

# Legislation Will Improve Representation for Abused and Neglected Children

By Christina D. Ghio

In a historic move in the waning hours of the legislature's special session, the General Assembly voted to create the Commission on Child Protection to administer the attorney appointment system in child protection cases.<sup>1</sup> Its creation is a bold step in improving the quality of legal representation provided to parents and children in child abuse and neglect cases.

The legislation, written and sponsored by the Center for Children's Advocacy, a nonprofit legal organization affiliated with the University of Connecticut School of Law, is aimed at improving the quality of legal representation in child protection matters. The legislation also received the support of the Juvenile Matters Trial Lawyers Association, the Judicial Branch, the Office of the Attorney General, and the Pro Bono and Children's Law Committees of the Connecticut Bar Association.

## The Commission on Child Protection

By creating the Commission on Child Protection, the law removes from the Judicial Branch the responsibility for administering the attorney appointment system, thereby eliminating the conflict of interest inherent in the Judicial Branch's administration of contracts for attorneys who appear before it.

The commission will exist for administrative purposes under the Office of the Chief Public Defender but will operate independently.<sup>2</sup> The commission will

appoint the chief child protection attorney, who will be charged with establishing, by July 1, 2006, a system for the appointment of attorneys in child protection matters and for ensuring that it is appropriately administered. The Judicial Branch will continue to determine eligibility for counsel for a child or youth and the parents or guardian of a child or youth if they are unable to afford counsel. Upon the judicial appointment of counsel for a parent, guardian, child, or youth, the judicial authority will notify the chief child protection attorney, who will assign the matter to a legal service entity or attorney under contract with the Commission on Child Protection to provide such representation.

Most importantly, pursuant to the law, the chief child protection attorney must give initial and in-service training to attorneys providing legal services to children and indigent parents and establish training, practice, and caseload standards. The standards will apply to any attorney who represents children or indigent parents and must be designed to ensure (1) a high quality of legal representation; and (2) proficiency in the procedural and substantive law and in relevant subject areas, including, but not limited to, family violence, child development, behavioral health, educational disabilities, and cultural competence.

The need for training and standards has long been recognized on both a national and state level. Indeed, training for guardians *ad litem* is required by the Child Abuse Prevention and Treatment Act.<sup>3</sup>

Both the National Association of Counsel for Children (NACC) and the American Bar Association (ABA) recommend training, practice, and caseload standards.<sup>4</sup> Within Connecticut, the Legal Representation of Children and Parents in Juvenile Matters Discussion Group (Discussion Group), convened in 2001 by then Chief Court Administrator Robert C. Leuba, recommended formalized performance standards and training and evaluation of counsel. This legislation is an important step in implementing those recommendations.

## Future Steps

While the Commission on Child Protection holds much promise, there is also ample work to be done. The chief child protection attorney should (1) adopt nationally recognized practice and caseload standards and demand high-quality representation from every attorney providing representation to children and indigent parents; (2) address the fee structure and compensation of attorneys providing this very important legal representation; and (3) consider moving toward a legal services or other model of representation.

## Nationally Recognized Practice and Caseload Standards

*The chief child protection attorney should adopt nationally recognized caseload and performance standards.*

The ABA Standards of Practice for Lawyers Who Represent Children, the

NACC, and the United States Department of Health and Human Services Children's Bureau recommend that caseloads not exceed 100 clients at one time.<sup>5</sup> Based on its findings in 2001, the Discussion Group's Subcommittee on Qualifications, Guidelines, Evaluation and Training of Counsel in Juvenile Matters suggested a case maximum of 100 new assignments per year for full-time attorneys.<sup>6</sup> Some jurisdictions require smaller caseload standards. For example, both Arkansas and Massachusetts require that attorneys have no more than seventy-five open cases at one time.<sup>7</sup>

The Discussion Group recommended that Connecticut adopt performance standards for attorneys. Indeed, the Subcommittee on Qualifications, Guidelines, Evaluation and Training of Counsel in Juvenile Matters looked to the standards set forth by the ABA and the NACC and offered detailed performance standards for Connecticut.<sup>8</sup>

To ensure that both children and parents receive adequate legal representation, these widely recognized caseload and performance standards should be adopted and enforced.

## Fee Structure and Compensation

*The chief child protection attorney should address the fee structure and compensation provided to attorneys performing this very important legal representation.*

The Discussion Group recommended that rates of compensation be enhanced, stating that "rates of compensation make it difficult to attract qualified and skilled members of the bar to seek a contract....The work is often complex, and can be physically and emotionally draining. Increased compensation, therefore, is necessary not only for fairness, but to ensure that knowledgeable contract attorneys remain within the system. An exodus of attorneys could lead to crippling of the system, resulting in delayed disposition of many cases causing further negative consequences for the children and families."<sup>9</sup>

Under the current system, attorneys receive \$350 per case. This amount compensates the attorney for the first thirty hours of work. If an attorney provides thirty hours of representation, he or she

earns \$11.66 per hour. Attorneys may bill for time in excess of thirty hours at a rate of \$40 per hour but must obtain prior permission of the court in ten-hour increments. The Discussion Group compared this rate to that of special public defenders: \$60 per hour for in-court work and \$40 for out-of-court work. Sadly, the disparity in compensation continues, and the 2005 rate is the same as it was when the Discussion Group reviewed the system in 2001.<sup>10</sup>

