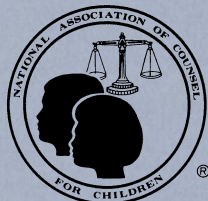

Child Welfare Law Office Guidebook

Best Practice
Guidelines for
Organizational
Legal Representation
of Children in
Abuse, Neglect, and
Dependency Cases



**National Association
of Counsel for Children**

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Abuse, Neglect, and
Dependency Cases



**National Association
of Counsel for Children**

NACC

NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN



Mission

THE MISSION OF THE NACC IS TO:

Strengthen the Delivery of
Legal Services for Children

Enhance the Quality of
Legal Services Affecting Children

Improve Courts and Agencies
Serving Children, and

Advance the Rights
and Interests of Children

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The *Child Welfare Law Office Guidebook* is produced by the National Association of Counsel for Children, Denver, Colorado.

The National Association of Counsel for Children (NACC) is a non profit child advocacy and professional membership association headquartered at the Kempe Children's Center at The Children's Hospital in Denver, CO. The mission of the NACC is to provide high quality legal services to children and families in the child welfare, juvenile justice, and family law systems. NACC members are primarily attorneys and judges but many physicians, social workers, CASAs, therapists, and other advocates make up the NACC's 2200 members throughout the country. Through its programs, the NACC provides training and technical assistance and works to improve the practice of juvenile and family law. The NACC also engages in policy advocacy to improve our family service systems.

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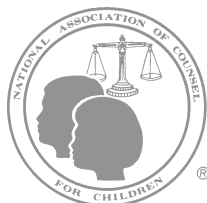
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National Association
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A. The NACC Children's Law Office Project

The Children's Law Office Project (CLOP) is a program of the National Association of Counsel for Children (NACC)¹ designed to improve the delivery of legal services to abused and neglected children through improved child welfare law office operation. The NACC believes that dedicated child welfare law offices concentrating on the legal representation of children provide one of the best models for the delivery of high quality legal services. Yet there are relatively few such offices in the country and existing offices often function without adequate resources, guidelines, or opportunity to collaborate.

CLOP is designed to identify the nation's child welfare law offices, bring them together in a national law office network, provide technical assistance for law office operation, and recognize exemplary programs. The long term goal is the proliferation of model child welfare law office practice, which will improve outcomes for thousands of children and their families each year.

The project has been guided by a volunteer National Advisory Board comprised of child welfare law office executives with significant experience in the practice of child welfare law and law office management. These individuals, representing premier programs across the country, have also served as the drafters of this *Guidebook*. This, then, is a publication written by child welfare law offices for child welfare law offices. The NACC and the child welfare legal system are indebted to these people.

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Camille Ventrell, JD	NACC Administrator / Certification Director
Daniel Trujillo	NACC Membership & Program Coordinator

¹ CLOP is part of the NACC's mission to improve the quality of legal services to children and develop the practice of law for children as a distinct legal specialty. Please contact the NACC for more information: NACC, 1825 Marion Street, Suite 242, Denver, CO 80218; 888-828-NACC; advocate@NACCchildlaw.org; www.NACCchildlaw.org.

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B. Child Welfare Law Offices

The practice of child welfare law is complex and dramatically impacts the lives of thousands of children and families each year. Attorneys representing children must possess expertise in state and federal substantive and procedural law, trial advocacy and dispute resolution, collateral proceedings, community resources and services, family dynamics, and child maltreatment and development. It is an increasingly specialized field.

The modern practice of child welfare law is relatively young with its roots in the Child Abuse Prevention and Treatment Act (CAPTA) of 1974. Since that time, the practice has developed rapidly from a handful of mostly volunteer lawyers to a sophisticated and distinct legal specialty. In 2001 the American Bar Association designated the practice of child welfare law as a formal legal specialty.²

The delivery of high quality child welfare legal services requires a practice infrastructure which provides the attorney with the necessary time, compensation, and resources. The NACC believes, therefore, that one 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 (CWLO).

For the purposes of CLOP and this publication, a CWLO is defined as “an entity organized and operated for the purpose of delivering legal services to children and youth. A CWLO must have substantial involvement / concentration in the practice of child welfare law (abuse, neglect, and dependency). A CWLO must employ a minimum of three (3) full-time staff attorneys with substantial involvement in child welfare law.”

As this definition indicates, a CWLO must exist for the purpose of providing legal services to children. The proportion of legal service dedicated to the various areas of children’s law will vary. Some law offices may focus exclusively on child welfare law while others may provide legal services in areas such as delinquency, education, mental health, immigration, or family law in addition to child welfare law. All such offices may be considered CWLOs so long as they have a substantial involvement³ in child welfare law.

CWLOs are encouraged to use this publication as a means of achieving best practices. The guidelines contained herein are just that — guidelines. The NACC and the drafters of this publication recognize that the practice of child welfare law varies from jurisdiction to jurisdiction and that there is no “one size fits all” model. We encourage offices to work toward substantial conformity or compliance with these guidelines and also to make thoughtful decisions when departing from suggested guidelines. While acknowledging the different ways to provide organizational representation to children, these guidelines establish baselines which lead to a high functioning, comprehensive, client-centered program. The guidelines are intended to be flexible and may be adapted to local conditions.⁴

2 The ABA defines Child Welfare Law as follows: “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 child custody and adoption disputes where the state is not a party. Lawyers certified in Child Welfare Law must be knowledgeable in the state and Federal laws applicable to child protection and foster care. A specialist must also understand relevant principles from child development and psychology regarding individual and family dynamics and appropriate treatment modalities for child abuse and neglect and be capable of recognizing the professional responsibility and ethical issues that arise out of the client’s status. Lawyers certified as specialists in Child Welfare Law should also be proficient in the skills of interviewing and counseling child clients.” ABA Standing Committee on Specialization Approval of NACC Definition, Standard 4.05(C), July 26, 2001.

3 The drafters of this publication decline to assign a strict interpretation to the term “substantial involvement.” It is intended to be a somewhat subjective standard. As a general guide, it is noted that the ABA defines substantial involvement for purposes of lawyer specialty certification as “twenty-five percent (25%) of the total practice of a lawyer engaged in a normal full-time practice.”

4 The views and opinions expressed herein do not necessarily represent the official views of the organizations to which individual authors are affiliated.

Best Practice Guidelines

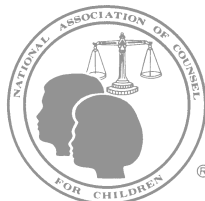
This *Guidebook* is a collection of 33 best practice guidelines intended to move child welfare law offices toward model practice. It is organized by three areas of operation: administration, development, and program. Within these categories are guidelines. Each guideline is a general proposition followed by commentary, intended to illustrate compliance with the guideline. The various guidelines were developed by the CLOP staff and advisory board to promote best practices in the delivery of legal services to children.

Join the CWLO Community

CWLOs meeting the CLOP definition are invited to join the CLOP network. Becoming part of a national network of offices allows for cross-fertilization of successful programs and funding development. The national network also conducts policy advocacy, through collaboration on significant national *amicus curiae* and impact litigation, as well as national legislative advocacy. CLOP CWLOs hold an annual meeting in conjunction with the NACC National Children's Law Conference. Members of the CLOP network also consult and mentor each other and other new programs throughout the year through a listserv, telephone conferencing, and regional visits.

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The following checklist outlines the 33 CWLO guidelines without the commentary provided in the full text.

Definition of a Child Welfare Law Office

A Child Welfare Law Office (CWLO), for the purposes of the NACC Children's Law Office Project, is an entity organized and operated for the purpose of delivering legal services to children and youth. A CWLO must have substantial involvement / concentration in the practice of child welfare law (abuse, neglect, and dependency). A CWLO must employ a minimum of three (3) full-time staff attorneys with substantial involvement in child welfare law.

A. Administration

- ☐ **A-1 Business and Strategic Plan / Organizational Structure:** A child welfare law office should be developed and run according to comprehensive business and strategic plans.
- ☐ **A-2 Administrative Infrastructure:** A child welfare law office should have a sound administrative infrastructure, including:
 - ☐ adequate support staff;
 - ☐ insurance;
 - ☐ Information Technology (IT) support; and
 - ☐ research ability.
- ☐ **A-3 Physical Space:** A child welfare law office should look and feel comfortable for child clients and be sensitive to privacy issues. An office should include child-friendly furniture, activities, and space, as well as private office space for waiting and interviewing.
- ☐ **A-4 Institutional Support:** A child welfare law office that is housed within a larger organization, such as legal services or public defender agencies, should have firm, on-going core support from its parent program. The parent organization should support necessary administration, training opportunity, human resource assistance, and fund raising services that will help the CWLO and its staff to function effectively.
- ☐ **A-5 Written Office Policies, Practices, and Procedures:** A child welfare law office should have written policies, practice and procedures that govern its administrative/personnel operations and its substantive practice.
- ☐ **A-6 Leadership and Supervision:** A child welfare law office should be governed by managers attuned to the administrative, development, and programmatic needs of a child welfare law office and should also provide uniform, skilled supervision for all staff.

-
- ☐ **A-7 Interns, Volunteers, and Relationships with the Local Bar:** A child welfare law office should use interns and volunteers and affirmatively develop good relations with law schools and the local bar in order to increase service, improve practice, and encourage good lawyers to engage in child advocacy.
 - ☐ **A-8 Staff Salaries:** A child welfare law office should pay sufficient salaries and benefits so that professionals can devote their time fully to representing abused, neglected or at risk children.
 - ☐ **A-9 Staff Recruitment:** A child welfare law office should have mechanisms in place for recruiting qualified staff members with diverse experiences and backgrounds.
 - ☐ **A-10 Staff Retention:** A child welfare law office should make every effort to retain staff by providing adequate pay and benefits, adequate supervision and support, and opportunities for professional development and career advancement.
 - ☐ **A-11 Staff Recognition:** A child welfare law office should create formal and informal mechanisms for recognizing the good work of its staff members.
 - ☐ **A-12 Staff Diversity:** A child welfare law office should strive to achieve staff diversity which reflects its client base.
 - ☐ **A-13 Cultural Competence:** A child welfare law office should deliver culturally competent services.

B. Development and Outreach

- ☐ **B-1 Public and Media Relations:** A child welfare law office should actively engage in public relation activities to increase the community's awareness of the important legal services that the office provides to the children in the community.
- ☐ **B-2 Client Outreach and Youth Involvement:** A child welfare law office should conduct client outreach activities and involve youth in the design and evaluation of the office's program and services.
- ☐ **B-3 Fund Development:** A child welfare law office should have comprehensive and diverse funding sources in order to provide quality representation of child clients and to allow each staff person to represent a manageable number of clients.
- ☐ **B-4 Growth Management:** A child welfare law office should prepare for the vagaries of the child welfare and legal services marketplace, including planning how to grow the organization or, if need be, how to pare down to essential services.
- ☐ **B-5 Collaborative Relationships:** A child welfare law office should build, sustain, and maintain credibility in the child welfare and public interest community. Such credibility can be

developed and enhanced by, for example, (a) active participation in local, state and national networking, (b) engaging in dialogues regarding key issues and initiatives relating to the state and national child welfare system, (c) developing collaborative relationships with organizations with similar missions, and (d) developing and maintaining relationships with law makers, governmental leaders, and the organized bar.

C. Program

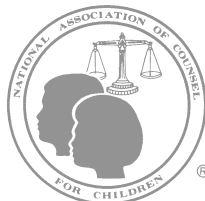
- ☐ **C-1 Child Welfare Case Concentration:** A child welfare law office should have a substantial concentration on child welfare cases in order to implement and support the administrative and programmatic practices recommended in these guidelines.
- ☐ **C-2 Standards of Practice:** A child welfare law office must comply with representation guidelines and standards of practice.
- ☐ **C-3 Knowledge of Community Resources:** A child welfare law office should develop expertise in the services its community offers that are relevant to the needs of children in abuse and neglect cases.
- ☐ **C-4 Multidisciplinary Practice:** A child welfare law office needs to incorporate the expertise of other disciplines to best represent its clients, given the complexity of social, economic and cultural influences at issue in child welfare cases.
- ☐ **C-5 Case Consultation:** A child welfare law office should have protocols for consistent case consultations or case reviews, both formal and informal, within the office and with outside experts to provide attorneys and other staff the opportunity to discuss and analyze cases collectively.
- ☐ **C-6 Caseloads:** A child welfare law office should maintain reasonable caseload limits to enable staff attorneys to comply with standards of practice in representing their clients.
- ☐ **C-7 Staff Training:** A child welfare law office should provide professional staff with comprehensive, ongoing training specific to the role and duties applicable in their jurisdiction.
- ☐ **C-8 Training in the Community:** A child welfare law office should not only develop the expertise of staff members, but should endeavor to train other participants in the child welfare system as well.
- ☐ **C-9 Attorney Certification:** A child welfare law office should be staffed by attorneys who are Certified Child Welfare Law Specialists. Specialty certification is a significant measure of competence, helps ensure legal expertise, and builds the status and credibility of the office as a whole.
- ☐ **C-10 Quality Review and Outcome Measures:** A child welfare law office should develop mechanisms to ensure the quality of its representation.

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- ☐ **C-11 Accountability:** A child welfare law office should establish a system for accountability to its clients, the court, and the community at large.
 - ☐ **C-12 Policy and Legislation:** A child welfare law office should support or initiate policy reforms and legislative action aimed at creating positive systemic change on behalf of children in the child welfare system.
 - ☐ **C-13 Impact Litigation:** A child welfare law office should undertake or support impact litigation as a tool to effect positive systemic changes on behalf of children in foster care.
 - ☐ **C-14 Writs and Appeals:** A child welfare law office should ensure that it has the ability to either pursue appeals and writs for its clients, or refer them to counsel who will competently handle the appeal in close collaboration with the trial attorneys.
 - ☐ **C-15 Amicus Curiae:** A child welfare law office should participate as *Amicus Curiae* (friend of the court) in significant cases as a means to promote child welfare system improvement through case law development.

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Administration



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III • Child Welfare • Law Office Guidelines

Definition of a Child Welfare Law Office

A Child Welfare Law Office (CWLO), for the purposes of the NACC Children's Law Office Project, is an entity organized and operated for the purpose of delivering legal services to children and youth. A CWLO must have substantial involvement / concentration in the practice of child welfare law (abuse, neglect, and dependency). A CWLO must employ a minimum of three (3) full-time staff attorneys with substantial involvement in child welfare law.

A. Administration

GUIDE LINE A-1

Business and Strategic Plan / Organizational Structure⁵

A child welfare law office should be developed and run according to comprehensive business and strategic plans.

by **Elizabeth Wicht, MBA**, former Administrator
NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN
Denver, Colorado

Commentary

Whether starting a child welfare law office or seeking to enhance a current practice, business and strategic plans are critical tools for organizational development. From obtaining key funding to guiding management and growth, these plans help to conceptualize the design and implementation of agency policies and practices.

There are several clear benefits to investing time into creating these plans. First, they help to clearly define the purpose and goals of the agency. Next, the planning process bridges board members and staff and focuses the resources of the organization on critical priorities. This creates efficiency and joint ownership in the plan and its goals (ultimately the mission of the organization). It can help the team identify potential obstacles early on before they become true problems. Finally, business and strategic plans can be a convincing tool for approaching potential donors exemplifying the office's professionalism and organization. The following outlines for Business Plan Key Elements and Strategic Plan Description and Creation Steps provide a high level overview of the processes.

Business Plan Key Elements

1. Executive summary. Written last but should be first item in the plan.
2. Detail the mission. List the mission and name or organization/logo.
3. Describe the organization. A paragraph or two explaining the services and/or programs at a high level.

⁵ Sources: Griesmann, Donald A. "Nonprofit Incorporating – The Business Plan." 2001. www.nonprofits.org/npofaq/misc/010708NP_Biz_Plan.pdf; McNamara, Carter. "Business Planning (for non profits or for-profits)." Authenticity Consulting LLC. 1999. Free Management Library. www.mapnp.org/library/gen_rsrc/newsgrps/np_grps.htm; McNamara, Carter. "Strategic Planning (in non profit or for-profit organizations)." Authenticity Consulting LLC. 1999. Free Management Library. www.mapnp.org/library/gen_rsrc/newsgrps/np_grps.htm.

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4. Describe the need. Are there gaps in government services the organization is filling? Competition for services? Provide numbers about service expectations — i.e., aim to represent $\frac{2}{3}$ of children in the county.
 5. Describe the Marketing/Implementation plan. How will the office bring services and needs together? Describe the model for the organization. Forecast impact on need. Identify and explain plan for overcoming obstacles.
 6. Describe management and operations plans. A well-developed organizational structure which details a specific chain of authority and guides the office in all policy, program, substantive, administrative, and development activities should be outlined. How will the office recruit the talent and expertise needed? What type of building space, technology and other resources are required?
 7. Financial Plan. Explain funding sources and fees for services. Detail costs for building, staff, benefits, etc. What funds does the office require and how will they be used? Create a forecast for at least 3–5 years for all income and expenses.
 8. Attachments. Add budget details, board list, biographies for key managers, foundation support letters, licenses required, etc., in this section.

Strategic Plan Description

A strategic plan fits within a business plan and essentially describes where the organization is going, how it plans to get “there,” and how it will know when it has arrived. Strategic plans can be high level or detailed, span one year or many years. Usually these plans are goal-based, branching down in detail from the mission to goals to action plans (objectives, responsibilities, timelines, etc.).

A strategic plan should be created or reworked when the organization is just starting, when a new program or need is identified, or when new targeted funding comes into the organization. Once in place, the plan should be reviewed at least annually and all action plans updated accordingly.

Strategic Plan Creation Steps

1. Invite the right participants. Board and management staff are the minimum. The more stakeholders involved, the easier the plan implementation.
2. Provide external and internal analysis. Assess the organization’s strengths, weaknesses, opportunities, and threats for the past, present and future. Prioritize the main issues for the organization.
3. Develop a vision. Taking into account the past, present and future landscape described in the analysis, what does the future of the organization look like?
4. Develop or update mission. Take a closer look at the organization’s mission and ensure it still meets current needs given what the team has uncovered and learned.
5. Develop high level goals mapped to the mission. Create an action plan for each goal that is time managed, assigned to a specific person/group, and tangible.
6. Document and communicate the plan.
7. Provide a timeframe for measurable progress to be tracked for the organization. A process for monitoring and evaluating this plan is critical.

While nonprofits are often known for their excellence in service, many times they come up short on administrative functions. Business and strategic plans enhance credibility with funders and other critical community partnerships by providing processes and outcomes that link to specific implementation goals. Even if office administrators look through these checklists and know all the elements that might be included in the plans, it is still important to go through the process of creating them. The process itself has value and will ensure that the key leaders are all on the same page. Experience the benefits from the continuous learning and program improvement that creating a business plan and a strategic plan can generate!

Administrative Infrastructure

A child welfare law office should have a sound administrative infrastructure, including:

- *adequate support staff;*
- *insurance;*
- *Information Technology (IT) support; and*
- *research ability.*

by **Christopher Wu, JD**, Supervising Attorney
ADMINISTRATIVE OFFICE OF THE COURTS CENTER FOR FAMILIES, CHILDREN AND THE COURTS
San Francisco, California

Commentary

Child welfare law offices operate in a competitive legal environment that increasingly demands the use of modern technology and thoughtful office staffing for efficient and effective practice. A well-planned office must consider its needs and resources in the noted areas of infrastructure.

