

How to Improve Legal Representation of Children in America's Child Welfare System

Abstract

This final chapter provides a vision for the future of child representation based on the QIC experience, which includes:

- implementing the QIC consensus role of the child's lawyer in every state,
- organizing the delivery of legal services for children statewide,
- encouraging supportive communities of learning among the lawyers, and
- promoting the promise of multidisciplinary legal representation.

13.1 Introduction

The central argument of this book is that a consensus on the role of the child's legal representative, as reflected in the QIC Best Practice Model of Child Representation, is at hand. The QIC review of the academic literature, national standards, conference recommendations and stakeholder opinion documents 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. (See Chapter 4.) Our national needs assessment of 2010 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.

Our goal is to present a broad story that captures child representation as it is today and provides an empirical foundation of evidence based practice from which to pivot

to the next stage of development. The Chapin Hall team provides some unique and insightful empirical data about our field and Robbin Pott's study of the lawyer-social worker team representation of children in Flint, Michigan confirm the anecdotal experiences of many across the country. More sound social science is needed to help us better understand how best to provide and organize legal representation of children.

This is the chapter that shifts from the foundational material in the previous chapters and turns our attention toward the future of child representation. Drawing upon our policy research and the QIC empirical findings, here are our recommendations.

13.2 Adopt a Public Health Model of Child Protection

This is a book about lawyer case-by-case advocacy. Yet our effectiveness is inextricably linked to the social and political milieu of our practice. We are not alone and factors external to our case advocacy and the family court system either enhance or compromise our efforts. The legal system cannot be the principal child welfare response in America. Certainly the court serves as the gatekeeper for the child welfare system, and only rarely does a child enter or leave foster care without a court order.

Many argue that too many children are lined up at that gate and that courts are asked to do too much. Enhanced public health policies for children and families hold the promise of protecting and nurturing children so that fewer of them end up at the courthouse steps. Our case-by-case effectiveness skyrockets if fewer children are petitioned to the court, leaving only the neediest requiring our attention.

Josh Gupta-Kagan writes: "A public health model would enable society to respond to the millions of children facing mild harms more effectively and would enable child protection authorities to respond to the more serious cases more effectively. . . . [F]ocus coercive interventions on the most severe cases."¹ Michael Wald points out that although reports of physical abuse and sexual abuse of children have declined dramatically over the past 25 years, reports of neglect continue unabated.² Cases recorded as neglect account for 75% of substantiations and 60% of all foster care placements.³ The upstream preventive approach offered by a public health approach holds the promise of reducing the number of children maltreated and responding to those who are maltreated in a more effective fashion.

1. Josh Gupta-Kagan, *Toward a Public Health Legal Structure for Child Welfare*, 92 NEBRASKA L. REV. 897 (2014) at 965.

2. Michael Wald, *Beyond CPS: Developing an Effective System for Helping Children in Neglectful Families*, Research Paper No. 2554074; <http://ssrn.com/abstract-2554074>.

3. *Id.* at 1. Certainly all cases categorized as "neglect" are not mild and some place children at considerable risk. Children die from neglect and can be permanently harmed from neglect. Nonetheless a public health approach is more consistent with our constitutional values of family integrity and can safely reduce the numbers entering our legal system.

One of my mentors, the pediatrician Ray Helfer, spoke of preventing child maltreatment and taking positive action to enhance parenting, to avoid the negative of child abuse and neglect:

With very few exceptions, if one wishes to prevent something bad from happening, the development of something good must come first. Eliminating cholera and dysentery from our society required the development of sewers and clean water systems. Preventing polio required building polio antibody levels in the bodies of our children through vaccination. Fire prevention necessitates cleaning up our closets and installing sprinkler systems. Likewise, to prevent child abuse and other adverse outcomes . . . within our families, we must enhance the interpersonal skills of those very folks who like each other the most and who will make up our future families, the mothers and fathers to be.⁴

The current child protection system relies too much on an adversarial investigative approach that infringes upon the fundamental liberty interests of millions of children and parents. A parental fault paradigm may be appropriate for a coercive intervention in the family, but there are other approaches to protecting and nourishing children. Clare Huntington writes:

The child welfare system suffers from a fundamental misorientation. The prevailing response to families at risk of abuse and neglect is to wait for a crisis, then act. In many cases, the state intervenes only after abuse or neglect has occurred. At that point, the state often removes a child from her home and places her in foster care, which can be rife with its own dangers. Once the child is out of the home, the state takes largely ineffective steps to reunite the family. This post hoc approach to child welfare has devastating effects for children, parents, and the state. By the time intervention occurs, children have already been harmed. Parents have already succumbed to various ills such as substance abuse. And the state's interest in the stability of families has been compromised, despite the system's 22 billion dollar annual price tag.⁵

Professor Huntington argues for a family's robust and supportive and voluntary engagement with the state to meet the needs of the child but without a loss of family self-determination.

