



# Maricopa County Office of the Public Advocate

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**TO: Arizona Supreme Court's Arizona Ethics Advisory Committee**

**SUBMITTED BY: Sabrina Ayers Fisher,  
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**DATE: February 4, 2020**

**RE: Comment on proposed EO 19-0003 for Rule 42.1 (h)**

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In Ethics Opinion No. EO-19-0003, the advisory committee proposed that an attorney is required to do the following:

1. Ensure the social worker is aware of the attorney's duty of confidentiality and that the duty extends to the social worker,
2. Inform the client of the confidentiality limits and risks created by the social worker's statutory reporting obligations,
3. Obtain the client's informed consent, and
4. Establish measures to remove the social worker from access to the client file.

The proposed ethical obligations that attorneys are tasked with is over-inclusive and misinterprets the application of the law regarding social workers. Specifically, §13-3620(A)(1) of the Arizona Revised Statute ("A.R.S.") requires a person to report to the appropriate authorities if there is a reasonable belief that a minor is or has been a victim of child abuse or neglect. A person is defined, in pertinent part, as a "social worker who develops the reasonable belief in the course of treating a patient." A.R.S. §13-3620(A)(1). (Emphasis added.) What this comment aims to do is distinguish whether social workers are treating clients subject to mandatory reporting or practicing social work not subject to mandatory reporting.

### **The Practice of Social Work is Broader than Treatment**

Title 32, Chapter 33 of the A.R.S. governs behavioral health professionals. It is there where the statute provide insight on the distinction between "treating patients" and "practicing social work." A.R.S. §32-3251(11) provides in its entirety the following:

"Practice of social work means the professional application of social work theories, principles, methods and techniques to:

- (a) **Treat** mental, behavioral and emotional disorders.
- (b) Assist individual, families, groups and communities to enhance or restore the ability to function physically, socially emotionally, mentally and economically.

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(c) Assess, appraise, diagnose, evaluate and **treat** individuals, couples, families and groups through the use of psychotherapy.” (Emphasis added.)

Pursuant to the above definition, the *practice* of social work is broad and encompasses more than solely treating clients as noted in subsection (a) and (c). It extends to also “[a]ssist[ing]... families... to “enhance or restore the ability to function...” *Id.* This language demonstrates that social workers can practice social work without actually treating clients. As such, the advisory committee should clarify that attorneys contracting social workers to be a part of the litigation team are not required to get informed consent from clients if the social worker is not providing treatment.

#### Multidisciplinary Parent Representation Model

The Office of the Public Advocate (“OPA”) represents indigent clients in family dependency, juvenile delinquency and mental health cases. One of the unique things OPA does is contract vendors such as social workers to assist parent representation in family dependency matters. This approach follows the Multidisciplinary Parent Representation Model.

Historically, the parent was – and still is in many areas – responsible for hiring a social worker to do home studies and assessments in his or her parent-child dependency case. This approach has proven to lengthen the rate and speed of family reunification, be costly for the parent and judicial system, and, among other things, result in more parent-child severances within the child welfare system. However, the old way is being replaced with a much more progressive model for parent representation.

The core value of the Multidisciplinary Parent Representation Model is to provide high quality legal representation to parents involved in the child welfare system nationwide. Under this model, attorneys hire professionals on the litigation team to assist with strengthening their parent skills and to help complete their court ordered services. These professionals are typically parent allies and social workers.

The parent ally is a parent who has navigated through the child welfare system with most of them successfully reunifying with their child(ren). Parent allies break down the child welfare system, explain the roles of the attorney and social worker – independent from the agency – and discuss ways for the parent to productively engage in the system. In other words, parent allies provide emotional support and mentorship to the parent through their success and experience with the child welfare system.

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On the other hand, the social worker is brought on to the case to help with a specific area or service, such as parenting skills, monitoring visits, and finding housing or employment. In addition, the social worker can accompany the parent to hearings and meetings, be a witness in support for the parent, and can also monitor parent-child visitation, giving parents more contact and time with their child.

In 2000, Washington state implemented multidisciplinary representation for indigent parents in dependency cases statewide. It was piloted by two counties and audited by the state Office of Public Defense. The pilot programs “showed increased quality and significant savings outpacing costs of the program overall...”<sup>1</sup> It was then when the Parents Representation Program, known as PRP, expanded into other counties and went statewide in 2018.<sup>2</sup>

In 2011, a rigorous study was conducted by the Washington State Office of Public Defense and the National Council of Juvenile and Family Court Judges.<sup>3</sup> This study compared non-PRP counties to PRP counties within the state of Washington.<sup>4</sup> Child welfare outcomes resulted in an 11% higher rate of reunification than counties without PRP.<sup>5</sup> The majority of PRP cases were more compliant with statutory time frames.<sup>6</sup> PRP cases had an 18.3% rate increase in earlier case resolutions, whereas non-PRP counties showed no significant change in reunification or case resolution rates.<sup>7</sup> Lastly, the PRP program offset costs and avoided an additional \$10 million each year in out-of-home care and adoption subsidy costs.<sup>8</sup>

Similarly, New York City contracted with interdisciplinary law offices (“ILO”), also known as a parent defender office, in 2007. These offices employ parent advocates (or parent allies) and social workers to help lawyers, agencies, and the court better understand parent needs. In fact, the ILO has other legal specialists to help with immigration, benefits, criminal, housing, or other concerns.<sup>9</sup> This team had remarkable results. “Over 50% of children avoid[ed] foster-care placement

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<sup>1</sup> Strong Families: How Does High-Quality Legal Representation for Parents Support Better Outcomes?, Casey Family Programs (2019), at page 3.

<sup>2</sup> *Id.*

<sup>3</sup> Measurable Success: Characteristics of Stronger Parent Representation that Improve Outcomes for Children by Jaclyn Chambers, Eliza Patten and Zabrina Alegrure (at page 3).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at pg 4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Strong Families: How Does High-Quality Legal Representation for Parents Support Better Outcomes?, Casey Family Programs (2019), at page 4.

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altogether.”<sup>10</sup> “For [ILO] children who enter[ed] care, their stay [was] less than 5 months compared to NYC’s median of 11.5 months.”<sup>11</sup>

As such, the multidisciplinary model is not only progressive, but it has proven to be successful from the very start. For these very reasons, OPA has started its own pilot program to provide high-quality parent representation.

