

BEST PRACTICE GUIDELINE: THE RISE OF THE ORGANIZATIONAL PRACTICE OF CHILD WELFARE LAW: THE CHILD WELFARE LAW OFFICE

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I. Introduction

In January of 2007, the National Association of Counsel for Children (NACC) held what is believed to be the nation's first Children's Law Office Symposium. The Symposium was hosted by the University of Colorado Law School, and sponsored by the American Bar Association Center for Children and the Law, and the Colorado Office of the Child's Representative. The Symposium was a gathering of law offices dedicated to providing legal services to children in abuse, neglect, and dependency court proceedings, also known as dependency or child welfare law. The purpose of the Symposium was to gather together the nation's pioneering child welfare law offices and to establish and implement best practice models for the delivery of specialized child welfare legal services.

This was a landmark event in that such dedicated offices have been a relatively recent development in American law and there remain relatively few such offices. This stands to reason as it is only in the past thirty to forty years that an attorney could practice child welfare law at all and only more recently in a concentrated fashion. Child welfare law is the outgrowth of American society's recognition of the presence of child maltreatment and our choice to intervene in the lives of families. This occurred in the 1960s and 1970s and the attorney practice in those years was largely part time and pro bono. But the practice evolved and now exists as a legitimate legal specialty. In 2001, the American Bar Association approved a definition of [*1098] child welfare law establishing it as a recognized specialty area within which an attorney may become certified.

A result of the development of child welfare law is a growing work force of attorneys, even certified specialists, who practice law for children on a full time basis. It is a complex and difficult practice that requires structures that promote the proficient delivery of legal services - in other words, a child welfare law office. The NACC recognizes that the delivery of high quality legal representation for children is a demanding and complex undertaking, and believes that the structure provided by a children's law office is a preferred model to ensure attorneys are provided with the necessary time, compensation, resources, support, and supervision for delivery of high quality legal services.

The Children's Law Office Symposium was the culmination of the NACC's Children's Law Office Project designed to identify, unify, and provide operational assistance to child welfare law offices. A product of this effort is the Child Welfare Law Office Guidebook: Best Practice Guidelines for Organizational Legal Representation of Children in Abuse, Neglect, and Dependency Cases (Guidebook), reproduced in this law review.

The long-range goal of **the Children's Law** Office Project is to encourage **the** proliferation of model **children's law** offices. In this way, **the** Symposium was not an end, but rather a beginning. Present at **the** beginning were thirty-nine **children's law** offices represented by sixty attorneys. Those offices and attorneys are listed in **the** appendix to this article.

The following article is derived from **the** Symposium opening comments delivered by **Leslie Starr Heimov**.

II. **The** Delivery of Legal Services for **Children**: Past, Present, and Future

"**The** right to representation by counsel is not a formality," **the** Supreme Court recognized in *Kent v. United States*.¹ "It is not a grudging gesture to a ritualistic requirement. It is **the** essence of justice."² In a fair and just legal system, **the** voices, perspectives, and interests of all parties must be considered and zealously represented in **the** court process.

[*1099] **Child welfare** attorneys embrace **the** principle set forth by **the** Kent court. Whether in a small rural office, a large metropolitan state agency, a government-funded office, or an office dependent upon fundraising, whether **practicing** in a state with a client directed scheme or advocate driven model of representation, attorneys who represent **children** and youth are committed to ensuring that their clients receive **the** most effective representation possible and that their efforts lead to improved outcomes for **children** and families.

A. Past: **The** Development of **Child Welfare Law**

The development of **child welfare law** in **the** United States has a long and multifaceted history dating back to **the** sixteenth century and **the** English Poor **Laws**.³ It is **the** story of **the** evolving status of **children** from being viewed as property to becoming rights-based citizens. Historically, **child** protection in America was based on **the** good intentions of individuals to protect **children** from poverty or danger.

