Report on Representation in New Mexico Child Abuse and Neglect Cases

October 25, 2018
**Executive Summary**

The Children’s Court Improvement Commission (CCIC) is concerned that the current system of Court Appointed Attorneys (CAAs) in abuse and neglect cases does not promote the high quality representation to which parents and children are statutorily entitled. This report provides a summary of the October 25, 2018 convening of the full CCIC membership where two national experts facilitated a conversation about the strengths and weaknesses of the current CCA system, and the need for a bipartisan stakeholder taskforce to perform an in-depth review of the current system and provide recommendations for its improvement.

The facilitators opened the meeting by reviewing national best practices for parent and child representation. They explained that attorneys in quality child abuse and neglect representation system have **reasonable caseloads**, are **adequately compensated**, are **appointed early**, are provided **support and oversight (but not by the court system)**, and have **access to an interdisciplinary team.** Further, a quality system **has diverse practitioners trained in cultural humility.**

The meeting then turned to the system of CAA representation in New Mexico.

CCIC members identified **several key strengths** of the current CAA system including:
- The interdisciplinary representation provided by the Family Advocacy Program in the 13th Judicial District
- Every parent and every child in an abuse and neglect case is appointed counsel before the first hearing and for the duration of the case.

CCIC members identified **four major challenges** to the current CAA system:
- Inadequate funding
- Inadequate oversight
- Poor attorney retention
- Lack of diversity and cultural humility

Noting that the challenges far outweigh strengths of the system and that the children and families of New Mexico are suffering because of the systems inadequacies, meeting participants agreed that **the current system of representation was inadequate and failed to provide the type of representation parents, youth, and children in New Mexico deserve.** After reviewing a draft memorial written by CCIC leadership that would create a Taskforce focused on improving the CAA system, meeting participants determined that the Taskforce should have three main roles:
  1) analyzing the current system in New Mexico
  2) reviewing research and local and national best practice
  3) drafting recommendations for improved representation in New Mexico

Of particular concern to participants is the current location of the CAA program within the Administrative Office of the Courts (AOC). That location, the CCIC determined, hinders independent decision-making and oversight and strains CAA resources. Based on that concern, the meeting participants also requested that the Taskforce:
- **Determine whether an independent standalone entity is necessary to effectively, efficiently and ethically manage and implement New Mexico’s CAA system.**

Finally, meeting participants believed that in order to be successful, the Taskforce should engage in a value-driven process. The values they identified to drive the Task Forces’ process were:
- Respecting Families
- Promoting Due Process
- Data-driven Decision-Making
- Community Engagement

Overall CCIC believes that the current CCA system is inadequate and a thoughtful and meaningful process is necessary to better understand the current challenges and recommend needed improvements.
Introduction

The Children Court Improvement Commission (CCIC) is a Supreme Court appointed Commission that coordinates the New Mexico Children’s Court Improvement Project. The Commission includes judges, legislators, representatives from Protective Services and Juvenile Justice in the Children, Youth and Families Department, attorneys, child and family advocates, educators, service providers, foster parents, youth, and other interested parties. The participants form a strong coalition working in collaboration to improve New Mexico’s child welfare and juvenile justice systems. It is CCIC’s goal to envision a seamless system of collaboration that provides for the safety and health of all children and families in New Mexico.

In its oversight capacity, CCIC has become concerned that the current system of Court Appointed Attorneys (CAAs) for parent and youth attorneys and guardians ad litem in abuse and neglect cases does not promote the high quality representation to which parents, youth and children are statutorily entitled. CCIC leadership believes that a new structure and additional funding are necessary to meet that mandate. To promote a thoughtful and research-driven process, CCIC leadership have sought support from the New Mexico Supreme Court for a memorial which would create a Taskforce charged with analyzing current practices, reviewing national research and proposing recommendations for an improved system for CAAs in Children’s Courts across New Mexico.

This report provides a summary of the October 25, 2018 convening of the full CCIC membership where two national experts facilitated a conversation about the current system that supports CAAs for parent and youth attorneys and children’s guardians ad litem. It is the hope of the CCIC that this report will serve (a) as a testament to the need for the proposed memorial creating a statewide Taskforce tasked with providing recommendations about how to improve abuse and neglect representation in New Mexico and (b) as a foundation for the future work of that Taskforce.

Background

Pursuant to NMSA 32A-4-10(B)(C), youth and parents in New Mexico abuse and neglect proceedings are entitled to counsel and children are entitled to guardians ad litem. Attorneys that practice pursuant to that statute must adhere to performance standards set by the AOC and provide adequate counsel and zealous advocacy for their clients (https://www.nmcourts.gov/Court-Appointed-Attorneys/attorney-performance-standards.aspx). Those demands are often in tension with the funding system that supports CCAs.

In 1993, the legislature first allocated funding to the New Mexico Supreme Court to pay for parent and youth attorneys and guardians ad litem in abuse and neglect cases. When first implemented, each judicial district administered a local Contract and Court-Appointed Attorney program. Contract rates were individually set by each judicial district and the Administrative Office of the Court (AOC) then allocated funding based on each districts’ requests. In 2010, the AOC centralized contract administration and assumed the authority over contract review and approval—but the compensation and allocation rates originally set on a district-by-district basis remained unchanged. Those rates grew slowly until and as a result of the study described below, the AOC attempted to pay attorneys by the hour starting in July 2016. By December 2016, it became clear that the cost of that payment model was
unsustainable. In its wake, the AOC has implemented a flat rate based on an attorney’s caseload.

In 2013, CCIC conducted a study of the quality of representation provided by parent and youth attorneys and guardians ad litem that highlighted concerns about attorneys’ abilities to prioritize client contact, to be prepared for hearings, and to monitor client progress on case plans. The study also showed that CAAs lacked general trial advocacy skills. In 2015, CCIC engaged in systematic conversations with judges and CAAs across the state to better understand those issues. Those conversations led CCIC to conclude that inadequate compensation was the primary contributor to the concerns identified in 2013. This low compensation has led to attorneys in the 2nd district taking on large caseloads to earn a living wage and attorneys elsewhere in the state to take contracts from multiple districts which increases their overall caseload (and the amount of time-consuming but necessary travel). Other issues identified by the 2015 conversations included a need for mentoring and coaching for new attorneys, a desire for more specialized training, and access to interdisciplinary team members (e.g., social workers, experts, investigators, paralegals). See Appendix A for more detail on the history of parent and child representation in New Mexico.

Finding that parent and child representation still remains inadequate and continues to face the same barriers to high quality practice identified in 2013 and 2015, on August 27, 2018, CCIC leadership drafted and presented a memorandum seeking support from the New Mexico Supreme Court for a 2019 legislative memorial. See Appendix B. The proposed memorial would, if passed, establish a Taskforce to analyze the current state of CAA representation in child welfare cases in New Mexico, study best practices locally and nationwide, and make recommendations on how to improve New Mexico’s CAA representation system.

On October 25, 2018, the CCIC convened its monthly meeting at the Albuquerque Art Museum. That day the commission was joined by two national experts Mimi Laver, Director, Legal Representation at the American Bar Association (ABA) Center on Children and the Law and Adrian (Addie) Smith, a consultant who coordinated efforts to improve parent and child representation in Oregon. The two facilitators helped guide a daylong conversation about national best practices in child welfare representation, the strengths and weaknesses of CAA representation in New Mexico, the need for a review of CAA current representation in New Mexico, and the priorities and values that should drive that analysis. See Appendix C for a list of attendees.

The conversation was grounded in three principles:

1) We assume that we all care about children, parents, and families and when a family comes in contact with the child welfare systems we want each member of that family to receive the best possible services—including legal representation.

2) We assume that attorneys for parents and youth and guardians ad litem want to do a good job/provide high quality representation and want the tools they need to do so.

3) We assume that high quality representation for all parties in Children’s Court protects individual rights, promotes better decision-making, and drives better outcomes.
A Summary of National Best Practices and Research

The conversation on October 25, 2018, began with a short presentation from the facilitators about the qualities of effective parent and child advocates and the state systems that support them. The facilitators shared the findings of relevant and available research and the lessons learned from other states during their efforts to improve parent and child representation. The individual characteristics of an effective child, youth or parent advocate and the characteristics of a system that supports quality practice described by the facilitators are provided below.

Individual Characteristics of Quality Child, Youth and Parent Representation

- **Engage with and know a client.** This requires an attorney to (a) meet and communicate regularly with their clients and (b) take the time to understand the client’s case.

- **Provide zealous legal advocacy both in and out of court.** This requires an attorney to (a) conduct a thorough and independent investigation at every stage of the proceedings, (b) research applicable legal issues and legal arguments, (c) develop a case theory and legal strategy, (d) engage in a corresponding motion practice, and (e) send appropriate cases up on appeal. It also requires the attorney to advocate for appropriate services on an ongoing basis throughout the life of the case.

- **Fulfill the role of legal counselor.** This requires that the attorney (a) explain the legal process to the client, (b) help the client understand his/her rights at each point in the proceeding, and (c) provide the client with the information he/she needs to make informed decisions and actively aid and assist in his/her case.

System Characteristics of Quality Child, Youth and Parent Representation

- **Reasonable Caseloads.** Approximately 60 cases is the recommended caseload for parent, youth, and child attorneys. A caseload of that size gives an attorney the time they need to fulfill their obligations to each client: meet outside of court, prepare for court, advocate in court, and advocate in out-of-court meetings.

- **Fair compensation.** Parity with agency attorneys is recommended. This allows for the recruitment and retention of talented and dedicated professionals and signals that the work of parent, youth and child attorneys is similar in nature and equally as valuable as the work of an agency attorney.

- **Access to interdisciplinary/multidisciplinary team.** A legal team that includes social workers and parent mentors is recommended best practice. An attorney must also have access to translators, investigators, and experts as necessary. An interdisciplinary team promotes client engagement and supports zealous advocacy.

- **Early appointment.** According to national recommendations, attorneys should be appointed early, at least in time for them to have a meaningful meeting with their client before any court appearance.

- **Support and oversight.** There should be clear expectations, performance evaluations, and specialized support and training for parent, youth, and child attorneys. As child abuse and neglect law and practices grows more sophisticated, these steps ensure clients receive quality representation.
• **Not overseen by the Court.** To avoid conflicts and to promote fairness, it is recommended that the court system not be the entity to provide oversight of parent, youth, and child attorneys.

**Diverse practitioners and cultural humility.** Best practice is for the bar of child abuse and neglect attorneys to reflect the diversity of their clients, to understand how cultural, social, and economic differences affect the attorney-client relationship and to avoid personal and systemic bias.

For more details on these characteristics, see the handouts from the ABA Center on Children and the Law and the Family Justice Initiative distributed at the convening contained in Appendixes D & E.

**Current Efforts to Improve Representation in New Mexico**

In 2013, the AOC began to work closely with the 13th judicial district to roll out an interdisciplinary model of child welfare representation called the New Mexico Family Advocacy Program (NM FAP). More recently, the AOC has begun exploring the possibility of expanding the NM FAP to the 2nd judicial district as well. The NM FAP is based on the interdisciplinary model used at the Center for Family Representation, which is widely considered to be a national best practice. As part of this model, attorneys have access to social workers and other experts who are considered to be a part of the parent or child’s legal team. This model is a new way of practicing for CAAs in New Mexico and although the numbers are limited, the data is already showing better permanency outcomes for children and families in the pilot districts. In fact, recent data shows that over 70% of cases in the 13th district reunify in under 12 months, in 2018 the percentage for the state was about 32%. In addition, attorneys practicing under this model report feeling more supported and better able to serve their clients, and judges have noted the improvement in practice they have witnessed in their courtrooms.

In September of 2018, the AOC was awarded a highly competitive federal grant of nearly eight million dollars by the Children’s Bureau at the U.S. Department of Health and Human Services to further develop the Family Advocacy Program, solidify data collection practice, analyze the program success, and determine the feasibility of implementing the model in other districts throughout the state. Additionally, the 13th Judicial District is a demonstration site for the Family Justice Initiative (FJI). The FJI is a national coalition of parents’ attorneys, children’s attorneys, academics, advocates and others who seek to build a better understanding of the role that high quality legal representation for children and parents has in ensuring that the child welfare system meets it promise to strengthen families.

With the help of this new federal grant, the AOC will focus on strengthening the use of the interdisciplinary representation model for parents and children and through the FJI, New Mexico will have access to technical assistance from the ABA Center on Children and the Law, Center for Family Representation, Children’s Law Center of California and Action Research Partners to study the effects on legal representation and outcomes. CCIC is excited to support the AOC’s work on this project and thrilled to consider the expansion of the pilot project to other districts in New Mexico as this model will be a key toward improving representation throughout the state.

**The Strengths of Parent and Child Representation in New Mexico**
After reviewing the history of Children’s Court representation in New Mexico and discussing best practices nationwide, the facilitators turned the conversation to the existing strengths in New Mexico’s CAA system. One clear strength repeatedly surfaced: the 13th Judicial District’s Pilot Program.

**The 13th Judicial Interdisciplinary Family Advocacy Program**

Practitioners from the 13th district joined CCIC for the October 25th meeting to discuss their experience with the Family Advocacy Program (FAP) and the new federal grant funding garnered to support it (as described above). The attorneys reported that because of the program they have been able to build more congenial relationships with the court and the Children Youth and Families Department (CYFD). They also reported increased parent engagement (particularly because of the addition of social workers to the legal team); improved ability to know of and address concerns and problems with clients before they “wreak havoc” on a case; and being better able to balance the work of protecting a client’s legal rights with the need to get a client services to promote reunification.

Below is a list of each of the strengths identified by CCIC members. The strengths have been organized by the facilitators to highlight individual practice strengths, outstanding local practices, and strengths of the current CAA system. (Additionally, strengths of the child welfare system at large were discussed. At the decision of the facilitators, those have been omitted from this report in order to focus specifically on representation in child abuse and neglect cases.)

**Practice Strengths**

- Attorneys across the state strive to provide ethical representation that meets the performance standards set by the Supreme Court.
- The 13th Judicial District interdisciplinary practice known as the family advocacy program.
- Strong motion practice coupled with strong collaborative advocacy in the 6th Judicial District.
- The 2nd Judicial District has a pool of experienced attorneys and a system in place with the court for client complaints.
System Strengths

- Every parent and every child in an abuse and neglect case is appointed counsel before the first hearing and for the duration of the case.
- The legislature provides a base level of funding and when necessary has authorized supplemental funding for attorneys for parents and youth as well as guardian ad litems.
- The Corinne Wolfe Center on Child and Family Justice at the University of New Mexico School of Law has two programs funded by the Kellogg Foundation to ensure consistent specialized training for attorneys who represent parents and children and to create a pipeline to create a new and diverse cohort of attorneys.
- Children over 14 years old have attorneys who provide them with direct representation.
- There are informal support networks and formal listservs of parents’ attorneys and children’s attorneys that share resources, offer advice on difficult cases, and collaborate in individual cases when their clients’ interests align.
- There are strong on-the-ground relationships between CASAs, parents’ attorneys, children’s attorneys, CYFD attorneys, and CYFD caseworkers.

The Challenges Parent and Child Representation Faces in New Mexico

The conversation then shifted to the challenges in the CAA system in New Mexico. Four topics dominated the conversation: inadequate funding, inadequate oversight, low rates of attorney retention, and lack of diverse attorneys as well as attorneys trained to practice with cultural humility and regional practice differences:

Inadequate funding. The problem of inadequate funding was the single largest concern identified by convening participants. CCIC members identified that inadequate funding has numerous effects on CAAs and the system that supports them. These concerns included the fact that CAAs are not paid fairly which contributes to the issues of the quality of representation and the high turnover and that CAAs and their clients did not always have access to investigators, social workers, and experts as necessary.

Inadequate oversight. The issue of inconsistent representation was connected to the lack of support and oversight for CAAs. These concerns included a need for more staff to implement the CAA system, a means to perform performance evaluations, and methods for continuous quality improvement in addition to the need for an independent office dedicated to supporting the CAA system.

Poor attorney retention. Although CCIC members noted that there are some parts of the state with long-standing parent and child attorney practitioners, one problem repeatedly identified was attorney retention. The source of this problem was characterized as three-fold: low pay, highly demanding and emotionally draining work, and a lack of respect for the work and practitioners who do the work. The consequence of low retention rates is high turnover.
**Lacking diversity and cultural humility.** CCIC members discussed at length the CAA systems role in disproportionality (the overrepresentation of children of color) and the disparate treatment families of color receive from New Mexico’s child welfare system. Specific concerns included the lack of diversity in the parent and child attorney bar, a continued need to build awareness within the parent and attorney bar about implicit bias and cultural humility, and shared ownership of the problems of disproportionality and disparate treatment across practitioners in the child welfare system.

Below is a list of specific challenges facing New Mexico - identified by CCIC members. The challenges have been organized by the meeting facilitators to help the reader better understand the challenges New Mexico faces. The categories include individual practice challenges, challenging regional practices, parent and system challenges. (Additionally, challenges facing the child welfare system at large were discussed. At the suggestion of the facilitators, those have been omitted from this report in order to focus specifically on representation in child abuse and neglect cases.)

**Practice Challenges**

- The quality of individual practice varies greatly across the state.
- The ability of attorneys to meaningfully connect with their clients varies greatly across the state.
- In some regions parent and child attorneys are overburdened with high caseloads.
- In some regions there are not enough cases for attorneys to specialize in parent and child representation.
- In some regions parent and child attorneys must travel large distances to meet with clients and/or attend court.
- In some regions parents are represented by interdisciplinary teams leading to improved outcomes, but this practice has not yet been implemented statewide, or for children’s representation.

**System Challenges**

- There is inadequate funding.
- All of the attorney contracts are administered by the court system (through the AOC). In some districts, courts appoint attorneys and in some districts CYFD appoints attorneys.
- There is no centralized complaint mechanism, performance evaluations, or policy for oversight of attorney performance.

