Providing Quality Representation for Abused and Neglected Children

Connecticut must ensure that the well being of its most vulnerable children is safeguarded and that their wishes are heard when plans are made about their futures. Connecticut can accomplish both goals by improving the quality of legal representation in child abuse and neglect proceedings and by ensuring that older children and youth are involved, in an age-appropriate manner, in all DCF meetings and court hearings about them.

Despite recent improvements, Connecticut’s system of legal representation in child protection proceedings falls short of providing high quality legal representation to all the children. The Commission on Child Protection was created by the Connecticut General Assembly in 2005 and staffed beginning in May 2006 with the appointment of the Chief Child Protection Attorney. The Commission was given statutory responsibility for (among other things) the appointment of attorneys and guardians ad litem in child protection proceedings (a responsibility previously held by the Judicial Department). In FY 07, the Commission provided attorneys to 14,416 children and indigent parents in Juvenile Matters cases and to 2,598 in Family Matters cases.

Currently, the Commission has an “independent contractor” model for appointed counsel, with a total of 196 separate contracts: 186 with solo practitioners and 10 with firms of two to three attorneys. The majority of these contracts (57%) are continuations of a pre-existing flat fee schedule ($500 per case for up to 30 hours of work). The remaining contracts are based on a newly-offered option for payment - $40 per hour for attorneys (and $15 per hour for paralegals and social workers assisting the attorney). Hourly billing is required of new contract attorneys.

In its first full year of operation (FY 07), some important changes were made to begin to improve the quality of legal representation, including:

- Standards of practice. Standards of practice were adopted and training provided on the standards to all new contract attorneys.
- Training. Free pre-service training (three days) and mentoring was required of all new contract attorneys. In-service training (three trainings/year) was mandated for all current contract attorneys.
- Caseload standards. New caseload standards were set: a) limiting attorneys to one court assignment, b) reducing the maximum caseloads for a majority of attorneys to 100 cases or less, and c) reducing the number of attorneys with over 150 cases. These changes enable attorneys to spend more time on their cases and help avoid scheduling conflicts that can result in court delays.
- Evaluation. Before contracts were renewed, the Chief Child Protection Attorney required each contract attorney to complete an application and have background and reference checks. The quality of representation was assessed through surveys of court personnel, other contract attorneys, youth in care over age 14, foster and adoptive parents, and Assistant Attorney Generals. New contracts were made only with those attorneys who met the Commission’s standards. An annual appraisal process, review of billing statements, periodic case audits, and in-person observation now provide ongoing assessment.
- Improving the practice model. The Commission issued a Request for Proposal for a “pilot” multidisciplinary child welfare law office that would link attorneys and social workers in an interdisciplinary and holistic model of legal representation that is considered to constitute
“best practice” in this field. The “pilot” is scheduled to begin accepting cases in September 2008 and will be independently evaluated.

Significant challenges remain in the current system, however. They include:

- **Quality assessment remains difficult.** Under the current model, the Chief Child Protection Attorney must assess the quality of representation provided by close to two hundred independent attorneys, and assure that these attorneys are adequately trained and supported. Although the hourly payment option is an improvement over the case rate (since monthly billing statements can provide some insight into work performed), monitoring attorneys in this independent contractor model is far more difficult than monitoring would be were representation provided through contracts with non-profit legal services programs or by staff attorneys in a state agency (e.g., Public Defenders) where there is in-house supervision.

- **Compensation remains low.** Attorneys who elect to be paid $500 per case have little incentive to devote sufficient time to the case; two hours of time results in a fee of $250/hour while a full 30 hours of time results in a fee of $16.67/hour. The attorneys paid $40/hour are paid well below market rates, and below even the rates paid for representation in similar matters before the Probate Court (i.e., court time at $75 for the first hour and $50 for each hour or part thereof; $50/hour for non-court time). Attorneys are expected to cover all costs of their practice (their own pay as well as their costs for office, insurance, secretarial staff, etc.) with this low hourly fee. Many states pay significantly more; appointed child protection attorneys in New York, New Jersey, and Massachusetts earn $70, $60 and $50 per hour, respectively.

