Giving Families a Chance: Necessary Reforms for the Adequate Representation of Connecticut's Children and Families in Child Abuse and Neglect Cases

March 2007

The Jerome N. Frank
Legal Services Organization

Yale Law School
P.O. Box 209090
New Haven, Connecticut 06520-9090
(203) 432-4800
www.law.yale.edu

CONNECTICUT VOICES FOR CHILDREN

33 Whitney Avenue
New Haven, Connecticut 06510
(203) 498-4240
www.ctkidslink.org

Giving Families a Chance: Necessary Reforms for the Adequate Representation of Connecticut's Children and Families in Child Abuse and Neglect Cases

William Bowen
Joshua Hudner
Blair Warner[1]

March 2007

Reproduced with the generous support of the
Jim Casey Youth Opportunities Initiative.

[1] Mr. Bowen, Mr. Hudner, and Ms. Warner are Yale Law students participating in the Yale Legislative Services program and have prepared this white paper under the supervision of Attorney Shelley Geballe (President, CT Voices for Children), and Professor J. L. Pottenger, Jr. (Legislative Advocacy Clinic, Yale Law School).

Table of Contents

Table of Contents i
Executive Summary ii
I. Introduction 1
A. Connecticut's Current System 1
II. Organizational Model 3
A. Contract with Individual Attorneys 4
B. Contract with Public or Nonprofit Organizations 5
C. Representation Through a Government Agency 9
D. Connecticut's Current System and Recommendations 10
III. Attorney Compensation and Workload 11
A. Compensation Models 11
B. Per Case or Flat Fee Compensation 12
C. Hourly Compensation 13
D. Salary 16
E. Compensating Organizations versus Individuals 16
F. Connecticut's Current System and Recommendations 17
G. Level of Compensation in Other States and Effects on Quality of Representation 18
H. Connecticut's Current System and Recommendations 22
IV. Caseload Standards 24
A. Attorney Caseload Limits Under National Standards and in Other States 24
B. Connecticut's Current System 26
C. Recommendations 27
V. Training 28
A. Training Systems and Qualification Requirements in Other States 28
B. Connecticut's System 30
C. Recommendations 31
VI. Oversight and Supervision 34
A. Oversight and Supervision Mechanisms in Other States 34
B. Connecticut's System 36
C. Recommendations 38
VII. Financing Connecticut's Improved System of Representation 40
A. Projected Costs 40
B. Projected Savings 41
VIII. Conclusion 44

Executive Summary

All kids need is a little help, a little hope and somebody who believes in them.
--Earvin "Magic" Johnson

How can a lawyer represent you if they haven't met you?
They don't even know if you're a boy or a girl.
--Cameron Iacovelli, 20, a ward of the state of Connecticut since he was 12,
explaining that he never knew he had an attorney.

The current model of representation in Connecticut – independent contract attorneys – does not provide constitutionally-adequate legal representation for our children and parents in abuse and neglect proceedings. Connecticut contracted with 144 attorneys to provide representation in 3500 cases in the first quarter of FY 2007. Seventy-three of the attorneys reported caseloads over 100, and 53 reported caseloads over 150. Further, an unknown portion of these attorneys also take on outside cases in order to supplement their income, reducing their available time per case even more.

These figures are unacceptable and force attorneys to provide substandard and inadequate representation to their numerous child and parent clients. The most common complaint that the Chief Child Protection Attorney receives is of attorneys simply not showing up for court appearances. Adequate representation requires an average of 25 hours per year per client in research, writing, preparation, and courtroom appearances. To spend this amount of time on each client requires attorneys to represent no more than 80 clients per year, including any outside work that they take on in addition to representing children and families. Connecticut's system is in crisis. This paper examines systems of representation used in other states and recommends short and long term changes to move Connecticut towards more timely, higher quality, and more cost effective representation of children and parents. It concludes that almost *any* of the alternatives to our current system would lead to better case outcomes.

Organizational Model

Individual Contract Model

Connecticut currently uses an individual contract model where attorneys are contracted on a case by case basis to provide representation for a child or parent. With this model, it is extremely difficult for the state to exercise adequate supervision and oversight over the attorneys, to provide adequate training for them, and to provide timely access to other experts like social workers. An individual contract system has great difficulty ensuring adequate representation for children and families.

Contract with Public or Nonprofit Organizations

Evidence from other states indicates that providing legal representation through a public agency or nonprofit legal services provider leads to higher quality representation of children and parents.

- A legal services or public defender-like organization can more easily provide centralized training and oversight, as well as the day to day advantages of mentoring, specialization, and institutional memory offered by working in the same office with attorneys who specialize in the same area of the law.

- A centralized office is able to employ social workers, medical experts, paralegals and other support staff that individual attorneys cannot afford on their own. These staff can provide additional expertise on cases, and also assure that the attorney's time is spent more cost-effectively.
- Data from New Jersey, New York, Massachusetts, Washington, and Michigan indicate that substantial benefits are found in an organizational model, including positive outcomes for children such as decreased length of time in foster care and increased reunification rates with family.

Attorney Compensation and Workload

Per Case or Flat Fee Compensation

Connecticut currently provides a flat fee of $500 for the first thirty hours of work on a case (recently increased from $350 by the Chief Child Protection Attorney). Flat fees provide a disincentive to spend adequate time on representation, since one is paid in full before work is completed and compensation does not increase with time spent. That is, an attorney who spends just two hours on a case receives $250 per hour for that case while an attorney who works the full thirty hours receives just $16.67 per hour. A flat fee system of compensation discourages competent representation of children and parents and also provides no information to the Chief Child Protection Attorney about what services have been provided by these attorneys.

Hourly Compensation

Reports from other states indicate that an hourly billing system is critical to providing adequate representation for children and families.

- An hourly compensation model gives attorneys incentives to spend enough time on every case, since they are paid more for the additional time spent.
- The more detailed records from hourly billing statements (detailing tasks performed and time taken to complete them) allow superior oversight since the Chief Child Protection Attorney can use them to identify attorneys who do not spend adequate time on each case or fail to perform necessary tasks.
- A soft cap on total compensation per case (which can be exceeded with the permission of the Chief Child Protection Attorney) can assist the state in its budgeting projections.

Level of Compensation

Connecticut currently pays $500 for the first 30 hours of work on a case. This comes to $16.67 per hour for the diligent attorneys who work 30 hours, and is grossly inadequate to encourage effective representation of children and parents throughout the state.

- Low compensation makes it difficult to attract and retain talented attorneys, creates a disincentive to spend the time needed on complex cases, and demoralizes attorneys.
- Of twenty-one other states examined, including many with a significantly lower costs of living than Connecticut, *all* pay significantly more per hour than Connecticut.
- In 2003, a state court found New York's system of representation constitutionally inadequate because of its low ($40 per hour in court and $25 per hour out of court) level of compensation, and ordered compensation of $90 per hour. In recent federal litigation in Connecticut, dismissed on procedural grounds, the court questioned the adequacy of

Connecticut's compensation scheme. *Juvenile Matters Trial Lawyers Association v. Judicial Branch,* 363 F. Supp. 2d 239, 251 (D. Conn. 2005)

Hourly rates should be set at least to the minimum levels recommended by the Governor's Task Force on Justice for Abused Children: $55 per hour for attorneys with zero to four years of experience, $75 for five to nine years, and $90 for ten or more years.

Caseload Standards

Heavy caseloads prevent attorneys from spending adequate time on each case, and thus prevent effective representation of children and parents in these time-intensive abuse and neglect cases. The National Association of Counsel for Children and the American Bar Association recommend that attorneys working full-time in this area have no more than 100 child clients per year. This assumes an average of twenty hours per case, and thus 2,000 hours of representation per year. Interviews with attorneys in the field suggest that twenty-five hours is a more realistic figure for providing adequate representation. Caseloads in Connecticut should be capped at 80 clients per year (for attorneys working full-time on these cases), assuming 2,000 hours of representation annually and twenty-five hours per client. This will enable attorneys to meet the Standards of Practice recently adopted by the Commission on Child Protection and thereby provide competent representation.

Training and Qualification Requirements

Connecticut's Current System

Connecticut had no formal training requirements until the creation of the Commission on Child Protection and its appointment of the Chief Child Protection Attorney last year. New attorneys must now undergo a criminal background check before attending training. The newly-required pre-service training provides an overview of child protection law, trial practice skills, and permanency placement. Attorneys must attend at least three seminars of in-service training each year. The CCPA plans to rotate one-third of the attorneys through the National Institute of Trial Advocacy's trial skills course each year, and DCF Training Academy courses are also available. Finally, the CCPA is coordinating an informal mentoring system.

Recommendations

The models of several other states examined and the advice of the American Bar Association indicates that several additions to the current training regime would be beneficial:

- Mandatory pre-service training should cover not only legal topics but also child development and psychology.
- Courses should be offered on interviewing children and explaining legal topics to them without doing any further emotional or psychological harm.
- The entire pre-service training program should be offered several times a year, since interested attorneys now must wait months before they have the opportunity for training.
- The CCPA's office, or any organization employing attorneys to provide this representation, should coordinate a formal, compensated mentor program. New attorneys should be required to assist their mentors in three abuse and neglect cases before they are permitted to take on cases of their own.
- Formal certification procedures should be adopted (which include peer reviews, writing samples, and an exam on child welfare law to be administered after three years of experience

in the field) and, if certification is granted, accompanied by an increase in compensation and the allowable caseload.

Oversight and Supervision

Connecticut's Current System

Before the appointment of the Chief Child Protection Attorney last year, oversight in Connecticut consisted only of numerous financial audits, demoralizing many of the attorneys. The CCPA's office now investigates the most glaring problems with billing, but faces problems with oversight since the flat fee system does not provide detailed billing statements. To improve programmatic oversight, the CCPA has established an informal investigatory process to handle complaints regarding attorney performance (involving interviewing court and DCF personnel involved and looking for patterns of poor representation) and is surveying parents, children, case workers, other attorneys, judges, and other court personnel to assess the quality of representation offered by each attorney, and the overall quality statewide.

Recommendations

An examination of oversight mechanisms in other states indicates several short and longer-term changes that would be beneficial in Connecticut. <u>In the short term, the CCPA's office should take a stronger lead in monitoring the quality of representation of children and parents throughout the state.</u>

- Funding should be provided for the CCPA to hire additional accounting staff to audit attorneys' hourly billing statements, survey the stakeholders in conjunction with DCF, and hire sufficient additional attorneys to assist her with courtroom observations.
- Connecticut should switch to an hourly billing model as quickly as possible, since other states find that detailed billing statements are the best first line of defense in maintaining high quality representation and detecting over-billing.
- The current informal investigatory procedure used to deal with complaints should be formalized along the lines of the successful Colorado model which involves a review of the court record, interviews with all parties involved, and potentially an audit of the attorney's other cases to check for a pattern of poor representation.
- The Office of the Child Advocate should, in its statutory role as Ombudsman for children, investigate the quality of representation in abuse and neglect cases if necessary, though the CCPA's office should have primary responsibility for investigating complaints against individual attorneys.

<u>In the longer term, oversight would become easier and more effective if Connecticut moved from its current system of appointing individual attorneys to an organizational model.</u>

- The organization(s) would provide a level of supervision not possible in the current model, helping to provide some of the oversight and resolving some of the complaints now being handled by CCPA's office.
- The organization(s) would have an incentive to ensure that its attorneys comply with best practice guidelines as these lead to better and timelier outcomes and permanent placements.
- Since the attorneys within an organization work with each other daily, review each others' work products, and assist each other in court, problems will be spotted early and complaints will be easy to corroborate by interviewing other attorneys in the office.

- This sort of informal daily oversight is critical to providing the highest quality of representation for Connecticut's children and families.

Financing Connecticut's Improved System of Representation

High quality legal representation leads to cost savings in the long term.

- An organizational model would cost roughly 15% more up front than an adequate independent contractor model, but evaluations of programs in other states have demonstrated that money is still saved in the long term.
- The Washington pilot program, for example, reduced the average time (and expense) of foster care by 20%, or 55 days per child. An innovative program in New York City with lower caseloads and in-house assistance of social workers resulted in even greater savings, reducing average time in foster care from 4.4 years to 4.4 *months* with few repeat referrals to child welfare.
- In Connecticut, each day in foster care costs between $24.80 and $27.40, so Connecticut would save between $1,364 and $1,507 for each child who spent 55 fewer days in such care, and $9,052 to $10,001 for each year of foster care avoided in board and care costs alone. The estimated cost of a high-quality organizational model of representation is about $1,500 per child per year. Hence, the marginal cost of increasing the current quality of representation would be more than offset by reduced foster care costs alone.
- Reunification rates went up significantly with the Washington program and termination of parental rights dropped, resulting in a reduction in long-term foster care costs and leading program officials to conclude that these savings alone would offset the cost of the pilot program within three years.
- Faster permanent placements save money for DCF and the legal system since they eliminate the need for periodic permanency plan hearings, staffing of the case by DCF, and foster care and/or residential care board and care payments.
- Better child and parent representation permits an outcome more closely fitted to the family's needs, reducing the possibility of repeat referrals and referrals of siblings.

Effective legal representation of children and parents is essential if our courts are to make fully-informed decisions about the well-being of our state's most vulnerable children, based on full knowledge of the child's wishes and best interests and the parents' needs. Without this information, the underlying reasons for the referral to DCF may not be addressed, resulting in longer term stays in care, a mismatch between services ordered and those needed, and other unnecessary costs.

I. Introduction

Connecticut has an obligation to protect its children, its most valuable resource. Typically, we can count on parents to provide for their children, but in some situations, the state must play a more active role. When parental neglect or misconduct makes it necessary for the State to intervene, its success depends on accurate and complete information about the child, the parents, and the family situation. Unfortunately, Department of Children and Families (DCF) workers, court personnel, and judges cannot be expected to gather all that important information on their own; this is why the lawyers' role serves the State's interests. Similarly, children may not be able to voice their own desires and concerns. They are taken from their homes and placed with strangers; they have no idea when they will see their mothers or fathers again. Parents find themselves confronted with a complicated legal system with which they may have no experience and the daunting prospect of their children being taken from them. In such a terrifying situation, both children and parents turn to attorneys to explain what is happening and to guide them through the process. Attorneys can reassure them, explain what they need to do, schedule visits between parents and children, translate court jargon, investigate the underlying claims of abuse or neglect, make sure they are receiving necessary medical care, find programs and services available to the family to improve their living situation, and simply be an open ear or a shoulder to cry on. During such a trying time, a child's or parent's attorney may be the only advocate they have.

Unfortunately, under the current system, attorneys are often too strained to play all of these roles effectively. Instead, with heavy caseloads and minimal pay, many attorneys can meet only the bare minimum expectations, if that. One youth who was removed from his home and placed in care at the age of twelve didn't even know he had an attorney until he turned eighteen and was informed by his DCF caseworker that he no longer had one. As he so poignantly stated, "How can someone represent you if they have never met you?"[2] With such problems endemic to the current model of representation in Connecticut, children and parents are often left alone and frightened during the most vulnerable and terrifying time of their lives.

There is hope. With better training, oversight, and compensation for attorneys in these abuse and neglect cases, parents and children can get the representation they need and deserve. No child should have to face being ripped from their home and thrust into the court system all alone. No parent should have their children taken from them and then have no one by their side who can explain what is happening and what they need to do to reunite their family. With better representation, these cases come to better, and quicker, resolutions for parents, children, and the State. Placing children where they will be best able to grow and thrive, with the love and safety they deserve, is of utmost importance. The best way to make sure this happens is to provide them with the best possible representation.

A. Connecticut's Current System

Currently in the state of Connecticut, children and parents in abuse and neglect proceedings are represented by contract attorneys who receive a fixed fee for their services.[3] Upon the filing of

[2] Cameron Iacovelli, Address at Forum at the State Capitol: Their Day in Court: Ensuring Adequate Representation for Children and Parents in Child Protective Service Cases (Nov. 20, 2006).

[3] In Fiscal Year 2007, the Office of the Chief Child Protection Attorney will spend over $7.8 million on compensation for attorneys working under private contract, comprising 80% of the Office's budget. Court-appointed attorneys and

child abuse and neglect actions by the Department of Children and Families (DCF), children are automatically appointed counsel, and parents can apply for counsel if they meet financial eligibility requirements tied to the federal poverty level.[4] Lawyers wishing to be considered for such court-appointed work file an application with the office of the Chief Child Protection Attorney (CCPA), which can contract with individual attorneys, as well as attorneys working at law firms or not-for-profit agencies.[5]

Connecticut currently compensates attorneys for children on a per case basis at a rate of $500 per case for up to thirty hours of work, plus $40 per hour for each hour spent over thirty hours.[6] Expenses such as for expert witnesses must be approved by the CCPA in conjunction with court orders relating to expert evaluations of the parties.[7] Connecticut's system of indigent child and parent representation lacks a certification requirement and, until recently, training requirements for attorneys, as well as mechanisms to provide supervision and oversight of the attorneys. Connecticut has only recently adopted standards of practice.[8]

Low pay and a lack of positive financial incentives to provide quality representation coupled with this lack of standards, oversight, and accountability have resulted in a system where many children and indigent parents do not receive effective counsel in abuse and neglect cases. The impact on Connecticut's children and families is profound. The core decisions that shape a child's life are being made with little guarantee that the desires and best interests of children are being competently presented to the court in abuse and neglect proceedings. The needs of the parents also are not being adequately identified and addressed because of deficient legal representation. Not only does this result in poorer outcomes for Connecticut's children and families, but it puts Connecticut at significant risk of being sued for failing to respect parents' and children's constitutional rights.[9]

---

standby attorneys represented a much smaller expenditure, approximately $0.85 million. COMM'N ON CHILD PROT., BUDGET SUMMARY 2007-09 (2006).

[4] COMM. ON THE QUALITY OF REPRESENTATION OF CHILDREN AND FAMILIES, GOVERNOR'S TASK FORCE ON JUSTICE FOR ABUSED CHILDREN, RECOMMENDATIONS TO THE COMMISSION ON CHILD PROTECTION AND CHIEF CHILD PROTECTION ATTORNEY 3 (2006), *available at* www.ct.gov/ccpa/lib/ccpa/Recommendations_to_Child_Protection_Attorney_Final.doc.

[5] *Id.*

[6] Previously, compensation was $350 for the first 30 hours of work and, if court approval was requested and obtained, $40 per hour for each hour spent over 30 hours. *Id.* The Commission made the changes noted in the text in the past year.

[7] *Id.*

[8] *See* Christina Ghio, *Legislation Will Improve Representation for Abused and Neglected Children*, CONN. LAW., Aug./Sept. 2005, at 1, *available at* www.kidscounsel.org/americanlawyerjulaug05cdg.pdf (lauding Connecticut for establishing the Commission on Child Protection, in part to develop caseload and practice standards, and improve training); COMM'N ON CHILD PROT., CONNECTICUT STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING CHILDREN IN CHILD PROTECTION CASES (adopted Nov. 16, 2006, pursuant to CONN. GEN. STAT. § 46b-123c(3)(2006)), *available at* www.ct.gov/ccpa/lib/ccpa/Final_StandardsKids_11-16-06.doc; COMM'N ON CHILD PROT., CONNECTICUT STANDARDS OF PRACTICE FOR ATTORNEYS & GUARDIANS AD LITEM REPRESENTING PARENTS IN CHILD PROTECTION CASES (adopted Nov. 16, 2006, pursuant to CONN. GEN. STAT. § 46b-123c(3)(2006)), *available at* www.ct.gov/ccpa/lib/ccpa/Final_Standards_Parents_11-16-06.doc.

