Money Matters: How Funding Changes Affect Legal Representation Quality

August 31, 2020
What are we going to do today?

- Welcome
- Introduction to Speakers
- Assessment Report
- Key Findings and Recommendations
- How to Use the Assessment Report
- Discussion
Introduction to Speakers

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ABA Center on Children and the Law

**Mission:** To promote access to justice for children and families

- Nonprofit entity within an Association of 400,000 legal professionals
- 16-person team of attorneys and core staff
- Work on grant projects across the country unified by two themes:
  - *improving legal representation* and
  - *improving legal systems that impact children’s and families’ lives*

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Legal Representation in Child Welfare Proceedings

**Benefits of high-quality legal representation**

- Protects parents’ and children’s legal rights.
- Increases parties’ perceptions of fairness.
- Reduces delays in achieving permanency and helps children and families reach better, long-term outcomes.
- Promotes tailored case plans and services.
- Improves frequency and timeliness of parent-child and sibling visitation and family time.
- Empowers families and communities to keep children safe at home.
- Informs better judicial decision making.
- Saves jurisdictions money by reducing time children spend in foster care.

**Quality hallmarks**

**Role:** Child attorney

- Protect and advance child’s interests in court.
- Provide legal counsel, and help the child understand the legal process and feel empowered to participate.

**Quality hallmarks:**
- Understand the child’s wishes in the case.
- Understand the child’s strengths, needs, and resources.
- Ensure the child has an opportunity to attend and participate in court hearings.
- Advocate for the child to maintain contact with parents, siblings, and kin through visitation, placement, and permanency planning.
- Work with collateral contacts—teachers, foster parents, service providers.
- Collaborate with a multidisciplinary team.
- Promote tailored, specific case plans and services.
- Advocate for the child’s access to education and community supports.

**Role:** Parent attorney

- Protect the parent’s legal rights, advance the parent’s interests in court, and help the parent understand the legal process.

**Quality hallmarks:**
- Explain the child welfare legal system and the parent’s rights and duties.
- Ensure the parent’s voice is heard and understood in the proceedings.
- Help the parent problem solve and meet case goals.
- Build a relationship of trust and ensure the parent experiences fairness.
- Understand the parent’s life circumstances, including strengths, needs, and available resources.
- Advocate parent-child contact through visitation and permanency planning.
- Collaborate with a multidisciplinary team, including parent mentors and parent social workers.
- Address collateral legal issues that may affect the child welfare case in housing, employment, health care, disabilities, domestic violence, benefits, criminal justice, and immigration law.

**Role:** Agency attorney

- Represent the child welfare agency or jurisdiction and present evidence of the underlying case in court including agency compliance with federal and state child welfare laws.

**Quality hallmarks:**
- Provide guidance to agencies and caseworkers on child welfare law, procedures and policies.
- Consult on decisions to remove or return a child and ensure decisions meet legal standards.
- Prepare or help prepare the initial petition and subsequent pleadings.
- Promote quality casework and agency performance to support families.
- Ensure no undue delays in service provision, case planning, or other agency duties.
- Cooperate and communicate regularly with other counsel.
- Help the agency meet federal monitoring and continuous quality improvement requirements.
- Work with agency to ensure parties’ legal rights are protected.
- Train caseworkers on federal and state laws to ensure the agency maintains high-quality performance.
Assessment Background

- Dependency Counsel Funding in California
- Shifting Caseloads and Funding Needs
- New Funding Methodology and Reallocation Plan
- ABA Assessment Period
Assessment Background: California Reallocations

**Site A**

**Funding Changes Over Time**

- **% Cumulative Increase**
- **% Funding Need Met**

**Site B**

**Funding Changes Over Time**

- **% Cumulative Change in Funding**
- **% Funding Need Met**
Assessment Report: Approach & Methodology

Site Selection

- Data on county funding reallocations
- Community type: urban/rural/suburban
- Geographic position in the state
- Socio-economic profile of the community
- Population demographics (e.g., race, ethnicity, language, education, income)
- Data availability
- Willingness to participate
Methodology, cont’d

- Assessment sites either received additional funding or lost funding for dependency counsel between 2014 and 2018
- Characteristics of the assessment sites

**INCREASED FUNDING SITE A**
Large, mostly urban county with increase in funding

**DECREASED FUNDING SITE B**
Large, mostly suburban county with decrease in funding

**DECREASED FUNDING SITE C**
Small, mostly rural county with decrease in funding
Methodology, cont’d

- Independent case study design: examined each site as a single case study

- Data collected from:
  - Case Management Systems
  - Site Visits and Interviews with attorneys, judges, agency leadership, and other stakeholders
  - Attorney Surveys
Key Finding

Funding changes for child and parent counsel had a direct impact on several factors that affect legal representation quality, such as attorney recruitment and retention, multidisciplinary legal practice, caseloads, workload per case, and case delays.