Support Staff

Historically, many children's law practices have operated on a low budget with little or no support staff. Efficient practice in a modern law office, however, requires some thoughtful division of labor among legal and non-legal personnel. Among the staff categories to be considered are:

- **Receptionist** — How often does the office host clients and visitors? Will the office's general phone number be answered during business hours electronically or by someone on staff? If child clients will often call directly, it may be best to avoid requiring them to negotiate a voice mail system if possible. What other tasks might a receptionist be able to cover, if any?
- **Secretarial/Clerical** — Very few law offices of any type assign secretarial staff to attorneys on a one-to-one basis. What is the most efficient ratio for the office? The answer will depend on many factors, including what can realistically be funded. Some non-legal staff will be necessary, however, for word processing, billing, file organization and other secretarial and clerical tasks. Another factor determining need in this area is the technology used in the office and the attorneys' and other staff members' ability to efficiently perform tasks such as word processing and entering billing data and other information on their own.
- **Other professional staff** — This category generally covers non-attorney staff "in the field." In children's law cases, staff with a background in social work may be especially useful. Often the central issues in child welfare cases revolve around case plans and recommendations based on a social work assessment of children's and family's needs. Staff in the field may also help the office maintain more direct contact with clients than attorneys in the courtroom might be able to manage alone. They should not, however, be used as a substitute for establishing an attorney-client relationship when the lawyer is appointed and periodically thereafter. For a more detailed discussion of the role of other professionals in a child welfare law office, see C-4, Multidisciplinary Practice.
- **Paralegals** — As an office grows larger and is involved in increasingly complex legal issues on a regular basis, utilizing paraprofessional legal staff may lead to more efficient operations. Paralegals may, at the direction of attorney staff, conduct research and draft documents that the lawyers may later review and refine. More attorney time may thus be freed up for courtroom and other activities.

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- Interns and volunteers — Similarly, interns and volunteers can also be an integral part of a child welfare law office. They are dealt with more specifically below in A-7, Interns and Volunteers.

IT Support

Computers are an essential tool in today's legal practice. Child welfare law offices should seek expert advice on how to establish, protect, and improve computer hardware and software systems. At a minimum, the office should have a network linking the computers and providing common resources such as file storage and high speed internet access. Management should consider the costs and benefits of hiring dedicated IT staff or contracting with a reliable outside agency to provide ongoing maintenance of the system. Also, whether or not to develop and maintain the office's own website must be considered. It may be a tool for clients, funders and the public to learn more about the office. A website will usually require, however, its own staff or service contract.

Numerous decisions related to technology must be made on a regular basis as the office changes and new hardware and software becomes available. These decisions include:

- Hardware
 - Types of computers (IBM/Windows or Macintosh? Desktop stations or notebook computers and who gets which?)
 - Printers
 - Network servers
 - Personal digital assistants (PDA's)
- Software
 - Office suite software, including
 - Word processing
 - E-mail
 - Spreadsheet
 - Presentation software (e.g., PowerPoint)
 - Billing
 - Calendaring and docketing
 - Virus protection
 - Database (including donor software for nonprofit agencies and method for tracking client or case statistics)

Legal and Other Research

Children's law practice presents increasingly complex legal issues. Moreover, it is an intrinsically multidisciplinary practice that frequently requires knowledge in fields such as psychology, social work, medicine, and law enforcement. The office must assess the available options for conducting legal and other research necessary for client representation. Are there law library resources nearby, perhaps through the court or a law school? What other relevant libraries are accessible (e.g., to research medical or mental health issues)? To what printed materials must attorneys and staff have easy access? What options are available for accessing online research (especially Westlaw or Lexis)?

Insurance

Although some states grant immunity to the law office, professional liability insurance and general business insurance must be major considerations. In states with immunity, the coverage may be minimal, but should be explored, and may even be required by the state's contractual body. In addition, nonprofit agencies will want to include coverage for directors and officers in their insurance package. For CWLOs which are also government agencies, insurance will likely not be an issue.

Of course, procurement of other types of insurance also comes into play in deciding the substance and structure of traditional employee benefits, such as medical, dental and vision coverage. See A-8 for further discussion of benefits packages.

Physical Space

A child welfare law office should look and feel comfortable for child clients and be sensitive to privacy issues. An office should include child friendly furniture, activities, and space, as well as private office space for waiting and interviewing.

by **Susan Dillard, JD**, Co-Director of the Children & Family Law Program
COMMITTEE FOR PUBLIC COUNSEL SERVICES
Boston, Massachusetts

Commentary

Planning office space for a child welfare law office begins with consideration of criteria that are not different from planning any office. The individuals making decisions about the office will plan the physical space to accommodate the number of people who will work there and the work they will do. Planners will also need to attend to details that make the space appropriate for child clients who might be coming to the office. It should look and feel comfortable for children, incorporating child-friendly furnishings, furniture, and art.

Location and Building Selection

In choosing a location for a child welfare law office, planners must be mindful of the mission and function of the office. Location selection will depend on the geographic area the office will be serving, proximity to the courts where attorneys will work, parking requirements, and access to public transportation.

Security is also an important issue. It includes looking at access to the building and office, and being thoughtful about the location of the building. For example, given that staff sometimes work at night and on weekends, locating an office in a business area that is deserted after five or six o'clock may not be sensible.

Accessibility for people with disabilities is usually accommodated in office buildings. However, the ease of accessing a building, offices and restrooms varies. Accessibility is always a factor to consider in choosing a location for a child welfare law office. A building's common areas are also important. An entrance that is poorly maintained, a litter covered parking area, or a sidewalk with inadequate snow removal will give poor impression of the office.

Space Planning

In estimating the square footage for an office, planners need to consider the number and type of staff, the office operations and the services of the organization. The square footage that will be allocated for each function will vary depending on the organization's budget. No matter what the budget, detailed calculations are necessary to determine the space requirements of the office. The following is a list of staff positions and space needed that can be used as a starting point for calculating square footage.

TYPE OF OFFICE	SQUARE FOOTAGE
Manager	180–200
Senior Attorney	100–120
Attorney or Social Worker	80–100
Support Staff 1	50–60
Support Staff 2	40–50
Interns or Part-time Staff	20–30

In addition to estimating square footage required for workspaces for office personnel, planners will also estimate the square footage that will be needed for other functional areas, such as:

Support Areas

Records and files storage (cases, resource and reference)

Copy machine, printer, fax, and shredder

Mail

Supply storage

Equipment storage (audio-visual equipment, flip charts, large brief cases)

File archives (closed cases, possibly off-site)

Meeting and Common Areas

Reception

Interview or small conference rooms

Large conference or training rooms

Lunch room or kitchen

Library

Planning a Child-Friendly Space

The layout and look of the child welfare law office should reflect and support the nature of its work, and with consideration of how a child will perceive the office. This consideration will affect decisions about room sizes and layouts as well as furnishings and furniture. For example, if children are going to be waiting in the reception area, a planner might allocate extra floor space where a child can play with toys or color, rather than planning space for a chair. Some chairs and tables should be child-size. Colorful artwork will appeal to children more than framed law school diplomas. Special care should be made to ensure that younger children will always be within eyesight of caregivers. The space should be “child-proofed.” Child clients may be easily over stimulated and some quiet space should be provided. Older clients may appreciate age appropriate reading materials. Most decisions are obviously common sense. Pediatrician’s offices, day-care centers and schools may be sources of ideas and inspiration for decorating, furnishing and equipping the child welfare law office.

Institutional Support

A child welfare law office that is housed within a larger organization, such as legal services or public defender agencies, should have firm, on-going core support from its parent program. The parent organization should support necessary administration, training opportunity, human resources assistance, and fundraising services that will help the CWLO and its staff to function effectively.

by **Howard Davidson, JD**, Director
ABA CENTER ON CHILDREN & THE LAW
Washington, D.C.

Commentary

Although many child welfare law offices are freestanding entities, including those with their own non-profit 501(c)(3) tax-exempt status, other CWLO programs have been established and maintained as units within larger institutional entities (e.g., legal aid or public defender programs) that have a broader mandate than providing legal services to children. Such CWLOs have unique opportunities to draw on a wide range of support and institutional credibility. These arrangements also present challenges, however, particularly in developing an equitable and reciprocal business relationship.

At times, child representation programs are not given tremendous respect within their communities, and this attitude can carry over to the larger organization housing the CWLO. It may be common for the child representation program to be treated like the ‘poor stepchild’, not prioritized within the organization, and given fewer administrative and financial resources. It is for these reasons that an effectively operating CWLO based within another organization must have the “parent” organization’s full support and nurturance. This is critical in such areas as: assistance with benefits administration, staff hiring, ongoing personnel issues, resource development and allocation, and community relations. For example, when allocating resources such as investigators, the CWLO should not be given last priority. Potential administrative complications should be addressed, such as a system for conflict of interest checks and a supervision and accountability structure.

In addition, CWLOs should not be viewed as primarily a training ground for inexperienced attorneys or a placement for under performing staff. Efforts should be made to identify and recruit staff from within with a genuine interest in making a career in child law.

Chief operating officers and governing boards of the larger entity must understand the importance of the child-focused work being done within their organization and how they can best support it. Likewise, the leaders of the CWLO must recognize the resources of their parent organization, and how to capitalize on them. For example, the parent organization may be well-established in the community and have excellent relationships with state, county, and local officials, legislators, judges, and the organized bar. These connections can be used to generate publicity for the CWLO, identify leaders of the bar who may be especially interested in supporting this area of legal practice, and focus fundraising events on promoting expansion of those activities.

The parent organization and the CWLO must have ongoing, open communication around financial support. Clear budgets and sources of income must address the needs of both, and restrictions in fundraising should be identified. This communication can be difficult when many juvenile court facilities are located at sites which may be isolated from the rest of the office. The CWLO should be

prepared to seek its own funding when need be, particularly in pursuing funding streams not available to the larger office. CWLOs need to develop expertise in areas in which the parent organization is inexperienced. For example, sometimes a parent organization has no experience in seeking funds for that office's support, such as through contracts with a court or government human services agency. Salaried lawyers within the parent organization may never have kept records of "billable" hours spent on cases, or entered into contractual fee-for-service arrangements. The larger organization needs to support flexibility and innovation in how the CWLO supports itself.

Most importantly, the lawyers within the CWLO must feel that their legal work is respected on an equal level with that of the parent organization's other attorney staff and activities, and that the CWLO's multidisciplinary approaches and non-attorney professional staffing needs are firmly supported. The CWLO's methods of case handling may be very different than the approaches traditionally maintained by the parent organization. For the CWLO to become a long-term institutional part of the larger organization's range of legal services, there must be unequivocal endorsement of the special approaches needed by the CWLO to practice children's lawyering effectively.

A child welfare law office should have written policies, practice and procedures that govern its administrative/ personnel operations and its substantive practice.

by **Nanette Schrandt, MSW**, Director of the Juvenile Services Unit
LEGAL AID SOCIETY, JUVENILE RIGHTS DIVISION
New York, New York

Commentary

While policies, practice, and procedures can be seen as encompassing two distinct areas — administrative operations/personnel matters and substantive practice — they are inextricably entwined in the office's capacity to provide competent assistance. Therefore, each should inform the other and be guided by the office's mission and values. Whenever possible, policies, practice, and procedures should be committed to writing and should be reviewed periodically and updated when necessary. All written policies, procedures, and manuals should be made available to all staff upon hire and throughout their employment with the office.

Administrative Operations/Personnel Matters

Offices should have manuals or other office materials which cover personnel policies, employee benefits, workplace procedures, organizational structure, and non-discrimination and EEOC statements.

Policies, practice, and procedures should reflect the office's commitment to hiring, developing, supervising, and retaining competent and qualified staff. Personnel procedures should include information on staff recruitment, screening, selection, training, evaluation, promotion and discipline. Offices should have clear written job descriptions and provide staff with specific expectations and requirements which will be used to evaluate work performance and guide professional development. In addition, staff should be provided with the criteria for promotional opportunities.

Supervision of staff should be addressed in both personnel procedures and in practice materials. The lines of accountability should be clearly articulated and supervisory responsibilities described.

Policies and procedures should assist in defining the role, responsibilities, activities and ethical and professional obligations of all staff members and, to the extent utilized in the office's practice, consultants, interns and volunteers. For example, in offices employing an interdisciplinary staff, protocols should be developed to guide the collaboration and procedures established to resolve potential differences in professional perspectives. Clear protocols should be established to address the issue of "mandated reporting" and any other situation which may require disclosure of information by individuals working as part of the team representing the child.

Substantive Practice Manuals

The office's substantive practice manuals and materials should guide staff in their client and institutional interactions and representation. They should ensure the delivery of quality legal assistance in accordance with established professional standards. Practice manuals should include such topics as the office's mission, model and scope of representation, intake procedures, case management, legal advice and confidentiality, conflicts of interest, file maintenance, referral process, and cultural competency procedures. In addition, practice manuals should cover the substance of legal representation.

To the extent possible, practice materials should also include relevant statutes, regulations, procedures, and case law. Resource information and guidance in navigating the child welfare, social service, educational and mental health systems are also helpful. Materials should be updated regularly. Training, both initial and ongoing, should encompass the topics covered in the practice manuals.

The office's practice manual/procedures should include identification of situations in which staff is expected to seek additional assistance and/or supervisory involvement and the procedures to be followed. For example, these situations might include conflicts of interest, clients who are presenting with specific issues, or certain proposed case resolutions. Procedures might include how to access other legal, social service or educational expertise, conference cases with other parties, or seek other remedies.

Examples of both administrative and substantive practice manuals can be found on the NACC website at www.NACCchildlaw.org/about/nclop.html.

Leadership and Supervision

A child welfare law office should be governed by managers attuned to the administrative, development, and programmatic needs of a child welfare law office and should also provide uniform, skilled supervision for all staff.

by **Susan Dillard, JD**, Co-Director of the Children & Family Law Program
COMMITTEE FOR PUBLIC COUNSEL SERVICES
Boston, Massachusetts

Commentary**Supervision**

To ensure quality representation and foster an environment of professional growth a child welfare law office should provide supervision for staff and volunteers. Managers and supervisors serve several leadership functions when they: (1) set the values and maintain the mission of the office by example, (2) ensure the office provides competent legal representation, and (3) exercise responsibility for the staff's professional development.

An office's leaders model quality representation for others in the CWLO. Managers and experienced supervisors pass on best practices to staff. They team with less experienced attorneys. Supervisors invite other staff to second chair trials or help write and argue motions. They coach and provide feedback to staff about their work. They allocate office resources fairly and effectively. Managers and supervisors are attuned to interpersonal issues in the office. Managers assume responsibility for personnel problems. They help maintain working staff relationships. Additionally, they should be aware of the unique stress of representing children in child welfare cases and the effects of secondary trauma staff may feel. Supervisors must be prepared to intervene when an attorney suffers burnout or distress. Through sensitive leadership, supervisors create an environment that is supportive as well as exciting and rewarding.

Supervision includes monitoring compliance with applicable standards of practice. Many jurisdictions have performance requirements for children's attorneys, social workers and other professionals. Where local standards are not available, national standards, such as those endorsed by the NACC and ABA, are valuable resources. Part of the responsibility of supervision is holding staff accountable for meeting these standards of practice. Copies of practice standards must be made available to all staff. Supervisors must tell staff that they will be evaluated, in part, based on compliance with those standards.

Leadership also entails assuming responsibility for their staff's professional development. Many tools to assist in this process are available through human resource consultants or offices. A professional development plan is a collaborative, written document that is periodically reviewed and revised by a supervisor and supervisee. It lists a few goals, specifies tasks and methods for achieving those goals, and sets timeframes by which the staff person will attain the goal. It may be an area of knowledge, such as understanding the impact of family violence on a child. It may be a skill, such as cross-examining an adoption worker or interviewing a toddler. It is an area of competence the attorney should master to represent clients effectively. The professional development plan provides a method for recognizing accomplishments and a tool for identifying areas in need of further support. The particular model for the plan is not critical. Any performance management plan that uses goal setting and periodic monitoring of progress enhances attorney development.

Because of these crucial responsibilities, supervisors must be carefully selected. There is often a temptation to promote attorneys based on lawyering skills. This may prove to be short sighted. While excellent legal skills should be valued, supervisors must have excellent people skills. They must be able to communicate and provide feedback. Once selected, supervisors need training in management and personnel skills. They, too need professional development plans that help nurture effective leadership skills. Promoting attorneys to supervisory positions provides a career ladder that both retains experience to be passed along to newer attorneys and provides a professional growth experience. Retaining experience promotes healthy functioning of the law office.

Community Leadership

Managers and senior staff also contribute their accumulated wisdom and expertise to the child welfare system. By participating in the larger child welfare community, CWLOs have an opportunity to share their expertise, learn from others, and promote the needs of their clients. First, CWLO leaders should help improve the local practice by sharing information and resources with other professionals. CWLO leaders should seek out opportunities to serve as faculty, to teach others, or to participate in learning from other professions. They should also initiate and participate in committees and working groups involving leadership of legal, judicial and social service organizations. By participating in local, state-wide, or national groups, CWLOs contribute directly to improvements in the child welfare system.

CWLOs also need to advocate for systemic changes which benefit clients and their families, and this can be accomplished, at times, by CWLO members bringing their clients' perspectives to community groups. Accordingly, CWLO leaders can promote their clients' interests by participating in leadership roles in community organizations, such as serving on boards of directors, advisory boards and the like.

A child welfare law office should use interns and volunteers and affirmatively develop good relations with law schools and the local bar in order to increase service, improve practice, and encourage good lawyers to engage in child advocacy.

by **Donald Duquette, JD**, Clinical Professor of Law and Director of Child Advocacy Law Clinic
UNIVERSITY OF MICHIGAN LAW SCHOOL
Ann Arbor, Michigan

Commentary

Volunteers and interns have the potential for increasing the amount and effectiveness of advocacy that can be done for individual clients. Even though volunteers and interns complicate the office's management, they may greatly benefit the clients and, with careful forethought and planning, be successfully incorporated into the law practice. Volunteers and interns must be trained and closely supervised, which requires additional staff time. In most circumstances, volunteers and interns do not have the in-depth knowledge and experience of staff attorneys, and should not be used as substitute. Great care should be made in "hiring" volunteers and interns, especially those who may have contact with clients. Some caution that a strong reliance on volunteers could ultimately discount an agency's position that children need full-time paid legal specialists to represent them. Others raise the concern that non-lawyer interns and volunteers could potentially create conflicts with mandated reporter laws.

Despite these concerns, the general balance is in favor of volunteers and interns and collaboration with the universities, law schools and local bar associations that may provide them. Child welfare law offices should have written policies for the engagement of volunteers and interns. These written policies must include detailed information about how volunteers will be supervised and how their work will be measured to ensure compliance with applicable standards of practice.

Community based non-lawyer volunteers of various sorts could help the child welfare law office fulfill its mission. One of the most extensive volunteer child advocacy programs in the U.S. is the National Court Appointed Special Advocate (CASA) Association. Although local CASA programs are often totally independent of the lawyers representing children, an alliance between the two may serve the interests of children. The child welfare law office could either collaborate with a CASA office or develop a CASA program within the child law office to supplement its work. One example of this is the St. Louis City CASA, where CASA volunteers are teamed with Guardians ad litem. More information about CASA is available at www.nationalcasa.org.

Volunteer lawyers may also help the law office fulfill its mission and resources are available to help child welfare law offices develop such programs. There are different ways to use volunteer, or pro bono, attorneys. Some offices refer cases to pro bono attorneys when they involve matters the office does not handle, such as immigration cases. Other offices utilize pro bono attorneys as the legal advocate for the child in their child welfare cases. There are several models of children's pro bono programs that work well. For example, Support Center for Child Advocates, in Pennsylvania, teams specially trained volunteer attorneys with staff social workers and lawyers who are specialists in child welfare practice. This unique service model requires extensive training, ongoing support, and the regular availability of supervision for the volunteer attorney. For more information about how to start such a program, see www.advokid.org, or the ABA Section on Litigation, Children's Rights Litigation Committee, at: www.abanet.org/litigation/committee/childrens_l.

Law schools and universities may also be a rich source of volunteers and interns. Student involvement can be structured in various ways — discussed here from the least organized to the most organized. Undergraduates, social work or psychology graduate students, or law students may show up and say “put me to work.” This fairly ad hoc approach is very common and can work well with the right student and opportunities for service. Some universities have programs to encourage “community based service-learning” that may provide some screening and assistance in recruitment and selection. See, for example, www.umich.edu/~mserve/, which describes the Ginsberg Center for Community Service Learning at the University of Michigan. Another example is the Office of the Public Guardian in Chicago, which is a field site for graduate students in psychiatry and social work. See www.publicguardian.org for more information.