[9] In 2004, the Juvenile Matters Trial Lawyers Association filed suit in federal district court in Connecticut against the Judicial Department, claiming that the compensation rates were substantially lower than those paid to public defenders. The District Court (Droney, J.) dismissed the case on procedural grounds. However, the court warned: "[T]he pay structure for appointed counsel representing indigent families and children in the Connecticut state courts may result in inadequate resources for effective representation . . . . [T]he decision here on the standing of the Association does not mean that other parties could not raise these issues in this Court or the Connecticut Superior Court. Finally, it may very well be that an administrative or *legislative review of the issues raised in this suit may be an appropriate course*." Juvenile Matters Trial Lawyers Ass'n v. Judicial Dep't, 363 F. Supp. 2d 239, 251 (D. Conn. 2005) (emphasis added).

Now, however, Connecticut has a great opportunity to improve its system of child and parental representation. In creating the office of the Chief Child Protection Attorney and empowering the Commission on Child Protection to study how the system can be improved, Connecticut has taken the first steps toward ensuring that children and families receive the quality representation necessary for the State to fulfill its responsibilities by protecting children and respecting children's and parents' rights in the process.[10]

This paper makes a comprehensive examination of the options Connecticut has for reforming its child and parent representation system to best represent children and parents in a way that is financially feasible in the short-run and generates systemic savings in the long-run. We examine the experiences of other states as well as the models suggested by prominent academics and professional organizations to explore the options available and make recommendations on what steps will be most useful to Connecticut given its particular assets and challenges. In the following sections, we propose recommendations in five areas key to ensure high quality representation of children and parents in child protective proceedings: 1) the basic organizational model; 2) the level and manner of attorney compensation; 3) caseload limits; 4) training requirements; and 5) oversight and supervision measures. We then go on to estimate the cost of implementing our recommendations, and document the off-setting short and longer-term cost savings that will result from the proposed changes. By implementing these reforms, Connecticut can achieve the level of representation that children and families deserve.

II. Organizational Model

There are several basic models available for hiring attorneys to represent children and parents in child abuse and neglect proceedings. The models are: (1) contract with individual attorneys to provide representation ("individual contract" model); (2) contract with one or more public,[11] private for-profit, or nonprofit organizations to supply child representation ("organizational contract" model); (3) establishment of a government agency that provides representation to children or parents by hiring attorneys as state employees ("direct agency" model); or (4) some combination of these three models.

This section analyzes the advantages and disadvantages of each model and argues that contracting with one or more qualified non-profit organizations is most likely to ensure that Connecticut provides the most effective representation and is least likely to incur unnecessary expenditures. However, because there will always be some conflicts of interest that will prevent the

[10] Ghio, *supra* note 8, at 1.

[11] For example, some states contract with local government entities that supply representation in other kinds of cases – e.g. city or county public defenders' offices. California, for example, provides most representation for children in abuse and neglect cases in San Diego by contract with the San Diego county public defender's office. Telephone Interview with Leah Wilson, Supervising Analyst, Center for Families, Children and the Courts, in San Francisco, Cal. (Nov. 9, 2006); *see also* AM. HUMANE ASS'N & SPANGENBERG GROUP, DEPENDENCY COUNSEL CASELOAD STUDY AND SERVICE DELIVERY MODEL ANALYSIS 53-59 (2004). While this may seem unusual given that the state could just as easily pay for salaries to directly employ attorneys in a state agency, this model has the advantage of relying on a well-established governmental bureaucracy rather than requiring the creation of a new one. Also, to the extent that these organizations belong to a different branch or levels of government from the office dealing with parents' representation, it may avoid some of the thorny problems with independence discussed below. Since these advantages are analogous to those that come from contracting with a non-governmental legal services organization, this model is also classified as an "organizational contract" model.

organization from representing all children and parents, Connecticut should retain its individual contract system for those cases in which a conflict requires independent representation.

A. Contract with Individual Attorneys

Connecticut currently uses an individual contract model to provide representation for children and families in abuse and neglect cases. The primary advantage of contracting with individual attorneys is that there is no need for the up-front time and monetary investment necessary to start a new nonprofit organization or government agency. In the short term, this may seem to save costs, but in reality the government has to pay attorneys enough to cover the overhead costs associated with maintaining their separate law offices.[12] Hence the state will always pay for infrastructure—either by paying for office space that it supplies directly, or by paying indirectly for the office space of individual practitioners.[13] In the latter instance, the state does not benefit from the economies of scale that can be gained by having multiple attorneys housed together and sharing resources in just a few locations.[14]

Sometimes it is impractical to gather attorneys together to work in one organization because their work is spread out geographically over a large area. Washington,[15] California,[16] and Utah,[17] for

---

[12] These costs can be significant. One study commissioned in Massachusetts found that overhead costs for a shared office and a secretary cost as much as $3000 a month. *See* SPANGENBERG GROUP, WESTERN MASSACHUSETTS CHILD WELFARE CASES: THE COURT-APPOINTED COUNSEL SYSTEM IN CRISIS 15 (2003), *available at* http://www.mass.gov/cpcs/CAFL/pdfs/Spangenberg_Report.pdf. For some attorneys, Massachusetts' $39 hourly rate was only enough to cover their overhead costs. *Id.*

[13] In some states, the cost of paying for attorney overhead is directly built into calculating the hourly rate of contract attorneys to achieve parity of compensation between contract attorneys representing parents and children and attorneys representing the child welfare agency, who are (with rare exception) salaried employees of the state (some are employed by governmental subunits, particularly when child welfare is administered by county and not state agencies). For example, California is piloting a program in ten of its counties wherein the rate for contract attorneys is computed by taking the pay rate of county counsel (who represent the child welfare agency) and adding 25% for the value of employee benefits and 25-30% for overhead costs. Telephone Interview with Leah Wilson, *supra* note 11.

[14] For example, it can be less expensive to rent a single space for multiple attorneys than multiple spaces for that same number of attorneys, both because the search costs for finding one facility will be lower than finding individual offices and because office resources and space can be used more efficiently when they are shared. *See* AM. HUMANE ASS'N & SPANGENBERG GROUP, *supra* note 11, at 61.

[15] JASON A. OETJEN, IMPROVING PARENTS' REPRESENTATION IN DEPENDENCY CASES: A WASHINGTON STATE PILOT PROGRAM EVALUATION 3 (2003), *available at* http://www.opd.wa.gov/Publications/Dependency%20&%20Termination%20Reports/watabriefcolorfinal%5B1%5D.pdf.

[16] Of the seventeen counties in California that have more than 200 people per square mile—Alameda, Contra Costa, Los Angeles, Marin, Orange, Riverside, Sacramento, San Diego, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, and Ventura—only three (Riverside, San Mateo, and San Francisco) do not use private law firms, district attorneys, public defenders offices, or nonprofits to provide representation. *See* U.S. Census Bureau, California by County: Census 2000 Summary File, http://factfinder.census.gov/servlet/GCTTable?_bm=y&-context=gct&-ds_name=DEC_2000_SF1_U&-mt_name=DEC_2000_SF1_U_GCTPH1_ST2&-tree_id=4001&-redoLog=true&-_caller=geoselect&-geo_id=04000US06&-format=ST-2|ST-2S&-_lang=en; AM. HUMANE ASS'N & THE SPANGENBERG GROUP, *supra* note 11, at 55-59.

[17] UTAH CODE OF JUDICIAL ADMIN. R. 4-906(3)(E) (requiring the director of the Office of the Guardian ad litem to "[d]etermine whether the guardian ad litem caseload in Judicial Districts 1, 5, 6, 7, and 8 is best managed by full or part time employment or by contract." Districts 1,5,6,7, and 8 are some of the most rural parts of Utah. *See* Judicial District Locator Map, http://www.utcourts.gov/knowcts/distlocmap.asp (last visited Mar. 9, 2007); U.S. Census Bureau, Utah by County: Census 2000 Summary File, http://factfinder.census.gov/servlet/GCTTable?_bm=y&-geo_id=04000US49&-_box_head_nbr=GCT-PH1&-ds_name=DEC_2000_SF1_U&-format=ST-2. The most densely populated county in these districts, Cache County, has a population density of 78.5 people per square mile. The second

example, rely on an individual contract model mainly in rural areas with too few cases to justify the creation of an entire agency. Finally, because multiple parties in one case with divergent interests cannot be represented by attorneys from the same agency or firm,[18] independent private contract attorneys will be necessary to represent all other parties in the case.[19] Thus contracting with individual attorneys will be necessary in these particular circumstances.

However, this model suffers from significant disadvantages. It is extremely difficult for the state agency contracting for the services to exercise adequate supervision and oversight. Selecting competent attorneys is difficult, particularly for complicated cases, because the contracting agency lacks the personal, day-to-day relationships that would give insight into attorneys' talents, commitments, and work habits. In addition, it is harder to provide in-house training. Even if the state were to offer optional training, attorneys would be less willing to attend, particularly if they were not compensated for their time or travel costs. In short, a contract system does not have an effective mechanism for ensuring that lawyers for children and indigent parents receive specialized training and adequate supervision and provide adequate representation.

Finally, private contract systems often attract attorneys who handle all different kinds of legal work, and who do not necessarily specialize in child abuse and neglect. Since their pay is so low, attorneys often take on other cases and clients to supplement their income.[20] This makes it particularly difficult to monitor caseloads because one can never be sure how many other cases attorneys have taken on in addition to their child protection work. It is important to remember that under the private contract model, even a strict cap on caseloads can be circumvented by taking on outside legal work. Given the incentive to take on as many cases as possible to maximize one's income, this can be a serious problem.

B. Contract with Public or Nonprofit Organizations

By contrast, contracting with a government agency or a nonprofit legal services provider facilitates training and oversight.[21] These features can be built into the institutional structure by having more experienced attorneys in mentoring and supervisory positions. The model also has the benefit of centralizing administration and support staff. An agency or nonprofit organization, unlike an individual attorney, provides access to supervisors and other attorneys with specialized skills and

---

most densely populated, Washington County, has a population of 37.5 people per square mile. By contrast, Connecticut's *least* densely populated county, Litchfield County, has a population of 198.1 people per square mile. U.S. Census Bureau, Connecticut by County: Census 2000 Summary File, http://factfinder.census.gov/servlet/GCTTable?_bm=y&-context=gct&-ds_name=DEC_2000_SF1_U&-mt_name=DEC_2000_SF1_U_GCTPH1_ST2&-tree_id=4001&-redoLog=true&-_caller=geoselect&-geo_id=04000US09&-format=ST-2|ST-2S&-_lang=en..

[18] *See* CONN. R. PROF. CONDUCT R. 1.7, 1.10 (2006), *available at* http://www.law.cornell.edu/ethics/ct/code/CT_CODE.HTM#Rule_1.10.

[19] In abuse and neglect cases, parent and child interests are often, if not always, adverse. For this reason, several states with organizational models make provisions for hiring private attorneys in the case of conflicts. *See, e.g.* CAL. WELF. & INST. CODE § 317(c) (2006); UTAH CODE JUD. ADMIN. R. 4-906(6)(B) (2006). *Cf.* THE AM. HUMANE ASS'N & THE SPANGENBERG GROUP, *supra* note 11, at 55-58 (2004).

[20] *See* THE SPANGENBERG GROUP, *supra* note 12, at 4 (finding that in Massachusetts, which paid a low hourly rate of $30 for some abuse and neglect cases and $39 an hour for others, attorneys were generally able to bill on average between $125 and $175 an hour for their privately retained work).

[21] While this paper does not explore the possibility of contracting with private, for-profit law firms because of the lack of information available, this system would theoretically provide the same benefits as a nonprofit organization. However the firm would need to be of equivalent size to a larger public agency or nonprofit organization so that it could provide centralized in-house training and oversight and the general economies of scale that such organizations allow.

expertise who can serve as a valuable resource for less experienced attorneys. Funds can be used to hire paralegals, investigators, social workers and other support staff, which can be extremely useful in preparing cases, writing motions, and doing other research. This generates cost savings by reserving attorney time for tasks that require a legal background.[22]

Attorneys who work in abuse and neglect cases full-time are also more likely to develop expertise in both the substantive law and the complexities of the court and administrative system. For example, many of the cases referred to DCF for neglect are related to family poverty. An attorney with expertise in this area, or working in a legal services office with other attorneys who have expertise in this area, might be able to identify untapped entitlement benefits or other ways to improve the family's economic situation.

A centralized office is also better able to provide attorneys with access to social workers and mental health professionals. A large enough office could pool resources to have paralegals, social workers, and experts available to all of their attorneys. Additionally, attorneys can share their experience with various experts to help others identify skilled experts in future cases. This support staff can help the office save costs by delegating tasks that do not have to be performed by attorneys to others whose time is less expensive. New York's Center for Family Representation (CFR), for example, relies a great deal on social workers and other staff to help with cases.[23]

In Washington State, a pilot program was initiated to provide better representation to parents. In 2000, Washington appropriated $500,000 to the Office of Public Defense to create a parents' representation pilot program in two demonstration cites, one in the Benton-Franklin Juvenile Court, located in a rural area, and the other in the Pierce County Juvenile Court, which is in an urban area.[24] The aim of the program was to provide better representation to parents and decrease court delays. The program increased compensation for attorneys, raising compensation to be more on par with the funding provided to the Attorney General's Office for use in dependency and termination cases.[25] In Pierce County, Washington, the pilot program was implemented through the public defender's office, which at the time had one supervisor and four full-time parents' attorneys.[26] The agency was expanded under the pilot program to include two more full-time attorneys, thereby increasing attorney capacity by 50%.[27] The funding apportioned to Benton-Franklin was used to add two part-time attorneys.[28] By reducing caseloads, increasing support staff, and improving access to experts, this program sought to increase the likelihood that attorneys would routinely communicate with their clients, provide them with meaningful counsel and advice, and properly prepare their cases for court.[29] The program also sought to decrease the court delays caused by overburdened attorneys; by reducing their caseloads to manageable levels, it was less likely they would request continuances based on their unavailability.[30]

---

[22] Interview with Patricia Kaplan, Executive Director, New Haven Legal Assistance in New Haven, Conn. (Dec. 7, 2006).

[23] Michele Cortese, Address at Forum at the State Capitol: Their Day in Court: Ensuring Adequate Representation for Children and Parents in Child Protective Service Cases (Nov. 20, 2006); *see also* Center For Family Representation Website, http://www.cfrny.org/new_legal.asp.

[24] OETJEN, *supra* note 15, at 3.

[25] Bobbe J. Bridge & Joanne I. Moore, *Implementing Equal Justice for Parents in Washington: A Dual Approach*, JUV. & FAM. CT. J., Fall 2002, at 32.

[26] OETJEN, *supra* note 15, at 3.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

The pilot program also added support staff to the office. Two paralegals and two social workers were added to the Pierce County office, decreasing the discrepancy between the Public Defender's Office and the Attorney General's Office and the Department of Social and Health Services.[31] Social workers under the pilot program were able to participate in 30% of the cases.[32] The pilot program also funded access to expert evaluators and investigators, aiding parents in bringing claims regarding medical evaluations or responding to other agency findings.[33] This access to experts and other support staff, which can be shared by all attorneys in the office, is a key benefit of the agency model.

The impact of the pilot program was dramatic. Prior to the pilot program, many attorneys claimed to only occasionally file written motions or briefs, investigate services issues, or meet with parents before hearings.[34] The pilot program resulted in attorneys spending more time communicating with their clients and preparing for their cases (79% of their time, with the remainder spent in court).[35] Thus, this pilot program provided parents with superior legal representation during the proceedings.[36]

Michigan had a similar experience. The American Bar Association report on the Michigan Court Improvement Program indicates that providing representation through institutions that specialize in this type of case, either a state agency or non-profit legal services entity, ensures significantly higher quality representation in the long run. In Michigan, most representation of children and parents was through individual contracts with private attorneys, but 25% of the Detroit-area representation was handled by attorneys at the Legal Aid and Defender Association of Detroit. The representation provided by the Association was generally described as "very good," but the representation afforded by the private attorneys was viewed as "problematic."[37] This can be explained, in part, by the benefits of institutional memory. Attorneys who specialize and work together as a group have a deeper understanding of the law, the preferences of judges who are sitting on these cases, how DCF works, and what community resources are available, among other advantages.[38] That superior understanding translates into more competent, and more cost-effective, representation.

New Jersey found a similar disparity in the quality of representation that can be afforded through an organization versus individual attorneys. Prior to a comprehensive reform of its child welfare system sparked by a class action suit,[39] New Jersey provided parental representation through individually hired "pool attorneys," but provided child representation through full-time employees of the Law Guardian Unit of the Office of the Public Defender.[40] One major concern with this system was that parents were significantly disadvantaged; the individual contract system made it

---

[31] Bridge & Moore, *supra* note 25, at 34.
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] Bridge & Moore, *supra* note 25, at 36.
[36] *See* Part VII B, *infra*.
[37] AM. BAR ASS'N CTR. ON CHILDREN AND THE LAW, FINAL REPORT: MICHIGAN COURT IMPROVEMENT PROGRAM: ASSESSMENT OF PROBATE COURTS' HANDLING OF CHILD ABUSE AND NEGLECT CASES 66 (1997).
[38] Interview with Patricia Kaplan, Executive Director, *supra* note 22.
[39] In *Charlie H. v. Whitman*, 83 F. Supp. 2d 476 (D.N.J. 2000), foster children brought a class action suit against New Jersey, alleging numerous violations of statutory and constitutional rights. Although the suit was settled without reaching the merits of all these claims, the settlement prompted a thorough reform of New Jersey's system. *See* JAMES E. MCGREEVEY ET AL., A NEW BEGINNING: THE FUTURE OF CHILD WELFARE IN NEW JERSEY 6 (2004).
[40] MCGREEVEY ET. AL, *supra* note 39, at 146.

difficult to provide parents with the same quality of representation that children received under the government agency.[41]

New York City also uses a non-profit legal services model that has proven effective in developing a well-trained, professional group of lawyers for children.[42] Approximately 90% of all children and youth who appear before the New York City Family Court on matters related to child protection, termination of parental rights, juvenile delinquency and status offenses are represented by Juvenile Rights attorneys from The Legal Aid Society of New York who are well-supported by paralegals and social workers. In addition, other non-profit organizations that build on the Legal Aid Society model have emerged. One such organization is New York's Center for Family Representation (CFR), a non-profit that is staffed by attorneys and social workers who are experienced in community resources.[43] Each parent is represented by a team comprised of an attorney, a social worker, and sometimes a parent advocate.[44] Since it was fully staffed in May 2004, CFR has served 160 families, expanding from one to two teams.[45] According to Michele Cortese, the Deputy Director of CFR, an interdisciplinary model is critical. For example, attorneys and social workers can help parents find access to healthcare, rehabilitation centers, psychologists, and other resources they may be eligible for but unaware of.[46] The team organizational model is key to CFR's success. Social workers, who are less expensive than attorneys, provide valuable assistance in each case in everything from contacting the child's school to coordinating parental visits.[47]

Massachusetts relies on a blended model for its Children and Family Law Program (CAFL). Statewide, CAFL consists of a panel of trained and certified private attorneys, coupled with two small offices located in Salem and Springfield.[48] The Springfield CAFL office employs five full-time staff attorneys, one social worker, and one administrative assistant.[49] Although these CAFL staff attorneys experience some of the same issues as panel attorneys regarding low compensation,[50] their salaried positions also come with support services, paid vacation and benefits, and no pressure regarding covering overhead or keeping track of billable hours.[51] A review of this system by the Spangenberg Group found that there were a number of positive reports about the Springfield office and the quality of staff attorneys there.[52] Additionally, law student interns at the Springfield CAFL office provide free assistance to the attorneys in performing research and drafting motions.[53] A private contract system with individual attorneys is less amenable to the use of interns insofar as

---

[41] *Id.* ("[B]ecause most of the parental representation is not institutionalized, but handled by the individual pool attorneys, most parents are represented by counsel without reliable access to ongoing training, support (from paralegals, investigators, or the like) or supervision, which cannot but affect the quality of parental representation. Parents are often represented by different attorneys during the course of their cases, undermining both the quality of representation and the parents' confidence in the operation of the system as a whole, at a time of particular legal and emotional vulnerability.").

