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HOW TO IMPROVE LEGAL REPRESENTATION OF CHILDREN IN AMERICA'S CHILD WELFARE SYSTEM

by

Donald N. Duquette*

INTRODUCTION

From 2009 to 2016 the University of Michigan Law School served as the National Quality Improvement Center on the Representation of Children in the Child Welfare System (*QIC-ChildRep*)^{1 2} This article provides the final recommendations of this project. These recommendations have not yet been published in the academic literature.³ This article first summarizes the research findings of the *QIC-ChildRep* project. Then it sets out *QIC-ChildRep* recommendations for: 1) Training and supervision of lawyers; 2) State statutes and rules governing lawyers for children; 3) State organizational structure to support child representation; 4) Strategies for recruiting lawyers in this specialty; 5) Caseload size; 6) Multidisciplinary

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**I am deeply indebted to the National Association of Counsel for Children for making the findings of the *QIC-ChildRep* widely available. NACC now houses the *QIC-ChildRep* website with all its training materials and other resources available for free. NACC made the book that summarizes the *QIC-ChildRep*, *CHILDREN'S JUSTICE: How to Improve Legal Representation of Children in the Child Welfare System*, available for free download under a Creative Commons License at [ImproveChildRep.org](https://www.improvechildrep.org). Thanks so much to Executive Director, Kim Dvorchak. Allison Green of NACC provided superb and invaluable editing to this article. Thank you.

¹ Funded by the U.S. Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services, Cooperative Agreement No. 90CO1047. The views expressed in this article do not necessarily reflect the position of the Children's Bureau.

² The *child welfare system* is a group of public and private services and courts primarily concerned with children who have been abused or neglected. Many of these children enter foster care. The public child welfare system operates at the federal, state, and local levels. Courts are intensely involved because the government intervention implicates fundamental constitutional rights. See Children Bureau's definition at: https://www.childwelfare.gov/pubPDFs/cw_educators.pdf. (Last checked February 4, 2022.)

³ The book that summarizes the *QIC-ChildRep* Project, *CHILDREN'S JUSTICE: How to Improve Legal Representation of Children in the Child Welfare System*, had limited distribution.

approaches to legal representation of children; and 7) Promotion of certification for lawyers as specialist in child welfare law.

SUMMARY OF *QIC-ChildRep* PROJECT

This seven-year, multimillion dollar project had three phases: 1) National assessment of the current situation, the “state of play”, of lawyer representation of children in child welfare cases which examined state laws, academic literature, and policy recommendations;⁴ 2) Framing a QIC Best Practice Model for child representation based on that assessment;⁵ and 3) Empirical field test of whether lawyers practicing according to this QIC Model improved the process and outcomes for children.

The *QIC-ChildRep* is the most substantial empirical research done to date on the effects of lawyer representation of children in child abuse and neglect cases and how such legal representation for the child might best be delivered. Lawyers representing children in Georgia and Washington State were randomly assigned to two groups, experimental and control. The experimental group received two days of training in the QIC Model and regular follow-up support to help them implement the QIC Model. The study included a total of 263 attorneys, approximately half experimental group and half control group, and 37 different judicial districts - - and 4,274 children.⁶ The observation period ran from 2012 to 2014.⁷

When the research began, attorneys for the child were not mandated in either state. Georgia’s statutes in 2012 made attorney representation of the child *discretionary* with the court except for termination of parental rights proceedings. In Washington State in 2012, the appointment of an attorney was not mandated at any point in the case for any child. State law provided that “if the child requests legal counsel and is age twelve or older, or if the guardian ad litem or the court determines that the child needs to be independently represented by counsel, the court *may* appoint an attorney to represent the child’s position.”⁸

⁴ DONALD N. DUQUETTE, et al. *CHILDREN’S JUSTICE: HOW TO IMPROVE LEGAL REPRESENTATION OF CHILDREN IN THE CHILD WELFARE SYSTEM* (2016) at 49-63 [Hereinafter *CHILDREN’S JUSTICE*] available at ImproveChildRep.org.

⁵ *Id.* at 35-47

⁶ *CHILDREN’S JUSTICE*, *supra* note 4, at 109-122.

⁷ *Id.* at 115.

⁸ See Rev. Code Wash. § 13.34.100(6)(f).

Whether the attorney was charged with best interests or client-directed representation differed in the two states at the time of study.⁹ In Washington State when an attorney was assigned, the attorney's role was almost always to represent the child's expressed wishes. In Georgia, by contrast, even though the legal authority and practice was quite ambiguous and unsettled throughout the study period, attorneys were commonly, although not always, appointed to serve both roles at once, i.e., in a "dual role." That is, the attorneys served in a substitute-judgment, GAL role unless there was a conflict between the attorney's view of the child's best interests and the child's wishes. If that occurred, the attorney was obligated to inform the court and an expressed wishes counsel for the child would be appointed.¹⁰ According to the attorney survey data, 44 percent of represented children in Georgia received client-directed representation, 23 percent received Guardian ad litem representation and the remainder were being represented by attorneys serving a dual role (32%). In Washington State, children received client-directed representation exclusively.¹¹

Compared to the control group, the experimental lawyers initiated more contact with the children they represented, created more discussion and collaboration with other players in the system, did more problem-solving, advocated for more services, and spent more time influencing the case plan and developing a theory of the case. *Importantly, these different behaviors improved the child outcomes.* Children represented by the experimental group tended to exit the system quicker. The effect of the lawyers was greatest at the beginning of a case. Children assigned an attorney in Washington State were 40 percent more likely to achieve permanency¹² within six months compared with the control group. The permanency rate for all Washington

⁹ A Child's Right to Counsel: A National Report Card on Legal Representation for Abused and Neglected Children, Third Edition, May 8, 2012. http://www.caichildlaw.org/Misc/3rd_Ed_Childs_Right_to_Counsel.pdf

¹⁰ In 2012, the Georgia Supreme Court approved a formal advisory opinion of the State Bar, ruling that a dual role attorney, confronted with a conflict between the child's expressed wishes and the attorney's considered opinion of the child's best interest, must withdraw as GAL, and seek appointment of a separate GAL without disclosing the reasons for her withdrawal. The attorney was permitted to continue as the child's (client-directed) attorney, or to withdraw entirely if the conflict was severe. State Bar of Georgia (Formal Advisory Opinion 10-2, upheld Ga. S.Ct. Docket No. S11U0730.)

