who aged out of foster care, close to 37% had been homeless or "couch surfer," nearly 25% had not earned their high school diploma or GED, only around 50% were currently employed, almost 67% of women who had become pregnant had an unplanned pregnancy, and 45% of men had been incarcerated since their last interview. MARK E. COURTNEY ET AL., MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 23 AND 24, at 10, 22, 27, 50, 67 (2010), available at http://www.chapinhall.org/sites/default/files/Midwest_Study_Age_23_24.pdf.

9. Khong & Hillel Larsen, *supra* note 7.

10. *Id.*

11. SHARON G. ELSTEIN ET AL., AM. BAR ASS'N, ACHIEVING PERMANENCY FOR ADOLESCENTS IN FOSTER CARE: A GUIDE FOR LEGAL PROFESSIONALS 3 (2006) ("Reunification is the most preferred permanency option under [the Adoption and Safe Families Act].").

12. See MINN. STAT. § 260C.001, subdiv. 2(b)(3) (2012).

13. *Id.* § 260C.001, subdiv. 2(b)(7)(i); *id.* § 260C.204.

14. See *id.* § 260C.223; CASEY FAMILY SERVS. ET AL., PERMANENCE FOR YOUNG

There are several ways to advocate for a child client who wants to be reunified with her family to support a greater chance of a successful reunification. First, ensure that the out-of-home placement plan identifies and details a treatment plan for the parents and the family that specifically correlates to the needs of the family and to the issues that caused the youth to be removed from the home.¹⁵ Next, ask the court early on to clearly communicate to the social services agency, the parents, and the youth what is expected of them to facilitate a stable reunification.¹⁶ If a client is placed out of the home and wants visits with family, ardently advocate for visitation since frequent visits and contact may increase the odds that reunification will occur.¹⁷ Finally, asking the court to grant a trial home visit may be a good way to test success at home after sufficient progress on a case plan has been achieved.¹⁸

B. Termination of Parental Rights and Adoption

Termination of parental rights is a process through which a person's rights as a parent are taken away and the person is no longer the child's legal parent.¹⁹ After a termination of parental rights, a parent no longer has the right to visit or talk to the child or to decide how the child is raised or taken care of, and the child can be adopted without the parent's permission.²⁰

A court may order a voluntary termination of parental rights by accepting a parent's admission to a termination of parental rights or an involuntary termination after a trial when the petitioner proves, among other findings, the responsible county made sufficient and individualized efforts to reunify the parent with the child and that the termination is in the child's best

PEOPLE: FRAMEWORK 2 (2004), available at <http://www.aecf.org/upload/publicationfiles/cfs3622h1222.pdf>. For a fuller discussion on concurrent planning, see *infra* Part VIII.

15. See ELSTEIN ET AL., *supra* note 11, at 4.

16. *Id.* at 4–5.

17. CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVS., FAMILY REUNIFICATION: WHAT THE EVIDENCE SHOWS 7 (2011), available at https://www.childwelfare.gov/pubs/issue_briefs/family_reunification/family_reunification.pdf.

18. ELSTEIN ET AL., *supra* note 11, at 6.

19. MINN. STAT. § 260C.317.

20. *Id.*

interests.²¹ After a parent's rights are terminated, if no other person has parental rights to the child, the guardianship of the child is transferred to the commissioner of human services and the court retains jurisdiction of the child until the child is adopted or ages out of the foster care system.²² An in-court appearance hearing must be held every ninety days following the termination of parental rights, for the purpose of reviewing the social services agency efforts to find an adoptive family for the child or to finalize an adoption.²³

Uncovering a child client's true thoughts about termination of her parents' parental rights and adoption may be difficult, as children often experience conflicted feelings about adoption.²⁴ Many children in out-of-home placements continue to feel a sense of loyalty to their birth or adoptive family, regardless of the abuse or neglect they may have suffered while in their parents' care.²⁵ Because of this, children in foster care may be unwilling to give up hope that their parents will change, or they may feel guilty for wanting to move on.²⁶ Assuring clients that they do not have to give up every emotional relationship from their pasts in order to explore a potential new future will enable many young people to move forward and consider adoption anew.²⁷

When discussing adoption with child clients, it is therefore extremely important to talk about contact agreements, which are legal documents that may enable clients to maintain scheduled visitation with siblings, extended family, and even birth parents.²⁸

21. *Id.* § 260C.301. The court must also make other specific findings in addition to finding that the social services agency made reasonable or active efforts to rehabilitate the parent and reunite the family and that the termination of parental rights is in the child's best interests. *Id.* In certain cases when reunification is not requested by the social services agency, reasonable or active efforts are not required. *Id.* §§ 260C.301, subdiv. 8(2), 260.012.

22. *Id.* §§ 260C.317, subdiv. 3(d), 260C.325.

23. *Id.* §§ 260C.317, subdiv. 3(c), 260C.607, subdiv. 1.

24. Khong & Hillel Larsen, *supra* note 7.

25. *Id.*

26. *Id.*

27. *Id.*; see also PEGGY SLATER, FAMILY CONNECTIONS PROJECT, MAKING THE CASE FOR ONGOING CONNECTIONS BETWEEN YOUTH AND THOSE WHO MATTER TO THEM—BEFORE PERMANENCY AND BEYOND 9–10 (2006), available at <http://www.nrcadoption.org/pdfs/ypc/LegalTrainingManual4-09-07withCover.pdf> (discussing the importance of former foster youth having the option to have ongoing connections with their family of origin and other people in their life).

28. Khong & Hillel Larsen, *supra* note 7. Contact agreements must be worked

Such contact agreements are enforceable when the terms are included in the written court order at the time the adoption is granted.²⁹ If clients are concerned about being adopted because adoption will sever the communication they currently have with their biological families, contact agreements may remove this potential roadblock to permanency, and some parents may be more agreeable to terminating their rights if they know they can maintain some contact with their child.³⁰

Another common fear surrounding adoption arises when children in foster care internalize the suffering they have been subjected to, leading them to believe that they do not deserve a family or that they are not good enough to be accepted by others.³¹ Such fears may lead children to reject potential adoptive families before the families reject them.³²

Using questions that enable clients to elaborate on the reasons behind their aversion to adoption helps clients make truly informed decisions about the permanency options available.³³ Conversations about adoption should be ongoing and conducted in a manner that allows clients to feel heard and express their concerns and wishes.³⁴

C. Consent to Adopt

The court may execute a “parent’s voluntary consent to adopt,” which relinquishes the parent’s parental rights in lieu of a termination of parental rights, when “there is an identified prospective adoptive” home that “has agreed to adopt the child” and the responsible social services agency approves of the identified prospective adoptive home.³⁵ If the adoption by the

out before an adoption is finalized. MINN. STAT. §§ 259.58, 260C.619. The type of contact exists in many different forms, such as letters exchanged through an agency or monitored by the parent, phone calls, e-mails, occasional supervised visits, designated holidays spent together, regular visits outside the home, an inclusion of a special person in the permanent family’s “extended family,” or all of the above in any combination that works. SLATER, *supra* note 27, at 10.

29. MINN. STAT. §§ 259.58(3)(a), 260C.619(b).

30. ELSTEIN ET AL., *supra* note 11, at 9-10.

31. Khong & Hillel Larsen, *supra* note 7.

32. *Id.*

33. *Id.* See *infra* Part V for examples of how to engage children in discussions about permanency.

34. ELSTEIN ET AL., *supra* note 11, at 8.

35. MINN. STAT. § 260C.515, subdiv. 3 (2012).

identified prospective home is not finalized by six months from the execution of the consent to adopt, the court may order the social services agency to pursue another adoptive home for the child.³⁶

D. Transfer of Legal Custody

While adoption is often considered the best permanency option for children who cannot or do not want to return to their parents' care, it is just one option that supports lifelong connections between children and stable, caring adults.³⁷ A permanent legal and physical transfer of custody is similar to adoption in that it provides a child with permanency, stability, and a caring family, but it does not require a termination of the parents' parental rights.³⁸ Legal custodians are given the right to protect and care for the child, enroll the child in school, and obtain medical care for the child.³⁹

Birth parents may retain certain rights such as visitation rights or access to information, and may still be obligated to pay child support.⁴⁰ Modifications to transfers of legal custody may be made upon a motion and a showing of a change in circumstances that such modification is in the best interests of the child.⁴¹ Thus, transfers of legal custody may be the best option for children who want to ensure their parents are granted visitation rights or for children who hope to be reunified with their parents in the future.⁴²

E. Permanent Custody to the Agency

Legally, permanent custody to the agency is listed as a permanency disposition in Minnesota;⁴³ however, in practice this option is not what many experts in the field would consider permanency. In 2012, this permanency disposition replaced the

36. *Id.* § 260C.515, subdiv. 3(7).

37. Khong & Hillel Larsen, *supra* note 7.

38. *Id.*

39. MINN. STAT. § 260C.515, subdiv. 4(3).

40. CHILD SAFETY & PERMANENCY DIV., MINN. DEP'T OF HUMAN SERVS., PATHS TO PERMANENCY: INFORMATION FOR MINNESOTA FOSTER FAMILIES 2 (2007), available at <http://www.mnadopt.org/downloads/DHS-4907-ENGpathsperm2007.pdf>.

41. MINN. STAT. §§ 260C.521, subdiv. 2, 518.18(d), 518.185.

42. Khong & Hillel Larsen, *supra* note 7.

43. MINN. STAT. § 260C.515, subdiv. 5.

prior permanency determination “Long-Term Foster Care” in Minnesota⁴⁴ and is considered “‘another planned permanent living arrangement’ (APPLA),” defined by the Adoption and Safe Families Act (ASFA).⁴⁵ ASFA explicitly prohibits long-term foster care as a permanency determination and allows APPLA as a permanency determination requiring the social services agency to provide compelling reasons why the living arrangement is expected to last and be stable.⁴⁶

The court may only order this permanency disposition if “no other permanency disposition . . . is in the child’s best interests,” the child is twelve years old or older or is the sibling of a child “ordered into the same foster home” and “the siblings have a significant positive relationship” with one another, the “social services agency has made reasonable [or active] efforts to locate and place the child” with “a fit and willing relative” or an adoptive family, but efforts were unsuccessful, and “the parent will continue to have visitation or contact with the child.”⁴⁷

An annual in-court appearance hearing must be held for any child in permanent custody of the agency.⁴⁸ Any party can ask the court to schedule more frequent review hearings to assess if the placement is safe and appropriate and if “a more preferred permanency option can be achieved.”⁴⁹ At the review hearing, the court must review whether or not permanent custody to the agency

44. See Act of Apr. 23, 2012, ch. 216, art. 4, § 31, 2012 Minn. Laws 502 (codified at MINN. STAT. § 260C.515, subdiv. 5) (repealing MINN. STAT. § 260C.201, subdiv. 11(d)(3) (2010), which was the permanency disposition titled “Long Term Foster Care”).

45. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115, 2121, 2129 (codified at 42 U.S.C. § 675 (2006)). ASFA regulations give three examples of compelling reasons to establish APPLA as a permanency plan: (1) “an older teen who specifically requests that emancipation be established as his/her permanency plan,” (2) a case where “parent and child . . . have a significant bond but . . . parent is unable to care for the child because of [a significant] emotional or physical disability and the child’s foster parents have committed to raising [the child] to the age of majority and to facilitate visitation with the disabled parent,” and (3) “the Tribe has identified another planned permanent living arrangement for the child.” 45 C.F.R. § 1356.21(h)(3)(i)–(iii) (2012).

46. CECILIA FLERMONTE & JENNIFER L. RENNE, MAKING IT PERMANENT: REASONABLE EFFORTS TO FINALIZE PERMANENCY PLANS FOR FOSTER CHILDREN 79 (Claire Sandt ed., 2002).

47. MINN. STAT. § 260C.515, subdiv. 5.

48. *Id.* § 260C.521, subdiv. 1(a).

49. FLERMONTE & RENNE, *supra* note 46, at 80.

is still in the child's best interests, if "the agency is assisting the child" in building connections with her family and the community, and if the agency is helping the child learn "independent living skills."⁵⁰ The "out-of-home placement plan" and the agency's efforts "to finalize an alternative permanent plan for the child" must also be reviewed at this hearing.⁵¹ This permanency disposition can continue if the court finds that permanent custody to the agency is still "the most appropriate legal arrangement for . . . the child's need[s] [relating to] permanency and stability" and ensures that the child is in an identified, specific home and that "appropriate services are [being] provided to address the . . . needs of the child."⁵²

F. Temporary Legal Custody to the Agency

The court may order temporary legal custody to the agency for continued placement for a specified period of time if the only basis for the Child in Need of Protection or Services (CHIPS) adjudication was the child's behavior, the court finds it is the child's best interests, and the court agrees with the social services agency's determination that there are compelling reasons to not transfer permanent physical and legal custody to a relative or to terminate parental rights.⁵³ This permanency disposition is generally used for foster youth in treatment programs and is essentially continued foster care for no more than a year.⁵⁴

IV. TIMELINES FOR PERMANENCY IN CHILD PROTECTION CASES
UNDER MINNESOTA LAW

ASFA puts significant emphasis on permanency timeline requirements for all states.⁵⁵ Typically in Minnesota, a child

50. MINN. STAT. § 260C.521, subdiv. 1(b)(1)-(3).

51. *Id.* § 260C.521, subdiv. 1(c)(1)-(4).