[42] Telephone Interview with Michele Cortese, Deputy Director, The Center for Family Representation, Inc., in New York, N.Y. (Dec. 12, 2006).

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *See* THE SPANGENBERG GROUP, WESTERN MASSACHUSETTS CHILD WELFARE CASES, *supra* note 12, at 1.

[49] *Id.* at 16.

[50] Entry level pay for staff attorneys is $35,000. *Id.* at 16n.12. Over the past five years, four staff attorneys have left the office for other positions due at least in part to a need or desire for increased compensation. *Id.* at 16.

[51] *Id.*

[52] *Id.*

[53] *Id.* at 13.

these attorneys are less able to recruit them, let alone have the office space to house or the time to supervise them.[54]

C. Representation Through a Government Agency

States may choose to place the responsibility for the representation of children and indigent parents in a state agency, rather than contract with an outside organization or with private attorneys. This is akin to the current model Connecticut uses for its public defender services.[55] The Commission on Child Protection could, for example, decide to hire, train, and directly supervise the attorneys responsible for representation, and contract with private attorneys only where conflicts of interest arise. This model provides similar advantages to the organizational contract model detailed in the previous subsection such as centralized training, specialization, and institutional memory. In addition, the state is likely to have even greater powers of supervision and oversight with an agency that it directly manages.

While this is an advantage, one price of increased oversight capabilities may be diminished institutional independence from other government agencies. In other states, this has led to calls for reform and has been partly responsible for costly litigation over the adequacy of representation. In studying changes to New Jersey's system, one major concern was the fact that parents and children were represented by the same government agency.[56] This raised serious ethical concerns about the fairness of the representation, given the potential conflicts of interest that were inherent in this system.[57] Any changes that Connecticut makes to its system must keep conflicts in mind; a single agency or firm cannot simultaneously represent all children and parents in a case.

Some states with programs administered through the judicial branch have encountered criticisms regarding institutional independence. Many argue that such a system compromises the independence both of the attorneys, who may be under increased pressure to settle cases or take other steps contrary to their clients' interests to reduce administrative burdens, and the judges, who may have too close a relationship with the attorneys the branch employs.[58] In fact, prior to the creation of the Commission on Child Protection in Connecticut, there were concerns that a conflict of interest existed when the Judicial Department was responsible for appointing private attorneys to represent children and families.[59] While these concerns have by and large been resolved by the creation of the CCPA's office, representing both parents and children within a single state agency would be difficult because there will be a conflict of interest between the parents and children in

---

[54] *Id.* ("CPCS [the Committee for Public Counsel Services (CPCS), the state agency responsible for training and certifying court appointed counsel] reported that they have no funding for interns, are unable to pay the employer portion of a work-study salary, and have no physical space for interns to sit. CPCS does not recruit interns but normally has one in each of its staff offices in Salem and Springfield from unsolicited applications.")

[55] Representation by state public defenders is supplemented by representation by private attorneys in cases in which conflicts of interest arise. For information regarding appointment as a Special Public Defender, see: http://www.ocpd.state.ct.us/Content/Specials/FAOs.htm.

[56] MCGREEVEY ET. AL, *supra* note 39, at 146 ("Children are represented by the Law Guardian Unit of the state Office of the Public Defender (OPD), which has a large in-house staff. Parents are also represented by the OPD, which has a small in-house staff for this purpose . . . . This model raises several concerns. First, there is concern about the conflict of interest inherent in having both parents and children, who in a given case may have very opposing interests, represented by the same organization.").

[57] *Id.*

[58] *E.g.* FLA. STAT. ANN. § 39.8296(b) ("The Legislature also finds that while the Guardian Ad Litem Program has been supervised by court administration within the circuit courts since the program's inception, there is a perceived conflict of interest created by the supervision of program staff by the judges before whom they appear.").

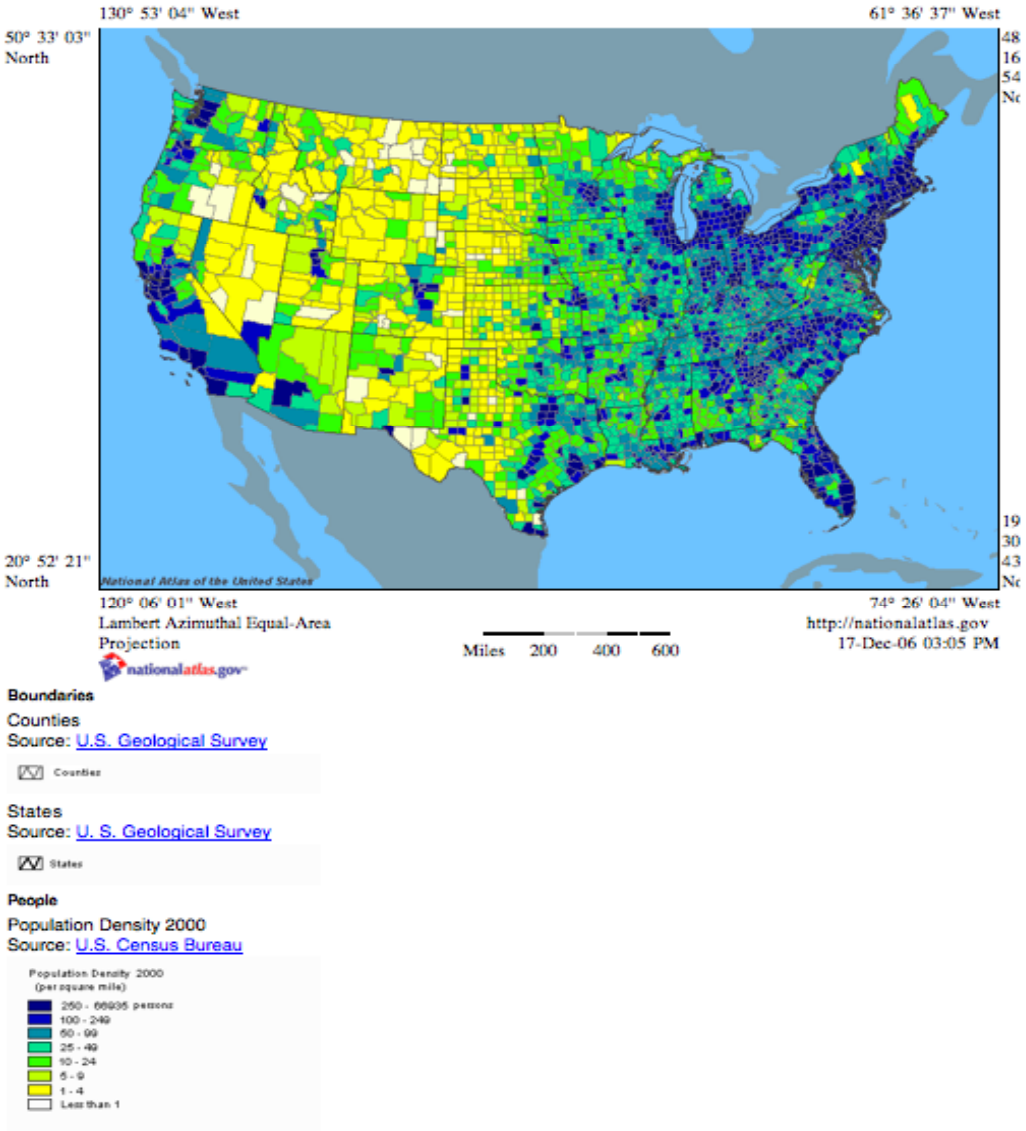
[59] Ghio, *supra* note 8, at 1.

many cases. Even if two separate state agencies were formed, one to represent children and one to represent parents, having state agents provide representation for all parties might negatively impact independence and the zealousness of advocacy.

D. Connecticut's Current System and Recommendations

Connecticut currently contracts with individual lawyers to represent children and indigent parents. Of the three models discussed, this is *least* able to ensure high quality representation.

While this model is *most likely* to be effective in highly rural areas where it is difficult to gather attorneys together into one office, Connecticut does not have sparsely populated expanses of land analogous to California, Washington, and Utah, as is clear from the figure below:[60]



This makes the individual practitioner model a particularly ineffective choice for Connecticut overall. Not only are there difficulties in supervision and oversight of widely-dispersed and

[60] Map generated from the National Atlas, http://www.nationalatlas.gov/natlas/Natlasstart.asp.

disconnected solo practitioners, but one loses the many benefits that come from having attorneys working *together,* including greater specialization, institutional memory, in-house mentoring and training opportunities, easier informational exchange, and greater sharing of case responsibilities (potentially reducing the number of continuances).

While both the government agency and organizational contract models would be good choices for these reasons, the organizational contract model offers a slight advantage in allowing greater flexibility in hiring, firing, benefits and other terms and conditions of employment than might exist in the state bureaucracy. In such a case, the Chief Child Protection Attorney would continue to provide oversight regarding the quality of the representation, but would not provide direct supervision as would be the case if the attorneys were state employees.

An organizational model is superior, but Connecticut's current model will continue to be an important way to provide representation in those cases in which conflicts of interest exist. While this "best practice" analysis indicates that Connecticut's primary model for representation should shift as rapidly as possible from an "individual contract" model to an "organizational contract" model for the majority of cases, it is also imperative that the current "individual contract" system be improved, as it will improve the quality of representation during the transition and ensure that the necessary "conflict attorneys" in the new system are well qualified.

III. Attorney Compensation and Workload

A. Compensation Models

While there are many possible models for compensating attorneys,[61] there are a few basic alternatives. Payment may be calculated: (a) per case; (b) per hour; or (c) per attorney.[62] In addition, payment for casework may be disbursed to: (1) individual attorneys; or (2) organizations.[63] This section analyzes the advantages and disadvantages of each system and recommends that Connecticut move from the current flat fee system to an hourly or salary system, with funding given to organizations rather than individual attorneys where this is a viable option based on Connecticut's organizational model.

---

[61] For another summary of various models of compensation and their advantages and disadvantages, see generally Althea Izawa Hayden, *Money Matters: Child Attorney Compensation Models*, 24 AM. BAR ASS'N CHILD L. PRAC. 102 (2005). This paper adopts a slightly different framework for analyzing compensation, distinguishing the compensation models states use to compensate attorneys from the organizational model they use in recruiting, selecting, hiring, and supervising attorneys. However, since the compensation models available to the state will depend heavily on which organizational model it selects, the two issues are inextricably linked.

[62] The simplest case here would be an annual salary paid to each attorney who represents children and/or parents full-time, but it would also be possible to compensate attorneys at an annual part-time salary if there were not sufficient cases for attorneys to work full-time. For the reasons discussed in Part II, *see supra* note 60 and accompanying text, it does not seem that Connecticut needs part-time attorneys in most cases.

[63] This choice depends on the state's organizational model for representation in abuse and neglect cases. Obviously, if the state elects to contract with individuals rather than with public or private institutions, the state will necessarily pay individuals for their work representing children and parents, not organizations. In organizational systems – representation through contracts with private law firms or non-profit legal services organizations – it still may be possible to compensate individual attorneys directly. However, this may detract from some of the advantages of the organizational model by reducing the discretion and independence of the organization.

B. Per Case or Flat Fee Compensation

Per case representation provides significant disincentives to devoting adequate time into representation because each additional hour spent on a case is done with no additional compensation, effectively reducing an attorney's hourly pay rate. For example, under Connecticut's current flat fee system of $500 per case, an attorney who works 30 hours on a case is effectively compensated at $16.67 per hour. An attorney that works only two hours on a case is effectively compensated at $250 per hour.

Other states have recognized that a flat fee builds in disincentives to spending time on representation and have moved away from this system. For example, up until 2004, Colorado –like Connecticut – operated on a flat fee system.[64] The Office of the Child Representative, created in 2000 to improve the quality of child representation in Colorado,[65] successfully persuaded the legislature to convert from the flat fee to an hourly system based in part on the disincentives inherent in the flat fee system.[66] The OCR explicitly recognized the built-in disincentives that decreased the quality of work the state received for its money: "The underlying reason for the approval was the flat fee compensation model did not promote effective attorney services to children . . . There was . . . a natural tendency to put as few hours as possible into the case, which lessened the value the state received for its dollars."[67]

Besides these obvious disincentives, the flat fee system in Colorado also was found to encourage attorneys to accept more cases, rather than dedicate sufficient time to each currently assigned case. This undermined competent representation. Because attorneys received payment for cases at the outset of the litigation, "there was no means of monitoring services and no incentive for the attorney to begin working the case immediately or completely."[68]

Per case compensation may also have another pernicious effect – the fact that cases are compensated equally may encourage lawyers to think of every case as requiring a roughly comparable amount of time. This may seem reasonable, except that the complexity of the law and the facts involved in abuse and neglect representation varies widely among cases.[69] Each abuse and neglect case includes several parties, including the child welfare agency, parents, former and current legal guardians, the child, and the child's siblings, all of whom may have differing interests, goals and desires.[70] This makes it particularly important that payment be based on the number of clients – as

---

[64] *See* THERESA SPAHN, COLORADO OFFICE OF THE CHILD'S REPRESENTATIVE, FISCAL YEAR 2008 BUDGET REQUEST , at 11-12 (2006).

[65] *See* COLORADO OFFICE OF THE CHILD'S REPRESENTATIVE, 4TH ANNUAL REPORT 3 (2004); *see also* SPAHN, *supra* note 64, at 4.

[66] SPAHN, *supra* note 64, at 11-12 ("The OCR was approved to convert to hourly compensation in Fiscal Year 2004. Understanding that this compensation model is more costly and given the budget situation of the state, the JBC allowed a phased-in transition continuing through Fiscal Year 2007.").

[67] *Id.*

[68] *Id.* at 12.

[69] Shari F. Shink, *In Search of a Child's Future*, 6 NEV. L.J. 1374, 1375 (2006) ("While many cases require similar types of legal tasks, at similar degrees of complexity, there is a significant range in the work. Among the factors that may lead an attorney (in dependency or delinquency cases) to spend more or less time on a case include, but are not limited to: the number of siblings and multiple placement changes; novel issues of law; unusual factual allegations; the extent and type of service needs of the child and family; geographic considerations; and external constraints such as the efficiency and effectiveness of the judiciary.").

[70] The number of parties involved in child protection cases can make this litigation particularly protracted, complicated, and difficult. THE SPANGENBERG GROUP, *supra* note 12, at 5 ("[C]hild welfare is one of the most difficult areas of legal practice. Some of the reasons for that include . . . It has characteristics of complex civil litigation (multiple parties, extensive discovery and motion practice, reliance on experts, multi-day trials)."). This often creates even more work, as it requires attorneys to deal with ethical issues on whether there is a conflict of interest among the siblings they

is currently the case in Connecticut – and not the number of families represented.[71] The length of each child protection case can also vary significantly – some can close in a matter of weeks; others can continue for several years.[72]

A flat fee system *does* have the advantage of relative administrative simplicity. Additionally, effective oversight and enforcement of standards of practice can help ensure that attorneys are spending adequate hours on each case, mitigating some of the disincentives to devote adequate time to abuse and neglect cases. However, this supervision itself may be burdensome and difficult for the state, which may not have the time and resources to pay staff to monitor attorneys in their daily duties. Furthermore, the per case compensation system creates a natural barrier to effective monitoring precisely because there is no need for attorneys to provide any information as to how they are spending their hours, or even how many hours they are spending.[73] In hourly billing, by comparison, attorneys are responsible for accounting for each of the hours they spend on the case with a description of the services they are providing and how long is spent on each task. All this information is lost in a flat fee compensation system because of its "black box" nature, which treats all cases and attorneys as if they were the same, and gathers no information as to how attorney time is being spent.

C. Hourly Compensation

A system where attorneys are paid hourly avoids the severe disincentives of the per case system. Unlike in the per case system, "[t]here is a natural incentive to begin the investigation as soon as possible because the attorney does not get paid until he or she begins to work the case."[74]

In fact, since its transition from a flat fee to an hourly billing system, Colorado has seen representation significantly improve: "[A]ttorneys are seeing children immediately and spending more time visiting living environments, attending more staffings, advocating within the school districts to help meet educational needs, and pursuing litigation against the department of social services when a decision has been made that does not serve the best interest of the child."[75]

---

represent, and if so, how to declare the conflict in a way that does not compromise client interests or confidentiality. These calculations are not simple. *See Recommendations of The Fordham Conference On Ethical Issues In The Legal Representation Of Children*, 64 FORDHAM L. REV. 1301 (1996), *reprinted in* 6 NEV. L.J. 1408, 1421 (2006) ("In any case where a lawyer considers representing multiple clients including at least one child, the lawyer should have heightened awareness that the possibility of conflict of interest may arise during the representation. Initially, the standards of professional conduct require that the lawyer give particular care to the question of whether the lawyer adequately can represent both clients notwithstanding the conflict of interest. The lawyer must not undertake the representation, unless the lawyer, after having given serious consideration to the matter, concludes that under applicable professional conduct standards it would be permissible to undertake the representation with informed consent. If the lawyer reasonably concludes that the child has capacity to understand the nature of the conflict of interest and the consequences of that joint representation and gives informed consent, then the lawyer may undertake the representation.").

[71] This is implicitly recognized by the recommendations of the 2006 University of Nevada, Las Vegas Conference on Representing Children and Families that suggested caseloads should be based on the number of clients, not the number of cases. *Recommendations of the UNLV Conference on Representing Children in Families: Child Advocacy and Justice Ten Years After Fordham*, 6 NEV. L.J. 592, 599 ("[C]aseload limits should be based on the number of clients, rather than the number of cases.").

[72] *See* THE SPANGENBERG GROUP, *supra* note 12, at 5.

[73] Of course, the state could require an accounting of hours in order to receive fees even if contracts are on a per case basis. However, this is less likely to lead to an accurate and precise accounting of hours in a per case system where it is merely another paperwork task to be completed, and does not affect the level of the attorney's compensation. Attorneys are more likely to take seriously the need to account for hours when their pay depends on the hours they are spending.

[74] SPAHN, *supra* note 65, at 12.

[75] *Id.*

In addition, a transition to hourly billing has allowed attorneys to avoid the temptation to take on too many cases to assure adequate annual income. Attorneys can afford to take on fewer cases, and thus can provide better representation in each individual case.[76] Hourly billing is a well-established practice in the legal community generally.

Shifting to an hourly billing system would not be difficult. The Chief Child Protection Attorney already has an electronic hourly billing system that is used for cases that require more than 30 hours; it could be easily adapted to a full hourly system.[77] Moreover, these more detailed records of hours spent on cases, and the specific services provided, will enable the Chief Child Protection Attorney to better assess the quality of representation and identify the attorneys not performing the necessary tasks to meet standards of representation. A system that tracks this data, particularly through an electronic database, would also facilitate useful research. System administrators, legislators, and other policymakers could use the data to see where attorney time is spent,[78] and where systemic inefficiencies could be reduced to cut costs and improve representation.

One potential disadvantage of a shift to a pure hourly billing system is that it would result in more billing data to audit; some increase in the accounting and oversight staff in the Office of the Chief Child Protection Attorney would be necessary.[79] Attorney over-billing may also be a concern in an hourly system. However, the hourly billing system can protect against this problem by requiring attorneys to provide specific information on how their time is used, discouraging over-billing and allowing the state to investigate suspect records. In any case, over-billing is also possible under the current system where virtually no services need to be provided to be paid the flat $500 fee. Moreover, concerns about over-billing are likely inflated because attorneys face strong legal and ethical penalties if they are detected submitting inflated hours. In addition, very few children's attorneys enter the profession to cheat the system[80] – they can earn far more money merely by choosing private practice instead of indigent representation.[81]

---

[76] *Id.* The increased income security that comes with an hourly as opposed to a per case system provides a major incentive for attorneys to represent children and indigent parents. Administrators in Colorado report that after their transition to an hourly system, applications from attorneys interested in the work skyrocketed, allowing the Office to be much more selective in which attorneys to hire. Telephone interview with Sarah Ehrlich, Staff Attorney, and Jerrod Cotosman, Controller, Office of the Child's Representative, in Denver, Colo. (Nov. 16, 2006). This can thus bring a significant source of improvement in the quality of representation.

