

UNIFORM REPRESENTATION  
Of  
CHILDREN & PARENTS  
IN CASES INVOLVING  
ABUSE & NEGLECT  
OVERSIGHT COMMITTEE

**Annual Report to Supreme Court for 2022**

Submitted February 2023



## **OVERVIEW**

As was stated in the annual report for 2021 submitted to the Oklahoma Supreme Court in February 2022 (Attachment A) from the Uniform Representation of Children & Parents in Cases Involving Abuse & Neglect Oversight Committee (“Oversight Committee”), every child in every family in every community deserves the chance to thrive. Oftentimes, the best way to help a child is to make sure children and their families are supported and have access to high quality legal representation. Yet access to high quality legal representation continues to vary dramatically across Oklahoma. National research shows that high quality legal representation can help keep families together by preventing unnecessary removal and increasing reunification of families if they are separated. It increases the rate of children being safely returned to their parents and their extended families. It decreases trauma resulting from family separation. It provides judges with additional information so they can make the best possible decision for families. It saves the state money by reducing the costs of foster care by DHS.

The Oversight Committee met ten times in 2022, following through on next steps outlined in the 2021 Annual Report. This Annual Report for 2022 summarizes progress made and recommended actions for consideration by the Supreme Court. The recommendations have been developed through subcommittees, reviewed by the full Oversight Committee (the updated membership list is attached as Attachment B), with advice of experts within and outside of Oklahoma, guided by data and fiscal analysis from the University of Oklahoma and informed by the experiences in other states. Specifically, the State of Oklahoma’s Children’s Court Improvement Program (CIP) secured the budgeting expertise of an economist, who has worked closely with the State of New Mexico to develop a similar statewide agency for high quality legal representation across that state, to prepare an updated full implementation budget for the proposed Oklahoma Family Legal Representation and Advocacy Program.

In 2022, legislation was introduced to create and fund a statewide program that would be responsible to contract, compensate and oversee interdisciplinary legal representation for indigent parents, drawing on this Committee’s recommendations for structure, caseloads, and compensation. The legislation, although passing the House unanimously, was not heard by the Senate Committee on Judiciary and therefore died. However, Rep. Mark Lawson has introduced HB1017 and Senator

Paul Rosino has introduced Senate Bill 907 - to be considered during the 2023 Oklahoma Legislative Session. Both bills draw heavily from the analysis and recommendations of the Oversight Committee.

## RECOMMENDATIONS

### High Quality Legal Representation for Children

The Oversight Committee convened a subcommittee to explore the status of high quality representation for children and youth in Oklahoma. The subcommittee surfaced most of the same barriers for children's representation that were identified for parent representation by the Oversight Committee in its 2020 Interim Report (Attachment C). These barriers include inadequate compensation for attorneys, lack of reasonable caseloads in the metro counties, interdisciplinary support, centralized training and oversight, as well as access to legal expertise and technical assistance. After studying models and structures of representation and conflict resolution in other states (specifically New Mexico and Massachusetts) that include both parents and children and after considering the fiscal impossibility of having two separately run offices, the Committee recommends that the proposed centralized entity and its regional offices should include the operational responsibility for high quality legal representation for both children and indigent parents in Oklahoma.

To effectively support the inclusion of high quality legal representation for children, the Oversight Committee recommends that the proposed staffing structure for the central entity be amended to add a Managing Attorney for child representation and a Managing social worker for child representation. Thus, the staffing structure and corresponding functions and deliverables (building on previous recommendation) for the central office would be as follows:

- **Executive Director (an attorney):** Directs the efforts for the entity in providing statewide support for both parents' and children's attorneys, defines relevant policies, procedures, and program materials in collaboration with the central entity team, actively engages judges and attorneys across Oklahoma regarding high quality legal representation for children and parents, seeks legislative support to fund the entity, secures philanthropic

investors, manages phased roll-out of multidisciplinary representation across Oklahoma.

