

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**E.T.; K.R.; C.B.; G.S.; FRANK DOUGHERTY, ON BEHALF OF
E.T., K.R., C.B. AND G.S.,**

Plaintiffs-Appellants,

v.

**RONALD M. GEORGE, JUDGE, CHAIR OF THE JUDICIAL COUNCIL OF
CALIFORNIA, IN HIS OFFICIAL CAPACITY; WILLIAM C. VICKREY,
ADMINISTRATIVE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURT OF
THE JUDICIAL COUNCIL, IN HIS OFFICIAL CAPACITY; JAMES M. MIZE, PRESIDING
JUDGE OF THE SUPERIOR COURT OF THE COUNTY OF SACRAMENTO, IN HIS
OFFICIAL CAPACITY,**

Defendants-Appellees.

On Appeal From the United States District Court
For The Eastern District of California, Sacramento
Case No. 2:09-cv-01950-FCD-DAD,
The Honorable Frank C. Damrell, Jr.

**APPELLANTS' EXCERPTS OF RECORD
Volume 2 of 2
Pages 122 through 347**

Edward Howard
Robert C. Fellmeth
Christina McClurg Riehl
CHILDREN'S ADVOCACY INSTITUTE
UNIVERSITY OF SAN DIEGO SCHOOL OF LAW
5998 Alcala Park
San Diego, California 92110
Telephone: (619) 260-4806

Peter Perkowski
Robyn Callahan
WINSTON & STRAWN LLP
101 California Street, 39th Floor
San Francisco, California 94111
Telephone: (415) 591-1000

Attorneys for Plaintiffs-Appellants

INDEX

APPELLANTS' EXCERPTS OF RECORD

**E.T.; K.R.; C.B.; G.S.; FRANK DOUGHERTY, ON BEHALF OF
E.T., K.R., C.B. AND G.S.,**

v.

**RONALD M. GEORGE, JUDGE, CHAIR OF THE JUDICIAL COUNCIL OF
CALIFORNIA, IN HIS OFFICIAL CAPACITY; WILLIAM C. VICKREY,
ADMINISTRATIVE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURT OF
THE JUDICIAL COUNCIL, IN HIS OFFICIAL CAPACITY; JAMES M. MIZE, PRESIDING
JUDGE OF THE SUPERIOR COURT OF THE COUNTY OF SACRAMENTO, IN HIS
OFFICIAL CAPACITY**

No. 10-15248

DOCKET No.	DATE	DESCRIPTION	VOLUME	PAGES
41	01/11/2010	Amended Memorandum and Order	1	1 – 51
40	01/07/2010	Judgment	1	52
49	11/06/2009	Reporter's Transcript of Proceedings Held on November 6, 2009 on Defendants' Motion to Abstain and Dismiss Plaintiffs' Complaint	1	53 – 121
42	02/02/2010	Plaintiffs' Notice of Appeal of Order Granting Defendants' Motion to Dismiss	2	122 – 178
29 Ex. 2	10/19/2009	Dependency Counsel Caseload Standards – A Report to the California Legislature dated April 2008	2	179 – 250

INDEX

APPELLANTS' EXCERPTS OF RECORD

DOCKET No.	DATE	DESCRIPTION	VOLUME	PAGES
18 Ex. A	09/18/2009	California Blue Ribbon Commission on Foster Care: Fostering a New Future for California's Children, Final Report and Action Plan, May 2009	2	251 – 308
18 Ex. C	09/18/2009	Fact Sheet: Dependency Representation, Administration, Funding, and Training (DRAFT) Program, September 2008	2	309 – 310
2	07/16/2009	Plaintiffs' Complaint	2	311– 339
		Civil Docket for U.S. District Court, Eastern District of California, Case No. 2:09-cv- 01950-FCD-DAD	2	340 – 347

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

CHILDREN'S ADVOCACY INSTITUTE
University of San Diego School of Law
Robert C. Fellmeth (SBN 49897)
Edward Howard (SBN 151936)
Christina McClurg Riehl (SBN 216565)
5998 Alcala Park
San Diego, California 92110
Telephone: (619) 260-4806
Facsimile: (619) 260-4753

WINSTON & STRAWN, LLP
Jonathan M. Cohen (SBN: 168207)
Robyn Callahan (SBN: 225472)
101 California Street, 39th Floor
San Francisco, CA 94111-5894
Telephone: (415) 591-1000
Facsimile: (415) 591-1400

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

E.T., K.R., C.B. and G.S., by their next friend,
Frank Dougherty, on their behalf and on behalf
of all those similarly situated,

Plaintiffs,

v.

RONALD M. GEORGE, Chair of the Judicial
Council of California, in his official capacity;
WILLIAM C. VICKREY, Administrative
Director of the Administrative Office of the
Courts of the Judicial Council, in his official
capacity; and JAMES M. MIZE, Presiding
Judge of the Superior Court of the County of
Sacramento, in his official capacity,

Defendants.

Case No. 2:09-CV-01950-FCD-DAD
Hon. Frank C. Damrell, Jr.

**PLAINTIFFS' NOTICE OF APPEAL OF
ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

CLASS ACTION

NOTICE IS HEREBY GIVEN that E.T., K.R., C.B. and G.S., by their next friend, Frank
Dougherty, on their behalf and on behalf of all those similarly situated, Plaintiffs in the above-named
case, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the following:

///

1 1. Order Granting Defendants' Motion to Dismiss dated January 11, 2010. A true and
2 correct copy of the Order is attached hereto as Exhibit A. The transcript of the November 6, 2009
3 hearing in this matter has been filed with the Court, and the case record is ready to be transmitted to
4 the Ninth Circuit.

5 Pursuant to Circuit Rule 3-2(b), a Representation Statement is attached to this notice as
6 Exhibit B.

7
8 Dated: February 1, 2010

WINSTON & STRAWN LLP

9
10 By: /s/ Jonathan M. Cohen

Jonathan M. Cohen

Robyn Callahan

Attorneys for Plaintiffs

11
12
13
14
15 SF:272493.1
16
17
18
19
20
21
22
23
24
25
26
27
28

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----00000-----

E.T., K.R., C.B., and G.S., by
their next friend, Frank
Dougherty, on their behalf and
on behalf of all those similarly
situated,

2:09-cv-01950 FCD DAD

Plaintiffs,

v.

AMENDED MEMORANDUM AND ORDER

RONALD M. GEORGE, Chair of the
Judicial Council of California,
in his official capacity;
WILLIAM C. VICKREY,
Administrative Director of the
Administrative Office of the
Courts of the Judicial Council,
in his official capacity; and
JAMES M. MIZE, Presiding Judge
of the Superior Court of the
County of Sacramento, in his
official capacity,

Defendants.

-----00000-----

This matter is before the court on defendants Ronald M.
George, William C. Vickrey, and James M. Mize's (collectively
"defendants") motion to abstain and to dismiss the complaint.

1 Plaintiffs E.T., K.R., C.B., and G.S., by their next friend,
2 Frank Dougherty, (collectively "plaintiffs") oppose the motions.
3 On November 6, 2009, the court heard oral argument on defendants'
4 arguments relating to justiciability. For the reasons set forth
5 below, defendants' motion to dismiss is GRANTED.

6 BACKGROUND

7 This case arises out of plaintiffs' allegations that the
8 caseloads in dependency courts in Sacramento County are so
9 excessive that they violate federal and state constitutional and
10 statutory provisions. Specifically, plaintiffs contend that the
11 overburdened dependency court system frustrates both the ability
12 of the courts to adjudicate and provide children with a
13 meaningful opportunity to be heard and the effective, adequate,
14 and competent assistance of counsel. (Compl., filed July 16,
15 2009.)

16 A. Dependency Court Proceedings

17 Dependency proceedings are conducted to protect the safety
18 and well-being of an abused or neglected child whose parents or
19 guardians cannot or will not do so or who themselves pose a
20 threat to the child. (Compl. ¶ 28.) They commence with an
21 initial hearing, which is held to determine whether a child falls
22 within one of ten jurisdictional bases of the juvenile court.
23 Cal. Welf. & Inst. Code §§ 300, 305, 306, 311, 325 & 332.
24 Dependency courts ultimately conduct an evidentiary hearing
25 regarding the proper disposition of the child. *Id.* §§ 319, 352,
26 355 & 358. In most cases, at the disposition hearing, dependency
27 courts "determine what services the child and the family need to
28 be reunited and free of court supervision." Bridget A. v.

1 Superior Court, 148 Cal. App. 4th 285, 302-03 (2d Dist. 2007).
 2 However, the courts have a variety of options, from reuniting the
 3 family and child to removing the child from parental custody and
 4 placing the child in foster care. See generally id. (outlining
 5 court options at disposition hearings). After a child is placed
 6 under court supervision, subsequent court proceedings and reviews
 7 are required every six months. Id.; see Cal. Welf. & Inst. Code
 8 §§ 364, 366.21, 366.22.

9 California Welfare & Institutions Code § 317 requires that
 10 counsel be appointed for children in almost all dependency cases.
 11 (Compl. ¶ 34.) Specifically, § 317(c) provides that “[i]f a
 12 child is not represented by counsel, the court shall appoint
 13 counsel for the child unless the court finds that the child would
 14 not benefit from the appointment of counsel.” This finding must
 15 be made on the record. Id. Pursuant to a Standing Order of the
 16 Superior Court of the County of Sacramento, third party, court-
 17 appointed attorneys are automatically appointed to represent each
 18 child who is the subject of dependency proceedings in the county;
 19 these attorneys are also appointed as the child’s guardian ad
 20 litem. (Compl. ¶ 50.)

21 **B. Functions and Funding within the Dependency Court System**

22 The Judicial Council of California is the body responsible
 23 for overseeing the statewide administration of justice in the
 24 California courts. (Compl. ¶ 9.) As Chair of the Judicial
 25 Council, the Honorable Ronald M. George,¹ defendant, is
 26 responsible for the allocation of the judicial branch budget,

27 ¹ The Honorable Ronald M. George is the Chief Justice of
 28 the California Supreme Court.

1 including the allocation of relevant funds for courts and court-
2 appointed child representation in dependency court proceedings.
3 (Id.) The Administrative Office of the Courts (the "AOC") is the
4 staff agency of the judicial council and is responsible for
5 California's Dependency Representation, Administration, Funding,
6 and Training ("DRAFT") program. (Compl. ¶ 10.) DRAFT was
7 established in July 2004 by the Judicial Council of California to
8 centralize the administration of court-appointed counsel services
9 within the AOC. (Compl. ¶ 55.) As Administrative Director,
10 defendant William C. Vickrey is responsible for the
11 administration of the AOC. (Compl. ¶ 10.) Finally, the
12 Presiding Judge of the Superior Court, the Honorable James M.
13 Mize, defendant, is responsible for allocating resources within
14 the Sacramento County Superior Court in a manner that promotes
15 the implementation of state and local budget priorities and that
16 ensures equal access to justice and the ability of the court to
17 carry out its functions effectively. (Compl. ¶ 11.) The
18 Presiding Judge also has the authority to assign judges to
19 departments, such as Sacramento County Superior Court's
20 dependency courts. (Id.)

21 The Superior Court of Sacramento previously paid for the
22 court-appointed attorneys' services pursuant to a Memorandum of
23 Understanding. (Compl. ¶ 55.) In 2008, however, the Superior
24 Court of Sacramento agreed to participate in the DRAFT program.
25 When Sacramento County joined the DRAFT program, the AOC became
26 responsible for paying for the court-appointed attorneys'
27 services. (Id.)

1 Plaintiffs allege that the staff attorneys for the non-
2 profit agency, who serve as court appointed counsel for the
3 approximately 5,100 children subject to dependency proceedings in
4 the County of Sacramento, carry as many as 395 cases at a time.
5 (Compl. ¶ 51.) Plaintiffs assert this is more than double the
6 188 caseload standard established by the Judicial Council and
7 nearly four times the number promulgated by the National
8 Association of Counsel for Children. As a consequence,
9 plaintiffs allege that the appointed lawyers are unable to
10 adequately perform even the minimum tasks required under the law
11 and in accordance with the American Bar Association's ("ABA")
12 standards. Specifically, these lawyers rarely meet with their
13 child clients in their foster care placements, rely on brief
14 telephone contact or courtroom exchanges to communicate, cannot
15 conduct complete case investigations or child-specific legal
16 analysis, virtually never file extraordinary writs or pursue
17 appeals, and rely on overworked county social workers without
18 conducting an informed review of Child Protective Services'
19 ("CPS") placement decisions. (*Id.*) Further, plaintiffs allege
20 that the high caseload and inadequate salaries of these lawyers
21 lead to high attorney turnover, which exacerbates the problems
22 associated with adequate representation. (Compl. ¶ 52.)
23 Plaintiffs contend that the court-appointed attorneys' unlawful
24 caseloads are due to inadequate funding and assert that if the
25 AOC had followed its own guidelines for DRAFT in funding the
26 court-appointed attorneys, counsel could have met the recommended
27 Judicial Council caseload standards. (Compl. ¶ 56.)
28

1 Plaintiffs allege that the County of Sacramento has only
2 five judicial referees, who preside over dependency proceedings,
3 responsible for approximately 5,100 active dependency cases.
4 (Compl. ¶ 29.) Plaintiffs allege that this affords referees
5 roughly two minutes of courtroom time per case. (Id.)
6 Therefore, plaintiffs contend that a foster child appearing in a
7 Sacramento County dependency court with ineffective counsel
8 cannot reasonably expect the judicial referee to serve as a
9 "backstop" and look out for his or her best interests. (Id.)

10 **C. Named Plaintiffs**

11 Plaintiff E.T. is a fourteen-year-old girl who is in her
12 third foster care placement in less than one year. She is a
13 special education student who has been diagnosed with depression.
14 She was assigned a court-appointed attorney in October 2008 and
15 has had two attorneys since then. (Compl. ¶ 59.) Although E.T.
16 has had fourteen court hearings, her attorneys have met with her
17 briefly only three times and have visited her at only one
18 placement. (Compl. ¶¶ 60-61.) They have been unable to
19 stabilize her foster care placements. (Compl. ¶ 61.) Further,
20 they have been unable to investigate her mental health issues to
21 notify the dependency court of any problems. (Compl. ¶ 62.)

22 Plaintiff K.R. is a thirteen-year-old girl who is in her
23 fifth foster care placement. She suffers from severe behavioral
24 problems, including oppositional defiance disorder. She was
25 assigned a court-appointed attorney in early 1996. When her case
26 was reopened in September 2005, she was again assigned a court-
27 appointed legal representative. K.R. has had six attorneys since
28 then. (Compl. ¶ 63.) However, although her case has had

1 seventeen court hearings since September 2005, K.R.'s attorneys
2 have not visited any of her foster care placements or had any
3 contact with school personnel. (Compl. ¶ 64.) K.R. has been
4 interviewed only once outside of court, by a social worker, and
5 virtually nothing has been done to investigate K.R.'s interests
6 beyond the scope of the dependency court proceedings. K.R.'s
7 attorneys have been unable to file pleadings, motions, responses,
8 or objections as necessary to protect her interests. Further,
9 they have been unable to stabilize her foster care placements,
10 determine whether she requires public services, or secure a
11 proper educational placement. (Compl. ¶ 65.)

12 Plaintiff C.B. is a seventeen-year-old, developmentally
13 disabled girl, who is in her tenth foster care placement. She
14 was assigned a court-appointed attorney on February 17, 1999, and
15 she has had ten attorneys over the last ten years. (Compl. ¶
16 67.) Her attorneys have not visited her in at least seven of her
17 ten placements. She has had five court and administrative
18 hearings, but her lawyers did not meet with her before the
19 majority of those hearings. (Compl. ¶ 68.) C.B.'s attorneys
20 have been unable to file pleadings, motions, responses or
21 objections as necessary to protect her interests. They have done
22 little to investigate C.B.'s needs and emotional health beyond
23 the scope of the juvenile proceedings or to ensure that she is in
24 a stable foster care placement. (Compl. ¶ 68.) Further, they
25 have failed to ensure compliance with an agreement that C.B. be
26 able to see her sibling, who has been adopted, or to make any
27 effort to meet up with her other adult sibling. (Compl. ¶ 69.)
28 They have also been unable to investigate her educational

1 interests to assess whether her interests need to be protected by
2 the institution or other administrative or judicial proceedings.
3 (Compl. ¶ 70.) C.B. will "age out" of the foster care system
4 when she turns 18; her attorneys have not had time to assess
5 whether her psychological or developmental issues require that
6 she be allowed to remain in the system until she is 21. (Compl.
7 ¶ 71.)

8 G.S. is an eighteen-year-old, emotionally disturbed boy in
9 his tenth foster care placement. He has had eleven attorneys
10 since he first entered the dependency system on May 3, 2001.
11 (Compl. ¶ 72.) G.S. has had 28 court and administrative
12 hearings, but his lawyers did not meet him before the majority of
13 those hearings, including the original detention hearing.
14 (Compl. ¶ 73.) G.S.'s attorneys have been unable to file
15 pleadings, motions, responses or objections as necessary to
16 protect his interests. They have done little to investigate
17 G.S.'s needs and emotional health beyond the scope of the
18 juvenile proceedings or to ensure that he is in a stable foster
19 placement, including failing to visit him in nine of his ten
20 placements. (Compl. ¶ 74.) They have also failed to ensure
21 compliance with court orders, including one that allows him to
22 visit his siblings. (Compl. ¶ 75.) Further, his attorneys have
23 not had time to assess whether his psychological issues require
24 that he be allowed to remain in the system until he is 21 or make
25 efforts relating to his potential imminent transition to life
26 outside the foster care system. (Compl. ¶ 76.)

27 /////

28 /////

D. The Litigation

On July 16, 2009, plaintiffs filed suit in this case, by their next friend Frank Dougherty, on behalf of themselves and all others similarly situated, specifically,

All children currently and hereafter represented by court-appointed counsel in juvenile dependency proceedings in the Sacramento County Superior Court.

(Compl. ¶ 12.) They assert federal claims under 42 U.S.C. § 1983 arising out of alleged (1) procedural due process violations from excessive attorney caseloads; (2) substantive due process violations from excessive attorney caseloads; (3) procedural due process violations from excessive judicial caseloads; (4) deprivation of rights under the Federal Child Welfare Act ("FCWA"); and (5) deprivation of rights under the Child Abuse Prevention and Treatment and Adoption Reform Act ("CAPTA").

Plaintiffs also assert state law claims arising out of alleged (1) violation of the inalienable right to pursue and obtain safety set forth in Article I, § 1 of the California Constitution for failure to provide fair and adequate tribunals and effective legal counsel; (2) violation of due process as guaranteed in Article I, § 7 of the California Constitution for failure to provide adequate and effective legal representation in dependency proceedings; (3) violation of Welfare and Institutions Code § 317(c); and (4) violation of Welfare and Institutions Code § 317.5(b).

Through this action, plaintiffs seek a declaratory judgment that defendants have violated, continue to violate, and/or will violate plaintiffs' rights as guaranteed by the above constitutions and statutes. Plaintiffs also seek injunctive

1 relief, restraining future violations of these rights, and an
2 order "mandating that [d]efendants provide the additional
3 resources required to comply with the Judicial Council of
4 California and the National Association of Counsel for Children's
5 recommended caseloads for each court-appointed attorney."
6 (Prayer for Relief.)

7 STANDARD

8 Under Federal Rule of Civil Procedure 8(a), a pleading must
9 contain "a short and plain statement of the claim showing that
10 the pleader is entitled to relief." See Ashcroft v. Iqbal, 129
11 S. Ct. 1937, 1949 (2009). Under notice pleading in federal
12 court, the complaint must "give the defendant fair notice of what
13 the claim is and the grounds upon which it rests." Bell Atlantic
14 v. Twombly, 550 U.S. 544, 555 (2007) (internal quotations
15 omitted). "This simplified notice pleading standard relies on
16 liberal discovery rules and summary judgment motions to define
17 disputed facts and issues and to dispose of unmeritorious
18 claims." Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002).

19 On a motion to dismiss, the factual allegations of the
20 complaint must be accepted as true. Cruz v. Beto, 405 U.S. 319,
21 322 (1972). The court is bound to give plaintiff the benefit of
22 every reasonable inference to be drawn from the "well-pleaded"
23 allegations of the complaint. Retail Clerks Int'l Ass'n v.
24 Schermerhorn, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not
25 allege "'specific facts' beyond those necessary to state his
26 claim and the grounds showing entitlement to relief." Twombly,
27 550 U.S. at 570. "A claim has facial plausibility when the
28 plaintiff pleads factual content that allows the court to draw

1 the reasonable inference that the defendant is liable for the
2 misconduct alleged." Iqbal, 129 S. Ct. at 1949.

3 Nevertheless, the court "need not assume the truth of legal
4 conclusions cast in the form of factual allegations." United
5 States ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th
6 Cir. 1986). While Rule 8(a) does not require detailed factual
7 allegations, "it demands more than an unadorned, the defendant-
8 unlawfully-harmed-me accusation." Iqbal, 129 S. Ct. at 1949. A
9 pleading is insufficient if it offers mere "labels and
10 conclusions" or "a formulaic recitation of the elements of a
11 cause of action." Twombly, 550 U.S. at 555; Iqbal, 129 S. Ct. at
12 1950 ("Threadbare recitals of the elements of a cause of action,
13 supported by mere conclusory statements, do not suffice.").
14 Moreover, it is inappropriate to assume that the plaintiff "can
15 prove facts which it has not alleged or that the defendants have
16 violated the . . . laws in ways that have not been alleged."
17 Associated Gen. Contractors of Cal., Inc. v. Cal. State Council
18 of Carpenters, 459 U.S. 519, 526 (1983).

19 Ultimately, the court may not dismiss a complaint in which
20 the plaintiff has alleged "enough facts to state a claim to
21 relief that is plausible on its face." Iqbal, 129 S. Ct. at 1949
22 (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 570
23 (2007)). Only where a plaintiff has failed to "nudge [his or
24 her] claims across the line from conceivable to plausible," is
25 the complaint properly dismissed. Id. at 1952. While the
26 plausibility requirement is not akin to a probability
27 requirement, it demands more than "a sheer possibility that a
28 defendant has acted unlawfully." Id. at 1949. This plausibility

1 inquiry is "a context-specific task that requires the reviewing
2 court to draw on its judicial experience and common sense." Id.
3 at 1950.

4 In ruling upon a motion to dismiss, the court may consider
5 only the complaint, any exhibits thereto, and matters which may
6 be judicially noticed pursuant to Federal Rule of Evidence 201.
7 See Mir v. Little Co. Of Mary Hospital, 844 F.2d 646, 649 (9th
8 Cir. 1988); Isuzu Motors Ltd. v. Consumers Union of United
9 States, Inc., 12 F. Supp. 2d 1035, 1042 (C.D. Cal. 1998).

10 ANALYSIS

11 Plaintiffs' claims describe critical dependency court system
12 failures, which adversely affect the lives of thousands of
13 children. The complaint depicts a court system in which the
14 voices of these children are not heard and their stories are not
15 told while important decisions affecting their health and welfare
16 are being made.

17 While acknowledging the gravity of these issues, defendants
18 assert that such claims are nonjusticiable. Specifically,
19 defendants assert that "the complaint impermissibly attempts to
20 embroil this court in administration and funding of the
21 dependency courts in the Superior Court of Sacramento County."
22 (Defs.' Mot. to Dismiss, filed Sept. 18, 2009, at 15.)
23 Defendants contend that plaintiffs' claims implicate duties
24 involving state judicial processes that cannot be properly
25 determined by a federal court and plaintiffs seek remedies that
26 cannot be molded without violating established principles of
27 equity, comity, and federalism.

1 "The judicial power of the United States defined by
2 Art[icle] III is not an unconditioned authority to determine the
3 constitutionality of legislative or executive acts." Valley
4 Forge Christian Coll. v. Americans United For Separation of
5 Church and State, Inc., 454 U.S. 464, 471 (1982). Rather,
6 Article III limits "the federal judicial power 'to those disputes
7 which confine federal courts to a role consistent with a system
8 of separated powers and which are traditionally thought to be
9 capable of resolution through the judicial process.'" Id. at 472
10 (quoting Flast v. Cohen, 392 U.S. 83, 97 (1968)); Steel Co. v.
11 Citizens For A Better Env't, 523 U.S. 83, 102 (1998).

12 Cases are thus nonjusticiable when the subject matter of the
13 litigation is inappropriate for federal judicial consideration.
14 Baker v. Carr, 369 U.S. 186, 198 (1962). In determining whether
15 a case is justiciable, "consideration of the cause is not wholly
16 and immediately foreclosed; rather, the [c]ourt's inquiry
17 necessarily proceeds to the point of deciding whether the duty
18 asserted can be judicially identified and its breach judicially
19 determined, and whether protection for the right asserted can be
20 judicially molded." Id. "It is the role of the courts to
21 provide relief to claimants, in individual or class actions, who
22 have suffered, or will imminently suffer, actual harm; it is not
23 the role of courts, but that of the political branches, to shape
24 the institutions of government in such fashion as to comply with
25 the laws and the Constitution. Lewis v. Casey, 518 U.S. 343, 349
26 (1996). These basic concerns are heightened when a lawsuit
27 challenges core activities of *state* responsibility. Rizzo v.
28 Goode, 423 U.S. 362, 378-79 (1976).

1 "Since the beginning of this country's history Congress has,
2 subject to few exceptions, manifested a desire to permit state
3 courts to try state cases free from interference by federal
4 courts." Younger v. Harris, 401 U.S. 37, 43 (1971). This desire
5 is premised upon the fundamental and vital role of comity in the
6 formation of this country's government and "perhaps for lack of a
7 better and clearer way to describe it, is referred to by many as
8 'Our Federalism.'" Id. at 44. Our Federalism demonstrates "a
9 proper respect for state functions, a recognition of the fact
10 that the entire country is made up of a Union of separate state
11 governments, and a continuance of the belief that the National
12 Government will fare best if the States and their institutions
13 are left free to perform their separate functions in separate
14 ways." Id. It represents "a system in which there is
15 sensitivity to the legitimate interests of both State and
16 National Governments, and in which the National Government,
17 anxious though it may be to vindicate and protect federal rights
18 and federal interests, always endeavors to do so in ways that
19 will not unduly interfere with the legitimate activities of the
20 States." Id.

21 It is within the context of this foundational concept of
22 comity, which strikes at the heart of the country's governing
23 principles, that the court must view plaintiffs' serious claims.
24 The court is cognizant of the potential hardships inflicted upon
25 one of society's most vulnerable populations if plaintiff's
26 claims are true. The court is equally cognizant of the profound
27 consequential principles of federalism implicated by this case.
28 Accordingly, it is with careful attention to these two

significant but conflicting interests that the court undertakes its analysis of justiciability pursuant to its equitable discretion and under the principles set forth by Younger v. Harris and its progeny.²

1. Equitable Abstention³

Principles of equity, comity, and federalism preclude equitable intervention when a federal court is asked to enjoin a state court proceeding. O'Shea v. Littleton, 414 U.S. 488, 499-500 (1974). The doctrine of equity jurisprudence provides that a "court of equity should not act . . . when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." Id. at 499.

² Defendants also contend that plaintiffs lack standing to bring their claims. Defendants' arguments relating to abstention and standing relate to whether plaintiffs' claims are properly before the court and within the confines of the judicial authority conferred by Article III. Indeed, assuming that plaintiffs have sufficiently alleged injury in fact and causation, the court's conclusions relating to its ability to redress such injury, as set forth *infra*, "obviously shade into those determining whether the complaint" sufficiently presents a real case or controversy for purposes of standing. O'Shea v. Littleton, 414 U.S. 488, 499 (1974).

³ While a majority of decisions have applied equitable abstention in the context of cases involving injunctions in criminal cases, the Court has noted that the doctrine "has not been limited to that situation or indeed to a criminal proceeding itself." Rizzo v. Goode, 423 U.S. 362, 380 (1976). Rather, the same principles apply to civil proceedings and to cases where injunctive relief is sought against those in charge of an executive branch of an agency of state or local governments. Id.

The court also notes that while there is significant cross-over between the fundamental principles and factors considered in the doctrines of equitable abstention and Younger abstention, the Supreme Court and Circuit decisions addressing equitable abstention reflect differences that justify separate treatment of these two doctrines.

1 The purpose of the doctrine of equitable abstention is to
2 sustain "the special delicacy of the adjustment to be preserved
3 between federal equitable power and State administration of its
4 own law." O'Shea v. Littleton, 414 U.S. 488, 500 (1974)
5 (quotation omitted). If the equitable relief requested requires
6 intrusive follow-up into state court proceedings, it constitutes
7 "a form of the monitoring of the operation of state court
8 functions that is antipathetic to established principles of
9 comity." Id. Indeed, the Supreme Court has recently noted that
10 "institutional reform injunctions often raise sensitive federal
11 concerns." Horne v. Flores, 129 S. Ct. 2579, 2593 (2009)
12 (holding that Court of Appeals should have inquired into whether
13 changed conditions satisfied statutory violations that the
14 continuing structural reform injunction was directed to address).
15 These "[f]ederalism concerns are heightened when . . . a federal
16 court decree has the effect of dictating state or local budget
17 priorities. States and local governments have limited funds.
18 When a federal court orders that money be appropriated for one
19 program, the effect is often to take funds away from other
20 important programs." Horne, 129 S. Ct. at 2593-94.

21 "When the relief sought would require restructuring of state
22 governmental institutions, federal courts will intervene only
23 upon finding a clear constitutional violation, and even then only
24 to the extent necessary to remedy that violation." Los Angeles
25 County Bar Ass'n v. Eu, 979 F.2d 697, 703 (9th Cir. 1992). Both
26 the First and Fifth Circuits have adjudicated cases relating to
27 overburdened court systems and the substantial delays occasioned
28 by these serious resource allocation problems, and both Circuits

1 have held that the doctrine of equitable abstention barred
2 consideration of the merits of such claims. In Ad Hoc Committee
3 on Judicial Administration v. Massachusetts, the plaintiffs
4 brought suit against the state, the state legislature, and the
5 governor of Massachusetts to compel the furnishing of additional
6 court facilities. 488 F.2d 1241 (1st Cir. 1973). The First
7 Circuit noted that the Supreme Court has never found *per se*
8 unconstitutional delay in a civil case; rather, "whether delay is
9 a violation of due process depends on the individual case." Id.
10 at 1244. Therefore, the First Circuit held the case was not
11 justiciable because, in order to define the constitutional duty,
12 the court would have to reduce due process into formulae and
13 timetables establishing the maximum permissible delay, which
14 would replace a context specific inquiry into the effect of the
15 delay on the parties, their diligence, the nature of the case,
16 and the interests at stake. Id. Similarly, to determine whether
17 that duty was violated, the court would have to extrapolate from
18 statistics, as opposed to considering factors such as discovery,
19 negotiation, investigation, strategy, counsel's engagement on
20 other matters, and even procrastination. Id. at 1245.

21 Further, the Ad Hoc Committee court recognized that the
22 relief sought would be unmanageable and outside the scope of the
23 federal judiciary. Specifically, the First Circuit noted

24 a federal judge faced with the awesome task of ordering
25 measures to cut down the waiting period in a state's
26 judiciary could hardly consider merely the augmentation
27 of resources. He would also have to inquire into the
28 administration of the system, its utilization of
personnel, the advisability of requiring adoption of
techniques such as pre-trial conferences, different
calendar arrangements, split trials, and the like, and
countless other administrative matters about which

1 books have been written and courses taught, and as to
2 the relative value of which there remains much dispute.

3 Id. In essence, the relief requested by the plaintiff would
4 require the court to sit as a receiver over the state court
5 system. Id. at 1246 (noting that "[w]hile the state judiciary
6 might appreciate additional resources, it would scarcely welcome
7 the intermeddling with its administration which might follow.").
8 Moreover, the court recognized that financing and organization of
9 the federal and state judiciary have been historically "left to
10 the people, through their legislature." Id. While, in certain
11 circumstances, courts have ordered a state to furnish certain
12 levels of medical or psychiatric care to those under the states'
13 control, in such cases, the alternative, either explicitly or
14 implicitly, was the closure of noncompliant institutions. Id. at
15 1246. Any such implied threat to close down a state court system
16 "would amount to little more than a quixotic and unwarranted
17 intrusion into an entire branch of government." Id.
18 Accordingly, the court concluded "it would be both unprecedented
19 and unseemly for a federal judge to attempt a reordering of state
20 priorities" as required by the plaintiff's requested injunctive
21 relief. Id. at 1245-46. While "[t]he dictates of a federal
22 court might seem to promise easy relief, . . . they would more
23 likely frustrate and delay meaningful reform which, in a system
24 so complex, cannot be dictated from outside but must develop
25 democratically from within the state." Id. at 1246.

26 Similarly, in Gardner v. Luckey, the Fifth Circuit held that
27 the claims brought by plaintiff "contemplate[d] exactly the sort
28 of intrusive and unworkable supervision of state judicial

1 processes condemned [by the Supreme Court]." 500 F.2d 712, 715
2 (5th Cir. 1974). The plaintiffs filed a class action against
3 Florida Public Defender Offices, alleging ineffective assistance
4 of counsel arising out of inadequate funding and excessive
5 caseloads. Id. at 713. The plaintiffs asked the court to
6 declare the Offices' caseloads excessive, to specify how
7 excessive they were, and to enjoin acceptance of overload cases.
8 Id. at 713. The court held that equitable abstention barred suit
9 because the relief requested would require an ongoing audit of
10 state criminal proceedings. Id. at 715. Further, the court
11 noted that plaintiffs could file habeas actions to challenge
12 their custody. Id.

13 The Ninth Circuit, however, has held that equitable
14 abstention did not bar federal jurisdiction in a case for
15 declaratory relief arising out of delays in the Los Angeles
16 County Superior Court. Los Angeles County Bar Ass'n, 979 F.2d at
17 703-04. In Los Angeles County Bar Ass'n, the plaintiff alleged
18 constitutional violations of its rights to access the courts and
19 equal protection arising out a statute that prescribed the number
20 of judges on the court. The Ninth Circuit distinguished the
21 First Circuit's decision in Ad Hoc Committee and held that
22 equitable abstention did not apply to bar federal court
23 jurisdiction. First, the plaintiff alleged that the *average* time
24 to resolution of civil cases in the Los Angeles County Superior
25 Court was unconstitutional. Id. at 703. The Ninth Circuit noted
26 that this was a less difficult question than that before the
27 First Circuit, whether a delay was constitutionally acceptable in
28 any given case. Id. Second, *the plaintiff sought only*

1 *declaratory, not injunctive relief.* As such, the Ninth Circuit
2 noted that any order would not directly require supervision of
3 the state court system by federal judges. Therefore, the Ninth
4 Circuit concluded, "although not without some trepidation," that
5 the claims for declaratory relief were appropriately before it.
6 Id. at 704.

7 Judge Kleinfeld, concurring in the decision, which
8 ultimately dismissed the plaintiff's claims on the merits,
9 disagreed with the majority's decision regarding equitable
10 abstention. Id. at 708-11. In noting that declaratory judgments
11 are discretionary, he asserted that a federal court cannot
12 properly declare a state legislative action regarding the
13 allocation of judges to be wrong, "where there are no legal
14 standards to say what number is right." Id. at 709-10. Further,
15 because it would be impossible to derive a standard without
16 considering (1) "methods of judicial administration within the
17 state court system," (2) "the receptiveness of the state court
18 system to various types of claims," (3) "undesirability of delay
19 in litigation relative to benefits of allocating resources to
20 other uses," and (4) "many other subtle matters of state policy
21 which are none of our business," Judge Kleinfeld noted that the
22 challenge lacked "judicially discoverable and manageable
23 standards" and required relief based upon resolution of "policy
24 determinations of a kind clearly for nonjudicial discretion."
25 Id. at 710. In short, Judge Kleinfeld asserted that the Ninth
26 Circuit lacked the power to adjudicate the case and noted,

27 The people of the State of California, through their
28 system of elected representatives, are entitled in our
system of federalism to decide how much of their money

1 to put into courts, as well as other activities in
2 which they choose to have their state government
3 participate. The process of deciding how much money to
4 take away from people and transfer to the government,
5 and how to allocate it among the departments of
6 government, is traditionally resolved by political
7 struggle and compromise, not by some theoretical legal
8 principle.

