

# Legal Representation for Parents in Child Welfare Proceedings:

A performance-based analysis of Michigan practice



American Bar Association  
Center on Children and the Law  
for  
The Child Welfare Services Division  
of  
The Michigan State Court  
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# TABLE OF CONTENTS

## EXECUTIVE SUMMARY

INTRODUCTION.....	1
FINDINGS.....	4
RECOMMENDATIONS.....	8

## THE ASSESSMENT

INTRODUCTION.....	13
METHODOLOGY.....	18
FINDINGS.....	27
RECOMMENDATIONS.....	53
CONCLUSION.....	62

## APPENDICES

A. LETTER FROM JUSTICE CORRIGAN.....	63
B. ABA STANDARDS FOR REPRESENTING PARENTS.....	64
C. MODEL CONTRACTS – CONNECTICUT AND MACOMB COUNTY...	68
D. COMPENSATION SPREADSHEET.....	92
E. COURTROOM OBSERVATION FORMS.....	96
F. INTERVIEW INSTRUMENTS.....	99
G. PARENTS’ SURVEY.....	113
H. ATTORNEY SURVEYS.....	118
I. JUDICIAL OFFICER SURVEY.....	129
J. SURVEY RESULTS.....	134
K. ONSITE TEAM BIOS.....	152

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## Executive Summary

### Introduction

In 2007-2008, the Michigan Court Improvement Program (CIP) Basic Grant Strategic Plan identified competent representation for parents in child protection proceedings as essential to improving outcomes for Michigan's children and families. In September 2008, the Child Welfare Services Division of the State Court Administrative Office (SCAO) engaged the American Bar Association (ABA) Center on Children and the Law to assess how Michigan provides representation for parents in child protection proceedings and to make recommendations for an improved parent representation model. The CIP Quality Representation Committee selected a subcommittee to assist in the assessment design and serve as a resource on Michigan law, policy, and procedure. The subcommittee consists of representatives from the University of Michigan Law School, the Department of Human Services (DHS), the Office of the Family Advocate, the Office of the Children's Ombudsman, state court administration, and selected judges and attorneys.

Like many other states, Michigan decided to examine the representation of parents in child protection proceedings after having studied the representation of children. Unlike other states, the Michigan CIP elected to commission an independent assessment of parent representation, including quantitative and qualitative measures. The qualitative part of the assessment was designed to be an inclusive process that engaged judges, lawyers, court staff, social workers, community providers, and of course, parents.

The current assessment is the fourth in a series of independent assessments examining core systemic issues in Michigan's child protection system. This assessment of parents' representation was preceded by three other studies: *A Challenge for Change: Implementation of the Michigan Lawyer-Guardian Ad Litem Statute* (ABA Center for Children and the Law 2002), the *Racial Equality Review: Findings from a Qualitative Analysis of Racial Disproportionality and Disparity for African American Children and Families in Michigan's Child Welfare System* (Center for the Study of Social Policy 2009), and the *Michigan CIP Reassessment: How Michigan Courts Handle Child Protection Cases* (Muskie School of Public Service 2005). These studies represent clear statements of Michigan's special commitment to the safety, permanence, and well-being of its children, and to strengthening its families.

The assessment team, in conjunction with the subcommittee, crafted an evaluation methodology consisting of seven primary components:

(1) Collection of all Circuit Court Rules, court orders, memoranda regarding the recruitment, screening, training, and continuing education requirements for attorneys appointed to represent parents;

(2) A compensation survey distributed to each Circuit Court administrator to obtain data about the fee schedule used for court-appointed parents' attorneys;

(3) Surveys (primarily via Survey Monkey) sent to all attorneys appointed to represent parents and children, and county prosecutors;

(4) Surveys (primarily via Survey Monkey) sent to each Judicial Officer currently or recently assigned to a child protection calendar;

(5) Surveys (distributed by various means) to parents involved in child protection cases;

(6) Interviews and focus groups on site with parents, social workers, providers, attorneys, judges, and court staff in Kalamazoo, Kent, Genesee, and Wayne Counties; and

(7) Courtroom observation in Kalamazoo, Kent, Genesee, and Wayne Counties.

These four counties were chosen because they reflected a variety of practice models and demographics.

The courtroom observations and onsite interviews were conducted from December 1-5, 2008 by three teams consisting of staff attorneys and consultants from the ABA Center on the Law. SCAO staff arranged the onsite visits, and accompanied the teams to their assigned counties.

## Findings

**(1) Michigan places the burden of funding parent representation on its counties, without structural support from the state.** As a consequence, compensation for parent representation in child protection cases varies from county to county. Compensation models include flat fee contracts, hourly rates for specific hearings, hourly rates only for in-court appearances but not out-of-court work, reduced hourly rates for out-of-court advocacy, fixed rates for termination of parental rights (TPR) hearings, and low bid contracts for representing a certain number of parents during a calendar year.

**(2) The majority of parents' attorneys have the skills needed for in-court trial advocacy, are familiar with the key legal principles of the Adoption and Safe Families Act (ASFA) and corresponding Michigan statutes, and are attentive to the requirements of their local courts.** However, recognition of the ethical and practical requirements of representing parents in abuse and neglect proceedings varies considerably. Attorneys' attitudes about their ethical responsibilities to clients in terms of establishing a trusting and confidential attorney-client relationship, maintaining communication, and advocacy for clients' goals are inconsistent. It is not uncommon for attorneys to expect the parent client to initiate communication after being notified by the court of the attorney's appointment or after the attorney has mailed a letter of introduction. As a consequence, hallway exchanges of information are accepted as a substitute for private office interviews, overlooking the inherent value of office consultation. Face-to-face consultation in the privacy of a law office allows not only for information exchange and an opportunity for direct questions and answers, but most important, for the establishment of a trusting relationship. The impact of the attorney-client relationship on a parent's investment in reunification, cooperation with



services, and engagement in the case plan is universally recognized by Judicial Officers in interviews and discussions.

**(3) The fragility of current parent-attorney relationships is exacerbated by the routine use of substitute counsel.** In focus groups and surveys, parents reported coming to court without prior contact from their attorney, being represented by substitute counsel who appear to have little knowledge of their case, and most important, who have no relationship with them. Judicial Officers and many attorneys supported the parents' description of the impact of substitute counsel on their representation. Judicial Officers, although reluctant to be critical of specific attorneys with whom they have had long-standing relationships and with whom they were sympathetic (due to their high caseloads and inadequate compensation), acknowledged the use of substitute counsel is disruptive and often results in less than zealous representation of the parent. Although some Judicial Officers stated that use of substitute counsel from the same appointment panel or contract lessens the negative impact of substitutions, this caveat did not alleviate the concerns of parents.

**(4) For a variety of reasons not unique to Michigan, attorneys representing parents do not always advocate for their clients during the months or weeks between court appearances.** Although exceptions to this norm were noted during the assessment and some attorneys should be credited with exceptional advocacy in this area, the exceptions are few and scattered across the state. Like with trial preparation in most types of civil cases, attorneys must have out-of-court time to conduct their own investigations of allegations and defenses, investigate and prepare witnesses and expert witnesses, and generally conduct discovery. In child protection, where evidence that directly impacts legal findings is gathered on an ongoing basis outside of the courtroom, out-of-court advocacy is

critical. Depending on the facts of the case, zealous advocacy might require counsel or advocacy before, during, or after the following:

- meetings with DHS
- meetings with service providers
- meetings with school personnel/IEP meetings
- assessments
- supervised visitation, or
- mediation

Last minute reading of reports and telephone calls to social workers cannot substitute for participation, timely analysis, and obtaining feedback from the client who has first-hand knowledge of what happened at the meeting with the social worker, mental health assessment, visit with their children, etc.

In addition to the many critical events that happen outside the courtroom in a child protection case, attorneys need to have substantive knowledge in child protection. Parents' attorneys are responsible for insuring that case plans are appropriate, that parents receive the necessary services in a timely manner, and that they are supported in maintaining their relationship with their children. The use of expert witnesses, community providers, and community services as core components of the case against the parent requires that the parent's attorney be familiar with these individuals and ensure that the parent is receiving appropriate services and is actively participating. This out-of-court work is essential to guaranteeing that the client is successful in reunifying with his/her children. Unfortunately, data from this study show that most Michigan attorneys do little out-of-court advocacy.

**(5) Parents need to be treated with more respect, and need additional support in and out of the courtroom.** Parents in child protection cases are often underemployed, lack adequate housing, and need an array of services. They are facing, at the least, a temporary separation from their child[ren]. At the same time, they are involved in a court system that is often confusing and intimidating.

To help parents understand the child welfare system and learn to navigate it successfully to have the best chance of reunification, Wayne County has instituted a Parent Partner program in several locations. This program pairs a parent new to the family courts with a mentor parent who has previously had a case in the court and been reunified with his or her child[ren]. These parent partners help the parent access services, communicate with others involved in the case, and generally lend moral support to the parent. Parents who have the benefit of a parent partner had a positive experience with the program. In particular they indicated the program helped them get their ‘voice heard.’ Parent partners work closely with parents’ attorneys to improve communication with parents and help parents access services that the parents and attorneys agree are important.

**(6) Compensation is inadequate.** Compensation, by whatever model employed, is below the level paid for counsel who represent criminal defendants. This fact reflects as much on a failure to appreciate the complexity of this type of legal representation as on budgetary constraints. With a few exceptions, attorneys representing parents are not compensated for “out-of-court work,” which greatly discourages the performance of the crucial out-of-court advocacy described in number (4) above.

## Recommendations

As addressed in more detail in the full report, Michigan should implement the following recommendations to improve the representation of parents in child protection cases.

**(1) Statewide Administrative Structure.** Michigan should adopt a statewide administrative structure to address parent representation. The three models below would address compensation, support systems, training, and oversight in some manner, but vary in their level of centralization.

**(a) Statewide Institutional System.** Like public defender systems in many states and legal aid offices in larger metropolitan areas, this model would primarily use salaried staff attorneys. This model would benefit from having in-house supervision and support staff such as investigators, social workers, and paralegals.

**(b) Office of Parent Representation.** This model relieves the counties of the administrative responsibilities for managing a panel of attorneys, but does not necessarily shift the financial responsibilities to the State. This model would include a limited number of full-time staff to address systemic representation issues, but would primarily provide client representation with contracted attorneys. One example of this model and its impact on the quality of representation is Connecticut's Office of Chief Child Protection Attorney (CCPA), a statewide office overseeing representation for children and parents in child protection, custody, and support cases. With a small full-time staff (nine at last report), CCPA has achieved remarkable improvements in child welfare representation. Staffing in Michigan would have to be sufficient to accomplish the core responsibilities (for example, Connecticut is smaller than Michigan and has had an effective office with nine full-time staff members).

Core responsibilities would include recruitment, screening, contracting, setting performance standards, accessing training, establishing a mentoring system, and regular auditing.

Quality control would be an ongoing responsibility of the Office and would be accomplished through surveys, interviews, and court observation. Housing an Office of Parent

Representation within an existing agency could reduce overhead costs. The Connecticut CCPA was first implemented as part of the Office of the Chief Public Defender, though it has become increasingly independent.

**(c) Hybrid Model.** As discussed in the full report, a hybrid of the above two could be used. In Massachusetts, through the Committee for Public Counsel Services, representation is provided by panels of private court-appointed attorneys and by staff attorneys in seven metropolitan areas.

**(2) Survey Local Practices.** Either as part of the administrative structure's responsibilities or independently, for example, through the SCAO, Michigan should regularly survey local practices regarding compensation, screening, appointment, use of standards, and case management. By sharing this information on a regular basis, court administrators and county policy makers could compare local practices with other counties and incorporate features that might improve their management of the attorney panel and the representation of parents.

**(3) Improve Training.** Michigan should improve its training requirements and delivery through the following:

**(a) Mandatory Training.** Michigan should establish mandatory training and continuing legal education requirements for parents' attorneys that include specific requirements regarding training *directly related to the representation of parents*.

**(b) Training Plan.** Michigan needs a multi-year training plan to increase the frequency of parents' attorney training. SCAO currently provides this training biannually in two locations across the state. Quarterly trainings offered in SCAO's four court administrative regions could attract more attorneys to participate. As with all SCAO trainings, this training should be posted on the SCAO website afterwards to allow other attorneys who could not participate in person to view the training at their convenience. The training could also be delivered via the web and/or in modules that would be available to local Bar Associations to include in their training calendar. Other strategies for promoting training should be created as part of this plan, for example training announcements could be sent via the listserv recommended in number (4).

**(c) Multidisciplinary Training.** Michigan should regionalize multidisciplinary trainings that are offered to all attorneys, social workers, and service providers on legal and substantive topics, e.g., mental health services, behavioral health assessments, ICPC, bonding and attachment, family engagement, case planning, and substance abuse.

**(4) Parents' Attorney Listserv.** Michigan should assist with the establishment and maintenance of a listserv specifically for parents' attorneys.

**(5) Rules of Court.** Michigan should adopt Rules of Court that recognize the special challenges of representing parents and acknowledge the importance of this practice area, with requirements comparable to those adopted for Lawyer-Guardians Ad Litem (LGALs), specifically regarding client contact.

**(6) Enhanced Judicial Attention.** Michigan should encourage enhanced judicial attention to the representation of parents.

**(7) Case Processing Protocols.** Michigan should establish case processing protocols or rules, which can be tracked, to assist courts in managing their caseloads in child protection matters.

**(8) Expand Parent Partner Program.** Michigan should expand the existing Wayne County Parent Partner program throughout the State and institutionalize the role the parent partner should play with respect to the parent's attorney.

**(9) Appointment of Counsel.** Michigan should establish a Rule of Court requiring appointment of counsel before the first court hearing for all parents, including non-respondent parents. Michigan should consider appointing counsel before a protection petition is filed as a long-term goal.

**(10) Evaluation.** Michigan should evaluate the effect of improved representation on case outcomes over time. This evaluation would include first gathering baseline case data such as time frames, case type, outcomes, and information about the legal representation provided and periodic follow-up on new and original cases after planned improvements in parent representation have occurred.

## Conclusion

Michigan has an opportunity to make significant strides in improving the safety, permanency, and well-being of its children by restructuring how parents are represented in child protection proceedings. The appointment of legal counsel to parents who are indigent and cannot afford to retain private counsel is a statutorily guaranteed right under Michigan law. This right comes with the requirement that such representation be “competent.” Improving the system by which attorneys are appointed to represent parents, the resources available for such attorneys, and the accountability to the client and the courts will not only improve the quality of parents’ representation but the overall performance of the courts.

The significant improvements made in the representation of Michigan's children occurred by recognizing the importance of having comprehensive information about each child presented to the court at each hearing through the adoption of statutory requirements that LGALs conduct an independent investigation and meet with children before court hearings. See Michigan Comp. Laws § 712A.17d (2004). Elevating the representation of parents through a uniform statewide system that combines standards, appropriate compensation, ancillary support, and monitoring would make the promise of competent representation for parents a reality throughout Michigan, while improving courts’ ability to make the best decisions for Michigan’s children and families.



# The Assessment

## Introduction

In Michigan and across the country, advocates, child welfare professionals, parents, children, and youth all agree on one thing, the child welfare system is not working to best serve children and families. Too many children are removed from their parents and raised

*The conclusions from studies of representation for parents and children in two large jurisdictions, Washington State and West Palm Beach, Florida, support the principle that improving representation has a direct impact on court performance in child welfare proceedings.*

by the state. Too many of these children are aging out of the system without permanent family connections. Too many youth leave the foster care system to live on the streets, in prisons, or back with their families who never received the services needed to help them support these youth. Too many of these families are poor and represent minority populations.

Research shows improved legal representation for parents can reverse these negative trends. Better representation for parents can decrease unnecessary removals of children from their families, increase the amount and quality of services parents receive, increase the frequency and quality of visitation between children and their parents, foster the use of kinship placements, and decrease the amount of time until a child is safely returned to her parent. Parents in Michigan should have access to the kind of high quality representation that will ensure their voices are heard when decisions are made about their children. Children in Michigan will then have the best possible chance at growing up as part of the family that loves them the most.

Parents have a fundamental liberty interest in the care and custody of their children under the due process clause of the 14<sup>th</sup> Amendment. See *generally Santosky v. Kramer*, 455 U.S. 745 (1982); *Troxel v. Granville*, 530 U.S. 57, 65 (2000). This interest is protected in Michigan by statute and Court Rules that provide parents a right to counsel in child protection proceedings and a right to appointed counsel if they are indigent. See Mich. Comp. Laws § 712A.17c(4)(5) (1999); Mich. Ct. R. 3.915(B)(1); Mich. Ct. R. 3.965 (B)(5); Mich. Ct. R. 3.974 (B)(3)(a)(i).<sup>1</sup>

The vast majority of parents' attorneys in Michigan, as in most states, are appointed by the court after a finding of indigency. Eighty-three percent (83%) of parents completing surveys for this assessment reported they had court-appointed counsel. The importance of appointing counsel at the earliest possible stage of the child protection proceedings was reinforced recently by two Michigan Supreme Court decisions.

Citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000), the Michigan Court noted in the concurring opinion to *In re Hudson* that the "interest of the parents in the care, custody, and control of their children" was "perhaps the oldest of the fundamental liberty interests." There, the majority found that the trial court had committed error by failing to fully advise the mother of the consequences of her plea, failing to determine if she was financially unable to obtain an attorney, and failing to appoint counsel for her. The concurring opinion noted that these errors "pervaded the 26-month child protective proceeding that followed and deprived the respondent of due process." *In re Hudson*, 763 N.W. 2d 618, 624 (Mich. 2009) (Corrigan J., concurring).

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<sup>1</sup> Michigan Court Rules are available at <http://coa.courts.mi.gov/rules/>.

Justice Corrigan identified the importance of appointing counsel at the preliminary hearing in preventing such error and protecting the rights of parents, and avoiding delay in reaching permanency for the children. “Had respondent been represented by counsel during the preliminary hearing, counsel could have fully advised her of the consequences of a plea of admission, which the trial court failed to do . . . Respondent’s admissions relieved DHS of the burden of proving the allegations in the petition by a preponderance of the legally admissible evidence . . . enabled the trial court to immediately assume jurisdiction . . . ” In re Hudson, 763 N.W. 2d at 624 (concurring). The Court directly linked the mother’s submission to the court’s authority to order drug screenings and psychological evaluations of the parents and the results of these services “unquestionably formed the basis for the court’s later termination decision.” Id. In some detail, the Court described how respondent’s counsel could have challenged the evidence, called witnesses, and cross-examined the preparers of the reports DHS witnesses referenced in their testimony. Such advocacy could have possibly prevented the children’s removal, which was ordered by the trial court only after receiving positive drug screenings and upon concern about relatives visiting the home. Without counsel, the removal was never challenged and the mother’s parental rights were terminated despite significant evidence of her progress.

Also, in In re Rood, the Michigan Supreme Court held that the “state deprived respondent [father] of even minimal procedural due process,” by repeatedly failing to provide adequate notice of the series of proceedings leading up to a termination hearing. In re Rood, 763 N.W. 2d 587, 612 (Mich. 2009) (plurality). In Rood, the child was removed from the mother. The trial court and DHS made minimal or failed efforts to notify or involve

the father in the case. Regarding the appointment of counsel just before termination, the Court indicated:

Subsequent notice of the termination petition and the appointment of counsel are insufficient to afford due process when respondent's rights were terminated in part because he had not participated in the earlier proceedings and when the trial court refused to adjourn in order for respondent to meaningfully participate in services and be evaluated as an appropriate caregiver for [the child]. The state cannot fail to make reasonable attempts to provide adequate notice of earlier proceedings and their consequences and then terminate a parent's rights on the basis of circumstances that could have been significantly affected by those proceedings.

Id. at 609.

As noted in Hudson, the constitutional rights of parents and the best interests of the child are often not in conflict. There is a growing recognition in the child welfare and legal communities that quality parent representation can protect parents' constitutional rights *and* improve outcomes for children. Judicial Officers and attorneys surveyed in this study overwhelmingly (84%) thought that quality parent representation improves outcomes for *children*. Studies in Washington State have shown that better parent representation improves reunification rates.<sup>2</sup> Washington also found quality parent representation improved outcomes where safe return was not possible:

In 50% more of the cases resulting in a termination order, parents have obtained visits or periodic correspondence. Most of these orders were agreed - attorneys worked with parents to understand the realities of the case and obtain the best outcome possible, and the state agreed that the parents' proposed arrangements were safe.<sup>3</sup>

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<sup>2</sup> See Bridge & Moore, *Implementing Equal Justice for Parents in Washington*, at 7 (2002)(available at <http://www.opd.wa.gov/ParentsRepresentation/Juvenile-Family Court Journal Fall 2002.pdf>).

<sup>3</sup> *Id.*

Guided by the goals of protecting Michigan parents' due process rights and improving outcomes for children and families, the Michigan CIP commissioned the ABA Center on Children and the Law to perform this assessment. Additional support was provided by Casey Family Programs and the National Child Welfare Resource Center on Legal and Judicial Issues.

The following report on the findings and conclusions of the assessment is divided into three sections:

- I. a description of the methodology;
- II. an analysis of survey data, onsite observations, interviews, and focus groups; and
- III. recommendations based on an application of best practice standards and research to the findings.

## I. Methodology

In discussions about how to tailor the assessment to reflect the varied practices within Michigan, the assessment team and Quality Representation subcommittee were guided by the following goals:

(1) A statewide picture of parental representation should be constructed through means that reached as many individual judges and attorneys as possible; and

(2) Due to limitations on time and resources, to capture a real-time picture of parental representation, sampling of opinions and practices in selected jurisdictions would be conducted by onsite observation, personal interviews, and focus groups.

An important added feature of visiting courts was the opportunity for informal interviews with court personnel, and conversations with parents, providers, and social workers. The electronic surveys used to reach judges and attorneys statewide provided for follow-up individual interviews upon request.

### A. Off-site Preparation

**(1) Compensation Survey.** In November 2008, SCAO collected information from each Circuit Court administrator about their procedures for soliciting, appointing, and compensating parents' attorneys. Analysis of this information reveals a broad range of variation among counties, including financial and other demands on Michigan's county court systems and the varying priority that county policy makers place on providing legal representation for parents in these cases.

Compensation paid to parents' attorneys is divided into three categories: hourly rates (sometimes with a "cap" per case), a flat fee for representation for the entire case (excluding appeals), and fees according to scope of representation, e.g., initial appearance, termination of parental rights trial. Approximately half the counties for which data was collected had hourly rates. The median hourly rate is \$55 per hour. Some counties (15) annually contract with law firm(s) or a group of attorneys to provide representation to parents. These counties use an RFP or RFI process to solicit applications. In a small number of counties, attorneys bill and are paid according to type of appearance, e.g., representation through disposition, representation at TPR, representation at permanency hearing. Wayne County and Washtenaw Counties, for example, use this model. (See Appendix D for spreadsheet.)

**(2) Opinion Surveys.** Simultaneously, the assessment team and subcommittee drafted surveys for parents, attorneys, and Judicial

Officers. All responses to the surveys have been maintained confidentially. *Survey Monkey* was the default means of receiving responses to the survey, but the survey could be returned by e-mail, fax, or post. The instructions included the name and contact information of a specific member of the assessment team at the ABA Center for Children and the Law for assistance as needed. The assessment team also had copies of the surveys available at all site visits and many were distributed to attorneys, social workers, judges, and parents with arrangements for return mail. Follow-up e-mails and personal telephone calls were made to attorneys and Judicial Officers to obtain the broadest response possible.

*Nearly 73% of attorneys and Judicial Officers surveyed described compensation for parents' attorneys as inadequate. Even more parents' attorneys -- 87% -- viewed compensation as inadequate.*

The survey was sent to a total of 1,037 attorneys for parents, children, and prosecutors via e-mail. Two hundred forty-three (243) attorneys completed the surveys for a 23% response rate from the list. Surveys were e-mailed to 313 Judicial Officers from SCAO lists of Judicial Officers with a family court docket. Ninety (90) Judicial Officers responded for a 29% response rate.

Provisions were made for quality control including searches for duplicate names, e-mail addresses, and Internet Protocol addresses that would indicate duplicate responses from one person. In all, ten (10) duplicates were eliminated. All parent attorney surveys were scanned to verify that they represented parents. The vast majority of respondents answered most of the questions. Eleven (11) surveys from parent attorneys, five (5) DHS/Children's attorneys, and three (3) from Judicial Officers were excluded from the sample due to largely incomplete responses. The following survey data for attorneys and Judicial Officers is based on responses from 148 parents' attorneys, 66 DHS/children's attorneys, and 83 Judicial Officers. Responses from Judicial Officers and attorneys from every Michigan county are represented in the survey data.

**(a) Attorney Survey.** The attorney surveys were designed to be completed within 15 minutes and included multiple choice questions, Likert scale questions, and open-ended questions. The surveys also invited attorneys to participate in follow-up interviews. The surveys (see Appendix H) were e-mailed accompanied by a cover letter from Justice Corrigan explaining the purpose of the survey, stressing its confidentiality, and encouraging participation. The SCAO obtained the names of attorneys currently being appointed to represent children and parents in child protection cases supplemented with the names of county prosecutors. Two attorney surveys were prepared: one for attorneys that represent



parents at least part of the time and another slightly modified version for other attorneys representing only children or DHS.

The surveys included sections on Training, the Role of the Court, Representation in General, Compensation, and Improving Representation. The section on the Role of the Court focused on courtroom practices around the timely appointment of attorneys for parents. Timely appointment of attorneys was of particular interest to the subcommittee and it was raised in earlier discussions. Attorneys were questioned regarding what stage of

*Parents consistently cite good communication as the cornerstone of quality representation, as well as effective out-of-court advocacy. One parent stated: "[My attorney] fights for me. He gives me information about how to solve my problems, with electric bills and life."*

the proceedings attorneys were appointed for parents, how parents were determined to be eligible to have an attorney appointed to represent them, and the percentage of parents

who were represented. To create a picture of the practice norms associated with parental representation, e.g., expectations and informal standards, attorneys were asked about how soon after appointment they usually attempted to make contact with their client, how often they represented parents through all stages of a child protection case, appellate representation, their practice in maintaining client communication, reasons for continuances, and the scope of their representation. Finally, attorneys were asked their opinion about whether the quality of parental representation improves outcomes for children, and if so, in what ways.

**(b) Parents' Survey.** The parents' survey (see Appendix G) focused on their experience with their attorney during their most recent case (or in the past year). This survey was distributed largely in hard copy form, but also could be completed online. The challenge with these surveys was both in the distribution and the collection. The assessment team distributed surveys individually to parents with self-addressed stamped envelopes. In Kent County, a community provider of parenting classes, counseling, and support services for families helped with survey distribution and collection. Focus groups were held in Kent County at the offices of D.A. Blodgett, a community service provider. In Wayne County, the Parent Partner programs provided assistance in survey distribution and collection, and hosted parent focus groups.

Courts were contacted and asked to assist with survey distribution, and self-addressed stamped envelopes were provided to several courts. Attorneys from the e-mail lists were also asked to distribute surveys. A few attorneys apparently assisted clients (at least by mailing surveys for them). A law school clinic also assisted with survey distribution and collection.

In total, 63 parents' surveys were returned. No duplicates were found for parents' surveys. One was excluded because it was completed by a foster parent and one because they had no attorney in their case, resulting in 61 valid responses.

The survey instructed that all questions were to be answered by the parent in reference to their "last" or "most recent" child protection case. Background questions inquired about whether their case was still open, how long the case had been in court, and whether they hired counsel or had counsel appointed for them by the court. The remainder of the survey focused on their experience with this specific attorney. Questions asked

included how soon they had been contacted by their attorney after appointment, their relationship with their attorney, communication with their attorney and his/her office, their opinion about the quality of representation they received or were receiving, their satisfaction with how their attorney raised and resolved the issues which were of most concern to them, and any participation in a parent support group(s). Parents were also offered an opportunity to participate further in the survey through a personal interview.