52. *Id.* The court must ensure that the agency is providing "appropriate services to address the physical health, mental health, and education needs of the child" as well as services which ensure the child is able "to maintain relationships with appropriate family members and the . . . community." *Id.* § 260C.521, subdiv. 1(c)(4). The court must also find that the agency has made reasonable or active efforts to find "a more legally permanent home for the child" and has engaged "the child in planning for independent living." *Id.* § 260.521, subdiv. 1(d)(1)-(2).

53. *Id.* § 260C.515, subdiv. 6.

54. *Id.*

55. *See* Title IV-E Foster Care Eligibility Reviews and Child and Family

protection case formally enters the juvenile court system within seventy-two hours from the time the child was removed from home via an Emergency Protective Care (EPC) hearing.⁵⁶ A CHIPS petition listing the allegations of abuse or neglect is filed with the request for an EPC hearing. The court examines the CHIPS petition to determine if there is a prima facie showing that a child protection matter exists; if the child is the subject of the matter; and if there is reason to believe that the child would endanger herself or others, not return to the court hearing, or that the child's health or welfare would be immediately endangered if she was returned home.⁵⁷ At the EPC hearing, the court determines placement in foster care, with or without relatives and siblings; visitation; social services needed for the child and family; and if the Indian Child Welfare Act applies to the case.⁵⁸

Assuming that the EPC request is granted, the matter proceeds to an admit/deny hearing within ten days of the EPC hearing.⁵⁹ At the hearing, the parent either admits to the petition and the child is adjudicated CHIPS or the parent denies the petition and the matter is continued to a pretrial hearing at least ten days before the trial date.⁶⁰ The purpose of the pretrial hearing is for, inter alia, settlement discussions, exchanging of witness and exhibit lists, and setting a trial date for the CHIPS determination.⁶¹ A CHIPS trial must commence within sixty days of the EPC hearing and the court must find that statutory grounds set forth in the CHIPS petition are proven by clear and convincing evidence or the case is dismissed.⁶² If the court finds that the statutory grounds in the petition are proven, the court shall adjudicate the child CHIPS and enter a disposition in the case addressing placement and services.⁶³

A written out-of-home placement plan must be filed within thirty days after a child is placed in foster care.⁶⁴ The plan is

Services State Plan Reviews, 65 Fed. Reg. 4020, 4035 (Jan. 25, 2000) (to be codified at 45 C.F.R. pt. 1355-57).

56. MINN. STAT. § 260C.178, subdiv. 1(a); MINN. R. JUV. PROT. P. 30.01, subdiv. 1.

57. MINN. STAT. § 260C.178, subdiv. 1; MINN. R. JUV. PROT. P. 30.08, subdiv. 1.

58. MINN. R. JUV. PROT. P. 30.10.

59. *Id.* R. 34.02, subdiv. 1(a).

60. *Id.* R. 35.01, subdiv. 1, 36.01.

61. *Id.* R. 36.02.

62. *Id.* R. 39.02, subdiv. 1(a), 39.04, subdiv. 1, 39.05.

63. MINN. STAT. § 260C.201 (2012); MINN. R. JUV. PROT. P. 40.01, 41.05.

64. MINN. STAT. § 260C.212, subdiv. 1.

prepared by the social services agency along with all the parties, including the child when it is appropriate.⁶⁵ The plan must be explained to all parties involved in its implementation and signed by such parties, including the child.⁶⁶ Each party, including the child, has the right to legal counsel in the preparation of the case plan and shall be informed of such right at the time of placement of the child.⁶⁷ The plan must describe how the out-of-home placement is "designed to achieve a safe placement for the child in the least restrictive, most family-like, setting available which is in close proximity to the home of the parent or parents or guardian of the child when the case plan goal is reunification."⁶⁸ The plan must describe what led to the removal of the child and the changes expected of the parent in order for reunification to safely occur.⁶⁹ The case plan must identify the specific actions expected of the family to correct the conditions that resulted in the child's removal as well as the time period allowed for the family to complete such actions.⁷⁰ Additional requirements of the case plan include a description of any services requested by the child, the child's parent, guardian, foster parent or custodian, and the visitation plan for the parents, other relatives, and siblings not placed together.⁷¹ Other issues addressed in the case plan include the child's educational needs; medical needs, including who is responsible for coordinating the child's health needs; and an independent living plan for children over sixteen years of age.⁷² The plan must be presented to the foster care provider.⁷³

The social services agency must file a relative search report enumerating its efforts to identify and search for relatives within three months of the date the child is ordered into an out-of-home placement.⁷⁴

The court will hold a review hearing every ninety days following a CHIPS adjudication until permanency is achieved to

65. *Id.* § 260C.212, subdiv. 1(b).

66. *Id.* § 260C.212, subdiv. 1(b)(3)(c).

67. *Id.* § 260C.212, subdiv. 1(d).

68. *Id.* § 260C.212, subdiv. 1(c)(1).

69. *Id.* § 260C.212, subdiv. 1(c)(2).

70. *Id.* § 260C.212, subdiv. 1(c)(3).

71. *Id.* § 260C.212, subdiv. 1(c)(4)-(5).

72. *Id.* § 260C.212, subdiv. 1(c)(7)-(11).

73. *Id.* § 260C.212, subdiv. 1(d).

74. *Id.* §§ 260C.193, subdiv. 3(b), 260C.202(b), 260C.221(c). For a fuller discussion of relative searches, see *infra* Part VII.

review the out-of-home placement plan and determine if the out-of-home placement is appropriate and necessary.⁷⁵ At a review hearing any party may request changes to the case plan and the court may modify the plan.⁷⁶

The court must conduct a permanency progress hearing no later than six months after the child was placed out of her home to determine the progress of the case, the parents' progress on the case plan, and the agency's efforts to facilitate reunification or to finalize a permanent plan for the child.⁷⁷ At this hearing the court may order the child to be returned home, continue the matter for up to six months for the social services agency to continue to provide services to support reunification, order the agency to develop a plan for transfer of legal and physical custody of the child to a relative, or order the agency to file a termination of parental rights petition.⁷⁸

The court is required to commence a proceeding to determine the permanent status of a child in out-of-home placement no later than twelve months after the child is placed in foster care or in the care of a noncustodial parent.⁷⁹ While this timeline may be extended,⁸⁰ it is important to be aware of counties' statutory obligations to ensure that foster children are provided with safe, stable, and lifelong homes as soon as possible.

If the legal permanency determination reached is termination of parental rights, then the agency must make specific recruitment efforts to find an adoptive family or other permanent plan for the child.⁸¹ An in-court appearance hearing must be held every ninety days following termination of parental rights to review the agency's progress and efforts to find an adoptive placement or other permanent living arrangement for the child.⁸²

75. MINN. STAT. § 260C.202(a).

76. *Id.* §§ 260C.202(a), 260C.203.

77. *Id.* § 260C.204(a).

78. *Id.* § 260C.204(c).

79. *Id.* § 260C.503, subdiv. 1.

80. *Id.* § 260C.503, subdiv. 3(b)(2). Extensions are granted under limited circumstances. *Id.*

81. *Id.* §§ 260C.317, subdiv. 3(c), 260C.607.

82. *Id.* § 260C.317, subdiv. 3(c).

V. ENGAGING YOUTH AS PARTICIPANTS IN PERMANENCY

Because youth are often the best resource in identifying potential permanent families, permanency efforts should be “youth-driven, family-focused, culturally competent, continuous, and approached with the highest degree of urgency.”⁸³ When discussing permanency with a child client, it is necessary to explain what permanency means so the client may make an informed decision about her future permanent placement.⁸⁴ Remember, not all foster children will want to obtain the same permanent outcome, and not all youth in out-of-home placements will be granted their expressed wishes.⁸⁵ Regardless, it is essential that a lawyer representing a child client express a client’s wishes to the court, assuming the client has granted permission to share her position.⁸⁶

Many times those involved in a child client’s case will throw the word permanency around without ever explaining what it means to the child.⁸⁷ A lawyer advocating for a child client should discuss what permanency means to the client and clarify different legal permanency options to a child client in a way that she can fully understand.⁸⁸ Explain that permanence is not a place or a placement, but a state of mind of feeling connected to someone who will miss you when you do not show up or a person whom you can count on unconditionally.⁸⁹ A child client can be empowered to choose her lifelong family connections and make them legal.⁹⁰ It is essential to involve foster youth in the decisions that are being made about their lives and doing so will allow the youth to feel more invested in the plans.⁹¹

83. CASEY FAMILY SERVS. ET AL., *supra* note 14, at 1.

84. See Brandy Hudson et al., *2008 National Convening on Youth Performance: Recommendations of Youth & Young Adults*, FAM. TO FAM. CAL. 2 (June 2008), <http://www.f2f.ca.gov/res/pdf/ConveningRecommendationsYouth.pdf>.

85. Khong & Hillel Larsen, *supra* note 7.

86. *Id.*

87. See Badeau, *supra* note 3, at 5 (demonstrating that youth are not always told what “permanency” means).

88. Khong & Hillel Larsen, *supra* note 7.

89. Badeau, *supra* note 3, at 6.

90. Khong & Hillel Larsen, *supra* note 7.

91. ELSTEIN ET AL., *supra* note 11, at 31.

Sample Questions: Approaching Permanency with Child Clients

- If you could live with anyone you wanted, who would you live with?
- Who do you love?
- Who loves you?
- Who do you feel close and connected to?
- Is there a relative with whom you are particularly close? Is there a close family friend whom you like to spend time with?
- Everyone deserves a family, even if their family isn't biologically related to them. What kind of family would you like? Would you like to have sisters? Brothers? Would you like to be the oldest? The youngest?
- If you cannot live with your parents (or siblings), how do you feel about being able to see them in the future?
- Who would you like to spend the holidays with?
- What does adoption mean to you?
- What do you like to do every day? Where would you like to do these things?
- Is staying in your current school important to you?
- Are there any places that you stayed at before that you wish to return to?
- Is there anyone that you would like to live with or spend time with that your social worker might not know about?
- Is there anyone that your social worker looked at before for you to live with and ruled out? If yes, would you like your social worker to take another look at this person?⁹²

VI. COUNSELING OLDER CLIENTS ABOUT PERMANENCY AND
PERMANENT CONNECTIONS

In 2012, over thirty percent of youth in foster care in Minnesota aged out of the child protection system without having been adopted or finding a permanent home.⁹³ Children who leave foster care without a supportive permanent connection in their lives fare much worse than those with supportive permanent

92. Khong & Hillel Larsen, *supra* note 7.

93. In 2012, 36.4% of children in foster care in Minnesota for three years or longer aged out of care or reached their eighteenth birthday without having obtained legal permanency. CHILDREN & FAMILY SERVS., MINN. DEP'T OF HUMAN SERVS., MINNESOTA'S CHILD WELFARE REPORT 2012, § II, at 24 (2013), available at <https://edocs.dhs.state.mn.us/lfservlet/Public/DHS-5408E-ENG>.

connections.⁹⁴ It is extremely important, therefore, to find permanency for older foster children, as opposed to simply preparing the child to live independently.⁹⁵ Thus, while it is important to help prepare an older client for adulthood, it is imperative to continue to find a permanent connection for the client.⁹⁶ While work on an Independent Living Plan begins at age sixteen,⁹⁷ youth are now able to remain in the system until age twenty-one,⁹⁸ and thus there may be increased time to find permanency for a client before she leaves the foster care system.⁹⁹

Sometimes adults give older children the option of saying that they do not want a permanent family.¹⁰⁰ When this happens, a foster care youth may feel that she is not loveable, that no one would want her, that there is no hope for her future, and that she is not important enough for anyone to search for a family for her.¹⁰¹ It is important to explain to older clients that they deserve and need the support and certainty of a family.¹⁰² If a client is open to the idea of counseling, it can be helpful to refer the client to a therapist who works with older youth on the issues surrounding adoption, such as grief, loss, and accountability.¹⁰³

While a formal permanent connection such as adoption or transfer of legal custody is often most beneficial, informal permanent connections can also be very valuable.¹⁰⁴ One way to explore informal permanent connections is through a "Permanency Pact."¹⁰⁵ "A Permanency Pact between a supportive adult and a foster child is a commitment to a long term supportive relationship and often identifies the type of support needed or

94. See THE CHILDREN'S AID SOC'Y, AGING OUT OF FOSTER CARE: YOUTH AGING OUT OF FOSTER CARE FACE POVERTY, HOMELESSNESS AND THE CRIMINAL JUSTICE SYSTEM 2 (n.d.), available at <http://www.childrensaidsociety.org/files/upload-docs/FosterCare.pdf>.

95. Khong & Hillel Larsen, *supra* note 7.

96. *Id.*

97. MINN. STAT. § 260C.212, subdiv. 1(c)(11) (2012).

98. *Id.* § 260C.451, subdiv. 3(a).

99. Khong & Hillel Larsen, *supra* note 7.

100. *Id.*

101. *Id.*

102. See Jen Braun, *Why Bother?*, AM. RADIOWORKS, <http://americanradioworks.publicradio.org/features/fostercare/fl.html> (last visited Dec. 8, 2013).