¹¹ CHILDREN'S JUSTICE, *supra* note 4, at 112-113.

¹² As defined by the U.S. Children's Bureau, *Permanency* is: "A legally permanent, nurturing family for every child and youth. As defined in the Child and Family Services Reviews, a child in foster care is determined to have achieved permanency when any of the following occurs: (1) The child is discharged from foster care to reunification with his or her family, either a parent or other relative; (2) the child is discharged from foster care to a legally finalized adoption; or (3) the child is discharged from foster care to the care of a legal guardian." Child Welfare Information Gateway, <https://www.childwelfare.gov/glossary/glossary/>

State children who were appointed counsel was 16% better than the control group. In Georgia, the likelihood of permanency was also greater for the group of children represented by the QIC-trained attorneys and the effect was greatest in the beginning of a case. Within the first six months of placement, a child's exit to permanency was 20% higher in the experimental group. For all cases from entry to 3 years in care, the exit to permanency was 17% higher.^{13 14}

The *QIC-ChildRep* research also provides a profile of the lawyers representing children and insights into what lawyer activities contributed to beneficial outcomes.¹⁵

A central *QIC-ChildRep* conclusion based on the national assessment in 2009-2010 is that a consensus on the role of the child's legal representative, as reflected in the QIC Best Practice Model of Child Representation¹⁶, is at hand. The QIC review of the academic literature, national standards, conference recommendations and stakeholder opinion, document the evolution of lawyer representation of children and reveals an emerging consensus on nearly all aspects of the role and duties of the child's legal representative. Despite the strong philosophical and civil rights debates on this issue, our national needs assessment revealed far more agreement on the role and duties of the child's legal representative than was commonly thought. Even the differences across the gulf of client-directed versus best interests are narrowed.¹⁷ A national best practices model has emerged.

Here are the *QIC-ChildRep* recommendations.

1. ENHANCE LAWYER TRAINING AND PROFESSIONAL DEVELOPMENT

a. QIC Best Practice Model Improved Case Outcomes.

Jurisdictions should consider adapting the QIC Training for their child welfare lawyers. Lawyers trained in the Six Core Skills realized improved process and case outcomes for children. The Six Core Skills was the organizing structure to communicate the essence of the QIC Model. **Our *intervention*, as social scientists use the term, was training the experimental group of lawyers in the Six Core Skills -- with follow-up pod meetings and coaching.** All other elements of the complicated child welfare process remained unchanged and, thanks to random

¹³ Id. at 163-178.

¹⁴ Were there any compromises in child safety? Because the observation period is limited for any specific child, the data is quite limited on this point. But what exists reveals no repeat maltreatment or return to the child welfare system. Id. at 175-178.

¹⁵ Id. at Chapter 9, Lawyer Activities and their Impact, pp. 145-162.

¹⁶ Id. QIC Best Practice Model of Child Representation, Appendix A, at 235-242.

¹⁷ Id. Chapter 4, *Emerging Consensus and the QIC Best Practice Model*, pp 49-63.

assignment, affected the control and experimental groups equally. The major take-away from the QIC project is that training in the Six Core Skills of the QIC Model was positively correlated with improved process and outcomes for children.¹⁸

The Six Core Skills were developed as follows. First, each element of the QIC Model was linked to specific lawyer behaviors required to fulfill it. From this desired list of behaviors, curriculum goals and objectives were identified. The application of the Six Core Skills is not linear. The desired attitudes, behaviors and skills are required from the beginning to the end of the court process; they are manifest in the lawyer's many interactions with the child and other participants in the child welfare process.

The framing of the Six Core Skills and the QIC Training considered the realities of adult learning styles.¹⁹ The training was meant to be interactive, memorable, and easy to absorb. It was important to maximize the chances that the training would be deeply internalized by the trainees so that it resulted not only in knowledge acquisition but also a change in the lawyer behaviors. A prolonged period of lecture on the QIC Model might result in confidence that every single element of the Best Practice Model was presented and discussed -- but that approach to teaching would be unlikely to stick with our lawyers -- or any adult learner. Traditional lecture is still, unfortunately, the staple of continuing professional legal education despite the conclusion of educators, including educational psychologists, that the traditional passive lecture approach is of limited effectiveness and has modest impact on actually changing professional practice. Many criticize the overreliance on the "set and get" form of training. The *QIC-ChildRep* goal was not only to deliver content but also to increase the likelihood that attorneys would absorb lasting knowledge and skills -- leading to a similar change in attorney behaviors.

An external constraint on the QIC Training was a judgment that *for the purposes of this project*, two days of training was about the limit of how much time could reasonably be expected of these particular attorneys, nearly all of whom did child representation as a modest part of a more general law practice. They received a subsidy for the training time but received no additional compensation for implementing this more aggressive approach to child representation. Taking more than two days away from a practice, even though they received incentive payments and CLE credits, seemed impractical. With an imposed two-day limit, communicating a fair

¹⁸ CHILDREN'S JUSTICE, *supra* note 4, at 163-178.