Primary areas affected by funding changes fall into two categories: Staffing and Time
STAFFING

- Attorney Recruitment and Retention
- Multidisciplinary Legal Practice
- Compensation levels

Adequate staffing leads to fewer delays, greater consistency in representation for the client, and opportunities to improve practice through training, experience, and oversight.
TIME

- Caseloads
- Workloads
- Continuances

By having a lower caseload, attorneys have more time per case, including time for out-of-court advocacy, more time to prepare for court hearings, and more time to meet with clients.
<table>
<thead>
<tr>
<th>Representation Duties Affected by Time – Not Enough Time (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Site B</strong></td>
</tr>
<tr>
<td>Making a sound legal argument</td>
</tr>
<tr>
<td>Site B: 33%</td>
</tr>
<tr>
<td>Site C: 40%</td>
</tr>
<tr>
<td>MC &amp; PC: 50%</td>
</tr>
<tr>
<td>Making sure my client understands their legal options</td>
</tr>
<tr>
<td>Site B: 41%</td>
</tr>
<tr>
<td>Site C: 20%</td>
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<tr>
<td>MC &amp; PC: 100%</td>
</tr>
<tr>
<td>Spending time out of court learning about the case</td>
</tr>
<tr>
<td>Site B: 53%</td>
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<tr>
<td>Site C: 18%</td>
</tr>
<tr>
<td>MC &amp; PC: 50%</td>
</tr>
<tr>
<td>Having a strong relationship with agency counsel</td>
</tr>
<tr>
<td>Site B: 31%</td>
</tr>
<tr>
<td>Site C: 40%</td>
</tr>
<tr>
<td>MC &amp; PC: 0%</td>
</tr>
<tr>
<td>Having a strong relationship with the judge</td>
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<tr>
<td>Site B: 24%</td>
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<tr>
<td>Site C: 22%</td>
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<tr>
<td>MC &amp; PC: 0%</td>
</tr>
<tr>
<td>Having a strong relationship with other (non-agency) counsel on the case</td>
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<tr>
<td>Site B: 32%</td>
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<tr>
<td>Site C: 33%</td>
</tr>
<tr>
<td>MC &amp; PC: 0%</td>
</tr>
<tr>
<td>Having a strong relationship with agency or volunteer staff</td>
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<tr>
<td>Site B: 55%</td>
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<tr>
<td>Site C: 77%</td>
</tr>
<tr>
<td>MC &amp; PC: 0%</td>
</tr>
<tr>
<td>Understanding any related litigation involving my client (e.g., criminal)</td>
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<tr>
<td>Site B: 94%</td>
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<tr>
<td>Site C: 77%</td>
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<tr>
<td>MC &amp; PC: 100%</td>
</tr>
<tr>
<td>Understanding what services or assessments my client needs to complete</td>
</tr>
<tr>
<td>Site B: 65%</td>
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<tr>
<td>Site C: 55%</td>
</tr>
<tr>
<td>MC &amp; PC: 50%</td>
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<tr>
<td>Visiting with my client outside of court</td>
</tr>
<tr>
<td>Site B: 59%</td>
</tr>
<tr>
<td>Site C: 90%</td>
</tr>
<tr>
<td>MC &amp; PC: 100%</td>
</tr>
<tr>
<td>Attending case-planning meetings</td>
</tr>
<tr>
<td>Site B: 82%</td>
</tr>
<tr>
<td>Site C: 88%</td>
</tr>
<tr>
<td>MC &amp; PC: 100%</td>
</tr>
<tr>
<td>Advocating for client’s needs</td>
</tr>
<tr>
<td>Site B: 47%</td>
</tr>
<tr>
<td>Site C: 22%</td>
</tr>
<tr>
<td>MC &amp; PC: 50%</td>
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</tbody>
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Recommendations for Stakeholders

1. Ensure attorney funding adequately addresses staffing and time requirements to meet the demands of each case and improve outcomes for parents and children.