103. ELSTEIN ET AL., *supra* note 11, at 7–8.

104. Khong & Hillel Larsen, *supra* note 7.

105. *Id.*

offered, such as a home for the holidays, a place to do laundry, or an emergency place to stay.”¹⁰⁶

*Sample Questions: For Older Clients or Those Resistant to Permanency*¹⁰⁷

- Are there important people in your life that you want to stay connected to?
- Do you have any connections with an adult who is a coach or mentor to you?
- Who cares for you when your parents can't? Who pays attention to you? Who looks out for you?
- Who do you share special occasions with? Who believes in you and stands by you?
- Who compliments you and appreciates you?
- Who would you call in the middle of the night if you were in trouble?
- Who would you want to share good or bad news with?
- Tell me about some of your future plans. How do you think an adult can help you accomplish these goals?
- I'm concerned about you because of what I know about teens who leave foster care without a family to fall back on. Do you know any kids who have left foster care? What types of support do they say they need now?
- Would you like a support network of people who care about you after you leave foster care?
- Do you have a Life Book?¹⁰⁸ If not, would you like help in creating one?
- Is there anyone you have lost contact with that you would like to be re-connected with?
- Have you had an opportunity to participate in a group with other youth in foster care (peer support)? If not, is this something that you would be interested in?
- What does your ideal family look like?
- What are your goals for next year and beyond?

106. *Id.*; see also FOSTERCLUB, PERMANENCY PACT (2006), available at https://www.fosterclub.com/sites/default/files/PermPact_2.pdf (describing a permanency pact and providing a sample pact).

107. This list of sample questions is adapted from a similar list found in Khong & Hillel Larsen, *supra* note 7.

108. A Life Book is a pictorial and written representation of the life of a child designed to help a child better understand her background and history. *Id.*; see also *Life Book [Adoption] Law & Legal Definition*, USLEGAL, <http://definitions.uslegal.com/l/life-book-adoption/> (last visited Dec. 9, 2013).

VII. THE IMPORTANCE OF RELATIVE SEARCHES

Relative searches can provide significant placement and permanency options for foster care youth.¹⁰⁹ Child advocates should continually ensure that thorough initial relative searches are completed, documented, and properly reported to the court and that renewed searches are revisited when children languish in care.¹¹⁰

Children in foster care face a variety of significant changes in a relatively short period of time.¹¹¹ In the first initial hours of children being removed from their parents' home, they have encountered numerous unknown individuals.¹¹² These children often do not know where their parents are, and they are often unsure as to where they will be living; however, being placed with a relative can help reduce their anxiety of being removed from their homes.¹¹³

Moreover, "[s]tudies 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."¹¹⁴ Further, "[p]lacement with relatives also serves to protect the child's self-esteem and sense of identity."¹¹⁵ Thus, when children are placed with individuals they know, they can feel more at ease.

Minnesota recognizes the importance of relatives and relative placement for its youth in care. Minnesota statutes define a

109. MINN. DEP'T OF HUMAN SERVS., RELATIVE SEARCH BEST PRACTICE GUIDE 1 (2006), available at <http://www.nrc4tribes.org/files/Relative%20Search%20Guide.pdf>.

110. See generally Jessie Shiffman & Lori D. Semke, *What the Child's Attorney Should Know About Relative Searches*, CLC PRAC. POINT (Children's Law Ctr. of Minn., St. Paul, Minn.), Jan. 12, 2011, available at <http://www.clcmn.org/wp-content/uploads/2009/06/January-2011-Practice-Point.pdf> (discussing the importance of relative searches).

111. Am. Bar Ass'n Section of Litig. Children's Rights Litig. Comm., *Interviewing the Child Client: Approaches and Techniques for a Successful Interview*, YOUTUBE (May 26, 2010), <http://www.youtube.com/watch?v=OYLWkVHvgOM> (Vincent Herman's comments at 9:19).

112. *Id.*

113. Shiffman & Semke, *supra* note 110, at 1.

114. *Id.* (citing MINN. DEP'T OF HUMAN SERVS., *supra* note 109).

115. *Id.*

“relative” 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.”¹¹⁶ This broad definition of relative allows a child to consider more familiar individuals as possible placement options. It is extremely important for child advocates to remember to ask their child clients to identify the important people in their lives.¹¹⁷ Minnesota’s child advocates cannot limit their list of relatives to only blood relatives, but must expand it beyond blood relatives to include friends, neighbors, and other significant individuals.¹¹⁸

When a child first enters the child protection system, Minnesota requires that its social services agencies first consider placement with a relative without delay, based upon the best interests of the child.¹¹⁹ Additionally, once a child is under court jurisdiction, the court must ensure that the social services agency uses “reasonable efforts” to prevent the child’s out-of-home placement, to reunite the family, and to finalize an “alternative placement plan.”¹²⁰ These reasonable efforts must involve due diligence by the social services agency to conduct a relative search to identify and provide notice to adult relatives either prior to the child’s placement or within thirty days after the child’s removal from the parent.¹²¹

A relative search in Minnesota must be comprehensive and it must include both maternal and paternal relatives.¹²² The social services agency has a continuing obligation to “appropriately involve” those relatives who responded to the agency’s relative notice.¹²³ The social services agency must provide detailed notification to a child’s relatives.¹²⁴

116. MINN. STAT. § 260C.007, subdiv. 27 (2012).

117. See Shiffman & Semke, *supra* note 110, at 1; see also MINN. STAT. § 260C.221(a) (requiring the social services agency to gather information from the child “in an age-appropriate manner about who the child considers to be family members and important friends with whom the child has resided or had significant contact”).

118. See Shiffman & Semke, *supra* note 110, at 1.

119. MINN. STAT. § 260C.221(a).

120. *Id.* § 260.012(a); see also *id.* §§ 260C.150, subdiv. 7, 260C.219.

121. *Id.* §§ 260.012(e)(3), 260C.221(a).

122. *Id.* § 260C.221(a).

123. *Id.*

124. *Id.*

Not only must a relative search be comprehensive, but it must last for the first six months following the child's first placement, even if that placement is with a relative.¹²⁵ Despite the Minnesota Juvenile Code's limit on multiple moves for children in care,¹²⁶ placements are disrupted and relatives change their minds about being a permanency option. Thus, it is critical for practitioners to ensure that the relative search is thorough and does not stop simply because a child is placed with a relative.¹²⁷ This practice allows for more options to be explored and thereby increases the likelihood that a permanency option can be found.

Minnesota also requires that the juvenile court review whether the social services agency made proper efforts to conduct the relative search as required under Minnesota Statutes section 260C.221.¹²⁸ No later than three months after the child's placement in foster care, the court must review the social services agency's reported diligent efforts to identify and search for relatives.¹²⁹ The court must order that such efforts continue if the social services agency failed to properly perform its duties.¹³⁰

If the court finds the social services 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.¹³¹ Thus, it is critical for practitioners to be aware of all the important individuals to a youth in care.

The social services agency's relative search requirements are also linked to Minnesota's special-efforts mandate to recruit foster families from children's relatives.¹³² In order for the social services agency to satisfy its mandate to make special recruitment efforts, it must ask the child, parent/guardian, and guardian ad litem about the child's relatives and preferences regarding relatives; contact relatives; request the names of other relatives if necessary; and with consent or court order, consult with others who know the family.¹³³

125. MINN. R. 9560.0535, subpt. 3 (2013).

126. MINN. STAT. § 260C.212, subdiv. 3.

127. See Shiffman & Semke, *supra* note 110, at 4.

128. MINN. STAT. § 260C.193, subdiv. 3(b)(1).

129. *Id.* § 260C.221(c)(1).

130. *Id.* § 260C.202(b); see also MINN. R. 9560.0535, subpt. 3.

131. MINN. STAT. § 260C.193, subdiv. 3(c).

132. *Id.* § 260C.215, subdiv. 1.

133. MINN. R. 9560.0535, subpt. 4.

These requirements seek to ensure that the social services agency is exploring all relative options for children in care. The social services agency satisfies its special efforts requirements if “the child is placed with a relative who is interested in providing a permanent placement for the child” or the court approves the social services agency’s efforts six months following the child’s placement in a residential facility.¹³⁴

Child advocates in Minnesota should ensure that “special efforts” truly occurred consistent with Minnesota’s requirements, and they should request that the court order the relative search to continue if such efforts were not made.¹³⁵

After the initial six-month search is completed, the social services agency is permitted to continue the search only by court order or if doing so would be in the best interests of the child.¹³⁶ Moreover, Minnesota provides that the court may order the social services agency to reopen its search for relatives at any time during the course of the proceedings when it is in the child’s best interests to do so.¹³⁷

A parent of a child placed in foster care may object to a relative search and relative placement for the child.¹³⁸ Minnesota requires the social services agency to evaluate and address a parent’s objection.¹³⁹ If, following the social services agency’s evaluation, a parent continues to object to contact or placement with specific relatives, the social services agency must inform the court of the parent’s objection and the parent’s reasons.¹⁴⁰ The court then must determine whether the objection is consistent with the child’s best interests.¹⁴¹ The social services agency must not contact this relative if the court determines that it would “endanger the parent, guardian, child, sibling, or any family member.”¹⁴² Best practice requires child advocates to ensure their clients’ express

134. MINN. STAT. § 260C.215, subdiv. 1.

135. Shiffman & Semke, *supra* note 110, at 2.

136. MINN. R. 9560.0535, subpt. 3.

137. MINN. STAT. § 260C.221(a).

138. *Id.* § 260C.221(b).

139. *See* MINN. R. 9560.0535, subpt. 2 (listing factors the agency is to consider when evaluating and addressing the parent’s concerns).

140. *Id.*; MINN. STAT. § 260C.221(b).

141. MINN. STAT. §§ 260C.221(b), 260C.193, subdiv. 3(e).

142. *Id.* § 260C.221(b).

wishes are known regarding contact with specific relatives so that a true best-interests determination may be made by the court.¹⁴³

If a child cannot return home and be reunified with her parent, the social services agency is again required to send notice to the child's relatives—"any adult with whom the child is currently residing, any adult with whom the child has resided for one year or longer in the past, and any adults who have maintained a relationship or exercised visitation with the child as identified in the agency case plan."¹⁴⁴ The notice must inform the recipients that a permanent home is being sought for the child; those receiving the notice must indicate their interest in providing a permanent home for the child within thirty days of receipt of the notice or possibly lose the opportunity to be considered for a permanent placement.¹⁴⁵

At this point in the proceedings, the social services agency may ask the court to modify its requirements of sending the required relative notice, or ask the court to completely relieve the agency of the requirements of sending such notice.¹⁴⁶ The court's order regarding the social services agency's notice requirements must be "consistent with the best interests, safety, permanency, and welfare of the child."¹⁴⁷ Moreover, Minnesota requires that reasonable efforts to finalize an adoption of a child include completing or updating the relative search under Minnesota Statutes section 260C.221 and requiring an updated search if there is no identified prospective adoptive placement or if the child has been removed from the home of an adopting parent.¹⁴⁸ Again, best practice and Minnesota's Juvenile Code dictate that the social services agency continues relative notification at this stage of the proceedings so that all relatives are notified and all possible permanent resources for the child are explored.

Minnesota law requires that placements with relatives and familiar individuals be the first consideration when foster care and permanent placement decisions are being made for children in care.¹⁴⁹ Relative placements increase stability and preserve a child's

143. Shiffman & Semke, *supra* note 110, at 3-4.

144. MINN. STAT. § 260C.221 (g).

145. *Id.*

146. *Id.* § 260C.221 (f).

147. *Id.*

148. *Id.* § 260C.605, subdiv. 1(d)(3).

149. *See id.* §§ 260.012, 260C.150, 260C.219, 260C.221, 260C.605.

sense of family identity.¹⁵⁰ These placements can also “help children avoid the feeling of being abandoned after being let down by their parents.”¹⁵¹ Renewed relative searches are also permitted if a new placement is needed or permanency has not been achieved for a youth in care.¹⁵² Thus, attorneys representing foster care youth must ensure that social services agencies complete thorough relative searches early in the court process and revisit those searches when placements are disrupted and additional permanency options are needed.

VIII. CONCURRENT PERMANENCY PLANNING

Minnesota defines concurrent permanency planning by the social services agency as developing an alternative permanency plan for children who are placed out of the home of their parents pursuant to a court order while making reasonable efforts to reunify the children with the family.¹⁵³ In practice, this means that in addition to the social services agency’s reunification plan, a concurrent alternative permanency plan must also be developed. The concept requires a concurrent and not sequential permanency plan for youth in care.¹⁵⁴

A concurrent permanency plan should simultaneously provide services to a child’s parent to improve the conditions which led to the child’s removal from the home so that the child can safely return home and provide placement of the child with a family that will support reunification while committing to being legally responsible for the child in the event the child cannot return home.¹⁵⁵

Minnesota’s goals for concurrent planning are to reduce delays in attaining permanency for children in care, to reduce the number of placements a child in care experiences, and to decrease

150. Shiffman & Semke, *supra* note 110, at 7.

151. *Id.*

152. MINN. STAT. §§ 260C.221(a), 260C.605, subdiv. 1(d)(3).

153. *Id.* § 260C.223, subdiv. 1.

154. Am. Bar Ass’n Permanency Barriers Project, *The Role of Courts and Attorneys in Concurrent Planning*, PA. OFF. CHILD. & FAM. CTS., <http://www.ocfcpcourts.us/assets/files/list-764/file-961.pdf> (last visited Mar. 11, 2014).