### OPA Pilot Program

The OPA pilot program is part of the Multidisciplinary Pilot Program being run from the Office of Public Defense Services within Maricopa county. The Multidisciplinary Pilot Program was created in order to determine if using a “team” approach would produce faster unification times for parents and their children. There are two components to the Multidisciplinary Pilot Program: (1) the Family Involvement Center and (2) the social worker approach. Through the Family Involvement Center, parent allies mentor and guide parents through the child welfare system. For OPA role in the pilot program, OPA contracts with social workers to assist in providing additional services to parents that the Department of Child Safety (“DCS”) will not provide or is not providing the service in a way that is benefit to the client and their needs. The services can include monitoring visits so a parent can have additional visits to bond with their child, assisting a parent with locating safe and affordable housing and following through to make sure they have all the necessary items to obtain the safe and affording housing, assisting with applications for benefits (medical, disability, etc...) or another other service that is determined by the attorney and the client to help with the reunification process.

The contracted social workers neither treat parents for any mental, behavioral or emotional disorders, nor do they use psychotherapy treatment. In fact, OPA attorneys prohibit social workers from engaging in any type of treatment. The level of assistance from the OPA contracted social workers fits squarely within A.R.S. 32-3251(11)(b) – the only subsection that does not include treatment.

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<sup>10</sup> Measurable Success: Characteristics of Stronger Parent Representation that Improve Outcomes for Children by Jaclyn Chambers, Eliza Patten and Zabrina Aleguire (at page 4).

<sup>11</sup> *Id.*

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### **The Propose Order Chills Proper Parent Representation**

The conflict EO-19-0003 creates is a chilling effect on parent representation. OPA has a vested interest with having social workers on the team under the pilot program. This proposed order will certainly undercut that interest unless it clarifies that not all social workers are used to treat clients.

The issue is whether contracted social workers are (1) treating disorders (2) treating patients using psychotherapy or (3) assisting families to enhance or restore their ability to function. EO-19-0003 correctly describes in detail the duties of the social worker in connection to their employment with not only enhancing the agency's representation, but also restoring family reunification. "[The social worker] provide[s] emotional and crisis support to victims, inform victims of court dates, explain steps, and accompany victims to court."<sup>12</sup> Furthermore, "[t]hey do not provide formal counseling services to clients."<sup>13</sup> (underline added.) Even under the committee's description social workers are not treating clients.

Similarly, the role of the social worker is also explained as:

"Hav[ing] honest conversations with the parent about the parent's strengths and challenges and can then work with the parent to find resources to address identified problems. She has more time than the caseworker to locate effective services in the community and then can work closely with the client to access them. The social worker also communicates regularly with the agency case worker, accompanies the client to agency meetings and ensures that the client's voice is heard."<sup>14</sup>

The chilling effect that would certainly happen under this proposal requires a better understanding of where parents are coming from. Parents already feel disrespected and confused in an overly adversarial system that they are likely to refuse to share information with their caseworkers and typically do not view agencies as partners.<sup>15</sup> It is important for programs following the multidisciplinary model, like

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<sup>12</sup> See EO-19-0003 at page 1, Factual Background.

<sup>13</sup> *Id.*

<sup>14</sup> Strange Bedfellows: How Child Welfare Agencies Can Benefit from Investing in Multidisciplinary Parent Representation by Vivek S. Sankaran, Patricia L. Rideout and Martha L. Raimon, (at page 5).

<sup>15</sup> Strange Bedfellows: How Child Welfare Agencies Can Benefit from Investing in Multidisciplinary Parent Representation by Vivek S. Sankaran, Patricia L. Rideout and Martha L. Raimon, (at page 3).

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OPA's pilot program, to be built on a foundation of trust and loyalty. This foundation can not be built if parents cannot trust their social worker or understand where the social worker's loyalty may lay.

### **Conclusion**

In conclusion, we ask that the advisory committee consider narrowly tailoring its definition of a social worker as it relates to the mandatory reporting statute to only those that "develop a reasonable belief in the course of treating a patient." Further we ask that the advisory committee acknowledge that examples exist under subsection (b) of §32-3251(11) where a social worker does not engage in any form of treatment, thereby not triggering any mandatory reporting obligations. Therefore, advisement to a client and presumably the social worker of any limits and risks of hiring a social worker would be unnecessary under §32-3251(11)(b).

## **Measurable Success: Characteristics of Stronger Parent Representation that Improve Outcomes for Children**

Jaclyn Chambers, Eliza Patten, & Zabrina Alequire

### Executive Summary

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

### Introduction

Across the nation, the issue of inadequate legal representation for parents in child welfare proceedings is coming under scrutiny. While there is no nationally representative data available, several states have conducted thorough analyses of parent representation and have found significant areas in need of improvement. For example, a 2007 assessment led by the National Center for State Courts found that parent attorneys in Colorado faced a number of barriers to effective representation including high caseloads, poor compensation, lack of support services and resources, and lack of training.<sup>1</sup> In 2009, the American Bar Association conducted a performance-based analysis of Michigan parent attorney practice and discovered problems such as poor communication between attorneys and parents, limited out of court advocacy, and frequent use of substitute counsel.<sup>2</sup> Oregon's legislative Task Force on Dependency Representation issued a report in July 2016 detailing the reality of excessive caseloads, inadequate compensation for out-of-court work, lacking standardization, and a shortage of interdisciplinary models of practice.<sup>3</sup> Similar reports from North Carolina, and Wyoming highlight many of the same problematic issues.<sup>4,5</sup>

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

creating a lack of reliability for decisions of critical importance regarding family integrity and child safety and well-being.

When court cases are not processed in a timely and efficient manner, with complete and reliable information, children suffer by entering into unnecessary foster care placements and remaining in temporary placements for too long. The most recent national data shows that, for children exiting foster care in FY2014, the median length of time spent in foster care was 13.3 months, and over 25% were in foster care for 2 years or more.<sup>6</sup> These extended stays in foster care are correlated with a range of poor outcomes, including homelessness, poor educational attainment, and physical and mental health problems (see Breakout Box for more detailed information).

#### **EXTENDED FOSTER CARE AND CHILD WELL-BEING**

According to the Administration of Children, Youth and Families (ACYF), there are four key domains for child well-being: 1) cognitive functioning, 2) physical health and development, 3) emotional/behavioral function, and 4) social function.<sup>17</sup> Research has shown that children with extended stays in foster care have poor outcomes in each of these four areas:

- **Problems with cognitive functioning/academic achievement:** A longitudinal study comparing 603 youth aging out of foster care to a nationally representative sample of youth found that youth aging out of foster care are significantly less likely to have a high school diploma or GED (64% vs. 91%).<sup>18</sup>
- **Poor physical health:** Studies have shown that foster youth have high rates of physical health problems.<sup>19</sup> Some estimates indicate that over 80% of foster children have at least one chronic condition,<sup>20</sup> and foster youth frequently do not receive appropriate and timely care for their health problems.<sup>21</sup>
- **High rates of behavioral and emotional problems:** Among a nationally representative sample of youth aged 11 to 18 with long-term stays in foster care, 27% had clinical levels of emotional problems and 41% had clinical levels of behavioral problems.<sup>22</sup>
- **Social functioning problems:** A study that evaluated the long-term effects of foster care found that one-third of former foster youth were living in poverty and more than 20% experienced homelessness.<sup>23</sup>

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

#### Approach

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

1. **Strong practice standards for attorneys:** Attorneys have clear expectations to meet with their clients early and often, to provide strong advocacy in and out of court (including the appeals process when indicated), and to have an expert understanding of the relevant child welfare legal standards and statutes in order to provide effective representation.