**Stories from the Field**

A former foster youth and system-involved parent described her experience with the CCA system. 

Over the course of her three-year-case she worked with three different attorneys. When each new attorney took over her case she had the burden of orienting her attorney and re-explaining the trauma of her children’s removal. She felt disrespected and discouraged by those experiences.

Perhaps most concerning, however, was that the lack of continuity in representation has led to her children remaining out of her care for much longer than necessary.
• There is no continuous quality improvement system in place.
• The AOC is understaffed and under-resourced. The individual who is coordinating parent and child attorneys has multiple responsibilities which prevents providing more intensive contract and performance oversight.
• Contract attorneys do not reflect the diverse clients for whom they work. Attorneys need to gain a better understanding of the diversity of the clients they serve and the experiences of clients who are people of color or lower socioeconomic status. Attorneys need to build cultural humility.
• There is frequent attorney turnover and no good process for case transfers.
• There is some concern that the guardian ad litem model (or best interest advocacy) may not be effective or serving New Mexico’s children well.
• There is no coordinated appellate agenda for children or parents. Further, trial attorneys are required to write the notice of appeal and docketing statement when they wish to appeal a trial court decision—a practice that is burdensome on trial attorneys and fails to take advantage of the expertise of appellate attorneys to set up the strongest possible appeals.
• There is no funding for or mechanism to identify and assign pre-petition representation for parents or children.
• There is poor coordination between delinquency attorneys and children’s attorneys and there is a statute that prevents a one lawyer-one child model.

The Need for Taskforce to Analyze Parent and Child Representation in New Mexico

CCIC participants agreed that due to the identified challenges in the CAA system, parents and children are not receiving the high quality legal representation that is required through statute and Supreme Court performance standards. Participants also agreed that a more thorough review of the current system was necessary to better understand what improvements and changes were necessary. After reviewing the draft memorial put together by CCIC leadership, the membership agreed that a Taskforce of key stakeholders charged with performing a review of the current system and offering recommendations for improvement would provide the time, focus, and expertise needed to offer the courts, legislature, and administration thoughtful solutions to the current system challenges, grounded in best practices and designed to promote efficacy and efficiency and ultimately better outcomes for children and families.

The Proposed Charge of the Taskforce

After reviewing the draft memorial, the CCIC agreed that the task force should have three main roles:

1) analyzing the current system in New Mexico
2) reviewing research and local and national best practice
3) using those processes to inform recommendations for improved representation in New Mexico

The CCIC also emphasized that it is imperative for the memorial to include specific directives that the Taskforce analyze (a) whether the AOC is the appropriate entity to manage CAAs or
if an independent state agency would be more appropriate, (b) the feasibility of expanding the Family Advocacy Program, and (c) how the Children’s Court system can best support any recommendations made.

After reviewing the draft memorial, the CCIC membership also suggested the following changes (as well as a few wordsmithing ideas):

- Expanding the membership to include, for example, tribal attorneys, CASAs, more parents and foster youth, or in the alternative, clarifying that the Taskforce will also utilize a subcommittee system and that subcommittees can include individuals who are not a part of the larger Taskforce
- Expanding the scope of recommendations to include changes beyond legislation, for example, administrative or judicial policy changes
- Ensuring that there is funding for staff, for travel and for the time of the Taskforce members (specifically system participants who are not salaried employees or consumers like foster youth and parents)
- Clarifying that disproportionality and diversity are included as issues for the Taskforce to consider
- Including the use of data and continuous quality improvement
- Emphasizing efficacy and cost-effectiveness in the recommendations made

For a copy of the final memorial drafted by legislative counsel to incorporate the suggestion of the CCIC membership, see Appendix F.

The Values that Should Drive the Work of the Taskforce

The CCIC concluded with a discussion about what values should drive the work of the proposed Taskforce. The individual values listed by participants are captured below in four different themes: Respecting Families, Promoting Due Process, Data-Driven Decision-Making, and Community Engagement.

Respecting Families. The Taskforce should strive to provide recommendations that acknowledge that the Constitution and the children’s code protect a parent’s right to parent their child and the child’s reciprocal right to be raised by their parent—children, whenever possible, belong with their families. The Taskforce should also remember that children and parents are more than just their child welfare case. They are whole people with complex issues (education, juvenile justice, housing, criminal justice system involvement) that may require legal attention, advocacy, referral or coordination. Finally, the Taskforce must affirm and respect the diversity of New Mexico’s families and create recommendations designed to support that diversity.

Promoting Due Process. The Constitution guarantees parents and children basic procedural protections when they interface with the child welfare system. The Taskforce should endeavor to make recommendations that promote due process and a sense of procedural justice. In support of those goals, the Taskforce should offer recommendations that promote compliance with state and federal laws, legal ethics, and attorney performance standards.

Data-driven Decision Making. The Taskforce should use data, best practices, and national experts in its deliberation processes. It should also consider the importance of data-collection
and continuance quality improvement in a strong representation system and determine how to best integrate those tools into New Mexico’s CAA system.

**Community Engagement.** The Taskforce should engage the community—the legal community, child welfare consumers, and the community at large—in its information gathering and decision-making processes. As part of this work, the Taskforce should serve as a participative and transformational leader promoting the importance of parent and child representation, the unique and essential role these advocates play, and the need to respect and value their work.

**Conclusion and Recommendation**

The New Mexico system of CCAs that supports representation for parents and youth in addition to guardians ad litem for children has some strengths, nonetheless it faces significant challenges. To better understand and overcome those challenges and most effectively serve the children and families of New Mexico, CCIC through the New Mexico Supreme Court, suggests that the legislature pass a memorial to create a Taskforce of key stakeholders to develop recommendations for improvement. This Taskforce should be charged with reviewing current practice, reviewing local and national best practices, and recommending necessary changes to improve the system that supports the individual practices of CCAs in New Mexico. Specifically, CCIC requests that the Taskforce determine whether an independent stand-alone entity is necessary to effectively, efficiently and ethically manage and implement New Mexico’s CAA system.
Memorandum
To: New Mexico Supreme Court
From: Children’s Court Improvement Commission
Date: August 27, 2018
Re: Legislative Memorial Proposal – Task Force on Abuse and Neglect Representation

Introduction
The purpose of this Memorandum is to seek the Supreme Court’s support for a Memorial in the 2019 legislative session that would establish a Task Force to study and make recommendations about the most effective and cost-efficient administrative structure for appointing, compensating, and retaining attorneys for parents and children in child welfare cases in order to improve the quality of representation.

Child welfare cases impact one of the most basic and fundamental rights, the right to the companionship and care of one’s family. Simply because of the importance of this right, high quality legal representation is critical. But it is also critical because of the impact of the child welfare system on parents and children (including the trauma of removal and the potential of permanently severing the parent-child relationship). High quality legal representation is important for many reasons: it ensures due process and procedural fairness; improves judicial decision-making by providing the court with accurate, timely, and complete information about the children and parents--including the views and voices of the parties’ themselves; and leads to better long-term outcomes for children and their families, including higher rates of reunification and swifter resolution of cases (which, in
turn, reduces costs to the state for things like foster care support payments, case worker and court time, and resources and services for children and families). In a state like New Mexico, where high rates of poverty and Adverse Childhood Experiences (commonly known as “ACES”), combine with limited access to meaningful services and supports, high quality legal representation can help prevent parents and children from falling through the cracks, get the services that they need, and reduce the impact of removal.

As background for your decision whether to support such a Memorial, this Memorandum outlines the history and current use of the Court Appointed Attorney Fund (CAAF), the CAAF budget, the number of child welfare case filings over the last decade or so, barriers to quality representation, and national research on child welfare representation. It then turns to the proposed Task Force, outlining its proposed charges and membership.

**Court Appointed Attorney Fund History**

Since 1993 the legislature has allocated funds to the AOC to pay for court appointed attorneys to represent indigent parties in abuse and neglect cases. Originally, judicial districts would select the attorneys and administer funding.

In 2010, the AOC centralized administration of the CAAF on a flat rate basis, used a model contract, became a party to the contracts, and had approval powers. The AOC employed an attorney to manage the fund.

In 2013, The Children’s Court Improvement Commission (CCIC) conducted a survey on the quality of representation in abuse and neglect cases to identify issues of concern, possible solutions, and recommendations for the CAAF. The study found that many Children’s Court judges and clients had concerns about the attorneys not meeting with their clients, lack of preparation for hearings, not
monitoring progress on case plans, and an overall lack of trial skills. Additional barriers identified were high caseloads, inadequate and inequitable compensation, and lack of support services and resources.

In 2015 CCIC began meeting with contract attorneys and children’s court judges to discuss changes to the CAAF. Overwhelmingly, all strategic partners stressed that adequate compensation was the highest priority for securing quality legal representation.

In 2016, the CAAF was administered with a model contract and compensated attorneys at $60/hour for in and out court time as well as $30/hour travel time. The CAAF was unable to sustain the billing and the fund was forced to revert to a flat rate in order to maintain representation in all districts. The same flat rate was imposed for all contracted attorneys based on the number of cases carried by each attorney.
**Budget**

The CAAF budget funds not only abuse and neglect attorneys but also court appointed attorneys (contracted or not) and their mileage, for the abuse and neglect appeals, mental health cases arising under the Children’s Code, Uniform Probate Code, and the Adult Mental Health and Developmental Disabilities Code. There are also circumstances requiring representation under the Uniform Parentage Act, and the Kinship Guardianship Act. Below is the spent budget on contracted attorneys. Each year the AOC has requested supplemental funding to ensure payment to contractors through the end of the fiscal year.

![Contract Attorney Budget](chart.png)

Except for FY17 all fiscal years were paid via flat rates to contractors. In FY17 the hourly billing system was introduced. The monthly billing total for only abuse and neglect attorneys was over $500,000, making it impossible for the CAAF to support the billing for the year.
Case Filings

Below are the abuse and neglect case filings statewide over the last 11 years. There was a spike in cases between 2013 and 2014 and a majority of those were in the 2nd Judicial District. Bernalillo County experienced the most severe increase in filings – with over a 40% increase that has yet to return to a pre-2013 level. Typically, each filed case requires the appointment of a minimum of 3 attorneys – 2 parents and one child’s attorney. The filed cases are in addition to the existing caseloads that carry over year to year. The chart below shows the yearly statewide new filings and the chart following shows the actual number of pending cases each year.
Quality Representation Barriers
The CAAF continues to face challenges with adequate compensation and infrastructure to ensure proper oversight, auditing, evaluation, and support. The program also struggles with attorney recruitment and retention particularly in the rural areas of the state. The fund has 2 FTEs: one attorney and one financial analyst. There are over 140 contracts across the state. The AOC attorney is also responsible for the Court Improvement Project, staffing of the CCIC and the JDAI Leadership Team, and the court appointed special advocate (CASA) contracts. With limited staff there is little oversight and evaluation to ensure quality legal representation. Additionally, the contract attorney model itself limits the ability of the AOC attorney to supervise the attorneys, and restricts her “supervision” to contract compliance only (making meaningful supervision of each contracting attorney’s substantive work impossible).

The financial analyst is responsible for contract tracking, attorney billing and work logs, mileage logs, purchase order issuance, and invoicing for all contractors and non-contract attorneys. The financial analyst also performs much of the administrative work of the office. The contract attorneys, a majority of whom are solo practitioners, lack access to experts, social workers, paralegals, and administrative staff. Attorneys working in larger districts have high caseloads and many are working in multiple districts making conflicts and continuances common. The rural districts face different struggles – lack of interested local attorneys, travel distances, and not enough cases to dedicate practice to child welfare. The lack of adequate compensation and infrastructure makes overcoming these barriers even more difficult; the CAAF functions reactively versus proactively.

National Research on Child Welfare Representation
Poor representation can lead to:
1. Longer stays in foster care
2. High rate of continuances
3. Longer case processing
4. Infrequent client communication
5. Less rigorously developed case resolutions

The U.S. Department of Health and Human Services through the Administration for Children, Youth and Families released an information memorandum (IM) to states in January of 2017 on the importance of quality legal representation and its effect on child welfare outcomes. See *Attachment A*. The American Bar Association Center on Children and the Law has produced a talking points quick sheet on the benefits of quality legal representation as well as the attributes of a legal structure that promotes quality representation. See *Attachment B*. Section VII of the IM also focuses on models for delivering legal representation and Appendix A to IM highlights exemplary models for parent and child representation. Those include: The Detroit Center for Family Advocacy, The Center for Family Representation in New York, the Washington State Office of Public Defense, Kids Voice in Pennsylvania, and the Wyoming Guardians ad Litem Program (some programs operate with parents and children’s attorneys in one office, other states have them separate). National research shows that improved parent representation is associated with better child welfare outcomes both in urban and rural areas including: increased rate and speed of permanency, fewer foster care placements, more efficient case processing, cost effectiveness, and court and client satisfaction. See *Attachment C*. For a summary of parent representation models across the country please see *Attachment D*.

**Task Force Charges**
1. Study attorney operational structure(s) within New Mexico and throughout the country including but not limited to:
2. Consider feasibility, costs and benefits including:
   a. Degree structure would promote equitable compensation, enhanced representation, and compliance with Supreme Court standards of representation
   b. Financial considerations in establishing and maintaining the office(s)
   c. Proposed governance and administrative functions
   d. The ability of the structure to ensure
      i. Attorney accountability
      ii. Oversight and supervision
      iii. Evaluation
   b. The ability of the structure promote training and litigation support
   e. The extent to which the structure could provide legislative advocacy
   f. Potential conflicts
   g. Appeals
   h. Costs associated with moving into an existing agency or creating a new entity or entities and considering the legal, practical and philosophical viewpoints
3. Whether legislation and or constitutional amendment would be needed to carry-out the recommendations.
4. Recommend what the new office(s) would do including:
   a. Staffing of the office(s) and hiring/contracting with attorneys statewide
   b. Improving and establishing accessibility to
i. Experts
ii. Investigators
iii. Social workers
iv. Paralegals
v. Administrative staff
c. Establishing trial and appellate standards (as part of the Court’s existing Performance Standards)
d. Creating relevant, accessible and role specific training
e. Establishing a mentoring and retention program and incorporation of law student opportunities
f. Establishing a compensation structure that achieves parity and adequate representation
g. Establishing a formal process for complaints
Task Force Members

A. The President of the Senate shall appoint one member from among members of the Senate.

B. The Speaker of the House of Representatives shall appoint one member from among members of the House of Representatives.

C. The Governor shall appoint two representatives as follows:
   i. The Cabinet Secretary or Designee of the Children, Youth and Families Department
   ii. The Chief Children’s Court Attorney of the Children, Youth and Families Department

D. The Chief Justice of the Supreme Court shall appoint
   i. 2 Children’s Court Judges
   ii. 3 attorneys practicing or formerly practicing in the child welfare system
      1. 1 respondent attorney
      2. 1 guardian ad litem
      3. 1 youth attorney

E. 1 member of the Children’s Court Improvement Commission
F. The Chief Public Defender or Designee
G. The Director of the Administrative Office of the Courts or Designee
H. The Director of New Mexico Legal Aid or Designee
I. The Director of the Legislative Finance Committee or Designee
J. The Director of the American Bar Association Center on Children and the Law
K. A former foster youth
L. A former system involved parent
Conclusion

The Children’s Court Improvement Commission has been studying and working to improve legal representation for all parties in abuse and neglect cases for more than a decade. Courts must review serious and life changing decisions made by CYFD. The quality of those court decisions is dependent upon the information presented by the attorneys who represent children and parents. Our legal system is premised on parties having due process rights, and that competent legal representation and fair treatment will produce a just result. The complexity of the child welfare system and the rights at stake necessitate competent legal representation. The legal system clearly plays a fundamental role in the well-being of New Mexico’s children and families. In the 2018 annual Kids Count Data Report, New Mexico ranked 50th in the country overall in child well-being.¹ The Commission believes that in order for New Mexico to improve the lives of families involved in child welfare cases, we must address the structure of how we provide legal representation to both children and parents.

Should you like any additional information or have questions please don’t hesitate to contact us.

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TO: State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-E and IV-B of the Social Security Act, Indian Tribes and Indian Tribal Organizations, State Courts, and State and Tribal Court Improvement Programs.

SUBJECT: High Quality Legal Representation for All Parties in Child Welfare Proceedings

PURPOSE: To encourage all child welfare agencies, courts, administrative offices of the courts, and Court Improvement Programs to work together to ensure parents, children and youth, and child welfare agencies, receive high quality legal representation at all stages of child welfare proceedings.


INFORMATION

The purpose of this information memorandum is to emphasize the importance of high quality legal representation in helping ensure a well-functioning child welfare system. This memorandum also highlights important research and identifies best practices and strategies to promote and sustain high quality legal representation for all parents, children and youth, and child welfare agencies in all stages of child welfare proceedings.

The Children’s Bureau (CB) strongly encourages all child welfare agencies and jurisdictions (including, state and county courts, administrative offices of the court, and Court Improvement Programs) to work together to ensure that high quality legal representation is provided to all parties in all stages of child welfare proceedings.

I. Background

Courts play an integral role in the child welfare system. A court order is required to involuntarily remove a child or youth from the home and to find that child or youth dependent.
Once a child is removed from home and placed in out-of-home care, federal law requires that judges make a number of determinations about the safety of the home of removal, the welfare of the child, and that child’s permanency plan in order for an agency to receive title IV-E funding.¹

A court must review agency decisions about the family, the suitability of the child or youth’s temporary placement, and the child’s permanency plan that will result in family preservation, reunification, or another permanency goal. In order for a judge to make the best possible decisions for a family, it is critical that he or she receive the most accurate and complete information possible from and about all parties. Incomplete or inaccurate information renders judicial decision-making more difficult and may result in delays, increases in the length of time children and youth spend in care, additional costs to state or tribal government, and less beneficial decisions.