155. MINN. DEP’T OF HUMAN SERVS., PRACTICE GUIDE FOR CONCURRENT PERMANENCY PLANNING (2006), available at <http://www.nrcpfc.org/cpt/docs/Minnesota%20Guide%20concurrentplanning.pdf>.

children's average length of stay in out-of-home care.¹⁵⁶ Minnesota's present concurrent permanency planning model "involves using family engagement, relative searches, targeted case practice and legal strategies to achieve timely permanency."¹⁵⁷ Moreover, Minnesota's Department of Human Services encourages the use of the following national concurrent practices:

- Frequent parent-child visitation;
- Providing intensive parenting services for birth parents;
- Review of relevant factors that may expedite or delay reunification;
- Full disclosure to birth parents early in the process of the importance of their involvement in planning for the return of the children and the legal ramifications if they are not involved;
- Identifying all family members early in the process and engaging them in case planning and visitation;
- Encouraging collaboration between all family members and foster parents;
- Convening Family Group Decision Making meetings to plan for the safety, permanency, and well-being of children; and
- Recruiting, training, and maintaining relative and nonrelative foster families.¹⁵⁸

Concurrent planning is not a new concept.¹⁵⁹ Moreover, ASFA specifically authorized the use of concurrent permanency planning.¹⁶⁰ While concurrent planning is not new, recent

156. *Id.*; see also MINN. STAT. § 260C.223, subdiv. 1.

157. MINN. DEP'T OF HUMAN SERVS., CONCURRENT PERMANENCY PLANNING: REDUCING TIME IN FOSTER CARE 1 (2012), available at <https://edocs.dhs.state.mn.us/lfservlet/Public/DHS-4926-ENG>.

158. *Id.* at 1-2.

159. Linda Katz, *Effective Permanency Planning for Children in Foster Care*, 35 SOC. WORK 220, 220 (1990); see also CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVS., CONCURRENT PLANNING: WHAT THE EVIDENCE SHOWS 3 (2012), available at https://www.childwelfare.gov/pubs/issue_briefs/concurrent_evidence/concurrent_evidence.pdf (explaining that concurrent planning began in the 1980s and has grown steadily over the last two decades).

160. Adoption and Safe Families Act, Pub. L. No. 105-89, 111 Stat. 2115, 2117 (1997) (codified at 42 U.S.C. § 671(a)(15)(F) (2006)) ("[R]easonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts [to preserve and reunify families].").

literature has produced “little in the way of outcomes or evidence-based practice.”¹⁶¹

Although there are limited quantitative studies, a Connecticut case record examination of 640 children “found that if the foster family with whom the child is living at the time of the [termination of parental rights] is rejected as the adoptive family, the child is 66 percent less likely to ever be adopted.”¹⁶² Further, it has been noted that “[b]y every measure, children adopted from foster care have better outcomes than children who age out.”¹⁶³ Thus, it is clear that achieving permanency early in the process is better for our foster care youth.

In 2012, Minnesota’s Juvenile Code was significantly amended.¹⁶⁴ Minnesota’s amended code specifically addresses concurrent planning in several sections.¹⁶⁵ Minnesota provides a concurrent planning roadmap for its courts and social services agencies when it states:

Reasonable efforts to place a child for adoption or in another permanent placement may be made concurrently with reasonable efforts to prevent placement or to reunify the child with the parent or guardian from whom the child was removed. When the responsible social services agency decides to concurrently make reasonable efforts for both reunification and permanent placement away from the parent under paragraph (a), the agency shall disclose its decision and both plans for concurrent

161. CHILD WELFARE INFO. GATEWAY, *supra* note 159, at 5 (citing Joan R. Rycraft & Guillermina Benavides, *Concurrent Planning: In Whose Interest?*, in NAT’L COUNCIL FOR ADOPTION, ADOPTION FACTBOOK V 257 (Elisa A. Rosman et al. eds., 2011), and Amy D’Andrade & Jill Duerr Berrick, *When Policy Meets Practice: The Untested Effects on Reunification and Adoption*, 33 J. SOC. & SOC. WELFARE 31 (2006)).

162. *Id.* at 5–6 (citing Greita Cushing & Sarah G. Greenblatt, *Vulnerability to Foster Care Drift After the Termination of Parental Rights*, 19 RES. ON SOC. WORK PRAC. 694 (2009)).

163. CHILD TRENDS, A NATIONAL EVALUATION OF THE IMPACT OF CHILD-FOCUSED RECRUITMENT ON FOSTER CARE ADOPTION: EXECUTIVE SUMMARY 1 (2011), available at <https://www.davethomasfoundation.org/about-foster-care-adoption/research/read-the-research/executive-summary/> (“The human cost of children not being adopted from foster care is staggering—with youth experiencing higher rate of incarceration, homelessness, unintended pregnancy and truncated educations.”).

164. *See generally* Act of April 23, 2012, ch. 216, 2012 Minn. Laws. 380 (amending many portions of the juvenile code).

165. *See* MINN. STAT. §§ 260.012(a), (k), 260C.201, subdiv. 2(c), 260C.605, subdiv. 1(b) (2012).

reasonable efforts to all parties and the court. When the agency discloses its decision to proceed on both plans for reunification and permanent placement away from the parent, the court's review of the agency's reasonable efforts shall include the agency's efforts under both plans.¹⁶⁶

Thus, it is clear that Minnesota's statutory amendments seek to ensure that Minnesota's social services agencies consider concurrent planning as part of their "reasonable efforts" requirements.

The American Bar Association Center on Children and the Law prepared a Concurrent Planning Hearing Checklist in 2007. The ABA's checklist noted that the concurrent plan should be discussed at "all hearings after the child has been in an out-of-home placement for 60 days."¹⁶⁷ The checklist also encourages asking the following questions at the hearings:

- Is the current caretaker willing to consider adoption?
- Have all relatives been explored? Are any of them willing to adopt or if not be a long term caretaker?
- If adoption has been ruled out, why?
- If the current caretakers are not willing to adopt, are they willing to be a permanent placement under another permanency goal?
- What steps have been taken toward achieving the concurrent plan, i.e., identifying and approving permanent caretakers?¹⁶⁸

Children's Law Center of Minnesota (CLC) provides direct representation for youth in foster care.¹⁶⁹ CLC is the only private organization in Minnesota that provides direct pro bono legal

166. *Id.* § 260.012(k).

167. Am. Bar Ass'n Ctr. on Children & the Law, *Concurrent Planning Hearing Checklist*, PA. OFF. CHILD. & FAM. CTS. 2 (2007), <http://www.ocfcpacourts.us/assets/files/list-764/file-962.pdf>.

168. *Id.*

169. CLC was founded in 1995 to increase the intensity and effectiveness of child advocacy in Minnesota. CLC's mission statement is as follows: "Children's Law Center of Minnesota is a statewide non-profit organization created to promote the rights and interests of children, especially children of color and children with disabilities, in the judicial, child welfare, health care, and education systems." CHILD. L. CENTER MINN., <http://www.clcmn.org/> (last visited Feb. 8, 2014). CLC carries out its mission by providing legal advocacy through direct representation to youth in foster care, systemic reform and education.

representation exclusively to children and young people in foster care. CLC's direct representation program utilizes a multi-disciplinary approach. This approach pairs staff attorneys and social workers with each volunteer attorney to provide extensive consultation and assistance so CLC child clients understand their legal options and are empowered to voice their opinions in the child protection cases that affect their lives.

As part of its practice, CLC seeks to utilize permanency best practices for its clients. As part of this permanency practice model, CLC staff internally identifies cases where concurrent planning is appropriate. In these cases, CLC staff social workers and staff attorneys address permanency with the child client during the first client meeting or postpone the conversation to a later date if the client appears to be resistant to the conversation. The practice model also provides the child's volunteer attorney with additional resources, documents, tools, and talking points, in order to have permanency conversations with the youth during subsequent client meetings.

Discussions with foster care youth at this stage are similar to the previously provided permanency questions and can include having the youth complete the following sentences:

- If I could have things my way, I would like to live with _____ because _____.
- If I can't live with Mom, I would want to live with _____.
- I feel safe with _____.
- _____ is important to me.

It is important to remember that permanency discussions are ongoing discussions that do not occur in a vacuum. When youth are comfortable talking, then questions relating to alternative placements can be asked. Conversations about permanency should happen early in the attorney-client relationship and should continue throughout the life of the case. Best practice requires flexibility and patience.

A child's attorney should have an understanding of her client's wishes regarding permanency following client communications and discussions with other important figures in the client's life. Once the client's permanency preferences are known, the attorney seeks the client's permission to share the client's express wishes as well as the names of individuals identified by the client as possible permanency resources. Upon receiving the client's permission to share the client's express wishes and identified permanency

options, the attorney communicates that information to the social services agency so that the child's identified relatives can be included on the social services agency's "relative search report" and explored as possible permanency options.

If relevant documents related to concurrent planning—such as the results of relative searches and the out-of-home case plans—are missing from an attorney's file, these documents are requested from the social services agency. The attorney reviews the client's case plan to determine if it is consistent with the child's wishes for the outcome of the case. If it appears that the case plan is inconsistent with the child's wishes, the child's attorney will meet with the client to verify the client's wishes and gain authority to request a modified case plan.

If the social services agency does not take any action regarding the client's wishes for exploring relative placement or the client's case plan, the child's attorney then considers what pleadings need to be filed to compel exploration of the proposed relatives or to modify the child's case plan as requested by the client.¹⁷⁰

This permanency practice model incorporates youth-driven best practices to help identify relatives for youth in care, seeks to achieve successful placements with relatives early in the judicial process, and empowers youth in their proceedings.

IX. USE OF CHILD-SPECIFIC RECRUITMENT FOR CHILDREN IN FOSTER CARE

In 2012, Minnesota changed its preferred permanency disposition from transfers of legal custody to termination of parental rights and adoption or guardianship to the commissioner of human services through a consent to adopt.¹⁷¹ A study conducted by the Dave Thomas Foundation for Adoption, the Wendy's Wonderful Kids Signature Program, found that "the use of innovative strategies [such as child-specific recruitment] can lead to higher rates of adoption, especially for [youth] for whom it has traditionally been difficult to find permanent adoptive families."¹⁷²

170. See MINN. STAT. §§ 260C.221, 260C.212, 260C.203 (2012) to support such motions.

171. Act of Apr. 23, 2012, ch. 216, art. 4, § 30, 2012 Minn. Laws 475.

172. CHILD TRENDS, *supra* note 163, at 2; see also Sue Pearlmutter et al., *Adopt Cuyahoga's Kids: Securing Adoptive Placements for Older Youth in Cuyahoga County's Public Child Welfare System*, 26 PROTECTING CHILD. 75, 82 (2011), available at <http://>

Thus, if Minnesota continues its permanency preference of adoption, the combination of concurrent planning in the beginning of the case and child-specific recruitment later in the case may help children find successful adoptive homes.

Minnesota encourages child-specific recruitment through its Public Private Adoption Initiative (PPAI). Minnesota's PPAI is a partnership between the Minnesota Department of Human Services, county and tribal social services agencies, and licensed, private adoption agencies, with a goal of placing children into adoptive homes.¹⁷³ To achieve this goal, there are eight private adoption agencies that have contracted with Minnesota's Department of Human Services to enhance existing adoption resources.¹⁷⁴ The agencies work with county and tribal social services agencies to recruit adoptive families, provide home studies, and train and educate prospective parents about adoption.¹⁷⁵ They also help place children in adoptive homes, provide support throughout the adoption process, and provide short-term post-adoption services.¹⁷⁶

Populations in foster care with the greatest need for child recruitment services assistance are children of color, sibling groups, children with significant special needs, school-aged children, and adolescents.¹⁷⁷ These children create unique challenges to the adoption process.¹⁷⁸ Bringing more resources to the adoption process, such as child-specific recruiters, allows potential adoptive families to take the time to get to know their potential new child as well as allows the child to be part of the process.¹⁷⁹ Including youth

www.americanhumane.org/assets/pdfs/children/protecting-children-journal/pc-26-1.pdf (discussing the benefits of child-specific recruitment).

173. MINN. DEP'T OF HUMAN SERVS., PUBLIC PRIVATE ADOPTION INITIATIVE: WORKING TOGETHER TO HELP FAMILIES 1 (2013), available at <http://www.mnadopt.org/downloads/PPAI2013.pdf>.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. See Jenna Skees & Anne Tyler Gueinzus, *Using the Public Private Adoption Initiative and Child-Specific Recruitment to Achieve Successful Adoptive Placements for Children in Foster Care*, CLC PRAC. POINT (Children's Law Ctr. of Minn., St. Paul, Minn.) Mar. 22, 2012, at 2-3, available at <http://www.clcmn.org/wp-content/uploads/2009/06/March-2012-Practice-Point.pdf>.

179. See KAREN MALM ET AL., CHILD TRENDS, EVALUATION REPORT SUMMARY: THE IMPACT OF CHILD-FOCUSED RECRUITMENT ON FOSTER CARE ADOPTION 23 (2011), <https://www.davethomasfoundation.org/about-foster-care-adoption/research>

in the adoption process and providing clarity to the youth about the process are significant factors in the adoption recruitment process.¹⁸⁰ Thus, permitting the youth to understand adoption and how the process works may allow the child to be comfortable enough to be able to discuss her feelings and concerns about adoption.¹⁸¹

Best practice requires attorneys in talking with their clients to recognize the clients' concerns about adoption.¹⁸² Once these concerns are known and the client gives permission, the attorney can then request the court to order the county social services agency to use a child-specific recruiter to ensure that her client's adoption process receives the necessary support and attention needed to find an appropriate adoptive resource.¹⁸³

Children deserve stable, permanent homes. They also deserve deliberate planning and parents who understand their unique needs and circumstances. Adoptions completed to achieve higher permanency numbers without careful, deliberate, and full disclosure on the child's timeline are a disservice to Minnesota's state wards. If an adoption fails and a youth returns to foster care, the foster care system has failed that child.