¹⁹ <https://ncea.acl.gov/What-We-Do/Education/Adult-Learning-Principles.aspx>; <https://www.ioaging.org/wp-content/uploads/2015/03/teachingadults-whattrainersneedtoknow-sml.pdf>

amount of material and skills within a few hours became a serious challenge. Every part of the child attorney skill set could not be a priority. The main focus of the two-day training must be on elements that distinguish the QIC approach. That is, the focus should be on elements that were unique or of essential importance to realizing the QIC Model. That judgment led to two critical assumptions: 1) that the lawyers knew the basics of their state law and procedure and, 2) that they had fundamental trial practice skills. These proved to be a reasonable assumptions.

From these exercises the Six Core Skills emerged as an organizing structure that *QIC-ChildRep* hoped would communicate the QIC Model in a clear, cogent, and sustained way.²⁰

The Six Core Skills are:

1. *Enter the Child's World*: Engage with the child, learn their needs, guide them, counsel them and advocate for their needs while accommodating their stated interests consistent with state law.
2. *Assess child safety* and protect the child but without over-reacting. “Remove the danger, not the child”, whenever that can be done consistent with child safety. Distinguish between case plan and safety plan.
3. *Actively Evaluate Needs*: Facilitate an appropriate assessment of the needs of the child and his/her family. Diagnose the problem.
4. *Advance Case Planning*: Facilitate development of an appropriate case plan.
5. *Develop Case Theory*: Develop an active and forward-looking theory of the case. What is going on here? Adopt, and maybe rule-out, alternative and tentative theories of the case. Provides force and direction to the advocacy. (Drive the bus.).
6. *Advocate Effectively*: Use advocacy corollaries in meeting a child's needs that stress problem-solving and non-adversarial approaches - but which include traditional adversarial modes when appropriate.²¹

Pod meetings and coaching sessions were essential to maximize the attorneys’ retention of the Six Core Skills and to ensure fidelity to the intervention model. The intention was that each experimental attorney would confer at least once per quarter with a resource attorney (a “coach”). The coach was expected to reinforce the model skills, not by acting as an authority, but by guiding the attorney to use the appropriate core skills for the circumstances of the case. In

²⁰ The architects of the final training package were Melissa Carter of Barton Child Law Center at Emory University, Timothy Jaasko-Fisher of University of Washington CITA program, and Don Duquette. Frank Vandervort of University of Michigan Law School provided the initial structure and content for the conflict resolution and Advocacy Corollaries” sections and later participated in the first trainings in Georgia.

²¹ CHILDREN’S JUSTICE, *supra* note 4, at 167

each state the coaches were lawyers experienced in child representation and recognized as experts in their states.²² The small group quarterly pod meetings of 60 to 90 minutes were designed to maintain a common understanding of the model and provide an opportunity for group reflection on the implementation. It was intended that the meetings would help build “enduring communities of [child representation] practice”.²³

The lawyers in our sample appreciated the Six Core Skill approach. Their individual comments²⁴ helped explain the challenges and successes in adopting an approach that is on one hand common sense and reflects a national consensus and, on the other, may be new and novel in some jurisdictions and to some lawyers. Some lawyers report that they posted the Six Core Skills on each case file, including non-child welfare cases, because it provided a structure and guided them in case assessment and advocacy.²⁵

It is not surprising that attorneys found the Six Core Skills familiar. The skills are, of course, based on review of state laws, practice models and recommendations from leading authorities, most particularly the 1996 ABA Standards.²⁶ Since the completion of the *QIC-ChildRep* in 2016, the National Association of Counsel for Children adopted in 2021 their excellent NACC Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings²⁷, which are also consistent with these other authoritative recommendations. The QIC effort synthesized the national conversation into an approach that hopefully finds a sweet spot between being comfortable and maybe even intuitive, yet still advancing the level of practice.²⁸

While the Six Core Skills Training represent our last and best articulation of the skill set necessary to represent children, they are hardly the last word. Others will tailor them to the

²² In Georgia, Jane Okrasinski and Darice Good provided the coaching and Melissa Carter conducted the pod meetings. In Washington State, the indomitable Rob Wyman handled the lawyer recruitment and coaching and assisted Tim Jaasko-Fisher with the pod meetings.

²³ *Id.* at 92-93; Compliance with the coaching and pod meetings varied between the states. *Id.* at 165, 186.

²⁴ See CHILDREN’S JUSTICE, *supra* note 4, Chapter 6, *Implementing the Six Core Skills* at 95-108

²⁵ *Id.* At 97.

²⁶ *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* Approved by the American Bar Association House of Delegates, February 5, 1996, [herein 1996 ABA Standards].

²⁷ NACC Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings, <https://naccchildlaw.app.box.com/s/vsg6w5g2i8je6jrut3ae0zjt2fvgltsn>

²⁸ *Id.* at 107

uniqueness of their own jurisdictions and their own needs. The Six Core Skills Training is available on-line and free to use as is or to update or modify for local use.²⁹

b. Other Training and Professional Development Lessons from the QIC Experiment

Both the 1996 ABA Standards³⁰ and our QIC Best Practice Model recommend that lawyers representing children have access to basic training and systematic continuing professional development. The administrative agency responsible for delivering legal services for children should assume the responsibility for on-going education and mentorship, including encouraging lawyers to become NACC Child Welfare Law Specialists (CWLS).³¹

The attorneys in our two QIC states were receptive to training and improving their practice level. A major take-away from the QIC experiment is that when the attorneys in Georgia and Washington State were offered an approach to child representation that was touted as a model that could help them improve practice and get better results for their child clients, they eagerly participated. The lawyers were eager to learn and implement the Six Core Skills themselves. It was as if they said, “Tell us what good practice is, and we will do it.” The lawyers’ earnest receptivity to training in the role bodes well for future efforts in other states in other times.