9 Id.

10 In this case, plaintiffs' challenges to the juvenile
11 dependency court system necessarily require the court to intrude
12 upon the state's administration of its government, and more
13 specifically, its court system. First, plaintiffs claim that the
14 "crushing and unlawful caseloads" frustrate the ability of the
15 dependency courts to adjudicate cases and "provide children with
16 a meaningful opportunity to be heard." (Compl. ¶ 22) As such,
17 plaintiffs allege that children subject to dependency proceedings
18 in Sacramento County are denied a fair and adequate tribunal in
19 violation of state and federal law. (Id. ¶ 27.) At their core,
20 all of plaintiffs' federal and state law claims arising out of
21 these allegations assert that the current judicial caseload is
22 insufficient for the dependency court judges or referees to
23 "consider carefully what has been provided" or to "serve as a
24 backstop and look out for [the child's] best interest." In order
25 to declare the current caseloads unconstitutional or unlawful,
26 the court would necessarily have to consider, among a host of
27 judicially unmanageable standards, how many cases are
28 constitutionally and/or statutorily permissible, whether each
type of case should be weighed evenly, which cases deserve more
time or attention, and how much time or attention is
constitutionally and/or statutorily permissible. See Los Angeles

1 County Bar Ass'n, 979 F.2d at 710 (Kleinfeld, concurring). In
2 order to attempt to mold an appropriate injunctive remedy to
3 address the excess caseloads, the court cannot consider only an
4 augmentation of the dependency court's resources. Rather, the
5 court would also have to consider a myriad of administrative
6 matters that affect the efficiency of the system. Further, in
7 order to enforce any method of injunctive relief, the court would
8 be required to act as a receiver for the Sacramento dependency
9 court system, ensuring that judges were giving adequate time to
10 each individualized case pursuant to the constitutional and/or
11 statutory dictates established through this proceeding. Such
12 involvement in any state institutional system is daunting, but
13 the problems accompanying plaintiffs' requested relief is
14 increased exponentially when applied to a state judicial system.
15 See O'Shea, 414 U.S. at 501 (noting that "periodic reporting" of
16 state judicial officers to a federal court "would constitute a
17 form of monitoring of state court functions that is antipathetic
18 to established principles of comity"); see also Ad Hoc Committee,
19 488 F.2d at 1244-46.

20 Second, plaintiffs claim that these overwhelming caseloads
21 prevent children from receiving "the effective, adequate and
22 competent assistance of counsel" in violation of state and
23 federal law. (Compl. ¶¶ 22, 26.) Specifically, plaintiffs
24 allege that the 395 caseload carried by court-appointed counsel
25 in dependency proceedings render them "unable to adequately
26 perform even the minimum tasks required of such counsel under law
27 and in accordance with the American Bar Association's ("ABA")
28 standards." (Compl. ¶ 51.) Similar to plaintiffs' claims

1 regarding excess caseloads in the courts, in order to declare the
2 current attorney caseloads unconstitutional or unlawful, the
3 court would necessarily have to consider through a generalized
4 inquiry how many cases are constitutionally and/or statutorily
5 permissible, whether some types of cases require more
6 investigation or preparation, which types of those cases deserve
7 more resources, and how much time or attention is
8 constitutionally and/or statutorily permissible. Further, in
9 order to mold a remedy to the injury alleged, the court cannot
10 consider only an increased budget for court appointed dependency
11 counsel. Rather, the court must consider whether that money
12 should be directed solely at hiring more attorneys, whether more
13 resources need to be directed to support staff or non-legal
14 resources, the need for larger facilities to house more attorneys
15 or staff, and the quality of the staff or attorneys hired.
16 Finally, in order to enforce injunctive relief that is carefully
17 directed to the problems alleged, the court would have to act as
18 an administrative manager of court-appointed dependency counsel
19 to ensure that any additional resources were being implemented
20 appropriately and that counsel was complying with the
21 constitutional and/or statutory guidelines set forth by the
22 court. See Gardner, 500 F.2d at 714-15.

23 The facts before the court in this case are readily
24 distinguishable from the facts before the Ninth Circuit in Los
25 Angeles County Bar Ass'n and weigh heavily in favor of finding
26 this case nonjusticiable. In Los Angeles County Bar Ass'n, the
27 Ninth Circuit acknowledged that it would be very difficult for
28 courts to determine how much delay was constitutionally

1 permissible in any given case, but concluded that the question
2 presented by the plaintiff was whether the *average* time to
3 resolution in a case violated its rights. 979 F.2d at 703.
4 However, in this case, plaintiffs do not allege an *average* amount
5 of time spent on cases by judges or court appointed attorneys to
6 which they object. Rather, they allege that their constitutional
7 rights have been violated based upon their specific, individual
8 circumstances. (See Compl. ¶¶ 59-76.) As such, the case before
9 the Los Angeles County Bar Ass'n court was substantially more
10 manageable than that before the court in this case.

11 Similarly, in Los Angeles County Bar Ass'n, the plaintiff
12 was a single party challenging the facial constitutionality of a
13 statute due to its alleged harmful effect on the plaintiff's
14 litigation. Accordingly, the court could undertake a "case-by-
15 case examination" of the merits of the claim by evaluating
16 whether the average delay deprived it of its ability to vindicate
17 important rights. 979 F.2d at 707. In this case, however,
18 plaintiffs bring claims challenging the practices of a state
19 institution and its officers on behalf of a putative class
20 comprised of all children represented by court-appointed counsel
21 in Sacramento County juvenile dependency proceedings. An ongoing
22 "case-by-case examination" of such a claim would not be just
23 daunting, but virtually impossible. Indeed, to fit within the
24 teachings of Los Angeles County Bar Ass'n, the court would have
25 to analyze each of the 5100 juvenile dependency court cases in
26 order to determine whether the lack of time or attention by
27 counsel or the dependency court deprived the minor of the ability
28

1 to vindicate her rights under the specific circumstances of the
2 case.

3 Finally, the Los Angeles County Bar Ass'n court placed great
4 emphasis on the nature of the relief sought by the plaintiff; it
5 sought only declaratory, not injunctive relief. While the court
6 noted that it was "not without some trepidation" in exercising
7 declaratory jurisdiction, it stressed that *the relief sought*
8 *would not directly require supervision of the state court system*
9 *by federal judges*. However, in this case, in addition to
10 declaratory relief, plaintiffs seek injunctive relief that would
11 require the court to act as an administrator and receiver of the
12 Sacramento County dependency court system. As such, the holding
13 of Los Angeles County Bar Ass'n is inapplicable to the facts
14 before the court in this case.

15 In sum, the claims asserted by plaintiffs and the relief
16 requested strike at the very heart of federalism and the
17 institutional competence of the judiciary to adjudicate state
18 budgetary and policy matters. Plaintiffs' claims require the
19 court to set constitutional parameters regarding the function of
20 both state judicial officers and state court appointed attorneys.
21 The adjudication of these claims, which seek to evaluate the
22 relationship between caseloads and fair access to justice for
23 children in a variety of situations, requires the implementation
24 of standards that no court has yet to address. See Los Angeles
25 County Bar Ass'n, 979 F.2d at 706 ("Notwithstanding the
26 fundamental rights of access to the courts, [the plaintiff] does
27 not cite, nor has our independent research revealed, any decision
28 recognizing a right to judicial determination of a civil claim

1 within a prescribed period of time."); Ad Hoc Committee, 488 F.2d
2 at 1245 ("To extrapolate from court statistics a picture of those
3 cases where inability to obtain a trial has reached due process
4 is difficult."); cf. Caswell v. Califano, 583 F.2d 9, 16-17 (1st
5 Cir. 1978) (holding that where the plaintiffs had a statutory
6 right to hearing within a reasonable time after the request, the
7 district's court imposition of a 90 day period was not an abuse
8 of discretion). Moreover, in adjudicating whether the Sacramento
9 County dependency courts meet sufficient constitutional
10 standards, there is an implicit threat that the failure to
11 provide constitutionally adequate services would result either in
12 a forced reduction of the number of cases brought on behalf of
13 children or the closure of the court itself. See Coleman v.
14 Schwarzenegger, No. Civ 90-0520, No. C01-1351, 2009 WL 2430820
15 (E.D. Cal., N.D. Cal. Aug. 4, 2009) (concluding that the only
16 proper relief for prolonged "woefully and unconstitutionally
17 inadequate" medical and mental healthcare in the California
18 prison system was reduction in the overall prisoner population
19 through prisoner release). However, any such implied threat
20 "would amount to little more than a quixotic and unwarranted
21 intrusion into an entire branch of state government." Ad Hoc
22 Committee, 488 F.2d at 1246.

23 The implementation of any injunctive remedy would require an
24 inquiry into the administration of Sacramento County's dependency
25 court system and the court-appointed attorneys with whom it
26 contracts. It would also require this court to impose its views
27 on the budgeting priorities of the California legislature
28 generally, and specifically on the Judicial Council of California

1 and the Sacramento Superior Court.⁴ The process of allocating
2 state resources lends itself to the legislative process where
3 people have an opportunity to petition the government regarding
4 how their money should be spent and remove from office those
5 political officials who act contrary to the wishes of the
6 majority. "The judicial process does not share these democratic
7 virtues." Los Angeles County Bar Ass'n, 979 F.2d at 710
8 (Kleinfeld, concurring). If the court granted plaintiffs'
9 request, it would result in a command to the state to take money
10 from its citizens, in the form of taxes, or from other
11 governmental functions, in order to put more money in the
12 Sacramento County juvenile dependency court system.⁵ While
13 numerous parties, including the dependency courts would likely
14 appreciate the influx of resources, such an award, implicating
15 the balance of budget priorities and state policies, is beyond the
16 institutional competence of a federal court. Rather, such
17 injunctive relief constitutes an "abrasive and unmanageable
18
19
20

21 ⁴ Indeed, plaintiffs argue that "[d]efendants spend
22 hundreds of millions for other priorities even as they assert
23 poverty when it comes to addressing the caseload-caused anguish
24 their own meticulous study certifies and decries." (Pls.'s Supp.
25 Brief [Docket #35], filed Nov. 20, 2009.) At oral argument,
26 plaintiff's counsel asserted the AOC spent approximately a
27 billion and a half dollars on a new management system and has
28 contracted to build new courthouses, implying that money to fund
relief in this case could be reallocated from those or similar
projects. (Tr. at 29.)

⁵ Moreover, unless the Superior Court of California were
awarded more judges overall, this court's order would necessarily
implicate state policy decisions regarding how many judges to
appoint in particular departments.

1 intercession" in state court institutions.⁶ See O'Shea, 414 U.S.
2 at 504.

3 Therefore, the court concludes that principles of equity,
4 comity, and federalism require the court to equitably abstain
5 from adjudicating plaintiffs' claims.

6 **2. *Younger* Abstention**

7 Generally, the Supreme Court's decision in Younger and its
8 progeny direct federal courts to abstain from granting injunctive
9 or declaratory relief that would interfere with pending state
10 judicial proceedings. Younger v. Harris, 401 U.S. 37, 40-41
11 (1971); Samuels v. Mackell, 401 U.S. 66, 73 (1971) (holding that
12 "where an injunction would be impermissible under these
13 principles, declaratory relief should ordinarily be denied as
14 well"). The Younger doctrine "reflects a strong policy against
15 federal intervention in state judicial processes in the absence
16 of great and immediate injury to the federal plaintiff." Moore
17 v. Sims, 442 U.S. 415, 423 (1979). When federal courts disrupt a
18 state court's opportunity to "intelligently mediate federal
19 constitutional concerns and state interests" and interject
20 themselves into such disputes, "they prevent the informed
21 evolution of state policy by state tribunals." Moore, 442 U.S.
22 at 429-30.

23 While the doctrine was first articulated in the context of
24 pending state criminal proceedings, the Supreme Court has applied
25 it to civil proceedings in which important state interests are
26

27 ⁶ Further, the court notes, as set forth, *infra*, in the
28 court's discussion of Younger abstention, plaintiffs have an
alternative, available avenue of relief.

involved. Id.; see Huffman v. Pursue, Ltd., 420 U.S. 592 (1975). “The seriousness of federal judicial interference with state civil functions has long been recognized by the Court. [It has] consistently required that when federal courts are confronted with requests for such relief, they should abide by standards of restraint that go well beyond those of private equity jurisprudence.” Huffman, 420 U.S. at 603.

Therefore, in the absence of “extraordinary circumstances,”⁷ abstention in favor of state judicial proceedings is required if the state proceedings (1) are ongoing, (2) implicate important state interests, and (3) provide the plaintiff an adequate opportunity to litigate federal claims. See Middlesex County Ethics Comm. v. Garden State Bar Ass’n, 457 U.S. 423, 432 (1982); see San Jose Silicon Valley Chamber of Commerce Political Action Comm. v. City of San Jose, 546 F.3d 1087, 1092 (9th Cir. 2008) (noting that where these standards are met, a district court “may not exercise jurisdiction” and that “there is no discretion in the district courts to do otherwise”). “Where Younger abstention is appropriate, a district court cannot refuse to abstain, retain jurisdiction over the action, and render a decision on the merits after the state proceedings have ended. To the contrary, Younger abstention requires *dismissal* of the federal action.” Beltran v.

⁷ In Moore, the Supreme Court held that dependency proceedings do not, without more, constitute such an extraordinary circumstance. 442 U.S. at 434 (“Unless we were to hold that every attachment issued to protect a child creates great, immediate, and irreparable harm warranting federal-court intervention, we are hard pressed to conclude that . . . federal intervention was warranted.”).

1 State of Cal, 871 F.2d 777, 782 (9th Cir. 1988) (emphasis in
2 original).

3 The Supreme Court has held that Younger abstention is
4 appropriately applied to broad challenges to state dependency
5 proceedings. Moore, 442 U.S. 415. In Moore, the appellees,
6 husband and wife and their three minor children, sought a
7 declaration that parts of the Texas Family Code
8 unconstitutionally infringed upon family integrity after a
9 juvenile court judge entered an emergency *ex parte* order that
10 gave temporary custody of the children to the State Department of
11 Public Welfare. Id. at 419-20. The appellees moved to terminate
12 the temporary custody. Id. at 420. However, instead of moving
13 to expedite the hearing in the county court, requesting an early
14 hearing from state trial or appellate courts, or appealing the
15 temporary order, appellees filed an action challenging the
16 constitutionality of the relevant state statutes in federal
17 court. Id. at 421. The Court first concluded that there were
18 ongoing state proceedings, even though not all of the appellee's
19 claims directly related to the custody determination.
20 Specifically, the Court held that the appellee's challenge to the
21 State's computerized collection and dissemination of child-abuse
22 information could be raised in the state court proceedings. Id.
23 at 424-25. That the appellee's challenges constituted a
24 "multifaceted" and broad challenge to a state statutory scheme
25 "militated in *favor* of abstention, not *against* it." Id. at 427.
26 Second, the Court concluded that challenges to the state juvenile
27 dependency system implicated an important state concern. Id. at
28 435 ("Family relations are a traditional area of state

1 concern."). Finally, the Court held that because state
2 procedural law did not bar presentation of the constitutional
3 claims in the dependency court proceedings, the appellees had an
4 adequate state court avenue for relief. In conclusion, the Court
5 noted that it was "unwilling to conclude that state processes are
6 unequal to the task of accommodating the various interests and
7 deciding the constitutional questions that may arise in child-
8 welfare litigation." Id. at 435.

9 **a. Interference with Ongoing State Proceedings**

10 Plaintiffs first contend that there are no ongoing state
11 proceedings where plaintiffs' or class members' claims are
12 currently being adjudicated. Specifically, plaintiffs assert
13 that none of the constitutional claims asserted in this action
14 have been asserted in the underlying dependency court cases upon
15 which they are based. Further, plaintiffs contend that the
16 constitutional and statutory claims alleged in this litigation
17 will not interfere with ongoing state proceedings for the
18 purposes of the Younger analysis.

19 Courts have concluded that continuing state dependency
20 proceedings, which involve the plaintiffs in a federal action
21 that challenges the constitutionality of the services and process
22 received, are "ongoing state proceedings" for purposes of Younger
23 abstention. See 31 Foster Children v. Bush, 329 F.3d 1225, 1275
24 (11th Cir. 2003); H.C. ex rel. Gordon v. Koppel, 203 F.3d 610,
25 603 (9th Cir. 2000) (holding that the ongoing proceeding element
26 was satisfied because the plaintiffs' complaint sought "an order
27 requiring procedural due process to be observed in the future
28 course of litigation" of the plaintiffs' pending state custody

1 proceedings); J.B. ex rel. Hart v. Valdez, 186 F.3d 1280, 1291
2 (10th Cir. 1999); Laurie Q. v. Contra Costa County, 304 F. Supp.
3 2d 1185, 1203 (N.D. Cal. 2004) (holding that challenge to
4 county's foster care system implicated ongoing dependency court
5 proceedings); see also Moore, 442 U.S. at 425-27; cf. Lake v.
6 Speziale, 580 F. Supp. 1318, 1329 (D. Conn. 1984) (holding that
7 Younger abstention did not apply in the absence of any pending
8 state court proceeding); Johnson v. Solomon, 484 F. Supp. 278,
9 295-97 (D. Md. 1979) (same). However, Younger abstention is only
10 implicated "when the relief sought in federal court would in some
11 manner directly 'interfere' with ongoing state judicial
12 proceedings." Green v. City of Tucson, 255 F.3d 1086, 1097 (9th
13 Cir. 2001) (en banc) *receded from on other grounds by Gilbertson*
14 *v. Albright*, 381 F.3d 965 (9th Cir. 2004). "The mere potential
15 for conflict in the results of adjudications is not the kind of
16 interference that merits federal court abstention." Id.
17 (internal quotations and citation omitted). Rather, the system
18 of dual sovereigns inherently contemplates the possibility of a
19 "race to judgment." Id. "In order to decide whether the federal
20 proceeding would interfere with the state proceeding, [courts]
21 look to the relief requested and the effect it would have on the
22 state proceedings." 31 Foster Children, 329 F.3d at 1276; see
23 also O'Shea, 414 U.S. at 500 (holding that abstention was proper
24 where the proposed injunction would indirectly accomplish the
25 same kind of interference that Younger and subsequent cases
26 sought to prevent).

27 The Eleventh Circuit has held that an action for declaratory
28 and injunctive relief arising out of challenges to Florida's

1 foster care system would interfere extensively with the ongoing
2 dependency cases of each plaintiff. 31 Foster Children, 329 F.3d
3 at 1279. In 31 Foster Children, the plaintiffs alleged that the
4 defendants' practices denied and threatened their rights, *inter*
5 *alia*, to (1) substantive due process for "safe care that meet
6 their basic needs, prompt placements with permanent families, and
7 services extended after their eighteenth birthdays"; (2)
8 "procedural due process in determining the services they will
9 receive"; (3) familial association with their siblings; and (4)
10 prompt placement with permanent families and information provided
11 pursuant to the Adoption Assistance and Child Welfare Act. Id.
12 at 1261. The plaintiffs requested that the court declare the
13 defendants' practices unconstitutional and unlawful and grant
14 injunctive relief that would prevent future violations and ensure
15 compliance. Id. The Eleventh Circuit held that the declaratory
16 judgment and injunction requested would interfere with the
17 pending state proceedings in numerous ways, including potential
18 conflicting orders regarding what is best for a particular
19 plaintiff, whether a particular placement is safe or appropriate,
20 whether sufficient efforts are being made to find an adoptive
21 family, or whether an amendment needs to be made to a child's
22 plan. Id. at 1278. The court concluded that the broad
23 implication of the relief sought was to take the responsibility
24 away from state courts and put it under control of the federal
25 court. Id. at 1279. Such action "constitute[d] federal court
26 oversight of state court operations, even if not framed as direct
27 review of state court judgments that is problematic, calling for
28 Younger abstention." Id.

1 Similarly, the Tenth Circuit has held that declaratory and
2 injunctive relief directed at state institutions involving
3 dependant children warranted abstention because the requested
4 relief would require a supervisory role over the entire state
5 program. J.B. ex rel. Hart v. Valdez, 186 F.3d 1280; see Joseph
6 A. v. Ingram, 275 F.3d 1253 (10th Cir. 2002). In J.B., the
7 plaintiffs, mentally or developmentally disabled children in the
8 custody of New Mexico, alleged constitutional and statutory
9 violations arising out of the failure to provide them with
10 services, benefits, and protections in custody determinations and
11 treatment plans. 186 F.3d at 1282-85. The court held that the
12 federal action would fundamentally change the dispositions and
13 oversight of the children because, by ruling on the lawfulness of
14 the defendant's action, the requested declaratory and injunctive
15 relief would place the federal court in the role of making
16 dispositional decisions in the plaintiff's individual cases that
17 were reserved to the New Mexico Children's Court. Id. at 1292-
18 93. Therefore, the court concluded that, for purposes of Younger
19 abstention, the federal court interfered with the ongoing state
20 court proceedings.

21 In Joseph A., the Tenth Circuit likewise concluded that
22 Younger abstention was implicated by the broad relief implicated
23 by a consent decree relating to the procedures to be accorded
24 children in the state's custody. 275 F.3d 1253. The plaintiffs,
25 children in New Mexico's custody due to abuse or neglect, and the
26 New Mexico Department of Human Services had entered into a
27 federal court consent decree, and the plaintiffs subsequently
28 moved the court to hold the Department in contempt for allegedly

1 violating that consent decree. Id. at 1257. The court held that
2 enforcement of the consent decree would require "interference
3 with the operations of the Children's Court in an insidious way,"
4 in that the consent decree operated like that of an injunction or
5 declaratory judgment that precluded the presentation of certain
6 options to the Children's Court. Id. at 1268-69. Further, the
7 consent decree's restrictions were ongoing, impacting the conduct
8 of the proceedings themselves, not just the body charged with
9 initiating the proceedings. Id. at 1269. Accordingly, the court
10 concluded that "Younger governs whenever the requested relief
11 would interfere with the state court's ability to conduct
12 proceedings, regardless of whether the relief targets the conduct
13 of the proceeding directly." Id. at 1272.

14 In this case, plaintiffs seek a declaration that the
15 judicial and attorney caseloads are so excessive that they
16 constitute a violation of constitutional and statutory rights.
17 In their complaint, plaintiffs request that defendants be
18 enjoined from currently and continually violating their
19 constitutional and statutory rights and that defendants provide
20 additional resources to reach recommended caseloads for
21 attorneys. At oral argument, plaintiffs clarified that they also
22 sought the appointment of more judges in order to ease judicial
23 caseloads. (Tr. at 31.)

24 Plaintiffs contend that at this stage of the litigation, the
25 court need not contemplate the precise remedy available to
26 plaintiffs if they prevail on the merits; rather the court should
27 presume that it is possible to "issue an order that avoids
28 Younger and conforms to the Court's sound discretion and proof at

1 trial." (Pls.' Opp'n at 23.) However, this contention runs
2 counter to the Court's explanation of the appropriate inquiry
3 regarding justiciability as set forth in O'Shea:

4 [T]he question arises of how compliance might be
5 enforced if the beneficiaries of the injunction were to
6 charge that it had been disobeyed. Presumably any
7 member of respondent's class who appeared . . . before
8 petitioners could allege and have adjudicated a claim
that petitioner's were in contempt of the federal
court's injunction order, with a review of an adverse
decision in the Court of Appeals and, perhaps in [the
Supreme Court].

9 414 U.S. at 501-02. Further, in evaluating whether Younger
10 abstention applied to the plaintiffs' challenges to the adequacy
11 of Georgia's indigent court system, the Eleventh Circuit looked
12 to the Supreme Court's analysis in O'Shea, and reasoned that
13 consideration of the remedies available is necessary at the
14 outset of the litigation because "[i]t would certainly create an
15 awkward moment if, at the end of protracted litigation, a
16 compliance problem arose which would force abstention on the same
17 ground that existed prior to trial." Luckey v. Miller, 976 F.2d
18 673, 679 (11th Cir. 1991). The court agrees.

19 The relief requested by plaintiffs in this case would
20 necessarily interfere with their ongoing dependency court cases
21 and those of the putative class. The requested declaratory
22 relief calls into question the validity of every decision made in
23 pending and future dependency court cases before the resolution
24 of this litigation. Specifically, plaintiffs seek a finding that
25 the number of lawyers currently provided are insufficient to
26 perform the enumerated duties that they are required to perform
27 under both state and federal law. Plaintiffs similarly seek a
28 finding that they have not been granted meaningful access to the

1 courts or appropriate consideration of their matters due to
2 judicial caseloads. While plaintiffs contend that each
3 individual plaintiff would still have to demonstrate prejudice in
4 order to invalidate the decision rendered in each pending case,⁸
5 the court cannot overlook the practical impact of the proposed
6 declaratory relief on the *5,100 active dependency court cases*;
7 this court's order would substantiate a finding of a
8 constitutional or statutory violation in every one of those
9 active cases. Even if not determinative in every instance, this
10 finding would impact each of the putative class member's cases.
11 See Luckey, 976 F.2d at 679 ("[L]aying the groundwork for a
12 future request for more detailed relief which would violate the
13 comity principles expressed in Younger and O'Shea is the precise
14 exercise forbidden under the abstention doctrine."); Gardner, 500
15 F.2d at 714 (noting that abstention was applicable to the
16 plaintiffs' challenges to operation of the Florida state public
17 defender offices "to the extent the complaint alleged present and
18 continuing constitutional deprivations due to the representation
19 appellants were receiving in pending state appeals proceedings");
20 see also Kaufman v. Kaye, 466 F.3d 83, 86-87 (2d Cir. 2006)
21 (holding that requested declaratory relief in challenged
22 assignment procedures in New York court system interfered with
23 ongoing administration of the court system because the court

24
25
26 ⁸ The court notes that plaintiffs' contention is
27 incongruous with their allegations and arguments relating to
28 injury. The named minor plaintiffs allege that the excessive
judicial and attorney caseloads prevented them from receiving
services or process. A finding in favor of the named plaintiffs
would directly affect the proceedings of those plaintiffs.

1 could not resolve the issues raised without resolving the same
2 issues as to the subsequent remedy chosen by the state).

3 Further, the broad and ill-defined injunctive relief
4 requested by plaintiffs would impact the conduct of the
5 proceeding themselves, not just the body charged with initiating
6 the proceedings. See Joseph A., 275 F.3d at 1269. If the court
7 finds constitutional or statutory violations based upon the
8 amount of time or resources spent on juvenile dependency court
9 cases, an injunction directed to remedying those violations would
10 require the court to ensure that in each case the child was
11 receiving certain services or procedures that the court has
12 declared constitutional. Enforcement could not simply end with a
13 policy directive to the Judicial Council, the AOC, or the
14 Sacramento Superior Court, but would require monitoring of its
15 administration.

16 Indeed, plaintiff contemplates such relief, as illustrated
17 by their submission of a consent decree in a Northern District of
18 Georgia case, Kenny A. v. Perdue, which they contend demonstrates
19 a "straightforward, easily enforceable" remedy. (Pls.'
20 Supplemental Opp'n, filed Nov. 22, 2009, at 4.) Specifically,
21 the proffered consent decree requires that defendants ensure that
22 Child Advocate Attorneys have a maximum caseload and that the
23 County will hire a specified number of additional attorneys
24 within certain time periods. (Ex. A. to Decl. of Jonathan M.
25 Cohen ("Consent Decree"), filed Nov. 20, 2009, at 3-4.) The
26 decree also requires that defendants provide documents and
27 information to a "Compliance Agent" regarding the caseload and
28 number of attorneys, training and CLE records for those

1 attorneys, performance reviews and evaluations for those
2 attorneys, and complaints of inadequate and ineffective legal
3 representation. (Id. at 4-5.) The appointed "Compliance Agent"
4 is then responsible for undertaking an independent fact-finding
5 review of the parties' obligations, issuing a "Compliance
6 Report," and reviewing or reporting any curative plans. (Id. at
7 6.) The Compliance Report must then be filed in federal court.
8 (Id. at 7.) Pursuant to certain requirements, the parties could
9 challenge non-compliance and seek enforcement of the decree in
10 federal court. (Id. at 8-9.)

11 The court disagrees with plaintiffs' characterization that
12 such a decree is straightfoward and easily enforceable. First,
13 the court has grave concerns about both the effectiveness and the
14 enforceability of the relief accorded. In this case, plaintiffs
15 allege violations arising from excessive caseloads of both
16 attorneys and judicial officers/judges and request injunctive
17 relief aimed at both of these problems. An order providing for
18 the allocation of more attorneys and judges to the dependency
19 court system and maximum caseloads presumes that such measures
20 would redress the problems of inadequate representation as
21 alleged in the complaint, which ignores other issues of
22 administrative efficiencies, resource management, and possible
23 physical constraints that are implicated by plaintiffs' claims.
24 However, *assuming arguendo*, that plaintiffs could support this
25 presumption through proof, the question remains how the court
26 would enforce such an order. Should the court order that court-
27 appointed representation cannot be granted if attorney caseloads
28 exceed the mandated maximum? Should the court suspend dependency

1 court proceedings until defendants are able to hire adequately
2 trained attorneys to represent children in these proceedings?
3 Should the court order that dependency court judicial
4 officers/judges simply should decline to hear cases that would
5 require them to exceed their maximum caseload? If state courts
6 refuse to comply with the court's maximum caseload requirements,
7 should the federal court impose sanctions on the state court
8 judge or officials for contempt? Would the court hold the Chair
9 of the Judicial Council or the Presiding Judge of the Superior
10 Court of Sacramento County in contempt for noncompliance due to
11 state budgetary limitations?⁹ These questions necessarily
12 implicate the importance of the state's interest in adjudicating
13 these matters and the ability of the court to enforce its own
14 orders without violating well-established principles of
15 federalism and comity. See Joseph A., 275 F.3d at 1267-72
16 (holding that litigation to enforce consent decree raised Younger
17 abstention issues); see also Laurie Q., 304 F. Supp. 2d at 1204-
18 05 (holding that in order to cure the juvenile court's alleged
19 failure to review case plans in a timely fashion, the court would
20 be compelled "to either spur the Juvenile court by injunction, or
21 even take the matter completely out of its hands" and thus,
22 engage in the type of interference criticized by the Ninth
23 Circuit in City of Tucson, 255 F.3d 965).

24 Second, the proffered periodic reporting requirements,
25 standing alone, "constitute a form of monitoring of the operation
26

27 ⁹ See Luckey, 976 F.2d at 679 ("Avoidance of this
28 unseemly conflict between state and federal judges is one reason
for O'Shea and Younger.")

1 of state court functions that is antipathetic to established
2 principles of comity." O'Shea, 414 U.S. at 501. The Supreme
3 Court has explicitly disapproved of an injunction aimed at
4 controlling or preventing the occurrence of specific events in
5 future state proceedings because it would require "the continuous
6 supervision by the federal court over the conduct [of defendants]
7 in the course of future . . . proceedings involving any members
8 of the . . . broadly defined class." Id. While the reporting
9 requirements may not impose an undue burden in their creation,
10 the underlying question is whether a federal court should order
11 such reports at all. See Luckey, 976 F.2d at 678 n.4; see also
12 Anthony v. Council, 316 F.3d 412, 421 (3d Cir. 2003) (abstaining
13 under Younger where federal relief would disrupt the New Jersey
14 court system and lead to federal monitoring). The principles
15 underlying both O'Shea and Younger persuade the court that it
16 should not.

17 Further, the court finds plaintiffs' reliance on the
18 reasoning of Kenny A. unpersuasive. See 218 F.R.D. 277. As an
19 initial matter, the facts considered by the Kenny A. court
20 relating to interference with ongoing state proceeding are
21 different from the facts that must be considered by the court in
22 this case. In Kenny A., nine foster children in the custody of
23 the Georgia Department of Human Resources filed a putative class
24 action in state court against the Governor of Georgia, the
25 Georgia Department of Human Resources and its Commissioner, the
26 counties' Department of Family and Children Services and their
27 Directors, and the counties. 218 F.R.D. at 283-84. Defendants
28 removed the case to federal court, where they asserted that the

1 court should refrain from exercising jurisdiction pursuant to
2 Younger. Id. at 284-85. The court held that defendants waived
3 their right to raise Younger abstention by removing the case to
4 federal court; accordingly, the court's cursory analysis of the
5 applicability of Younger abstention is merely dicta. Id. at 285.
6 However, the court reasoned that the federal action would not
7 interfere with the juvenile proceedings because the declaratory
8 and injunctive relief was not directed at the plaintiffs' review
9 hearings, at Georgia's juvenile courts, juvenile court judges, or
10 juvenile court personnel. Id. at 286. Rather, the court
11 emphasized that plaintiffs' alleged violations arose out of the
12 (1) excessive numbers of cases assigned to inadequately trained
13 and poorly supervised case workers (not lawyers); (2) failure to
14 identify and develop a sufficient number of foster homes; (3)
15 failure to identify adult relatives who could care for
16 plaintiffs; (4) failure to provide relevant information and
17 support services to foster parents; (5) failure to develop
18 administrative controls; (6) failure to provide timely and
19 appropriate permanency planning; (7) placement in dangerous,
20 unsanitary, and inappropriate homes; (8) failure to provide
21 appropriate mental health, medical, and educational services; and
22 (9) separation of teenage mothers in foster care from their own
23 children. Id. The court held that remedying these failures
24 would not interfere in any way with ongoing juvenile court
25 proceedings. Id.

26 Conversely, in this case, plaintiffs' claims are directed at
27 the fairness and efficacy of the dependency courts and counsel
28 arising out of excessive caseloads. As such, unlike the court's

1 characterization of the claims in Kenny A., plaintiffs' requested
2 declaratory and injunctive relief is directed at the plaintiffs'
3 review hearings, Sacramento County's juvenile courts, juvenile
4 court judges, and juvenile court personnel. See Joseph A., 275
5 F.3d at 1272 (noting that injunctive relief directed at
6 attorneys, rather than at the court directly, does not preclude
7 Younger's application because the same underlying principles
8 apply to officers of the court).

9 Moreover, the court notes that the Kenny A. court's analysis
10 failed to address issues that the Supreme Court and other Circuit
11 courts have found important to the applicability of the first
12 element of Younger abstention. Specifically, while the Kenny A.
13 court noted that plaintiffs challenged excessive caseloads in its
14 analysis of whether there was an adequate opportunity to raise
15 federal claims, the court notably omitted this allegation from
16 its analysis of potential interference with state court
17 proceedings. See id. at 286-89. The court's focus on
18 non-lawyers and non-judicial actors in the determination of
19 whether the federal court would interfere with on-going state
20 proceedings avoided a pivotal issue of whether an analysis of the
21 constitutionality and lawfulness of allegedly excessive caseloads
22 would interfere with ongoing state court proceedings. See
23 Luckey, 976 F.2d at 679.

24 In sum, the court concludes that the declaratory and
25 injunctive relief requested by plaintiffs severely interferes
26 with the operation of state court proceedings. Any declaratory
27 relief necessarily implicates the validity of pending dependency
28 court proceedings, even if such findings are not wholly

1 determinative. Further, the requested injunctive relief would be
2 impossible to enforce without violation of established principles
3 of federalism and comity. Accordingly, the first element of
4 Younger abstention is present in this case.

5 **b. Important State Interests**

6 The parties do not dispute that this litigation implicates
7 important state interests in the care, placement, and welfare of
8 children in the Sacramento County dependency court system.

9 Indeed, the law is clear that “[f]amily relations are a
10 traditional area of state concern.” Moore, 442 U.S. at 435.
11 Further, “[p]roceedings necessary for the vindication of
12 important state policies or for the functioning of the state
13 judicial system . . . evidence the state’s substantial interest
14 in the litigation.” Middlesex County Ethics Comm., 457 U.S. at
15 432. Accordingly, the second element of Younger abstention is
16 present in this case.

17 **c. Adequate Opportunity to Present Federal Claims**

18 Plaintiffs contend that there is no adequate opportunity to
19 present their federal claims in the pending state court
20 dependency proceedings. Specifically, plaintiffs contend that
21 they “would be unable to get a fair hearing in state court
22 because the [d]efendants employ the state court judges.” (Pls.’
23 Opp’n at 21). Plaintiffs also contend that, as a practical
24 matter, they cannot press their constitutional claims in
25 dependency court because the system is overburdened.

26 “Minimal respect for state processes, of course, precludes
27 any *presumption* that the state court will not safeguard federal
28 constitutional rights.” Middlesex County Ethics Comm., 457 U.S.

1 at 431. Rather, a federal court "should assume that state
2 procedures will afford an adequate remedy, in the absence of
3 unambiguous authority to the contrary." Pennzoil Co. v. Texaco,
4 Inc., 481 U.S. 1, 15 (1987). As such, a plaintiff opposing
5 abstention bears the burden of establishing that the pending
6 state proceedings do not provide an adequate remedy for their
7 federal claims. 31 Foster Children, 329 F.3d at 1279.