**(c) *Judicial Officers' Survey.*** The Judicial Officers' survey (see Appendix I) followed a similar pattern as the other surveys, asking some general background questions about experience on the bench, assignments, their child protection calendar, and the number of child protection cases heard in the past month. The introductory background section was followed by two sections specifically examining how they appoint parents' attorneys and their opinions about the quality of parental representation in their court. Judicial Officers were asked about the factors they considered in deciding to appoint counsel, when they generally appointed counsel, their advisements to parents, the duration of their appointments, the frequency of appearances by substitute counsel, and compensation. Courtroom practice was explored through questions about how well attorneys appeared to be prepared for various hearings, the scope of advocacy, and the Judicial Officer's overall appraisal of the quality of advocacy by attorneys who represented parents in his/her court, including their knowledge of current social science research, general competency, and comparisons with attorneys in other areas of law practice. The survey concluded with a small set of open-ended questions asking for opinions about the relationship between the quality of parental representation and outcomes for children, their personal efforts to enhance or improve the quality of representation, and their suggestions

for improving the quality of representation. They were also invited to participate in a follow-up interview.

## **B. Onsite Assessment**

After extensive discussion, four counties were selected for onsite assessment: Kalamazoo, Kent, Genesee, and Wayne Counties. During the week of December 1-5, 2008, three two-person teams from the ABA Center on Children and the Law, accompanied by SCAO staff, conducted the onsite component of the assessment. These counties were selected to represent various demographics, court sizes, and models of appointment/compensation. There was preliminary discussion around visiting a more rural county, such as one in the Upper Peninsula, to provide a more complete picture. However, given the low volume of cases available for court observation, the small number of relevant parties available for focus groups, and the brief time available for onsite visits, a rural county was not able to be included in the assessment.

Arrangements for courtroom observation, personal interviews, and meetings were made by SCAO staff, preceded by an explanation of the assessment goals. One team was assigned to Wayne County, one to Genesee, and a third team spent the week primarily in Kalamazoo and Kent with a half-day in Genesee to allow for court observations. Each team completed a single court observation form for each court visited. (See Appendix E.) Specific questions in this form were drafted in acknowledgement that evidentiary hearings are a critical part of measuring quality of representation but do not present the total picture. Research and courtroom experience leaves no doubt that the courtroom environment, including communication with the Judicial Officer and the way in which the parent is received in the courtroom, has a direct impact on the parent's sense of being heard and

respected, and can encourage (or discourage) more engagement with social workers, community resources, and counsel. Consequently, this form included questions about courtroom appearance, waiting rooms and interview space, and attorney activity outside of the hearing, e.g., interviewing clients and social workers, conversations with other counsel, and information gathering.

The hearings observed varied in content and purpose. In total, 20 hearings were observed. Most were review hearings, but several pretrial, jurisdiction, and termination hearings were observed. For each hearing, the observation form included questions about type of hearing, how the parents were treated, and the attorney's interaction with the parents to obtain a picture of the attorney-client relationship and the amount of parental engagement. Advocacy was measured in terms of use of procedural tools, e.g., opening statements, discovery, evidentiary objections, citing legal authority in arguments, presenting affirmative evidence, and understanding legal principles and necessary Adoption and Safe Families Act findings. How the court explained its findings and generally communicated with the parties, specifically the parents, was also examined in detail, including any admonitions or encouragement from the bench. Attorney contact with the parent after the hearing was also recorded.

Each onsite visit, which consisted of either one or two days, included courtroom observations, interviews with Judicial Officer(s) if available, focus groups, discussions with attorneys appearing in the cases, and individual interviews. In total, 126 individuals participated in 22 group sessions and five individual interviews.

- **Kalamazoo County.** The assessment team conducted a large focus group with agency social workers and private providers. The Kalamazoo County court administrator convened a luncheon “focus group” or roundtable by inviting any interested attorneys, judges, and any court staff who were interested to attend.
- **Kent County.** The assessment team conducted a large focus group with social workers from a private provider and another focus group for parents at the private provider’s offices. The team interviewed the Presiding Judge of the Family Court and four other Judicial Officers, attended court sessions, and conducted brief interviews with attorneys.
- **Genesee County.** All Judicial Officers were interviewed and parents’ attorneys were interviewed during the onsite visits.
- **Wayne County.** In Wayne County, many Family Court Judicial Officers, including the Presiding Judge, were interviewed, court sessions were observed, and focus groups were held with parents, parents’ attorneys, parent partners, and Foster Care Review Board members.

In addition to the onsite visits, the assessment team conducted nine telephone interviews after the visits. Some phone interviews were made in an attempt to reach out to underrepresented areas, e.g., the Upper Peninsula. Others were follow-up interviews with individuals who had expressed interest in being involved in the study, but had been unavailable during the onsite visits.

## II. Findings

### A. ABA Standards

The assessment methodology was structured around the *ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases* (hereinafter Parent Attorney Standards), which were adopted in 2006, and the findings below are organized in the same way. (See Appendix B.) The Parent Attorney Standards were organized into the following sections for the assessment: (1) basic obligations, including a knowledge foundation in federal and state law, regulations, policies, and rules; (2) relationship with the client; (3) court preparation; (4) courtroom advocacy in hearings and post-hearings; and (5) the organization of parent representation.

**(1) Basic Obligations of Attorneys.** The Parent Attorney Standards require competency in core knowledge areas of law, federal and state regulations, ongoing training, access to research, and related resources. See Standards 1 – 2. In addition, the Standards require that the attorney avoid continuances unless there is a strategic benefit for the client, and cooperate and communicate regularly with other professionals in the case. See Standard 5.

According to survey results, the majority of Michigan parents' attorneys (57%) are not required to attend any special training to qualify for appointment to represent parents. Likewise, remaining eligible for court appointment does not generally require attending any annual or ongoing training. Less than one third of judges surveyed (30%) stated that attorneys are required to satisfy some mandatory training requirements before receiving appointments. Many Judicial Officers (49%) stated that parents' attorneys are generally knowledgeable about social science research in areas such as mental and physical health,

substance abuse, and parenting. One third of the Judicial Officers (34%) answered that “it depended on the attorney”; and only slightly over 11% described the attorneys representing parents who practice before them as “very knowledgeable.”

Offering more training and establishing training requirements are most frequently identified as necessary to improving representation. Of 234 Judicial Officers and attorneys that answered an open-ended question about what could be done to improve representation in Michigan, 43% recommend training. Parents' attorneys were least inclined to indicate that additional training would improve their representation (39% vs. 43 % of DHS/children’s attorneys and 50% of Judicial Officers).

A closed-ended question asked attorneys whether they had training in 15 substantive areas. Complete results appear in Appendix J.

*One Judicial Officer noted:  
"They [attorneys] are not always prepared. I don't think they spend as much time as they should with the clients. Conferences are ongoing in the hallway before hearings and I think they should have been going on days before that in the attorney's offices."*

- Domestic violence (59%) is the area in which the most parents' attorneys had received training.
- A little over 50% of parents’ attorneys had received training in evidence, trial practice in child protection cases, and DHS policies.
- Almost half (40 - 45%) reported having received some training in child development, federal and state child welfare law and regulations, mental health, physical abuse, and substance abuse.



During the previous 24 months, attorneys reported attending training provided by their County Bar Association, SCAO, or other sources on specific topics such as mental health and child sexual abuse. When asked to identify those areas in which they felt that they most needed training, only “DHS policies and procedures” is indicated by the majority of parents' counsel (60%). In comparing responses to the questions about what training they *have* attended and what training they *need*, it is notable that interstate placements and public benefits stand out as areas where little training has occurred and many attorneys feel they need training.

Judicial Officers (73%) shared the attorneys' perspective that attorneys representing parents will benefit from additional training on DHS policies and procedures. By more than 60%, they identified mental health as an area where attorneys need training. In addition, almost half of the Judicial Officers shared the opinion that attorneys will benefit from more training in specific areas such as child development, education/special education, evidence in child protection matters, public benefits (SSI/SSD), and substance abuse.

The statistics detailed above generally support a finding that parents' attorneys could improve their representation with additional training. Only 11% of Judicial Officers described parents' attorneys as “very knowledgeable,” and half of all responding Judicial Officers stated that additional training would benefit parents' attorneys. Nearly 40% of parents' attorneys agreed, a significant response given that the responses reflect attorneys who generally have many years experience in the child protection field.

**(2) Relationship with Client.** The most extensive section of the Parent Attorney Standards relates to the attorney-client relationship. This section addresses the need for advocating for the client’s goals in accordance with the duty of loyalty owed to the client, providing the client with sufficient information to direct his/her case, maintaining confidentiality, engaging with cultural competence, and maintaining continuous contact with the client despite changes in location/circumstances. The attorney-client relationship is the foundation of the ethical duties of any attorney. In child protection practice, rules of evidence are often relaxed by Court Rule or practice, and the burden to prove parental “fitness” is shifted to the parent from the moving party. To ensure parents receive the full procedural guarantees to which they are entitled, parents’ attorneys must establish strong relationships with their clients.

This area of the assessment is one where data from parents and the legal community varied remarkably to many of the same questions. Some sampling bias may be inferred. It is quite possible that attorneys most committed to child protection were overrepresented in the surveys and *they* are more likely to be the attorneys that worked harder to maintain quality relationships with parents. Likewise, it is possible that parents most concerned that they received substandard representation were more impassioned about attending focus groups or completing surveys. However, given the numbers of surveys and focus group participants included in the study and the consistency of many responses, it can be safely concluded that the issues discussed below are significant, even if they vary individually and geographically.

Standards 10 and 11 require attorneys to regularly communicate with their client well before court and establish a system for maintaining communication. Fifty-eight percent (58%) of parent attorneys indicated that they contact their clients within one day of being appointed and another 36% contact their clients within one week.

Many parents expressed concerns regarding communication. Sixteen percent (16%) of parents reported that they were contacted within a day and 18% within a week. A disturbing number (31%) responded to the 'Other'/open-ended portion of Question 11 (see chart below) to indicate their attorney never contacted them and even more (51.7%) said their only contact was immediately before court hearings.

Almost all the attorneys use telephones, voice mail, and letters to communicate with their clients. Many attorneys (65%) reported requesting alternate telephone numbers from their clients, though only 4% of parents responding to the same question indicated their attorneys sought alternate numbers. Slightly more than a third (36%) use e-mail. Most meet with clients outside their office, but less than half (45%) maintain flexible office hours (e.g, weekends or evenings).

As the survey results below show, parents had a distinctively different perspective on their relationship with their attorney. Question 18 on the parents' attorney survey read: "How do you maintain open lines of communication with respondent parent clients?"

Answer Options	Response Frequency	Response Count
Telephone/voice mail	99.3%	145
Request alternative phone numbers	65.1%	95
E-mail	35.6%	52
Letters	92.5%	135
Maintain flexible office hours	45.2%	66
Meet with client outside the office	54.1%	79
Other, please specify		26
<i>answered question</i>		<b>146</b>
<i>skipped question</i>		<b>2</b>

Results from a similar question on the parents' survey, however, yielded dramatically different responses. Question 11 on the parents' survey read: "How did your lawyer keep in contact with you (check all that apply)?"

Answer Options	Response Frequency	Response Count
Telephone/voice mail	42.1%	24
Used alternative contact/phone numbers	3.5%	2
E-mail	3.5%	2
Letters	21.1%	12
Maintained flexible office hours	8.8%	5
Met with me outside the office	7.0%	4
Met with me at court before hearings	70.2%	40
Other, please specify	19.3%	11
<i>answered question</i>		<b>57</b>
<i>skipped question</i>		<b>4</b>

Court observations show a mixed practice. Some attorneys clearly had previously met their client, while others clearly did not recognize their clients when having to locate them in the waiting room. Likewise, testimony in a number of cases revealed that some attorneys attempt to locate missing parents, while others consider this task exclusively the responsibility of the parent or DHS. As noted by one Judicial Officer: “They [attorneys] are not always prepared. I don’t think they spend as much time as they should with the clients. Conferences are going on in the hallway before hearings and I think they should have been going on days before that in the attorney’s offices.”

Although a few parents reported exceptional representation, parents in focus groups also were not satisfied with the representation they received. Parents paint a picture of attorneys not responding to telephone calls, communicating only outside of the court room, not being available when conflicts arose with their case plan or services, and generally, not being a reliable advocate.

Two parents who were very satisfied with their representation highlighted good communication as a cornerstone of quality representation. Parents also explained how attorneys with good communication practices would learn about all of the clients’ needs. They described frequent communication, taking time out to explain, strong courtroom advocacy, good communication with social workers and providers, and out-of-court advocacy in areas related to their stability, e.g., housing, Social Security benefits, employment. As one parent stated: “He fights for me. He gives me information about how to solve my problems, with electric bills and life.”

Another parent compared her attorney with her husband’s attorney as follows: “My baby’s daddy’s lawyer didn’t seem to know anything. Some lawyers make little effort. My lawyer really likes his work; he is very compassionate . . . lawyers need to get to know their clients and respect them. I wish more was like that.”

When asked what a “good lawyer does,” one parent’s comments during a focus group shows how a positive relationship and good communication is tied to effective advocacy: “Just make me feel like you hear me . . . A good lawyer stays informed, calls back, checks in with clients. We don’t talk after court. Communication is the key. He expresses

*Most of the responding parents (67%) and parents' attorneys (76%) stated that the attorney represented the parent through the entire case (until dismissal or termination of parental rights). Parents, however, also expressed displeasure with the frequent use of substitute counsel at individual hearings in their cases.*

my wishes in court but the way he puts it, it isn’t right . . . My first lawyer was great, fought for me, knew what I was trying to do, how to get over the barriers. I was in jail and when I got out he got on the case and moved it along. My lawyer now is slowing down . . . the substitute lawyer doesn’t let me participate but goes along with what DHS tells her.”

The consensus among social workers and providers in focus groups was that how attorneys represent parents varies greatly, depending on many factors, but that overall, improving representation of parents will directly impact their work. There was general agreement that an attorney who has a good relationship with the client can encourage the client to fully engage in services and with his/her case plan.

The statistics indicate a significant variation between attorneys' and parents' perceptions regarding the attorney-client relationship. Overall, there appears to be consensus that parents generally want and need more communication from their attorneys between hearings, which is addressed more thoroughly in Court/Case Preparation below.

**(3) Court/Case Preparation.** Preparation is closely linked with courtroom advocacy. Standards 24 – 31 require attorneys to develop a case theory and strategy, research, timely file pleadings, engage in case planning and advocate for appropriate services, aggressively advocate for family-friendly visitation, prepare the client, obtain witnesses, and, as needed, expert witnesses.

- Most Judicial Officers (56%) found attorneys for parents are as well prepared as attorneys in other types of civil litigation.
- Only a small percentage of Judicial Officers (14%) thought the preparation by parents' attorneys is *less* or *much less* than what would be expected from attorneys practicing other types of civil litigation.
- Slightly more Judicial Officers (19%) thought preparation by parents' attorneys is *better* or *much better* than attorneys practicing other types of civil litigation.
- More than 50% of Judicial Officers agreed that attorneys are *always* prepared for jurisdiction hearings, disposition hearings, and TPR hearings.
- Slightly less than half of the Judicial Officers (46%) rated attorneys as being *always* prepared for permanency hearings.
- Less than a quarter (20%) of Judicial Officers found attorneys are only *sometimes* prepared for preliminary hearings.

The consequence of less than complete preparation may be continuances, weak cross examination, failure to present affirmative evidence, and inadequate preparation of clients to testify or participate in critical decision making.

Court preparation depends on a number of factors including access to discovery and third party reports. Standard 9 under Rule of the Court requires that courts “[e]nsure all parties, including the parent’s attorney, receive copies of court orders and other documentation.” Not receiving documentation, including court reports, ahead of time was seen as a problem by social workers, Judicial Officers, and attorneys. Attorneys on surveys and in focus groups, however, reported that they do not receive court reports until the day of the hearing. In response to an open-ended question about why they ask for continuances, 36% of parents’ attorneys reported that discovery issues lead to continuances, many indicating specifically that they fail to receive timely reports from DHS.

Client unavailability was identified by fewer than 25% of the parents’ attorneys as the main reason for requesting a continuance. Parents and other attorneys (28%) noted that parents’ attorneys sometimes request continuances to obtain more time for their clients to complete their service plans. Delayed or continuing settlement discussions were only rarely listed as cause for continuances (4%).

The parent attorneys’ survey also focused on case preparation outside of court appearances and other than on the day of the hearing. As the chart below shows, parents’ attorneys often review case records before the day of the hearing, but are significantly less likely to meet with clients or speak with others in the case prior to the day of the hearing. Question 21 on the parents’ attorney survey read: “In representing respondent parents, how often do you do the following on a date other than the day of the hearing?”



Answer Options	Never	Rarely	Occasionally	Always	Response Count
Meet with your client	2.1%	9.6%	61.0%	26.7%	145
Talk to DHS worker	1.4%	3.4%	58.2%	36.3%	145
Review case records	0.0%	4.8%	34.2%	61.0%	146
Speak to service providers	2.1%	8.2%	60.3%	29.5%	146
Investigate alternative placements/resources	2.7%	22.6%	56.2%	17.1%	144
Investigate potential independent witnesses	2.7%	11.6%	57.5%	27.4%	145
Speak to agency attorneys	7.5%	13.0%	44.5%	32.9%	143
<i>answered question</i>					146
<i>skipped question</i>					2

The lack of contact between court days was also discussed in focus groups. A common frustration was expressed by one social worker: “I would like attorneys to be involved between court hearings . . . The attorney usually comes to the courthouse and says ‘Who is my client?’ then goes to talk to them in the hall . . . they only know what’s in the court report. I doubt if they know what’s going on with their clients, or care.” In addition, according to the social workers, attorneys have not read the report(s) and rarely contact the social worker in advance. “We see them first at court . . . attorneys are chatting in the attorney conference rooms, rather than talking to their clients.”

The Center for the Study of Social Policy, in its review of racial disproportionality and disparity for African American children in the child welfare system, also found weak out-of-court advocacy was an issue. The study also suggests that this issue affects more African American families because they are less likely to hire private attorneys.<sup>4</sup>

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<sup>4</sup> See Center for the Study of Social Policy, *Race Equity Review: Findings from a Qualitative Analysis of Racial Disproportionality and Disparity for African American Children and Families in Michigan’s Child Welfare System*, 34 – 35 (2009).

The statistics above indicate that, while attorneys generally review case records prior to the day of the hearing, far fewer have met with their client, spoken with the social worker, or spoken with a service provider before the day of the hearing. In fact, in most instances, attorneys stated that they did these things before the day of the hearing *occasionally*. In addition, it appears that attorneys are not receiving court reports in advance of the hearing, making it difficult to fully digest before their appearance in court.

**(4) Courtroom Advocacy.** The Parent Attorney Standards require that attorneys attend all hearings and be prepared and able, as appropriate, to make motions, objections, conduct cross-examination, make opening and closing statements, request closed proceedings, and prepare appeals. Both surveys to attorneys and Judicial Officers attempted to capture the respondents' full experience about the quality of courtroom advocacy on behalf of parents.

- Most Judicial Officers (57%) are *generally satisfied* with the competence of attorneys representing parents in their courts and 27% are *very satisfied*.
- Judicial Officers reported that in *almost all* (44%) or *most* (25%) hearings, parents' attorneys in contested cases present evidence or make arguments that are important to Judicial Officers' findings or decisions.
- Judicial Officers also noted that parents' attorneys regularly make closing arguments (*usually* 30%; *always* 53%).
- Parents' attorneys only *rarely* (45%) or *sometimes* (49%) called expert witnesses, and *sometimes* (60%) file written motions and cite legal authority.

Parents' attorneys were asked a number of questions about trial advocacy. Most (64%) indicated they *occasionally* file pleadings, motions, or briefs. Most (57%) stated they *always* make evidentiary objections, and nearly as many (54%) stated they *occasionally* prepare and present exhibits. Almost all (80%) reported *always* making closing arguments, with nearly half (49%) *rarely* obtaining expert witnesses.

The use of substitute counsel is a common complaint around trial advocacy. Half of the Judicial Officers reported that substitute attorneys *rarely* appear in child protection cases, 25% estimated that substitute attorneys appear *occasionally*, and over 14% stated that substitute attorneys appear *sometimes*.

Less than 5% reported that substitute counsel regularly appear in their courts. Where substitute attorneys appear, Judicial Officers recognized them from the appointment list/panel or as attorneys from the same firm. Attorneys are generally required to make their own arrangements for substitute counsel.

Focus groups spoke to the effect of substitute counsel on trial advocacy. Many parents recounted instances of substitute counsel not being knowledgeable enough about the facts in the case to provide effective cross-examination. One onsite team asked a number of focus groups to estimate the frequency of substitute counsel appearing at hearings. Estimations ranged from 1/5 to 1/3 of hearings having a substitute.

Onsite teams noted systemic issues around respect and understanding for parents and their attorneys:

- long waiting room delays
- "cattle call" docketing systems
- perception that parent representation in child welfare cases is a "baby court" used primarily to train new attorneys

One parent said in an interview about substitute counsel: “They hurry up and read the report so they can get caught up. You feel disoriented, everything is so fast-paced. You wait longer in the waiting room to be called and then you have a quick hearing.”

In sum, while several strengths can be noted from the above data, the standout issue around trial advocacy was the overuse of substitute counsel. Even though having around 25% of cases with substitutions might not cause great alarm in and of itself, what was impressed upon the onsite teams was that this level of substitution was perceived by parents to lead to or compound issues, especially given the lack of out-of-court time spent with counsel.

**(5) Organization of Parents’ Representation.** In addition to addressing the obligations placed on parents’ attorneys, the Parent Attorney Standards address the organization of parent representation. These issues are primarily addressed in the sections on the Role of the Court and the Obligations of Attorney Managers. Many of the recommendations of judges, attorneys, and social workers focus on these issues.

Standard 4, under Role of the Court, addresses the importance of early appointment and continuity of representation. It requires courts to “[e]nsure appointments are made when a case first comes before the court, or before the first hearing, and last until the case has been dismissed from the court’s jurisdiction.” Michigan statute also makes appointment mandatory. See Mich. Comp. Laws § 712A.17c(4)(5) (1999); Mich. Ct. R. 3.915(B)(1); Mich. Ct. R. 3.965 (B)(5); Mich. Ct. R. 3.974 (B)(3)(a)(i).<sup>5</sup> Attorneys generally agreed that judges *always* inquire about whether parents have an attorney (88%), *always* advise the parents of the availability of court-appointed attorney (91%), and almost *never*

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<sup>5</sup> Michigan Court Rules are available at <http://coa.courts.mi.gov/rules/>.

(83%) discourage parents from obtaining an attorney. Judicial Officers agreed, with the exception of 6% who reported that they advise parents of their right to an appointed attorney only “as needed.” However, the responses show a tendency not to appoint attorneys for noncustodial parents who are not named as respondents in the Petition. In response to an open-ended question about how eligibility for appointed counsel was determined, 20% of parents’ attorneys noted that this tendency not to appoint attorneys for noncustodial or parents not named as respondents is an issue. This issue was also raised in several onsite focus groups and is highlighted in the In re Rood case. See In Re Rood, 763 N.W. 2d 587, 612 (Mich. 2009) (plurality).

According to the attorney and Judicial Officer surveys, attorneys are appointed before the preliminary hearing 70% of the time and before the jurisdiction hearing 29% of the time. Appointments just before reviews and terminations were reportedly rare. Results from parents’ surveys were consistent with the answers from judges and attorneys.

Appointments are made based on an eligibility form or interview. The vast majority of Judicial Officers report that proof of inability to retain an attorney is their primary, if not exclusive, criteria for appointing an attorney to represent a parent (89%). Other factors such as complexity of the case, ability of the parent to represent himself/herself in court, and the likelihood that the case may proceed to TPR are much less significant.

According to the attorneys surveyed, almost all parents are represented at the dispositional hearing (92%) and at hearings on termination of parental rights (96%). The only significant difference in representation statewide is at the preliminary hearing, where only 72% are represented by an attorney.

However, when survey results are analyzed by county, sharp differences in timeliness of appointment can be seen. The chart below shows the responses to Parents' Attorney Survey Question 14 and the DHS/Children's Survey Question 8 for the 22 most populous Michigan counties.<sup>6</sup> Questions 14/8 read: "Please estimate the percentage of respondent parents represented by counsel at the following child protection hearings."

County	Preliminary	Jurisdiction	Disposition	Review	TPR	Response Count
Wayne	87%	95%	95%	94%	96%	25
Oakland	91%	96%	100%	97%	100%	22
Macomb	87%	96%	93%	88%	97%	11
Kent	91%	87%	87%	85%	91%	13
Genesee	22%	86%	88%	88%	99%	9
Washtenaw	82%	81%	97%	95%	97%	7
Ingham	73%	97%	99%	94%	100%	7
Ottawa	20%	80%	80%	78%	95%	2
Kalamazoo	50%	91%	88%	78%	93%	3
Saginaw	97%	97%	97%	97%	97%	2
Livingston	85%	95%	95%	88%	96%	4
Muskegon	100%	100%	100%	100%	100%	1
Jackson	21%	69%	69%	69%	72%	3
Berrien	78%	84%	84%	84%	86%	4
Monroe	78%	92%	92%	92%	97%	5
Calhoun	83%	83%	83%	83%	83%	2
Allegan	80%	100%	100%	100%	100%	1
Eaton	98%	98%	98%	98%	100%	2
Lenawee	99%	100%	100%	100%	100%	1
Lapeer	49%	84%	86%	86%	97%	5
Grand Traverse	80%	81%	85%	85%	87%	3
Midland	6%	100%	100%	100%	100%	4

<sup>6</sup> Results for the 25 most populous counties were analyzed; no results were obtained from St. Clair, Bay, or Van Buren.

Although lower survey response rates from some counties don't allow the most conclusive results, these results were also supported by interviews and other anecdotal information.

After being appointed, the vast majority of attorneys (76%) report that they *always* represented the parents through the end of the case, including TPR if applicable. Parents generally agreed (67%) they are represented by the same attorney through the life of the case. Continuity of representation beyond permanency and through appeal is rare; only 8% of respondents *occasionally* or *always* represented their parent client on appeal.

Standard 10 for Attorney Managers requires managers to "implement an attorney evaluation process." Surveys to attorneys and Judicial Officers sought recommendations about how representation for parents can be improved through open-ended questions, e.g., "What do you think can be done to improve representation of respondent parents in child protection cases?" The response rate to this question on Judicial Officer and attorney surveys was high with 234 of those 297 surveyed answering. Although a small number (4%) of Judicial Officers and attorneys recommended enhanced accountability or performance evaluations, this issue was raised more frequently in focus groups. Some suggested that Judicial Officers should assume a more aggressive role in monitoring the quality of representation. "I'd like to see a competency system in place to insure that parents and children get representation that actually knows about child abuse issues. These are cases where only attorneys who do child protection law on a daily basis should be practicing in the child abuse and neglect areas."

Social workers also noted problems with a lack of oversight or evaluation. Some complained about a “good old boys network” where there are no controls on the attorneys or their conduct with their clients. “I hear parents’ attorneys making lots of negative comments about their clients . . . they use their clients names in casual conversation; they shouldn’t stand around joking with social workers especially when the parent is there.” All social workers were concerned that attorneys do not seem prepared and do not seem to “do anything outside of court.” They questioned how many communicate with their clients outside of the courtroom. “Attorneys rush out and don’t explain what happened in court. The parents come to me to explain.”

Attorney Manager’s Standard 3 and Role of the Court Standard 5 relate to ensuring parents’ attorneys receive competent and fair compensation. Improving compensation was also recommended as a means of improving representation in many surveys and onsite interviews. The compensation provided for attorneys who represent parents was described as *inadequate* by almost 73% of the attorneys and Judicial Officers surveyed. Attorneys for parents even more strongly (87%) viewed compensation as inadequate.

Both surveys solicited open-ended recommendations about what would be a preferred compensation formula, with the following results.

- The overwhelming recommendation is for an hourly rate (56%) (compared to only 7% that suggested a per hearing rate for this open-ended question).
- Some (17%) of attorneys and Judicial Officers also noted that the rate should be comparable to rates for prosecutors or criminal defense attorneys or based on a fraction of the attorney’s rate for retained clients.



