

Recommendations for Consideration from the Chair
Task Force on Representation in Childhood Dependency

6/3/16

Disproportionality

Findings

In Oregon, African American/Black children and American Indian/Alaskan Native (“AI/AN”) children are disproportionately represented in the foster care system. For example, the 2014 Department of Human Services Child Data handbook reports that, although African American/Black children comprise 3.3% of Oregon’s child population, they constitute 6.7% of the children in foster care; AI/AN children are 1.6% of the child population, but 5.6% of the children in foster care.¹ In 2011, the Oregon Governor’s Task Force on Disproportionality in Child Welfare found that:

“Foster care in Oregon is used much more often and for much longer periods of time for African American and American Indian/Alaskan Native children than for white children. The overrepresentation of children, families and communities of color in Oregon’s foster care system represents both a serious social injustice and an economic emergency. But it also offers an opportunity for Oregon to lead the charge in eliminating this persistent and complex nationwide problem.”²

The 2011 Task Force took the strong position that reducing disproportionality “must be a priority for the State and for the Legislature” for two important reasons:

- The unacceptable human impact to African American and Native American children who languish in the foster care system and their families; and
- The financial consequences to the state and its citizens when disadvantaged children become part of a system that will virtually guarantee a further decline in opportunities available to them when they exit the system.³

This Task Force heeds the findings of the Disproportionality Task Force and recognizes that in addition to the Department of Human Services, attorneys for all parties in dependency proceedings also play an important role in Oregon’s efforts to eliminate this persistent and complex problem.

Recommendations

Recommendation #1: Require dependency practitioners, such as judges, CASAs, and attorneys for parents, children, the agency, and the state, to regularly participate in trainings on cultural competence, trauma-informed practice, and reasonable/active

¹ Department of Human Services, *Child Welfare Databook*, 16 (2015) available at <https://www.oregon.gov/DHS/CHILDREN/CHILD-ABUSE/Documents/2014-data-book.pdf>.

² Governor’s Task Force on Disproportionality in Child Welfare, *Final Report 4* (2011).

³ *Id.* At 13.

efforts. National experts have identified these training topics as most critical to attorney efforts to decrease disproportionality and improve the treatment of children and families of color in the child welfare system. To ensure that practitioners have access to these trainings, entities that typically offer continuing legal education to Oregon dependency practitioners are strongly encouraged to seek out national and local experts and integrate these topics into training curriculums. Partners in child welfare work, including the Tribes, Department of Human Services, Citizen Review Board volunteers, foster parents, and community partner organizations should be included in these training efforts.

Recommendation #2: Require entities that supervise and contract with dependency practitioners to actively engage in efforts to recruit and retain a dependency workforce that better reflects the families in the dependency system. Entities that supervise or contract with dependency practitioners should perform internal assessments to determine how to better recruit and support a diverse workforce and then implement these findings. Efforts may include creating or expanding mentorship programs, pro bono programs, affinity groups, and/or new attorney recruitment efforts.

Indian Child Welfare Act

Findings

In 1978, Congress enacted the Indian Child Welfare Act (ICWA) in response to a national crisis in which an alarmingly high percentage of American Indian and Alaska Native (AI/AN) children were being removed from their families and tribal communities and placed in non-Native homes. ICWA creates unique jurisdictional rules⁴, guarantees parents access to legal representation⁵, and assigns enhanced legal responsibilities to states, including heightened evidentiary standards, an active efforts standards, rather than reasonable efforts standard, and a qualified expert witness requirement.⁶ Additionally, under ICWA, a child's tribe is eligible to intervene as a party in state child welfare proceedings.⁷ In Oregon, tribal child welfare workers need not be attorneys to appear in court and represent the Tribe's interest in a case.⁸ Unfortunately, significant barriers still stand in the way of tribes' ability to intervene in these cases, including, inadequate or late notice, *pro hac vice* requirements, and attorney costs.