X. REPRESENTING THE WHOLE CHILD IN ORDER TO ACHIEVE POSITIVE PERMANENCY OUTCOMES

Children in foster care suffer from post-traumatic stress disorder (PTSD) at almost twice the rate of combat veterans.¹⁸⁴ Children come into foster care for a variety of reasons. Some have been beaten, degraded, and raped. Others have been born with effects from a mother who abused alcohol or drugs during her

/read-the-research/evaluation-report-summary/ ("[P]arents need assistance in understanding children's needs and how to best work with the children both pre- and post-placement.").

180. *Id.*

181. Skees & Gueinzius, *supra* note 178, at 3; see ELSTEIN ET AL., *supra* note 11, at 8.

182. Skees & Gueinzius, *supra* note 178, at 3.

183. *Id.*

184. See PETER J. PECORA ET AL., CASEY FAMILY PROGRAMS, IMPROVING FAMILY FOSTER CARE: FINDINGS FROM THE NORTHWEST FOSTER CARE ALUMNI STUDY 32 (2005), available at http://www.casey.org/Resources/Publications/pdf/ImprovingFamilyFosterCare_FR.pdf. Children in foster care experience PTSD at six times the rate of the general population and nearly twice the rate of Iraq and Vietnam War veterans. *See id.*

pregnancy. All have been abused or neglected in some way and then are thrust into a complex and confusing legal system that seeks to determine their best interests.

Every child in foster care is different, and every child has his or her own unique set of needs, wants, and desires. Most children want their parents to get better so that they can go home.¹⁸⁵ Those children are often well aware that they may not be permitted to go home.

Children in foster care have been let down by most adults in their lives.¹⁸⁶ Often telling their stories has resulted in them being removed from their homes, placed with strangers, and then not believed or blamed for telling family secrets. It is not surprising that they are often slow to trust.

Children in foster care also have multiple needs. Most have mental health needs due to the trauma they have experienced.¹⁸⁷ Others may need dental and medical care due to years of neglect. Still others need help in school due to placement changes.¹⁸⁸ Attorneys representing youth in care discover a youth's individual needs when they meet the youth, read court reports and assessments, and talk to the other parties in the case. As an attorney discovers the various components of her child client, she then begins to understand the "whole child."¹⁸⁹ It is only when this "whole child" is explored that the child begins to trust her attorney.

Once the practitioner has the child's trust, she can then build on that trust and learn more about who and what would make the child feel safe and secure. For example, if a child had numerous

185. See, e.g., Am. Bar Ass'n Section of Litig. Children's Rights Litig. Comm., *supra* note 111, at 33:05.

186. *Id.* at 3:04.

187. See Susan J. Ko et al., *Creating Trauma-Informed Systems: Child Welfare, Education, First Responders, Health Care, Juvenile Justice*, 39 PROF. PSYCHOL.: RES. & PRAC. 396, 397-98 (2008) ("[C]hildren in the child welfare system, especially those in foster care, have a higher prevalence of mental health problems than the general population.").

188. See U.S. DEP'T OF EDUC., EDUCATION FOR HOMELESS CHILDREN AND YOUTH PROGRAM: TITLE VII-B OF THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT AS AMENDED BY THE NO CHILD LEFT BEHIND ACT OF 2001, DRAFT NON-REGULATORY GUIDANCE 30 (2003). A child may lose four to six months of academic progress with every move to a new school. *Id.*

189. Whole child representation is a holistic approach to child representation. CLC utilizes this approach in its view that a youth in foster care cannot be represented without consideration of all aspects of the child's needs, background, and experiences in other systems.

medical needs, perhaps a former personal care attendant is a permanency option. If a child loves to read, perhaps the librarian at her previous elementary school is a permanency option. Better permanency options and placements can be made once the attorney knows the entire child, the "whole child." Such child representation requires time, commitment, and collaboration.

XI. CONCLUSION

Minnesota and federal child protection laws focus on permanency and the best interests of the children in the state's care.¹⁹⁰ Permanency cannot be successfully achieved without deliberate, thorough, and consistent work to understand the children in care, their relatives, family history, individual needs, and express wishes. Child practitioners cannot advocate for permanency if their clients are not included in these permanency discussions and provided opportunities to identify permanent resources.

190. See 42 U.S.C. §§ 612, 627, 628, 670-676, 1320b-2, 1320b-3 (2006) (codifying the Adoption Assistance and Child Welfare Act of 1980); *id.* §§ 673b, 678, 679b (codifying the Adoption and Safe Families Act of 1997); *id.* §§ 5101, 5102, 5104-5106, 5106a, 5106c-5106i, 5116, 5116a-5116i (codifying the Child Abuse Prevention and Treatment Act (CAPTA)); Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (codified as amended at scattered sections of 42 U.S.C.); Child Family Services Improvement and Innovation Act, Pub. L. No. 112-34, 125 Stat. 369 (2011); see also MINN. STAT. §§ 260C.001, .193, .201, .212, .503-.521 (2012).

CLC PRACTICE POINT

No. 13

February 10, 2011(updated January 2013)

Approaching and Advocating the Issue of Permanency

By Suriya Khong, University of Minnesota Law School (JD Candidate, 2011) and Julia Hillel Larsen, CLC Staff Attorney
(Also many thanks to CLC Volunteer Jonathan Schaan for his contribution to this practice point)

Permanency is both a process and a result wherein children locate and create a lifelong supportive, secure, safe, and stable parenting relationship with at least one unconditionally committed and caring adult.¹ It is an intimate and belonging relationship in which there is mutual participation and understanding that the relationship is intended to last forever.² In general terms, permanency is a sense of belonging—it refers both to children's membership in a family and to their attachments to the individuals who matter most to them. In legal terms, permanency refers to the child's permanent familial status created by a court order: reunification, transfer of legal custody, or termination of parental rights and adoption.³

For foster children who have been placed in out-of-home care, the instability of multiple, prolonged, and/or unstable foster care placements can have lasting effects upon a child's sense of belonging and emotional well-being.⁴ Finding permanency that is safe and secure for a child is crucial to a child's development. It also is extremely important because those who age out of the system without a permanent connection to a loving family or adult fare much worse in many aspects of life.⁵ Planning for permanency should begin the moment children are placed into out-of-home care and continue until the very end of their involvement in the foster care system. Informing your child client about their permanency options, engaging them in real conversations about permanency, ensuring that their express wishes are heard in court and building support of your client's position through investigation of facts are all essential to effectively advocate for your client.

Types of Legal Permanency through the Eyes of a Child Client

Reunification

Reunifying a child with his or her legal custodian is often the preferred outcome of children in out-of-home placements. However, reunification is not always a real option, so it is important to concurrently engage in

¹ California Permanency for Youth Project, <http://www.senecacenter.org/files/cpyy/Files/DefinitionPermanency12-01-07.pdf> (last visited Jan. 26, 2011).

² Sue Hoag Badeau, Casey Family Programs, *Permanency Values Training: Who Wouldn't Want a Family?* (2009).

³ Minn. Stat. § 260C.503; Minn. Stat. § 260C.513 (2012).

⁴ Rhode Island Kids Count, Issue Brief # 36, *Achieving Permanency for Children and Youth in Foster Care* (May 2008), <http://www.rikidscount.org/matriarch/documents/Permanency%20IB%281%29.pdf> (last visited Jan. 26, 2011).

⁵ A recent Chapin Hall study showed that of the 23- or 24- year-olds surveyed who had left foster care without a permanent connection, close to 40% had been homeless or "couch surfed," nearly 25% had not earned their high school diploma or GED, only around 50% were currently employed, 67% of women had become pregnant, and 45% of men had been incarcerated. Mark E. Courtney et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 23 and 24*, Chapin Hall at the University of Chicago (2010), http://www.chapinhall.org/sites/default/files/Midwest_Study_Age_23_24.pdf (last visited Jan. 26, 2011).

contingency planning with your client regarding other permanency options.⁶ If your client is placed out of the home and wants visits with family, you should ardently advocate for visitation since visits can increase the odds that permanency will occur faster.⁷

Termination of Parental Rights and Adoption

Uncovering your client's true thoughts about termination of their parent's parental rights and adoption may be difficult, as children often experience conflicted feelings about adoption. Many children in out-of-home placements continue to feel a sense of loyalty to their birth family, regardless of the abuse or neglect they may have suffered while in their parents' care. Because of this, children in foster care may be unwilling to give up hope that their parents will change or they may feel guilty for wanting to "move on." Assuring clients that they do not have to give up every emotional relationship from their past in order to explore a potential new future will enable many young people to move forward and consider adoption anew.⁸ When discussing adoption with your clients, it is therefore extremely important to talk about contact agreements, which are legal documents that may enable your client to maintain scheduled visitation with siblings, extended family and even birth parents.⁹ If your clients are concerned about being adopted because adoption will sever the communication they currently have with their biological families, contact agreements may remove this potential roadblock to permanency.

Another common fear surrounding adoption arises when children in foster care internalize the suffering they have been subjected to, leading them to believe that they do not deserve a family or that they are not good enough to be accepted by others. Such fears may lead children to reject potential adoptive families before the families reject them. Using questions that enable youth to elaborate on the reasons behind their aversion to adoption helps clients make truly informed decisions about the permanency options available.¹⁰

Transfer of Legal Custody

While adoption is often considered the best permanency option for children who cannot or do not want to return to their parents' care, it is just one option which supports lifelong connections between youth and stable, caring adults. A transfer of custody is similar to adoption in that it provides a child with permanency, stability, and a caring family, but it does not require a termination of the parents' parental rights. Legal custodians are given the right to enroll the child in school, obtain medical care for the child, and even seek child support from a child's parent. Modifications to transfers of legal custody may be made upon a motion and showing of a substantial change in circumstances.¹¹ Thus, transfers of legal custody may be the best option for children who want to ensure their parents are granted visitation rights or for children who hope to be reunified with their parents in the future.

⁶ National Resource Center for Foster Care and Permanency Planning at the Hunter College School of Social Work and Casey Family Services, *Permanence for Young People Framework* (August 10, 2004). Concurrent Permanency Planning emphasizes the goal of family reunification, while simultaneously establishing an alternative permanency plan to be implemented if a child can't safely return to their biological parents. Minn. Stat. § 260C.223 (2012). The goals of concurrent planning are to achieve early permanency for children, decrease the child's length of stay in foster care, reduce the number of moves a child makes in foster care and develop a group of families who will work towards reunification and also serve as permanent families for the child. *Id.*

⁷ One study found that each day of parental visitation per week tripled the odds of a permanent placement within one year. Concurrent Planning: What Evidence Shows, Issue Brief, U.S. Department of Health and Human Services, at 5 (April 2005), http://childwelfare.gov/pubs/issue_briefs/concurrent_evidence.pdf (last visited Jan. 26, 2011).

⁸ Peggy Slater, *Making the Case for Ongoing Connections Between Youth and Those Who Matter to Them—Before Permanency and Beyond* (December 2006).

⁹ Contact agreements can be worked out before an adoption is finalized and the type of contact exists in many different forms such as letters exchanged through an agency or monitored by the parent, phone calls, emails, occasional supervised visits, designated holidays spent together, regular visits outside the home, an inclusion of a special person in the permanent family's "extended family" or all of the above in any combination that works. *Id.* See Minn. Stat. §§ 259.58; 260C.619; (2012). Communication or contact agreements.

¹⁰ See "Sample Questions" below for examples of how to engage children in discussions about permanency.

¹¹ Minn. Stat. § 260C.521, subd. 2 (2012).

Engaging Youth as Participants in Permanency

Because youth are often the best resource in identifying potential permanent families,¹² permanency efforts should be “youth-driven, family-focused, culturally competent, continuous, and approached with the highest degree of urgency.”¹³ When discussing permanency with your clients, it is necessary to explain what permanency means so that each young person may make an informed decision about his or her future permanent placement. Remember, not all foster children will want to obtain the same permanent outcome and not all youth in out-of-home placements will be granted their express desires. Regardless, it is essential that you express your client’s wishes to the court, assuming you have your client’s permission to share his or her position.

Many times those involved in your child client’s case will throw the word permanency around without ever explaining what it means to your client. You should discuss what permanency means with your client. You should explain that permanence is not a place or a placement, but a state of mind of feeling connected to someone who will miss you when you don’t show up or a person who you can count on unconditionally. You can empower your child client to choose their lifelong family connections and make them legal.¹⁴ You will also need to explain all these different legal permanency options to your client in a way that they can fully understand.

Sample Questions: Approaching Permanency with Child Clients

- If you could live with anyone you wanted, who would you live with?
- Who do you love?
- Who loves you?
- Who do you feel close and connected to?
- Is there a relative with whom you are particularly close? Is there a close family friend who you like to spend time with?
- Everyone deserves a family, even if their family isn’t biologically related to them. What kind of family would you like? Would you like to have sisters? Brothers? Would you like to be the oldest? The youngest?
- If you cannot live with your parents (or siblings), how do you feel about being able to see them in the future?
- Who would you like to spend the holidays with?
- What does adoption mean to you?
- What do you like to do everyday? Where would you like to do these things?
- Is staying in your current school important to you?
- Are there any places that you stayed at before that you wish to return to?

¹² 2008 National Convening on Youth Performance, Recommendations of Youth and Young Adults, <http://www.f2f.ca.gov/res/pdf/ConveningRecommendationsYouth.pdf> (last visited (Jan. 26, 2011)).