Numerous studies and reports point to the importance of competent legal representation for parents, children, and youth in ensuring that salient information is conveyed to the court, parties’ legal rights are protected and that the wishes of parties are effectively voiced. There is evidence to support that legal representation for children, parents and youth contributes to or is associated with:

- increases in party perceptions of fairness;
- increases in party engagement in case planning, services and court hearings;
- more personally tailored and specific case plans and services;
- increases in visitation and parenting time;
- expedited permanency; and
- cost savings to state government due to reductions of time children and youth spend in care.

The decisions courts make in child welfare proceedings are serious and life changing. Parents stand the possibility of permanently losing custody and contact with their children. Children and youth are subject to court decisions that may forever change their family composition, as well as connections to culture and heritage. Despite the gravity of these cases and the rights and liabilities at stake, parents, children and youth do not always have legal representation. Child welfare agencies also sometimes lack adequate legal representation. In some states parents or children may not be appointed counsel until a petition to terminate parental rights has been filed. The absence of legal representation for any party at any stage of child welfare proceedings is a significant impediment to a well-functioning child welfare system.

II. Parties, Interests and Rights

The U.S. legal system is based on the premise that parties have a due process right to be heard and that competent legal representation and fair treatment produce just results. Parents, children and youth, and title IV-E/IV-B agencies are all parties to child welfare proceedings. Each may be required to provide sworn testimony under oath in court, each may be cross-examined and all are subject to court orders. All parties have significant liberties or liabilities at stake.

Parents

¹ 42 U.S.C. 672(a)(2)(A)(ii); 42 U.S.C. 671(a)(15); 45 CFR § 1356.21(b)(2).
The stakes are particularly high for parents in child welfare proceedings as their parental rights may be permanently severed, a right that the United States Supreme Court has identified as a fundamental liberty interest.\(^2\) By any standard this marks a significant deprivation. Termination of parental rights is often referred to as the civil law equivalent of the death penalty.

There is consensus in the field that the rights at stake for parents and the complexity of legal proceedings in child welfare cases require all parents to have competent legal counsel. Parents’ attorneys protect parents’ rights and can be key problem solvers as counselors at law, helping parents understand their options, the best strategies for maintaining or regaining custody of their children and bringing cases to conclusion.

*Children and Youth*

Children and youth that have been removed from their families, even for a short period of time, experience a range of trauma and stress. Children and youth are often scared and confused and have incomplete understandings of what is happening to their families and what their future will hold. A recent study characterizes this uncertainty as “ambiguity” and provides evidence that ambiguity (this not knowing where he or she will live or what will happen to him or her) is a tremendous source of trauma.\(^3\)

Federal law recognizes the importance of children having an advocate in judicial proceedings. In order to receive funding under the Child Abuse Prevention and Treatment Act (CAPTA) state grant, the governor of each state must provide an assurance that the state has provisions and procedures requiring “that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings—(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and (II) to make recommendations to the court concerning the best interests of the child.”\(^4\)

While CAPTA allows for the appointment of an attorney and/or a court appointed special advocate (CASA), there is widespread agreement in the field that children require legal representation in child welfare proceedings.\(^5\) This view is rooted in the reality that judicial proceedings are complex and that all parties, especially children, need an attorney to protect and advance their interests in court, provide legal counsel and help children understand the process.

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\(^5\) One of the findings of the Quality Improvement Center on the Representation of Children in the Child Welfare System (QIC-ChildRep), a project funded by CB, is that there is widespread agreement on the proper role of the child’s attorney. The QIC-ChildRep review of the academic literature, national standards, conference recommendations and stakeholder opinion documents the evolution of lawyer representation of children and reveals an emerging consensus on nearly all aspects of the role and duties of the child’s legal representative. Even the differences across the debate of client-directed versus best interests are narrowed. The QIC-ChildRep recommends that states adopt the 2011 ABA Model Act as the statutory structure for legal representation of the child. See Appendix A for descriptions of an exemplary specialty office and a statewide model of delivering child representation.
and feel empowered. The confidential attorney-client privilege allows children to feel safe sharing information with attorneys that otherwise may go unvoiced.

In addition to attorneys, children and youth also benefit from a lay guardian ad litem, such as a CASA. CASAs can make important contributions to child welfare proceedings through time spent getting to know the child’s needs and reports to the court.

**Child Welfare Agencies**

Title IV-E/IV-B caseworkers and their supervisors must regularly appear in court. It is incumbent upon these caseworkers and supervisors to provide evidence that the agency has made reasonable efforts (or active efforts where cases are subject to Indian Child Welfare Act (ICWA)) to prevent removals, that it is contrary to the welfare of a child to remain in the home, and that reasonable efforts have been made to finalize a permanency plan.

Attorneys for public child welfare agencies play a crucial role in ensuring that the child welfare agency presents evidence of its diligence in working with families, that reasonable efforts are made, and that there are not undue delays in service provision, case planning or other vital services to keep families safe, together and strong. Agency attorneys can provide valuable oversight as to whether removal or return decisions conform to the proper standards. Such oversight is critical to ensuring judges have the information requisite to make statutorily required judicial determinations. Agency representation has also been identified as a safeguard against case workers engaging in the unauthorized practice of law.

**State and Territorial Governments**

Concern over the rights of children in care has resulted in federal class action lawsuits alleging civil rights violations. Such lawsuits cost state governments hundreds of millions of dollars in legal defense expenses. It stands to reason that high quality legal representation for all parties may help ensure greater system accountability, thereby reducing the likelihood that such lawsuits are filed in the first place.

**Tribes and Tribal Governments**

In cases involving an Indian child, it is critical that the right of tribes to intervene and participate in proceedings under ICWA is honored and that an attorney or other representative of the tribe be noticed, present if the tribe deems it appropriate, or otherwise able to fully represent the tribe of which the child is a member or eligible for membership. As sovereign nations, tribes have a statutorily protected interest in member or potential member children who are party to state child welfare proceedings, and it is critical that the tribal voice be heard.

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8 Id.
9 42 U.S.C. 671(a)(15); 45 CFR § 1356.21(b)(2).
10 81 FR 3886/ 25 CFR part 23; see also, the BIA's 2016 ICWA Guidelines (p.8, A.3, re: 23.133). Note that tribes, as sovereign nations, should identify their own representatives in state court proceedings, whether or not the representative is a lawyer. [https://www.bia.gov/cs/groups/public/documents/text/idc2-056831.pdf](https://www.bia.gov/cs/groups/public/documents/text/idc2-056831.pdf)
Failure to provide a meaningful opportunity for tribes to participate in cases involving Indian children is a violation of ICWA\textsuperscript{12}, may lead to unnecessary long stays in care, increased foster care costs, appeals, and unnecessary trauma for Indian children and youth.

III. Increases in Procedural Justice, Fairness and Engagement

State intervention in the lives of families, even when absolutely necessary, is a traumatic experience for children and parents alike. Removal and family separation based on allegations of abuse or neglect typically represent the most difficult and vulnerable time a family may face. During this time, it may be very difficult for a parent to fully trust an agency caseworker. A parent also may not fully understand how the child welfare system works, the relevant laws and his or her legal rights.

Lack of trust and lack of familiarity with the child welfare system can create significant barriers to engagement, especially for youth and parents. Lack of engagement can stand in the way of identifying strengths, needs and resources and impede all elements of case planning. When a parent or youth is unable or unwilling to engage with child protective services or agency caseworkers it is less likely that they will feel the process is fair.

Research supports that when a party experiences a sense of fairness, he or she will be more likely to comply with court orders, return for further hearings, trust the system, and will be less likely to repeat offenses.\textsuperscript{13} In the legal field, this feeling of fairness or trust in court proceedings is known as procedural justice.

Researchers have identified four key components to procedural justice: 1) voice – having one’s viewpoint heard; 2) neutrality – unbiased decision-makers and transparency of process; 3) respectful treatment – individuals are treated with dignity; 4) trustworthy authorities – the view that the authority is benevolent, caring, and genuinely trying to help.\textsuperscript{14}

Several studies and program evaluations examining legal representation in child welfare proceedings have identified competent legal representation as a key element in enhancing party perceptions of procedural justice. A small study in Mississippi compared the outcomes of child abuse and neglect cases for parents who did and did not have legal representation in two Mississippi counties.\textsuperscript{15} Parents who were represented by an attorney believed that they had a greater voice in determining case outcomes, and they understood the court process better than parents without attorneys. In addition, preliminary findings indicate a trend toward more positive

\textsuperscript{12} 25 CFR 23.111.


outcomes in cases where parents were represented by an attorney: they attended court more often, stipulated to fewer allegations, and had their children placed in foster care less often.

The importance of procedural justice has also been recognized by the Conference of Chief Justices and the Conference of State Court Administrators. In 2013, the Conferences jointly adopted a resolution to support and encourage state supreme court leadership to promote procedural fairness, identifying procedural justice as critical for courts to promote citizen’s experience of a fair process.16

IV. Early Appointment of Counsel, Improved Case Planning, Expedited Permanency and Cost Savings

There is a growing body of empirical research linking early appointment of counsel (at or prior to a party’s initial appearance in court) and effective legal representation in child welfare proceedings to improved case planning, expedited permanency and cost savings to state government.17 Early appointment of counsel allows attorneys for parents and children to be involved from the very beginning of a case. Attorneys can contest removals, identify fit and willing relatives to serve as respite care providers, advocate for safety plans and identify resources, all of which may help prevent unnecessary removal and placement. Where removal is necessary attorneys for parents and children can be actively involved in case planning, helping to craft solutions that address their client’s needs and concerns and expediting reunification or other permanency goals.

The Quality Improvement Center on the Representation of Children in the Child Welfare System (hereinafter, QIC-ChildRep), a randomized control trial funded by the CB, provided strong evidence that the early appointment of a well-trained attorney for children and youth expedites permanency.18 Children represented by attorneys trained and practicing under the QIC-ChildRep model in Washington State were 40 percent more likely to experience permanency within the first six months of placement than children represented by non QIC-ChildRep attorneys.19

A number of smaller, less rigorous studies lend further support to links between early legal representation and expedited permanency. A pilot study in Texas aimed at earlier appointment of attorneys for parents found that cases where attorneys were appointed within ten days of petition filing had more permanent outcomes (e.g., reunification) than cases in which attorneys were appointed later.20 A study examining foster care data from multiple jurisdictions found that the


presence of the mother’s attorney at the preliminary protective hearing (emergency removal hearing) predicted a higher likelihood of reunification.21

There is also evidence that legal representation helps ensure more thoughtful and effective case planning. A study conducted in Palm Beach Florida found that children’s attorneys practicing in compliance with the practice model resulted in more personally tailored and specific case plans and services, as well as expedited permanency.22

Both parents’ attorneys and children’s attorneys can be helpful in addressing collateral legal issues that may leave families vulnerable, such as housing, employment, immigration, domestic violence, healthcare and public benefits issues -- one or any combination of which may contribute to bringing families into contact with the child welfare system. Such efforts may help prevent children from entering foster care or help children return home sooner.

High quality agency representation brings a number of clear benefits to a jurisdiction’s child welfare system. Consistent statewide quality legal representation helps individual caseworker practice and overall statewide performance. More consistent advice and consultation with counsel helps ensure child welfare agencies policies and procedures are followed consistently across the state and that all federal child welfare requirements are met. Agency effort has a direct result on judicial decisions, which in turn directly affects federal monitoring and continuous quality improvement efforts such as the title IV-E foster care eligibility reviews and Child and Family Services Reviews (CFSR).

Agency representation provides legal guidance to child welfare agencies that helps caseworkers meet legal standards governing caseworker visits, evidentiary burdens, compliance with court orders, and existing law. Consistent and adequate representation is likely to reduce the number of court hearings required and make court hearings more focused and efficient. Consistent agency representation also helps child welfare agencies avoid over-intervention while still protecting those children at risk.

The most rigorous research effort examining agency representation to date found that agency attorneys who represented the agency as a client (the agency representation model) and received specialized training achieved permanent placement decisions for children on average 250 days more quickly than attorneys external to the agency (also known as the prosecutorial model) representing the state23. Data also indicated significant state savings because of the reduction in time children spent in temporary foster care placements.

V. Standards of Practice, Specialization, and Quality Assurance

Leading national organizations have long emphasized that the gravity of the interests at stake in child welfare cases require well-trained legal representation for all parties at all stages of child

22 See Zinn, A. & Slowriver, J. (2008), Expediting Permanency: Legal Representation for Foster Children in Palm Beach County. Chapin Hall Center for Children at the University of Chicago available at https://www.chapinhall.org/research/report/expediting-permanency
welfare proceedings. Most notably, the ABA has passed national standards of practice for parent attorneys, attorneys for children and youth, and counsel for public child welfare agencies in child welfare proceedings.\textsuperscript{24} The standards have been widely supported, adopted by many state bar associations and written into court rules and legislation across the country. Under the standards, attorneys practicing child welfare law are required to have a minimum number of child welfare law training hours and provide practice guidance to ensure attorneys represent their clients ethically. CB strongly encourages all states to adopt standards of practice for parents, children and youth, and the child welfare agency to help ensure all parties receive high quality legal representation.

CB has invested in the ABA accredited Child Welfare Legal Specialist (CWLS) Certification program administered by the National Association of Counsel for Children (NACC), which has resulted in over 600 attorneys and judges around the country obtaining CWLS certification.\textsuperscript{25} Certification requires attorneys to complete a self-directed course of study, submit work product, and take a test to demonstrate knowledge of applicable child welfare law and practice. CB strongly encourages all attorneys and judges practicing child welfare law to obtain CWLS certification. CB also strongly encourages all Court Improvement Programs, courts, and bar associations to work together to support attorneys and judges that practice child welfare law to obtain CWLS certification.

The QIC-ChildRep provided empirical evidence that specialized child welfare law training and coaching can positively impact attorney behavior and result in more effective representation of children. QIC-ChildRep lawyers changed their behavior to conform to the practice model, resulting in greater contact with clients, increased communications with other important collateral contacts and were more actively involved in conflict resolution and negotiation activities.

Related research has determined that training can impact judges’ behavior on the bench. This may hold true for attorney practice as well. A recent study completed by the National Council of Juvenile and Family Court Judges (NCJFCJ) lends further support to the importance of training legal professionals.\textsuperscript{26} The study, which looked at the effect that judicial participation in NCJFCJ’s Child Abuse and Neglect Institute had on judicial practice in court hearing revealed that, post-training, judges were more likely to use specific strategies to engage parents in the court process. Judges also asked more questions after the training and were more likely to discuss child well-being and services that would allow the child to return home. This indicates the training was effective in increasing engagement of parents in the process and improving the overall quality of dependency hearings.

\section*{VI. Caseload, Ethics, and Quality Legal Representation}

The larger the caseload, the less a lawyer can do for any individual client. The NACC recommends a standard of 100 active clients for a full-time attorney.\textsuperscript{27} The NACC based this

\begin{itemize}
\item \textsuperscript{24} Available at: http://www.americanbar.org/groups/child_law/tools_to_use.html
\item \textsuperscript{25} Available at: http://www.naccchildlaw.org/?page=certification
\item \textsuperscript{27} National Association of Counsel for Children, 	extit{Child Welfare Law Guidebook}, 2006, at 54.
\end{itemize}
recommendation on a rough calculation that the average attorney has 2000 hours available per year and that the average child client would require about 20 hours of attention in the course of a year. In the federal class action lawsuit filed against the state of Georgia, *Kenny A. v. Deal*, one of the allegations was that overly large caseloads for children’s attorneys violated children’s constitutional rights to competent legal counsel. The court heard expert testimony from NACC regarding caseload size. Evidence gained through the testimony became a key consideration in the court’s finding that foster children have a right to an effective lawyer who is not burdened by excessive caseloads in dependency cases.

Other research and guidelines recommend smaller caseloads. In the QIC-ChildRep study, the adjusted caseload of the sample was 60 cases. That is, even when child representation occupied only a portion of a lawyer’s practice, when the number of cases is adjusted for the percentage of effort required for child representation, the typical caseload was approximately 60 cases.

Data gained from the QIC-ChildRep shows benefits to smaller caseloads. The QIC-ChildRep asked attorneys to do much more than appear in court, the theory being the more an attorney knows about the facts of the case and the competencies and challenges of his or her client the better he or she will be able to represent that client and that proper representation requires considerable work and advocacy outside of the courtroom. For child clients, where it is critical to observe the child in school and in placement settings and regularly communicate with collateral contacts such as teachers, foster parents and service providers, this could require several hours of effort a month per client. It is also the child’s attorney’s duty to independently verify the facts of the case.

A 2008 caseload study by the Judicial Council of California recommended a caseload of 77 clients per full-time dependency attorney to achieve an optimal best practice standard of performance. The Massachusetts Committee for Public Counsel Services, which provides counsel for children and parents in dependency cases, enforces a caseload of 75 open cases. In a very detailed systematic study, a Pennsylvania workgroup carefully broke down the tasks and expected time required throughout the life of a case and matched that to attorney hours available in a year. They concluded that caseloads for children’s lawyers should be set at 65 per full time lawyer.

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29 The QIC-Child Rep found a one-standard-deviation increase (20 cases) in the size of dependency caseload is associated with a 22 percent decrease in the monthly rate of investigation and document review and a 9 percent decrease in the monthly rate of legal case preparation activities.


Given the rights at stake for parents in dependency cases it is vital for parent attorneys to have reasonable caseloads. Ethical representation of parents in dependency proceedings requires considerable time and attention out of court. Legal scholars, practitioners and parents that have been involved with the system agree that it is the work done out of court that makes the biggest impact in dependency cases. Building trusting attorney-client relationships, being a counselor at law that helps a parent understand the system, working together to identify acceptable respite or substitute care options, developing safety plans, attending agency planning meetings, and identifying appropriate services all require a tremendous amount of time.

