

Enhancing Legal Representation of Child and Parent Attorneys in the Dependency System:

A CALL TO ACTION

*RECOMMENDATIONS *

Recommendation 1: Devote time at a local Children’s Roundtable meeting to review and become familiar with the Standards of Practice for attorneys.

Recommendation 2: Convene a local group, including attorneys for parents and children, to examine the Task/Time Charts and determine the time required to complete the identified tasks in their county.

Recommendation 3: Use the results of the Task/Time Charts determinations to calculate manageable attorney caseload size.

Recommendation 4: Determine attorney compensation rates based upon the determinations of both the Task/Time Charts analysis and caseload calculations.

Recommendation 5: Develop an implementation process for Standards of Practice, manageable caseload size and appropriate compensation.

Recommendation 6: Engage all key professionals who have an authoritative role over the selection of attorneys, assignment of caseloads and approval of compensation, to establish mechanisms for accountability and oversight of the Standards of Practice.

Recommendation 7: Improve data collection and financial accounting.

Mission and Guiding Principle:

Ensure competent, trained legal counsel for children and parents who qualify for court-appointed legal counsel.

RECOMMENDATION 1: Devote time at a local Children’s Roundtable meeting to review and become familiar with the Standards of Practice for attorneys (*Appendix 1*).

Rationale:

- Representation of children and parents in dependency matters poses unique challenges including:

- Decisions to be made carry life-changing consequences;
- Dynamic nature of the cases;
- Need for extensive preparation and extensive out-of-court Advocacy;
- Tight time frames are required by such laws as the Adoption and Safe Families Act and Juvenile Act;
- Clients are often struggling with a myriad of issues including trauma, literacy issues, deep poverty, mental health and substance abuse; and
- Clients often need significant guidance to understand and navigate the child welfare system and court process.

Mission and Guiding Principle:

Recognize that families are capable of change and, with support, most can safely care for their children.

- There is need for consistent statewide legal representation practice.
- The Standards of Practice were drafted by the State Roundtable’s Legal Representation Workgroup, a committee of attorneys for children and parents, solicitors, judges, child welfare professionals and state and national partners who embarked on the process of drafting these standards after engaging with attorneys around the state.
- The Legal Representation Workgroup convened focus groups of attorneys, parents, youth and stakeholders to gather input, from various jurisdictions, on key elements to include in standards of Practice.
- The Standards of Practice, which were approved as final by the 2014 State Roundtable, present a consensus understanding of what is required for thorough and sound representation.
- Publication of the Standards of Practice and training is not enough to ensure consistent high quality representation statewide.
- All stakeholders and participants need to develop an understanding of the infrastructure necessary to permit, support, and ultimately demand legal practice that meets the Standards of Practice.
- Starting point is the close examination of the Standards of Practice themselves and commitment to a process to implement them in each county.

RECOMMENDATION 2: Convene a local group, including attorneys for children and parents, to examine the Time Charts and determine the time required to complete the identified tasks in their county.

Rationale:

- The Legal Representation Workgroup created four Time Charts to capture the time an attorney would reasonably spend on the tasks involved in representation that meets the Standards of Practice. The tasks listed in the Time Charts are all necessary to the provision of quality advocacy consistent with the Standards of Practice. The State Roundtable in 2014 approved the methodology of the Time Charts. The charts include suggested time values that were defined through work group and practitioner dialogue of parents’ and children’s attorneys from various sized jurisdictions in the Commonwealth. The Roundtable, in approving the methodology of the Time Charts, did not set specific hourly requirements for the individual or total tasks.
- Although the Juvenile Act and Rules of Juvenile Court Procedure delineate some tasks for Guardians ad Litem, the Legal Representation Workgroup Time Charts are more specific and comprehensive. The Time Charts makes the concept of quality representation concrete and measureable.
- The Standards of Practice will prove meaningless if attorneys do not have the time or do not devote the time necessary to meet them. For example, current practice encourages 90-day review cycles for court hearings. Attorneys must have the time available to prepare for and participate in these more frequent hearings.
- Each county is different and should review the Time Charts, suggested time values and note where their county may require adjustments. We suggest that each local group develop its own calculations of the hours needed to complete the required tasks, based upon the frequency of hearings, distance traveled to court and to visit clients. Attached is a flexible tool to assist counties in determining the hours needed to complete the tasks required for adequate representation (*Appendix 2*). The Time Charts are available in a downloadable electronic format at the AOPC website.