At the next level of organization, the child welfare law office could structure and supervise law student involvement more carefully, perhaps even expecting more institutional support from the law schools. The ABA and the Association of American Law Schools (AALS) have taken the position that law schools should encourage and enable all law students to engage in pro bono and public service. Child advocacy certainly fills that important need. A child welfare law office could help the law schools fulfill its accreditation obligations while getting some assistance in recruiting and supervising students.

Law school clinical programs provide an even higher level of structure and support for the students and for the work of the law office. Increasingly, law schools have developed child advocacy clinical programs. For a list of clinical programs, see the NACC list at www.naccchildlaw.org/training/resource_career.html, or the ABA’s list at: www.abanet.org/child/ and www.abanet.org/litigation/committee/childrens_1. Students under faculty supervision can cooperate with the child welfare law office, handle cases, and conduct research under faculty supervision. And do not overlook clinical professors as a source of service and collaboration for mutual benefit.

Summer internship programs involving law students may provide a good source of interns. For example, the University of Michigan Bergstrom Child Welfare Law Summer Fellowship, attempting to encourage a career path in children’s law, selects 30 law students from around the country, trains them for three days in Ann Arbor, assists them in finding summer stipends, and places them in child welfare law offices around the country. For more information, see www.law.umich.edu/CentersAndPrograms/childlaw/summerfellows/index.htm.

There are a number of other organizations that provide financial support and fellowships. PILI, Loyola University Chicago, and large firms such as Skadden, Arps have fellowships that fund attorneys.

Several established child welfare law offices conduct their own training and orientation for summer interns. See KidsVoice in Pittsburgh, www.kidsvoice.org, the Children’s Law Center in Washington, D.C., www.childrenslawcenter.org, and Children’s Law Center of Los Angeles, www.clcla.org. Check with them for suggestions about structuring an internship program.

Volunteer service can enhance the work of the child welfare law office by taking on tasks from answering phone, to fund-raising, to actually appearing in court on behalf of a client. The involvement in the larger community provides other benefits by developing support for the work and assisting in recruiting staff.

A child welfare law office should pay sufficient salaries and benefits so that professionals can devote their time fully to representing abused, neglected or at risk children.

by **Scott Hollander, JD**, Executive Director
and **Jonathan Budd, JD, MPA**, Director of Operations
KIDSVOICE
Pittsburgh, Pennsylvania

Commentary

Salaries

While children's attorneys are notoriously underpaid, this must change if the field is going to continue to attract and keep competent and talented professionals who can develop their expertise in representing children. A career cannot be made in this field with the current pay structures in place in many jurisdictions. Adequate pay should be of the highest priority for child welfare law offices. Staff should receive cost of living and step increases in salary to encourage retention.

Because establishing what constitutes an adequate salary for child attorneys will vary by jurisdiction, an office should conduct a salary and benefits survey of other public interest law organizations and public servants, including prosecuting attorneys and public defenders, in the jurisdiction. This survey will yield valuable information that can be used to make the case with funding sources that salaries must be raised to an adequate level. Salary and benefits surveys are also useful in setting adequate salaries for social service professionals and for support personnel in the office.

When they have the resources, child welfare law offices should work with the private bar to raise rates and, in other ways, improve the financial situation of other court-appointed lawyers. Solo practitioners are also hindered by low pay and cumbersome payment systems.

Higher pay and other financial incentives will encourage good lawyers to represent children and to stay in the practice.

Health Insurance

Even though the cost of healthcare is rising rapidly, providing adequate healthcare benefits is also very important. At a minimum, an office should strive to pay the majority of an individual employee's medical insurance premium. Offices should also, when financially feasible, pay a portion of the employee's family medical insurance premium. Dental and vision insurance should also be offered. The office should strive to pay the majority of an individual's dental and vision premiums and when financially feasible, pay a portion of the employee's family dental and vision insurance premium.

Time-off Benefits

Time-off benefits (vacation, sick, personal, paid holidays, etc.) can be a critical component of any benefits package, particularly given the lower pay that public interest attorneys receive. Time-off benefits that take into account the stressful nature of the work are important. Time-off benefits, because they are not expensive to provide, should be an area where an office can consider providing above-average benefits.

Retirement

A professional job generally includes some kind of retirement plan. An office should consider establishing a pension plan or a 403(b) plan with an employer contribution or match.

Disability and Life Insurance

An office should consider providing employees with disability insurance (short- and long-term) and life insurance coverage.

Staff Recruitment

A child welfare law office should have mechanisms in place for recruiting qualified staff members with diverse experiences and backgrounds.

by **Shannan Wilber, JD**, Executive Director
LEGAL SERVICES FOR CHILDREN, INC.
San Francisco, California.

Commentary

Child welfare law offices can utilize a range of strategies to attract qualified staff members, including internship programs, community outreach, and publicity. Offices should have a hiring process or committee in place, which ensures broad feedback on hiring and a process for developing good candidates over time.

An active internship program for law students and other graduate students, such as social work or psychology students, has several advantages. Internship programs cement partnerships with local law schools and graduate schools, whose placement offices often conduct the bulk of the recruiting and screening process. In addition, past legal interns who received positive reviews, are already familiar and dedicated to the organization's programs and services, and represent a pool of qualified candidates. For more information about interns, see A-7.

Child welfare law offices may wish to employ specific strategies to recruit candidates with specific attributes or skills. A particular office may, for example, serve a large population of Spanish-speaking youth. The office should conduct targeted outreach to minority bar associations or professional organizations. The office might also post the job opening in a local minority newspaper or website.

Generally, connections with other professionals lead to the greatest number of referrals of qualified applicants. Accordingly, offices should build community connections through all available avenues, such as committee work, meetings, conferences, and other community events.

Also, law offices should circulate job postings to partnering organizations and professional groups to receive referrals for candidates already familiar with the type of work and community.

Child welfare law offices should also disseminate job postings on internet employment websites, as well as child advocacy listservs and web-based newsletters. Another useful strategy is to advertise job openings in relevant professional journals or websites.

Recruitment efforts should not necessarily be limited to a local geographical area. Many young professionals are willing to relocate to obtain a position with a child advocacy organization.

A child welfare law office should make every effort to retain staff by providing adequate pay and benefits, adequate supervision and support, and opportunities for professional development and career advancement.

by **Scott Hollander, JD**, Executive Director
and **Jonathan Budd, JD, MPA**, Director of Operations
KIDSVOICE
Pittsburgh, Pennsylvania

Commentary

Staff members are motivated to remain with an organization for different reasons — what is important to one person may not be as important to another. That is why it is critical that a law office adopt a multi-pronged approach to staff retention.

Adequate Pay and Benefits

Adequate pay and benefits are crucial components to retention. Beyond offering adequate starting salaries, it is important to offer reasonable raises each year that, at a minimum, keep up with inflation and cost of living increases. If possible, merit pay increases that reward high-level performers should be utilized. Benefits that increase with seniority can also help retain staff, e.g., time-off or employer's contribution toward health insurance premiums. Salary is also addressed above, in A-8.

Some offices offer other benefits as retention incentives, such as:

- Paid Sabbaticals
- Paid Parking or Transportation Costs
- Tuition Reimbursement
- Vesting Retirement Benefits With Years of Service
- Increasing percentage of employer paid health care benefits with Years of Service
- Cafeteria Plans for Unreimbursed Health Care, Dependent Care and Transportation
- Increasing Vacation with Years of Service

Loan Repayment Programs

Some programs, such as the St. Louis CASA office, Voices for Children, have designed Loan Repayment Assistance Programs ("LRAP") to help recruit qualified staff attorneys who, due to existing school loans, would otherwise be unable to consider representing children. The program is designed to take advantage of some changes made in 1997 to Section 108(f) of the Internal Revenue Code. This law now defines as non-taxable the forgiveness of a loan that refinances pre-existing educational loan debt of recipients who perform public service work.

Professional Development

Providing staff with opportunities to attend trainings to enhance their knowledge and skills is important. This can be done through providing staff with a training allowance or other means to attend outside training programs and/or through holding in-house training programs with outside trainers or law office staff.

Supervision

Providing staff with regular supervision and feedback about their performance is also important in helping staff develop and enhance their knowledge and skills. Regular supervision also provides staff with opportunities to be recognized for their good work and accomplishments.

Career Ladder

Opportunities for promotion and advancement within the organization can be important retention devices. Whenever possible, a law office should promote from within when creating, adding or replacing supervisory positions or other positions such as trainers. A law office should also consider creating “lead” professional designations for high-performing line staff who have been with the organization for many years but who may not be interested or capable of becoming supervisors or when organizations don’t have supervisory positions. These “lead” professionals may be asked to provide training or mentoring to other staff and receive increased compensation. Depending on staff size, some child welfare law offices may consider creating specialty units (e.g., appellate, TPRs, etc.) that allow staff members to become experts on certain facets of dependency litigation. A law office should also consider providing opportunities for staff to work on special projects that allow staff to participate in system reform and/or outreach work.

Exit Interviews

A law office should conduct exit interviews when staff leaves the organization. Over time, exit interviews can provide valuable information as to whether a law office’s retention strategies are working.

A child welfare law office should create formal and informal mechanisms for recognizing the good work of its staff members.

by **Miriam Krinsky, JD**, Executive Director
and **Leslie Starr Heimov, JD**, Policy Director
CHILDREN'S LAW CENTER OF LOS ANGELES
Los Angeles, California

Commentary

Offices should endeavor to recognize — both formally and informally — efforts above and beyond ordinary expectations. Practices should be put in place to take note of special achievements by staff as well as by pro bono attorneys and volunteers. Given the high demands of this job, and the high rate of “burn out,” offices should also consider recognizing the contributions of staff who meet expectations day in and day out.

Even modest steps to acknowledge good work have a powerful impact in motivating individuals and building allegiance to the organization. Such recognition can include short, handwritten notes and e-mailed messages of thanks or congratulations from supervisory personnel, office wide e-mails and announcements sharing particular achievements, and singling staff and volunteers out in public remarks during staff meetings or at special events.

Additionally, a child welfare law office should recognize accomplishments of both staff and volunteers in a more tangible manner. “Spot” awards of cash bonuses or gift certificates can provide a vehicle for demonstrating appreciation. Trophies, certificates, or mementoes will highlight outstanding contributions. The office could also establish annual achievement awards or tributes as a vehicle for providing public recognition.

Recognition and acknowledgement of special work should extend beyond the office. Exceptional achievements of staff and volunteers should result in press releases to the media and notification to the individual's alumni organization. Profiles featuring personal accomplishments should be submitted to legal journals. The office should also bring attention to individuals with superior skills or performance achievements by nominating them for local, state, and national awards.

A child welfare law office should strive to achieve staff diversity which reflects its client base.

by **Shannan Wilber, JD**, Executive Director
LEGAL SERVICES FOR CHILDREN, INC.
San Francisco, California

Commentary

Staff Diversity

Maintaining an organization composed of individuals dedicated to serving all clients in a culturally competent manner should be a high priority of any child welfare law office. Recruiting and retaining a diverse workforce helps the organization meet this objective in several ways.

There is a direct benefit to clients when the cultural attributes of the staff match those of clients. A familiar language, appearance or mannerism can make a law office feel much less intimidating to a young person. Staff members who are culturally similar to their clients are also more likely to identify cultural cues and to understand the clients' experience through a particular cultural lens. Thus, it is worthwhile for child welfare law offices to collect and maintain demographic data on the cultural attributes of their clientele, and to recruit and retain staff members who reflect that particular cultural mix.

The exact cultural matching of staff and clients is, of course, impossible. Moreover, there are benefits to maintaining staff diversity apart from those flowing from similarities between staff and clients. Cultural identity is composed of a vast range of variables, including race, ethnicity, religious or spiritual beliefs, gender identity, sexual orientation, language, physical ability, education, and socio-economic status. Recruiting a staff in which many of these cultural differences are reflected helps create an office atmosphere in which *all* cultural differences are acknowledged and valued. A diverse staff also brings a range of viewpoints or perspectives to casework and office policy, creating a richer dialogue and more informed decisions.

Another value underlying the recruitment of a diverse staff is creating employment opportunities for groups of individuals who have suffered historically from discrimination or unequal opportunities. Many legal services organizations have expressly allied themselves with broader social justice movements, in part by making efforts to intentionally redress societal discrimination. Adopting this approach requires careful consideration, and consensus regarding the office's goals.

Staffing an organization with diverse individuals does not guarantee that the law office or its staff is culturally competent. Nor does recruiting staff to match or mirror the client population guarantee cultural competence. Cultivating an organization of diverse individuals does foster an atmosphere where difference is a conscious variable that is both embraced and respected. The development of this conscious awareness leads one on the continual path of cultural competence and is central to the strength of any child welfare law office.

A child welfare law office should deliver culturally competent services.

by **Shannan Wilber, JD**, Executive Director
and **Ron Gutierrez, LCSW**, Clinical Director
LEGAL SERVICES FOR CHILDREN, INC.
San Francisco, California

Commentary

Cultural competence is the process by which individuals and systems respond respectfully and effectively to people of all cultures, languages, social and economic classes, races, ethnic backgrounds, religions, and other diversity factors in a manner that recognizes, affirms, and values the worth of individuals, families, and communities, and protects and preserves the dignity of each (NASW, 2001). The origins of the provision of culturally competent services can be traced to the counseling profession which recognized the inadequacy of services provided to African Americans, American Indians, Asian Americans and Latinos during the 1970s (Sue, 1998). When ethnic mismatches occurred between practitioner and client, client treatment was generally ineffective, clients terminated from treatment prematurely and client outcomes suffered. Although some of the issues surrounding race from the 1970s still exist today, there are different dynamics present today. Even so, organizationally, agencies were not recognizing the cultural and linguistic identities of their clients.

Law offices representing children in the dependency system invariably serve clients of very diverse backgrounds. Children of color are disproportionately represented in the child welfare system compared to their overall representation in the general population. The incidence of first generation immigrant children in need of legal services is also on the rise. Dependent children and their families reflect the full range of cultural variables: race, ethnicity, personal beliefs and values, religious or spiritual beliefs, gender identity, sexual orientation, language, developmental stage, education level, socioeconomic status and other identifiers. It is virtually impossible to culturally match clients and lawyers or other staff. In fact, professional staff members always confront educational and developmental differences between their minor clients and themselves. Thus, it is important to remember that every client assignment is cross-cultural.

Given the reality of cross-cultural practice, child welfare law offices should take concrete and intentional steps to increase their cultural competence. Standards for the provision of culturally competent client services exist in a number of professions, most notably in psychology through the American Psychological Association (APA), *Guidelines on Multicultural Education, Training, Research, Practice, and Organizational Change for Psychologists* (APA, 2002) and in social work through the NASW, *Standards for Cultural Competence in Social Work Practice* (2001). These professional standards provide excellent models for designing a cultural competence plan. Child welfare law offices should create and implement a written cultural competence plan with the active participation of all staff. The plan should encompass four main areas of organizational functioning: 1) the provision of client services; 2) the composition of the staff, management and agency governing body; 3) staff

⁶ Sources and references: American Psychological Association (2002). Guidelines on multicultural education, training, research, practice, and organizational change for psychologists: www.apa.org/pi/multiculturalguidelines/homepage.html; National Association of Social Workers (2001). NASW standards for cultural competence in social work practice: www.socialworkers.org/practice/standards/cultural_competence.asp; Sue, S. (1998). In search of cultural competence in psychotherapy and counseling. *American Psychologist*, 53, 440–448.

training, education and development; and 4) regular evaluation of the organization's cultural competence through internal and external mechanisms.

The provision of culturally competent client services depends, in large part, on developing the competence of each individual staff member. At the core of developing individual cultural competence is the practice of maintaining awareness of existing differences between all individuals and the influence this may have on service delivery. Thus, awareness of and insight into one's personal identity composition as well as one's values, biases, judgments, and prejudices is critically important. Engaging in an on-going process of self-evaluation allows for greater awareness of cultural differences with clients and colleagues; and develops insight into how this may impact client services.

A client's perception of a staff member may be directly affected by one's external cultural markers. For example, a client may be reluctant to work with someone of a different race or ethnicity because of a previous negative experience. This reluctance may manifest itself through the client's behavior (i.e. being chronically late or missing appointments). A client may directly express discomfort, but will most likely present non-verbal cues. One's ability to identify and adequately address these issues will be critical to the success of engaging and working with clients. Cultural differences may also influence the ways in which we relate to co-workers. We may gravitate toward people whom we perceive to be more like ourselves, or misinterpret the actions of people with whom we feel less familiar.

Awareness of cultural differences and the impact of these differences are enhanced in an environment in which diversity is valued. Written policy, as well as daily practice, should establish an office culture in which the inherent worth and dignity of every person is acknowledged and valued. Child welfare law offices should take concrete steps to recruit, hire and retain a culturally diverse staff and board of directors. Policies should explicitly prohibit discrimination or harassment against employees, contractors, clients or families based on any cultural variable. Child welfare law offices might also consider prominently displaying signage in various languages, photographs of children of different cultural backgrounds, and posters or stickers indicating that the office is a "hate free zone."

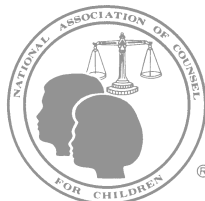
Child welfare law offices should include cultural competence in the subjects about which staff members receive formal education and training. Training should be continuous and ongoing, and should cover the broad range of cultural differences. Supervisors should be mindful of cultural competence in ongoing staff supervision and evaluation. As a matter of practice, all staff should consider the effects of cultural variables as part of the intake, assessment and case staffing processes.

Cultural Competence is a continual process of assessment and adaptation; to reach stasis is to revert to an era of cultural incapacity. Organizationally, CWLOs need to recognize that the demographics of our clients are constantly changing. CWLOs must work to recognize barriers in service delivery and build service models that will support its practitioners to culturally competent services.

Child Welfare Law Office Guidebook

Best Practice
Guidelines for
Organizational
Legal Representation
of Children in
Abuse, Neglect, and
Dependency Cases

Development
and Outreach



National Association
of Counsel for Children

B. Development and Outreach

GUIDE LINE **B-1**

Public and Media Relations

A child welfare law office should actively engage in public relations activities to increase the community's awareness of the important legal services that the office provides to the children in the community.

by **Theresa Spahn, JD**, Executive Director
OFFICE OF THE CHILD'S REPRESENTATIVE
Denver, Colorado

Commentary

A community's awareness of the valuable services provided by the office, the reputation of the child welfare law office and, most importantly, the impact the office has on children's lives are all critical to a vibrant and successful law office. One of the most natural and effective methods of ensuring public awareness is for the office to be personally engaged in the community it serves, defined here as "public relations."

The numerous benefits of successful public relations include:

- community recognition as a leader in child welfare;
- input into court, funding, or legislative policy changes;
- the community understands and appreciates the critically important legal services that are provided to children by the office; and
- community awareness of the office's clients' needs, which in turn can create pressure and support for well-funded services.

Increased public awareness is also fundamental to the office's ability to maintain or increase appropriate funding either through fundraising or government appropriations. Finally, public relations efforts are essential to ensuring broad support in the community, which contributes to the ultimate success of the office.

Ascertain the Community

Does the office serve children in a particular city, county, or region of the state? Once the "community" is defined, then the office can strategically target those community leaders, legislative delegates, groups, or individuals to build relationships or awareness with and who will be supportive of children's issues and the office.

Recognize What the Office Has To Offer the Community

What can the office contribute to the community outside or in addition to the services it provides for children? An office that actively interacts with a community beyond the primary services it provides will naturally develop relationships and form a bond with that community. The office should serve as an easily accessible resource of information for its community. The office has a unique, hands-on perspective of children's issues which can serve as a valuable source of information and benefit to the community. Because the office provides services to children it can speak to trends in child abuse or other child welfare issues for the community. The office can also share its experience and knowledge by offering to participate or serve on committees or organizations addressing children and families'

issues. Simply put, one of the fundamental roles of a successful child welfare law office should be to act as a proactive resource of information for the community.