The higher the caseload, the less time an attorney will have to represent her client. Excessive caseloads make it harder for all attorneys to meet with clients, learn the facts of each particular case and prepare for court. This may result in increased frequency of scheduling conflicts, higher numbers of requests for continuances, undue delays in case resolution, and poor representation for all parties. The costs associated with each consequence are high for families and jurisdictions alike.

**VII. Models of Delivering Legal Representation for Child Welfare Proceedings**

There are three predominant models of delivering legal representation for children and parents: centralized state or county government offices; independent offices that specialize in child welfare law; and private practitioners that are either appointed by judges or assigned to cases as members of a pool of attorneys who handle child welfare cases in a jurisdiction. The vast majority of attorneys representing children and parents fall into the last group, private practitioners. For this group of attorneys, child welfare law often accounts for only a portion of their practice.

Some government and private specialty law offices utilize a multi-disciplinary team approach, which pairs or provides attorneys with access to independent social workers and/or includes a peer parent advocate. Evaluations of models that employ these types of teams are yielding very positive results. Regardless of the type of attorney or model of representation -- standards of practice, reasonable caseloads, ongoing training, connections to support (such as social workers, peer parent advocates or investigators) and effective oversight are important factors in ensuring high quality legal representation. See Appendix A for descriptions of exemplary models of delivering parent and child representation.

**Parent Representation**

The ABA Standards of Representation for Parents in Child Welfare Proceedings provide clear guidance that is applicable to all models of delivering parent representation. The standards emphasize the need for parent attorneys to be both counselors at law and zealous legal advocates. The counselor at law role requires an attorney to take the time to learn and understand their client’s life circumstances, including their strengths and needs and the resources he or she has available. Such information is identified as critical to helping best represent the client.

The standards further articulate that helping clients understand when and how it is most important to cooperate with the child welfare agency is also crucial. Under the standards,
traditional, zealous legal representation is necessary, but insufficient to achieve the best outcomes for parents and families. Rather, the complexities of child welfare proceedings require the parent attorney to simultaneously assume multiple roles including: advisor, teacher and advocate. It is through this combination of roles that comprehensive representation and the best possible outcome are achieved.

CB strongly encourages all jurisdictions to provide legal representation to all parents in all stages of child welfare proceedings. CB further encourages all jurisdictions to consider providing such representation as part of a multi-disciplinary team.

**Child Representation**

Regardless of the model of child representation, the QIC-ChildRep approach is a useful tool for states and individual practitioners to consider. The approach is based on an enhanced version of the ABA Standards of Legal Representation for Children and aligns very closely with procedural justice research. The model calls for proactive lawyering, advocacy and problem-solving.

The model encourages attorneys to utilize six core skills: (1) enter the child’s world; (2) assess child safety; (3) actively evaluate needs; (4) advance case planning; (5) develop a theory of the case; and (6) advocate effectively. Taken together, the core skills empower attorneys to have a well-informed understanding of the particular strengths, needs, and resources of the child’s family, and an understanding of the child’s wishes (where they are able to be expressed). It is this vital individual child and family information that allows the attorney to take an active role in representing the child in case planning and to effectively advocate on his or her behalf.

While the QIC-ChildRep was developed specifically for child representation and the study looked exclusively at child representation, with minor modification the six core skills may be equally valuable for parent representation.

CB strongly encourages all jurisdictions to provide legal representation to all children and youth at all stages of child welfare proceedings. CB further encourages all jurisdictions to consider providing such representation as part of a multi-disciplinary team.

**Child Welfare Agency Representation**

Many states do not currently provide adequate representation to the state’s child welfare agencies or their contract agencies. The agency may be represented differently from county to county, or not directly at all. Consequently, the agency is often deprived of the benefits of having legal guidance in the investigation and disposition of their cases. Absent effective legal counsel, caseworkers lack the knowledge to be effective in court and may unwittingly fall into unlawful practice of law.

There are two basic models of representation for state and county government in child welfare proceedings: the agency representation model and the prosecutorial model. As the names

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33 QIC ChildRep Model and Core Skills available at:  
http://www.improvechildrep.org/DemonstrationProjects/BestPracticeModelSixCoreSkills.aspx
suggest, the agency representation model provides for an attorney or office of attorneys that represents the public child welfare agency. Under this model, the attorney(s) provide legal counsel and advice to the child welfare agency leadership. This includes counsel on specific cases, overall legal approaches to the work, and policy. The agency attorney also represents the child welfare agency in court. Agency attorneys prepare all legal documents, filings, and petitions for the agency and work closely with agency caseworkers to prepare them for court. Agency attorneys also play a critical role in holding case workers accountable. It is important to note, however, that the agency attorney does not represent the caseworker individually.

Under the prosecutorial model, the attorney represents the people or the state, much as a district or county prosecutor would in a criminal case. The prosecutorial model treats the agency as the complaining witness, as opposed to a client. Often attorneys operating under the prosecutorial model are employed by the state or county district attorney’s office. Some attorneys practicing under this model may also practice criminal law; other offices exist as a separate unit within the prosecutor’s office and handle exclusively child welfare cases. Under this model, the public child welfare agency does not have direct legal representation. This approach is not favored today. 34

The agency representation model finds strong support in the ABA standards, existing research and efforts to protect against the unlawful practice of law. States will find a helpful resource in the ABA Standards of Practice for Lawyers Representing Child Welfare Agencies.

A 2016 study of dependency representation in Oregon identified inconsistent state and agency representation, a lack of uniform practice, and complicated financial models as challenges to timely and effective case planning and case management, stating that “obstacles to adequate and effective representation for all parties stand in the way of better outcomes for Oregon’s children and families.”35

Furthermore, the Oregon report found that a model of government representation that provides full representation for the agency in all hearings and out-of-court activities will ultimately eliminate the risk of unlawful practice of law by child welfare employees in the courtroom, and increase outcomes for children and families in Oregon. This recommendation would eliminate “the state” as a party to dependency cases and ensure the child welfare agency is fully represented and has access to consultation with counsel.

CB strongly encourages all jurisdictions to implement the agency representation model to ensure consistent legal representation that supports child welfare agencies to meet all federal requirements.

**VIII. Best Practice Considerations**

There are a number of strategies that a jurisdiction can employ to ensure high quality legal representation for all parties in child welfare proceedings. Each of the below can be adjusted in scale and approach to meet the unique characteristics and resources available in all jurisdictions. There are also a number of best practices that attorney offices or independent attorneys practicing child welfare law can adopt to provide high quality legal representation. Both structural and attorney best practices are included below.

**Structural Best Practices to Ensure High Quality Legal Representation**

- Adopt, implement, and monitor statewide standards of practice for parents’ attorneys, children’s attorneys and agency attorneys.
- Implement binding authority or constitutional protection requiring parents, children and youth to be appointed legal counsel at or before the initial court appearance in all cases.
- Develop a formal oversight system for parents’ attorneys and children’s attorneys to ensure quality assurance. This can be achieved through the creation of an office, the addition of a division to an existing office such as the public defender’s office, as a duty for the presiding family court judge, through the work of a committee or by any other means that are used to ensure accountability and continuous quality improvement. In determining the assignment of oversight responsibilities, it is important to address any conflict of interest issues.
- Require mandatory initial child welfare training for parents’ attorneys, children’s attorneys and agency attorneys. Where resources do not exist for in-person training or geographical challenges make attendance difficult, states are encouraged to explore distance learning and online training experiences.
- Institute mandatory annual training requirements for parents’ attorneys, children’s attorneys and agency attorneys. Child welfare law and regulations and court rules change regularly at the state and federal level. It is important to have an effective way to keep all attorneys up-to-date. Annual update or “booster shot” trainings are one effective way to ensure all practitioners are kept current in law and practice.
- Support adequate payment and benefits to “professionalize” this type of law practice, and move from a contract system with competing priorities to an employment system like other indigent and state agency representation.
- Support a payment system for parent and child representation that is designed to promote high quality, ethical legal representation and discourages overly large caseloads.

**Attorney Best Practices to Provide High Quality Legal Representation**

- Communicate regularly with clients (at least monthly and after all significant developments or case changes) and in-person when possible.
- Ensure that language translation services and other accommodations to ensure equal access and full participation in all processes are available to all clients at all stages of child welfare proceedings.
- Thoroughly prepare for and attend all court hearings and reviews.
• Thoroughly prepare clients for court, explain the hearing process and debrief after hearing are complete to make sure clients understand the results. For children this must be done in a developmentally appropriate way.
• Regularly communicate with collateral contacts (i.e., treatment providers, teachers, social workers).
• Meet with clients outside of court (this provides attorneys an opportunity to observe clients in multiple environments and independently verify important facts).
• Conduct rigorous and complete discovery on every case.
• Independently verify facts contained in allegations and reports.
• Have meaningful and ongoing conversation with all clients about their strengths, needs, and wishes.
• Regularly ask all clients what would be most helpful for his or her case, what is working, and whether there is any service or arrangement that is not helpful, and why.
• Work with every client to identify helpful relatives for support, safety planning and possible placement.
• Attend and participate in case planning, family group decision-making and other meetings a client may have with the child welfare agency.
• Work with clients individually to develop safety plan and case plan options to present to the court.
• File motions and appeals when necessary to protect each client’s rights and advocate for his or her needs.

IX. Conclusion

The child welfare system is intended to keep families safe, together and strong, and where that is not possible to find the next best option for children and youth. To realize this potential it is critical that children and families experience the system as transparent and fair, one in which rights are protected and options are known, co-created and understood. Providing high quality legal representation to all parties at all stages of dependency proceedings is crucial to realizing these basic tenets of fairness and due process under the law. Moreover, research shows that legal representation for all parties in child welfare proceedings is clearly linked to increased party engagement, improved case planning, expedited permanency and cost savings to state government. CB strongly encourages all jurisdictions to work together to ensure all parties receive high quality legal representation at all stages of dependency proceedings.

Inquiries: CB Regional Program Managers

/ s /

Rafael López
Commissioner
Administration on Children, Youth & Families
Attachments:
A - Models of Delivering Parent Representation
B - CB Regional Office Program Managers

RESOURCES

ABA Standards of Representation for Parents, Children, and Child Welfare Agencies
http://www.americanbar.org/groups/child_law/tools_to_use.html

NACC Child Welfare Legal Specialist Certification (CWLS)
http://www.naccchildlaw.org/?page=certification

Quality Improvement Center for the Representation of Children in the Child Welfare System. (QIC-ChildRep) Practice Model

NCJFCJ Enhanced Resource Guidelines

Child Welfare Capacity Building Center for Courts
https://capacity.childwelfare.gov/courts/
Appendix A

Models of Delivering Parent Representation

The Washington State Office of Public Defense (OPD) provides legal representation to indigent parents in child welfare proceedings. The program was created more than a decade ago following an investigative report showing that indigent parents throughout the state typically received poor legal representation in dependency and termination cases. Now operating in 83% of the state, the Parents Representation Program provides state-funded attorneys for indigent parents, who have legally mandated rights to counsel. These attorneys are contracted by OPD, which oversees performance, limits caseloads and provides resources.

The OPD designed and implemented standards specifically for dependency and termination case representation, uniquely blending a counselor at law approach with traditional practice techniques. The standards require OPD contract attorneys to meet and communicate regularly with their parent clients throughout the case, ensure their clients have adequate access to services and visitation, prevent continuances and delays within their control, prepare cases well, and attempt to negotiate agreements and competently litigate if no agreement is reached. Reasonable caseloads are set at no more than 80 open cases per full-time attorney (equivalent to about 60 parents).

The program has been favorably evaluated six times. In 2010, in consultation with the Washington State Center for Court Research, OPD published a report on the court records and court orders in 1,817 dependency cases prior to and after implementation of the Parents Representation Program. The comparison found significant differences in the rate of reunification. Cases commenced after the program was implemented achieved permanency 36.5% more often than those that were commenced prior to representation under the program began.

A 2011 study by the University of Washington, which conducted the study at DSHS’s request, found that after the Parents Representation Program was instituted in various counties, cases were decided between one month and one year faster. The study concluded that the program is helpful in getting children out of foster care and into permanent homes that it should be extended statewide. The reduction of time that children spend in care has been attributed as saving the state hundreds of thousands of dollars.

The Detroit Center for Family Advocacy provides legal and social work advocacy for parents to ensure that children do not needlessly enter foster care. The Center receives referrals directly from child welfare agencies to help at-risk families resolve legal issues that directly impact the child's safety in the home. For example, a mother may need assistance resolving a housing issue against a landlord. A domestic violence victim may need assistance obtaining a restraining and child custody order against an abusive ex-husband. Or a father may need an advocate to ensure that a school is providing the right services to a child with special needs. The model is based on a fundamental belief that early intervention by a multidisciplinary legal team can prevent kids from unnecessarily entering foster care.

A three year evaluation conducted between 2009 and 2012 confirmed the efficacy of the model. During the evaluation period, the Center served 110 children for whom the child protective services had substantiated child abuse or neglect. The CFA was to use legal tools and
advocacy, supported by social workers, to safely prevent removal. Not one of those children entered foster care—reducing trauma to the child and family and also avoiding thousands of dollars in costs for each child. The Center achieved its legal objectives in 98.2 percent of its prevention cases, and the multidisciplinary approach to addressing problems ensured that these children were able to remain in their homes.

**The Center for Family Representation** (CFR) in New York is another example of a comprehensive parent representation model that is achieving notable outcomes. The CFR model provides every parent with an attorney, a social worker, and a parent advocate. Parent advocates are parents who themselves once faced family court prosecution, had their children removed, and were able to successfully reunify their families. Under the CFR model, every parent is surrounded by a team that works together to problem-solve, identify resources, strengths and needs and provide counsel and advice. By combining in-court litigation with out-of-court social work referrals and case-management, individualized service planning, and parent mentoring, CFR dramatically improve outcomes for our families. Former clients of CFR report very high decrees of satisfaction with CFR representation, siting it as essential to their successes and communicating that they truly felt their voices were heard and needs effectively addressed.

**Models of Delivering Child and Youth Representation**

**KidsVoice** in Pittsburgh, Pennsylvania is recognized as a national model for multi-disciplinary and holistic approach to child advocacy and legal representation. They are a non-profit agency that advocates in court and in the community to ensure safe and permanency homes for abused, neglected, and at-risk children. Each year, KidsVoice represents nearly 3,000 children involved in the child-welfare system in Allegheny County’s Juvenile Court. Child advocacy at KidsVoice goes beyond the traditional child welfare and juvenile court arenas. The staff advocates for clients in educational, medical, mental health and Social Security matters, as well as providing representation for minor criminal citations and for expungement of delinquency records. They also assist the older clients as they pursue college or vocational training opportunities and transition to living independently. Every client is represented by both an attorney and a Child Advocacy Specialist (a social service professional with expertise in social work, mental health, education or child development).

The **Wyoming Guardians Ad Litem Program** is a state- and county-funded centralized state office that trains and supervises all attorneys representing children in Juvenile Court in the state. In 2008, the program adopted rules and policy setting practice standards and addressing other related quality indicators like the presence of children and youth in court proceedings, set caseload maximums for all program attorneys, began specialized training for the program attorneys, instituted a quality assurance process, and a multi-tiered evaluation process for program attorneys. From 2008 to 2012, the program underwent an overhaul of the program and brought many of the attorney positions in-house as full-time attorneys or state employees, drastically reducing the number of independent contract attorneys. In 2015, the program released an on-line cases management system to better track compliance with standards, timeliness of proceedings, and outcomes for children and youth.
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<th>Region 1 – Boston</th>
<th>Region 2 - New York City</th>
<th>Region 3 – Philadelphia</th>
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<td>150 S. Independence Mall West - Suite 864</td>
<td>61 Forsyth Street SW, Ste. 4M60</td>
<td>233 N. Michigan Avenue, Suite 400</td>
<td>1301 Young Street, Suite 945</td>
<td>Federal Office Building, Rm. 349</td>
<td>1961 Stout Street, 8th Floor</td>
<td>90 7th Street - Ste 9-300</td>
<td>701 Fifth Avenue, Suite 1600, MS-73</td>
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<td>New York, NY 10278</td>
<td>Philadelphia, PA 19106-3499</td>
<td>Atlanta, GA 30303-8909</td>
<td>Chicago, IL 60601</td>
<td>Dallas, TX 75202-5433</td>
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Benefits of high-quality legal representation:

- Protects parents’ and children’s legal rights.
- Increases parties’ participation in and out of court.
- Improves all parties’ perceptions of fairness.
- Reduces delays in achieving permanency and helps children and families reach better, long-term outcomes.
- Promotes tailored case plans and services.
- Improves frequency and timeliness of parent-child and sibling visitation and family time.
- Empowers families and communities to keep children safe at home.
- Informs better judicial decision making.
- Saves jurisdictions money by reducing time children spend in foster care.

Structuring a system of high-quality representation:

- Clearly define roles and expectations.
- Set reasonable caseloads.
- Offer fair compensation and benefits.
- Follow standards of practice.
- Provide specialized child welfare law training.
- Ensure effective supervision.
- Seek client feedback on representation.
- Give attorneys access to an interdisciplinary model of representation.

