

The Existing Civil Right to Counsel Infrastructure

By Laura K. Abel and Judge Lora J. Livingston

In August 2006 the ABA House of Delegates unanimously passed a resolution endorsing a civil right to counsel in cases concerning basic human needs.¹ The resolution was, in the words of former ABA President Michael Greco, “historic.”² At the same time, the report accompanying the resolution made clear that it was offering “a careful, incremental approach . . . limited to those cases where the most basic of human needs are at stake.”³

The resolution is incremental in another way, too: it builds on the existing civil right to counsel infrastructure already in place throughout the country. Virtually every jurisdiction in the country has a right to counsel in at least some types of civil proceedings (including proceedings concerning family law matters, involuntary commitment, medical treatment, and many other issues). The rights are set out in hundreds of state and federal laws and court rules. Some implement court decisions establishing a constitutional right to counsel in one or more types of proceedings.⁴ Others implement federal laws requiring the provision of counsel to specific types of individuals, such as members of the military or Native American children facing removal from their parents. Still others flow from a legislature’s belief that providing counsel in a particular type of case is good social policy. For example, recent changes strengthening the role of appointed counsel for parents in abuse and neglect proceedings in Arkansas and Texas apparently resulted from a desire to ensure that children were not sent to foster care unnecessarily.⁵

These existing civil-right-to-counsel laws ease the way towards fulfillment of the ABA’s resolution in several ways. First, the fact that there already exists a civil right to counsel in some cases concerning basic human needs means that the task of fulfilling the ABA’s right-to-counsel resolution is not as large as it would otherwise be. In our first section below, we compare the existing civil right-to-counsel statutes and court rules to the scope of the civil right to counsel outlined in the ABA resolution. It is clear from this analysis that, while no jurisdiction has a right to counsel in more than a few types of cases concerning basic human needs, no jurisdiction has to start from scratch, either.

Second, we can learn from existing civil right-to-counsel schemes about how best to create new schemes to fulfill the ABA resolution. Some lessons drawn from existing civil right-to-counsel schemes are discussed below in our second section.

Cases Where a State Statute or Court Rule Provides for a Right to Counsel

Child Custody

The ABA resolution calls for a civil right to counsel in cases where any one of five types of basic human needs are at stake: shelter, sustenance, safety, health, or child custody.⁶ Of those, child custody is the category with the greatest number of existing civil right-to-counsel statutes. This is in part because federal law requires that states receiving federal child abuse prevention and treatment

funding appoint a representative for children involved in abuse or neglect proceedings.⁷ Thus, virtually all states have statutes guaranteeing either the right to an attorney or the right to a guardian ad litem for children in abuse and neglect cases.⁸ Many, but not all, states also have a statute guaranteeing the right to counsel for parents in state-initiated termination-of-parental-rights proceedings, and some have a statute guaranteeing the right for parents in abuse and neglect proceedings as well.⁹

Federal law also requires states to provide counsel for the parent of an Indian child in abuse, neglect, and termination-of-parental-rights proceedings.¹⁰ A number of states have incorporated that requirement into their statutes.¹¹

Other categories of child custody matters in which statutes guarantee a right to counsel for one or more parties include:

- private petitions to terminate parental rights or for adoption;¹²
- paternity proceedings;¹³
- child custody, support, and visitation proceedings;¹⁴
- divorces and annulments;¹⁵ and
- proceedings regarding visitation or permanency for children in foster care.¹⁶

Health

Being able to obtain access to or to refuse medical treatment is another subject of some right-to-counsel statutes. For example, some statutes guarantee counsel to a minor seeking a judicial bypass of a requirement of parental notification or consent before undergoing an abortion.¹⁷ Other statutes guarantee the right to counsel for people who are the subject of an involuntary sterilization proceeding.¹⁸ Connecticut guarantees the right to counsel for people who are the subject of an involuntary vaccination order.¹⁹ Finally, Indiana provides a right to counsel for the subject of a petition for the involuntary release of mental health records.²⁰

Safety

As discussed above, all states provide some sort of representation to children who are the subject of an abuse or neglect pro-

ceeding. A 2005 Florida law provides that abused, neglected, or abandoned noncitizen children whom a state court determines may be eligible for special immigrant juvenile status under federal immigration law have a right to counsel for the purpose of petitioning the federal government for special immigrant juvenile status.²¹

New York appears to be the only jurisdiction providing counsel as a right to people seeking protection from domestic violence,²² although a few other states give courts the discretion to appoint counsel for the petitioner in such cases.