DHS and dependency practitioners strive to adhere to the requirements of ICWA and identify all eligible children. "Oregon works closely with the federally recognized tribes to ensure ICWA standards are applied and tribes are involved in the decisions about these children"⁹ Yet, in spite of these efforts, ICWA-eligible children are still over-represented in the Oregon child welfare system. In 2014, a total of 562 children served in foster care were ICWA eligible. This was 4.9% of all children served in foster care, whereas American Indian or Alaskan Native children

⁴25 U.S.C. § 1911

⁵ 25 U.S.C. § 1912 (b).

⁶ 25 U.S.C. § 12912 (d)-(f).

⁷ 25 U.S.C. § 1911(c)

⁸ *State ex rel. Juvenile Dep't of Lane County v. Shuey*, 119 Ore. App. 185 (1993).

⁹ Department of Human Services, *Child Welfare Databook*, 17 (2015) available at <https://www.oregon.gov/DHS/CHILDREN/CHILD-ABUSE/Documents/2014-data-book.pdf>.

are only 1.6% of the children in Oregon.¹⁰ National organizations attribute this continued overrepresentation to misunderstandings about the law and a lack of adequate ICWA training.¹¹

Recommendations

Recommendation #1: Require each entity that supervises or contracts with dependency practitioners, CASAs, and attorneys for parents, children, the agency, and the state, to maintain or contract with at least one expert ICWA attorney to provide regular training, technical assistance, and case consultation to practitioners around the state. Dedicated ICWA experts engaged in dependency practice would provide training, technical support, and system oversight to improve ICWA compliance statewide, while carrying a small ICWA caseload. Those practitioners would monitor court filings to ensure the prompt identification of ICWA eligible children, consult with practitioners on ICWA cases statewide, provide regular trainings to child welfare stakeholders and build relationships with tribal attorneys and Indian Child Welfare workers who have ICWA cases in Oregon courts.

Recommendation #2: Create qualification standards for “designated ICWA specialists” among parent/child attorneys and, in judicial districts with large numbers of AI/AN children in-care, contract with these specialists to represent one party in each ICWA proceeding in the district. Developing qualified ICWA expertise in regions where AI/AN children are overrepresented in foster care will improve ICWA compliance. Entities contracting with ICWA specialists should take into account the additional practice requirements and costs of cultivating ICWA expertise when structuring payment schedules and caseloads.

Recommendation #3: Revise Oregon Uniform Trial Court Rule 3.170 to waive the fee requirement and in-state attorney association requirement for tribal attorneys appearing in child welfare proceedings in Oregon courts. As a source of federal law, ICWA preempts state laws and rules regarding the unlawful practice of law. Under the reasoning of *Shuey*,¹² tribal attorneys, just like non-attorney tribal child welfare representatives, should be able to exercise their right to represent the tribe in state child welfare proceedings involving their member children regardless of state law. Modifying Oregon UTRC 3.170 will reduce the burden on tribal-attorneys and increase compliance with ICWA requirements.

Developing a Dedicated Juvenile Dependency Workforce

Findings

When a parent takes a child to a physician who specializes in pediatric medicine, the parent expects that the pediatrician has had the benefit of specialized training in the diagnosis and treatment of children. A child in need of legal representation should, in the same way, benefit from a lawyer's specialized training in the law and practice

¹⁰ Department of Human Services, *Child Welfare Databook*, 16-17 (2015) available at <https://www.oregon.gov/DHS/CHILDREN/CHILD-ABUSE/Documents/2014-data-book.pdf>.

¹¹ Simmons, First Focus, SPARC & National Indian Child Welfare Association, *Improving the Well-being of American Indian and Alaska Native Families through State-level Efforts to Improve ICWA Compliance* (2014) available at <http://childwelfareparc.org/wp-content/uploads/2014/10/Improving-the-Well-being-of-American-Indian-and-Alaska-Native-Children-and-Families.pdf>

¹² *State ex rel. Juvenile Dep't of Lane County v. Shuey*, 119 Ore. App. 185 (1993).

particular to children. Programs are needed to train pediatric lawyers so that they will be confident in their ability to provide the finest legal representation to their young client.¹³

Although this statement directly addresses the need for specialized attorneys for children, it is equally applicable to parent and government dependency practitioners.

