

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

Annual Report: February, 2021



## OVERVIEW

Oklahoma is currently 18<sup>th</sup> in the nation for rate of entry into the child welfare system. It has a very low reunification rate of 43%, meaning nearly 6 out of 10 children do not go home to their families within a year. 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 their family is supported and has access to high quality legal representation.

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 care by the Department of Human Services (DHS).

According to the ABA Center on Children and the Law, high quality legal representation consists of lawyers who are unfailing advocates. They support parents and children in child welfare cases in and out of court in coordination with a multidisciplinary team and a centralized office that supports, oversees, and ensures these lawyers are providing the highest quality of representation to those they serve.

On February 1, 2020, an interim report was presented to the Oklahoma Supreme Court wherein the Task Force made several recommendations:

1. The Task Force should continue to study early appointment (prior to initial hearing) of attorneys for parents and children.
2. The Task Force should prioritize implementation of critical initial and on-going quality education for attorneys and judges.
3. The Task Force recommends that the AOC expeditiously continue to research the feasibility of Title IV-E funds either going through the AOC or through other appropriate entities.
4. The Task Force should gather more information about the financing of high quality legal representations from other states.
5. In addition to the pursuit of supplemental federal funds, the Task Force recommends that the final report provide comprehensive information about financing and therefore believes the following information is necessary.

The Task Force requests the Chief Justice require all Court Clerks in counties that are on the KellPro system, by April 1, 2020, to supply the AOC the following:

- a. Number of deprived cases filed in calendar years 2019 and 2020;
- b. Number of guardianship cases filed in calendar years 2019 and 2020; and
- c. Number of mental health and indirect contempt cases filed in calendar years 2019 and 2020.

The Task Force also requests the Chief Justice to require all attorneys in the fifty (50) counties with contracts with the Court to provide the following by April 15, 2020:

- a. Cases appointed in Fiscal Year 2020 through March 30, 2020;
- b. Number of current open cases regarding the representation of:
  1. Deprived parents
  2. Deprived children
  3. Guardianship
  4. Adoption
  5. Contempt
  6. Mental Health
  7. Other

Receiving this information will allow the Task Force to better estimate the number of cases attorneys are handling and the amount being paid and for each case type, to allow for an estimation of Title IV-E funds from these expenses.

6. The Task Force recommends the Supreme Court adopt practice standards for legal representation of children, similar to the Standards for Parent Representation adopted by the Oklahoma Supreme Court in 2016.
7. The Task Force recommends that the Chief Justice discuss with the Presiding Judges the issue of prioritizing juvenile deprived cases, and suggest they collaborate with their colleagues to address these concerns, and identify and implement solutions.
8. The Task Force will continue to determine reasonable caseloads for parent children's attorneys, including defining caseload.
9. The Task Force should continue to determine adequate compensation for parents' and children's attorneys that will reinforce high quality legal representation in both trial and appellate courts. This should include compensation for out-of-court advocacy at least at the same level of compensation for in-court work.

10. The Task Force should keep apprised of other states 'progress in claiming and receiving Title IV-E funds as well as studying the impact of collecting IV-E reimbursements in Oklahoma.
11. The Task Force should prioritize implementation of the multidisciplinary model of representation when deciding on the statewide model.
12. The Task Force should prioritize implementation of critical initial and ongoing training for trial and appellate attorneys that includes and emphasizes the practice of cultural humility and respect within the child welfare system.
13. The Task Force should gather information about any ethical conflicts and resolutions thereof from other states when considering the recommended structure of the legal representation agency/agencies.
14. The Task Force should continue to think creatively about improvements to the Oklahoma legal representation model while not losing sight of financial realities.
15. The Task Force recommends 10A O.S. 1-4-306 be amended to additionally allow parents' attorneys reasonable compensation for mileage if the attorney is required to travel to a district court location other than his or her county of business. The current statute only allows for reimbursement of children's attorneys to be compensated for mileage.

On June 29, 2020, the Oklahoma Supreme Court amended paragraph 3 of SCAD 2019-65 wherein:

The Task Force was re-designated as The Uniform Representation of Children and Parents in Cases Involving Abuse and Neglect Oversight Committee ("Oversight Committee").

The individuals appointed to serve as members of the Task Force continue to serve as members of the Oversight Committee.

The Oversight Committee is required to provide oversight to the Parent Representation Program as well as any pilot programs which may be created in Oklahoma.

The Oversight Committee is required to monitor ongoing representation of children and parents paid by the district court fund budget.