- A smaller number (7%) of attorneys and Judicial Officers recommended a per hearing rate, with most also adding that the per hearing rate should be raised (6%).
- Other attorneys and Judicial Officers (12%) noted that any compensation formula should take into account out-of-court time for meeting with clients or other preparation, and attorneys should be compensated for time associated with docket management, including continuances and court wait times.
- Attorneys for DHS, children, and parents did not believe that the compensation paid to attorneys who represent parents reflects the complexity of the legal and factual issues in child protection cases (84%). Improved training and compensation were identified as potentially having the most direct positive impact on improving the representation of parents.
- Attorneys and Judicial Officers were divided about whether compensation negatively impacts the quality of representation, but almost half (49%) thought it does negatively impact representation and 10% had no opinion.

*The assessment results indicate several systemic issues that need to be considered for reform:*

- *attorney compensation*
- *appointment of attorneys for nonrespondent parents*
- *evaluation of attorney performance*
- *prompt receipt of court reports*
- *improved understanding and respect from the bench for child protection cases, parents, and their attorneys*

In response to an open-ended question about how to improve representation, 43% of Judicial Officers and attorneys recommended better compensation to enhance the representation of parents. A representative response to this open-ended question was the following: “I think current compensation is a big detriment. It is not prohibitive in this day, but it is a hardship. Most attorneys who work in this are willing to do the work, it is just a financial burden to sit in court for three to four hours for a dispositional review and only get paid \$120.”

Focus groups echoed the survey responses. In one county, an experienced attorney described the problem: “We are paid less than appointed criminal lawyers; there is no money for preparation; we don’t have the training to represent parents on all the issues they have, and we don’t get support from the court, e.g., discovery is always late and judges don’t want to hear real legal arguments.” Another attorney suggested that “[S]ome recognition for these lawyers would make a big difference . . . there is nothing in what we do or how we are treated or how our clients are treated that says representing parents is valuable.”

As previously noted, prompt receipt of court reports appears to be a problem in many jurisdictions. One focus group discussed how the court set up a system for workers to e-mail reports, which had to some extent improved timeliness. However, this system was abandoned when conflicts arose as to who would pay for copies. While individual attorneys may be able to establish an effective procedure to receive reports in a timely manner from certain courts with whom they work, this issue probably requires statewide organization or policy changes.

Attorney Manager's Standard 8 requires attorney managers to "ensure the office has quality technical and support staff as well as adequate equipment, library materials, and computer programs to support its operations." As noted above, many Michigan parents' attorneys are sole practitioners and may not per se have a 'manager.' Nonetheless, the access to online or other research materials appears to be a strength in Michigan. In response to a question about parents' attorneys' access to resources to assist them in keeping current regarding changes in law, regulations, and related social science research, many attorneys stated that they had access to online research sites: Westlaw (40%), Michigan Institute of Continuing Legal Education (ICLE) (36%), Lexis (18%). With a high response rate to this open-ended question (138 or 93%) there is little indication that access to research materials is a major issue. The majority of parents' attorneys (54%) do not belong to any professional organization associated with child welfare law practice. A few (20%) belong to relevant sections of the Michigan Bar Association or their County Bar Associations and/or were members of related listservs.

Finally, onsite teams noted systemic issues around respect and understanding for parents and their attorneys. Negative attitudes of isolated individual attorneys, Judicial Officers, or court staff toward respondent parents could be inferred by results discussed elsewhere, but there are also systemic philosophies, policies, and procedures that parents and others discussed in this regard. Examples of these systemic issues, such as long waiting room delays, "cattle call" systems for parents to appear in the courtroom, and perceptions that parent representation in child welfare cases is a "baby court" used primarily to train new attorneys, were frequently reported. These issues lead parents to believe they are not valued as a parent or an individual and are unlikely to have children

returned despite their efforts. One presiding judge, when asked how to maintain quality representation, identified showing respect from the bench for child protection cases as key to quality representation.

The Center for the Study of Social Policy also found there is a need to improve respect and understanding for parents' needs and the importance of the attorney's work in protection cases. They noted that "parents were observed being unable to address the Court directly....The court practice is to have parents and youth speak primarily through their

*Each of the four counties selected for onsite assessment have different ways of compensating parents' attorneys:*

- *County 1: pays hourly rate of \$70; attorneys can bill for out-of-court time*
- *County 2: pays hourly rate of \$55*
- *County 3: pays per case and per case event; no compensation for out-of-court time*
- *County 4: pays per appearance; no compensation for out-of-court work*

attorneys, yet as described below, these attorneys have such high caseloads and limited time that most are unfamiliar with the unique situation and needs of their individual clients." Observations and discussions from this study supported those findings.

The statistics discussed above indicate several "organizational" or systemic issues regarding representation of parents that need to be addressed: (1) compensation (which is considered inadequate by nearly everyone); (2) appointing attorneys to represent nonrespondent parents; (3) monitoring/evaluating

attorney performance; (4) prompt receipt of court reports; and (5) improved understanding and respect from the bench for child protection cases, parents, and their attorneys – in particular for the unique challenges faced by parents and their attorneys in these cases.

## B. Current practice: Snapshots of four counties

### County 1:

This County maintains a panel of approximately 34 attorneys and is reviewing their appointment procedures for parents' attorneys. Written application is required with a statement of legal experience and legal education. All attorneys must carry professional liability insurance, have a local office and telephone number, and be in good standing with the State Bar of Michigan. Attorneys must "satisfy the judges" that they are competent to handle the cases assigned. The policies are not included in Local Rules. There is a waiting list for appointment to the panel. Attorneys applying for the panel are encouraged to connect with experienced panel attorneys, watch court proceedings, and acquaint themselves with the Judicial Officers' expectations and rules. The court administrator has arranged mentoring with more experienced lawyers and recommends mentoring. Attorneys are reviewed twice annually and may be removed by a majority vote of the judges in the division responsible for their selection. The hourly rate of \$70+ has not changed for many years. Attorneys may bill for out-of-court time as well (but often don't). Attorneys are appointed for both parents only if there are allegations against both parents.

### County 2:

The plan for appointment of counsel to indigent parties was established through administrative order and provides for RFP's to contract for representation. Application is made in writing, and new attorneys to the panel must complete an orientation and are assigned a mentor attorney. All attorneys on the panel are required to attend "any relevant training" as determined by the Court. The panel is *capped* at 60 attorneys; most of the attorneys have been on the list for many years. Attorneys are paid an hourly rate of \$55.

Court administrators and judges review attorneys annually and as needed. The Presiding Judge will meet individually with an attorney where concerns have been expressed regarding his/her conduct by other Judicial Officers, attorneys, or court staff.

Judicial Officers encourage new attorneys to apply for the panel as one of their responsibilities. “We look for attorneys who have empathy, are bright, and can work well with others.” Mentoring is available and encouraged. The Presiding Judge actively engages panel attorneys in projects related to improving the family court and solving problems. “Brown bag” lunches monthly are used to maintain good communication, solve problems, and conduct interdisciplinary training. Judicial Officers discussed what they perceived as the “*mentality* that our cases are less significant than others . . . We try to reinforce that judges care for these families and that these cases are very important.” The Presiding Judge expressed sentiments shared by the other Judicial Officers interviewed: “We are very fortunate to have these attorneys. I wish we could pay them more. It is important that we show respect for them and these cases through how we manage our courtrooms.”

### **County 3:**

All attorneys applying to represent indigent parties must satisfy the same requirements, i.e., be a member of good standing with the State Bar of Michigan and have a principal place of business in the county. Attorneys are assigned to a single court and will only represent parents with cases assigned to that court and judge. Each attorney panel is under the supervision of a managing attorney who assigns cases on a rotational basis. Compensation is event-based; extraordinary services are reviewed by the assigned judges. Attorneys may be removed from the eligibility list upon a violation of the Rules of Professional Responsibility, Rules of the Defender Program, or other inappropriate conduct.

Judges are generally satisfied with the quality of representation. One judge noted that “[s]ometimes [attorneys] are more interested in the case than the parent.” Judges acknowledged that low pay is a problem and the economic realities cause attorneys to take on more cases than they should. Attorneys are paid per case and per event. Failure to compensate attorneys for out-of-court work creates a disincentive to preparation and the failure to communicate with clients before hearings is a significant problem. These issues contribute to a culture where attorneys “do a good job” at trial but are not counseling their clients. As one judge noted, “. . . this relates to the low regard for this area of law practice as ‘baby court’ because it favors collaboration and is not ‘adversarial’.”

Judges recognize that they have a role in improving representation and that when attorneys for parents do a better job, “things are better for everyone else.” They also recognize the challenge of representing parents in these cases; however, judges reported that they meet with attorneys who are not meeting expectations and remind them that they will be removed from the panel if they do not meet their obligations. Reliance on substitute counsel was recognized as a problem but a necessary reality.

#### **County 4:**

Attorneys are paid according to appearance, but are not paid for out-of-court time, e.g., attending case planning meetings. Attorneys can petition for reimbursement of extraordinary expenses but, according to the Judicial Officers interviewed, such requests are rarely granted. Qualifying for the appointment panel and continuing to receive appointments does not require any particular training, compliance with performance standards, or accountability. Attorneys are appointed

*One parent in a focus group said: "Just make me feel like you hear me. . . . A good lawyer stays informed, calls back, checks in with clients."*

after the preliminary hearing. Use of substitute attorneys is common. “Attorneys are always substituting before court so that they can appear in other cases.”

Although many examples of strong advocacy by a core of “competent and qualified lawyers” were noted in the interviews, Judicial Officers generally expressed tremendous concern about the *lack* of advocacy among parents’ attorneys. Failure to meet clients before court, failure to prepare parents for court, lack of knowledge about the case plan status, and failure to communicate with social workers or potential witnesses prior to court were cited as common examples of obstacles to adequate advocacy and competent representation. Consequently, Judicial Officers find themselves in the position of “asking the questions” to witnesses and parents to make sure that parents get a fair trial. “Jurists seem to carry many of the cases.” Recommendations for improving the representation of parents include compensating lawyers for spending more total time on cases, requiring attorneys to show evidence of working on their cases outside of court including more client contact, reviewing files/reports before court, and linking fees to time spent outside court as well as court appearances. As one Judge noted, “Attorneys need experience and effort.”



### III. Recommendations

These recommendations derive from the assessment, the analysis of the assessment team and Quality Representation subcommittee, and the growing research on court performance standards and representation. The conclusions from studies of the representation of parents and children in two large jurisdictions, Washington State<sup>7</sup> and West Palm Beach, Florida,<sup>8</sup> present significant support for the principle that improving representation for a party has a direct impact on the overall performance of courts in child protection proceedings.

The special nature of child protection proceedings and the multiple interests which require protection, the broad impact of the courts' decisions on families, and the complexity of the evidence produce a situation in which the failure of one party to be fully represented

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<sup>7</sup> In 1999, the State Legislature directed the Washington State Office of Public Defense (OPD) to report on the inequalities in attorney funding in dependency cases. OPD's report found severe disparities in funding for the initiation and processing of these cases for the Attorney General's Office compared to the funds provided by counties for legal representation of parents. OPD obtained a legislative appropriation to create an enhanced parent representation pilot program in two counties. The legislation established five program goals: (1) reduce the number of continuances; (2) set maximum caseload requirements; (3) enhance attorneys practice standards (including time for case preparation and client consultation); (4) support use of investigative/expert services in the representation of parents; and (5) ensure implementation of indigency screening. The evaluation of the pilots showed that the pilots produced better outcomes for children, including increased family reunifications, reductions in continuances, more participation by parents in their case plans, and better access to services. As a result, since 2000, the pilots have been continuously refunded and additional counties have been added annually to the pilot. Currently, the OPD Parents Representation Program is fully operational in two-thirds of Washington's counties and in all major urban counties.

<sup>8</sup> In 2001, the Children's Service Council of Palm Beach County, Florida contracted with the Legal Aid Society to provide legal representation to children three years of age or younger entering shelter care with the goal of expediting children's exit to permanency, i.e., reunification or adoption. Since its inception, the Foster Children's' Project (FCP) expanded twice to include children 12 years and younger, and funded two permanency planners (social workers) and related support personnel. In 2006, the Chapin Hall Center for Children at the University of Chicago studied the project to determine if the enhanced representation offered through the program had any impact on the nature and timing of children's permanency outcomes. The study found that children represented by FCP had a significantly higher rate of exit to permanency than other children; specifically, these children had a much higher rate of adoption and long-term custody. The FCP model of representation combines court advocacy (filing motions, including termination of parental rights petitions) and out-of-court case preparation, e.g., attendance at staffings and case planning meetings, service advocacy, and recruitment of adoptive homes.

diminishes the quality of the overall evidence before the court and may result in inappropriate or untimely decisions. The life-long impact on children and families of removing children from their homes, placing them with strangers in communities which may be entirely foreign to them, separating them from their primary caretakers and, potentially terminating their legal relationship with their parents must be given serious consideration in examining these recommendations. The extent to which implementation of these recommendations may be driven by budgetary and resource constraints rests with the state and county government, the courts, and the citizens of Michigan.

Therefore, based on the assessment findings and analysis, Michigan should implement the following recommendations to improve the representation of parents in child protection cases.

**(1) Michigan should adopt a uniform administrative structure for the representation of parents.** The assessment data above shows a wide range of practice among Michigan courts regarding the appointment and compensation of attorneys, case preparation, judicial oversight, support staff, and out-of-court advocacy. This assessment reveals that county court administrators and Judicial Officers often struggle to address the issues without state support. The data also shows that many of the same issues are common in different parts of Michigan, yet with an entirely county-based system, each court works in isolation to address improvements. Any of the statewide administrative structures below must address the issues in recommendations (2) through (10) in some manner. The administrative entity must also address inadequate compensation via a pay structure that ensures attorneys representing parents receive pay parity with attorneys representing indigent persons accused of crimes and encourages preparation and out-of-court advocacy.

One of the following administrative structures could address these issues:

**(a) *Statewide Institutional System.*** Like a public defense system in many states or legal aid providers in larger metropolitan areas, this model would primarily use salaried staff attorneys to provide legal representation. This model would provide the benefits of in-house supervision, training, and support staff such as investigators, social workers, and paralegals.

**(b) *Office of Parent Representation.*** This model relieves the counties of the administrative responsibilities for managing a panel of attorneys, but could leave financial responsibilities with the counties. While this office would have full-time staff to address systemic issues in child protection cases, it would provide representation primarily through contract attorneys. One example of this model and its impact on the quality of representation is the Colorado Office of Child’s Representative (OCR). The OCR conducts an annual review of the “competency and quality of attorney services as well as the validity of any concerns.” Attorneys annually apply to OCR and each application is individually reviewed. The annual review includes distributing surveys to all CASA agencies, court facilitators, administrators, and Judicial Officers, and conducting visits to each judicial district. During visits, the OCR staff meet with attorneys under contract, interview new applicants, and interview court personnel, Judicial Officers, and CASA directors. OCR meets with county attorneys who represent the social services agency and social services staff. Annually, a list of attorneys eligible for appointment is compiled and distributed to each judicial district by July 1 of the upcoming fiscal year to allow for contracting. In addition to effectively monitoring the quality of representation, the annual process helps OCR address

systemic needs in each district and statewide issues which might involve other agencies, appropriations, Rules of Court, and legislation.

Another example is the Connecticut Office of Chief Child Protection Attorney (CCPA), a statewide office overseeing representation for children and parents in child protection, custody, and support cases. With nine full-time staff members (at last report), CCPA has achieved remarkable improvements in child welfare representation.

In 2007 – 2008, CCPA contracted with over 250 attorneys, most of whom are solo practitioners. CCPA also contracts with firms and organizations. Through these contracts CCPA provided representation in over 16,000 cases in 2008.

Some of the ways CCPA works to improve the quality of representation are: performance evaluation of contracted attorneys; ensuring fair compensation; ensuring attorneys have support staff such as social workers; organizing substantive training; working to reduce high case loads; and, acting as a liaison between the public agency and the contracting attorneys over systemic issues. A copy of a sample Connecticut contract is provided as Appendix C.

Housing an Office of Parent Representation within an existing agency could reduce overhead costs. For example, the Connecticut office originated as part of the Office of the Chief Public Defender.

**(c) Hybrid Model.** A combination of the Institutional and Office of Parent Attorney models is also possible. This hybrid model would use a combination of staff attorneys and contract attorneys. Regardless of regional variations between in-house and contract attorneys, a hybrid model would require some statewide organization to provide the type of oversight and organization described in (b).

In Massachusetts, the representation of parents in protective custody cases is housed within the Committee for Public Counsel Services (CPCS), the state entity responsible for providing legal services in civil and criminal matters for indigent persons as required by Massachusetts or federal law. Although most representation is provided by contract attorneys, the program uses staff attorneys in seven locations. Attorneys take appointments for both children and parents. The Children and Family Law Division (CAFL) is responsible for the recruitment, training, certification, and supervision of all attorneys under contract. Admission is by application only and requires satisfactory completion of a five-day training program combining substantive law and trial skills. Upon completion of the training, attorneys are assigned to an experienced CAFL attorney for mentoring and support. Caseload is limited to 75 clients at any one time; compensation is based on a hourly rate which includes case preparation. Attorneys can hire social workers and other experts to assist them with case preparation and investigation. Social workers are considered to be critical to maintaining the quality of representation, keeping caseloads manageable and controlling costs. Social workers are used to evaluate clients and services, negotiate open adoption agreements, and monitor case plans and the quality of services provided to clients. Regional coordinators are also available to the attorneys to provide advice and technical assistance.

Programs in operation in other states as described above offer Michigan the opportunity to avoid the cost of “reinventing the wheel” and to adopt an administrative structure that offers the possibility of significant *near-term* improvements in the quality of parental representation in child protection cases, as well as overall improved outcomes for children and families.

(2) Either as part of the administrative structure’s responsibilities or independently ,for example, through the SCAO, **Michigan should periodically survey local practices regarding compensation, screening, appointment, use of standards, and case management.**

By sharing this information on a regular basis, court administrators and county policy makers could compare local practices with other counties and incorporate features that might improve their management of the attorney panel and the representation of parents.

(3) Though surveys and interviews reveal that the SCAO does offer quality trainings, there is an impression that only a small group of dedicated parents’ attorneys are either able or willing to attend. **Michigan should improve its training requirements and delivery through the following:**

(a) establish mandatory training and continuing legal education requirements for parents’ attorneys that include specific requirements regarding training *directly related to the representation of parents*;

(b) develop a multi-year training plan to increase the frequency that parents’ attorneys attend trainings. Expand the current biannual trainings offered by SCAO to quarterly and hold trainings in the four SCAO regions. The trainings should be better promoted. They should continue to be promoted on the SCAO website, but should also be announced on the listserv (mentioned below). Training should be made as convenient and useful for attorneys as possible, e.g., court should not be in session on training days; some training could be delivered through the Internet and/or in modules that local Bar Associations could include in their training calendar; and

(c) regionalize quarterly multidisciplinary trainings that are offered to all attorneys, social workers, and service providers on legal and substantive topics, e.g., mental health services, behavioral health assessments, ICPC, bonding and attachment, family engagement, case planning, substance abuse.

**(4) Michigan should support the establishment and maintenance of a listserv specifically for parents' attorneys.**

**(5) Michigan should adopt Rules of Court that recognize the special challenges of representing parents and acknowledge the importance of this practice area,** with requirements comparable to those adopted for LGAL's, specifically regarding maintaining client contact.

**(6) Michigan should encourage enhanced judicial attention to the representation of parents through adoption of court rules, judicial standards, or other measures.** The assessment clearly shows an alarming disengagement by the majority of parents' attorneys from their clients and how their clients are progressing outside of court. This orientation is combined with a failure to fully appreciate the need for out-of-court case preparation as it relates to child protection cases. Providing zealous advocacy in court, while critical, is an incomplete measure of competent representation. This practice area has strict time frames that require coordination and cooperation with third parties, and a unique relationship with a public agency as a party with whom a client has to cooperate to achieve desired ends, e.g., reunification, return home, or a desired alternative plan that would avoid termination of parental rights. More attention from Judicial Officers to each attorney's apparent pretrial preparation, the relationship between the parent and the attorney, and decreasing the frequency and use of substitute counsel would change the climate of the courtroom. Direct

questions from the bench to the attorney about out-of-court preparation and advisements from the bench to parents about working closely with his/her attorney are important. Providing an internal mechanism to receive complaints about problems in communication between attorney and client should also be considered as a way to reinforce enhanced judicial oversight. Judges must set the tone that parents and their attorneys are valued and that positive outcomes for families are the central focus of the court. One judge indicated that parents wouldn't feel "railroaded" by the system if they had a sense that they are valued by their attorney and the court and that their opinions matter to both.

**(7) Michigan should establish case processing protocols or rules, which can be tracked, to assist courts in managing their caseloads in child protection matters.** Common complaints among attorneys who practice in high volume courts are long waiting times and the inability to plan for multiple appearances in a single day in a single court. As a result, the use of substitute attorneys becomes common, with no expectation that the attorney who appears with a parent will have met with the parent in advance or even prior to the appearance. Case processing protocols specifically designed to reduce high volume calendars while setting the expectation of a meaningful hearing would serve the dual functions of improving advocacy and providing more certainty for attorneys. Data collected through court performance measures attached to these protocols could be regularly provided to Presiding Judges and court administrators to use in their planning and allocation of resources. This data could also be used for outcome evaluation as described under recommendation (10).



In addition, each county or regional area should establish a peer-to-peer team to examine court procedures and identify ways to better support parent representation and engagement. This task could be assigned to the Circuit Courts or a statewide office/organization described in recommendation (1). Some of the measures that can be implemented with a relatively low expenditure of funds include (a) improving calendar management; (b) providing better notice to parties at or immediately after court hearings of next court dates; (c) appointing a court “case manager” who would be available to answer questions for parents; (d) establishing linkages with other public agency information systems that may be able to assist in locating parents; and (e) providing written information for parents about their rights in child protection cases. Courts can adopt protocols on advising and engaging parents, especially fathers, and stressing review hearings as a means to ensure parents understand their case plans and are in communication with their counsel.

**(8) Michigan should expand the existing Wayne County Parent Partner program throughout the State.** Additionally, the relationship between parent partners and parents’ attorneys should be formalized.

**(9) Michigan should adopt a Rule of Court requiring appointment of counsel before the first hearing for all parents in a child protection case.** Effective legal representation at the critical stages of removal and adjudication is needed to ensure children are only removed when absolutely necessary and that parents’ rights are protected. Appointing attorneys for all parents, not only respondent parents, will improve the preservation of families and avoid situations like the one exemplified in In re Rood. In addition, Michigan should consider appointing attorneys during the investigation stage prior to petitions being filed. The Center for Family Representation in New York has shown impressive results by

providing legal representation before courts are involved in a case; often preventing foster care placements. See Community Advocacy Teams, *available at* [http://www.cfrny.org/new\\_legal.asp](http://www.cfrny.org/new_legal.asp).

**(10) Michigan should evaluate the effect of improved representation on case outcomes over time.** This evaluation would include first gathering baseline case data such as time frames, case type, outcomes, and information about the legal representation provided and periodic follow-up on new and original cases after planned improvements in parent representation have occurred. Existing DHS or court data systems should be explored to determine if needed data elements already exist or if existing systems could be modified to include needed elements. Examples of outcome evaluations can be found in the reports on Washington’s website at <http://www.opd.wa.gov/ParentsRepresentation/PRP-history.HTM>.

## **IV. Conclusion**

Despite the challenges revealed by this assessment, many strengths are also apparent. The number involved and depth of participation of Judicial Officers, attorneys, parents, and other stakeholders in this assessment show that many in Michigan have a strong commitment to preserving safe families. Michigan should seize on the interest and attention of these stakeholders; not only because parents have a right to quality representation, but because children have a right to their family.

Appendix A  
Letter from Justice Corrigan



**Michigan Supreme Court**

MAURA D. CORRIGAN  
JUSTICE

CADILLAC PLACE SUITE 8-500  
3034 WEST GRAND BOULEVARD  
DETROIT, MICHIGAN 48202-6034  
313 972-3232

11/3/2008

Dear Child Protection Attorney/Judicial Officer,

The State Court Administrative Office (SCAO) has recently partnered with the American Bar Association (ABA) to evaluate the quality of legal representation provided to respondent parents in child protective proceedings. I write to ask for your participation in this study to assist us in evaluating how we can improve outcomes for families and children.

The study provides an exciting opportunity to obtain information from all stakeholders in child protective proceedings and identify areas where positive changes can be implemented. The ABA will distribute surveys, conduct focus groups, and interview professionals throughout the child welfare community.

Your participation is critical to the success of this study, and I request that you participate in any way you can. If you would like to join a focus group or be interviewed by the ABA, please contact Jenifer Pettibone, at SCAO, [pettibonej@courts.mi.gov](mailto:pettibonej@courts.mi.gov) or her direct line, 517 373-9574. She will connect you with the ABA team conducting the study.

Thank you for your time and willingness to share your thoughts and experiences on this very important topic. Your participation is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Maura D. Corrigan".

Maura D. Corrigan

Justice

/jp

## Appendix B

### ABA Standards

#### ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases

**Basic Obligations: The parent's attorney shall:**

**General:**

1. Adhere to all relevant jurisdiction-specific training and mentoring requirements before accepting a court appointment to represent a parent in an abuse or neglect case.
2. Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules.
3. Understand and protect the parent's rights to information and decision making while the child is in foster care.
4. Actively represent a parent in the pre-petition phase of a case, if permitted within the jurisdiction.
5. Avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the client.
6. Cooperate and communicate regularly with other professionals in the case.

**Relationship with the Client:**

7. Advocate for the client's goals and empower the client to direct the representation and make informed decisions based on thorough counsel.
8. Act in accordance with the duty of loyalty owed to the client.
9. Adhere to all laws and ethical obligations concerning confidentiality.
10. Provide the client with contact information in writing and establish a message system that allows regular attorney-client contact.
11. Meet and communicate regularly with the client well before court proceedings. Counsel the client about all legal matters related to the case, including specific allegations against the client, the service plan, the client's rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with service plans.
12. Work with the client to develop a case timeline and tickler system.
13. Provide the client with copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule or court order.

14. Be alert to and avoid potential conflicts of interest that would interfere with the competent representation of the client.
15. Act in a culturally competent manner and with regard to the socioeconomic position of the parent throughout all aspects of representation.
16. Take diligent steps to locate and communicate with a missing parent and decide representation strategies based on that communication.
17. Be aware of the unique issues an incarcerated parent faces and provide competent representation to the incarcerated client.
18. Be aware of the client's mental health status and be prepared to assess whether the parent can assist with the case.

**Investigation:**

19. Conduct a thorough and independent investigation at every stage of the proceeding.
20. Interview the client well before each hearing, in time to use client information for the case investigation.

**Informal Discovery:**

21. Review the child welfare agency case file.
22. Obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers.

**Formal Discovery:**

23. When needed, use formal discovery methods to obtain information.

**Court Preparation:**

24. Develop a case theory and strategy to follow at hearings and negotiations.
25. Timely file all pleadings, motions, and briefs. Research applicable legal issues and advance legal arguments when appropriate.
26. Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.
27. Aggressively advocate for regular visitation in a family-friendly setting.
28. With the client's permission, and when appropriate, engage in settlement negotiations and mediation to resolve the case.
29. Thoroughly prepare the client to testify at the hearing.
30. Identify, locate and prepare all witnesses.
31. Identify, secure, prepare and qualify expert witness when needed. When permissible, interview opposing counsel's experts.

**Hearings:**

32. Attend and prepare for all hearings, including pretrial conferences.
33. Prepare and make all appropriate motions and evidentiary objections.
34. Present and cross-examine witnesses, prepare and present exhibits.
35. In jurisdictions in which a jury trial is possible, actively participate in jury selection and drafting jury instructions.
36. Request closed proceedings (or a cleared courtroom) in appropriate cases.
37. Request the opportunity to make opening and closing arguments.
38. Prepare proposed findings of fact, conclusions of law and orders when they will be used in the court's decision or may otherwise benefit the client.