Speaking Engagements

Members of law offices should speak and participate whenever possible, including serving on multi-disciplinary task forces or committees. As mentioned above, the unique expertise and experience of the office is a valuable resource to other advocates working to address children's issues. The office should play an active role in their community on committees, legal task forces, etc. In addition to increasing local awareness, the office is also providing a very necessary and useful function for the community.

Introduce Community Leaders to Staff

It is important that the office be open to the public as much as possible. One of the most effective methods of promoting an accurate awareness of the office is to invite community leaders to lunch or have an office open house so community leaders can attend and meet the office staff. It is helpful to always follow-up invitations with personal phone calls, particularly if any of the staff is also a constituent of the community leader(s).

How to Present Information

Often a community does not understand or has preconceived ideas of what a child welfare law office actually does or means. They may confuse the office with local social services agencies. In order to promote an accurate awareness of the office and its purposes, the office should engage in public relations efforts that educate the community about the services it provides. One useful and effective tool that can be used when describing what the office "does" without violating confidentiality (do not use identifying information such as child's real name) is to give powerful real life anecdotal stories of cases where, but for the legal services provided by the office, the outcome in the child's life would have been different. Or an office could invite a former client who is now age appropriate and who wants to share his or her experiences with the office and the difference it made in his or her life. Another effective and simple educational tool is to prepare a brief fact sheet for distribution after meeting with community leaders or participating in speaking engagements that summarizes the mission of the office, number of children served, type of cases, a powerful anecdotal story and any other relevant information.

Always try to be positive in sharing information and sensitive to information that will be critical of other agencies or entities. It is with the best intentions that any organization attempts to serve children, whether it is the courts or child welfare agencies. However, it is when these best intentions fail that the office steps in and advocates and protects children from these types of harm. In describing the role of the office, the office should emphasize the positive efforts of all entities involved in a case and be sensitive about providing necessary information that may be critical of other entities.

Still, there are times when there is no choice but to be critical. Public awareness and public criticism can improve the quality of services that clients receive. One cannot discount systemic problems, and sometimes these issues can be devastating to clients. The community should be aware that child clients suffer as a result of these problems. Offices are cautioned, however, to be careful in their approach to presenting critical information.

Who to Target for Media Relations

Here are some ideas on people or entities in the community to target and develop relationships with the office. The office has many allies and advocates in a community that can help ensure the success of the office for the children it represents and the community as a whole. It is paramount that the office commits itself to outreach and engaging community members in the activities and purposes of the office. Vital stakeholders include:

- Judiciary
- Legislative delegates that represent the community, state or national level
- Elected community leaders or city officials
- Local bar associations, particularly minority bar associations also involved in policy setting
- Clubs or organizations such as Rotary's, etc., whose mission is to be charitable toward children's issues
- Other organizations who advocate for children or provide services

High Profile Cases and the Media

States have different laws and regulations regarding the confidentiality of child abuse and neglect cases. Some states consider the courtroom presumptively closed from the public and the press, others consider it presumptively open. To begin with, a child welfare law office must know what laws, rules and regulations apply in their jurisdiction regarding the public's access to information about these proceedings. Offices should then develop written policies consistent with the rules of their jurisdiction. For a much longer discussion of the policy impact of confidentiality, see the Final Report of National Center for State Courts, by the Minnesota Supreme Court Advisory Committee on Open Hearings in Juvenile Protection Matters, (2001), and "Pandora's Box: Opening Child Protection Cases to the Press and Public," William Wesley Patton, 27 W. St.U.L.Rev.181 (2001).

Even in the few states where the public is granted access to information about child welfare proceedings, the legal advocate for the child in a high profile case should zealously protect his or her client's right to privacy. Therefore, a law office should include within their employee handbook and written policy a section instructing management and staff on procedures to follow when the media or anyone else attempts to contact the office and get information on any case including a high profile case. Written policy should include:

- Offices should designate one or two staff people responsible for handling media contacts. These staff members should receive training in presenting information to the press.
- Anytime the press and/or media contact the office, they should be referred to the designated staff members. No one else on the staff should make any comments or provide any information without consultation with the media-trained staff.
- Files, case reports, expert opinion, work product and any other written or documented information is not to be provided to anyone outside the office in order to protect the child's right to privacy and confidentiality, absent a valid court order. All requests for such information should be reviewed by counsel, and legal channels should be used to prevent disclosures if at all possible.
- Counsel should request a protective order and admonishment from the court, if necessary, directed at any of the parties or professionals in the case who potentially could be violating confidentiality in order to protect the privacy of the child or children
- Should the press appear at any of the court proceedings, counsel should motion the court to close the hearing finding such an order would serve and protect the best interest of the child.
- Counsel for the child or any other professional attending a staffing or other meeting outside the courtroom should always be aware of who is participating. If anyone is an unknown and may be accompanying the parent or other party one should immediately inquire as to their identification and the purpose or reason for their presence. While there is some question about a parent's right to sign a release or waive their right to confidentiality that right can not be waived for the child.
- Written office policy should also include citation to the appropriate rules of professional conduct detailing permissible media contact for lawyers.

While it is critical to have policies in place, offices need to make case by case determinations regarding what information to share about their clients and cases.

Client Outreach and Youth Involvement

A child welfare law office should conduct client outreach activities and involve youth in the design and evaluation of the office's program and services.

by **Shannan Wilber, JD**, Executive Director
LEGAL SERVICES FOR CHILDREN, INC.
San Francisco, California

Commentary**Client Outreach**

Child welfare law offices that primarily practice in the dependency system usually receive their clients through court appointment. Therefore, traditional client outreach activities may not be seen as a high priority. However, these same offices may represent children who seek to compel the filing of a dependency petition when the child welfare agency has declined to do so. Similarly, offices may elect to represent some children after their dependency case has been formally dismissed. In addition, child welfare law offices may represent children in proceedings other than dependency, such as guardianship, immigration, public benefits or school discipline matters. In any of these situations, outreach efforts can serve the function of informing potential clients of the office's services.

Another important function of outreach activities is informing youth, community-based organizations, public agencies and the general public about children's legal rights and the office's role in advocating for children. These educational efforts can help garner support for vulnerable youth and for the organizations and agencies serving these youth. Community outreach elevates the office's visibility and is an important aspect of fundraising activities. Providing "know your rights" workshops to groups of youth can help them understand their legal options and the resources that exist to help them achieve their goals. Outreach in the form of in-service trainings helps to create personal relationships with other professionals that can assist in subsequent work on behalf of specific clients.

Youth Involvement

Increasingly, youth-serving organizations actively involve young people in the development and evaluation of their programs and services. Strategies to involve youth include dedicating youth positions on the Board of Directors, forming a youth advisory board, administering periodic written evaluations to youth clients, conducting youth focus groups, and consulting with local youth commissions on specific programmatic issues. The primary benefit of actively soliciting the input of youth is ensuring the relevance, accessibility and effectiveness of the organization's services. An equally important benefit is providing youth with an opportunity to build their leadership skills, to make an impact in their community, to form supportive relationships with adults, and to work constructively to improve their lives and the lives of their peers. These benefits are consistent with accepted youth development principles, and help create an organizational atmosphere in which young people are respected and empowered, as well as served. See Youth Development Framework for Practice, www.cnyd.org, for more information.

The benefits of youth involvement apply equally to child welfare law offices. Young people may have important insights about the office's areas of practice, the effectiveness of its outreach activities, its overall accessibility and sensitivity to youth, and the extent to which it carries out its mission. Individual youth may also have important feedback about the specific services they received as clients of the office. Child welfare law offices should carefully consider the implications of asking current or former clients

to act as advisors to the organization. At a minimum, offices should take precautions to avoid conflicts of interest or any implication or perception that clients are required to participate in youth involvement activities. Attorneys and other professionals should also distinguish their roles as service providers from any role they may play in the implementation of a youth involvement component.

Before implementing a youth involvement program, child welfare law offices should undertake meaningful planning, ensure organizational buy-in and commitment, and devote adequate resources. For example, simply placing one or two youth on the board of directors without making additional adjustments will not yield the benefits of youth involvement. Youth board members will need training and support to understand their role, to feel comfortable participating in board functions, and to build their confidence and skills. Adult board members will also need training and support to understand the purpose and benefits of youth involvement, and to work effectively and collaboratively with youth colleagues. As a general rule, the more time and involvement required of youth, the more time and resources required of the organization. Child welfare law offices should carefully identify the goals of any youth involvement component, and commit the resources necessary to make it work.

Practical accommodations can also help ensure the success of youth involvement programs. Youth activities should be conducted after school hours, and in safe, accessible locations. Providing food and a modest stipend provides additional incentives for youth to make an ongoing and consistent commitment.

Fund Development

A child welfare law office should have comprehensive and diverse funding sources in order to provide quality representation of child clients and to allow each staff person to represent a manageable number of clients.

by **Scott Hollander, JD**, Executive Director
and **Jonathan Budd, JD, MPA**, Director of Operations
KIDVOICE
Pittsburgh, Pennsylvania

Commentary

Adequate funding allows staff to provide quality representation by reducing the number of clients each staff member represents and/or increasing the amount of time devoted to each client. Adequate funding also allows child welfare law offices to offer competitive salaries, which in turn will increase staff job satisfaction, reduce staff turnover, and benefit clients through continuity of representation.

Child welfare law offices require sufficient funding to allow staff to travel to see clients, to pursue outside training opportunities, and to cover litigation expenses. Funding in this area of law is often volatile. Offices should seek to stabilize revenues through a well structured fund development plan which will vary according to the type of office (i.e., government agency v. nonprofit) and the funding needs and strengths of the organization and the community.

It is important to recognize that every office will have a different fundraising strategy based upon its history and current funding sources. However, regardless of the office size or type, the goal of each child welfare law office should be to build a robust, multi-dimensional and strategic fundraising program that can better sustain the advocacy work of that office. To do so requires a fundraising plan that identifies and prioritizes the various areas of the fundraising program to be implemented, including:

- Major and planned gifts;
- Annual individual giving;
- Foundation and corporate support;
- Special events; and
- Government funding

Analysis of the potential and priorities among the above categories should involve evaluating the current fundraising practices and the additional fundraising potential within each of the primary fundraising areas categories above.

While it is preferable for nonprofit child welfare law offices to have a development director or even a development department, some child welfare law offices may not be able to hire separate development staff due to the size, budget or operation of the agency. Those offices may opt to have the Executive Director take responsibility for fundraising, sometimes with the help of outside consultants. The success of any fundraising effort will be largely dependent upon the level of support and participation of the agency's board of directors.

A fundraising plan should include:

- An organizational chart with generally defined roles, duties and responsibilities for the Board of Directors, the administration, and fundraising staff. (This comment recognizes that there may not be a separate fundraising staff depending on the size and type of organization.)
- A timetable for implementation and projected revenue.

Some child advocacy organizations are government agencies and, as such, may not be eligible to receive donations or some foundation grants. Those government programs should seek other local, state and federal government grants to supplement the agency's budget or contract revenues. A government agency might consider developing an associated nonprofit "Friends" agency that can accept charitable donations. Experienced counsel should be consulted in how to do this properly.

Child welfare law offices should maximize revenues from government contracts or other fee for services. Some child welfare law offices generate a small percentage of their budget this way while others may rely on government contracts for substantially all of their funding. Child welfare law offices may wish to consider offering other fee-generating representation — such as cases where attorneys' fees may be awarded to a prevailing party in civil rights proceedings, some special education cases, and some benefits cases (social security eligibility, medical coverage, etc.). Any such representation must be consistent with and driven by the agency's mission and strategic plan rather than by a funding need.

Growth Management

A child welfare law office should prepare for the vagaries of the child welfare and legal services marketplace, including planning how to grow the organization or, if need be, how to pare down to essential services.

by **Scott Hollander, JD**, Executive Director
and **Jonathan Budd, JD, MPA**, Director of Operations
KIDSVoice
Pittsburgh, Pennsylvania

Commentary

The strategic plan of a child welfare law office should establish priorities for expansion of staff and programming. Those strategic objectives require planned, sustained funding of the operation.

Unplanned opportunities for growth, if not in the strategic plan, must be carefully weighed against the mission of the organization and any risk to core services and programs that may result from pursuing that unplanned growth.

Budgeting and planning for program growth must include a supervisory structure sufficient to provide the support, recognition and accountability needed to develop and implement the expansion. This requires the organization to develop clear expectations regarding roles, duties and job descriptions. Otherwise, unplanned growth without adequate supervisory support and clear roles and expectations likely will over-extend existing and new staff—and risk failure of the new program and a weakening of existing programs. This is especially true of growth based upon short-term funding (i.e., a three-year grant).

Recognizing that the vagaries of human service, child welfare and juvenile court funding may result in budget reductions, child welfare law offices should consider what the impact of losing 10%, 30%, and 50% of revenues would mean in terms of whether the program would continue to function and what the operation would look like in each of those three budget scenarios. Planning for those scenarios allows the child welfare law office to consider its priority services and which essential program functions would survive in each budget scenario.

Collaborative Relationships

A child welfare law office should build, sustain, and maintain credibility in the child welfare and public interest community. Such credibility can be developed and enhanced by, for example, (a) active participation in local, state and national networking, (b) engaging in dialogues regarding key issues and initiatives relating to the state and national child welfare system, (c) developing collaborative relationships with organizations with similar missions, and (d) developing and maintaining relationships with law makers, governmental leaders, and the organized bar.

by **Miriam Krinsky, JD**, Executive Director
and **Leslie Starr Heimov, JD**, Policy Director
CHILDREN'S LAW CENTER OF LOS ANGELES
Los Angeles, California

Commentary

Offices should be active participants and leaders in the many local, state and national efforts surrounding child welfare. Offices should also collaborate with other organizations and governmental agencies and become a recognized convener and leader in the community on child welfare issues. By expanding its reach and visibility, the office will gain credibility and become known for its expertise. Such credibility includes recognition, respect, and reputation in the community.

While collaboration should be of the highest priority for a CWLO, it should be noted that the office's independent beliefs and zealous advocacy must not be subordinated to consensus with other organizations.

On another note, child welfare practice in most communities includes solo practitioners, or very small law firms. These lawyers may have limited resources. Whenever possible, it is important to share resources, including training and library materials with these advocates.

Networking and collaboration can include the following strategies:

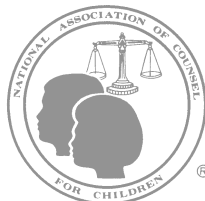
- Work with other advocacy groups which may include other child advocacy organizations, the local Bar Association, and other nonprofit child advocacy organizations. Offices should consider bringing together and establishing a child advocacy group whereby legal advocates involved in children's issues can come together to establish a joint agenda. Regular meetings should be held to discuss ongoing issues and concerns specific to the local practice area as well the national and legislative arena.
- Actively participate in nationwide child advocacy groups such as the NACC and the ABA. This link will assist the office in garnering support and resources beyond the confines of the local jurisdiction. Often questions might arise as to how other states may handle an issue; by being connected to the larger group, the office will be able to access additional information to take back and further local discussions. The child welfare law office will benefit from learning what innovative programs and strategies have been implemented in other jurisdictions.
- Commit to working with local government child welfare agencies, commissions and subcommittees that spring forth from these oversight bodies. By actively participating in these meetings and

committees, the office will establish its visibility and credibility and also play a leadership role in any local or state change. Often the child welfare director and representatives participate in these committees, and this is an excellent opportunity for the office to offer its insight and perspectives.

- Work with the bench and local bar to shape and support any system change and to offer assistance and insight into local problems, concerns or issues. It is essential that the office be present at court convened meetings that include the various local agency heads, i.e., probation, mental health, education, etc.
- Schedule regular meetings in order to form relationships with the local Board of Education(s), Mental Health, Health Services and Probation departments in order to assure that client needs are met.
- Identify areas of practice that need review and reform. Take the lead in organizing a convening or summit on that topic. The summit should be supported by local and state “partners,” stakeholders, as well as the bench.
- Identify and develop formal or informal working relationships with legal service providers and experts in related legal fields such as poverty, disability, domestic violence, mental health, education, and immigration law.
- Identify and develop formal or informal working relationships with service providers and experts in related non-legal disciplines such as child development, health, substance abuse, education, and mental health.

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National Association
of Counsel for Children

C. Program

GUIDE LINE C-1

Child Welfare Case Concentration

A child welfare law office should have a substantial concentration on child welfare cases in order to implement and support the administrative and programmatic practices recommended in these guidelines.

by **Michael Jamison, JD**, former Associate Project Attorney
NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES
Reno, Nevada

Commentary

Lawyers representing children must have the expertise necessary to represent their clients competently. Developing this expertise comes, in part, from the experience gained from focusing one's practice on child abuse and neglect cases. A general practice, which infrequently includes child clients, is not conducive to providing excellent representation. Child welfare law offices should dedicate their practice to representing child clients, particularly in abuse and neglect cases. As discussed further in C-2, Standards of Practice, and C-9, Training and Certification, the field is too complex for attorneys to master on a part-time basis. Child welfare law offices should employ full-time⁷ professional staff dedicated to the field of child welfare.

As noted, the practice of child welfare law is unique and complex. This field of law has developed its own procedural and substantive statutes, rules and related decisional law. Not only has juvenile law evolved separately from civil and adult criminal law but within the category of juvenile law the sub-categories of delinquency, status and child welfare law are quite different from each other.

Knowledge of Collateral Systems

Concentration on the field of child abuse and neglect however does not mean that counsel should restrict his/her knowledge to child welfare law. The families in dependency court commonly present a wide range of problems including alcohol and other drug dependence, family violence, educational deficits, unemployment, developmental problems, and emotional and psychological disorders. These problems occur in varying social, economic and cultural contexts. Substantial research on the dynamics of these issues has been developed and is ongoing. The organization must be committed to supporting counsel in gaining and maintaining familiarity with this research if he/she is to recommend effective, culturally competent services for families.

A child welfare law office should facilitate staff members maintaining current expertise in the related collateral legal systems, such as child custody, divorce, immigration, delinquency/criminal, mental health proceedings, as well as maintaining institutional expertise in these areas.

⁷ Staff who only work part-time, but devote their entire practice to child welfare law, are considered differently from staff which spend part of their time working on child welfare law, and the other half of their time on tort law, for example. For the purposes of these Guidelines, we believe practitioners must concentrate their work on child welfare law.

Being an effective legal advocate for children is enhanced by knowledge of collateral legal fields, particularly family, education, mental health, criminal, truancy, delinquency and immigration law.⁸ The organization should support the development of competency in these areas, even if the same attorney does not represent the child in such matters.

For example, issues pertaining to the child's educational rights are frequently encountered in dependency cases. Counsel should be able to recognize if the client's educational rights are being met. Dependency courts are an important forum for advocating that the child is receiving an appropriate education to which he/she is entitled.

Dependent children are statistically at high risk for delinquency and truancy. Although there are different ways that states deal with potential dual jurisdiction cases (i.e. dependency, status and/or delinquency) it is not unusual for teenage dependent children to find themselves subject to delinquency or truancy proceedings. The interrelationship of the processes must be understood, particularly because in many cases, depending on the law of the jurisdiction, dependency counsel may deem it appropriate to advocate for the dependency court, with its greater focus on treatment, to retain jurisdiction over the child.

Many families have pending or previous matters in family court. There may be existing family law orders and issues that overlap the dependency case. Again, although the law may vary from state to state, it behooves counsel to have a working understanding of family law and the relationship between family court and dependency court orders.

There is a high incidence of mental health issues among both parents and children in neglect and abuse cases. A significant percentage of dependency cases are filed primarily as a means of obtaining mental health services for children. Counsel will need to be prepared when questions arise about eligibility for services and alternative legal processes to address the problems.

Increasingly, the immigration status of families must be considered. Coming to the attention of the legal system even through a child abuse or neglect investigation can trigger immigration or naturalization consequences for the family and or child. A child who has been abused may be entitled to specific immigration benefits as a result.

⁸ One state, California, by statute specifically requires that attorneys for children in dependency actions inform the court of other interests of the child that need to be protected by other administrative or legal proceedings: "In addition counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings. The attorney representing a child in a dependency proceeding is not required to assume the responsibilities of a social worker and is not expected to provide nonlegal services to the child. The court shall take whatever appropriate action is necessary to fully protect the interests of the child." (California Welfare and Institutions Code sec. 317(e)).