4. Ray Helfer, *An Overview of Prevention*, in *The Battered Child*, Fourth Edition (Helfer & Kempe Eds) 1987 at 425.

5. Clare Huntington, *Mutual Dependency in Child Welfare*, 82 NOTRE DAME L.REV.1485 (April 2007).

Wald, Gupta-Kagan, Huntington and others endorse a public health approach to support families—and consequently improve the welfare of children. Broader family friendly policies may do away with the need to petition so many of them into the court child protection system. Michael Wald would build on the existing Women, Infant and Children program and a network of home health visitors or pediatricians to assist parents with child rearing issues voluntarily and as needed, as a preventive and supportive service. “[G]iven the magnitude of the problem, child advocates should unite behind a set of programs and urge policy makers to adopt some version of the system I have outlined at scale and then work to improve it over time.”⁶

“We will always have some need for a child welfare system” says Professor Huntington, “but rather than try so hard to fix the system, we should reduce the need for it.”⁷

The QIC prescriptions include these macro issues since the broader social issues seriously affect the individual lawyer’s ability to represent any child effectively.

13.3 Federal Leadership

CAPTA remains the Federal touchstone when it comes to advocacy for the allegedly abused or neglect child. It requires that states receiving CAPTA funds provide representation for children, either a lawyer or a lay volunteer or both, but does not specify the training or duties of that advocate other than that it be a person “who has received training appropriate to the role” who would “obtain first-hand a clear understanding of the situation and needs of the child and . . . make recommendations to the court concerning the best interests of the child.”⁸ The CAPTA reauthorization could reflect some of the findings of the QIC and the growing consensus as to what sort of advocacy a child requires in protection cases, including a more robust statement of the lawyer role. CAPTA should require that a child be represented by legal counsel in all child welfare proceedings. CAPTA should also direct the U.S. Children’s Bureau to promulgate rules or guidelines governing child representation or provide direction in the form of recommended policies for recruitment and training of such lawyers. CAPTA could direct additional research dollars to identify and promote the optimum approaches to legal representation of children—and parents and the agency. The interface between the agency child protection response and the courts is far from optimum and improved lawyering for all parties can help.

The Federal government could enforce the existing CAPTA requirement that all children receive a guardian-ad-litem or lawyer in a child protection judicial proceeding. The QIC research found that many children in Georgia and Washington State did not receive *any* representation—not from a lay volunteer and not from a lawyer in any

6. *Supra* note 5 at 25.

7. Huntington, *The Child Welfare System and the Limits of Determinancy*, 77 *Duke JI of Law and Contemporary Problems*, 221, 246 (2014).

8. 42 USC s5106a(b)(2)(A)(xiii).

role. This is consistent with research from other quarters that despite the CAPTA mandate, states are still not providing independent representation of all children in child welfare cases. First Star and the Children's Advocacy Institute call for Federal enforcement of the CAPTA requirement and report:

- In Florida, only 80% of abused and neglected children received a CAPTA-mandated GAL.
- In Ohio, 40% of the GALs never even met with the children they represented.
- In New Hampshire, hundreds of children go without the services of a *CASA guardian ad litem* every year.
- In one North Carolina county, 25% of the children who have been abused or neglected are going to court without advocates.⁹

Others have noted that Congress was wise in requiring an advocate for the child in these proceedings and the Children's Bureau should put the requirement into effect.¹⁰ One step toward enforcement could be for the U.S. Children's Bureau to conduct an inquiry into states to determine whether children really are receiving the individual advocacy required by CAPTA. Children's Bureau could identify any shortfall and work with the states to make it up.