[77] Interview with Carolyn Signorelli, Chief Child Protection Attorney, Office of the Chief Child Protection Attorney in New Haven, Conn. (Nov. 28, 2006). The Chief Child protection attorney has established an online billing system that is extremely popular among attorneys, because it saves them a significant amount of administrative time and hassle. *Id.* The system is used for submitting both flat fee bills in Connecticut's current per case compensation system and for submitting hourly bills for cases where over 30 hours are spent on representation. *Id.* Moving to a full hourly system would merely involve using the latter system in all cases to submit hourly bills. *Id.*

[78] One of Colorado's difficulties in transitioning to an hourly system, which Connecticut also faces, is that it was very difficult to estimate how much time attorneys were spending on cases on average. In fact, Colorado found that surveys it conducted in an attempt to measure the costs of the transition did not accurately represent the number of hours that were being spent. Telephone interview with Sarah Ehrlich and Jerrod Cotosman, *supra* note 76. Only with a system where hours were tracked as they were billed has this information become clear.

[79] We suggest that funding for at least two more full-time accountants would be necessary to deal with the increased administrative work.

[80] THE SPANGENBERG GROUP, *supra* note 12, at 4 ("[C]hild and family welfare is a practice area that attracts people who are interested in doing socially meaningful work, and most are not motivated solely by the prospect of high pay.").

[81] LAW OFFICE MANAGEMENT AND ADMINISTRATION, FIRM FINANCIALS: NEW DATA ON 2005 FIRM PERFORMANCE, LAWYER PAY & MORE (2006) (finding that the median associate hourly billing rate at law firms was $190, and the lower quartile was $158. Rates were significantly higher for partners and other lawyers with more experience (e.g. lawyers "of counsel"); *see also* THE SPANGENBERG GROUP, *supra* note 12, at 4 (finding that in Massachusetts, which paid a low hourly rate of $30 for some abuse and neglect cases and $39 an hour for others, attorneys were generally able to bill on average between $125 and $175 an hour for their privately retained work).

A more difficult problem may be figuring out whether, and how, to place reasonable limits on the amount of time well-intentioned attorneys can spend on a given case. Although dedicating more time to each client would undoubtedly increase the quality of the representation offered to parents and children, the General Assembly will be concerned about the total costs if there is no general limit to how much may be billed in a case.

One way states have dealt with this concern is by capping the number of hours that may be billed on each case. Colorado, for example, has a $2000 limit on dependency and neglect cases, with additional hours allowed on approval of the Office of the Child Representative.[82] Rhode Island pays $30/hour with a $1000 limit on abuse and neglect petitions and $1500 limit for termination of parental rights.[83] The Chief Judge of the Family Court must approve payments above this limit.[84] The District of Columbia also sets maximum limits on compensation. For the initial hearing through disposition, the maximum is $1600.[85] All subsequent proceedings are capped at $1600 per year.[86] Proceedings to terminate parental rights are capped at $2200.[87] Appeals from trial court orders are capped at $1100 per case.[88] Attorneys may submit requests for additional compensation in extended or complex cases to the Superior Court.[89]

While caps give the state greater control over how much will be billed, they also may restore some of the perverse incentives of the flat fee system. Practitioners may bill only to the hourly cap even in complex cases where more time is necessary for effective representation, either refusing to work the necessary extra hours, or working them uncompensated.[90] They may also be likely to bill up to the cap in cases which do not require as much time, in part to recoup lost income from uncompensated hours in their more difficult cases. The result can be slightly too much time spent on simple cases, and inadequate time spent on hard cases. Allowing attorneys to bill surplus hours subject to the approval of state administrators, as is done in Rhode Island and Colorado, decreases these disincentives.[91] An even better alternative to a hard hourly cap is providing for an automatic audit for cases that exceed a specified number of hours, depending on the type of case. However, hourly compensation – even with a limit on hours – is still preferable to flat fee compensation in that under a capped hourly system there is a disincentive to spend needed time only after the attorney already has invested a large number of hours in an individual case, whereas in the flat fee system there is a disincentive to spend time on representation from the very start.

---

[82] A full list of payment rates and caps is available on OCR's website, at http://www.coloradochildrep.org/Payment/payment.html.

[83] Executive Order of the Rhode Island Supreme Court, Family Court: Indigent Counsel, No. 2004-02, at 4 (Mar. 19, 2004)

[84] *Id.*

[85] D.C. CODE § 16-2326.01(b)(1) (2006).

[86] D.C. CODE § 16-2326.01(b)(2) (2006).

[87] D.C. CODE § 16-2326.01(b)(3) (2006).

[88] D.C. CODE § 16-2326.01(b)(4) (2006).

[89] D.C. CODE § 16-2326.01(f) (2006).

[90] A system such as Colorado's, which does not impose a hard cap but requires special approval for billing above a specified amount, to a large extent avoids this problem as administrators may allow attorneys the extra time necessary for cases that are truly extraordinary and limit any frivolous expenses. Administrators report that in practice, the vast majority of these requests are approved. Telephone Interview with Sarah Ehrlich and Jerrod Cotosman, *supra* note 76.

[91] These disincentives are not necessary eliminated, as attorneys may be reluctant to submit requests for extra hours even where they are needed because of the administrative burden of submitting the request and the possibility that administrators will deny it.

D. *Salary*

Paying attorneys an annual salary, while establishing a fixed caseload assignment, can help solve concerns about misallocating resources among cases. Attorneys are free to allocate their time among cases based on their complexity and need for attention. While the amount of time an individual case requires can be difficult to calculate in advance, it is easier to estimate the average amount of time abuse and neglect cases require using aggregate data from the cases following best practice standards.

Unfortunately, a salary system is only practicable in a model where there is opportunity for oversight and the enforcement of standards of practice to ensure attorneys are spending adequate time on cases. Salaried attorneys, like attorneys compensated on a per case basis, can effectively increase their hourly pay by spending fewer hours on their cases than is necessary to provide quality representation. This problem can be somewhat limited in the case of full-time salaried attorneys, as their contracts can specifically disallow private work that might otherwise take precedence over high quality representation in abuse and neglect cases. In fact, although full-time attorneys who are paid a salary may also suffer from the same low pay as attorneys who are paid hourly, salaried attorneys can enjoy greater job security, better working conditions and benefits that may still make them better off.[92]

However, there is a danger in relying on a salary system unless it also has pre-defined caseload limits. A salary system raises the specter that as time goes on and the population of children in need of representation grows, the state may prefer to simply increase attorney caseloads rather than spend the necessary funds to hire more attorneys. In this sense, an annually-uncapped hourly system would be preferable to a salary system without caseload limits in that it would keep the state from demanding more legal services without also increasing the resources to provide them.[93]

E. Compensating Organizations versus Individuals

In each of these compensation systems, payment may be made to individuals or to the organizations for which they work. Contracting with organizations rather than individuals offers several advantages. An organization can promote representation of a more consistently high quality by pairing less experienced attorneys with more experienced attorneys on complex cases. By assigning less experienced attorneys cases that are more straightforward, the organization can ensure inexperience does not undermine the quality of representation. High quality representation, education and job experience can be rewarded where the director of an organization has discretion over salary and job benefits. Because more capable attorneys are likely to complete work more efficiently, the director of the organization will also have incentives to hire and retain good attorneys and the state will get better results for its money. These incentives can be further reinforced by giving the organization itself incentives to hire a sufficient number of highly trained attorneys:

---

[92] *See, e.g.*, THE SPANGENBERG GROUP, *supra* note 12, at 16 ("Although CAFL staff attorneys experience some of the same issues as panel attorneys regarding low compensation, their salaried positions come with support, paid vacation and benefits, and no pressure over overhead or billable hours. We received a number of positive reports about the Springfield office and the quality of staff attorneys there.").

[93] An annually capped hourly system also has this advantage, *unless* attorneys are already billing the maximum hours allowed. In that situation, if their caseload increases they will either put in extra hours uncompensated, or simply reduce the amount of time dedicated to each case. The annual hourly cap is probably beneficial overall in limiting caseloads, but may be problematic where courts are overburdened. Massachusetts controls caseloads by prohibiting attorneys from billing over 1800 hours annually. *See* THE SPANGENBERG GROUP, *supra* note 12, at 9-10.

annual salaries, hourly rates, or case fees paid to the organization can be based on the education, experience, and training of the attorneys that the organization hires.

By comparison, in a system where individuals are paid directly at a fixed, flat rate, less experienced attorneys and more experienced attorneys are given equal pay. This creates two problems: 1) The state overpays for a new, inexperienced attorneys, and underpays for talented, experienced attorneys; and 2) Attorneys have no financial incentive to remain in the system and gain experience in representation.[94] Of course, the state can alter this by building incentives into a system in which individuals receive direct compensation. A system that varies the per case, hourly, or annual pay of attorneys based on years of experience, amount of training or education will generally incentivize high-quality representation.[95] However, even these criteria cannot fully identify the attorneys who provide the best representation since some experienced attorneys provide poor representation and some new attorneys provide excellent representation.[96]

Since attorney supervisors who are working directly with the attorneys providing representation are much better situated than the Chief Child Protection Attorney to discern which attorneys are most helpful to children and families, best able to serve as mentors to younger lawyers and most deserving of increases in salary, it is more cost-effective to provide payments to organizations and then allow them to distribute funds based on merit and experience.

F. Connecticut's Current System and Recommendations

Connecticut currently hires the majority of its attorneys through a private contract system.[97] Connecticut compensates attorneys for children and indigent parents on a per case basis at a rate of $500 per case for up to thirty hours of work, plus $40 per hour for each hour spent over thirty.[98]

The Connecticut system creates significant disincentives[99] to spending the necessary time on child protection cases. For an attorney who spends a full thirty hours on a case, the hourly rate is just $16.67 per hour. At the other extreme, attorneys who work two hours on a case are compensated at a rate of $250 per hour. Particularly for private practitioners who are balancing child representation with more highly paid client work, the amount of time spent on each child protection

---

[94] Mark Hardin, Director, American Bar Association Center on Children and the Law National Child Resource Center, Address at Forum at the State Capitol: Their Day in Court: Ensuring Adequate Representation for Children and Parents in Child Protective Service Cases (Nov. 20, 2006); *see also* Interview with Patricia Kaplan, *supra* note 22 (arguing that some attorneys may take the courtroom training gained from child protection cases to more lucrative private practice).

[95] *See* COMM. ON THE QUALITY OF REPRESENTATION OF CHILDREN AND FAMILIES, *supra* note 4, at 7 (recommending hourly rates for contract attorneys based on experience in the field).

[96] Interview with Carolyn Signorelli, *supra* note 77.

[97] In Fiscal Year 2007, the Office of the Chief Child Protection Attorney will spend over $7.9 million on compensation for attorneys assigned to cases working under private contract, comprising 80% of the Office's budget. Standby contract attorneys – who are assigned to be present on OTC days for $150.00 per day – and court-appointed attorneys represent a much smaller expenditure, approximately $0.61 million. COMM'N ON CHILD PROT., *supra* note 3.

[98] Interview with Carolyn Signorelli, *supra* note 77.

[99] Of course, this disincentive disappears for cases that require more than 30 hours of work, but – to date -- the vast majority of cases have not fallen into this category, as evidenced by the fact that in FY 2007, only $0.7 million is projected to be spent on hourly compensation for over thirty hours of work, as compared to $7.1 million spent on per case compensation. COMM'N ON CHILD PROT., *supra* note 3. The Commission on Child Protection projects that in FY 2007, there will be a total of 14,237 cases billed by Connecticut's privately contracted attorneys, and a total of 17,875 hours billed for cases exceeding 30 hours. COMM'N ON CHILD PROT., *supra* note 3. Given the administrative costs of requesting additional compensation from the court, it would be unrealistic to assume that attorneys will submit requests for cases that exceed 30 hours of work by only one or two hours. This means that a majority of cases are billed at the per case rate, with attorneys spending an unknown quantity of time somewhere between zero and thirty hours of work on each case.

case is likely to suffer. There is no incentive to work up to thirty hours on a case, and little to no oversight of the amount of time attorneys actually invest.

Connecticut would benefit from a transition to either an hourly or a salary system. While instituting this system may require slightly more administrative resources, Connecticut already has some experience administering an hourly pay system. Attorneys can currently request payment – through a new on-line electronic submission system – of $40 an hour for any hours spent over thirty. A pure hourly system would increase accountability, make data available for evaluation of the system's efficiency, and significantly improve incentives to provide good representation. To the extent that Connecticut retains its system of contracting with private attorneys with no monitoring or oversight in cases with conflicts of interest, an hourly system will be superior to either a per case or a salary system. An hourly system assures that adequate hours are indeed spent on representation, and provides the data that allows oversight to ensure the attorneys are meeting the standards of practice.

Should Connecticut elect to provide the majority of representation through contracts with non-profit legal services organizations, there is still a choice to be made about whether the organization's contract will provide for compensation based on hourly bills in individual cases, an annual budget based on aggregate caseload, or some combination. An hourly billing system allows more state oversight of attorneys within the organization, at some cost of attorney and administrative time spent billing, receiving bills, and auditing bills. An annual budget, conversely, may create incentives for the state to increase caseloads rather than fund more attorney salaries, unless strict contract caseload limits are also established. A blended approach may also be possible. The Commission could enter into an annual contract for a specified workload (number of cases, clients, and/or hours) that can pay for the salaries of the attorneys and support staff needed to address that workload. The organization could be required to invoice the Commission quarterly, documenting the actual services performed. Upward (or downward) adjustments to the payment in the contract could be made if the billable hours and/or the number of clients differed significantly from what was projected.

G. Level of Compensation in Other States and Effects on Quality of Representation

How much attorneys are paid to represent parents and indigent children affects the quality of the representation as much, or more, than the manner in which they are paid. In fact, in discussions with practitioners in the field about what kind of organizational and compensation model provides the best incentives to good representation, many remarked that securing adequate compensation for attorneys had a much greater effect on the quality of representation than how the system was structured.[100] Some surveys of practitioners have come to similar conclusions.[101] This section assesses the experiences of other states in dealing with the amount of compensation and

[100] Telephone interview with Frank Cervone, Executive Director, Support Center for Child Advocates, in Philadelphia, Penn. (October 19, 2006) (stating that in Pennsylvania, which uses multiple models of representation because each county has control over its own system, the amount of compensation has a clearer effect on good representation than the particular model used); Telephone Interview with Sarah Ehrlich and Jerrod Cotosman, *supra* note 76 (stating that while an organizational model might have some theoretical advantages in terms of attorney mentoring and supervision and access to support services, both the independent contract model and organizational contract model were effective if given effective oversight by the OCR and adequate pay. Because securing adequate compensation levels for attorneys was considered more crucial, this was a higher legislative priority for the OCR than changing the organizational model).

[101] *See, e.g.*, THE SPANGENBERG GROUP, *supra* note 12, at 14 (finding that "[p]anel attorneys, DSS attorneys, judges and clerks all consistently reported that the low compensation level is a major factor and to most, the number one factor, in the problem of attracting and retaining attorneys" to represent children).

recommends that Connecticut pay no less than $55 hourly to its least experienced attorneys representing children and indigent parents, with higher pay for more experienced attorneys. This hourly fee would be all-inclusive, covering not only the attorney's own compensation, but also all taxes and benefits, office overhead, salaries of support and other staff, and other necessary operating costs.

Research shows that the amount of compensation affects the quality of representation in numerous ways.

Systemically, low compensation can make it difficult to recruit and retain enough qualified attorneys to handle child protection cases, let alone to recruit enough attorneys to have some choice in deciding whom to appoint. This can result in a system in which individual attorneys have financial incentives to take on excessively large caseloads, and attorneys feel pressured by courts into accepting more work than they can perform at a high-quality level.[102] If attorneys do not step in to fill these work needs, the results may be even more disastrous: excessive caseloads result in delays in court proceedings because attorneys request continuances and these delays, in turn, result in children languishing in foster care waiting in line to receive representation and their parents experiencing delays in getting the services necessary to reunite the family.[103]

Low compensation creates negative incentives. Attorneys who are paid poorly are more likely to take on work outside the full-time representation of children and parents to supplement this inadequate income, and/or give private paying work priority over work representing children.[104] They may also take on more child protection cases than is ideal to generate adequate pay.[105] While this can be limited by setting a cap on either the size of the caseload attorneys may carry, or the number of hours they may bill annually, these limits may just force conscientious attorneys out of the field, or – in forcing them to spend extra hours providing needed representation on an unpaid basis - result in their deciding to take fewer cases.[106]

Low compensation is demoralizing for children's attorneys, who receive little pay for what is an extremely psychologically[107] and intellectually[108] demanding job. Besides the inherent frustration in doing difficult work for low pay, low pay is demeaning to attorneys as well as to the clients they

---

[102] *Id.* at 14; ASTRA OUTLEY, THE PEW COMM'N ON CHILDREN IN FOSTER CARE, REPRESENTATION FOR CHILDREN AND PARENTS IN DEPENDENCY PROCEEDINGS 8 (2004), *available at* http://pewfostercare.org/research/docs/Representation.pdf ("In some jurisdictions, the low compensation discourages attorneys from representing parents at all. In New York City, for example, the low rate has led to an 'exodus of attorneys from the assigned counsel panels.' The mass departure resulted in fewer lawyers to handle the increasing caseload and the inability of the courts to handle the increase in pending matters.").

[103] *Id.* ("The lack of attorneys left families disrupted and children in foster care for a longer amount of time than if the parents had been represented.").

[104] THE SPANGENBERG GROUP, *supra* note 12, at 14.

[105] *Id.*

[106] *Id.* at 10.

[107] *See id.* at 44 ("One attorney felt that the nature of the work can be so unpleasant that many attorneys would not do it at any pay rate.").

[108] *See id.* ("The cases involve multiple parties and the practice is highly specialized, requiring work with multiple attorneys, experts and service providers. Some parent clients are difficult to work with because various factors, such as substance abuse, mental illness, illiteracy or immaturity, contribute to a failure to appreciate how high the stakes are. One attorney who used to do antitrust work said C&P work is comparable in complexity but she prefers C&P work to antitrust work. A juvenile court clerk magistrate who used to work in superior court said the cases are akin to the heaviest cases in superior court. Another attorney who also practices criminal law said that while the stakes are high in criminal cases -- clients risk a loss of liberty -- the prospect in C&P cases of permanent termination of parental rights is equally serious. Some C&P attorneys felt the stakes were more serious than in criminal cases.")

are appointed to represent.[109] Low pay contributes to the false impression that attorneys who represent children and indigent parents do not have a practice that is challenging or complicated, and minimizes the importance of these cases that are so important to the long-term well-being of children and youth at risk and in turn to the welfare of our society in general.