8 "Where vital state interests are involved, a federal court
9 should abstain 'unless state law clearly bars the interposition
10 of the constitutional claims.'" Middlesex County Ethics Comm.,
11 457 U.S. at 423 (quoting Moore, 442 U.S. at 423); Hirsh v.
12 Justices of Supreme Court of Cal., 67 F.3d 708, 713 (9th Cir.
13 1995) ("Judicial review is inadequate *only* when state procedural
14 law *bars* presentation of the federal claims."). "The pertinent
15 inquiry is whether the state proceedings afford an adequate
16 opportunity to raise the constitutional claims." Id. (internal
17 quotations omitted). A federal court "should not exert
18 jurisdiction if the plaintiffs 'had an *opportunity* to present
19 their federal claims in the state proceedings.'" Id. at 425
20 (quoting Juidice v. Vail, 430 U.S. 327, 337 (1977)) (emphasis in
21 original). The fact that judicial review is discretionary or
22 that the claims may be raised only in state court review of
23 administrative proceedings does not amount to a procedural bar.
24 Hirsh, 67 F.3d at 713 (discretionary judicial review of the Bar
25 Court's decision provided adequate opportunity for judicial
26 review); Beltran, 871 F.2d at 783 (state appellate court review
27 of the Agricultural Labor Relations Board's decision provided
28 adequate opportunity to raise constitutional claim).

1 California courts have explicitly held that juvenile courts
2 can hear constitutional claims relating to the deficient
3 representation of counsel arising out of the unavailability of
4 adequate time and resources to represent a minor. In re. Edward
5 S., 173 Cal. App. 4th 387, 407-10 (1st Dist. 2009); see In re
6 Darlice C., 105 Cal. App. 4th 459, 463 (3d Dist. 2003) ("Where,
7 as here, the juvenile court has ordered parental rights
8 terminated, a parent has the right to seek review of claims of
9 incompetent assistance of counsel."); Laurie Q., 304 F. Supp. 2d
10 at 1206 ("California law has conferred upon the Juvenile Court
11 the sweeping power to address nearly any type of deficiency in
12 the care of a minor and order nearly any type of relief.").
13 Indeed, at least one California court has noted, that it is the
14 "paramount responsibility of a judicial officer to assure the
15 provision of a fair trial" and that a continuance of pending
16 proceedings or other adequate relief is justified where there is
17 "an adequate showing that an [attorney's] excessive caseload and
18 the limited resources [available to him] made it impossible . . .
19 to adequately represent" his client. Id.; see also 31 Foster
20 Children, 329 F.3d at 1279 (holding that available remedies were
21 adequate because the juvenile court can act to protect children
22 within its jurisdiction); J.B., 186 F.3d at 1292-93 (holding that
23 because the juvenile court was a court of general jurisdiction
24 under state law, the plaintiffs had not provided "unambiguous
25 authority" that state courts could not provide an adequate
26 remedy); Joseph A., 275 F.3d at 1274 (holding that dismissal of a
27 federal claim in dicta from a state court opinion was
28

1 insufficient to overcome the presumption that state relief was
2 available).

3 In this case, plaintiffs have failed to overcome the
4 presumption that their pending state court proceedings provide an
5 adequate opportunity for judicial review of their federal claims.
6 Rather, California law explicitly provides recourse through the
7 state court system for the federal claims raised in this
8 litigation. At oral argument, plaintiffs conceded that the state
9 dependency courts can entertain the type of federal claims
10 brought in this litigation. (Tr. of Nov. 6, 2009 Hr'g ("Tr.") at
11 43.) Further, under California law, one of the paramount
12 responsibilities of state judicial officers is the assurance that
13 parties are provided with a fair trial. Therefore, plaintiffs
14 have an alternative adequate opportunity to press their federal
15 claims.

16 Plaintiff's reliance on the D.C. Circuit's decision in
17 LaShawn A. v. Kelly, is misplaced. 990 F.2d 1319 (D.C. Cir.
18 1993.) In LaShawn A., the plaintiffs brought a child welfare
19 class action against the defendants based upon alleged
20 constitutional and statutory violations arising from "ineptness
21 and indifference, inordinate caseloads, and insufficient funds."
22 Id. at 1320. In rejecting the applicability of Younger
23 abstention, the court noted that the District of Columbia Family
24 Division had "explicitly rejected the use of review hearings to
25 adjudge claims requesting broad-based injunctive relief based on
26 federal law." Id. at 1323. Accordingly, there was no
27 alternative avenue for relief for the plaintiffs. However, as
28 set forth above, in this case it is undisputed that state courts

1 can entertain the type of federal claims brought in this
 2 litigation. As such, there is no procedural bar as was before
 3 the LaShawn A. court.¹⁰

4 Accordingly, the third element of Younger abstention is met
 5 in this case.

6 d. Exceptions to Abstention

7 Finally, plaintiffs contend that abstention is unwarranted
 8 because the judicial state officer or other state judge
 9 responsible for deciding their claims "would be placed in the
 10 position of having to rule against either the Honorable Presiding
 11 Judge in their own County or against the remaining [d]efendants .
 12 . . who establish policy governing their jobs. (Pls.' Opp'n at
 13 28.)

14
 15
 16 ¹⁰ Plaintiffs' reliance on Kenny A. is similarly misplaced
 17 as the Northern District of Georgia explicitly found that the
 18 juvenile court lacked the power to grant the relief requested by
 19 the plaintiffs. 218 F.R.D. at 287. Further, the Kenny A.
 20 court's alternative rationale, that the plaintiffs "are dependent
 21 upon an allegedly overburdened and inadequate system of legal
 representation, which prevents them from raising their claims in
 the juvenile court," is contrary to Ninth Circuit precedent,
 which, as set forth above, provides that judicial review is
 inadequate "only where there is a procedural bar to the
 presentation of federal claims. See Hirsh, 67 F.3d at 713.

22 The court is not dispassionate regarding the obstacles
 23 facing plaintiffs. However, their arguments regarding the
 24 practical impediments to judicial review run counter to explicit
 25 Supreme Court and Ninth Circuit authority on this issue. See
 26 Pennzoil, 481 U.S. at 15 ("[W]hen a litigant has not attempted to
 27 present his federal claims in related state-court proceedings, a
 28 federal court should assume that state procedures will afford an
 adequate remedy, in the absence of unambiguous authority to the
 contrary."); Hirsh, 67 F.3d at 713. Neither the Supreme Court
 nor the Ninth Circuit has held that practical impediments may
 amount to a procedural bar for purposes of Younger abstention;
 nor did the Kenny A. court cite any legal authority for its novel
 rationale. 218 F.R.D. at 287.

1 "Although a federal court is normally required to abstain if
2 the three prongs of the Younger test are satisfied, abstention is
3 inappropriate in the 'extraordinary circumstance' that the state
4 tribunal is incompetent by reason of bias." Hirsh, 67 F. 3d at
5 713 (citing Gibson v. Berryhill, 411 U.S. 564, 577-79 (1973)).
6 "Bias exists where a court has prejudged, or reasonably appears to
7 have prejudged, an issue." Kenneally v. Lungren, 967 F.2d 329,
8 333 (9th Cir. 1992).

9 The party alleging bias "must overcome a presumption of
10 honesty and integrity in those serving as adjudicators." Hirsh,
11 67 F.3d at 714. (internal quotations and citations omitted).
12 Where there is an absence of any personal or financial stake in
13 the outcome sufficient to create a conflict of interest and where
14 there is a lack of personal animosity towards the parties in the
15 proceedings, the presumption is not overcome. Vanelli v.
16 Reynolds Sch. Dist. No. 7, 667 F.2d 773, 779-80 n.10 (9th Cir.
17 1982). The Supreme Court has held that a plaintiff did not
18 sufficiently demonstrate bias when a state medical board
19 adjudicated the merits of a disciplinary action in which the
20 board itself investigated and filed charges. Withrow v. Larken,
21 421 U.S. 35, 47 (1975). The Court has also concluded that a
22 state board's prior involvement in a labor dispute with striking
23 teachers did not prevent it from deciding whether those teachers
24 should be dismissed as a result of that unlawful strike.
25 Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass'n,
26 426 U.S. 482, 497 (1976); see also Vanelli, 667 F.3d at 779-80
27 (holding that a school board reviewing its own prior decision was
28 not impermissibly biased). Similarly the Ninth Circuit has held

1 that judges are not incompetent to review findings of judicial
2 officers whom they participate in appointing. Hirsch, 67 F.3d at
3 714. The Ninth Circuit has also held that fines imposed by a
4 disciplinary board, which are paid to the same entity that pays
5 the salaries of the disciplinary board, is insufficient to
6 establish bias. Id.

7 Plaintiffs' conclusory and astonishing assertions that all
8 state court judges are biased in this matter is unsupported by
9 law or facts. Plaintiffs have not submitted any allegations or
10 argument that all state court judges and judicial officers have a
11 personal or financial stake in the litigation. Nor have
12 plaintiffs proffered any allegations or arguments relating to any
13 judge's personal animosity against them. While plaintiffs
14 contend, without any legal authority for support, that defendants
15 control policy decisions that may impact state judges, such a
16 broad and ambiguous contention does not come close to surpassing
17 the factual circumstances in which the Ninth Circuit has held the
18 presumption of bias was not overcome. As such, plaintiffs'
19 conclusory assertions are insufficient to demonstrate
20 extraordinary circumstances.

21 Therefore, because plaintiffs' claims would interfere with
22 ongoing state dependency court proceedings that implicate
23 important state interests, plaintiffs have an adequate
24 opportunity to pursue their federal claims in those proceedings,
25 and they have failed to overcome the presumption of honesty and
26 integrity in those serving as adjudicators, the court must
27 abstain from adjudicating these claims pursuant to Younger v.
28 Harris.

CONCLUSION

In conclusion, the court again acknowledges that plaintiffs' claims present a troubling depiction of the state of Sacramento County's dependency court system. The facts alleged relative to the named minor plaintiffs demonstrate a serious lack of responsiveness by the state's current system to the needs of children. However, to remedy these wrongs, this court must reallocate state financial resources, reorder state legislative priorities, and revise state judicial policies. This proposed federal judicial takeover of these functions of state government not only strikes at the core principles of federalism and comity, but assumes an institutional competence that a federal district court simply does not possess.

Therefore, for the foregoing reasons, defendants' motion to dismiss is GRANTED.

IT IS SO ORDERED.

DATED: January 11, 2010



FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE

EXHIBIT B

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

CHILDREN'S ADVOCACY INSTITUTE
University of San Diego School of Law
Robert C. Fellmeth (SBN 49897)
Edward Howard (SBN 151936)
Christina McClurg Riehl (SBN 216565)
5998 Alcala Park
San Diego, California 92110
Telephone: (619) 260-4806
Facsimile: (619) 260-4753

WINSTON & STRAWN, LLP
Jonathan M. Cohen (SBN: 168207)
Robyn Callahan (SBN: 225472)
101 California Street, 39th Floor
San Francisco, CA 94111-5894
Telephone: (415) 591-1000
Facsimile: (415) 591-1400

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

E.T., K.R., C.B. and G.S., by their next friend,
Frank Dougherty, on their behalf and on behalf
of all those similarly situated,

Plaintiffs,

v.

RONALD M. GEORGE, Chair of the Judicial
Council of California, in his official capacity;
WILLIAM C. VICKREY, Administrative
Director of the Administrative Office of the
Courts of the Judicial Council, in his official
capacity; and JAMES M. MIZE, Presiding
Judge of the Superior Court of the County of
Sacramento, in his official capacity,

Defendants.

Case No. 2:09-CV-01950-FCD-DAD
Hon. Frank C. Damrell, Jr.

REPRESENTATION STATEMENT

CLASS ACTION

Pursuant to Federal Rule of Appellate Procedure 12(b) and Circuit Rule 3-2(b), the following
is the identity of the named Plaintiffs/Appellants and Defendants in this matter, and the name,
address, and telephone number of their known counsel of record.

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

1 Plaintiffs: E.T., K.R., C.B. and G.S., by their next friend, Frank
2 Dougherty, on their behalf and on behalf of all those similarly
situated

3 Counsel for Plaintiffs: Jonathan M. Cohen (SBN: 168207)
4 jcohen@winston.com
5 Robyn Callahan (SBN: 225472)
6 rcallahan@winston.com
7 WINSTON & STRAWN, LLP
8 101 California Street, 39th Floor
9 San Francisco, CA 94111-5894
10 Telephone: (415) 591-1000
11 Facsimile: (415) 591-1400
12
13 Robert C. Fellmeth (SBN 49897)
14 Edward Howard (SBN 151936)
15 Christina McClurg Riehl (SBN 216565)
16 CHILDREN'S ADVOCACY INSTITUTE
17 University of San Diego School of Law
18 5998 Alcala Park
19 San Diego, California 92110
20 Telephone: (619) 260-4806
21 Facsimile: (619) 260-4753

22 Defendants: WILLIAM C. VICKREY, Administrative Director of the
23 Administrative Office of the Courts of the Judicial Council, in
his official capacity

24 Counsel for Defendants: Robert A. Naeve (State Bar No. 106095)
25 rnaeve@jonesday.com
26 Brian M. Hoffstadt (State Bar No. 187003)
27 bhoffstadt@jonesday.com
28 JONES DAY
3161 Michelson Drive, Suite 800
Irvine, California 92612
Telephone: (949) 851-3939
Facsimile (949) 553-7539

21 Dated: February 1, 2010

WINSTON & STRAWN LLP

23 By: /s/ Jonathan M. Cohen
Jonathan M. Cohen
Robyn Callahan
Attorneys for Plaintiffs

27 SF:272495.1

Dependency Counsel Caseload Standards

A REPORT TO THE CALIFORNIA
LEGISLATURE

APRIL 2008



JUDICIAL COUNCIL
OF CALIFORNIA

ADMINISTRATIVE OFFICE
OF THE COURTS

DEPENDENCY COUNSEL CASELOAD STANDARDS

A REPORT TO THE CALIFORNIA LEGISLATURE

APRIL 2008



**JUDICIAL COUNCIL
OF CALIFORNIA**

ADMINISTRATIVE OFFICE
OF THE COURTS

This report is also available on the California Courts Web site:
<http://www.courtinfo.ca.gov/programs/cfcc/resources/publications/articles.htm>

For additional copies or more information about this report, please call the Center for Families, Children & the Courts at 415-865-7739, or write to:

Judicial Council of California
Administrative Office of the Courts
Center for Families, Children & the Courts
455 Golden Gate Avenue
San Francisco, California 94102-3688

Printed on recycled and recyclable paper.

**Judicial Council of California
Administrative Office of the Courts**

Hon. Ronald M. George
*Chief Justice of California and
Chair of the Judicial Council*

William C. Vickrey
Administrative Director of the Courts

Ronald G. Overholt
AOC Chief Deputy Director

Center for Families, Children & the Courts Staff

Diane Nunn
Director

Charlene Depner, Ph.D.
Assistant Director

Lee Morhar
Assistant Director

Leah Wilson
Supervising Court Services Analyst

JUDICIAL COUNCIL OF CALIFORNIA

Hon. Ronald M. George

*Chief Justice of California and
Chair of the Judicial Council*

Hon. George J. Abdallah Jr.

*Judge of the Superior Court of California,
County of San Joaquin*

Mr. Raymond G. Aragon

Attorney at Law, San Diego

Hon. Marvin R. Baxter

Associate Justice of the California Supreme Court

Mr. Anthony P. Capozzi

Attorney at Law, Fresno

Hon. Ellen M. Corbett

Member of the California State Senate

Hon. Peter Paul Espinoza

*Assistant Supervising Judge of the Superior Court of
California, County of Los Angeles*

Hon. Terry B. Friedman

*Judge of the Superior Court of California,
County of Los Angeles*

Mr. Thomas V. Girardi

Attorney at Law, Los Angeles

Hon. Brad R. Hill

*Associate Justice of the Court of Appeal,
Fifth Appellate District*

Hon. Richard D. Huffman

*Associate Justice of the Court of Appeal,
Fourth Appellate District, Division One*

Hon. Jamie A. Jacobs-May

*Assistant Presiding Judge of the Superior Court of
California, County of Santa Clara*

Hon. Dave Jones

Member of the California State Assembly

Hon. Carolyn B. Kuhl

*Judge of the Superior Court of California,
County of Los Angeles*

Hon. Thomas M. Maddock

*Judge of the Superior Court of California,
County of Contra Costa*

Hon. Charles W. McCoy, Jr.

*Assistant Presiding Judge of the Court of California,
County of Los Angeles*

Hon. Barbara J. Miller

*Judge of the Superior Court of California,
County of Alameda*

Hon. Eileen C. Moore

*Associate Justice of the Court of Appeal,
Fourth Appellate District, Division Three*

Hon. Dennis E. Murray

*Presiding Judge of the Superior Court of California,
County of Tehama*

Ms. Barbara J. Parker

Chief Assistant City Attorney, Oakland

Hon. James Michael Welch

*Judge of the Superior Court of California,
County of San Bernardino*

ADVISORY MEMBERS

Hon. Ronald E. Albers

*Commissioner of the Superior Court of California,
County of San Francisco*

Ms. Deena Fawcett

*Clerk/Administrator, Court of Appeal,
Third Appellate District*

Hon. Ira R. Kaufman

*Presiding Judge of the Superior Court of California,
County of Plumas*

Mr. Michael D. Planet

*Executive Officer, Superior Court of California,
County of Ventura*

Mr. Michael M. Roddy

*Executive Officer, Superior Court of California,
County of San Diego*

Hon. Nancy Wieben Stock

*Presiding Judge of the Superior Court of California,
County of Orange*

Ms. Sharol Strickland

*Executive Officer, Superior Court of California,
County of Butte*

SECRETARY

Mr. William C. Vickrey

Administrative Director of the Courts

DRAFT PILOT PROGRAM IMPLEMENTATION COMMITTEE

Hon. Richard D. Huffman

*Associate Justice of the Court of Appeal,
Fourth Appellate District, Division One and
Chair of the DRAFT Pilot Program Implementation
Committee*

Ms. Leah Wilson

*Project Manager, Administrative Office of the
Courts/Center for Families, Children & the Courts*

Hon. Thomas Adams

*Juvenile Court Judge, Superior Court of California,
County of Santa Barbara*

Hon. Clifford (Kip) R. Anderson III

*Judge of the Superior Court of California,
County of Santa Barbara*

Hon. Cynthia Bashant

*Juvenile Court Judge, Superior Court of California,
County of San Diego*

Mr. Gary M. Blair

*Executive Officer, Superior Court of California,
County of Santa Barbara*

Mr. Bob Bradley

*Director, Finance and Contracts,
Superior Court of California, County of San Diego*

Mr. Alex Calvo

*Executive Officer, Superior Court of California,
County of Santa Cruz*

Ms. Diane Donnelly

*Administrative Assistant, Superior Court of
California, County of Mendocino*

Ms. Nancy Eberhardt

*Director, Juvenile Court Operations,
Superior Court of California, County of San Diego*

Ms. Rebecca Fleming

*Chief Financial Officer, Superior Court of
California, County of Stanislaus*

Hon. Arthur Garcia

*Presiding Juvenile Court Judge, Superior Court of
California, County of Santa Barbara*

Ms. Mona Gieck

*Senior Administrative Assistant, Superior Court of
California, County of Imperial*

Mr. Jose Octavio Guillen

*Executive Officer, Superior Court of California,
County of Imperial*

Mr. Wayne Hall

*Executive Officer, Superior Court of California,
County of San Luis Obispo*

Mr. Randy Henderson

*Dependency Court Administrator, Superior Court of
Los Angeles, County of Los Angeles*

Hon. Randolph Heubach

*Juvenile Court Commissioner, Superior Court of
California, County of Marin*

Hon. Susan D. Huguenor

*Presiding Juvenile Court Judge, Superior Court of
California, County of San Diego*

Ms. Marilyn James

*Chief Evaluation & Planning Officer, Superior Court
of California, County of San Diego*

Ms. Rosa Junqueiro

*Executive Officer, Superior Court of California,
County of San Joaquin*

Ms. Kristi Kussman

*Assistant Executive Officer, Superior Court of
California, County of Imperial*

Hon. Leonard LaCasse

*Presiding Juvenile Court Judge, Superior Court of
California, County of Mendocino*

Mr. Don Lundy

*Administrator, Superior Court of California,
County of Stanislaus*

Ms. Beverly MacLaren

*Executive Assistant to the Presiding Judge, Superior
Court of California, County of Orange*

Hon. Cindee F. Mayfield

*Presiding Judge of the Superior Court of California,
County of Mendocino*

Hon. Linda A. McFadden

*Presiding Juvenile Court Judge, Superior Court of
California, County of Stanislaus*

Hon. Heather D. Morse

*Presiding Judge of the Superior Court of California,
County of Santa Cruz*

Hon. Michael Nash

*Presiding Juvenile Court Judge, Superior Court of
California, County of Los Angeles*

Hon. John Parker

*Presiding Juvenile Court Judge, Superior Court of
California, County of San Joaquin*

Ms. Margaret Pendergast

Attorney at Law, San Francisco

Hon. Roger T. Picquet

*Presiding Judge of the Superior Court of California,
County of San Luis Obispo*

Ms. Kathleen Richards

Attorney at Law, San Francisco

Hon. Janis Sammartino

*Presiding Judge of the Superior Court of California,
County of San Diego*

Ms. Sue Shackelford

*Budget Administrator, Superior Court of California,
County of Los Angeles*

Mr. Tom Slocumb

Attorney at Law, Oakland

Mr. Benjamin D. Stough

*Executive Officer, Superior Court of California,
County of Mendocino*

Mr. Michael Tozzi

*Executive Officer, Superior Court of California,
County of Stanislaus*

Ms. Kim Turner

*Executive Officer, Superior Court of California,
County of Marin*

Hon. Juan Ulloa

*Supervising Family and Juvenile Court Judge,
Superior Court of California, County of Imperial*

Hon. Nancy B. Williamsen

*Juvenile Court Commissioner, Superior Court of
California, County of Stanislaus*

APPELLATE ATTORNEYS

Ms. Carole Greeley

Attorney at Law, Fairfield

Mr. Alan Siraco

Attorney at Law, Santa Rosa

Mr. Harry Zimmerman

Attorney at Law, Albuquerque, New Mexico

Executive Summary

Senate Bill 2160 (Stats. 2000, ch. 450) amended section 317 of the Welfare Institutions Code to require that (1) counsel be appointed for children in almost all dependency cases; (2) appointed counsel have caseloads and training that ensure adequate representation; and (3) the Judicial Council promulgate rules establishing caseload standards, training requirements, and guidelines for appointment of counsel for children. In 2001, the Judicial Council took action to implement SB 2160. In addition to adopting a rule that mandated the appointment of counsel for children subject to dependency proceedings in all but the rarest of circumstances, the council directed staff to undertake a study to identify caseload standards for attorneys representing both parents and children.

Pursuant to the legislative mandate, a comprehensive Caseload Study of court-appointed dependency counsel was conducted in 2002. A key premise underlying the Caseload Study was that dependency counsel are motivated to provide quality legal services but may be constrained in so doing by workload levels. The Caseload Study attempted to quantify quality representation and resulted in a recommendation that a maximum caseload of 141 clients per full-time dependency attorney be the base-level standard of performance; a maximum caseload of 77 clients was identified as necessary for an optimal, or best practice, standard of performance.¹ The Caseload Study results compared to a statewide average, at the onset of the caseload study, of 273 clients per attorney.

Due to concerns about the fiscal viability of either the basic or optimal caseload standard, as well as a desire to ensure that attorneys were sufficiently trained and supported, such that reduced caseloads would actually result in improved practice, the Judicial Council did not adopt the recommended maximum caseload standard in 2002, but instead directed Administrative Office of the Courts' staff to pilot implementation as part of the Dependency Representation, Administration, Funding, and Training (DRAFT) program. The DRAFT program, initiated in July 2004, was established by the Judicial Council as a response to a number of co-occurring challenges, including inconsistent quality of attorney representation, escalating costs, and difficulty in securing sufficient numbers of attorneys to provide legal services to parents and children in the dependency system. DRAFT centralizes the administration of court-appointed counsel services within the Administrative Office of the Courts, for courts that voluntarily participate in the program. Centralized administration has enabled systematic caseload reduction and compensation standard implementation, as well as the provision of coordinated training and technical assistance efforts designed to improve the legal services provided to dependent children and their parents.

¹ It should be noted that national standards, promulgated by the American Bar Association and the National Association of Counsel for Children, recommend caseload maximums of 100 clients per full-time practitioner. This recommendation was followed by the U.S. District Court, Northern District of Georgia in *Kenny A. ex. Rel. Winn v. Perdue*, 218 F.R.D. 277 (N.D. Ga. 2005) in a decision that mandated a 100-client caseload maximum for dependency attorneys in Georgia.

Under the auspices of the DRAFT program, the basic caseload standard was modified to reflect the impact of nonattorney staffing (namely investigators and social workers) on requisite attorney time.² These modifications were necessary in order to account for the important work of investigators and social workers, whose services enhance the advocacy of court-appointed counsel and also serve to reduce the amount of attorney time needed on discrete aspects of any given case. The modified caseload standard is 188 clients per attorney (versus 141), with a 0.5 FTE investigator/social worker complement for each full-time attorney position. It is important to emphasize the underlying meaning of the caseload figure – the figure reflects the maximum number of cases that a full-time attorney may carry based upon assumptions regarding the type, frequency, and duration of tasks to be performed in the course of representation. The Judicial Council adopted the revised caseload standard in October 2007.

Although a caseload standard has been formally adopted, there is widespread recognition that there is not currently sufficient funding available to implement that standard; the estimated cost of implementation totals \$57.14 million, a 58 percent increase over the current state appropriation for court-appointed counsel services.

Although the initial investment would be significant, there is evidence that statewide implementation of the caseload standard would reduce annual program growth after initial implementation costs were realized. With respect to DRAFT implementation, average annual provider increases subsequent to the initial contract year have been *less* than the State Appropriations Limit (SAL); further, annual contract increases in DRAFT courts average less than half the rate realized in non-DRAFT courts.³

Further, investment in attorney representation has initially proven to be a cost effective way of improving permanency and well-being outcomes for children and families in the dependency system. As highlighted by a recent *San Jose Mercury News* series, current funding levels result in underpaid and overworked lawyers who often cannot effectively and appropriately advocate for their parent and child clients. Viewed in that light, the recommended caseload standard and related implementation costs are more than reasonable, and in fact reflect the minimum funding level needed to provide adequate legal services. The caseload standard adopted by the Judicial Council is significantly higher than the caseload standards promulgated by the American Bar Association and numerous other legal advocacy organizations. While not optimal, the California judicial branch caseload standard reflects a pragmatic fiscal realism regarding the court-appointed counsel program. At the same time, the caseload standard has been thoughtfully conceived so as to ensure improved outcomes.

² The basic, as opposed to optimal, caseload standard was piloted as part of DRAFT implementation; although this figure is significantly higher than national standards, fiscal realities dictated utilization of the basic standard.

³ SAL increases have averaged between four and five percent. The average annual contract increase in DRAFT courts is three percent; in non-DRAFT courts, eight percent.

The link between caseload reduction, compensation standardization, and quantifiable, measurable outcome improvements for children and families has been initially established through evaluation of the DRAFT program. DRAFT attorneys convened in June 2006 to review the federal outcome measures being used to evaluate state child welfare systems and were asked to identify those measures most directly affected by attorney performance; specifically, attorneys were asked to identify those outcomes most likely to be affected given reasonable caseloads. The following outcome measures were selected by participating attorneys:

- Time to reunification⁴
- Reentry⁵
- Time to guardianship⁶
- Placement with kin
- Placement with some or all siblings

The analysis of the effect of the DRAFT program on the selected outcome measures was based on a comparison of DRAFT and non-DRAFT courts. At the onset of the program, the DRAFT courts significantly underperformed non-DRAFT courts in all selected measures other than sibling placement. At the conclusion of DRAFT's initial three-year pilot period, DRAFT courts outperformed non-DRAFT courts on several measures, including kin placement and reunification rates. Most importantly, DRAFT courts improved during the pilot period on all measures, other than sibling placement, at rates exceeding their non-DRAFT counterparts:

Reunification		
	October 2003 – September 2004	July 2005 – June 2006
DRAFT Counties	34.7%	37.1%
	Change	2.4%
Non-DRAFT Counties	40.9%	42.9%
	Change	2.0%

Reentry		
	October 2002 – September 2003	January 2005 – December 2005
DRAFT Counties	12.1%	11.2%
	Change	-0.9%
Non-DRAFT Counties	12.0%	12.8%
	Change	0.8%

⁴ Of children who entered foster care during a specified 12-month period, the percent that were reunified within 12 months of entry into care.

⁵ Of children who entered foster care during the specified 12-month period and were reunified within 12 months of entry, the percent that reentered care within 12 months of reunification.

⁶ Of children who entered foster care during a specified 12-month period, the percent who exited to guardianship within 24 months of entry into care.

Guardianship		
	October 2002 – September 2003	January 2004 – December 2003
DRAFT Counties	2.3%	2.5%
	Change	0.2%
Non-DRAFT Counties	4.3%	3.7%
	Change	-0.6%

Placement with Kin		
		July 2007
DRAFT Counties	39.8%	42.2%
	Change	2.4%
Non-DRAFT Counties	36.6%	37.0%
	Change	0.4%

These outcome improvements, though modest, represent potentially significant aggregate cost savings with respect to out-of-home placement costs; importantly, these improvements were realized even absent full implementation of the recommended caseload standard – the average caseload in DRAFT courts is 191, and the full investigator complement has not been achieved. It remains to be seen at what level systemic outcome improvements might be realized should the resources needed to fully fund the caseload standard be provided.

Conclusion

The Judicial Council has made a tremendous effort in recent years to address the related problems of overworked, underpaid court-appointed counsel and inconsistent, and in some instances poor-quality, representation. The Judicial Council's efforts have occurred even in light of considerable fiscal constraints; those constraints have necessarily called for a measured and thoughtful approach. Initial work in this regard centered on the establishment of caseload standards; initial caseload standards developed pursuant to legislation were subsequently modified as part of the Judicial Council's DRAFT program. Attorney compensation standards were also developed under the auspices of the DRAFT program; implementation of both the caseload and compensation standards would require a resource infusion of approximately \$57 million. While this level of funding is significant, initial evaluation results suggest a correlation between caseload reduction and improved permanency and well-being outcomes for dependent children and their families. Thus it is expected that implementation of caseload standards that reduce caseloads will improve the quality of representation and result in the saving of costs related to out-of-home placements. This relationship will be explored by the Judicial Council in subsequent work involving expansion of the DRAFT program to include additional court systems in the budget year.

INTRODUCTION

This report is in response to the following requirement:

On or before January 1, 2008, the Judicial Council shall report to the Legislature the following information regarding caseload standards established pursuant to Section 317 of the Welfare and Institutions Code: (a) Steps taken and progress made toward developing caseload standards; (b) The efforts made and the efficacy of putting caseload standards in place for counsel representing dependent children; (c) any resources, support, or recommendations that might help propel these efforts and ensure implementation statewide of reasonable caseloads for dependency attorneys.⁷

This report outlines the Judicial Council's efforts to develop and implement caseload standards and to identify the resources needed to ensure reasonable caseloads for dependency attorneys statewide.

CASELOAD STUDY AND DEPENDENCY COUNSEL CASELOAD STANDARDS

Senate Bill 2160 (Stats. 2000, ch. 450) amended section 317 of the Welfare and Institutions Code to require that (1) counsel be appointed for children in almost all dependency cases; (2) appointed counsel have caseloads and training that ensure adequate representation; and (3) the Judicial Council promulgate rules establishing caseload standards, training requirements, and guidelines for appointment of counsel for children. In 2001, the Judicial Council took action to implement SB 2160. In addition to adopting a rule that mandated the appointment of counsel for children subject to dependency proceedings in all but the rarest of circumstances, the council directed staff to undertake a study to identify caseload standards for attorneys representing both parents and children, including an analysis of multiple service delivery models for dependency counsel.

In 2002, the AOC contracted with the American Humane Association to conduct a quantitative caseload study (Caseload Study) of trial-level court-appointed dependency counsel based on an assessment of the duties required as part of representation and the amount of time needed to perform those duties.

The Caseload Study was designed to identify maximum per-attorney caseloads for court-appointed dependency counsel based upon quantifiable standards of practice.⁸ Caseload Study results indicated an *optimal practice standard* maximum caseload of 77 cases or clients per full-time dependency attorney and a *basic practice standard* caseload of 141 clients per full-time dependency attorney; these recommended standards compared to a statewide average number, at the onset of the Caseload Study, of 273 clients per attorney. For purposes of the

⁷ This language was proposed as part of AB 2480 (Evans) as it was amended on May 26, 2006. Subsequent amendments removed this language from the bill before it was chaptered, but the Judicial Council agreed to provide a report to the Legislature on a voluntary basis that would be consistent with this language.

⁸ Unless otherwise noted, all references to court-appointed counsel refer to trial counsel; the Caseload Study did not address appellate counsel practice or caseload standards.

Caseload Study results, one client is equivalent to one case; each sibling of a sibling group is counted as an individual case.⁹

A detailed description of the Caseload Study is provided as Appendix 1.

DRAFT Pilot Program: Caseload Standard Adjustment and Compensation Model Development

Because of the obvious fiscal implications of caseload reduction as significant as that implicated by the Caseload Study results, and given the fact that the impact of nonattorney support staffing on attorney case-carrying capacity was not addressed by the Caseload Study, the Judicial Council did not immediately adopt a caseload standard pursuant to the Caseload Study results, but instead directed staff to pilot the basic-practice standard, or caseload reduction, as part of the Dependency Representation, Administration, Funding, and Training (DRAFT) pilot program.¹⁰

The goal of the DRAFT pilot program, originally implemented for a three-year period beginning July 1, 2004 and recently made permanent by the Judicial Council, is to improve the quality of attorney representation for parents and children in dependency cases in as cost effective a manner as possible. DRAFT comprises a partnership between the Administrative Office of the Courts (AOC) and participating courts, wherein court-appointed counsel are jointly selected by the courts and the AOC, with the AOC entering into direct contractual relationships with selected attorney providers. One of the initial challenges faced by the Implementation Committee charged with overseeing DRAFT was to develop an adjusted caseload standard reflecting the impact of nonattorney staffing, specifically social workers and investigators (both groups hereinafter referred to, collectively, as investigators), on attorney case-carrying capacity.

Caseload Standard Adjustment

The caseload standard adjustment process initially involved identifying those attorney tasks most commonly performed by investigators and determining the attorney time-savings associated with investigator activity.

In August 2005, a survey, designed to solicit information about the use of investigators, was sent to organizational juvenile dependency providers (e.g. for-profit law firms, nonprofit organizations, and government agencies) throughout the state. Responses were received from 21 of the 48 organizations to which the survey was sent. Among the questions asked of organizations was whether they employed investigators and, if so, what tasks those investigators performed that would, absent such staff, be performed by attorneys.

⁹ Comments were solicited regarding the determination that one child was equivalent to one case (and thus that sibling groups would be treated as individual cases). Feedback supported the notion that, while sibling groups generally require less attorney time than an equal number of unrelated cases, the numerous confounding variables affecting the workload associated with sibling representation suggest a one-to-one correlation.

¹⁰ Staff recommended piloting of the basic, as opposed to the optimal, caseload standard because of concerns about the fiscal viability of optimal standard implementation. It should be noted that national standards, promulgated by the American Bar Association and the National Association of Counsel for Children, recommend caseload maximums of 100 clients per full-time practitioner. This recommendation was followed by the U.S. District Court, Northern District of Georgia in *Kenny A. ex. Rel. Winn v. Perdue*, 218 F.R.D. 277 (N.D. Ga. 2005) in a decision that mandated a 100-client caseload maximum for dependency attorneys in Georgia.