13.4 States Should Enact a Legal Structure to Support Child Representation

States should adopt the 2011 ABA Model Act as the statutory structure for legal representation of the child. Shortly after the QIC began its work, the ABA House of Delegates adopted the 2011 Model Act.¹¹ The Model Act is consistent with the findings and recommendations of the QIC (See discussion in Chapter Four.). The ABA 2011 Model Act, the 1996 ABA Standards and the QIC Best Practice Model are in essential harmony. This reflects an emerging consensus throughout the land on most of these questions. The 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 Six Core Skills provide the essential clinical skills required by a lawyer representing a child.

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. In our baseline survey

9. *Shame on U.S.: Failings by All three Branches of Our Federal Government Leave Abused and Neglected Children Vulnerable to Further Harm*, (2015) at 59; available at http://www.caichildlaw.org/Misc/Shame%20on%20U.S._FINAL.pdf (last visited February 24, 2016).

10. Glynn, *The Child's Representation under CAPTA: It Is Time for Enforcement*, 6 Nev L.Rev. 1250 (Spring 2006).

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

we found areas of disagreement as to the proper elements of child representation. Many attorneys saw themselves as having only limited responsibility for certain tasks that the QIC Best Practice Model and other national recommendations see as important. (Chapter 8, §8.9, Table 7)

But the attorneys in our two states demonstrate a strength that is likely present elsewhere. Despite variances as to what tasks are properly child lawyer responsibilities, there was a consistency of opinion that favors thoughtful, active, representation that involves a relationship with the child. There also seems to be an appetite among lawyers for gaining more skills and improving their practice. They were receptive to learning new approaches and adopted new methods when trained and encouraged to do so.

13.5 Organization for Legal Services for Children

13.5.1 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. (§9.8.4) Where child representation constitutes only a small portion of an attorney's practice, he or she may be less likely to want to invest in developing these unique skills.

High attorney activity rates on individual cases is positively associated with the proportion of an attorney's practice devoted to child representation. (§9.7) In particular there is a higher level of contact with the child by staff attorneys and attorneys where child representation is a higher proportion of the caseload. (§9.7) Therefore an important influence on attorney behavior may be the organizational climate and culture with the advantage to a specialized law office. The analysis in Chapter 8, however, indicates that the potential benefits of specializing, 1) smaller caseloads, 2) higher relative concentrations of child representation cases and 3) a belief that the work is important and rewarding, may be achieved across the various organizational structures.

13.5.2 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-by-case basis. (§8.7) 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 law incomes than attorneys working in other settings. (§8.12.6)

The empirical data provide support for dedicated staff attorney offices or otherwise concentrating the child representation within a modest number of lawyers in order 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.

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.¹² 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.”¹³

13.5.3 *Where Case Volume Is Low; Statewide System*

But our data show that some counties 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 staff attorneys were more likely to work in urban counties.

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. (§8.4) In the previous six months, 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

12. 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).

13. NACC, *Child Welfare Law Office Guidebook* (2006).

group of lawyers who develop considerable experience and expertise.¹⁴ In the QIC sample, however, most children are not represented by such specialists, but rather by general practitioners handling a limited number of dependency cases. 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.

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 would 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.¹⁵ 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 requirements and typically provide 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.

Statewide networks, like a localized child welfare law office, also provide a valuable quality control and accountability function. Judges may appreciate the additional recourse 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 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.

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

13.6 Recruit the Best and the Brightest 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

14. Guidebook; QIC see below.

15. 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.)

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 program around the country and a full list of all child law clinics associated with law schools.¹⁶

But the talent pool for child representation will not all come directly from law schools. Our QIC study found that the lawyers are hardly fresh out of school.¹⁷ 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.¹⁸

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 attorney activity study that the attorney attitude about the importance of the role as a child representative and their perception of how impactful their work on cases is was positively associated with various activities. 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.¹⁹ And it appears that a lawyer’s beliefs about the importance of the work and their effectiveness is a

16. The ABA Section of Litigation, Children’s Directory of Children’s Law Programs at <http://apps.americanbar.org/litigation/committees/childrights/directory.html>. 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). Program listings by state as well as a full pdf of the Directory is available at http://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/directory.authcheckdam.pdf.

17. Orlebeke, Zinn, Duquette and Zhou, “Characteristics of Attorneys Representing Children,” 49 *Fam. L. Q.* 477 (Fall 2015). studied 126 lawyers in Washington and 143 in Georgia.

18. *Id.* at 505.

