Tools for Evaluating Parent Attorney Performance

by Elizabeth Thornton

Performance evaluations—who needs them? If you’re an attorney representing parents in private practice, you’ve likely gone without them. But, evaluating your performance regularly helps uncover what you’re doing well and what needs work.

Many states are starting to ensure that parents in child welfare proceedings receive high quality legal representation. They recognize that parent attorneys need resources and training to provide their clients the assistance they need. As legal representation for parents emerges as an important child welfare issue, more states, court improvement projects, and institutional law offices are starting to use evaluation tools, including performance measures, to determine if attorneys are providing effective representation to parents.

If you represent parents, you may not work in an institutional parent representation office. You may lack oversight by a state system of representation. However, that does not mean you cannot evaluate your own performance.

This article shares how three states evaluate parent attorney performance. It then discusses how you, as an attorney in private practice, can use these evaluation tools to assess your performance. What you find from your self-evaluation may:

- reinforce what you are doing well;
- expose areas where you can improve your practice; and
- reveal systemic barriers that prevent you from meeting your clients’ needs.

How Parent Representation Systems Evaluate Attorney Performance

This section highlights three states’ efforts to evaluate attorney performance and shares how you might adapt these approaches to evaluate your performance.

Connecticut

In 2005, the Connecticut legislature established the Commission on Child Protection to oversee representation of parents and children in child welfare proceedings. The commission ensures quality legal representation through practice, training, and caseload standards for attorneys in child welfare cases. It contracts with private attorneys and private firms to provide representation to parents and children in the child welfare system. These private contract attorneys must participate in mandatory trainings and follow the Standards of Practice for Lawyers Representing Parents in Child Protection Cases (adopted from the ABA Standards of Practice for Attorneys Representing Parents). They must work with clients outside court and are compensated equally for their out-of-court and in-court work.

In Connecticut, the Chief Child Protection Attorney (CCPA) reviews attorney performance in child welfare cases. The CCPA started the attorney review process by sending short surveys about attorney performance to clients, attorneys, court personnel, and foster parents. The client surveys focused on whether the attorney:

- was available to the client;
- met with the client outside court;
- was reachable by phone;
- discussed the allegations with the

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client and different strategies; and
- effectively argued the client’s position in court.

The judge surveys focused on attorney preparation and knowledge of relevant law and courtroom procedures. The findings from the client surveys revealed that many attorneys did not regularly contact their clients, meet with their clients to discuss the case and case strategies, or attend out-of-court meetings that directly affected their client’s case.

Based partly on these initial survey findings, the CCPA decided to look at attorney activities to determine how well they were meeting requirements of the Standards of Practice for Lawyers Representing Parents in Child Protection Cases. To build accountability into the independent contract system, the CCPA requires attorneys to track activities performed on each case through K.I.D.S., a new case management and information system. The database provides screens and dropdown menus for virtually every activity that can be performed in a case, from reviewing the agency record, to meeting clients to preparing for trial. In this way, the CCPA can compare activities entered on cases to activities required by the practice standards to assess attorney compliance.

A pattern of failure to perform critical activities often leads to further review of an attorney’s work. The database also requires entering hearing outcomes and dispositions that are used to evaluate whether system improvements and enforcement of practice standards is positively affecting the court process and case outcomes.

California
In 2004, the California Dependency Representation, Administration, Funding and Training Program (DRAFT) began as a pilot program in 10 California counties. It has since expanded to 19 counties. DRAFT encourages quality legal representation in child welfare proceedings by setting attorney standards for caseloads, compensation, and performance. Like Connecticut’s system of representation, private or nonprofit attorney offices contract with the California Administrative Office of the Courts to represent children and parents in child welfare proceedings. As part of the contract, attorneys must participate in yearly trainings and comply with practice standards that closely mirror the ABA standards.