Organizational provider survey results were used to modify the recommended caseload standard as follows:

A. Identification of Support Staff Tasks

First, attorney tasks from the Caseload Study were identified as “Support Staff Tasks” if at least three organizations indicated that investigators performed that task. Following is a list of tasks, as classified in the Caseload Study (see Appendix 1) that meet that criterion:

- Notes to file
- Communicate with client in person
- Communicate with client
- Communicate with child welfare worker
- Communicate with others
- Investigation
- Other case management activity

B. Modification of Caseload Standard Based on Support Staff Tasks

Second, the time attributed to Support Staff Tasks in the caseload standard model was adjusted to reflect the contribution of support staff to the completion of those specified tasks. The following illustrative scenarios are based on the sample task outlined in Table 10, Communicate With Client in Person, at the Case Phase Beginning Through Detention Hearing:

Table 10: Sample Task From Caseload Study	
Case Phase	Beginning Through Detention Hearing
Task	Communicate With Client in Person
Task Duration	38 minutes
Task Frequency	83 percent (or the task should occur under the Caseload Standard model in 83 percent of cases)
Weighted Task Duration	32 minutes (38 minutes multiplied by 83 percent)

Scenario 1: 25 Percent Support Staff Completion

If it is assumed that investigators complete the task “Communicate With Client in Person” 25 percent of the time, then it is assumed that the attorney completes the task 75 percent of the time. The amount of attorney time required for this task is then multiplied by 75 percent; the frequency of the task remains constant. Therefore, the weighted attorney time for the task “Communicate With Client in Person” when investigators complete the task 25 percent of the time, is 24 (38 minutes x 0.75 x 0.83), as opposed to 32, minutes.

Scenario 2: 50 Percent Support Staff Completion

If it is assumed that investigators complete the task “Communicate With Client in Person” 50 percent of the time, then it is assumed that the attorney completes the task 50 percent of the time. The amount of attorney time required for this task is multiplied by 50 percent; the frequency of the task remains constant. Therefore, the weighted time for the task “Communicate With Client in Person” when investigators complete the task 50 percent of the time is 16 (38 minutes x 0.50 x 0.83), as opposed to 32, minutes.

Scenario 3: 100 Percent Support Staff Completion

If it is assumed that investigator staff completes the task “Communicate With Client in Person” 100 percent of the time, then the amount of attorney time required for the task would be 0 minutes.

The scenarios depicted above were developed for each Support Staff Task, and for each case phase, in order to derive a composite adjusted caseload standard reflecting the impact of support staff utilization.

Using this methodology, four adjusted caseload standards were derived, each one reflecting different levels of Support Staff Task time that could be attributed to investigators versus attorneys, as follows:

Table 11: Caseload Levels With Investigator Support	
Time Attributed to Investigators	Caseload per FTE Attorney¹¹
0% (Basic Practice Caseload Standard)	141
25%	161
50%	188
75%	228
100%	299

Organizations providing dependency representation throughout the state were surveyed to determine the ratio of investigator staffing necessary to achieve the percentages of investigator contribution outlined above. That is, they were asked how many investigators per full-time attorney would be required to complete the Support Staff Tasks at the identified rate. Table 12 on the following page summarizes organizational provider responses.

¹¹ The impact of Support Staff Tasks on the caseload standard is nonlinear due to the complexity of the underlying data.

Table 12: Investigator Staffing Ratios		
Investigator Rate¹²	Investigator Staffing Required¹³	Maximum Caseload¹⁴
0%	0	141
25%	0.5	161
50%	0.75	188
75%	1.0	228
100%	1.5	299

Subsequent to the development of the adjusted caseload standard, staff analyzed workload data submitted by attorneys and investigators under DRAFT contracts.¹⁵ That data analysis resulted in staff modification of the model; specifically, staff found that a 0.5 investigator position more appropriately correlates with an attorney caseload of between 188 and 200 clients. The revised caseload standard reflects staff's findings and is highlighted in gray in the table on the next page. The caseload increase associated with the addition of investigator staffing essentially means that a 0.5 FTE investigator increases an attorney's case-carrying capacity by 33 percent. Because of the cost differential between attorney and investigator salaries, the use of investigator staffing to reduce the number of attorneys needed in any given jurisdiction is fiscally prudent. Further, the use of investigators represents an important enhancement to the services that appointed counsel can provide; investigators often have specialized education and experience in the areas of client communication and service needs assessments that supplement the more traditional legal work of court-appointed counsel.

The revised caseload standard was adopted by the Judicial Council in October 2007.

¹² Percentage of time that investigators perform Support Staff Tasks in lieu of attorneys.

¹³ Amount of full-time equivalent (FTE) investigator staffing per FTE attorney necessary to complete the Support Staff Task at the identified rate.

¹⁴ Adjusted caseload per FTE attorney at identified support rate.

¹⁵ DRAFT attorneys are required to submit detailed workload data on a quarterly basis. The workload data provides information about individual case activity and hearing outcomes.

Table 13: Impact of Investigator Staffing on Attorney Caseloads	
Investigator/Attorney Ratio (Investigator Full-Time Equivalent [FTE])	Maximum Attorney Caseload¹⁶
0	141
	161
0.75	
1.0	228
1.5	299

Compensation Standard Development

The DRAFT Implementation Committee was also charged with developing attorney compensation standards. Compensation standards are a critical component of the effort to improve the quality of appointed counsel representation that served as the impetus for the Caseload Study. The development of compensation standards enables us to answer the question of what constitutes appropriate and reasonable compensation for court-appointed counsel, as well as to identify the cost of caseload standard implementation.

At the onset of its work in this area, the Implementation Committee made a policy decision regarding the development of regional versus statewide appointed-counsel rates. Staff used a combination of data sources to develop proposals for regional rates. These sources included (1) the Watson-Wyatt study of court employees conducted as a precursor to the transition of court staff from county to court employees; (2) county counsel salary information; (3) census data on median home value; and (4) census data on median income. Staff began its regional rate analysis with the four regions identified by the Watson-Wyatt study; court affiliation with any particular region was then adjusted as census and county counsel salary data were taken into account. Specifically, staff averaged each court's ranking among the data sources (Watson-Wyatt, county counsel salary, and census data) and rounded up to generate court regional rankings.

The regional ranking of court systems statewide is provided in Appendix 2.

Subsequent to determining court regional rankings, staff addressed the issue of developing compensation levels for each region. Implementation Committee members made another important policy decision at this juncture, determining that court-appointed counsel salaries (not including benefits) should be pegged to those of county counsel. This decision reflects equity and recognition principles underlying the DRAFT pilot program's goal of improving the quality of court-appointed counsel practice.

County counsel salary data for entry-, mid- and high-level positions were analyzed to create regional court-appointed counsel rates; tiers have been developed to reflect these three salary

¹⁶ Adjusted caseload per FTE attorney at identified support rate.

levels. Hourly rates, reflecting the hourly equivalent of regional salary levels, were also developed¹⁷:

Table 14: Regional Rates			
Region	Tier	Annual Salary	Hourly Rate
Region 1	1	\$49,049	\$59
	2	\$67,143	\$65
	3	\$85,237	\$70
Region 2	1	\$59,047	\$70
	2	\$79,539	\$75
	3	\$100,031	\$81
Region 3	1	\$60,451	\$81
	2	\$95,892	\$86
	3	\$131,333	\$92
Region 4	1	\$74,658	\$92
	2	\$114,800	\$97
	3	\$154,942	\$102

Attorney salaries and benefits are only one portion of an overall court-appointed counsel compensation model. The other primary components are supervisory and secretarial staffing ratios and overhead (indirect) rates. For these components of the compensation model, data was analyzed according to provider type; provider types are administered panel, firm (nonprofit or private), government agency, and solo practitioner. These provider types derive from a fiscal analysis of the cost structure of DRAFT providers and reflect the most important distinctions between organizational structures as related to cost; data regarding supervisory and support staffing ratios and organizational overhead costs is provided in the tables on the following page.

¹⁷ The hourly rates reflect an equivalent of salary plus the costs of benefits and other overhead.

Table 15: Supervisory and Support Staffing Ratios		
	Supervising Attorneys to Line Attorneys	Secretarial Staff to Line Attorneys
Administered Panel	0.01	0.5
Firm (Nonprofit or Private)	0.2	0.4
Government Agency	0.1	0.3
Solo Practitioner	0	0.2
Recommended Levels (Averages)	0.15	0.35

Table 16: Overhead by Provider Type¹⁸				
	Average by Provider Type		Recommended Ratio (Average)	
Provider Type	Direct	Indirect	Direct	Indirect
Administered Panel	79%	21%	76%	24%
Firm	72%	28%		
Government Agency	75%	25%		
Nonprofit	67%	34%		
Solo Practitioner	82%	18%		

For both supervising attorney and secretarial staffing ratios, and direct/indirect cost apportionment, the Implementation Committee determined that average rates should be reflected in the finalized compensation model.¹⁹

An illustration of the fully implemented compensation model is provided in Table 17, on the following page.

¹⁸ For the purpose of the compensation model, overhead costs include supervising attorneys, support staff, and all operating and facility costs. Direct costs include case-carrying attorneys (staff or contract), investigators (staff or contract), bar dues, attorney training costs, interpreters, travel costs associated with client visitation, and experts.

¹⁹ With respect to both ratios, the recommended staffing levels reflect the average of the government agency and firm ratios; neither administered panel or solo practitioner representation models reflect comparable utilization of either supervising attorneys or support staff. Thus, the figures related to these provider types were not included in the analysis.

Table 17: Applied Compensation Model			
Region: 3			
Number of Clients: 800			
Required Staffing	Number of Positions (FTEs)	Annual Salary per FTE	Total Annual Cost
Attorneys	4.3	\$95,892	\$408,051
Supervising Attorneys	0.6	\$131,333	\$83,830
Social Workers/Investigators	2.1	\$55,000	\$117,021
Support	1.5	\$30,000	\$44,681
Net Salaries			\$653,583
Benefits @ 25% ²⁰			\$163,396
Total Core Staff Costs			\$816,978
Overhead Costs ²¹			\$57,826
Grand Total			\$874,804
Cost per Client			\$1,094

Statewide Implementation: Compensation Model

The cost of statewide implementation would total approximately \$57.14 million, a 58 percent increase above the current statewide funding level, as detailed in Appendix 3.

Although the initial investment would be significant, there is evidence that statewide implementation of the court-appointed counsel compensation model would reduce annual program growth after initial implementation costs were realized. With respect to DRAFT implementation, average annual provider increases subsequent to the initial contract year have been *less* than the State Appropriations Limit, as outlined in Table 18.

²⁰ A standardized benefit rate of 25 percent is used for all DRAFT contracts.

²¹ This figure does not include supervising attorney or support staff salaries and benefits, which are overhead costs but are separated out in the table for illustrative purposes.

Table 18: Cost Stabilization Over Time			
	Average Funding Level per Child	Range in Funding Level per Child	Average Annual Cost Increases
Non-DRAFT Counties	\$1,182	\$200–\$4,500	8%
DRAFT Counties	\$2,189	\$1,200–\$3,500	3% ²²

This table reflects the average funding level for compensation standard implementation on a per child basis, for both DRAFT and non-DRAFT courts; while the unit cost associated with compensation model implementation is significantly higher, annual contract increases average less than half the rate realized in non-DRAFT courts.

Why Are Standards Important?

In assessing the viability of a resource infusion this significant, particularly during difficult budget times, it is critical to assess the anticipated outcome, or result of standards implementation—an answer to the question, what can we expect to gain? An analysis of the initial results of the DRAFT pilot program suggests that caseload reduction and compensation enhancement lead to measurable improvements for children and families in the dependency system. Specifically, DRAFT evaluation results suggest that an infusion of resources in appointed counsel services results in improved permanency and well-being outcomes for dependent children and their families.

The evaluation of the DRAFT pilot program comprises both qualitative and quantitative components, as described below.

Qualitative Evaluation

The Spangenberg Group, a Boston, Massachusetts, consulting firm specializing in improving the quality of legal services provided to indigent clients, conducted pre- and post-DRAFT implementation surveys, interviews, and focus groups in which judicial officers and attorneys in each DRAFT-participating court were asked to identify their concerns about attorney representation in their respective jurisdictions. The Spangenberg Group's findings are summarized in Table 19, on the following page.

²² SAL increases have averaged between four and five percent.

Table 19: Qualitative Evaluation Findings			
Pre-DRAFT Court Opinions	Post-DRAFT Court Opinions	Pre-DRAFT Attorney Opinions	Post-DRAFT Attorney Opinions
<i>Challenges</i> • Inadequate funding • Lack of attorney preparation • Inconsistent attorney availability • Insufficient child client visitation • Insufficient identification of WIC §317(e) issues • Frequent continuances • High attorney turnover • Insufficiently trained attorneys	<i>Improvements</i> • Resolution of funding issues • Increased attorney preparedness and knowledge of the law • Reduced continuances • Decreased turnover • Increase in dedicated children's attorneys • Increased client contact • Improved attorney communication • Reduced caseloads	<i>Challenges</i> • High caseloads • Disparity in pay between court-appointed and county counsel • Lack of dedicated dependency assignments • Inadequate time to meet with clients • Lack of available training	<i>Improvements</i> • Increased ability to visit child clients in placement settings • Increased client contact • Increased availability of high-quality training

Qualitative interview and focus group data suggest that DRAFT has resulted in several important improvements from participating courts' perspectives, and universally perceived improvement in the area of client contact, including increased frequency of in-placement child client visitation.

This qualitative finding regarding client contact is supported by an analysis of DRAFT workload data. An analysis of that data reflects significant increases in the amount of time spent by DRAFT attorneys on specific activities, including client communication (in-person and other), investigation, legal research, and trial preparation. The baseline measure for task time is the Caseload Study workload data; Table 20 on the following page, illustrates the impact of DRAFT on client communication.

Table 20: Impact of Reduced Caseloads on Attorney Case Time		
Activity	Average Time per Hearing:²³ Caseload Study	Average Time per Hearing: DRAFT
In-Person Client Communication	28 minutes	75 minutes
Other Client Communication	23 minutes	37 minutes

Quantitative Evaluation

A central premise of the DRAFT pilot program has been that caseload reduction and compensation standardization will result in quantifiable, measurable outcome improvements for children and families in participating dependency courts. DRAFT attorneys convened in June 2006 to review the federal outcome measures being used to evaluate state child welfare systems and were specifically asked to identify those measures most directly affected by attorney performance. The following outcome measures were selected by DRAFT providers for evaluation purposes:

- Time to reunification²⁴
- Reentry²⁵
- Time to guardianship²⁶
- Placement with kin
- Placement with some or all siblings

The analysis of the outcome's effect on the DRAFT program centered on a before and after comparison of the selected outcome measures in DRAFT court systems with those in to non-DRAFT court systems, both before and after the implementation of the DRAFT program. At the onset of the program, the DRAFT courts²⁷ significantly underperformed non-DRAFT courts in all selected measures other than sibling placement. At the conclusion of DRAFT's initial three-year pilot period, DRAFT courts outperformed non-DRAFT courts on several measures, including kin placement and reunification rates. Most importantly, DRAFT courts improved during the pilot period on all measures, other than sibling placement, at rates exceeding their non-DRAFT counterparts.

²³ Time spent per statutory hearing; this includes time associated with hearing preparation, the hearing itself, immediate post-hearing activity, and travel time to visit child clients in their placement settings.

²⁴ Of children who entered foster care during a specified 12-month period, the percent that were reunified within 12 months of entry into care.

²⁵ Of children who entered foster care during the specified 12-month period and were reunified within 12 months of entry, the percent that reentered care within 12 months of reunification.

²⁶ Of children who entered foster care during a specified 12-month period, the percent who exited to guardianship within 24 months of entry into care.

²⁷ Los Angeles is not included in the quantitative evaluation as DRAFT contracts were not finalized in Los Angeles until January 1, 2007.

Reunification		
	October 2003 – September 2004	July 2005 – June 2006
DRAFT Counties	34.7%	37.1%
	Change	2.4%
Non-DRAFT Counties	40.9%	42.9%
	Change	2.0%

Reentry		
	October 2002 – September 2003	January 2005 – December 2005
DRAFT Counties	12.1%	11.2%
	Change	-0.9%
Non-DRAFT Counties	12.0%	12.8%
	Change	0.8%

Guardianship		
	October 2002 – September 2003	January 2004 – December 2004
DRAFT Counties	2.3%	2.5%
	Change	0.2%
Non-DRAFT Counties	4.3%	3.7%
	Change	-0.6%

Placement with Kin		
	July 2005	July 2007
DRAFT Counties	39.8%	42.2%
	Change	2.4%
Non-DRAFT Counties	36.6%	37.0%
	Change	0.4%

Because the outcomes analysis is based on complex data, and given variances in the timing of DRAFT contract implementation, the full impact of DRAFT on system outcomes will not be realized for another 12–24 months; the preliminary outcomes findings present a compelling argument for sustaining and expanding DRAFT. In reality, caseload reduction, compensation standardization, and enhanced training and technical assistance are simply important inputs. The evaluation of DRAFT suggests that these inputs are having a quantifiable, positive impact on system outcomes — outcomes for children and families under the jurisdiction of our juvenile courts.

Conclusion

The Judicial Council has made a tremendous effort in recent years to address the related problems of overworked, underpaid court-appointed counsel, and inconsistent, and in some instances poor-quality, representation. The Judicial Council's efforts have occurred

even in light of considerable fiscal constraints; those constraints have necessarily called for a measured and thoughtful approach. Initial work in this regard centered on the establishment of caseload standards; initial caseload standards developed pursuant to legislation were subsequently modified as part of the Judicial Council's DRAFT program. Attorney compensation standards were also developed under the auspices of the DRAFT program; implementation of both the caseload and compensation standards would require a resource infusion of approximately \$57 million. While this level of funding is significant, initial evaluation results suggest a correlation between caseload reduction and improved permanency and well-being outcomes for dependent children and their families. Thus it is expected that implementation of caseload standards that reduce caseloads will improve the quality of representation and result in savings in costs related to out-of-home placements. This relationship will be explored by the Judicial Council in subsequent work involving the expansion of the DRAFT program to include additional court systems in the budget year.

DEPENDENCY COUNSEL CASELOAD STUDY

Senate Bill 2160 (Stats. 2000, ch. 450) amended section 317 of the Welfare and to require that (1) counsel be appointed for children in almost all dependency cases; (2) appointed counsel have caseloads and training that ensure adequate representation; and (3) the Judicial Council promulgate rules establishing caseload standards, training requirements, and guidelines for appointment of counsel for children. In 2001, the Judicial Council took action to implement SB 2160. In addition to adopting a rule that mandated the appointment of counsel for children subject to dependency proceedings in all but the rarest of circumstances, the council directed staff to undertake a study to identify caseload standards for attorneys representing both parents and children, including an analysis of multiple service delivery models for dependency counsel.

In 2002, the AOC contracted with the American Humane Association to conduct a quantitative caseload study (Caseload Study) of trial-level court-appointed dependency counsel based on an assessment of the duties required as part of representation and the amount of time needed to perform those duties.

The Caseload Study was designed to identify maximum per-attorney caseloads for court-appointed dependency counsel based upon quantifiable standards of practice.¹ A Caseload Study Working Group was established to facilitate the initial development of the Caseload Study design and to advise both the AOC and the lead contractor selected for the project, the American Humane Association,² as to the nature of dependency counsel work and the interpretation of data collected during the course of the Caseload Study.

Through consultation with the Caseload Study Working Group it became apparent that the scope of the Caseload Study would have to be expanded to include certain types of attorney support staffing, given that these staff are not uniformly available and that their availability affects attorney workload.

Specified support staff was therefore included in the Caseload Study in order to measure the case services support staff provide and to determine what, if any, impact such staff have on the case service time of the attorneys with whom they work.

CASELOAD STUDY DESIGN

The Caseload Study consisted of four primary components:

- Defining dependency counsel work in terms of discrete actions attorneys take in providing services to clients;

¹ Unless otherwise noted, all references to court-appointed counsel refer to trial counsel; the Caseload Study did not address appellate counsel practice or caseload standards.

² In May 2002, the American Humane and its collaborating partners, the National Center for State Courts, the National Center for Youth Law, and North American Legal Services, entered into a contractual relationship with the AOC to conduct the Caseload Study. The American Human Association was selected as the primary contractor for the Caseload Study specifically because of its role as project lead for the State of California's Child Welfare Services Workload Study, conducted pursuant to Senate Bill 2030 in 1999.

- A Workload Study to measure the time it currently takes to provide these services;
- Conducting structured estimation focus groups to determine the amount of time attorneys should spend providing case services, based on two standards of performance; and
- Developing models to identify caseload standards based on structured estimation results.

Defining Dependency Counsel Work

The initial stage of the Caseload Study involved the development of a list of services describing attorney work in dependency cases. This list of services was designed to serve two functions:

- As a listing of all possible dependency case-related services on which standards of practice could be based; and
- As a finite listing of discrete case-related services that formed the basis of the data collection instrument used in the workload study component of the Caseload Study.

AOC staff developed an initial list of dependency counsel activities and tasks in conjunction with members of the Caseload Study Working Group. This list was then refined by six “Standards Setting” focus groups comprising parents and children’s counsel, juvenile court judicial officers, and appellate attorneys from all parts of the state. In all focus groups, it was clearly stated that the list was not only designed to reflect current practice, but also to provide the AOC with a document that described all possible activities and tasks that an attorney could or should do to provide quality legal services in all cases.

After completion of the six focus groups, the resulting activity and task list was sent out for comment to practitioners statewide; further modifications were made based on the results of that comment period. In addition, AOC staff separately conducted two support staff focus groups designed to ensure that the task list was comprehensive enough to reflect not only all possible attorney activities, but also the casework performed by nonattorney support staff.

The Organization of Dependency Counsel Work: The Activity/Task List

The activity and task list is organized into major headings, called Hearing Classifications, based on statutorily required dependency hearings. Within each of these Hearing Classifications, three stages of casework related to those hearings are delineated. These stages, or Case Phases, are Pre-Hearing, At Hearing, and Post-Hearing.

Hearing Classifications and Case Phases together create the following general structure for defining dependency counsel work:

- I. Hearing Classification: Beginning Through Detention Hearing
 - a. Pre-Hearing
 - b. At Hearing
 - c. Post-Hearing
- II. Post-Detention Hearing Through Disposition Hearing

- a. Pre-Hearing
 - b. At Hearing
 - c. Post-Hearing
- III. Post-Disposition Through End of Reunification Services and/or In-Home Dependency
 - a. Pre-Hearing
 - b. At Hearing
 - c. Post-Hearing
- IV. 39.1B Writ Preparation Through Completion of the Selection and Implementation (WIC § 366.26) Hearing
 - a. Pre-Hearing
 - b. At Hearing
 - c. Post-Hearing
- V. Post-Permanent Plan Hearings
 - a. Pre-Hearing
 - b. At Hearing
 - c. Post-Hearing

Although these Hearing Classifications are generally designed to suggest the “trajectory” of a case through the dependency court system from detention through post-permanency, the list is not chronological within each Hearing Classification, nor does it assume that every case reaches each classification.

Within the structure of Hearing Classifications and Case Phases, specific actions are detailed. These specific actions, or *Activities*, were defined to be mutually exclusive and of limited duration so that workload study participants could easily determine when they began and ended any Activity on the list. Because some Activities were broad in scope (for example, Case Preparation, Investigation, and Management), an additional level of detail was included, called *Tasks*. Taken together, the Hearing Classifications, Case Phases, Activities, and Tasks constitute a list of services that can be utilized to describe dependency counsel work as a whole, and are referred to as the *Activity and Task List* (Appendix 1a).

For workload study purposes, another “classification” category was created to capture non-court-appointed dependency work. This category, called “Other Legal and Administrative Activities,” was designed to capture both administrative functions and attorney casework unrelated to court-appointed dependency work.

Workload Study Methodology, Training, and Implementation

Methodology

The workload study was designed to be a self-report study. Participants were asked to self-report what activities or tasks, picked from the Activity and Task List, they were performing, and how long those activities or tasks took to perform, over a two-week period. Whenever possible, participants were to record this information as they were completing each activity, so that workload study results would be as accurate as possible. A software data-collection tool was developed to facilitate accurate and timely reporting. Based on the Delphi programming language, this software, called the TimeDataCollector, was loaded with the Activity and Task List developed by the Standards Setting focus groups. It also contained special screens for collecting information about participants and their cases including:

Client/Case Information

- Whether the client was a child, parent, or “de facto” parent³
- Whether parent client was a minor
- The number of siblings associated with a single child case number
- The number of dependent children associated with a parent case

Workload Study Participant Information

- Job type (attorney, social worker/investigator, paralegal, or “other”) and
- Primary county of practice (one in which a majority of dependency cases are handled)

Training and Implementation

Workload study trainings were conducted to ensure accurate use of data collection instruments. Sixty-five attorney trainings were held in 24 counties — a level of coverage deemed necessary to ensure accurate time reporting and encourage overall participation. Attorneys and support staff attorneys identified as time study participants were contacted by the AOC and encouraged to attend a workload study training.⁴ Workload study implementation was conducted in “stair step”

³ Rule 5.502(10) of the California Rules of Court defines a “de facto parent” as a person who is the current or recent caretaker of a child and who has been found by the court to have assumed, on a day-to-day basis, the role of a parent to the child, fulfilling both the child’s physical and psychological needs for care and affection. Rule 5.534(e) allows the juvenile court to grant de facto parent status to those persons, thereby giving them standing to appear as parties in disposition hearings and any hearing thereafter at which the status of the dependent child is at issue. De facto parents may be present at hearings, may be represented by retained counsel or, at the discretion of the court, by appointed counsel, and may present evidence.

⁴ AOC staff worked with dependency counsel providers in order to identify criteria for support staff inclusion in the Caseload Study; several determinations were made as to which types of support staff to include (and exclude). First, the category support staff was initially narrowed to include only social workers/investigators and paralegals. Practitioner feedback resulted in the addition of a third group, “Others,” which included a broad array of employee classifications that did not fit into the other groups. Criteria for inclusion in any of the support staff categories was based upon a determination of whether a particular individual was doing “legal” work (e.g. client interviews, investigation activities). Study participation was further limited to staff, rather than contractual or ad-hoc support.

fashion, with the state divided into five contiguous zones and participants in each zone beginning to record data for a 14-day period following implementation in the previous zone.

The workload study was designed as a “100 percent work study”; that is, 100 percent of all work time was recorded (whether administrative, court-appointed dependency related, or related to other casework, and whether weekday or weekend work time), and 100 percent of all eligible participants were asked to participate. This design resulted in a complete picture of work time, capturing both case and noncase work time for attorneys and specified support representing all practice types and compensation models statewide.

Workload Study Results

Participation Rates: Respondents, Time Captured, and Cases Touched

The number of electronic and paper log data submissions is detailed in Table 1. Seven hundred and twenty-two participants submitted workload study data. The results show broad participation in the workload study, but not at levels that would suggest participation much above a numeric majority of possible participants. Obviously, the intended participation rate for the study — approaching 100 percent of attorneys and specified support — was not achieved. AOC data identified the number of attorneys eligible for the study (i.e. court-appointed dependency counsel) at 1,065, so that the 591 attorneys who submitted data represented only 56 percent of all eligible attorneys in the state. The data does not indicate that those submitting workload study data differed in any systematic way from the general court-appointed dependency counsel population; further, in terms of sampling statistics, a sample of 56 percent is considered to be very powerful for determining results that speak for all members of a study population.

Table 1: Participation in the Workload Study:		
Participant Type	Participant Number	Percent of Total Sample
Attorney	591	81.85%
Social Worker/Investigator	74	10.25%
Paralegal	29	4.02%
Other	28	3.88%

The workload study was designed to derive data concerning services to cases (child or parent clients). Thus, a count of cases worked on during the study is helpful in determining the breadth of data collected. Table 2 shows the number of cases for which data was submitted by county. From the perspective of data robustness, Table 2 shows a generally good coverage of counties and generally good numbers of court-appointed cases —10,846 child cases, 7,983 parent cases,

Appendix 1

and 172 de facto parent cases, for a total of 19,002 cases for which workload study data was submitted. This count of cases is somewhat inflated, since if more than one attorney (or an attorney and attorney support) worked on the same case during the study, that case would be counted twice. The actual unduplicated case count for the study is 17,385 child, parent, and de facto parent cases across 53 counties.⁵

⁵ There are five counties for which no workload study data was submitted : Alpine, Napa, Placer, Sutter, and Trinity.

Table 2: Number of Workload Study Cases by County

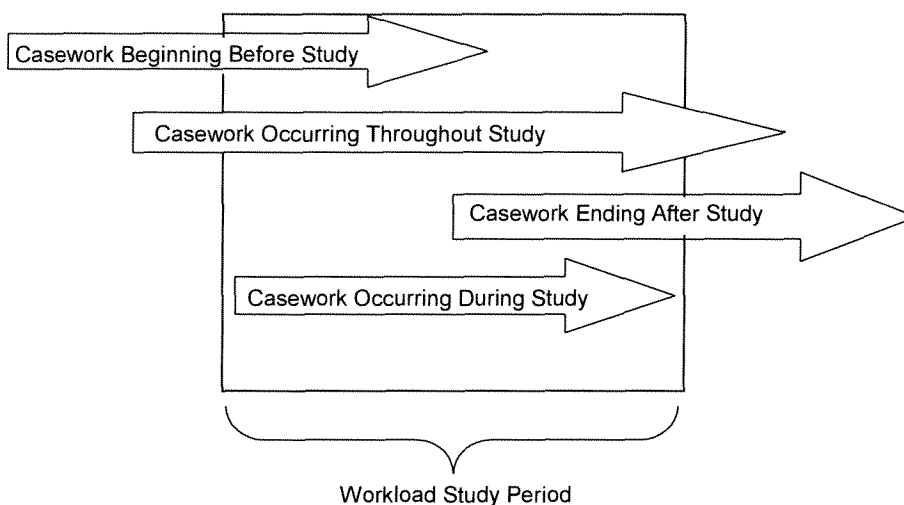
County	Child Cases	Parent Cases	De Facto Parent Cases	Total	County	Child Cases	Parent Cases	De Facto Parent Cases	Total
Alameda	514	159	2	675	Orange	763	748	10	1521
Amador	25	0	0	25	Plumas	8	13	0	21
Butte	162	310	13	485	Riverside	306	422	2	730
Calaveras	21	4	0	25	Sacramento	545	535	7	1087
Colusa	9	2	0	11	San Benito	9	25	0	34
Contra Costa	369	353	3	725	San Bernardino	286	315	3	604
El Dorado	51	46	4	101	San Diego	1468	706	1	2175
Fresno	408	250	13	671	San Francisco	240	189	6	435
Glenn	5	10	0	15	San Joaquin	191	217	4	412
Humboldt	97	79	4	180	San Luis Obispo	71	108	0	179
Imperial	28	27	0	55	San Mateo	66	73	2	141
Inyo	8	24	0	32	Santa Barbara	72	38	1	111
Kern	447	292	2	741	Santa Clara	1050	558	3	1611
Kings	58	38	2	98	Santa Cruz	53	44	0	97
Lake	47	27	0	74	Shasta	68	119	0	187
Lassen	0	6	0	6	Sierra	1	0	0	1
Los Angeles	2627	1349	68	4045	Siskiyou	34	50	0	84
Madera	0	25	0	25	Solano	99	10	0	109
Marin	56	42	2	100	Sonoma	144	177	3	324
Mariposa	9	10	1	20	Stanislaus	22	81	2	105
Mendocino	35	28	2	65	Tehama	18	18	0	36
Merced	94	92	5	191	Tulare	64	75	1	140
Modoc	2	2	2	6	Tuolumne	0	40	0	40
Mono	2	1	0	3	Ventura	73	107	2	182
Monterey	13	1	0	14	Yolo	100	111	0	211
Nevada	3	20	2	25	Yuba	5	7	0	12
					Total	10846	7983	172	19002

Another way to look at numbers of cases for which work was completed in the workload study is to break down the number of cases by statutory hearing classification and case phase, as is shown in Table 3. Note that the number of cases in Table 3 is larger than in the county-by-county count because the count in Table 3 is “duplicative”; that is, cases changing status during the workload study are counted twice — once in the original hearing classification and again in the new hearing classification after status change. As shown in Table 3, cases worked on were most commonly at the review hearing (39.8 percent) or post-permanent plan phase (24.45 percent). Almost 20 percent of cases were at the jurisdiction/disposition stage, while fewer cases were at detention or the “.26 hearing” stage.

Casework Duration and the Representativeness of Data

For any workload study of limited duration, a question is raised as to how representative the data is to the actual flow and duration of casework. In a two-week study it is possible that only a portion of overall casework is captured, requiring a weighting or other modification of captured time. The logical possibilities of casework duration in relation to the workload study time frame can be found in Figure 1.

Figure 1: Patterns of Case Work Relative to the Workload Study



The assumption of a workload study of broad representation (involving a large sample across the state) is that work is evenly distributed, so that case services begun before the start of the study (but included in the study period) and case services ending after the study (but included in the study period) are evenly represented across all case service types. Of greater concern is the possibility that case service duration is greater than the two-week study period, meaning that

Appendix 1

case service work both begins and ends outside the scope of the workload study, which would leave some services that are routine to cases unmeasured.

In order to determine if case service work routinely is of long duration, an analysis was conducted of the number of consecutive days that cases received services. All casework was recorded on “log sheets” (for the electronic TimeDataCollector, a type of spreadsheet entry; for those completing a paper log, a literal log sheet), which specified the date on which an Activity or Task was completed. By analyzing the number of days that the same cases were worked on, the duration (in days) of case service work was computed.

Table 3: Count of Workload Study Cases, by Case Phase, Case Type

Case Phase		Child Cases	Parent Cases	De Facto Parent Cases	Total
Pre-Detention	Count % of Case Type	598 3.70%	543 4.30%	3 1.10%	1144 3.93%
At Detention	Count % of Case Type	483 3.00%	511 4.00%	5 1.80%	999 3.43%
<i>Detention Total</i>	Count % of Case Type	1081 6.70%	1054 8.30%	8 2.90%	2143 7.36%
Pre-Juris/Dispo	Count % within Case Type	1657 10.30%	1800 14.10%	22 7.90%	3479 11.95%
At Juris/Dispo	Count % within Case Type	1110 6.90%	1193 9.30%	14 5.00%	2317 7.96%
Dispos. Appeal	Count % within Case Type	3 0.00%	4 0.00%	0 0.00%	7 0.02%
<i>Juris/Dispo Total</i>	Count % within Case Type	2770 17.20%	2997 23.40%	36 12.90%	5803 19.93%
Pre-Review	Count % within Case Type	4412 27.50%	3277 25.70%	59 21.10%	7748 26.62%
At Reviews	Count % within Case Type	1831 11.40%	1947 15.30%	38 13.70%	3816 13.11%
Review Appeal	Count % within Case Type	6 0.00%	16 0.10%	0 0.00%	22 0.08%
<i>Review Total</i>	Count % within Case Type	6249 38.90%	5240 41.10%	97 34.80%	11586 39.80%
Pre-“.26”	Count % within Case Type	788 4.90%	739 5.80%	18 6.50%	1545 5.31%
At “.26”	Count % within Case Type	400 .50%	440 .40%	6 2.20%	846 .91%
“.26” Appeal	Count % within Case Type	16 0.10%	53 0.40%	0 0.00%	69 0.24%
<i>“.26” Total</i>	Count % within Case Type	1204 7.50%	1232 9.60%	24 8.70%	2460 8.45%
Pre-P.Perm	Count % within Case Type	3269 20.40%	1340 10.50%	68 24.40%	4678 16.07%
At P.Perm	Count % within Case Type	1479 9.20%	886 6.90%	46 16.50%	2411 8.28%
P.Perm Appeal	Count % within Case Type	10 0.10%	19 0.10%	0 0.00%	29 0.10%
<i>P.Perm Total</i>	Count % within Case Type	4758 29.70%	2245 17.50%	114 40.90%	7118 24.45%
Totals	Count % within Case Type	16062 100.00%	12768 100.00%	279 100.00%	29110 100.00%

Table 4: Casework Duration in Days and Time per Case

Count of Days	Number of Cases	Percent of Cases	Cumulative Percent of Cases	Mean Time per Case	Median Time per Case	Mean Time Increase (percent)
1	13322	63.80%	63.80%	0:31:00	0:20:00	
2	5059	24.23%	88.02%	1:02:00	0:40:00	200.00%
3	1515	7.26%	95.28%	1:53:00	1:17:00	182.26%
4	568	2.72%	98.00%	2:50:00	2:05:00	150.44%
5	236	1.13%	99.13%	4:22:00	3:13:00	154.12%
6	105	0.50%	99.63%	6:07:00	4:50:00	140.08%
7	35	0.17%	99.799%	7:54:00	5:31:00	129.16%
8	25	0.12%	99.919%	10:09:00	8:30:00	128.48%
9	13	0.06%	99.981%	16:13:00	10:50:00	159.77%
10	2	0.01%	99.990%	44:09:00	44:09:00	272.25%
11	1	0.00%	99.995%	5:01:00	5:01:00	—
13	1	0.00%	100.000%	30:08:00	30:08:00	—
Total	20882	100.00%		0:55:00	0:30:00	

As can be seen in Table 4, over 95 percent of cases received all services during three days of the study measurement period, and 98 percent received services within four days. Given this, it is unlikely that significant case service time was unmeasured during the workload study. Further, the relative increase in case service time per day does not increase uniformly with additional days: although the increase in time per case doubles from one day of service to two (a 200 percent increase), there is only a 150 percent increase from a third to fourth day of service, and the proportional increase in service time reduces further subsequently. It can therefore be said that the workload study captured most of the work within a hearing classification for most of the cases “touched” during the workload study. The likelihood that large amounts of case service time were unmeasured due to a long duration of service (beginning before the study period and ending after the study period) is small in terms of both numbers of cases and associated case service time.