2. Collaboration with interdisciplinary staff: Attorneys work in teams with social workers, parent advocates, and/or case managers. \*\*
3. Training: Staff receive initial and ongoing training on topics of direct relevance to representing parents in child welfare cases.
4. Oversight and evaluation: Strong systems of oversight are in place, such as client complaint procedures, performance evaluation as a condition of contract renewal, oversight by court systems, and/or other methods of supervision.
5. Adequate compensation and caseload: While structures and rates vary by jurisdiction, attorneys and interdisciplinary staff receive adequate compensation and reasonable caseloads needed to provide effective advocacy both in and out of court.

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

### Results

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

### **Child Welfare Outcomes**

- Increased rate and speed of permanency:
  - Evaluation data shows the following results for counties where Washington's PRP is in operation, compared to counties where PRP is not in operation:<sup>10</sup>
    - Exit rate to reunification is 11% higher.
    - Rate at which children are adopted is 83% higher.
    - Rate at which child children enter guardianships is 104% higher.
    - PRP helps achieve reunification about a month sooner and achieve other permanency outcomes about a year sooner.
  - California DRAFT courts improved reunification rates, reentry and guardianship rates, and the frequency of placement with kin, at rates exceeding their non-DRAFT counterparts.<sup>12</sup>
  - Compared to statewide data, Oregon's PCRCP is associated with an increased reunification rate and increase in the percentage of children who achieve permanency within 24 months.<sup>13</sup>
  - For New York CFR families who are reunified, the foster-care re-entry rate is approximately 7% within 1 year compared with a statewide rate of 15%.

- Reduced/avoided foster care:
  - Oregon's PCRCP is associated with a reduced rate of foster care:<sup>13</sup>
    - PCRCP counties had an average foster care reduction rate of 19% in 2014, compared to a statewide decrease of 4.33%.
    - From 2014 to June 2015, the statewide rate of change in children exiting foster care to guardianship was 12.5%, while in the PCRCP counties the average rate of change was 111%.
  - New York's CFR data shows that among the families they serve:<sup>14,15</sup>
    - Over 50% of children avoid foster-care placement altogether.
    - For CFR children who enter care, their stay is less than 5 months compared to NYC's median of 11.5 months.

### **Case Processing**

- Low continuances:
  - Because they have reasonable caseloads, Oregon's PCRCP attorneys are requesting fewer continuances due to scheduling conflicts.<sup>13</sup>
  - Washington's PRP demonstrates low continuances resulting from attorneys being over-scheduled (only 4% of all continuances).<sup>7</sup>
- Compliance with statutory timeframes:
  - The majority of PRP cases are compliant with statutory timeframes.<sup>8</sup>
  - PRP is associated with significant reductions in the average number of days from removal to shelter hearing.<sup>8</sup>
- Earlier case resolutions:
  - PRP had an 18.3% rate increase in earlier case resolutions, whereas non-PRP counties showed no significant change in reunification or case resolution rates.<sup>9</sup>

### **Cost Effectiveness**

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

### **Satisfaction and Quality Improvements**

- Courts pleased with model
  - Qualitative data from letters from judicial officers showed that courts were extremely pleased with the Washington PRP program.<sup>7</sup>
- Parent satisfaction
  - 96% of clients report being satisfied or very satisfied with services received from the Oregon PCRCP.<sup>13</sup>
- Better attorney-parent communication
  - An early study of the Washington PRP program found that attorneys are communicating frequently with parents, averaging 3.1 hours/month on dependency cases and 4.8 hours/month on TPR cases.<sup>7</sup>

- The Oregon PCRP legal representation team spends over 70 hours per month in direct client out-of-court contact.<sup>13</sup>
- Decreased attorney turnover
  - Qualitative interviews with judicial officers and attorneys indicated significant improvements in attorney turnover during the California DRAFT pilot.<sup>12</sup>

### Conclusion

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

### Implications and Recommendations

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

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#### **Notes:**

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

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

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

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# Strange Bedfellows



## How Child Welfare Agencies Can Benefit from Investing in Multidisciplinary Parent Representation

Vivek S. Sankaran, Patricia L. Rideout and Martha L. Raimon\*

*This is the second of a series of articles that examines the role that advocates for parents and families can play in furthering the well-being and safety of children. This article highlights emerging parent representation models that expedite the safe reunification of children already in foster care.*

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**Effective child welfare leaders are not interested in adversarial relationships with parents or their attorneys. They are invested in accomplishing their mission: making sure children, youth and families get what they need so that every child can grow up in a safe and stable family.**

*Patricia L. Rideout, Former Administrator,  
Cuyahoga County, Ohio, Division of Children and Family Services*

**A**fter the child welfare agency removed Maria's three children and placed them in foster care, Maria sank into despair. She was confused about why her children were taken from her. She could not understand the legal jargon on the paperwork given to her. She did not know why everyone refused to tell her where her children were and when she could see them next. By the time of the first court hearing, Maria was angry, upset and frustrated. She wanted nothing to do with the agency that took her children from her.

Child welfare agencies face a humbling task. Their overarching goal is to ensure the safety, permanency and well-being of children in their community, but they

face difficult decisions about when a child's safety is in jeopardy and placement in foster care may be necessary. Understanding the severe consequences for the child and his or her family, they must try, in the first instance, to prevent unnecessary removals of children from their families. When placement into foster care is necessary to ensure the safety of the child, they must work diligently to reunify children with their birth parents. And to do that, they must juggle a number of difficult tasks, such as identifying appropriate placements for children, securing services for parents and arranging visitation.

Yet, to achieve success, agencies must do one thing especially well in every circumstance—*they must effectively engage birth parents in all aspects of case planning*. If parents are not effectively engaged, agencies will too often fail in their efforts to either reunify children with their parents or to achieve another permanency goal for the children.

Effectively engaging with birth parents around this work has been a particularly elusive goal for child welfare agencies. Birth parents like Maria are often skeptical and mistrustful of the intent of the agency to help them get their children home, particularly when the agency has just removed their children from their care. Birth parents may be resistant to forming trusting relationships with caseworkers and may be reluctant to comply with services. Additionally, birth parents face a host of complicated legal and socio-emotional needs that require a significant amount

of time to address, which few caseworkers can provide, given high caseloads, sometimes limited skills and administrative responsibilities. In many jurisdictions, caseworkers are only expected to meet with parents once each month. Predictably, parent engagement remains a strong barrier to child welfare agencies achieving the outcomes they desire for children.