The DRAFT program operates on the belief that increased attorney performance leads to better case outcomes for families in the child welfare system. To evaluate attorney and program performance, DRAFT looks at quantitative and qualitative performance measures:

**Qualitative review measures** include either peer or client surveys of attorney performance. The peer survey is given to agency counsel, judges, children’s attorneys and parent attorneys representing opposing parties. The focus of the peer survey is whether parents’ attorneys are prepared for court, have met with their clients, and know the law and court procedures. Client surveys focus on the client’s satisfaction with his attorney, including whether the attorney is available to the client to answer questions and explain the court process. Poor survey results are used to identify training needs for DRAFT attorneys and factor into contract renewal decisions.

**Quantitative review measures** involve comparing pre-DRAFT program and post-DRAFT program reunification rates, including the time it takes for a family to reunify, and relative placement rates for families represented by DRAFT attorneys. DRAFT relies on data collected by the Child Welfare Dynamic Report System, which includes data broken down for every California county, for both pre- and post-DRAFT program reunification rates, length of time to reunification, and relative placements. California’s child welfare data is available at: [http://cssr.berkeley.edu/ucb_childwelfare/](http://cssr.berkeley.edu/ucb_childwelfare/).

The quantitative review assesses whether families represented by DRAFT program attorneys have higher reunification rates, are more likely to reunify within 12 months, and are more likely to use relative placements. The quantitative review helps measure the success of the DRAFT program attorneys, which has proved useful in expanding the DRAFT program.

**Michigan**
In 2007 and 2008, the Michigan Court Improvement Project acknowledged that quality representation for parents in child welfare proceedings is essential to improving outcomes for children and families. To identify strengths and weaknesses with the current parent representation system, the state court administrative office engaged the ABA’s National Project to Improve Representation for Parents in Child Welfare Proceedings to fully assesses how Michigan provides legal representation to parents in child welfare proceedings. A key component of the assessment involved surveys of parents, attorneys, and judges.

Some interesting findings emerged from the surveys. The attorney surveys focused on courtroom practice, timely appointment, and practice norms. Attorney surveys asked how soon after appointment attorneys contacted their client, how often they represented parents throughout all stages of the child welfare case, how they maintained contact with their clients, and the scope of their representation.
Parent surveys focused on parents’ experiences with their attorney and practice norms. Like the attorneys, parents were asked how soon they were contacted by their attorney after the attorney was appointed, how they communicated with their attorney, their opinion of the quality of representation they received, and their satisfaction with how their attorney raised and resolved issues that were important to them.

The overall assessment revealed many strengths in Michigan’s parent representation. However, the attorneys and parent surveys revealed that attorneys viewed their performance relating to the attorney-client relationship quite differently than their clients. For example:

- While almost 99% of attorneys who responded to the survey reported maintaining communication with their clients by phone, only 42% of parents surveyed said their attorneys communicated with them by phone.
- Similarly, while 54% of attorneys reported meeting with clients outside of the office, only 4% of parents reported meeting their attorneys outside of the office. Most parents (70%) reported meeting with their attorneys before court on the day of their hearings.

The Michigan assessment was an important step in improving representation for parents in child welfare proceedings. In October 2009, judges, legislators, community leaders, and parent attorneys met to discuss the
assessments and how to strengthen Michigan’s parent representation system, including supporting parent attorney work with clients outside of court.

**Evaluating Yourself and Why You Should**

Three main evaluation tools emerge from the discussion of state systems of parent representation discussed above: (1) peer, judge, and client surveys; (2) activity logs focused on compliance with practice standards; and (3) data review and comparisons of clients’ case outcomes.

**Surveys**

Surveys can identify what you are doing well and where you can improve. You can use them to compare your perceptions about your performance with those of your clients and peers. One easy evaluation tool that yields important information about your practice is the client survey.

The sidebar includes a brief survey that you can give your parent clients. This survey focuses on:

- your availability to your client;
- how your client perceives your attorney/client relationship;
- if your client feels you raise and resolve issues that are important to her; and
- your client’s overall satisfaction with your representation.

In Michigan and Connecticut, clients’ experiences often differed from their attorneys’ experiences. You might be surprised by the feedback you get from client surveys. Consider sending a client survey to all of your parent clients with a self-addressed stamped envelope, or to a random sampling of your clients.