We also learned that lawyers learn well from one another. The *QIC-ChildRep* relied on developing a “community of practice” to realize the implementation of the Six Core Skills through the coaching and pod meetings. The attorneys were committed to the importance of the work and their willingness to assist others was impressive. Even though most attorneys were solo practitioners, more than 80% said that individuals were often or almost always available to discuss cases with them.³²

Where case volume and concentration of cases is low, lawyers may be less willing to invest in the unique skills required for child representation. This has implications for how training and other professional development is organized and delivered. In low volume less populated areas educators need to respect the limited time and resources attorneys can devote to

²⁹ <https://www.improvechildrep.org/Training.aspx>

³⁰ *Supra* note 26.

³¹ www.naccchildlaw.org/page/Certification

³² *Id* at 186.

this practice and identify trainings that are targeted to the most critical skills. Distance learning, on-line professional education courses, and web-based chat and email groups may be central means of professional training.

There may also be some lessons for training in the QIC analysis of how the lawyer chooses to use their time and what that says about lawyer priorities, and their attitudes, beliefs, and biases.³³ Lawyers, perhaps with objective assistance, might wish to analyze their own time allocation and determine if what they do is consistent with overall case needs. In our sample, for instance, lawyers spent more time with older children -- the rate of contact with a 13-year-old was almost 45% higher than with a 3 year old. Likewise, the older the child, the more contact with family and other collaterals. In our sample attorneys had higher level of activities with girls compared with boys.³⁴

Lawyers could reflect on how they spend their time and consider whether that is the optimum distribution. For example, if the lawyer spends more time with older girls than toddlers, is that because the older girl has more issues to address or because the lawyer is more comfortable dealing with older girls who actually are glad to speak with them, compared with a sullen teen boy or wary toddler? This mindfulness may lead to reprioritization or even to seeking additional training in whatever skills need support. For instance, what are good approaches to building trust and breaking through to the uncommunicative teen or reading a toddler that might improve getting information about them and their needs and thus improving the lawyer's advocacy? These insights may open new territory for training, supervision, and mentorship.

The subjective view of whether the work is rewarding is positively related to higher rates of desirable activities.³⁵ This is basic common sense; if a person finds an action rewarding, they work harder at it. The inference is that training that builds an *esprit de corps* or builds enthusiasm for the child advocacy field itself, may itself have a direct impact on performance. This may be especially valuable where cynicism and futility are common.

³³ Id. Chapter 9, *Lawyer Activities and Their Impact*, at 145-162.

³⁴ Id at 154-156.

³⁵ Id.

The children's race or ethnicity was not found to be statistically significantly related to rates of contact with the children or the children's family. And no differences were found based on relative versus non-relative placements.³⁶

2. MAKE THE DUTIES OF THE CHILD REPRESENTATIVE CLEAR IN STATE STATUTES AND RULES

One of our QIC findings is that uncertainty as to the proper tasks and duties of the child's representative makes improvement much more difficult. States could address the role ambiguity problem in several ways. First, our nationwide assessment supports the conclusion that states should adopt the 2011 ABA Model Act as the statutory structure for legal representation of the child.³⁷ The Model Act is consistent with the findings and recommendations of the QIC.³⁸

Reflecting the emerging consensus throughout the land on most of these questions regarding representing the child, the ABA 2011 Model Act, the 1996 ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases,³⁹ and the QIC Best Practice Model are in essential harmony. The new 2021 NACC recommendations are also in harmony with these other ⁴⁰The 2011 Model Act provides the statutory structure, the 1996 ABA Standards and the QIC Best Practice Model provide the day-to-day standards, and the QIC Six Core Skills provide the essential clinical skills required by a lawyer representing a child.

State laws should clarify the role and duties of the child's lawyer because child representation is a unique function, and one cannot expect lawyers to intuit what is expected of them. Our data reveal a lack of agreement as to what the responsibilities of the child lawyer are. There was little shared understanding of the child lawyer role. Yet when given a clear statement of the duties and tasks expected, the attorneys fulfilled the clear standards. So, clarifying state laws will help. Here is the support for these conclusions.

In our baseline survey of all the lawyers in our sample, both experimental and control, in both Georgia and Washington State, we asked the lawyers to evaluate seven child representation tasks and indicate which task was "your responsibility as a child's attorney". These questions were not intended to be comprehensive but rather to gauge attorney's opinions of certain tasks

³⁶ Id. at 156.

³⁷ *ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings*.

³⁸ CHILDREN'S JUSTICE, *supra* note 4, at pp 49-63

³⁹ *Supra* note 25.

⁴⁰ <https://naccchildlaw.app.box.com/file/904187651949>

associated with an active model of children representation. These questions were presented before the experimental group received the QIC Six Core Skill training and in advance of the evaluation of the QIC Best Practice Model. Almost every attorney representing children in the covered jurisdictions were included and the response rate was very high – 86% for Georgia and 93% for Washington State.

When lawyers were asked which of the seven tasks⁴¹ were the responsibility of a child’s lawyer and which the responsibility of others in the case including the agency caseworker and the other lawyers, we found considerable disagreement as to the proper elements of child representation. Many attorneys saw themselves as having only limited responsibility for tasks that the QIC Best Practice Model and other national recommendations see as important such as attending case planning meetings, identifying potential foster parents, and establishing the goals required of parents in order to have their children returned. To reflect the best practices, we would have expected attorneys to rate each item as a shared or primary one. Notable portions of the attorneys saw themselves having limited or no responsibilities for certain tasks.

This is consistent with Ross’ qualitative study of lawyers’ views of the tasks of child representation in Australia. She found that “lawyers reported that they represented children in very different ways, reflecting the ambiguity about how to interpret these roles and involve children as clients or the subjects of best interests representation.”⁴²

Clear and detailed state laws governing child representation will direct and guide attorneys as to their duties and responsibilities. Training that explicitly communicates a broad scope of responsibility and identifies desirable tasks may improve performance. Our research demonstrates that when lawyers are told what is expected of them – they do it.