The Oversight Committee is required to submit an annual report to the Supreme Court regarding the status of uniform representation of children and parents in deprived cases not later than February 1st of each year.<sup>1</sup>

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<sup>1</sup> See Attachment A

The Oversight Committee continues to meet monthly and respectfully submits this report in compliance with the Supreme Court's directive.

## **IMPLEMENTATION OF CRITICAL INITIAL AND ONGOING QUALITY EDUCATION FOR ATTORNEYS AND JUDGES**

A subcommittee of the Oversight Committee was formed to recommend specific training requirements for attorneys representing parents and children in deprived cases.<sup>2</sup> The recommendations were approved by the Oversight Committee. It is the intent that the recommended training topics be provided by the Oklahoma and County Bar Associations as well as the Children's Court Improvement Program.

Despite much discussion to increase the number of mandated hours of continuing Legal Education to twelve (12) hours<sup>3</sup>, the Oversight Committee's ultimate recommendation was to maintain the statutorily required annual 6 hour Continuing Legal Education ("CLE") for attorneys. Concerns were expressed that the majority of attorneys appointed to represent parents and children in deprived cases are private practitioners who are also required to be competent in other areas of the law. It was determined by the majority of the Committee that increasing the juvenile CLE requirements would create an undue burden on those attorneys.

However, the Oversight Committee also recognized the importance of specialized legal training for those attorneys new to the legal representation of parents and children in deprived cases. Discussion ensued regarding establishment of an initial 12-hour course on essential topics. Examples of topics recommended are as follows:

- Oklahoma Children's Code and relevant caselaw
- Relevant Federal Legislation, e.g., ASFA, ICWA, Families First Prevention Services Act
- Inpatient Mental Health & Substance Abuse Treatment of Minors
- DHS Child Welfare Policies
- ABA's Child Safety Guidelines
- Essential trial skills
- Motion practice specifically relevant to deprived cases
- Specific social issues relevant to deprived cases, e.g., addiction, domestic violence, poverty, cognitive disabilities, infant mental health, adolescent brain development, trauma, cultural humility/implicit bias
- Techniques for interviewing children

It is the recommendation of the Oversight Committee that the Parent Representation Program within the AOC create the curriculum for the initial 12 hour training in a format that can be easily accessed by all attorneys interested in representing parents and children in deprived cases.

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<sup>2</sup> See Attachment B

<sup>3</sup> Similar to that of Judges with juvenile docket responsibilities.

It should be noted that the majority of the responses received from the survey conducted by the Task Force in 2019 for judges and attorneys expressed the necessity for increased training and specifically in the following areas:

- DHS policies
- Evidence in and laws regarding Termination of Parental Rights trials
- Federal and State laws affecting deprived proceedings
- Indian Child Welfare Act
- Interstate Compact on the Placement of Children
- Public Benefits such as SSI/SSD
- Building parent capacity
- Child development
- Education laws
- Medical evidence and testimony
- Trauma
- Cognitive delays
- Mental health
- Trial practice

The Oversight Committee's recommendations are responsive to the judges and attorneys who voiced their requests for more comprehensive training for attorneys appearing in Oklahoma courts representing parents and children in deprived cases.

Of note, the Oklahoma Bar Association's Juvenile Law Section will be sponsoring a series of CLE programs in 2021 designed to provide attorneys who practice in juvenile court with practical and specific skill building training. The first 3-hour program of this series was held on January 22, 2021 and featured the following topics: DHS Child Safety Guidelines and Understanding DHS Child Welfare Policies or Emergency Custody Hearings. This program was attended by the maximum capacity of 100 participants - with many other attorneys attempting to unsuccessfully log on to the virtual training. In order to meet the expressed demands, the Juvenile Law Section will ensure that more than 100 attendees will be able to participate in upcoming juvenile law CLEs.

A statewide Listserv to promote conversation, share practice knowledge, and support among the attorneys who practice in this area of law was also requested by the majority of attorneys. As more fully discussed below, the Listserv is now up and running.

The Oversight Committee members wish to commend Felice Hamilton, Children's Court Improvement Program Director, on the quality of the presentation of relevant topics and participating speakers in the 2020 CIP Conference. Contrary to previous years, only judges and attorneys were invited to attend and the programming was directed to their practices within the delinquent and deprived proceedings. Members of the Oversight Committee participated in the programming specifically by facilitating the Parent and Youth Panels composed of individuals with lived child welfare experience. Both panels spoke directly to the quality (or lack thereof) of the legal representation provided to them during their involvement as parties in deprived court proceedings. This was the first effort of the Oversight Committee to ensure that the voices of parents and youth with

lived experiences in the child welfare system were being heard when addressing the necessity and impact of high quality legal representation in Oklahoma.