**Post Hearings/Appeals:**

39. Review court orders to ensure accuracy and clarity and review with client.
40. Take reasonable steps to ensure the client complies with court orders and to determine whether the case needs to be brought back to court.
41. Consider and discuss the possibility of appeal with the client.
42. If the client decides to appeal, timely and thoroughly file the necessary post-hearing motions and paperwork related to the appeal and closely follow the jurisdiction's Rules of Appellate Procedure.
43. Request an expedited appeal, when feasible, and file all necessary paperwork while the appeal is pending.
44. Communicate the results of the appeal and its implications to the client.

**Obligations of Attorney Managers:****Attorney Managers are urged to:**

1. Clarify attorney roles and expectations.
2. Determine and set reasonable caseloads for attorneys.
3. Advocate for competitive salaries for staff attorneys.
4. Develop a system for the continuity of representation.
5. Provide attorneys with training and education opportunities regarding the special issues that arise in the client population.
6. Establish a regular supervision schedule.
7. Create a brief and forms bank.

8. Ensure the office has quality technical and support staff as well as adequate equipment, library materials, and computer programs to support its operations.
9. Develop and follow a recruiting and hiring practice focused on hiring highly qualified candidates.
10. Develop and implement an attorney evaluation process.
11. Work actively with other stakeholders to improve the child welfare system, including court procedures.

## **Role of the Court**

### **The Court is urged to:**

1. Recognize the importance of the parent attorney's role.
2. Establish uniform standards of representation for parents' attorneys.
3. Ensure the attorneys who are appointed to represent parents in abuse and neglect cases are qualified, well-trained, and held accountable for practice that complies with these standards.
4. Ensure appointments are made when a case first comes before the court, or before the first hearing, and last until the case has been dismissed from the court's jurisdiction.
5. Ensure parents' attorneys receive fair compensation.
6. Ensure timely payment of fees and costs for attorneys.
7. Provide interpreters, investigators and other specialists needed by the attorneys to competently represent clients. Ensure attorneys are reimbursed for supporting costs, such as use of experts, investigation services, interpreters, etc.
8. Ensure that attorneys who are receiving appointments carry a reasonable caseload that would allow them to provide competent representation for each of their clients.
9. Ensure all parties, including the parent's attorney, receive copies of court orders and other documentation.
10. Provide contact information between clients and attorneys.
11. Ensure child welfare cases are heard promptly with a view towards timely decision making and thorough review of issues.

## Appendix C

### Model Contracts – Connecticut and Macomb Counties

#### CONNECTICUT CONTRACT

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##### **LEGAL REPRESENTATION OF CHILDREN AND INDIGENT LEGAL PARTIES IN JUVENILE MATTERS PROCEEDINGS**

NAME OF CONTRACTOR:

VENDOR FEIN/SSN: JURIS NUMBER:

SUPERIOR COURT, JUVENILE MATTERS AT: Case Limit #

##### SECTION 1 - SCOPE OF SERVICES

The undersigned (hereinafter, the “Contractor”) agrees to provide legal representation and Guardian ad Litem services for children, indigent parents and other legal parties as defined by statute in Child Protection cases, Delinquency cases for state rate assignments and GAL appointments, Family With Service Needs (FWSN) and Youth in Crisis (YIC) cases as ordered by the Superior Court for Juvenile Matters (SCJM) and assigned by the Chief Child Protection Contractor (CCPA). The period of the Agreement is July 1, 2009 through June 30, 2010.

##### SECTION 2 – DUTIES OF CONTRACTOR:

- A. Legal representation shall include, but not be limited to, preparation, investigation, pretrial activities and court appearances through all stages of the proceedings, including final judgment at the trial court and/or appellate court level and through achievement of the approved permanency plan. Counsel for children are expected to file appellate briefs and provide legal argument before the appellate court consistent with their client’s interests and wishes in instances where an appeal from a trial court decision is filed.
- B. By applying for and accepting this contract the contractor is certifying pursuant to Rule 1.1 of the Rules of Professional Conduct that the Contractor has a working knowledge of the Connecticut General Statutes applicable to child protection matters, including but not limited to C.G.S. §§ 46b-120 et. seq. and C.G.S. §§ 17a-1 through 17a-185, the Connecticut Practice Book Rules of Professional Conduct and Superior Court-Procedure in Juvenile Matters Chapters 26 through 35a, the Standards of Practice for Contractors in Child Protection Matters promulgated by the Commission on Child Protection and that the Contractor is competent to try a juvenile matters case.



- C. Any New Contractor (an attorney receiving a contract to provide representation in juvenile matters for the first time commencing July 1, 2009) certifies that he or she will complete the court observation portion of the training program prior to receiving any case assignments and complete the 3 pre-service training days scheduled during the months of August and September of 2009, at least 3 In-Service or relevant CLE seminars and 3 of the 5 Bi-Monthly trainings offered through the Center for Children's Advocacy ("CCA") between July 1, 2009 and June 30, 2010. Failure to satisfy these requirements may be grounds for rescission or non-renewal of the contract.

Any New Contractor certifies that he or she will participate in the Mentor Program offered by the CCPA and CCA. The program includes attending the Mentor/Mentee meetings conducted by the CCA throughout the contract term and observing at least one of each of the following hearing types prior to receiving any cases: OTC Preliminary Hearing, OTC Trial, part of a Neglect or TPR trial, Permanency Plan Hearing, Neglect Plea, TPR Plea, Case Status Conference and a DCF Treatment Plan or Administrative Hearing. The New Contractor will accept supervision from the assigned mentor, which includes acting as co-counsel with the mentor for at least two cases and perhaps more if recommended by the assigned mentor.

- D. Any Contractor who is herein renewing their prior contract with the CCPA certifies that he or she will attend a minimum of 3 In-Service Trainings or relevant CLE seminars and at least 2 of the 5 Bi-monthly trainings offered by CCA between July 1, 2009 and June 30, 2010. Failure to satisfy this requirement may be grounds for non-renewal in July of 2010.
- E. The Contractor shall maintain records of all work performed in relation to this Agreement in the KidsVoice Integrated Data System (K.I.D.S.©) and make any hard copy records kept available to the CCPA for inspection, audit, and evaluation in such form and manner as the CCPA may require for a period of three years, subject to attorney/client privilege.
- F. The duties required to complete legal representation in each case assigned during this contract period shall survive the expiration of the Agreement until such time as the case ends or is reassigned.
- G. The Contractor must submit, via K.I.D.S., his or her request for payment to the CCPA no later than 30 days following the close of the prior month. (See Section 3. A - Compensation). Submissions beyond the deadline will result in delayed processing subsequent to the processing of all timely submitted billing. Bills submitted more than three months from the last day of the month in which the work claimed was performed, except for good cause as determined by the CCPA, shall not be accepted.
- H. Contractors will be required to serve as a Standby Attorney for at least one OTC docket per month at a rate of \$150.00 per day. Failure to remain available to accept cases until dismissed by the court will result in non-payment of the \$150.00 fee.

- I. The Contractor is responsible for all expenses related to representation, unless otherwise agreed to by the Commission on Child Protection, as set forth in Section 3.B of this Agreement.
- J. The Contractor agrees to accept appointments as stated in this Agreement. The Contractor may not refuse to accept appointments by the CCPA unless a conflict of interest precludes representation or the maximum caseload limit specified in the Agreement has been reached or the Contractor believes that accepting the case under his or her current workload constraints would be inconsistent with the Rules of Professional Conduct. The Contractor will be required to check K.I.D.S. for new appointments on a daily basis to ensure a rapid response in the event an OTC is assigned. Once the Contractor receives notification of a new case assignment via K.I.D.S., the Contractor must file an appearance with the court. Upon receiving the appearance filing, the court will provide the Contractor with the Petition and accompanying documentation.
- K. If the Contractor is an individual Contractor, the Contractor must file a written appearance in each case related to each appointment pursuant to Conn. Prac. Bk. §§ 3-5 and 3-7.
- L. If the Contractor is a law firm, the Contractor must file a written law firm appearance in each case related to each appointment. Any member or associate of the law firm, who is approved by the CCPA, must file an appearance in addition to the firm. In the event that a firm intends to allow a new lawyer to handle cases under the firm's contract, the firm will notify the CCPA in advance and forward a completed Application for the new attorney. Authorizations for Background and CPS Checks included in the application must be cleared by CCPA prior to allowing that attorney to handle any children's cases. The firm is responsible for ensuring that the attorneys providing representation pursuant to its contract are qualified and properly supervised consistent with the requirements of the CCPA's Mentoring Program and that any new attorneys attend the required Pre-Service Training.

SECTION 3 – DUTIES OF CCPA:

A. COMPENSATION:

CCPA shall compensate the Contractor as follows:

Certified Child Welfare Law Specialists \$75.00/hr, all others \$ 40.00/hr. for each case assignment. A case is commenced upon the filing of a petition of neglect, uncared for or dependency and includes all subsequent petitions or motions filed pertaining to a particular child until the case ends with the achievement of the permanency plan or the child attains the age of 18. For purposes of billing a sibling group is considered one case. If the Contractor reaches 50 hours on the case within the first year that the petition is pending or 100 hours on the case at any point in time, he or she shall submit a Request for Pre-

Approval to the CCPA to receive authorization for further billing. The request should explain the reasons for the amount of time required on the case.

**B. PAYMENT:**

The CCPA will render timely payment under the terms of the Agreement in accordance with C.G.S. §4a-71 depending on timely submission of accurately completed case and activity information via K.I.D.S.. The Contractor must record through the entry of case activity and outcome information in K.I.D.S. whenever there is a court hearing and disposition or a case outcome reached. K.I.D.S. provides drop down lists for hearing and outcome types that must be entered in order for bill submissions to be processed.

Contractors must follow the record keeping and reporting requirements contained in Section 5 and may be subject to audit procedures, including specific bill reviews and random audits.

The Contractor must submit, via K.I.D.S., his or her request for payment to the CCPA no later than 30 days following the close of the prior month. Submissions beyond the deadline will result in delayed processing subsequent to the processing of all timely submitted billing. Bills submitted more than six months from the last day of the month in which the work claimed was performed or more than 3 months from June 30, 2010, except for good cause as determined by the CCPA, shall not be accepted.

**Billing on pre-July 1, 2008 cases for flat fee contractors transitioning to hourly:**

I. Cases that were assigned prior to 6/30/08 may be billed hourly once 30 hours of work has been documented via submission of a certified Initial 30 Hour Form.

II. Cases that were assigned between 7/1/08 and 6/30/09 may be billed hourly once 12.5 hours of work has been documented via submission of a certified Initial 12.5 Hour Form.

**Compensable Activities:**

- Any scheduled court hearing or conference;
- Time spent at the courthouse interviewing clients;
- Travel time to and from the courthouse, administrative hearings, client placement visits, DCF, service provider or education meetings (travel time to the court house and DCF is limited to 2 hours round trip from office to court or DCF office [office includes home offices] );
- Client and witness interviews;
- Home visits;
- Preparation of case or court documents, including legal research;
- Investigation;
- File review for case or court purposes;
- Attendance at administrative case reviews, hearings, meetings and any other case-related conference not scheduled in court;

- Filing of petitions, motions, responses, objections, proposed findings of fact, trial briefs, as necessary to represent the client;
- Telephone or electronic (e- mail) consultation with lawyers for other parties, GAL's, non-lawyer GALs, social workers, probation officers, service providers, school personnel, and other individuals with information pertinent to the case; and
- Time spent by a pre-approved paralegal or social worker who are properly supervised on any of the listed compensable activities can be billed at the rate of \$20.00 per hour. This time shall be recorded on the Administration Activity page of K.I.D.S.

Payment is not authorized for:

- Office or administrative overhead;
- Clerical assistance or for time clerical assistants spend on any matters concerning an appointment;
- Mileage
- Delivery Services;
- Routine copying costs;
- Postage;
- Faxing;
- Client searches.
- Billing.\*

The Commission will pay, with prior approval of the CCPA and in consultation with the Contractor: Expert Witness fees, case investigation expenses, interpreter services, out-of-state travel, costs of copying trial exhibits and documentation for record reviews by expert witnesses, appellate brief filing and other exceptional expenses. Approved expenses for expert witnesses may be billed directly by the expert to the CCPA. Fees to issue subpoenas for trial witnesses and requests for transcripts for appellate review do not require pre-approval. Marshals, as well as experts, investigators, interpreters, and court monitors, should be instructed to submit their bills directly to the CCPA.

### C. CASELOAD

The CCPA is not obligated to make appointments up to the maximum caseload limit under this Agreement. The maximum Agreement caseload limit may be increased upon application or decreased pursuant to the CCPA's promulgation of case load standards as required by C.G.S. § 46b-123d.

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\* Of note, use of K.I.D.S. to record activities and outcomes and generally manage your cases will be counted as time under the various activity entry pages and the administration page of the program provides for file administration time to be recorded. Therefore, it will not be necessary or permitted for separate time to be billed just for the preparation of billing as that function will be automated once the time for activities performed is entered.

D. TRAINING:

The CCPA will conduct mandatory trainings offered free of charge for Contractors throughout the State and will offer additional training scholarships for trial skills and other child welfare law conferences. Contractors will attend mandated training according to the requirements set forth in Section 2 C & D above.

SECTION 4 – SCOPE OF REPRESENTATION:

A. REPRESENTATION OF CHILDREN –

(1) CHILD PROTECTION CASES:

The appointment is based upon the specific child or sibling group that the Contractor is appointed to represent and for whom the Contractor has filed an appearance. The appointment to represent the specific child or sibling group includes the initial petition (writ, summons and complaint) filed, and includes all subsequent motions or petitions filed while the file on the original petition remains open until the achievement of the permanency plan or until the child ages out of DCF care. If the Contractor representing the child or another party files a motion, application, petition for reinstatement or removal of guardian, a Termination of Parental Rights Petition or an Appeal, the Contractor must continue to represent the child through that process.

Attorneys for children are expected to take appeals on behalf of their child clients when appropriate or, if the child is an appellee, file briefs or position statements in support of the party whose position is consistent with the child's. If counsel for the child determines that an appeal should be filed on behalf of the child, counsel may request that a separate appellate attorney be assigned for appeal purposes solely. If the child has not taken an appeal or filed a cross-appeal, the counsel for the child shall remain on the case and shall not delay the appellate process by requesting an extension of time to file a brief, but should instead file a statement in support of the party whose position is consistent with the child's. The child's attorney shall coordinate with the party whose position they support to provide argument before the appellate court on behalf of the child.

If a child or youth who the Contractor represents attains the age of 18 and has agreed to voluntarily remain under the supervision and care of DCF, the Contractor may meet with that client and enter into an agreement with the client to continue providing legal representation so long as the client continues to receive support and services from DCF. If such an agreement is filed with the CCPA, you will be compensated for your legal services to said client.

(2) FWSN CASES:

The appointment to represent the specific child includes all initial petitions and/or informations filed (regardless of the number of docket numbers) and include all subsequent petitions and/or informations filed while the files on the original petition and/or information

remain open. The appointment also includes all subsequent motions and petitions resulting from adjudication or disposition that pertains to the specific child that the Contractor is appointed to represent.

### (3) GAL FOR DELINQUENCY:

The appointment to represent the specific child includes all initial petitions and/or informations filed (regardless of the number of docket numbers) and include all subsequent petitions and/or informations filed while the files on the original petition and/or information remain open. The appointment also includes all subsequent motions and petitions resulting from adjudication or disposition that pertains to the specific child that the Contractor is appointed to represent. (If you are appointed by the court to provide legal representation to a child on a delinquency case because the child does not qualify for Public Defender Services, unless the court has authorized such representation pursuant to C.G.S. § 46b-136, that case should be considered a private case and you should attempt to collect from the legally responsible party. If you are unable to collect for your services then you may bill the CCPA. Such submission must include the billing information for the legally responsible party).

#### B. REPRESENTATION OF INDIGENT PARENTS/LEGAL PARTIES - CHILD PROTECTION CASES

An appointment to represent the specific indigent parent/legal party includes all initial petitions filed (regardless of the number of children involved) and all subsequent petitions filed on additional siblings while the files on the original siblings remain open. The appointment also includes all subsequent motions and petitions resulting from adjudication or disposition that pertain to the individual indigent parent/legal party that the Contractor is appointed to represent. If a former client files a motion to reinstate guardianship and the court accepts the filing and finds that the client is indigent, then the Contractor may be assigned to the case.

TPR petitions are considered part of the original case. Contractors will be expected to represent their existing clients when a TPR is filed and to appear at the initial plea hearing. If the Contractor does not wish to continue representing a client in relation to a TPR petition or the client indicates that they no longer wish to be represented by the Contractor, the Contractor shall notify CCPA and shall file a Motion to Withdraw Appearance pursuant to PB 3-10(c), as it may be amended from time to time. The appointment includes all subsequent petitions filed on additional siblings while the files on the original sibling remain open.

In the event, the client has not remained in contact with the Contractor, kept the Contractor, DCF or the Court informed of his or her whereabouts; and does not appear for the initial plea hearing, the Contractor's assignment to the case will end. In the event the court orders that the Contractor perform a diligent search for the client, the assignment will end upon failure to locate the client or continue in the event the client is located and appears at court

### C. GUARDIAN AD LITEM

Pursuant to C.G. S. §46b-129a(2) and §46b-123d, as they may be amended from time to time, appointments in the capacity of a GAL for the child or an incompetent parent shall be considered a single appointment.

### D. APPEALS

Filing an appeal on behalf of a party will be considered a new appointment for purposes of annual caseload limits. If another party files the appeal, the Contractor must continue to represent their client through the appellate process unless a Motion to Withdraw Appearance on the appeal has been granted or CCPA has otherwise excused the Contractor. In the event an appeal is pursued by an Appellate Contract Attorney on behalf of the contractor's client, the contractor will be expected to remain on the case for any issues pertaining to the underlying case before the local juvenile court unless a Motion to Withdraw Appearance has been granted by the court or the court or CCPA has otherwise excused the Contractor. Attorneys for children are expected to file briefs and argue before the appellate court on behalf of their child client.

## SECTION 5 - RECORDKEEPING AND REPORTING

The Contractor must utilize the K.I.D.S. web-based program to maintain detailed records of services performed including the case names and docket numbers related to each appointment opened and closed, the dates and times services were provided in each case related to each appointment, the type of service provided, the person providing the service, and the amount of time worked providing such services both by distinct activity and collectively for each appointment. Case specific records should be based on the individual Contractor's time records maintained contemporaneously with the activities recorded.

In addition, the Contractor must maintain documentation of billings and receipts for payment of any necessary expenses approved by CCPA and related to representation.

Failure to accurately utilize K.I.D.S. for maintenance of case records, activities and time will be considered a breach of this Agreement. Such breach will bar the Contractor from recovering payment for services that are not properly documented and the CCPA may also elect to pursue any of the remedies set forth in Section 6 - Standard Terms and Conditions, Paragraph T - Contractor Default. If payment for services not properly documented has already been made, the CCPA has the right to demand return of payment and may also elect to pursue any of the remedies set forth in Section 6 - Standard Terms and Conditions, Paragraph Q - Contractor Default.

## SECTION 6 - STANDARD TERMS AND CONDITIONS

- A. **Evaluations** - The CCPA reserves the right to inspect, monitor, or otherwise evaluate the work being performed under this Agreement. The Contractor agrees to cooperate with the CCPA in the monitoring and evaluation of services, which shall include, but not be limited to, providing reasonable access to and use of the Contractor's facility for such purposes.
- B. **Delay** - If services are not provided consistent with the Rules of Professional Conduct, the Standards of Practice adopted by the Commission on Child Protection, this Agreement or within a reasonable time, the CCPA may exercise its options as outlined in Paragraphs S and T herein.
- C. **Contingencies** - Neither party hereto shall be liable to the other for breach or delay in delivering or accepting services hereunder if such breach or delay is caused by fire, strike, riot, war, Acts of God, delay of carriers, governmental order or regulation or other contingency beyond the reasonable control of the respective parties. The Contractor shall give notice to the CCPA of any such unavoidable delays or breach.
- D. **Non-Waiver** - Failure of the CCPA to insist upon strict performance of any terms and conditions herein shall not be deemed a waiver of any rights or remedies the CCPA may have, nor deemed a waiver of any rights or remedies the CCPA may have for any subsequent breach or non-compliance.
- E. **Equal Opportunity** - The Commission on Child Protection of the State of Connecticut is an Equal Opportunity employer and purchaser. No employee or applicant for employment or vendor will be discriminated against because of race, color, religious creed, marital status, national origin, ancestry, sex, sexual orientation, age, or veteran's status. This clause applies equally to present or past history of mental disorder, mental retardation or physical disability including but not limited to blindness, unless it is shown by the CCPA that such disability prevents performance of the work involved.
- F. **Civil Rights Agreement** - (1) The Contractor agrees and warrants that in the performance of the Agreement such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut. The Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all



solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission on Human Rights and Opportunities (CHRO); (3) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other agreement or understanding and each vendor with which such Contractor has an agreement or understanding, a notice to be provided by the CHRO, advising the labor union or workers' representative of the Contractor's commitments under section 4a-60, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of Section 4a-60, 4a-60a, 46a-68e and 46a-68f and with each regulation or relevant order issued by said CHRO pursuant to Connecticut General Statutes §§46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the CHRO and the CCPA with such information, requested by them, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of C.G.S. §§46a-56 and 4a-60. If the agreement is a public works agreement, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as sub-contractors and suppliers of materials on such public works project.

Public Act 07-245 and Sections 9 and 10 of Public Act 07-142 have amended the nondiscrimination provisions of the General Statutes by adding civil unions to the existing protected classes and requiring the Contractor, prior to entering into the Agreement, to provide the CCPA with documentation in the form of a company or corporate policy adopted by resolution of the board of directors, shareholders, managers, members or other governing body of such Contractor to support the nondiscrimination agreement and warranty under Paragraph F (1) above. For the purposes of this section, "Agreement" includes any extension or modification of the Agreement, and "Contractor" includes any successors or assigns of the Contractor.

- G. **Non-discrimination Regarding Sexual Orientation** - (a) (1) The Contractor agrees and warrants that in the performance of the Agreement such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other agreement or understanding, and each vendor with which such Contractor has an agreement or understanding a notice to be provided by the CHRO advising the labor union or workers' representative of the Contractor's commitments under section 4a-60a and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of section 4a-60a and with each regulation or relevant order issued by said commission pursuant to C.G.S. §46a-56; (4) the

Contractor agrees to provide the CHRO with such information requested by the CHRO, and permit access to pertinent books, records and accounts concerning the employment practices and procedures of the Contractor which relate to the provisions of C.G.S. §§46a-56 and 4a-60; (b) the Contractor shall include the provisions of subsection (a) of C.G.S. §4a-60a in every subcontract or purchase order entered into in order to fulfill any obligation of an agreement with the state and such provisions shall be binding on a subContractor, vendor or manufacturer unless exempted by regulations or orders of the CHRO.

The Contractor shall take such action with respect to any such subcontract or purchase order as the CHRO may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with C.G.S. §46a-56 provided, if such Contractor becomes involved in, or is threatened with, litigation with a subContractor or vendor as a result of such direction by the commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

Public Act 07-245 and Sections 9 and 10 of Public Act 07-142 have amended the nondiscrimination provisions of the General Statutes by adding civil unions to the existing protected classes and requiring the Contractor, prior to entering into the Agreement, to provide the Judicial Branch with documentation in the form of a company or corporate policy adopted by resolution of the board of directors, shareholders, managers, members or other governing body of such Contractor to support the nondiscrimination agreement and warranty under Paragraph O (1) above. For the purposes of this section, "Agreement" includes any extension or modification of the Agreement, and "Contractor" includes any successors or assigns of the Contractor.

- H. **Americans With Disabilities Act of 1990** - This clause applies to those Contractors which are or will come to be responsible for compliance with the terms of the Americans with Disabilities Act of 1990 (43 USCS Section 12101-12189 and Sections 12201-12213) (Supp. 1993); 47 USCS Sections 225.611 (Supp. 1993). During the term of the Agreement, the Contractor represents that it is familiar with the terms of this Act and that it is in compliance with the law. The Contractor warrants that it will hold the state harmless from any liability which may be imposed upon the State as a result of any failure of the Contractor to be in compliance with this Act.

Where applicable, the Contractor agrees to abide by the provisions of section 504 of the federal Rehabilitation Act of 1973, as amended, 29 USC Section 794 (Supp. 1993), regarding access to programs and facilities by people with disabilities.

- I. **Subcontractors** - The Contractor shall not subcontract any of the services required under this Agreement without prior written approval from the CCPA. Subcontractors shall be bound by all the terms and conditions of this Agreement. Subcontractors

shall not relieve the prime Contractor of its responsibility under this Agreement. The CCPA reserves the right to approve or reject any and all subcontractor agreements.

- J. **Indemnification** - The Contractor hereby agrees to indemnify and hold the State of Connecticut, Commission on Child Protection, its agents, employees, public officials and representatives harmless from any and all claims, causes of action, demands for damages, or liabilities of any kind, including the reasonable costs to defend such actions regardless of whether such action is successful or not, brought by any person or entity whatsoever, arising from any act, error, or omission of the Contractor and or its employees during or resulting from Contractor's activities (including those of subcontractors) under this Agreement.

The Contractor shall use counsel reasonably acceptable to the State and/or the CCPA in carrying out its obligations under this paragraph. The Contractor's obligations under this paragraph to indemnify, defend and hold harmless includes Claims concerning confidentiality of any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or non-copyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the performance of the Agreement.

The Contractor's duties under this paragraph shall remain fully in effect and binding in accordance with the terms and conditions of the Agreement, without being lessened or compromised in any way, even where the Contractor is alleged, or is found, to have merely contributed in part to the Acts giving rise to the Claims or where the State or the CCPA is alleged, or is found, to have contributed to the Acts giving rise to the Claims.

The rights provided in this paragraph for the benefit of the State or the CCPA shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.

This paragraph shall survive the Termination, Cancellation or Expiration of the Agreement, and shall not be limited by reason of any insurance coverage.

For purposes of this paragraph, "Claim" shall include all actions, suits, demands, investigations, grievances and proceedings of any kind, open, pending or threatened, whether matured, unmatured, contingent, known or unknown, at law or in equity, in any forum.

- K. **Notice of Litigation** - The Contractor agrees to notify the CCPA if the Contractor is, or has a reasonable cause to expect to be, subject to litigation which might adversely affect the Contractor's ability to perform the agreed services or affect the Contractor's financial capacity.

The Contractor shall provide written notice to the CCPA of any final decision by any tribunal, state or federal agency, court or Grievance Committee or Panel which is adverse to the Contractor or which results in a settlement, compromise of claim or

agreement of any kind for any action or proceeding brought against the Contractor or its employees or agents.

- L. **Prohibition Against Assignment** - The Contractor shall not transfer, pledge or otherwise assign this Agreement or any rights or responsibilities hereunder to any third party.
- M. **Agreement Amendments** - Any changes to the Agreement will be made in the form of a written amendment signed by both parties, except as provided in Section \_\_\_ whereby the CCPA has reserved the right to institute a cap on hours per case due to budget cuts implemented by the General Assembly.
- N. **No Joint Venture** - Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment relationship among the parties hereto, nor shall any party have the right, power or authority to create any obligation or duty, express or implied, on behalf of any other party.
- O. **Choice of Law** - This Agreement is governed by the laws of the State of Connecticut. It is agreed that any questions of interpretation of this Agreement or actions brought pursuant to this Agreement shall be according to Connecticut law.
- P. **Applicable Law** - The Contractor shall comply with Federal, State and local laws, standards and regulations applicable to the Contractor's practice and the services being provided under this Agreement. Unless otherwise provided by law, the Contractor is not relieved of compliance while formally contesting the authority to require such standards, regulations, statutes, ordinance or criteria.
- Q. **Copyrights** - The Contractor shall not distribute any materials under this Agreement containing the copyrighted works of others without the written consent of the copyright holder. The Contractor shall obtain any necessary authorization(s) for usage of any such third-party materials.