State intervention into family matters is derived from **the** state's authority as *parens patriae*, or ultimate parent.⁴ In most jurisdictions **the** state can intervene in family matters based on a prima facie showing that a **child** is likely to be in danger of imminent harm. Dependency court⁵ judges are charged with balancing **the** parents' constitutional right to direct **the** upbringing of their **children** with **the** state's authority to protect **the child's** safety.⁶

¹ [383 U.S. 541, 561 \(1966\)](#)

² *Id.*

³ See generally Marvin Ventrell, Evolution of **the** Dependency Component of **the** Juvenile Court, 49 *Juv. & Fam. Ct. J.* 17 (1998).

⁴ See, e.g., *Ex parte Crouse*, 4 *Whart.* 9 (*Pa.* 1839) (concluding that **the** court had **the** authority to intervene into **the** parent-**child** relationship as *parens patriae*). See also **Child Welfare Law** and **Practice** 126 (Marvin Ventrell & Donald N. Duquette eds., 2005).

⁵ For **the** purposes of this article dependency court is defined as a court having jurisdiction over all **child** abuse and neglect proceedings.

⁶ **Child Welfare Law** and **Practice**, supra note 4, at 187. **The** Supreme Court decisions in *Meyer v. Nebraska*, 262 U.S. 390 (1923), *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), and *Prince v. Massachusetts*, 321 U.S. 158 (1944) provide **the** parameters for **the** relationship between parent and state. These cases recognize that parents have a due process-protected, fundamental liberty interest in **the** upbringing of their **children** on which **the** state may infringe upon only for compelling reasons necessary to **the** protection of **the** state's interest.

Parents have a constitutionally recognized interest in family integrity, thus most state courts provide counsel for parents [*1100] in termination of parental rights cases⁷ and many states provide counsel throughout the dependency court process. The legal rights and interests of children involved in the court process have not yet been recognized to the same extent as the rights of parents. However, with the development of state and federal child protection laws and proceedings based on due process, child protection cases became part of a rights-based legal process.⁸ As children became recognized as rights-based citizens, there became a growing need for legal representation of children.

In the 1960s and 1970s, society began to see a practice of law for children. Nearly forty years ago, the Supreme Court established that children have a constitutional right to counsel in juvenile delinquency proceedings in In re Gault.⁹ The Gault decision marked the start of a new way of thinking about legal representation for children and extended to children due process protections when liberty deprivations are at stake. Although the Gault Court did not address the representation of children in dependency proceedings, the dependency court became a process-based system.¹⁰

In the year's following the Gault decision, Congress passed the Child Abuse Prevention and Treatment Act (CAPTA) creating the nation's first mandatory reporting laws.¹¹ Today, CAPTA mandates that the court appoint a guardian ad litem to every child involved in a dependency and neglect proceeding:

In every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), [*1101] shall be appointed to represent the child in such proceedings ...¹²

The role of the child's representative varies by state.¹³ Thirty-one states mandate legal representation for children in civil child protection cases. In other states lay advocates or volunteers serve as the child's guardian ad litem.

B. Present: Providing Legal Services to Children

Providing children with legal counsel increases the likelihood that the court will have access to all relevant facts in the case, be better positioned to make more accurate and informed decisions to promote the best interests of the

⁷ See, e.g., Lassiter v. Dept. of Soc. Serv., 452 U.S. 18 (1981). Although the Court held that the mother in this case was not constitutionally entitled to appointment of counsel, it encouraged states to appoint counsel to indigent parents in termination of parental rights and dependency and neglect proceedings.

⁸ See generally Marvin Ventrell, The Practice of Law for Children, 66 Mont. L. Rev. 1 (2005).

⁹ 387 U.S. 1 (1967).

¹⁰ Jacob Smiles, A Child's Due Process Right to Legal Counsel in Abuse and Neglect Dependency Proceedings, 37 Fam. L.Q. 485 (2003).

¹¹ Child Abuse Prevention and Treatment Act of 1996, 42 U.S.C. §§5101-5119 (2000). The Act formally recognized the existence of child maltreatment in America. It provides states with funding for the investigation and prevention of child maltreatment conditioned on the states' adoption of mandatory reporting laws.

¹² 42 U.S.C. § 5103a(b)(2)(A).

¹³ For a state-by-state review of representation laws visit <http://www.naccchildlaw.org/childrenlaw/documents/LegalRepresentationChart-ABA2005.pdf>.

child, and reduce **the** risk of making erroneous decisions.¹⁴ Although there is not a federal requirement for legal representation of **children** in dependency proceedings, recent developments reflect evolving notions of a **child's** constitutional right to counsel.