Shelter and Sustainance

There are few laws creating a right to counsel in cases concerning shelter or sustainance. One standout is the Civil Asset Forfeiture Reform Act of 2000, which provides a federal right to counsel for low-income homeowners who face civil forfeiture of their primary residence.²³ New York appears to have the only right to counsel in any sort of case concerning sustainance: this state has a statute providing a right to counsel on appeal for unemployment insurance claimants who won before the Unemployment Insurance Appeals Board and are defending that decision against their employer's appeal.²⁴

Other

Civil cases concerning physical liberty are outside the scope of the ABA resolution, perhaps because it is already generally accepted as a matter of constitutional law that there should be a right to counsel in such cases.²⁵ Nonetheless, it is worth noting that many, but not all, states provide a right to counsel for people facing incarceration as the result of civil contempt charges.²⁶ Many state statutes guarantee the right to counsel for people facing involuntary institutionalization for mental illness or alcohol or drug intoxication and for people facing disease quarantine.²⁷ Alabama also guarantees counsel for anyone seeking to commit another person involuntarily.²⁸ A number of statutes provide a right to counsel for adults who are the subject of a petition for involuntary protective services or guardianship.²⁹

A few other mandatory right-to-counsel

statutes fall into the following categories:

- *Civil Arrest or Imprisonment.* North Carolina provides a right to counsel for people who are the subject of a petition seeking their imprisonment for a debt or their civil arrest.³⁰
- *Individual under Disability to Sue.* Maryland provides a right to counsel for people under a disability to sue.³¹
- *Members of the Military.* The federal Servicemembers Civil Relief Act requires all states to provide counsel to a military member who is a defendant in a civil case and has not appeared in the case.³² A number of states have incorporated this requirement into their laws.³³

The Administration of the Civil Right to Counsel

While some existing civil right-to-counsel regimes provide a high quality of representation, others are widely criticized as capable of providing representation in name only.³⁴

To address this problem the ABA, the National Center for State Courts, and other entities have issued national standards for the representation of children in custody and child abuse cases, of parents in abuse and neglect cases, and of people subject to involuntary commitment.³⁵ Although guidelines do not yet exist for the performance of other types of mandated civil representation, the existing guidelines teach that, for a civil right-to-counsel scheme to be effective, appointed counsel must have the following characteristics:

- adequate experience and training;
- assigned to fulfill particular duties;
- given only as many cases as they can competently handle;
- function independently of the appointing authority;
- be adequately compensated;
- be appointed early enough in a particular proceeding; and
- the appointment system must be uniform throughout a particular state.

We discuss each of these requirements in turn.

In order to provide competent representation with respect to most types of

mandated cases, the attorneys appointed need to have relevant experience and training.³⁶ Appointed attorneys should fulfill certain basic duties, such as interviewing clients, although the specific duties will vary with case type.³⁷ However, virtually none of the civil right-to-counsel statutes or court rules requires experience, training, or the fulfillment of any particular duties.³⁸

Exceptions in some states are notable. An Arizona statute spells out specific tasks for attorneys appointed to represent people who are the subject of an involuntary commitment petition.³⁹ An Arkansas court rule requires that attorneys appointed to represent parents or children in dependency and neglect proceedings have experience and training, that they receive continuing legal education in specified topics, and that they complete specific duties, such as reviewing relevant documents, attending court hearings, meeting with clients, and filing appropriate pleadings.⁴⁰ In Florida, each judicial district imposes its own standards for counsel in dependency cases, and all such standards must meet or exceed training and experience standards that the Florida Indigent Services Advisory Board suggests.⁴¹ A number of states impose standards on counsel for children in abuse and neglect cases but apparently do not impose standards on counsel for the parents or in other types of cases.⁴²

Courts should not assign appointed attorneys more cases than the attorneys can handle competently.⁴³ However, very few right-to-counsel statutes or court rules provide any caseload limits or guidelines. One exception is an Oregon court rule providing that “[n]either defender organizations nor assigned counsel should accept workloads that, by reason of their size or complexity, interfere with providing competent and adequate representation or lead to the breach of professional obligations.”⁴⁴

Appointed counsel should be independent of the court.⁴⁵ Commentators generally agree that someone other than the presiding judge should appoint counsel to ensure that counsel's desire to be appointed in other cases does not influ-

ence counsel's representation of clients.⁴⁶ However, very few civil right-to-counsel statutes provide any guidelines about how judges should appoint counsel. Judges presiding over the cases are free to appoint the attorneys in those cases, and, except in jurisdictions where the public defender is responsible for representing people entitled to counsel in civil cases, that seems to be what generally happens.

