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## Report of the Parent Representation Working Group

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## Report of the Parent Representation Working Group

### Cover Page Footnote

This report was co-authored by Beth Harrow (co-facilitator) and Sue Jacobs (co-facilitator). The other working group members were Barbara Winter (reporter), Martin Guggenheim, Alan Halpin, Tanya Krupat, Katherine Law, Margarita Lopez Torres, Nancy Matles, Jose Nazario, Catherine Nelson, Emily Olshansky, diana Pichardo Henriquez, Judy Reisman, Edwina Richardson-Thomas, Joyce Russell Anderson, Beth Schwartz, Jane Spinak, Marybeth Sullivan Kass, and Jill Cohen (student reporter).

# REPORT OF THE PARENT REPRESENTATION WORKING GROUP<sup>1</sup>

## CHARGE

What should the Conference recommend to lawyers in all segments of the child welfare system to better achieve justice for parents?

## INTRODUCTION

The working group began by considering proposing standards for effective representation of parents. This focus was rejected as such standards have been suggested by other groups such as the American Bar Association. In addition, the group felt that there was insufficient time for the working group to propose standards and that the group was not composed of all of the appropriate people needed to develop commentary on such standards.

Instead of focusing on standards of practice, the group swiftly turned its attention to analyzing the crisis in the lack of legal representation for parents and the lack of resources available to parent attorneys. The group agreed that the starting point for its concern is the current absence of a voice for parents. The group agreed that a voice for parents could be obtained through the creation of an institutional, community-based law office for parents in child welfare proceedings. The current lack of a voice for parents in the child welfare system stands in stark contrast to the ability of all the other players in these cases (e.g., New York City's child welfare agency, the Administration for Children's Services and children's lawyers) to have their voices heard. Parents' voices need to be heard not just in court but also in the important policy, legislative, and rule-making discussions and decisions, which impact the families in the child welfare system. The enormous gap between the ability of parents to be heard and of other system participants to be heard was

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perceived as a poignant indicator that parents are disrespected throughout the child welfare system. Notably, the child welfare system impacts, with staggering disproportion, poor families of color.

The group acknowledged that in addition to the critical need for the development of institutional law offices for parents, there would always be a need for a panel of attorneys who can be assigned by the court (i.e., in New York, the "18-B panel") to parents.<sup>2</sup> The group strongly urged that current reimbursement rates for 18-B panel attorneys are unacceptably low and need to be raised immediately. The participants were also concerned that some legislative proposals for increased rates for panel attorneys continue the distinction between fees paid for out-of-court time and those paid for in-court time, with the former having the lower rate. Participants agreed that any rate must be equal for in-court and out-of-court time.

These themes led the group to decide on framing their recommendations with the following in mind:

#### PREAMBLE

There is an acute crisis in the current system of legal representation for parents in New York Family Court. Parents, who are predominantly poor people of color, are denied effective assistance of counsel under the current system, which fails to provide sufficient funding and resources in support of parents' attorneys. Parents are denied meaningful participation in all aspects of child welfare policy and law-making. We propose that there be a more equitable system of parent representation, which would contain the following components and promote respect for parents as full participants throughout the process: an enhanced assigned counsel panel and a newly created Parents' Law Office.<sup>3</sup>

Once the preamble was agreed upon, the group moved on to discussing the specific needs of such a new system. These needs fell into three categories: system, parents, and lawyers.

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2. The continuing need for assigned counsel is based on the recognition that institutional lawyers may at times have conflicts of interest preventing them from representing a parent and that many lawyers want the option to continue in private practice.

3. The group replaced a first draft of the preamble with the one stated here to ensure that it did not sound as if no attorney had ever provided effective representation for parents.