19. *Id.* at 500.

self-fulfilling prophecy and actually makes them more effective. That is, lawyers who believe in the importance of the work and their own effectiveness actually seem to be more effective. (§9.7)

One concern is that the financial compensation received by child representatives is low leading to a high level of attrition and diminution in practice quality.²⁰ 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 attrition among these groups of child representatives appears low, especially as compared with agency caseworkers in child welfare. Paradoxically, attorneys who reported spending more time on their cases were more likely to say that their compensation was too low. Child representatives seem motivated by altruistic reasons that transcend financial concerns. The personal rewards these attorneys derive from child representation seems to reduce the drag of inadequate compensation.

13.7 Caseloads

The QIC data provides some insight into the question of what the proper caseload for attorneys should be. Our QIC assessment is that the *adjusted caseload* of our sample was 60 cases. That is, even when child representation occupied only a portion of a lawyer's practice, when the number of cases is adjusted for the percentage of effort required for child representation, the adjusted caseload was 60.

Caseload matters. The QIC lawyer activity data in Chapter 9 supports the common sense conclusion that caseload size limits what an attorney can do for any individual child. A one-standard-deviation increase (20 cases) in the size of dependency caseload is associated with a 22 percent decrease in the monthly rate of investigation and document review and a 9 percent decrease in the monthly rate of legal case preparation activities. (§9.7) 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. A 2006 survey for the NACC showed that 18 percent of respondents had more than 200 cases and an additional 25% had between 100 and 199.²¹

20. 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.

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

The NACC recommends a standard of 100 active clients for a full-time attorney.²² The NACC based this recommendation on a rough calculation that the average attorney has 2000 hours available per year and that the average child client would require about 20 hours of attention in the course of a year.²³ In *Kenny A* the court heard expert testimony from NACC along these lines. 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 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.²⁴ 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 150²⁵. The Massachusetts Committee for Public Counsel Services, which provides counsel for children and parents in dependency cases, enforces a caseload of 75 open cases.²⁶

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.²⁷

13.8 Multidisciplinary Law Practice

Multidisciplinary approaches to representing children are increasing popular and widely considered a good practice but up to now there are few studies of the challenges behind implementing such an office and little empirical evidence of the effect of lawyer-social worker collaboration on case process and outcomes. The QIC-ChildRep

22. National Association of Counsel for Children, *Child Welfare Law Guidebook*, 2006, at 54.

23. NACC, Pitchal, Freundlich, and Kendrick, *Evaluation of the Guardian ad Litem System in Nebraska*, (December 2009) at 42-43, available http://c.y.mcdn.com/sites/www.naccchildlaw.org/resource/resmgr/nebraska/final_nebraska_gal_report_12.pdf

24. 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>.

25. 22 N.Y. Comp. Codes R. & Regs. Tit. 22, §127.5(a).

26. Massachusetts Policies and Procedures. https://www.publiccounsel.net/private_counsel_manual/CURRENT_MANUAL_2010/MANUALChap5links3.pdf.

27. 2014 Pennsylvania State Roundtable Report: Moving Children to Timely Permanency, available at 2014 Pennsylvania State Roundtable Report: Moving Children to Timely Permanency.

provides some of the first empirical assessment of the effectiveness of multidisciplinary representation of children. Using a random assignment experimental design children in Genesee County (Flint), Michigan, children 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 together, 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. (§12.5.3) *Throughout the process observation, the study found that the attorneys' respect for the social work skillset, the social workers' ability to effectively collaborate with the child welfare agency and their intensive advocacy early in the case, as well as protections for client confidentiality, are keys to successfully employing multidisciplinary teams.*

Many of the leading child law offices collaborate with social service professionals and NACC endorses multidisciplinary practice.²⁸ 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." 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.

13.9 Training

Both the 1996 ABA Standards 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). Training has both a macro and micro aspect.

The QIC empirical data show that lawyers seemed 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

28. 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/cloguidebookfinal4-06.pdf>.

results for their child clients, they lapped it up. Apart from whatever merits might be found in the Six Core Skills themselves, the lawyers were eager to learn and responded very well to the promise and prospect of improvement. To their credit, they learned and implemented the approach we offered them. 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.

