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## **Cornerstone Advocacy (for Solo Practitioners)**

### **Visiting**

*Assembled by Carolyn Walther, Litigation Supervisor*

Some ideas for small adjustments in:

#### 1. Your mindset:

- As a parents' attorney, making visitation applications is a way to keep forward momentum towards reunification: making a visit application is an opportunity to remind everyone of the urgency all parties should have regarding this and the positive aspects of our client's case (services, close bond with the child). Think of visits as something that is on the table to be raised at *every* court appearance.
- Even in a TPR phase, there is often the ability to keep improving visits
- For every visiting plan proposed by the agency, ask yourself whether this is appropriate for this particular case (for example, why do visits need to be supervised?) Remember that you don't need to accept the agency's plan, which can often be formulaic.
- Keep a creative mindset regarding what visits should look like. Examples include: identifying visit hosts (even if these individuals are not viable placement resources for the child or are not family members); other types of parent-child contact, such as phone, Skype, email, etc.; and flexible hours to accommodate the schedules of the parents and children.
- Practitioners in the custody/matrimonial areas are probably familiar with the move towards the term "parenting time" rather than "visitation". Keeping this term in your mind (and even using it out loud) can help solidify the concept that visitation should be as natural as possible, as well as centered on normal family activities, such as birthday celebrations, doctor visits, school conferences, bedtime routines, etc.
- Keep the effect of positive (or problematic) visiting arrangements on the child in mind, even though you're representing the parent, because courts are often receptive to these arguments (and making them shows our client's concern with her child's well-being): bonding with our client if the child is young; or the

child's desires if an older child. Having regularly scheduled, natural visitation can be very beneficial in limiting the upheaval in children's lives. Also, just because children are in the same family doesn't mean that they need to be having visitation in the exact same way: they could be differently situated because of age, special needs, or even gender.

- Does the child have to be in foster care with the relative? Sometimes, releases to relatives can mean more opportunities for visits

2. Your communication with others:

Your client	The agency	Attorney for the children/GAL
<p>Are there any regular activities that you would particularly like to be involved in (bedtime, sports games)? What about upcoming special events (birthdays, holidays, school plays)?</p> <p>Are the children in services that you have been involved in or would like to be involved in? (therapy, medical appointments, etc.)</p>	<p>When is the next visit going to be?</p> <p>What will the regular schedule going forward be?</p> <p>What do terms like "weekend visits" mean specifically?</p> <p>What is the agency's default when it comes to frequency and location (and when can this change?)</p> <p>Why is the default warranted in this particular case?</p>	<p>How do the children feel about visitation?</p> <p>Are all of the children similarly situated?</p> <p>Could a "negative" reaction during or after the visit be due to the child's trauma due to separation from the parent?</p>
<p>Who would you want to be a visit host? (does that person have a criminal or child welfare history?)</p> <p>What is their schedule?</p> <p>Can we provide their contact information to the agency?</p> <p>Consider the travel time in unsupervised time—don't want too much spent on that</p>	<p>When will the agency have completed their exploration of a particular visit host?</p>	<p>Is there anyone that the children would identify as a visit host (even a non-relative)?</p>
<p>Remind client to let us know ASAP if there is a problem with visitation. Failure to visit can be misinterpreted as disinterest when the really problem is something else (distance, schedule).</p>	<p>Put the agency (and attorney for the child) on notice before court that you'll be making visitation applications so they can come prepared with specific information.</p>	

### 3. Your litigation strategies:

- Always argue that meaningful visits are a “reasonable effort” in support of reunification!
- At the first court appearance or as soon as possible thereafter, request that a visit take place within 48-72 hours.
- Ask about visiting at *every* court appearance.
- Request that the court direct foster care providers to investigate potential visiting hosts as well as possible activities that could be integrated into visits.
- Be sure that placement options are explored that maximize the child and the family’s ability to spend time together, i.e. kinship placements or those with someone with a significant prior relationship to the family, i.e. godparents.
- Ask that court orders clearly outline an agency’s responsibility for visiting, i.e., to provide reimbursements for transportation costs. Also ensure that orders are clear regarding the current visitation schedule, as well as the need to update parties and the court on the reasons for supervision, whether the visiting plan can progress and/or whether and to what extent an agency will have discretion to modify visiting plans.
- Draft the visitation orders you would like issued, and submit them to counsel prior to court appearances for review and feedback. Provide these proposed orders to the court as well -- they may be willing to sign them over the objection of other parties.
- Ask in court to be provided with updated visiting plans generated at conferences or reviews that are required by law and/or agency policy.
- Reference applicable regulations in oral argument and in motion practice and keep copies of pertinent regulations handy, i.e., 18 NYCRR 430.12 which states that visits should be conducted in a manner that assures the ‘privacy, safety and comfort’ of the family.
- Obtain copies of any pertinent social service policy memos or guidelines and reference them as well! What the guidelines state can often be different than what is actually taking place.
- If the family identifies someone who can assist with visiting, ask that person to come to court to address the judge on his/her ability to assist with the visit and assure the well-being of the child.