Counsel must be adequately compensated.⁴⁷ Many civil right-to-counsel statutes do not address compensation beyond requiring that it be "reasonable."⁴⁸ In practice, funding falls short of need almost everywhere. Many of the statutes that do specify how much counsel should be paid provide for an hourly rate of between \$50 and \$75, which is far below what most attorneys in private practice receive.⁴⁹ Moreover, the fees are often capped at an extremely low rate.⁵⁰ Other statutes expressly permit or require courts to appoint uncompensated counsel.⁵¹ Too often, the clients suffer because attorneys must maintain a very high caseload to make ends meet.⁵²

Counsel need to be appointed early enough to be able to represent and consult with the client during crucial stages of the proceedings.⁵³ Some right-to-counsel statutes require that this happen, and some

require the court to grant an adjournment for this to happen. For example, a Montana statute requires that counsel be appointed for a parent or guardian "immediately" following the filing of a petition seeking removal or placement of a child or the termination of parental rights.⁵⁴ A New York statute provides that parties who have the right to counsel in family court also have "the right to have an adjournment to confer with counsel."⁵⁵ However, many right-to-counsel statutes are silent about this important issue.

Where possible, counsel should be provided in a uniform manner throughout a state.⁵⁶ Lack of a uniform system can lead to individual judges or county administrators determining who should get counsel on an ad hoc basis. Even when individual counties have written policies, the differences between those policies can lead to vastly different access to counsel in different counties, despite the presence of an applicable statewide law guaranteeing this right.

However, unified state systems to administer the right to counsel are very rare. In most states, individual counties are responsible for administering and often funding the right-to-counsel system. Often the counties themselves have no uniform procedures. Thus, how the

right to counsel is implemented tends to vary not only by state but also by county and by judge. For example, in Nevada's Clark County, a public defender office specializing in family law handles family law matters, with contract attorneys handling only those cases that the special public defender cannot handle. In the rest of the state, however, the general public defender's office or court-appointed contract attorneys handle family law matters.⁵⁷

Alaska and Montana are exceptions to the general lack of uniformity. Alaska operates a statewide public defender office and an Office of Public Advocacy, both representing civil and criminal litigants with a right to counsel.⁵⁸ After a major lawsuit, Montana created a statewide public defender's office to represent low-income people in both civil and criminal matters.⁵⁹

The existing civil-right-to-counsel infrastructure is far from perfect, and perhaps the ABA resolution will help strengthen it in some respect. At a minimum, the resolution underscores the importance of the right to counsel in civil matters when a litigant's basic human needs are at risk. Any strategy, whether incremental or global, that advances the right to legal representation in these important cases is a significant step toward the goal of access to justice for all. ■

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Endnotes

1. ABA Resolution 112A (Aug. 7, 2006).
2. James Podgers, *A Civil Law Gideon: ABA House of Delegates Calls on Government to Recognize Right to Legal Counsel in Key Civil Cases*, A.B.A. J. (Annual Meeting Daily Report) (Aug. 8, 2006).
3. ABA Task Force on Access to Civil Justice, *Report to the House of Delegates* at 12 (Aug. 2006).
4. *E.g.*, New Jersey Rules of the Chancery Division, Family Part 5:3–4, implement rulings by New Jersey courts that counsel must be provided in civil and criminal cases with a "consequence of magnitude." See *Rodriguez v. Rosenblatt*, 277 A.2d 216, 223 (N.J. 1971); *Crist v. New Jersey Division of Youth & Family Services*, 343 A.2d 815, 816 (N.J. Super. Ct. App. Div. 1975).
5. Our understanding of the legislative history behind Arkansas's 2001 enactment of a statute and court rule strengthening the right to counsel for



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custodial parents in abuse and neglect proceedings comes from telephone interview by Max Rettig with Jean Carter, Executive Director, Center for Arkansas Legal Services (Jan. 31, 2006). Our understanding of Texas's 2005 reforms to its child welfare system come from Texas Senate Research Center, Bill Analysis, S.B. 6 (Aug. 26, 2005).