How judges promote high-quality legal representation:

- Ensure all parties have access to legal representation as early as possible in the case.
- Confirm all counsel have requisite training, experience, and understanding of child welfare law to vigorously represent their clients.
- Establish an environment where parties are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process.
- Understand the child welfare agency’s practices, procedures, and operations, and ensure it fulfills its legal duties.
- Require that all attorneys adopt a disciplined approach to processing cases and respect timely court hearings, court decisions, and implementation of court orders.
- Ensure the spirit of collaborative meetings and case management does not compromise any party’s rights and protections under the law.
- Seek opportunities to train child welfare attorneys.
- Solicit input from all parties to gain as complete a picture as possible to inform judicial decision making and promote child and family well-being.
### Essential practices for all child welfare attorneys

- Advocate for your client.
- Ensure judges have information needed to make case decisions.
- Communicate with clients regularly.
- Know federal and state child welfare laws and keep current on new developments.
- Prepare for and attend court hearings and reviews.
- Seek court accommodations that promote equal access and full participation in proceedings.
- Prepare clients and witnesses for court.
- Maintain a reasonable caseload and devote sufficient time for advocacy.
- Conduct a thorough, independent investigation at every stage of the case.
- Provide ethical legal representation.
- Understand and effectively implement trauma-informed practice.
- Confirm clients receive proper notice and comply with court orders.
- Actively engage in conflict resolution and negotiation.
- Reduce case continuances and timely file all pleadings, motions, and briefs.
- Mentor and train others in the field.
- File motions and appeals to protect client rights and interests.
- Understand how cultural, social, and economic differences affect the attorney-client relationship and avoid personal and system bias.

### Quality hallmarks

#### Child attorney

**Role:** Protect and advance child’s interests in court, provide legal counsel, and help the child understand the legal process and feel empowered to participate.

**Quality hallmarks:**
- Understand the child’s wishes in the case.
- Understand the child’s strengths, needs, and resources.
- Ensure the child has an opportunity to attend and participate in court hearings.
- Advocate for the child to maintain contact with parents, siblings, and kin through visitation, placement, and permanency planning.
- Work with collateral contacts—teachers, foster parents, service providers.
- Collaborate with a multidisciplinary team.
- Promote tailored, specific case plans and services.
- Advocate for the child’s access to education and community supports.

#### Parent attorney

**Role:** Protect the parent’s legal rights, advance the parent’s interests in court, and help the parent understand the legal process.

**Quality hallmarks:**
- Explain the child welfare legal system and the parent’s rights and duties.
- Ensure the parent’s voice is heard and understood in the proceedings.
- Help the parent problem solve and meet case goals.
- Build a relationship of trust and ensure the parent experiences fairness.
- Understand the parent’s life circumstances, including strengths, needs, and available resources.
- Advocate parent-child contact through visitation and permanency planning.
- Collaborate with a multidisciplinary team, including parent mentors and parent social workers.
- Address collateral legal issues that may affect the child welfare case in housing, employment, health care, disabilities, domestic violence, benefits, criminal justice, and immigration law.

#### Agency attorney

**Role:** Represent the child welfare agency or jurisdiction and present evidence of the underlying case in court including agency compliance with federal and state child welfare laws.

**Quality hallmarks:**
- Provide guidance to agencies and caseworkers on child welfare law, procedures and policies.
- Consult on decisions to remove or return a child and ensure decisions meet legal standards.
- Prepare or help prepare the initial petition and subsequent pleadings.
- Promote quality casework and agency performance to support families.
- Ensure no undue delays in service provision, case planning, or other agency duties.
- Cooperate and communicate regularly with other counsel.
- Help the agency meet federal monitoring and continuous quality improvement requirements.
- Work with agency to ensure parties’ legal rights are protected.
- Train caseworkers on federal and state laws to ensure the agency maintains high-quality performance.
Measurable Success: Characteristics of Stronger Parent Representation that Improve Outcomes for Children

Jaclyn Chambers, Eliza Patten, & Zabrina Aleguire

Executive Summary
Inadequate legal representation for parents presents a significant barrier to timely permanency for children in the child welfare system. Improved models of parent representation are arising across the country. These programs, which adhere to a core set of quality standards, are associated with improved permanency outcomes for children and reduce or eliminate the need for foster care in many cases. Policymakers, legislators, and funders should support the growth and continued evaluation of such models to determine the full measure of their potential to improve child well-being and to decrease overall system costs.

Introduction
Across the nation, the issue of inadequate legal representation for parents in child welfare proceedings is coming under scrutiny. While there is no nationally representative data available, several states have conducted thorough analyses of parent representation and have found significant areas in need of improvement. For example, a 2007 assessment led by the National Center for State Courts found that parent attorneys in Colorado faced a number of barriers to effective representation including high caseloads, poor compensation, lack of support services and resources, and lack of training. In 2009, the American Bar Association conducted a performance-based analysis of Michigan parent attorney practice and discovered problems such as poor communication between attorneys and parents, limited out-of-court advocacy, and frequent use of substitute counsel. Oregon’s legislative Task Force on Dependency Representation issued a report in July 2016 detailing the reality of excessive caseloads, inadequate compensation for out-of-court work, lacking standardization, and a shortage of interdisciplinary models of practice. Similar reports from North Carolina, and Wyoming highlight many of the same problematic issues.

Poor representation leads to court cases not being processed in a timely and efficient manner. Cases handled by attorneys who do not have sufficient time, resources, or training to effectively prepare for court appearances tend to have a high rate of continuances, longer case processing, and less rigorously developed case resolutions. These attorneys are likely to have infrequent communication with their clients, which prevents parents from meaningfully participating in the process and prevents attorneys from proactively addressing the causes of dependency involvement or independently assessing available options for resolution. Additionally, insufficiently supported counsel may not have the time or expertise to adequately research and litigate complex legal issues. Flat fee compensation structures, a common way to keep costs low, create incentives that reward attorneys for doing less work on a case overall by creating financial pressure to carry high caseloads in order to make a living wage. More concerning, such fee structures often include no compensation for out of court advocacy. As child welfare cases are largely administrative in nature— involving sustained participation by parents in meetings with social workers, service providers, and multi-disciplinary teams— denying a parent access to an advocate from their legal team in out of court proceedings hampers the parents’ ability to fully engage in their service plan and have their progress reliably assessed. Without multi-disciplinary representation, decision-makers in and out of court may be relying on incomplete and inaccurate information that has not been fairly tested through meaningful advocacy.
creating a lack of reliability for decisions of critical importance regarding family integrity and child safety and well-being.

When court cases are not processed in a timely and efficient manner, with complete and reliable information, children suffer by entering into unnecessary foster care placements and remaining in temporary placements for too long. The most recent national data shows that, for children exiting foster care in FY2014, the median length of time spent in foster care was 13.3 months, and over 25% were in foster care for 2 years or more. These extended stays in foster care are correlated with a range of poor outcomes, including homelessness, poor educational attainment, and physical and mental health problems (see Breakout Box for more detailed information).

EXTENDED FOSTER CARE AND CHILD WELL-BEING
According to the Administration of Children, Youth and Families (ACYF), there are four key domains for child well-being: 1) cognitive functioning, 2) physical health and development, 3) emotional/behavioral function, and 4) social function. Research has shown that children with extended stays in foster care have poor outcomes in each of these four areas:

• **Problems with cognitive functioning/academic achievement**: A longitudinal study comparing 603 youth aging out of foster care to a nationally representative sample of youth found that youth aging out of foster care are significantly less likely to have a high school diploma or GED (64% vs. 91%).

• **Poor physical health**: Studies have shown that foster youth have high rates of physical health problems. Some estimates indicate that over 80% of foster children have at least one chronic condition, and foster youth frequently do not receive appropriate and timely care for their health problems.

• **High rates of behavioral and emotional problems**: Among a nationally representative sample of youth aged 11 to 18 with long-term stays in foster care, 27% had clinical levels of emotional problems and 41% had clinical levels of behavioral problems.

• **Social functioning problems**: A study that evaluated the long-term effects of foster care found that one-third of former foster youth were living in poverty and more than 20% experienced homelessness.

Several states have implemented model programs to address the issue of inadequate legal representation for parents and, in turn, improve outcomes for children. These programs utilize interdisciplinary teams and apply strong legal advocacy standards. While researchers are still building the evidence for this model, the existing research evaluations and performance management data have demonstrated overwhelmingly positive results. The available data show that when parent representation adheres to a core set of quality principles, there are improved outcomes in permanency, case processing, cost effectiveness, and parent and court satisfaction.

Approach
Parent representation pilot programs are developing in many states, and the initial outcome data is promising. The most robust outcome data is available for the following programs: Washington’s Parent Representation Program (PRP); California’s Dependency, Representation, Administration, Funding, and Training (DRAFT) Program; New York’s Center for Family Representation (CFR); and Oregon’s Parent Child Representation Program (PCRP). These four programs all follow a core set of quality principles:

1. **Strong practice standards for attorneys**: Attorneys have clear expectations to meet with their clients early and often, to provide strong advocacy in and out of court (including the appeals process when indicated), and to have an expert understanding of the relevant child welfare legal standards and statutes in order to provide effective representation.
2. **Collaboration with interdisciplinary staff:** Attorneys work in teams with social workers, parent advocates, and/or case managers.**

3. **Training:** Staff receive initial and ongoing training on topics of direct relevance to representing parents in child welfare cases.

4. **Oversight and evaluation:** Strong systems of oversight are in place, such as client complaint procedures, performance evaluation as a condition of contract renewal, oversight by court systems, and/or other methods of supervision.

5. **Adequate compensation and caseload:** While structures and rates vary by jurisdiction, attorneys and interdisciplinary staff receive adequate compensation and reasonable caseloads needed to provide effective advocacy both in and out of court.

Several favorable research evaluations of the Washington PRP program have been conducted by the Washington State Office of Public Defense and the National Council of Juvenile and Family Court Judges.\(^7,8,9\) The most recent and comprehensive study was conducted in 2011 by researchers who reviewed case data for over 12,000 children in Washington’s child welfare system.\(^10,11\) They compared data across counties with and without PRP as well as intra-county data pre- and post-PRP implementation. Similarly, in 2007, California’s Administrative Office of the Courts released a before and after comparison of DRAFT to non-DRAFT courts on several quantitative outcome measures.\(^12\) Additionally, there is publicly available performance management data from the programs themselves. While less methodologically rigorous than formal research evaluations, New York’s CFR and Oregon’s PCRP both collected performance data on child welfare outcomes and compared it to relevant comparison groups at the county and/or state level.\(^*\)

**Results**

All of the current research and performance evaluation data show that improved parent representation is associated with better child welfare outcomes in terms of increased rate and speed of permanency, avoided foster care placement, more efficient case processing, cost effectiveness, and court and parent satisfaction. There are positive results across both urban and rural counties.

**Child Welfare Outcomes**

- **Increased rate and speed of permanency:**
  - Evaluation data shows the following results for counties where Washington’s PRP is in operation, compared to counties where PRP is not in operation:\(^10\)
    - Exit rate to reunification is 11% higher.
    - Rate at which children are adopted is 83% higher.
    - Rate at which child children enter guardianships is 104% higher.
    - PRP helps achieve reunification about a month sooner and achieve other permanency outcomes about a year sooner.
  - California DRAFT courts improved reunification rates, reentry and guardianship rates, and the frequency of placement with kin, at rates exceeding their non-DRAFT counterparts.\(^12\)
  - Compared to statewide data, Oregon’s PCRP is associated with an increased reunification rate and increase in the percentage of children who achieve permanency within 24 months.\(^13\)
  - For New York CFR families who are reunified, the foster-care re-entry rate is approximately 7% within 1 year compared with a statewide rate of 15%.
• **Reduced/avoided foster care:**
  - Oregon’s PCRP is associated with a reduced rate of foster care:\(^{13}\)
    - PCRP counties had an average foster care reduction rate of 19% in 2014, compared to a statewide decrease of 4.33%.
    - From 2014 to June 2015, the statewide rate of change in children exiting foster care to guardianship was 12.5%, while in the PCRP counties the average rate of change was 111%.
  - New York’s CFR data shows that among the families they serve:\(^{14,15}\)
    - Over 50% of children avoid foster-care placement altogether.
    - For CFR children who enter care, their stay is less than 5 months compared to NYC’s median of 11.5 months.

**Case Processing**

• **Low continuances:**
  - Because they have reasonable caseloads, Oregon’s PCRP attorneys are requesting fewer continuances due to scheduling conflicts.\(^{13}\)
  - Washington’s PRP demonstrates low continuances resulting from attorneys being over-scheduled (only 4% of all continuances).\(^{7}\)

• **Compliance with statutory timeframes:**
  - The majority of PRP cases are compliant with statutory timeframes.\(^{8}\)
  - PRP is associated with significant reductions in the average number of days from removal to shelter hearing.\(^{8}\)

• **Earlier case resolutions:**
  - PRP had an 18.3% rate increase in earlier case resolutions, whereas non-PRP counties showed no significant change in reunification or case resolution rates.\(^{9}\)

**Cost Effectiveness**

• New York’s CFR spends approximately $6,500 per family over the entire life of the case versus a minimum of $28,000 to keep a child in foster care for a year in NYC.\(^{14}\)
• CFR conservatively estimates that in over ten years of parent representation it has generated more than $130 million in public savings.\(^{16}\)
• As Washington’s PRP has expanded, its outcomes of increased reunifications and decreased time to permanency wholly offset the PRP program cost and avoid at least an additional $10 million each year in out-of-home care and adoption subsidy costs.\(^{24}\)

**Satisfaction and Quality Improvements**

• **Courts pleased with model**
  - Qualitative data from letters from judicial officers showed that courts were extremely pleased with the Washington PRP program.\(^{7}\)

• **Parent satisfaction**
  - 96% of clients report being satisfied or very satisfied with services received from the Oregon PCRP.\(^{13}\)

• **Better attorney-parent communication**
  - An early study of the Washington PRP program found that attorneys are communicating frequently with parents, averaging 3.1 hours/month on dependency cases and 4.8 hours/month on TPR cases.\(^{7}\)
The Oregon PCRP legal representation team spends over 70 hours per month in direct client out-of-court contact.  

- Decreased attorney turnover
  - Qualitative interviews with judicial officers and attorneys indicated significant improvements in attorney turnover during the California DRAFT pilot.

Conclusion
High-quality, interdisciplinary legal representation for parents is a promising strategy to improve outcomes for families in the child welfare system. Evaluations have shown that when legal teams follow a set of best practices, children avoid foster care, have increased stability, and achieve permanency more quickly. Furthermore, this model appears to be cost-effective and improve efficient case processing. Court officials and parents are both pleased with the model.

Implications and Recommendations
Improving parent representation appears to address barriers to permanency and improve outcomes for children and families. The currently available data is encouraging but does have limitations, and this model is deserving of a further look with a more rigorous design to build on the existing evidence. Policymakers, legislators, and funders should support and fund model programs that follow the five core components described above. Furthermore, jurisdictions should oversee these systems as they roll out to monitor fidelity to the model and evaluate outcomes.

Notes:

* The best practices listed here are consistent with a more comprehensive set of practices recommended by the ABA in their Indicators of Success for Parent Representation.

** The California DRAFT program did not explicitly require but did contemplate an interdisciplinary component.

*** A rigorous research evaluation of the New York institutional providers of parent representation that adhere to these best practices is currently underway through New York University School of Law in partnership with New York City’s Administration for Children’s Services, funded by Casey Family Programs.

References:


SUMMARY OF PARENT REPRESENTATION MODELS

Quality representation and due process for all parties in the child welfare system are essential but not always achieved. Poor parent representation exacts huge costs for families and the state. Families can be unnecessarily separated for extended periods of time, if not permanently. The state has to provide foster care support payments, caseworker and court time, and resources to children and families, who may not have needed to be separated in the first place, or who could have been reunited sooner and more safely, had the parents had an effective voice in the process. A national consensus is emerging that quality legal representation for parents is necessary to ensure the most appropriate outcomes for families and children involved in the child welfare system.

This information sheet summarizes a small number of parent representation models used in various states across the country. This information sheet is not intended to be a complete summary of all parent representation programs or all parent representation programs that are working well for families. Rather, this information sheet provides a snapshot of what different jurisdictions are doing to provide quality representation to parents and/or to improve representation for parents. If you want more information or are interested in replicating any of the programs described in this document, we have included a website address (when available) for the programs described. If you think that your jurisdiction’s parent representation model should be added to the summary, please contact Liz Thornton at thorntoc@staff.abanet.org.
This summary describes different types of representation models, including:

- institutional parent representation organizations – offices with a full time staff of attorneys, social workers, peer parent advocates, and investigators;
- contract or panel systems of representation – a panel of contract attorneys who have education requirements, mandated practice standards, resources for social workers, investigators and experts, and compensation for out-of-court work; and
- hybrid state or county parent representation offices and contract/panel systems – a panel or list of contract attorneys who handle the majority of the parent representation and a state or county office with a full time staff who may handle some direct parent representation, oversee admission onto the panel, provide and oversee attorney education, and administer an attorney review process.

The focus of the summary is on parent representation programs. Programs that provide representation to children are also discussed as examples of models of statewide programs that can be followed for parents’ attorneys.

ARKANSAS

In August of 2001, the Arkansas Legislature established a state-sponsored program for the appointment and payment of attorneys to represent indigent parents in child welfare cases. The Act provided that the Arkansas Supreme Court adopt qualifications and standards of practice for parents’ attorneys and appropriated funding to pay for the attorneys’ representation. Prior to accepting an appointment to represent parents, attorneys are required to complete 10 hours of initial training related to child welfare practice and they must participate in a mentorship program with an attorney experienced in child welfare cases. They must complete 4 additional hours of training specific to child welfare practice each year to remain qualified for appointment. The Supreme Court of Arkansas also implemented standards of practice for parents’ attorneys, requiring that the attorneys review all relevant documents, perform investigations, meet with clients prior to hearings, explain each step in the case and the clients’ rights, appear at all hearings and present evidence when necessary, advocate for appropriate services and monitor implementation of the case plan, and file all appropriate pleadings. Prior to implementation of the state program, it was common for counsel for parents to be appointed at the termination of
parental rights hearing, but not sooner. The state sponsored program provides that attorneys for parents are appointed at the time of the emergency ex-parte order, or when the dependency petition is filed. In October 2007, the state converted from a court appointed system to a state contract system with attorneys to represent indigent parents in all stages of abuse and neglect proceedings. Each Judicial District has trained and experienced attorneys responsible for handling these cases when the case is initiated. The state also contracts with additional attorneys to cover conflict cases with approval of the state Parent Counsel Coordinator.