While some clients will be unhappy with your performance no matter how much work you do, you should be able to identify overall trends from your clients’ experiences. The information you gather can help you improve your practice.

If many clients say you are not explaining the court process or you are not available to answer questions, you may need to reach out to your clients more or spend more time explaining to them what is happening in court. These are easy fixes that can greatly improve your client relationships and overall functioning as an advocate and counselor at law.

You can also use the judge or peer surveys to get a sense of how your colleagues view your work. These surveys may be uncomfortable to use when you have active cases in front of the judges or work with the same peers on a number of cases. Be careful to ensure surveys never discuss specific cases. Instead, these surveys should focus on perceptions of your overall preparedness and knowledge of laws and court procedure. Survey answers can help you identify areas where you need to improve your skills or may need more training.

In some ways, surveys completed by peers and judges may be more useful to you as a private attorney evaluating yourself than they are to a large institutional review of attorney performance. Many judges are protective of attorneys who regularly appear before them, especially when those attorneys are being reviewed by an outside entity.

As a private practitioner evaluating your own performance, you might get more honest information about your performance from judges and peers because the underlying worry that their responses could jeopardize your career will not be there. Ultimately, your response to the information you get from these surveys should help you improve your courtroom advocacy.

**Activity Logs**

Another easy way to evaluate your performance is to keep an activity log for each of your cases. A sample activity log is included on the next page. The activities are tracked based on key elements of the ABA Standards of Practice for Attorneys Representing Parents. Tracking your activities and reviewing your work on your cases lets you know if you are meeting minimum practice standards. For example, you may find you rarely meet with clients outside court or ask for discovery in your cases. This may be because you have developed some habits in your years of practice that you can change. Or, this may be because you are not compensated for your time working on cases out-of-court. Either way, you will have learned valuable information that you can use to improve your practice and possibly advocate for improved support of the work you and your colleagues do.

**Data Review and Case Outcomes**

Evaluating outcome data for your cases and comparing it to a standard may seem impossible if you are in private practice. However, you can do a rough comparison of your case outcomes to case outcomes in your state. Just follow these simple steps:

**Step 1: Look at national trends.**

Every state must track their adoption and foster care statistics to be eligible for federal funding. National data is compiled and available on the U.S. Department of Health and Human Services, Administration for Children and Families Web site: www.acf.hhs.gov/programs/cb/stats_research/index.htm#afcars. This data includes information about the number of children exiting foster care through reunification.

### Sample Case Activity Log

**Case Name:** In re E.F.

**Case Opened:** 6/10/10

**Client:** Jean Ferra (mother)

<table>
<thead>
<tr>
<th>Date</th>
<th>Client Relationship</th>
<th>Investigation/Discovery</th>
<th>Court Prep</th>
<th>Hearings</th>
<th>Post Hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>6/15/10</td>
<td>Call client. Arrange office meeting for 6/20. Time: .10</td>
<td>Review agency case file. Phone call to caseworker. Time: 1.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6/20/10</td>
<td>Meet client. Explain role/confidentiality. Review agency petition &amp; initial report. Discuss agency case file and upcoming court date on 7/2. Discuss programs &amp; services with client. Time: 1.25</td>
<td>Interview client. Time: 1.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6/22/10</td>
<td>Call client to discuss substance abuse treatment program and upcoming meeting with caseworker. Time: .25</td>
<td>Call agency attorney to discuss upcoming hearing/settlement negotiations. Time: .40</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6/25/10</td>
<td>Attend team meeting at agency office to discuss services for client and case resolution. Time: 1.00</td>
<td>Call relative foster parent for client’s son. Discuss visits and plan for shared responsibilities for client and caretaker. Time: .50</td>
<td>Draft settlement agreement/circulate to all counsel. Time: 1.60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6/28/10</td>
<td>Call client to discuss settlement. Talk about visitation and treatment program. Time: .50</td>
<td>Review report from client’s treatment provider. Time: .25</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6/29/10</td>
<td>Phone call to treatment provider. Discuss report. Time: .30 Telephone call to caseworker. Time: .25</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7/1/10</td>
<td>Phone call to client. Confirm hearing date and time. Time: .10</td>
<td>Check in with counsel about settlement proposal. Time: .25</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7/2/10</td>
<td>Office meeting with client to review case plan and answer any questions re: court hearing. Time: .75</td>
<td>Attend pretrial settlement conference. Time: 1.00</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Step 3: Identify your performance measures. To evaluate attorney performance, the California DRAFT program looks at reunification rates and the length of time it takes families to reunify. Using the data available through the CDF Web site you can see what the percentage of exits of children to reunification is in your state. You can also see how many children went home in less than 12 months and how many children went home between 12 and 24 months. For example, based on the data gathered by the Children’s Defense Fund, in Arizona between the years 2002 through 2005, 54% of children reunified with their parents.