Dependency Case Time vs. NonCase Time

Any analysis of workload must take into account the fact that not all work time is related to casework. This additional “noncase time” refers to any attorney work not related to court-appointed dependency cases, administrative duties (such as supervision of employees and billing), and time off. An analysis of dependency case time and other time is found in Table 5. Workload study results indicated that 66.3 percent of all attorney time, statewide, was spent on casework. This is a finding parallel to many public and private organizations in terms of the proportion of work to administrative and leave time.

Table 5: Mean Per-Attorney Case and NonCase Time

	Mean Time	% of Total Time
Dependency Case Time	37:57	48.10%
NonDependency Case Time	22:00	18.20%
Lunch, Leave, Vacation, Holiday, etc.	22:43	22.20%
Administrative Tasks (Copying, Filing, etc.)	5:46	6.00%
Supervision (Reviewing Work, Performance Review)	5:23	1.80%
Time to Complete Workload Study	3:34	3.70%
Dependency Plus NonDependency Case Time	59:57	66.3%
NonCase Total	13:26	33.70%

In order to avoid inflating the amount of noncase time associated with dependency practice, “administrative time” was redefined to a higher standard. The category “Lunch, Leave Vacation, Holiday, etc.” was removed from the analysis, in order to focus on only administrative and supervisory activities. Additionally, the analysis of case vs. noncase time was limited to those attorneys who submitted at least 35 hours per workload study week of dependency casework and administrative time combined. Table 6 shows an analysis of case vs. noncase-related activities for full-time dependency attorneys.

Table 6: Case vs. Non Case Time, Full-Time Dependency Attorneys Only

Per Attorney Dependency Case/Non-Dependency Case Time	Number	Mean Time
Dependency Case Time	278	53:29:44
Administrative Tasks (Copying, Filing, Billing, etc.)	248	5:08:10
Leave, Vacation, Holiday	263	20:19:20
Nondependency Case Time	162	9:53:34
Supervising (Reviewing Work, Performance Reviews)	78	3:24:50
Time to Complete Workload Study)	250	4:18:45

	Time	% of Total
Dependency Plus Non-dependency Case Time	63:23:18	83.13%
Admin Time (administrative, supervisory, workload study)	12:51:45	16.87%
Total Non-Leave Time	76:15:03	100.0%

By defining administrative time to omit “leave” or “time gaps” used broadly by workload study participants, casework time, or “case time,” is derived as a percentage of time available for dependency plus nondependency casework, with “administrative time” narrowly defined as pure administrative work, supervision, and time to complete the workload study. This leads to a ratio of case to noncase time of 83 percent. Given that the “leave” category could be used in ways other than to depict the amount of actual leave time, the figure of 83 percent available dependency case time is used in caseload model building as outlined later in this report, as it is a more well defined case-service time value.

Workload Study Data

Attorney workload study data is provided in detail in Appendix 1B. The results are most useful for comparing the actual times given to activities and tasks with the suggested times identified by structured estimation focus group participants and reflected in caseload standards, as outlined in the following section.

Structured Estimation

The workload study was designed to quantify current practices; alternative methods were required to identify the amount of time required for improved practice levels. A key assumption of the Caseload Study was that dependency counsel are motivated to provide quality legal services but may be constrained in so doing by current workload levels. In order to determine how much additional time, on average, would be needed to ensure improved practice, the Caseload Study included a component designed to quantify attorney performance based on two hypothetical standards: 1) a “basic practice standard,” where all mandated activities are completed to a base level of performance; and 2) an “optimal practice standard,” where enough time is available to provide each case with the complete complement of needed legal services. To determine the time values for these two standards, groups of attorneys met in a series of

Structured Estimation focus groups and identified both the amount of time required to complete case service actions (taken from the Activity and Task List) under the two standards and the percentage of their caseloads that would require specific activities to be performed in order to meet both standards. This process resulted in four measures that apply to parent and child cases:

1. The amount of time required to provide case services at a basic, minimum standard of competent practice;
2. How often that service would be required to meet a minimum standard of practice, expressed as a percentage of the total attorney caseload to which the action would apply;
3. The amount of time required to provide case services at an optimum best practice standard; and
4. How often that service would be required to meet an optimum standard of practice, expressed as a percentage of the total attorney caseload to which the activity would apply.

Development of the Structured Estimation Tool

The Activity and Task List is a very detailed listing of case services — so detailed, in fact, that the resulting list, across all hearing classifications, contains over 200 unique items — too many for focus group participants to have addressed as part of the structured estimation process. In order to reduce the size of the list under consideration many tasks from the Activity and Task List were collapsed into their larger respective activity categories. For instance, for all hearing classifications, time estimates were made for the activity “Trial Preparation” as a whole, rather than for the specific tasks contained within that activity. This combining of tasks created larger “service units” that were easier to manage for estimation purposes.

Structured Estimation Focus Group Methodology

In the majority of the structured estimation focus groups, participants were split into two subgroups, with one group utilizing workload study results to inform its estimations (“informed” group) and one group developing estimations absent those results (“blind” group).

Participants of the focus groups (both blind and informed) were asked to provide numerical estimates for each structured estimation service unit addressing the time required to complete each service unit and the frequency of its occurrence. Although participants were provided with worksheets listing the units of service for estimation, each group ultimately developed a single group estimation product.

Analysis of the difference between blind and informed estimates showed that blind estimates were systematically higher than informed estimates. This was generally consistent for type of client, child or parent, and for type of estimate, basic or optimal. Since this effect was generally equivalent across the factors of interest in the structured estimation results (rather than systematic for one or a few factors), the results for blind and informed groups were pooled; that is, all analyses of structured estimation data for both basic and optimal practice standards are based on the average scores of blind and informed groups.

Structured Estimation Results

The results of the structured estimation process identified both the time required to perform specific services and the likelihood that any given case would require that service, for both “basic” and “optimal” practice standards.

Modeling requisite attorney case service time from the structured estimation results required taking into account the service unit times estimated by the structured estimation groups and the likelihood (represented by a percentage) that any given service unit would be required for a case. Therefore, for each service unit, the estimated attorney time required was multiplied by the percentage of cases for which the service was considered applicable. This produced weighted hearing classification case times for the basic and optimal conditions of estimation, based on the likelihood that each particular service would be performed. Table 7 illustrates this point for the hearing classification End of Disposition through Permanency; structured estimation results for each hearing classification follow.

Table 7: Annotated Example from Structured Estimation, Base Standard, End of Disposition through Permanency

Units of service were established to combine some activities/tasks from the workload study into larger categories for structured estimation service units.	Activity 1 Case Preparation Document review and Obtain and Draft orders Notes to file and Draft orders Legal research Communicate with client (in-person) Communicate with client (other) Communicate with child welfare worker Communicate with other counsel Communicate with others Other Investigation or case management activity	Child Blind % of Cases Time in minutes	Child Informed % of Cases Time in minutes	Blind and Informed Reconciled % of Cases Time in minutes	Weighted Time (% * Time)	By multiplying times by percentage indicated, a weighted time value was created.	
Activity 2 Motions and Other Hearings	68%	105	59%	75	52%	90	53.7
Activity 3 Review Hearing Trial Prep Phase B: Statutory Review Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify) Termination of Reunification Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify) Phase C: File Notice of Appeal or Writ Prepare and file notice of appeal Prepare/file/respond/wargue writ	30%	135	40%	120	35%	128	44.8
	14%	98	10%	98	12%	98	11.8
	66%	17	54%	26	60%	22	13.2
	21%	173	6%	203	14%	188	29.9
	5%	21	6%	34	5%	28	1.2
	5%	15	2%	33	3%	24	0.7
	2%	535	4%	560	3%	543	16.3
Total					Minutes	549.9	
Total					Hours	9.16	

Summing the weighted time for each service unit yields a total time, in minutes, that each hearing classification should take. That value is converted into hours.

Structured Estimation Data: Version 1

Beginning Through Detention Hearing; Basic		Beginning Through Detention Hearing; Optimal			
Activity 1 <i>Case Preparation</i>	Document review and obtain and review discovery Notes to file and draft orders Legal research Communicate with client (in-person) Communicate with client (other) Communicate with child welfare worker Communicate with other counsel Communicate with others Other investigation or case management activity	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
		100% 52% 7% 83% 24% 75% 84% 66% 100%	20 9 44 38 10 22 25 45 18	20 11 23 43 18 22 19 29 18	20 9 2 39 7 16 18 18 18
Activity 2 <i>Motions and Other Hearings</i>	Activity 3 <i>Detention Hearing Trial Prep</i>	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
Phase B. At Initial/Detention Hearing	Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify)	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
Phase C. File Notice of Appeal or Writ	Prepare and file notice of appeal Prepare/file/respond to argue writ	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
Total		1% 210	1% 390	1% 225	3% 390
Case Time (in minutes)		669	953	778	1,241
Hours		11.2	15.9	12.97	20.69
				5.00	7.06

For both Basic and Optimal columns, the results of the blind and informed structured estimation focus groups are averaged, with respect to both the frequency of service unit occurrence (percent) and the time required per service unit. The Corrected Time columns reflect the frequency of service unit occurrence (percent) multiplied by the time required for the service unit.

Structured Estimation Data: Version 1

End of Detention Through Juris/Dispo; Basic

	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
100%	37	41	37	41
91%	20	11	18	8
28%	28	30	8	10
90%	32	46	29	42
23%	11	20	3	13
99%	21	76%	21	15
94%	14	93%	13	16
81%	41	66%	34	20
56%	29	43%	16	17
58%	80	58%	46	49
37%	131	38%	48	94
10%	135	208	13	21
30%	9	19	3	6
12%	192	225	23	29
28%	12	22	3	6
9%	241	241	22	25
36%	32	32	12	13
2%	9	14	0	1
1%	443	750	5	26
Total				
Case Time (in minutes)	1516.38	2095.72	353	450
Hours	25.27	34.93	5.88	7.50

End of Detention Through Juris/Dispo; Optimal

	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
100%	77	75	77	75
97%	23	30	23	29
34%	54	39%	18	21
99%	61	97%	60	80
33%	23	100%	7	37
100%	36	94%	36	39
96%	35	96%	33	33
95%	63	87%	59	49
62%	46	60%	29	38
69%	114	69%	78	82
33%	274	35%	89	182
10%	244	11%	23	26
39%	30	30%	12	7
13%	266	14%	35	35
33%	32	26%	10	8
10%	345	9%	35	27
41%	39	47%	16	19
3%	14	8%	0	1
3%	1,223	6%	37	69
Total				
Case Time (in minutes)	2,998	3,260	679	858
Hours	49.96	54.33	11	14

Phase A. Before Hearing

Activity 1 Case Preparation

Document review and obtain and review

- discovery
- Notes to file and draft orders
- Legal research
- Communicate with client (in-person)
- Communicate with client (other)
- Communicate with child welfare worker
- Communicate with other counsel
- Communicate with others
- Other investigation or case management activity

Activity 2 Motions and Other Hearings

Activity 3 Juris/Dispo Trial Prep

Phase B. At Hearing

Juris Only

- Conduct hearing (witnesses testify)
- Conduct hearing (witnesses do not testify)

Dispo Only

- Conduct hearing (witnesses testify)
- Conduct hearing (witnesses do not testify)

Juris/Dispo Combined

- Conduct hearing (witnesses testify)
- Conduct hearing (witnesses do not testify)

Phase C. File Notice of Appeal of Writ

- Prepare and file notice of appeal
- Prepare/file/respond to argue Writ

For both Basic and Optimal columns, the results of the blind and informed structured estimation focus groups are averaged, with respect to both the frequency of service unit occurrence (percent) and the time required per service unit. The Corrected Time columns reflect the frequency of service unit occurrence (percent) multiplied by the time required for the service unit.

Structured Estimation Data: Version 1

End of Disposition Through Permanency; Basic

End of Disposition Through Permanency; Optimal

Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
98%	98%	54	28
77%	74%	26	12
25%	28%	8	12
84%	81%	47	36
60%	91%	25	37
92%	86%	53	40
94%	95%	39	40
86%	70%	102	40
66%	60%	26	17
63%	52%	57	52
		0	0
35%	33%	45	46
12%	12%	12	12
60%	61%	13	12
14%	11%	26	20
5%	5%	1	1
3%	5%	1	1
3%	3%	17	19
Total		549	425
Case Time (in minutes)	1,591	1,511	
Hours	26.52	25.18	7.09

Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
98%	98%	107	49
76%	75%	72	25
39%	41%	61	63
94%	92%	130	84
81%	98%	65	67
97%	97%	93	64
97%	97%	81	74
94%	94%	238	110
76%	67%	91	57
83%	65%	126	124
37%	36%	243	238
18%	16%	101	126
56%	58%	24	22
11%	12%	195	239
4%	4%	33	29
5%	8%	24	18
5%	4%	760	980
Total		2,444	2,367
Case Time (in minutes)	2,444	1,114	777
Hours	40.74	18.56	12.96

For both Basic and Optimal columns, the results of the blind and informed structured estimation focus groups are averaged, with respect to both the frequency of service unit occurrence (percent) and the time required per service unit. The Corrected Time columns reflect the frequency of service unit occurrence (percent) multiplied by the time required for the service unit

Structured Estimation Data: Version 1

	.26 Hearing/39.1B Writ; Basic				.26 Hearing/39.1B Writ; Optimal			
	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
Activity 1								
Case Preparation								
Document review and obtain and review discovery	80	80	100%	80	139	92	139	92
Notes to file and draft orders	42	30	76%	22	38	35	29	27
Legal research	46	55	57%	31	108	63	57	37
Communicate with client (in-person)	43	43	74%	32	88	61	86	53
Communicate with client (other)	29	30	82%	24	33	43	25	40
Communicate with child welfare worker	39	15	71%	36	56	33	56	29
Communicate with other counsel	39	27	94%	37	70	45	70	45
Communicate with others	46	43	72%	31	113	81	109	65
Other investigation or case management activity	39	41	62%	35	169	71	148	44
Activity 2								
Motions and Other Hearings	87	230	57%	49	195	315	120	233
Activity 3								
39.1B Writs								
Prepare and file notice of intent to file	50	23	16%	8	45	26	7	10
Request preparation and/or augmentation of record	35	32	17%	9	75	41	13	12
Review record	140	365	32%	45	320	450	104	204
Preparation and filing of pleadings	260	650	17%	43	840	830	139	355
Oral argument	110	98	2%	2	193	118	4	5
Draft settlement/order language	80	45	1%	1	60	45	0	1
Activity 4								
.26 Hearing Trial Preparation								
Conduct hearing (witnesses testify)	20	85	27%	5	175	100	41	23
Conduct hearing (witnesses do not testify)	20	65	8%	2	28	68	5	1
Phase B. At .26 Hearing: Adoption Indicated 50%	20	10	17%	3	—	11	0	0
Conduct hearing (witnesses testify)	20	—	0%	3	390	—	39	0
Conduct hearing (witnesses do not testify)	20	—	0%	2	28	—	4	0
Phase C. File Notice of Appeal or Writ	20	—	0%	0	—	—	0	0
Prepare and file notice of appeal	20	—	0.5%	0	8	—	0	0
Prepare/file/respond to/argue writ	20	—	2%	0	590	—	12	0
Total	Case Time	1,284	(in minutes)	514	Case Time	3,761	1205	1275
	Hours	21.40		8.56	Hours	62.68	20.08	21.25

For both Basic and Optimal columns, the results of the blind and informed structured estimation focus groups are averaged, with respect to both the frequency of service unit occurrence (percent) and the time required per service unit. The Corrected Time columns reflect the frequency of service unit occurrence (percent) multiplied by the time required for the service unit.

STRUCTURED ESTIMATION DATA: Version 1

End of Permanency Hearing Through Post-Perm Plan; Basic

	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
100%	16	23	16	23
59%	8	11	5	10
8%	31	29	2	4
90%	50	30	45	8
57%	58	15	33	8
68%	60	15	41	9
32%	23	13	7	11
95%	70	44	67	10
80%	43	44	34	20
104%	107	158	111	32
53%	230	105	122	3
3%	110	105	3	2
76%	18	24	13	15
0%	155	-	0	0
7%	12	-	1	0
1%	10	14	0	0
17%	700	300	119	2
Total	Case Time (in minutes)	928	620	155
	1,698			

Hours 28.30 15.46 10.33 2.58

End of Permanency Hearing Through Post Perm-Plan; Optimal

	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
100%	32	38	32	38
92%	13	24	12	22
13%	37	43	5	9
99%	130	40	129	28
70%	85	25	60	13
100%	65	25	65	19
35%	28	18	10	16
95%	90	58	86	26
86%	88	73	75	36
29%	137	188	39	38
4%	280	158	12	5
4%	115	113	4	2
77%	20	28	15	14
0%	160	0	0	0
7%	14	0	1	0
1.1%	10	14	0	0
0.8%	900	1,200	8	12
Total	Case Time (in minutes)	2,040	552	276
	2,202			

Hours 36.71 34.00 9.21 4.61

Activity 1 Case Preparation

Document review and obtain and review discovery
Notes to file and draft orders
Legal research
Communicate with client (in-person)
Communicate with client (other)
Communicate with child welfare worker
Communicate with other counsel
Communicate with others
Other investigation or case management activity

Activity 2 Motions and other Hearings

Activity 3 Review Hearing Trial Preparation

Phase B. At post-perm plan hearing
Conduct hearing (witnesses testify)
Conduct hearing (witnesses do not testify)
Phase B. At post-perm plan hearing:
adoption indicated
Conduct hearing (witnesses testify)
Conduct hearing (witnesses do not testify)
Phase C. File Notice of Appeal or Writ
Prepare and file notice of appeal
Prepare/file/respond to/argue writ

For both Basic and Optimal columns, the results of the blind and informed structured estimation focus groups are averaged, with respect to both the frequency of service unit occurrence (percent) and the time required per service unit. The Corrected Time columns reflect the frequency of service unit occurrence (percent) multiplied by the time required for the service unit.

Several significant modifications to the structured estimation data were made as part of the caseload modeling process. These modifications focused on additional structured estimation time adjustments or weights needed in order to take into account: 1) the likelihood that any given case entering the dependency system will reach each hearing classification; and 2) the proportional case-type distribution of attorney caseloads. Additional task specific modifications were made as follows: 3) the inclusion of attorney time associated with writ preparation based upon feedback received during the report comment period; 4) the substitution of workload study in-court time (at hearing) for parallel structured estimation data; and 5) the addition of travel time to the structured estimation data as determined by comments received subsequent to the issuance of the interim report. Each of these modifications is discussed below.

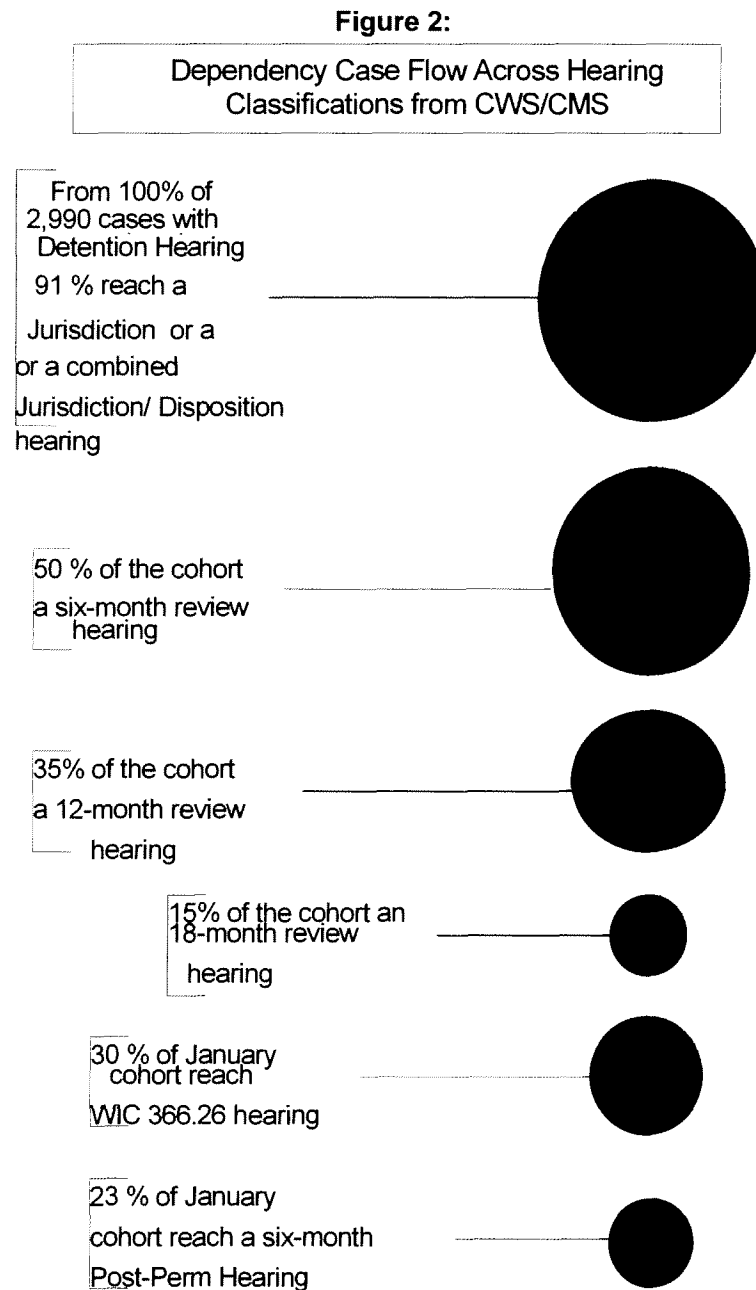
Development of Caseload Models

Model Building I: Case-Flow and Standardizing Structured Estimation Results

Structured estimation focus group participants did not definitively determine the percentage of cases that would reach each specific hearing classification. Just as not all dependency cases require all services listed in the Activity and Task List, neither do all cases reach every stage in the process — for instance, many children are returned home after a period of dependency, and their cases do not require a hearing to terminate parental rights.

In order to correct for the fact that not all cases reach every statutory stage in the process outlined in the Activity and Task List, data was obtained from a study of California's Child Welfare Services Case Management System (CWS/CMS) conducted by the University of California, Berkeley, Center for Social Services Research, California Children's Services Archive. Fields within CWS/CMS include dates of statutory hearings and the numbers of cases reaching those hearings. All cases with a scheduled detention hearing in January, 2001 — 2,990 cases in all — were tracked through the system to the present day. By tracking the number of cases from that group that reach each subsequent statutory milestone, a rate of "survival" from one milestone to the next can be measured.

Figure 2 shows the relative survival of cases from one statutory milestone to the next, following the case flow from detention through the first post-permanency hearing



Data from the CWS/CMS case-flow analysis was used to prorate structured estimation results so that all focus group estimates reflected the percentage of cases surviving to that hearing classification. To illustrate this proration with an example:

Structured estimation results indicated that “Document Review” should be completed for 100 percent of cases that reach the “End of Disposition through Permanency” stage; that number was converted to 49.9 percent, the number indicated by the CWS/CMS analysis. All other service unit frequencies were then prorated to reflect that the maximum frequency within “Review Hearing” was 49.9 percent. For example, “Legal Research” was indicated as a task that should be conducted for a quarter of child cases within the “Review Hearing” stage (indicated as 25 percent in the original structured estimation data⁶); the prorated frequency is 12.5 percent — a quarter of the 49.9 percent of cases reaching this stage of the dependency process.

This example is particularly relevant given that for most focus groups, “Document Review” was considered a necessary precursor for all work within a hearing classification. Therefore, “Document Review” was set at 100 percent, meaning that all cases should receive document review. This 100 percent was then modified to match the percentage of cases reaching the hearing classification in question, and other service units were prorated from that new value. In this way, all values were modified to reflect the actual likelihood that a given case would require that service out of the 100 percent of cases for which there was a scheduled detention hearing, while maintaining the proportionality contained within the groups’ work product.

Structured estimation results as modified by CWS/CMS survival data are provided as Structured Estimation Data: Version II, on the following pages.

Model Building II: Composition of Attorney Caseloads

In translating structured estimation data into caseload standards it is important to take into account the relative proportion of each case type in an average attorney’s caseload, with “case type” being defined by stage of dependency proceeding or hearing classification. The case service time requirements for each hearing classification vary significantly; it is critical not to assume that caseloads consist of an equal distribution of cases at each hearing stage.

Table 3 (page 15) detailed workload study submissions by case type. A summary is provided below:

- 7.36 percent of the cases worked on during the workload study were at Beginning Through Detention Hearing;
- 19.93 percent were at Post-Detention through Jurisdiction/Disposition Hearing;
- 39.8 percent were at Review Hearing;
- 8.45 percent were at the .26 Hearing stage; and
- 24.45 percent were at Post-Permanent Plan Hearing.

⁶ Average of blind and informed frequencies.

Structured Estimation Data: Version 2

Beginning Through Detention Hearing; Basic					Beginning Through Detention Hearing; Optimal				
	Child		Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
	Blind and Informed Reconciled	Case Time (in minutes)							
Activity 1 Case Preparation									
Document review and obtain and review discovery	20	20	100%	20	20	100%	36	33	36
Notes to file and draft orders	9	11	76%	5	9	81%	17	9	14
Legal research	44	23	10%	3	2	15%	51	7	7
Communicate with client (in-person)	38	43	92%	31	39	94%	59	42	55
Communicate with client (other)	10	18	38%	2	7	39%	32	4	12
Communicate with child welfare worker	22	22	73%	17	16	88%	30	24	25
Communicate with other counsel	25	19	93%	21	18	90%	28	28	28
Communicate with others	45	29	63%	29	18	83%	48	46	38
Other investigation or case management activity	18	19	91%	18	18	100%	28	24	26
Activity 2									
Motions and Other Hearings	21	22	2%	0	0	3%	26	1	1
Activity 3									
Detention Hearing Trial Prep									
Phase B. At Initial/Detention Hearing									
Conduct hearing (witnesses testify)	69	182	27%	20	48	35%	333	29	112
Conduct hearing (witnesses do not testify)	103	119	11%	11	13	18%	122	19	24
Phase C. File Notice of Appeal or Writ									
Prepare and file notice of appeal	35	38	89%	31	33	82%	43	33	34
Prepare/file/respond to/argue writ									
	210	390	1%	1	4	1%	390	1	12
Total									
Case Time (in minutes)	669	953	Total	Case Time (in minutes)	245	Total	Case Time (in minutes)	300	424
Hours	11.2	15.9	Hours	3.50	4.08	Hours	12.97	5.00	7.06

For both Basic and Optimal columns, the results of the blind and informed structured estimation focus groups are averaged, with respect to both the frequency of service unit occurrence (percent) and the time required per service unit. The Corrected Time columns reflect the frequency of service unit occurrence (percent) multiplied by the time required for the service unit.

For both Basic and Optimal columns, the results of the blind and informed structured estimation focus groups are averaged, with respect to both the frequency of service unit occurrence (percent) and the time required per service unit. The Corrected Time columns reflect the frequency of service unit occurrence (percent) multiplied by the time required for the service unit.

Structured Estimation Data: Version 2

End of Detention Through Juris/Dispo; Basic		End of Detention Through Juris/Dispo; Optimal				
	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
Phase A. Before Hearing	90%	90%	90%	90%	77	75
	37	41	77	75	70	68
	83%	11	23	30	21	27
	25%	30	54	54	17	19
	82%	46	61	88%	55	73
	21%	20	23	90%	37	33
	89%	20	36	85%	41	35
	85%	17	35	87%	34	30
	74%	30	63	79%	56	44
	Other investigation or case management activity	29	40	46	64	26
Phase B. At Hearing	50%	39%	56%	54%	71	75
	80	84	114	120	81	165
	33%	247	274	521		
	9%	208	244	238	21	23
	27%	19	30	24	11	7
	Dispo Only					
	11%	225	266	259	32	32
	25%	22	32	31	9	7
	Juris/Dispo Combined					
	8%	241	345	300	31	24
Phase C. File Notice of Appeal	33%	32	39	40	14	17
	Conduct hearing (witnesses do not testify)					
	2%	9	14	14	0	1
	1%	443	1,223	1,238	36	62
	Total	1516.38	2095.72	Total	3,260	777
	Case Time (in minutes)	320	408	Case Time (in minutes)	617	
	Hours	5.33	6.80	Hours	10	13

For both Basic and Optimal columns, the results of the blind and informed structured estimation focus groups are averaged, with respect to both the frequency of service unit occurrence (percent) and the time required per service unit. The Corrected Time columns reflect the frequency of service unit occurrence (percent) multiplied by the time required for the service unit.

Structured Estimation Data: Version 2

End of Disposition Through Permanency; Basic				End of Disposition Through Permanency; Optimal			
Activity 1 Case Preparation	Child		Parent	Child		Parent	
	Blind and Informed Reconciled	Blind and Informed Reconciled	Corrected Time per*time	Blind and Informed Reconciled	Blind and Informed Reconciled	Corrected Time per*time	
Document review and obtain and review discovery Notes to file and draft orders Legal research Communicate with client (in-person) Communicate with client (other) Communicate with child welfare worker Communicate with other counsel Communicate with others Other investigation or case management activity	49%	55	29	44%	107	49	
	39%	33	17	34%	72	25	
	12%	32	41	18%	61	11	
	42%	56	45	42%	130	84	
	30%	41	46%	37%	65	67	
	46%	57	43%	44%	93	64	
	47%	41	47%	44%	81	74	
	43%	119	57	42%	238	110	
	33%	40	30%	34%	91	57	
	31%	90	26%	37%	126	124	
Activity 2 Motions and Other Hearings	17%	128	139	17%	243	238	
Activity 3 Review Hearing Trial Preparation	6%	98	104	8%	101	126	
	30%	22	20	25%	24	22	
Phase B. Statutory Review Hearing	7%	188	186	5%	195	239	
	3%	28	26	2%	33	29	
Phase C. File Notice of Appeal or Writ	2%	24	18	2%	24	18	
	2%	543	573	2%	760	980	
Prepare and file notice of appeal	Total	1,591	1,511	Total	Case Time (in minutes)	Case Time (in minutes)	
Prepare/file/respond to argue writ	Case Time (in minutes)	274	212	Case Time (in minutes)	500	349	
	Total	274	212	Total	Case Time (in minutes)	Case Time (in minutes)	
	Case Time (in minutes)	4,57	3,54	Case Time (in minutes)	8,33	5,82	
	Hours	26.52	25.18	Hours	39.44	39.44	

For both Basic and Optimal columns, the results of the blind and informed structured estimation focus groups are averaged, with respect to both the frequency of service unit occurrence (percent) and the time required per service unit. The Corrected Time columns reflect the frequency of service unit occurrence (percent) multiplied by the time required for the service unit.

Structured Estimation Data: Version 2

.26 Hearing/39.1B Writ: Basic

	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
Activity 1				
Case Preparation				
Document review and obtain and review discovery	80	80	24	24
Notes to file and draft orders	42	30	10	7
Legal research	46	55	7	9
Communicate with client (in-person)	26%	43	11	10
Communicate with client (other)	29	30	6	7
Communicate with child welfare worker	39	15	11	3
Communicate with other counsel	28%	27	11	8
Communicate with others	29%	43	13	9
Other investigation or case management activity	27%	41	10	8
Activity 2				
Motions and Other Hearings				
	87	230	15	47
Activity 3				
39.1B Writs				
Prepare and file notice of intent to file	50	23	2	2
Request preparation and/or augmentation of record	35	32	2	3
Review record	140	365	14	50
Preparation and filing of pleadings	260	650	13	83
Oral argument	110	98	1	1
Draft settlement/order language	80	45	0	0
Activity 4				
.26 Hearing Trial Preparation				
Conduct hearing (witnesses testify)	20	85	2	7
Conduct hearing (witnesses do not testify)	20	65	0	2
Phase B. At .26 Hearing: Adoption Indicated 50%				
Conduct hearing (witnesses testify)	20	10	1	1
Conduct hearing (witnesses do not testify)	20	—	1	0
Phase C. File Notice of Appeal or Writ				
Prepare and file notice of appeal	20	—	0	0
Prepare/file/respond to/argue writ	20	—	0	0
Total	Case Time (in minutes)	Case Time (in minutes)	Case Time (in minutes)	Case Time (in minutes)
	1,284	1,966	155	280
Hours	21.40	32.77	2.58	4.67

.26 Hearing/39.1B Writ: Optimal

	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
	30%	30%	139	92
	23%	23%	38	35
	16%	18%	108	63
	29%	26%	88	61
	22%	28%	33	43
	30%	26%	56	33
	30%	30%	70	45
	29%	24%	113	81
	26%	19%	169	71
	18%	22%	195	315
	5%	11%	45	26
	5%	9%	75	41
	10%	14%	320	450
	5%	13%	840	830
	1%	1%	193	118
	0%	0%	60	45
	7%	7%	175	100
	5%	0%	28	68
	0%	1%	—	11
	3%	0%	390	—
	5%	0%	28	—
	0%	0%	8	—
	1%	0%	590	—
Total	Case Time (in minutes)	Case Time (in minutes)	Case Time (in minutes)	Case Time (in minutes)
	3,761	2,527	363	384
Hours	62.68	42.12	6.04	6.39

For both Basic and Optimal columns, the results of the blind and informed structured estimation focus groups are averaged, with respect to both the frequency of service unit occurrence (percent) and the time required per service unit. The Corrected Time columns reflect the frequency of service unit occurrence (percent) multiplied by the time required for the service unit.

Structured Estimation Data: Version 2

End of Permanency Hearing Through Post-Perm Plan: Basic					End of Permanency Hearing Through Post-Perm Plan: Optimal				
Activity 1 Case Preparation Document review and obtain and review discovery Notes to file and draft orders Legal research Communicate with client (in-person) Communicate with client (other) Communicate with child welfare worker Communicate with other counsel Communicate with others Other investigation or case management activity	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time	
	23%	23%	4	5	32	38	7	9	
	14%	20%	1	2	13	24	3	5	
	2%	3%	1	1	37	43	1	2	
	21%	6%	11	2	130	40	30	7	
	13%	12%	8	2	85	25	14	3	
	16%	14%	10	2	65	25	15	4	
	8%	20%	2	3	28	18	2	4	
	22%	5%	16	2	90	58	20	6	
	19%	11%	8	5	88	73	18	8	
Activity 2 Motions and other Hearings	24%	5%	26	7	137	188	9	9	
Activity 3 Review Hearing Trial Preparation	12%	1%	29	1	280	158	3	1	
Phase B. At post-perm plan hearing Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify)	1%	0%	1	0	115	113	1	0	
	18%	15%	3	3	20	28	4	3	
	0%	0%	0	0	160	-	0	0	
Phase B At post perm plan hearing/adoption indicated Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify)	2%	0%	0	0	14	-	0	0	
	0%	1%	0	0	10	14	0	0	
	4%	0%	28	0	900	1,200	2	3	
Phase C. File Notice of Appeal or Writ Prepare and file notice of appeal Prepare file/respond to/argue writ	Total				Total		Total		
	Case Time (in minutes)	1,698	928	145	36	2202.33	2040.00	Case Time (in minutes)	65
	Hours	28:30	15:46	2:42	0:60	36:71	34:00	Hours	1:08

For both Basic and Optimal columns, the results of the blind and informed structured estimation focus groups are averaged, with respect to both the frequency of service unit occurrence (percent) and the time required per service unit. The Corrected Time columns reflect the frequency of service unit occurrence (percent) multiplied by the time required for the service unit.

