



# MAKING REASONABLE EFFORTS FINDINGS IN A PANDEMIC

PRESENTED BY JUDGE R. MICHAEL KEY

NATIONAL COUNCIL OF  
JUVENILE AND FAMILY COURT JUDGES



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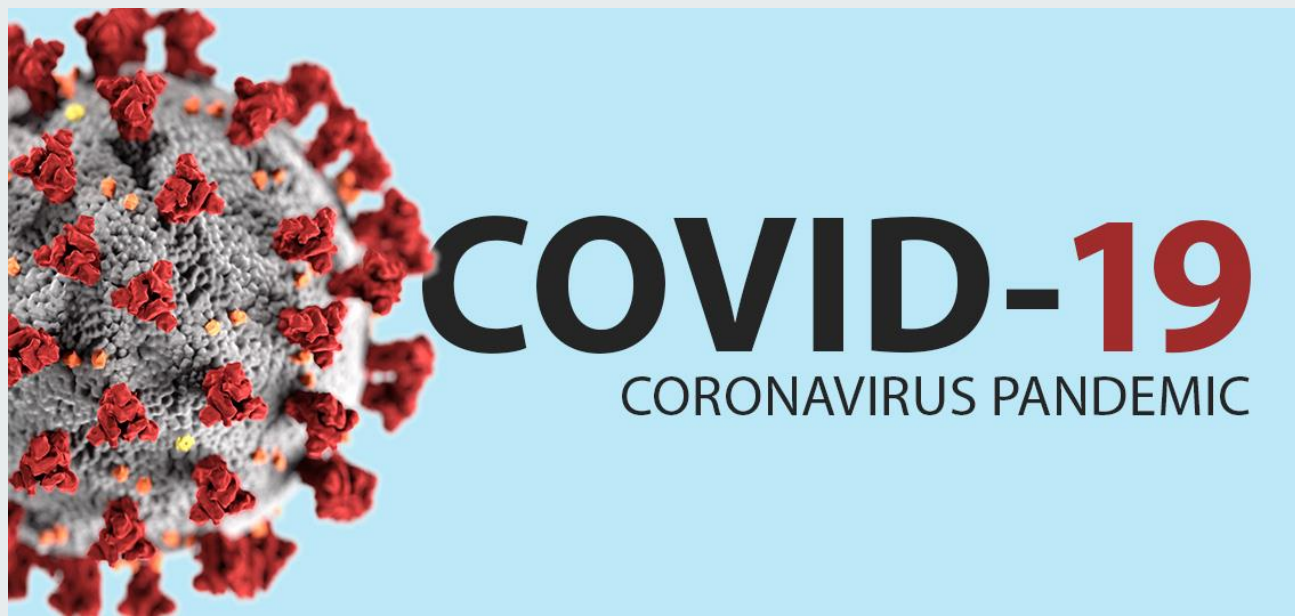
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# Happy Birthday Reasonable Efforts



# LEARNING OBJECTIVES

Quick primer on reasonable efforts



Weave in challenges and successes in making reasonable efforts findings in a pandemic



Things that are easy to get  
are often not worth the  
effort!

**Be difficult!**

It should be hard to take or  
keep a six-day old baby girl  
away from her mother!

# REASONABLE EFFORTS - THREE OVERARCHING GOALS

- To keep families together;
- To (timely) reunite families when they have to be separated; and
- To (timely) achieve an alternative plan for permanency for children when they can't go back home.



# WHAT'S THE OBJECTIVE?

- To ensure that every child that should be in care is in care, but ***not a single child more***; and
- To ensure that every child that is in care is in a safe, nurturing placement that is supportive of the permanency plan for the child, and ensures the child's wellbeing.



# THREE LAYERS OF LAWS AND REGULATIONS

Federal and state statutory framework →



■ State and United States →  
Constitutions



← Federal and state regulations





# THE COURT'S ROLE: JUDICIAL OVERSIGHT

The Court holding the child welfare agency accountable for making reasonable or active efforts is not just a best practice.

**It's the law!**



# CONGRESSIONAL INTENT FOR JUDICIAL OVERSIGHT

- Prevent unnecessary removals
- Act as a safeguard against potential inappropriate agency action
- Not become a mere pro forma exercise in paper shuffling to obtain Federal funding
- Unwilling to accept as a general proposition that the judiciaries of the states would so lightly treat a responsibility placed upon them by federal statute for the protection of children



