

*Quality Improvement Center on the Representation of
Children in the Child Welfare System*

**Needs Assessment
Discussions with Stakeholders**

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**Children's Bureau, US Department of Health and
Human Services**

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DISCUSSIONS WITH STAKEHOLDERS

Background, Purpose and Methodology

Phone discussions with key informants were held to gain a greater understanding of the current status of child representation across the country, the roles and responsibilities of those representing children, the supports and challenges that influence practice, and perceptions regarding the quality of representation.

Initially a review of Court Improvement Program (CIP) Reassessments, CFSR Statewide Assessments and the First Star Report was conducted. As a condition to receiving federal CIP funds states are required to perform periodic reassessments of their dependency court system. Those reviewed were largely conducted in 2005. In addition, relevant state statutes and court rules pertaining to child representation were studied to understand the legal mandates in each state. We also considered our review of the academic literature on the subject. The information extracted provided a background that directed the content of the interview questions.

Using the American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases as a guide to the important aspects of good representation, a protocol was developed for the stakeholder interviews. The interviews were to focus specifically on how child representatives currently perform their duties, interact with others and manage the challenges of the profession. Informants were also queried about compensation, caseloads, and recommendations for reform. We were interested in how the duties set out in state laws, the “law on the books”, compared with the “law in practice” as reflected by the key informants.

The protocol (see Section 6) was piloted with several attorneys and the CIP directors in four states to determine if talking directly with key informants would help fill information gaps. The pilot revealed the efficacy of this approach. It was also made clear that the discussions needed to expand to include a broader range of stakeholders. For instance, Court Appointed Special Advocates (CASAs) were included because many jurisdictions employ CASAs, either as a primary representative for the child, or in addition to an attorney.

The discussions took place in ten states with stakeholders knowledgeable about dependency legal practices. One state from each of the 10 federal regions was chosen, representing a diversity of jurisdictions across the country: California, Colorado, Connecticut, Delaware, Georgia, Iowa, Illinois, New York, Texas and Washington State. Within each state the set of interviewed stakeholders were: two judges, five attorneys, two child welfare casework supervisors and two to three CASAs. In addition to these stakeholders, initial calls were held with the state CIP Director, or equivalent knowledgeable person, and the Administration for Children and Families (ACF) Regional Office staff person most familiar with the selected state within each region.

A highly qualified team of interviewers was assembled from University of Michigan, Pal-Tech and National Association of Counsel for Children (NACC) with experience in child welfare, law or, in some cases both. The conversations were conducted according to the standard protocol, and interviews were transcribed and the information was then inserted into tables, allowing for systematic analysis of the data.

Assembling information into data tables allowed the responses to be compared across various groups, examining:

- A particular stakeholder group within a state (e.g., comparing all CASA responses in California)

- All stakeholders within a state
- A stakeholder group across all 10 states (e.g., how judges in all ten states responded)
- All stakeholders groups across all states

These analyses allowed various themes and discrepancies among the participants to be identified. Areas of similarity and difference were noted and common themes developed from the discussions. The analyses identified where practice and policy diverge within states, allowing for a more complete picture of statewide practice. While the interviews followed a structured format, they did allow for more open ended discussion. A number of themes emerged consistently across groups, and reflect the areas of concern among the informants. Informants also reported on improvements and promising initiatives in their jurisdictions.

Limitations

Though attempts were made to include a broad a range of perspectives within the interview sample, limitations on time and resources made it impossible to include every state in the country. The capacity to execute the discussions limited the scope to ten states, chosen from each of the ten federal regions. Within states, attempts were made to sample broadly, choosing from areas that are both urban and rural in character. Taken together, the findings provide a good assessment of practice on the ground.

Knowing that those who work in different child welfare positions bring their unique viewpoints to the system, stakeholders were chosen who represent various disciplines: judges, attorneys, casework supervisors and CASAs. The choice of individual informants was not made on a random basis, however. Sources within the field, such as the NACC, CIP directors and others in leadership positions, provided the contacts. Therefore, the interview sample seems biased towards those who were chosen because of their positive reputations, and may be more knowledgeable and experienced than others working in their capacity.