We also learned that lawyers learn well from one another, from peer to peer conversations, facilitated by a respected professional. An encouraging finding is the commitment to the importance of the work and willingness to assist others in doing it. Despite the fact that most attorneys were solo practitioners, more than 80% said that individuals were often or almost always available to discuss cases with them. (§8.9)

The concentration of child representation practice has significant implications for recruiting and training lawyers. A high volume of children’s cases might allow a lawyer to specialize and possibly earn a reasonable income from child welfare law practice. But where the volume and concentration of cases is low, lawyers will 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 this practice and identify trainings that are targeted to the most critical skills. The lack of specialization puts a premium on distance learning and on-line professional education courses that attorneys could take on their own schedules.²⁹

The discussion of lawyer activities in Chapter 9 surfaces the effect of lawyer attitudes, beliefs and biases and opens up some lessons for training, supervision and mentorship. Lawyers could reflect on how they spend their time and consider whether that is the optimum distribution.

For example, does the lawyer spend more time with older girls than toddlers 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 awareness may lead to reprioritization or even to providing clinical training in skills necessary to build trust and break through to the uncommunicative teen or read a toddler, and thus get information about them and their needs. (§9.6)

Building a general agreement as to what the tasks and duties of the child’s lawyer are is salutary. The QIC empirical information shows that uncertainty—as to specific duties, how to best spend one’s energy, and what the overall role of the child lawyer is—makes engagement more difficult. Merely clarifying these basic expectations may serve to improve the practice. Support for this inference comes from the fact that the

29. *Id.* at 506.

attorney's professed level of responsibility for various case-related tasks is positively associated with increased contacts with the child and family. (§9.7) That is, when an attorney believes it is his or her responsibility to do a task, they do it! Training that explicitly communicates a broad scope of responsibility and identifies desirable tasks may improve performance.

Likewise, the subjective view of whether the work is rewarding is positively related to higher rates of desirable activities. (§9.7) 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 that builds up 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.

We find good news in that we found no activity differences based on ethnicity or race. And no differences were found based on relative versus non-relative placements.

13.10 Certification

Specialty certification of lawyers can add to the quality and sophistication of a state's work force and improve 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."³⁰ There are now about 600 NACC Certified Child Welfare Law Specialists in 43 jurisdictions.³¹

Child Welfare Law Certification is modeled after physician board certification and requires that attorneys satisfy certain requirements to apply. The applicant must make a satisfactory showing of substantial involvement relevant to child welfare law, with at least thirty (30) percent of his or her time involved in child welfare law during the three (3) years preceding the filing of the application. The major requirements are:

- Three or more years practicing law
- 30% or more of the last three years involved in child welfare law
- 36 hours of continuing learning education within the last three years in courses relevant to child welfare law (45 hours in CA, and 36 hours + nine hours of ethics courses in AZ)

30. <http://www.naccchildlaw.org/?page=Certification>; last visited, 6-07-16.

31. *Id.*

- A writing sample drafted within the last three years that demonstrates legal analysis in the field of child welfare law
For a complete list of requirements, please see the NACC Certification Standards³²

13.11 Research Agenda

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

Broadly speaking, there are at least two important research questions about child representation that merit attention. First, which types of activities yield the greatest impact, and do these impacts vary across case types, outcomes, and practice contexts? For example, is contact with children's families equally important for younger vs. older children, victims of sexual abuse vs. neglect, or for cases with permanency goals of reunification vs. guardianship? Collectively, these questions would begin to address the broader question of which practices, under which circumstances, constitute impactful child representation.

Second, does increased attorney activity actually lead to better outcomes for children in dependency cases? On its face, the answer would seem to be obvious, that is, more attorney activity is better. However, given the multiplicity of factors that influence case outcomes, and potentially mitigate the impact of attorneys' efforts, there may be a point of diminishing returns where more attorney action does not contribute significantly to improving the overall outcome. There are many other contextual factors that limit the ability of a single party (attorneys or anyone else) to influence outcomes. Thus, the question of whether more is better seems well-justified. Child representation takes place in a context with other parties, organizations and institutions. This may be a situation in which a rising tide is necessary to lift all boats.

13.12 Conclusion

The practice of law for children continues to evolve at a fairly rapid rate. It has evolved from a cottage industry of "kiddie law" to a sophisticated legal specialty. Increasingly there is a consensus on how lawyers should approach representing children. Whether the lawyer is charged with representing the child's wishes or the child's best interest, the lawyer's tasks and duties are essentially the same.

Empirical evidence is beginning to provide helpful guidance as to organization and delivery of legal services to the child. A national model of practice has emerged. Above all we want this book to be practically helpful to legislators, judges, policy makers, and especially to Court Improvement Project directors and to the U.S. Children's Bureau.

32. *Id.*