Table. Opinions about responsibilities of child representatives⁴³

	All	Georgia	Wash.
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⁴¹ The seven tasks are: Attending case planning meetings; Advocating for services for children; Identifying caregivers who can serve as foster parents; Identifying potential adoptive homes; Advocating with respect to other legal matters (e.g. education, custody, SSI) for the children you represent in dependency cases; Establish the goals that parents need to meet in order to have their children returned to them; Advocating for services for parents. CHILDREN’S JUSTICE, *supra* note 4, at 134.

⁴² Nicola M. Ross, *Different Views? Children’s Lawyers and Children’s Participation in Protective Proceedings in New South Wales, Australia*, 27(3) International Journal of Law, Policy and the Family (2013)

⁴³ Id at 134-135.

Attending case planning meetings			
Little or none	6%	11%	1%
Limited	16%	24%	7%
Shared	61%	59%	62%
Primary	11%	4%	19%
Exclusive	6%	2%	11%
Advocating for services for children			
Little or none	0%	0%	0%
Limited	2%	3%	0%
Shared	33%	37%	28%
Primary	47%	50%	43%
Exclusive	19%	9%	29%
Identifying caregivers who can serve as foster parents			
Little or none	17%	24%	10%
Limited	30%	31%	28%
Shared	45%	41%	50%
Primary	7%	5%	9%
Exclusive	1%	0%	2%
Identifying potential adoptive homes			
Little or none	32%	37%	26%
Limited	35%	32%	38%
Shared	29%	28%	30%
Primary	4%	3%	4%
Exclusive	0%	0%	1%
Advocating with respect to other legal matters (e.g., education, custody, SSI) for the children you represent in dependency cases			
Little or none	7%	7%	8%
Limited	13%	15%	11%
Shared	33%	36%	31%
Primary	32%	32%	32%
Exclusive	15%	11%	19%
Establish the goals that parents need to meet in order to have their children returned to them			
Little or none	8%	7%	9%
Limited	25%	20%	32%

Shared	57%	62%	52%
Primary	7%	10%	3%
Exclusive	3%	2%	4%
Advocating for services for parents			
Little or none	15%	11%	19%
Limited	29%	25%	32%
Shared	45%	49%	41%
Primary	9%	13%	4%
Exclusive	3%	2%	3%

3. ORGANIZE LEGAL SERVICES FOR CHILDREN

a. Advantages of Concentrated Practice

A general thrust of the QIC collective findings is that a specialized or concentrated lawyer caseload representing children is associated with a better practice in several respects. A homogeneous practice that is more focused on child representation allows the lawyer to specialize and invest more time and energy in continuing and improving their child welfare law professional skills.⁴⁴ Where child representation constitutes only a small portion of an attorney's practice, they may be less likely to want to invest in developing these unique skills. High attorney activity rates on individual cases are positively associated with the proportion of an attorney's practice devoted to child representation. In particular there is a higher level of contact with the child by attorneys where child representation is a higher proportion of the caseload.⁴⁵ Therefore an important influence on attorney behavior may be the organizational climate and culture with the advantage to a specialized law office.

b. Child Welfare Law Offices

Staff attorney offices, in which lawyers are substantially involved in child representation, were found to offer a number of advantages. The staff had access to more resources than the solo practice and private law firm attorneys. Staff attorneys were more independent of the court because they were more likely to operate under contracts with the court while solo and private firm lawyers were more likely to receive appointments on a case-by-case basis and bill on a case-

⁴⁴ CHILDREN'S JUSTICE, *supra* note 4, at 161.

⁴⁵ *Id.* at 158.

by-case basis.⁴⁶ Not all findings support the superiority of staff attorney offices, however. For example, attorneys working for staff attorney offices are found to be less experienced and to report lower overall lower incomes than attorneys working in other settings.⁴⁷

The empirical data provide support for dedicated staff attorney offices or otherwise concentrating the child representation within a modest number of lawyers to encourage the commitment, energy and skill development that seems to result. This is consistent with the recommendation of *QIC-ChildRep* Best Practice Model that each jurisdiction have an administrative structure, independent of the court that supports, trains, and holds accountable lawyers representing children.⁴⁸ Dedicated children's law offices seem to offer several advantages over alternative organizational settings. By pooling resources and expertise, child welfare legal offices provide their attorneys with greater opportunities for mentoring, training and professional consultation, and greater access to clinical and other support staff than alternative organizational settings.⁴⁹ A dedicated organization can provide lawyers a career path in the field. The organization can also hold lawyers accountable to high standards of practice. Contractual arrangements between child welfare legal offices and juvenile courts may promote independence of the child representatives and militate against attorneys restraining their advocacy to avoid alienating the individuals (e.g., judges, court clerks) responsible for making court appointments.

The NACC recommends a practice infrastructure to support the delivery of legal services to children. “[O]ne of the best mechanisms for delivery of high-quality legal services to children is an institutional structure that allows multiple attorneys to focus their attention on the representation of children in general and the representation of children in child welfare law proceedings in particular – in other words, a dedicated child welfare law office.”⁵⁰

c. Where Case Volume Is Low; Statewide System

The potential benefits of specializing (smaller caseloads, higher relative concentrations of child representation cases and a belief that the work is important and rewarding) may be achieved across other organizational structures as well. Our data show that some counties

⁴⁶ Id at 142.

⁴⁷ Id.

⁴⁸ Id, Appendix A at 241

⁴⁹ Leslie S. Heimov, Amanda G. Donnelly & Marvin Ventrell, *Rise of the Organizational Practice Of Child Welfare Law: The Child Welfare Law Office* 78 U. Colorado L. Rev. 1097-1117 (2007).