A new and perhaps surprising tool has emerged to assist child welfare agencies to better engage parents and achieve improved outcomes for children—*multidisciplinary parent representation*. Legal offices across the country are providing birth parents with the assistance of a team consisting of a lawyer, social worker and a parent mentor to help guide them through the complexities of a child welfare case. Rather than obstructing child welfare agencies from accomplishing their goals, these multidisciplinary teams are instead furthering agency goals by reducing unnecessary removals of children from their homes, achieving greater rates of reunification and expediting permanency for children – the same outcomes agencies are required to seek by federal law. Initial data from these programs demonstrate the dramatic impact that this type of parent representation can have on outcomes for children.

This article will explore the challenges facing child welfare agencies in engaging parents, suggest how multidisciplinary parent representation can assist them in reaching their goals and encourage child welfare agencies to prioritize strengthening parent representation in their jurisdictions.

## Lack of Parent Engagement Undermines the Ability of Child Welfare Agencies to Accomplish Their Goals.

Unlike other types of legal disputes, child welfare proceedings are unique in two major respects. First, at the outset of the case, in most instances all parties in a child welfare case share the same goal: to reunify children with their families. The Constitution of the United States presumes that the interests of children are best served when they are safely cared for by their birth parents.<sup>1</sup> Consistent with this presumption, both federal and state laws not only mandate that child welfare agencies keep children in their homes absent evidence that it would be “contrary to the welfare of the child” but also require agencies to make “reasonable efforts” both to prevent children from being removed and if removed, to expedite the child’s return

back home.<sup>2</sup> Agencies’ internal policies also reflect the primacy of reunification as their chief goal for those children who are removed from their parents. Thus, in nearly every child welfare case, all parties are legally obligated to work toward the same outcome for the child.

Second, child welfare cases are unique because the legal disputes primarily center on resolving what will happen in the future, as opposed to adjudicating historical facts. Most other legal disputes involve a contest over what happened in the past. Did the defendant rob the bank? Did the company breach the contract? Did the employer discriminate against the worker? Once the

historical facts are settled, the only remaining question is what the precise punishment or remedy will be for the offense. After that, the case is concluded. Neither the court, nor the parties, has an ongoing need to work together within the context of the case.

Child welfare cases are different. In many, the question of what happened in the past plays a minor role in the case. Parents often admit that they have neglected or abused their children in some way, but these admissions do not resolve the case. They simply mark the beginning of the next phase of the case, which often lasts months, if not years. And in this phase, the focus is entirely forward-looking. What should happen in the future? How will the court and the parties work together to return the child home safely? What services will be offered? When will the child be able to return home? Until that happens, how will visitation be structured and the child's needs best be met? Given the parties' shared goal of returning the child to his or her parents, the parties must work together to ensure that this will happen.

But it is not enough for the professionals to work together. A crucial requirement for achieving reunification is engaging parents to remain actively and constructively involved in their child welfare case and in their children's lives. Studies have repeatedly shown that when child welfare agencies are able to work effectively with birth parents, outcomes improve for children.<sup>3</sup> Effective engagement involves making parents meaningful partners in case planning, providing them with a voice in the decision-making process and sharing with them the information they need to successfully advocate for themselves and their children.<sup>4</sup> When this type of engagement occurs, parents are far more receptive to accepting services from child welfare and related agencies.<sup>5</sup> Additionally, parents who engage with child welfare agencies are more likely to feel hopeful, openly acknowledge problems and become motivated to change.<sup>6</sup> Unsurprisingly, the U.S. Department of Health and Human Services has observed that "[s]uccessfully involving family members in case planning may be the most critical component for achieving outcomes in child welfare practice."<sup>7</sup>

Yet, despite the consensus about the importance of engaging parents, the goal remains elusive. Recent federal child and family service reviews concluded that every state failed in this area, finding that agencies only involved parents and children in roughly 50 percent of cases.<sup>8</sup> The federal reviews also found that only 19 states met the national standard for reunifying children with their parents.<sup>9</sup> In only approximately 50 percent of all child welfare cases do agencies successfully reunify children with their parents.<sup>10</sup>

Child welfare agencies struggle to engage parents for a number of reasons.

Many caseworkers are overworked and lack the experience or the time to spend with parents, who often present complicated legal and emotional issues and carry a deep history of trauma.<sup>11</sup>

A caseworker's ability to engage parents is also impeded by their conflicting roles. Caseworkers often make decisions that result in the separation of the family. They then must work to reunify the same family they helped to separate. Additionally, if the parent fails to make progress on his or her service plan, then the same caseworker tasked with reunifying the family may simultaneously seek to terminate that parent's rights. Thus, understandably, many parents find it very difficult to trust caseworkers.

As a result of these and other dynamics, parents often feel disrespected, excluded from the decision-making process and "helpless and confused in an overly adversarial system."<sup>12</sup> They may refuse to share information with their caseworkers and typically do not view agencies as partners.<sup>13</sup> Rather, they view caseworkers as authority figures mandating what they must do and watching to see if they comply, exactly the sort of dynamic that undermines the goals of child welfare agencies.<sup>14</sup> So long as this dynamic remains, child welfare agencies will not achieve the best outcomes for children.

**Effective engagement involves making parents meaningful partners in case planning, providing them with a voice in the decision-making process and sharing with them the information they need to successfully advocate for themselves and their children.**

## Inadequate Parent Representation Throughout the Country Impedes Child Welfare Systems' Efforts to Engage Parents.

Unfortunately, inadequate parent representation only exacerbates the struggles faced by child welfare agencies to engage parents.

Consider this reality for Maria, the parent described earlier. Before her initial shelter care hearing, she is not greeted by an attorney. Instead, she waits alone outside of the courtroom. When the clerk calls her case, she remains motionless until the clerk tells her to come forward. The judge instructs her that the individual standing beside her is her lawyer. And for the next 10 minutes, a conversation occurs between the lawyers and the judges, none of which Maria comprehends. The clerk then announces a date for the next hearing, and Maria is abruptly hustled out of the courtroom. Just like that, the court has determined that her children remain in foster care. She doesn't know for how long.

She is confused. She is scared. She may not have seen her daughter for days. And her anger intensifies.

Over the next few weeks, her phone calls to her new attorney go unanswered, as do her many questions about what is happening with her daughter. When her caseworker approaches her and asks

her to discuss her case plan and engage in services, Maria shuts down. Yet, the clock dictating when her parental rights will be terminated continues to tick at a steady, rapid pace.