Law schools across the country have multidisciplinary child welfare and family defense clinics that train future practitioners through rigorous programs that combine classroom learning, supervised direct client representation, and externship opportunities.¹⁴ The literature describes the various ways that the child advocacy and family defense programs train qualified practitioners and improve dependency practice across a system.¹⁵ Descriptions of child advocacy programs show that these academic laboratories not only develop cohorts of skilled and dedicated dependency practitioners, but they also often serve as important centers for practice innovation, policy development, and training and technical assistance for seasoned practitioners.¹⁶ Although law schools in Oregon have some aspects of a successful Child Advocacy Clinical Law Programs, none of the Oregon law schools offers a complete training program for students interested in dependency practice.

Recommendations

Recommendation #1: Develop a child advocacy clinic at University of Oregon School of Law to prepare a strong and dedicated dependency workforce in Oregon. The University of Oregon is Oregon's only public law school. It currently hosts the Oregon Child Advocacy Program (OCAP). This program works on legislative proposals, provides research assistance and consultation to attorneys, and supports fellowships that place students in dependency externships. Due to resource limitations, however, the program does not include a practical legal clinic where students provide individual client representation under the supervision of an expert practitioner. Adding a multidisciplinary child advocacy clinic will not only provide Oregon with high quality, well-trained and dedicated dependency practitioners, it will also create an in-state laboratory for improved dependency practice.

Budget Estimate: \$300,000/Biennium

¹³ Breger et al., *Building Pediatric Law Careers: The University of Michigan Law School Experience*. 34 Fam. L. Q. 531, 531 (2000).

¹⁴ See, e.g., University of Michigan Child Advocacy Law Clinic, <http://www.law.umich.edu/clinical/calc/Pages/default.aspx>; University of South Carolina Children's Law Concentration Program, http://www.law.sc.edu/clinical_legal_education/description.shtml; New York University Family Defense Clinic, <http://www.law.nyu.edu/sites/default/files/2016-17-Clinic-Packet-March-2.pdf>; University of Nevada Las Vegas, Family Justice Clinic, <https://law.unlv.edu/clinics>.

¹⁵ Breger et al., *Building Pediatric Law Careers: The University of Michigan Law School Experience*. 34 Fam. L. Q. 531, 531 (2000); Donald N. Duquette, *Developing a Child Advocacy Law Clinic: A Law School Clinical Legal Education Opportunity*, 31 U.MICH. J.L. REFORM 1 (1997); Zawisza, *Two Heads Are Better Than One: The Case-Based Rationale for Dual Disciplinary Teaching in Child Advocacy Clinics*, 7 FLA. COASTAL L. REV. 631, 631 (2006).

¹⁶ See, e.g., University of Michigan Child Advocacy Law Clinic, <http://www.law.umich.edu/clinical/calc/Pages/default.aspx>; University of South Carolina Children's Law Concentration Program, http://www.law.sc.edu/clinical_legal_education/description.shtml; New York University Family Defense Clinic, <http://www.law.nyu.edu/sites/default/files/2016-17-Clinic-Packet-March-2.pdf>; University of Nevada Las Vegas, Family Justice Clinic, <https://law.unlv.edu/clinics>.

Judicial Resources

Findings

"Judging in juvenile court is specialized and complex, going beyond the traditional role of the judge. Juvenile court judges, as the gatekeepers to the foster care system and guardians of the original problem-solving court, must engage families, professionals, organizations and communities to effectively support child safety, permanency, and well-being."¹⁷

Oregon, like many states, has adopted judicial time lines and strives to achieve a one judge-one family model. Training and resources, however, continue to be a concern both in Oregon and nationally, with national organizations continuing to highlight these needs.¹⁸ In 2011, the National Council for Juvenile and Family Court Judges stated: "Juvenile and family courts must be appropriately supported. Courts must maintain a sufficient number of specially trained and permanently assigned judicial officers, staff, attorneys and guardians *ad litem* to thoroughly and effectively conduct the business of the court."¹⁹