The workload study data then suggests a composite statewide attorney caseload where there are few cases at system entry (Beginning Through Detention) and a majority of cases at either the Review or Post-Permanent Plan Hearing stages. This proportional distribution of cases is used in caseload modeling; in an effort to simplify the modeling process, the hearing classifications were aggregated for caseload development purposes as follows:

- Beginning Through Detention + Post-Detention through Jurisdiction/Disposition + 6-Month Review Hearing ► case type = Year One
- 12-Month Review Hearing + 18-Month Review Hearing + .26 Hearing + First Post-Permanent Plan Hearing ► case type = Year Two
- Two Post-Permanent Plan Hearings ► case type = Year Three and Beyond

The terms “Year One,” “Year Two,” and “Year Three” are descriptive of case types — the analysis then becomes determining the proportion of an average attorney’s caseload that is in Year One, Year Two, or Year Three (and beyond) as opposed to the proportion of cases at each hearing classification stage. The annual cutoffs were determined by a review of the CWS/CMS survival data, which revealed that, at *most*, a case could go through detention, jurisdiction, disposition, and one review hearing within 365 days of entry,⁷ two review hearings, a .26 hearing, and one post-permanent plan hearing within the next 365 day period, and two post-permanent plan hearings at six-month intervals thereafter.

Applying the workload study case type distribution to the Year One/Year Two/ Year Three clusters leads to the following conclusion as to proportional case type distribution for an average attorney’s caseload:

- 47.19 percent of cases are in Year One (7.36+19.93+19.9⁸ percent)
- 36.5 percent of cases are in Year Two (13.93+5.97+8.45+8.15⁹ percent)
- 16.31 percent of cases are in Year Three and beyond (8.15+8.15 percent)

⁷ Other than cases where a WIC §366.26 hearing was ordered at Disposition, which was the case in slightly less than 10 percent of the sample, and only accounting for statutorily required hearings (i.e., not hearings pursuant to motions, etc.).

⁸ Thirty-nine-point-eight percent of workload study cases at the Review Hearing stage. CWS/CMS ratios are applied to this figure to identify percentages for 6-, 12- and 18-month reviews (per CWS/CMS, 50 percent of cases have a 6-month, 35 percent a 12-month, and 15 percent an 18-month review).

⁹ The UC Berkeley sample contains data through the first post-permanency hearing only; for the purposes of caseload modeling we assume the same frequency of occurrence for each of three post-permanent plan hearings modeled (and those thereafter). Therefore, 24.45 percent was divided by three to get percent values for each of the three post-permanent plan hearings included in the model.

Model Building III: Removal of Structured Estimation Data for Writ Work

Structured estimation data did not include time requirements for writ work; because of the infrequent yet highly resource-intensive nature of writ work, AOC staff determined that the impact of this activity on attorney caseloads could not be accurately captured by the caseload model. Comments were solicited as to how best to account for writ work in a caseload model; those comments, in conjunction with Court of Appeals statistics regarding the frequency of writ filings, were used to determine an appropriate factor for accounting for the impact of writ work on attorney time.

The current caseload model reflects an assumption that one writ will be prepared annually by each full-time dependency practitioner and that those writs will require approximately 12.25 hours of attorney time.

Model Building IV: Substitution of Workload Study for Structured Estimation Hearing Times

A comparison of Structured Estimation Data: Version I hearing times with those evidenced in the workload study data reveals that structured estimation focus group participants identified, on average, significantly longer hearing times for both contested (in which witnesses testify) and uncontested hearings at both basic and optimal practice standards than in hearings as currently conducted. Participants in several focus groups engaged in substantive discussions as to the impact of increased case service time outside of court (in case management and investigation activities and tasks) on both the frequency of incidence of contested versus uncontested hearings and on how long those hearings would take. Whereas hearing-frequency estimates identified by focus group participants remain in the caseload model, hearing-time estimates were substituted with data as identified by the workload study. The amount of time available to attorneys for both contested and uncontested hearings is ultimately dependent on judicial and court resources; these issues are outside the immediate parameters of the Caseload Study, and therefore the caseload model as developed is based on actual available court time.

Modified structured estimation data, absent time associated with writ preparation and including workload study hearing times, is provided as Structured Estimation Data: Version III, on the following pages.

Structured Estimation Data: Version 3

Beginning Through Detention Hearing; Basic

Activity 1 Case Preparation	Child		Parent		Child Corrected Time per*time	Parent Corrected Time per*time
	Blind and Informed Reconciled	Blind and Informed Reconciled	Blind and Informed Reconciled	Blind and Informed Reconciled		
Document review and obtain and review discovery	20	20	20	20	20	20
Notes to file and draft orders	52%	11	76%	11	5	9
Legal research	7%	44	10%	23	3	2
Communicate with client (in-person)	83%	38	92%	43	31	39
Communicate with client (other)	24%	10	38%	18	2	7
Communicate with child welfare worker	75%	22	73%	22	17	16
Communicate with other counsel	84%	25	93%	19	21	18
Communicate with others	66%	45	63%	29	29	18
Other investigation or case management activity	100%	18	91%	19	18	18
Activity 2 Motions and Other Hearings						
Activity 3 Detention Hearing Trial Prep Phase B. At Initial/Detention Hearing	2%	21	2%	22	0	0
	29%	69	27%	182	20	48
	10%	20	11%	20	2	2
	90%	15	89%	15	13	13
Phase C. File Notice of Appeal or Writ						
Prepare and file notice of appeal						
Prepare/file/respond to argue writ						
Total	Case Time (in minutes)	356	442	Total Case Time (in minutes)	183	210
	Hours	5.9	7.4	Hours	3.04	3.50

Beginning Through Detention Hearing; Optimal

Activity 1 Case Preparation	Child		Parent		Child Corrected Time per*time	Parent Corrected Time per*time
	Blind and Informed Reconciled	Blind and Informed Reconciled	Blind and Informed Reconciled	Blind and Informed Reconciled		
Document review and obtain and review discovery	100%	33	100%	36	33	36
Notes to file and draft orders	59%	15	81%	17	9	14
Legal research	14%	52	15%	51	7	7
Communicate with client (in-person)	89%	48	94%	59	42	55
Communicate with client (other)	28%	13	39%	32	4	12
Communicate with child welfare worker	88%	28	83%	30	24	25
Communicate with other counsel	90%	31	100%	28	28	28
Communicate with others	83%	55	79%	48	46	38
Other investigation or case management activity	100%	24	93%	28	24	26
Activity 2 Motions and Other Hearings						
Activity 3 Detention Hearing Trial Prep Phase B. At Initial/Detention Hearing	3%	26	3%	26	1	1
	35%	83	34%	333	29	112
	18%	107	20%	122	19	24
	82%	40	80%	43	33	34
Phase C. File Notice of Appeal or Writ						
Prepare and file notice of appeal						
Prepare/file/respond to argue writ						
Total	Case Time (in minutes)	778	1,241	Total Case Time (in minutes)	300	424
	Hours	12.97	20.69	Hours	5.00	7.06

For both Basic and Optimal columns, the results of the blind and informed structured estimation focus groups are averaged, with respect to both the frequency of service unit occurrence (percent) and the time required per service unit. The Corrected Time columns reflect the frequency of service unit occurrence (percent) multiplied by the time required for the service unit.

Structured Estimation Data: Version 3

End of Detention Through Juris/Dispo; Basic		End of Detention Through Juris/Dispo; Optimal			
Activity 1 Case Preparation	Phase A. Before Hearing	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
		90% 37	90% 41	33	37
Activity 2 Motions and Other Hearings	Document review and obtain and review discovery	83% 20	71% 11	16	7
	Legal research	25% 28	30% 30	7	9
	Communicate with client (in-person)	82% 32	82% 46	26	38
	Communicate with client (other)	21% 11	59% 20	2	12
	Communicate with child welfare worker	89% 21	69% 20	19	14
	Communicate with other counsel	85% 14	84% 17	11	15
	Communicate with others	74% 41	60% 30	30	18
	Other investigation or case management activity	50% 29	39% 40	15	15
		53% 80	53% 84	42	44
		33% 131	34% 247	43	85
Activity 3 Juris/Dispo Trial Prep	Phase B. At Hearing	9% 45	9% 45	4	4
	Conduct hearing (witnesses testify)	27% 13	27% 15	4	4
	Conduct hearing (witnesses do not testify)	11% 45	12% 45	5	5
	Dispo Only	25% 13	25% 15	3	4
	Conduct hearing (witnesses testify)	8% 45	10% 45	4	4
	Conduct hearing (witnesses do not testify)	33% 13	36% 15	4	5
	Juris/Dispo Combined	2% 9	6% 14	0	1
	Phase C. File Notice of Appeal of Writ	1% 9	3% 14	0	1
	Prepare and file notice of appeal				
	Prepare file/respond to/argue writ				
Total		Case Time (in minutes)	778.84	Case Time (in minutes)	321
		Hours	12.98	Hours	5.35
		Case Time (in minutes)	626.63	Case Time (in minutes)	270
		Hours	10.44	Hours	4.49
		Case Time (in minutes)	2,998	Case Time (in minutes)	1,223
		Hours	49.96	Hours	20.38
		Case Time (in minutes)	3,260	Case Time (in minutes)	1,238
		Hours	54.33	Hours	20.50
		Case Time (in minutes)	617	Case Time (in minutes)	36
		Hours	10	Hours	0.60
		Case Time (in minutes)	777	Case Time (in minutes)	62
		Hours	13	Hours	1.03

For both Basic and Optimal columns, the results of the blind and informed structured estimation focus groups are averaged, with respect to both the frequency of service unit occurrence (percent) and the time required per service unit. The Corrected Time columns reflect the frequency of service unit occurrence (percent) multiplied by the time required for the service unit.

Structured Estimation Data: Version 3

End of Disposition Through Permanency; Basic

End of Disposition Through Permanency: Optimal

Activity 1 Case Preparation	Document review and obtain and review discovery Notes to file and draft orders Legal research Communicate with client (in-person) Communicate with client (other) Communicate with child welfare worker Communicate with other counsel Communicate with others Other investigation or case management activity	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		49%	55	49%	29	27	14	
		39%	33	37%	17	13	6	
		12%	32	14%	41	4	6	
		42%	56	40%	45	24	18	
		30%	41	46%	41	12	19	
		46%	57	43%	46	26	20	
		47%	41	47%	42	19	20	
		43%	119	35%	57	51	20	
		33%	40	30%	28	13	8	
Activity 2 Motions and Other Hearings		31%	90	26%	101	28	26	
Activity 3 Review Hearing Trial Preparation Phase B. Statutory Review Hearing	Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify) Termination of reunification Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify)	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		17%	128	16%	139	22	23	
		6%	25	6%	35	1	2	
		30%	10	30%	10	3	3	
		7%	65	5%	85	4	5	
		3%	10	3%	15	0	0	
		2%	24	3%	18	0	0	
		2%		2%				
		Total	Case Time (in minutes)	825	748	249	190	Total Case Time (in minutes)
		13.74	12.46	4.15	3.17	Hours	Hours	

Activity 1 Case Preparation	Document review and obtain and review discovery Notes to file and draft orders Legal research Communicate with client (in-person) Communicate with client (other) Communicate with child welfare worker Communicate with other counsel Communicate with others Other investigation or case management activity	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		49%	55	49%	29	27	14	
		39%	33	37%	17	13	6	
		12%	32	14%	41	4	6	
		42%	56	40%	45	24	18	
		30%	41	46%	41	12	19	
		46%	57	43%	46	26	20	
		47%	41	47%	42	19	20	
		43%	119	35%	57	51	20	
		33%	40	30%	28	13	8	
Activity 2 Motions and Other Hearings		31%	90	26%	101	28	26	
Activity 3 Review Hearing Trial Preparation Phase B. Statutory Review Hearing	Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify) Termination of reunification Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify)	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		17%	128	16%	139	22	23	
		6%	25	6%	35	1	2	
		30%	10	30%	10	3	3	
		7%	65	5%	85	4	5	
		3%	10	3%	15	0	0	
		2%	24	3%	18	0	0	
		2%		2%				
		Total	Case Time (in minutes)	825	748	249	190	Total Case Time (in minutes)
		13.74	12.46	4.15	3.17	Hours	Hours	

Activity 1 Case Preparation	Document review and obtain and review discovery Notes to file and draft orders Legal research Communicate with client (in-person) Communicate with client (other) Communicate with child welfare worker Communicate with other counsel Communicate with others Other investigation or case management activity	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		49%	55	49%	29	27	14	
		39%	33	37%	17	13	6	
		12%	32	14%	41	4	6	
		42%	56	40%	45	24	18	
		30%	41	46%	41	12	19	
		46%	57	43%	46	26	20	
		47%	41	47%	42	19	20	
		43%	119	35%	57	51	20	
		33%	40	30%	28	13	8	
Activity 2 Motions and Other Hearings		31%	90	26%	101	28	26	
Activity 3 Review Hearing Trial Preparation Phase B. Statutory Review Hearing	Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify) Termination of reunification Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify)	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		17%	128	16%	139	22	23	
		6%	25	6%	35	1	2	
		30%	10	30%	10	3	3	
		7%	65	5%	85	4	5	
		3%	10	3%	15	0	0	
		2%	24	3%	18	0	0	
		2%		2%				
		Total	Case Time (in minutes)	825	748	249	190	Total Case Time (in minutes)
		13.74	12.46	4.15	3.17	Hours	Hours	

Activity 1 Case Preparation	Document review and obtain and review discovery Notes to file and draft orders Legal research Communicate with client (in-person) Communicate with client (other) Communicate with child welfare worker Communicate with other counsel Communicate with others Other investigation or case management activity	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		49%	55	49%	29	27	14	
		39%	33	37%	17	13	6	
		12%	32	14%	41	4	6	
		42%	56	40%	45	24	18	
		30%	41	46%	41	12	19	
		46%	57	43%	46	26	20	
		47%	41	47%	42	19	20	
		43%	119	35%	57	51	20	
		33%	40	30%	28	13	8	
Activity 2 Motions and Other Hearings		31%	90	26%	101	28	26	
Activity 3 Review Hearing Trial Preparation Phase B. Statutory Review Hearing	Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify) Termination of reunification Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify)	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		17%	128	16%	139	22	23	
		6%	25	6%	35	1	2	
		30%	10	30%	10	3	3	
		7%	65	5%	85	4	5	
		3%	10	3%	15	0	0	
		2%	24	3%	18	0	0	
		2%		2%				
		Total	Case Time (in minutes)	825	748	249	190	Total Case Time (in minutes)
		13.74	12.46	4.15	3.17	Hours	Hours	

Activity 1 Case Preparation	Document review and obtain and review discovery Notes to file and draft orders Legal research Communicate with client (in-person) Communicate with client (other) Communicate with child welfare worker Communicate with other counsel Communicate with others Other investigation or case management activity	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		49%	55	49%	29	27	14	
		39%	33	37%	17	13	6	
		12%	32	14%	41	4	6	
		42%	56	40%	45	24	18	
		30%	41	46%	41	12	19	
		46%	57	43%	46	26	20	
		47%	41	47%	42	19	20	
		43%	119	35%	57	51	20	
		33%	40	30%	28	13	8	
Activity 2 Motions and Other Hearings		31%	90	26%	101	28	26	
Activity 3 Review Hearing Trial Preparation Phase B. Statutory Review Hearing	Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify) Termination of reunification Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify)	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		17%	128	16%	139	22	23	
		6%	25	6%	35	1	2	
		30%	10	30%	10	3	3	
		7%	65	5%	85	4	5	
		3%	10	3%	15	0	0	
		2%	24	3%	18	0	0	
		2%		2%				
		Total	Case Time (in minutes)	825	748	249	190	Total Case Time (in minutes)
		13.74	12.46	4.15	3.17	Hours	Hours	

Activity 1 Case Preparation	Document review and obtain and review discovery Notes to file and draft orders Legal research Communicate with client (in-person) Communicate with client (other) Communicate with child welfare worker Communicate with other counsel Communicate with others Other investigation or case management activity	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		49%	55	49%	29	27	14	
		39%	33	37%	17	13	6	
		12%	32	14%	41	4	6	
		42%	56	40%	45	24	18	
		30%	41	46%	41	12	19	
		46%	57	43%	46	26	20	
		47%	41	47%	42	19	20	
		43%	119	35%	57	51	20	
		33%	40	30%	28	13	8	
Activity 2 Motions and Other Hearings		31%	90	26%	101	28	26	
Activity 3 Review Hearing Trial Preparation Phase B. Statutory Review Hearing	Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify) Termination of reunification Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify)	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		17%	128	16%	139	22	23	
		6%	25	6%	35	1	2	
		30%	10	30%	10	3	3	
		7%	65	5%	85	4	5	
		3%	10	3%	15	0	0	
		2%	24	3%	18	0	0	
		2%		2%				
		Total	Case Time (in minutes)	825	748	249	190	Total Case Time (in minutes)
		13.74	12.46	4.15	3.17	Hours	Hours	

Activity 1 Case Preparation	Document review and obtain and review discovery Notes to file and draft orders Legal research Communicate with client (in-person) Communicate with client (other) Communicate with child welfare worker Communicate with other counsel Communicate with others Other investigation or case management activity	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		49%	55	49%	29	27	14	
		39%	33	37%	17	13	6	
		12%	32	14%	41	4	6	
		42%	56	40%	45	24	18	
		30%	41	46%	41	12	19	
		46%	57	43%	46	26	20	
		47%	41	47%	42	19	20	
		43%	119	35%	57	51	20	
		33%	40	30%	28	13	8	
Activity 2 Motions and Other Hearings		31%	90	26%	101	28	26	
Activity 3 Review Hearing Trial Preparation Phase B. Statutory Review Hearing	Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify) Termination of reunification Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify)	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		17%	128	16%	139	22	23	
		6%	25	6%	35	1	2	
		30%	10	30%	10	3	3	
		7%	65	5%	85	4	5	
		3%	10	3%	15	0	0	
		2%	24	3%	18	0	0	
		2%		2%				
		Total	Case Time (in minutes)	825	748	249	190	Total Case Time (in minutes)
		13.74	12.46	4.15	3.17	Hours	Hours	

Activity 1 Case Preparation	Document review and obtain and review discovery Notes to file and draft orders Legal research Communicate with client (in-person) Communicate with client (other) Communicate with child welfare worker Communicate with other counsel Communicate with others Other investigation or case management activity	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		49%	55	49%	29	27	14	
		39%	33	37%	17	13	6	
		12%	32	14%	41	4	6	
		42%	56	40%	45	24	18	
		30%	41	46%	41	12	19	
		46%	57	43%	46	26	20	
		47%	41	47%	42	19	20	
		43%	119	35%	57	51	20	
		33%	40	30%	28	13	8	
Activity 2 Motions and Other Hearings		31%	90	26%	101	28	26	
Activity 3 Review Hearing Trial Preparation Phase B. Statutory Review Hearing	Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify) Termination of reunification Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify)	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		17%	128	16%	139	22	23	
		6%	25	6%	35	1	2	
		30%	10	30%	10	3	3	
		7%	65	5%	85	4	5	
		3%	10	3%	15	0	0	
		2%	24	3%	18	0	0	
		2%		2%				
		Total	Case Time (in minutes)	825	748	249	190	Total Case Time (in minutes)
		13.74	12.46	4.15	3.17	Hours	Hours	

Activity 1 Case Preparation	Document review and obtain and review discovery Notes to file and draft orders Legal research Communicate with client (in-person) Communicate with client (other) Communicate with child welfare worker Communicate with other counsel Communicate with others Other investigation or case management activity	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		49%	55	49%	29	27	14	
		39%	33	37%	17	13	6	
		12%	32	14%	41	4	6	
		42%	56	40%	45	24	18	
		30%	41	46%	41	12	19	
		46%	57	43%	46	26	20	
		47%	41	47%	42	19	20	
		43%	119	35%	57	51	20	
		33%	40	30%	28	13	8	
Activity 2 Motions and Other Hearings		31%	90	26%	101	28	26	
Activity 3 Review Hearing Trial Preparation Phase B. Statutory Review Hearing	Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify) Termination of reunification Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify)	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time			
		17%	128	16%	139	22	23	
		6%	25	6%	35	1	2	
		30%	10	30%	10	3	3	
		7%	65	5%	85	4	5	
		3%	10	3%	15	0	0	
		2%	24	3%	18	0	0	
		2%		2%				
		Total	Case Time (in minutes)	825	748	249	190	Total Case Time (in minutes)
		13.74	12.46	4.15	3.17	Hours	Hours	

Activity 1 Case Preparation	Document review and obtain and review discovery Notes to file and draft orders Legal research Communicate with client (in-person) Communicate with client (other) Communicate with child welfare worker Communicate with other counsel Communicate with others Other investigation or case management activity	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time		
		49%	55	49%	29	27	14
		39%	33	37%	17	13	6
		12%	32	14%	41	4	6
		42%	56	40%	45	24	18
		30%	41	46%	41	12	19
		46%	57	43%	46	26	20
		47%	41	47%	42	19	20
		43%	119	35%	57	51	20
		33%	40	30%	28	13	8
Activity 2 Motions and Other Hearings		31%	90	26%	101	28	26
Activity 3 Review Hearing Trial Preparation Phase B. Statutory Review Hearing	Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify) Termination of reunification Conduct hearing (witnesses testify) Conduct hearing (witnesses do not testify)	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time		
		17%	128	16%	139	22	23
		6%	25	6%	35	1	2
		30%	10	30%	10	3	3
		7%	65	5%	85	4	5
		3%	10	3%	15	0	0

For both Basic and Optimal columns, the results of the blind and informed structured estimation focus groups are averaged, with respect to both the frequency of service unit occurrence (percent) and the time required per service unit. The Corrected Time columns reflect the frequency of service unit occurrence (percent) multiplied by the time required for the service unit.

Structured Estimation Data: Version 3

.26 Hearing/39.1B Writ: Basic

.26 Hearing/39.1B Writ: Optimal

	.26 Hearing/39.1B Writ: Basic				.26 Hearing/39.1B Writ: Optimal			
	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time	Child Blind and Informed Reconciled	Parent Blind and Informed Reconciled	Child Corrected Time perc*time	Parent Corrected Time perc*time
Activity 1								
Case Preparation								
Document review and obtain and review discovery	80	80	24	24	139	92	42	28
Notes to file and draft orders	30%	30%	10	7	38	35	9	8
Legal research	23%	23%	7	9	108	63	17	11
Communicate with client (in-person)	15%	17%	11	10	88	61	26	16
Communicate with client (other)	26%	22%	6	7	33	43	7	12
Communicate with child welfare worker	21%	25%	11	3	56	33	17	9
Communicate with other counsel	28%	21%	11	8	70	45	21	14
Communicate with others	28%	28%	13	9	113	81	33	20
Other investigation or case management activity	29%	22%	10	8	169	71	45	13
Activity 2								
Motions and Other Hearings								
	87	230	15	47	195	315	36	70
Activity 3								
39.1B Writs								
Prepare and file notice of intent to file	50	23	2	2	45	26	2	3
Request preparation and/or augmentation of record	35	32	2	3	75	41	4	4
Review record	10%	8%	14	50	320	450	31	61
Preparation and filing of pleadings	260	365	13	83	840	830	42	107
Oral argument	1%	1%	1	1	193	118	1	1
Draft settlement/order language	80	45	0	0	60	45	0	0
Activity 4								
.26 Hearing Trial Preparation								
Conduct hearing (witnesses testify)	20	85	2	7	175	100	12	7
Conduct hearing (witnesses do not testify)	46	60	1	1	28	68	1	0
Conduct hearing (witnesses do not testify)	10	10	1	1	-	11	0	0
Phase B. At .26 Hearing: Adoption Indicated 50%								
Conduct hearing (witnesses testify)	46	-	2	0	390	-	12	0
Conduct hearing (witnesses do not testify)	10	-	0	0	28	-	1	0
Phase C. File Notice of Appeal or Writ								
Prepare and file notice of appeal	20	-	0	0	8	-	0	0
Prepare/file/respond to/argue writ	1%	0%	0	0	590	-	4	0
Total	Case Time (in minutes)	Case Time (in minutes)	Case Time (in minutes)	Case Time (in minutes)	Case Time (in minutes)	Case Time (in minutes)	Case Time (in minutes)	Case Time (in minutes)
	1,316	1,961	156	280	3,761	2,527	363	384
Hours	21.93	32.68	2.59	4.67	62.68	42.12	6.04	6.39

For both Basic and Optimal columns, the results of the blind and informed structured estimation focus groups are averaged, with respect to both the frequency of service unit occurrence (percent) and the time required per service unit. The Corrected Time columns reflect the frequency of service unit occurrence (percent) multiplied by the time required for the service unit.

Structured Estimation Data: Version 3

End of Permanency Hearing Through Post-Perm Plan; Basic										End of Permanency Hearing Through Post-Perm Plan; Optimal									
	Child				Parent					Child				Parent					
	Blind and Informed Reconciled	Blind and Informed Reconciled	Blind and Informed Reconciled	Blind and Informed Reconciled	Blind and Informed Reconciled	Blind and Informed Reconciled	Blind and Informed Reconciled	Blind and Informed Reconciled		Blind and Informed Reconciled	Blind and Informed Reconciled	Blind and Informed Reconciled	Blind and Informed Reconciled	Blind and Informed Reconciled	Blind and Informed Reconciled	Blind and Informed Reconciled	Blind and Informed Reconciled		
Case Preparation																			
Document review and obtain and review discovery	23%	16	23%	23	23%	32	23%	38		23%	32	23%	38	23%	32	23%	38		
Notes to file and draft orders	14%	8	20%	11	20%	13	21%	24		21%	13	21%	24	21%	13	21%	24		
Legal research	2%	31	3%	29	3%	37	5%	43		3%	37	5%	43	5%	43	5%	43		
Communicate with client (in-person)	21%	50	6%	30	6%	11	16%	40		23%	130	16%	40	16%	40	16%	40		
Communicate with client (other)	13%	58	12%	15	12%	8	13%	25		16%	85	13%	25	13%	25	13%	25		
Communicate with child welfare worker	16%	60	14%	15	14%	10	16%	25		23%	65	18%	25	18%	25	18%	25		
Communicate with other counsel	8%	23	20%	13	20%	2	8%	18		8%	28	21%	18	21%	2	21%	18		
Communicate with others	22%	70	5%	44	5%	16	22%	58		22%	90	11%	58	11%	58	11%	58		
Other investigation or case management activity	19%	43	11%	44	11%	8	20%	73		20%	88	12%	73	12%	88	12%	73		
Activity 2																			
Motions and other Hearings																			
Conduct hearing (witnesses testify)	24%	107	5%	158	5%	26	7%	188		7%	137	5%	188	5%	188	5%	188		
Activity 3																			
Review Hearing Trial Preparation																			
Conduct hearing (witnesses do not testify)	12%	230	1%	105	1%	29	1%	158		1%	280	1%	158	1%	158	1%	158		
Phase B. At post-perm plan hearing																			
Conduct hearing (witnesses do not testify)	1%	15	0%	15	0%	0	1%	113		1%	115	0%	113	0%	113	0%	113		
Phase B At post perm plan hearing adoption indicated																			
Conduct hearing (witnesses testify)	18%	10	15%	10	15%	2	18%	28		18%	20	12%	28	12%	28	12%	28		
Conduct hearing (witnesses do not testify)	0%	15	0%	-	0%	0	0%	-		0%	160	0%	-	0%	-	0%	-		
Phase C. File Notice of Appeal or Writ																			
Prepare and file notice of appeal	2%	10	0%	-	0%	0	2%	14		2%	14	0%	-	0%	-	0%	-		
Prepare/file/respond to argue writ	0%	10	1%	14	1%	0	0.3%	14		0.3%	10	1%	14	1%	14	1%	14		
	4%		0%		0%		0.2%			0.2%		0%		0%		0%			
Total	Case Time (in minutes)	754	524	524	524	115	34	2040.00	Total Case Time (in minutes)	2202.33	2040.00	129	65	Total Case Time (in minutes)	2202.33	2040.00	129	65	Total Case Time (in minutes)
	Hours	12.56	8.73	8.73	8.73	1.92	0.57	34.00	Hours	36.71	34.00	2.15	1.08	Hours	36.71	34.00	2.15	1.08	Hours

For both Basic and Optimal columns, the results of the blind and informed structured estimation focus groups are averaged, with respect to both the frequency of service unit occurrence (percent) and the time required per service unit. The Corrected Time columns reflect the frequency of service unit occurrence (percent) multiplied by the time required for the service unit.

Model Building V: Addition of Travel Time, Child's Counsel Only

For attorneys representing child clients, traveling to visit the child in his/her placement setting is recommended prior to every hearing, in general, as part of both the basic and optimal standards. Since the amount of time required for travel to a placement setting is not under attorney control, structured estimation groups were not asked to estimate travel times. Instead, an average client-related travel time of 0.8 hours (48 minutes per case of prehearing travel) was calculated from workload study results and included in the per-case totals for both the basic and optimal conditions as distributed in the interim report. Travel was included only for child cases due to the importance of attorney-client visits in placement settings and the assumption that most parent clients have independent means to travel to see their attorneys.

Comments were solicited and received with respect to how reflective the estimate of 48 minutes per-case of travel time was of the expectation of client visits prior to every hearing. As a result of those comments, the travel time factor was modified upwards significantly, to 3.2 hours per child case annually.

Caseload Model

The structured estimation data was used to develop a caseload model as follows:

1. Structured estimation times weighted by frequency of activity or task occurrence;
2. Results of (1.) weighted by CWS/CMS data outlining the likelihood that any dependency case will reach each particular hearing classification stage;
3. Results of (2.) weighted by workload study and CWS/CMS data reflecting the proportional distribution of attorney caseloads by case type; and
4. Annual attorney time requirements by case type derived.

The final key component of the caseload model is the annual number of attorney hours available for actual casework. As indicated by the workload study data, 83 percent of all attorney time was spent on court-appointed dependency casework over the two-week workload study period; utilizing the judicial branch annual work available hours figure of 1,778, a case service time of 1,476 hours per year was identified. This figure is then adjusted downward to account for time needed for writ preparation. By dividing available case time by the weighted number of requisite attorney hours per case type as outlined above, values for a basic and optimal caseload were attained.

Table 8 outlines parent and child client caseloads at a basic standard of practice, Table 9 at an optimal practice standard. Because of both the similarity of the caseload figures for parent and child cases and the practical implications of administering differing caseload standards for each, the caseload figures for parent and child clients were averaged. Thus, Caseload Study results indicated an *optimal practice standard* maximum caseload of 77 cases or clients per full-time dependency attorney and a *basic practice standard* caseload of 141 clients per full-time dependency attorney; these recommended standards compared to a statewide average at the onset

Appendix 1

of the caseload study of 273 clients per attorney. Note that for purposes of Caseload Study results, one client is equivalent to one case; each sibling of a sibling group is counted as an individual case.¹⁰ Although originally intended by the study design, neither the basic nor the optimal caseload standards reflected the potential impact of support staffing, particularly investigators or social workers, on attorneys' case-carrying capacity.¹¹

¹⁰ Comments were solicited regarding the determination that one child was equivalent to one case (and thus that sibling groups would be treated as individual cases). Feedback supported the notion that, while sibling groups generally require less attorney time than an equal number of unrelated cases, the numerous confounding variables affecting the workload associated with sibling representation suggest a one-to-one correlation at this time.

¹¹ While support staff were included as workload study participants, their participation was entirely voluntary and based on the discretion of their employers. As such, data collected did not reflect a representative sample of support staff activity and could not be used to inform caseload standard modifications.