A child welfare law office must comply with representation guidelines and standards of practice.

by **Marvin Ventrell, JD**, President and CEO
NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN
Denver, Colorado

Commentary

Model practice requires a clear understanding of the lawyer's role and duties and adherence thereto. Child welfare law office attorneys must comply with the rules of practice as defined by law, state ethics codes, and any adopted standards of practice. Lawyers should also turn to practice recommendations and guidelines to promote model practice.

The role and duties of the child's attorney are set forth in a number of authorities including the following:

Controlling Authority

- The Child Abuse Prevention and Treatment Act (CAPTA) (if adopted by jurisdiction)
- State Statute
- Case Law
- Court Rules, Orders, and Directives
- Ethics Codes: ABA Model Code of Professional Responsibility or Model Rules of Professional Conduct (as adopted by the jurisdiction)
- Adopted Standards of Practice

Guiding Authority

- Local Practice Guidelines
- Office Practice Guidelines
- ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases
- ABA (NACC Revised) Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases
- NACC Recommendations for Representation in Abuse and Neglect Cases
- National Conference of Commissioners on Uniform State Laws (NCCUSL) Uniform Representation of Children in Abuse and Neglect and Custody Proceedings Act (currently in the drafting stage)

First, child welfare law office staff attorneys must comply with the fundamental duty of all lawyers to provide competent, independent, zealous representation as defined by the state's version of the ABA Model Rules or Model Code.⁹ Children's lawyers are not relieved of these traditional lawyer duties unless the jurisdiction has made an exception (as some jurisdictions have regarding client confidentiality for example). Children's attorneys must specifically be familiar with their state's version of ABA Model Rule 1.14 which provides: "When a client's ability to make adequately considered decisions is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall,

⁹ See Model Rules Preamble; Rule 1.1; and Model Code EC 7-1; 7-12; DR 6-101.

as far as reasonably possible, maintain a normal client-lawyer relationship with the client.” In 2002 the American Bar Association adopted revised Rule 1.14(a) of the Model Rules, now referring to a client with diminished capacity, as follows: “When a client’s ability to make adequately considered decisions is diminished, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.”

Staff attorneys must also comply with state law (statutory and case) defining the role and duties of the child’s attorney. Many jurisdictions, for example, define by statute and /or case law whether the lawyer’s role is client directed (traditional expressed wishes representation) or attorney directed (substituted judgment best interest representation). Many jurisdictions also have statutory provisions and case law defining the lawyer’s duties, including the duty to perform a complete investigation and visit the client for example.¹⁰

The state’s ethics code and laws of practice, therefore, provide the foundation of the lawyering process for children, but rarely provide dispositive guidance for all situations. In response, some jurisdictions have adopted mandatory and enforceable representation rules in the form of standards of practice or court orders or directives.¹¹ Child welfare law office attorneys must be aware of and comply with these rules too.

Next, offices may adopt certain internal office practice standards or guidelines. Such rules may not be contrary to other mandated state requirements but may go beyond them, requiring for example that the lawyers meet with their clients in their homes or placements, or see clients a minimum number of times. Additionally, whereas most jurisdictions do not mandate caseload maximums, offices may choose to impose such limits for their attorneys.

Offices should also be knowledgeable about local and national guidelines and national standards of practice which, while not necessarily enforceable in one’s jurisdiction, nonetheless provide guidance. In particular, attorneys should be familiar with the *ABA Standards of Practiced for Lawyers Who Represent Children in Abuse and Neglect Cases*, *ABA (NACC Revised) Standards of Practiced for Lawyers Who Represent Children in Abuse and Neglect Cases*, and the *NACC Recommendations for Representation in Abuse and Neglect Cases*. These Standards are summarized in Appendix A.

One of the most important topics in the NACC Recommendations is the matter of caseloads. Section III. A. 2. of the Recommendations calls for “reasonable caseload limits.” Comment A then provides that “the NACC recommends that a full time attorney represent no more than 100 individual clients at a time....” This guideline was recognized by the court in *Kenny A. ex rel. Winn v. Perdue*, 218 F.R.D. 277 (N.D. Ga. 2005); U.S. District Court, Northern District of Georgia (February 8, 2005). For more information on caseloads, see C-1, Caseloads, of this publication.

As of February 2006, the National Conference of Commissioners on Uniform State Laws (NCCUSL) Uniform Representation of Children in Abuse and Neglect and Custody Proceedings Act was in the drafting stage. Lawyers should familiarize themselves with this Act which could become law in their jurisdictions.

Accordingly, child welfare law office policy should include mechanisms for evaluating staff attorney compliance with the law of child welfare practice including statutes, case law, ethics codes, court orders, standards, and guidelines. Individual attorney and overall office compliance data should be kept and attorneys should be evaluated in part on this basis. See the Quality Review and Accountability Guidelines C-10 and C-11 for more information on attorney compliance.

¹⁰ Colorado Revised Statutes Section 19-3-203 (3), *People in the Interest of J.E.B.*, 854 P.2d 1372 (Colo. Ct. Appeals 1993).

¹¹ See Colorado Chief Justice Directive, 04-06, at www.coloradochildrep.com.

Knowledge of Community Resources

A child welfare law office should develop expertise in the services its community offers that are relevant to the needs of children in abuse and neglect cases.

by **Gerry Glynn, JD, MS, LLM**, Associate Professor
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Commentary

Children and their families need more than legal representation when lawyers are appointed or retained. They are often entangled in a web of needs that include the need for many social services. The value of multidisciplinary practice is discussed in C-4. Whether an office has a multidisciplinary component, it is necessary for all offices to have knowledge of all available community services. Judicial determination of “available resources” is an important part of most juvenile court proceedings when the state has to prove that they have provided “reasonable efforts” or the “least restrictive placement.” The judge’s rulings on these items and others in juvenile practice are often dependent on whether the state has explored all available resources. To advocate for one’s client adequately, a child’s lawyer must have independently investigated what resources are available and not rely on the representations made by the state.

In addition to knowing what is available, it is important to know how decisions are made about who receives the services. When an advocate knows who makes the decisions and how, he or she can affect the outcome, rather than respond to it. Being aware of the supervisory structure of an agency can enable an attorney to resolve placement and treatment issues quickly. This knowledge of how to access resources is especially critical when an emergency arises.

**A Child Welfare Law Office Should
Constantly Collect Information About Services and Resources**

Defining an office’s “community” of resources will depend on the type of practice and location. Some will focus on their city as the geographic area of resources while others may be able to (or forced to) access resources from around the state. However one defines the “community,” each office should have a list of resources broken down into categories that are accessible by everyone on the staff. Whether the office uses a computer system or a file cabinet, do not rely on one person as the repository. Everyone in the office should not only have access to resources, but also the responsibility for updating, sharing and maintaining information.

When initially developing the pool of information, an office may not have to recreate the wheel. If the community has a United Way Office, legal services office or major social service provider, they may have already created a user friendly guide to services. Use their information as a base to build on. Do not accept what others have done as complete. Each offices’ clients’ needs will be different from other providers. Usually other lists will provide basic information: name, address, phone number, webpage and services provided. A child welfare law office will need additional information, which may be accumulated through experience with various providers.

At a minimum, an office should learn what each provider has to offer in services to its clients. (For example: Do they provide counseling at schools or only at their offices? Do they provide tutoring for all ages or only middle school children?) Offices should also learn how to access the services. (For example: Can they accept referrals from anyone or do they need to have a court ordered referral?) Do

they have specific criteria for services? (For example: Do they not accept children with developmental disabilities? Do they not accept anyone with a criminal or delinquency background?) Information about funding is also needed. (For example: Will they accept Medicaid? Are they funded by a juvenile justice agency and thus cannot accept children unless they have a delinquency or potential delinquency offense?) Finally, offices need to know if any of these rules are flexible.

Staff will learn this type of information through advocacy for individual clients. To improve the services provided by the entire office, make the information one advocate learns available to everyone else in the office. Thus, the office needs to have a centralized filing system (whether computerized or in file cabinets.) When an advocate learns information about a new program or additional information about an existing program, the advocate needs to be encouraged or required to provide that information to the centralized depository. This can consist of encouraging all to pick up copies of brochures when out or copying application forms. Until a database is well established, the office can also make sharing information about resources part of a regular office meeting or “case-rounds” session.

In addition to collecting data internally from the advocates within the office, some communities have regular service provider meetings. A major social service provider (Catholic Social Services or Community Alliance or the United Way Office) may have a monthly meeting in which different providers present on their services. If such an event occurs in the local community, a representative of the child welfare law office should attend and bring the information collected back to the office. If no such event occurs in the local community, a child welfare law office may want to start the event and have providers attend to learn from each other.

Appendix B includes a list of the services about which Child Welfare Law Offices should maintain information.

A Child Welfare Law Office Should Schedule Regular Reviews of Information

Social service providers may move or change their services. At least once a year, a member of the office staff should review the data available. The staff person should call or email each of the most commonly used providers to make sure that the basic data (name, address and services provided) is still accurate. If programs have closed, they should be deleted from the database.

A Child Welfare Law Office Should Strive to Expand the Resources Available

Too often our clients are denied justice because services are unavailable. The law may only require the judge to order “available” services. This gives the state, agencies and parents an excuse for failing to serve our client’s needs. Thus, a child welfare law office should be advocating for more services to eliminate the excuse (and legal defense) that those services are not available.

Staff of the child welfare law office, in collaboration with others from the community, should look for opportunities to expand services. There are two ways to expand services. First, advocates can encourage an existing service provider to expand the type of services they provide. (For example, encourage a day care provider to expand their hours to include night shift services to meet the needs of people who work at night. Or, encourage an after-school athletic program to provide tutoring services for children who are falling below the required grade point averages needed to make teams. Or, encourage that same after-school athletic program to agree to be a probationary placement for youth to work off probation community service hours by coaching younger kids.) Second, advocates can help create a new non-profit service provider in the community. Often, advocates learn at national or regional meetings about services provided in other communities. Working with other community activists and judges, advocates can help ignite local interest in a new program to avoid clients being denied necessary services or shipped to another community to receive the services.

In advocating for expansion of services or the creation of new services, the two major barriers are personnel and finances. If the service requires personnel who are highly trained, the personnel barrier may be more difficult. However, many social services can be developed or enhanced with limited

training. Thus, advocates should work with church, civic or elderly groups to help organize and staff the services needed. A university or college nearby could be another great resource of free or cheap labor. To succeed at a university or college, the advocate will have to connect with a faculty member or community outreach office.

To overcome the financial barrier, the advocate will have to be creative in designing the program. Is this a service that can be compensated through Medicaid or some other insurance? Is there a designated government fund interested in addressing this need? Are there foundations or corporations interested in providing this service? By working with others who may have experience fund raising, advocates can learn how to research sources of funds. Do not forget that the number one source of all philanthropic giving is individuals. Advocates should consider what individual or group of individuals might be interested enough to make the service a reality.

A child welfare law office needs to incorporate the expertise of other disciplines to best represent its clients, given the complexity of social, economic and cultural influences at issue in child welfare cases.

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and **Jonathan Budd, JD, MPA**, Director of Operations
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Commentary

Appropriate and effective representation is more likely to occur when a child welfare law office provides a multidisciplinary approach to representation. Advocates for children — regardless of their role as GAL or counsel — must assess the full range of the child's social, physical, psychological, educational, developmental and legal needs. This section discusses how to collaborate with other professionals to meet children's non-legal needs.¹²

No single profession, including attorneys, is likely to possess the broad skills and specialized knowledge necessary to advocate for developmentally appropriate and individualized recommendations for each client. To do so requires a sophisticated knowledge of child development, mental health, substance abuse, domestic violence, foster care, regular and special education and physical health and medicine.

A child welfare law office should apply a multidisciplinary approach to advocacy — inside and outside the courtroom — that integrates various professional perspectives and expertise. The insight of one professional will enrich, influence and cross-train the other.

There is no one way to accomplish this. Some offices employ professional staff who team with attorneys to advocate for children. This may range from having a social service professional on every case to having social service professionals on staff to consult and/or work on selected cases.

Another multidisciplinary approach is to use other professionals on a volunteer basis. For instance, a child welfare law office might host or participate in a monthly brown bag lunch with other professionals, such as a pediatrician, social worker, psychologist, special education teacher, child development expert and law enforcement official where the participants consult with each other regarding individual cases. Another volunteer option is to develop a panel of professionals in various disciplines who volunteer to consult and/or testify in selected cases. Some offices may also be in a position to use paid investigators or experts.

In addition to developing multidisciplinary staff and/or volunteers, child welfare law offices should consider opportunities to participate in multidisciplinary task forces addressing systemic issues. For example, the individual district offices of the United States Attorney around the country convene Crimes Against Children task forces to coordinate the response of state, local and federal law enforcement and child welfare and human service agencies to the abuse, neglect and sexual exploitation of children.

The power and effectiveness of bringing together professionals from different disciplines and perspectives also can bring challenging differences in communication style, approach to clients, terminology,

¹² Consulting other lawyers may be useful in helping with legal issues that are ancillary to a child welfare case or where a legal specialization is helpful, such as in school discipline, social security benefits or special education issues.

and professional ethics and values. Depending upon the jurisdiction and professionals involved, multidisciplinary practice can raise questions and issues regarding client confidentiality, privilege, mandated reporting, and the role and duties of the attorney which cannot be assigned to other staff. It is important to thoroughly research and consider those issues in order to develop policies and procedures that are respectful of the different professionals and consistent with the professional codes, ethical principles and licensing requirements of everyone involved.

A child welfare law office should have protocols for consistent case consultations or case reviews, both formal and informal, within the office and with outside experts to provide attorneys and other staff the opportunity to discuss and analyze cases collectively.

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Commentary

Although a child may become the client of a law office because of a discrete legal problem, e.g., abuse and neglect, effective advocacy on behalf of a child client requires the practitioner to investigate and become knowledgeable regarding all areas of a child's life, such as how the child is doing in school, whether the child has access to regular medical care, etc. Thus, children's cases are among the most complex legal matters — implicating a myriad of areas of legal expertise, including education, immigration, juvenile justice, as well as arenas of expertise outside of the law, including psychology, social work, medicine, etc. Superimposed on top of this complex web of issues is the panoply of emotions that children's cases tend to invoke in practitioners. These emotions include frustration, anger, sympathy, distress, and often times a feeling of helplessness in the face of seemingly insurmountable obstacles caused by an intractable bureaucracy. Consequently, in order for children's law practitioners to stay at the top of their game in representing children, the individual practitioner must have access to regular and effective supervision, as well as an opportunity to analyze his/her cases with experts in a variety of fields.

Regular and ongoing supervision is critical to enhance practice, however, supervision is not the topic of this commentary. Supervision means the management and oversight of individual cases by an experienced practitioner in the same office as the case handling staff member. Case consultation or case review differs from supervision in that case consultation brings to bear the expertise of practitioners of other disciplines on the case.

It is critical for all staff members who work on cases, including attorneys, paralegals, social service professionals, and other specialists, have the opportunity to discuss each case with members of other disciplines to the extent that those disciplines are implicated in a particular case. Although seeking advice, the attorney still must follow ethical standards regarding professional independence, and must exercise the professional judgment to advance the client's legal strategy.

A system that allows for case consultation or case reviews can be implemented in many ways, both formally and informally.

1. **Ad Hoc Case Consultation:** This informal mechanism addresses issues as they arise. It is important for staff of all disciplines to be available for consultation with their colleagues who need immediate guidance and assistance in crisis situations. Supervisory staff, in particular, should have as part of their job description and their daily time allotment, an expectation and understanding that they will serve this important function for the agency.
2. **One-on-One Formal Case Consultation:** In an office with a multidisciplinary practice, there should be regular case consultation between disciplines. E.g., social workers and attorneys should consult with each other in preparation for upcoming hearings. Additionally, lawyers

should consult with a social worker or other staff member with special expertise, if that expertise is relevant to an upcoming hearing.

3. **Formal Extra-Agency Case Review:** Extraordinarily complex cases often benefit from the input of an outside panel of experts, including a medical doctor, psychiatrist, social worker, police officer, trauma specialist, education expert, lawyer. Case reviews of this sort can be used for “problem” cases, or an agency may choose to utilize this mechanism for all cases after a designated period of time.

The panel of experts can be convened regularly by a staff member responsible for this task. The actual functioning of the panel can take many forms, but one that works well is for staff to provide a brief, redacted summary, with issues highlighted, to the panel ahead of time, and then to make a brief oral presentation to the panel on the day of the review, seeking feedback from the convened experts.

For a newly forming office or an existing office without an interdisciplinary staff, there should be a protocol for accessing a special consult from an outside agency. Good external working relationships with service providers relevant to the child welfare law office practice, e.g., a local Children’s Advocacy Center specializing in interviewing children who have been sexually abused, or a local doctor specializing in adolescent medicine, etc., should be fostered to make this a viable alternative.

Another option for an office that does not have an interdisciplinary staff is to utilize a peer consultation model. Under this model, all the lawyers in a particular office should meet regularly as a group to analyze cases collectively. Each lawyer will bring differing expertise from past practice to the table, as well as varying experience from their own cases.

For organizations that use volunteers or pro bono lawyers to supplement the work of the in-house staff attorneys, a model that has become known in Philadelphia as “Child Advocacy Practice Groups,” is an excellent vehicle to provide case consultation. Law firms that have several lawyers handling child advocacy cases are encouraged to form such a practice group. The practice group meets monthly, usually over a brown bag lunch, to discuss the cases, and bring in a child law specialist from the local child welfare law office for which the lawyers are handling their individual cases. In this way, not only are cases collectively analyzed, but ongoing education regarding children’s law issues and systemic questions are handled.

A child welfare law office should maintain reasonable caseload limits to enable staff attorneys to comply with standards of practice in representing their clients.

by **Christopher Wu, JD**
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Commentary

All offices agree that staff need reasonable caseloads in order to represent their clients effectively. The field is full of controversy, however, about what a reasonable caseload is or should be. Historically, many child welfare law offices have had average caseloads that would be excessive by any rational standard. For example, in 1993, attorneys in the Child Advocacy Unit of the Legal Aid Society in Pittsburgh were each responsible for the representation of 1100 children. See Youth Law News, bulletin of the National Center for Youth Law, July-August 1993 issue. As our understanding of the legal needs of children increases, along with the complexity of the cases, most states now recognize that such high caseloads are unworkable.

Although some offices are able to cultivate resources and a legal culture that permit sufficient staffing to represent its clients adequately, many offices are faced with difficult situations brought on by the related problems of high caseloads, staff shortages and inadequate financial resources. As a result, the ABA, the NACC and individual states have attempted to set guidelines for the maximum caseload a lawyer should carry.

The ABA/NACC standards for attorney caseloads¹³ employ a functional analysis that essentially recommends caseloads which allow the attorney to fulfill the specific substantive duties of representation outlined in the standards. In addition, the later-adopted NACC *Recommendations for the Representation of Children in Abuse and Neglect Cases* state that a system of representation must include reasonable caseload limits in order to assure that the child has an attorney with adequate time and resources.¹⁴ More specifically, the commentary to that section recommends that a full-time attorney carry no more than 100 active clients at a time, assuming the attorney's cases are at various stages and recognizing that some of the clients will be in sibling groups in which the lawyer may have multiple clients. Both the Standards and the Recommendations are available on the NACC's web site at www.naccchildlaw.org.

Individual states have also developed attorney caseload standards. These include Arkansas, with an implemented standard of 75 cases (a case may include multiple siblings) per full-time attorney, and California, with an identified (yet to be implemented) standard of 141 *clients*. Some child welfare law offices have adopted their own standards, such as the Children's Law Center of D.C., which caps its attorneys' caseloads at 50 cases each.

Both the Arkansas and California caseload standards derive from an analysis of the requisite duties or activities of dependency counsel as translated into a maximum number of cases or clients that any full-time practitioner can handle. California's caseload standard derived from a 2004 caseload study initiated by the state's Administrative Office of the Courts (AOC). The effort began with an in-depth

13 American Bar Association (NACC-revised version) Standards for Lawyers Who Represent Children in Abuse and Neglect Cases, std. L.1.