- **Managing Attorney for Parent Representation:** Provides case consultation/support specifically for practicing parent attorneys across Oklahoma, develops and conducts training regarding best practices and addresses practice challenges, ensures a listserv operational for all parent attorneys as a resource, assesses and tracks status of parent representation across Oklahoma and ensures the avoidance of conflict within the office regarding children's counsel.
- **Managing Attorney for Child Representation:** Provides case consultation/support specifically for practicing children's attorneys across Oklahoma, develops and conducts training regarding best practices and addresses practice challenges, ensures a listserv operational for all children's attorneys as a resource, assesses and tracks status of child representation across Oklahoma.
- **Managing Social Worker for Child Representation and Managing Social Worker for Parent Representation (LMSW):** Recruit and train social workers and peer mentors within various locations across the state, develop practice standards, protocols, training curriculum and regional approach for inter-disciplinary representation in collaboration with respective Managing Attorneys, recruit and train social workers and peer mentors respectively for parents' and children's attorneys, and ensure the avoidance of conflict within the office regarding children and parents counsel.
- **Data & Performance Manager:** Establishes statewide database and collects all data providing concrete numbers concerning costs and outcomes of high quality parent and child legal representation, monitors program and performance outcomes through case management
- **Administrative Assistant:** Provides support and administrative help to all staff members.

## **Fiscal Analysis, Budget Assumptions and Projected Costs**

In 2021, the University of Oklahoma, through a contract with the CIP, provided an analysis and created a unique calculator for projected costs. Drawing on the Oversight Committee 2021 assumptions for structure, caseloads, compensation and inter-disciplinary practice (Attachment A), the OU professors utilized the cost calculator to estimate the cost of rolling out high quality parent representation statewide (central office and regional offices) to be approximately \$17 million.

To update the prior OU calculations in 2022, the CIP contracted with Dr. Kelly O'Donnell of O'Donnell Economics and Strategy. O'Donnell created a revised budget drawing upon more current DHS caseload data (fiscal years 2021 and 2022), the addition of a second Managing Attorney and Managing Social Worker for child representation, five regional offices which align with DHS regions, and the compensation of parent and child attorneys with caseloads of no more than 80. (The number of children's attorneys needed in Tulsa and Oklahoma City were reduced to reflect the fact that four attorneys in Tulsa and five attorneys in Oklahoma City are already representing children in deprived cases on behalf of the local Public Defender's Offices). O'Donnell estimated the cost for the full roll out statewide of high quality child and parent interdisciplinary legal representation at approximately \$20.3 million. Attorney services for children and parents constitute 70 percent of this total, interdisciplinary supports in the form of social workers and peer mentors constitute 22 percent of the program expenditures with 8 percent for administrative costs.

## **Appellate Procedure**

The Oversight Committee would like to submit for consideration the following recommendation. Due to expressed concerns regarding the untimeliness in the perfection of appeals in deprived cases, the lack of notice given to parties regarding their right to appeal an adverse decision and the delays by trial courts in appointing appellate counsel, the Oversight Committee drafted the following documents:

- Notice of Right to Appeal in Deprived Cases (Attachment D)
- Order Finding Respondent Indigent, Authorizing Preparation of Transcript at Public Expense and Appointing Appellate Counsel (Attachment E)

- Uniform Trial Court Pauper's Affidavit (Attachment F)

The above documents were written with the intent to provide uniform Notice of Right to Appeal, Orders, and Affidavits to be made available to and utilized by all trial courts if approved by the Oklahoma Supreme Court.

These documents, in whole, will ensure the advisement to parties by the trial court regarding their right to appeal from an adverse decision as well as their right to appointed appellate counsel if determined to be indigent. Further, it provides uniformity with trial courts' orders relating to payment of transcripts.

It is also recommended by the Oversight Committee that trial judges be statutorily required to provide verbal and written notice of the right to appeal from an adverse judgment, decree, or appealable order rendered.