⁵⁰ NACC, *Child Welfare Law Office Guidebook* (2006). Guidebook available at:

<https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/clop/cloguidebookfinal4-06.pdf>

simply do not have the volume of cases to support a dedicated child welfare legal offices or a specialized children's lawyer. Dedicated child welfare legal offices might be preferable, but admonitions to establish such offices may be moot where the volume of dependency cases is insufficient to make such arrangements viable.

The QIC found that child representation usually constituted a fairly small proportion of a lawyer's practice. For most lawyers, child representation constituted less than 20% of their legal work.⁵¹ In the six months before the study, one-third of the attorneys handled five or fewer cases. The national cognoscenti of child advocacy tend to focus on the specialty child welfare law office where children are represented by a dedicated group of lawyers who develop considerable experience and expertise.⁵² But in many jurisdictions, especially those in rural counties, there may not be a sufficient number of dependency cases to support either a full-time or specialized dependency law practice.

Nonetheless, lawyers with a greater proportion of their caseload representing children seem to do better by our various measures.⁵³ A take-away for a local jurisdiction might be to select only a few lawyers to serve on the panel, rather than distributing the case assignments broadly. Even in a small-volume jurisdiction, the benefits of a more concentrated caseload could be realized.

A statewide response to this data could be to organize child representation using a statewide contracting model. This approach, which is currently implemented in a handful of states, appears to offer many of the same advantages attributed to child welfare legal offices, even when the lawyers are not necessarily housed together in the same office.⁵⁴ In general, these programs contract with individual attorneys to represent dependency cases within the jurisdiction. Participating attorneys are required to complete initial and ongoing training and the state office typically provides participating attorneys with ongoing support, including case consultation and professional mentoring. Caseloads are commonly limited. Programs set practice standards for contracted attorneys and, in some cases, promulgate minimum rates of compensation for attorney services.

⁵¹ CHILDREN'S JUSTICE, *supra* note 4, at 126.

⁵² *Guidebook*, *Supra* note 23.

⁵³ CHILDREN'S JUSTICE, *supra* note 4, at 161

⁵⁴ See, for example, Arkansas, (Ark. Code. Ann. §9-27-401 established a state-wide system of employment or contracts for representing children). Colorado (Colorado Office of the Child's Representative; <http://www.coloradochildrep.org/>; Massachusetts, (Children and Family Law Division of the Massachusetts Committee for Public Counsel Services; and New York State of New York Office of Attorneys for Children.)

Statewide networks, like a localized child welfare law office, also provide a valuable quality control and accountability function. Judges provide reviews of the attorneys who appear before them. Judges may appreciate recourse to the state office when they are concerned about the quality of child representation practice. On the other hand, much like child welfare legal offices, these statewide network arrangements may promote attorney independence and more active advocacy. They lessen attorneys' dependence upon smooth relations with local courts and judges and reduce the judges' power to limit case assignments received by a particular attorney. The attorney dependence on the judge's good will for their next court appointment has been known to inhibit aggressive advocacy.

The statewide network can create a financially predictable, supportive environment that encourages continued dedication to and specialization in child representation.⁵⁵

4. RECRUIT THE BEST AND MOST COMMITTED

The QIC data has implications for efforts to hire, train, support and retain a cadre of high-quality child representatives. One of the concerns often expressed is that selection of lawyers for children is somewhat random. Are these lawyers who were “accidentally washed up on the shores of child welfare and decided to stay”? Truth is that some of these “accidental child lawyers” are quite good, but focused attention on developing a career path for the self-selected passionate and committed may pay dividends for the field.

Increasingly law schools are providing educational opportunities in child welfare law and students see child welfare as an inviting area of practice -- not so much for the money, but for the satisfaction of the job. The ABA maintains a directory of children's law programs around the country and a full list of all child law clinics associated with law schools.⁵⁶ Some law schools sponsor fellowships in child welfare law in addition to their regular course offerings.⁵⁷

⁵⁵ See also Family Justice Initiative: Implementing FJI System Attributes, <https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2020/03/fji-implementation-guide-attribute5-1.pdf>

⁵⁶ The ABA Section of Litigation, Children's Directory of Children's Law Programs at <https://www.americanbar.org/groups/litigation/committees/childrens-rights/directory/legal-clinics/>. It is compilation of children's law programs across the country with a full list of all children's law centers, all children's legal clinics (associated with a law school) and all children's resource centers (that provide litigation support to children's lawyers).

⁵⁷ See for example, University of Michigan Law School, Bergstrom Fellowship; Emory University School of Law, Barton Summer Child Advocacy Program; Loyola University Chicago Civitas ChildLaw Center.

But the talent pool for child representation will not all come directly from law schools. Our QIC lawyers were hardly fresh out of school.⁵⁸ Most had practiced law for many years, with a mean of 13.5 years, and 56% had represented children for five or more years. The implications for recruitment and training may be that capable children's attorneys could be recruited at various stages of a legal career and that training opportunities should be available to prepare not only the beginning lawyer, but also the more experienced lawyer looking to add the personally rewarding child representation to an existing practice.

It behooves the child welfare community to facilitate a match between the lawyer especially interested in the field and job opportunities. Where a jurisdiction delivers legal services to children and their parents through dedicated offices or concentrated caseloads, lawyers with a particularly strong interest in the field are more likely to find a foothold and pursue child welfare as career specialty.

A reason to facilitate a career path for the "passionate and committed" is the important observation from the QIC attorney activity study that the attorney attitude about their advocacy is itself a driver of improved representation. Sixty-four percent of our surveyed attorneys "strongly agreed" that their work as a children's lawyer was rewarding. Eighty-five percent agreed or strongly agreed that their work had a significant impact on the outcomes for the children they represent.⁵⁹ And it appears that a lawyer's beliefs about the importance of the work and their effectiveness is a self-fulfilling prophecy and actually makes them more effective.