Impetus for the Arkansas reforms came from a 1997 Court Improvement Project funded assessment and report on the state of representation for children and parents in Arkansas. The assessment found that there were serious deficiencies in Arkansas’ system of representation in child welfare proceedings – many parents and children were not appointed counsel in a timely manner and when they were provided with counsel the representation was inadequate. The assessment and report traced the problems with representation to the county based system of funding representation in child welfare cases. Funding for Arkansas’s 2001 reforms to a state-sponsored program for the appointment and payment of attorneys in child welfare cases was provided in part by a $25 increase in court costs for civil cases.

Arkansas Judiciary Parent Counsel Program website:
http://courts.state.ar.us/juvenile/parent_counsel.cfm

CALIFORNIA

The California Dependency Representation, Administration, Funding and Training Program ("DRAFT") was established as a pilot program in 2004 to test caseload standards for attorneys representing parents and children in juvenile dependency cases, identify uniform rate and compensation structures for those attorneys appointed in dependency cases, and determine the implementation costs and practice improvements associated with caseload standards and uniform rate and compensation structures. The DRAFT Program includes the following components:

- attorney caseload standards of 188-200 clients per attorney (this caseload level assumes a half-time social worker/investigator per full-time attorney);
- regional compensation standards;
- attorney performance standards;
• attorney reporting requirements regarding time spent on in-court and out-of-court activities;
• training and technical assistance for attorneys; and
• outcome evaluations, including attorney evaluations completed by judges, peers and clients and permanency evaluations using reunification, guardianship and placement data.

The DRAFT Program began implementation in July of 2004 working with 10 volunteer counties. Representation models vary in each county, and include private firms, government agencies, solo practitioners and non-profit organizations. Program evaluation results as of October 2008 show the following improvements in DRAFT counties:
• increased rate of reunification within 12 and 24 months of entry;
• increased rate of siblings placed together, when siblings are placed in foster care; and
• increased rate of children placed with relatives, rather than foster care.

Although budget restrictions have prohibited both lower case load standards and the implementation of the current caseload standards in all of the DRAFT counties, the overall success of the pilot resulted in programmatic expansion in July 2008, doubling the program to 20 counties.

DRAFT Program website:
http://www.courttinfo.ca.gov/programs/cfcc/programs/description/DRAFT.htm

Two DRAFT county, non-profit institutional representation offices are described here:

Dependency Advocacy Center provides representation to parents in Santa Clara County dependency court. The office employs a team of lawyers and social workers experienced in juvenile dependency work and mentor moms and dads (parents who have been through the dependency system themselves and reunited with their children and have been sober for at least five years). Investigators are also available to work with the attorneys and clients. The Dependency Advocacy Center also significantly increased pay for attorneys (average pay is $85,000 per year) in an effort to reduce turn-over and monitors lawyers' competency through peer, client and judicial officer reviews. Attorneys are provided with regular training and are
subject to evaluations by peers, clients and judges. Attorneys are appointed to represent clients at the first calling of the case.

Los Angeles Dependency Lawyers, Inc. ("LADL") provides representation to parents in Los Angeles County dependency court. Los Angeles County has the largest dependency system in the nation, with the most children in care. LADL provides representation to 97% to 98% of the parents in Los Angeles County who are involved with the child welfare system. LADL has a staff of attorneys, social workers and investigators (social workers and investigators are available on those cases where they are needed). Attorneys are provided with regular training and are subject to evaluations by peers, clients and judges. Attorneys are appointed to represent clients at the first calling of the case.

LADL website: http://www.ladlincc.org/

Throughout California, the county's juvenile court, through its Presiding Juvenile Court judge, chooses the representation model for court appointed counsel. Given the county-based nature of representation, the models used vary throughout California's 58 counties. Regardless of the representational model, California Rules of Court require a minimal level of training to qualify to accept a court-appointed case, and court systems are encouraged to develop a system of accountability and supervision to ensure quality.

An example of a non-DRAFT county representation model is described here:

The Bar Association of San Francisco, Dependency Representation Program ("BASF") contracts with the court to provide representation to parents involved in the child welfare system in San Francisco. BASF maintains a referral panel of attorneys to which individual attorneys must apply and qualify for with BASF. Applications are reviewed by the Qualification Subcommittee of BASF to determine whether attorneys qualify for admission to the panel based on their experience or whether they must complete a mentorship program with a senior panel attorney. The mentorship program can take up to six months to complete. The court has established strict practice standards and court rules for parent representation. Attorneys are required to complete 10 hours of training in child welfare practice each year to remain on the panel. Attorneys are paid a fair hourly rate ($98/hour) and are compensated for out-of-court time. Attorneys are expected
to spend out-of-court time working with their parent-clients to help them prepare for court, work with the agency, and engage in services. Attorneys are appointed to represent clients at the first calling of the dependency case. Funding for appointment of private social workers, investigators and experts is available to attorneys as needed on cases.

*BASF Dependency Representation Program website:*

**CONNECTICUT**

The Commission on Child Protection ("COCP") oversees the representation of parents and children in dependency proceedings throughout Connecticut with the goals of: ensuring fair compensation for attorneys; ensuring attorneys have support staff such as social workers; organizing substantive training; working to reduce high case loads; and acting as a liaison between the public agency over systemic issues. With a small full-time staff, the office has achieved remarkable improvements in child welfare representation. COCP contracts with private attorneys and private firms to provide representation to parents and children involved in the child welfare system. COCP establishes stringent training standards for attorneys, requiring attorneys participate in three training days before taking a case-appointment, three CLE classes after approval for the panel and three of five bi-monthly trainings offered throughout the year. New contract attorneys also must participate in a mentor program with an attorney experienced in child welfare law. The mentor program requires newer attorneys to attend regular meetings with mentors, observe hearings, and act as co-counsel with a mentor for at least two cases. Attorneys are expected to follow Standards of Practice for Lawyers Representing Parents in Child Protection Cases (adopted from the ABA Parent Representation Standards) and are expected to work with their clients both in-court and out-of-court. Attorney performance is reviewed by COCP.


**DISTRICT OF COLUMBIA**

The Counsel for Child Abuse and Neglect ("CCAN") Office is a branch of the Family Court of the District of Columbia Superior Court. The CCAN Office maintains a list of qualified attorneys
who are available for appointment in child abuse and neglect cases. The office also processes the
orders appointing counsel in both new and ongoing cases. The CCAN Office provides initial and
ongoing training to attorneys who represent children, parents, and caretakers in child abuse and
neglect cases. The Office screens adult parties for financial eligibility for court appointed
attorneys and assists attorneys who have legal and social work questions regarding child abuse
and neglect cases.

The CCAN Office staff consists of a Branch Chief, who is an attorney, a social worker, and three
deputy clerks. The clerical staff handles case assignment processing, financial eligibility, and
inquiries. The Branch Chief and social worker provide training and support to court appointed
attorneys in child abuse and neglect cases. In addition, the CCAN Office distributes a monthly
newsletter with legal, training, and social work updates for attorneys.

The Superior Court has adopted Practice Standards which regulate the performance of attorneys
practicing in child welfare cases.

CCAN website: http://www.dccourts.gov/dccourts/superior/family/ccan.jsp

ILLINOIS

The Legal Assistance Foundation of Metropolitan Chicago (“LAF”) in Chicago, Illinois
represents families with children in the child welfare system. LAF represents parents, relative
caregivers, and foster parents. They handle cases at all stages – during the child protective
services investigation through the juvenile court hearings. LAF receives cases through referrals,
which typically come from LAF attorneys handling non-child welfare cases in LAF
neighborhood offices, prior clients, and agency caseworkers. LAF employs a team model of
representation – clients work with LAF attorneys, law students and a social worker. The office
employs a staff of one supervising attorney, three staff attorneys and one social worker for the
LAF agency. LAF spends a significant amount of attorney and social worker time working with
parents outside of court. LAF is funded through the Legal Services Corporation and through
private grants.

LAF website: http://www.lafchicago.org/content/view/74/88/
The Family Defense Center ("FDC") in Chicago, Illinois provides representation to parents before their case gets to dependency court – they represent clients during the child protective services investigation and with appeals related to clients’ placement on the child abuse registry. FDC typically does not represent clients after a child protective services petition is filed. FDC is a legal office with a staff of three full time attorneys. Advocacy focuses on helping parents and families through the child protective services investigation process (making sure clients know their rights) and making sure that the child protective services investigators know that the families they are investigating have rights and that the law is followed. FDC has successfully prevented the filing of dependency petitions in a number of their cases. FDC has provided training to approximately fifty pro-bono attorneys working at large law firms in the Chicago area. The pro-bono attorneys represent some FDC clients, under the supervision of FDC staff, through the administrative appeals process to have their names removed from the child abuse registry. FDC has been in operation since 2007 and last year served over 400 clients who mostly heard of them through word-of-mouth. FDC is completely privately funded.

FDC website: http://www.familydefensecenter.net/

MASSACHUSETTS

In Massachusetts, the Committee for Public Counsel Services ("CPCS"), a state agency, is responsible for providing legal services to the indigent in civil and criminal matters. The Children and Family Law ("CAFL") Division of CPCS oversees all court-appointed child welfare attorneys. This is a hybrid model of representation. Approximately 90% of dependency cases are handled by a panel of specially qualified private attorneys overseen by CAFL. Staff attorneys in seven offices handle the remaining 10% of the cases. To be eligible for the private attorney panel, attorneys must apply to CAFL. If initially selected by CAFL, attorneys must then participate in: (1) three days of substantive child welfare training; (2) a half-day training on extraordinary medical/anti-psychotic medication issues for children; and (3) two days of trial skills training specially tailored to child welfare cases. Attorneys who satisfactorily complete the trainings and are eligible to be on the panel must also work with a mentor attorney for at least 18 months. The mentor attorney advises the newer attorney on cases, observes trial skills, and recommends to CAFL if the attorney is ready to work independently. Attorneys are compensated at the same rate for both in-court and out-of-court work and cannot have more than
100 open cases. Attorneys can hire social workers and investigators to assist them with their cases. CAFL oversees attorneys for both children and indigent parents, and all private panel and staff attorneys have a mixed caseload. Attorneys are appointed for children immediately upon the filing of a “care and protection” case; attorneys for parents are appointed upon a determination of indigence. CPCS private panel attorneys and staff are funded annually in separate legislative line items. Attorneys are compensated at the same rate for representing parents and children.

CPCS website: http://www.publiccounsel.net/Practice_Areas/cafl_pages/civil_cafl_index.html

MICHIGAN

In May 2009, the Detroit Center for Family Advocacy (“CFA”) in Detroit, Michigan, opened and began providing legal advocacy and social work services to low-income families to prevent the unnecessary placement and prolonged stay of children in foster care. CFA uses an interdisciplinary model of representation and provides clients with a team of lawyer, social worker and parent advocate. CFA only accepts cases connected with the Osborn neighborhood of Detroit, which has one of the highest rates of removal in the state. CFA focuses on giving families at risk of becoming involved in the child welfare system or already involved in the child welfare system, the tools necessary to protect their families and focuses on legal mechanisms and services (guardianship, child custody orders, personal protection orders, education advocacy) to prevent out-of-home placement. CFA is referred cases by the Michigan Department of Human Services. CFA is funded by a combination of county support, foundation support, and private donors.

CFA website: http://www.law.umich.edu/centersandprograms/ccl/cfa/Pages/default.aspx

Michigan’s State Court Administrative Office offers regular monthly training in child welfare law to attorneys, judges, and court staff. Topics range from sharing best practices, to minority overrepresentation in the child welfare system, to trainings specifically tailored to parent representation. In addition, the State Court Administrative Office will be hosting a symposium in October 2009 specifically addressing the state of parent representation in Michigan. The symposium will include an opening address from Judge Leonard Edwards who developed one of the first unified family courts in the nation and one of the first collaborative drug courts. Judge
Edwards will discuss the judge’s role in assuring that parents receive good legal representation. The American Bar Association Center on Children and the Law will present their report assessing Michigan’s parent representation and experts from across the country will present about model parent representation programs. Symposium attendees will have time to meet and discuss what steps Michigan can take to improve representation for their families involved in the child welfare system.

NEW JERSEY

In New Jersey, the Office of Parental Representation (“OPR”), a unit of the New Jersey Office of the Public Defender, is appointed to represent parents in both pre-termination and termination hearings as prescribed by statute. OPR provides representation through staff attorneys housed in six regional offices and through a pool of attorneys contracted by OPR to provide representation. OPR provides mandatory child welfare trainings to contract attorneys. OPR attorneys work with support staff and parent advocates to provide representation to clients. OPR parent advocates work with the attorneys and parents to identify services for parents and assist them with accessing services and to provide traditional investigative services.

OPR website: http://www.nj.gov/defender/div_opr.shtml

Legal Services of New Jersey, Family Representation Project (“FRP”) also provides representation to parents in child welfare cases in New Jersey. FRP defends parents in pre-termination cases and also represents parents in administrative appeals and termination proceedings. FRP also represents relatives in kinship legal guardianships. There are currently six attorneys working with FRP in the separate Legal Services regional offices, not including the main Legal Services of New Jersey office. Legal Services of New Jersey also has social workers on staff who assist attorneys with their parent representation. FRP works closely with OPR (described above) sharing resources and information and has recently joined as amicus on several of OPR’s cases before the New Jersey Supreme Court.

FRP website: http://www.lsnj.org/represent.htm#assigned
NEW YORK

Center for Family Representation, Inc., ("CFR") in New York, New York provides high-quality comprehensive representation to parents involved in the child welfare system. CFR employs an institutional model of representation and has a salaried staff of experienced and dedicated attorneys, social workers and parent advocates. CFR’s operating revenue is derived from government contracts for parent representation and support from private foundations, corporations, and individuals.

- CFR provides each parent-client with a Community Advocacy Team consisting of an attorney, a social worker and a parent advocate (a parent who has directly experienced the child protective and foster care systems and has successfully reunified with his/her child.)

- From 2004-2006 CFR provided representation to families, beginning at the pre- and post-investigation stage of the case. In cases where CFR began working with families during the child protection investigation, they prevented foster care for 95% of their cases. In the cases where their team began working with the family after a dependency petition has been filed and a child placed in care, they achieved an average length of foster care of 4.5 months -- compared to a statewide average of more than four years.

- From 2007 – 2008 CFR’s representation expanded to 600 families and representation began at the time of the child protection investigation. In 50% of CFR’s cases, children never enter foster care, but instead stay at home with the services needed to help them stay safe and thrive. Children of parents represented by CFR spend, on average, 73% less time in foster care than other children in the city and state.

CFR website: http://www.cfrny.org/

The Bronx Defenders in the Bronx, New York also provides high-quality comprehensive representation to parents involved in the child welfare system. The Bronx Defenders, like CFR, employs an institutional model of representation and has a salaried staff of lawyers, investigators, social workers and parent advocates. The Bronx Defenders began their family
defense practice in 2003. They started with representing Bronx Defenders’ criminal clients who had concurrent Family Court cases. Every parent was paired with an interdisciplinary team of lawyers, social workers, and parent advocates. The Bronx Defender’s representation model is to advocate for parents in court and out of court. The interdisciplinary team works to develop comprehensive service plans ensuring that meaningful services are in place to provide the parents with critical supports. In 2007, Bronx Defenders was selected by the City of New York to expand their successful interdisciplinary team model and became the first institutional provider of parent representation in the Bronx Family Court. Bronx Defenders now represent over half of all Bronx parents accused of neglect or abuse each year. The representation begins whether their case is before a judge in Family Court or under investigation by the New York child welfare agency.

Bronx Defenders website:
http://www.bronxdefenders.org/?page=content&param=family_defense

Legal Services NYC, Brooklyn Family Defense Project ("BFDP") in Brooklyn, New York provides parent representation to 800 low-income families in Brooklyn Family Court each year. BFDP employs a team model of representation. Clients work with an attorney, a social worker, a paralegal and a parent advocate. BFDP also collaborates with NYU School of Law’s Family Defense Clinic and the Hunter School of Social Work to provide comprehensive representation to clients. BFDP represents parents in court and works with clients out of court – their mission is to provide high quality representation to protect parents’ due process rights while promoting access to the services necessary to build safe and stable families. BFDP staff also advocate for systemic change in the way the child welfare system treats parents and responds to families’ needs.

BFDP website:
http://www.legalservicesnyc.org/index.php?option=com_content&task=view&id=89&Itemid=129

NORTH CAROLINA

In North Carolina, the Office of Indigent Defense Services ("IDS") oversees legal representation of indigent persons in North Carolina. To ensure that indigent defendants in North Carolina receive high quality legal representation, IDS develops specialized training programs and
resources for attorneys, sets payment rates for attorneys, and sets comprehensive and strict performance guidelines for attorneys. Further, IDS has expanded the number of public defender offices and implemented a Model Appointment Plan for counties without a public defender office.

IDS has a special office that oversees and supports attorneys representing parents involved in the child welfare system - the Office of Parent Representation. The Office of Parent Representation provides training to trial and appellate attorneys representing parents, consulting services (attorneys can call and discuss cases with an attorney experienced in child welfare law), and information sharing resources (a listserv for attorneys, brief bank, forms bank and case law updates). The comprehensive training available to attorneys representing parents is provided by state and national experts on child welfare law.

A parent respondent is appointed counsel upon the filing of the petition by a county department of social services. The trial attorneys appointed are assistant public defenders, contract attorneys or attorneys who have met the qualifications to be on the appointment list for child welfare cases. Appellate attorneys are appointed from a roster managed by the Office of Parent Representation.