Table 8: Caseload Model: Basic Standard						
	CWS/CMS Frequencies Not Already Accounted for in Structured Estimation Data	Hearing Classification Attorney Time Requirements: Child Client (in hours)	Hearing Classification Attorney Time Requirements: Parent Client (in hours)	Proportion of Caseload in Year One, Year Two, Year Three	Weighted Annual Hour Requirement by Case Type: Child Client	Weighted Annual Hour Requirement by Case Type: Parent Client
Detention		3.04	3.50			
Disposition		4.49	5.35			
Permanency (6 month review)		4.15	3.17			
Year						
12 month review	35.60%	2.96	2.26			
18 month review	15.00%	1.25	0.95			
.26 Hearing		2.59	4.67			
First PPH		1.92	0.57			
Year Two Hours per Case						
Year Three						
Second PPH		1.92	0.57			
Third PPH		1.92	0.57			
Three Hours per Case						
Annual Work Hours						
Annual Dependency Casework Hours /						
Annual Hours per Composite Case		1476	1476		9.32	8.94
Available Work Hours per Year						
Composite (Year One+Year						
One 39.1B Writ per Year		11.26	13.22			
Revised Annual Depend						
Hours (Reflecting One						
Available Work Hours per Year Minus Writ						
per Case Composite (Year One+Year		157.08	164.00			
Two+Year Three)						
Travel Hours per Case						
Child Cases with Travel		117				
Hours per Case						
Hours per Year/Other Case Service Time		1091				
REC						

Table 9: Caseload Model: Optimal Standard						
	CWS/CMS Frequencies Not Already Accounted for in Structured Estimation Data	Hearing Classification Attorney Time Requirements: Child Client (in hours)	Hearing Classification Attorney Time Requirements: Parent Client (in hours)	Proportion of Caseload in Year One, Year Two, Year Three	Weighted Annual Hour Requirement by Case Type: Child Client	Weighted Annual Hour Requirement by Case Type: Parent Client
Detention		5.00	7.06			
Disposition		10.28	12.95			
Permanency (6 month review)		8.33	5.82			
Year One		23.62				
Year Two						
Year Three						
12 month review	35.60%	6.14	4.14			
18 month review	15.00%	2.59	1.74			
26 Hearing		6.04	6.39			
First PPH		2.15	1.08			
Year Two Hours		16.93				
Year Three						
Second PPH		2.15	1.08			
Third PPH		2.15	1.08			
Year Three Hours per Case						
Total Annual Work Hours						
Annual Dependency Casework Hours /						
Annual Hours per Composite Case		1476	1476		18.03	17.41
Available Work Hours per						
Composite (Year One+Year		81.88				
One 39.1 B Writ per Year		11.25	13.22			
Revised Annual Dependency		464.75				
Hours (Reflecting One 39.1						
Available Work Hours per Year minus Writ						
per Case Composite (Year One+Year						
Two+Year Three)		81.25	84.01			
Travel Hours per Year						
Child Cases with Travel		69				
Hours per Year/Travel		221				
RECOMMENDED CASELOAD		77				

APPENDIX 1B

Hearing Classification: Beginning Through Initial/Detention Hearing				Minutes to Complete: From Workload Data	
<i>Phase A. Before Hearing</i>				N	Mean
Activity 1. Case Preparation				770	:19
Document review and Obtain and review discovery					
Notes to file and Draft orders				107	:12
Legal research				10	:54
Communicate with client (in person)				465	:27
Communicate with client (other)				153	:24
Communicate with child welfare worker				165	:15
Communicate with other counsel				191	:14
Communicate with others				123	:15
Other investigation or case management activity				71	:29
Activity 2. Motions and Other Hearings				82	:29
Activity 3. Detention Hearing Trial Preparation				82	:32
<i>Phase B. At Initial/Detention Hearing</i>					
Conduct hearing (witnesses testify)				90	:36
Conduct hearing (witnesses do not testify)				1146	:19
Phase C. File Writ					
Prepare and file notice of appeal					
Prepare/file/respond to/argue writ					

The Caseload Study for Court-Appointed Dependency Counsel

APPENDIX 1B

Hearing Classification: Post-Detention Hearing Through Disposition				Minutes to Complete: From Workload Data
<i>Phase A. Before Hearing</i>				
<i>Activity 1. Case Preparation</i>				
Document review and Obtain and review discovery		N	Median	Mean
Notes to file and Draft orders		2083	:15	:25
Legal research		577	:10	:15
Communicate with client (in person)		115	:33	:56
Communicate with client (other)		952	:22	:30
Communicate with child welfare worker		695	:17	:25
Communicate with other counsel		647	:10	:15
Communicate with others		833	:14	:19
Other investigation or case management activity		588	:14	:22
		324	:11	:21
<i>Activity 2. Motions and Other Hearings</i>				
		415	:20	:42
<i>Activity 3. Juris/Dispo Trial Preparation</i>				
		407	:35	1:13
<i>Phase B. At Hearing: Juris-Dispo Combined</i>				
Conduct hearing (witnesses testify)		326	:45	1:24
Conduct hearing (witnesses do not testify)		2590	:14	:18
<i>Phase C. File Writ</i>				
Prepare/file/respond to/argue writ		3	2:49	2:49

The Caseload Study for Court-Appointed Dependency Counsel

APPENDIX 1B

Hearing Classification: 39.1B Writ Preparation through Completion of the Selection and Implementation (.26) Hearing				Minutes to Complete: From Workload Data	
Phase A. Before Hearing		N	Median	Mean	
Activity 1. Case Preparation					
Document review and Obtain and review discovery		757	:15	:26	
Notes to file and Draft orders		223	:10	:13	
Legal research		62	:39	1:11	
Communicate with client (in person)		165	:15	:30	
Communicate with client (other)		248	:16	:25	
Communicate with child welfare worker		217	:11	:15	
Communicate with other counsel		267	:14	:20	
Communicate with others		309	:15	:24	
Other investigation or case management activity		128	:12	:18	
Activity 2. Motions and Other Hearings		179	:23	:54	
Activity 3. 39.1B Writs					
Prepare and file notice of intent to file		4	:42	:53	
Request preparation and/or augmentation of record		5	:38	:41	
Review record		21	1:12	2:49	
Preparation and filing of pleadings		6	2:25	5:05	
Oral argument				0	
Draft settlement/order language		1	:15	:15	
Activity 4. .26 Hearing Trial Preparation		89	:37	:51	
Phase B. At .26 Hearing					
Conduct hearing (witnesses testify)		127	:53	1:24	
Conduct hearing (witnesses do not testify)		881	:10	:17	
Phase C. File Notice of Appeal or Writ					
Prepare and file notice of appeal		26	:35	:58	
Prepare/file/respond to/argue writ		46	3:00	4:46	

The Caseload Study for Court-Appointed Dependency Counsel

APPENDIX 1B

Hearing Classification: Post-Disposition Through End of Reunification Services and/or End of In-Home Dependency Period				Minutes to Complete: From Workload Data	
<i>Phase A. Before Hearing</i>					
<i>Activity 1. Case Preparation</i>				N	Mean
Document review and Obtain and review discovery				3661	:18
Notes to file and Draft orders				1099	:13
Legal research				122	:43
Communicate with client (in person)				1291	:24
Communicate with client (other)				1323	:21
Communicate with child welfare worker				1291	:15
Communicate with other counsel				1178	:16
Communicate with others				1319	:22
Other investigation or case management activity				530	:18
<i>Activity 2. Motions and Other Hearings</i>					
				819	:34
<i>Activity 3. Review Hearing Trial Preparation</i>					
				362	:57
<i>Phase B. Statutory Review Hearing</i>					
<i>At Hearing, Services Ongoing</i>					
Conduct hearing (witnesses testify)				372	1:00
Conduct hearing (witnesses do not testify)				3878	:15
<i>At Hearing, Services Terminating</i>					
Conduct hearing (witnesses testify)				19	1:40
Conduct hearing (witnesses do not testify)				141	:17
<i>Phase C. File Notice of Appeal or Writ</i>					
Prepare and file notice of appeal				12	:34
Prepare/file/respond to/argue writ				8	:40

The Caseload Study for Court-Appointed Dependency Counsel

APPENDIX 1B

Hearing Classification: Post-Permanent Plan				Minutes to Complete: From Workload Data	
Phase A. Before Hearing		N	Median	Mean	
Activity 1. Case Preparation		2323	:10	:15	
Document review and Obtain and review discovery					
Notes to file and Draft orders		736	:08	:10	
Legal research		69	:29	:38	
Communicate with client (in person)		519	:18	:30	
Communicate with client (other)		778	:15	:20	
Communicate with child welfare worker		783	:10	:16	
Communicate with other counsel		498	:11	:18	
Communicate with others		1056	:14	:22	
Other investigation or case management activity		416	:07	:17	
Activity 2. Motions and Other Hearings		390	:20	:41	
Activity 3. Review Hearing Trial Preparation		85	:28	:37	
Phase B. At Post Perm Plan Hearing					
Conduct hearing (witnesses testify)		173	:15	:29	
Conduct hearing (witnesses do not testify)		2469	:10	:13	
Phase C. File Notice of Appeal or Writ					
Prepare and file notice of appeal		15	:29	:36	
Prepare/file/respond to/argue writ		14	:48	3:42	

Court Compensation Regions

Appendix 2

Region 1					Region 2					Region 3					Region 4				
	Watson Wyatt Group	Co. Co. Salary Group	Income Group	Home Value Group		Watson Wyatt Group	Co. Co. Salary Group	Income Group	Home Value Group		Watson Wyatt Group	Co. Co. Salary Group	Income Group	Home Value Group		Watson Wyatt Group	Co. Co. Salary Group	Income Group	Home Value Group
Butte	1	1	1	1	Alpine	1		2	2	Alameda	3	3	3	3	Contra Costa	3	3	4	3
Colusa	1	1	1	1	Amador	1	2	2	2	Los Angeles	3	3	2	2	Marin	3	3	4	4
Del Norte	1	1	1	1	Calaveras	1	1	2	2	Monterey	2	2	3	3	San Francisco	4	4	3	4
Fresno	1	1	1	1	El Dorado	1	2	3	2	Napa	2	2	3	3	San Mateo	4	3	4	4
Humboldt	1	1	1	1	Glenn	1	3	1	1	Orange	2	2	3	3	Santa Clara	4	4	4	3
Imperial	1	1	1	1	Inyo	1	1	1	2	Placer	1	3	3	2					
Kings	1	1	1	1	Kern	1	2	1	1	Riverside	2	3	2	2					
Lassen	1	1	1	1	Lake	2	1	1	1	San Diego	2	3	3	3					
Mariposa	1		1	1	Madera	1	1	2	1	Santa Barbara	2	2	3	3					
Merced	1	1	1	1	Mendocino	1	1	1	2	Santa Cruz	2	2	3	4					
Modoc	1		1	1	Mono	1	2	2	3	Solano	3	2	3	2					
Plumas	1	1	1	1	Nevada	1	1	2	2	Sonoma	2	3	3	3					
Shasta	1	1	1	1	Sacramento	2	2	2	2	Ventura	2	2	3	3					
Sierra	1		1	1	San Benito	1	1	3	3										
Siskiyou	1	1	1	1	San Bernardino	2	2	2	1										
Tehama	1	1	1	1	San Joaquin	1	2	2	2										
Trinity	1		1	1	San Luis Obispo	1	2	2	3										
Tulare	1	1	1	1	Stanislaus	1	2	2	2										
					Sutter	1	2	2	1										
					Tuolumne	1	1	1	2										
					Yolo	1	1	2	2										
					Yuba	1	2	1	1										

STATEWIDE CASELOAD STANDARD IMPLEMENTATION COSTS

Appendix 3

Court	Total Clients July 1, 2007	Caseload Standard Implementation
Alameda	6,774	7,407,403
Alpine	-	-
Amador	62	58,880
Butte	1,709	1,438,960
Calaveras	151	143,516
Colusa	87	73,026
Contra Costa	4,241	5,339,094
Del Norte	179	150,716
El Dorado	437	415,522
Fresno	4,317	3,634,894
Glenn	176	167,277
Humboldt	457	384,789
Imperial	834	702,219
Inyo	54	51,324
Kern	4,078	3,875,889
Kings	668	562,449
Lake	325	308,893
Lassen	124	104,322
Los Angeles	40,552	44,343,816
Madera	504	479,449
Marin	179	225,347
Mariposa	115	96,871
Mendocino	575	546,502
Merced	1,071	901,644
Modoc	52	43,783
Mono	9	8,411
Monterey	793	867,106
Napa	161	176,131
Nevada	144	136,863
Orange	9,585	10,481,246
Placer	692	756,705
Plumas	202	170,082
Riverside	10,603	11,594,434
Sacramento	8,083	7,682,395
San Benito	145	137,814
San Bernardino	10,670	10,141,180
San Diego	11,871	12,980,998
San Francisco	4,517	5,686,557
San Joaquin	4,062	3,860,682
San Luis Obispo	1,002	952,339
San Mateo	966	1,216,120
Santa Barbara	1,421	1,553,871
Santa Clara	4,573	5,757,057
Santa Cruz	792	866,056
Shasta	933	785,399
Sierra	16	13,436
Siskiyou	258	217,587
Solano	832	909,687
Sonoma	1,102	1,205,043
Stanislaus	985	936,182
Sutter	364	345,960
Tehama	443	372,580
Trinity	78	65,574
Tulare	1,884	1,586,308
Tuolumne	282	268,024
Ventura	1,277	1,396,406
Yolo	1,425	1,354,375
Yuba	386	366,736
Total		156,305,931
Cost of Implementation	\$156,305,931	
FY 07-08 CAC Budget	\$99,157,998	
Additional Funding Needed	\$57,147,934	
Percentage Increase	0.58	

California Blue Ribbon Commission on Children in Foster Care

FOSTERING A NEW FUTURE FOR CALIFORNIA'S CHILDREN

Ensuring Every Child
a Safe, Secure, and
Permanent Home

FINAL REPORT
AND ACTION PLAN
MAY 2009



ADMINISTRATIVE OFFICE
OF THE COURTS

CENTER FOR FAMILIES, CHILDREN
& THE COURTS

About the Blue Ribbon Commission on Children in Foster Care

On March 9, 2006, Chief Justice Ronald M. George established the California Blue Ribbon Commission on Children in Foster Care and appointed Supreme Court of California Associate Justice Carlos R. Moreno as its chair. The commission was charged with providing recommendations to the Judicial Council of California on the ways in which the courts and their partners can improve safety, permanency, well-being, and fairness for children and families who find themselves in the child welfare system. This report contains the commission's recommendations for improving California's juvenile dependency courts and foster care system and the commission's action plan for implementation.

The commission includes members from a variety of disciplines including judges, legislators, child welfare administrators, foster youth, caregivers, philanthropists, tribal leaders, advocates for children and parents, and others providing leadership on the issues that face foster children and their families and the courts and agencies that serve them. The establishment of the commission builds on recent Judicial Council efforts to improve California's juvenile courts and is consistent with goals and objectives recently adopted by the Judicial Council.

The California Blue Ribbon Commission on Children in Foster Care seeks to achieve four results:

1. A comprehensive set of achievable recommendations for how courts and their partners can improve the child welfare system, including an implementation plan;
2. Improved court performance and accountability in achieving safety, permanency, well-being, and fairness for all children and families in the child welfare system;
3. Improved collaboration and communication between courts and child welfare agencies and other stakeholders, and the development of permanent local county commissions that support ongoing efforts involving foster care; and
4. Greater public awareness of the court's role in the foster care system and the need for adequate and flexible funding.

California Blue Ribbon Commission on Children in Foster Care

FOSTERING A NEW FUTURE FOR CALIFORNIA'S CHILDREN

Ensuring Every Child
a Safe, Secure, and
Permanent Home



FINAL REPORT
AND ACTION PLAN
MAY 2009



ADMINISTRATIVE OFFICE
OF THE COURTS

CENTER FOR FAMILIES, CHILDREN
& THE COURTS

Judicial Council of California
Administrative Office of the Courts
Center for Families, Children & the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3688
www.courtinfo.ca.gov

Copyright © 2009 by Judicial Council of California/Administrative Office of the Courts. All rights reserved.

Except as permitted under the Copyright Act of 1976 and as otherwise expressly provided herein, no part of this publication may be reproduced in any form or by any means, electronic, online, or mechanical, including the use of information storage and retrieval systems, without permission in writing from the copyright holder. Permission is hereby granted to nonprofit institutions to reproduce and distribute this publication for educational purposes if the copies are distributed at or below cost and credit the copyright holder.

For more information on the California Blue Ribbon Commission on Children in Foster Care or to view the report and its supporting documents online, please visit www.courtinfo.ca.gov/blueribbon. To order copies of the report, please call 415-865-7739.

Printed on 100 percent recycled and recyclable paper.

ACKNOWLEDGMENT

Funding for the California Blue Ribbon Commission on Children in Foster Care Statewide Summit was provided by the generous contributions of the:

- Stuart Foundation
- U.S. Department of Health and Human Services, Court Improvement Program
- van Löben Sels/RembeRock Foundation
- Walter S. Johnson Foundation

The Blue Ribbon Commission would also like to thank and acknowledge The Pew Commission on Children in Foster Care for its pioneering national work on improving outcomes for children in foster care and its encouragement of state level commissions; the Pew Charitable Trusts for its support of our commission's work; and Carol Emig, President of Child Trends, for her help in shepherding our commission through critical decisions in developing our recommendations.

**Judicial Council of California
Administrative Office of the Courts**

Chief Justice Ronald M. George
Chair of the Judicial Council

William C. Vickrey
Administrative Director of the Courts

Ronald G. Overholt
Chief Deputy Director

Center for Families, Children & the Courts

Diane Nunn
Director

Charlene Depner
Assistant Director

Lee D. Morhar
Assistant Director

Carolynn Bernabe
Staff Analyst

Chris Cleary
Attorney

Megan Lafrenz
Administrative Coordinator

David Meyers
Senior Attorney

Chantal Sampogna
Attorney

Sonya Tafoya
Senior Research Analyst

Don Will
Manager

Leah Wilson
Manager

Christopher Wu
Supervising Attorney
Executive Director to the Commission

Renée Wessels and Joanne Edgar, *Consultants*
Renée Wessels & Associates

**Members of the California Blue Ribbon Commission on
Children in Foster Care, 2006–2009**

Hon. Carlos R. Moreno
Chair
*Associate Justice
Supreme Court of California*

Ms. Robin Allen
*Executive Director
California CASA*

Hon. Michael D. Antonovich
*Member
Los Angeles County Board of
Supervisors, Fifth
Supervisory District*

Hon. Lucy M. Armendariz
*Judge
State Bar Court, State Bar of
California*

Ms. Mary L. Ault
*Deputy Director
Riverside County Department
of Public Social Services*

Hon. Karen Bass
*Speaker of the Assembly
California State Assembly*

Hon. Richard C. Blake
*Chief Judge
Hoopa Valley Tribal Court*

Mr. Lawrence B. Bolton
*Deputy Director/Chief
Counsel
California Department of
Social Services*

Mr. Curtis L. Child
*Director
AOC Office of Governmental
Affairs*

Ms. Miryam J. Choca
*Senior Director
California Strategic
Consultation
Casey Family Programs*

Mr. Joseph W. Cotchett
*Attorney at Law
Cotchett, Pitre & McCarthy*

Mr. Michael S. Cunningham
*Chief Deputy Director
Program Services Division
California Department of
Alcohol and Drug
Programs*

Hon. Kathryn Doi Todd
*Associate Justice
Court of Appeal, Second
Appellate District, Division
Two*

Dr. Jill Duerr Berrick
*Professor
School of Social Welfare
Co-director, Center for Child
and Youth Policy
University of California at
Berkeley*

Hon. Leonard P. Edwards
*(Ret.)
Judge-in-Residence
AOC Center for Families,
Children & the Courts*

Mr. Raul A. Escatel
*Tax Counsel
California Franchise Tax
Board*

Ms. Deborah Escobedo
*Staff Attorney
Youth Law Center*

Hon. Terry B. Friedman
*Judge
Superior Court of California,
County of Los Angeles*

Mr. Robert E. Friend
*Director
California Permanency for
Youth Project*

Hon. Richard D. Huffman
*Associate Justice
Court of Appeal, Fourth
Appellate District,
Division One*

Hon. Susan D. Huguenor
*Presiding Judge of the
Juvenile Court
Superior Court of California,
County of San Diego*

Ms. Teri Kook
*Senior Program Officer,
Child Welfare
Stuart Foundation*

Ms. Miriam Krinsky
*Lecturer
University of California at
Los Angeles School of
Public Affairs*

Ms. Amy Lemley
*Policy Director
John Burton Foundation for
Children Without Homes*

Mr. Will Lightbourne
Director
Santa Clara County Social
Services Agency

Hon. Bill Maze
Former Member
California State Assembly

Ms. Donna C. Myrow
Executive Director
L.A. Youth

Hon. Michael Nash
Presiding Judge of the
Juvenile Court
Superior Court of California,
County of Los Angeles

Mr. David Neilsen
Deputy Director
Program Services Division
California Department of
Alcohol and Drug
Programs

Ms. Diane Nunn
Director
AOC Center for Families,
Children & the Courts

Mr. John O'Toole
Executive Director
National Center for Youth
Law

Mr. Ken Patterson
Managing Director
Child and Family Services
Casey Family Programs

Mr. Derek Peake
Partner
Costly Grace

Mr. Jonathan Pearson
Former foster youth

Ms. Linda Penner
Chief Probation Officer
Fresno County Probation
Department

Mr. Anthony Pico
Legislative Assistant
Office of Assembly Member
Fiona Ma
Former foster youth

Ms. Patricia S. Ploehn,
LCSW
Director
Los Angeles County
Department of Children
and Family Services

Ms. Pat Reynolds-Harris
Family to Family
Permanency Consultant
Founder, California
Permanency for Youth
Project

Ms. Jennifer Rodriguez
Staff Attorney
Youth Law Center
Former foster youth

Ms. Maria D. Robles, R.N.
Sacramento

Dr. David Sanders
Executive Vice President for
Systems Improvement
Casey Family Programs

Mr. Gary Seiser
Senior Deputy County
Counsel
San Diego County Office of
the County Counsel

Mr. Alan Slater
Special Consultant
AOC Southern Regional
Office

Mr. Joseph L. Spaeth
Public Defender
Marin County Office of the
Public Defender

Hon. Todd Spitzer
Former Member
California State Assembly

Hon. Darrell S. Steinberg
President pro Tempore
California State Senate

Hon. Dean T. Stout
Presiding Judge
Superior Court of California,
County of Inyo

Mr. John Wagner
Director
California Department of
Social Services

Ms. Jacqueline Wong
Consultant
Foster Youth Services
Program
California Department of
Education

EX OFFICIO

Hon. John Burton
Former President pro
Tempore of the California
State Senate
John Burton Foundation for
Children Without Homes

Contents

Message From the Chair	1
Introduction: Our Children Deserve Better	3
The State of the Courts	4
Background on the Blue Ribbon Commission.....	5
The Process of Developing Our Recommendations	6
Highlights of the Commission’s Recommendations	7
Implementing the Recommendations	8
 Chapter 1: California Blue Ribbon Commission on Children in Foster Care Final Recommendations	 10
Four Overall Recommendations	10
Recommendation 1: Reasonable Efforts to Prevent Removal and Achieve Permanency	11
Recommendation 2: Court Reform.....	14
Recommendation 3: Collaboration Between Courts and Their Child Welfare Partners	20
Recommendation 4: Resources and Funding.....	23
 Chapter 2: A Road Map to Reform: The Blue Ribbon Commission’s Action Plan	 29
Recommendation 1: Reasonable Efforts to Prevent Removal and Achieve Permanency	30
Recommendation 2: Court Reform.....	35
Recommendation 3: Collaboration Between Courts and Their Child Welfare Partners	40
Recommendation 4: Resources and Funding.....	45
 Chapter 3: Conclusion: Looking to the Future.....	 49
 Epilogue: Brighter Futures	 52
 Appendices.....	 55
A. Judicial Council Resolution Creating Blue Ribbon Commission.....	57
B. Judicial Council Resolution on Data Sharing.....	58
C. Local Team Planning Workbook.....	60
D. Summit Statistics From 50 Local County Teams.....	80
E. Twenty-six Recommendations Within the Purview of the Judicial Branch.....	81
F. Operational Framework for the Blue Ribbon Commission.....	84
G. Overview of the Blue Ribbon Commission.....	86
H. Facts at a Glance: California Dependency Courts.....	87
I. Backgrounder: California Dependency Courts and the Hearing Process.....	89
J. Chronology: California Dependency Courts.....	91
K. Highlights of Commission Recommendations and Action Plan.....	95



Message From the Chair

I am pleased to present this final report from the California Blue Ribbon Commission on Children in Foster Care. The report includes the commission's recommendations and action plan, which are the result of an unprecedented three-year collaborative effort to help California's overstressed juvenile dependency courts do a better job of safeguarding children, reducing the need for foster care, and improving the foster care system.

As a relative caregiver and foster parent myself, I know from my own family's experience how important it is to provide children in foster care with the love, stability, and security that all children need. Fostering the success of our state's most vulnerable young people is vital to planning for the future of our state.

Our commission is California's first statewide effort to look at the role of the courts in child welfare reform. The courts, along with their child welfare partners, have legal responsibility for the safety and well-being of children in foster care, in effect serving as their "parent." The weight of that responsibility informed our work as a commission throughout the three-year process.

Our recommendations promise to significantly change the lives of our state's children and youth. Under the system we envision, there will be fewer children in foster care, leading to substantial savings for the child welfare system that can be reinvested to continue strengthening this state's most vulnerable families.

I invite you to read this full report—our recommendations, our action plan, and about implementation efforts that are already underway. In particular, I invite you to read the "stories" at the end of the report where we describe what we hope will be brighter futures for California's children, youth, and families. The true measure of our commission's success will be the real difference we make in their lives.

On behalf of the commission, I thank all of the individuals and organizations that advised us throughout our process. I also extend a heartfelt thanks to each of our commissioners for their invaluable contributions and extraordinary commitment to improving the lives of California's children and families. And I thank, too, our talented and dedicated staff whose tireless efforts significantly eased the burden of our challenge as a commission at every step.

Finally, I thank Chief Justice Ronald M. George; William C. Vickrey, the Administrative Director of the Courts; and the Judicial Council for giving us the extraordinary opportunity to present our blueprint for significant reform of the juvenile dependency courts and the child welfare system and for making that reform a high priority for California's judicial branch.

A handwritten signature in black ink, appearing to read "Carlos R. Moreno".

Carlos R. Moreno
Associate Justice, Supreme Court of California
Chair, California Blue Ribbon Commission on Children in Foster Care

Introduction: Our Children Deserve Better

The courts are often the unseen partners in child welfare, but every child and parent in the foster-care system knows that the courts are where critical decisions are made, including such life-changing issues as where and with whom a child will live. When dependency court judges and attorneys are not acquainted with “100 percent” of the child, when there is inadequate time or not enough information to make informed decisions, hearings are likely to be rushed or delayed. Children and families suffer.

The courts and their child welfare partners share responsibility for the safety and well-being of children while they are in foster care, in effect, serving as their “parent” until a child either safely returns home, moves to another permanent home, or becomes an adult and leaves the system. Dependency court judges, attorneys, and child welfare workers work collaboratively so the judge can make the best decision for each child and family. They share a belief that *all* children are entitled to a safe, permanent family that will love, nurture, protect, and guide them. The courts and their partners agree that even when children must be removed from their homes, foster care should be a short-term refuge, not a long-term saga. Timely reunification with their family or placement in another permanent home is *always* the goal.

But time moves slowly through the eyes of children, especially those who have been removed from their homes, through no fault of their own, and placed into the mysterious world of dependency courts. Finding a permanent home for a child sometimes takes years. Youth who grow up in foster care too often “age out” of the system ill-prepared to live as adults. These young people face increased risk of dropping out of school, unemployment, homelessness, mental illness, substance abuse, and involvement with the criminal justice system.

There are more than 75,000 children in foster care in California, more than in any other state in the nation. Most – almost 80 percent – have been removed for neglect. Nearly half – 45 percent – have been in care for more than two years; 17 percent of them for more than three years. We know that the longer children remain in care, the less likelihood they have of reunifying with their parents. We also know that African-American and American Indian children are disproportionately represented in the system.

When I was 12 years old—in a court hearing I was not invited to, and that I did not even know about—a decision was made that I was not appropriate for a foster family but needed to be in group homes.

That decision was made in only a few minutes, with most of the people in the room having never met me, not knowing my hopes and dreams, only knowing one or two of the facts that represented 1 percent of the 100 percent child I was.

—Jennifer Rodriquez
Staff attorney,
Youth Law Center;
Former member,
California Blue Ribbon
Commission on Children
in Foster Care

The State of the Courts

California's dependency courts are overstressed and underresourced, burdened by crowded dockets and inadequate information. For example:

- Fewer than 150 full-time and part-time judicial officers preside over the entire dependency court system.
- Full-time juvenile dependency court judges carry an average caseload of 1,000, which directly affects the amount of time and attention given to any one case.
- Juvenile dependency court attorneys, who represent children and parents in court, have an average caseload of 273, which far exceeds the recommended caseload standard of 188 recently adopted by the Judicial Council. In some counties, attorney caseloads rise to 500 or 600.
- Children and parents sometimes do not meet their attorneys until moments before their hearings, which not only limits their opportunity to speak in court, but means attorneys often have inadequate information about a child's life.
- The median time for a hearing is only 10-15 minutes, far less than the recommended 30-60 minutes.
- Judges are often assigned to juvenile court for short rotations, instead of the recommended three-year assignments.
- Families are often involved with more than one system, yet courts and other agencies do not easily share data or information that may be critical to the families' circumstances.

Overwhelming caseloads and crowded dockets in the courts sometimes prevent even the best of judges and attorneys from addressing the whole of each child and family member who come before their courts. In addition, the courts do not work in isolation. Communication between juvenile dependency courts and the other agencies charged with helping families is inconsistent and often ineffective. All of these factors taken together means the system is not always a very good "parent" to these children.

With these concerns in mind, Chief Justice Ronald M. George established the California Blue Ribbon Commission on Children in Foster Care in March 2006, and appointed Supreme Court of California Associate Justice Carlos R. Moreno as its chair. The Chief Justice charged the commission with providing recommendations to the Judicial Council of California on ways in which the courts and their partners can improve safety, permanency, well-being, and fairness for children and families in the child welfare system.

After an unparalleled three-year collaborative effort, we submit this final report with our recommendations for improving California's juvenile dependency courts and child welfare system, and our action plan for

implementing these recommendations. We believe our recommendations and action plan represent a blueprint to fundamentally change a system that too often fails our state's children and their families despite the efforts of hardworking and dedicated professionals.

Background on the Blue Ribbon Commission

The Blue Ribbon Commission is a multidisciplinary, statewide body providing leadership on issues that face foster children and their families and the courts and agencies that serve them. The commission includes judges, legislators, child welfare administrators, foster youth, caregivers, philanthropists, tribal leaders, advocates for children and parents, and more. A roster of commission members is included at the front of this report.

The establishment of the commission builds on other Judicial Council efforts to improve California's juvenile courts and is consistent with the goals and objectives recently adopted by the Judicial Council. These efforts include a number of programs that are designed to improve the operations of the juvenile dependency courts, including 1) expansion of the Court Improvement Project to increase the number of training programs and to enhance development of data exchanges to improve communication between the courts and child welfare agencies; 2) expansion of the Judicial Review and Technical Assistance (JRTA) program to include specific projects related to improving compliance with the Indian Child Welfare Act and increasing the number of permanent placements for children in foster care; and 3) establishment of the Dependency Representation, Administration, Funding, and Training (DRAFT) program relating to attorney representation of parents and children in juvenile dependency court.

There was national impetus behind our formation as well, including the Pew Commission on Children in Foster Care, which was established in 2003. The Pew Commission was charged with developing nationally focused recommendations to improve outcomes for children in foster care. Former U.S. Representatives Bill Frenzel and William H. Gray III served as chair and vice-chair respectively. William C. Vickrey, California's Administrative Director of the Courts, was one of 18 members representing a broad cross-section of organizations involved in foster care issues.

In 2004, the Pew Commission issued its recommendations, which focused on federal child welfare funding mechanisms and improving court oversight of child welfare cases. The recommendations called for the courts and public agencies to collaborate more effectively by establishing multidisciplinary, broad-based state commissions on children in foster care. In 2006, the Chief Justice of California established the California Blue Ribbon Commission on Children in Foster Care.

Commission's Mandate

The commission's charge was to develop recommendations focused on four areas:

1. How courts and their partners can improve the child welfare system, including an implementation plan;
2. Improved court performance and accountability in achieving safety, permanency, well-being, and fairness for all children and families in the child welfare system;
3. Improved collaboration and communication among courts and child welfare agencies and others, including the development of permanent local county commissions that support ongoing efforts; and
4. Greater public awareness of the court's role in the foster-care system and the need for adequate and flexible funding.

Principles and Values

Our commission was guided by a set of overarching principles, which we adopted early in our deliberations:

- ✓ All children are equal and deserve safe and permanent homes;
- ✓ Efforts to improve the foster care system must focus on improving safety, permanency, well-being, and fairness outcomes for children, and services should be integrated and comprehensive;
- ✓ Collaboration is essential for achieving the best possible outcomes for children and families;
- ✓ Courts play an important statutory role in overseeing children, families, and services in the dependency system;
- ✓ Children and families should have a say in decisions that affect their lives; and
- ✓ Government agencies need adequate and flexible funding to provide the best outcomes for children in the foster care system.

A set of values informed our work throughout. We believe in:

- ✓ Collaboration;
- ✓ Shared responsibility;
- ✓ Accountability;
- ✓ Leadership;
- ✓ Children and families;
- ✓ Child safety;
- ✓ Inclusion;
- ✓ Permanency; and
- ✓ Youth voice.

The Process of Developing Our Recommendations

We deliberated over the course of two years, holding public meetings, hearings, focus groups and other activities. We attended site visits to see programs and courtrooms firsthand. We heard from a variety of juvenile court and child welfare experts and from social workers, families, children, and youth who have been in the child welfare system. Their experiences and their suggestions for reform proved invaluable as we developed our recommendations and action plan.

We also drew from significant research provided by the County Welfare Directors Association of California; the Center for Social Services Research at the University of California at Berkeley; Chapin Hall Center for Children at the University of Chicago; Child Trends; the U.S. Department of Health and Human Services, Administration for Children and Families; and the Urban Institute.

After nearly two years of information gathering, we developed draft recommendations for public comment in March 2008. We held public hearings on the proposed recommendations in Los Angeles and San Francisco. In response to the public comment and testimony, we reviewed the recommendations at a June 2008 commission meeting.

Our final recommendations fall under four broad categories:

1. Reasonable efforts to prevent removal and achieve permanency;
2. Court reform;
3. Collaboration among courts and partnering agencies; and
4. Resources and funding.

The full set of recommendations can be found in Chapter 1 of this report. They include our four overall recommendations and 79 specific recommendations. Of the specific recommendations, 26 of them are within the purview of the Judicial Council and can be accomplished within our judicial branch of government. The remaining recommendations require collaboration with child welfare and other agency partners.

Highlights of the Commission's Recommendations

1. Reasonable Efforts To Prevent Removal and Achieve Permanency

- **Increasing the Number of Placements With Relatives (Kinship)**

That child welfare agencies engage family members as early as possible in each case, and the Judicial Council work with state and federal leaders to develop greater flexibility in approving placements with relatives when necessary.

- **Reducing the Disproportionate Representation of African-American and American Indians in the Child Welfare System**

That the courts and child welfare agencies reduce the disproportionate number of African-American and American Indian children who are in the child welfare system.

- **Providing Extended Support for Transitioning Youth**

That the Judicial Council urge the California Legislature to extend the age for children to receive foster-care assistance from 18 to 21.

2. Court Reform

- **Reducing the Caseloads of Judicial Officers, Attorneys, and Social Workers**

That the Judicial Council work to reduce the high caseloads of judicial officers and attorneys, and work with state and county child welfare agencies to reduce the caseloads of social workers.

- **Ensuring a Voice in Court and Meaningful Hearings**

That the courts ensure that all participants in dependency proceedings, including children and parents, have an opportunity to be present and heard in court. Court-Appointed Special Advocates (CASA) programs should be expanded to make CASA volunteers available in every case.

- **Ensuring That All Attorneys, Social Workers, and Court-Appointed Special Advocates (CASA) Are Adequately Trained and Resourced**

That the Judicial Council advocate for sufficient resources to implement caseload standards, and the Administrative Office of the Courts expand multidisciplinary training and opportunities.

3. Collaboration Among Courts and Child Welfare Partners

- **Facilitating Data and Information Exchange**

That the Judicial Council support the courts and all partners in the child welfare system in eliminating barriers to the exchange of essential information and data about the children and families

they serve. The Judicial Council should implement court-performance measures to improve foster-care outcomes as mandated by state law.

- **Establishing Local Foster Care Commissions**
That the courts and child welfare agencies jointly convene multidisciplinary commissions at the county level to identify and resolve local child-welfare concerns and to help implement the commission's recommendations and related reforms.
- **Improving Indian Child Welfare**
That the courts, child welfare agencies and other partner agencies collaborate with Indian tribes and tribal courts to ensure that Indian children and families receive the services for which they are eligible.

4. Resources and Funding

- **Prioritizing Foster Care**
That all agencies and the courts make children in foster care and their families a top priority when providing services and when allocating and administering public and private resources.
- **Advocating for Flexible Funding for Child-Abuse Prevention and Services**
That the Judicial Council work with state and federal leaders to allow greater flexibility in the use of funds for child-abuse prevention and eliminate barriers to coordinating funds for child-abuse prevention and services.
- **Expanding Educational Services**
That all agencies and the courts make access to education and all of its related services a top priority when working with foster children and youth.

Implementing the Recommendations

On August 15, 2008, the Judicial Council unanimously accepted our final recommendations and directed the Administrative Director of the Courts to refer to the appropriate advisory committee 26 of the recommendations that could be acted on by the judicial branch alone.¹ Work on implementing those recommendations has begun. The Judicial Council also directed that we develop an action plan for recommendations that require collaboration with court partners, including child welfare and other agencies and organizations that serve children and families.

¹ See Appendix E for a list of the 26 recommendations within the sole purview of the judicial branch.

The commission met again in October 2008 to prioritize the recommendations and adopt an action plan to implement them. While our commission is strongly committed to ensuring that each one of our 79 recommendations becomes a reality, we focused our initial action plan on a practical set of recommendations that are fiscally responsible, realistic first steps that will lay a critical foundation for implementing the remaining recommendations.

In December 2008, we brought together teams from 50 counties to a summit meeting to begin the process of developing local foster care commissions to take the work home. The commission is aware of the current fiscal realities in our state and the nation. However, we strongly believe that our abused and neglected children must be given the same priority in state and federal budget deliberations that responsible California families give their own children.

More than half of our recommendations are cost neutral and call for using existing resources differently, implementing policies that are already in place, or phasing in proposals over time in order to reduce reliance on new funds. Some recommendations have little fiscal impact, focusing on structural issues within the courts. Other recommendations call on Congress to give states more flexibility in how they use federal child welfare funds.

Most of all, we must remember that when our recommended changes are implemented successfully, there will likely be fewer children in foster care or in other more costly out-of-home placements. Money saved on placements can be reinvested in the child welfare system to more effectively serve children and families who need supportive prevention and reunification services.

It is not enough, however, to just use current funds more effectively and efficiently and reinvest the money that is saved. We know that additional resources will be required to fully implement our recommendations. Current budget restraints may affect the timing of securing additional resources, but we believe that improving the lives of our foster children must remain a priority.

The bottom line is that our recommendations represent the changes, both short-term and long-term, that must be made to improve the juvenile dependency court and child welfare systems and to ensure a better future for our most vulnerable children and families.

Chapter 1: California Blue Ribbon Commission on Children in Foster Care Final Recommendations

Ours has been an unprecedented effort to focus attention on the central role that the courts play in foster care. We have an absolute obligation to do right by the children and families who come into our court rooms.

With these recommendations, we propose changing the way that juvenile dependency courts do business, and we identify the ways in which courts and agencies can more effectively collaborate to meet the needs of foster children and their families.

—Diane Nunn
Director, Center for
Families, Children & the
Courts, Administrative
Office of the Courts;
Member, California Blue
Ribbon Commission on
Children in Foster Care

The Blue Ribbon Commission believes that all children in California deserve a safe, nurturing, and permanent family where they can grow up and learn to become productive adults. We drafted these recommendations as a blueprint for achieving that goal.

In developing our recommendations, we sought to build on the momentum for child welfare reform that is already changing how the courts, the state, and counties serve children and families. We recognize that California is in the midst of a statewide effort to improve child welfare practices across the board, with an end goal of safer and more stable families and fewer children in foster care. We see this as an opportunity for real change in the systems that serve our state's most vulnerable children and families.

None of the efforts to improve child welfare practices thus far have focused on the courts. We believe that it is essential for the courts to play a leadership role in building a better system for children and families given the courts' critical role in the child welfare system.

As a legal "parent" to children in foster care, the courts share with their child welfare partners responsibility for the welfare of our state's children. Every day judges make decisions that are often life-changing for children and their parents. But, the courts, like the rest of the child welfare system, are overwhelmed and underresourced.