Step 4: Compare your case data with state trends. To see how your cases compare to the state average, look at your out-of-home cases for a year timeframe. Of those cases, you can see how many of your cases achieved reunification. If you practice in Arizona, and the percentage of your cases reunified is significantly lower than the 54% average, you may want to look closely at how you handle your cases and what systemic barriers may be preventing your clients from reunifying. It could be that services are not available for clients in your jurisdiction or that you need to take a more active role helping your client access services.

Step 5: Identify strengths/improvement areas. Comparing outcomes in your cases to a state average is by no means a perfect measure of performance. First, the statewide data cited on the CDF Web site may be out of date. The number of cases resolving in reunification and the timeframes for reunification can vary significantly from county to county. There are countless factors that affect outcomes on every case. For example, your reunification rate may be low because you are working hard to get your clients’ children home before their case goes to disposition. This could mean that only your most challenging clients have their children placed out of their care. You may appear before a judge who is reluctant to reunify families unless every reunification service is perfectly completed. You may practice in an area where services are not readily available to families. Comparing your case outcomes to your state average can be a catalyst to begin thinking about the many factors, including your representation, that impact your clients’ success.

Conclusion

Having represented parents myself, I know your days already have too few hours to accomplish everything you want for your clients. Using these self-assessment tools may seem like a waste of time when you have 10 phone calls to return after a full day of court hearings. But by using just one or two of these self-evaluation tools you can gain insight that can help you improve your practice and better meet your clients’ needs.

Self-evaluation also can lead to broader change. As you identify areas in your practice that need improvement, you can begin to identify systemwide barriers that prevent you and your clients’ success. As parent representation continues to emerge as an important child welfare issue, it is likely that more states will begin evaluating parent attorney performance. Evaluating yourself can validate what you are doing well and help you fine-tune your practice now.

Elizabeth Thornton is an attorney at the ABA Center on Children and the Law. Her work at the Center includes a focus on improving representation for parents.

Notes

1 While this article focuses on self-assessment for parents’ attorneys, many of the assessment tools discussed can be used to assess children’s attorneys’ performance.

(In re R.A., Cont’d from page 83)

Parental rights. The father testified he had housing, child care, a steady job, and had raised four other children. The facts did not show he was “unwilling or unable to eliminate the harm facing the child” or that he was “unable or unwilling to provide a safe and stable home for the child.”

The department did not make “reasonable efforts to provide services to help the parent correct the circumstances which led to the child’s placement outside the home” and the court did not consider “alternatives to termination of parental rights.” The department never worked with the father to develop a reunification service plan or gave him updates on the child. He was only offered parenting classes, which was inappropriate since he had raised four children. His visits took several months to set up and were monitored for only one hour per week. He was never given a fair chance to bond with his child. The department’s goal had been adoption since March 2007, only four months after the father’s paternity test came back positive.

Last, there was no question the child was minimally bonded to the father. However, the father was only given minimal supervised visits. This minimal visitation was itself a basis not to terminate the father’s rights. There was insufficient evidence that “termination of parental rights will not do more harm than good.”

The three dissenting justices criticized the majority for focusing on the father, not the best interests of the child. They stressed the child was with his foster parents for most of his life and the father’s nine-month delay in offering to take custody was tantamount to abandonment.