Unless otherwise indicated, the CCPA retains exclusive rights to ownership in its copyrighted protected works. All rights are reserved and any reproduction, adaptation, distribution, dissemination or making available of such copyrighted works is strictly prohibited unless acknowledgment of CCPA's copyright is acknowledged thereon

- R. **Approval Notification** - The CCPA assumes no liability for payment under the terms of this Agreement until the Contractor is notified that this Agreement has been approved by the CCPA, a fully executed Agreement has been issued and documentation of work performed has been provided pursuant to Section \_\_\_ of the Agreement.

- S. **Termination of This Agreement** - Either party may terminate the Agreement to provide legal representation for any reason by providing thirty (30) days prior written notice to the other party.

The Contractor shall be subject to immediate removal from his or her cases and termination of this Agreement for failure to adhere to the terms of this Agreement, Standing Orders of Juvenile Matters or the Standards of Practice promulgated by the CCPA or for other good cause as determined by the CCPA. The decision by the CCPA is final.

In the event the legal rights of the Contractor's clients are endangered, the CCPA may cancel the Agreement and take any immediate action, without notice, it deems appropriate to protect the legal rights of the clients.

Upon termination of the Agreement by either party, the Contractor shall assist in the orderly and timely transfer of appointments as directed by the CCPA, including forwarding client files upon request of the CCPA or newly assigned attorney. The Contractor shall forward via first class postage prepaid mail a written notice to each client informing the client that the Contractor will no longer be representing them and that a new attorney will be assigned by the CCPA. Said notice shall be copied to the court and the CCPA. If the Agreement was terminated by the CCPA, the Contractor may seek reimbursement for the costs of postage from the CCPA.

All provisions of this Agreement survive any termination or non-renewal, including but not limited to, Section 6 - Standard Terms and Conditions, Paragraph T, Contractor Breach and Paragraph W, Contractor Records and Access.

- T. **Contractor Breach** - If the Contractor becomes financially unstable, breaches or otherwise fails to comply with any of the terms, provisions or conditions of this Agreement or any of the Exhibits or Amendments which are part of this Agreement, the CCPA may elect to pursue any one or more of the following remedies in any combination or sequence:

- Seek damages,
- Withhold or reduce payment(s) until the breach is resolved to the satisfaction of the CCPA,
- Require the Contractor to correct or cure the breach to the satisfaction of the CCPA,
- Either temporarily or permanently discontinue the execution of all or part of the services,
- Require the unexpended or improperly expended funds be returned to the CCPA,
- Assign appropriate state personnel or another Contractor to execute the Agreement until such time as the Agreement breach has been corrected to the satisfaction of the CCPA,

- Require that Agreement funding be used to enter a subcontractual arrangement with a person, persons or agency designated by the CCPA in order to bring the program into Agreement compliance,
- Terminate this Agreement,
- Take such other action appropriate and in the best interests of the CCPA, along with any other remedies provided by law, including, but not limited to, procuring services from other sources and charging the Contractor any excess costs incurred or damages occasioned thereby,
- any combination of the above actions.

U. **Recoup of Payments Following Termination or Breach** - The CCPA reserves the right to recoup any deposits, prior payment, advance payment or down payment made if the Agreement is terminated by either party or breach occurs. Allowable costs incurred to date of termination or breach for operation or transition of representation under this Agreement shall not be subject to recoupment. The Contractor agrees to return to the CCPA any funds not earned in accordance with the terms and conditions of the Agreement and, if the Contractor fails to do so upon demand, the CCPA may recoup said funds from any future payments owing under this Agreement or any other Agreement between the CCPA and the Contractor.

V. **Controversies or Claims** - Any controversy or claim arising out of this Agreement shall be pursued and interpreted in accordance with applicable State and Federal laws. This provision shall not be deemed to constitute a waiver of sovereign immunity. The Contractor shall notify the CCPA of any claim or controversy brought against it by any person or entity during the term of this Agreement.

W. **Contractor Records and Access** - To the maximum extent permitted by law, the Auditors of Public Accounts and CCPA auditors shall have access to all records and accounts for each Agreement year. The Contractor shall maintain books, records, documents, program and individual service records, and other evidence of its accounting and billing procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature incurred in the performance of this Agreement. These records shall be subject at all reasonable times to monitoring, inspection, review or audit by authorized employees or agents of the CCPA, State or applicable Federal agencies.

The Contractor will retain all such books, records and other financial program and individual service documents concerning this Agreement for a period of three (3) years after the close of the Agreement term and three additional years if an audit is performed in accordance with the Single Audit Act of 1991 Chapt. 55b, C.G.S. §4-230 to §4-236 inclusive within those three years, except as noted above. If any litigation, claim or audit is started before the expiration date of this three (3) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved or the expiration of the three year period, whichever is later.

To the maximum extent permitted by law, the Contractor shall maintain client files and make them available for inspection by any agent of the CCPA. The Contractor must immediately notify CCPA of any change in his or her contact information, including address, phone and fax numbers, or email address.

- X. **Contractor Insurance Required** - The Contractor agrees that, while performing services specified in this Agreement, it shall carry sufficient liability and/or other insurance and to maintain that coverage in full force for the duration of the Agreement term including any and all amendments. The following minimum amounts shall apply:

Workers' Compensation	CT Statutory Coverage required
Property Damages	\$100,000.00
General Liability	\$500,000.00
Professional Liability	\$500,000.00

The Contractor is considered an independent Contractor and shall be responsible for providing sufficient malpractice insurance. Prior to execution of an Agreement, the Contractor shall provide a valid certificate of insurance verifying malpractice insurance coverage of \$500,000.00. Failure to provide such a certificate will result in the Agreement not being issued. During the term of the Agreement, notice of termination of malpractice insurance coverage and failure to provide a new insurance certificate will be considered a breach of the Agreement.

- Y. **Safeguarding Client Information** - The Contractor agrees to safeguard the use and disclosure of information concerning all applicants for and all clients who receive service under this Agreement in accordance with all applicable Federal and State laws and court rule concerning confidentiality. Any Contractor considered a "covered entity" under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), agrees to follow HIPAA's privacy regulations governing the use of protected health information. Notwithstanding any other provision to the contrary, the Contractor is solely responsible for any disclosure of information in violation of Federal, or State law by it, its employees and agents.

The Contractor agrees on behalf of the Contractor and the Contractor's principals, employees, agents, heirs, successors and assigns that (1) they may only access such CCPA data, files, records, computers or other systems, as specifically set forth herein, and as are necessary for the performance of the Contractor's duties under this Agreement, if any, and (2) they may only disclose in any form or use any information obtained or created from, or by the work performed, pursuant to this Agreement as specifically set forth in this Agreement. The Contractor shall take such reasonable actions as are necessary to protect the confidentiality of Judicial Branch records and computer files including, at a minimum, instructing each person assigned to work under this Agreement on the Contractor's behalf of the prohibition to access, use or disclose information not specifically authorized by this Agreement.

Any claim, harm or alleged harm, injury or alleged injury, resulting from the unauthorized use or unauthorized disclosure of such information obtained by the Contractor and/or the Contractor's principals, employees, agents, heirs, successors and assigns from work performed pursuant to this Agreement, shall subject the Contractor to the indemnification provisions of this Agreement in addition to all other rights and remedies available to the CCPA pursuant to this Agreement and law.

- Z. **Prohibited Interest** - The Contractor warrants that no state appropriated funds have been paid or will be paid by or on behalf of the Contractor to Agreement with or retain any company or person, other than bona fide employees working solely for the Contractor, to influence or attempt to influence an officer or employee of any state agency in connection with the awarding, extension, continuation, renewal, amendment or modification of this Agreement, or to pay any company or person, other than bona fide employees working solely for the Contractor, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.
- AA. **Contractor Recording of Private Telephonic Communication** - The Contractor certifies that if it records telephone communications that it will do so only in compliance with Connecticut General Statutes section 52-570d- Action for illegal recording of private telephonic communications. With limited exceptions, section 52-570d prohibits the recording of private oral telephonic conversations without the prior consent of all parties to the conversation, verbal notice of the recording at the start of the conversation (with such notice as part of the recording), or an automatic tone warning device which repeats at intervals of approximately every fifteen seconds.
- AB. **Service Performance Standards** - The Contractor agrees that all services shall be performed with skill and professional competence in accordance with the Rules of Professional Conduct, any applicable Standing Court Orders, and the Standards of Practice established by the Commission on Child Protection pursuant to C.G.S. §46b-123d(3). The Contractor agrees to see his or her child clients in the child's placement as soon as possible after receipt of a case assignment, to make every reasonable effort to see the child client prior to a Preliminary Hearing on an OTC and either meet with, visit or, for an older child, speak with him or her before each court hearing. Failure to comply with these Standards may be grounds for termination or non-renewal of the Agreement.



- AC. **Notice of Adverse Findings of Discrimination** – Contractors that receive United States Department of Justice funds shall submit directly to the U.S. Department of Justice and the CCPA notice of any adverse findings of discrimination issued within the past three years after the opportunity for a due process hearing by any State or Federal administrative agency or court. Submission under this provision should be forwarded to: U.S. Department of Justice Programs, Office of Justice Programs, Office for Civil Rights, 810 Seventh Street, N.W., Suite 8135, Washington, DC 20531 and the Materials Management Unit, the Judicial Branch of the State of Connecticut, 90 Washington Street, Hartford, CT 06106.
  
- AD. **Tax Exempt** - The CCPA is exempt from Connecticut Sales Tax under C.G.S. §12-412, Federal Excise Taxes, and the provisions of the Federal Robinson-Patman Act.
  
- AE. **Entire Agreement** - The terms and conditions of this Agreement constitute the entire agreement between the parties hereto and supersede all previous agreements, promises or representations whether written or oral. This Agreement may not be changed, altered or modified except by an instrument in writing signed by a duly authorized representative of both parties.
  
- AF. **Acceptance** - The Contractor agrees to and accepts the terms and conditions stated herein.

COMMISSION ON CHILD PROTECTION      Name of Contract Contractor or Firm

BY: \_\_\_\_\_

Carolyn Signorelli	Date	Contractor	Date
Chief Child Protection Contractor			

## MACOMB COUNTY CONTRACT

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### STATE OF MICHIGAN

#### MACOMB COUNTY CIRCUIT COURT

In re Appointment of Counsel for  
Indigent Parties

Administrative Order 2003-7

\_\_\_\_\_ /

This Administrative Order governs the selection, appointment, and compensation of counsel who represent indigent parties in the Macomb County Circuit Court pursuant to MCR 8.123.

I. The following Indigent Assignment lists will be maintained:

- A. Civil/Criminal Division Assignment List, with the following subdivisions:
  - 1. Those who represent persons charged with capital offenses (potential sentences of imprisonment for life); 'A' level offenses.
  - 2. Those who represent persons charged with major felony offenses (potential sentences of imprisonment in excess of five years to less than life); 'B' level offenses.
  - 3. Those who represent persons charged with all other offenses for which counsel is to be appointed by law within the jurisdiction of the Circuit Court (potential sentences up to and including five years imprisonment); 'C' level offenses.
- B. Family Division Assignment List
- C. Juvenile Division Assignment List

II. Administration of the Appointed Counsel Program

The Chief Judge shall administer the appointed counsel program. The Civil/Criminal and Family Division Assignment Lists shall be maintained by a person or persons designated by the Circuit Court Administrator. The Juvenile Division Assignment List shall be maintained by a person or persons designated by the Juvenile Division Administrator.

III. Method of Selecting Attorneys for the Assignment Lists

- A. An Indigent Assignment List Selection Committee ('Committee') shall be appointed by the Chief Judge for each of the assignment lists.
  - 1. The Civil/Criminal Division Committee shall be made up of two judges of the Macomb County Circuit Court and three members of the Macomb County Bar Association, nominated by the President of the Macomb County Bar Association.

2. Family Division Committee shall be made up of two judges of the Macomb County Circuit Court, two Friend of the Court representatives and three members of the Macomb County Bar Association, nominated by the President of the Macomb County Bar Association.

3. The Juvenile Division Committee shall be made up of one judge, two juvenile Division representatives, and three members of the Macomb County Bar Association, nominated by the President of the Macomb County Bar Association.

- B. Each Committee shall meet, as needed, to review the applications of attorneys applying to be appointed to an Indigent Assignment List or subdivision of a list and to determine their qualifications to be appointed.
- C. Attorneys wishing to be appointed to an Indigent Assignment List or subdivision of a list shall apply to the appropriate Committee on an application form provided by the person or persons maintaining the list. Applications shall be filed with the person or persons maintaining the list.
- D. Attorneys shall be notified in writing of the action taken by a Committee.
- E. An attorney who is not appointed, following proper application, may appeal in writing to the Chief Judge within 30 days of mailing of the notice of the action of the Committee. There will be no oral argument. The Chief Judge shall inform the applicant of the decision in writing.

#### IV. Minimum Standards/Qualifications of Attorneys

- A. All attorneys applying to be appointed to an Indigent Assignment List must be members in good standing of the State Bar of Michigan and the Macomb County Bar Association.
- B. All applicants to the Civil/Criminal and Family Division Lists must have their principal office located in Macomb County. 'Principal office' shall be defined as the attorney's official address as currently maintained by the State Bar of Michigan.
- C. In order to be placed on an Indigent Assignment List, all attorneys must have attended a basic skills seminar on practicing law in Macomb County in the area of law relevant to the list to which the attorney seeks appointment.
- D. In order to remain on an Indigent Assignment List, attorneys must attend continuing education programs consisting of at least one seminar or three mini-seminars per year covering the area of law relevant to the list or lists to which the attorney is appointed.
- E. The continuing education requirements in paragraph (B) and (C) of this section may be satisfied by documentation of attendance at relevant seminars through the Macomb County Bar Association,, the Institute for Continuing Legal Education. Oakland County Bar Association or other organization offering recognized continuing legal education.

- F. Appointments to cases are to the individual appointed not to a firm, partnership or association of attorneys. Substitution of another attorney is not permitted unless in emergency situations and with the consent of the judge or judicial officer assigned to the case. In the event a substitution is necessary, it is the responsibility of the assigned attorney, not the Court staff, to find a substitute. If a substitution is approved, the substituting attorney must be prepared at any proceedings on the case. Failure to comply may result in the removal of the appointed attorney from the applicable list and the appointment of replacement counsel. The substituting attorney may be sanctioned as well if appropriate. Any proposed substitute must be an attorney on the appropriate list
- G. Attorneys shall appear on time for all hearings and trials. If an attorney is delayed by an emergency, the assigned judge or judicial officer must be notified. Failure to appear on time without good cause may result in a sanction(s) or discipline, including removal from the case, appointment of substitute counsel and/or removal from the appropriate list or lists.
- H. Attorneys must contact their clients prior to all hearings and trials and must direct them to be present on all required occasions. Attorneys must dress appropriately for all court proceedings and must advise their clients to also dress appropriately.
- I. Qualifications for the Civil/Criminal Division List
1. Attorneys applying to be counsel in 'A' level capital cases must have current and extensive experience in representing individuals in major felony and capital criminal cases, including experience in the Macomb County Circuit Court. They must have shown competence and diligence in their representation of parties in prior cases.
  2. Attorneys applying to be counsel in 'B' level major felony cases must have current and substantial experience in representing individuals charged with offenses with a potential sentence in excess of five years, including experience in representing individuals in these cases in the Macomb County Circuit Court. They must have shown competence and diligence in their representation of parties in these prior cases.
  3. Attorneys applying to be counsel in 'C' level cases with a potential sentence less than five years must have sufficient knowledge and ability to represent indigent parties in these cases with competence and diligence.
- J. Qualifications for the Family Division List
- Attorneys applying to be counsel in domestic relations cases within the Family Division must have substantial and relevant experience in representing individuals in domestic relations proceedings for which counsel must be appointed by law, including experience in the Macomb County Circuit Court. They must have shown competence and diligence in the cases in which they have appeared.
- K. Qualifications for the Juvenile Division List

Attorneys applying to be counsel in Juvenile Division cases must have substantial and relevant experience representing individuals in juvenile matters, including experience in the Macomb County Circuit Court. They must have shown competence and diligence in the cases in which they have appeared.

Attorneys appointed to represent children in protective proceedings must interview children, consult with case workers and foster parents, and comply with all provisions of MCL 712A(c)(7); MCL 712A.17(c)(7) and MCR. 3.915.

#### V. Process for Appointment of Counsel to Cases

- A. When practical, counsel for indigent parties in the Macomb County Circuit Court shall be appointed in rotation from the appropriate Indigent Assignment List.
- B. In exigent circumstances, a judge may appoint counsel to represent an indigent party immediately. To the extent feasible, a judge shall appoint counsel from the appropriate Indigent Assignment List.
- C. In criminal cases, persons seeking appointment of counsel on their behalf shall make application on a form provided by the person or persons maintaining the lists and shall provide adequate information to demonstrate their indigence. Judicial Aide shall appoint counsel after receiving an application and determining indigence.
- D. In domestic relations cases, parties shall make application on a form provided by the person or persons maintaining the list and provide adequate information to demonstrate their indigence. The judge assigned to the case shall appoint counsel after receiving an application and determining indigence.
- E. In Juvenile Division matters, counsel shall be appointed when required by law. Otherwise, parties seeking appointment of counsel shall make application on a form provided by the Juvenile Division to the person designated to receive applications by the Juvenile Division Administrator. Counsel shall be promptly appointed after receiving the application and determining indigence.

#### VI. Repayment of Appointed Counsel Costs

Parties for whom counsel has been appointed must reimburse Macomb County for the costs incurred on their behalf. Collection action will take into account ability to pay.

#### VII. Compensation of Counsel

- A. Indigent Fee Schedules shall be adopted for the compensation of attorneys appointed to represent indigent parties in the Macomb County Circuit Court and approved by the Chief Judge. The Indigent Fee Schedules shall compensate counsel on a case segment or hourly basis. The Indigent Fee Schedules shall be reviewed by the Chief Judge periodically.

- B. In Civil Criminal and Family Division matters, counsel shall submit a billing to the person or office maintaining the list from which they were appointed within 6 months of the conclusion of the case. An interim billing may be submitted for payment when allowed by the applicable Fee Schedule.
- C. In Juvenile Division matters, counsel shall submit billings after each appearance on a matter.

#### VIII. Reviewing Performance, Sanctioning and Removing Counsel from Lists

- A. The performance of counsel will be reviewed by each Committee. In addition, each Committee may require any or all members of the list it reviews to reapply and demonstrate continued qualification to serve on the list.
- B. Complaints about appointed counsel shall be made to the appropriate Committee. The Committee shall evaluate the complaint and take the action it deems appropriate.
- C. An attorney may be sanctioned, suspended, or removed from a list or lists for violation of the terms of this Order, incompetency, lack of diligence, consistent unavailability to serve, violation of Court policies, or other good cause.
- D. When immediate action is necessary, the office or person maintaining the list may suspend an attorney from further appointments pending a review of the circumstances by the appropriate Committee.
- E. This Order does not limit the authority of the judge or judicial officer assigned to the case to sanction, remove, or replace an attorney.

#### IX. Appeal

- A. An attorney who is denied an appointment or upgrade, or who is sanctioned, suspended or removed from a list by a Committee may seek review of the decision by the Chief Judge in writing within 30 days of the decision. There will be no hearing allowed. The Chief Judge shall make a decision in writing.
- B. An attorney who is sanctioned by judge or judicial officer may seek relief allowed by law. He or she may not seek review by the Chief Judge under this section.

#### X. Maintenance of Records

- A. The Court shall compile an annual report of the information required by MCR 8.123(D) at the end of each calendar year.
- B. The annual report or reports will be available for inspection by the public, without charge, at the office of the Circuit Court Administrator within normal business hours. A person seeking access to the reports must provide identification and may only review the reports in the lobby of the Circuit Court Administrator's Office under the reasonable supervision of staff to safeguard the contents of the reports.

C. A person may receive a copy of an annual report or reports upon the payment of a reasonable fee in accordance with the Courts Local Administrative Order pursuant to MCR 8.119(E).

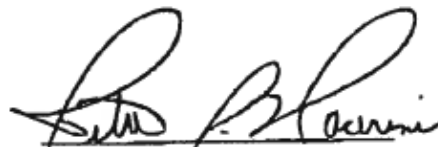
D. Records will be maintained pursuant to Schedule 16.

XI. Transition to the Lists Created by this Local Administrative Order

Attorneys eligible to be appointed under the Court's current systems may continue to be appointed until applications under this Order can be received, reviewed and appointments made to the new lists.

XII. This order repeals Local Administrative Orders 1990-2 and 1999-4. This order shall take effect on January 1, 2004

JAN. 28, 04  
Dated

  
Peter J. Magroni  
Chief Judge

## Appendix D

### Compensation Spreadsheet

<u>County</u>	<u>Voucher Provided</u>	<u>Rate of Pay</u>	<u>Pay Cap</u>	<u>Require Contract</u>	<u>Notes</u>
Alcona					
<b>Alger</b>	MC221	\$40.00	No	No	
<b>Allegan</b>	No	See Contract	See Contract	Yes	
Alpena					
<b>Antrim</b>	MC221	\$70.00 per hour	No	No	
<b>Arenac</b>	MC221	\$60.00/hour	No	No	
Baraga					
<b>Barry</b>	MC221	\$50.00 /hour	Appeal = \$1000.00	No	
Bay					
Benzie					
<b>Berrien</b>	No	Pay a group of 4 attorneys a total of \$60,000.00 year. \$15,000.00 qtrly	\$60,000.00 for	Yes	
<b>Branch</b>	No	\$65.00	No	Unknown	
<b>Calhoun</b>	No	\$45,000 per atty, annually	\$45,000 per atty, annually	Yes	
<b>Cass</b>	Yes	See voucher - differs per hearing	\$400.00 per full day	No	
Charlevoix					
<b>Cheboygan</b>	No	\$1,375.00 per month per P.C.	For county \$82,500.00	Yes	
<b>Chippewa</b>	No	\$2,875.00 per attorney per month (3 atty's)	Total contact for all 3 atty's \$103,500.00	Yes	
<b>Clare</b>	N/A	\$1,207.99 per attorney per month	\$1,207.99 per atty per month	No	"We pay a flat amount per month, depending on the number of Atty's that are on the list. In other words, we have a set amount of money that we pay and that 'pool' is divided by the number of atty's that are on our court appointed list."
<b>Clinton</b>	MC221	\$60.00/hour	No	No	



Crawford					
Delta					
<b>Dickinson</b>	No	Each attorney is paid \$1,340.00 per month (4 attorneys)	\$166,080 per atty per year with exception of appeals	No	Attorneys can submit bills for appeal over and above the contract for \$50.00 per hour. Court has discretion to pay for services he feels are legitimate with no cap. Also, if they need to go off list due to conflict, the new atty bills \$50.00 per hour.
<b>Eaton</b>	Yes	\$35.00/ hour	No	No	
Emmet					
<b>Genesee</b>	Yes	See voucher - differs per hearing	No	No	Response regarding assignment of attorneys has been attached. Have a panel of attorneys assigned to each judge and a managing attorney overseeing each panel. Administrative costs are paid to the managing attorney.
<b>Gladwin</b>	N/A	\$550.00 per atty per month	\$550.00 per atty per month	No	"We pay a flat amount per month, depending on the number of Atty's that are on the list. In other words, we have a set amount of money that we pay and that 'pool' is divided by the number of atty's that are on our court appointed list."
Gogebic					
Grand Traverse					
Gratiot					
<b>Hillsdale</b>	No	two attys under contract: Brandes = \$38,130.00 does DL also; Dunham \$23,400.00 yrlly	Contract fee	Yes	
<b>Houghton</b>	MC221	\$55.00 per hour	No	No	
Huron					
<b>Ingham</b>	Yes	varies per hearing - see voucher	Appeal = \$750.00	No	
<b>Ionia</b>	MC221	\$50.00 per hour	No	No	

Iosco					
<b>Iron</b>	No	See Contract	Contract fee	Yes	
<b>Isabella</b>	No	\$125.00/hour	No	No	
<b>Jackson</b>	N/A	See Contract	See Contract	Yes	Contract amount is set for each attorney; additional fees can be paid for appeals
<b>Kalamazoo</b>	Yes	\$72.00 /hour	No	No	"use roster system"
Kalkaska					
<b>Kent</b>	N/A	\$55.00/hour	No	No	"Attorney's complete a bid proposal" Proposal was provided.
Keweenaw	No	\$55.00 /hour	No	No	
<b>Lake</b>	No	\$45.00/hour	No	No	
<b>Lapeer</b>	Use MC221	\$60/hour	No	No	Sample billing statements provided
<b>Leelanau</b>	No	\$70.00	No	No	
Lenawee					
<b>Livingston</b>	Yes	varies per hearing - see voucher	No	No	
Luce					
<b>Mackinaw</b>	MC221	\$40.00 per hour plus expenses	No	No	
<b>Macomb</b>	Yes	See voucher - differs per hearing	see voucher	No	
Manistee					
<b>Marquette</b>	MC221	\$50.00 per hour	No	No	
Mason					
<b>Mecosta</b>	Yes	varies per hearing - see voucher	see voucher	Yes	
Menominee					
<b>Midland</b>	No	See contract	See Contract	Yes	
<b>Missaukee</b>	None	\$12,546.00/ year = contract	See Contract	Yes	
<b>Monroe</b>	MC221	\$52.00	No	No	
<b>Montcalm</b>	MC221	\$55.00	No	No	
Montmorency					
<b>Muskegan</b>	No	\$45,000 per year in monthly payments	\$45,000.00	Yes	
<b>Newaygo</b>	No	See Contract	See Contract	Contract	
<b>Oakland</b>	Yes	See voucher/fee schedule	See voucher/fee schedule	Yes (application)	
<b>Oceana</b>	No	\$59,824.00 per yr per firm/ \$2,500.000 contingency fund for LGAL travel costs.	\$59,824.00 per yr per firm/ \$2,500.000 contingency fund for LGAL travel costs.	Yes	
<b>Ogemaw</b>	no	\$60.00/hour	Per case	Yes	
<b>Ontonagon</b>	MC221	\$40.00 / hour	No	No	
<b>Osceola</b>	Yes	varies per hearing - see voucher	see voucher	Yes	
Oscoda					

<b>Ostego</b>	No	See Contract	See Contract	Yes	Contract includes other indigent parties, not just CAN related.
Ottawa					
<b>Presque Isle</b>	No	\$65.00	No	Yes	
<b>Roscommon</b>	No	(\$1,519.57) per month	Court willing to consider reimbursement of additional costs	Yes	
<b>Saginaw</b>	No	\$53,957.00/year	3% increase per year	Yes	
<b>Sanilac</b>	Yes	See voucher - differs per hearing	See voucher	No	
<b>Schoolcraft</b>	No	\$40.00 / hour	No	No	
<b>Shiawassee</b>	MC221	\$60/ hour	No	No	
St. Clair					
<b>St. Joseph</b>	Yes	\$65.00 per hour	Only for appeals - \$1,000.00	No	
<b>Tuscola</b>	MC221	per contract or \$50.00 per hour	No	Yes	
Van Buren					
<b>Washtenaw</b>	MC221	\$700.00 thru disposition; \$500 at termination or reunification and \$75.00 per PTR or similar hrg.	Same	No	substituted attorneys are paid \$75.00 per hearing up to disposition
<b>Wayne</b>	Yes	varies per hearing - see voucher	see voucher	No	
<b>Wexford</b>	No	\$2,112.68 per month and \$55.00 for other expenses.	No	Yes	

## Appendix E

### Courtroom Observation Forms

#### ON SITE COURT ASSESSMENT: Michigan - Court in General (One per county)

Number of hearings observed \_\_\_\_\_  
Date \_\_\_\_\_  
County \_\_\_\_\_  
Staff/Consultants present \_\_\_\_\_

1. What does physical plant look like?  
Was waiting room/area adequate?  
Interview rooms for attorneys?  
General open area where everyone waits to be called?
2. What is happening outside the courtroom while people are waiting for their cases to be called?
3. Did you observe any appointments of parents' attorneys? If so please describe:
4. Other comments:

#### ON SITE COURT ASSESSMENT: Michigan – Case Observations (One per case)

County \_\_\_\_\_  
Staff/Consultant \_\_\_\_\_  
Case No./initials \_\_\_\_\_ (optional: for note taker's use if needed for finishing notes later)

##### I. Outside courtroom

1. Did the attorney seem to be concerned about protecting their client's confidentiality during their conversations?
2. Did the attorney interview their client (as opposed to discussing new information or what will be happening in court) outside the courtroom?
3. Does it appear that the attorney had already established a relationship with their parent client?
4. Did the attorney interview social workers?
5. Did the attorney interview other witnesses?
6. Was the attorney given reports and read those reports/documents while waiting for their case to be called?
7. Other observations of outside courtroom activities:

## II. Inside the courtroom

### Background:

8. How was the calendar called?
9. Note the time the case was called
10. Did both parents appear?
11. What type of hearing was this?
12. Does it appear that everyone, attorneys and parties, are aware of the purpose of the hearing?
13. Where did the parent(s) and their counsel sit? Are attorneys seated with their clients or are clients seated at the side or rear?
14. How were/was the parent(s) treated by courtroom staff?
15. Describe the judge's interaction with the parent(s), if any.