While many attorneys work hard to provide adequate representation to their clients despite the woefully inadequate compensation, the systemic effect of this fee structure is to encourage attorneys to provide poor legal representation. To make a reasonable income, many attorneys accept an unmanageable number of cases. Because the hourly rate of pay decreases with each hour of work prior to reaching thirty hours of work on a given case, the fee structure encourages attorneys to minimize the time spent on any one case.<sup>11</sup> This analysis is supported by the NACC and the Department of Health and Human Services, which have stated that:

Primary causes of inadequate legal representation of the parties in child welfare cases are low compensation and excessive caseloads. Reasonable compensation of attorneys for this important work is essential. Rather than a flat per case fee, compensate lawyers for time spent....When attorneys are paid a set fee for complicated and demanding cases, they cope either by providing less service than the child-client requires or by providing representation on a pro bono or minimum wage basis. Neither of these responses is appropriate....The need for improved compensation is not for the purpose of benefiting the attorney, but rather to ensure that the child receives the intense and expert legal services required.<sup>12</sup>

Attorneys who provide representation to children and indigent parents perform a valuable service not only for the families but also for our communities. By representing the interests of parents and children, they are in a unique position to oversee the actions of the Department of Chil-

dren and Families (DCF) and others providing service to the families. When DCF fails to protect a child, fails to provide necessary services, or fails to ensure permanency within a reasonable time, attorneys for children and parents bring these issues to the attention of the court. They ensure that no child falls through the cracks of the child welfare system. Such attorneys must be well-trained, must be required to provide a high quality of representation, and must be compensated adequately for the service they provide.

## Models of Legal Representation

*The chief child protection attorney should consider various models, including but not limited to the legal services model of representation.*

The Discussion Group recommended that the Judicial Branch "explore the various methods of providing representation for parents and children in juvenile court."<sup>13</sup> Members of the group discussed a variety of models, including the panel system, a contract system using an hourly rate rather than a flat rate, an agency model (similar to the Office of the Public Defender), and a hybrid model.<sup>14</sup>

The Children's Law Center in Los Angeles, California has a model that has proven effective nationally.<sup>15</sup> The center is a legal service organization that has contracted with the county to provide representation to all abused and neglected children in the county, except where there is a conflict of interest or caseload limits would be exceeded. This model has offered a number of advantages. First, quality control is built into the model and is therefore more manageable. Rather than one attorney overseeing individual contract attorneys throughout the state, the legal service office monitors attorney performance. Second, attorneys working in this office have the opportunity to learn from each other, with more experienced attorneys mentoring newly hired attorneys. Third, their attorneys have the ability to identify and address systemic issues. Even under this model, there is a need for private contracted attorneys in cases where parents and/or siblings have conflicting interests.

Whatever model is ultimately chosen,

it is imperative that the chief child protection attorney explore all current national models, and any evaluative data on them, determining, with the commission members, which model will work best for the children and families in Connecticut.

## Conclusion

To ensure that the Commission on Child Protection leads to true systemic change for the benefit of children and families, the legislature must adequately fund the commission to ensure that it can address fee structure and attorney compensation and the chief child protection attorney must (1) adopt nationally recognized practice and caseload standards and demand high quality representation from every attorney providing representation to children and indigent parents; (2) address the fee structure and compensation provided to attorneys performing this very important legal representation; and (3) carefully consider all models of legal representation including a legal services model. **CL**

*Christina D. Ghio is senior staff attorney for the Child Abuse Project at the Center for Children's Advocacy at the University of Connecticut School of Law in Hartford.*

## Notes

1. For full text of the act, see Section 44 of Public Act 05-3 of HB 7502, available at <http://www.cga.ct.gov/2005/tob/h/2005HB-07502-R00-HB.htm>.
2. The commission will consist of eleven members who will be appointed as follows: the governor will appoint three members; the chief justice of the supreme court will appoint two judges of the superior court (one may be retired); and one member each will be appointed by the speaker of the House of Representatives, the president *pro tempore* of the Senate, the majority leader of the Senate, the majority leader of the House of Representatives, the minority leader of the House of Representatives, and the minority leader of the Senate.
3. 42 U.S.C.A. § 5106a(b)(2)(xiii) (2003).
4. ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, §§ L-1, L-2(1996); Nat'l Ass'n of Counsel for Children Program Committee, "NACC Recommendations for Representation of Children in Abuse and Neglect Cases," ADVOCACY FOR CHILDREN

AND FAMILIES: MOVING FROM SYMPATHY TO EMPATHY, LAW MANUAL SERIES 96-112 (2001).

5. "NACC Recommendations," at 102, Comment A.
6. *Legal Representation of Children and Parents in Juvenile Matters Discussion Group: Findings and Recommendations*, State of Connecticut Judicial Branch 12 (October 2001).
7. *Id.* at 11.
8. *Id.* at Appendix A.
9. *Id.* at 6.
10. *Id.*
11. If an attorney provides thirty hours of representation, he or she earns \$11.66 per hour. If an attorney provides five hours of representation, he or she earns \$70 per hour.
12. *NACC Recommendations*, at 102, Comment B, quoting Adoption 2002: *The President's Initiative on Adoption and Foster Care. Guidelines for Public Policy and State Legislation Governing Permanence for Children*, U.S. Dept. of HHS ACF ACYF Children's Bureau, 1999, page VII-4.
13. *Discussion Group*, at 9.
14. *Id.*
15. To view the organization's Web site, go to <http://www.clcla.org>.