¹³ National Resource Center for Foster Care and Permanency Planning at the Hunter College School of Social Work and Casey Family Services, *supra*,

note 6.

¹⁴ Badeau, *supra*, note 2.

- Is there anyone that you would like to live with or spend time with that your social worker might not know about?
- Is there anyone that your social worker looked at before for you to live with and ruled out? If yes, would you like your social worker to take another look at this person?

Counseling Older Clients about Permanency

In 2010, approximately 36% of CLC's clients aged out of the child protection system without having been adopted or found a permanent home. As noted above, children who leave foster care without a supportive permanent connection in their lives fare much worse.¹⁵ It is extremely important therefore to find permanency for older foster children, as opposed to simply preparing the child for living independently. Thus, while it is important to help prepare your older client to transition to living independently, it is imperative to continue to find a permanent connection in your client's life. While work on an Independent Living Plan begins at age 16, youth are now able to remain in the system until age 21,¹⁶ and thus there may be increased time to find permanency for a client before they leave the system.

Sometimes adults give older children the option of saying that they don't want a permanent family. When this happens, the child may feel that they are not loveable, that no one would want them, that there is no hope for the child's future and that the child is not important enough for anyone to search for a family for the child.¹⁷ It is important to explain to older clients that they deserve and need the support and certainty of a family.¹⁸ While a formal permanent connection such as adoption or transfer of legal custody is often most beneficial, informal permanent connections can also be very useful. One way to explore informal permanent connections is through a "Permanency Pact."¹⁹ A Permanency Pact between a supportive adult and a foster child is a commitment to a long term supportive relationship and often identifies the type of support needed or offered, such as a home for the holidays, a place to do laundry or an emergency place to stay.

Additional sample questions for older clients or those resistant to permanency include the following:

- Are there important people in your life that you want to stay connected to?
- Who would you call in the middle of the night if you were in trouble?
- Who would you want to share good or bad news with?
- Tell me about some of your future plans. How do you envision an adult helping you accomplish those goals?
- I'm concerned about you because of what I know about teens who leave foster care without a family to fall back on. Do you know any kids who have left foster care? What types of support do they say they need now?
- Would you like a support network of people who care about you after you leave foster care?

¹⁵ See, The Children's Aid Society, *Aging Out of Foster Care: Youth Aging Out of Foster Care Face Poverty, Homelessness and the Criminal Justice System*, 2, <http://www.childrensaidsociety.org/files/upload-docs/FosterCare.pdf> (last visited Jan. 26, 2011).

¹⁶ Minn. Stat. §§ 260C.451; 260C.212, subd. 1(c)(11) (2012).

¹⁷ Badeau, *supra*, note 2.

¹⁸ See Jen Braun, *Ampersand Families*, American RadioWorks, *Why Bother?* (Nov. 2007).

¹⁹ CLC has samples of permanency pacts. Please contact our office to get a copy of one.

- Do you have a Life Book?²⁰ If not would you like help in creating one?
- Is there anyone you have lost contact with that you would like to be re-connected with?
- Have you had an opportunity to participate in a group with other youth in foster care (peer support)? If not, is this something that you would be interested in?

The Permanency Process

When Must Permanency Be Reached?

Generally, the court must conduct a permanency progress hearing no later than six months after the child was placed out of their home.²¹ The court is required to commence a proceeding to determine the permanent status of a child in out-of-home placement no later than 12 months after the child is placed in foster care or the care of a noncustodial parent.²² While this timeline may be extended,²³ it is important to be aware of counties' statutory obligations to ensure that foster children are provided with a safe, stable and lifelong home as soon as possible.

If the legal permanency determination reached is termination of parental rights, then the agency must make specific recruitment efforts to find an adoptive family or other permanent plan for the child. An in-court appearance hearing must be held every 90 days following termination of parental rights to review the agency's progress and efforts to find an adoptive placement or other placement living arrangement for the child.²⁴

What can you do to advocate for your client?

Given the importance of permanency, it is essential that you be pro-active in working toward permanency for your client.

- For those children who have become State Wards, check to see if your client is listed on the State Adoption Exchange.
- Request a copy of the adoption recruitment plan for your client. If there is not a recruitment plan, ask when a referral will be made and whether Public/Private Adoption Initiative (PPAI) services are being utilized.²⁵ Emphasize that PPAI services are available at no cost to the county.
- Check to see whether your client's current or past foster home is an adoptive resource. If it is, find out the target date for conversion. If not, find out what ways the foster home is going to support the transition to an adoptive home.
- Consider what steps you and others are taking to provide the youth with a support network.²⁶

²⁰ A Life Book is a pictorial and written representation of the life of a child designed to help a child better understand his/her background and history.

²¹ Minn. Stat. § 260C.204(a) (2012).

²² Minn. Stat. § 260C.503 subd. 1 (2012).

²³ Minn. Stat. § 260C.503, subd. 3(b)(2). This is granted under limited circumstances.

²⁴ Minn. Stat. § 260C.317, subd. 3(c) (2012).

²⁵ Through the PPAI, private adoption agencies under contract with the state provide adoption services to state wards and the families who hope to adopt them. The goal is to ensure that children are placed in adoptive homes quickly, and they and their families receive the support they need.

²⁶ Badeau, *supra*, note 2.

- Identify barriers that may be preventing your client from achieving permanency.
- If your client is receiving mental health services, examine how well the therapist understands the different permanency options and the importance of permanency for all youth.
- Examine when and what has been done to help your client identify a permanent connection. Ask which adults have a healthy relationship with the child.
- Explore what provisions have been made for visits with the child's family or other important adult connections.

It is imperative that you build support for your client's position and the best way to do this is to investigate the facts.

- Interview the parties in the case such as the birth family, kin and the resource family.
- Obtain all your client's records, which include reports from social services, psychiatrists, psychologists, medical doctors, law enforcement, schools and Guardians ad Litem. Contact any Guardians ad Litem and caseworkers for background information.
- Examine all assessments and reports carefully. Identify whether or not recommended services are relevant to your client's needs.
- Address issues in court that may be blocking your client from achieving permanency.

Conclusion

While it is important to be respectful of your client's views on permanency, you must ensure they are adequately informed about all the options available to them so that they can become real players in the judicial process. Research shows that legal representation of children has a positive effect on permanency outcomes.²⁷ Engaging your clients in real conversations about permanency and describing to them what each option entails is an important part of working with and advocating for children in the foster care system.

²⁷ Center on Children and the Law, Court Works, Vol. 10, Issue 3, (June 2008).

Overview of State Ward Process: New Adoption Provisions for Children Under the Guardianship of the Commissioner

*By Melissa Panzer, University of Iowa College of Law (J.D. Candidate, 2013)
and Managing Attorney, Anne Tyler Gueinzus*

State wards, or children “under guardianship of the Commissioner of the Minnesota Department of Human Services,” are children whose parents’ parental rights have been terminated by the court. State wards live in foster care, an institutional group home, or a residential treatment center until either adoption or termination of court jurisdiction. The state stands *in loco parentis*, or “in place of parents,” for the child through the state’s social service agencies. The Minnesota Department of Human Service’s (DHS) goal is to find permanent homes, preferably through adoption, for all children under state guardianship. As of September 1, 2011, there were 823 Minnesota children under guardianship of the Commissioner of the Minnesota Department of Human Services, hereinafter “Commissioner”.¹

On August 1, 2012, Minnesota updated and consolidated many sections of its Juvenile Code regarding adoption of state wards. The primary changes are to Chapters 259, 260, and 260C. All procedures for judicial review and finalization of adoption for state wards are now governed under Minn. Stat. §§ 260C.601 - 635. Many of the responsibilities of the Commissioner have been narrowed in these new statutory changes regarding state wards. All duties, obligations, and consents not specifically reserved to the Commissioner are now delegated to the responsible social services agency.² Agency decisions regarding state wards, however, are subject to judicial review and these new legislative changes will allow you to ensure your client’s best interests are being met through the court’s exercise of its expanded authority.

New Adoption Provisions for State Wards

Adoption-related provisions for children under guardianship of the Commissioner have been moved from Minn. Stat. § 259 to Minn. Stat. § 260C. Moving these statutory sections into the child protection chapter of the Juvenile Code supports the underlying policy of adoption as a permanency path for children who cannot return home. Though the sections regarding the adoption of state wards are new to Chapter 260C,³ the content is largely a restatement and clarification of existing law. The goal of these additions to Chapter 260C is to establish requirements for court review and the procedures for finalization of adoptions in the best interests of state wards.⁴ Adoption provisions for children *not* under guardianship of the Commissioner are governed by Chapter 259.⁵

New additions to adoption provisions for children under guardianship of the Commissioner include:

¹ Adoption: Finding Families for Minnesota’s Waiting Children, Minnesota Department of Human Services (October 2011), <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-4746-ENG>.

² Minn. Stat. §260C.615, subd.2 (anticipated 2012).

³ Minn. Stat. §§ 260C.601 – 635 (anticipated 2012).

⁴ Minn. Stat. § 260C.601, subd. 1 (a)(anticipated 2012).

⁵ *Id.* § 260C.601, subd. 1 (b)(anticipated 2012).



The Commissioner is no longer required to consent to the adoption of a state ward.⁶

Adoptive placements are now under the exclusive authority of the responsible agency. When making adoptive placements of children who are wards of the state, the Commissioner is no longer required to consent to the adoption. The Commissioner does continue as a signatory to an adoption placement agreement (APA), which is the written adoption agreement between the agency, the Commissioner, and the adoptive parent. The responsible social services agency must notify the court, and all parties entitled to notice, including counsel for the youth, whenever there is an adoption placement agreement in place or if the agreement is terminated during the adoption process.⁷ The agency may also file an adoption petition on behalf of the adopting parent.⁸

Attorney Tip: It may be difficult for your client to admit his true feelings about adoption. Children may feel uncomfortable about being adopted because of loyalty to their birth parents, regardless of the abuse or neglect they experienced. Discuss the possibility of a contact agreement between your client and his family members.⁹ A contact agreement will enable your client to maintain visitation with siblings, extended family, and even birth parents through letters, phone calls, holiday visits, and/or regularly scheduled visits.¹⁰

The court no longer has the ability to order a state ward into long-term foster care.¹¹

The court's ability to order a child under guardianship of the Commissioner into long-term foster care has been eliminated. The frequency of court reviews may be reduced to at least every six months in the following circumstances: if the court has approved the agency's reasonable efforts to place the child with an adoptive parent for at least 24 months, the child is at least 16 years of age, and the child's guardian ad litem agrees that more than 90 days between court reviews would be in the child's best interests.¹²

The court may make findings and order that placement of siblings together is not in the best interests of one of more of the siblings.¹³

Responsible social services agencies must continue reasonable efforts to place siblings together for adoption.¹⁴ The court, however, now has the final decision as to whether siblings should be separated for adoption. Previously, the Commissioner made this decision. If siblings under guardianship of the Commissioner will not be adopted by the same adoptive family, the social services agency must now

⁶ Minn. Stat. § 260C.613, subd. 1 (a)(anticipated 2012).

⁷ *Id.* §§ 260C.613, subd. 1 (c)-(d) (anticipated 2012).

⁸ Minn. Stat. § 260C.623, subd. 1 (a) (anticipated 2012).

⁹ Adoptive parents and a birth relative or foster parents may enter an agreement regarding communication, contact, or visitation with or between an adopted minor, adoptive parents, and a birth relative or foster parents. A contact agreement may be ordered by the Court any time before a decree of adoption is granted. Minn. Stat. § 259.58. *see also* Minn. Stat. § 260C.619 (anticipated 2012).

¹⁰ Minn. Stat. § 259.58 (anticipated 2012).

¹¹ Minn. Stat. § 260C.317, subd. 3(c) is repealed.

¹² Minn. Stat. § 260C.607, subd. 8 (b)(anticipated 2012).

¹³ Minn. Stat. § 260C.613, subd. 3 (anticipated 2012), *See also* Minn. Stat. § 260C.617(anticipated 2012).

¹⁴ Minn. Stat. § 260.012 (e) (4).

request court approval for the separation.¹⁵ The court may make findings that separating siblings is not in the best interest of one or more of the siblings or that the responsible social services agency has not made reasonable efforts to place the siblings together.¹⁶

Attorney Tip: This new judicial oversight of sibling separation will allow you to argue to the court that the agency has not made reasonable efforts in keeping your client and his/her sibling(s) together, as it is the responsibility of the agency to make every effort to place siblings together for adoption.

For more information and attorney tips on this topic, refer to CLC's July 2012 Practice Point entitled "What Minnesota's New Legislative Changes Mean for Sibling Advocacy." <http://www.clcmn.org/wp-content/uploads/2010/09/July-2012-Practice-Point1.pdf>.

The adopting petitioner must be at least 21 years of age but does not need to be a Minnesota resident.¹⁷

The new age requirement for adoptions is now set at 21, which matches the minimum age required for foster care providers.¹⁸ This age requirement may be waived if the prospective adoptive parent is a family member.¹⁹

The Minnesota residency requirement to file a petition to adopt a state ward has been removed from the law.²⁰ Previously, the petitioner had to be a resident of Minnesota for at least one year prior to filing.