- **Caseloads remain high.** Because fees are low, many attorneys compensate by accepting dozens of cases. As a result, many attorneys fail to devote the time to individual cases that is required and that the children desperately need. Too often attorneys make decisions without input from children and their families; both youth and lawyers report never even meeting each other. Indeed, the most recent report by the Juan F. Court Monitor found that only 8% of children’s attorneys attended DCF case planning meetings and family conferences at which important decisions about the child’s future are made. When attorneys do not meet with their clients or attend key meetings, client interests are not adequately represented.

> “[I have] failed to personally meet or speak with 90 percent of [my] own clients.”
> **Child Protection Attorney in Connecticut**

- **Youth and family participation in DCF meetings and court proceedings remains inadequate.** The recent report by the Juan F. Court Monitor found that just 17% of children and youth attended DCF case planning meetings and family conferences. Yet, it is vital that foster children and youth are involved – in an age-appropriate manner – when important decisions about their futures are made. Their appointed legal counsel must assure that this occurs. Disastrous situations such as disrupted placements (which can lead to school placement changes) can be avoided if youth first are consulted. Foster youth, who have been uprooted from their families, have a particularly strong desire to know what is going to happen to them to be sure that any changes being considered will meet their needs. The point is not that youth should make the decisions themselves, but rather that their input is essential to making good decisions. The more that youth are engaged in the decision-making process, the more likely they are to respond positively to choices made for placements and services.

> “Maybe you don’t want certain things, and when they do them anyway and they won’t work it’s too bad, too late.”
> **-- Foster youth**

When youth are provided with high quality legal representation, youth outcomes improve and state savings ensue. A pilot program to improve legal representation in Washington State reduced the time that youth spent in foster care by an average of 20%. The Washington pilot also demonstrated that quality representation resulted in better outcomes for children and their families; reunification rates increased from 37% to 56% and cases involving the termination of parental rights were cut in half. Children not only returned home, they returned to
safe homes and required no further involvement from the agency.

The Center for Family Representation in New York City, which uses an inter-disciplinary approach to representation, has reduced the average time in foster care from 4.2 years to less than 4 months. A similar reduction in time in foster care in Connecticut would save the state $36,000-$40,000 in foster care costs per child. There would be additional savings to the Judicial Department and DCF due to decreased caseloads.4

Additional reforms and resources are needed to assure competent legal representation for all children and youth in the child protection system. Although much progress has been made in a short time, much remains to be done to assure high quality representation for Connecticut’s most vulnerable children. Next steps include:

- Reducing reliance on independent contract attorneys. To most effectively provide legal representation to children in child abuse and neglect cases, a change in the model used by the Commission on Child Protection must be made – from one that relies on a cadre of independent contract attorneys to one based primarily on contracts with specialized, multi-disciplinary legal services practices or based in a public agency. By providing representation through organizations, rather than individual attorneys, it is easier to provide centralized training and oversight. Better access to social work and other support staff also ensures that an attorney’s time is spent most cost-effectively. The RFP issued by the Commission for a “pilot” model office is step in the right direction, but full implementation of a different model is essential (as New York, Chicago, and Colorado have done). To accomplish this:
  
  o Current funding for the pilot must be maintained in FY 09 and augmented in years thereafter;
  
  o Statutory authorization to use funds now appropriated for independent contract attorneys (hourly fees/case fees) for contracts with specialized legal services programs should be provided.

- Increasing funding to the Commission. The Commission is a young, small agency with enormous responsibility. Additional resources are essential to:
  
  o Increase payments to attorneys so caseloads can be reduced and more adequate time be spent with the children they represent;
  
  o Increase fees for attorneys who take the initiative and the time to become Certified Child Welfare Specialists;
  
  o Cover the costs of mandatory pre-service and in-service training for all attorneys;
  
  o Increase the number of staff attorneys at the Commission to provide better monitoring and more assistance to attorneys in the field and to act as liaisons with local courts and DCF offices;
  
  o Provide a social worker at the Commission to assist attorneys with client service needs assessments and referrals.

- Requiring appointed counsel to regularly meet with and consult their child/youth clients and, in an age-appropriate manner, include them in all meetings and court proceedings pertaining to their futures.

Reductions in unnecessary foster care stays, cost-savings in the child protection system, and improved outcomes for foster children and youth are achievable in Connecticut if all children and youth in foster care have well prepared, highly competent, and unquestionably committed legal advocates.

These most vulnerable children deserve nothing less.

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2 Public Act 05-3 (§§44-46); Conn. Gen. Stat. 46b-123c et seq.