Trainings have been shown to be particularly important and effective. One national training curriculum, the Child Abuse and Neglect Institute (CANI), provides instruction in best practices for judicial officers who have either been newly assigned to child abuse and neglect cases or for experienced juvenile dependency judges who would like to learn about emerging and promising practices in this field.²⁰ Assessments of the efficacy of this training have shown that judges who attend not only learn from the training but change their decision-making behavior in a way that improves the dependency court process.²¹

¹⁷ National Council of Juvenile and Family Court Judges, Key Principles for Permanency Planning for Children, 1 (2011) available here: http://www.ncjfcj.org/sites/default/files/keyprinciples.final_permplanning.pdf

¹⁸ U.S. Department of Health and Human Services, *Guidelines for Public Policy and State Legislation Governing Permanency for children*, IV-2 (1999). The US Department of Health and Human Services recommends that "state legislatures ensure that courts handling child abuse and neglect cases are well organized [sic] to achieve the goals of child safety, permanency, and health"¹⁸ and provides the following commentary:

The quality of the judicial decision-making process depends, to a large extent, on characteristics of judicial organization and structure. For example, it is important that the same court (and judge) hears all stages of a child abuse or neglect case. It is equally important that judges and attorneys receive specialized training concerning child welfare cases; that there are comprehensive deadlines governing the court process; and that the judiciary and bar handling child welfare cases are specialized in child welfare or other family matters. It is essential that adequate resources are available to the courts, including adequate staffing levels for judges and attorneys in child protection cases. State legislatures can either determine or have a major influence on each of these issues.

Id.

¹⁹ National Council of Juvenile and Family Court Judges, Key Principles for Permanency Planning for Children, 2 (2011) available here: http://www.ncjfcj.org/sites/default/files/keyprinciples.final_permplanning.pdf

²⁰ Divault, Sicafuse, and Summers Research Report: 2014 Child Abuse and Neglect Institute in Reno, NV 5 (2014) available at [http://www.ncjfcj.org/sites/default/files/Research%20Report%20CANI%20Evalaution%20\(1\).pdf](http://www.ncjfcj.org/sites/default/files/Research%20Report%20CANI%20Evalaution%20(1).pdf)

²¹ Specifically after the training, participants were more likely to

- appoint a CASA for the child
- order services for the mother
- recommend that the child be placed with the father
- cite the child's risk of harm as an important piece of information to be considered in their orders and findings
- request additional information regarding the child's well-being, specifically relating to the child's physical and emotional well-being
- show an increase in Indian Child Welfare Act (ICWA) inquiries

Id. at 3.

The root of strong judicial practice, however, remains adequate judicial resources.²² A recent workload study of Oregon's courts by the National Center for State Courts (NCSC), reports forthcoming, found that most of Oregon's courts do not have as many judicial officers as they need to process their caseloads. Observations of dependency hearings found that hearings often do not cover key items regarding the child's needs and well-being and parents' progress. Analysis of the data collected in court and discussions in a series of juvenile judge focus groups led NCSC to make the following best practice recommendations for dependency hearings in Oregon:

- Shelter hearings: 25 minutes
- Jurisdiction/Disposition hearings: 30 minutes
- Permanency hearings: 30 minutes
- Review hearings: 30 minutes

Data from the NCSC's court observations and workload study, as well as data drawn from OJD's OJIN and Odyssey case management systems, show that durations of hearings, particularly shelter and permanency hearings, fall well short of the estimated times needed to cover all essential items (including the necessary off-bench time to complete orders, judgments and related judicial findings). In focus groups, juvenile judges reported they had often lack enough off-bench time to thoroughly review court reports and other materials ahead of their hearings.

Recommendations

Recommendation #1: The Chief Justice should direct the Juvenile Court Improvement Program (JCIP) Advisory Committee to 1) study the education requirements other states have established for judges who handle juvenile cases, and 2) make a recommendation to the Chief Justice on minimum educational and annual reporting requirements for Oregon Judicial Officers who regularly preside over dependency cases. Dependency law, child welfare policies, and the science around child development are constantly changing and improving. A minimum training requirement for judges would ensure that decisions made in dependency cases are based on the most recent law and policy and the most up-to-date science. It also would promote consistency and continuity in judicial practice around the state.