This is the reality faced by many parents in the child welfare system. While most states, but not all, provide parents attorneys in child welfare cases, they have failed to ensure that parents receive adequate legal representation.<sup>15</sup> Consequently, parents' lawyers are underpaid, overworked and inadequately trained.<sup>16</sup> They carry high caseloads. They lack access to experts from other disciplines, like social workers, investigators and parent partners. Rather than spending their time engaging with their clients or advocating for them at important agency meetings, they too often move from hearing to hearing, simply helping to process a case from one stage to the next.

National child advocacy groups have lamented the inadequacy of parents' counsel for many years. For example, a 2005 report by the American Bar Association described parent representation in one state as falling "disturbingly short of standards of practice."<sup>17</sup> Yet, systems have largely failed to respond to this outcry. Although significant reforms have occurred in some jurisdictions to strengthen legal representation in criminal matters, parent representation has received scant attention. But in maintaining the status quo of inadequate parent representation, systems are contributing to the isolation and frustration experienced by parents, further leading to their disengagement with the system.

Child welfare agencies have recently employed a number of innovations to improve their ability to engage parents, including convening team decision-making meetings,<sup>18</sup> employing parent mentors to help parents navigate the system and connecting birth parents and foster parents to ensure that parents remain involved in raising their children even when children are not in their care. But they have yet to recognize the link between strong parent representation and parent engagement. The next section discusses how multidisciplinary parent representation can serve as an important tool to engage parents and reach common goals.

**Inadequate parent representation only exacerbates the struggles faced by child welfare agencies to engage parents.**



## Multidisciplinary Legal Representation Can Be an Effective Tool to Engage Parents.

Consider this alternate reality for Maria. While waiting anxiously in the hallway in front of the courtroom prior to the commencement of her initial shelter care hearing, she is greeted by three members of her new legal team— an attorney, a social worker and a parent mentor. Recognizing her anxiety, her team takes Maria to a private meeting room, where they explain their role, their undivided loyalty to her and their legal obligation to keep their communications confidential unless given Maria's permission. The team also tells Maria about what will happen next in the case, what they will be asking for and what they expect the child welfare agency to request. But most importantly, the team gives Maria a chance to tell her story and to tell them exactly what she wants for herself and her child. Maria has never been given the chance to do this. After the meeting, Maria takes a deep breath and enters the court hearing feeling less angry and more willing to listen to and work with everyone on her case. She feels more willing to engage with the system, knowing that advocates presenting her perspective are on her side and will support her. She also knows that she can rely on her team to advocate for her on an ongoing basis.

Across the country, multidisciplinary parent representation practices, like the one described above, are emerging and place parent engagement at the core of their work. These offices provide parents with the assistance of a team made up of an attorney, a social worker and a parent mentor to help them navigate the child welfare system. Each partner plays a crucial role in helping the parent feel supported and engaged.

The attorney provides quality legal representation to the parent, both inside and outside the courtroom. He or she meets with the client, investigates the facts of the case, counsels the client about the various options and possibilities, advises on what is likely to happen and then zealously advocates for the parent based on the client's goals. The attorney also works with the other players in the case, such as the caseworkers and the children's attorneys, recognizing the need to collaborate around planning for the child and family, while also understanding that there may be times where issues need to be aggressively litigated in the courtroom. Importantly, the attorney, who may be better able to access current information about the family, investigates the

facts of the case and shares relevant information with both the agency and the court to ensure that all players have an accurate understanding about what transpired prior to the filing of the petition. This stands in stark contrast to the typical practice seen across the country.

The social worker on the multidisciplinary team is able to connect with the parent in ways that the agency caseworker cannot because she, unlike the agency caseworker, has undivided loyalty to the parent. Thus, she is able to have honest conversations with the parent about the parent's strengths and challenges and can then work with the parent to find resources to address identified problems. She has more time than the caseworker to locate effective services in the community and then can work closely with the client to access them. The social worker also communicates regularly with the agency caseworker, accompanies the client to agency meetings and ensures that the client's voice is heard.

Finally, the parent mentor, who herself successfully navigated the child welfare system to reunify with her child, provides emotional support to the parent so that her energy can be used productively in service of the legal proceeding. The parent advocate also discusses ways for the parent to productively engage with the system and helps to ensure that the legal team—along with the other players in the system—effectively engage with the parent. The parent advocate provides a consistent reminder to all the stakeholders about the need to tailor the intervention to address the family's identified needs.

Although this new model of parent representation is just emerging, initial data demonstrates the dramatic impact it can have on outcomes for children. For example, the Center for Family Representation (CFR) in New York City,<sup>19</sup> which represents parents using multidisciplinary legal teams, prevented the need for foster care for many children, reduced the length of stay of other children and reduced the rate of children re-entering the system. Data tracked since 2007 demonstrate that more than 50 percent of children of CFR clients avoid foster care placement altogether.<sup>20</sup> Where foster care cannot be avoided, the median length of placement for children of parents served by CFR is just

five months compared with a citywide average of nearly a year.<sup>21</sup> Preliminary data also indicate that children of parents served by CFR re-entered the foster care system after their case was closed at a rate of approximately 1 percent, compared with a statewide foster care re-entry rate of 15 percent.<sup>22</sup> Judges working with CFR's multidisciplinary teams noted that because CFR attorneys knew the facts of their cases better and proposed solutions to the court, court orders were better tailored to meet the needs of families.<sup>23</sup>

CFR's services are also cost-effective. They cost approximately \$6,500 per family over the entire life of the case, a sum that is vastly less expensive than a single year of foster care for a single child, which can range from \$25,000 to \$60,000 dollars per year, depending on a variety of factors including where and in what kind of setting the agency places the child.<sup>24</sup> *Thus, for every child prevented from entering foster care, or for every child whose length of stay is reduced by months, the system can save thousands of dollars.* In fact, since 2007, CFR services have saved the foster care system more than \$30 million.<sup>25</sup>

The Washington State Office of Public Defense (OPD), which also provides parents with multidisciplinary legal representation, has achieved similar outcomes.<sup>26</sup> During a three-year pilot period, data showed that there was an 11 percent increase in the reunification rate in counties served by OPD.<sup>27</sup> Data also demonstrated that there was a 104 percent increase in the adoption rate and an 83 percent increase in the guardianship rate in the counties served by OPD, demonstrating that this new model improves all types of child welfare outcomes.<sup>28</sup> Researchers found that the increased reunification rate resulted in children spending one less month in foster care; the increased adoption and guardianship rates meant that permanency was accelerated by approximately one year.<sup>29</sup> Commentators observed that, as a result of OPD's work, "[p]arents are more willing to engage in services and work with their agency caseworkers, so there are fewer terminations. When families cannot reunify, OPD attorneys advise clients about adoption with contact and guardianship possibilities, and work to negotiate those outcomes."<sup>30</sup> Thus, even when reunification may not be possible, multidisciplinary parent representation allows and supports parents to be fully engaged in planning for other options for their children.<sup>31</sup>

The initial data suggest that multidisciplinary parent representation can dramatically improve parent engagement, supporting parents to be partners in the child welfare system's

efforts to help children, and in doing so, improve outcomes for children. More research must be done to demonstrate the effectiveness of these multidisciplinary models, but the unfortunate reality is that this type of legal representation is rare. Instead, the inadequate parent representation that is prevalent often serves as a major impediment to engaging families, and therefore undermines the goals of child welfare agencies.