Besides these drawbacks, low compensation can be costly in the long run because the state will be forced to expend resources defending this defective current system in litigation. Inadequate compensation denies parents and children constitutionally-guaranteed effective assistance of counsel in proceedings that threaten their constitutionally protected liberties to live as a family free from state interference.[110]

In other states, litigation challenging the state's failure to provide adequate compensation has resulted in injunctions requiring the state to increase that compensation. In 2003, for example, the New York County Lawyers Association obtained a permanent injunction against the City and State of New York requiring the City of New York and the State of New York to pay assigned counsel $90 per hour for both in-court and out-of-court work until the legislature modified the laws setting compensation.[111] At the time the suit was brought, New York lawyers received $40 per hour of in-court work and $25 per hour for out of court work.[112] After the litigation, the legislature modified the laws setting compensation to increase it to $70 an hour. The court was quite explicit in its linking low compensation to constitutionally-deficient quality of representation, stating:

> The insufficient number of assigned counsel in the Family Court has resulted in less than meaningful and effective assistance of counsel. The testimony of experts, judges and experienced attorneys in Family Court showed that because of the rate levels assigned counsel do not: interview clients; consult with them on a regular basis throughout the proceedings; review all relevant records and documents; perform an independent investigation of the facts and the law; identify and interview witnesses; file motions, conduct discovery and follow up on appropriate discovery requests; make applications for investigators or other experts where appropriate; prepare for a negotiated settlement or litigation at each stage of the proceedings; ensure that clients receive necessary services and prepare appropriate service plans; secure appropriate orders, and monitor compliance.[113]

Notably, the federal litigation brought in Connecticut, though dismissed on standing grounds, included an admonishment by the federal court regarding Connecticut's current low compensation scheme and its questionable adequacy.[114]

Moreover, the private contract attorneys are typically outmatched by their Assistant Attorney General counterparts. Constitutional concerns arise when state agents are better funded and resourced than their counterparts. While these problems typically arise in a criminal defense context (comparing the staffing and other resources available to public defenders as compared to state prosecutors), similar arguments apply to the child protection system. If Assistant Attorney Generals

---

[109] *See id.* at 44 ("One attorney also commented that her own child showed a lack of respect for what she does because she was a court appointed attorney in Juvenile Court handling child welfare cases, as opposed to the private attorney working at a law firm or with a general practice.")

[110] *See, e.g.*, Santosky v. Kramer, 455 U.S. 745 (1982); Stanley v. Illinois, 405 U.S. 645 (1972); Wisconsin v. Yoder, 406 U.S. 205 (1972); Quilloin v. Walcott, 434 U.S. 246 (1978); Pierce v. Society of Sisters, 268 U.S. 510 (1925); Meyer v. Nebraska 262 U.S. 390 (1923).

[111] New York County Lawyers' Ass'n v. State, Index No. 102987/00, at 37 (N.Y.Sup.Ct. 2003), *available at* http://www.nycla.org/publications/decision.pdf. Note that the hourly out-of-court rate challenged was equal to the current hourly rate for attorneys in Connecticut in any case where attorneys spend over 20 hours of work on a case.

[112] *Id.* at 3.

[113] *Id.* at 15-16.

[114] Juvenile Matters Trial Lawyers Ass'n v. Judicial Branch, 363 F. Supp. 2d 239 (D. Conn. 2005).

are better equipped, have better experts, more time to prepare for trial, better training, and simply more pay, the adversarial system cannot be relied upon to arrive at the correct outcome. The adversarial system depends on evenly matched opponents fleshing out the arguments and laying the facts before the court.

In the criminal defense context, resource disparity between defense and prosecution has been the subject of litigation over claims that counsel was inadequate. Parity is so important to the functioning of an adequate public defense system that one of the *ABA Ten Principles of a Public Defense Delivery System* requires parity.[115] Especially over the past two decades, courts have accepted claims by defendants and defense attorneys that defense funding is inadequate.[116] For instance, the Arizona Supreme Court ruled in 1984 that the anemic funding for criminal defense under a contract system created such huge caseloads that the state was violating the defendants' constitutional right to counsel.[117] In 1993, the Louisiana Supreme Court held that low funding levels, high caseloads, and inadequate investigative support all combined to create a "rebuttable presumption" in every criminal case that public defenders were providing ineffective assistance of counsel.[118] The Michigan Supreme Court in 1993 struck down a "fixed-fee schedule"—much like the current payment scheme for child protection cases in Connecticut—because such a system gave attorneys too little compensation for trial work and violated the statutory right to an attorney who receives "reasonable compensation for the services performed."[119] Litigation forced courts to abandon the old system of compensation and develop a new one.[120] Courts in New York City and Boston also ordered increases in the compensation rates for appointed counsel in those cities.[121] An Oklahoma court used prosecutor salaries specifically as benchmarks for setting defense attorney salaries, although only on an interim basis.[122] Some of these suits regarding inadequate funding never reached judicial resolution because the parties settled out of court. In Connecticut, a class action suit brought by indigent defendants against the Governor, the Public Defender Services Commission, and the members of the Commission sued in their official capacities reached a settlement that increased the

---

[115] The principle reads: "There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system." *See* Shubhangi Deorass, *The ABA's "Ten Principles" Ensure Proper Legal Representation*, CHAMPION, January/February 2003, at 33, *available at* http://www.nacdl.org/public.nsf/698c98dd101a846085256eb400500c01/c1cc9a8f247b6f1985256e540074c126?OpenDocument&Highlight=0,parity.

[116] Ronald F. Wright. Parity of Resources for Defense Counsel and the Reach of Public Choice Theory. 90 Iowa L. Rev. 219, 246-249 (2004) (arguing that "a new breeze" favoring increased funding "is blowing in the attorney funding litigation").

[117] State v. Smith, 681 P.2d 1374, 1378-84 (Ariz. 1984) (finding a Sixth Amendment violation under contract system in Mojave County); *see* Zarabia v. Bradshaw, 912 P.2d 5, 7-8 (Ariz. 1996) (en banc) (holding that the Yuma County appointment and contract systems are potentially unconstitutional. For a general review of this litigation in the context of low-bid contract attorneys, see Margaret H. Lemos, Note, *Civil Challenges to the Use of Low-Bid Contracts for Indigent Defense*, 75 N.Y.U. L. REV. 1808 (2000).

[118] State v. Peart, 621 So. 2d 780, 783 (La. 1993).

[119] Recorder's Court Bar Ass'n v. Wayne County Court, 503 N.W.2d 885, 892 (Mich. 1993).

[120] Id. at 893-94 (striking down rules that set flat fees for every case). For more recent litigation over the compensation for appointed attorneys in Wayne County, Michigan, see Shawn D. Lewis, *Lawyers Sue Court for Raise*, Detroit News, Nov. 12, 2002, at 1A.

[121] *See* Lavallee v. Justices in the Hampden Superior Court, 812 N.E.2d 895, 911 (Mass. 2004) (requiring increased compensation rates for appointed attorneys in Hampden County, Massachusetts); N.Y. County Lawyers' Ass'n v. State, 763 N.Y.S.2d 397, 414 (Sup. Ct. 2003) (granting a permanent injunction and an increase in fees for appointed counsel).

[122] State v. Lynch, 796 P.2d 1150, 1161 (Okla. Crim. App. 1990).

number of attorney and staff capacity in the Public Defender Commission by thirty percent at a cost of $5 million.[123]

The parity of resources challenges that have proven successful in criminal defense settings are also applicable in child protection cases, where similar liberty interests are at stake. State law provides for the appointment of counsel for the child and indigent parents in child protection proceedings,[124] and the Connecticut Supreme Court has held that, "[b]ecause of the substantial interests involved," parents in termination of parental rights cases have the right "not only to counsel but to the effective assistance of counsel."[125] The Court has also found that "[c]hildren who are at risk of removal from their loving parents are entitled to and need the assistance of counsel."[126] Since the rights of children and parents to effective counsel in child protection cases is of similar stature as the right of a criminal defendant in Connecticut to effective counsel, parity among attorneys representing children and parents and those representing the state is required, as it is between public defenders and state prosecutors.

The current private contract system has left children's and parents' attorneys trailing far behind their state counterparts in the resources the state provides for their representation, and the entire process suffers. Since there is no evidence that low attorney compensation improves the quality of representation or the outcomes for children and families, and abundant evidence that it imposes short- and longer-term costs on the state and its most at-risk children and families, Connecticut should increase the rate of compensation paid to attorneys in these most challenging cases.

H. Connecticut's Current System and Recommendations

Connecticut's current effective hourly rate for attorneys, particularly those spending at or near thirty hours per case, is insufficient to ensure quality representation and likely to be constitutionally inadequate. For this reason, it would be in Connecticut's best interests to take the federal district court's advice in the recently-dismissed Connecticut litigation and provide adequate compensation, and thereby avoid the costs that would accompany additional litigation**.**

Connecticut's current effective hourly rate is grossly out of proportion to what other states with similar costs of living have determined is necessary,[127] and even below what is paid in some

---

[123] *See* Rivera v. Rowland, No. CV 950545629S, 1996 WL 636475 (Conn. Super. Ct. Oct. 23, 1996); CONN. DIV. OF PUBLIC DEFENDER SERVS., 1999 ANNUAL REPORT 25 (2000) (indicating that the settlement adds fifty-four new positions over two years with a five million dollar budget increase); Adele Bernhard, *Trends in Defense Services Standards, in Inst. for Law & Justice*, 1 COMPENDIUM OF STANDARDS FOR INDIGENT DEFENSE SYSTEMS 18, 23 n.55 (2000). Litigation also settled in Allegheny County, Pennsylvania. Settlement Agreement, Doyle v. Allegheny County, No. 96-13606 (Ct. Common Pleas May 15, 1998), *available at* http://www.aclu.org/crimjustice/indigent/10181lgl19980515.html; *see also* John B. Arango, *Defense Service for the Poor*, 13 CRIM. JUST. 25, 25 (1998).

[124] Section 46b-136 says that, in any juvenile matter, the court shall "provide an attorney to represent the child or youth, his parent or parents, [or] guardian or other person having control of the child or youth.". CONN. GEN. STAT. ANN. § 46b-136 (West 2002).

[125] State v. Anonymous, 179 Conn. 155, 160 (1979).

[126] In re Christina M., 90 Conn. App. 565, 578 (2005), *aff'd*, 280 Conn. 474 (2006).

[127] For a comprehensive comparative state-by-state look at costs of living in the US, *see* http://ded.mo.gov/researchandplanning/indicators/cost_of_living/index.stm. While Connecticut is not included in this most recent compilation of state cost of living indexes because of failure of Connecticut towns to submit data, previous studies indicate Connecticut cost of living is on par with the most expensive states in the study. *See, e.g.*, F. Howard Nelson, *An Interstate Cost-of-Living Index*, [Spring 1991] EDUC. EVALUATION AND POL'Y ANALYSIS 103, 108 (showing Connecticut together with New York, Massachusetts, New Jersey, Maryland, Alaska, and Hawaii as having the most expensive costs of living).

states with significantly lower costs of living. Areas with a comparable cost of living include New York City, which currently pays attorneys in abuse and neglect cases $75 hourly;[128] California, which pays most contract attorneys $60-$75 hourly;[129] Washington DC, which pays $65 hourly;[130] New Hampshire, which pays $60 hourly;[131] New Jersey, which pays $60 hourly for in-court work and $50 hourly for out-of-court work;[132] Massachusetts, which pays $50 hourly,[133] Hawaii, which pays $60 hourly for in-court work and $40 hourly for out-of-court work;[134] and Rhode Island, which pays $30 hourly.[135]

Other states with lower costs of living also pay their attorneys better than Connecticut: Illinois pays $95-100 hourly;[136] Virginia pays $75 hourly for in-court work and $55 hourly for out-of-court work;[137] Florida pays between $50-70 hourly;[138] Minnesota[139] pays $55 hourly; Montana pays $60 hourly;[140] Wyoming pays $60 hourly;[141] Colorado pays $57 hourly;[142] Maine pays $50 hourly;[143] Utah pays $50 hourly;[144] Michigan pays $35-$65 hourly[145]; Texas pays $40-$125 hourly[146]; and Wisconsin pays $40-$70 hourly.[147]

---

[128] Email from Howard Davidson, Director, ABA Center on Children and the Law, to Paul Chill, Professor of Law, University of Connecticut Law School (May 15, 2006, 12:39 PM EDT) (on file with authors) Even this rate is less than what has been suggested as sufficient for adequate compensation. New York County Lawyers' Ass'n v. State, Index No. 102987/00, at 37 (N.Y.Sup.Ct. 2003), *available at* http://www.nycla.org/publications/decision.pdf (granting an injunction to raise the pay for attorneys in abuse and neglect cases to $90 hourly).

[129] California's system of representation varies between its 58 court systems, as does the pay rate for attorneys that are hired on an hourly basis. Of the 35 court systems that pay an hourly rate, the vast majority (23) pay in the $60-$75 range. Six court systems pay attorneys rates that are higher, and six pay attorneys rates that are lower. AM. HUMANE ASS'N & THE SPANGENBERG GROUP, *supra* note 11, at 55-59. Updated information indicates that in ten California counties participating in a pilot program in that state, hourly rates are set according to region and attorney experience levels. Four regional rates have been established based upon the mid-range of agency attorney salaries in identified socio-economic regions; within each region three rates have been established to provide for increased compensation as attorneys gain experience. The lowest regional hourly rate range is $55-$61/hour and the highest is $86-$96/hour. Telephone Interview with Leah Wilson, *supra* note 11.

[130] D.C. CODE § 11-2604(a) (2006).

[131] RULES OF THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE, ADMINISTRATIVE R. 48-A, *available at* http://www.nh.gov/judiciary/rules/scr/scr-48-a.htm.

[132] New Jersey Office of the Public Defender Website, http://www.thedefenders.nj.gov/pa_guide.shtml.

[133] MASS. GEN. LAWS ch. 211D, § 11 (2006). *See also* THE SPANGENBERG GROUP, INDIGENT DEFENSE IN MASSACHUSETTS: A HISTORY OF REFORM (2005) (explaining the process which led to the most recent rate reforms), *available at* www.abanet.org/legalservices/downloads/sclaid/indigentdefense/MAindigdefreform2005.pdf. Even if $50 an hour is an improvement from the abysmally low rates that Massachusetts paid prior to 2005, it falls far short of what has been suggested as adequate in the literature. THE SPANGENBERG REPORT, *supra* note 12, at 58 (recommending a rate of $90 hourly for care and protection cases in Massachusetts and $60 hourly for children in need of services cases).

[134] HAW. REV. STAT. § 571-87(b) (2006).

[135] Executive Order of the Rhode Island Supreme Court, No. 2004-02, *supra* note 83, at 4.

[136] In two of its counties. Email from Howard Davidson, *supra* note 128.

[137] OFFICE OF THE EXECUTIVE SECRETARY, COURT APPOINTED COUNSEL –PUBLIC DEFENDER PROCEDURES AND GUIDELINES MANUAL, at 48, *available at* http://www.courts.state.va.us/ed/resources/ctapptattyman.pdf.

[138] Email from Howard Davidson, *supra* note 128.

[139] The largest county in Minnesota pays this rate. Email from Howard Davidson, *supra* note 128.

[140] *Id.*

[141] *Id.*

[142] *Id.*

[143] State of Maine Supreme Judicial Court Administrative Order JB-05-05 (A. 4-06) (effective Apr. 14, 2006), *available at* http://www.courts.state.me.us/opinions/adminorders/JB-05-5%20%20(A.htm; *see also* OFFICE OF PROGRAM EVALUATION & GOV'T ACCOUNTABILITY OF THE ME. STATE LEGISLATURE, PERFORMANCE AUDIT OF GUARDIANS *AD LITEM* FOR CHILDREN IN CHILD PROTECTION CASES, S. 123-SR-GAL-05, 2nd Regular Sess., at 47 (2006).

[144] UTAH CODE OF JUDICIAL ADMIN. R. 4-906(6)(B) (2006).

[145] Michigan's rate varies by county. Email from Howard Davidson, *supra* note 128.

Given the pay rates in states with roughly comparable costs of living, the hourly rate in Connecticut for attorneys with the *least experience* in child protection cases should be no less than $60 per hour.[148] Even this rate would leave Connecticut below its neighbors with comparable costs of living, with the exception of Massachusetts, New Jersey, and Rhode Island.[149] To encourage the retention and increased specialization of attorneys who represent children and parents, we also recommend basing the hourly rate on the number of years of attorney experience in juvenile and family law.

For these reasons, we recommend that hourly rates be set, at a minimum, to the levels recommended by the Governor's Task Force on Justice for Abused Children: $55/hour for attorneys with 0-4 years of experience, $75/hour for attorneys with 5-9 years of experience; and $90/hour for attorneys with more than 10 years of experience.[150] Alternatively, or in addition, the hourly rate might be based on whether the attorney has received specialty certification in this area of the law. It also is important to index any hourly rate set in statute or policy to the general rate of inflation or the specific rate of growth in average hourly fees charged by the private bar in such cases.

IV. Caseload Standards

A. Attorney Caseload Limits Under National Standards and in Other States

While adequate compensation is necessary to provide incentives to good representation, the quality of representation is also affected by the size of the attorney's caseloads.[151] When attorneys

---

[146] Texas's compensation varies by county and some counties also work on a flat fee basis. *Id.*

[147] Wisconsin's compensation varies by county. *Id.*

[148] We strongly recommend against establishing a different hourly rate for in-court versus out-of-court work. Out-of-court work is often as vital to adequate representation as in-court work and there should be no disincentive to spending time outside of court in preparation for cases. The importance of out-of court work, and the unreasonableness of differential pay for in-court and out-of court work has been recognized both by courts, New York County Lawyers' Ass'n v. State, Index No. 102987/00, at 19, 34 (N.Y. Sup. Ct. 2003) ("The evidence shows that out-of-court assigned counsel work requires no less legal skill and effort than work performed in-court and is as important, if not more so, to the quality of representation. . . . The distinction between compensation for in-court work versus out-of-court work creates an economic disincentive for lawyers to perform adequate investigations and seek speedy disposition of all cases despite the particular facts."), and policymakers. Telephone Interview with Sarah Ehrlich and Jerrod Cotosman, *supra* note 76 (explaining that Colorado's OCR was able to successfully lobby for a change in the compensation system which established a uniform hourly rate of $57/hour. Previously, attorneys had been compensated at $55 for in-court and $45 for out-of-court work).

[149] We recommend that the compensation level be set higher than these states because they have experienced severe problems with their child welfare systems in recent years, leading to strong criticism of the Massachusetts system. THE SPANGENBERG REPORT, *supra* note 12 (subtitled "The Court-Appointed Counsel System in Crisis" and identifying the low $39 hourly rate at the time as the number one concern of attorneys), and costly litigation in New Jersey. *Charlie H. v. Whitman*, 83 F. Supp. 2d 476 (D.N.J. 2000).

[150] COMM. ON THE QUALITY OF REPRESENTATION OF CHILDREN AND FAMILIES, *supra* note 4, at 7.

[151] This is not to say that the level of compensation and the size of attorney caseloads are unrelated. In fact, one of the effects of low compensation is that it encourages attorneys to take on more cases in order to ensure a minimally adequate income. Howard Davidson & Erik S. Pitchal, *Caseloads Must Be Controlled So All Child Clients Can Receive Competent Lawyering* 10 (Working Paper Series, Oct. 2006) *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=943059. This is particularly true where compensation is done on a flat fee per case, but may also be true in an hourly system if rates are sufficiently low that attorneys need extra hours. Finally, low compensation may generate increased caseloads through systemic pressures: low compensation attracts fewer attorneys, requiring the state to persuade attorneys with already full caseloads to take on the unwanted work. *See*

have high caseloads, they cannot devote adequate time to individual cases and their representation suffers. Not only is there simply less time for each case, but the administrative burden of juggling numerous commitments increases significantly as caseloads become larger, detracting from the time spent actually doing substantive work on each case and increasing the likelihood that proceedings will be delayed due to scheduling conflicts.