Findings from Regional Offices

General background discussions were held with the federal regional office directors in each of the ten targeted states and common themes emerged:

- **Four state directors specifically identified representation of children as an issue.** One state director identified problems with representation of tribal children, while two directors raised a concern about lack of consistency in quality of representation around their states.
- **Five of the ten directors said that budget shortfalls are the main issue affecting child welfare in their state.** A commission in one state made child representation improvement a priority but reform efforts have been slowed by a budget crisis.
- **Five of the directors mentioned the use of CASAs in their state, with one saying their CASA program had a very strong presence.**
- **Two directors mentioned active training efforts, one led by a children’s advocacy center.**
- **Two directors said their states are focusing on permanency outcomes, with one state focusing on collaboration between courts and agencies.**

Findings from Key Stakeholders in Ten States

As the knowledge and viewpoints from professionals across the country were gathered and analyzed, a comprehensive view of the stakeholder priorities formed. Stakeholders noted much

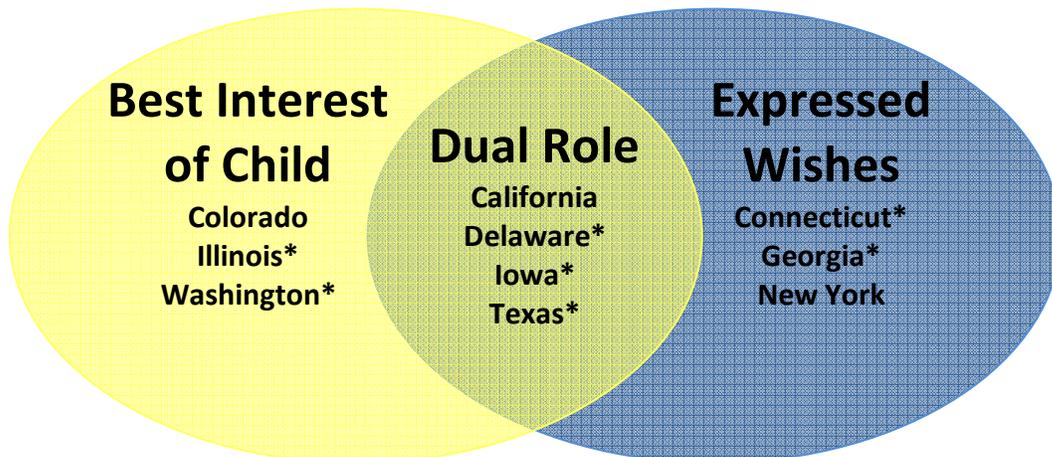
room for improvement. They reported representation of an inconsistent quality, often with few qualifications, little oversight, monitoring or supports for attorneys. Most said caseloads were too high to allow attorneys to effectively and actively do their jobs.

However, when attorneys are actively involved in their cases, they are seen as problem solvers. Many felt forming a rapport with the child was essential to successful advocacy. In general, they gave higher marks to specialized attorneys, crediting child advocacy centers and statewide offices with improving the qualifications and raising the performance of children's attorneys.

Accommodating the Child's Wishes: Representing Best Interests and the Child's Expressed Wishes

In all the states surveyed, at least some children were appointed an attorney; however, the practice can vary within a state. In Washington, for example, children under 12 are represented by CASA. In Georgia, the model of representation varies widely throughout the state, with attorneys representing best interests, expressed wishes or taking a dual role, depending on the jurisdiction. As shown in the following figure, attorneys take different roles in representing

Attorney Role in Child Representation Cases



*Option to appoint a second representative.

children:

1. Best interests of the child (BIC), meaning that the attorney makes recommendations on what they conclude to be the best interests of the child.
2. Expressed wishes, where the attorney represents the child's stated wishes.
3. A dual role, where the attorney makes BIC recommendations to the court, and also informs the court of the expressed wishes of the child.

Though the attorney role can be classified into these three categories of best interests, express wishes or dual role, it is important to note that there are many variations within these categories, often related to the child's capacity and closely linked to age and maturity. For example, even in an expressed wishes state, the attorney will represent the child's best interests when the child is too young to have a conversation with his attorney, or when a child's cognitive disabilities interfere with their capacity to make informed decisions. In some states, even though the model is generally best interests, the child may be appointed a client directed attorney once they reach a certain age, or once the case proceeds to a certain point, such as termination of parental

rights. Finally, many statutes or policies provide that a second representative can be appointed in some circumstances, such as when the attorney's opinion of best interests and the child's stated wishes conflict. So, while broad categories are useful in understanding a state's general philosophy about the attorney role, it is important to understand that there are nuanced variations among the models, and even from case to case within a jurisdiction.

The attorney's role in representing children is also unique because the situation can change over time as the child matures and their capacity to express their wishes increases. Jurisdictions surveyed were split among the three models. Some jurisdictions also split the role between two representatives, either appointing an attorney/Guardian ad litem (GAL combo) from the first appointment, or appointing a separate representative in the event conflict surfaced between the attorney's recommendation and the child's wishes. The stakeholder responses reflect that in some states the attorney role differs from county to county. It could be that perceived divergence within states is due, not to differences in law or policy, but to informants' lack of understanding about the attorney's role.