"...[A]ttorney opinions about the degree to which their work in dependency cases is rewarding are found to be positively associated with the rates of several types of [advocacy] activities."⁶⁰

A common concern is that the financial compensation received by child representatives is low leading to a high level of attrition and diminution in practice quality.⁶¹ The QIC data paint a somewhat more complicated picture, however. Although a majority of attorneys in both states report that the level of financial compensation is either somewhat or very inadequate, most report that their work as child representatives is both rewarding and impactful. And the level of

⁵⁸ Orlebeke, Zinn, Duquette and Zhou, "Characteristics of Attorneys Representing Children," 49 *Fam. L. Q.* 477 (Fall 2015). CHILDREN'S JUSTICE, *supra* note 4, at 126

⁵⁹ CHILDREN'S JUSTICE, *supra* note 4, at 138.

⁶⁰ *Id.* at 158. An increased opinion that the work is rewarded is associated with increased rates of contact with other attorneys, caseworkers, biological parents, foster parents, and CASAs (Court Appointed Special Advocates).

⁶¹ D'Andrea, Theresa (2012) "Money Talks": An Assessment of the Effects of Attorney Compensation on the Representation of Children in the Child Welfare System and How States Speak through Delivery Systems. *Children's Legal Rights Journal*, 32(3), 67-88.

attrition among these groups of child representatives appears low, especially as compared with agency caseworkers in child welfare. Attorneys were experienced in child welfare and were also active in different fields of law, including divorce and paternity, private adoption, truancy, and juvenile justice.⁶²

Taken all together, the attorneys' relatively long tenure and views that the work is personally rewarding despite the inadequate the financial compensation, suggests that there are other, non-financial factors at play. Child representatives may be motivated by altruistic reasons that transcend financial concerns. The personal rewards these attorneys derive from child representation seems to reduce the drag of low compensation.

5. CONTROL CASELOADS

Caseload matters. The QIC lawyer activity data documents the common-sense conclusion that caseload size limits what an attorney can do for any individual child.

The size of attorney caseloads is found to be significantly negatively associated with the rates of investigation and document review activities and legal case preparation activities. Specifically, a 1-standard deviation increase (20 cases) in the size of dependency caseloads is associated with a 22 per cent decrease ... in the monthly rate of investigation and document review and a 9 percent decrease in the monthly rate of legal case preparation activities.⁶³

The larger the caseload the less a lawyer can do for any individual child.

What is a reasonable caseload for lawyers representing children? Crushing caseloads in urban settings have been a troubling feature of child welfare law practice for many years and the QIC findings reinforce the importance of reasonable caseloads for attorneys doing this work. In 2005 in *Kenny A*⁶⁴ the court heard expert testimony from NACC regarding caseloads. This evidence became a key consideration in the court's finding that foster children have a right to an effective lawyer in dependency cases who is not burdened by excessive caseloads. A settlement agreement in that case limited caseloads to 90 children per attorney. A 2006 survey of child welfare lawyers for the NACC showed that 18 percent of respondents had more than 200 cases

⁶² CHILDREN'S JUSTICE *supra* note 4 at 141.

⁶³ *Id* at 156.

⁶⁴ *Kenny A ex rel. v. Perdue*, 356 F. Supp 2d 1353 (N.D. Ga, 2005)

and an additional 25% had between 100 and 199.⁶⁵ The NACC updated policy now recommends a standard of 40-60 active clients for a full-time attorney.⁶⁶

A 2008 caseload study by the Judicial Council of California based on time and motion measures recommended a caseload of 77 clients per full-time dependency attorney to achieve an optimal best practice standard of performance.⁶⁷ The California Judicial Council set 141 as the maximum ceiling of cases a full-time attorney may carry. The Council also recognized the value of multidisciplinary representation when it proscribed a modified *maximum* caseload standard of 188 clients per attorney if there is a 0.5 FTE investigator/social worker complement for each full-time attorney position.

New York law sets the maximum caseload at 150⁶⁸. The Massachusetts Committee for Public Counsel Services, which provides counsel for children and parents in dependency cases, enforces a caseload of 75 open cases.⁶⁹

In a very detailed systematic study, a Pennsylvania workgroup carefully broke down the tasks and expected time required throughout the life of a case and matched that to attorney hours available in a year. They concluded that caseloads for children's lawyers should be set at 65 per full time lawyer.⁷⁰

The Family Justice Initiative examined caseloads more recently and recommends caseloads of 60 per attorney.⁷¹

6. ENCOURAGE MULTIDISCIPLINARY LAW PRACTICE

Multidisciplinary approaches to representing children are increasingly popular and widely considered a good practice⁷² but up to now there are few studies of the challenges behind

⁶⁵ Davidson & Pitchal, *Caseloads Must Be Controlled So All Child Clients May Receive Competent Lawyering*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=943059n

⁶⁶ <https://naccchildlaw.box.com/s/vsg6w5g2i8je6jrut3ae0zjt2fvgltsn>

⁶⁷ Ca Dependency Counsel Caseload Standards A Report To The California Legislature April 2008 by the Judicial Council of California Administrative Office of the Courts Center for Families, Children & the Courts This report is also available on the California Courts Web site: <http://www.courtinfo.ca.gov/programs/cfcc/resources/publications/articles.htm>

⁶⁸ 22 N.Y. Comp. Codes R. & Regs. Tit. 22, §127.5(a).