# WHAT JUDICIAL OVERSIGHT IS **NOT!**

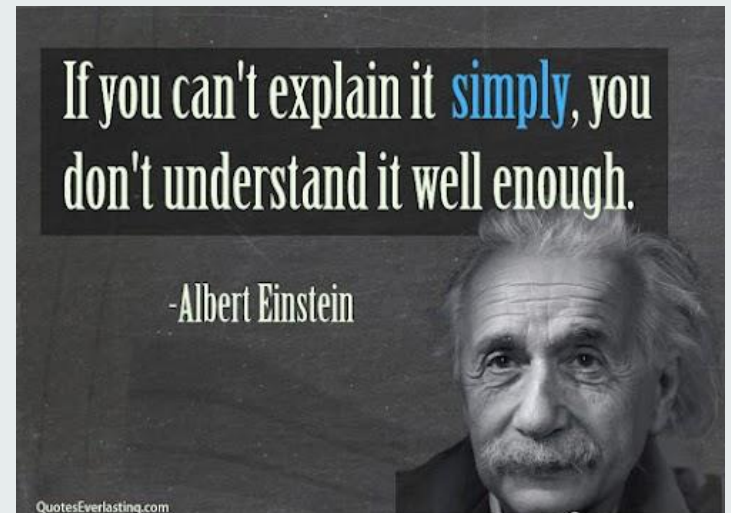
- Out of 1200 judges, less than 4% had ever made a no reasonable efforts finding
- 90.4% of judges stated that they either rarely or never made a no reasonable efforts finding
- 40.5% of judges reported making reasonable efforts findings even when the the agency had not made reasonable efforts
- Reasons given for not making no reasonable efforts findings: insufficient information and funding concerns

# RECENT SURVEY - BETTER BUT NO CIGAR

- 27.27% have made reasonable efforts when evidence did not support that finding
- 89.7% reported having not made or seldom made a no reasonable efforts finding in the last year
- Reasons given for not making no reasonable efforts findings: potential loss of funding and/or services (51.61%) and insufficient information (33.87%)
- Most common no reasonable findings made as to reunification (55.22%)
- A lot of work needs to be done around parent and child attorney advocacy around reasonable efforts

# JUDGES NEED TO SET CLEAR EXPECTATIONS/DRAW THE LINE

- It is important for judges to have a structured decision-making process around reasonable efforts findings that is sufficiently developed so that they can articulate that process. And they should consistently maintain fidelity to that process while still making individualized decisions.
- This decision-making process is what was Congress referred to as a “meticulous and impartial decision-making procedure” to prevent overreaching by state agencies.



# JUDGE KEY'S ASPIRATIONAL DEFINITION

Doing for children and families we serve that which we would want others to do for us and our families if we found ourselves in like circumstance.



# JUDGE KEY'S STRUCTURED DECISION-MAKING MODEL

If it is not unreasonable to expect a certain thing to be done in order to keep families together, to reunite the family, or to achieve an alternative permanency goal, then it is reasonable, and the failure to do that thing is a failure to make reasonable efforts.

Factors to consider:

- All appropriate
- Culturally appropriate
- Adequate
- Availability and accessibility
- Tier Two reasonable efforts if services are not available
- Evidence-based
- Likelihood of success
- Willingness to participate
- Duration of service
- Cost
- Timely

# TWO TIERS OF REASONABLE EFFORTS

- Tier One Reasonable Efforts
  - Reasonable efforts made in each individual case
- Tier Two Reasonable Efforts
  - Reasonable efforts to track needs and develop services to meet the needs

Making Reasonable Efforts: A Permanent Home for Every Child





# TIER ONE REASONABLE EFFORTS

- Assess the family situation
- Determine if any available services will work
- Consider alternative ways other than removal
- Inform family about available services
- Offer services most likely to work
- Give family an opportunity to request other services
- Provide a means for review of agency's failure to provide the services the family believes will work
- Develop an appropriate case plan
- Visitation
- Permanency hearings

# TIER TWO REASONABLE EFFORTS

- Assess need
- Comprehensive plan for prevention and reunification
- Provide all services
- Structure service delivery to keep families together
- Conduct training
- Establish appropriate criteria for services
- Develop written guidelines, procedures and protocols

Making Reasonable Efforts: A Permanent Home for Every Child

# MOVING FROM LAW TO PRACTICE

- Conduct a thorough investigation
- Assess and articulate safety threat as immediate, significant and clearly observable
- Consider and articulate vulnerability
- Look for and articulate controlling interventions
- Identify and be able to articulate the specific harm that might come to a child if the child remains in the home

# MOVING FROM LAW TO PRACTICE

- Consider all risk mitigation services
- Seek short term safety and ask for expedited hearing
- It is more than just knowing the questions to ask – it is the persistent pursuit of the answers to the questions
- Can the child go home safely today?
- Would you remove the child today?
- Family time is critical

# MOVING FROM LAW TO PRACTICE

- Make the equivalent of active efforts
- Hold the agency accountable for meeting its burden of proof
- Demonstrate a true sense of urgency

# HOW IS IT DIFFERENT IN A PANDEMIC?

- Do not let you guard down
- The standards do not change
- The inquiry changes
- Tier two reasonable efforts become more of the focus
- Balancing becomes more difficult

# WHAT PANDEMIC-RELATED CHALLENGES AROUND THE THREE OVERARCHING GOALS HAVE WE MISSED?

- To keep families together;
- To reunite families when they have to be separated; and
- To achieve an alternative plan for permanency for children when they can't go back home.



# QUESTIONS