*IDS Office of Parent Representation website:*
http://www.ncids.org/Parent%20Representation/ParentRepHomePage.htm

**NORTH DAKOTA**

The Commission on Legal Counsel for Indigents ("LCI") oversees all indigent defense in North Dakota, including parent representation in child welfare cases. There are six public defender offices in the state and the remaining defense services are provided by attorneys who have contracted with LCI to provide representation to indigent clients, including parents. LCI was established by the legislature to be an executive branch state agency overseeing legal services to indigent clients. Prior to LCI, judges assigned cases to counsel and monitored contracts for counsel. LCI was established as an independent body to separate the judiciary from the delivery of indigent services and avoid the appearance of conflict. LCI sets state-wide eligibility, compensation, training and practice standards for attorneys representing parents in child welfare cases.
Attached Document Content:

LCI website: http://www.nd.gov/indicents/standards/

PENNSYLVANIA

Community Legal Services, Inc. ("CLS") in Philadelphia, Pennsylvania provides dependency representation to many, but not all parents in Philadelphia. CLS is a legal services organization representing clients in various civil matters. CLS's Family Advocacy Unit has been representing families in dependency court for over 25 years. Where possible, CLS's Family Advocacy Unit represents families both in the investigation stage of the case (before a dependency petition has been filed) and throughout the dependency case (after a dependency petition has been filed and/or a parent's child has been removed from the home).

CLS's Family Advocacy Unit is an institutional model of representation, employing a staff of attorneys, social workers and paralegals who receive significant training and supervision. Most CLS FAU clients are assisted by a team of a lawyer and a paralegal or social worker, so that the client has the benefit of intensive legal and social work assistance. Additionally, since CLS houses different legal units with each proficient in a different area of law, CLS's Family Advocacy Unit clients often benefit from legal assistance from the other CLS units in resolving important collateral issues that arise in their cases. For example, CLS Family Advocacy Unit clients often benefit from in-house expertise in dealing with problems such as evictions, utility shut-offs, denied or delayed public benefits, or medical insurance issues.

The CLS director and staff also are actively engaged in systemic reform efforts in the Philadelphia child welfare system, and conduct substantive trainings and community education sessions for child welfare professionals, agencies and parents.

CLS website: http://www.clsphila.org/Content.aspx?id=179

Juvenile Court Project ("JCP") in Pittsburgh, Pennsylvania provides representation to parents in dependency cases in Allegheny County. JCP is administered by the Allegheny County Bar Foundation, a subsidiary of the Allegheny County Bar Association. JCP has a staff of full-time attorneys, support staff, and social work specialists referred to as parental support advocates. JCP represents parents in dependency proceedings, termination of parental rights hearings, and Childline (child abuse registry) appeals for existing JCP clients. JCP employs a community liaison and promotes community awareness of its services through law clinics established at
local jails, homeless shelters and drug treatment centers. JCP also provides legal trainings for
the child welfare community.

*JCP website: [http://www.acbfparentadvocates.org/index.html](http://www.acbfparentadvocates.org/index.html)*

**TEXAS**

An Office of Parental Representation ("OPR") was recently established in Travis County, Texas. This public defender type law office is a branch of the Travis County government and was created to help provide consistent and quality legal representation to custodial parents in child welfare cases. The office employs four full time staff attorneys who specialize in child welfare cases and four full time support staff – including a social worker. The office will also have available social work students supervised by a clinical professor of social work from the University of Texas to work with clients, as needed. The office is eventually expected to handle a caseload of approximately 400 cases so attorneys should not have more than 100 cases each. Prior to the establishment of OPR, all Travis County parent representation was handled by private, independent attorneys appointed from a rotation list. That list now remains in existence to allow OPR to grow gradually in size as well as to handle cases for non-custodial parents, conflict cases, and overflow appointments when OPR reaches capacity. The office took its first case in May 2009. The Supreme Court of Texas' Permanent Judicial Commission on Children, Youth and Families provided Travis County with a Court Improvement Grant of $300,000 for the first year of operation of OPR to help absorb some start-up costs and facilitate the transition from a private appointment system to a county law office. Travis County is expected to continue seeking grant dollars over the next couple of years to help absorb the transitional costs and is eventually expected to fund this office entirely with civil indigent defense funds.

**WASHINGTON**

The mission of the *Washington State Office of Public Defense* ("OPD") is to implement the constitutional and statutory guarantees of counsel and to ensure the effective and efficient delivery of indigent defense services funded by the state. The OPD parent representation program provides state funded attorney representation and case support services to indigent parents, custodians and legal guardians involved in child dependency system. The program operates in 25 of Washington's 39 counties.
Key elements of the OPD parent representation program include: the implementation of case load limits and professional attorney standards; access to expert services and independent social workers; OPD oversight of attorneys; and ongoing training and support.

The OPD pilot-project for parent representation began in 2000 in two distinct regions, Benton-Franklin (rural) and Pierce (urban) counties.

For Benton-Franklin county (rural) OPD entered into part-time contracts with private, attorneys under the direct supervision of OPD. These part-time pilot attorneys had partial case loads and the assistance of support staff.

In Pierce county (urban) OPD contracted with the public defender’s office, who provided full time attorneys to represent parents. As part of the program the public defender’s office hired additional attorneys to reduce caseloads and additional support staff, including social workers. Attorneys for both pilot programs had access to the services of expert evaluators for their cases.

2003 program evaluation results (both pilot program counties included): increased compliance with statutory time frames for hearings; decreased time spent in non-relative foster care; increased reunification, leading to reunification as the outcome in the majority of cases working with the pilot program attorneys; decreased number of children “aging out” of the foster care system.

The Washington State Legislature has continuously funded the OPD program since 2000. Because of OPD’s demonstrated success, the Legislature provided additional funding to expand the program in 2005, 2006 and 2007.

**OPD website:** [http://www.opd.wa.gov/](http://www.opd.wa.gov/)
VERMONT

The Vermont Parent Representation Center, Inc. ("VPRC") a not for profit, public interest law and policy organization, is in its start-up stage. Its mission is to represent parents in child welfare cases initiated by the state to prevent children from entering state custody; reducing the time in custody and reducing the re-entry rate after children are reunified with their parents. The importance of the not for profit, self standing organization is to provide leadership and a voice for parents at the state level where policy decisions are made, to identify and use performance measures to improve performance, and to provide supervision and oversight for the staff. VPRC will use the Community Advocacy Team ("CAT") model (attorney, social worker and parent advocate working as a team) based on the Center for Family Representation in New York. Center for Family Representation staff will train VPRC staff. The CAT model, now implemented in a large urban area, will be implemented and tested in Vermont's rural environment. Case outcomes will be measured to determine the effectiveness of the representation model.

STATES TAKING STEPS TO IMPROVE PARENT REPRESENTATION

As stated at the beginning of this summary, a national consensus is emerging that quality parent representation is necessary to ensure the most appropriate outcomes for families and children involved in the child welfare system. Below is a brief summary of some of the steps other states are beginning to take to improve their parent representation.

ALABAMA

The Alabama Court Improvement Project met with the Administrative Office of the Courts in Alabama to discuss improving parent representation. A bill was drafted to create both the Alabama Indigent Defense Commission as an independent agency of the judicial branch to ensure that children and parents are adequately represented in dependency cases and an indigent defense office with a director and support staff. The Bill also called for increased pay for attorneys. The bill was introduced in the 2009 regular legislative session, but did not pass. In August 2009, the Alabama Court Improvement Project held a statewide conference for attorneys representing parents in child welfare cases.
COLORADO

In 2005, the Colorado Supreme Court through the Colorado Court Improvement Program created the Respondent Parents' Counsel Task Force ("RPC Task Force") a group of child welfare professionals, to review the issues facing parents' counsel and to make recommendations to the Supreme Court and the Colorado Legislature. The RPC Task Force structured its efforts into four main areas: (1) advocacy for parents’ attorney resources; (2) training for parents’ attorneys; (3) researching and defining structural outcomes for administration of parents’ attorney resources; and (4) guidelines and practice standards. Equitable resources for parents’ attorneys was identified as a key part of reform efforts.

To assist in identifying needs of attorneys, areas in need of improvement and baseline data for potential reform efforts, the RPC Task Force commissioned an assessment of parents’ attorneys. This assessment, performed by the National Center for State Courts, National Council of Juvenile and Family Court Judges and the National Association of Counsel for Children, provides both a statewide overview of factors impacting parents’ attorney performance as well as an in-depth analysis of four counties: Denver County, El Paso County, Teller County and Weld County. Based on the recommendations of the RPC Task Force, the Colorado State Administrator’s Office is developing a three year strategic plan to address: (1) training; (2) exploration of compensation models (alternatives to the flat fee payment model); (3) technical support and assistance (through the creation of a quarterly newsletter); (4) outreach and communication to attorneys; and (5) improved oversight of attorneys.

Colorado's Respondent Parent Task Force website:

http://www.courts.state.co.us/Courts/Supreme_Court/Committees/rptf.cfm

GEORGIA

Georgia’s Supreme Court Committee on Justice for Children has contracted with the Georgia Public Defender Standards Council ("GPDSC") with the goal of improving parent representation and organizing parent attorneys. GPDSC formed a Parent Attorney Advocacy Committee ("PAAC") made up of parents’ attorneys and public defenders representing parents. PAAC
meets monthly and serves as a network of support for parents’ attorneys to share information and practice experiences. PAAC is doing the following work to improve representation for parents:

- identifying issues that limit justice for parents and working collaboratively with judges, state attorney generals, the child welfare agency offices and legislators to improve justice for families;
- reviewing upcoming child welfare legislation and participating in the upcoming legislative session;
- recognizing and endorsing successful parent representation models throughout Georgia;
- collaborating with the Carl Vinson Institute of Government to complete a statewide parent attorney assessment; and
- drafting a parent attorney trial manual.

GPDSC is also working to improve representation for parents by hosting parent attorney trainings and providing scholarship money for parents to attend national child welfare conferences. GPDSC has developed performance standards for attorneys representing parents in child welfare proceedings. The standards have been distributed to parents’ attorneys throughout the state and are a core part of the training curriculum for parents’ attorneys. GPDSC has created a listserv and website for parents’ attorneys and is working with the Carl Vinson Institute of Government to provide parents’ attorneys with access to social workers for phone or email advice regarding case plans and services for clients.

Georgia’s parents’ attorney website: www.parentattorney.org

LOUISIANA

Louisiana’s Court Improvement Project has collaborated with the Task Force on Legal Representation in Child Protection Cases has put forth performance standards for attorneys representing indigent parents in child welfare cases. As of 2007 the performance standards were being considered for possible implementation on an administrative basis by the Louisiana Public Defender Board. In November 2007, the Court Improvement Project cosponsored, with the Louisiana Public Defender Board, the first practice seminar for attorneys representing parents in child welfare cases. The National Resource Center on Legal and Judicial Issues and the National
Project to Improve Representation for Parents Involved in the Child Welfare System provided technical assistance for the seminar.

VERMONT

The Legal Representation Subcommittee of the Justice for Children Task Force of the Vermont Court Improvement Project has been discussing strategies for supporting and improving representation for parents in dependency proceedings. In June 2008 the Subcommittee surveyed prosecutors, children’s attorneys, and parents’ attorneys about what would improve legal representation for parents. The Subcommittee is reviewing the survey information and identifying the next steps to take to improve parent representation throughout the state.

STATE PROGRAM FOR CHILD REPRESENTATION THAT CAN BE REPLICATED FOR PARENT REPRESENTATION

Colorado’s Office of Child’s Representative (OCR) is a state agency that administers the child representation program in Colorado. The OCR was established with the passage of HB00-1371, and became fully operational in July 2001. The OCR is responsible for enhancing the legal representation of children, establishing fair and realistic rates of compensation for attorney services, setting minimum practice and training standards, and working collaboratively with the state CASA. In Colorado, GALs are appointed in all Dependency and Neglect cases. The court has discretion to appoint GALs in delinquency, paternity, probate, domestic relations and other case types. The standards are set forth in Chief Justice Directive 04-06, and include appointment authority for GALs, guidelines for payment, and the duties and expectations of GALs.

The OCR conducts an annual review of the “competency and quality of attorney services as well as the validity of any concerns.” Attorneys annually apply to OCR and each application is individually reviewed. The annual review includes distributing surveys to all CASA agencies, court facilitators, administrators, and judicial officers, and conducting visits to each judicial district. During visits, the OCR staff meet with attorneys under contract, interview new applicants, and interview court personnel, Judicial Officers, and CASA directors. Annually, a list of attorneys eligible for appointment is compiled and distributed to each judicial district. In addition to effectively monitoring the quality of representation, the annual process helps OCR
address systemic needs in each district and statewide issues which might involve other agencies, appropriations, Rules of Court, and legislation.

The OCR also administers a staff model office in the 4th Judicial District. The El Paso County Office of the Guardian ad Litem is staffed with attorneys, case managers, social workers and support staff.

OCR website: http://www.coloradochildrep.org/

LAW SCHOOL CLINICS FOCUSED ON PARENT REPRESENTATION

The University of Michigan Law School Child Advocacy Law Clinic provides in-court training and classroom learning to law students interested in a future career in child advocacy. Clinic students get the opportunity to represent children, parents and the county agency in active child welfare cases. Students work under the supervision of professors and get the opportunity to work with specialists from related fields – psychology, social work, and pediatric medicine.

University of Michigan Law School Child Advocacy Law Clinic website: http://www.law.umich.edu/centersandprograms/ccl/Pages/default.aspx

New York University School of Law Family Defense Clinic provides students with an in-depth view of child welfare policy and practice. Students work to prevent the unnecessary break-up of poor families and assist those families who are separated in reuniting. Students represent parents, relatives and foster parents in child welfare proceedings and work on projects designed to improve the foster care system and family court system to better serve families. Clinic students work in a team with social work students on behalf of the families they represent. Students also have the opportunity to help families clear their name from the child abuse registry. Students gain valuable courtroom experience and also spend significant time outside of court working with their clients.

New York University School of Law Family Defense Clinic website: http://www.law.nyu.edu/academics/clinics/semester/familydefense/ECM_DLV_004775
The University of the District of Columbia, David A. Clarke School of Law, through the HIV/AIDS law clinic provides students with the opportunity to represent parents and guardians in child welfare proceedings in Washington D.C. Students represent parents and/or guardians in all stages of the child welfare case. Through class-work, time spent with clients, and hands-on experience in the D.C. child welfare courts students see first-hand the struggles faced by parents in the child welfare system. In the classroom students learn the relevant child welfare laws. Through their court room experience students learn how to advocate for clients in court and gain insight into the child welfare system and how the laws are applied/or not applied in court.

Additionally, the Family Court in Washington, D.C., gave a Court Improvement Project grant to the law school in the amount of $75,000 to fund a clinic that represents parents. The clinic has been operating for a year. In that year, more than 60% of the children of clinic clients have been returned home without a finding of abuse or neglect. Most of these prompt reunifications were the result of the agency dismissing its own case for lack of evidence after clinic students conducted thorough independent fact investigations and were able to persuade the agency that the cases were without merit. In one case, a child was returned home to his mother, after three months out of her care, after a trial in which the clinic students defeated the agency’s efforts to prove the child was abused and neglected.

*University of the District of Columbia, David A. Clarke School of Law: HIV/AIDS Legal Clinic website: [http://www.law.udc.edu/?page=HIVClinic](http://www.law.udc.edu/?page=HIVClinic)*
This document describes fundamental attributes of quality legal representation for parents and children in child welfare proceedings, beyond presumed competency and knowledge of the law, rules of procedure, and negotiation and trial skills. This document builds on existing Standards of Practice for attorneys representing children and parents in child welfare proceedings, and findings and recommendations from the U.S. Department of Health and Human Services, Children's Bureau, National Quality Improvement Center on the Representation of Children in the Child Welfare System and Administration for Children and Families.

FUNDAMENTALS

Prioritize Quality

The attributes/elements of quality representation identified in this document should be in place as soon as possible. Systems should ensure attorneys for parents and children have supports to provide quality representation to clients.

Be a Lawyer

First and foremost, children's attorneys and parents' attorneys in child welfare proceedings are lawyers who have ethical duties to their clients and to the administration of justice in an adversarial system. The adversarial nature of the legal system presumes disagreements can be resolved by a neutral arbiter, after hearing facts and legal arguments presented by opposing parties within a formal framework of evidentiary and procedural rules. Child welfare proceedings, in contrast, are often characterized as more informal or collaborative. While there may be instances where clients' goals can be achieved through negotiation and cooperation, attorneys for parents and children must always remember...
their ethical duties are to their clients in an adversarial system, including their professional obligations of competency and diligence. Other system-actors, including judges and court administrators, also must not forget that children's and parents' attorneys have ethical duties to their clients, which are paramount to expediency or cost-savings and are a cornerstone of the legal system.

**Special Considerations for Children's Attorneys**

Significant debate surrounds the appropriate role for children's attorneys in child welfare proceedings, primarily around whether children's attorneys should, consistent with rules of professional conduct, "abide by the client's decisions concerning the objectives of representation" and help clients achieve their objectives; or whether attorneys should substitute their judgement for that of their clients and advocate for what they believe is best for their clients. Academics, and many practitioners, favor client-directed representation as the most appropriate model of representation for verbal children who can express a point-of-view. However, most states do not have a client-directed model of children's representation, but rather follow a substituted judgement model.

When children are nonverbal, or if children's attorneys are required by the appointing statute to substitute their judgement for that of their clients, attorneys are advised to frame their role in the context of advancing their child-clients' legal rights or legal interests (i.e., children have a legal right to live with their parents unless a court has found the parents unfit; children have a legal right to be placed with relatives, not in the most well-resourced home). To do otherwise invites children's lawyers to take on the role of the judge and determine what they believe to be in their client's best interest based on factors which are not limited by the rules of evidence and procedure, and are not subject to review. At the very least, any analysis of what is in in a child's best interest must focus on the child-client's wishes and objectives and preserving the child's family environment and maintaining familial relationships.

**Individual and System Responsibilities**

This document divides attributes/elements into those that must be met by individual parents' and children's attorneys when representing their clients and those that must be addressed by the systems or structures governing legal representation for children and parents in child welfare proceedings.