In fact, excessive caseloads can make it impossible for attorneys to provide constitutionally adequate levels of representation. In *Kenny A. v. Perdue*, a class of plaintiff foster children brought suit in federal court alleging ineffective assistance of counsel. [152] In denying defendant counties' motion for summary judgment, the court noted that plaintiffs had created a genuine issue of material fact in presenting evidence that "effective assistance of counsel by a child advocate attorney requires that he or she carry out certain minimum legal tasks as part of the representation. These tasks include meeting with the child prior to court hearings and when apprised of emergencies or significant events impacting the child; conducting investigations and discovery, including interviewing individuals involved with the child, such as caseworkers and foster parents, and reviewing all judicial, medical, social services, educational, and other records pertaining to the child; evaluating the child's need for particular services; monitoring the implementation of all court orders; participating in all hearings; and filing all relevant motions and appeals."[153] While it may seem obvious that any good lawyer would need to fulfill these tasks, caseloads were so high that many attorneys did not even have the opportunity to *meet* their clients.[154] One attorney testified she had "failed to personally meet or speak with 90 percent of [her] own clients."[155] In an informal survey of children's attorneys, many reported having little time to interact with clients as caseloads grew larger.[156]

Because heavy caseloads are both prevalent[157] and extremely detrimental to high quality representation,[158] academics and practitioners have adopted standards for maximum caseloads in child and family representation. Both the American Bar Association and the National Association of Counsel for Children recommend that attorneys have no more than 100 child *clients*[159] *per year*.[160]

New York County Lawyers' Ass'n v. State, Index No. 102987/00, at 16 ("The insufficient number of assigned counsel in the Family Court has resulted in less than meaningful and effective assistance of counsel. The testimony of experts, judges and experienced attorneys in Family Court showed that because of the rate levels assigned counsel do not: interview clients; consult with them on a regular basis throughout the proceedings; review all relevant records and documents; perform an independent investigation of the facts and the law; identify and interview witnesses; file motions, conduct discovery and follow up on appropriate discovery requests; make applications for investigators or other experts where appropriate; prepare for a negotiated settlement or litigation at each stage of the proceedings; ensure that clients receive necessary services and prepare appropriate service plans; secure appropriate orders, and monitor compliance.")

[152] Kenny A. *ex rel* Winn v. Perdue, 356 F. Supp. 2d 1353 (N.D. Ga. 2005).

[153] *Id.* at 1362.

[154] *Id.* at 1363.

[155] *Id.*

[156] *See, e.g.*, Davidson & Pitchal, *supra* note 151, at 9 ("Because of the large numbers in our case load, we are unable to have relationships with our [sic] most of our kids. We do not get the opportunity to visit them in their foster homes or other placements. We do not get to make a lot of first hand observations and must depend, in large part, upon social workers, parent aides, therapists and other providers who report to us and to the courts.")

[157] *Id.* at 6 (finding in an informal study that 17.6% of respondents had caseloads of over 200 and 24.9% had caseloads of over 100 cases).

[158] *Id.* at 7-11.

[159] It is important to note that this may be different from 100 *cases*, depending on what counts as one case. In many jurisdictions, one "case" can involve representation of numerous siblings in a single family if cases are counted as the number of families represented. For more on the complexities of counting cases, see Davidson & Pitchal, *supra* note 151, at 2.

This 100 case limit assumes that attorneys spend an average of 20 hours per year on each case, resulting in a total of 2000 hours of representation per year. It assumes that a full 2000 hours (50 weeks at work for 40 hours a week) is available for representation. However, not all of an attorney's time can be spent doing case work – there must also be time for administrative tasks, training, and other incidents of work. As a result, some states have set lower caseload limits. Massachusetts, for example, limits the number of hours attorneys could bill for child representation to 1800.[161] An unpublished study in Colorado found that there was only seventy-five percent of time available for case related work, leaving only 1428 annual hours available.[162] Assuming twenty hours of work per child client yearly, this means attorneys should carry no more than 72 cases.

Some states have tried to achieve the goal of assigning well under 100 cases. Massachusetts limits its attorneys to 75 Care and Protection cases at a time.[163] In the Washington pilot, the aim was to limit caseloads to 90 cases per full-time defense attorney at a time and 45 cases to each part-time attorney.[164]

B. Connecticut's Current System

As discussed earlier, representation in abuse and neglect cases is complex work that requires a significant time investment in each case.[165] Connecticut's recently adopted Standards for Representation for Attorneys and Guardians ad Litem Representing Children in Child Protection Each case requires attorneys to accomplish many tasks, including attending numerous court appearances, case status conferences, negotiations, discovery and pretrial conferences, and mediations on behalf of child clients, but also spending significant out of court time preparing for these events, as well as meeting frequently with their client and doing extensive outside investigatory work and follow-up to make sure their client's educational, health, and mental health needs are being met. [166] Attorneys for indigent parents have similarly rigorous standards of practice to meet.[167] In developing these standards, Connecticut has expressed what it believes is the minimum level of adequate representation for indigent parents and children in abuse and neglect cases.

---

[160] NAT'L ASS'N OF COUNSEL FOR CHILDREN, NACC RECOMMENDATIONS FOR REPRESENTATION OF CHILDREN IN ABUSE AND NEGLECT CASES 7 (2001); *see also* CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., ADOPTION 2002: THE PRESIDENT'S INITIATIVE ON ADOPTION AND FOSTER CARE. GUIDELINES FOR PUBLIC POLICY AND STATE LEGISLATION GOVERNING PERMANENCE FOR CHILDREN, at VII-3 (1999) (recommending the same); COMM. ON THE QUALTIY OF REPRESENTATION OF CHILDREN AND FAMILIES, *supra* note 4, at 11 (recommending these standards be adopted).

[161] THE SPANGENBERG GROUP, *supra* note 12, at 9.

[162] Shink, *supra* note 69, at 1382.

[163] THE SPANGENBERG GROUP, *supra* note 12, at 9. Massachussetts does allow attorneys to have open a combined 200 C&P and Child in Need of Services Cases, however.

[164] OETJEN, *supra* note 15, at 3.

[165] *See supra* notes 107-108 and accompanying text; *see also id.* at 1 ("Lawyers who represent children in dependency cases have a difficult job. In addition to the usual complexities of trial practice, children's lawyers have the added challenges of working with young clients, most of whom have experienced trauma, poverty, disability, discrimination, or some combination of these things. Nationally accepted standards of practice make clear that to provide quality representation, children's lawyers must be familiar with dozens of substantive and procedural areas of law; they must be skilled litigators and excellent negotiators; and they must be especially attuned to the emotional and social dimensions of their cases and their actions in those cases").

[166] *See* COMM'N ON CHILD PROT., CONNECTICUT STANDARDS OF PRACTICE FOR ATTORNEYS & GUARDIANS AD LITEM REPRESENTING CHILDREN IN CHILD PROTECTION CASES 8-13 (adopted Nov. 16, 2006, pursuant to CONN. GEN. STAT. § 46b-123c(3)(2006)).

[167] COMM'N ON CHILD PROT., CONNECTICUT STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING PARENTS IN CHILD PROTECTION CASES 5-8 (adopted Nov. 16, 2006, pursuant to CONN. GEN. STAT. § 46b-123c(3)(2006)).

It is evident, however, that these standards cannot be met with Connecticut's current caseloads. The low level of compensation offered in Connecticut results in caseloads that are excessive. During the first quarter of FY 2007, according to data compiled by the Chief Child Protection Attorney's Office, there were 144 child protection contract attorneys in the state who were assigned a total of 3,500 cases; 1,449 of those were child clients. Based upon yearly projections from those figures and from prior years' data, the average caseload per attorney – whether working full- or part-time on child protection cases – is 97. Although many attorneys *are* part-time and do not take on high case loads, in reviewing the maximum caseloads permitted to attorneys under their current contracts, there are 73 attorneys with caseloads over 100 and 53 of those attorneys have caseloads over 150. That is, currently *more than half* of Connecticut's contract attorneys are maintaining child protective service caseloads in excess of professional standards *even if we assume* that all 73 attorneys handle *only* these cases. It is highly unlikely that all these attorneys, in fact, are working exclusively in this area, given current fees: with Connecticut's current compensation system, for a full-time attorney to have an annual salary of $50,000 would require at least 150 clients.[168] This far exceeds the 100 clients recommended in professional caseload standards.

In short, while Connecticut has established high standards for adequate representation, the contrast between what the standards demand and what current resources allow for could hardly be more stark, and the detrimental consequences more clear.

In a recent focus group with twelve foster youth enrolled in the Jim Casey Youth Opportunities Initiative, only two said they were even aware that they had an attorney, and one of them reported that he first learned he had an attorney when he turned 18 and DCF informed him that he would no longer be entitled to an attorney because he was aging out of the system. At a recent conference on representation in Connecticut, this youth, Cameron Iacovelli*,* expressed the problem with Connecticut's system succinctly: "How can someone adequately represent you when they haven't even met you? My attorney didn't even know if I was a boy or a girl."[169] Further, during a recent legal workshop for youth at the Marshal House Shelter in Hartford conducted by the Center for Children's Advocacy, very few of the children and youth present knew who their lawyer was and many did not have their basic needs met (such as sufficient clothing, holiday visitation with family, or even haircuts).

In short, Connecticut's system of representation falls far short of the standards it has set, as well as the standards recommended by child welfare experts and promulgated by national professional associations. For Connecticut to meet its constitutional obligation to provide the adequate assistance of competent counsel, it is essential that caseloads be reduced.

C. Recommendations

Given Connecticut's new standards for representation, which are at least as stringent as the National Association of Counsel for Children (NACC) standards, the amount of time spent per case

---

[168] This assumes 1/3 of fees go to support overhead costs. This is a reasonable estimate under several measures. *See* Part III.A, *infra*; note 225 and accompanying text (finding $31,743 of overhead costs per full-time attorney at a salary of $49,954); Telephone Interview with Leah Wilson, *supra* note 11 (adding 30% to government attorney salaries to determine appropriate fee for outside contractors to account for overhead). Note this does *not* account for benefits, which are another significant expense privately contracting attorneys must bear. Part III.A, *infra*; note 225 and accompanying text (finding a cost of $25,864 in benefits per full-time attorney at a salary of $49,954); Telephone Interview with Leah Wilson, *supra* note 11 (adding 25% to government attorney salaries to determine appropriate fee for outside contractors to account for overhead).

[169] Cameron Iacovelli, Address at Forum at the State Capitol: Their Day in Court: Ensuring Adequate Representation for Children and Parents in Child Protective Service Cases (Nov. 20, 2006).

should be somewhat above the time calculated by the NACC for each client. We estimate that no less than 25 hours are required on average per client. With somewhere between 1500 and 2000 hours available annually for a full-time attorney's case-related work, caseloads would need to be between 60 and 80 clients per attorney per year to provide representation consistent with these standards. While even this does not represent the amount of time necessary to represent children according to some conscientious practitioners,[170] this will be an important step toward achieving the quality of representation mandated by Connecticut's own legislation requiring practice and caseload standards and recommended in national standards.

V. Training

Providing additional compensation and lowering caseloads will only lead to better representation of children and parents if the attorneys themselves have the skills and knowledge required to provide that representation. Law schools provide a good theoretical background, but most legal training occurs on the job and through seminars and Continuing Legal Education (CLE) courses offered by other attorneys and the Bar Association.

There are several advantages to having a training requirement for child advocates. First, and most obviously, it benefits the state because more skilled and effective attorneys lead to better and faster outcomes for children and parents within the system. This ultimately saves the state money by reducing court delays and continuances, speeding up permanent placements, and reducing time in foster care.[171] Second, training helps to standardize the quality of representation and assure a minimum level of attorney proficiency throughout the state. Third, required training screens out uninterested attorneys; those who remain are more committed to providing a higher quality of representation. Finally, the training requirements are a logical entry point for state oversight, since the state can determine the content of the training and only assign cases to attorneys who have mastered it.

Before examining different training models, it is important to recognize that there are two types of training needed for attorneys in child welfare cases. First, there are the standard legal courses on trial skills and the relevant statutory provisions and case law in Connecticut. Second, and just as important, are courses on child development, child psychology, and child interviewing skills. While attorneys can be effective only if they meet with their clients, communicating with and representing a child is not as simple as representing an adult. The attorneys need training in how to elicit information from a child, how best to impart information to a child in a manner the child will understand, and above all, how to avoid further harming the child. Without proper training, an attorney might unintentionally further traumatize a child who is already in a difficult and stressful situation.

A. Training Systems and Qualification Requirements in Other States

States vary in the training requirements they set for attorneys working in child protection cases. For example, Rhode Island contracts only with attorneys who have Rhode Island Bar membership, malpractice insurance, and three hours of Continuing Legal Education (CLE) in family law topics each year. Attorneys must also express a willingness to mentor new attorneys in the future. Before attorneys are assigned cases on their own, they must represent parents, children, or

[170] *See* Shink, *supra* note 69, at 1382 (suggesting 42 hours per year of casework is necessary for adequate representation).
[171] For a detailed discussion of these cost savings, see Part VII.B, *infra*.

the state under the supervision of a mentor attorney in at least three abuse and neglect or termination of parental rights cases.[172]

In Massachusetts, the Children and Family Law Program (CAFL) of the Massachusetts Committee for Public Counsel Services provides representation to parents and children in state intervention and child welfare matters.[173] Only attorneys admitted to the CAFL trial panel are permitted to represent such clients, and there are several requirements for admission. [174] First, attorneys must complete a five day training program on the substantive law of child welfare and trial skills. Then they must take part in a mandatory mentoring program for the first year of their careers. This involves meeting at least once every three months with a mentor, who is already qualified in the field, to evaluate the new attorney's strengths and weaknesses in the areas of trial skills, oral argument, and out of court dealings with their clients, and to discuss strategy in individual cases.[175] Finally, to maintain their eligibility, attorneys must complete at least eight hours of approved CLE courses each year.[176]

To be eligible for case assignments in Maine, each attorney must also undergo a criminal background check and must complete sixteen hours of training with a curriculum approved by the Chief Judge. This training covers pertinent titles of Maine family law, the dynamics of divorce and its effect on children, child development, the effects of abuse, neglect and trauma on the child, substance abuse, legal issues and processes, the duties and obligations of the Guardian Ad Litem (GAL) as an agent of the court, and interviewing techniques. The Maine CASA program sponsors a three day conference every six months to fulfill this requirement. Finally, to maintain eligibility, attorneys must complete an annual six hour CLE requirement.[177]

Virginia has six qualification requirements. First, attorneys must be members of the Virginia Bar. Second, they must complete seven hours of CLE in family law and children's topics before their first case assignments. Third, they must demonstrate a familiarity with the juvenile court system, either by participating as an attorney or third-year law student in four cases in the juvenile courts, or by serving as or assisting a GAL in two cases involving children in the juvenile courts. Fourth, attorneys must demonstrate proficiency in representing children by receiving a nomination from a juvenile court judge before whom they participated in a case, or from a member of the Virginia Bar who the attorney in question assisted in a juvenile case. Fifth, attorneys must file letters requesting certification and providing evidence of the above criteria with the executive secretary of the court. Finally, to maintain eligibility, attorneys must complete six hours of CLE in family law topics each year.[178]

In the District of Columbia, attorneys must establish and maintain eligibility under the guidelines of the Counsel for Child Abuse and Neglect ("CCAN"). CCAN eligibility requires initial classroom training of several hours; maintaining eligibility requires sixteen hours of CLE each year on abuse and neglect topics approved by CCAN. Prior to attorneys' first assignments, they must

---

[172] Executive Order of the Rhode Island Supreme Court, Family Court: Indigent Counsel, No. 2004-02 (Mar. 19, 2004).
[173] Children and Family Law Program, http://www.mass.gov/cpcs/CAFL/index.htm.
[174] There is a separate panel with different training requirements for the appellate level. *Id.*
[175] Children and Family Law Program: Mentor Requirements (effective July 31, 2001), http://www.mass.gov/cpcs/CAFL/mentor.html.
[176] CPCS Certification Requirements for Client Representation in Criminal and Civil Cases, http://www.mass.gov/cpcs/certreqs/civilreq.htm#CAFLTrialPanel.
[177] MAINE RULES FOR GUARDIANS AD LITEM, at 4-5 (2004), *available at* http://www.courts.state.me.us/rules_forms_fees/rules/MGalRules%208-04.pdf.
[178] JUDICIAL COUNCIL OF VIRGINIA, STANDARDS TO GOVERN THE APPOINTMENT OF GUARDIANS AD LITEM PURSUANT TO § 16.1-266.1 CODE OF VIRGINIA (2006), available at http://www.rollanet.org/~childlaw/galstd/vagalstd.htm.

have completed a courtroom observation requirement by following a case through the court system and observing all appearances, although they are not required to participate.[179]

In sum, Rhode Island, Massachusetts, Maine, Virginia, and Washington, D.C. all have an initial training requirement and CLE requirement (though only Maine explicitly requires training on child psychology and development). Three of the five have an in-courtroom training requirement as a mentee or observer. A fourth, Massachusetts, has an out-of-court mentor requirement where the mentor reviews the new attorney's assignments, strengths and weaknesses, and progress. The only one of these states lacking this requirement entirely, Maine, has a significantly higher initial training requirement than any of the other states except Massachusetts.

Finally, a certification requirement can help assure quality of representation. Some states require certification in addition to training. True certification will lead to a higher base level of knowledge and proficiency among juvenile attorneys, and four states – California, Michigan, New Mexico, and Tennessee – currently contract with NACC to provide a certification program modeled after the physician board certification programs.[180] This certification process involves demonstrating good standing with the state bar, substantial involvement with child welfare law for at least three years, satisfactory peer reviews, a satisfactory writing sample, and passing the NACC child welfare law exam.[181] The certification process has the added benefits of requiring attorneys to demonstrate mastery of knowledge (through the exam at the end of the process) and of requiring minimal state involvement once the NACC is contracted to handle the procedure.

B. Connecticut's System

Connecticut's current training system for juvenile contract attorneys is in flux. There was *no* formal training requirement until well into 2006. However, the new CCPA has begun instituting training requirements since her appointment.

The CCPA's office has contracted with the Center for Children's Advocacy (CCA), a nonprofit legal organization affiliated with the University of Connecticut Law School, to provide a three day mandatory pre-service training session. This training provides an overview of child protection law and practice in Connecticut, including defending orders of temporary custody, advocating for services through the administrative process, motions practice and permanency planning, trial practice skills, educational advocacy, helping disabled clients, defending family with service needs petitions, termination of parental rights cases, evidentiary rules and issues, DCF's policies and procedures, and ethics.[182] Before attorneys are even eligible for the training session, they must undergo a criminal background check and a DCF background check, and must submit references which are checked by the CCPA's office. After they complete the pre-service training session, attorneys must attend at least three seminars of in-service training each year to maintain eligibility to receive cases the following year. The CCPA will seek to include a full day of juvenile topics at the annual Connecticut Bar Association (CBA) meeting in June 2007, which would provide attorneys with the opportunity to fulfill their in-service requirement on a day when courts in the

---

[179] FAMILY CT. ADVISORY RULES COMM., SUPERIOR COURT OF THE DISTRICT OF COLUMBIA: CHILD ABUSE & NEGLECT: ATTORNEY PRACTICE STANDARDS 6-8 (2003).

[180] Become an NACC Certified Child Welfare Law Specialist, http://www.naccchildlaw.org/training/certification.html.

[181] NAT'L ASS'N OF COUNSEL FOR CHILDREN, CHILD WELFARE LAW ATTORNEY SPECIALTY CERTIFICATION, at 4-5 (2006), *available at* http://www.naccchildlaw.org/training/documents/ProgramBrochure10-06_000.pdf. For more detailed information on the certification requirements and process, see NAT'L ASS'N OF COUNSEL FOR CHILDREN, STANDARDS FOR CHILD WELFARE ATTORNEY CERTIFICATION (2004), *available at* http://www.naccchildlaw.org/training/documents/StandardsABAOriginal04_001.pdf.

