



Ensuring High-Quality Legal Representation for Parents and Children

ABA Center on Children and the Law

National Council of Juvenile and Family Court Judges

Quick Overview

This alert highlights:

- ✓ key aspects of high-quality legal representation relevant to judges and courts,
- ✓ judges' roles in promoting quality representation,
- ✓ funding considerations,
- ✓ challenges to providing high-quality representation and how judges can help address them, and
- ✓ how multidisciplinary representation offers high-quality representation.

As a judge presiding over child welfare proceedings, your effectiveness depends on the quality of legal representation provided by lawyers who represent the parents, children, and child welfare agencies who come before you. Child welfare attorneys provide high-quality representation by carrying out the functions outlined in professional codes of conduct and attorney practice standards.¹ Growing research,² recent federal guidance,³ education and training programs,⁴ and other resources continue to shape our understanding of high-quality legal representation and raise its importance.

How does having high-quality legal representation for parents and children support my judicial role?

Judges depend on attorneys to ensure all important information is brought to their attention to allow for fair and meaningful decisions about the family. High-quality legal representation of parents and children:

- Leads to more timely family reunifications and use of kinship care.
- Helps ensure a well-functioning child welfare system.
- Ensures judges have the information they need to make informed decisions in court cases involving children and families.
- Ensures parties' rights are protected, their voices are heard in court, and the legal system treats them fairly.
- Promotes greater understanding of the court process by parties.
- Saves the system money.
- Promotes positive case outcomes for parties by increasing presence and participation in court.⁵

What is my role in ensuring high-quality legal representation for parents and children?

Judges can set the tone for the level and quality of legal representation attorneys provide in child welfare proceedings. Steps judges can take to promote high-quality legal representation include:

- Ensure all parties have access to legal representation as early as possible in the case, but no later than the first hearing, and lasting consistently throughout the life of the case.

Key Resources

Attorney Practice Standards

[ABA Standards for Lawyers who Represent Children in Abuse and Neglect Cases](#)

[ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases](#)

[ABA Standards of Practice for Lawyers Representing Child Welfare Agencies](#)

[ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings](#)

[Attributes of High-Quality Legal Representation for Children and Parents in Child Welfare Proceedings](#)

Federal Guidance

Children's Bureau, [IM-17-02: High Quality Legal Representation for All Parties in Child Welfare Proceedings](#), January 17, 2017.

Research

Guggenheim, Martin and Susan Jacobs. "[Providing Parents Multidisciplinary Legal Representation Significantly Reduces Children's Time in Foster Care.](#)" *Child Law Practice Today*, June 4, 2019.

[FJI Child/Parent Representation Research Overview](#)

Effects of Funding Changes on Legal Representation Quality in California Dependency Courts

[Child Welfare Attorneys National Compensation & Support Survey 2017](#)

Other Materials

[Legal Representation in Child Welfare Proceedings](#)

[Why Every Child in Foster Care Would Benefit from High-Quality Legal Representation \(Video\)](#)

- Join child welfare legal system stakeholders in establishing uniform standards of representation for attorneys who represent children, parents, and child welfare agencies.
- Confirm all counsel have requisite training, experience, and understanding of child welfare law to vigorously represent their clients and are held accountable for meeting standards of representation.
- Establish an environment where parties are treated with respect, cultural and racial sensitivity, patience, dignity, courtesy, and as part of the problem-solving process.
- Learn about models of high-quality legal representation, such as multidisciplinary legal teams (see [Spotlight: Multidisciplinary Representation](#)), and work with stakeholders to develop these models in your jurisdiction.
- Require that all attorneys adopt a disciplined approach to processing cases and respect timely court hearings, court decisions, and implementation of court orders.
- Ensure attorneys carry a reasonable caseload that allows them to provide high-quality representation for their clients.
- Ensure the spirit of collaborative meetings and case management does not compromise any party's rights and protections under the law.
- Solicit input from all parties to gain as complete a picture as possible to inform judicial decision making and promote child and family well-being.
- Ensure attorneys are fairly compensated for work done both in and out of court and their fees and costs are paid timely.
- Provide interpreters, investigators, and other specialists attorneys need to competently represent clients. Ensure fees for these services are reimbursed timely.
- Seek opportunities to train and mentor child welfare attorneys.
- Attend legal conferences geared to attorney advocacy in child welfare and bring back ideas to your jurisdiction to implement change.⁶

How does funding affect quality legal representation?

A recent assessment⁷ of the impact of funding changes on the quality of legal representation in California found increased funding for attorneys directly affected several factors that influence representation quality, such as attorney recruitment and retention, multidisciplinary legal practice, caseloads, workload per case, and case delays.

Attorney compensation and support also affect representation quality. A 2017 survey⁸ of children's and parents' attorneys found attorney pay structures did not fully recognize the significance of out-of-court work, such as meeting with clients, attending family team meetings, discussing placement, case goals and visitation, and other attorney activities. The survey also found certain appointment systems prevented parent attorneys from being prepared at initial hearings. The survey noted funding for multidisciplinary supports that help attorneys do their jobs, such as interpreters, experts, social workers, and investigators had improved.

Spotlight: Multidisciplinary Representation

What it is and how it works:

Multidisciplinary representation is a legal representation model that offers high-quality legal representation and produces positive outcomes for families.¹⁵ In this type of representation, attorneys work with a team of professionals who help perform essential roles in the case and strategize about the best approach for a family.

