



A Groundbreaking Study of Children's Attorney Workloads: The *Kenny A* Case Report (Part 1)

As a result of a federal class action in Georgia, a sophisticated study of the caseloads of Child Advocate Attorneys (attorneys for children) has recently been released. This article describes the study and its results in two parts. Part One describes the background of the *Kenny A* case and the methodology of the study. Part Two sets out the study results and recommendations for reform.

Kenny A. Consent Decree

The *Kenny A* case is a federal court class action lawsuit filed in June 2002, in which the plaintiffs asserted violations of foster children's constitutional and statutory rights under federal and Georgia state law. *Kenny A v. Perdue et al.*, 356 F.Supp.2d 1353 (N.D. Ga. 2005). Among other things, there was a claim against Fulton County, Georgia, for failure to provide adequate, appropriate and meaningful legal representation for children alleged to be abused or neglected and involved in juvenile court proceedings.

In a February 2005 order, federal Judge Marvin Shoob issued a summary judgment order stating that children in all deprivation (i.e., dependency) proceedings have a statutory and state constitutional right to effective counsel and that the children are parties in these cases. The order said that deprived children have a due process right to counsel because fundamental liberty interests are at stake – children's safety, health and well-being; their interest in maintaining the integrity of the family unit; and their interest in having a relationship with their biological parents.

As a result, the parties entered into a consent decree for Fulton County on February 10, 2006. The decree requires three main changes:

- Establishment of an office for the Fulton County Child Advocate Attorneys (CAA) with specified levels of full-time employees including attorneys, investigators and support staff. The CAA office was established prior to the *Kenny A* decree as a division of the Juvenile Court, but the decree mandated that the office become an independent division of the Fulton County government. Initially, the CAA office was moved to the Office of the Public Defender. Shortly thereafter, the Fulton County Board of Commissioners created a Child Advocate Board to oversee the CAA Office so that it is essentially its own division.
- Adherence by individual Fulton County Child Advocate Attorneys (CAAs) to the Principles and Guidelines set forth for the representation of children as stated in the consent decree. These Guidelines are largely based on the *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (<http://www.abanet.org/child/resources.shtml>).

- Comprehensive review of the workloads of Fulton County CAAs performed by the Carl Vinson Institute of Government (CVIG) at the University of Georgia.

This last requirement – the comprehensive Fulton Workload Study – provides groundbreaking data and recommendations regarding the responsibilities of children's attorneys.

The Fulton Workload Study

According to the consent decree, the Workload Study was to make recommendations for standards by which the workloads of CAAs should be measured, whether by caseload counts or some other mechanism. The Study was also to take into account case volume, types of cases and their levels of difficulty, the use of volunteer lawyers, attorneys' experience level, support staff, equipment, technology, and other factors substantially affecting the CAA workload. The result of the Study would provide the basis for ongoing determinations of staffing requirements and be incorporated into the consent decree.

The Study was released in June 2007. If the Court approves the Study, the County will have 180 days from the date of approval to comply with its recommendations.

Study Methodology

The Study team developed a methodology to:

- Describe current practices of Child Advocate Attorneys (CAAs) (including caseloads and work patterns);
- Estimate how much time each CAA would require to comply with the *Kenny A* Principles and Guidelines; and
- Estimate how that compliance would affect the number of children that each CAA should represent.

The methodology included:

- a review of the current work environment of CAAs,
- focus group discussions with current CAAs,
- data collection during a month-long study of time spent by CAAs,
- observations in court,
- case file reviews, and
- an analysis of the data collected in light of the *Kenny A* mandates.

During a month-long detailed study from February 14 to March 14, 2007 (conducted while the CAAs were housed within Public Defender's Office), CAAs reported how much time they spent on different phases of their case work and on different kinds of activities, specifically those

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(continued from front page)

activities stated in the *Kenny A* decree as well as tasks identified as necessary or advisable in the *ABA Standards of Practice*. The study addresses both the numbers and percentages of cases in which certain types of activities were performed and the percentage of total CAA time spent on different activities.

The study used multiple methods to collect data in an attempt to take into consideration all factors that affect a CAA's representation including focus groups, court observations, file reviews, and a detailed time study. Project members used CAA focus groups throughout the Workload Study to evaluate elements of the task environment, to analyze the results of the time study, and to develop an appropriate workload standard.

The crux of the methodology was the time study that was designed to allow CAAs to describe with precision how they spent their time while representing child clients. The study considered all the ways that CAAs spent their time, including time spent with child clients who were not members of the *Kenny A* class – those who were not in the custody of the Fulton County Department of Children and Family Services. The time study collected data from the following five general components:

- Case Phase and Activity
- Hearing-Specific Activities
- Case Participants
- Time
- Assessment of Time Needed

The study further divided these components into subdivisions so that the time study would be comprehensive and the terms used would be mutually exclusive to the extent possible. For example, the "Case Phase and Activity" category provides for both primary activities such as "Adjudication" or "Disposition" and secondary activities such as "Hearing—wait time" or "Motion—continuance." CAAs were instructed to select a more detailed category rather than a general one if an activity could be placed under multiple categories. The time study also asked CAAs to identify the amount of "quality time" that they spent on one case and whether that time was sufficient to provide good and zealous representation.

Based on this methodology, the Workload Study identifies two different caseload numbers. The "point-in-time" caseload identifies the number of discrete child clients an average CAA currently represents. The "annually opened" caseload identifies the total number of new children represented by CAAs each year. Detailed results of the Workload Study are discussed in Part 2 of this article in the July 2007 issue of *Child CourtWorks* (Volume 9, Issue 5).

This article is adapted from the Executive Summary and various chapters of the Child Advocate Attorney Representation and Workload Study conducted by the Carl Vinson Institute of Government at the University of Georgia. The full report, along with other related materials, can be found on the ABA's National Child Welfare Resource Center on Legal and Judicial Issues website at <http://www.abanet.org/child/rcjji/online.html> under "Other". For specific information about the study, please contact Karen Baynes at baynes@cviog.uga.edu or (706) 542-2736.

Legal Center for Foster Care & Education

The Legal Center for Foster Care and Education (Legal Center FCE) is a national technical assistance resource and information clearinghouse on legal and policy matters affecting the education of children in the foster care system. The Legal Center FCE provides expertise to states and constituents, facilitates networking to advance promising practices and reforms, and provides technical assistance and training.

Resources available through the Legal Center FCE include publications, a resource library of documents related to education of children in foster care organized by state and topic, a listserv, and a schedule of conference calls focused on topics of interest to advocates working in the field of foster care and education.

The Legal Center FCE is a collaboration between Casey Family Programs and the ABA's Center on Children and the Law, in conjunction with the Education Law Center-PA and the Juvenile Law Center.

For more information visit the Legal Center FCE website at www.abanet.org/child/education/home.shtml.



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