

High Quality Legal Representation of Children and Parents

Honorable Michael C. Flanagan
Associate District Judge of Cotton County
Chairman, Legal Representation Committee - Vice-Chairman, JJOAC

Senate Interim Study Presentation

OVERSIGHT COMMITTEE

On July 22, 2019, the Oklahoma Supreme Court approved the establishment of a Task Force (now Oversight Committee) to study and report on legal representation of children and parents in legal proceedings set forth in the Oklahoma Children's Code, 10A O.S. Section 1-1-101, et seq.

The Oklahoma Supreme Court considered the matter of such importance that it converted the Task Force into an Oversight Committee to study the issues long-term.

HIGH QUALITY REPRESENTATION IN OTHER STATES

The Oversight Committee studied the systems and models in the following states:

Colorado
Massachusetts
Still She Rises/Bronx Defenders
Oregon
North Carolina
Arkansas
New Mexico

The Task Force focused on gathering information and data regarding current legal representation practices in Oklahoma deprived cases as well as receiving information from other selected states regarding their models, structure, compensation, training, supervision, and caseloads. The Task Force focused on:

- Defining high quality representation
- Identifying and assessing the current models of representation
- Understanding the obstacles to and costs of high quality and consistent representation
- Assessing the role of the deprived court system in child welfare outcomes
- The benefits of high quality and consistent representation
- Practice differences between Oklahoma counties
- Local practices of note
- Nationally recognized best practices

OKLAHOMA'S CURRENT STATUS

As of July 11, 2022, Oklahoma had 6,685 kids in foster care.

For SFY (State Fiscal Year) 2023, the budget for foster care placements, not including adoptions or guardianships, is \$118,877,000.00.

If Oklahoma could implement a multidisciplinary system of representation and achieve the changes revealed in the Casey Family Study, more children would return home, permanency achieved faster, and millions of dollars would be saved.

COURT BUDGETS

Oklahoma has several computer systems at work - OSCN; OCIS; KELLPRO; and ODCR which make it close to impossible to extract and analyze expenditures for legal representation on a case-by-case basis. Oklahoma District Courts spend court fund money on several types of cases:

- Deprived
- Guardianship
- Mental Health
- Indirect Contempt
- Adoption

Aside from Oklahoma and Tulsa County Public Defender Offices, approximately \$5.25 million is budgeted annually from “court funds” for indigent representation statewide.

In fifty (50) counties, court funds contract with approximately 200 attorneys annually to provide legal representation for parents and children (contract counties).

In twenty-five (25) counties, court funds compensate attorneys either on an hourly basis or on a case-by-case basis (exempt counties).

At the present time, there are no formal records maintained by many exempt counties to track the number of attorneys used for court appointments.

Oklahoma and Tulsa counties also rely on the Public Defender's Office and Oklahoma and Tulsa Lawyers for Children to provide representation for children and rely on contract attorneys to provide legal representation for parents. I think recently Oklahoma Lawyers for Children have undertaken parent representation also and is now known as Oklahoma Lawyers for Families.

Many rural counties have difficulty in recruiting attorneys willing to contract or received appointments for representation of parents and children in deprived cases, especially in termination cases.

Annually, six (6) hours of CLE relevant to juvenile law practice is statutorily required (excluding private counsel), while pre-appointment training is not required.

The lack of pre-appointment training is of concern to the Oversight Committee. Furthermore, repercussions for non-compliance with mandated annual CLE is inconsistent between counties. The Oklahoma Supreme Court approved Oklahoma Standards of Practice for Attorneys Representing Parents in Juvenile Court in March of 2016 but it is unknown whether these standards are enforced by the courts.

Additional resources such as social workers, parent mentors, investigators, and experts are generally not utilized by contracted or court-appointed private attorneys, except for the two Public Defender Offices in Oklahoma and Tulsa Counties.

The burden of recruiting, compensating, supervising, and training court appointed private attorneys falls upon the local trial courts, which creates a conflict of interest for the court - it is responsible for supervising attorneys while at the same time it must determine their compensation. Furthermore, the current system is not uniform and consistent statewide, resulting in inconsistent practices.

BARRIERS TO HIGH QUALITY REPRESENTATION

- COMPENSATION - Rates are all over the place and until recently, money was not available for mileage for parent representation. A statutory change now allows for mileage.
- TRAINING - Judges are required to have 12 hours of CJE; contract lawyers must have 6 hours of CLE; private attorneys must have 0 hours. No one is required to have any training prior to handling a case.
- CASELOADS - Mostly a problem in Oklahoma and Tulsa Counties; however, rural county lawyers must maintain a private practice which is the same problem.
- APPEALS - Very few lawyers are available to handle appeals and little if any money is budgeted for appeals.
- MULTIDISCIPLINARY SUPPORT - Unlike the offices of district attorneys and public defenders, the majority of attorneys for children and parents have little to no multidisciplinary support.

- **TIMING OF APPOINTMENTS.** Except when ICWA applies, appointment of counsel for children and parents at the time of the emergency custody hearing is discretionary with the trial court. Oklahoma trial courts tend to appoint an attorney for a child prior to the emergency custody hearing, but appoint attorneys for parents just before or at adjudication hearings. Also, Oklahoma trial courts tend to allow court appointed counsel for adjudication, disposition, and termination of parental rights hearings, and not for review or permanency hearings, although case law requires representation throughout the case.
- **SUPPORT FROM THE JUDICIARY.** The Oversight Committee believes that judges throughout the districts and the state should work together to limit delays or long waiting times for hearings in deprived cases. Juvenile cases cannot be relegated to “second class cases.” Some jurisdictions give deprived cases priority and schedule as many cases on one setting to prevent multiple trips to court; make court reporters available to meet that priority; and organize their dockets to accommodate attorneys.

LEGISLATION

In the 2022 Legislative Session, Representative Mark Lawson introduced legislation to fully fund parent legal representation. The bill passed the House unanimously, but was not heard in the Senate due to lack of time and change in leadership of the Senate Judiciary Committee.

Now, the OC Committee has approved the structure for children representation as well and it is anticipated that legislation will be reintroduced as a Family Representation Bill covering representation of children and parents. An economist has been engaged to calculate the costs of adding children representation to the legislation.

This fall, a Senate Interim Study - IS-2022-34 - requested by Senator Rosino will study interdisciplinary legal representation for indigent parents and their children in child welfare judicial proceedings.

You may contact me any time about any of these matters:

Michael C. Flanagan
Associate District Judge
District Court of Cotton County
301 N. Broadway
Walters, OK 73572
(580) 875-3137 - telephone
(580) 875-2288 - facsimile
michael.flanagan@oscn.net