Timelines

After the child comes under guardianship of the Commissioner, there will be a court review of the reasonable efforts to finalize an adoption every 90 days.²¹ During this review, the agency's reasonable efforts to finalize an adoption and the child's current out-of-home placement are assessed to ensure the child is receiving all services and supports required to meet the child's needs.²² The needs of the child may include education, placement, and visitation and contact with siblings and relatives. A child's needs may also include her medical, mental, and dental health.²³ If the youth is age 16 and older and is in foster care, the court will also review the youth's independent living plan (ILP).²⁴

The court may grant reviews more frequently than 90 days.²⁵ Frequent court reviews of the responsible social services agency's reasonable efforts may be granted if this review would expedite finalizing the adoption.²⁶

¹⁵ Minn. Stat. § 260C.613, subd. 3(anticipated 2012).

¹⁶ Minn. Stat. §260C.617(anticipated 2012).

¹⁷ Minn. Stat. § 260C.623(anticipated 2012).

¹⁸ Minn. Rule 2960.3060, subd. 2 (A).

¹⁹ See Minn. Stat. § 245A.02, subd. 13 for definition of relative.

²⁰ Minn. Stat. § 260C.623, subd. 1(anticipated 2012).

²¹ Minn. Stat. § 260C.607, subd. 1 (a) (anticipated 2012).

²² *Id.* § 260C.607, subd. 3(anticipated 2012).

²³ *Id.* § 260C.607, subd. 4 (anticipated 2012).

²⁴ *Id.*

²⁵ Minn. Stat. § 260C.607, subd. 8 (b)(anticipated 2012).

²⁶ *Id.*

Reasonable efforts to finalize an adoption must begin no later than the permanency progress review hearing when a child has been in foster care for six months.

New policies effective August 1, 2012 regarding timelines for state wards include:

- Once the APA is signed by all parties and executed by the Commissioner, an adoption petition must be filed within nine months.²⁷ A petition to adopt a child under guardianship of the Commissioner may not be filed unless the responsible social services agency has made an adoptive placement with the petitioner.²⁸ The agency may file the adoption petition on behalf of the adopting parent.²⁹
- If a relative or foster parent would like to file a motion requesting that the court order the agency to make an adoptive placement with the moving party, the motion may be filed any time after the court orders a child under guardianship of the Commissioner, but not later than 30 days after receiving notice that an agency made an adoptive placement.³⁰

Attorney Tip: Deliberate and careful planning (such as diligent searches for adoptive homes) for your client must be done early in the process, as court reviews take place less frequently as time passes while the child is under guardianship of the Commissioner. Important planning for your client should not be rushed through to meet early deadlines.

If you feel it would be beneficial to speed up the finalization of your client's adoption, you may ask the court for reviews more frequently than 90 days.

Agency and DHS Requirements

Although none of the reasonable efforts requirements in this section are new policy, they have been grouped together in the updated statute to provide the court with a basis for reviewing agency's efforts to find permanent homes for foster care youth. The responsible social services agency has a duty to act as the Commissioner's agent in making reasonable efforts to finalize the adoption of all children under guardianship of the Commissioner.³¹ The agency must ensure that:

- The best interests of the child are met in the planning and granting of adoptions.
- The child is involved in the process of planning for adoption.
- The diversity of Minnesota's population is recognized and respected during the adoption process, including culture, language, and religion.
- The court has the timely information it needs to make a decision that is in the best interests of the child in reviewing the agency's plan for adoption.

Minn. Stat. § 260C.601, subd. 2 (anticipated 2012).

These reasonable efforts include using age-appropriate engagement strategies to plan for the adoption with the child and identifying a potential adoptive parent for the child based on the child's needs, such as

²⁷ Minn. Stat. § 260C.623, subd. 2(anticipated 2012).

²⁸ Minn. Stat. § 260C.613, subd. 1(anticipated 2012).

²⁹ Minn. Stat. § 260C.623 (anticipated 2012).

³⁰ Minn. Stat. § 260C.607, subd. 6 (anticipated 2012).

³¹ Minn. Stat. § 260C.601, subd. 2(anticipated 2012).

completing a relative search, engaging the child's foster parent and the child's relatives as an adoptive resource, and registering the child on the state adoption exchange.³² The agency must also update or complete any social or medical history, certify the child for adoption assistance, and place siblings together.³³ To finalize the adoption in a timely manner, the agency must work with the adopting parent to file a petition to adopt the child.³⁴

The responsible social services agency must complete a relative search, giving notice to relatives of the need for a foster home for the child.³⁵ If there are no identified prospective adoptive placements for the child, an updated relative search is required.³⁶

A child who is a state ward and is legally available for adoption may not refuse or waive the agency's reasonable efforts to recruit and place a child in an adoptive home.³⁷ The court is also prohibited from relieving an agency of this recruitment duty.³⁸ The age at which the child's consent to the adoption is required remains age fourteen under the new legislation.³⁹

Attorney Tip: Request all documentation of reasonable efforts from the social services agency for your client so you are able to determine if the "reasonable efforts" standard has been met before court hearings. This includes exploring previous relative searches and requesting updated searches as needed.

Request a copy of the adoption recruitment plan for your client. If there is not a recruitment plan, ask when a referral will be made and whether Public/Private Adoption Initiative (PPAI) services are being employed. These services are available at no cost to the court. PPAI's goal is to ensure that children are placed in adoptive homes quickly.

For more information and attorney tips on this topic, refer to CLC's March 2012 Practice Point entitled "Using the Public Private Adoption Initiative and Child-Specific Recruitment to Achieve Successful Adoptive Placements for Children in Foster Care. <http://www.clcmn.org/wp-content/uploads/2009/06/March-2012-Practice-Point.pdf>

Minnesota has enacted significant changes to its juvenile code. Many of these legislative changes seek to ensure that the courts are reviewing the agency's progress in finding permanent homes for children without legal parents. To best represent your clients in need of permanency following a termination of parental rights proceeding, it is critical to ensure that there is a thorough review of the agency's reasonable efforts to find a permanent home for your client and that your client's permanency wishes are brought to the court's attention.

³² Minn. Stat. § 260C.605, subd. 1 (d) (anticipated 2012).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* § 260C.605, subd. 1 (d) (3) (anticipated 2012).

³⁶ *Id.* § 260C.605, subd. 1 (d) (3) (ii) (anticipated 2012).

³⁷ *Id.* § 260C.605, subd. 2 (b) (anticipated 2012).

³⁸ *Id.* § 260C.605, subd. 2 (c) (anticipated 2012).

³⁹ Minn. Stat. § 259.24, subd. 3 (anticipated 2012).

Understanding and Utilizing the Reasonable Efforts Standard in Child Protection Matters¹

By Julia Hillel, CLC Staff Attorney and Amy Ryan, CLC Volunteer Attorney

The term “reasonable efforts” is found throughout the Child Protection Section of Minnesota’s Juvenile Code.² This simple phrase may play a big role in achieving positive results for your child client. Understanding the reasonable efforts standard at each stage of a child protection case can be an important tool to use to successfully represent your client.

The court must find that the responsible social services agency (“the agency”) made reasonable efforts to achieve certain duties at various stages and hearings throughout the course of a child protection matter from the initial removal proceedings all the way through the finalization of an adoption.³ If the agency is not meeting its burden, depending on the stage of the case, there may be severe consequences that can alter the outcome of the case.

This practice point will describe the different stages of the proceedings when reasonable efforts findings must be made by the court. Further, it will review what the court must consider in reviewing whether the agency has met its burden, offer some guidelines as to what constitutes reasonable efforts and examine the legal and financial consequences if the court does not find the agency has made reasonable efforts.

When is a Reasonable Efforts Finding Required?

In all child protection proceedings, the agency has the burden of proving by clear and convincing evidence⁴ that it performed the appropriate reasonable efforts for the specific stage of the proceeding.⁵ Reasonable efforts must be demonstrated at four different times in child protection proceedings and also continually applies to certain obligations of the agency throughout the life of the case. These efforts include 1) reasonable efforts to prevent an out-of-home placement into foster care or to eliminate the need for removal from the home, 2) reasonable efforts to reunify the parent and child once removal has occurred, 3) reasonable efforts to finalize and support a permanency plan for the child, and 4) reasonable efforts to secure an adoptive home, or to finalize an adoption.⁶ The agency must also continuously perform

¹ Special thanks to Linda S. Svitak from the law firm of Faegre and Benson for the original memorandum of law prepared for Children’s Law Center of Minnesota on the “reasonable efforts” standard.

² See MINN. STAT. § 260C (2013).

³ In cases in which the foster child is an Indian child and the Indian Child Welfare Act and Minnesota Indian Family Preservation Act apply, the agency is required to provide the higher standard of “active efforts.” MINN. STAT. § 260.012(c) (2013). A practice guide for lawyers representing Indian children can be found at: <http://www.clcmn.org/wp-content/uploads/2013/10/The-Indian-Child-Welfare-Act-October-Practice-Point.pdf> (last visited January 17, 2014).

⁴ MINN. STAT. § 260C.163, subdiv. 1(a); MINN. R. JUV. PROT 39.04 (2012).

⁵ MINN. STAT. §§ 260.012(f) (2013); 260C.605, subdiv. 1.

⁶ *Id.* § 260.012; MINN. STAT. §§ 260C.178, subdiv. 1(e); 260C.201, subdiv. 2(4); 260C.204(a)(3); 260C.605; 260C.607(1)(c).

reasonable efforts to place siblings together both in foster care, and in adoption,⁷ and ensure services provided to families in the system are culturally appropriate.⁸

At every stage of the proceeding, “the child’s best interests, health, and safety must be of paramount concern.”⁹ There are certain times when the agency is not required to meet its reasonable efforts burden to prevent removal or to reunify the parent and child.¹⁰ It is the court and not the agency who decides when reasonable efforts are not necessary.¹¹

Practice Tip: At each step of the proceeding, make sure the agency provides a specific list of its reasonable efforts. Just because the agency performed its reasonable efforts previously, does not mean it is still meeting its burden. Reasonable efforts is an ongoing burden that the agency must continually meet. An argument that the agency has not met its burden can be used if your client’s wishes are not being realized as a result of the agency failing to provide appropriate services or support.

To Prevent Placement

At the initial removal hearing, the agency must show that prior to a child being removed from her home, the agency “made reasonable efforts to prevent the placement of the child in foster care by working with the family to develop and implement a safety plan,”¹² or that, “given the particular circumstances of the child and family at the time of the child’s removal, there are no services or efforts available which could allow the child to safely remain in the home.”¹³ The court’s written order resulting from this hearing must briefly describe the agency’s preventative and reunification efforts, why further efforts would not have prevented the child’s removal, or that the agency was not required to perform reasonable efforts due to an exception under Minn. Stat. 260.012(a) (1-7) & (f) (4), or 260C.178, subd. 1 (g).¹⁴

⁷ *Id.* §§ 260.012(e)(4); 260C.212, subd. 2(d).

⁸ *Id.* § 260.012(f).

⁹ *Id.* § 260.012(a).

¹⁰ *Id.* §§ 260.012(a)(1)-(7) & (f)(4); 260C.178, subd. 1(g)(1)-(7). There are seven listed exceptions within section 260C.178, subd. 1(g)(1)-(7), that if anyone of them are determined by the court, the agency is relieved of its reasonable efforts burden to reunify the child with her parent. These exceptions are:

- (1) the parent has subjected a child to egregious harm as defined in section 260C.007, subd. 14;
- (2) the parental rights of the parent to another child have been terminated involuntarily;
- (3) the child is an abandoned infant under section 260C.301, subd. 2(a)(2);
- (4) the parent’s custodial rights to another child have been involuntarily transferred to a relative under Minn. Stat. 2010, section 260C.201, subd. 11(e)(1) and section 260C.515, subd. 4; or a similar law of another jurisdiction;
- (5) the parent has committed sexual abuse as defined in section 626.556, subd. 2, against the child or another child of the parent;
- (6) the parent has committed an offense that requires registration as a predatory offender under section 243.166, subd. 1b(a) or (b); or
- (7) the provision of services or further services for the purpose of reunification is futile and therefore unreasonable under the circumstances.

MINN. STAT. § 260C.178, subd. 1(g)(1)-(7).

If reasonable efforts to prevent the placement or to reunify the child are found to be unnecessary, the agency still has the burden of performing reasonable efforts to find a permanent suitable placement for the child in a timely manner. MINN. STAT. § 260.012(j).

¹¹ *Id.* § 260.012(a); *In the Matter of the Welfare of the Children of T.R.*, 750 N.W. 2d 656, 666 (Minn. 2008) (Court specifically said that the agency was not allowed to stop or not provide services based on the agency’s determination that they would be futile).

¹² *Id.* § 260.012(d)(1).

¹³ *Id.* § 260.012(d)(2).

¹⁴ MINN. STAT. § 260C.201, subd. 2(a)(4)(i).

To Reunify the Parent and Child after Removal

The agency bears the burden of showing at each review hearing that after a child is placed in foster care, it is making continual reasonable efforts to reunify the child with her parents.¹⁵ This is the most common time that CLC attorneys would question the agency's reasonable efforts. Carefully consider the agency's efforts in a case when a client wants to reunify with her parents and the agency has not appropriately helped the family to facilitate reunification.

Practice Tip: Always remember the factors the court considers when determining whether the agency is meeting its reasonable efforts burden. Ensure that you are aware of the specific case plan that is implemented for your child's parent, and that the agency is providing the appropriate type and amount of services that specifically relate to the safety and protection of your client.