In 2005, a landmark ruling from a federal district court in Georgia moved **the** issue of legal representation of **children** into **the** forefront.¹⁵ That court embraced **the** notion that abused and neglected **children** have a constitutional due process right to legal representation. As **the** court observed, "it is well settled that **children** are afforded protection under **the** Due Process Clauses of both **the** United States and Georgia Constitutions and are entitled to constitutionally adequate procedural due process when their liberty or property rights are at stake."¹⁶

The Georgia court not only endorsed **the** right to legal representation for **children** in **child welfare** proceedings, but also emphasized that these rights are meaningless unless we ensure that counsel is effective. **The** Court recognized that **the** goal of assuring effective legal counsel for **children** cannot be achieved without minimum training, competency standards, and reasonable caseloads.

[*1102] In 2006, **the** National Conference of Commissioners on Uniform State **Laws** adopted **the** Uniform Representation of **Children** in Abuse, Neglect, and Custody Proceedings Act.¹⁷ An underlying premise of **the** act is that an attorney should be appointed for every **child** who is **the** subject of an abuse or neglect proceeding.¹⁸ Although **the** act is a source of debate among **child** advocates,¹⁹ it reflects a growing public awareness of **the** unique legal challenges facing **children** and **the** necessity that **children** receive quality legal representation.

1. Unique Challenges of Providing Legal Services to **Children**

Child maltreatment impacts **children** of all ages, races, religions, cultures, and communities. Each year, approximately four million **children** are reported abused or neglected nationwide.²⁰ Of those reports, nearly one million cases are substantiated.²¹ At any given time over a half-million **children** are living in **the** foster care system.²² **The** legal proceedings involving these **children** often determine **the** course of their lives. Serving as a lawyer for these **children** is an awesome responsibility.

¹⁴ See generally Bruce A. Green & Bernardine Dohrn, Ethical Issues in **the** Legal Representation of **Children**, *64 Fordham L. Rev.* 1281 (1996) (discussing **the** ethical complexities in **child welfare law**).

¹⁵ *Kenny A. v. Perdue*, 356 F. Supp. 2d 1353 (N.D. Ga. 2005).

¹⁶ *Id.* at 1359.

¹⁷ Uniform Representation of **Children** in Abuse, Neglect, and Custody Proceedings Act (Nat'l Conf. of Comm'rs on Unif. State **Laws** 2006), available at <http://www.law.upenn.edu/bll/archives/ulc/rarccda/2006> final act.pdf.

¹⁸ *Id.* at 1-11.

¹⁹ See, e.g., Jane M. Spinak, Simon Says Take Three Steps Backwards: **The** National Conference of Commissioners on Uniform State **Laws** Recommendations on **Child** Representation, 6 Nev. L. Rev. 1385 (2006).

²⁰ U.S. Dept. of Health & Hum. Serv., **Child** Maltreatment 21 (2003), available at <http://www.acf.hhs.gov/programs/cb/pubs/cm03/cm2003.pdf>

²¹ *Id.*

²² U.S. Dept. of Health & Hum. Serv., Adoption and Foster Care Reporting and Analysis System Report #10: Interim Estimates for Fiscal Year 2003 at 1 (2006), available at <http://www.acf.hhs.gov/programs/cb/stats> re search/afcars/tar/report10.pdf.

"I think **the** court system would have more effectively worked for me if my voice could have been heard. You see," reported a foster youth, "they never asked, 'What do you want?,' 'Are you a part of this service plan?,' 'Is **the** [social] worker providing services for you?' No one thought about me ... I felt like no one cared." ²³

Child clients are **the** most vulnerable of any, and **the** decisions made in court literally set **the** course for every aspect of [*1103] **children's** lives. **The** entire future of these **children** - their family relationships, physical safety, health, mental health, education, and home - are at stake. To provide them with any less than **the** highest level of representation cannot be justified and should not be tolerated.