14 NACC Recommendations for Representation of Children in Abuse and Neglect Cases, sec. III.2.

exercise involving appointed counsel and juvenile court judicial officers designed to identify the full spectrum of requisite dependency counsel tasks. Subsequent to the development of the “Activities and Task List”, the current workload of attorneys was measured through a statewide, two-week analysis of attorneys’ time (a “Time-Study”). Focus groups, designed to determine what attorneys thought an appropriate workload should be based on Time-Study results, were then conducted. The final case-load study report concluded that attorneys should generally handle no more than 141 clients (either parents or children) at a time. The California study is available from the AOC’s Center for Families, Children & the Courts at ccfc@jud.ca.gov or 415-865-7739.

Recent federal court developments also suggest a trend towards the recognition of caseload standards in this area; a recent case from the Northern District of Georgia¹⁵ denied two Georgia counties’ motions for summary judgment and concluded that both the Georgia Constitution and State statute provide a right to counsel for children in deprivation and termination of parental rights cases.

The efforts of the ABA/NACC, the states of Arkansas and California, and the Georgia federal district court all serve to illustrate the fact that caseload standards are an important proxy for ensuring that attorneys have adequate time to provide effective representation, which, at a minimum includes the ability to develop an attorney-client relationship, to conduct appropriate investigation, and to attend to all of the litigation needs for each child they are assigned to represent.

Factors to Consider in Developing a Caseload Standard

Developing or Adopting Performance Standards:

A critical first step towards the development of a caseload standard is an analysis of the duties and expectations of attorneys’ work; this analysis should be informed by national practice standards (e.g. ABA/NACC standards), the local court, law office management, and others as appropriate, including the legislature, if statutory mandates play a significant role in defining attorneys’ duties.

The development of performance standards enables two related activities 1) the assignment of time to required attorney activities; and 2) the ability to tell a meaningful “story” about the impact of increased caseloads on attorneys’ abilities to perform specific critical tasks for their clients.

Defining Cases:

Some caseload standards for child welfare law offices may be based on a measurement of “cases” instead of individual clients, where a “case” may involve representation of multiple siblings. Although representation of siblings may result in certain workload economies (e.g., hearings for multiple clients simultaneously), there are other tasks that must be accomplished for each client, such as interviews. Because a case may involve representation of one client or many, use of a client-based, rather than a case-based, standard is recommended for the sake of consistency. Some adjustment in the maximum number of clients may be made based on the tasks identified in which representation of multiple siblings might lead to some efficiencies. Both the NACC Recommendations and the California caseload standard described above specifically take into account some representation of multiple siblings.

Impact of Non-Attorney Staffing on Caseload Standard:

The ABA/NACC, Arkansas and California standards are all premised upon the notion of a full-time practitioner with no support staff (particularly social worker/investigator support staffing). The development of caseload standards should take into account the role of non-attorney staffing, if available, with respect to identified attorney duties. For example, will social workers perform some of the home visits and communication functions? If non-attorney staffing will be performing any of the

¹⁵ Kenny A. ex rel. Winn v. Perdue, 218 F.R.D. 277 (N.D. Ga. 2005); U.S. District Court, Northern District of Georgia (February 8, 2005).

tasks delineated in attorney performance standards, the impact of the availability of such staffing on attorney caseloads must be assessed.

Implementation Ability:

The child welfare law office must recognize the likely conflict between caseload standard adoption and the budget realities facing most jurisdictions in the nation which often translate as high attorney caseloads. Any caseload standard developed by an office may thus have to be implemented in a phased-in manner as resources are available.

The child welfare law office must also consider if and how it will be able to exercise some control over its caseload. Situations to anticipate include the court assigning new cases to the office even though management believes that the staff is handling the most clients it can adequately represent. Increased case assignment may result from a change in local providers or new filings; in either instance it is unlikely that a child welfare law office will have the ability to turn away new clients referred by the court. The benefit of a caseload standard, particularly one based on an analysis of the time required to complete specific tasks, is that the impact of caseload increases can be articulated to the court in terms of client-related activities that can no longer be performed.

For a child welfare law office with adequate staffing and resources to meet its duties to clients, analyzing a maximum caseload may be a low priority. For offices that occasionally, or frequently, have difficulty meeting those obligations, a careful analysis of the tasks of representation and the staffing necessary to accomplish those tasks may be the best justification for more resources.

Staff Training

A child welfare law office should provide professional staff with comprehensive, ongoing training specific to the role and duties applicable in their jurisdiction.

by **Gail Chang Bohr, JD**, Executive Director
CHILDREN'S LAW CENTER OF MINNESOTA
St. Paul, Minnesota

Commentary

Training for staff attorneys is crucial if an office is to provide high quality representation to its child clients. This section provides a few ideas about how to conduct such trainings and what should be covered.

Training staff may be done within the office, in many different ways. For larger offices, a senior attorney may serve as the training director, or a training committee formed to help identify what training the staff believes it needs. Experienced lawyers can assist less experienced lawyers by taking them to court and providing mentorship.

Staff attorneys may also attend external trainings, either within the community or ones offered nationally. In jurisdictions with mandatory continuing legal education, specific topics on representing dependent youth may be offered. Training should be geared to all aspects of the representation — from advocating in court to negotiating and working collaboratively with county workers and probation officers.¹⁶ Some critical topics, for example, are discussed below.

Substantive Knowledge

Staff needs to know, at a minimum:

- statutory and court rule provisions applicable to child welfare cases in their jurisdictions, and
- substantive state and federal law, including the Indian Child Welfare Act (ICWA), the Adoption Safe Families Act (ASFA), the Individuals with Disability Education Act (IDEA), the Chafee Foster Care Independence Act. For a more detailed analysis of the substantive law that children's attorneys need to know, see C-9 below on attorney certification.

Social Issues

Staff needs training on the myriad of social issues affecting clients in their communities. Such topics include, but are not limited to:

Child Development

Mental Health

Disabilities

Addictions and Treatment

Pregnant and Parenting teens

¹⁶ The ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases contains a list of topics that should be included in any lawyer training. Part II, Enhancing the Judicial Role in Child Representation, I-2, Content of Lawyer Training (1996).

Domestic Violence
Trauma
Effects of child maltreatment
Education
Immigration
Housing
Early Periodic Screening Diagnosis and Treatment (EPSDT) program, etc.
Issues effecting youth aging out of foster care

Skills

Staff also needs skills related training on many topics, such as:

Interviewing the Child. Learning how to interview and relate to children is an important part of representing children. To establish a trusting lawyer-client relationship, lawyers must learn how to speak to children and how to listen. Lawyers must be able to explain difficult legal concepts to children in language they will understand, and they must know how to ask questions in an age appropriate way.

Courtroom Advocacy. The lawyer should be a skilled courtroom advocate with expertise in motion practice and trial advocacy.¹⁷

Written Advocacy. There is no substitute for having thorough knowledge of the law and regulations — federal and state. New lawyers increase their learning and also educate others in the law by writing motions and memoranda of law. Such written advocacy helps judges and others to make better decisions since they will have time to think about the issues in advance. Writing motions lays the foundation for a brief bank and helps to train others in the law.

Multidisciplinary Staff. Likewise, there is no better alternative for understanding how the child welfare system works and having a working relationship with the players. A child welfare law office should train staff on working with other disciplines.

Ethical Practice. Having a good foundation in the ethical practice of law is also important. Especially when representing children, the lawyer will need to understand the allocation of decision making between the lawyer and the client, lawyer-client confidentiality, and identifying potential conflicts of interest. It is critical that the new lawyer be able to consult with more experienced lawyers on such matters as conflicts of interest, confidentiality, and boundary issues.

Role of the Lawyer.¹⁸ Lawyers also need training on their role in a child welfare cases. In jurisdictions where the child's attorney represents the child's preference and is not also the guardian ad litem, training should be offered on how to ascertain the child's preference. In jurisdictions in which lawyers represent children as guardians ad litem, lawyers need training on how to assess what is in a children's best interest. Regardless of the jurisdiction's model of representation, lawyers need training on how to respect their child clients, give the child a meaningful opportunity to express their wishes, and work to see the situation from the child's point of view.

Systems Knowledge. A thorough knowledge of the child protection and foster care system will be invaluable to the attorney especially when issues of placement and treatment are presented. Having a

¹⁷ The Rocky Mountain Child Advocacy Training Institute (RMCATI) is an annual course that teaches child advocates trial advocacy skills. For more information about the training, visit www.NACCchildlaw.org.

¹⁸ For an in-depth discussion on the role of the lawyer, see the *NACC Recommendations for Representation of Children in Abuse and Neglect Cases*, IV. Representation Models (2001).

social worker on staff who understands the child welfare system can contribute to understanding the whole child and providing holistic representation.

Managing Caseloads. Law offices should offer training on managing caseloads, since not every case will take the same amount of time. Learning to manage conflicting demands and how and when to ask for help, should be part of the in-house training.

Administrative Hearings and Appeals. Since active representation should continue until the child's case is dismissed, representation will also often include administrative hearings and appeals.

Professionalism. Representing children can be an emotionally draining experience, which may impart secondary trauma on the professionals. Staff should be training on how to care for themselves, including stress management and burn out prevention. Staff must learn to identify situations in which boundaries between professional representation and emotional attachment may become blurred.

Cultural Competence. See the above section on Cultural Competence, A-13.

Child welfare law offices should provide and encourage ongoing training for staff, whether the advocate is new or experienced.

A child welfare law office should not only develop the expertise of staff members, but should endeavor to train other participants in the child welfare system as well.

by **Catherine Krebs, JD**, Committee Director of ABA Section of Litigation
CHILDREN'S RIGHTS LITIGATION COMMITTEE
Washington D.C.

Commentary

Lawyers for children need to be experts on a wide variety of issues, and training on these issues is essential to ensure zealous advocacy for children involved with the child welfare system. This section discusses the role of child welfare law offices in providing training to the greater child welfare community.

Although some jurisdictions have trainings for child advocates before they can take cases, many do not. Even those jurisdictions that do provide training cannot cover the breadth of issues on which children's lawyers must be experts. Additionally, lawyers for children are not generally paid enough to afford to pay for necessary training. Child welfare law offices should step forward to fill in this gap by providing trainings to lawyers in the community at a reasonable cost to enhance their representation. Providing trainings can also elevate an office's profile in the community and sharpen the expertise of staff members as they prepare trainings on a variety of subjects.

Good trainings need not take a lot of staff time or money, there are many resources that an office can utilize to put together a range of programs several times a year. Panelists for trainings could be staff members or they could come from a local or national organization. A law center may want to establish relationships with local universities or professional organizations to identify experts in psychology, social work or medicine for interdisciplinary trainings. There are also many national resources such as the National Institute of Trial Advocacy (NITA) or the American Bar Association (ABA) that may be able to provide speakers or training materials.¹⁹ Programs should often include people who are well known and respected in a community in order to draw attendees and provide a sense of legitimacy.

Child welfare law offices can develop relationships with local law firms to sponsor trainings by providing physical space and assisting in putting together materials. The local or state bar may also be able to help. Offices can also work with the court and judges to identify content for the training, to assist in putting together trainings (perhaps by hosting at the courthouse) and to encourage lawyers to go (perhaps by closing a court one afternoon or even a full day so that lawyers can attend trainings). Offices located in jurisdictions that require continuing legal education (CLE) credits should ensure that their trainings offer credits to attending lawyers.

Law offices can also raise the level of practice for children in their communities by providing case updates and other relevant information for lawyers in a newsletter or on a website, or by establishing a local list serve by which current information can be distributed and questions can be asked and brainstormed. A website could also include pleading banks and local resources.²⁰

19 For example, the American Bar Association Section of Litigation Children's Rights Litigation Committee (CRLC) can provide speakers for trainings at no cost to the local organization. www.abanet.org/litigation/committee/childrens/ Additionally, NITA and the CRLC have put together *Training the Lawyer to Represent the Whole Child*, an intensive NITA skills training program that combines traditional advocacy skills with interdisciplinary knowledge in the areas of child welfare and juvenile justice. This training has been provided in several cities across the country, and NITA is seeking other locations in which it can be held.

20 The Center for Children's Advocacy at the University of Connecticut School of Law maintains a listserve for lawyers and a website that includes a case library, legislative news, a pleadings bank, placement resources and local and national trainings. www.kidscounsel.org

There are a variety of national trainings and conferences that local attorneys can attend and child welfare law offices should publicize these trainings.²¹ Depending on the community, lawyers may need scholarships to attend, and when appropriate law offices could consider reaching out to local firms to sponsor travel costs and tuition for these national opportunities.

Law offices should provide written materials at trainings that lawyers can use in their everyday practice. Materials can then be put on a website so that all lawyers in the community can utilize them to improve their practice. Law firms may be able to contribute to materials by providing research or writing sample motions to include.

Child welfare law offices should also consider providing trainings for other participants in the child welfare system, for example judges, lawyers representing the state, and social workers. By training system participants on the needs of children and families and about innovative ideas to improve services to children and families, the system will work better for kids.²²

If offices utilize pro bono lawyers, then they must provide good and comprehensive trainings for their volunteers. Training should include the areas in which children's lawyers must be experts in order to ensure that pro bono representation is excellent, and volunteers should have a mentor who can supervise their work and be available for questions.

21 The Annual Children's Law Conference offered by the National Association of Counsel for Children (NACC) is one such example, www.NACCchildlaw.org

22 There are national resources that provide training or assistance for trainings to system participants, for example the National Council of Juvenile and Family Court Judges, www.ncjfcj.org and The ABA Center on Children and the Law, www.abanet.org/child.

Attorney Certification

A child welfare law office should be staffed by attorneys who are Certified Child Welfare Law Specialists. Specialty certification is a significant measure of competence, helps ensure legal expertise, and builds the status and credibility of the office as a whole.

by **Marvin Ventrell, JD**, President and CEO
NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN
Denver, Colorado

Commentary

The practice of child welfare law is a distinct legal specialty. In July of 2001, the American Bar Association (ABA) designated child welfare law as a legal specialty, defined as follows:

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 child custody and adoption disputes where the state is not a party. Lawyers certified in Child Welfare Law must be knowledgeable in the state and Federal laws applicable to child protection and foster care. A specialist must also understand relevant principles from child development and psychology regarding individual and family dynamics and appropriate treatment modalities for child abuse and neglect and be capable of recognizing the professional responsibility and ethical issues that arise out of the client's status. Lawyers certified as specialists in Child Welfare Law should also be proficient in the skills of interviewing and counseling child clients.

Thereafter, in 2004, the ABA accredited the National Association of Counsel for Children (NACC) as the national body authorized to certify individual lawyers as Child Welfare Law Specialists. The NACC certification program is sponsored by the U.S. Department of Health and Human Services Children's Bureau. Although currently only active in a few states, the Certification program is expanding. Check with the NACC at www.NACCchildlaw.org to obtain a list of states currently offering certification.

In order to become certified, a lawyer must apply to the NACC and satisfy the following standards or requirements:

Substantial Involvement. 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.

Educational Experience. The applicant must demonstrate substantial participation in continuing legal education relevant to child welfare law in the three-year period immediately preceding application. Topics deemed relevant to child welfare law include but are not limited to substantive and procedural law, trial practice, alternative dispute resolution, child abuse and neglect, child development, and family dynamics and relationships.

Peer Review. The applicant shall submit with application the names of no less than five (5) references. These references shall be substantially involved in child welfare law, and familiar with the applicant's work. References satisfactory to the NACC must be received from at least one judge who can attest to the applicant's competence in child welfare law. A reference from an individual who has served as opposing counsel is encouraged.

Writing Sample. The applicant shall submit a copy of a trial court memorandum, appellate brief, article, or a writing sample demonstrating legal analysis in the field of child welfare law. This should be a substantial writing sample, stating facts and arguing law, submitted or drafted no more than three years before the date of application.

Examination. The applicant must pass the NACC Child Welfare Law written competency examination.

The competencies (knowledge base) for certification are contained in the publication, *Child Welfare Law and Practice: Representing Children, Parents and State Agencies in Abuse, Neglect and Dependency Cases*, Editors Donald N. Duquette and Marvin Ventrell, (Bradford Publishing 2005). The publication is provided to all certification applicants as part of the certification process. The publication also serves as a general practice reference and training guide. The certification competencies contained in the publication include:

THE CONTEXT OF CHILD WELFARE LAW

1. America's Children
2. Physical, Sexual, and Emotional Child Abuse and Neglect
3. Mental Health Aspects of Child Maltreatment
4. Child Development and the Impact of Maltreatment
5. Family Dynamics in Child Maltreatment
6. Cultural Competence

THE LEGAL FRAMEWORK OF CHILD WELFARE LAW

7. The History of Child Welfare Law
8. Federal Child Welfare Law and Policy: Understanding the Federal Law and Funding Process
9. Child Welfare Constitutional Case Law

THE CHILD WELFARE LEGAL PROCESS

10. The Child Welfare Case Process
11. Dependency Court Jurisdiction and Interstate and International Proceedings
12. Collateral Proceedings
13. Confidentiality of Juvenile Court Proceedings and Records
14. Children in Court: Presence and Testimony
15. Non Adversarial Case Resolution
16. Special Evidentiary Issues
17. Establishing Legal Permanence for the Child
18. Child Welfare Appellate Law and Practice

THE ROLE AND DUTIES OF LEGAL COUNSEL IN CHILD WELFARE PROCEEDINGS

19. Representing the State or Welfare Agency: The Role and Duties of Agency Counsel
20. Representing Parents: The Role and Duties of Respondents' Counsel
21. Representing Children and Youth
22. Trial Advocacy

Specialty certification brands lawyers as particularly competent to practice in their area of expertise while distinguishing them from other lawyers in the community. Specialty certification evidences a career commitment to the specialty and strengthens the profession as a whole. As specialty certification in child welfare law grows, the NACC believes employers and courts will look increasingly to certified specialists to form the core of the child welfare law bar.

Child welfare law office leaders should encourage their staff attorneys to pursue certification as Child Welfare Law Specialists. Child welfare law offices are encouraged to develop office programs, in conjunction with the NACC, which promote the culture of specialty certification. For more information, go to: www.naccchildlaw.org/training/certification.html or contact the NACC.

A child welfare law office should develop mechanisms to ensure the quality of its representation.

by **Frank Cervone, JD,**
and **M. Christine Kenty, Ph.D.**
SUPPORT CENTER FOR CHILD ADVOCATES
Philadelphia, Pennsylvania

Commentary

Background

Children's law offices should develop methods to assess lawyer practice and case outcomes. Children's lawyers have not achieved the understanding that comes with a research-based, results-oriented approach to the work. Like most lawyers, children's lawyers have focused more on their inputs (i.e., hours) and activities (i.e., court appearances) than on the outcomes (i.e., acquittals obtained, adoptions completed, etc.) of their work. The evaluative task of quality review involves identifying the relationship between outcomes and activities, in order to define successful strategies in cases, make decisions about the investment of resources, and to further develop standards of practice.

Why should a children's law office measure outcomes? The United Way, which has led development of the language and methods of outcomes measurement for the non-profit sector, suggest that both financial support and a commitment to quality of service are to be served by this approach:

In growing numbers, service providers, governments, other funders, and the public are calling for clearer evidence that the resources they expend actually produce benefits for people. Consumers of services and volunteers who provide services want to know that programs to which they devote their time really make a difference. That is, they want better accountability for the use of resources. One clear and compelling answer to the question of "Why measure outcomes?" is: to see if programs really make a difference in the lives of people. Although improved accountability has been a major force behind the move to outcome measurement, there is an even more important reason: to help programs improve services. Outcome measurement provides a learning loop that feeds information back into programs on how well they are doing. It offers findings they can use to adapt, improve, and become more effective.

Measuring Program Outcomes: A Practical Approach, United Way of America (1996), www.national.unitedway.org/outcomes/resources.