Mission and Guiding Principle:

*Ensure timely and thorough court hearings
and expeditious decisions for each child.*

RECOMMENDATION 3: Use the results of the Time Charts determinations to calculate manageable attorney caseload size.

Rationale:

- An attorney’s caseload size affects their ability to meet the Standards of Practice. Focus groups of attorneys identified caseload size as a barrier to meeting the Standards of Practice.
- Each county should make a conscious choice, driven by the Time Charts analysis, about what caseload size is both manageable and acceptable for ensuring quality representation for children and parents. Both the representing attorney and entity responsible for appointments will need to know the determined caseload size.
- The Legal Representation Workgroup has developed a tool that will allow counties to determine caseloads, the methodology of which was approved by the State Roundtable in 2014. The Caseload Calculation sheets (*Appendix 3*) allow for a calculation related to representation of parents and a separate calculation related to representation of children.

RECOMMENDATION 4: Determine attorney compensation rates based upon the determinations of both the Time Charts analysis and caseload calculations.

Rationale:

- If we expect representation that meets the Standards of Practice, then we must pay for adequate investment of time by a sufficient number of attorneys. Similarly, compensation rates and structure must support administrative, social work, investigative support or other costs attorneys will need to meet the Standards of Practice. Focus groups of attorneys identified compensation rates and structure of payment as barriers to meeting the Standards.
- In the dependency system, the courts and government agencies bear responsibility for assuring adequate compensation since most attorneys are appointed or contracted to provide representation.
- Different models for payment structure create both incentives and disincentives for quality practice. For example, a structure where payment rates diminish over time creates a disincentive for attorneys to invest the time necessary to prepare well for a case that remains longer in the system. Examples of compensation issues that will need to be addressed include:
 - Payment rates that have not changed in years, even as the State Roundtable and other stakeholders have encouraged implementation of best practices; and
 - Hourly or monthly rates that should recognize the need for out-of-court

Mission and Guiding Principle:

Advocate for stable and sufficient funding to support all aspects of service delivery and account for the expenditure of all such funds.

- work including participation in service planning as well as in-court work and waiting time.
- Fixed compensation models that effectively diminish hourly rates as more tasks are added to the practice.

Local Children’s Roundtables must have a realistic discussion of what compensation is needed to support work that meets the Standards of Practice, upon the conclusion of the determination for appropriate caseload size. *Appendices 4 and 5* contains compensation information and analysis provided by various counties in response to a 2014 survey questionnaire and follow-up communications.

RECOMMENDATION 5: Develop an implementation process for Standards of Practice, manageable caseload size and appropriate compensation.

Rationale:

- The Standards of Practice, Time Charts analysis, and determination of caseload size will allow counties to be clear about the content of the legal services they are buying and what attorneys are expected to provide.
- Several practice models exist, and counties will need to choose the practice model that suits their needs.
- An attorney’s ethical responsibility for advocacy must be assured under any practice model. Attorneys cannot be placed in a position where they may be penalized for positions they take in the course of their advocacy.
- Counties/Courts should have mechanisms in place to effectively count and report on the numbers of cases assigned to each attorney.
- In practice models where attorneys are individually appointed, it is recommended to designate one individual who oversees the process (see *Appendices 9 and 10* for further discussion of the role of this designated individual).
- A practice model should include a mechanism for selecting attorneys, agencies, or firms who apply for appointments, provide initial and continuing legal training requirements, as well as encouraging some opportunity for mentoring newer attorneys and courtroom observations.
- Contracting offers significant benefits for counties establishing a comprehensive system to implement the Standards of Practice. Counties are encouraged to consider suggested components of a thorough contract as presented in this report. Guidelines for consideration are included in *Appendix 10*.
- Each local group and relevant purchasing authority should review the options presented in this report and develop an implementation process that will allow them to move toward implementation of the Standards of Practice and other improvements in representation.

RECOMMENDATION 6: Engage all key professionals who have an authoritative role over the selection of attorneys, assignment of caseloads and approval of compensation, to establish mechanisms for accountability and oversight of the Standards of Practice.