## **FEASIBILITY OF TITLE IV-E FUNDS GOING THROUGH APPROPRIATE ENTITIES**

The Department of Human Services has recently entered into an agreement with Legal Aid Services of Oklahoma (“LASO”) to receive federal Title IV-E funding reimbursement for the costs, including administrative costs, associated with providing high quality multidisciplinary legal representation for parents in Tulsa County, Oklahoma. Administrative costs include expenses associated with employing paralegals, investigators, peer partners, social workers, support staff as well as overhead expenses – such as creating and maintaining a data management system.

The first quarterly claim for the IV-E reimbursement has not, at the time of the writing of this report, been made. However, it is anticipated that the first claim will begin for the administrative costs associated with the 3<sup>rd</sup> calendar quarter of 2020 and continuing quarterly thereafter. The IV-E reimbursement received by DHS will be forwarded to LASO to pay for the additional expansion of its parent representation interdisciplinary legal teams.

Additionally, Tulsa County’s Public Defender’s Office will be entering into a similar agreement with DHS to receive Title IV-E funding reimbursement for the administrative costs associated with providing high quality legal representation for children. It is anticipated that this agreement will soon be finalized. It is the intent of Dr. Deborah Shropshire, the Director of Children Welfare Services, to also enter into an agreement with Oklahoma County’s Public Defender’s Office. A timeframe for finalization of this agreement has not been provided.

On July 20, 2020, the Administration for Children and Families (“ACF”) Children’s Bureau (“CB”) issued a Technical Bulletin opining that private donor funds complies with the Title IV-E program cost-sharing requirements for the non-federal share of program expenditures which apply to the non-federal share of the cost of providing independent legal representation. See: 45 CFR 1356.60 and 1356.68.

“The required state share of costs claimed for the title IV-E foster care program must be sourced from state or local appropriated funds *or donated funds*, but may not be sourced from federal funds provided through another program. State title IV-E agencies may not use third party in-kind expenditures (or contributions) as a source of the state share of funds for the foster care programs under title IV-E of the Act... [F]or example, attorney volunteer hours may not be used as a source of state match.” (Emphasis added).

The information within this Bulletin is critical not only for LASO but for any not-for-profit legal representation agency - including the Public Defenders’ Offices - that rely in part on private donor funds for operational costs. Currently, LASO’s parent representation pilot in Tulsa County is

relying on a local private foundation grant to fund 60% of its budget with 40% from district court funds. Should any additional parent and/or child legal representation pilots be created in Oklahoma, private grants will be critical to their creation and these efforts can only benefit further from the potential receipt of IV-E reimbursement necessary for the expansion and stability of the legal representation expansion programs.

### **ADOPTION OF PRACTICE STANDARDS FOR LEGAL REPRESENTATION OF PARENTS AND CHILDREN**

The Oversight Committee is in the process of writing the Practice Standards for Attorneys Representing Children in Deprived Child Proceedings and is the process of writing amendments to the 2016 Practice Standards for Attorneys Representing Parents in Deprived Child Proceedings.<sup>4</sup> Both Practice Standards are being written with the goals of raising the quality of representation as well as promoting uniformity of practice throughout the state.

The Standards are divided into the following categories:

- General Obligations
- Relationship with the Client
- Case Preparation
- Out-of-Court Advocacy
- In-Court Advocacy
- Post Hearings and Appeals

The amendments being added to the 2016 Practice Standards for Attorneys Representing Parents include considerations and actions that promote the attributes of high quality legal representation as more fully described by The Family Justice Initiative published “*Attributes of High-Quality Legal Representation for Children and Parents in Child Welfare Proceedings.*”<sup>5</sup>

It is important to note that the Committee does not desire that the Practice Standards carry the force of law; nor should a violation of a Standard give rise to a cause of disciplinary action against a lawyer or create a presumption that a legal duty has been breached. The Standards are intended by the Oversight Committee to provide guidance to attorneys and promote consistency of high quality legal representation statewide.

### **IMPLEMENTATION OF THE MULTIDISCIPLINARY MODEL OF REPRESENTATION IN CERTAIN IDENTIFIED COUNTIES**

The Committee recommends that in addition to the LASO multidisciplinary legal representation pilot located in Tulsa County, other “pilots” be considered in other non-metro counties. This recommendation was made with the intent of gathering data that will demonstrate positive outcomes related to client satisfaction, reduction of children’s length of time in foster care, and increase in

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<sup>4</sup> See Attachments C and D

<sup>5</sup> The Family Justice Initiative (FJI) is a collaboration of the ABA Center on Children and the Law, the Children’s Law Center of California (CLC), the Center for Family Representation (CFR), and Casey Family Programs (CFP).



reunifications with parents/relatives - outcomes that will eventually reduce the State's financial obligation to subsidize foster care and adoptions.