Common outcome measurement vocabulary includes the following terms:

- **Inputs** are resources such as staff (i.e., as measured in units of time, numbers of positions, etc.), volunteers, facilities, equipment, curricula and money. Inputs also include constraints on the program, such as laws, regulations, and requirements for receipt of funding.
- **Activities** are services provided to fulfill the mission of the organization. Activities of children's law offices include, for example, filing lawsuits or petitions for relief/protection, courtroom representation, motion practice, interagency planning representation, gathering information, or home visits.
- **Outputs** are the direct products or units of service, such as the numbers of: children represented, court hearings, home visits, or family service planning meetings. Outputs have little inherent value in themselves. They are important because they are intended to lead to a desired benefit for participants or target populations.

-
- **Outcomes** are benefits or changes to the client participants' condition, status, knowledge, or behavior, and must be observable, measurable characteristics or changes. For example, increasing clients' awareness of legal options or improving the rate at which children return home safely from foster care are outcomes of lawyer service that can be measured and improved.
 - **Outcome targets** are numerical objectives that a program plans to achieve.

For a thorough development of outcomes measurement, see *Measuring Program Outcomes: A Practical Approach*, United Way of America (1996), Id.

Federal Outcomes

In the child welfare field, the federal government now measures each state's systemic outcomes through the Child and Family Service System Review (CFSSR). Seven outcomes are assessed in the domains of safety, permanency and well-being, as follows:

- Safety
 - Children are, first and foremost, protected from abuse and neglect.
 - Children are safely maintained in their homes whenever possible and appropriate.
- Permanency
 - Children have permanency and stability in their living situations.
 - The continuity of family relationships and connections is preserved for children.
- Family and Child Well-Being
 - Families have enhanced capacity to provide for their children's needs.
 - Children receive appropriate services to meet their educational needs.
 - Children receive adequate services to meet their physical and mental health needs.

See www.acf.hhs.gov/programs/cb/cwrp/geninfo. Children's lawyers practicing in child welfare and related fields should consider developing organizational outcomes measures that reflect the federal scheme.

Data Collection and Analysis

The organization will need a system or method to track outcomes and related information such as child-specific biographic data. Children's law offices should have computerized database and information-management systems to track client demographics, key case data, and case-closing information. See A-2, Infrastructure, for more information.

Outcomes in Children's Law Practice

Traditionally legal and social services programs focused on their activities and outputs, such as counting the number of home visits or court appearances, rather than evaluating the quality or result of the visits or hearings. In order to integrate outcomes measurement into an office's practice, it is important and even essential to connect the dimensions. A children's law office should develop a "logic model" or "**program outcome model**" to depict the relationship between inputs, activities, outputs, and outcomes. This approach can engage all aspects of the organization's work, including the representation of children, staff training, volunteer recruitment, training and support, in a coordinated approach to improve its capacity to serve.

Other outcomes to be studied could include, for example:

- Procedural: obtaining an initial hearing or a case dismissal; outcome of motion practice; enrollment in a school program or implementation of an Individualized Education Program (IEP).

- Substantive: child removed from home or returned home; conditions of confinement improved.
- Social service: in-home services acquired; parent able to manage child's special medical needs.
- Health: prompt medical assessment; enrollment in a health care insurance program; access to and receive comprehensive health care services and treatments.
 - For an example of the application of outcomes measurement principles to health care, see *Meeting the Health Care Needs of Children in the Foster Care System — Summary of State and Community Efforts — Key Findings*, Georgetown University Child Development Center, September 2002, www.georgetown.edu/research/gucchd/programs/meeting_health_needs.
- Overall case outcomes: client goal achieved; child in permanent home; child prepared for adulthood; policy improvement accomplished.
- Staff performance: client feedback; goals achieved; self-assessment.

Standard outcomes logic models presume that there is a problem, a set of standard actions or treatments the agency applies to the problem, and either a success or a failure as a result — a win or a loss. Legal advocacy for children is complex in each of these dimensions. First, the problems of most children are more than they may seem at appointment. That is, a case that is opened on a delinquent charge may include dependency issues as well as mental health service issues. Or, a case that opens in Juvenile Court may require advocacy in schools and medical care.

Second, multiple confounding factors complicate the selection of actions or interventions. First, it is difficult to describe and to categorize in research terms the multifaceted practice and art of child advocacy within the matrix of laws and regulations, court culture, systems of providers, and the parents' and defense bar. Lawyers may find it necessary to advocate for the same client's freedom, protection, and supports for their social or psychological needs, and may use a variety of litigation and negotiation methods. That practice and art often involves pressing toward the overall direction of the case without the power to command action from anyone. Some guardians ad litem are bound to ensure that the court is aware of all relevant information, even if it does not support the child-client's wishes or the advocate's theory of the case. In some jurisdictions, and often in the representation of older child clients, counsel is bound to pursue what that child wants, even though the goal may not be particularly winnable. Then things change mid-course: clients get arrested, have babies or decide they don't want to be adopted; caregivers die; long-lost relatives resurface. Any of these events can completely alter the trajectory.

Finally, "wins" and "losses" are terms that fit oddly, if at all, to many children's law cases. There is no inherent rightness or wrongness to returning home, termination of parental rights, adoption, or kinship care. Less restrictive sentences, more intensive treatment services, and different educational programs have similarly ambivalent characteristics. Thus, many outcomes are meaningful only as they relate to the needs and desires of the individual child.

To our knowledge there is little data or systematic experience in applying outcomes assessment models to children's legal services. Following are summaries of two new models in development, offered to illuminate the process that a children's law office might engage to frame an outcomes measurement program.

NCLN Outcomes Model

The National Children's Law Network²³ is currently testing an outcomes model for children's legal services based heavily on retrospective assessments of client, legal, and social service goals, strate-

²³ The National Children's Law Network includes: Children and Family Justice Center of Northwestern University School of Law, Chicago, IL; Children's Law Center of Massachusetts, Lynn, MA; Children's Law Center of Minnesota, St. Paul, MN; JustChildren Program, Legal Aid Justice Center, Charlottesville, VA; Oklahoma Lawyers for Children, Oklahoma City, OK; Public Counsel, Los Angeles, CA; Rocky Mountain Children's Law Center, Denver CO, and the Support Center for Child Advocates, Philadelphia PA.

gies, and concomitant barriers to success. NCLN agencies have postulated that a strategies-assessment model comes closer to capturing the realities of legal advocacy. In the design phase of creating the database, the group carefully generated a working menu of essential strategies via case presentations and edits of the database, as well as identifying the diverse demographic and case-descriptive data-fields that are viewed as essential for later categorization and review. In the data-entry application phase, the case manager (i.e., lawyer, team, supervisor, etc.) creates multiple “sets” of advocate’s goals, each of which has a corresponding client goal and opponent’s goal (i.e., which can be any relevant opposing party, including human services, defense attorney, parent, etc). The case manager assesses whether each of the advocate and client goals was achieved, even partially. Then the case manager prioritizes, from an extensive menu of options, which strategies were most crucial to affecting goal achievement. The database also invites additional open-ended notes about strategies and barriers to achievement.

The NCLN-identified Strategies are Included in Appendix C.

In this approach, data collection occurs both at the beginning and at the end of the case, to include typical or standard information such as: demographics about each client, many descriptors about their legal, health, education and social needs, and the various courts in which they were involved. Such information obviously must be charted in case files during representation. Some users wish to include various counts of lawyer time and client placements in this database. Finally, case managers note any system changes or movement towards such changes resulted from the representation. For each case, a short summary emphasizing changes in client status, needs, and strategies is attached, providing further qualitative material for analysis.

Support Center for Child Advocates Outcomes Model

The Support Center for Child Advocates (Child Advocates) practices a form of child advocacy that is fairly expansive in its understanding of children’s needs, generally not limited just to the emergent problem that brought the case to the attention of the court. Consequently, Child Advocates is testing a client outcomes model that attempts to circumvent the problems of defining wins and losses for permanency and victim/witness work, while addressing advocacy for many of the important objectives for client well-being.

Child Advocates is experimenting with an exhaustive checklist of pertinent outcomes regarding permanency, well-being and criminal prosecution of alleged abusers that will be assessed by case managers as they close cases. This extensive checklist was developed by Child Advocates’ staff over the course of many discussions about advocacy standards to which the agency wishes to hold itself, including those standards contained in laws and policies regarding children in custody. Imbedded in these outcomes are the agency activities necessary to ensure these outcomes.

For purposes of this outcomes model, well-being includes healthcare, education and safety. Universal goals include regular physical and dental health and developmental screening, insurance coverage and treatment, and mental health assessment and treatment where needed. All school-aged children should be attending school, should be in a school that meets their needs, and should be on target to graduate from high school. The education section includes separate sets of questions for preschool (i.e., developmental milestones), teen (i.e., planning for higher education or vocational training) and school-aged clients. Safety issues include the physical environment, background of the caregiver (i.e., is the caregiver an offender?), protection from an abuser, and adequate assessment before closing a child’s case. As in permanency cases, criminal cases (i.e., representation of child victims) include hierarchies of desirable and neutral or undesirable outcomes to criminal prosecution.

While there is no right or wrong permanency outcome except as it relates to client interests, still there are a discrete number of positive, negative and neutral outcomes that can be assembled as an

outcomes hierarchy to be counted at case closing. Simple outcomes will be detailed by text about outstanding advocacy efforts.

Permanent Outcomes

- Stabilized at home with same caregiver
- Stabilized with different parent
- Placed then reunified
- Placed then Adopted
- Placed then PLC to kin/other
- Placed then TLC to kin/other
- Placed then APPLA
- Independent living with adequate skills or program

(If Independent Living is checked, answer below)

Is client eligible for/receiving SSI?

Is client enrolled in a vocational or higher education program?

Does client have social supports in place?

Has planning for adult services been completed?

Does client have a job and/or an income?

Neutral or Undesirable Outcomes

- Missing
- Deceased
- Living outside of supervision without skills or independent living program
- Aged out without permanent living situation
- Adjudicated delinquent/out of dependency system
- Transferred to another jurisdiction
- Discharged without permanent living situation

Cumulatively, data collected on these outcomes, when fleshed out by compilation of barriers to success, will provide important information about the effectiveness of representation in overcoming the morass of family and systemic barriers that makes up the advocacy environment.

For victims of crime cases, again there are desirable outcomes and other neutral or undesirable outcomes. For this subsection, they are not hierarchically arranged, just listed. As for permanency, barriers to success and outstanding advocacy strategies are a crucial component to the compilation of data. Clearly, victim's lawyers control these outcomes even less than in the family court setting. Still, creating more successful strategies requires a snapshot of agency effectiveness in achieving desirable outcomes.

Desirable Client Outcomes

- Client testified at preliminary hearing
- Client testified at trial
- Client testified under the videotape law
- Family registered with Office of Victim Advocate
- Crime Victim Compensation opportunities were analyzed

Desirable Prosecution Outcomes

- Case was held for trial at Criminal Justice Center
- Defendant pled no contest/guilty
- Defendant was found guilty

Neutral or Undesirable Client Outcomes

- Client did not testify at preliminary hearing though needed
- Client did not testify at trial though needed
- Client testified at the trial and the defendant was acquitted
- Client disappeared/was unable to be located

Neutral or Undesirable Prosecution Outcomes

- Case was not held for trial at CJC
- Case was withdrawn at the preliminary stage
- Case was withdrawn at the trial stage
- Case was nulle pros
- Defendant disappeared/was unable to be located

For all cases, advocates collect demographic and client needs information. For permanency, advocates will extract from records data about number of placements and length of time between several sets of significant phases of the move towards permanency. For each section of the Child Advocates database, the instrument also includes extensive menus of possible barriers to positive outcomes based on agency experience. For instance, barriers to prosecution can include family resistance, recantation, the victim's emotional state, or the discouraging length of the criminal process. Child Advocates is appointed on crime victims cases that have prosecutors have already identified as difficult to prosecute, so the hurdles are many. Case managers can articulate other barriers not already delineated on the database menus. At this stage of development, retrospective assessment of notable advocacy efforts will be highlighted as text memos. Child Advocates may choose at some point to add NCLN-type sets of case goals and stratified menus of specific successful strategies.

The children's legal services community is understandably reluctant to engage in the kinds of outcomes-based evaluation models that funders are aggressively demanding of all non-profit service providers. There are fundamental problems in applying standard outcomes logic models to legal advocacy. Nonetheless, legal services agencies need to develop ways to demonstrate both its adherence to practice standards and its effectiveness in achieving positive outcomes for its clients. This is important both to provide validation to funders and to the community that money is being well spent, and to point agencies and practitioners towards the strategies that are most effective in improving children's lives. The process of developing a program outcomes model, in concert with the agency's staff, board, and the public, can have the added benefit of establishing or clarifying what is most important in the office's work.

A child welfare law office should establish a system for accountability to its clients, the court, and the community at large.

by **Frank Cervone, JD**, Executive Director
SUPPORT CENTER FOR CHILD ADVOCATES
Philadelphia, Pennsylvania

Commentary

Child welfare law offices must institutionalize accountability into its management and practice structures. Whether established as an independent non-profit organization or as a quasi-governmental unit (i.e., a public defender or guardian ad litem office within the local government), the child welfare law office is largely self-regulating. Unlike most businesses and professions who are held accountable by the marketplace, children's lawyers and their offices work mostly for clients who have neither the power nor the influence to demand quality in their practice. Child clients may not have the ability nor resources to avail themselves of traditional protections. Of course all lawyers are subject to the profession's legal and ethical constraints, and both state and federal law address aspects of non-profit management and finances. Yet children's lawyers and their offices often function on their own. In short, child welfare law offices must be self regulatory.

Each child welfare law office should define its standards of practice and performance, consistent with recognized standards. For a more detailed discussion, see C-2, Standards of Practice. Regular staff supervision, technical assistance, and personnel appraisal serve as vehicles for organizational accountability. The child welfare law office should ensure that all cases are reviewed on a regular basis for compliance with office and professional standards of practice and performance. Child welfare law offices should work to develop outcomes measures and other metrics to help objectify accountability. See C-10, Quality Review, above for more information.

A key issue in organizational accountability must be the quality of practice of the organization's professional staff. Lawyers, legal assistants and paralegals, social workers and other allied professionals engage clients, family members and others on behalf of the organization, and so accountability for practice must be a management issue.

A child welfare law office should have a mechanism in place to receive, address and resolve client complaints and concerns. Such procedures should ensure client safety and well-being and the integrity of the review process. Some organizations have created Client Advisory Boards as a vehicle to receive feedback from their client population.

The child welfare law office and its attorneys are accountable in a traditional sense to the court in each individual case; for example each jurisdiction has its own system in place for attorney discipline and ethical oversight. The law office bears some responsibility to ensure the protection of the child client from inappropriate practice by its attorneys. The child welfare law office may serve a leadership role in the juvenile court community and the community at large, including offering responsible commentary and advocacy on the needs of children, system and law reform efforts, and other developments in children's law.

Most child welfare law offices are established and organized as non-profit organizations. The Board of Directors of each non-profit organization has an important role in accountability. The Board should set policy and provide oversight for personnel policies, fiscal matters, and professional practice. The Board of Directors should also have a policy on Board conflicts of interest. The office's responsi-

bilities include compliance with state, federal and professional standards for fiscal administration and reporting.²⁴ Since most non-profit organizations are engaged in fundraising and development, the organization should have a well-developed program for record-keeping, donor relations, and sound investment and spending practices.

²⁴ See Financial Accounting Standards Board Statement of Financial Accounting Standards Available at: www.fasb.org/faq/index.shtml (last visited June 8, 2005).

A child welfare law office should support or initiate policy reforms and legislative action aimed at creating positive systemic change on behalf of children in the child welfare system.

by **Leslie Starr Heimov, JD**, Policy Director
CHILDREN'S LAW CENTER OF LOS ANGELES
Los Angeles, California

Commentary

Local, state and national policy, regulations and legislation all play a significant role in the day-to-day practice of dependency law and in the real life outcomes for children and families impacted by the child welfare system. Child welfare law offices are uniquely positioned to affect child welfare policy and legislation. The ability to speak as the collective “voice” of children in foster care and to offer the knowledge and credibility derived from this perspective gives the child welfare law office a strength of position that few others possess.

It is incumbent on the child welfare law office to become a strong voice in the policy arena; without that advocacy, policy and legislation is unlikely to fully consider and address the needs of the many at-risk children we represent. While a host of knowledgeable entities contribute to the formation of policy, few other groups offer the unique perspectives of foster children.

Credibility and an acknowledged expertise is critical to any involvement in policy and legislative advocacy. Positioning the child welfare law office as the “expert” to be relied upon by lawmakers, governmental committees and commissions can be achieved by employing the following strategies:

- Seek out membership in local and statewide governmental committees, commissions, and working groups addressing child welfare issues;
- Provide written or oral testimony at legislative hearings, requests for public comment and in response to the state or federal review processes;
- Partner with other advocacy groups; consider partners including parents’ counsel, government counsel, judicial groups, and agency heads or associations;
- Establish a process for providing input to and engaging in discussion on a regular basis with the leadership of both the court and the child welfare agency;
- Set up regular meetings with the child welfare agency head, as well as leaders in related disciplines including social services, education, mental health, health, law enforcement and the faith community;
- Forge relationships with legislative staff and elected officials by initiating introductory meetings and routinely providing informative briefing materials, position papers and case examples pertinent to pending legislation or other areas of interest;
- Reach out to the media; submit letters to the editor and offer commentary on local and broader national issues; and
- Take positions on pending legislation, reform initiatives and implementation plans.

Sponsoring legislation will often be the most effective route to system reform. While entering this arena may be intimidating, the child welfare law office can be a powerful force in initiating legislative reform. Starting with a less controversial issue creates the opportunity to learn the ins and outs

of the legislative process, nurture relationships, forge alliances and ensure early success. Once an issue or problem is identified that can only be solved through legislative change, the child welfare law office must find a sympathetic lawmaker to champion the issue. This process of identifying an author or sponsor for proposed legislation varies from locality to locality. In some instances the process is quite informal and in others proposed bill language, briefing papers and lists of supporters must be provided by the child welfare law office before legislative support will be provided. In either case, the organization's passion and extensive knowledge of the system and the issues will be the most important tools.

A child welfare law office should undertake or support impact litigation as a tool to effect positive systemic changes on behalf of children in foster care.

by **Leslie Starr Heimov, JD**, Policy Director
CHILDREN'S LAW CENTER OF LOS ANGELES
Los Angeles, California

Commentary

Advocates often encounter problems or issues that arise in their cases again and again. Children and families may be disenfranchised because of the child welfare system's repeated inability or unwillingness to comply with existing mandates or to set just guidelines. After meetings have been held, editorials written, commissions created, problems studied, and reports issued with no discernable improvement, the time may be ripe for the child welfare law office to consider and undertake impact litigation.

Impact litigation, while time consuming and costly, is a powerful tool when all other avenues have been exhausted or when a problem is so severe as to necessitate immediate or more pervasive systemic relief. Such lawsuits can bring about changes that span beyond a single case or a single client. Indeed, many child welfare systems have instituted new or innovative approaches in response to — and only as result of — court directives. Moreover, litigation can precipitate a commitment of new resources to a child welfare system, whether monetary or through the involvement of outside monitors or expert panels whose expertise can help enlighten not simply the need for reform, but also solutions that can best address existing challenges and barriers.

While a child welfare law office may not have the budget or the expertise to file a suit on its own, the organization can and should forge partnerships with other nonprofits specializing in impact litigation or with private civil firms who are often willing, as part of their pro bono commitment, to provide technical assistance and resources essential to support any such litigation. Both local and national alliances should be explored, as there are many groups working on reforms aimed at ensuring that all children are protected and well served by the child welfare system. Several groups organized to do impact litigation include the Youth Law Center, the National Center for Youth Law, and Children's Rights, Inc. The ABA also pairs non-profits with law firms willing to handle or assist in impact or significant litigation, through its Litigation Assistance Partnership Project. See www.abanet.org/litigation/lapp. For offices wishing to undertake impact litigation, trainings are available. Chicago Kent Law School organizes a very good and inexpensive § 1983 conference every year. For more information, see www.kentlaw.edu/depts/cle/sect1983.