6. ABA Resolution 112A (Aug. 7, 2006).

7. Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a(b)(2)(A)(xiii).

8. Whytini Kernodle Frederick, *A Child's Right to Counsel: First Star's National Report Card on*

How the right to counsel is implemented tends to vary by county and by judge.

Legal Representation for Children (2007), available at www.firststar.org (reporting that all 50 states require some kind of representation for children, 36 states and the District of Columbia require appointment of a lawyer, and 17 states require that the lawyer follow the child's wishes).

9. Astra Outley, *Representation for Children and Parents in Dependency Proceedings* 7, <http://pewfostercare.org/research/docs/Representation.pdf> (last visited May 7, 2008) (citing *National Council of Juvenile and Family Court Judges, Child Abuse and Neglect Cases: Representation as a Critical Component of Effective Practice* 21 (1998)) (reporting that 6 states require that counsel be appointed for indigent parents in all dependency proceedings, 39 require that counsel be provided for indigent parents in at least some dependency proceedings, 3 require that counsel be provided for indigent parents in termination or parental rights cases only, and 3 do not have statutes "explicitly" providing for the appointment of counsel for parents in any dependency or termination-of-parental-rights cases). See, e.g., TEX. FAM. CODE ANN. § 107.013 (requiring appointment of counsel for certain respondents to a governmental entity petition for termination of parental rights) and § 161.003 (requiring appointment of counsel for mentally or emotionally ill or deficient respondent to a Department of Protective and Regulatory Services petition for termination of parental rights).

10. Indian Child Welfare Act, 25 U.S.C. § 1912.

11. See, e.g., MONT. CODE ANN. § 41-3-425(2).

12. See, e.g., ALASKA STAT. § 25.23.180(h) (requiring appointment of counsel for respondent to a private petition for termination of parental rights); 750 ILL. COMP. STAT. ANN. § 50/13B (West) (guaranteeing right to counsel for respondent in an adoption petition where the petition alleges the

respondent to be unfit); MASS. GEN. LAWS ANN. ch. 119, § 29 (West) (guaranteeing right to counsel for child in contested proceeding to dispense with need for consent to adoption); N.Y. FAM. CT. ACT § 262(a) (McKinney) (guaranteeing right to counsel for a parent opposing adoption); TEX. FAM. CODE ANN. § 107.021 (providing for discretionary appointment of an amicus attorney or guardian ad litem in a suit in which the best interests of a child are at issue, other than a governmental termination or governmental conservatorship request; requiring appointment of an amicus attorney or guardian ad litem in a private termination unless the court finds that the child's best interest will be adequately represented by a party to the suit whose interests are not in conflict with those of the child).

13. See, e.g., CONN. SUPER. CT. FAM. MATTERS P. § 25-68(a) (guaranteeing right to counsel for putative father in a state-initiated paternity action); KAN. STAT. ANN. § 38-1125 (authorizing petitioner in a paternity proceeding to seek representation from county trustee, the county social services department, or the county attorney); N.Y. FAM. CT. ACT § 262(a) (McKinney) (guaranteeing right to counsel for respondent in paternity proceeding); TEX. FAM. CODE ANN. § 160.608 and § 160.612 (requiring appointment of an amicus attorney or attorney ad litem for a child who is a minor or is incapacitated in a proceeding to adjudicate parentage).

14. See, e.g., LA. REV. STAT. ANN. § 9:345 (guaranteeing right to counsel for child in child custody or visitation proceeding if any party presents a prima facie case that the child has been sexually, physically, or emotionally abused); MASS. GEN. LAWS ANN. ch. 209C, § 7 (West) (requiring appointment of counsel for either party in contested custody or visitation proceeding "whenever the interests of justice requires"); N.Y. FAM. CT. ACT § 262(a) (McKinney) (guaranteeing right to counsel for parents in a child custody proceeding); OR. REV. STAT. § 107.425(6) (guaranteeing right to counsel for children who request it in a custody proceeding or a proceeding regarding support of an out-of-wedlock child); TEX. FAM. CODE ANN. § 107.021 (providing for discretionary appointment of an amicus attorney or guardian ad litem in a suit in which the best interests of a child are at issue, other than a governmental termination or governmental conservatorship request; requiring appointment of an amicus attorney or guardian ad litem in a private termination unless the court finds that the child's best interest will be adequately represented by a party to the suit whose interests are not in conflict with those of the child).