**Non-Metro County Pilot:** Several Oklahoma private foundations have expressed a strong interest in funding a "rural" county or regional multidisciplinary legal model of legal representation for parents - similar to that created in Tulsa County. However, despite the work of a subcommittee, a county or a rural regional area has not as yet been solidly identified. Relevant considerations in the selection process are, in part:

- Interest of current contracted or appointed attorneys to participate in the pilot
- Interest and cooperation of the judge to provide a system that promotes high quality representation
- Availability of resources that can be accessed to provide social workers
- Current caseloads of parent attorneys
- Current district court funds available to support sufficient contracted attorneys
- Average length of time in foster care - whether due to reunification efforts or adoption efforts

It is anticipated that a rural county or region will be identified within the next several months and planning for implementation to start soon thereafter.

**LASO Parent Representation Program, Tulsa County:** While the program was not formally commissioned through the operation of the Oversight Committee, the Oversight Committee is closely monitoring the implementation and outcomes of this multidisciplinary model to inform further spread in additional Oklahoma counties.

The multidisciplinary team is composed of a Managing Attorney, Social Worker Supervisor and Parent Advocate Supervisor. These positions were filled in mid-Summer 2020. Twelve attorneys have contracted with LASO to represent indigent parents and legal guardians in the Juvenile Division of the Tulsa County District Court. The contracts require the attorneys to adhere to the Oklahoma Practice Standards for Attorneys Representing Parents, participate in training, submit monthly time sheets describing in and out of court activities, and agree to work within a multidisciplinary structure. The monthly compensation for each attorney was raised to \$3500 per month (an increase from the court fund's approval of \$2800 per month).

Significant efforts have been made to ensure that the caseload of each attorney does not exceed 80 cases. This is now being accomplished by the trial court making a general appointment to LASO, thereby placing the responsibility of individual attorney assignments with the Managing Attorney who has up-to-date data regarding attorneys' caseloads. LASO is also providing attorneys the opportunity to request additional resources, e.g., expert witnesses and litigation costs.

The Managing Attorney has made extraordinary efforts to provide the attorneys with legal research materials, ICWA handbooks, brief and motion banks, as well as materials received from the ABA Center on Children and the Law and other out-of-state and national legal agencies. The attorneys have received certain training with respect to multidisciplinary legal practice as well as other topics. They also participate in monthly Brown Bag CLE luncheons, occasional virtual "happy hours"

that permit them to explore topics, issues, and shared practice experiences, and have established a private social media group.

The Social Work Supervisor and Parent Advocate Supervisors have collaborated with universities and other community agencies to recruit and train social work interns and parent peer advocates (i.e., parents with lived experience with the child welfare system). Several interns have been recruited and five parent peer advocates have been employed, as part-time contractors, all of whom are prepared to participate with the attorneys in assigned cases.

It was anticipated that the multidisciplinary teams would be assigned to cases beginning January 1, 2021. However, this rollout has been delayed to allow more comprehensive planning by the parent defense team in their determination of what type of cases should receive this support and at what point in the case.

The Managing Attorney has been meeting with DHS's regional staff in planning for out-of-court DHS related activities and pre-petition participation in the Child Safety Meetings as well as post-petition family team meetings.

Additionally, the LASO will be expanding its LegalServer case management software to address the specific data collection needs for the LASO Parent Representation Program. Attorneys, social workers, and parent peer mentors will be able to enter their time spent, case assignments, activities, and other informative data relevant for the evaluation of this pilot as well as documentation necessary for the IV-E claims.

The pandemic has slowed the roll-out of this pilot significantly but, that said, much has been done to provide the necessary support and training that has been sorely needed for the practicing attorneys. The next six months should provide more information regarding the potential outcomes of the deprived cases with the use of multidisciplinary teams.