[182] Interview with Carolyn Signorelli, *supra* note 77.

state are closed.[183] The CCPA also is attempting to rotate roughly one-third of the juvenile contract attorneys in the state through the National Institute of Trial Advocacy's (NITA) Child Advocacy trial skills training program each year. The costs of the training for this year are being covered by the Federal Court Improvement Program (CIP) training grant administered by the Judicial Branch.[184]

The CCPA also is coordinating an informal mentor system. Judges, clerks, and fellow attorneys recommend experienced attorneys as mentors to the CCPA. These attorneys are asked to be a first point of contact for questions and case advice for new attorneys. The CCPA currently handles the matching process and the mentors are not compensated for their efforts.[185] The program is informal and has no set requirements or time commitments, though mentors are expected to introduce their mentees to clerks, judges, and fellow attorneys, and allow them to observe cases that the mentors themselves are handling. The largest problem with the program has been the time required on the part of the CCPA to identify potential mentors with sufficient skills and knowledge to make a positive impact on the growth and effectiveness of new attorneys.[186]

Finally, the CCPA in conjunction with the NACC is working to bring the certification process to Connecticut. This would be an optional training and examination procedure in which attorneys with three or more years of experience in the field could participate. This certification examination would provide a means to ensure that attorneys are actually learning how to be better advocates in juvenile cases, rather than simply attending the training sessions because they are required. Those who successfully pass the examination would receive official certification in the field of juvenile law and practice; only these attorneys would be allowed to handle the maximum caseloads.[187] The CCPA is advocating for an increase in her budget so that these experienced and capable attorneys can receive increased compensation when they are handling the maximum caseloads, including compensation for acting as mentors.

C. Recommendations

Based on the state models above and advice from the American Bar Association (ABA) and other professional organizations, we propose the following training recommendations. While we believe that the initiatives of the CCPA's office are a good first step, more can be done to assure the training necessary to provide high quality and competent representation to Connecticut's children and parents.

We recommend a mandatory pre-service training requirement on both substantive law and child development and psychology. As discussed below, we ultimately recommend a full pre-service certification requirement that assures mastery of these topics. The exact topics that should be covered by the initial training requirement are numerous, and we suggest that the training be comprehensive enough to cover the topics recommended both by the ABA and the Governor's Committee on the Quality of Representation of Children and Families. These include:

- Legal and procedural aspects of juvenile actions,
- Applicable statutes, regulations, policies, and case law in the area of practice,
- Education law,
- Custody and visitation rights,

---

[183] *Id.*
[184] *Id.*
[185] *Id.*
[186] *Id.*
[187] *Id.*

- The role of counsel for children,
- Ethical considerations unique to child law practice,
- Resources available to children and parents through social services and financial assistance programs,
- The need for permanency planning and considerations when creating a plan,
- Child and youth development, including the impacts of trauma on that development,
- Indicators and consequences of child abuse and neglect,
- Sexual abuse,
- Domestic violence,
- Substance abuse and its impact on parenting and treatment options,
- Child and adult mental health,
- Foster care,
- Adoption,
- Effects of divorce on a child,
- Cultural and ethnic sensitivity.
- The basic rights of each party,
- Procedure and practice in the juvenile court,
- DCF administrative procedure,
- The provision of services to children diagnosed with disabilities,
- The special role of the guardian *ad litem*.[188]

In the short term, the best way to provide this training is along the lines the CCPA has begun. However, funding should be increased to allow the Center for Children's Advocacy to provide its three day training session at least twice a year. There are new attorneys interested in taking on juvenile cases now.[189] While they could help reduce the strain on the system, they cannot take cases until they have completed the pre-service training. The next CCA session will not be offered until summer or fall 2007, so in the meantime these attorneys must wait.[190] Additional training sessions would prevent this problem and make new attorneys available more quickly. Similarly, the DCF Training Academy sessions that have been open to contract attorneys on issues such as child development and psychology, adolescent issues, substance abuse, domestic violence and behavioral health are a good beginning, but are a piecemeal and ultimately inadequate approach to the particular concerns of attorneys. Training should be offered several times a year to new and current contract attorneys and the CCPA's office should offer an additional course that deals specifically with the issue of interviewing and explaining legal topics to younger children.

However, if, as recommended, Connecticut switches to an organizational model, all pre-service training sessions could be offered by the organization itself. The organization could tailor the training to address attorney concerns as they arise, taking new cases and laws into account.

We also recommend a mandatory in-service CLE requirement aimed at keeping attorneys aware of new case law and statutes at the federal and state levels. The Governor's Committee

---

[188] *See* AM. BAR ASS'N CTR. ON CHILDREN AND THE LAW, FINAL REPORT: MICHIGAN COURT IMPROVEMENT PROGRAM ASSESSMENT OF PROBATE COURTS' HANDLING OF CHILD ABUSE AND NEGLECT CASES 61 (1997); CONNECTICUT COMM. ON THE QUALITY OF REPRESENTATION OF CHILDREN AND FAMILIES, RECOMMENDATIONS TO THE COMMISSION ON CHILD PROTECTION AND THE CHIEF CHILD PROTECTION ATTORNEY, at 12-13 (2006).

[189] Interview with Carolyn Signorelli, *supra* note 77.

[190] *Id.*

recommends an ongoing training requirement focusing on new developments in the law, advances in associated fields such as mental health, and changes in associated agencies like DCF.[191]

The CCPA has made significant progress in implementing this recommendation. Specifically, the CCPA now requires attendance at two CLE seminars a year, and plans to raise the requirement to three CLE training sessions per year in 2007. Attorneys may attend Bi-Monthly Trainings offered by the CCPA through its contract with the CCA, addressing changes in the statutes and case law, DCF policies and programs, and other topics relevant to the practice. In addition, the CCA will be conducting three regional trainings on the non-legal topics required by CCPA's enabling legislation. Contract attorneys can also attend biannual seminars offered by Lawyers for Children America on special topics and their day long "core" training program on child protection practice. The attorneys can meet their training requirements through relevant CLE seminars offered by the CBA and others, as well as by attending DCF Training Academy courses. The CCPA has already sent, and plans on continuing to send, at least thirteen attorneys each year to the NACC's or the ABA's Annual Children's Law Conference.

In the short term, we recommend that funding be provided for the CCPA to organize and present a full day of training on juvenile issues at the 2007 Connecticut Bar Association summer meeting. This will allow attorneys to fulfill at least some of their in-service training requirement without needing to miss or reschedule court appointments. We further recommend that the state provide annual funding for ten to twenty attorneys to enhance their trial skills through trainings offered by NITA, ensuring continuity of this initiative when CIP funds expire.

Longer term, under the organizational model we propose, all in-service training would be offered by or in conjunction with the organization providing the representation. This would permit the training to be tailored to pertinent issues of the day, and the organization would be more responsive to the demands and complaints of its own attorneys and modify the training accordingly. The organization should also encourage attorneys to take courses elsewhere, especially on such general topics as interviewing techniques and trial skills. Nevertheless, having the organization itself manage the courses on core topics such as juvenile law and communicating with children would lead to better tailored and more pertinent training. In addition, the organization(s) should open these courses and training programs to outside contract attorneys handling conflict cases, thus ensuring that all attorneys working on juvenile cases have the same high quality pre- and in-service training.

In addition to formal training, we strongly recommend that the state fund a mentorship program. In the short term, funding would provide for an additional staff member in the CCPA's office to coordinate a formal mentoring program that compensates mentors for their time. Once this system is firmly in place, we recommend that pre-service courtroom experience be mandatory. Attorneys would fulfill this requirement by assisting their mentors in three juvenile cases representing either parents or children. Since most legal expertise is acquired on the job, learning hands-on from a more experienced attorney prevents mistakes such as improper motions and missed filing deadlines. These errors require judges to put cases on hold, slowing down the system and costing the state more money.

In the longer term, mentoring could easily be handled in an organizational model. Under this model, the majority of the attorneys would be working for the same organization(s), and one of the standard responsibilities of more experienced attorneys in these organizations would include bringing the new attorneys along for interviews, depositions, and courtroom appearances, as well as offering advice and strategizing on cases assigned to new attorneys.

---

[191] COMM. ON THE QUALITY OF REPRESENTATION OF CHILDREN AND FAMILIES, *supra* note 4, at 14-15.

Finally, we support the CCPA's plan to develop a certification process for juvenile contract attorneys who have worked in the field for three or more years. We urge the legislature to approve funding for the CCPA to carry out her plan to contract with the NACC to provide certification training and examination services. In the long term, under an organizational model, the organization could either continue to contract with the NACC for these services or develop its own certification procedure based off of the NACC model, whichever it deems most cost effective. We also recommend a modification to the current plan. Attorneys should be eligible to take the certification exams after three years of experience, but if they have not opted to do so or have not passed the examination by their fifth year, we recommend that they be barred from representing clients in new juvenile cases until and unless they pass the certification exams. In this manner the additional skills and higher quality of representation guaranteed by the certification process can be required of all experienced attorneys throughout the state.

VI. Oversight and Supervision

Increasing the qualifications, training requirements and standards of practice, and improving compensation are necessary but not sufficient steps to ensure that the quality of representation is improved. The state also needs mechanisms to ensure that its requirements and standards are being followed, and to assess whether these requirements actually lead to adequate representation and good outcomes for children and families. Also, at a more mundane level, the state needs methods to ensure that state funds are appropriately used.

A. Oversight and Supervision Mechanisms in Other States

Oversight measures are relatively simple at the boundaries of the system. As noted earlier, many states maintain lists of qualified juvenile attorneys. Attorneys who wish to become listed must complete pre-service training or certification, as well as annual in-service training to maintain eligibility. The CCAN in the District of Columbia requires attorneys to submit proof of their training and CLE attendance to be listed, and removes those who fail to submit CLE credits each year.[192] Massachusetts, Virginia, and Rhode Island have similar systems. In Massachusetts the CAFL program oversees the trial and appellate panel lists,[193] in Virginia the Executive Secretary of the Supreme Court manages the list of qualified attorneys,[194] and in Rhode Island the family court maintains the list itself.[195]

Once attorneys are through the pre-service qualification barrier and working on their cases, oversight of independent contract attorneys becomes much more difficult. In theory, the state would want to make sure that every attorney was meeting with their clients, spending an adequate amount of time on each case, providing competent representation, and avoiding conflicts of interest in cases where the client is a child and the attorney feels that the child's stated wishes contradicts its best interests. In reality, this is impractical, and different states use different measures to approximate these duties as best as they can.

One oversight method that is frequently used in other states is surveys. Surveying those whom the attorneys encounter in the courtroom – judges, clerks, caseworkers, and other attorneys –

---

[192] ATTORNEY PRACTICE STANDARDS, *supra* note 179, at 1.
[193] Children and Family Law Program, *supra* note 175.
[194] VA. CODE ANN. § 16.1-266 (2006).
[195] Executive Order of the Rhode Island Supreme Court, Family Court: Indigent Counsel, No. 2004-02 (Mar. 19, 2004).

is one of the most comprehensive ways to examine the quality of legal representation. Arkansas, for example, surveys judges, caseworkers, CASAs, attorneys and the attorney *ad litem* (AAL) herself to determine if the attorney in question is meeting the state's mandated standards of practice. The Administrative Office of the Courts (AOC), which handles the state AAL program in Arkansas, also sends personnel to interview judges regarding the attorneys' performance, and to observe attorneys in the courtroom.[196] Since these review procedures have been put into effect, 86% of attorneys and 98% judges surveyed in the state agree that quality of representation for children has improved.[197]

The Office of the Child's Representative (OCR) in Colorado takes a similar approach. It distributes an "objective evaluation form" to CASA agencies, court facilitators, court administrators, and judicial officers. This survey asks respondents to rate the attorney in question on the frequency of their meetings with the child, their attendance and preparedness at court appearances, their knowledge and application of juvenile law and other psycho/social fields such as child development, their independent investigations, their recommendations as to the best interests of the child, and their professionalism.[198] The OCR uses these survey results to review the competency and quality of the contract attorneys, and they are a factor in the decision whether or not to renew attorneys' contracts for the following year.[199] The OCR director and two additional staff attorneys travel the state each year to interview attorneys with poor survey results and the judicial and social services personnel with whom they interact. These interviews allow the Office to verify problems (such as attorneys not meeting with their juvenile clients prior to courtroom appearances) and remedy them by declining to renew these attorneys' contracts.[200]

The Utah Office of the Guardian *ad Litem* also uses surveys as part of a mandatory performance evaluation of GALs each year.[201] The surveys ask each of the GAL's peers to rate them on general legal knowledge of abuse and neglect cases, knowledge of their specific cases, their understanding of the DCFS (Utah's equivalent of Connecticut's DCF) and their skill in requesting and reviewing DCFS documents and reports, their attendance at meetings and court dates, their submission of monthly reports and attendance at training sessions, their general work quality and productivity, their courtroom and trial skills, their communications abilities, and their general attitude and cultural competency.[202]

Another common method of oversight is scrutinizing hourly billing statements to monitor both fiscal honesty and quality of legal services. The OCR in Colorado, for example, reviews the hourly billing statements of the contract attorneys to ensure that work is being done properly, and that money is not being wasted. The OCR has found that this is the most effective way to monitor services in any given case and cites it as a compelling argument for transitioning from per case payments to hourly billing.[203] The OCR uses the hourly activity details found in billing statements to supplement information received in formal complaints, as well as to check and ensure that attorneys show up for their court appearances and meet with their clients.[204] This sort of monitoring is extremely helpful, and requires only an adequate database, consistent recordkeeping and prompt data input, and attorneys who are paid (and who document their time) by the hour.

---

196 ARK. SUPREME COURT AD HOC COMM. ON FOSTER CARE & ADOPTION, ARK. COURT IMPROVEMENT REASSESSMENT REPORT, at app. G (2005).
197 *Id.* at 82.
198 COLORADO OFFICE OF THE CHILD'S REPRESENTATIVE, *supra* note 65, at app. B.
199 *Id.* at 16.
200 *Id.* at 16-17.
201 UTAH OFFICE OF THE GUARDIAN AD LITEM & CASA ANNUAL REPORT 3 (2005).
202 *Id.* at exhibit H.
203 COLORADO OFFICE OF THE CHILD'S REPRESENTATIVE, *supra* note 65, at 19.
204 *Id.*

Oversight also involves receiving and investigating complaints. There are two primary methods for doing this. First, the organization managing the attorneys (or the state agency which handles their billing and payments, where an organizational model is not in use) accepts standard complaints, investigates them, and takes appropriate action up to and including the termination of the attorney's employment or contract. Second, an independent state official, generally called an Ombudsman's Office, accepts complaints about individual attorneys or the organization or agency managing them, and launches broad and long term investigations with findings and suggested reforms reported directly to the legislature.

The OCR in Colorado provides a good example of the first method. The OCR has developed a formal complaint system and processes dozen of complaints each year. The number of complaints continues to drop each year and was down from over 70, in 2003,[205] to 25, in 2005, [206] indicating that the system is effectively weeding out or reforming poorly qualified and unskilled attorneys. Each complaint triggers an investigation involving a review of the record of court proceedings in the case by OCR personnel and interviews with all parties, including social workers, foster parents, relatives, parents, and attorneys.[207] When a complaint is substantiated (only 4 of the 25 in 2005 were found to be violations of standards of practice), a full audit of a random selection of that attorney's cases for the year is performed to determine if this was an isolated incident or part of a broader pattern of unprofessional behavior. If the former, the attorney is placed on "probation" and complaints in the following year may lead to the termination of the attorney's contract. If the latter, the contract is terminated immediately. In 2005, the 25 complaints received by the OCR led to 2 contract terminations and 2 probations.[208]

The second method, the Ombudsman's Office, exists currently in Connecticut within the Office of the Child Advocate (OCA). Over twenty-seven states have Ombudsmen for Children, including Massachusetts, New Hampshire, Rhode Island (on which the OCA's Ombudsman role is based), New Jersey, and California.[209] While no formal study has been done to evaluate their effectiveness, Ombudsmen's reports have resulted in significant legislative changes in some states, including Rhode Island.[210]

B. Connecticut's System

With the formation of the CCPA's office and the appointment of the new CCPA last year, Connecticut's system of supervision and oversight for juvenile contract attorneys is in a state of flux. Unfortunately, Connecticut's current method of appointing attorneys to represent children and indigent parents in abuse and neglect cases, and the manner in which it pays these attorneys, fails to promote programmatic and fiscal oversight, and in some ways actually undermines it.

Prior to the creation of the Commission on Child Protection, the Judicial Department paid a flat fee of $350 for the first 30 hours of work and a low hourly rate of $40 for hours in excess of 30 (with court approval). After abuses by several attorneys involving over billing, the Department established an invasive auditing system that demoralized many of the attorneys and led some to

---

[205] COLORADO OFFICE OF THE CHILD'S REPRESENTATIVE, 3RD ANNUAL REPORT 12-13 (2003).
[206] COLORADO OFFICE OF THE CHILD'S REPRESENTATIVE, 5TH ANNUAL REPORT 12-13 (2005).
[207] COLORADO OFFICE OF THE CHILD'S REPRESENTATIVE, 4TH ANNUAL REPORT, *supra* note 65, at 18.
[208] COLORADO OFFICE OF THE CHILD'S REPRESENTATIVE, 5TH ANNUAL REPORT, *supra* note 206, at 14.
[209] Children's Ombudsman Offices, http://www.ncsl.org/programs/cyf/ombuds.htm (2006).
[210] *Id.* The Ombudsman's reports led the Rhode Island legislature to require a national criminal background check for all foster and adoptive parents, and to legislate mandatory training for all DCYF (Rhode Island's equivalent of Connecticut's DCF) staff.

leave for other work.[211] The Chief Child Protection Attorney has removed the pre-approval requirement for billing excess hours, but with the office's current levels of billing and accounting staff, she can only investigate the most glaring problems with the bills being submitted. However, the CCPA now requires attorneys to sign an oath on the bills themselves, swearing that their statements are accurate.[212] While these changes are helpful, they do not address the underlying problem with the current system – that few cases are billed on an hourly basis and therefore the majority of bills provide little or no information about how the attorney's time was spent, making it difficult to determine if attorneys are following the CCPA's standards of practice.

The CCPA's office recently developed and implemented a simple web form for attorneys to submit their bills online. The form and database also handle hourly billing statements for those cases in which attorneys go over the 30 hour mark.[213] However, as noted above, for cases that do not reach this mark, attorneys are not required to detail their time spent on the case. As a result, the system only permits oversight to the extent of knowing that an attorney was "on" the case; attorneys can bill for the case as soon as they are assigned to it. Only the hourly billing statements for time spent over 30 hours indicate whether the attorney met with the client, spent sufficient time on research, or appeared in court, because only the hourly statements require attorneys to submit the activity type, time, and date.[214] In anticipation of a switch to a full hourly billing model, the CCPA is developing a grid of case types and months the cases have been open to allow accounting staff to red-flag cases with suspiciously high or low hours being reported for further investigation. The CCPA has requested funding for the additional accounting staff needed to examine the more detailed billing statements.[215]

The CCPA's office is also developing surveys for all of the stakeholders in abuse and neglect cases. Sets of questions are being written for judges, court personnel, attorneys, social workers, foster parents, parents, and youth over the age of fourteen.[216] For fellow attorneys, judicial staff, DCF, and the Attorney General's Office, the plan calls for surveys to be distributed and collected via email or web form. The Connecticut Association of Foster and Adoptive Parents will assist in distributing and collecting surveys of foster parents and the Adolescent Services Department of DCF will do the same for surveys of youth. DCF is still determining whether the CCPA will be permitted to survey its social workers.[217] These surveys would provide the CCPA with initial feedback on the skill, quality, and preparedness of the juvenile contract attorneys.