15. See, e.g., OR. REV. STAT. § 107.425(6) (guaranteeing right to counsel for children who request it in a divorce proceeding); VT. STAT. ANN. tit. 15, § 594 (guaranteeing right to counsel for children called as a witness in a divorce or annulment proceeding).

16. See, e.g., N.Y. FAM. CT. ACT § 262(a) (McKinney) (guaranteeing right to counsel for petitioner in proceeding regarding visitation of child in foster care and for respondent in permanency proceeding); TEX. FAM. CODE ANN. § 107.012 (requiring appointment of an attorney ad litem to represent the interests of the child in a governmental termina-

tion or governmental conservatorship request).

17. See, e.g., ALASKA STAT. § 18.16.030(d) (guaranteeing right to counsel for minor seeking waiver of requirement that parental consent be obtained before seeking abortion); TEX. FAM. CODE ANN. § 33.003 (guaranteeing right to counsel for minor seeking waiver of requirement that parental consent be obtained before seeking abortion).

18. See, e.g., W. VA. CODE § 27-16-1 (guaranteeing right to counsel for incompetent person who is the subject of a sterilization petition).

19. CONN. GEN. STAT. ANN. § 19a-131e(d) (West).

20. IND. CODE § 16-39-3-5; TEX. FAM. CODE ANN. § 261.305 (requiring appointment of counsel for an indigent parent or person where access to mental health records is sought in connection with an investigation of a report of child abuse or neglect).

21. FLA. STAT. ANN. § 39.5075(5) (West).

22. N.Y. FAM. CT. ACT § 262(a) (McKinney). See, e.g., ALASKA STAT. § 18.66.100 (permitting court to appoint counsel for minor who is the subject of a petition for a domestic violence protective order); CAL. FAM. CODE § 6386 (West) (permitting court to appoint counsel for minor or adult who is the subject of a petition for a domestic violence protective order).

23. 42 U.S.C. § 2996f(a)(11).

24. N.Y. Lab. Law § 538(1)(e).

25. *Lassiter v. Department of Social Services*, 452 U.S. 18, 25 (1981).

26. See, e.g., *Mead v. Batchlor*, 460 N.W.2d 493, 504-05 (Mich. 1990); *McBride v. McBride*, 431 S.E.2d 14, 20 (N.C. 1993); TEX. FAM. CODE ANN. § 157.163.

27. See, e.g., ALASKA STAT. §§ 18.85.100, 47.37.200(f); TEX. HEALTH & SAFETY CODE ANN. § 574.003.

28. See, e.g., ALA. CODE § 22-52-5.

29. See, e.g., DEL. CODE ANN. tit. 31, § 3909 (guaranteeing right to counsel in proceeding for involuntary protective services); TEX. HEALTH & SAFETY CODE ANN. § 574.024 (guaranteeing right to counsel in proceeding for involuntary protective services).

30. N.C. GEN. STAT. ANN. § 7A-451(a)(7) (West).

31. MD. R. CT. 2-202.

32. *Servicemembers Civil Relief Act*, 50 U.S.C. App. § 521(b)(2).

33. See, e.g., COLO. REV. STAT. § 13-6-407(3).

34. See, e.g., Michael L. Perlin, "And My Best Friend, My Doctor/Won't Even Say What It Is I've Got": *The Role and Significance of Counsel in Right to Refuse Treatment Cases*, 42 SAN DIEGO L. REV. 735, 738-50 (2005) (criticizing quality of representation in civil commitment and right to refuse medication cases).