## I. SYSTEM<sup>4</sup>

The group agreed that there should be a dual system for the representation of parents that would include an institutional organization and a panel of attorneys. It was acknowledged that for this dual system to succeed, not only would there be a need to create an institutional law office for parents, but also the current assigned counsel panel would have to be properly funded and provided with the resources to enable the panel attorneys to provide effective representation for the parents. The group endorsed systemic change including equalizing the reimbursement rates for in-court and out-of-court work by the panel attorneys. Moreover, the group supported a model of “enhanced resources” for these attorneys, which would fund all necessary auxiliary services.

The group also considered how early in the process of a “child welfare problem” family intervention by, and/or services from, an institutional parent lawyer could be offered. Some participants discussed the need for parents to have a “safe” place to go to discuss risk issues without the fear that, just by seeking help or information, they might lose custody of a child through a mandated report to the child abuse hotline. Some participants wondered whether there should be a protocol for notice, parallel to a Miranda warning, given to parents about how statements they make to preventive service agency staff may be used. Others wondered whether preventive services could be provided without links to protective services. No consensus was reached on this set of issues other than a shared desire that a new institutional model provide assistance to families before a child is removed or a petition is filed in court.

## II. PARENTS<sup>5</sup>

The parents in the group felt very strongly that attorneys who represent them in court often did not listen and that two-way communication was virtually non-existent. They wanted to see parent advocates<sup>6</sup> brought into every aspect of the process, including court

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4. See *Recommendations of the Conference on Achieving Justice: Parents and the Child Welfare System*, 70 *Fordham L. Rev.* 337, 355 (2001) [hereinafter *Recommendations*] (section 6.1) (explaining how rates for assigned counsel should be calculated in order to improve legal representation for parents, and recommending an enhanced assigned counsel panel and the creation of a parent law office).

5. See *id.* at 355-56 (section 6.2) (delineating current and proposed rights of parents involved in New York Family Court proceedings).

6. Parent advocates are defined here as parents who have been through the system and trained to assist other parents.

appearances, so that the parents would have a trained peer who had been through the process to assist them.

Attorneys wanted to be available to parents as early as possible in the process. This requires a stronger connection between community resources and parent representation efforts. The parents wanted better information and access to community preventive services in settings where exposing their confidences would not automatically lead to court cases.

The parent participants were united in their experience and belief that they are effectively voiceless in the child welfare system and, especially, in court proceedings. They commented that not only did the proceedings occur so rapidly that a hearing was over before they knew what was going on, but often their own attorneys were completely unavailable to them before and after court appearances. At several points during the working group sessions, parents expressed anger and frustration that although it was *their* children and families whose lives were at stake, their voices were almost never heard at any stage of the process. While one or two parents agreed that eventually or occasionally they had been assigned an attorney who was effective, on the whole, the parents were dissatisfied with the quality of representation they had received.

Other participants agreed that parents should be entitled to bring advocates with them to court and that parent advocates should have a bigger role in the process as a whole.

### III. LAWYERS<sup>7</sup>

There was virtually unanimous agreement on what resources are needed to provide effective legal representation for parents and widespread acknowledgment that lawyers representing parents must function in an interdisciplinary environment. This means that whether the attorneys are members of an assigned panel or an institution, they should be able to access resources to assist parents on collateral matters that may impact their Family Court cases. Such matters may include domestic violence, public benefits, and housing issues. Personnel resources available to attorneys should at a minimum include social workers, paralegals, investigators, and parent advocates.

The group also agreed that attorneys should have offices or private interview space easily accessible to clients, as well as neighborhood-based offices. Attorneys should be able to provide translation and culturally sensitive services for their client community, and also be

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7. See *Recommendations*, *supra* note 4, at 356 (section 6.3) (outlining the various responsibilities of attorneys representing parents and the resources that should be made available to them).

capable of referring clients for other necessary services such as counseling or drug rehabilitation.

Several members of the group wanted to ensure that equalizing the rate of pay for in-court and out-of-court time spent by assigned counsel would result in attorneys (or their agents) participating in the periodic service plan reviews conducted at the foster care agency, as well as other important out-of-court activities relevant to the case.

*Notes & Observations*