The fundamental attributes of quality representation for both children and parents that must be met by individual attorneys are those attributes that are already required of attorneys under their codes of professional conduct. The fundamental attributes that must be met by systems or structures governing legal representation for children and parents in child welfare proceedings are those attributes that must be in place to allow parents' and children's attorneys to meet their individual obligations to their clients.
Legal Advocacy

- Diligently pursue clients’ case goals and, as needed and when consistent with client’s interests and objectives, proactively drive the case forward:

  1. Develop a case theory and legal strategy for adjudication, and advance other client objectives and issues that support reunification (e.g., litigation to increase visitation).
  2. Engage in proactive case planning, develop and propose a case plan, identify service providers, and set a visitation schedule (if family maintenance or immediate family reunification is not possible).
  3. Litigate issues and use experts, as needed, to achieve clients’ case goals, including through active motion practice throughout proceedings, not only at statutorily set periodic review dates.
  4. Explain to clients their right to attend court hearings and advocate for clients who want to attend court proceedings to attend in person.

Out-of-Court Advocacy

- Engage with and know the clients.
- Understand trauma and client’s specific trauma history, including:
  1. How client’s trauma history impacts client’s experience with the child welfare system and ability to engage in child welfare services; and
  2. How trauma impacts the attorney/client relationship.
- Meet and communicate regularly with client and well before any and all court hearings.
- Counsel clients about all legal matters related to the case, including the allegations related to dependency, the proposed service plan, and the client’s rights in the pending proceedings.
- Approach cases with a sense of urgency with an immediate focus on:
  1. Placement arrangements that support child’s connection to family, siblings, education, language and culture (including in-home placement, with relatives, neighbors and fictive kin/close family friends);
  2. Visiting arrangements that, consistent with child safety, are: unsupervised whenever possible in child friendly places conducive to parent/child interaction and engagement, as frequent and long as possible, organized around activities that reflect the routine activities of the family, and progress through reduced supervision and increased frequency; and
  3. Services that appropriately address client’s strengths and needs.
- Conduct a thorough and independent investigation at every stage of the proceeding, before and after the jurisdictional/dispositional phase of the proceedings. This should include obtaining and reviewing on an ongoing basis and to the extent allowable under state law (including via subpoena, discovery, or court order), child welfare agency records, service provider records, and all other relevant records for parents and children, including medical and education records.
- Research applicable legal issues and legal arguments.
- Engage in case planning and advocate for appropriate services and visitation, on an ongoing basis, including after the jurisdictional/dispositional phase of the proceedings.
Cultural Humility

- Understand how racial, cultural, social, and economic differences may impact the attorney/client relationship, avoid imposing personal values upon clients, and take these factors into account when working with clients to achieve their case goals, including identifying and accessing services.
- Understand and recognize the impact of personal and system bias stemming from race, gender identity, sexual orientation and expression, ethnicity, culture, country-of-origin, disability, and socioeconomic status, and develop strategies, including legal strategies, to mitigate the negative impact of personal and systems bias on clients’ case goals.
- Identify and use to clients’ advantage their individual, familial, cultural, and community strengths.

Scope of Representation

- Identify potential ancillary legal issues that could impact client’s dependency case and refer client to legal resources to address issues, or handle if competent to do so.
- Cooperate and communicate regularly with client’s other legal service providers to ensure dependency proceedings and other legal proceedings benefit client.

System Attributes

Caseloads and Compensation

- Ensure parents’ and children’s attorneys’ compensation rates are adequate for the attorneys’ practice, accounting for overhead and other costs borne by private professionals. At a minimum, parents’ attorneys’ and children’s attorneys’ compensation should be equal to county or child welfare agency attorneys’ compensation, and consistent with other publicly-funded attorneys’ compensation, including criminal defense attorneys.
- Ensure attorneys have a reasonable caseload of no more than 60 clients at a time for a full-time attorney, assuming a caseload that includes clients at various stages of the case. Generally, caseloads with over 60 clients will not be manageable for attorneys who lack supports of an interdisciplinary practice model, including access to social workers, investigators, and/or paralegals. Note, a caseload of 60 clients should be considered full-time work, and attorney compensation should support a full-time practice at this caseload level.

Interdisciplinary Model

- Ensure attorneys have access to work in an integrated manner with interpreters, experts, social workers, and investigators, as needed.
- Ensure attorneys have access to work in an integrated manner with parent allies/peer parent mentors and youth ambassadors, as needed.

Diversity/Cultural Humility

- Ensure system provides attorney training around bias and cultural humility, including how racial,
cultural, social, and economic differences may impact the attorney/client relationship, how personal and system bias may influence child welfare system decision making, and how attorneys can mitigate the negative impact of personal and system bias on clients’ case goals.

- Ensure attorney supervision and oversight includes an opportunity for attorneys to reflect on bias and cultural humility and to evaluate impact of attorneys’ personal bias on representation.
- Develop and implement a strategy to ensure a diverse attorney and staff workforce that mirrors the cultural, racial, and socioeconomic background of clients and communities served and which includes meaningful professional advancement and leadership opportunities.\(^\text{13}\)

**Timing of Appointment**

- Ensure attorneys are appointed and have the opportunity to have a meaningful meeting with the client, before any court appearance, regarding any allegations of abuse or neglect, the attorney/client relationship, and the child welfare legal system process. The meeting should be held at the earliest to occur of: (1) the emergency removal of a child from his or her home; (2) an application for an order of removal, prior to the filing of a petition alleging abuse or neglect; or (3) the filing of a petition alleging abuse or neglect.\(^\text{14}\)

**Support and Oversight**

- Define clear roles and expectations for attorneys and all members of the multidisciplinary team.
- Provide training and education opportunities.
- Provide oversight and performance evaluation.
- Provide the opportunity for clients to provide feedback on representation.

**Accountability/Use of Data**

- Use a continuous quality improvement process to measure qualitative and quantitative outcomes.\(^\text{15}\)

**Endnotes**

1. ABA STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES (American Bar Association, 2006); ABA STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (American Bar Association, 1996); NACC RECOMMENDATIONS FOR REPRESENTATION OF CHILDREN IN ABUSE AND NEGLECT CASES (National Association of Counsel for Children, 2001).
2. DONALD N. DUQUETTE, CHILDREN’S JUSTICE: HOW TO IMPROVE LEGAL REPRESENTATION FOR CHILDREN IN THE CHILD WELFARE SYSTEM (American Bar Association, 2016).
4. DUQUETTE, supra note 2; See also Recommendations of the UNLV Conference on Representing Children in Families: Child Advocacy and Justice Ten Years After Fordham, 6 NEV. L.J. 592 (2006).
5. See e.g., CHILD ADVOCACY INSTITUTE & FIRST STAR, A CHILD’S RIGHT TO COUNSEL: A NATIONAL REPORT CARD ON LEGAL REPRESENTATION FOR ABUSED AND NEGLECTED CHILDREN (3d ed. 2012), at http://www.caichildlaw.org/Misc/3rd_Ed_Childs_Right_to_Counsel.pdf
6. See e.g., Martin Guggenheim, A Paradigm for Determining the Role of Counsel for Children, 64 FORDHAM LAW REVIEW 1399 (1996); see also Lisa Kelly & Alicia Levezu, Until the Client Speaks: Reviving the Legal Interest Model for Preverbal Children, 50 FAM L.Q. 3 (Fall 2016) (noting that when children’s legal rights conflict, the child’s attorney should present information on both options to the
judicial officer without taking a position).

7. See Guggenheim, supra note 6, at 1431.
8. See e.g., DUQUETTE, supra note 2; see also U.N. Committee on the Rights of the Child, Convention on the Rights of the Child, General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1), §§ 48-79, May 29, 2013.
9. See e.g., MODEL RULES OF PROF'L CONDUCT (2016).
11. Throughout the country, caseloads for parents and children's attorneys vary significantly, and in many jurisdictions caseloads exceed 100 or even 150 open cases. Research has indicated that when parents have high-quality legal representation (and attorneys have lower caseloads) children achieve permanency faster. See e.g., MARK E. COURTNEY, JENNIFER L. HOOK, & MATT ORME, EVALUATION OF THE IMPACT OF ENHANCED PARENTAL LEGAL REPRESENTATION ON THE TIMING OF PERMANENCY OUTCOMES FOR CHILDREN IN FOSTER CARE (Partners for Our Children, Feb. 2011). Managers of parent representation programs indicate that attorneys are unable to consistently meet their obligations to their clients when caseloads exceed 60 clients, and in some jurisdictions caseloads are capped at 40 clients again as program managers have found that attorneys cannot meet their individual obligations to their clients with more cases. Researchers have found that children's attorneys with more than sixty cases spent less time on investigation, document review, and legal case preparation. See DUQUETTE, supra note 2. Additionally, a comprehensive caseload analysis in Pennsylvania found that attorneys for parents and children could not meet their statutory obligations to clients with cases exceeding 61 clients for parent attorneys and 71 clients for children's attorneys. See 2015 PENNSYLVANIA STATE ROUNDTABLE REPORT, LEGAL REPRESENTATION: A CALL TO ACTION (2015), at http://www.ocfpacourts.us/assets/upload/Resources/Documents/2015%20Legal%20Representation%20Report%20%3(1).pdf
12. This attribute is considered “ideal” and may be aspirational for many jurisdictions because of funding or other limitations.
13. Id.
14. Some jurisdictions have piloted appointing parents' attorneys prior to removing a child from the home, or filing of a petition seeking removal or court oversight. Pre-petition/pre-removal appointment of parents' attorneys has had promising results keeping families intact and preventing the unnecessary removal of children into foster care.
15. Continuous quality improvement generally means collecting data and using it to “identify, inform, monitor and improve progress toward outcomes in an ongoing fashion.” U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILDREN & FAM., PROGRAM INSTRUCTION FOR STATE COURTS APPLYING FOR COURT IMPROVEMENT PROGRAM (CIP) FUNDS FOR FISCAL YEARS (FYS) 2012-2016, ACYF-CH-PI-12-02, 6 (Jan. 11, 2012). Collecting data is key to measuring and tracking the progress of legal representation, monitoring how well interventions and activities are working, and making any needed adjustments to meet your goals. See e.g., Andrew Davies & Angela Olivia Burton, Why Gather Data on Parent Representation? The Pros, Cons, Promise and Pitfalls, 34 ABA CHILD LAW PRACTICE 49, 54-57 (April 2015). Tools available to help with continuous quality improvement of legal representation for children's and parents' attorneys are available, as well as technical assistance regarding the same. See e.g., ABA CENTER ON CHILDREN AND THE LAW, INDICATORS OF SUCCESS FOR PARENT REPRESENTATION, (2015), at https://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/Indicators-of-Success.authcheckdam.pdf

The Family Justice Initiative (FJI) is a collaboration of the ABA Center on Children and the Law, the Children's Law Center of California (CLC), the Center for Family Representation (CFR), and Casey Family Programs (CFP).

The FJI unites professionals from around the country to ensure every child and every parent has high-quality legal representation when child welfare courts make life-changing decisions about their families. Through the FJI's work, child welfare lawyers, researchers, judges, social workers, policymakers, families impacted by abuse and neglect, and others are reenvisioning how to best protect children, strengthen families and support communities.
In collaboration with a diverse team of partner organizations, the ABA Center on Children and the Law, the Children’s Law Center of California, the Center for Family Representation, and Casey Family Programs launched the Family Justice Initiative (FJI) in 2016 with one unified goal:

To ensure every child and every parent has high-quality legal representation when child welfare courts make life-changing decisions about their families.

Background:

In the United States, every day approximately 740 children are removed from their families with the goal of keeping them safe. A system of federal and state laws exists to support reunification between children and parents. However, the tragic result is that many families do not reach that outcome. Over 400,000 children are in foster care at any time and nearly half never return to their parents.

Rather than finding safety and stability, many children suffer significant trauma when they are removed from their parents and placed in the care of others. They often are cut off from existing support networks, separated from siblings, battle emotional and mental health problems, fall behind in school and run away. Experiences in foster care can also serve as a pipeline to incarceration, homelessness, sex trafficking and long-term institutionalization.

Despite the rights at stake in child welfare cases, many children and parents lack any, or adequate, legal representation. Children typically do not appear in their own court hearings and those who have a lawyer may never meet or talk with her. As a result, youth express feeling isolated by the very legal system designed to support them. Similarly, parents feel terrified and disregarded in a legal process that separates them from their children and can permanently sever their parental rights, sometimes in hearings as short as ten minutes.

Families deserve better and we know we can do better. Research shows high-quality legal representation for children and parents helps families achieve positive long-term outcomes, including higher reunification rates. In addition, high-quality legal representation provides a necessary check on well-intentioned, but often overreaching, government intrusion into families’ lives.

Changing the Status Quo:

The existing system often pits children and parents against one another as unnecessary adversaries. Since its inception in 2016, the FJI has worked to change this status quo by unifying a national collaborative of children’s attorneys, parents’ attorneys, educators, researchers, and national policy advocates who share a goal of expanding access to high quality legal representation for all children and all parents in child welfare cases.
FJI’s Three Main Goals Are:

1. To replicate successful models of child and parent representation, including examples where attorneys have reasonable caseloads, are trained to work with clients who have suffered trauma, and work as part of an interdisciplinary team with social workers and peer advocates.

2. To evaluate models of representation in practice and expand the body of existing evidence on legal representation and its impact on child and family outcomes.

3. To build understanding and public support for the essential role high-quality legal representation has in ensuring all families are treated fairly under the law.

Since its Launch in 2016, the FJI has:

- Built a national collaborative with representatives from twenty-three states who advocate for children and parents’ right to counsel in child welfare proceedings.

- Developed consensus around replicable FJI models of high quality legal representation for children and parents among a diverse range of child welfare and legal stakeholders.

- Collected existing research on the impact of legal representation on child welfare outcomes.

- Selected five demonstration sites throughout the country where the FJI models of representation can be implemented and evaluated in practice.

- Begun to design a national communication campaign targeting key audiences within and outside the child welfare field to build public support for the essential role of high quality child and parent legal representation in ensuring families are treated fairly under the law.

- Submitted policy statements to state legislatures and courts across the country advocating for increases in support for child and parent legal representation in child welfare proceedings.

More Work is Needed:

Building on these initial successes, much work remains. In the future, the FJI seeks to support more model representation projects in individual jurisdictions, launch a national communications strategy, advocate for increased state and federal child welfare legal representation resources, and fill gaps in research on the impact of legal representation in child welfare cases.

To learn more about how to support or join this initiative please contact the FJI Executive Team:

- Prudence Beidler Carr, ABA Center on Children and the Law, prudence.beidlercarr@americanbar.org
- Mimi Laver, ABA Center on Children and the Law, mimi.laver@americanbar.org
- Leslie Starr Heimov, Children’s Law Center of California, heimovl@clcla.org
- Sue Jacobs, Center for Family Representation, sjacobs@cfmy.org
- Elizabeth Thornton, FJI Attorney, eliz.thornton.sf@gmail.com
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<th>Attendee</th>
<th>Title/Role</th>
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<td>Hon. Chief Judge Jennifer DeLaney</td>
<td>Co-Chair CCIC</td>
<td>Sixth Judicial District Court</td>
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<td>Ezra Spitzer</td>
<td>Co-Chair CCIC</td>
<td>Executive Director</td>
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<tr>
<td>Beth Gillia</td>
<td>Director, Corinne Wolfe Center for Child and</td>
<td>University of New Mexico School of Law</td>
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<td>Shelly Bucher</td>
<td>Director, Substitute Care Review Board</td>
<td>Mesilla Park, Mesilla Park</td>
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<td>Alison Pau</td>
<td>Juvenile Defender</td>
<td>Office of the Public Defender</td>
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<td>Dr. Kristine Meurer</td>
<td>Executive Director</td>
<td>Student, Family, and Community Supports Division</td>
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<td>Hazel Mella, PhD</td>
<td>Reentry/CTE Program Administrator</td>
<td>NM Corrections Department</td>
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<td>Sarah Blackwell</td>
<td>Deputy Field Director</td>
<td>Child, Youth and Families Department</td>
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<td>Hon. Angie Schneider-Cook</td>
<td>Twelfth Judicial District Court</td>
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<td>Hon. John Romero</td>
<td>Second Judicial District Court</td>
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<td>Bette Fleishman</td>
<td>Children’s Attorney</td>
<td>Pegasus Legal Services</td>
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<tr>
<td>Cynthia Chavers</td>
<td>Federal Reporting Bureau Chief and Tribal Liason</td>
<td>Children, Youth and Families Department</td>
<td>Santa Fe</td>
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<td>Georgia Berrenberg</td>
<td>Children’s Attorney</td>
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<td>Andrea Gunderson</td>
<td>Respondent Attorney</td>
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<td>Caitlin DiFiore</td>
<td>Lead Social Worker</td>
<td>New Mexico Family Advocacy Program</td>
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<td>Annamarie Luna</td>
<td>Protective Services Division</td>
<td>Children, Youth and Families Department</td>
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October 25, 2018 CCIC Attendees

Rodney Gross
CIP Statistician
Judicial Information Division
Santa Fe, New Mexico

Hon. Marie Ward
Presiding Judge Children’s Court
Albuquerque, New Mexico

Beth Williams
Deputy CEO, Thirteenth Judicial District Court
Los Lunas, New Mexico

Sarah Jacobs
CIP Director
Administrative Office of the Courts
Santa Fe, New Mexico

Monica Rodriquez
Deputy CEO, Second Judicial District Court
Albuquerque, New Mexico

Lorenzo McDuffie
Executive Director
New Mexico CASA Association
Albuquerque, New Mexico

Shantell Gallegos
Former Foster Youth/Parent
New Mexico Child Advocacy Networks
Albuquerque, New Mexico

Leslie Jones
Respondent Attorney
Los Lunas, New Mexico