In a parent representation model, team members typically include a social worker who helps parents access rehabilitative services and a parent advocate who provides emotional support and helps parents engage in their cases. The lawyer represents the parent in court and focuses on legal tasks while the other team members provide essential support and advocacy for parents outside court.¹⁶

What research shows:

A landmark May 2019 study¹⁷ found providing parents multidisciplinary representation in child welfare proceedings significantly improved case outcomes. The multiyear study in New York City compared outcomes for 9,582 families and their 18,288 children, looking at differences based on representation type: solo panel attorneys vs. multidisciplinary legal teams that included attorneys, social workers, and parent advocates. The study found multidisciplinary representation promoted swift permanency outcomes by:

- reducing the time children spend in care,
- producing plans that allowed parents to safely care for their children,
- reuniting families sooner, and
- increasing kin placements and guardianships.

Judges can be influential in efforts to ensure attorney pay and support is fair, accounts for out-of-court work, and provides needed supports that improve efficiency and help attorneys to their jobs.

What funding is available to support legal representation for parents and children?

A recent federal policy change provides a new funding source for legal representation for parents and children.⁹ The change allows states to seek federal reimbursement under Title IV-E of the Social Security Act for the cost of providing legal representation to eligible children and parents. The purpose of the funding is to invest in improving legal representation for children and parents.¹⁰

Excellent resources exist explaining the details of this new funding.¹¹ Becoming knowledgeable about this funding source, raising awareness within the child welfare legal community, and supporting efforts to leverage it to improve representation quality in your jurisdiction are key judicial roles. However, elements of high-quality legal representation do not depend on new funding sources, so it is equally key to ensure attorneys adhere to fundamental representation standards that guide their practice.¹²

What are some court-based challenges to providing high-quality legal representation and strategies to address them?

In addition to funding and compensation, discussed above, common challenges judges can help address include:

- *High caseloads* can cause attorneys to do the bare minimum when representing clients as they scramble to keep up with high case volumes.
 - ✓ *Action steps:* Monitor attorney caseloads and share concerns with supervising attorneys. Advocate for attorney caseload caps, backup attorney case coverage, paralegals, investigators and other staff to assist with attorneys' legal tasks, and social workers and peer mentors to assist with client support and advocacy. The Family Justice Initiative recommends a caseload of 60 cases per full-time attorney.¹³
- *Time in court* can limit out-of-court work and other attorney tasks.
 - ✓ *Action steps:* Streamline court hearings by implementing time-certain hearings, requiring reports and records before hearings, and improving docketing and case-flow management practices.¹⁴
- *Court culture and practices* can interfere with attorneys' ability to represent children and parents at the highest level.
 - ✓ *Action steps:* Provide family-friendly waiting areas, private meeting spaces for attorneys to meet clients, child-specific accommodations, and trauma-sensitive courtroom approaches. These accommodations can significantly improve attorney representation.

Endnotes

1. See https://www.americanbar.org/groups/public_interest/child_law/resources/practice-standards/
2. See Children's Bureau, [IM-17-02: High Quality Legal Representation for All Parties in Child Welfare Proceedings](#), January 17, 2017; Gerber, Lucas et al. "Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare." *Child and Youth Services Review* 102, 2019, 42.
3. Children's Bureau, 2017.
4. See e.g., ABA Litigation Section, Committee on Children's Rights. [Children's Legal Clinics](#); ABA Center on Children and the Law. [Trial Skills for Child Welfare Attorneys](#); National Association of Counsel for Children. [Child Welfare Law Training](#).
5. Children's Bureau, 2017.
6. *Id.*; See ABA Practice Standards, available at: https://www.americanbar.org/groups/public_interest/child_law/resources/practice-standards/; Family Justice Initiative. [Attributes of High-Quality Legal Representation for Children and Parents in Child Welfare Proceedings](#), 2019.
7. ABA Center on Children and the Law. *Effects of Funding Changes on Legal Representation Quality in California Dependency Courts* (2020).
8. Ellis, Krista et al. [Child Welfare Attorneys National Compensation & Support Survey 2017](#). ABA National Alliance for Parent Representation, 2018.
9. U.S. Dep't of Health & Human Servs., Admin. For Children & Families, Children's Bureau. [8.1B TITLE IV-E, Administrative Functions/Costs, Allowable Costs - Foster Care Maintenance Payments Program](#), December 12, 2019.
10. Family Justice Initiative. [Questions and Answers: Federal IV-E reimbursement for high-quality legal representation for children and parents](#), 2019.
11. See Family Justice Initiative. [Federal Funding](#) webpage.
12. See https://www.americanbar.org/groups/public_interest/child_law/resources/practice-standards/
13. Family Justice Initiative. [Attributes of High-Quality Legal Representation for Children and Parents in Child Welfare Proceedings](#), 2019.
14. National Council on Juvenile and Family Court Judges. [Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases](#), 2016.
15. For an excellent video on multidisciplinary representation, see Kathleen Creamer's Family Justice Talk, *Why Multidisciplinary Representation is Beneficial to All*, June 2020. available at https://www.americanbar.org/groups/public_interest/child_law/project-areas/national-court-projects/cip-talks/
16. Gerber et al., 2019.
17. Guggenheim, Martin & Susan Jacobs. "Providing Parents Multidisciplinary Legal Representation Significantly Reduces Children's Time in Foster Care." *Child Law Practice Today*, June 4, 2019.

Funding for this report was provided by the U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention through Award #2018-CT-BX-K001 to the National Council of Juvenile and Family Court Judges. Points of view or opinions expressed are those of the report contributors and do not necessarily represent the official position or policies of the funder or the National Council of Juvenile and Family Court Judges.