A child welfare law office should ensure that it has the ability to either pursue appeals and writs for its clients, or refer them to counsel who will competently handle the appeal in close collaboration with the trial attorneys.

by **Donna Furth, JD**, Attorney in Private Practice
and Adjunct Professor
UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW
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Commentary

It's always best to win at trial, of course. In some circumstances, however, seeking relief in the appellate courts becomes necessary. Offices need to know how and when to seek such relief.

Even if an office wins at trial, it has a duty to take a position in any appeal filed by another party. If a staff attorney represents the child, for example, ABA Standards advise that the attorney "take a position in any appeal filed by the parent, agency, or other party."²⁵ Moreover, if the child's interests are affected by the issues raised in the appeal, "the lawyer should seek an appointment on appeal or seek appointment of appellate counsel to represent the child's position in the appeal."²⁶

Initial things to consider when deciding whether to file an appeal include:

- Is the order appealable?
- What are the time limits?
- What is the standard of review?
- Was the error preserved?
- Was the error prejudicial?
- What is the procedural sequence on appeal?

When developing an appellate procedure, offices need to assess their resources and ability to file appeals. As a threshold matter, CWLOs should establish whether members of the office have the necessary expertise to file appeals. CWLOs will need then to determine whether the members have the required time to devote to appellate activity.

Should the CWLO make the decision that the office has the ability to participate in appellate work, the CWLO will have to determine whether one or more lawyers should specialize within the office by dedicating their practice to appeals and by handling all of the office's appeals, or whether the individual trial lawyers will be responsible for appeals in their cases. The Juvenile Rights Division of the Legal Aid Society, in New York City, for example, has an appellate unit with lawyers specializing in appellate practice. If the CWLO decides that the appellate lawyer will be an attorney within the CWLO other than the trial lawyer, the CWLO should implement a policy and/or structure that maximizes effective representation. The policy should state clearly who is responsible for making decisions at the appel-

25 American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases Standard F-3 (1996) ("The child's attorney should participate in an appeal filed by another party unless discharged.") [hereinafter ABA Standards]. This standard was adopted by the National Association of Counsel for Children (NACC). See ABA Standards (NACC Revised Version) (2001) at www.NACCchildlaw.org/training/standards.html.

26 ABA Standards, supra note 25, Commentary to Standard F-3.

late level, as well as who is responsible for maintaining client contact and keeping the client informed of the status and progress of the case. If the office decides the trial lawyer will be responsible, the office should implement a policy which allows the lawyer adequate access to research materials, as well as the time to devote to preparing appellate materials. The policy should include case coverage for the trial lawyer as he or she prepares and/or argues appellate matters, including interlocutory appeals. Lastly, offices should maintain a briefs and forms bank for appellate practice, so attorneys can work from previous samples.

Some offices may decide that they lack the expertise, time, or other resources to undertake appeals. In order to comply with their ethical obligations to their clients, these offices must implement a plan that allows for the timely transfer of the case to outside appellate counsel. A pro bono arrangement with a local law firm may prove helpful in this regard. Law firms with an appellate practice group may have the expertise and resources, in terms of people, money and time, to handle children's appellate matters in an efficient and effective manner. As above, the CWLO should implement a policy that clearly states how the case will be transferred, how the appellate lawyer and the trial lawyer will communicate with each other, and who will have ongoing contact with the client during the pendency of the appellate matter. The CWLO should consider, as part of its policy, that the child's trial attorney and appellate attorney have face-to-face meetings at various points in the case, e.g., at a point prior to filing the brief, as well as prior to oral argument. In this way, the child's attorney can bring to bear her/his child welfare expertise, and more importantly, her/his knowledge of the child and the child's life situation, on the writing of the brief and the argument presented to the appellate court. Ideally offices should answer these questions, and have a detailed program in place, prior to the issues arising in cases.

A child welfare law office should participate as amicus curiae (friend of the court) in significant cases as a means to promote child welfare system improvement through case law development.

by **Marvin Ventrell, JD**, President and CEO
NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN
Denver, Colorado

Commentary

The development of case law which serves the interests of children is critical to the effective practice of law for children. Child welfare law offices should be concerned, not only with the day to day delivery of direct client legal services, but also with child welfare system improvement. Filing *amicus curiae* briefs which promote the legal interests of children is an important way in which child welfare law offices can impact the development of case law. Research has shown that courts value and benefit from *amicus curiae* participation.²⁷

Child welfare law offices should adopt an *amicus curiae* program through which they identify important pending appellate litigation, carefully review the cases for participation, and file *amicus curiae* briefs where appropriate. The following protocol, used by the National Association of Counsel for Children, is provided as an example.

National Association of Counsel for Children *Amicus Curiae* Policy and Procedure

I. Criteria

- A. *Amicus Curiae* participation must promote and be consistent with the mission of the NACC.
- B. *Amicus Curiae* cases must have widespread impact in the field of children's law and not merely serve the interests of a particular litigant.
- C. The *Amicus Curiae* legal argument must be supported by existing law or the good faith extension the law.
- D. There should be a reasonable prospect of prevailing.
- E. The case must be at the appellate level.

II. Procedure

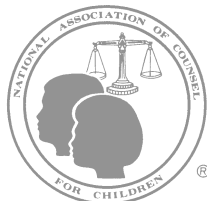
- A. Requests (see NACC *Amicus Curiae* Application Form) for NACC *Amicus Curiae* participation should be made to the NACC Executive Director in writing.
 1. The request should thoroughly and clearly summarize the case (facts, law and procedural history) and indicate why NACC involvement is considered to be valuable.
 2. The applicant should include, in the request, the *amicus* rules of the jurisdiction and the time frame (briefing schedule, if known) in which the NACC should respond.

²⁷ "Filing Amicus Curiae Briefs in State Courts of Last Resort," Corbally, Bross, and Flango, *The Justice System Journal*, Volume 25, Number 1, page 39 (2004).

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3. The request should indicate whether the applicant is requesting that the NACC prepare the amicus brief or whether arrangements are in place for the brief to be prepared by the applicant or someone known to the applicant.
 4. If the request is for the NACC to prepare the brief, the applicant shall also provide contact information and qualifications (knowledge of the substantive area of law involved and appellate and brief writing experience) for any individuals, firms, or agencies that may be available to draft the brief.
 5. If the request indicates that arrangements have been made for the brief to be prepared by the applicant or someone known to the applicant, the request shall include detailed information regarding the drafter's qualifications to prepare the brief including knowledge in the substantive area of law involved and appellate and brief writing experience.
- B. The Executive Director will make a preliminary determination regarding the request. If the request has not satisfied the threshold criteria for NACC involvement, the Director will reject the request and notify the applicant. This determination may be made independently or in consultation with the *Amicus Curiae* Workgroup. If the request satisfies the threshold requirements, the Director shall present the case to the members of the *Amicus Curiae* Workgroup for review.
 - C. The *Amicus Curiae* Workgroup will individually review the request and communicate to the Director the Workgroup members' decision to accept the case, reject the case, or an instruction to acquire further information. The Workgroup member's decision can be reached independently or through communication with the Director or other Workgroup members. In the event that a member of the *Amicus Curiae* Workgroup is not available to vote, the *Amicus Curiae* Workgroup may rely on an alternate. The alternate will be either the Board of Directors Vice President or the Chair of the Program Committee.
 - D. If the Workgroup unanimously rejects the case, the review is concluded and the Director shall notify the applicant that the request is denied. If the Workgroup unanimously accepts the case, the Director will proceed with board notification pursuant to part "E" below. If the Workgroup is not unanimous, (for or against) the request shall be put to a vote of the entire Board of Directors, which shall require a two-third ($\frac{2}{3}$) vote majority for acceptance.
 - E. Acceptance by the Committee.
 1. Upon acceptance of an *amicus curiae* case, the Director shall notify the full Board of Directors and allow for a 24-hour objection period. There being no objection, the Director shall proceed with the case.
 2. In the event of an objection, the matter shall be referred back to the *Amicus Curiae* Workgroup for reconsideration in light of the objection. In the event that upon reconsideration, the *Amicus Curiae* Workgroup is no longer unanimous in its decision to proceed, the request shall be put to a vote of the entire Board which shall require a two-thirds ($\frac{2}{3}$) majority of those voting to proceed. In the event that the *Amicus Curiae* Workgroup is not persuaded by the objection and remains unanimous, the matter must nonetheless be put to a vote of the entire Board of Directors and the case shall not proceed without a simple majority.
 - F. Acceptance of an *amicus curiae* request remains conditional until the final approval of the *amicus curiae* brief. No brief may be filed on behalf of the NACC until it has been approved by the NACC staff or *Amicus* Workgroup. Drafters are required to stay in communication with the NACC throughout the drafting process and provide NACC with progress reports, outlines, and drafts of the brief.

Child Welfare Law Office Guidebook

Best Practice
Guidelines for
Organizational
Legal Representation
of Children in
Abuse, Neglect, and
Dependency Cases



National Association
of Counsel for Children

Appendix **A**: Summary of Child's Attorney Standards of Practice

(The entire text of these Standards of Practice can be found at www.NACCchildlaw.org.)

The *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (1996) promote the “child’s attorney” model of representation as follows.

- A-1. The term ‘child’s attorney’ means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client....
- B-4. The child’s attorney should elicit the child’s preferences in a developmentally appropriate manner, advise the child, and provide guidance. The child’s attorney should represent the child’s expressed preferences and follow the child’s direction throughout the course of litigation.
 - (1) To the extent that a child cannot express a preference, the child’s attorney shall make a good faith effort to determine the child’s wishes and advocate accordingly or request appointment of a guardian ad litem.
 - (2) To the extent that a child does not or will not express a preference about particular issues, the child’s attorney should determine and advocate the child’s legal interests.
 - (3) If the child’s attorney determines that the child’s expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer’s opinion of what would be in the child’s interests), the lawyer may request appointment of a separate guardian ad litem and continue to represent the child’s expressed preference, unless the child’s position is prohibited by law or without any factual foundation. The child’s attorney shall not reveal the basis of the request for appointment of a guardian ad litem which would compromise the child’s position.

The ABA Standards then go on to describe the duties or actions to be performed by the child’s attorney including meeting with the client, investigation, filing of pleadings, participation in hearings, post hearing activity and appeals. While some critics have taken issue with the role provisions of the ABA standards, there seems to be consensus that the duties provisions are quite useful regardless of the attorney’s defined role.

The ABA (NACC Revised) Standards (Adopted in 1999) are identical to the ABA Standards as to duties. The distinction between the ABA Standards and the NACC Revised ABA Standards is found in the role of the child’s attorney, specifically standard B-4. Where the ABA remained consistent with the client directed attorney throughout, the NACC carved out a significant exception where the client cannot meaningfully participate in the formulation of his or her position.

The *NACC Recommendation for Representation of Children in Abuse and Neglect Cases* were adopted in 2001, following the adoption of the ABA and NACC

Revised ABA Standards in an attempt to get past the best interests and expressed wishes debate and provide guidance to states in drafting their own guidelines. The Recommendations encourage jurisdictions to avoid the wishes/interests debate and instead focus on the provision of fundamental services to child clients through a child's needs assessment. The NACC believes that regardless of the role designation, attorneys should be able to provide competent independent legal representation by focusing on the following systemic safeguards, advocacy duties, and special advocacy issues.

A. Systemic Safeguards

- ☐ 1. Children need competent, independent, and zealous attorneys. The system of representation must require the appointment of competent, independent, zealous attorneys for every child at every stage of the proceedings. The same attorney should represent the child for as long as the child is subject to the court's jurisdiction.
- ☐ 2. Children need attorneys with adequate time and resources. The system of representation must include reasonable caseload limits and at the same time provide adequate compensation for attorneys representing children.
- ☐ 3. Children need attorneys who understand their role and duties. The system of representation of children must be well defined by statute, bar standards, administrative guidelines, supreme court directive or other documents such that every attorney appointed for a child can understand his/her precise role and duties, and such that an attorney can be held accountable for performance of those duties.
- ☐ 4. Children need an opportunity to present their positions to the court through counsel. The system of representation must provide the child with an opportunity for his/her needs and wishes to be expressed to the court.
- ☐ 5. Children need confidential communication with their attorneys. The attorney has a duty to explain the extent of confidentiality in developmentally appropriate language.
- ☐ 6. Children need to be involved as litigants in the entire litigation process, including any post disposition, termination of parental rights, and adoption proceedings. The system of representation must recognize the child as a party to the litigation and must include the child in all phases of the litigation, including the opportunity to participate in arguments and jury selection where applicable, offer exhibits, call witnesses, examine and cross examine witnesses and engage in motions and discovery processes. The child must also be given notice of all proceedings and copies of all pleadings.
- ☐ 7. Children need judicial review of adverse decisions. The system of representation must provide an opportunity to appeal an adverse ruling.

- ☐ 8. Children need to be able to hold their attorneys accountable. The system of representation must provide recourse for ineffective assistance of counsel.
- ☐ 9. Children need an attorney with a fair opportunity to be effective in the court system. The system of representation must include a court system that devotes adequate time and resources to cases.

B. Advocacy Duties

- ☐ 1. Children need attorneys who fully understand their cases. The attorney must perform a full and independent case investigation.
- ☐ 2. Children need meaningful communication with their attorneys. The attorney must observe the child, and dependent upon the child's age and capabilities, interview the child. The attorney must engage in regular and meaningful communication with the child. Children need to participate in making decisions that affect their cases. The attorney has a duty to involve the child client in the process, whether under a client directed model or advocate directed model. The attorney has a duty to explain his/her role to the child in developmentally appropriate language.
- ☐ 3. Children need loyal attorneys. The child's attorney is prohibited from representation that would constitute a conflict of interest.
- ☐ 4. Children need the full benefit of legal counsel. The attorney must provide competent, independent and zealous representation for each client. The attorney must have adequate time and resources to devote to the child's case, and to understanding his/her role and duties, insuring confidentiality, and full active participation in all stages of the child's case.

C. Advocacy Issues

- ☐ 1. Children need permanence. The attorney must advocate for timely resolution and permanent resolution (absent compelling reasons to the contrary) of the case.
- ☐ 2. Children need their immediate and basic needs met. The attorney must advocate for food, shelter, clothing, and safety, including a safe temporary placement where necessary and for educational, medical, mental health, and dental needs.
- ☐ 3. Children need family relationships. The attorney must advocate for continuation of appropriate familial relationships and family preservation services where appropriate.
- ☐ 4. Children need to be protected from unnecessary harm that can result from legal proceedings. The attorney must advocate for the utilization of court processes that minimize harm to the child, and make certain that the child is properly prepared and emotionally supported where the child is a witness.

Appendix **B**: Community Resources

At a minimum, child welfare law offices should have information on the following types of services:

» **Child Abuse Prevention Programs**

- Home Builders/Family Builders Programs
- Home Visiting Programs
- Healthy Family Initiatives
- Drug Treatment Programs
- Divorcing Parents Intervention/Treatment Programs
- Prenatal Classes/Counseling
- Respite Care Programs

» **Child Abuse Treatment Programs**

- Domestic Violence Treatment
- Parenting Classes
- Anger Management Programs

» **Sex Abuse Treatment Programs**

- Offender Treatment
- Victim Treatment

» **Self Help Groups**

- Parents Anonymous
- Alanon
- Alcoholics Anonymous
- Narcotics Anonymous
- Divorce Support

» **Drug and Alcohol Treatment**

- Detox
- Residential
- Family Residential
- Outpatient

» **Credit Counseling Services**

» **Mental Health Programs**

- Outpatient Counseling Centers
- Inpatient Counseling Centers
- Children and Adolescent Specialists
- Family Counseling Clinics
- Individual Therapist
 - Psychiatrists
 - Psychologists
 - Licensed Clinical Social Workers
 - Other Licensed Counselors

- » **Day Care Providers**
- » **Adoption Services**
 - Evaluation and Placement
 - Post Adoption Counselors
- » **Medical Providers**
 - Pediatricians
 - Dentists
 - Medical Case Management
 - County Health Services
- » **Emergency Services**
 - Homeless Services
 - Clothing Providers
 - Food Banks
- » **Investigative Resources**
 - Child Protection Teams
 - Police Specialized Units
- » **Children in Need of Services/Family in Need of Services Programs**
 - Truancy Programs
- » **Delinquency Related Programs**
 - Probation Department Officials
 - Drug Treatment
 - Gang Prevention Programs
 - Residential Placement Programs
- » **Disability Services**
 - Protection and Advocacy Office
- » **Transportation Providers**
 - Public Transportation System
 - Disability or Medicaid Funded Systems
 - Private Providers (taxis)
- » **Education**
 - Head Start & other Pre-School Programs
 - Tutoring Programs
 - Educational Assessment Programs
 - School Counselors
 - School Board Members
 - School Placement Personnel (especially McKinney Vento designee)
 - Abuse Prevention Programs
 - Extra-curricular Activities

- Anti-Violence Education Programs
- Drug and Alcohol Programs
- Alternative Educational Programs
- Special Educational Services
 - Evaluations
 - District Coordinators
 - Behavioral Specialists
- » **Before & After School Programs**
 - School Clubs
 - Sports Programs (karate, tennis, soccer)
 - Educational Programs
 - Museum Related Programs
- » **Athletic Leagues**
 - School Related Sports Programs
 - Boys & Girls Clubs
 - YMCA
 - Church Related Leagues
 - Professional Sports Teams Community Outreach
- » **Jobs/Job Training Programs**
 - Career Counseling Services
 - Department of Labor Placement Services
 - Community College Programs
 - Vocational Training Programs
 - Welfare to Work Service Providers
- » **Mentoring Programs**
 - Big Brothers/Big Sisters
 - Church Related Programs
- » **Court Related**
 - Court Appointed Special Advocates (CASA)
 - Legal Aid/Legal Service Offices
 - Courthouse Day Care Services
 - Divorce Intervention Programs
 - Translators
 - Child Support Enforcement

Appendix **C**: Outcome Measures Model

A children's law office should develop a "logic model" or "**program outcome model**" to depict the relationship between inputs, activities, outputs, and outcomes. This approach can engage all aspects of the organization's work, including the representation of children, staff training, volunteer recruitment, training and support, in a coordinated approach to improve its capacity to serve.

The National Children's Law Network identified strategies are:

Child's Wishes and Child's Best Interests

- Clarified child's wishes
- Informed court and other parties of child's wishes
- Clarified child's best interests
- Informed court and other parties of child's best interests

Relationships

- Educated child about the court system
- Counseled the child about options
- Mobilized team of professionals
- Negotiated agreement between multiple parties
- Developed relationship with child
- Developed relationship with caregivers
- Influenced caregivers to provide services to child
- Influenced caregivers to improve parenting
- Influenced caregivers to cooperate with prosecution
- Developed fruitful relationship with another attorney or other professional

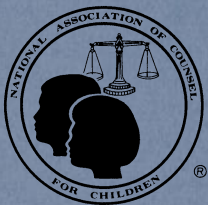
Legal Advocacy/Action

- Legal research
- Pre-trial investigation
- Pre-trial advocacy
- Identified important witnesses
- Case conference
- Negotiation
- Threatened legal action
- Prevented violation of probation
- Discovery/disposition
- Filed petition
- Filed appeal
- Effective motion practice – competency
- Effective motion practice – suppression
- Effective motion practice – dismissal
- Effective motion practice – reconsideration
- Effective motion practice – open field

- Effective courtroom representation
- Prepared and handed up court orders or requested specific court orders
- Presented expert witnesses
- Presented appropriate witnesses
- Obtained protective order against abuse
- Used novel legal argument

Services and Resources

- Community supervision/probation for perpetrator
- Secured services for child/family
- Garnered financial resources for child/family
- Identified kinship caregiver
- Advocated for specific placement
- Advocated for appropriate placement
- Advocated for permanent placement
- Uncovered important information
- Secured child's eligibility for service
- Advocated for quality mental health assessment
- Advocated for mental health treatment
- Advocated for quality educational assessment
- Advocated for quality educational placement
- Advocated for quality medical assessment
- Advocated for quality medical treatment
- Advocated for quality in-home services
- Advocated for transition-to-independence services
- Provided a small but crucial support to child/family
- Probation for child
- Involved the media
- Involved political figures
- Organized the community



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