Often, youth do not understand what is happening to them. They do not know where they will sleep each night or what school they will attend **the** next day. **Children** typically come into **the** foster care system with significant physical and mental health problems, which are then exacerbated by **the** lack of attention paid to both. ²⁴ Because **the child welfare** system may not attend to all of these needs, lawyers for **children** have a responsibility far broader than that of an average attorney.

The very young client has no ability to make an informed judgment about **the** quality of **the** legal service they are receiving. When an adult is unhappy with her lawyer she can fire **the** lawyer and hire a new attorney. Even in a publicly funded situation, there are steps an adult can take say, "I don't think my lawyer is doing a good job for me."

Even an older **child** can make only limited efforts in trying to assess or monitor **the** quality of advocacy provided. Unless **the child** is represented by a qualified, knowledgeable attorney, one who knows **the child** and can address **the child's** views and interests, **the** court's life-changing decisions may be made without adequate input from or advocacy on behalf of **the** youth.

"**The** courts don't care where you want to go," said a foster youth in California. "Once you are in **the** system, your life is in their hands not yours." ²⁵ Another teen agreed, "**The child** doesn't really have a say in what happens." ²⁶

Youth around **the** country express repeatedly that **the** system designed to protect and nurture them has left them feeling abandoned, has inflicted additional trauma upon them, and has failed to meet even their most basic needs. Research examining outcomes for foster youth paints an equally dismal picture: over one-third of foster youth earn neither a high school diploma [*1104] nor a GED; ²⁷ one-third of youth who age out of **the** foster care system evidence mental health problems; ²⁸ and over one-fifth of foster youth will become homeless at some time after turning eighteen. ²⁹

The National Commission on **Children** observed, "If **the** nation had deliberately designed a system that would frustrate **the** professionals who staff it, anger **the** public who finance it, and abandon **the children** who depend on

²³ Interview by **Leslie Starr Heimov** with foster youth in Denver, Colo.

²⁴ Lisa Kraimer-Rickaby & Preston A. Britner, Providing **Child** Care for Foster **Children** with Special Needs, **Child** Care Ctr Connect., Mar.-May 2000, at 1, available at <http://www.canr.uconn.edu/ces/child/pdf/CCC93.pdf>.

²⁵ Home at Last, My Voice, My Life, My Future: Foster Youth Participation in Court: A National Survey (2006).

²⁶ Id.

²⁷ Mark E. Courtney, *et al.*, Midwest Evaluation of **the** Adult Functioning of Former Foster Youth: Outcomes at Age Nineteen 21 (May 2005), available at <http://www.rikidscount.org/matriarch/documents/Midwest%20Evaluation%20of%20the%20Adult%20functioning%20of%20former%20foster%20youth%2081%29.pdf>.

²⁸ Id. at 41.

²⁹ Casey Family Programs, Improving Family Foster Care: Findings from **the** Northwest Foster Care Alumni Study 37 (2005), available at <http://www.casey.org/NR/rdonlyres/4E1E7C77-7624-4260-A253-892C5A6CB9E1/923/CaseyAlumniStudyupdated082006.pdf>.

it, it could not have done a better job than **the** present **child-welfare** system." ³⁰ That is **the** system we are counting upon to take care of our clients' needs outside of **the** courtroom.

C. Future: **The** Necessity for Greater Specialization

Child welfare law is complex and requires a great breadth and depth of knowledge. As **the practice** becomes even more sophisticated, and as **the child's** right to due process is appropriately given greater respect, **the** need for specialization, advanced skill, and structural support is increasing.

A **child welfare practice** requires proficiency in a variety of areas, including: **child** development; special education; community resources; substance abuse; social work and investigation; domestic violence; grief and mourning; public benefits; health care; negotiation and mediation skills; legal research and writing; and trial skills.