35. See AMERICAN BAR ASSOCIATION, STANDARDS FOR PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES (2006); AMERICAN BAR ASSOCIATION Section of Family Law, STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING CHILDREN IN CUSTODY CASES (2003), available at www.abanet.org/family/reports/standards_childcustody.pdf; American Bar Association, STANDARDS OF PRACTICE FOR LAWYERS

WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (National Association of Counsel for Children revised version 1999); AMERICAN BAR ASSOCIATION, STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (1996), available at <http://www.abanet.org/child/repstandwhole.pdf>; NATIONAL CENTER FOR STATE COURTS, GUIDELINES FOR INVOLUNTARY CIVIL COMMITMENT (1986).

36. STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING CHILDREN IN CUSTODY CASES, *supra* note 36, § VI.A.7; STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES, *supra* note 36, Stds. H-4, I-2, I-3; STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES, *supra* note 36, Commentary to Basic Obligation 1; NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES 22–23 (1995), available at www.ncjfcj.org/images/stories/dept/ppcd/pdf/resguide.pdf; NATIONAL CENTER FOR STATE COURTS, *supra* note 35, Guideline E.1(a).

37. *See, e.g.*, STANDARDS FOR PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES, *supra* note 36, Basic Obligations 4, 19, 20; NATIONAL CENTER FOR STATE COURTS, *supra* note 36, Guidelines E1(d), E2, E5.

38. Not surprisingly, appointed counsel in family court, involuntary commitment, and right-to-refuse-medical-treatment cases often lack training and experience essential to provide competent representation. *See* Perlin, *supra* note 35, at 735, 738–40, 743–44, 748–50; U.S. GENERAL ACCOUNTING OFFICE, PUB. NO. GAO/HEHS-99-13, JUVENILE COURTS: REFORMS AIM TO BETTER SERVE MALTREATED CHILDREN 13 (1999), available at www.gao.gov/archive/1999/he99013.pdf.

39. ARIZ. REV. STAT. ANN. § 36-537.B.

40. Ark. Sup. Ct. Admin. Order No. 15; *see also* ARK. CODE ANN. § 9-27-401(d)(2) (West) (requiring the appointment of counsel to occur in a manner consistent with Order Number 15); TEX. FAM. CODE ANN. § 107.003-107.004 (setting forth the powers and duties of an attorney ad litem for a child and amicus attorney and the additional duties of an attorney ad litem for a child) and § 107.005 (setting forth the additional duties of an amicus attorney).

41. *See Indigent Services Advisory Board, Final Report: Recommendations Regarding Qualifications, Compensation and Cost Containment Strategies for State-Funded Due Process Services, Including Court Reporters, Interpreters and Private Court-Appointed Counsel*, 5, 14 (2005), available at www.justiceadmin.org/art_V/1-6-2005%20Final%20Report.pdf (recommending that dependency counsel “shall have observed a total of thirty hours of hearings which shall include six shelter hearings, three dependency hearings and one termination of parental rights hearing and attend annually, at least three hours of continuing legal education at the Dependency Court Improvement Project Conference, or an equivalent,” and that in termination-of-parental-rights cases “the attorney shall have at least ten dependency trials, or one year of dependency experience.”).

42. *See, e.g.*, Md. R. Ct., tit. 11 app. (GUIDELINES OF ADVOCACY FOR ATTORNEYS REPRESENTING CHILDREN IN CINA [CHILDREN IN NEED OF ASSISTANCE] AND RELATED TPR [TERMINATION OF PARENTAL RIGHTS] AND ADOPTION PROCEEDINGS); CAL. WELF. & INST. CODE § 317(c), (e) (West) (setting general caseload and training standards for attorneys for children and requiring the attorneys to fulfill specific duties).

43. STANDARDS FOR PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES, *supra* note 36, Role of the Court 8; STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING CHILDREN IN CUSTODY CASES, *supra* note 36, § VI.D; STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES, *supra* note 36, § L.

44. OR. REV. STAT., QUALIFICATION STANDARDS FOR COURT-APPOINTED COUNSEL TO REPRESENT FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE, STANDARD II; *see also* Wis. STAT. ANN. § 977.08(5) (West) (imposing caseload limits on the trial unit of the state public defender office but not on assigned counsel).

45. STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING CHILDREN IN CUSTODY CASES, *supra* note 36, § VI.A.5; STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES, *supra* note 36, § G-1; NATIONAL CENTER FOR STATE COURTS, *supra* note 36, Guideline E4(b).