To Finalize a Permanent Plan

The agency must also make reasonable efforts to finalize a permanent plan for a child when the child cannot return home.¹⁶ Once a child is placed out of her home, the permanency clock begins to tick. The court must review the permanency progress of the child no later than six months after the child is placed out of her home.¹⁷ At this progress hearing, the court will look at the parent's progress on the out-of-home case plan, the agency's reasonable efforts to reunify the parent and child, and the agency's reasonable efforts to finalize a permanent home in the case that the child cannot return to her parent's care.¹⁸

If at this six month marker the court does not feel the child can safely return home at this time, but the parent is making progress on the plan, the court may continue the matter up to an additional six months.¹⁹ If the parent has not made progress on the plan, the court may have the agency proceed immediately to finding a permanent option for the child, including filing an appropriate permanency petition with the court.²⁰

In order for the agency to meet its burden of reasonable efforts to finalize a permanent plan for the child, the agency must show due diligence to:

- (1) Reunify the child with the parent or guardian from whom the child was removed;
- (2) Assess a noncustodial parent's ability to provide day-to-day care for the child and, where appropriate, provide services necessary to enable the noncustodial parent to safely provide the care, as required by Section 260C.219;
- (3) Conduct a relative search to identify and provide notice to adult relatives as required under section 260C.221;
- (4) Place siblings removed from their home in the same home for foster care or adoption, or transfer permanent legal and physical custody to a relative. Visitation between siblings who are not in the same foster care, adoption, or custodial placement or facility shall be consistent with section 260C.212, subdivision 2; and
- (5) When the child cannot return from the parent or guardian from whom the child was removed, to plan for and finalize a safe and legally permanent alternative home for the child, and consider permanent alternative homes

¹⁵ MINN. STAT. §§ 260.012 (e), (f)(2); 260C.201, subdiv. 2(4).

¹⁶ *Id.* §§ 260.012 (e)(5); MINN. STAT. § 260C.204(a)(3).

¹⁷ MINN. STAT. § 260C.204(a).

¹⁸ *Id.*

¹⁹ *Id.* at (c)(1)(ii).

²⁰ *Id.* at (c)(2)(i)-(iii). The permanency dispositions available to the agency and the court include termination of parental rights, guardianship to the commissioner of human services, permanent transfer of legal and physical custody of the child to a relative, permanent custody to the responsible social services agency, and temporary legal custody to the responsible social services agency. *Id.* § 260C.515.

for the child inside and outside of the state, preferably through adoption or transfer of permanent legal and physical custody of the child.

MINN. STAT. § 260.012(e)(1)-(5).

The court may find that the agency has met its burden when it shows it made reasonable efforts to identify a more legally permanent placement for the child than an order for foster care, and the agency has reasonably and appropriately engaged the child for independent living planning.²¹

Practice Tip: Be aware that reasonable efforts to find the child a permanent placement, including adoption, may be performed at the same time the agency is providing reasonable efforts to either prevent placement, or to reunify the child with their family.²² The agency must disclose its choice to seek both reunification and concurrent placement with all parties and the court, as well as provide each with the plans to do so.²³

To Finalize an Adoption

Once the parental rights have been terminated, it is the agency's burden to perform reasonable efforts to finalize an adoption for the child.²⁴ The reasonable efforts required for finalizing an adoption include:

1. Using age appropriate strategies to engage a child in planning for the adoption.
2. Identifying appropriate prospective adoptive placements by updating the child's identified needs.²⁵
3. Making an adoptive placement that fits the child's identified needs including ensuring relatives who have been in touch with the agency and who have indicated interest in adopting the child as well as relatives located in an updated²⁶ search are notified of the need for an adoptive home for the child, and relative searches are updated and ongoing.
4. Engage those identified in the relative search and the child's foster care placement as being an adoptive resource, and taking other measures when there is no identified possible adoptive parent.
5. Updating and completing the child's social and medical history.
6. Making and updating appropriate referrals as required by section 260.851 (the Interstate Compact on the Placement of Children).
7. Giving notice of responsibilities to prospective adoptive parents.
8. Offering an adoptive parent the ability to apply for adoption assistance.
9. Certifying and assessing adoptive assistance.
10. Placing the child with their siblings.
11. Working with the adoptive parents and the court to submit the adoption petition and finalize the adoption.²⁷

²¹ MINN. STAT. § 260C.521, subdiv. 1 (d)(1)-(2).

²² MINN. STAT. § 260.012(k).

²³ *Id.*

²⁴ MINN. STAT. § 260C.605.

²⁵ *Id.* § 260C.212, subdiv. 2. (defining placement needs of a child in care).

²⁶ An updated search is required whenever:

- (A) There is no identified prospective adoptive placement for the child notwithstanding a finding by the court that the agency made diligent efforts under section 260C.221, in a hearing required under section 260C.202;

- (B) The child is removed from the home of an adopting parent; or

- (C) The court determines a relative search by the agency is in the best interests of the child.

Id. § 260C.605, subdiv. 1 (d)(B)(ii)(A)-(C).

²⁷ *Id.* § 260C.605, subdiv. 1 (d)(1)-(10).

When there is no identified possible adoptive parent, the agency must register the child on the state adoption exchange, unless they can provide the court with an exception for doing so. The agency must also review families that the agency knows have approved adoption home studies, present the child to other adoption agencies for assistance seeking an adoptive home, use newspaper and other forms of media to find an adoptive home, use a private agency for intensive recruitment efforts, and make any other efforts or resources that could reasonably lead to an adoptive home for the child.²⁸

Practice Tips:

- 1) Ensure notice that the child is in need of an adoptive home is sent to relatives who have shown an interest in adopting the child, and have kept the court or agency aware of their contact information, as well as new relatives or kin located in the updated search.²⁹
- 2) Make sure to speak with your client about possible relatives or caring adults they know and would like to be considered as an adoptive placement, relay the names you receive from your clients to the agency in court on the record and ask the court for an updated kinship search if it has been a while since the last one has been performed.

The agency has the responsibility to seek an adoption placement for the child.³⁰ Neither the court, nor the adoptive child can relieve the agency of this burden.³¹ Thus, it is critical to know your clients placement preference and, with your client's consent, ensure your client's preference is known to the court.

To Place Siblings Together

The agency must also make reasonable efforts to place children with their siblings.³² This determination must be made for both placement in foster care, as well as with an adoptive home.³³

The court should inquire what reasonable efforts the agency has made to place siblings in foster care together at each court proceeding.³⁴ If siblings are not placed together the agency must create a visitation plan for the siblings, unless it is against the children's safety or wellbeing.³⁵

When a child is placed for adoption, the agency must document the reasonable efforts it has made to place siblings together, and specify reasons for why the children are separated.³⁶ The agency must continue to make reasonable efforts to place siblings together for adoption until the court relieves it of this duty.³⁷ The court will relieve the agency of its reasonable efforts burden only if further reasonable efforts to place the children together would be futile, or it is in the best interests of the children that for the purpose of adoption they are separated.³⁸

²⁸ *Id.* § subdiv. 1(d)(3)(iv)(A)-(F).

²⁹ *Id.* § subdiv. 1 (d)(3)(i)(A)&(B).

³⁰ *Id.* § 260C.605, subdiv. 2.

³¹ *Id.*

³² *Id.* §§ 260C.212, subdiv. 2(d); MINN. STAT. § 260.012(d)(4).

³³ *Id.*

³⁴ *Id.* § 260C.178, subdiv. 1(k).

³⁵ *Id.*

³⁶ *Id.* § 260C.605, subdiv. 1(d)(9).

³⁷ *Id.*

³⁸ *Id.*

Court Considerations

Among other things, the court considers six specific factors when determining whether the agency has met its reasonable efforts burden.³⁹ These factors include: “1) whether the services provided were, relevant to the safety and protection of the child; 2) adequate to meet the needs of the child and family; 3) culturally appropriate; 4) available and accessible; 5) consistent and timely; and 6) realistic under the circumstances.”⁴⁰

The court specifically looks to the case plan that the agency and parents have submitted to the court.⁴¹ If the case plan is approved by the court, it is presumptively reasonable, thus when all of the actions of the agency taken together are consistent with the case plan, its actions are likely presumptively reasonable in the eyes of the court.⁴²

Even with the above referenced presumption, the court shall analyze the quantity and quality of the services provided to the parent in accordance with the case plan in order to determine whether reasonable efforts are met.⁴³ If the quantity and quality of the services are lacking, the court can find that reasonable efforts were not made.

Finally, the court may consider the relevance of the parent’s problems in relation to the parent’s ability to parent his/her child when considering whether the agency made reasonable efforts.⁴⁴ The agency only needs to help a parent address issues that are “relevant to the safety and protection of the child.”⁴⁵ In *Children of T.A.A.*, the Court determined that the agency’s efforts were not unreasonable when it did not provide a mother with services to combat her drug addiction, because her drug use did not actively hinder her ability to parent her child.⁴⁶ Since the agency did provide other services directly relevant to the difficulties the parent had in parenting her child, the court found the agency’s actions were reasonable.⁴⁷

Effects When the Responsible Social Services Agency Does Not Performing its Reasonable Efforts Obligation

Legal Effects

The effects of whether the agency has performed its reasonable efforts burden varies by the stage of the proceedings. In the early stages, the court may allow for a child to continue to be placed out of the home, even if the court determines that the agency’s efforts for prevention or reunification were unreasonable, as long as it is determined that further reasonable efforts would not allow for the child to return home.⁴⁸

Consequences in later stages of the proceedings can be much more severe if reasonable efforts are not made. If the court determines that the agency has not performed reasonable efforts for reunification prior to the termination of parental rights, then the termination of such rights can be reversed.⁴⁹

³⁹ MINN. STAT. § 260.012(h).

⁴⁰ *Id.*

⁴¹ *In the Matter of the Welfare of the Children of S.E.P. and J.W.P.*, 744 N.W. 2d 381 (Minn. 2008).

⁴² *Id.* at 388.

⁴³ *In the Matter of the Welfare of the Children of S.W.*, 727 N.W. 2d 144, 150 (Minn. 2007) (citing *Welfare of A.H.*, 402 N.W. 2d 598, 604 (Minn. Ct. App. 1987)).

⁴⁴ *In the Matter of the Welfare of the Children of T.A.A.*, 702 N.W. 2d 70, 710 (Minn. 2005).

⁴⁵ MINN. STAT. § 260.012(h)(1).

⁴⁶ *In the Matter of the Welfare of the Children of T.A.A.*, 702 N.W. 2d 703, 710 (Minn. 2005).

⁴⁷ *Id.* At 710-11.

⁴⁸ MINN. STAT. §§ 260C.178, subdiv. 1(e)(2); 260C.201, subdiv. 2(b).

⁴⁹ *In the Matter of the Welfare of the Children of T.R.*, 750 N.W. 2d 656,666 (Minn. 2008). See also, *In Re Welfare of Copus*, 356 N.W.2d 363, 367 (Minn. Ct. App. 1984).

Title IV-E requirements and Funding Effects

A lack of reasonable efforts can also have an impact on the funding the agency receives from the federal government. In order to receive federal funding under the Social Security Act, Title IV-E, the court must make a finding of reasonable efforts.⁵⁰ Federal law requires an individualized determination of reasonable efforts for each child, based on her specific case.⁵¹

The determination that reasonable efforts were made to prevent the removal of the child must be made within 60 days following the removal of the child from the home.⁵² If this determination is not made within this 60 day window, then the agency forgoes all possible federal aid reimbursement of care for the duration that the child is in foster care.⁵³

Moreover, an annual determination of reasonable efforts is required to finalize a permanency plan after the initial determination of eligibility described above, and each year thereafter.⁵⁴ If the agency fails to meet its burden of reasonable efforts to finalize a permanency plan, this can render the child ineligible to get federal funding for the entire 12 month period and the agency may incur these costs. However, if the court fails to find that the agency met its burden of reasonable efforts to finalize a permanency plan during the 12 month period, the child may still be eligible for federal funding if the court determined the agency made reasonable efforts at some point within the 12 month period.⁵⁵

Practice Tip: If you are asking the court to find the agency did not make reasonable efforts and the court rules in your favor, request that the court explicitly state in its written findings that the agency has not met its burden.⁵⁶ It is not enough just to infer that reasonable efforts were done based on a list of actions the county has taken.⁵⁷

Conclusion

Challenging reasonable efforts is a powerful advocacy tool for attorneys to utilize in their child clients' cases when the agency is not fulfilling its obligations. The agency has an ongoing burden throughout your client's case to meet the different reasonable efforts requirements for each stage of the proceeding. If the agency is not meeting its burden, you as an advocate can positively change the outcome of your client's case.⁵⁸

⁵⁰ 42 U.S.C. 672 (a)(2)(ii) (2012). *See also*, U.S. Department of Health and Human Services, Administration for Children & Families, *Title IV-E Foster Care Eligibility Review Guide*, 34 (December 2012), http://www.acf.hhs.gov/sites/default/files/cb/title_iv_e_review_guide.pdf (last visited on January 29, 2014) [hereinafter *Title IV-E Foster Care Review Guide*].

⁵¹ *Title IV-E Foster Care Eligibility Review Guide*, *supra*, note 50 at 31-32.

⁵² *Id.* at 34.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ 45 CFR § 1356.21(d), *See also*, *Title IV-E Foster Care Eligibility Review Guide*, *supra*, note 50 at 31-34.

⁵⁷ *Title IV-E Foster Care Eligibility Review Guide*, *supra*, note 50 at 34.

⁵⁸ Only a few appellate courts in Minnesota have found an agency's actions to be unreasonable. *See, e.g., In the Matter of the Welfare of the children of T.R.*, 750 N.W.2d 656, 666 (Minn. 2008) (Court reversed father's termination of parental rights partly because the agency did not make reasonable efforts for the father to succeed with his case plan).