In order to achieve **the** desired and necessary level of expertise in **the** varied disciplines that bear on **child welfare** cases, it is essential that attorneys devote their attention to **the** full time, exclusive **practice** of this specialty. One attorney commented, "As to **the** expertise of this area, it is truly specialized and cannot be learned until you are literally in **the** thick of it." ³¹

[*1105] It could be argued that anything beyond **the** courtroom is not **the** lawyer's responsibility. **The** lawyer's responsibility as a zealous advocate is to see that **the** petition is fairly adjudicated, that state and federal **law** is complied with, that **the** court makes reasonable decisions, that **the** orders are upheld, and that **the child's** wishes are heard. Attorneys in this **practice** area know full well that their responsibilities extend far beyond **the** walls of **the** courtroom. Some state statutes require that **child welfare** lawyers attend to **the child's** interests beyond **the** scope of **the** juvenile proceedings. In California, for example, lawyers are required to conduct an independent investigation into any issue where **the child's** interests may need to be protected. ³²

The requisite areas of expertise are both exhaustive and essential. Very few attorneys take **child** development classes in **law** school. Some lawyers may have **children**, younger siblings, or nieces and nephews, and may think that makes them experts in **child** development. What these lawyers really have expert knowledge of is **the** development of their **children**, nieces and nephews. This misimpression can be more dangerous than acknowledging a complete lack of information.

One very dramatic case illustrating this point involved a [*1106] toddler about ten months old. **The** mother found **the** toddler face down, submerged in **the** toilet. **The** toddler died, and **the** question was whether this was an accident or an intentional drowning. Some held firm that a **child** of this age could not possibly have gotten out of his

³⁰ National Commission on **Children**, Beyond rhetoric: A new American agenda for **children** and families (1991).

³¹ **Children's Law** Center of Los Angeles, Loan Forgiveness Survey (2005).

³² [Cal. Welfare and Institutions Code § 317\(e\) \(2007\)](#) reads:

"**The** counsel for **the child** shall be charged in general with **the** representation of **the child's** interests. To that end, **the** counsel shall make or cause to have made any further investigations that he or she deems in good faith to be reasonably necessary to ascertain **the** facts, including **the** interviewing of witnesses, and he or she shall examine and cross-examine witnesses in both **the** adjudicatory and dispositional hearings. He or she may also introduce and examine his or her own witnesses, make recommendations to **the** court concerning **the child's welfare**, and participate further in **the** proceedings to **the** degree necessary to adequately represent **the child**. In any case in which **the child** is four years of age or older, counsel shall interview **the child** to determine **the child's** wishes and to assess **the child's** well-being, and shall advise **the** court of **the child's** wishes. Counsel for **the child** shall not advocate for **the** return of **the child** if, to **the** best of his or her knowledge, that return conflicts with **the** protection and safety of **the child**. In addition counsel shall investigate **the** interests of **the child** beyond **the** scope of **the** juvenile proceeding and report to **the** court other interests of **the child** that may need to be protected by **the** institution of other administrative or judicial proceedings. **The** attorney representing a **child** in a dependency proceeding is not required to assume **the** responsibilities of a social worker and is not expected to provide nonlegal services to **the child**. **The** court shall take whatever appropriate action is necessary to fully protect **the** interests of **the child**."

walker, into **the** bathroom, up to **the** toilet, and fallen into **the** toilet. This family was in danger of being destroyed because there were those who believed it was impossible for that to have happened.

The case was resolved after a long, drawn-out trial, but **the** infant's four-year-old brother was separated from his family at a time where he was traumatized over **the** death of his younger sibling, and another baby born in **the** interim was detained at birth. Although it was ultimately found that **the** death was accidental, **the** family was torn apart. **The** system inflicted further trauma on a vulnerable family because of a lack of expertise in **child** development. This was both unnecessary and avoidable.

Knowledge about **child** development also impacts **the** court process with regard to interviewing **children**. Attorneys interview **child** clients every day. And every day lawyers ask **children** questions **the children** are not capable of answering. They do answer **the** questions, however, and attorneys believe that they have obtained accurate information and then rely on **the** information in forming opinions, making recommendations, and forming legal arguments on their clients' behalf.

It is not that **the children** are lying; it is that **child welfare** attorneys may be asking bad questions precisely because they are not trained **child** development experts.³³ Lawyers too often fail to form proper questions, taking into account a **child's** age and developmental ability, which may be lower for **children** who have been in a neglectful or abusive situation. **Child welfare** attorneys need to consider factors including: **the child's** level of trauma; **the child's** environment; **the child's** cognitive ability; **the** language is spoken at home compared to **the** language **the** lawyer is speaking; **the child's** reliance on slang or local vernacular; and many other qualifiers. Attorneys on their own, or doing this work as a portion of their **practice**, cannot possibly acquire these skills until they have years of experience. [*1107] They certainly do not possess them their first day on **the** job, yet **the child** cannot wait for their attorney to learn in pieces over time. A **child** cannot wait years, months, or even weeks while **the** sole practitioner or part-time professional learns on **the** job.