Addressing Conflict

The majority of all stakeholders, regardless of whether they are in a BIC or expressed wishes jurisdiction, reported that when a conflict arises between what the attorney sees as the best interests of the child and the child's expressed wishes, the attorney will inform the court of both the attorney's best interests recommendation and the child's wishes. Informants consistently reported that as the child gets older, expressed wishes becomes more of a factor. Even stakeholders from BIC jurisdictions said this, which suggests that the child's wishes are taken into account regardless of the formal role of the attorney.

Determining Capacity

Stakeholders also reported that they talk to older children more and with younger children they consider collateral information to a greater degree. Some attorneys said they also e-mail or call older children.

Qualifications and Training

When asked whether they felt attorney qualifications were adequate, most stakeholders responded yes, but with reservations. The majority in every group gave qualified "yes" answers. High caseloads or need for administrative support were cited by judges, attorneys and CASAs. All called for establishing and adhering to improved qualifications and training. Caseworkers mentioned the need for child development training most often. Attorneys mentioned the need for litigation training and experience.

Need for Training

The need for more training emerged as an overarching theme. Stakeholders spontaneously raised this issue even when answering questions not directly linked to training, for example, in discussing qualifications, performance variability, practice challenges, recommendations and noted improvements. They also raised the issue in response to the open-ended question "are there other issues in your state or county impacting the quality of representation?" When asked for recommendations, the majority suggested the delivery of more and better training.

Variability across Trainings

Current training requirements reflect little standardization and a wide range of pre-appointment requirements, with few or no post appointment requirements. Across states, pre-training requirements ranged from a 3-hour course to a 2-day seminar. A few judges noted they assembled their own trainings. A few stakeholders described a "training plus" component in

effect in their jurisdiction, i.e., training plus shadowing or mentoring. Peer support was seen as important by some, and comments reflect that attorneys value training because it provides a networking opportunity.

When asked to describe trainings offered, stakeholder responses resulted in a long laundry list of various training subjects. It appears that the field does not adhere to one standard curriculum for training new attorneys in child welfare practice. Litigation and court process were the most common subjects listed, but there appeared to be little consensus overall. A few stakeholders commented that they would like to see more NACC training. And a few stakeholders mentioned online training. One judge said online instruction is helpful for rural attorneys who cannot travel long distances to trainings.

Training or increased skills to improve the quality of practice in their jurisdiction were mentioned as needs within each stakeholder group.

Oversight, Monitoring and Supervision

Minimal Monitoring

In response to whether there were consequences for failure to meet training requirements, many stakeholders, including many attorneys, responded, “I don’t know,” which may indicate that consequences are minimal or there isn’t much enforcement.

Stakeholders raised the need for oversight in various contexts: when asked about qualifications; performance variability; recommendations for improvement; and improvements already made. They described various systems of oversight: a central state authority, case supervision, or judicial leadership.

Improving Performance

A majority of informants reported some variability in attorney performance. Comments among all groups reflect the performance of specialized attorneys varies less than that of pro bono or part-time children’s attorneys. Training, oversight (including judicial leadership) and guidelines were cited as reducing variability. Attorneys, caseworkers and CASAs recommended enacting standards and creating central oversight. Some attorneys said specifically they would like to see a centralized state office.

Stakeholders in states with centralized state offices spoke highly of how they had improved the level of practice. Stakeholders in all groups also spoke highly of specialized offices.

Quality of Representation

When asked whether attorneys were adequately performing the activities associated with their jobs, judges gave the most positive response, with the majority saying yes. However, other stakeholders gave more qualified responses. Among those giving a qualified, “yes,” answer, some of the reservations expressed include high caseloads, a lack of contact with the child, and panel or volunteer attorneys not being as qualified and engaged as full-time or specialized attorneys. Some said when a CASA is on the case, the CASA performs some of the necessary duties, so the overall representation is adequate, even if the attorney falls short. CASAs said that they support attorneys primarily by visiting the child and being a main source of information about the case.

Insufficient Contact with Child

Although not directly asked about attorney-child visitation, stakeholders repeatedly raised the concern that attorneys are not spending enough time with their clients. They said it is important

for attorneys to visit the child. Some went beyond mere visitation and said “getting to know the child” is important. Caseworkers and CASAs in particular find attorneys to be lacking in this area, but even some attorneys said that it can be difficult to spend adequate time with clients. Caseworkers and CASAs were critical of attorneys who meet with children just before court, saying that was insufficient.