This is precisely why child welfare agencies must take the lead in creating awareness and advocating for a better system of representation for parents. Child welfare leaders are keenly aware that even children who need to be separated from parents suffer and that agencies must work diligently to reunify children safely with their parents. And child welfare leaders are aware of the research on poor outcomes of children in foster care, especially those children who age out of the system without ever having achieved permanency, and thus they want to see parents succeed. In short, good child welfare leaders are not interested in adversarial relationships with parents and their attorneys, but instead are interested in ensuring that children—and their parents—get the assistance they need.

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## A Call to Action

At its best, parent representation can be an effective tool in helping to ensure that all voices are heard in the court process and that parents work in partnership with the child welfare system to jointly plan for the well-being and safety of their children. At its worst, ineffective parent representation can lead to the further isolation parents experience and can impede the innovative efforts being made by agencies. In short, child welfare agencies must seize this opportunity to assist families by supporting and investing in this needed service.

What does it mean for agencies to invest in parent representation? At a minimum, agencies must begin to speak out about the importance of parent representation and how effective parent representation promotes many of the same outcomes sought by agencies, including successful permanency for children. When parent representation offices are advocating for increased funding, child welfare agencies should be allies in their efforts, explaining to legislative bodies how effective advocacy for parents is not tangential to ensuring children's safety and well-being, but is, in fact, crucial to a well-functioning child welfare system.

Nationwide, there are models of child welfare agencies advocating for quality representation for parents. For example:

- In Allegheny County, Pennsylvania, the child welfare agency provides **direct funding** for the representation of parents.
- In the District of Columbia, the Child and Family Services Agency has used **Title IV-E waiver funds** to support legal advocacy for parents prior to the filing of the petition.
- In Cuyahoga County, Ohio, the child welfare agency initiated a campaign to strengthen parent legal representation and the **Ohio Supreme Court** has agreed to fund a parent representation pilot, expected to start in the spring of 2016. These efforts reflect but a few of the ways in which child

welfare agencies can take the lead to address this important issue.

Think back to Maria's story and how the quality of legal representation can affect the trajectory of Maria's case. And think about whether child welfare systems will be able to achieve the best outcomes possible if parents like Maria do not receive adequate legal representation, and therefore, do not fully engage with the system. That is the question before us. And that is the call to action child welfare agencies must answer.

**At a minimum, agencies must begin to speak out about the importance of parent representation and how effective parent representation promotes many of the same outcomes sought by agencies, including successful permanency for children**

# Endnotes

1. See, e.g., *Santosky v. Kramer*, 455 U.S. 745, 753-754; 102 S. Ct. 1388; 71 L. Ed. 2d. 599 (1982).
2. See 42 U.S.C. § 671(a)(15); 42 U.S.C. § 672(a)(2)(A)(ii).
3. Rice, K. & Girvin, H. (2014). Engaging families, building relationships: Strategies for working across systems from a social exchange perspective. *Advances in Social Work*, 15(2), 306–317; *Family Reunification: What the Evidence Shows*. (June 2011). Child Welfare Information Gateway; Cheng, T.C. (2010). Factors associated with reunification: A longitudinal analysis of long term foster care. *Children and Youth Services Review*, 32(10), 1311–1316.
4. Rice & Girvin (2014); Gladstone, J. et al. (2012). Looking at engagement and outcome from the perspectives of child protection workers and parents. *Children and Youth Services Review*, 34(1), 112–118; *Family Reunification: What the Evidence Shows*. (June 2011).
5. Cheng (2010).
6. Gladstone et al. (2012).
7. *Engaging Families in Case Planning*. (September 2012). Child Welfare Information Gateway.
8. Ibid.
9. *Family Reunification: What the Evidence Shows*. (June 2011).
10. Ibid.
11. *The Family Engagement Inventory: A Brief Cross-Disciplinary Synthesis*. (August 2014). Child Welfare Information Gateway.
12. Darlington, Y., Healy, K. & Feeney, J. (2010). Challenges in implementing participatory practice in child protection: A contingency approach, *Children and Youth Services Review*, 32(7)1020–1027.
13. *Family Reunification: What the Evidence Shows*. (June 2011).
14. Darlington et al. (2010).
15. For an overview of the ways in which states are inadequately providing parent representation, see Sankaran, V. (2011). No harm, no foul? Why harmless error analysis should not be used to review wrongful denials of counsel to parents in child welfare cases. *South Carolina Law Review*, 63(1), 13–41.
16. See, e.g., Minnesota Judicial Branch. (November 2008) *Report of Children's Justice Initiative Parent Legal Representation Workgroup to Minnesota Judicial Council*, available at <http://www.leg.state.mn.us/docs/2009/other/090151.pdf> (noting that “[t]here is no statewide funding and no standards of practice for attorneys representing parents.”); Outley, A. (2004). *Representation for Children and Parents in Dependency Proceedings*, available at [http://www.pewtrusts.org/our\\_work\\_report\\_detail.aspx?id=49014](http://www.pewtrusts.org/our_work_report_detail.aspx?id=49014) (noting that almost three-fourths of court-improvement specialists believed that attorneys for parents were not adequately compensated); Giving overmatched parents a chance [Opinion]. (June 17, 1996). *New York Times*, A14, available at <http://www.nytimes.com/1996/06/17/opinion/giving-overmatched-parents-a-chance.html> (observing that “parents are generally stuck with harried court-appointed lawyers who are juggling many cases, and who often show up unprepared and late for hearings.”); Appellate Division First Department Committee on Representation of the Poor. (2001). *Crisis in the Legal Representation of the Poor*, available at [http://www.courts.state.ny.us/press/old\\_keep/1ad-rep-poor.shtml](http://www.courts.state.ny.us/press/old_keep/1ad-rep-poor.shtml) (writing that “[a]s a result of shamefully low rates of compensation of assigned counsel, lack of resources, support and respect, inadequate funding of institutional providers, combined with ever-increasing caseloads, New York's poor are too often not being afforded the ‘meaningful and effective’ representation to which they are entitled.”).