Special education is an area that has received increasingly more attention. National workgroups are looking at **the** educational challenges of **children** in foster care. Most lawyers coming to **the practice child welfare law** not only lack special education knowledge, a complicated and complex body of **law** primarily controlled by federal legislation, but they are not even familiar with **the** related red flags. Furthermore, it is well documented that **the** educational outcomes for **children** in foster care are abysmal.³⁴ There have been legislative efforts, both federally and in some states, to try to improve those outcomes, but to do so require a level of expertise and knowledge that can only be achieved in **the** agency model of representation.

Delinquency is another area of concern. Unfortunately, many older **children** in **the child welfare** system have run-ins with **the law**, often directly related to their history of abuse and neglect. Without a strong voice in court, these youth are far more likely than similarly situated peers to find themselves arrested, incarcerated, convicted or found delinquent, and subject to harsher penalties and poorer services than youth who are living at home with their parents.³⁵

³³ See generally Ann Graffam Walker, Handbook on Questioning **Children**: A Linguistic Perspective (2d ed. 1999); Thomas D. Lyon, Questioning **Children**: **The** Effects Of Suggestive And Repeated Questioning, Suggestibility of **Children** and Adults (J. Conte ed., 1999).

³⁴ Casey Family Programs, supra note 29, at 35.

³⁵ See Vera Institute of Justice, Reducing **the** Foster Care Bias in Juvenile Detention Decisions: **The** Impact of Project Confirm (2001) available at http://www.vera.org/publication/pdf/146_182.pdf. In New York, **children** in foster care are more likely to be held in detention prior to their hearings than **children** living with their parents. Id.

Research in California reveals **the** fact that **children** in foster care have reduced likelihood of being released into **the** community and increased likelihood of being found delinquent.³⁶ Without an advocate who is knowledgeable about **children's** needs and what **the** system can provide for them, attorneys may be neglecting **the** best interests and **the** legal [*1108] needs of their clients. Further, a well-meaning **child welfare** attorney who does not have **the** requisite criminal **law** knowledge may inadvertently, in an effort to be helpful, expose a **child** client to harsher criminal penalties and **the** potential loss of liberty and other serious outcomes.

Public benefits are a specialty area that is often overlooked. **Children** in **the child welfare** system may be missing out on supplemental social security income benefits, on disability payments, on survivor's benefits, or other supports. Their caretakers may not be properly or adequately funded nor given access to funds to which **the** youth are entitled. **Children** fail to get needed benefits because no one in **the child's** life is able to navigate **the** public benefits system, and lawyers may rely on a dysfunctional **child welfare** system to interface with an equally dysfunctional department of public social services to meet their clients' needs.

As informed advocates, attorneys need to consider a broad spectrum of scientific information. Lawyers must understand everything from attachment theory to adolescent brain development, along with all that lies in between. When **child welfare** lawyers make judgment calls based on personal experiences and intuition rather than on a thorough understanding of scientific information, they may make mistakes - sometimes without being aware they are making them. In an agency model, there is far greater opportunity to designate assigned staff to acquire scientific information and trainers to ensure that attorneys have access to **the** information.

Once there is institutional commitment to providing adequate legal counsel in **child welfare** cases, **the** problem remains in determining how that representation will be provided. Dedicated and passionate lawyers battle many systemic and **organizational** hurdles to serve as **the** "voice" in **the** legal system on behalf of **children** who might otherwise have little input regarding their future.

Representing abused and neglected youth is admittedly a difficult undertaking. When there is no agency model of oversight, **the** system relies on individual lawyers who answer to **the** judge, and accountability and monitoring are too often absent. There are inherent impediments, especially those related to dealing with very young clients. However, experience has demonstrated that an extremely effective delivery system is to be found in **the** establishment of an agency model.