Additionally, understanding that the state's interests in timely permanency for children must be balanced with the parents' interests in the care and custody of their children, the appellate process in juvenile deprived cases are expedited to avoid unnecessary delays with finalization of the permanency plans. However, despite the appellate courts' efforts to address the appeals in a timely manner, the Oversight Committee is aware of instances where delays are unnecessarily created by the trial court's untimely filings of the Orders Terminating Parental Rights (i.e., final journal entry of judgment) - filings occurring weeks after the trial court's decision has been verbally rendered.

Therefore, the Oversight Committee recommends that the Supreme Court issues a Rule that requires all final Orders Terminating Parental Rights be filed no later than 15 calendar days after the decision has been announced. The Uniform Order, previously approved by the Supreme Court, was provided to trial judges to easily and accurately reflect their findings of fact and conclusions of law and can be easily executed and filed within the recommended timeframe.

## **Standards of Practice Guidelines**

The Oversight Committee continues to recommend that standards of practice **guidelines** for parents' and children's attorneys be adopted to advance consistency in practice and provide an important resource for the statewide entity as it develops contractual performance standards and a basis for developing effective and consistent training. The Oversight Committee recognizes that the guidelines proposed would be aspirational and not mandatory and do not have the force of law. A violation of these guidelines would not be a basis for disciplinary action nor give rise to a cause of action against a lawyer nor create any presumption in such a case that a legal duty has been breached.

As expressed in earlier recommendations, the standards of practice guidelines are first and foremost intended to create uniformity in practice across the state. While standards were passed by the Court in 2016 for parents' counsel, there are still no standards or guidelines for children's counsel who represent the most vulnerable in deprived proceedings. The creation of these practice guidelines would encourage counsel for parents and counsel for children to perform a high standard of quality legal representation and to promote professionalism in this unique area of representation. The guidelines are also intended to alert counsel to courses of action that may be necessary, advisable or appropriate and thereby assist attorneys and judges in deciding upon the particular actions to be taken in each case. These guidelines would promote consistency and accountability in the contracting process with respect to state funds and in the training of counsel that will be the responsibility of the centralized office.

## **Statewide Structure: Amendment**

Building on the statewide structure recommendations from year 2021 (Attachment A), the Oversight Committee continues to recommend the roll-out of a centralized entity with five regional offices, independent of the trial courts, that will provide oversight, technical assistance, training, interdisciplinary support, support for recruitment of new attorneys, and other resources to ensure high quality legal representation for parents with the following two modifications:

- Inclusion of high quality legal representation for children across Oklahoma

- Launch the statewide structure under the auspices of the Administrative Office of the Court which, in turn, would contract with a statewide legal entity, selected through a Request for Proposals (RFP) process, to implement the program

## **NEXT STEPS**

The Oversight Committee will develop and implement outreach strategies to advance the understanding of the legal community and other key stakeholders of the importance of high quality interdisciplinary legal representation for children and indigent parents in Oklahoma.

*The members of the Oversight Committee are grateful for the Oklahoma Supreme Court's support to improve the quality of legal representation for parents and children who are involved with the child welfare system. Better access to high quality legal representation whether a family lives in rural Oklahoma or metro Oklahoma will allow the state to continue to strengthen these families and help Oklahoma parents and children thrive for years to come. Together with the other recommendations, we believe having a central entity to provide meaningful support to parent attorneys would be a major step towards this outcome.*

Respectfully Submitted:

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The Honorable Michael Flanagan  
Chair of the Oversight Committee

### **Attachments:**

A: 2021 Annual Report

B: Oversight Committee Current Membership



C: 2020 Interim Report

D: Notice of Right to Appeal in Deprived Cases

E: Order Finding Respondent Indigent, Authorizing Preparation of Transcript at Public Expense and Appointing Appellate Counsel

F: Uniform Trial Court Pauper's Affidavit