Stakeholders did not specify what they thought was an adequate amount of contact, nor did they say why they thought the attorney-child contact is important. Nonetheless, the majority in every group emphasized that interaction with the child is the most important factor in determining capacity of the child to instruct counsel. A handful of caseworkers and CASAs said they would like to see an official mandate of minimum number of contacts with the child.

Problem Solving and Collaboration

All stakeholders reported that collaboration and problem solving are significant parts of attorney duties. Some caseworkers commented that attorneys will become adversarial when they take a position that differs from that taken by the agency. Two judges suggested that the manner in which the judge runs the courtroom can encourage a collaborative atmosphere. Most stakeholders listed attending meetings as a common attorney activity. Attorneys said that meetings facilitate collaboration.

In giving recommendations, a few stakeholders mentioned multidisciplinary training as a method for better-understanding the roles of those involved. When asked about their challenges, attorneys listed a number of child welfare agency issues related to: changing agency policies, holding the agency responsible for casework completion, caseworker turnover, and general lack of cooperation.

Need for Specialization

Several questions prompted stakeholders to suggest that specialized attorneys do a better job of representing children. When asked whether attorney qualifications are adequate, attorneys, caseworkers and CASAs said that attorneys who work for specialized programs are better qualified and their performance is less variable. In responding to a question about whether attorneys adequately perform their activities, some said only institutional lawyers are doing a good job. Some said attorneys who have a child-only caseload do a better job than those who take other types of cases.

In response to being asked about variability in performance among attorneys in their jurisdiction, stakeholders in each group commented that there is less variability among full-time child representative attorneys. The majority of the comments reflect that attorneys from specialized offices most consistently received high marks from stakeholders. Training, oversight and guidelines were cited as reducing variability.

Supports

Attorneys in specialized offices were most often described as having access to formalized support. The most common formal support named was a social worker. One centralized office makes a coordinator available by e-mail. Private attorneys described informal methods of support, such as peer support or support from their private law office. It should be noted that stakeholders mentioned the ability to apply for an expert witness as a support. However, expert witnesses, even when granted, are to be used only for providing evidence in a case, and are not an ongoing source of support.

Stakeholders also said that attorneys sometimes rely on the child welfare agency social workers or CASAs as a support, but this raises a question about the attorney being able to reach independent conclusions or challenge agency positions. When talking about attorney activities, one judge said institutional attorneys perform better because they have access to support staff. In two states, stakeholders reported they can bill for support staff, but one attorney noted that because these rates are low, it is impossible to find adequate help.

When asked for recommendations, attorneys, caseworkers and CASAs said standards and oversight of attorneys should be implemented. Some attorneys specifically suggested establishing central state offices.

High Caseloads

When asked specifically about representatives' caseloads, the majority of informants said they are too high. Stakeholders expressed concern over high caseloads in a variety of other contexts as well. For instance, time was cited as one of the most common challenges for attorneys and caseload reductions as one of the most common recommendations. Jurisdictions that had reduced caseloads reported improved performance. Stakeholders did not specifically describe what they thought was a manageable caseload.

Lack of Resources

Lack of financial resources emerged as another overarching theme affecting the quality of representation. The majority of all stakeholders who responded said attorney compensation is too low. When asked about challenges or issues, every group talked about the lack of services or resources.

CASAs

All but one state, California, reported using CASAs to varying degrees. This seemed to vary within states, with some jurisdictions relying heavily on them and some using them only in certain circumstances, for example with younger children. In two states the responses revealed that CASAs play a more secondary or passive role. But in some jurisdictions, stakeholders felt that CASAs considerably bolster the dependency system.

The interviews revealed that CASAs generally perform the same range of out-of-court activities as attorneys, with the key difference being visits with child. CASAs said they are able to spend more time with the child, some visiting at least once per week, and also visiting schools, doctors and family members. Other stakeholder groups did not comment on visits specifically, but did mention that CASAs provide information to the court and attorney. CASAs said they help solve problems, but they did not report any in-court advocacy other than giving a report and recommendation to the court.

Consistent with national standards, participants reported CASAs carry a caseload of 1-3 cases. Some reported they have time to conduct activities for which attorneys do not. For instance, one CASA described staying with a child overnight in the hospital.

In contrast to attorneys, CASAs reported consistent training, 30-40 hours pre-appointment and 12 hours per year as an on-going requirement. The training topics represented a variety of subjects, with legal issues and child development as the most common.

CASAs also consistently reported having supervisor support. They said supervisors are available for case consultation and sometimes appear in court. A minority of CASAs also said mentoring is available to them.

Overall, informants held a favorable view of CASAs. At least one stakeholder in each group credited the CASA program with improving representation in their jurisdiction.