### Trial advocacy:

16. Was there an opening statement or argument?
17. Who were the witnesses? Which party offered witnesses?
18. Did parent (s) testify?
19. Were stipulations properly used?
20. Did the parent's counsel make evidentiary objections? Timely? Appropriate?
21. Were there any problems with discovery or exchange of information?
22. What legal issues were raised during the hearing and by whom?
23. Was legal authority cited? If so, by counsel for which party (parties)?
24. Was an agreement offered that had been reached outside of court on any issue?
25. Describe the interaction between attorneys for parents and their clients during the hearing.
26. Did the parents address the court at any time during the proceeding?
27. Were there any language issues? Translator? Cultural issues that should have been addressed by counsel or the court?

### Closing:

28. Did the court state its findings clearly at the conclusion of the hearing?
29. Did the parties seem to understand the findings or instructions from the court?
30. Did they receive a copy of the findings before they left the courtroom (or outside)?
31. Were they ordered to return to court on a specific date?

32. Were they given a written reminder of their next court date?
33. Were they reminded of the purpose of their next court hearing?
34. Did the court give any admonitions and/or any encouragement from the court? e.g., "Make sure that you keep in contact with your counsel, cooperate with the social worker on your case plan etc, or you only have six more months to finish your case plan before the state will have to decide whether or not to ask me to terminate your parental rights?"
35. Did the attorneys for the parents meet with their clients either inside or outside the courtroom after the hearing was over?
36. Note the time the case concluded:

## Appendix F

### Interview Instruments

#### Michigan Parents' Attorneys Study -Attorney Individual/Group Interview-

*The first set of questions (1 – 18) are for the most part, not in the surveys. If you are not able to complete all questions with interviewees, these should be prioritized.*

##### -Introduction-

- Confidentiality – names will not be used, most identifying information in report will be “A from X county said Y”
- Purpose of the study – improve outcomes for families.
- Methodology
  - Statewide surveys of
    - Parents
    - Judges/Referees
    - DHS attorneys
    - Parents' attorneys
    - Children's attorneys
  - Group and individual interviews in four target counties of
    - Parents
    - Judges/Referees
    - Attorneys
    - Court Administrators
    - DHS social workers
    - Other providers
    - Some others, FCRB, academic
- Thanks for participating!

Number of participants \_\_\_\_\_  
Date \_\_\_\_\_  
County \_\_\_\_\_  
Staff/Consultants present \_\_\_\_\_

1. Who do you represent in child protection proceedings? Are they DHS, Parents' attorney, Parent & Children's attorneys?
2. If you represent parents, how long have you been doing so in protective custody proceedings?
3. If you represent parents, what is your office arrangement? Sole practitioner? 2-5 attorneys? Public Defender?
4. If you represent parents, describe your caseload. How do you manage your caseload?
5. If you represent parents, what motivates you to continue this type of practice?
6. Describe the issues that are most challenging to you in representing parents in this judicial district. Do you have a basis for comparison with practice in other courts?

7. If you represent parents, how often do you do the following on a date other than the day of the hearing:

Meet with your client?

Talk to the DHS caseworker?

Attend Case Planning meetings?

Review case records?

Speak with service providers?

Investigate alternative placements or resources including extended family?

Investigate potential independent witnesses?

Speak with agency or children's attorneys?

Visit programs that your client is attending?

9. If you represent parents, where do you generally meet with your clients?

10. How soon after you are appointed to represent a respondent parent do you usually attempt to make contact with your client?

Within one day	57.6%
Within one week	37.4%
Within one month	2.0%
Wait until they contact me	3.0%

What factors determine how soon you will make contact?

11. How do you maintain open lines of communication with respondent parent clients?

12. What resources do you have available to you, and which do you use, in case investigation and preparation?

13. What resources do you have available to your at your practice? Investigator? Computer and laptop? LEXIS NEXIS or other electronic legal research? Internet access? Social worker? Paralegal? Answering Service.

14. Are there ways in which the court could make a parents' attorney's job easier (more satisfying)?

15. Are there practice, rule, or law changes that are needed to improve parent representation? Procedural changes? Changes to local rules or Rules of Court? Calendaring changes?

16. What are the main reasons respondent parents' counsel ask for continuances?

*\* Wayne – there was a higher number of responses regarding asking for continuances because parents did not show up for court.*

If it is because parents are not present, what steps can be taken to improve their attendance?

17. Do you believe that quality parental representation in protection cases improves outcomes for children and if so how?

18. What suggestions do you have for improving representation of parents in this judicial district?



**-Questions from surveys-**

**19. If you represent parents, were you required to receive any specialized training prior to receiving a court-appointment to represent a respondent parent in a child protection case?**

From the surveys, of parents' attorneys, 56% were not required to attend training and 43% were required. What was your experience?

*\*Wayne – Most attorneys DID report being required to attend training.*

**20. If you are a parents' attorney, what would you say about training in general? Are the limitations on your getting specialized training for child welfare issues?**

**21. In what area(s) do you feel you most need training regarding child abuse & neglect?**

The most comment response from parents' counsel was "DHS policies and procedures" 65%, no other response topped 50%. Other attorneys felt that parents' counsel would benefit from training on DHS policies, federal and state law and regulations, and evidence. Comments?

**22. What type of trainings have you attended in the last 24 months?**

**23. In your experience, how frequently do judges...**

Survey results indicated...

Answer Options	Never	Rarely	Occasionally	Always
Inquire whether respondent parents have counsel	3	3	10	135
Advise respondent parents of the availability of appointed counsel	1	1	10	139
Discourage respondent parents from obtaining counsel	128	20	4	1

**13% of attorneys noted that, though rare, judges do discourage parents from having attorneys. Why does this happen?**

**24. In your experience, when do judges usually appoint an attorney for respondent parents?**

Before the preliminary hearing	71.1%	108
Before the jurisdiction hearing	27.6%	42
Before the disposition hearing	1.3%	2
Before a termination of parental rights hearing	0.0%	0
	<i>answered question</i>	<b>152</b>

Attorneys are reportedly appointed early. **Comments?**

*\*Genesee – more so than in other counties, parents were not appointed until after the preliminary hearing. This issue was also highlighted by one survey respondent in another question.*

**25. If you know, please describe the process used to determine whether respondent parents are eligible to have an appointed attorney:**

**26. How often do you represent a respondent parent through all stages of a child protection case including termination of parental rights?**

Never	1.0%
Rarely	5.9%
Occasionally	16.8%
Always	76.2%

**What are reasons parents' attorneys do not represent a parent through all stages?**

**27. If you are appointed to represent a respondent parent in the trial court proceeding, how often do you represent that parent on appeal?**

Parents' attorneys report they rarely represent clients on appeal (82%).

**Why is that the case?**

**28. What is does your average trial consist of? What are things you usually do in a case such as introducing exhibits, objections, bringing in independent experts?**

**29. In your opinion, is the compensation for appointed respondent parents' attorneys adequate?**

Parents' attorneys overwhelmingly thought that compensation was inadequate (94%) as did the vast majority of other attorneys (73%). comments?

**30. In your opinion, does the compensation paid to respondent parent counsel adequately reflect the complexity of the legal and factual issues in these proceedings?**

**31. In your opinion, does the level of compensation negatively impact the quality of representation of parents, or the ability of the court to get attorneys to represent respondent parents in these proceedings?**

63% of parents' attorneys and 53% of other attorneys thought it did. Comments?

**32. Do you participate in efforts to improve the child protection system? For example, programs to train new attorneys in protection cases or court improvement projects. If yes, please describe.**

If you answered yes to the above question, does part of your role involve advocating for respondent parents' interests? If yes, please describe.

Most survey respondents did not participate in such groups. Comments?

**33. What are other things that we have not covered that you think are issues in parent representation in your area?**

# Michigan Parents' Attorneys Study -Court Staff Individual/Group Interview-

## -Introduction-

- Confidentiality – names will not be used, most identifying information in report will be “A Court Administrator said Y”
- Purpose of the study – improve outcomes for families.
- Methodology
  - Statewide surveys of
    - Parents
    - Judges/Referees
    - DHS attorneys
    - Parents' attorneys
    - Children's attorneys
  - Group and individual interviews in four target counties of
    - Parents
    - Judges/Referees
    - Attorneys
    - Court Administrators
    - DHS social workers
    - Other providers
    - Some others, FCRB, academic
- Thanks for participating!

Number of participants \_\_\_\_\_  
Date \_\_\_\_\_  
County \_\_\_\_\_  
Staff/Consultants present \_\_\_\_\_

1. What is your general background in relation to child protection proceedings?
2. If you know, what is the County's history of providing legal representation to parents?
3. How did the current arrangement(s) evolve?
4. Go over contract, voucher, rule etc. information collected from the county. Have staff answer any questions you have about the documents.
5. If a written contract is used, has it been reviewed recently and how are the terms negotiated?
6. How many attorneys are under contract for this calendar or FY year? Is attorney retention a problem? How do you recruit?
7. What are the County's requirements for receiving a contract to represent parents in child protective proceedings or being eligible to be on the panel for appointment? Are these requirements different from the criminal contract or panel?
8. If appointments are made from a panel, what are the criteria? Any standardized criteria?
9. How is compliance with the contract monitored? For example, do you survey judges or are there written reporting requirements?

**10. Do you have mechanisms to remove attorneys from the panel or contract who you determine are not performing satisfactorily?**

**11. How is compensation determined? Have you researched the practice in other counties?**

**12. What are the main reasons respondent parents' counsel ask for continuances?**

*\* Wayne – there was a higher number of responses regarding asking for continuances because parents did not show up for court.*

**13. Do you have an opinion about of the overall quality of representation provided to parents in this county?**

**14. Do you believe that quality parental representation in protection cases improves outcomes for children and if so how?**

**15. Do you have suggestions for improving the quality of representation for parents in child protection?**

**16. What are other things that we have not covered that you think are issues in parent representation in your area?**

## Michigan Parents' Attorneys Study -Judicial Officer Individual/Group Interview-

*The first set of questions (1-12) are for the most part, not in the surveys. If you are not able to complete all questions with interviewees, these should be prioritized. We have a large number of responses to survey questions already; if a judge/referee has other things they find significant to discuss, that are not in these questions, by all means, do not be overly concerned about this 'script.'*

### Introduction

- Confidentiality – names will not be used, most identifying information in report will be “A Judicial officer said X.” We will not identify by county since in some smaller counties that may be de facto identifying.
- Purpose of the study – improve outcomes for families.
- Methodology
  - Statewide surveys of
    - Parents
    - Judges/Referees
    - DHS attorneys
    - Parents' attorneys
    - Children's attorneys
  - Group and individual interviews in four target counties of
    - Parents
    - Judges/Referees
    - Attorneys
    - Court Administrators
    - DHS social workers
    - Other providers
    - Some others, FCRB, academic
- Thanks for participating!

Number of participants \_\_\_\_\_  
Date \_\_\_\_\_  
County \_\_\_\_\_  
Staff/Consultants present \_\_\_\_\_

1. Overall, what are the strengths and weakness of the representation of parents in your court.
2. Have there been changes that you have observed over time in the quality of representation for parents? If yes, describe
3. How does the representation of parents compare with the representation of children and the agency?
4. Have you made efforts to improve representation? If so describe
5. Do you feel any ethical or other limitations on what you can do to improve representation for parents, either in an individual case or overall?
6. What do you see as the obstacles to improving the quality of representation for parents?
7. What do you think are the biggest obstacles attorneys face in representing parents in these proceedings?
8. Is attorney compensation an obstacle?

9. Do you know how attorneys are hired and compensated? If so, describe.

10. Do you have Rules of Court regarding what is required of counsel representing parents in their court? If not, have the considered using Rules for this purpose?

11. Do you have a way of setting expectations about the quality of representation you expect from attorneys who appear in your court?

12. Do you have an opinion about what would be the best or preferred means of providing legal counsel, e.g., a dedicated law office, expanding the public defenders office, more attorneys under contract, a Bar screened panel with eligibility specified criteria?

13. Do you believe that quality parental representation in protection cases improves outcomes for children and if so how?

Most responses indicated improvements were seen because parents counsel encourages better follow-through of parents. **Comments?**

14. What do you think can be done to improve representation of respondent parents in child protection cases?

**-Questions from surveys-**

15. Which of the following factors do you consider in deciding whether to appoint an attorney to represent a respondent parent who may be unable to retain legal counsel? Identify all that apply.

- Complexity of the case
- Likelihood that the case will proceed to TPR
- Request of the parent
- Request of an attorney
- Request of the social worker
- The ability of the parent to represent himself/herself in the proceedings
- Always appoint if parent meets appointment criteria

Judges overwhelmingly (85.7%) reported that they always appoint if the parent meets criteria. **Comments?**

16. When do you usually appoint an attorney to represent a respondent parent?

Survey results indicated...

Before the preliminary hearing	71.0%
Before the jurisdiction hearing	29.0%
Before the disposition hearing	0.0%
Before a termination of parental rights hearing	0.0%

Judges report that attorneys are usually appointed before the preliminary hearing. What are the exceptions? Other comments?

*\*In Genesee, attorneys reported that attorneys are often not appointed until after the preliminary hearing.*

**17. Do you advise respondent parents that they may request court appointed counsel in these proceedings if they are unable to retain counsel?**

Always	93.5%	58
Most of the time	0.0%	0
As needed	6.5%	4

**What are exceptions? Other comments?**

**18. Do you appoint the same attorney to represent the respondent parent for the duration of the case?**

Yes	96.8%	60
No	1.6%	1
Depends on the case	1.6%	1

**Are there exceptions? Are there reasons attorneys withdraw commonly? Other comments?**

**19. How often are attorneys for respondent parents unable to appear, but send substitute counsel for a particular hearing?**

Rarely	59.7%	37
Occasionally	24.2%	15
Sometimes	9.7%	6
Often	6.5%	4
Please describe how this is usually done such as using attorneys from the same firm or emergency 'house counsel.'		

A significant number of judges report substitute counsel are used. Narrative responses indicate that substitutes are usually from the same firm/organization, and that the attorneys have their own system to find a sub. **Comments?**

**20. Are there any training requirements for attorneys to remain eligible to receive court-appointment to represent respondent parents? If so, what are they?**

Responses indicate that this varies throughout Michigan. Many report not having training requirements, some 'recommended' but not mandatory. *Wayne attorneys reported being required to attend training.* **What is required in your county? Other comments?**

**21. How often in the following child protection hearings are attorneys fully prepared to represent their respondent parent clients?**

Results indicate that judges generally think that parents' attorneys are **usually** or **always** fully prepared at all hearings except preliminary hearing.

**Comments?**

**22. How frequently do attorneys for respondent parents in contested cases present evidence or testimony, or make arguments which are important to your findings or decisions?**

Very few	1.6%
Some hearings	<b>27.9%</b>
Most hearings	21.3%
Almost all hearings	<b>45.9%</b>
Don't know	1.6%
Don't handle contested matters	1.6%

The results suggest the practice varies. **What are some examples or trends in your county?**

**23. How often do attorneys for respondent parents...**

Answer Options	Rarely	Sometimes	Usually	Always
Call witnesses at hearings?	3	<b>35</b>	18	3
Call expert witnesses?	<b>25</b>	<b>34</b>	0	0
File written motions?	<b>22</b>	<b>35</b>	2	0
Present opening arguments?	11	<b>24</b>	16	8
Present closing arguments?	1	8	19	<b>31</b>
Cite legal authority in their arguments?	8	<b>34</b>	16	2

**How does this compare to your experience in your county?**

**24. In general, how knowledgeable are attorneys who represent respondent parents about relevant research on specific topics affecting their clients such as substance abuse recovery, mental health, and child development?**

Somewhat	3.4%
Depends on the attorney	<b>37.3%</b>
Generally knowledgeable	<b>42.4%</b>
Very knowledgeable	15.3%
Don't know	1.7%

Many judges thought knowledge varied from attorney to attorney. **Can you elaborate?**

**25. In your opinion, attorneys who represent respondent parents in your court would benefit from additional training on...**

The question had multiple check boxes. The highest number of judges checked

DHS policies and procedures (75%)  
 Mental Health (60%) and  
 Substance Abuse (53%)

**What about in your county?**



## Michigan Parents' Attorneys Study -Parent Individual/Group Interview-

- Confidentiality – names will not be used, most identifying information in report will be “A from X county said Y”
- Purpose of the study – improve outcomes for families.
- Methodology – surveys of judges, DHS, children’s, parents’ attorneys & parents
- Thanks for participating!

Number of participants \_\_\_\_\_  
Date \_\_\_\_\_  
County \_\_\_\_\_  
Staff/Consultants present \_\_\_\_\_

1. Have you completed a survey? (hand out surveys if not)
2. At what stage is your case in the process?
3. How long was your case in court?
4. In your case, did you hire a lawyer on your own to represent you or did the court appoint a lawyer for you?
5. What was the process for you getting an appointed lawyer?
6. If the judge appointed a lawyer to represent you, when did the judge do so?
7. How soon after the court appointed a lawyer did the lawyer contact you? How?
8. Did you know your lawyer before this case? For example from another child’s case or some other type of case?
9. Did you have the same lawyer from the beginning to the end of your case?
10. Did you ever have a substitute lawyer for a hearing?
11. On average, how many times did you talk with your lawyer before each hearing? In person? By Phone?
12. How did your lawyer keep in contact with you?
13. Did you ever talk with someone from your lawyer's office like a social worker, paralegal, investigator, or a parent advocate?
14. Did your lawyer give you copies of the paperwork on your case? (petitions, orders, leadings, Dep’t of Human Services case plans, and other documents)
15. Did your lawyer explain DHS policies to you?
16. Did your lawyer help you get into programs you needed?
17. Did your lawyer help you prepare to testify in court?
18. Did your lawyer explain what would happen at court hearings?

19. How often was your lawyer with you when you went to court?
20. After each hearing, did your lawyer explain what happened?
21. When you left messages for your lawyer, did you get a quick response?
22. Did your lawyer meet with you on a day *before* the day of the hearing at court?
23. Did your lawyer talk to you about the facts in the case?
24. Did your lawyer use exhibits, like reports or photographs, at court?
25. Did your lawyer talk to you about DHS's case plan?
26. Did your lawyer go to meetings with you out of court?
27. Do you feel your lawyer listened to you?
28. Do you feel your lawyer let you be in charge of the case?
29. Do you feel the judge listened to and respected your lawyer?
30. Do you feel your lawyer was prepared for court hearings?
31. Are you now or were you ever part of a parents' support group? If yes, what is the name of the group?\_\_\_\_\_
32. In what ways was your lawyer most helpful to you?
33. How would you improve the system of parent legal representation?

# Michigan Parents' Attorneys Study -Child Welfare Professional Individual/Group Interview-

## -Introduction-

- Confidentiality – names will not be used, most identifying information in report will be “A from X county said Y”
- Purpose of the study – improve outcomes for families.
- Methodology
  - Statewide surveys of
    - Parents
    - Judges/Referees
    - DHS attorneys
    - Parents' attorneys
    - Children's attorneys
  - Group and individual interviews in four target counties of
    - Parents
    - Judges/Referees
    - Attorneys
    - Court Administrators
    - DHS social workers
    - Other service providers
    - Some others, FCRB, academic
- Thanks for participating!

Number of participants \_\_\_\_\_  
Date \_\_\_\_\_  
County \_\_\_\_\_  
Staff/Consultants present \_\_\_\_\_

1. What is your role in child protection? Social worker? Provider?
2. Do you regularly attend court hearings as a witness in that role? If so how often?
3. Do you attend meetings that parents' attorneys also attend such as case planning meetings, IEP meetings? If so please describe.
4. Do you feel that parents' attorneys are knowledgeable in areas of child protection such as DHS policies, substance abuse, mental health etc.?
5. In what areas do they most need training?
6. Do parents' attorneys get involve with accessing services for their clients? Please describe
7. Would you say parents' attorneys in your area are strong advocates for their clients? Inside the courtroom? Outside the courtroom?
8. Have parents ever talked to you about their attorneys? In what context/what do they say?
9. If you know, when are attorneys usually appointed for parents?
10. Do parents' attorneys contact you before the day of the hearing to discuss the case? If so please describe.

**11. Do you believe that quality parental representation in protection cases improves outcomes for children and if so how?**

**12. What suggestions do you have for improving representation of parents in this judicial district?**

**13. What are other things that we have not covered that you think are issues in parent representation in your area?**

## Appendix G

### Parents' Survey

#### Parent Representation in Child Protection Cases -Parents' Survey-

This survey is being done to help the Michigan Supreme Court study how well parents are being represented by lawyers in child abuse and neglect (child protection) cases. Your answers to these questions are very important to helping the courts do a good job in providing lawyers for parents.

This survey will be used by the Michigan Supreme Court for research only and is entirely confidential, with your answers being added to the answers from other parents. This survey should take approximately \_\_\_\_\_ minutes to complete.

**This survey is for PARENTS who have been involved in child protection cases.**

If you have internet access and would rather fill out this survey online you can find it at [www.abanet.org/child/mi.html](http://www.abanet.org/child/mi.html)

The survey can be faxed to 202-662-1755 to the attention of Scott Trowbridge, mailed to Scott Trowbridge, Esq., ABA Center on Children and the Law, 740 15th Street, NW, Washington, DC 20005 or e-mailed to [trowbris@staff.abanet.org](mailto:trowbris@staff.abanet.org)

#### Background

1. Is your child protection case finished? *(If you had more than one case, please fill the survey out according to the last case)*

- Yes
- No, my case is still in court

2. If your case is finished, what was the outcome?

- Not applicable, my case is still in court
- My child(ren) returned home
- My child(ren) was adopted
- My child(ren) was placed with a relative
- My child(ren) was placed in the custody or guardianship of someone else
- My child(ren) aged out of custody at age 18 (or 20).
- Other. Please specify \_\_\_\_\_

3. How long was your case in court?

- \_\_\_\_ Days
- \_\_\_\_ Months
- \_\_\_\_ Years

4. In your case, did you hire a lawyer on your own to represent you or did the court appoint a lawyer for you?

- I hired a lawyer
- The court appointed one
- I did not have a lawyer in my child protection case

**If you never hired or had an appointed lawyer in your case, you may stop the survey now. Thank you for your time.**

### Your Case

5.	Yes	No
In your case, did the judge/referee ask you if you had a lawyer?		
Did the judge/referee explain that you could have a free lawyer if you couldn't afford to pay one?		
Did you feel the judge/referee discouraged you from having a lawyer?		

6. If the judge appointed a lawyer to represent you, when did the judge do so?

- At the first hearing
- At the hearing where the judge/referee determined whether abuse or neglect occurred
- At a review hearing
- At or before a termination of parental rights hearing
- Other, please specify \_\_\_\_\_

7. How soon after the court appointed a lawyer did the lawyer contact you?

- Within one day
- Within one week
- Within one month
- I did not have an appointed lawyer, I hired my own.
- Other, please describe \_\_\_\_\_

8. Did you know your lawyer before this case? For example from another child's case or some other type of case?

- Yes
- No
- If Yes, please explain:  
\_\_\_\_\_

9. Did you have the same lawyer from the beginning to the end of your case?

- Yes
- No
- My case is still in court, but I've had the same lawyer
- My case is still in court, and I've changed lawyers

I had the same lawyer, but I had a substitute lawyer at court, the following number of times: \_\_\_\_

10. On average, how many times did you talk with your lawyer before each hearing? (enter a number, if they didn't talk with you before each hearing enter zero)

\_\_\_\_\_ In person?

\_\_\_\_\_ By phone?

11. How did your lawyer keep in contact with you? (check all that apply)

- Telephone/voice mail
- Used alternative contact/phone numbers
- E-mail
- Letters
- Maintained flexible office hours
- Met with me outside the office
- Met with me at court before hearings
- Other; please specify\_\_\_\_\_

12. Did you ever talk with someone from your lawyer's office like a social worker, paralegal, investigator, or a parent advocate?

Yes

No

13. In your case...	Yes	No
Did your lawyer give you copies of the paperwork on your case? (petitions, orders, pleadings, Dep't of Human Services case plans, And other documents)		
Did your lawyer explain DHS policies to you?		
Did your lawyer help you get into programs you needed?		

14. In your case...	Never	Rarely	Sometimes	Always
Did your lawyer help you prepare to testify in court?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did your lawyer explain what would happen at court hearings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
How often was your lawyer with you when you went to court?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
After each hearing, did your lawyer explain what happened?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
When you left messages for your lawyer, did you get a quick response?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did your lawyer meet with you on a day before the day of the hearing at court?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did your lawyer talk to you about the facts in the	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

case?				
Did your lawyer use exhibits, like reports or photographs, at court?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did your lawyer talk to you about DHS's case plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did your lawyer go to meetings with you out of court?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you feel your lawyer listened to you?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you feel your lawyer let you be in charge of the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you feel the judge listened to and respected your lawyer?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you feel your lawyer was prepared for court hearings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

15. Are you now or were you ever part of a parents' support group?

Yes

No

If yes, what is the name of the group? \_\_\_\_\_

16. In what ways was your lawyer most helpful to you? (check the top three)

He or she was not helpful in any way

He or she explained things to me

He or she provided me with information about my case

He or she made sure the court heard my side of the story

He or she helped me be more comfortable in court

He or she helped me work with DHS

He or she helped me work better with the programs I had to attend

He or she helped me with visitation with my child(ren)

He or she was someone that I could talk to confidentially

Other, please describe \_\_\_\_\_



## Follow-Up

Thank you for completing the survey. If you would like to participate further in this study, such as for individual or group interviews, please enter your information below.

Your personal information will remain **confidential**. Results of this study will not use anyone's name.

17. Name: \_\_\_\_\_  
Phone Number(s): \_\_\_\_\_  
What County was your case in? \_\_\_\_\_

18. Would you like to participate in a follow-up interview?

- Yes
- No

19. Would you like to participate in a follow-up focus group with other parents?

- Yes
- No

## Appendix H

### Attorney Surveys

### Respondent Parent Representation in Child Protection Cases -Respondent Parents' Counsel Survey-

This questionnaire is one method being used to evaluate the quality of parent representation in child protection cases in Michigan. Please answer these questions carefully and honestly. This survey should take approximately 15 minutes to complete.

The survey can be faxed to 202-662-1755 to the attention of Scott Trowbridge, mailed to Scott Trowbridge, Esq., ABA Center on Children and the Law, 740 15th Street, NW, Washington, DC 20005 or e-mailed to [trowbris@staff.abanet.org](mailto:trowbris@staff.abanet.org)

**This survey is for attorneys who represent PARENTS in child protection cases. If you represent parties other than parents please fill out the survey located at [www.abanet.org/child/mi.html](http://www.abanet.org/child/mi.html)**

#### Background

1. Identifying information is only requested in the event we need clarification or if you wish to participate in a follow-up interview, and will remain confidential. Only summary, non-identifying results will be reported.