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III. Environment

The delivery of legal services to **children** varies from state to state, but generally most advocates are individual attorneys who receive court appointments to represent **children** on a case-by-case basis. Despite their best intentions, these advocates are often under-resourced, over-burdened by large case loads, and underpaid. Furthermore, panel attorneys are customarily employed by, and answer to, **the** judge who will be deciding **the** case. Clearly, this is an inherently flawed option, as **the** possibility presents itself that lawyers may engage in less zealous advocacy.

Some states have overcome concern about **the** panel attorney model by creating a statewide office responsible for hiring, firing, training, and monitoring **the** panel of lawyers. **The** Colorado Office of **the Child's** Representative may have been **the** first to initiate this type of panel representation, and others including Connecticut have adopted a similar approach. In Colorado, use of support staff to assist with legal questions, mandatory training, court observation, and file review, resulted in a great improvement on **the** traditional panel attorney model hired by **the**

³⁶ See Los Angeles County **Children's** Planning Council, Youth in **the** Los Angeles County Juvenile Justice System: Current Conditions and Possible Directions for Change 8 (2006), available at http://www.lapublichealth.org/childdpc/re_source-files/JuvJustice_yfa_Final4.20.6prot.pdf; Joseph P. Ryan **et al.**, Maltreatment and Delinquency: Investigating **Child Welfare** Bias in Juvenile Justice Processing (working paper).

court. When elements of accountability and training are incorporated, there is significant improvement in the quality of representation.

Although many sole practitioners do an excellent job, it is a time consuming and often emotionally exhausting process. The premise of the Children's Law Office Project is that court-involved children experience better outcomes when they are represented by an attorney who has adequate training, compensation, access to resources, and staff expertise. It is rare to find this environment outside of a children's law office.

A. What is a Model Children's Law Office?

Like a public defender's office or a large law firm, a children's law office, whether it be a large government agency like the Public Guardian's Office in Chicago, a boutique law firm like Legal Services for Children in San Francisco, a traditional public defender's model as seen in New York City and San Diego, a large private non-profit law firm like the Children's Law Center of Los Angeles, a multidisciplinary practice dedicated solely to child welfare law exemplified by Kids Voice in [*1110] Pittsburgh, or a small office of lawyers working to improve practice in their jurisdiction, is optimally suited to ensure that best practices become the norm, rather than the exception.

A children's law office is, in many respects, similar to the structure of a children's hospital. This model provides a concentration of expertise, access to state-of-the-art tools of the trade including research, legal updates, and expertise from other disciplines, as well as opportunities to consult with colleagues who possess an array of skills. Lawyers knowledgeable in education, mental health, probate, and delinquency law will work together and support each other on behalf of the child client, thus providing a seamless continuum of legal and related services.

A large children's law office can allocate resources to conduct training classes for rookie lawyers, ongoing targeted continuing education classes, and regular case reviews. Absent the agency model, many critically important training topics could be addressed only sporadically or even overlooked.

Within the standards provided by the American Bar Association and the NACC, and in some jurisdictions local court rules or state statutes, there are certain defined standards of practice. However, without actual oversight and supervision, without looking at case files, observing the lawyers in the courtroom, and gaining a thorough understanding of the quality of representation actually provided, there is no way to have confidence that the standards are being met.

Only personal oversight can ensure that each child is receiving the same type of representation, coming from the same base of information, the same legal understanding and philosophy. The level of representation a child receives should not be dependent upon the calendar attorney of the day or whoever happens to be the next available attorney on the bar panel list. There should be oversight from within the agency in the form of self-monitoring.

Along with accountability, practice standards, and enhanced opportunities for training, children and families benefit most from an agency model that promotes consistency of representation, thus enabling better transitions among attorneys. If a child's lawyer changes, the child will continue to have the same firm representing him or her, and there will be greater ability to share information and hand over the case sensitively.