Recommendation #2: Fund and hire three referees to work exclusively on dependency cases in jurisdictions whose juvenile courts are most under-resourced in terms of judge availability. The NCSC, after conducting an in-depth study of Oregon's juvenile courts, is recommending that OJD allot an additional 50 minutes of judicial time to each dependency case. At current filing rates, that would require three additional full-time judicial officers across the state. Providing these positions and allowing OJD to place them in courts that most need additional judicial time for juvenile cases will allow for higher quality hearings, fewer problems in scheduling contested matters, and more efficient and effective processing of dependency cases and use of attorneys' and parties' time.

Budget Estimate: \$759,348/biennium

²² National Council of Juvenile and Family Court Judges, Key Principles for Permanency Planning for Children, 2 (2011) available here: http://www.ncjfcj.org/sites/default/files/keyprinciples.final_permplanning.pdf.

Hearings Referee (J9718)		
Salary Range: 25		
Year 1		Step 3
Salary		\$ 6,731.00
PERS	25.62%	\$ 1,724.48
Mass Transit	0.60%	\$ 40.39
Social Security	7.65%	\$ 514.92
Employee Relations Board	\$ 1.92	\$ 1.92
Workers Comp	\$ 2.86	\$ 2.86
Health Insurance	\$ 1,531.00	\$ 1,531.00
	monthly	\$ 10,546.57
	12 mos	\$126,558.84

Recommendation #3: The Chief Justice should direct presiding circuit court judges to review the recent judicial workload study and assess whether or not their resource allocation for juvenile court is in line with the study’s recommendations. NCSC’s study of Oregon juvenile courts assessed the juvenile court needs of each judicial district, in addition to the needs of the state as a whole. This information may be helpful to presiding court judges’ resource allocation and judicial management.

Recommendation #4: The Chief Justice should direct presiding circuit court judges to strive to increase the amount of judicial time spent on dependency cases in accordance with the study’s recommendations. This allows for additional in-court time to implement best practices and off-bench time to both adequately prepare for hearings and complete post-hearing work. The NCSC’s ‘dependency best practices’ version of the OJD workload model shows that an increase of 50 minutes of dependency time over the life each dependency case would require an additional three judicial officers across the state.

Court Appointed Special Advocates (CASA)

Findings

Federal law requires that the best interests of every child subject of a juvenile court abuse or neglect proceeding is represented through a guardian ad litem.²³ A volunteer Court Appointed Special Advocate (CASA) may serve that role. Oregon relies on CASAs to fulfill this federal requirement.²⁴ Oregon designates CASA as a legal party with full rights to participation in juvenile court proceedings, and liberal access to information relating to the child.

CASAs are volunteers who receive 35 hours of pre-service training in the child welfare and juvenile court systems. The training focuses on achieving safe, sustainable permanency; preferably with parents. CASAs are supported by supervisors who, in most instances, have professional experience in child welfare, juvenile court, or other child-serving professions.

²³ 42 U.S.C. § 5106a(b) (2010)

²⁴ ORS 419B.112

CASAs commit to at least 2 years of service involving 5 – 20 hours each month. CASAs most frequently remain as advocates until case closure or when permanency is achieved. In 70% of cases, children have one advocate for their case. CASAs meet with their assigned children at least monthly, investigate the child’s circumstances by interviewing parents, other family members, community partners providing services to the family; and school personnel. CASAs report to the court through written reports and oral testimony at all dispositional, review, and permanency hearings. CASAs use information gathered in investigation and ongoing contact to facilitate positive outcomes for children outside of court through direct advocacy with DHS, schools, and other community providers. Well trained and supervised CASAs provide important high quality advocacy for children, can be as effective as attorneys or law students with similar levels of training and supervision.²⁵

Twenty-three county-based non-profits recruit, train, and support Oregon CASAs. All programs must be in substantial compliance with National CASA for Children program standards. CASA programs are required to provide access to legal counsel “as needed to assist in performing the duties assigned to the volunteers by the courts.”²⁶

CASA programs without legal counsel report difficulty performing relatively simple legal tasks: initiating requests for court review, responding to subpoenas for CASA testimony, and preserving CASA recommendations and findings in court records. Programs also report challenges with other advocacy needs that generally are accomplished with legal consultation: interpreting new case law or statutory changes; developing strategies for advocacy outside of juvenile court proceedings that require understanding of administrative law; and continuing to provide meaningful advocacy in complex juvenile court proceedings.