⁶⁹ Massachusetts Policies and Procedures.

https://www.publiccounsel.net/private_counsel_manual/CURRENT_MANUAL_2010/MANUALChap5links3.pdf

⁷⁰ 2014 Pennsylvania State Roundtable Report: Moving Children to Timely Permanency, available at 2014 Pennsylvania State Roundtable Report: Moving Children to Timely Permanency

⁷¹ Family Justice Institute: <https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2020/03/fji-implementation-guide-attribute1-1.pdf>; See also Child Welfare Attorneys National Compensation & Support Survey – 2017 <https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2019/12/2017-Survey-of-Parents.pdf>

implementing such an office and little empirical evidence of the effect of lawyer-social worker collaboration on case process and outcomes. The *QIC-ChildRep* did a separate study in Genesee County (Flint), Michigan, which provides some of the first empirical assessment of the effectiveness of multidisciplinary representation of children.⁷³ Using a random assignment experimental design children in Genesee County represented by a team of a lawyer and social worker were compared with children represented by an attorney only. Despite the cultural challenges of lawyers and social workers collaborating on the same team, multidisciplinary teams dramatically improved case outcomes and the experience of children facing foster care.

The MDT approach led to quicker case resolutions for some children and preserved family connections more often. Children served by the MDT had fewer removals after the intervention was assigned, fewer adjudications of jurisdiction, and fewer petitions to terminate the rights of parents. When children were removed, they were more likely to be placed with relatives and less likely to be placed in foster care.⁷⁴ The study identified the following as key elements to a successful multidisciplinary team: 1) attorneys' respect for the social work skillset, 2) the social workers' ability to effectively collaborate with the child welfare agency, 3) the team's intensive advocacy early in the case, and 4) protections for client confidentiality.⁷⁵

Many of the leading child law offices collaborate with social service professionals and NACC endorses multidisciplinary practice.⁷⁶ Scott Hollander and Jonathon Budd of Pittsburgh's KidsVoice recommend: "A child welfare law office should apply a multidisciplinary approach to advocacy – inside and outside the courtroom – that integrates various professional perspectives and expertise."⁷⁷ No single profession possesses the broad range of skills necessary to successfully identify and advocate for a child's needs. The QIC strongly recommends that communities adopt the practice of lawyers representing children in a collaborative team, working side-by-side with social workers or similarly trained professionals.

⁷² Family Justice Initiative provides a more recent 2020 update and examples of multidisciplinary practice at <https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2020/03/fji-implementation-guide-attribute2-2.pdf>

⁷³ Robbin Pott, *The Flint MDT Study: A Description and Evaluation of a Multidisciplinary Team Representing Children in Child Welfare*, in CHILDREN'S JUSTICE, *supra* note 4 at 189-211.

⁷⁴ *Id.* at 203-204.

⁷⁵ *Id.* at 211.

⁷⁶ Hollander and Budd, *Multidisciplinary Practice*, in NACC *Child Welfare Law Office Guidebook* at 51. Guidebook available at: <https://c.ymcdn.com/sites/naccchildlaw.site-ym.com/resource/resmgr/clop/clopguidebookfinal4-06.pdf>

⁷⁷ *Id.*

7. PROMOTE CERTIFICATION

Specialty certification of lawyers can add to the quality and sophistication of a state's child welfare system by improving the quality of representation that children (and parents and the agency) receive. In 2004 the ABA recognized a legal specialty in child welfare law and accredited the NACC to certify lawyers as specialists in the field. The specialization area is defined as "the practice of law representing children, parents or the government in all child protection proceedings including emergency, temporary custody, adjudication, disposition, foster care, permanency planning, termination, guardianship, and adoption. Child Welfare Law does not include representation in private custody and adoption disputes where the state is not a party."⁷⁸ There are now over 600 NACC Certified Child Welfare Law Specialists in 43 jurisdictions.⁷⁹

Child Welfare Law Certification is modeled after physician board certification and requires that attorneys satisfy certain requirements to apply. The major requirements are:

- Three or more years practicing law
- Successful passage of the CWLS examination.
- 30% or more of the last three years involved in the field of child welfare law (4 of last 6 years in AZ; 30% of last 5 years in SC)
- A resume/CV detailing your involvement in the field
- 36 hours of continuing legal education within the last three years in courses relevant to child welfare law (36 hours + 9 hours of ethics courses in AZ; 45 hours in CA; 36 hours of state-approved CLE in SC)
- A writing sample drafted within the last three years that demonstrates legal analysis in the field
- Your public and private disciplinary history
- Peer review reports
- Successful completion of the CWLS Certification Examination.

⁷⁸ <http://www.naccchildlaw.org/?page=Certification>; last visited, 1-19-22

⁷⁹ Id.

For a complete list of requirements, please see the NACC Certification Standards⁸⁰

RESEARCH AGENDA

More analysis and reflection are required about these data, these findings, and their meaning. The full Evaluation Report by Chapin Hall available on their website at <http://www.chapinhall.org>. Our research data are available at the National Data Archive on Child Abuse and Neglect.

https://www.ndacan.acf.hhs.gov/datasets/pdfs_user_guides/Dataset212UsersGuide.pdf

CONCLUSION

The practice of law for children in the child welfare system continues to evolve at a rapid rate. It has evolved from a cottage industry of “kiddie law” where lawyers were expected to represent the “best interests of the child” *pro bono* as a service to the court, to a sophisticated legal specialty authorized by the American Bar Association with Child Welfare Law Specialists certified by the NACC throughout the nation. Increasingly there is a consensus on how lawyers should represent children. A national model of practice has emerged. Whether the lawyer is charged with direct representation of the child or the child’s best interest, the lawyer’s tasks and duties are very much the same -- both requiring an engaged and active lawyer.

Empirical evidence is also beginning to provide helpful guidance as to the organization and delivery of legal services to the child. Legislators, judges, policy makers, now have a blueprint for improving the quality of children’s justice in the child welfare system.

⁸⁰ Id