46. *See* AMERICAN BAR ASSOCIATION, *GIDEON'S BROKEN PROMISE: AMERICA'S CONTINUING QUEST FOR EQUAL JUSTICE* 20 (2004), available at www.abanet.org/legalservices/sclaid/defender/brokenpromise/fullreport.pdf.

47. STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING CHILDREN IN CUSTODY CASES, *supra* note 36, § VI.C; STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES, *supra* note 36, Standard J-1; NATIONAL CENTER FOR STATE COURTS, *supra* note 36, Guideline E4(c); *see also* NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *supra* note 37, at 22 (stating that “[j]uvenile and family courts should urge state legislatures and local governing bodies to provide sufficient funding for attorney compensation”).

48. *See, e.g.*, ARIZ. REV. STAT. ANN. § 8-221; IND. CODE § 34-10-1-2; TEX. FAM. CODE ANN. § 107.015 and § 107.023.

49. *See, e.g.*, ALASKA R. CT. ADMIN. 12 (specifying that court-appointed attorneys should be paid \$75 per hour); DELAWARE STAT. SUP. CT. R. 26.1(e) (stating that the maximum that attorneys may be paid in termination-of-parental-rights cases is \$50 per hour); Fla. 13th Jud. Cir. Admin. Order No. S-2007-089 (establishing an hourly rate of \$60 for appointed counsel in termination-of-parental-rights cases and judicial waiver of parental-notice-of-abortion proceedings).

50. *See, e.g.*, ARK. CODE ANN. § 20-47-212 (West) (capping fees in commitment cases at \$150); KY. REV. STAT. ANN. § 620.100(1) (West) (capping fees at \$250 for termination-of-parental-rights cases and at \$250 for dependency, neglect, and abuse proceedings

disposed of in district court); LA. REV. STAT. ANN. § 46:432 (capping fees at \$10 for uncontested case and \$25 in contested case in proceeding to have a curator appointed for the purpose of applying for public assistance for a mentally incompetent person); S.C. FAM. CT. R. 41 (capping fees for attorneys appointed for children in abuse and neglect proceedings at \$100 unless the court determines that “extraordinary circumstances require the award of a fee larger than that which is specified in this rule . . .”).

51. *See, e.g.*, ARK. CODE ANN. § 20-47-212 (West) (stating that, in involuntary commitment proceedings, “[t]he court shall have the authority to appoint counsel on a pro bono basis”); LA. REV. STAT. ANN. § 9:345(F) (stating that, when an attorney is appointed for a child in a custody or visitation proceeding, and the parents’ ability to pay for counsel is limited, “the court shall attempt to secure proper representation without compensation”).

52. *See* *In re Nicholson*, 181 F. Supp. 2d 182, 186–87 (E.D.N.Y. 2002) (“the current statutory rates do not permit [appointed] lawyers [in New York Family Court] to provide competent representation to their clients, and . . . as a result mothers are consistently denied their constitutional rights”). After this ruling, the New York legislature raised the hourly rate, but it is still far lower than most attorneys receive in private practice.

53. STANDARDS FOR PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES, *supra* note 36, Role of the Court 4; STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES, *supra* note 36, Standard H-1; NATIONAL CENTER FOR STATE COURTS, *supra* note 36, Guideline E4(a).

54. MONT. CODE ANN. § 41-3-425; *see also* ARK. CODE ANN. § 20-47-212 (West) (requiring appointment of counsel in involuntary commitment proceedings immediately upon filing of the original petition); N.H. REV. STAT. ANN. § 464-A:6 (requiring appointment of counsel “immediately upon the filing of a petition for guardianship of the person and estate, or the person, or estate”).

55. N.Y. FAM. CT. ACT § 262(a) (McKinney).

56. STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES, *supra* note 36, Stds. G-2, J-4.

57. Telephone Interview by Max Rettig with Jane Femiano, Attorney, Clark County Special Public Defender’s Office (Apr. 7, 2006).

58. *See* ALASKA STAT. §§ 18.85.100, 25.23.180(h).

59. Telephone Interview by Max Rettig with Randi Hood, Chief Public Defender, State of Montana (Feb. 24, 2006); *see also* *White v. Martz*, No. CDV-2002-133 (Mont. Dist. Ct. filed April 1, 2002).