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Work address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Email: \_\_\_\_\_

2. Years representing respondent parents in child protection cases: \_\_\_\_\_

3. For the current year, what percentage of your caseload involved representation of the following parties in child protection cases:

Respondent parents	%
Children	%
DHS	%
Other	%
If Other; please specify _____	%

4. In what County do you primarily practice? \_\_\_\_\_

**Training**

5. Were you required to receive any specialized training prior to receiving a court appointment to represent a respondent parent in a child protection case?

- No
- Yes, please describe \_\_\_\_\_

6. Have you ever attended training on the following?(check all that apply)	Yes	No
Child development	<input type="checkbox"/>	<input type="checkbox"/>
Cognitive delays	<input type="checkbox"/>	<input type="checkbox"/>
Cultural competence	<input type="checkbox"/>	<input type="checkbox"/>
DHS policies and procedures	<input type="checkbox"/>	<input type="checkbox"/>
Domestic violence	<input type="checkbox"/>	<input type="checkbox"/>
Education/Special education	<input type="checkbox"/>	<input type="checkbox"/>
Ethical issues in child protection	<input type="checkbox"/>	<input type="checkbox"/>
Evidence in child protection	<input type="checkbox"/>	<input type="checkbox"/>
Federal and state statutes, regulations, and rules regarding child protection	<input type="checkbox"/>	<input type="checkbox"/>
Public benefits such as SSI/SSD	<input type="checkbox"/>	<input type="checkbox"/>
Interstate placement of children	<input type="checkbox"/>	<input type="checkbox"/>
Mental health	<input type="checkbox"/>	<input type="checkbox"/>
Physical abuse	<input type="checkbox"/>	<input type="checkbox"/>
Substance abuse	<input type="checkbox"/>	<input type="checkbox"/>
Trial practice in child protection	<input type="checkbox"/>	<input type="checkbox"/>
Other; please Specify _____	<input type="checkbox"/>	

7. In what area(s) do you feel you most need training regarding child abuse & neglect?	
Child development	<input type="checkbox"/>
Cognitive delays	<input type="checkbox"/>
Cultural competence	<input type="checkbox"/>
DHS policies and procedures	<input type="checkbox"/>
Domestic violence	<input type="checkbox"/>
Education/Special Education	<input type="checkbox"/>
Ethical issues in child protection	<input type="checkbox"/>
Evidence in child protection	<input type="checkbox"/>
Federal and state, statutes, regulations, and rules	<input type="checkbox"/>

regarding child protection	
Public benefits such as SSI/SSD	<input type="checkbox"/>
Interstate placement of children	<input type="checkbox"/>
Mental health	<input type="checkbox"/>
Physical abuse	<input type="checkbox"/>
Substance abuse	<input type="checkbox"/>
Trial practice in child protection	<input type="checkbox"/>
Other; please pecify _____	<input type="checkbox"/>

8. What type of trainings have you attended in the last 24 months?

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9. What type of research resources do you have access to? For example, Lexis, Westlaw, or other online resources.

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10. Do you belong to any professional organizations or services related to representation in child protection cases? For example, e-mail list serves, NACC. If Yes, please list.

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### Role of the Court

11. <i>In your experience, how frequently do judges...</i>	<i>Never</i>	<i>Rarely</i>	<i>Occasionally</i>	<i>Always</i>
Inquire whether respondent parents have counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Advise respondent parents of the availability of appointed counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Discourage respondent parents from obtaining Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

12. In your experience, when do judges usually appoint an attorney for respondent parents?

- Before the preliminary hearing
- Before the jurisdiction hearing
- Before the disposition hearing
- Before a termination of parental rights hearing

13. If you know, please describe the process used to determine whether respondent parents are eligible to have an appointed attorney:

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14. Please estimate the percentage of respondent parents represented by counsel at the following child protection hearings:

Preliminary hearings	%
Jurisdiction	%
Disposition	%
Review hearings	%
Termination of parental rights	%

### Representation in General

15. How soon after you are appointed to represent a respondent parent do you usually attempt to make contact with your client?

- Within one day
- Within one week
- Within one month
- Wait until they contact me

16. How often do you represent a respondent parent through all stages of a child protection case including TPR?

<i>Never</i>	<i>Rarely</i>	<i>Occasionally</i>	<i>Always</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

17. If you are appointed to represent a respondent parent in the trial court proceeding, how often do you represent that parent on appeal?

<i>Never</i>	<i>Rarely</i>	<i>Occasionally</i>	<i>Always</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

18. How do you maintain open lines of communication with respondent parent clients? (check all that apply)

- Telephone/voice mail
- Request alternative phone numbers
- E-mail
- Letters
- Maintain flexible office hours
- Meet with client outside the office
- Other; please specify \_\_\_\_\_

19. As respondent parents' counsel, what are the main reasons that you ask for continuances?

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<i>20. In representing respondent parents, how often do you do the following?</i>	<i>Never</i>	<i>Rarely</i>	<i>Occasionally</i>	<i>Always</i>
Use formal discovery methods to obtain information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Attempt to locate non-respondent parents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Investigate allegations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Obtain independent evaluations of your clients	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
File pleadings, motions, or briefs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Provide copies of petitions, orders, pleadings, service plans, and other relevant documents to parents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Engage in settlement negotiations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prepare witnesses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Make evidentiary objections	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prepare and present exhibits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Make opening arguments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Make closing arguments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
File appeals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ask for continuances	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Participate in mediation/alternative dispute resolution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Obtain an expert witness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Attend meetings with DHS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Explain DHS policies and procedures to your client	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Explain the child protection law to your client	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Explain the court process to your client	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Work out issues with the client and caseworker outside of court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Encourage your client to follow through with DHS or court ordered requirements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<i>21. In representing respondent parents, how often do you do the following on a date other than the day of the hearing?</i>	<i>Never</i>	<i>Rarely</i>	<i>Occasionally</i>	<i>Always</i>
Meet with your client	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Talk to the DHS caseworker	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Review case records	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Speak with service providers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Investigate alternative placements or resources	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Investigate potential independent witnesses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Speak with agency attorneys	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

22. Do you believe that quality parental representation in protection cases improves outcomes for children and if so how?

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### Compensation

23. In your opinion, is the compensation for appointed respondent parents' attorneys adequate?

- Yes
- No
- Have no opinion
- If No, what compensation formula would you recommend? \_\_\_\_\_

24. In your opinion, does the compensation paid to respondent parent counsel adequately reflect the complexity of the legal and factual issues in these proceedings?

- Yes
- No
- Have no opinion

25. In your opinion, does the level of compensation negatively impact the quality of representation of parents, or the ability of the court to get attorneys to represent respondent parents in these proceedings?

- Yes
- No
- Have no opinion

### Improving Representation

26. What do you think can be done to improve representation of respondent parents in child protection cases?

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27. Do you participate in efforts to improve the child protection system? For example, programs to train new attorneys in protection cases or court improvement projects. If yes, please describe.

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28. If you answered yes to the above question, does part of your role involve advocating for respondent parents' interests? If yes, please describe.

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29. Would you be willing to participate in a follow-up interview?

Yes

No

Thank you very much for your time!

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**Respondent Parent Representation in Child Protection Cases  
-DHS & Children’s Attorney Survey-**

This questionnaire is one method being used to evaluate the quality of parent representation in child protection cases in Michigan. Please answer these questions carefully and honestly. This survey should take approximately 10 minutes to complete.

The survey can be faxed to 202-662-1755 to the attention of Scott Trowbridge, mailed to Scott Trowbridge, Esq., ABA Center on Children and the Law, 740 15th Street, NW, Washington, DC 20005 or e-mailed to [trowbris@staff.abanet.org](mailto:trowbris@staff.abanet.org)

**This survey is for attorneys who represent parties NOT including PARENTS in child protection cases. If you represent parents please fill out the survey located at [www.abanet.org/child/mi.html](http://www.abanet.org/child/mi.html)**

**Background**

1. Identifying information is only requested in the event we need clarification or if you wish to participate in a follow-up interview, and will remain confidential. Only summary non-identifying results will be reported.

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Work address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Email: \_\_\_\_\_

2. Years representing parties/clients in child protection cases: \_\_\_\_\_

3. For the current year, what percentage of your caseload involved representation of the following parties in child protection cases:

DHS	_____	%
Children	_____	%
Other	_____	%
If Other; please specify _____		%

4. In what County do you primarily practice? \_\_\_\_\_

## Role of the Court

5. In your experience, how frequently do Judges...	Never	Rarely	Occasionally	Always
Inquire whether respondent parents have counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Advise respondent parents of the availability of appointed counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Discourage respondent parents from obtaining counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

6. In your experience, when do judges usually appoint an attorney for respondent parents?

- Before the preliminary hearing
- Before the jurisdiction hearing
- Before the disposition hearing
- Before a termination of parental rights hearing

7. If you know, please describe the process used to determine whether respondent parents are eligible to have an appointed attorney:

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8. Please estimate the percentage of respondent parents represented by counsel at the following child protection hearings:

Preliminary	%
Jurisdiction	%
Disposition	%
Review hearings	%
Termination of parental rights	%

## Representation in General

9. What are the main reasons respondent parents' attorneys ask for continuances?

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10. Do you believe that quality parental representation in protection cases improves outcomes for children and if so how?

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## Compensation

11. In your opinion, is the compensation for appointed respondent parents' attorneys adequate?

- Yes
- No
- Have no opinion
- If No, what compensation formula would you recommend? \_\_\_\_\_

12. In your opinion, does the compensation paid to respondent parent counsel adequately reflect the complexity of the legal and factual issues in these proceedings?

- Yes
- No
- Have no opinion

13. In your opinion, does the level of compensation negatively impact the quality of representation of parents, or the ability of the court to get attorneys to represent respondent parents in these proceedings?

- Yes
- No
- Have no opinion

## Improving Representation

14. What do you think can be done to improve representation of respondent parents in child protection cases?

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15. Do you participate in efforts to improve the child protection system? For example, programs to train new attorneys in protection cases or court improvement projects. If yes, please describe.

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16. In your opinion, attorneys who represent respondent parents would benefit from additional training on.....(check all that apply)

Child development	<input type="checkbox"/>
Cognitive delays	<input type="checkbox"/>
Cultural competence	<input type="checkbox"/>
DHS policies and procedures	<input type="checkbox"/>
Domestic violence	<input type="checkbox"/>
Education/Special Education	<input type="checkbox"/>
Ethical issues in child protection	<input type="checkbox"/>

Evidence in child protection	<input type="checkbox"/>
Federal and state statutes, regulations, and rules regarding child protection	<input type="checkbox"/>
Public benefits such as SSI/SSD	<input type="checkbox"/>
Interstate placement of children	<input type="checkbox"/>
Mental health	<input type="checkbox"/>
Physical abuse	<input type="checkbox"/>
Substance abuse	<input type="checkbox"/>
Trial practice in child protection	<input type="checkbox"/>
Other; please specify _____	<input type="checkbox"/>

17. Would you be willing to participate in a follow-up interview?

- Yes
- No

Thank you very much for your time!

## Appendix I

### Judicial Officer Survey

#### Respondent Parent Representation in Child Protection Cases -Judicial Officer Survey-

This questionnaire is one method being used to evaluate the representation of respondent parents in child protection cases in Michigan. We appreciate your taking the time to assist in this effort. This survey should take approximately 15 minutes to complete.

The survey can be faxed to 202-662-1755 to the attention of Scott Trowbridge, mailed to Scott Trowbridge, Esq., ABA Center on Children and the Law, 740 15th Street, NW, Washington, DC 20005 or e-mailed to [trowbris@staff.abanet.org](mailto:trowbris@staff.abanet.org).

#### Background

1. Identifying information is only requested in the event we need clarification or if you wish to participate in a follow-up interview, and will remain confidential. Only summary non-identifying results will be reported.

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Work address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

2. Type of judicial officer

- Circuit Court Judge
- District Court Judge
- Referee

3. How many years have you been a judicial officer? \_\_\_\_

4. Please estimate the number of open child protection cases currently assigned to you?

- 0-5
- 6-25
- 26-99
- 100 or more
- Don't know
- No child protection cases are currently assigned to me

5. Last month, about how many hearings (contested and uncontested) did you conduct in child protection proceedings?

- 0-10 hearings
- 11-20 hearings
- 21-40 hearings
- More than 40 hearings

6. For the current year, what percent of your total caseload consists of child protection proceedings?

- Less than 20%
- 20-50%
- 51-75%
- Over 76%
- 100%
- Don't know

### **Representation in General**

7. Which of the following factors do you consider in deciding whether to appoint an attorney to represent a respondent parent who may be unable to retain legal counsel? Identify all that apply.

- Complexity of the case
- Likelihood that the case will proceed to TPR
- Request of the parent
- Request of an attorney
- Request of the social worker
- The ability of the parent to represent himself/herself in the proceedings
- Always appoint if parent meets appointment criteria

8. When do you usually appoint an attorney to represent a respondent parent?

- Before the preliminary hearing
- Before the jurisdiction hearing
- Before the disposition hearing
- Before a termination of parental rights hearing

9. Do you advise respondent parents that they may request court appointed counsel in these proceedings if they are unable to retain counsel?

- Always
- Most of the time
- As needed

10. Do you appoint the same attorney to represent the respondent parent for the duration of the case?

- Yes
- No
- Depends on the case

11. How often are attorneys for respondent parents unable to appear, but send substitute counsel for a particular hearing? Please describe how this is usually done such as using attorneys from the same firm or emergency 'house counsel.'

- Rarely
- Occasionally
- Sometimes
- Often

12. Are there any training requirements for attorneys to remain eligible to receive court-appointment to represent respondent parents? If so, what are they?

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13. In your opinion, is the compensation for appointed respondent parents' attorneys adequate?

- Yes
- No
- Have no opinion
- If No, what compensation formula would you recommend? \_\_\_\_\_

14. In your opinion, does the level of compensation negatively impact the quality of representation of parents, or the ability of the court to get attorneys to represent respondent parents in these proceedings?

- Yes
- No
- Have no opinion

15. How often in the following child protection hearings are attorneys fully prepared to represent their respondent parent clients?	Rarely	Sometimes	Usually	Always	Don't Know
Preliminary hearings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jurisdiction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Disposition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Review	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Permanency planning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Termination of parental rights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

16. How frequently do attorneys for respondent parents in contested cases present evidence or testimony, or make arguments which are important to your findings or decisions?

- Very few
- Some hearings
- Most hearings
- Almost all hearings
- Don't know
- Don't handle contested matters

17. How often do attorneys for respondent parents...	Rarely	Sometimes	Usually	Always
Call witnesses at hearings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Call expert witnesses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
File written motions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Present opening arguments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Present closing arguments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cite legal authority in their arguments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Summary Assessments

18. In general, how knowledgeable are attorneys who represent respondent parents about relevant research on specific topics affecting their clients such as substance abuse recovery, mental health, and child development?

- Somewhat
- Depends on the attorney
- Generally knowledgeable
- Very knowledgeable
- Don't know

19. How satisfied are you with the overall competency of the attorneys appointed to represent respondent parents in your court?

- Frequently dissatisfied
- Varies widely
- Generally need improvement
- Generally satisfied
- Very satisfied

20. Overall, in comparison to attorneys appearing in other civil litigation, how prepared are attorneys who represent respondent parents in child protection cases?

- Much less
- Less
- About the same
- Better
- Much better
- Don't have the basis to form an opinion



21. In your opinion, attorneys who represent respondent parents in your court would benefit from additional training on.....(check all that apply)

Child development	<input type="checkbox"/>
Cognitive delays	<input type="checkbox"/>
Cultural competence	<input type="checkbox"/>
DHS policies and procedures	<input type="checkbox"/>
Domestic violence	<input type="checkbox"/>
Education/Special Education	<input type="checkbox"/>
Ethical issues in child protection	<input type="checkbox"/>
Evidence in child protection	<input type="checkbox"/>
Federal and state statutes, regulations, and rules governing child protection	<input type="checkbox"/>
Public benefits such as SSI/SSD	<input type="checkbox"/>
Interstate placement of children	<input type="checkbox"/>
Mental health	<input type="checkbox"/>
Physical abuse	<input type="checkbox"/>
Substance abuse	<input type="checkbox"/>
Trial practice in child protection	<input type="checkbox"/>
Other; please specify _____	<input type="checkbox"/>

22. Do you believe that quality parental representation in protection cases improves outcomes for children and if so how?

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23. Do you participate in efforts to improve the child protection system? For example, programs to train new attorneys or referees in child protection cases or court improvement projects. If yes, please describe.

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24. What do you think can be done to improve the representation of respondent parents in child protection cases?

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25. Would you be willing to participate in a follow-up interview?

- Yes
- No

Thank you very much for your time!

## Appendix J

### Survey Results

#### Summary of All Survey Data

##### Source of Survey Data

Questions 1-4 on the attorney and parents' surveys and 1-6 on the judicial officer survey were demographic questions.

1037 children's, parents' attorneys, and prosecutors were e-mailed in total. 243 completed surveys for a 23% response rate based on the e-mail list. 164 Attorneys completed the parents' attorney survey and seventy-nine 79 attorneys completed the DHS, children's and other attorney survey. 313 Judicial officers were e-mailed from SCAO lists and 90 responded for a 29% response rate. 63 responses were received in total to the parents' survey.

Several measures were taken to ensure accuracy of the survey sample.

Duplicate IP addresses were searched for (indicating responses from the same computer network) which might indicate multiple surveys being entered by one person. None were found except for those from hardcopies entered by ABA staff. Doubled checked these for duplicate names.

Duplicate names were searched for and deleted if found. Some were a result of persons completing a survey online as well as mailing a hardcopy. One **(1)** result was eliminated from DHS/Children's survey, five **(5)** from parents' attorney, and four **(4)** from judicial officer surveys.

Results of seven **(7)** individuals that filled out the DHS/Children's survey but should have filled out the parents' attorneys survey as they indicated they represented parents part of the time were found. Three of the seven filled out both parents' attorney and DHS/Children's attorney survey. Their results were retained only in the parents' attorney survey results.

Searched parents' attorney results for anyone that did not indicate they represented parents. Though two skipped this question (Question 3) their responses elsewhere indicated they did and no results were eliminated for this reason.

All individuals who completed the judicial officer indicated they were judges or referees. Those few that left question 2 blank, which asked whether they were a district court judge, circuit court judge, or referee, indicated elsewhere they were probate judges.

Corrected formatting inconsistencies that called for integers or percentages, such as 'none' to '0' to ensure accurate calculations on results.

Eliminated results of persons that failed to complete the surveys. Though considered, no numeric criteria was used for this edit to determine 'majority' as the results were quite stark in comparison; almost all respondents completed the vast majority of questions and a few individuals filled out the first few questions and almost nothing else. Five **(5)** DHS/Children's results, eleven **(11)** parents' attorney results, none **(0)** from parents' surveys, and three **(3)** from judicial officers were eliminated.

Based on the measures above, the final survey data for judicial officers and attorneys were based on **148** parents' attorney, **83** judicial officer, and **66** DHS/children's attorney responses.

One (1) parents' survey was completed by a foster parent and this result was excluded. One (1) parent indicated that they did not have an attorney in their case and their results (which were mostly blank) were excluded resulting in **61** valid parent survey responses.

## Background of Survey Population

Parents' attorneys who responded to the survey were generally experienced in representing parents. They had represented parents for an average of 11 years with 40% having over 10 years experience and only 17% having less than 2. For the current year, 53% of their caseloads were respondent parents, with a substantial percentage (28%) also representing children.

On the non-parent attorney survey, attorneys had an average 12 years experience in child protection. For the current year, 46% of their caseload was children, and a fair number represented DHS (26%).

Attorney responses represented 48 counties in Michigan.

Judicial officer's had an average of 12 years on the bench. Most had substantial child protection caseloads with 35% having 26-99, 31% having over 100, and only 12% with 0 to 5 currently assigned open cases.

Judicial officers were asked about the number of contested or uncontested hearings they had in the prior month. Child protection docket size was fairly evenly divided among those surveyed with 27% reporting 0-10 hearings, 24% 11-20, 21% 21-40, and 28% over 40 hearings in the prior month. Most judicial officers (61%) surveyed indicated that 20 to 50% of their caseload was child protection cases, with a fair number (27%) having a caseload with less than 20% child protection matters.

Most parents that returned surveys, 80.0% (48 of 60), reported their case was still in court.

Parents were asked about the length of time their case had been in court. The average reported length was sixteen (16) months.

Most parents had appointed counsel (83.3%).

When asked about the outcome of the case if it was concluded, most reported the case ended in reunification, (23.4% where 59.6% responded that the question was not applicable since their case was still in court).

Questions 27 parents' attorneys (PA) & 15 other attorneys (O) & 23 judicial officers (J) read:

**"Do you participate in efforts to improve the child protection system? For example, programs to train new attorneys in protection cases or court improvement projects. If yes, please describe."**

Many participants indicated they were involved in improvement efforts with only 21.0% indicating that they were not. Notably, 8.2% remarked that there was a lack of opportunities to participate in such efforts. Several types of involvement were commonly noted:

Efforts to Improve Child Welfare	Response Frequency	Response Count
Attend and participate in trainings	22.7%	53
Involvement in group/organization	22.7%	53
Act as mentor to attorneys	18.9%	44
Presenter at trainings	17.6%	41
<i>answered question</i>		<b>233</b>
<i>skipped question</i>		<b>64</b>

Questions 22 (PA), 10 (O), & 22 (J) read: **"Do you believe that quality parental representation in protection cases improves outcomes for children and if so how?"** 262 of 297 participants responded.

Overwhelmingly, attorneys and judicial officers (84%) thought that quality parental representation improved outcomes for children. Of the few (5.0%) that did not think quality representation improved outcomes, most contended either that a case depended so strongly on the parents' behavior rather than representation or that the courts are so deferential to DHS that the quality of representation was not a strong factor.

While the question was worded "improved outcomes for *children*," acknowledging that federal and state statutes and case law often focus on the best interests of children over the rights of parents, a fair number (11.8%) also noted that quality representation improves fairness in the process for parents.

The most common reason given (42.4%) as to why outcomes are improved for children was that quality attorney representation improves the performance/participation of parents in the process. Other frequent responses included that quality representation helps the court make better decisions (10.7%), generally reduces delays (10.7%), and improves the performance of DHS (8.0%).

## Basic Obligations of Parents' Attorneys

Questions 26 on the parents' attorneys (PA), 14 on the other attorneys (O), & 24 on the judicial officer surveys (J) read: **"What do you think can be done to improve representation of respondent parents in child protection cases?"**

Training	More training	Mandatory training
Parents' Attorneys	39.1%	13.9%
DHS/children's Attorneys	43.4%	11.3%
Judicial Officers	50.0%	15.2%
Total	43.2%	13.7%
<i>answered question</i>		234
<i>skipped question</i>		63

Question 5 (PA) read: **"Were you required to receive any specialized training prior to receiving a court-appointment to represent a respondent parent in a child protection case?"**

According to parents' attorneys, 42.8% (62 of 145) were and 57.2% (83 of 145) were not required to attend pre-service training.

Question 12 (J) read: **"Are there any training requirements for attorneys to remain eligible to receive court-appointment to represent respondent parents? If so, what are they?"**

For Judicial officers, 69 of 83 answered this open-ended question. Of those, 47.8% indicated that there were not and 30.4% indicated there were mandatory training requirements. Ten percent (10.1%) of judicial officers indicated that mentoring was encouraged or required.

Judicial officers were asked in question 18 (J), “In general, how knowledgeable are attorneys who represent respondent parents about relevant research on specific topics affecting their clients such as substance abuse recovery, mental health, and child development?”

Answer Options	Response Frequency	Response Count
Somewhat	2.5%	2
Depends on the attorney	34.2%	27
Generally knowledgeable	49.4%	39
Very knowledgeable	11.4%	9
Don't know	2.5%	2
<i>answered question</i>		<b>79</b>
<i>skipped question</i>		<b>4</b>

Questions 6 (PA) read: “Have you ever attended training on the following? (check all that apply)” and provided multiple check boxes

Parents’ Attorneys responded:

Answer Options	Response Frequency	Response Count
Child development	40.1%	55
Cognitive delays	24.8%	34
Cultural competence	16.8%	23
DHS policies and procedures	52.6%	72
Domestic violence	59.1%	81
Education/Special education	21.2%	29
Ethical issues in child protection	26.3%	36
Evidence in child protection	56.2%	77
Federal and state statutes, regulations, and rules regarding child protection	46.7%	64
Public benefits such as SSI/SSD	14.6%	20
Interstate placement of children	10.2%	14
Mental health	44.5%	61
Physical abuse	41.6%	57
Substance abuse	45.3%	62
Trial practice in child protection	54.7%	75
Other; please specify	15.3%	21
<i>answered question</i>		<b>137</b>
<i>skipped question</i>		<b>11</b>

Question 8 parents’ attorneys (PA) read: “What type of trainings have you attended in the last 24 months?”

One hundred and thirty-five (135) respondent parents’ counsel answered this question with a wide variety of responses. There were multiple responses indicating they had attended SCAO, CDAM, ICLE, county bar association trainings, and trainings on specific topics such as substance abuse, sexual abuse, or mental health.

Question 7 (PA) read: **“In what area(s) do you feel you most need training regarding child abuse & neglect? (check all that apply)”**

Parents’ Attorneys responded:

Answer Options	Response Frequency	Response Count
Child development	17.7%	25
Cognitive delays	15.6%	22
Cultural competence	14.9%	21
DHS policies and procedures	59.6%	84
Domestic violence	6.4%	9
Education/Special Education	16.3%	23
Ethical issues in child protection	17.0%	24
Evidence in child protection	37.6%	53
Federal and state, statutes, regulations, and rules regarding child protection	37.6%	53
Public benefits such as SSI/SSD	39.0%	55
Interstate placement of children	31.9%	45
Mental health	23.4%	33
Physical abuse	7.8%	11
Substance abuse	16.3%	23
Trial practice in child protection	30.5%	43
Other; please specify		
<i>answered question</i>		<b>141</b>
<i>skipped question</i>		<b>7</b>

In question 21 (J), judicial officers were asked, **“In your opinion, attorneys who represent respondent parents in your court would benefit from additional training on...(check all that apply)”**

Answer Options	Response Frequency	Response Count
Child development	47.4%	37
Cognitive delays	34.6%	27
Cultural competence	20.5%	16
DHS policies and procedures	73.1%	57
Domestic violence	26.9%	21
Education/Special Education	46.2%	36
Ethical issues in child protection	23.1%	18
Evidence in child protection	41.0%	32
Federal and state statutes, regulations, and rules regarding child protection	34.6%	27
Public benefits such as SSI/SSD	42.3%	33
Interstate placement of children	37.2%	29
Mental health	61.5%	48
Physical abuse	26.9%	21
Substance abuse	48.7%	38
Trial practice in child protection	42.3%	33
Other; please specify	14.1%	11
<i>answered question</i>		<b>78</b>
<i>skipped question</i>		<b>5</b>

Question 9 (PA) read: **“What type of research resources do you have access to? For example, Lexis, Westlaw, or other online resources.”**

Responses identified Westlaw (39.9%), MI institute of Continuing Legal Education (ICLE) (35.5%), Lexis (18.1%). A few noted they had access to law libraries, listserves, and manuals/benchbooks. Of the 138 responses (93% response rate) there was no indication that they lacked access to research materials.

Question 10 (PA) read: **“Do you belong to any professional organizations or services related to representation in child protection cases? For example, e-mail list serves, NACC. If yes, please list.”** 106 answered this question.

The majority of parents’ attorneys (54%) did not belong to any professional organizations on child welfare. Some belonged to the relevant sections of the state (20%) or local (10%) bar, and some (20%) were members of relevant listserves.

## Client Relationship

Question 15 (PA) read: **“How soon after you are appointed to represent a respondent parent do you usually attempt to make contact with your client?”**

Answer Options	Response Frequency	Response Count
Within one day	57.7%	82
Within one week	35.9%	51
Within one month	2.8%	4
Wait until they contact me	3.5%	5
<i>answered question</i>		<b>142</b>
<i>skipped question</i>		<b>6</b>

Parents were also asked about initial contact with their counsel.