17. *Michigan Court Improvement Reassessment*. (2005). Muskie School of Public Service & ABA Center on Children and the Law, available at [http://muskie.usm.maine.edu/Publications/cf/MI\\_CourtImprovementProgramReassessment.pdf](http://muskie.usm.maine.edu/Publications/cf/MI_CourtImprovementProgramReassessment.pdf). The report further noted that parents reported that “their attorneys do not return phone calls or provide parents with their phone numbers, do not explain what is going on in their cases, do not give parents a chance to tell their side of the story at court hearings, and make deals without consulting them. Parents describe talking to their attorneys for only a few minutes before their hearings.”
18. The Annie E. Casey Foundation has played a pivotal role in spreading team decision-making across the country. See The Annie E. Casey Foundation. (2002). *Involving the Family and Community in Child Welfare Decisions*, available at <http://www.aecf.org/resources/team-decisionmaking-involving-the-family-and-community-in-child-welfare-dec/>, for more information about this work.
19. More information about the Center for Family Representation is available at <http://www.cfrny.org>.
20. See Center for Family Representation. *Our Results*, available at <http://www.cfrny.org/about-us/our-results/>.
21. Center for Family Representation. *Our Results*.
22. Thornton, E. & Gwinn, B. (2012). High-quality legal representation for parents in child welfare cases results in improved outcomes for families and potential cost savings. *Family Law Quarterly*, 46(1), 139–154.
23. Thornton & Gwinn (2012).
24. Thornton & Gwinn (2012).
25. Center for Family Representation. *Our Results*.
26. More information about the Parent Representation Program at OPD can be found at <http://www.opd.wa.gov/index.php/program/parents-representation>.
27. Thornton & Gwinn (2012). p. 147.
28. Thornton & Gwinn (2012). p. 147.
29. Thornton & Gwinn (2012). p. 147.
30. Thornton & Gwinn (2012). p. 148.
31. In Part I of this Series, the article detailed outcomes of several multidisciplinary efforts, including the Detroit Center for Family Advocacy, which provides multidisciplinary parent representation prior to the filing of a petition. Not one of the 112 children served by the Center during its three year prevention pilot period entered foster care. For more information about this prevention model, see Sankaran, V. S. & Raimon, M. L. (2014). *Case Closed: Addressing Unmet Legal Needs & Stabilizing Families*. Center for the Study of Social Policy, available at <http://www.cssp.org/reform/child-welfare/Preventive-Legal-Representation.pdf>.

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STRATEGY BRIEF

# STRONG FAMILIES

## How does **high-quality legal representation for parents** support better outcomes?

Quality legal representation in court is an essential safeguard to ensure that pertinent information is conveyed to the court, all parties' legal rights are well protected, and the wishes and needs of all parties are effectively voiced. In turn, this helps judges make the best, most informed decisions possible in every case.

However, parents facing the potential loss of their children in dependency courts across the country are not afforded the same universal right to counsel as defendants in criminal proceedings. Access to representation for parents involved with the child welfare system who cannot afford to hire a private attorney varies from state to state — and the quality of that representation, when provided, varies even more.

In December 2018, the Children's Bureau [revised its Child Welfare Policy Manual](#) to permit Title IV-E agencies to claim administrative costs for attorneys to provide legal representation for children and their parents. This [policy change](#) makes new entitlement funding available to support all jurisdictions in offering parents legal representation in dependency hearings, and/or improving the quality of that representation in accordance with best practice.



# How does high-quality legal representation for parents support better outcomes?

According to the Children’s Bureau, this change is intended to help ensure that reasonable efforts are made to prevent removal, that parents and youth are engaged in case plans, and that timely efforts are made to finalize permanency plans for children. [Research in multiple states](#) further highlights the importance of quality legal representation for parents, suggesting that it has the potential to support:

- More timely [permanency](#) (including reunification, adoption, and guardianship).
- Increased parental engagement and perceptions of fairness.
- More individualized case plans and better access to services.
- More frequent and timely family visitation.
- Better judicial decision-making.
- Cost savings for child welfare agencies due to reduced time in foster care.<sup>1</sup>

## High-quality representation

Due to the unique and complex nature of dependency cases, **interdisciplinary representation** is considered to be the best way to deliver high-quality representation. Teams commonly include attorneys, social workers, and [parent mentors/advocates](#), but also may include professionals with expertise in substance abuse treatment or other legal matters affecting families, such as domestic violence, education, delinquency, employment, or housing concerns.

## CORNERSTONE ADVOCACY

Developed by the Center for Family Representation in New York City, [Cornerstone Advocacy](#) is an approach that can be used by any parent’s attorney to support family reunification. It involves intensive advocacy during the first 60 days of a case in four areas:

- **Visiting arrangements** for children and their parents that are as frequent and long as possible, and closely mimic family life.
- **Placements** that support a child’s connection to family and other important relationships.
- **Services** that address a parent’s and child’s strengths and needs.
- **Conferences and meetings** that provide opportunities for parents and older youth to meaningfully participate in their case planning.

Other characteristics of effective representation include the following:

- **Attorneys as unfailing advocates for their clients.** Positive outcomes can sometimes be achieved through mediation or other non-adversarial means, and lawyers must also be prepared to use all available legal tools — including motions and appeals — to protect and advocate for parents’ rights. Parents are naturally more likely to engage and open up

Parents’ attorneys are the best friends child welfare agencies don’t know they have.

— MARTIN GUGGENHEIM  
CO-DIRECTOR, FAMILY DEFENSE CLINIC, NEW YORK CITY

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to representatives who they perceive to be fully dedicated to their goals.

- **Legal advocacy beyond the courtroom.** In foster care cases, what happens outside the courtroom is often more important than what occurs in court. It is especially critical for parents to be supported at child welfare agency meetings. Effective representation helps shape effective service plans by more accurately identifying the needs of families and ensuring that services are tailored to them.

These tenets of effective attorney practice are supported by the following system characteristics:

- **Attorney support and accountability.** The American Bar Association [Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases](#) cover hiring, training, and supervising parent attorneys, in addition to encouraging courts to establish uniform standards and hold attorneys accountable for compliance.
- **Specialized attorney training.** In addition to being experts in family law, parents' representatives must be well informed about the [impact of trauma](#) on parents' behavior and decision-making, as well as [systemic bias](#) and the ways that racial, social, and cultural differences may impact the attorney/client relationship.
- **Representation early in the case.** In some jurisdictions, representation may be appointed as late as the first permanency hearing or, in rare cases, the hearing to terminate parental rights. To

be most effective, parent representatives must be available to their clients at the very first hearing, if not before.