The CCPA, as the only attorney in the office, plans to make rounds of the state courts twice each year to observe the contract attorneys. These rounds will occur once in the Fall and once in Spring as part of the process of finalizing contract renewals for the next year.[218]

Finally, the CCPA has established an informal complaint process. DCF case workers, social workers, and court clerks are aware of the process and able to inform parents and children that they should contact the CCPA's office with complaints. These individuals and other attorneys also contact the CCPA themselves when they have complaints about the attorneys with whom they work. The CCPA logs all complaints and, depending on the nature of the complaint or if the complaint is part of a pattern, conducts an informal investigation by talking with court personnel,

---

[211] Interview with Carolyn Signorelli, *supra* note 77.
[212] *Id.*
[213] *Id.*
[214] *Id.*
[215] *Id.*
[216] *Id.*
[217] *Id.*
[218] *Id.*

other attorneys, and DCF personnel involved with the case.[219] Depending on the results of the investigation, the CCPA may send a warning letter to the attorney in question, may meet with the attorney to discuss the complaint and possible solutions, or may take other action. The most common complaint is of an attorney failing to appear for a court appearance, and if a pattern emerges here the CCPA will, caseloads permitting, restrict that attorney to a single court to make it easier for them to make their appearances.[220]

As stated above, the OCA in Connecticut acts as an Ombudsman for children. The OCA, in its Ombudsman role, currently has a primary duty of monitoring DCF, and can communicate privately with children in DCF's care and subpoena court records, police reports, DCF records, and persons who have cared for or treated the child. The Office has the power to take all appropriate steps to publicize the purpose and services of the Office, lobby the legislature, and pursue legal action on behalf of injured children. [221] The OCA has statutory authority to investigate beyond DCF and can look into any state agency that provides services to children, including the CCPA.

C. Recommendations

In the short term, we agree with the recommendation of the Governor's Committee on the Quality of the Representation: the CCPA should develop a system to monitor quality of representation throughout the state. In the longer term, the evidence suggests that an organizational model would lead to more effective oversight and supervision. There are clear advantages to such a model, because the state can delegate much of the day-to-day oversight functions to the organization itself. There can be periodic performance reviews of the organization as a whole, but the burden on the government and the CCPA's office would be greatly reduced. It is in such an organization's best interests to ensure that its attorneys comply with best practice guidelines, since these lead to a better understanding of the law, better preparation for court appearances, and thus faster and better outcomes and permanent placements. Further, the organizational model places all of the attorneys within a small number of offices. They work with each other daily, review each other's work products, and assist each other in court. If problems arise, they will often be spotted within the organization by other attorneys and supervisors before they become serious enough to cause problems for the children and parents within the system. This sort of informal, daily oversight is critical to providing the highest quality of representation for children and parents, and simply cannot be duplicated within an independent contract model. The CCPA will retain the power to audit the organization if complaints suggest that state guidelines are not being met.

We also agree with the Governor's Committee that "the current system does not provide an effective mechanism for supervising the assigned lawyers," and that supervision is "critical" to insuring high quality representation.[222] In the short term, we strongly recommend an immediate switch to an hourly billing system. Most other states use this model, and many find it to be the most effective and efficient method of oversight. Such a model, unlike Connecticut's current system of a fixed fee for the first 30 hours of work (which is generally all of the work done on these cases), requires attorneys to document their time, revealing whether they met with their client, spent sufficient time preparing the case, and appeared in court. The web form and database currently

---

[219] *Id.*

[220] *Id.*

[221] CONN. GEN. STAT. § 46a-13k (2006), *available at* http://www.ct.gov/oca/cwp/view.asp?A=1554&Q=271488. *See also* Rhode Island Office of the Child Advocate, http://www.providence.edu/polisci/students/child_advocate/ (The Ombudsman's Office of the OCA is based directly on the same office within the same organization in Rhode Island.).

[222] COMM. ON THE QUALITY OF REPRESENTATION OF CHILDREN AND FAMILIES, *supra* note 4, at 10.

managed by the CCPA's office already supports hourly billing, and we urge that additional funding be appropriated for the additional accounting staff person who would be required to review the more detailed billing statements.

In the long term, after a successful transition to an organizational model (that evidence from other states suggests would lead to the best child and family outcomes), the burden on the CCPA's office would be greatly reduced. The organization or organizations in charge of the attorneys would handle the majority of this oversight internally. They would review the billing statements themselves, since they would be in the best position to know what the attorneys should have been doing. They work with the attorneys daily and know their basic caseloads and any serious problems that have arisen. This is an advantage of the organizational model that cannot be duplicated within an independent contractor system. The CCPA's office would review the aggregate requests by the entire organization, but only examine individual billing statements where conflict attorneys were hired on an individual contract basis. This would be a more efficient system and would place less burden on the state while achieving a higher level of oversight, ultimately leading to greater benefits in family outcomes.

The Governor's Committee also recommends that CCPA personnel visit local courts regularly to meet with judges, clerks, and attorneys, and to observe attorneys in their court appearances.[223] Data from programs such as the OCR in Colorado suggests that this is a necessary part of the oversight process. The CCPA has begun this process on her own, but the CCPA's office has no staff attorneys qualified to observe courtroom work other than the CCPA herself. We reiterate the Governor's Committee recommendation and urge that additional funding be provided to hire one or more staff attorneys as the CCPA deems necessary to observe the contract attorneys in all state courts on a regular basis.

In the long term, these observations should also be handled by the organization under an organizational model. The organization would have better knowledge of when attorneys would be appearing in court and thus would be in a better position to carry out the observations in a cost effective manner. Further, the senior attorneys at the organization who would carry out the observations will have reviewed the junior attorneys' work products and case strategies in the past, and thus will have some idea of the attorneys' strengths and weaknesses already. The senior attorneys will also have greater knowledge of the cases they are observing. This knowledge is critical since complex issues that the junior attorneys ignore or misstate may also be missed by a less knowledgeable observer. While the CCPA cannot keep track of every case by herself, senior attorneys in an organization can routinely observe junior attorneys whom they have assisted and with whose cases they are intimately familiar with. Since the organization would handle core training in house as well, it could use the observations to tailor training sessions to the needs of its attorneys. Thus we see again several advantages of the organizational model – knowledgeable senior attorneys and in house training – that simply cannot by duplicated by an independent contract system.

As a less direct means of observation, we support the CCPA's plan to develop and distribute surveys to the stakeholders in each case. We urge that funds be made available to contract with a professional organization for assistance in designing the surveys if necessary, and to hire additional staff as the CCPA deems necessary to collect and analyze the survey responses. As discussed above, other states use this method as a first line of defense against lack of professionalism and simple incompetence among attorneys, and the survey results can trigger deeper investigations and audits that may lead to the termination of the attorney's contract.

---

[223] *Id.*

Even in the long term under an organizational model, we believe that funding should remain available for the CCPA's office to continue coordinating the surveys and analyzing the results. The state should maintain at least one means of monitoring quality of representation even after one or more nonprofit organizations are managing the attorneys directly. Surveys are likely the method best suited for this purpose since they can reflect both general troubles statewide and problems with individual attorneys. The CCPA could request an internal investigation by the organization when survey results indicate a problem with an individual attorney, or could investigate the organization itself where the results indicate a systematic problem in training or preparedness. The organization would be in the best position to investigate its own attorneys since other attorneys, supervisors, and support staff work with the attorney in question daily and could easily corroborate or refute survey results indicating poor trial preparation, failure to appear in court, or failure to meet with clients.

We also agree with the Governor's Committee recommendation that "the CCPA should establish procedures to deal with complaints in a speedy and efficient manner."[224] This is both a short- and long-term issue, since the state should retain the ability to handle complaints even after an organizational model is adopted. As discussed above, the CCPA currently handles complaints via an informal investigation process. We urge that funds be made available for an additional staff person to manage a formal complaint and investigation process along the lines of the effective model used by the OCR in Colorado. Each complaint should trigger an investigation consisting of a review of the court record and interviews with the stakeholders in the case, including children, parents, court officials, social workers, and other attorneys. If the complaint is substantiated as a violation of the CCPA's standards of practice, then a random selection of that attorney's cases for the year should be audited to determine if this was an isolated lapse or a pattern of failure. If a pattern is discovered, the CCPA should forbid the attorney from being appointed to represent clients in juvenile cases, effectively forcing the organization to fire them. Once an organizational model is adopted, the investigatory staff of the CCPA's office should work with the organization to perform the investigations, taking advantage of the unique knowledge that coworkers and supervisors have about the attorney and the case in question.

Finally, reports from states nationwide indicate the importance of an Ombudsman's Office to handle broader systemic complaints. The primary goal of the CCPA's formal complaint mechanism will be to catch and remove unskilled and unprofessional attorneys. This will certainly provide some guidance to the CCPA about what systemic changes may be desirable to improve quality of representation statewide, but that is not the immediate goal of the complaint system. The Ombudsman's Office, on the other hand, should investigate the entire system of representation when necessary, and suggest changes to the legislature or the CCPA. This function should be performed by the OCA, which has broad statutory authority to investigate any state agency or state-funded contractor that provides services to children.

VII. Financing Connecticut's Improved System of Representation

A. Projected Costs

The cost of contract attorney fees for an adequate hourly system, based on an average hourly fee of $60 (less for attorneys with less experience, more for attorneys with more experience), an average of 25 hours per year spent on each case, and about 14,000 cases per year, would be $21

[224] *Id.*

million, or 2.7 times the amount expected to be spent in FY 07 ($7.8 million). While this is admittedly a significant up-front increase in costs, it will also significantly improve the quality of representation and result in a more cost-effective system in the long term. Increased monitoring of hourly bills will both avert fraud and strengthen oversight to ensure that attorneys are meeting standards of practice. It will also generate long-term savings, as outlined in the next section.

The cost of an adequate organizational model is roughly comparable, but includes funding for paralegals, social workers, and others that support the attorney. In a cost estimate provided by a local Connecticut nonprofit,[225] the costs of support staff – a part time secretary, paralegal, and social worker – would be approximately $49,954 for each full-time attorney. Benefits in the aggregate would cost approximately $25,864 for each full-time attorney. There would be approximately $31,743 in overhead and administrative costs per full-time attorney – included in this would be the cost of training, supplies, rent, phone, and travel costs. Attorney salary would be on average $48,766 annually. In total, there would be $150,668 of costs per full time attorney, or about $1,500 per case (assuming a maximum of 100 cases). Based on the current volume of cases, about 140 full-time attorneys (and accompanying support staff) would be needed,[226] at an approximate cost of $21.1 million.

The small difference ($100,000) between the cost of an adequate hourly contract system of representation and the slightly greater cost of an adequate organizational system of representation is well worth it considering the significant advantages the organizational model provides for direct oversight, on-the-job mentoring, and training tailored to the needs of individual attorneys and clients. In addition, the cost for the organizational contract already includes the money necessary to provide for social workers and support staff. Under the individual contract model, it is difficult to guarantee that attorneys will spend adequate money for these vital experts.

B. Projected Savings

High quality legal representation has been proven to lead to savings, both in the short and long term. Although it is not possible to quantify the developmental value of placing a child in a safe, loving, and permanent home, some states that reformed their parental representation systems have quantified the immediate fiscal impacts of such reform.

Superior representation reduces the time children spend in government-funded foster and residential care. The average time in foster care fell by nearly 20% in Washington during the pilot program discussed above (from 290.6 to 235.6 days), and the number of days spent in relative care increased from 105.3 to 360.3 days.[227] Since, in Connecticut, each day in foster care costs between $24.84 (for children birth to 5) to $27.43 (for children 12 and older),[228] if a child spends 55 fewer days in foster care it would save the state between $1,364 and $1,507 for foster care alone.[229] By

---

[225] To preserve the ability of this organization to bid competitively in the case that Connecticut accepts our recommendation to switch to an organizational model, the identity of the organization is confidential. A detailed copy of these cost estimates is on file with Connecticut Voices for Children.

[226] The cost estimate assumed a caseload of 100 cases per attorney, which is within our recommendations for appropriate caseloads.

[227] OETJEN, *supra* note 15, at 7.

[228] In Connecticut, the basic foster care maintenance payment for a 30-day month for children ages 0-5 is $745.20, ages 6-11 is $756.00, and ages 12-18 is $822.90, effective July 1, 2006. A higher payment is made for children with medically-complex needs of $1358.10. *See*: http://www.dir.ct.gov/dcf/Policy/Trmt36/36-55-25-2.htm.

[229] This savings would only materialize if the children taken out of foster care were returned to their homes rather than placed in relative foster care. In the case of subsidized guardianship, the state would pay the same rate to relatives as non-relative foster parents for housing children. *See*: http://www.dir.ct.gov/dcf/Policy/Trmt36/36-55-25-2.htm.

comparison, the cost of 25 hours of representation at $60 per hour is $1,500. That is, the averted costs in foster care payments alone, resulting from the adequate representation of a child under the Washington model, would come close to paying for the entire cost of representation proposed here.

Even more importantly, reunification rates under the pilot program in Washington increased from 36.8% to 56.4%, and cases involving the termination of parental rights decreased from 41.3% to 22.9%,[230] leading to substantial additional savings. Moreover, in the cases where the families had a prior history, those who received representation exclusively through the pilot program with the court were 6.9 times more likely to be reunified than those whose cases concluded before the pilot program began. [231] This strongly suggests that better representation brings about preferred outcomes. In post-dependency order reunifications,[232] parents successfully changed their behavior, lifestyles, or situations and established a safe environment for their children, even when monitored for the six months following reunification.[233] Importantly, "[d]ata provided by the State of Washington, Office of the Administrator for the Courts indicate that a new dependency petition was not filed on *any* case that researchers coded as having an outcome of reunification."[234]

The increase in reunifications alone resulted in such significant foster care savings that Justices Bobbe Bridge and Joanne Moore concluded that in Washington, the savings would fully offset the cost of the program on a statewide basis within two or three years.[235]

Reduced foster care payments would be only one of the many ways improved representation would save Connecticut money. Not all children who are reunified would otherwise be in foster care; some would be in residential programs. The cost of one year of care for an abused or neglected child at the DCF-run Connecticut Children's Place is $339,000.[236] In addition to these board-and-care costs, there are also costs associated with DCF providing staffing (e.g., a caseworker, caseworker supervisor) for each case.

The legal system itself will save money. After children are placed in permanent homes, there is no need for periodic permanency plan hearings which occupy significant amounts of attorney and judicial resources. Washington also saw administrative court savings when attorneys were better funded. During the pilot program, parents' attorney over-scheduling was responsible for only 4% of all continuances.[237] By way of contrast, court over-scheduling was responsible for 20% of the continuances.[238] There was also a decrease in the time spent between entry to the system and the first shelter hearing, with the average days lapsing falling from 6.35 to 4.81, and the maximum days spent waiting from 130 to 22.[239] Giving attorneys a realistic case load means they will be better to able to make court appearances and not waste the court's time. Quicker resolution of cases also is important for children's well-being; achieving permanency is vital to a child's psychological well-being.

If all children taken out of foster care were placed in relative care, there would be no savings. Nevertheless, relative care is generally a less traumatic environment than living with strangers, and this benefit can not be quantified.

[230] OETJEN, *supra* note 15, at 7.

[231] *Id.*

[232] Post-dependency order reunifications are cases in which a dependency order has been entered, as opposed to cases where the state has not yet adjudicated that abuse or neglect has occurred. 80% of all reunifications are post-dependency orders. Bridge & Moore, *supra* note 25, at 37.

[233] *Id.*

[234] OETJEN, *supra* note 15, at 8 (emphasis added).

[235] Bridge & Moore, *supra* note 25, at 37.

[236] Connecticut Voices for Children. *Foster Care: Helping Abused and Neglected Children.* Candidate Briefing: September 2006. Available at http://www.ctkidslink.org/publications/CB06FosterCare.pdf.

[237] Bridge & Moore, *supra* note 25, at 38.

[238] *Id.* at 37. No data was kept regarding reasons for continuances prior to the initiation of the pilot program.

[239] OETJEN, *supra* note 15, at 7.

Additionally, more competent attorneys representing children and parents will follow up with DCF to ensure that the services provided more closely fit the child and family's needs, reducing the possibility of repeat referrals and referrals of siblings. Assisting the family can prevent cases of neglect from arising, and can keep children from being sent to residential treatment programs, which are far more expensive than residential or foster care. Good advocacy will keep more kids in their homes and communities, while also providing families with the support they require. Keeping children with their families avoids disruptions in schooling, and other adverse psychological consequences of placement. In short, a decline in the number of children in under state care would save Connecticut taxpayers money, while also improving child and family outcomes.

The Center for Family Representation in New York, a not-for-profit organization employing experienced and well-trained child protection attorneys, clearly has demonstrated the positive impact of high quality representation. Each attorney is responsible for a caseload of 45 to 60 cases, with the social workers on their team carrying caseloads of 35 to 50 cases.[240] Lower caseloads allow the staff to really get to know their clients and address their needs in a holistic way.

The outcomes for New York families are phenomenal. Of the 160 families CFR served since May 2004, 40% of the cases were received prior to the filing of an abuse or neglect petition. Out of these 65 "pre-court" phase cases, only two resulted in a neglect filing. Out of the 95 cases that CFR accepted soon after a petition had been filed, 70 cases are still active. In 48% of these cases, children were home within one year. In New York City overall, less than 23% of children in the same situation were home within one year.[241] The average foster stay in cases managed by CFR was 8.6 months. For cases handled exclusively by CFR soon after or at the time of filing – rather than cases that had already been in the system for months or years – the average length of stay is only 4.4 months. By comparison, the average foster care stay in New York City is 4.4 years![242]

CFR's tremendous success has brought New Yorkers huge tax savings. A year of foster care for one child costs New York City $18,000 to $49,000.[243] With average foster care stays falling from 4.4 years to 4.4 months, the city saves $72,600 to $197,634 per child on foster care alone! CFR estimates of the cost of representation *per family* ranges from $4000 to $6600.[244] In light of the savings, especially considering that many families they represent have more than one child, the investment is well worth the cost. Moreover, these figures do not even begin to include future savings from helping parents access needed services, keeping children in their communities and schools, and avoided mental health costs from the trauma caused by removal. This does not even take into account the most important consideration – the intangible benefit to a child placed in the best possible home. CFR is living proof that lower caseloads and access to adequate resources and support lead to better representation and better outcomes for children and families.

---

[240] Telephone Interview with Michele Cortese, *supra* note 42.

[241] *Id.* The range varies by age. Among children ages 0-2, 76% of children were still in care a year later. Among children ages 2-5, 89% of children were still in care a year later. Among children ages 6-9, 90% of children were still in care a year later. Among children ages 10-13, 93% of children were still in care a year later.

[242] *Id.* New York is ranked 49th in length of foster care stays. These successes were also present in 2005. Of those families assisted by CFR during a child protective investigation, foster care and family court filings were diverted in more than 90% of the cases; Of those families whose cases CFR received after a family court case had already started, children returned home safely in more than 30%, often in as little as a few weeks and all within one year of CFR beginning the case; in an additional 10%, children are no longer in care and are with a relative while a parent pursues long-term rehabilitation: more than 30% now enjoy unsupervised visits and should be reunified in the next six months; by comparison, in more than 85% of family court's pending cases, children still have not returned home within one year and ACS reports that currently more than 43% of the children in foster care have been there since 2003. CFR 2005 Accomplishments, http://www.cfrny.org/2005_accomp.asp.

[243] Telephone Interview with Michele Cortese, *supra* note 42.

[244] *Id.*

VIII. Conclusion

While there are various alternatives to Connecticut's current per-case funding system, ***the experiences of other states with different models make it clear that almost any alternative to the current system would lead to better case outcomes.***

Switching from payment by the case to payment by the hour and increasing the effective hourly rate would decrease caseloads, enabling attorneys to represent their clients adequately. Even better outcomes could be achieved by contracting, for an adequate fee, with one or more non-profit legal services organizations to provide most of the representation, while relying on contract attorneys for conflicts. This more centralized model would ensure better monitoring, training, direct supervision, and the development of institutional competence and expertise. A centralized system of representation also helps attorneys gain access to support resources such as paralegals, experts, and private investigators.

The savings from such reforms would quickly outstrip the added costs. Better legal representation increases the likelihood that clients will receive needed services in a more timely fashion, and that children will not be traumatized by lengthy and numerous foster care and out of home placements. This can result in tremendous long-term savings by combating recidivism, family cycles of abuse and neglect, behavior disorder and substance abuse, and juvenile and criminal justice system involvement. Spending a little more on representation today will save Connecticut millions, while also doing what is best for our children. The key to sustainability will be to identify a way to capture some of the savings in the DCF and Judicial Department budgets that result from high quality representation and use them to help fund the improved system.