**STAFFING**
- Sufficient funding to recruit quality attorneys and retain them for the long term

**PRACTICE MODELS**
- Funding to invest in multidisciplinary models of practice that include social workers and peer or parent mentors as part of the legal team.

**TIME**
- Funding level that allows for manageable caseloads and sufficient time to meet the workload demands
How to Use the Assessment to Advocate for Parent and Child Counsel Funding

Use this information to explain:

- the impact of compensation on recruitment and retention of counsel
- how decreases in caseload per attorney can help attorneys meet the workload of each case to achieve better outcomes: meet with clients more regularly, build trust and develop stronger relationships with other counsel, identify critical needs
- how increases in funding can help provide greater access to multidisciplinary models of legal representation
- how decreases in funding can lead to increased caseload as well as decreased retention and consistency in representation
Key Finding

In addition to attorney funding, other child welfare system factors influenced the quality of child and parent legal representation. These included agency policy, court funding and structure, and client access to services.
Caseload Changes Over Time

Site A

Site B
Recommendations for Stakeholders

Understand and address potential influences within the child welfare system (both the agency and judicial processes) on quality legal representation (QLR) that exist outside attorney funding, including petition filing, court funding, hearing delays, and the ability of clients (parents and children) to access needed services and supports.
How to Use the Assessment to Advocate for Parent and Child Counsel Funding

Use this information to explain:

- how agency petition filing practices can affect the total attorney caseload that parent and child counsel may handle and their workload per case
- how court funding and structures directly affect case processing and efficient use of attorney and client time
- that the availability and accessibility of services for clients often directly bears on how the case progresses
Factors outside the child welfare system also affected the quality of legal representation available to children and parents in the sites studied.

For example, homelessness and poverty were regularly reported as significant challenges for effective representation.
Recommendations for Stakeholders

3. Understand and address potential influences on representation quality that exist outside the context of the child welfare system.

- **TRANSPORTATION**: Affects the ability of clients to meet with their attorneys, receive services, and travel to the courthouse.

- **HOUSING ACCESS**: Affects the client’s stability, which in turn affects their ability to be contacted, and receive services or information.

- **IMMIGRATION STATUS**: Affects eligibility for services and may require clients meet other court demands.
How to Use the Assessment to Advocate for Quality Legal Representation by Addressing Outside Factors Affecting Client Advocacy

Explain the connection between high-quality legal representation and potential influences that exist outside the context of child welfare, including:

• Transportation limitations
• Housing access and stability
• Immigration

Understand and address these influences through advocacy, legislative action, and increased awareness
Recommendations for Stakeholders

4. Improve and refine data management systems to track important variables to better assess the quality of legal representation and case functioning generally.

Although this recommendation does not derive from the specific findings, it does derive from the assessment process itself, which revealed the need for more robust data in each site to track the quality of representation. By improving data management systems and increasing use of continuous quality improvement driven by data, the quality of legal representation can be better measured and linked with outcomes for children and families.
How to Use the Assessment to Advocate for Quality Legal Representation through Improved Data Management Systems

Use the California assessment to:

- advocate for improved and refined data management systems to track important variables to better reflect representation quality and case functioning generally
- explain how improved data can support advocacy for increased and adequate funding for dependency counsel
What we covered today:

- Background and Methodology
- Three Key Findings and Four Recommendations on:
  - Direct Effects – Staffing and Time
  - Influences within Child Welfare System
  - Factors Outside Child Welfare
  - Data
- How to Use the Assessment Report in Advocating for Quality Legal Representation
Discussion

Please enter your questions into the Q&A
Resources

For the full report and summary visit our website: http://ambar.org/calrep-funding

Check out these other resources:

ABA Center on Children and the Law – www.americanbar.org/child

Family Justice Initiative – https://familyjusticeinitiative.org

Capacity Building Center for Courts – https://capacity.childwelfare.gov/courts/

Capacity Building Center for States: check out this inspiring video from the May webinar “Collaborating with Courts to Promote Foster Care as a Support to Families, Not a Substitute for Parents”
Thank you!