Question 7 (P) read: **“How soon after the court appointed a lawyer did the lawyer contact you?”**

Answer Options	Response Frequency	Response Count
Within one day	16.1%	9
Within one week	17.9%	10
Within one month	7.1%	4
I did not have an appointed lawyer, I hired my own.	7.1%	4
Other, please describe	51.8%	29
<i>answered question</i>		<b>56</b>
<i>skipped question</i>		<b>5</b>

While a fair number of parents report being contacted within a day or a week as shown above, a disturbing number responded to the ‘Other’/open-ended portion to indicate their attorney never contacted them (31.0% - 9 of 29) or that their only contact was immediately before court hearings (51.7% - 15 of the 29).

Question 18 (PA) read: **“How do you maintain open lines of communication with respondent parent clients?”**

Answer Options	Response Frequency	Response Count
Telephone/voice mail	99.3%	145
Request alternative phone numbers	65.1%	95
E-mail	35.6%	52
Letters	92.5%	135
Maintain flexible office hours	45.2%	66
Meet with client outside the office	54.1%	79
Other, please specify		26
<i>Answered question</i>		<b>146</b>
<i>skipped question</i>		<b>2</b>

Question 11 (P) asked parents many of the same questions. It read: **“How did your lawyer keep in contact with you? (check all that apply)”**

Answer Options	Response Frequency	Response Count
Telephone/voice mail	42.1%	24
Used alternative contact/phone numbers	3.5%	2
E-mail	3.5%	2
Letters	21.1%	12
Maintained flexible office hours	8.8%	5
Met with me outside the office	7.0%	4
Met with me at court before hearings	70.2%	40
Other, please specify	19.3%	11
<i>answered question</i>		<b>57</b>
<i>skipped question</i>		<b>4</b>

Notably, twenty-two parents (38.6% - 22 of 57) *only* selected “Met with me at court before hearings,” echoing other responses. Three (3) specified that they only had contact in court in the “other” open-ended portion of the question.

Of the 11 “other” responses, five (5) indicated they had no contact with their attorney.

Parents were also asked about frequency of contact. Question 10 (P) read:

**“On average, how many times did you talk with your lawyer before each hearing? (enter a number, if they didn’t talk with you before each hearing enter zero)”**

Responses evidenced a wide variance in practice among parents’ attorneys.

An alarming number of parents (37.0% no phone contact – 17 of 46; 50.0% no in person contact – 23 of 46) reported that on average no contact occurred before each hearing.

A fair number reported one (1) phone (39.1% - 18 of 46) or in person (17.4% - 8 of 46) contact.

However, a very few parents had extensive contact with their attorneys on average before hearings reporting 6, 10, and even 12 in person or phone contacts on average before hearings.



## Court/Case Preparation

Question 20 (J) read: “Overall, in comparison to attorneys appearing in other civil litigation, how prepared are attorneys who represent respondent parents in child protection cases?”

Answer Options	Response Frequency	Response Count
Much less	1.3%	1
Less	12.5%	10
About the same	56.3%	45
Better	13.8%	11
Much better	5.0%	4
Don't have the basis to form an opinion	11.3%	9
<i>answered question</i>		<b>80</b>
<i>skipped question</i>		<b>3</b>

Question 15 (J) read: “How often in the following child protection hearings are attorneys fully prepared to represent their respondent parent clients?”

Answer Options	Rarely	Sometimes	Usually	Always	Don't know	Response Count
Preliminary hearings	3.7%	19.8%	35.8%	23.5%	12.3%	77
Jurisdiction	0.0%	2.5%	35.8%	53.1%	7.4%	80
Disposition	0.0%	3.7%	30.9%	56.8%	8.6%	81
Review	0.0%	7.4%	42.0%	42.0%	8.6%	81
Permanency planning	0.0%	6.2%	37.0%	45.7%	11.1%	81
Termination of parental rights	0.0%	0.0%	32.1%	55.6%	12.3%	81
<i>answered question</i>						<b>81</b>
<i>skipped question</i>						<b>2</b>

Question 19 (PA) read: “As respondent parents’ counsel, what are the main reasons that you ask for continuances?”

Question 9 (O) read: “What are the main reasons respondent parents’ counsel ask for continuances?” 192 of 214 participants responded to this open-ended question.

Although both DHS/children’s attorneys and parents’ identified discovery issues and parental unavailability as common reasons for continuances, these responses were more frequent on the parents’ attorneys survey with discovery issues at 36.4% and parental unavailability at 24.8% as compared with 27.0% and 17.5% respectively on the DHS/children’s surveys.

Many of the 36.4% of parents’ attorneys who noted that discovery issues (the highest frequency response to this open-ended question) led to continuances indicated specifically that they failed to receive/timely receive reports from DHS.

Both DHS/Children’s (27.0%) and parents’ attorneys (27.9%) reported that one of the common reasons for continuances at behest of parents’ counsel was in order to give a parent more time to complete service/plan goals.

Results from both groups of attorneys also indicate that settlement negotiations (4.2%) witness unavailability (5.7%), and continuances to wait for a related criminal proceeding to finish (4.7%) were occasional reasons for continuances.

Question 21 (PA) read: **“In representing respondent parents, how often do you do the following on a date other than the day of the hearing?”**

Answer Options	Never	Rarely	Occasionally	Always	Response Count
Meet with your client	2.1%	9.6%	61.0%	26.7%	145
Talk to the DHS caseworker	1.4%	3.4%	58.2%	36.3%	145
Review case records	0.0%	4.8%	34.2%	61.0%	146
Speak with service providers	2.1%	8.2%	60.3%	29.5%	146
Investigate alternative placements or resources	2.7%	22.6%	56.2%	17.1%	144
Investigate potential independent witnesses	2.7%	11.6%	57.5%	27.4%	145
Speak with agency attorneys	7.5%	13.0%	44.5%	32.9%	143
<i>answered question</i>					<b>146</b>
<i>skipped question</i>					<b>2</b>

Question 16 (J) read: **“How frequently do attorneys for respondent parents in contested cases present evidence or testimony, or make arguments which are important to your findings or decisions?”**

Answer Options	Response Frequency	Response Count
Very few	2.5%	2
Some hearings	24.7%	20
Most hearings	24.7%	20
Almost all hearings	44.4%	36
Don't know	0.0%	0
Don't handle contested matters	3.7%	3
<i>answered question</i>		<b>81</b>
<i>skipped question</i>		<b>2</b>

Question 17 (J) read: “How often do attorneys for respondent parents...”

Answer Options	Rarely	Sometimes	Usually	Always	Response Count
Call witnesses at hearings?	5.1%	57.7%	32.1%	5.1%	82
Call expert witnesses?	44.9%	48.7%	5.1%	0.0%	81
File written motions?	34.6%	60.3%	3.8%	0.0%	81
Present opening arguments?	20.5%	37.2%	29.5%	11.5%	81
Present closing arguments?	2.6%	14.1%	29.5%	52.6%	81
Cite legal authority in their arguments?	14.1%	60.3%	23.1%	2.6%	82
<i>answered question</i>					<b>83</b>
<i>skipped question</i>					<b>9</b>

## Organization of Parent Representation

Questions 11 (PA) & 5 (O) read: “In your experience, how frequently do judges...”

Answer Options	Never	Rarely	Occasionally	Always	Response Count
Inquire whether respondent parents have counsel	2.8%	2.4%	6.2%	87.7%	209
Advise respondent parents of the availability of appointed counsel	0.5%	0.5%	6.6%	90.5%	207
Discourage respondent parents from obtaining counsel	83.4%	12.3%	3.3%	0.9%	211
<i>answered question</i>					<b>211</b>
<i>skipped question</i>					<b>3</b>

Results between parents’ attorneys and other attorneys varied only slightly. Parents’ attorneys were somewhat more likely to report that judges, if rare, discourage parents from obtaining counsel (13.7%) as compared to other attorneys (9.2%).

Question 9 (J) read: “Do you advise respondent parents that they may request court appointed counsel in these proceedings if they are unable to retain counsel?”

Judicial officers responded:

Answer Options	Response Frequency	Response Count
Always	93.9%	77
Most of the time	0.0%	0
As needed	6.1%	5
<i>answered question</i>		<b>82</b>
<i>skipped question</i>		<b>1</b>

Parents were also asked about the Court's role in appointment. Question 5 (P) read: **"In your case..."**

Answer Options	Yes	No	Response Count
Did the judge/referee ask you if you had a lawyer?	63.6%	36.4%	55
Did the judge/referee explain that you could have a free lawyer if you couldn't afford to pay one?	79.2%	20.8%	53
Did you feel the judge/referee discouraged you from having a lawyer?	5.8%	94.2%	52
<i>answered question</i>			55
<i>skipped question</i>			6

Questions 12 (PA) & 6 (O) read: **"In your experience, when do judges usually appoint an attorney for respondent parents?"** and Question 8 (J) read: **"When do you usually appoint an attorney to represent a respondent parent?"**

Answer Options	Response Frequency	Response Count
Before the preliminary hearing	70.0%	205
Before the jurisdiction hearing	29.0%	85
Before the disposition hearing	0.7%	2
Before a termination of parental rights hearing	0.3%	1
<i>Answered question</i>		293
<i>Skipped question</i>		4

Question 6 (P) read: **"If the judge appointed a lawyer to represent you, when did the judge do so?"**

Answer Options	Response Frequency	Response Count
At the first hearing	60.4%	32
At the hearing where the judge/referee determined whether abuse or neglect occurred	13.2%	7
At a review hearing	7.5%	4
At or before a termination of parental rights hearing	0.0%	0
Other, please specify	18.9%	10
<i>answered question</i>		53
<i>skipped question</i>		8

In the open-ended response, most indicated the court appointed an attorney before the first hearing.

Questions 13 (PA) & 7 (O) read: **"If you know, please describe the process used to determine whether respondent parents are eligible to have an appointed attorney:"** 162 of 214 attorneys responded.

The most common responses to this open-ended question were that there was an eligibility form or interview (40.1%) or that appointment was virtually automatic (30.2%). Responses to these did not vary significantly between parents' attorneys and other attorneys.

One issue that was noted in much more frequency by parents' attorneys was that non-custodial/non-respondent parents were not appointed attorneys (19.6%), though some DHS/Children's attorneys also noted this (6.0%).

Another issue around appointment noted by four parents' attorneys was that in some cases appointment is so automatic some receive appointed attorneys though they are not indigent.

Judicial officers were asked a companion question. Question 7 (J) read: **“Which of the following factors do you consider in deciding whether to appoint an attorney to represent a respondent parent who may be unable to retain legal counsel? Identify all that apply.”**

Answer Options	Response Frequency	Response Count
Complexity of the case	28.9%	24
Likelihood that the case will proceed to TPR	22.9%	19
Request of the parent	47.0%	39
Request of an attorney	9.6%	8
Request of the social worker	6.0%	5
The ability of the parent to represent himself/herself in the proceedings	27.7%	23
Always appoint if parent meets appointment criteria	89.2%	74
<i>answered question</i>		<b>83</b>
<i>skipped question</i>		<b>0</b>

Questions 14 (PA) & 8 (O) read: **“Please estimate the percentage of respondent parents represented by counsel at the following child protection hearings:”**

Answer Options	Average	Response Count
Preliminary hearings.....%	71.9%	201
Jurisdiction.....%	91.4%	201
Disposition.....%	92.2%	200
Review hearings.....%	90.3%	199
Termination of parental rights.....%	96.0%	202
<i>answered question</i>		<b>202</b>
<i>skipped question</i>		<b>12</b>

Responses between DHS/Children’s and parents’ attorneys varied most as to preliminary hearings with the former estimating respondent parents are represented an average of 65.9% of the time and the latter 75.7%.

Question 16 (PA) read: **“How often do you represent a respondent parent through all stages of a child protection case including termination of parental rights?”**

Answer Options	Response Frequency	Response Count
Never	1.4%	2
Rarely	4.8%	7
Occasionally	17.9%	26
Always	75.9%	110
<i>answered question</i>		<b>145</b>
<i>skipped question</i>		<b>3</b>

Question 9 (P) read: “Did you have the same lawyer from the beginning to the end of your case?”

Answer Options	Response Frequency	Response Count
Yes	32.8%	19
No	19.0%	11
My case is still in court, but I've had the same lawyer	34.5%	20
My case is still in court, and I've changed lawyers	5.2%	3
I had the same lawyer, but I had a substitute lawyer at court the following number of times:	8.6%	5
<i>answered question</i>		<b>58</b>
<i>skipped question</i>		<b>3</b>

Question 10 (J) read: “Do you appoint the same attorney to represent the respondent parent for the duration of the case?”

Answer Options	Response Frequency	Response Count
Yes	95.1%	78
No	1.2%	1
Depends on the case	3.7%	3
<i>answered question</i>		<b>82</b>
<i>skipped question</i>		<b>1</b>

Question 11 (J) read: ‘How often are attorneys for respondent parents unable to appear, but send substitute counsel for a particular hearing?’

Answer Options	Response Frequency	Response Count
Rarely	54.9%	45
Occasionally	25.6%	21
Sometimes	14.6%	12
Often	4.9%	4
Please describe how this is usually done such as using attorneys from the same firm or emergency ‘house counsel.’		66
<i>answered question</i>		<b>82</b>
<i>skipped question</i>		<b>1</b>

Sixty-six (66) responses were received for the open-ended portion. Though not mutually exclusive, they indicated that:

- attorneys are usually from the appointment list/panel (39.4%)
- they are usually from the same firm (34.8%), or that
- attorneys usually find their own substitutes (33.3%).

Question 17 (PA) read: **“If you are appointed to represent a respondent parent in the trial court proceeding, how often do you represent that parent on appeal?”**

Answer Options	Response Frequency	Response Count
Never	81.3%	117
Rarely	10.4%	15
Occasionally	5.6%	8
Always	2.8%	4
<i>answered question</i>		<b>144</b>
<i>skipped question</i>		<b>4</b>

Question 19 (J) read: **“How satisfied are you with the overall competency of the attorneys appointed to represent respondent parents in your court?”**

Answer Options	Response Frequency	Response Count
Frequently dissatisfied	0.0%	0
Varies widely	12.7%	10
Generally need improvement	3.8%	3
Generally satisfied	57.0%	45
Very satisfied	26.6%	21
<i>answered question</i>		<b>79</b>
<i>skipped question</i>		<b>4</b>

Questions 26 (PA), 14 (O), & 24 (J) read: **“What do you think can be done to improve representation of respondent parents in child protection cases?”** 234 of the 297 participants answered this question.

A number of participants (3.8%) recommended an enhanced accountability/performance evaluation for parents’ attorneys.

Questions 23 (PA), 11 (O), and 13 (J) read: **“In your opinion, is the compensation for appointed respondent parents’ attorneys adequate? Yes No Have no opinion If No, what compensation formula would you recommend?”** A total of 292 closed-ended and 182 open-ended responses were received.

Taking all attorney and judicial officer responses, 72.6% reported compensation was inadequate, while 17.1% thought it was adequate, and 10.3% had no opinion. Attorneys were more likely to view compensation as inadequate with 87.0% of parents’ attorneys and 69.2% of other attorneys compared to 49.4% of judicial officers answering no to the above.

As to the compensation formula recommended, the most common response (55.5%) to this open-ended portion of the question was a recommendation for an hourly based compensation formula. Large numbers (31.9%) specifically noted that a higher hourly rate was needed.

The next most common response (16.5%) was that the pay should be comparable to other attorneys in the community such as prosecutors or criminal defense attorneys or based on some fraction of the attorney’s rate for retained clients.

Others noted that any compensation formula should take into account out-of-court time for meeting with clients or other preparation (12.1%) and that attorneys should be compensated for issues around docket management including adjournments and long wait times at court (8.8%).

Some recommended per hearing formulas (7.1%) and most of those noted the per hearing rate needed to be higher (5.5%).

Questions 24 (PA) & 12 (O) read: **“In your opinion, does the compensation paid to respondent parent counsel adequately reflect the complexity of the legal and factual issues in these proceedings?”**

Answer Options	Response Frequency	Response Count
Yes	8.1%	17
No	84.4%	178
Have no opinion	7.6%	16
<i>answered question</i>		211
<i>skipped question</i>		3

Questions 25 (PA), 13 (O), and 14 (J) read:

**“In your opinion, does the level of compensation negatively impact the quality of representation of parents, or the ability of the court to get attorneys to represent respondent parents in these proceedings?”**

Answer Options	Response Frequency	Response Count
Yes	48.5%	142
No	42.0%	123
Have no opinion	9.6%	28
<i>answered question</i>		293
<i>skipped question</i>		4

Questions 26 (PA), 14 (O), & 24 (J) read: **“What do you think can be done to improve representation of respondent parents in child protection cases?”** 234 of the 297 participants answered this question. Many addressing compensation.

Improve Compensation	Response Frequency	Response Count
Parents' Attorneys	44.3%	51/115
DHS/children's Attorneys	54.7%	29/53
Judicial Officers	30.3%	20/66
Total	42.7%	100/234
<i>answered question</i>		234
<i>skipped question</i>		63

A number of participants (8.5%) indicated that parent representation could be improved if parents' attorneys had better access to support and service staff such as social workers and expert witnesses.

This issue was also addressed in question 23 (PA), 11 (O), and 13 (J) which asked participants what compensation formula they would recommend. There, 4.9% noted that parents' attorneys had difficulty obtaining or funding appropriate support persons.



Parents' responses reinforced the fact that there is little access to support staff for parents' attorneys. Question 12 (P) read:

**“Did you ever talk with someone from your lawyer's office like a social worker, paralegal, investigator, or a parent advocate?”**

Most (83.9% - 47 of 56) had not.

Questions 26 (PA), 14 (O), & 24 (J) read: **“What do you think can be done to improve representation of respondent parents in child protection cases?”** Again, 234 of the 297 participants answered this question.

Seventeen participants (7.3%) identified the need for parents' attorneys to spend time out-of-court working on cases as an area needing improvement. Note that a number of participants (12.1%) also indicated lack of funding for out-of-court time was an issue in response to questions 23 (PA), 11 (O), and 13 (J) which addressed compensation. Some focused on the need for compensation for out-of-court time, and the disincentive that lack of compensation leads to. Others recommended rule or expectation changes that could require/encourage attorneys to work on cases other than in court.

Questions 26 (PA), 14 (O), & 24 (J) read: **“What do you think can be done to improve representation of respondent parents in child protection cases?”** 234 of the 297 participants answered this question.

A small number (2.6%) recommended the development of some type of organization to facilitate improvement of representation. Some of those responses were:

## Questions covering multiple areas

Some questions covered multiple areas, but were grouped to simplify the survey instrument. Question 20 (PA) read: **“In representing respondent parents, how often do you do the following?”**

Answer Options	Never	Rarely	Occasionally	Always	Response Count
Use formal discovery methods to obtain information	5.5%	24.7%	45.9%	24.0%	146
Attempt to locate non-respondent parents	21.9%	36.3%	21.2%	17.8%	142
Investigate allegations	1.4%	2.1%	30.1%	63.7%	142
Obtain independent evaluations of your clients	14.4%	37.7%	42.5%	2.7%	142
File pleadings, motions, or briefs	1.4%	17.1%	63.7%	17.1%	145
Provide copies of petitions, orders, pleadings, service plans, and other relevant documents to parents	2.1%	4.8%	17.8%	73.3%	143
Engage in settlement negotiations	1.4%	4.8%	25.3%	67.8%	145
Prepare witnesses	0.7%	6.8%	32.2%	60.3%	146
Make evidentiary objections	0.0%	6.2%	36.3%	56.8%	145
Prepare and present exhibits	0.7%	6.8%	54.1%	38.4%	146
Make opening arguments	4.1%	20.5%	38.4%	35.6%	144
Make closing arguments	0.0%	4.1%	15.1%	79.5%	144
File appeals	56.8%	21.9%	18.5%	1.4%	144
Ask for continuances	6.2%	54.1%	39.0%	0.0%	145
Participate in mediation/alternative dispute resolution	46.6%	31.5%	15.8%	3.4%	142
Obtain an expert witness	15.8%	48.6%	34.9%	0.0%	145
Attend meetings with DHS	8.9%	28.8%	49.3%	12.3%	145
Explain DHS policies and procedures to your client	1.4%	5.5%	23.3%	68.5%	144

Explain the child protection law to your client	0.0%	0.7%	7.5%	91.1%	145
Explain the court process to your client	0.0%	0.0%	2.1%	95.9%	143
Work out issues with the client and caseworker outside of court	1.4%	7.5%	55.5%	34.9%	145
Encourage your client to follow through with DHS or court ordered requirements	0.0%	0.7%	2.7%	95.9%	145
<i>answered question</i>					<b>146</b>
<i>skipped question</i>					<b>2</b>

Parents were asked about the specific assistance they received from their attorneys. Question 13 (P) read: **“In your case...”**

Answer Options	Yes	No	Response Count
Did your lawyer give you copies of the paperwork on your case? (petitions, orders, pleadings, Dep’t of Human Services case plans, and other documents)	48.3%	51.7%	58
Did your lawyer explain DHS policies to you?	32.8%	58.6%	53
Did your lawyer help you get into programs you needed?	12.1%	69.0%	47
<i>answered question</i>			<b>58</b>
<i>skipped question</i>			<b>3</b>

Question 14 (P) read: **“In your case...”**

Answer Options	Never	Rarely	Sometimes	Always	Response Count
Did your lawyer help you prepare to testify in court?	44.1%	13.6%	15.3%	22.0%	56
Did your lawyer explain what would happen at court hearings?	30.5%	13.6%	22.0%	33.9%	59
How often was your lawyer with you when you went to court?	1.7%	8.5%	18.6%	66.1%	56
After each hearing, did your lawyer explain what happened?	18.6%	11.9%	28.8%	37.3%	57
When you left messages for your lawyer, did you get a quick response?	28.8%	10.2%	23.7%	27.1%	53
Did your lawyer meet with you on a day before the day of the hearing at court?	71.2%	11.9%	8.5%	5.1%	57
Did your lawyer talk to you about the facts in the case?	22.0%	18.6%	18.6%	35.6%	56
Did your lawyer use exhibits, like reports or photographs, at court?	66.1%	8.5%	10.2%	10.2%	56
Did your lawyer talk to you about DHS’s case plan?	37.3%	13.6%	18.6%	27.1%	57
Did your lawyer go to meetings with you out of court?	74.6%	1.7%	11.9%	8.5%	57
Do you feel your lawyer listened to you?	27.1%	18.6%	13.6%	37.3%	57
Do you feel your lawyer let you be in charge of the case?	49.2%	15.3%	18.6%	15.3%	58
Do you feel the judge listened to and respected your lawyer?	22.0%	11.9%	25.4%	35.6%	56
Do you feel your lawyer was prepared for court hearings?	23.7%	18.6%	22.0%	32.2%	57
<i>answered question</i>					<b>59</b>
<i>skipped question</i>					<b>2</b>

Question 15 (P) read: "In what ways was your lawyer most helpful to you?"

Answer Options	Response Frequency	Response Count
He or she was not helpful in any way	30.0%	15
He or she explained things to me	48.0%	24
He or she provided me with information about my case	32.0%	16
He or she made sure the court heard my side of the	24.0%	12
He or she helped me be more comfortable in court	28.0%	14
He or she helped me work with DHS	16.0%	8
He or she helped me work better with the programs I had to attend	8.0%	4
He or she helped me with visitation with my child(ren)	14.0%	7
He or she was someone that I could talk to confidentially	26.0%	13
Other; please describe	16.0%	8
<i>answered question</i>		<b>50</b>
<i>skipped question</i>		<b>11</b>

## Appendix K

### Onsite Team Bios

**Joanne Brown, J.D., M.S.W.**, is a former Superior Court Commissioner in California (Juvenile and Family Law Judge), and General Counsel for the New Mexico Department of Children, Youth, and Families. Since 2004 she has been a consultant for the National Resource Center on Legal and Judicial Issues, ABA Center on Children and the Law and an expert on CFSRs, IV-E, ASFA, and the role of the court and attorneys in the child welfare law and practice. She is a member of the Bars of California, New Mexico, Maryland and the Supreme Court of the United States.

**Kelly Howard, B.A.**, is the Manager of the State Court Administrative Office, Child Welfare Services Division (SCAO/CWS). In addition, Ms. Howard manages Michigan's Court Improvement Program. Prior to joining SCAO/CWS, Ms. Howard was a Management Analyst with SCAO's Friend of the Court Bureau, which provides circuit courts across the state with management assistance in operating local friend of the court offices, including development of local policies and procedures regarding child support, parenting time, and custody matters. Before joining SCAO in 2003, Ms. Howard worked for the Michigan Legislature as a Policy Advisor on family law issues. Additionally, she worked as a Legislative Assistant covering Judiciary and family issues for a Congressman in Washington DC.

**Joshua Kay, J.D., Ph.D.**, is an attorney with Michigan Protection & Advocacy Service, Inc., a state-wide, non-profit disability rights agency. He presently has a Skadden Fellowship focusing on representation of parents with disabilities in child protection cases. He received his J.D. from the University of Michigan Law School, where he worked extensively in the Child Advocacy Law Clinic and started a student group dedicated to children's legal issues.

Prior to law school, he completed a Ph.D. in clinical psychology at the University of Michigan and then was on the University of Michigan Medical School faculty for several years, where he provided neuropsychological assessment and psychotherapy services to children with disabilities and their families and conducted research in traumatic brain injury and other topics.

**Judith Larsen, J.D., M.A.**, is a consultant with the ABA with extensive experience as a trial attorney in child abuse and neglect cases. She has authored numerous articles and reports in this area of law including on substance abuse, teens and poverty, health care in foster care, and standby guardianship. She has given around 50 presentations on substance abuse in family law to judges, lawyers, social workers, physicians, and legislators.

**Mimi Laver, J.D.**, heads the National Project to Improve Representation for Parents Involved in the Child Welfare System. Ms. Laver has extensive experience in child welfare legal representation issues and was instrumental in drafting the ABA Model Standards of Practice for agency and parents' attorneys. Her publications include *Foundations for Success: Strengthening Your Agency Attorney Office* and *Representing Parents in Child Welfare Cases: A Basic Introduction for Attorneys*. She also has extensive experience in court improvement having edited the National Child Welfare Resource Center on Legal and Judicial Issues' annual Court Improvement Progress Reports since 2000 and provided training and technical assistance to numerous states on child welfare legal issues. Prior to joining the ABA, Mrs. Laver was a supervising agency attorney in Philadelphia.

**Jenifer Pettibone, J.D.**, has been a Management Analyst with the State Court Administrative Office, Child Welfare Services Division (SCAO/CWS) since April, 2008. In this capacity, Ms. Pettibone has served on several cross-professional committees focused on improving the child protection system in Michigan. Prior to joining the SCAO/CWS, Ms. Pettibone worked as a contract children's attorney in Ingham County for several years, working with approximately 1,500 children. Ms. Pettibone represented parents in several other counties. Additionally, she is involved in various community services that reach out to at-risk families.

**Diane Boyd Rauber, J.D., M.Ed.**, is a consultant with the ABA Center on Children and the Law and the National Child Welfare Resource Center on Legal and Judicial Issues. She is a specialist in child welfare court improvement and has written and edited a number of Resource Center publications.

**LaShanda Taylor, J.D.**, served as a staff attorney at the ABA Center on Children and the Law during the onsite portion of the assessment. Prior to joining the Center, she worked at American University Washington College of Law (WCL) where she was a Practitioner-in-Residence with the General Practice Clinic. She has also served as a Skadden Fellow, attorney and Project Director at The Children’s Law Center in the District of Columbia and as an Assistant Child Advocate with the New Jersey Office of the Child Advocate. Ms. Taylor is currently an Associate Professor at the University of the District of Columbia’s David A. Clarke School of Law in the HIV/AIDS clinic.

**Scott Trowbridge, J.D.**, has been a staff attorney with the ABA Center on Children and the Law and the Resource Center since December, 2007. Before law school and the ABA, Mr. Trowbridge was a supervisor for the State of Tennessee’s adoption program for a 15 county region placing abused and neglected children into permanent homes. Prior to this supervisory position, he was a caseworker with the State of Tennessee in various positions including permanency barriers, foster care, juvenile justice, and as a court liaison and was a counselor in a private residential treatment center for children.