A child welfare attorney recounted, "Longevity is imperative [*1111] in this field. Many attorneys who represent children not only develop better skills over time, but also build strong relationships with their clients." ³⁷ Children are often represented by multiple attorneys while they are under the jurisdiction of child welfare courts. The relationship between child and attorney is disrupted each time a new attorney assumes the case. "Having the

³⁷ Home at Last, Foster Children May be Paying a Price for Attorneys' Overwhelming Student Loan Debt 2 (2005), available at <http://fostercarehomeatlast.org/reports/LoanForgiveness.pdf>.

same lawyer makes a big difference, because that person really knows you and you can trust them," related one former foster youth. "My lawyer was the only person I trusted." ³⁸

While there is a critical mass of efficiency for a children's law office, it is not necessary to have an office of one to two hundred people. Still, there should be sufficient attorneys and other staff to allow for specialization. It is not unusual for an attorney handling child protection cases to require the services of social workers and other professionals who can provide knowledge of related practice areas, including education, mental health, delinquency, and other specialties.

Additionally, there should be opportunity to develop professional mentorship. A number of lawyers acknowledge having felt adrift when they first started in child welfare law. New entrants into the field can often feel overwhelmed by the responsibility of representing a child in a proceeding where life-changing, and sometimes life-saving, decisions are made every day.

Another way that a children's law office can have an impact is in the ability to affect system reform and reduce challenges that attorneys face every day in court. In addition to advocating for individual children in court, a children's law office has the capacity to identify areas where policy changes and systemic reforms are needed and to work to bring about those more far-reaching advances. Children's law offices can also enhance public awareness within their community of the broader issues and concerns facing foster youth.

IV. The Future of Legal Representation of Children

The integrity of each individual case and the integrity of [*1112] the legal system, the child welfare system, and the court system are dependent in large part upon child welfare attorneys monitoring themselves and holding themselves to the highest standard possible. To accomplish that without the support of children's law offices is challenging at best, and more likely impossible.

A well-organized and well-managed children's law office is able to provide youth in the foster care system with consistent, stable, adequately supported, and effective representation by talented and devoted attorneys who are able to dedicate their professional life to this worthy field. The following Guidebook provides thirty-three best practice guidelines to help child welfare law offices obtain this goal. Our most vulnerable children deserve no less.

A. Using the Guidebook

The NACC recognizes that practice varies from jurisdiction to jurisdiction and the Guidebook is meant to establish baselines which lead to a high functioning, comprehensive, client-centered program. Offices are encouraged to work toward substantial conformity or compliance with the Guidebook and also to make thoughtful decisions when departing from the recommendations.

B. Getting Involved in the National Dialogue about Improving Practice

The long term goal of the Children's Law Office Project is to proliferate a model child welfare law office practice, which will in turn improve outcomes for thousands of court-involved children. The Children's Law Office Network provides a forum for national dialogue on improving the delivery of legal services to children. Practitioners interested in joining the network should contact the NACC. ³⁹

[*1113]

Appendix

³⁸ Children's Law Center of Los Angeles, supra note 31.

³⁹ National Association of Counsel for Children, 1825 Marion St., Ste. 242, Denver, CO 80218; phone: 888-828-NACC; e-mail: advocate@NACCchildlaw.org; web site: www.NACCchildlaw.org.

Children's Law Office Symposium Attendees, University of Colorado School of **Law**, January 18-20, **2007**

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Sahar Douraghy

Administration of Families and **Children**, Family Dept.

San Juan, Puerto Rico

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Arlene Echevarria Rodriguez

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Albuquerque, New Mexico

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Alameda County Bar Association

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Jane Dressler

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Alameda County Public Defender - Dependency Division

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Carolyn Signorelli

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Laramie, Wyoming

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[*1115] Juvenile Law Group - Legal Aid and Defender Association

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Kids Matter

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Laurence M. Berlin

Constance P. Berlin

Legal Advocates for Children & Youth

San Jose, California

Jennifer Kelleher

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Legal Aid Society - JAP & FCP

West Palm Beach, Florida

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Legal Services for Children, Inc.

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Mental Health Advocacy Services

New Orleans, Louisiana

Margot Hammond

Office of the Child's Representative

Denver, Colorado

Theresa Spahn

Office of the Guardian ad Litem

Colorado Springs, Colorado

Debra Campeau

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Denver, Colorado

Sheri Danz

Oklahoma Indian Legal Services, Inc.

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