Currently, CASA for Children (serving Columbia, Multnomah, and Washington counties) is the only Oregon CASA program meeting this standard. Because volunteers are directly supervised by staff with expertise in juvenile court or child welfare systems; CASA for Children uses a program attorney model providing legal consultation and training, along with occasional in court representation. Most legal needs can be met without formal appearances by the attorney. The Program Attorney is on-call to the program, allowing for rapid access to legal services; participates in pre-service and on-going training for staff and CASAs; and assists with systemic program issues. Providing adequate legal consultation increases the effectiveness of CASA advocacy.

Recommendations

Recommendation #1: Provide funds sufficient to support four CASA program attorneys so that CASAs in Oregon have timely access to legal consultation and representation.

Oregon’s state administrator for general fund CASA appropriations should create standards and contracting procedures to manage legal services contracts for CASA programs through the Oregon CASA Network. To improve advocacy and bring programs into compliance with national standards, CASA programs should have access to legal counsel experienced in child welfare and juvenile court advocacy to provide consultation, limited direct representation, training, and consultation on systemic processes and reforms. Services should be available regionally, and be

²⁵ Donald D. Duquette and Sarah H. Ramsey, *Using Lay Volunteers to Represent Children in Child Protection Court Proceedings (Appendix C)*. 10 Child Abuse and Neglect 293-308 (1986).

²⁶ National CASA for Children, *Standards for Local CASA/GAL Programs*, Standard 5.A.2 (2012 Edition).

housed in local CASA programs selected for their capacity to support new personnel and regional accessibility. Salary costs for staff attorneys reflect competitive salaries for attorneys with 5 years of experience in direct juvenile court representation plus 27% for benefits and withholdings. Salary for lead attorney reflects competitive salary for an attorney with 10 years experience in direct juvenile court representation acting in a lead attorney position plus 27%.

Budget Estimate: \$802,700/biennium

- Staff attorneys - 3FTE @ 76,200 = \$228,000
- Lead attorney -1FTE @ \$80K = \$101, 600
- Admin support - .5 FTE = \$31,750
- Travel and overhead = \$40,000

Implementation and System Efficiencies

Findings

A 2014 Work Group on Juvenile Court Dependency Proceedings identified barriers to permanency specific to the dependency system, and found that:

[I]n order to effect more substantial improvement for children and families involved in the juvenile system, improved legal representation for all parties and a judiciary with sufficient time and resources is needed to give parents and children the attention and priority that they deserve.²⁷

This Task Force builds on the efforts of the 2014 work group by setting forth clear recommendations to improve legal representation and enhance judicial resources for the dependency system.

This report creates a road map for a better dependency system, in order to realize the shared goals of ensuring the fair and consistent treatment of parents and children in Oregon and giving the Dependency System the attention it deserves this report must be implemented with intentionality and with an eye toward increasing system efficiencies.

Recommendations

Recommendation #1: A subset of Task Force members will continue to meet regularly to implement the recommendations of this report. This voluntary group, comprised of task force and stakeholder, will monitor and support the implementation of this report. This group will also work closely with Judicial Leadership and the Juvenile Court Improvement Program as well as the Department of Justice, Department of Human Services, and District Attorneys to assess current laws and policies (including, but not limited to, Oregon Administrative Rules, Uniform Trial Court Rules, and Child Welfare Policies and Procedures) and promote changes that will support the implementation of these recommendations, improve system efficiency, and promote cost-savings.

²⁷ Court Dependency Work Group, Juvenile Court Dependency Proceedings Final Report 11 (2014).