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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.

LEGAL AND RELATED REFERENCES: Title IV-E and IV-B of the Social Security Act; the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106a et seq.); the Indian Child Welfare Act of 1978 (ICWA) (Pub. L. 95-608)

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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[2] *Santosky v. Kramer,* 455 U.S. 745 (1982).

[3] *See* Mitchell, Monique. (2016) *The Neglected Transition: Building a Relational Home for Children Entering Foster Care*. Oxford: Oxford University Press.

[4] 42 U.S.C. 5106a (b)(2)(B)(xiii).

[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[6] (ICWA)) to prevent removals,[7] that it is contrary to the welfare of a child to remain in the home,[8] and that reasonable efforts have been made to finalize a permanency plan.[9]

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.[10] As sovereign nations, tribes have a statutorily protected interest[11] 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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[6] 25 U.S.C. 1912(d).
[7] 42 U.S.C. 672(a)(2)(A)(ii).
[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
[11] 25 U.S.C. 1901(3).

Failure to provide a meaningful opportunity for tribes to participate in cases involving Indian children is a violation of ICWA[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.[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.[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.[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

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[12] 25 CFR 23.111.

[13] *See generally* Leben, S. & Burke, K. (2007-2008) Procedural fairness: A key ingredient in public satisfaction. *Court Review*, *44,* 4-17; Tyler, T. & Zimerman, N. (2010) Between Access to Counsel and Access to Justice: A Psychological Perspective. *Fordham Urban Law Journal, 37,* 473-507; Tyler, T. (2007-2008) Procedural justice and the courts. *Court Review, 44,* 26-31Tyler, T. (1990). *Why People Obey the Law: Procedural Justice, Legitimacy, and Compliance.* New Haven: Yale University Press.

[14] Tyler, T. & Zimerman, N. (2010) Between Access to Counsel and Access to Justice: A Psychological Perspective. *Fordham Urban Law Journal, 37,* 473-507.

[15] Exploring Outcomes Related to Legal Representation for Parents Involved in Mississippi's Juvenile Dependency System, Preliminary Findings, National Council of Juvenile and Family Court Judges (2013) *available at: https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=266785*

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

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[16] Conference of Chief Justices and Conference of State Court Administrators (2013) Resolution 12: In Support of State Supreme Court Leadership to Promote Procedural Fairness. (http://ccj.ncsc.org/~/media/microsites/files/ccj/resolutions/07312013-support-state-supreme-court-leadership-promote-procedural-fairness-ccj-cosca.ashx).

[17] *See* Thornton & Gwin (Spring 2012) *High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings*, 46 Fam Law Quarterly 139.

[18] *See* Duquette *et. al*., (2016) *Children's Justice: How to Improve Legal Representation of Children in the Child Welfare System,* ABA Publications; *see also* QIC findings: Robbin Pott (2016), *The Flint MDT Study,* in CHILDREN'S JUSTICE.

[19] Olebeke, Zhou, Skles & Zinn, (2016)Evaluation of the QIC-ChildRep Best Practices Model Training for Attorneys Representing Children in the Child Welfare System, Chapin Hall. *Available at: http://www.chapinhall.org/qicreport*

[20] Wood, S. M., Summers, A., & Duarte, C.S. (2016). Legal Representation in the Juvenile Dependency System: Travis County, Texas' Parent Representation Pilot Project. *Family Court Review, 54,* 277-287.

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 state [23]. 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

[21] Wood., S.M., & Russell, J.R. (2011). Effects of parental and attorney involvement on reunification in juvenile dependency cases. *Children and Youth Services Review, 33,* 730-1741.
[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*
[23] *See* Herring, D. (1993). Legal Representation for the State Child Welfare Agency in Civil child Protection Proceedings: A Comparative Study. Tol L. Rev. 603

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.[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.[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.[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.

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.[27] The NACC based this

[24] *Available at*: http://www.americanbar.org/groups/child_law/tools_to_use.html
[25] *Available at*: http://www.naccchildlaw.org/?page=certification
[26] Child Abuse and Neglect Institute Evaluation: Training Impact on Hearing Practice (2016) *available at*: http://www.ncjfcj.org/CANI-Report-2016
[27] National Association of Counsel for Children, *Child Welfare Law Guidebook,* 2006, at 54.

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.[28] 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.[29] 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.[30] The Massachusetts Committee for Public Counsel Services, which provides counsel for children and parents in dependency cases, enforces a caseload of 75 open cases.[31] 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.[32]

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[28] NACC, Pitchal, Freundlich, and Kendrick, *Evaluation of the Guardian ad Litem System in Nebraska,* (December 2009) at 42-43, *available at* http://c.ymcdn.com/sites/www.naccchildlaw.org/resource/resmgr/nebraska/final_nebraska_gal_report_12.pdf

[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.

[30] CA Dependency Counsel Caseload Standards A Report To The California Legislature April 2008 by the Judicial Council of California Administrative Office of the Courts Center for Families, Children & the Courts, *available at* http://www.courtinfo.ca.gov/programs/cfcc/resources/publications/articles.htm

[31] Massachusetts Policies and Procedures. https://www.publiccounsel.net/private_counsel_manual/CURRENT_MANUAL_2010/MANUALChap5links3.pdf

[32] 2014 Pennsylvania State Roundtable Report: Moving Children to Timely Permanency, available at http://www.ocfcpacourts.us/childrens-roundtable-initiative/state-roundtable-workgroupscommittees/legal-representation/state-roundtable-reports

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.[33] 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

[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.

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[34] *See* Silverthorn, B. (2016) *Agency Representation in Child Welfare Proceedings,* Child Welfare Law and Practice: Representing Children, Parents and State Agencies in Abuse, Neglect, and Dependency Cases. Bradford

[35] *See* Oregon Task Force on Dependency Representation Report, July, 2016, *available at* http://courts.oregon.gov/OJD/docs/OSCA/JFCPD/Juvenile/EYES-2016/Dependency%20Representation%20Task%20Force%20Report%20(full).pdf

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.

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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
http://www.improvechildrep.org/DemonstrationProjects/QICChildRepBestPracticeModel.aspx

NCJFCJ Enhanced Resource Guidelines
http://www.ncjfcj.org/ncjfcj-releases-enhanced-resource-guidelines

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

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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