Rationale:

- In this field, we cannot rely on market forces to ensure quality work. Rather, we must institute other structural protections.
- The Courts play a unique and significant role in ensuring quality, but all key professionals have a part to play.
- Key oversight and accountability components at the *local level* include:
 - Setting clear expectations that the standards of Practice are to be followed. Ideally this would be done through contract language.
 - Setting clear expectations about caseload limits.
 - Setting eligibility criteria and a process for selecting qualified attorneys, agencies and/or firms to be eligible for appointment.
 - Periodic evaluation of attorneys providing dependency representation,
 - Creation of a complaint mechanism, with a follow-up procedure,
 - Creation of a mechanism for consumer feedback, and
 - Regular collection, analysis and use of data at the local level.
- Key components at the *state level* include:
 - Regular collection, analysis and use of data,
 - Public reporting to build transparency and confidence,
 - Continued development and delivery of training, and
 - Ethics enforcement.
- Each local group should review the Accountability Checklist options presented in Appendix 6 and develop mechanisms to both support and hold accountable attorneys for children and parents in complying with the Standards of Practice.

Mission and Guiding Principle:
Establish and monitor accountability for all system participants.

Recommendation 7: Improve data collection and financial accounting.

Rationale:

- Compensation can affect the quality of legal services. Many attorneys experience financial pressure when making decisions about the investment of time and resources in their cases, citing the limits on rates and billing as a contributing factor.
- The survey of individual counties across Pennsylvania revealed a wide variety of models and rates of compensation for attorneys representing children and parents in dependency proceedings. The survey data showed:
 - Some compensation models encourage quality representation while other compensation models create disincentives to meeting the Standards of Practice.
 - Actual or effective (i.e., monthly rates divided by number of hours of service provided in a case) hourly rates vary widely, both statewide and in comparably sized jurisdictions.
 - Some counties pay differently for parent and child representation.
 - Compensation rates paid in many counties have not changed in years, or even decades.
- The survey provided some clarification for reasons why data was difficult to obtain, specific to dependency representation, including:
 - Variations in accounting and payment systems or appointment procedures, which required some individual county data to come from a variety of sources.
 - Some compensation structures or arrangements between the attorney and county/court require regularly submitted invoices, while others provide payments on a schedule without invoices.
 - Some compensation structures pay per dependency petition on a quarterly or other regular cycle.
 - Child and parent representation cost are combined together in some counties.
 - Child and parent representation cost for dependency and other legal services provided to or on behalf of the county are combined together in some counties (i.e., attorney fees for Guardian ad Litem and conflict-custody representation, orphan's court proceedings, etc. combined in one payment).
- Many county and court officials had difficulty obtaining data on attorney caseloads and compensation due to a lack of data/accounting system to break down the costs and number of assigned cases to each lawyer or organization.
 - *Appendix 7* provides a breakdown of the number of attorney appointments assigned to each child and each parent in calendar year 2014 (as recorded in the Common Pleas Case Management System (CPCMS)). Many inaccuracies are apparent in the report, suggesting need for continued improvement in data entry and content management.
- Caseloads cannot be analyzed or controlled, and compensation rates cannot be set or compared (i.e. hourly rates to monthly or yearly rates, parent versus child representation, etc.) unless a system knows how many appointments were made and how much is being paid for the service.

- It is nearly impossible to compare hourly rates in some counties to salaried, monthly or annual payment rates in other counties without knowing how many appointments were made or clients represented. Lack of sound data made it difficult to determine actual rates of payment in some counties. For this reason, the Committee was unable to reduce all of the survey data to like units for a comparative analysis.
- Better data collection and accountability should provide for necessary information to ensure adequate compensation rates.
- An attorney who is assigned a “full-time” caseload, which requires “full-time” hours, should not be compensated as a part-time lawyer.
- Through improved data collection and use of CPCMS, counties and members of the dependency bar will have a more complete understanding of caseload size and compensation for lawyers practicing in dependency and be able to ensure higher quality representation of children and parents across Pennsylvania.

Mission and Guiding Principle:

Ensure that the courts, child welfare agencies, permanent families, and all other participants in the child dependency system are provided with the necessary resources and capacity to implement these Guiding Principles and accomplish the mission to “protect children, promote strong families, promote child well-being, and provide timely permanency” in Pennsylvania.