### **INITIATING IMPROVEMENTS TO STATEWIDE QUALITY LEGAL REPRESENTATION FOR OKLAHOMA PARENTS**

The Oversight Committee has continued to think creatively about improvements statewide to the Oklahoma legal representation model while not losing sight of the financial reality. Specifically, thanks to the Children's Court Improvement Program ("CIP"), which continues to be an integral part of the Committee, funds were used to contract with a part-time data analyst in September 2020. The data analyst is housed within AOC and is assisted by Sharon Hsieh, Deputy General Counsel for AOC and Felice Hamilton, CIP Director. Together they comprise the initial state Parent Representation Program. The data analyst's responsibilities, in part, is to assist in gathering information that will help inform the Parent Representation Program and develop trainings for the attorneys practicing in the child abuse and neglect courts.

The data analyst will work to develop a 12-hour training curriculum for attorneys new to the practice in this area of law. This training will be available and easily accessible to the attorneys and will consist of "nuts and bolts" practice instructions. Training will also be developed for different

practice topics related to child welfare and will be housed in an online library as an ongoing resource for interested attorneys.

The data analyst will also be responsible for managing the child welfare representation group listserv (cw-representation-group@gaggle.email). This listserv was requested by attorneys and provides an invaluable avenue to share news, updates, opportunities, assistance, practice strategies, and communication with others practicing across the state.

With the help of members of the Oversight Committee, the Parent Representation Program has worked and will continue to work on a statewide outreach to attorneys and judges to gauge the strengths and needs of practice in their respective areas. During the outreach meetings, the attributes of high quality legal representation and the various structures and models of providing legal representation for parents and children will be shared. This outreach is also an opportunity to obtain support from the stakeholders for a new practice model to help improve outcomes for the children and families in the child welfare system.

The data analyst along with the CIP will work to collect relevant data that will inform the implementation of a high functioning, high quality statewide parent representation program. The goals of this program are:

- Attorneys will be well-trained and prepared to represent their clients
- Attorneys will have manageable caseloads
- Attorneys will have access to a team of other professionals such as a Licensed Social Worker, Parent Advocate (mentor) and investigator to offer expert support and assistance in the representation of the parent client
- Attorneys will have more time for out of court advocacy

The overall goal is that children will spend less time in the care and custody of DHS and achieve their permanency plan - preferably reunification with their families - in a safe and expedient manner.

#### **NEXT STEPS/RECOMMENDATIONS:**

The Oversight Committee will continue to explore the best system for Oklahoma to utilize in supporting high quality legal representation across Oklahoma for parents and children who are parties in deprived cases.

The Oversight Committee will continue to make recommendations that will implement the attributes of high quality legal representation. Specifically, subcommittees will be formed to research and recommend to the Oversight Committee:

- reasonable caseload assignments
- adequate compensation for attorneys
- training implementation
- data and comprehensive fiscal study
- identification of any ethical conflicts and resolutions thereof when considering the recommended structure of any proposed legal agency

- any other topics or issues that are brought to the attention of the Oversight Committee

The Oversight Committee will continue to recommend that the following information be sought and collected, particularly for counties that are on the KellPro System:

- Number of deprived cases filed in calendar years 2019 and 2020
- Number of guardianship cases filed in calendar years 2019 and 2020
- Number of mental health and indirect contempt cases filed in calendar years 2019 and 2020
- Cases appointed in Fiscal Year 2020 and 2021
- Number of current open cases where attorneys are court-appointed or contracted to represent:
  - Deprived parents
  - Deprived children
  - Adult clients in Mental Health proceedings
  - Parties subject to Guardianship proceedings
  - Children in Adoption proceedings
  - Adults subject to Contempt proceedings
  - Other court-appointed cases

This data is critical for the Oversight Committee's ultimate recommendations regarding maximum caseloads, reasonable compensation, analysis of availability of court funds and need for grants/funds from other sources, and estimated IV-E reimbursement.

The Oversight Committee continues to recommend that 10A O.S. 1-4-306 be amended to additionally allow parents' attorneys reasonable compensation for mileage if the attorney is required to travel to a district court location other than his or her county of business. The current statute only allows for reimbursement of mileage for children's attorneys.

The Oversight Committee will continue to explore the need of early appointment (prior to initial hearing) of attorneys for parents and children and will research procedures/protocols and funding that will enable the courts to provide early appointment of counsel for indigent parents.

The Oversight Committee will continue to promote implementation of the multidisciplinary model of representation throughout the state.

The members of the Oversight Committee are appreciative for the Oklahoma Supreme Court's support of this endeavor to improve the quality of legal representation for parents and children who are involved with the child welfare system. Oklahoma is and should be filled with strong families. Better access to high quality legal representation will allow the state to continue to strengthen these families and help Oklahoma parents and children thrive for years to come.

Respectfully Submitted:

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The Honorable Michael Flanagan  
Chair of the Oversight Committee