- **Reasonable caseloads and compensation.** Although the numbers will vary by jurisdiction, the American Bar Association [Indicators of Success for Parent Representation](#) recommend maximum caseloads that provide adequate capacity to handle all cases through appeal, if necessary, and rates that are sufficient to support an attorney's practice while adhering to this cap.<sup>2</sup>

## Jurisdictional examples

**Washington state** was the first jurisdiction to provide access to multidisciplinary representation for all indigent parents in dependency cases statewide.<sup>3</sup> The program began in 2000 with a pilot in two counties, which followed an [audit by the state Office of Public Defense](#) that found the previous system of county-funded representation resulted in vast inconsistencies across the state, significantly lower spending on parent representation than agency representation, and fundamental quality concerns, including a high continuance rate due to the size of caseloads carried by parents' attorneys.

Based on successful [evaluations of the pilot](#), which showed increased quality and significant savings outpacing costs of the program overall, the state Legislature gradually expanded authorization to additional counties until the Parents Representation Program (PRP) went statewide in July 2018. For the

You don't need to wait for a statewide effort — or to be an institutional provider — to take a step toward the highest level of effective legal representation. As a sole practitioner, having a parent mentor on the team goes a long way toward achieving an interdisciplinary focus.”

— MIMI LAVER,  
DIRECTOR, LEGAL REPRESENTATION, AMERICAN BAR ASSOCIATION CENTER ON CHILDREN AND THE LAW



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two hours because a local charity already had arranged for the office to have strollers on hand.

- ILO offices sometimes represent clients who give birth while their older children are in foster care. ILOs are able to be present while their clients are interviewed in the hospital, attend child safety conferences, and begin working on cases even before the agency files for removal. In many of these cases, the ILO has been able to persuade the agency that the newborn can remain safe with the mother and should not be placed in foster care, or the ILO has been successful in challenging the agency's decision to remove the child.

Recently, New York University School of Law, Action Research Partners, and Casey Family Programs completed the [largest-ever study of parent representation in dependency court](#), tracking outcomes for 9,582 families and 18,288 children during a four-year period. The study compares outcomes for families represented by ILOs with those of similar families represented by panel attorneys. Key findings include:

- Children placed in foster care were **safely returned to their families about 43 percent more often in the first year** when their parents were represented by an ILO.
- Children's **time in foster care was reduced by nearly four months** during the study period when parents were represented by ILOs.
- Reduced time in foster care represents **up to \$40 million in potential annual savings** in foster care board rates.
- Children were **just as safe** with ILO representation. They were no more likely to experience a subsequent substantiated report of maltreatment.

A number of other jurisdictions have followed Washington and New York City's examples in recent years. **Colorado** established an [Office](#)

[of Respondent Parents' Counsel](#) in 2016 to work with the state's judicial districts to establish uniform, high-quality legal representation. Improved reunification outcomes in **Sandoval County, N.M.**, which employs multidisciplinary parent representation, has prompted the state to explore expansion of the model. In addition, **California, New Mexico, Michigan, Louisiana, Oregon, Texas, Delaware, and Mississippi** are committed to utilizing a multidisciplinary model and/or lowering attorney caseloads to improve legal representation for both parents and children.

## Resources to support implementation

States have considerable flexibility in how they implement the recent [Title IV-E policy](#) change depending on the current status of parent representation in their jurisdiction.<sup>7</sup> For example, the funds could be used to:

- Provide every parent with an attorney at or before the initial hearing, in jurisdictions where clients currently may not be provided a lawyer until their case approaches termination of parental rights.
- Hire additional attorneys, in jurisdictions where average caseloads are much higher than recommended, so that attorneys can work in a more high-quality way with clients.
- Create a workgroup to review and adapt American Bar Association model standards of practice in state-specific ways.
- Pilot or expand interdisciplinary representation by hiring social workers and/or parent mentors to support attorneys.
- Explore opportunities to provide pre-petition representation, helping families to resolve ancillary legal issues before they reach the point of removal.

A number of resources are available to support implementation of high-quality legal representation, including:

# How does high-quality legal representation for parents support better outcomes?

RESOURCE	DESCRIPTION
<a href="#">Information Memorandum 17-02</a>	The Children's Bureau's overview of the importance and benefits of quality parent representation.
<a href="#">National Alliance for Parent Representation</a>	Protects the rights, dignity, and integrity of families involved in the child welfare system by pursuing justice through effective legal, legislative, and policy advocacy. The Alliance is a project of the American Bar Association Center on Children and the Law, with investments from Casey Family Programs and a national steering committee of legal experts.
<a href="#">Family Justice Initiative (FJI)</a>	Unites professionals from around the country to ensure that all children and parents have high-quality legal representation when courts make life-changing decisions about their families. The Initiative is a collaboration of the American Bar Association Center on Children and the Law, Children's Law Center of California, and the Center for Family Representation.
<a href="#">Attributes of High-Quality Legal Representation for Children and Parents in Child Welfare Proceedings</a>	FJI's description of the fundamental attributes for quality legal representation for parents and children in child welfare proceedings.
<a href="#">Research on Legal Representation Program Outcomes</a>	FJI's ongoing work to determine whether the FJI model of legal representation positively impacts outcomes for parents and children.
<a href="#">American Bar Association Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases</a>	Drafted with input from practicing parents' attorneys and child welfare professionals, these standards acknowledge the challenges of day-to-day practice while promoting consistent, high-quality representation.
<a href="#">Interim Report to Chief Judge DiFiore</a>	New York State's Commission on Parental Legal Representation recently released its initial findings and recommendations.

- 1 A summary of research can be found in the U.S. Department of Health and Human Services, Children's Bureau. (2017). ACYF-CB-IM-17-02: High Quality Legal Representation for All Parties in Child Welfare Proceedings. Retrieved from <https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf>. Also see <https://doi.org/10.1016/j.childyouth.2019.04.022>.
- 2 Family Justice Initiative. Attributes of High-Quality Legal Representation for Children and Parents in Child Welfare Proceedings. Retrieved from <https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2019/01/FJI-Attributes-Fact-Sheet.pdf>.
- 3 Information in this section is adapted from interviews with Joanne Moore (April 17), Michael Heard (April 4), Brett Ballew (April 4), and Rob Wyman (April 17).
- 4 Personal communication with Joanne Moore, June 19, 2019.
- 5 Courtney, M. E., & Hook, J. L. (2012). Evaluation of the impact of enhanced parental legal representation on the timing of permanency outcomes for children in foster care. *Children and Youth Services Review, 34*(7), 1337-1343.
- 6 Information in this section is adapted from an interview with Susan Jacobs and Martin Guggenheim, March 28, 2019.
- 7 Information in this section is informed by an interview with Mimi Laver, American Bar Association Center on Children and the Law, April 29, 2019.

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