Four Overall Recommendations

Our final recommendations point to what the courts, child welfare agencies, and other partners can do to help children grow up in safe, nurturing, and permanent homes. The recommendations cover four key areas:

1. Reasonable efforts to prevent removal and achieve permanency;
2. Collaboration among courts and partnering agencies;
3. Court reform; and
4. Resources and funding.

In the rest of this chapter we have organized our recommendations as follows: within each of our four overall recommendations, we include 1) a summary of some of the main issues that speak to the reforms needed, 2) our principal recommendations, and 3) specific recommendations that flow from each principal recommendation.

Recommendation 1: Reasonable Efforts to Prevent Removal and Achieve Permanency

As the commission met during the last three years, we learned much about the various stakeholders in the child welfare system and the realities they face every day. We know that the courts and their child welfare partners are unified in a fundamental belief that all children deserve a safe, stable family in which to grow up and thrive. And there is a universal acknowledgment that interrupting a child's bond to a parent, even when necessary and temporary, is a destabilizing event.

But while child welfare agencies aspire to offer more services to prevent placement in foster care, funds to support preventive services have not been given a priority at the local, state, or federal level. A recent national study sponsored by the nonprofit organization Kids Are Waiting found that states are allowed to use only 10 percent of federal child welfare funding for prevention or reunification services. This means dependency court officials, faced with serious gaps in necessary services, are often forced to advocate for more funding for services to support vulnerable children and families.

We know that every one of the children in foster care in California has multiple hearings before a juvenile court. Yet we found that despite the efforts of judicial officers doing their best to make the right decision for each of these children, placement does not necessarily ensure an improved situation for them or for their families, even when removal is required. Far too many of these foster children experience multiple placements; changes in schools; and separation from siblings, friends, and other family members.

We found that African-American and American Indian children are disproportionately in the system. They are more likely than other children to be reported for abuse, more likely to be removed, and less likely to be reunified or adopted.

And we learned that as many as 5,000 youth in California reach the age of 18 every year without reunifying with their own families or being placed in another permanent family. National research shows that young people who "age out" of the system are more likely to drop out of school, to have serious mental health needs, to experience homelessness and unemployment, and to end up in the criminal justice system. These are the children who have all too often languished in a foster care limbo.

This first set of recommendations is the commission's road map to respond to the challenge posed by these problems.

Recommendation 1

Because families who need assistance should receive necessary services to keep children safely at home whenever possible, the Blue Ribbon Commission recommends that the Judicial Council, the California Department of Social Services, and local courts and child welfare

I was in foster care for eight years. I was removed from my mother when I was ten years old. I was placed in seven different foster homes during that first year.

When I turned 11, I was placed in a group home. When I first moved in, the director toured me around the place and said, "I'm not here to be your mother. I'm here to get you through the system."

It was a wake-up call for me to realize that in the foster care system you do not have a parent. You do not have somebody who you can count on, who is there for you when you fall off your skateboard – you know, somebody to hug you and say, "Are you OK?"

—Tony Thompson
Former foster youth

agencies implement improvements to ensure immediate, continuous, and appropriate services and timely, thorough review for all families in the system.

Recommendation 1A

Children and families need access to a range of services to prevent removal whenever possible. All reasonable efforts should be made to maintain children at home in safe and stable families. The courts should make an informed finding as to whether these efforts actually have been made.

The Blue Ribbon Commission recommends that:

- The courts and partnering agencies tailor resources to make sure they have sufficient information and time to establish that all reasonable efforts have been made to prevent removal.
- All children and families receive timely and appropriate mental health, health care, education, substance abuse, and other services, whether children reside with their own parents or with relatives, foster parents, guardians, or adoptive parents or are in another setting.
- At the earliest possible point in their involvement with the family, child welfare agencies engage family members, including extended family wherever they may live, to support the family and children in order to prevent placement whenever possible. Child welfare systems should develop and improve internal protocols for finding family members.
- The courts and partnering agencies work to reduce the disproportionate number of African-American and American Indian children in the child welfare system.
- Judicial officers, attorneys, social workers, and other professionals who serve foster children and their families increase the diversity and cultural competence of the workforce.
- The Judicial Council work with local, state, and federal leaders to advocate for greater flexibility in the use of federal, state, and local funding for preventive services.

Recommendation 1B

If foster care placement is necessary, children, families, and caregivers should have access to appropriate services and timely court reviews that lead to permanency as quickly as possible. Service delivery and court review should ensure that all reasonable efforts are made to return children home, to make sure families and workers comply with case plans, and to achieve timely and stable transitions home or, if necessary, to place with relatives or in another permanent, stable family.

The Blue Ribbon Commission recommends that:

- The Judicial Council work with state and federal leaders to advocate for changes in law and practice to increase and encourage more relative placements, including:
 - Addressing funding disparities;
 - Developing greater flexibility in approving relative placements whereby relatives would not, by virtue of federal law, be held to the same standard as nonrelatives; and
 - Formulating protocols to facilitate swift home assessments and placement with family members when appropriate.
- The courts and child welfare agencies expedite services for families and ensure that foster children maintain a relationship with all family members and other important people in their lives.
- The courts ensure that children who cannot return home receive services and court reviews to enable them to successfully transition into a permanent home and into adulthood. This includes paying attention to each child's language, development, and cultural needs in making decisions about home and school placements, visitation, education, and mental health needs. It also means making sure they have consistent community ties and help from supportive adults, such as mentors, as they grow up.
- All court participants continuously review and make extraordinary efforts to preserve and promote sibling connections and co-placement.
- Children and families receive continuous and comprehensive services if a child enters the delinquency system from foster care.
- The Judicial Council and the state Department of Social Services work together to urge Congress, the state Legislature, and state and local agencies to ensure that THP-Plus programs for transitional housing sustain a level of funding sufficient to maintain and expand program capacity to meet the demonstrated need of youth aging out of the foster care system.
- The Judicial Council work with federal and state leaders to support or sponsor legislation to extend the age when children receive foster care assistance from age 18 to age 21. This change should apply to those children who at age 18 cannot be returned home safely, who are not in a permanent home, and who choose to remain under the jurisdiction of the court. If the court terminates jurisdiction before a youth's 21st birthday, the youth should have the right to reinstatement of jurisdiction and services.
- The Judicial Council work with local, state, and federal leaders to develop practices, protocols, and enhanced services to promote both placement and placement stability of children and youth in family-like, rather than institutional, settings.

Recommendation 2: Court Reform

Overwhelming caseloads, crowded dockets, and inadequate information mean that the best of judges and attorneys struggle to meet the needs of each child and parent who come before the bench.

Because of these challenges, children and parents do not always participate meaningfully in court, and we are often not able to meet our federal and state mandates for timely hearings.

—Hon. Leonard P. Edwards
Retired Judge
of the Superior Court
of California,
County of Santa Clara;
Member, California
Blue Ribbon Commission
on Children in Foster Care

We know that California's dependency court system is overstressed and underresourced. Because of staggering caseloads, judicial officers, attorneys, and social workers are often forced to limit the time and attention they give to each child. Even if they do give each case a thorough review, we learned they often cannot meet the statutory timeline for the case.² Either way, children and their families lose.

Dependency cases represent the most intrusive form of governmental intervention into the lives of families, so we believe that it is essential for the court system to have sufficient resources to appropriately oversee these cases. It is also essential that the local trial courts make these cases a priority and allocate the resources that are needed.

We learned that many families and children appear at the courthouse but wait for hours before their hearing, only to receive a few minutes with the court and with their attorneys. In fact, the median time for a juvenile dependency hearing in California is just 10–15 minutes, far short of the recommended 30–60 minutes needed to give appropriate attention to a case.

Dependency court attorneys, who represent foster children and their families, and social workers, suffer from similar time and caseload pressures. These systemic problems inhibit the courts' ability to meet their statutory requirements, as well as their obligation to ensure that all participants in the hearings understand their rights and responsibilities and the decisions made in court.

We found that dependency courts are able to gather only limited data on their ability to meet statutory timelines for hearings and requirements regarding safety, permanency, and well-being. Currently, uniform statewide court data is limited to the number of filings and dispositions. Without more advanced data systems and court performance measures, the courts are not able to track children's progress, measure compliance with statutes, and identify sources of delay and other areas of reform needed in juvenile dependency court cases.

After hearing from many stakeholders through testimony, focus groups, written comments, and other means of communication, the commission crafted the following blueprint for reform of the court system. We believe that implementation of these recommendations will bring fundamental change to a court system charged with serving our state's most vulnerable children and families.

² See Appendix I, Backgrounder: California Dependency Courts and the Hearing Process

Recommendation 2

Because the courts are responsible for ensuring that a child's rights to safety, permanency, and well-being are met in a timely and comprehensive manner and that all parties are treated fairly in the process, the Blue Ribbon Commission recommends that the Judicial Council and the trial and appellate courts make children in foster care and their families a priority when making decisions about the allocation of resources and administrative support.

Recommendation 2A

The trial and appellate courts must have sufficient resources to meet their obligations to children and families in the child welfare system.

The Blue Ribbon Commission recommends that:

- Consistent with Judicial Council policy, judges—not subordinate judicial officers—hear dependency and delinquency cases. Pending a full transition from subordinate judicial officers to judges (through reassignment or conversion of subordinate judicial officer positions to judgeships), presiding judges should continue the assignment of well-qualified and experienced subordinate judicial officers to juvenile court.
- The Judicial Council work with bar organizations, the Governor's office, and state and local leadership to ensure that juvenile law experience is given favorable consideration during the judicial appointment and assignment process and well-qualified subordinate judicial officers and attorneys with juvenile law experience are encouraged to apply for vacant judicial positions.
- Presiding judges follow standard 5.40 of the California Standards of Judicial Administration and assign judges to juvenile court for a minimum of three years and give priority to judges who are actively interested in juvenile law as an assignment.
- The Judicial Council undertake a new judicial caseload study focused specifically on juvenile dependency courts. The study should take into account the court's unique oversight and case management responsibilities and address the use of case managers to support judges in meeting their workloads.
- Pending completion of the study, presiding judges evaluate their current allocation of judgeships and resources and make adjustments as necessary. If reallocation of existing resources is not sufficient, the Judicial Council should seek additional funding to ensure full implementation of the standards and statutory requirements.
- The Administrative Office of the Courts helps courts comply with the judicial standard outlining the knowledge, commitment,

and leadership role required of judicial officers who make decisions about children in foster care (see standard 5.40 of the California Standards of Judicial Administration). Presiding judges of the superior courts should receive training in the role and duties of juvenile court judicial officers as outlined in the standard.

Recommendation 2B

All participants in dependency hearings and subsequent appeals, including children and families, should have an opportunity to be heard and meaningfully participate in court.

The Blue Ribbon Commission recommends that:

- Judicial officers identify and engage all parties in each case as early as possible. A particular emphasis should be placed on finding fathers and identifying Indian tribes where applicable.
- Judicial officers and other stakeholders remove barriers that prevent children, parents, and caregivers from attending hearings. This includes addressing transportation and scheduling difficulties, as well as exploring telephonic appearances and other technological options.
- The Judicial Council and other stakeholders develop and implement laws and policies to promote relative finding, funding, assessment, placement, and connections.
- The Judicial Council provide an expedited process for all juvenile dependency appeals by extending the application of rule 8.416 of the California Rules of Court to all dependency appeals.
- The Judicial Council require the appointment of independent counsel for all children in juvenile dependency appeals.

Recommendation 2C

Judicial officers should ensure that local court practices facilitate and promote the attendance of children, parents, and caregivers at hearings.

The Blue Ribbon Commission recommends that:

- Hearings be available at times that do not conflict with school or work or other requirements of a family's case plan.
- To the extent feasible, hearings be set for a specific date and time. Delays should be minimized, and hearings should be conducted on consecutive days until completed.
- A concurrent criminal proceeding not delay a dependency case.
- All parties, including children, parents, and social workers, have the opportunity to review reports and meet with their attorneys before the initial hearing and in advance of all subsequent hearings.

- Hearings be timely and meet all federal and state mandated timelines. Continuances be minimized, and the reasons for systemic continuances be addressed by the local court and child welfare agency.
- All participants leave court hearings with a clear understanding of what happened, why decisions were made, and, if appropriate, what actions they need to take.
- The Administrative Office of the Courts provide judicial officers and court participants with education and support to create courtroom environments that promote communication with, and meaningful participation of, all parties, including children, that takes into account age, development, language, and cultural issues.
- The same judicial officer hear a case from beginning to end, when possible.
- Courts explore telephonic appearance policies and new technology options to ensure participation in juvenile court hearings.

Recommendation 2D

The court's ability to make fair, timely, and informed decisions requires attorneys, social workers, and Court Appointed Special Advocates (CASAs) who are well qualified and have the time and resources to present accurate and timely information to the courts.

The Blue Ribbon Commission recommends that:

- The Judicial Council advocate for the resources, including a stable funding source, necessary to implement the council's recently adopted attorney caseload standards, to implement caseload standards for social workers, and to develop and implement caseload standards for social services agency attorneys.
- The Judicial Council take active steps to promote the advancement of juvenile law as a sought-after career. Accomplishing this recommendation requires:
 - Fair and reasonable compensation for court-appointed attorneys;
 - Adoption and implementation of a methodology for determining attorney effectiveness;
 - Forgiveness of student loans for attorneys who commit a substantial portion of their careers to juvenile law;
 - That public and nonprofit law offices hire and retain attorneys based on their interest in the field and encourage them to build careers in juvenile law; and
 - Collaboration with State Bar of California leaders to include juvenile dependency law as a mandatory area of

study for the California Bar exam and create a State Bar juvenile law section.

- The Administrative Office of the Courts expand multidisciplinary training opportunities for court professionals and other participants, including caregivers, educational representatives, CASA volunteers, and tribal leaders. Training should include conferences as well as distance learning opportunities.
- The Judicial Council continue to support the development and expansion of CASA programs and to help make available CASA volunteers for all foster children in the dependency system. State funding for CASA programs should be expanded to allow for appointments in all cases.
- Local or regional legal advocacy resource centers be established to ensure that the nondependency legal needs of dependent children and their parents are appropriately addressed. This includes education, immigration, tribal enrollment or other requirements to receive the benefits of tribal membership, tort issues, and other issues.

Recommendation 2E

All courts should have nonadversarial programs available as early as possible and whenever necessary for children and families to use to resolve legal and social issues when appropriate.

The Blue Ribbon Commission recommends that:

- Mediation and other forms of alternative dispute resolution be available in all courts at any time in the proceedings.
- Families in all counties have access to other types of court proceedings—drug, mental health, and unified courts, for example—that can help them remain together or, if the children are removed, to stabilize and reunify the family as soon as possible.
- Presiding judges work with agencies to ensure that families in all counties have access to specific nonadversarial child welfare-based practices such as family group conferencing, team decision-making, and family team meetings.

Recommendation 2F

The Judicial Council should establish and implement a comprehensive set of court performance measures as required by state law (Welf. & Inst. Code, § 16545).

The Blue Ribbon Commission recommends that:

- The Judicial Council adopt and direct the Administrative Office of the Courts to work with local courts and state agencies to implement a rule of court that embodies the commission's following recommendations:
 - Court performance measures include those for safety, permanency, timeliness of court hearings, due process, and child well-being;
 - Court performance measures align with and promote the federal and California Child and Family Services Review outcome measures and indicators;
 - The California Court Case Management System collect uniform court performance data and have the capability to produce management reports on performance measures; and
 - Trial court performance measures be included in a separate Judicial Council-approved Administrative Office of the Courts Implementation Guide to Juvenile Dependency Court Performance Measures.
- These performance measures and management reports be used for the following:
 - To promote court accountability for ensuring fair and timely hearings and to inform improvements in local case processing;
 - To provide stakeholders and the public with an aggregate picture of the outcomes for children before the court and to increase the public's understanding of the court's role in the child welfare system; and
 - To measure compliance with statutory mandates and effective practices.
- The Judicial Council work with the Child Welfare Council and local courts and state agencies to develop uniform child well-being performance measures. Based on these measures, the Administrative Office of the Courts, Center for Families, Children & the Courts should work with local courts to develop and implement educational tools that help courts improve child well-being outcomes.
- The Judicial Council and other stakeholders advocate at the federal, state, and local levels for the funding necessary to implement recommended court performance measures.

Recommendation 3: Collaboration Between Courts and Their Child Welfare Partners

Collaboration can be very difficult. There are such different cultures across state and county departments and agencies, and there is such a scarcity of resources that collaboration alone is not enough. We need real transformation. That will mean forming meaningful partnerships and looking at things in new ways.

—Phillip Crandall
Director of Health and
Human Services,
Humboldt County

In California, the courts share responsibility for the safety and well-being of children and youth in foster care with a range of agencies, including child welfare, education, alcohol and drug treatment, mental health, public health, and Indian tribal councils.

This means that families are often involved with more than one agency at a time. These agencies have independent and sometimes conflicting policies and regulations that inhibit communication and sharing of data and information. We learned that because of this problem, judges and attorneys sometimes lack full knowledge of a child's health, mental health, education, language, or citizenship. This means the courts must sometimes make decisions without a complete or accurate picture of the child and his or her family.

We found that this leads to a situation where court-ordered services to benefit families and children sometimes conflict with other court orders or mandated services from other agencies. And the courts and child welfare agencies do not always know what services exist in the community. Often there is limited availability of essential services.

The commission adopted the following recommendations to solve this problem. We believe that collaboration is a critical piece of the foster care puzzle. We know that together we can serve children and families more effectively.

Recommendation 3

Because the courts share responsibility with child welfare agencies and other partners for the well-being of children in foster care, the courts, child welfare, and other partnering agencies must work together to prioritize the needs of children and families in each system and remove barriers that keep stakeholders from working together effectively.

Recommendation 3A

The Judicial Council, trial courts, and California Department of Social Services should work cooperatively with all departments, agencies, and other stakeholders to ensure optimal sharing of information to promote decision-making that supports the well-being of children and families in the child welfare system.

The Blue Ribbon Commission recommends that:

- The Judicial Council continue its efforts to fully develop and implement the California Court Case Management System and other data exchange protocols, so that the judicial branch, the California Department of Social Services, and other trusted

partners will be able to exchange essential information about the children and families they are mandated to serve.

- California Case Management System permit judicial officers in dependency courts to access information about children and families who are involved in cases in other courts.
- California Case Management System and the state Child Welfare Services/Case Management System promote coordinated data collection, data exchange, and filing of documents, including electronic filing, between the courts, social service agencies, and other key partners and track data that permits them to measure their performance.
- The Child Welfare Council prioritize solutions to federal and state statutory and regulatory policy barriers that prevent information sharing between the courts and their partners and that cause delays in the delivery of services and, hence, delays in permanency for children.
- Data systems in the various agencies evolve to capture the growing complexity of California demographics, including issues such as limited English proficiency, use of psychotropic medications, and disabilities.

Recommendation 3B

The presiding judge of the juvenile court and the county social services or human services director should convene multidisciplinary commissions at the local level to identify and resolve local system concerns, address the recommendations of the Blue Ribbon Commission, and build the capacity to provide a continuum of services.

The Blue Ribbon Commission recommends that:

- These multidisciplinary local commissions include participation from the courts; local government officials; public and private agencies and organizations that support children and families; children, parents, and families with experience in the system; caregivers; and all other appropriate parties to the process.
- These commissions focus on key areas of local concern and activities, including:
 - Undertaking a comprehensive assessment of existing services available in the community; encouraging development of appropriate services that are not available; coordinating services with tribal services and transitional services; and ensuring that children and families receive the support they need for reunification and permanency;
 - Identifying and resolving barriers to sharing information among the courts, agencies, and schools;
 - Communicating local needs and concerns to the Child Welfare Council; and

- o Raising the visibility and public understanding of foster care issues in their communities.
- The Administrative Office of the Courts support local commissions in their efforts to collaborate and to avoid duplication with other efforts to achieve positive child welfare outcomes (including county efforts to develop system improvement plans as required by state law).
- All participating agencies prioritize children in foster care, and their families, when providing services.

Recommendation 3C

Courts, child welfare agencies, and other agencies should collaborate with Indian tribes and tribal courts to ensure that the rights of children, families, and tribes are protected and that Indian children and families have access to all appropriate services for which they are eligible.

The Blue Ribbon Commission recommends that:

- The Administrative Office of the Courts work with state trial courts and tribal courts to establish protocols for identifying and sharing jurisdiction between state and tribal courts and for sharing services, case management, and data among superior courts, tribal courts, and county and tribal service agencies. The protocols established should encourage a mutual understanding of and respect for the procedures in both the state and tribal courts and the challenges that all communities face in providing services for children and families. The Administrative Office of the Courts collaborate with the state to develop and offer judicial education and technical assistance opportunities to tribal court officers and staff and legal education to tribal attorneys, lay advocates, and service providers.
- The Administrative Office of the Courts work with the California Department of Social Services to offer ongoing multidisciplinary training and technical assistance to judges, court staff, attorneys, social workers, and other service providers on all of the requirements of the Indian Child Welfare Act.
- Indian children and families have access to the same services as other families and children regardless of whether their cases are heard in state court or tribal court.

Recommendation 4: Resources and Funding

During our three-year investigation, we found that financial support for children and families in the child welfare system is built on a patchwork of funding streams, each with its own rules and restrictions. In addition to state and county funding, child welfare dollars come from at least a half-dozen federal sources, some of which require matching funds from state, county, and local agencies. Delays in services result when providers, social service agencies, and the courts struggle to determine the pertinent funding source for services. Delays are compounded when a child is moved to a new county or state.

Even when services are available, agencies and the courts do not always give priority to foster children and their families in the delivery of these services. For example, children have a right to certain educational and transition-to-independent-living services but often are not able to benefit from these services because there are no resources or funding supports to help these children access the services. This lack of prioritization of, and accountability to, children and families in the delivery of services deprives them of the comprehensive and concentrated services that are critical to family reunification and permanency.

The commission offers the following recommendations to respond to the challenge of resources and funding.

Recommendation 4

In order to meet the needs of children and families in the foster care system, the Judicial Council, Congress, the Legislature, the courts, and partnering agencies should give priority to children and their families in the child welfare system in the allocation and administration of resources, including public funding – federal, state, and local – and private funds from foundations that support children’s issues.

Recommendation 4A

The Judicial Council should urge Congress, the state Legislature, and state and local agencies – including agencies and organizations that provide health, mental health, education, substance abuse, domestic violence, housing, employment, and child care services – to prioritize the delivery and availability of services to children and families in the child welfare system.

The Blue Ribbon Commission recommends that:

- Congress and the state Legislature fund dissemination of evidence-based or promising practices that lead to improved outcomes for foster children and their parents. Examples include therapeutic foster care and drug courts.

Simply put, current federal funding mechanisms for child welfare encourage an over-reliance on foster care at the expense of other services to keep families safely together and to move children swiftly and safely from foster care to permanent families, whether their birth families or a new adoptive family or legal guardian.

—Pew Commission on Children in Foster Care

Recommendation 4B

States and counties should be given permission to use federal funding more flexibly. Flexible funding should be used to address the needs of children and families in a timely manner that recognizes the child's developmental needs and relationship with his or her parents, guardian, and extended family. The commission supports key financial recommendations of the Pew Commission on Children in Foster Care and encourages innovative funding strategies at the federal, state, and local levels of government.

The Blue Ribbon Commission recommends that:

- The Judicial Council urge Congress to adopt the following federal financing reform recommendations, based on those advocated in 2004 by the Pew Commission on Children in Foster Care, a national panel of experts that issued proposals around financing child welfare and court reforms:
 - Creation of an incentive model for permanency. Based on the adoption incentive, this model would encompass all forms of permanency, including reunification and guardianship, and would offer equal payment levels;
 - Federal adoption assistance for all children adopted from foster care;
 - Federal guardianship assistance for all children who leave foster care to live with a permanent, legal guardian;
 - Elimination of the income limit for eligibility for federal foster care funding;
 - Flexibility for states and counties to use federal funds to serve children from Indian tribes and children living within U.S. territories;
 - Extension of federal title IV-E funding to children in Indian tribes and the U.S. territories;
 - Reinvestment of local, state, and federal dollars saved from reduced foster care placements into services for children and families in the child welfare system;
 - Reinvestment of penalties levied in the federal Child and Family Services Review process into program improvement activities; and
 - Bonuses when the state demonstrates improved worker competence and lighter caseloads.

Recommendation 4C

No child or family should be denied services because it is unclear who should pay for them. Funding limitations that prohibit or delay the delivery of services to children and families should be addressed through coordinated and more flexible funding.

The Blue Ribbon Commission recommends that:

- The Judicial Council work with other branches of federal, state, and local governments to identify barriers to funding for services and to develop solutions.
- The Judicial Council should urge Congress to change any federal law that prevents federal funds from being coordinated among several agencies to support specific services.

Recommendation 4D

The Judicial Council, along with other stakeholders, should work to improve the foster care system by supporting those who provide care to dependent children.

The Blue Ribbon Commission recommends that:

- The Judicial Council and other stakeholders advocate for increasing foster care rates and supports to enable foster parents to care for their foster children.
- The Judicial Council and other stakeholders advocate for funding and other resources to provide statewide legal and informational support for caregivers so they understand the dependency process and know what to expect in court.

Recommendation 4E

The Judicial Council, the executive and legislative branches of federal and state government, local courts, businesses, foundations, and community service organizations should work together to establish a fund to provide foster youth with the money and resources they need to participate in extracurricular activities and programs to help make positive transitions into adulthood.

The Blue Ribbon Commission recommends that:

- Children in foster care and partnering agencies have access to reliable funding to support their access to extracurricular activities and transitional programs. These activities should include music and dance lessons, sports, school events, and independent living activities.
- Systemic barriers that prevent foster children from participating in the above events be eliminated, including transportation, licensing restrictions, and confusion regarding waivers and consents.

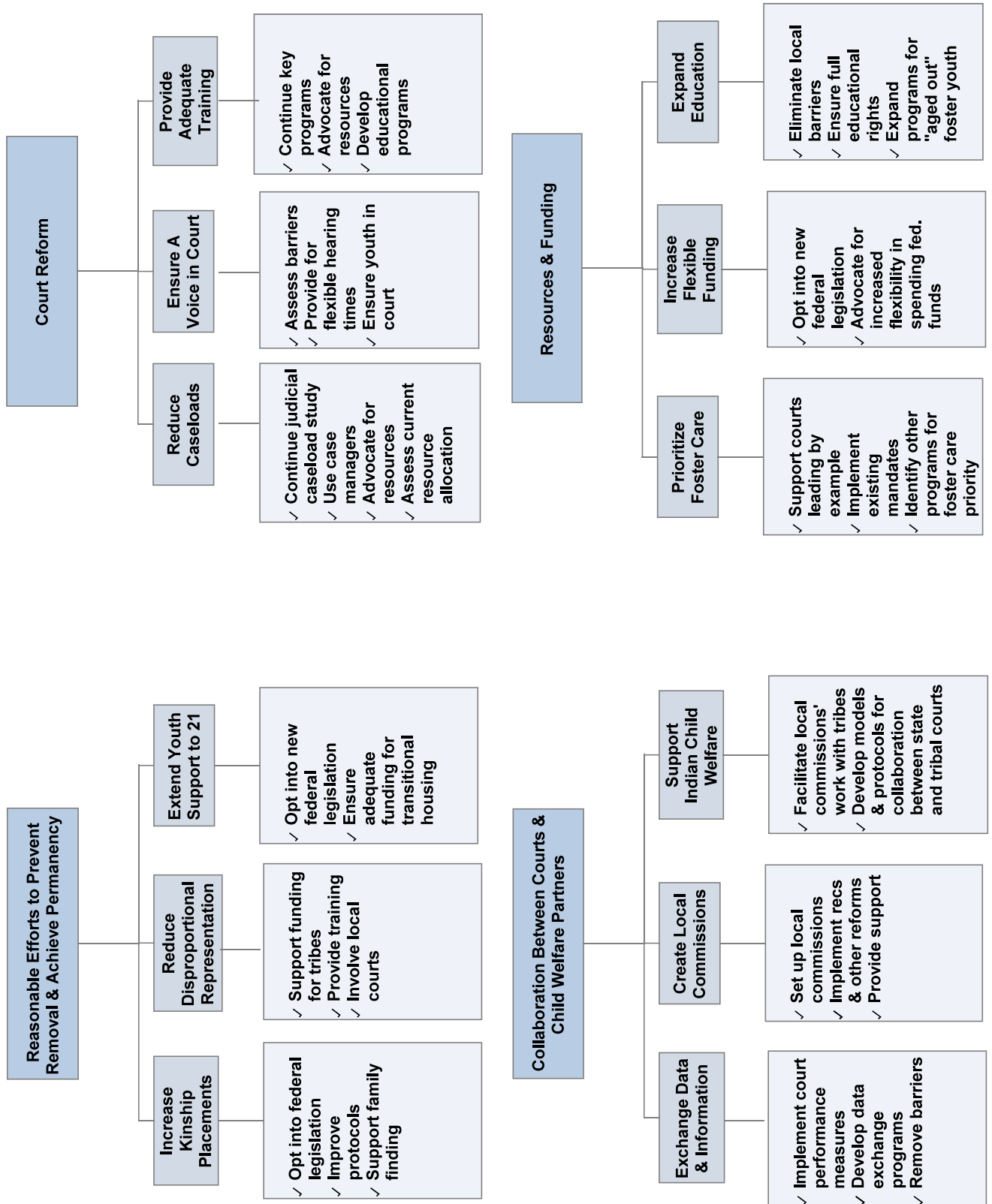
Recommendation 4F

Educational services for foster youth and former foster youth should be expanded to increase access to education and to improve the quality of those services.

The Blue Ribbon Commission recommends that:

- Courts and partnering agencies ensure that foster children receive the full education they are entitled to, including the support they need to graduate from high school. This includes tutoring and participation in extracurricular activities. The courts should require other agencies to justify any denial of such services to foster youth in school.
- The Judicial Council urge Congress and the state Legislature to strengthen current education laws to explicitly include all foster children and to fill funding gaps, such as the lack of support for transportation to maintain school stability.
- The Child Welfare Council prioritize foster children's educational rights and work with educators to establish categorical program monitoring to oversee compliance with education laws and regulations that support foster youth in school.
- The California Department of Education designate foster youth as "at-risk" students to recognize that foster care creates challenges and obstacles to a child's education that other children do not experience and to increase the access of foster youth to local education programs.
- Foster Youth Services grants be expanded to include all children age five or older, including those in kinship placements, because close to half of foster children are placed with kin and Foster Youth Services is not currently funded to serve those children.
- The Judicial Council urge legislative bodies and higher education officials to expand programs, such as the Guardian Scholars, statewide to ensure that all current and former foster youth who attend college have access to housing and other support services and to waive tuition and other educational fees for current and former foster youth.

BLUE RIBBON COMMISSION RECOMMENDATIONS & ACTION PLAN HIGHLIGHTS



Chapter 2:

A Roadmap to Reform:

The Blue Ribbon Commission's Action Plan

Commissioners kept implementation in mind throughout our deliberations. We were determined from the beginning that our recommendations not sit on a shelf gathering dust, but be implemented as soon as possible in the hope of improving the lives of children and families, and bringing some relief to the state's chronically overstressed juvenile court and child welfare systems.

When the Judicial Council unanimously accepted our final recommendations on August 15, 2008, it directed that work get underway immediately on the 26 specific recommendations that are under its purview. It also directed us to develop an action plan in keeping with our principles and values for those recommendations that required collaboration with court partners. We met in San Francisco on October 21, 2008 to begin work on the action plan that is included in this chapter.

The commission believes that each one of our recommendations is important and indispensable to the sweeping reform of the foster care and dependency court systems that we envision. For this initial action plan, we took a pragmatic approach, identifying practical first steps that we believe are fiscally responsible and realistically achievable. We also believe that these initial reforms will provide an important and improved foundation for the remaining recommendations and reforms that will follow.

We organized our action plan around the key recommendations in each of the four overall categories of recommendations:

1. Reasonable efforts to prevent removal and achieve permanency;
2. Court reform;
3. Collaboration between the courts and their child welfare partners;
and
4. Resources and funding.

We have highlighted key recommendations within each of these categories and outlined our action steps to make them a reality.

We realize that our recommendations have financial implications. That goes without saying. And we acknowledge that our state is experiencing difficult financial times. But not everything needs to happen at once. We are taking the long view.

These recommendations, when implemented, will bring significant change to our juvenile court and child welfare system, to the benefit of California's most vulnerable children and families.

—Hon. Carlos R. Moreno
Associate Justice, Supreme Court of California;
Chair, California Blue Ribbon Commission on Children in Foster Care

REASONABLE EFFORTS TO PREVENT REMOVAL AND ACHIEVE PERMANENCY

Increasing the Number of Relative Placements (Kinship)

I was placed in foster care when I was six years old and had multiple placements in the first three years. Growing up, it was really difficult because you would have to make family trees in school, and on my family tree it was just me and my brother. I had no idea who my parents were. I had no idea of any genetics or any family history. I had no idea of who I was until I was 17.

With the limited information I had, I searched on the internet for my family and was able to locate my grandmother who said she had not been contacted when I was placed in foster care.

—Sean Guthrie
Former foster youth

Nearly half of the children in foster care have been in care for over two years, 17 percent for three years or more. Too often these children are in foster care limbo, shifted from placement to placement, separated from siblings, friends, and schools. Often they could be placed with relatives if the system knew who and where the relatives were.

Key Recommendations

- That, at the earliest possible point in their involvement with the family, child welfare agencies engage family members, including extended family wherever they may live, to support the family and children in order to prevent placement whenever possible. Child welfare systems should develop and improve internal protocols for finding family members.
- The Judicial Council work with state and federal leaders to advocate changes in law and practice to increase and encourage more relative placements, including:
 - Addressing funding disparities;
 - Developing greater flexibility in approving relative placements whereby relatives would not, by virtue of federal law, be held to the same standard as nonrelatives; and
 - Formulating protocols to facilitate swift home assessments and placement with family members when appropriate.
- That all court participants continuously review and make extraordinary efforts to preserve and promote sibling connections and co-placement.

Action Steps

To facilitate the implementation of these recommendations, we urge that the following steps be taken to improve the availability of relatives to care for foster children:

- That the Judicial Council work with the Administrative Office of the Courts, the California Department of Social Services, and other appropriate partnering agencies to evaluate and determine whether California should opt into the kinship provisions of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (hereinafter “Fostering Connections to Success Act”). These provisions would provide more support for relative caregivers. If it is determined that California should opt in, the Judicial Council should support appropriate legislation.
- That local and statewide child welfare agencies develop and improve internal protocols for finding, engaging, and supporting family relationships. The efforts and forthcoming recommendations of the Child Welfare Council Permanency

Committee and the implementation of California's Program Improvement Plan will support this work.

- That local foster care commissions support the expansion of family finding in their counties by developing information-sharing protocols among public and private agencies to enhance the ability of the child welfare agency to locate family members. The Blue Ribbon Commission's local teams committee and Administrative Office of the Courts staff will provide support for this effort.

Reducing the Disproportionate Representation of African Americans and American Indians in Foster Care

African-American children constitute 6% of the state's child population, but represent more than 26% of the children in foster care. More than three times as many American Indian children are in the foster care system compared to the state's population of American Indian children. These statistics sharply profile the enormity of the problem of disproportionality in California's foster care system. We recommend a strong, determined response to this systemic inequity.

Key Recommendations

- That the courts and partnering agencies work to reduce the disproportionate number of African-American and American Indian children in the child welfare system, and
- That judicial officers, attorneys, social workers, and other professionals who serve foster children and their families increase the diversity and cultural competence of the workforce.

Action Steps

We recommend addressing the problem on multiple fronts through the following steps:

- That the Judicial Council and partnering agencies support as appropriate Indian tribes opting into the provisions of the Fostering Connections to Success Act to get federal title IV-E funds and to access grants.
- That the Administrative Office of the Courts provide training and support to trial courts on how these courts may contribute to the disproportionate representation of African-American and American Indian children and provide tools for eliminating this effect.
- That the Administrative Office of the Courts and other statewide stakeholders, including Casey Family Programs, set up a task force to develop the basics of a training template to reduce disproportionality that can be provided to each county.
- That the Judicial Council, partnering agencies, and local commissions work collaboratively to develop a strategy to increase the diversity and cultural competence of the workforce at every level.

- That the California Department of Social Services and county child welfare agencies develop and improve internal protocols for finding family members to help avoid nonrelative placement whenever possible.
- That courts and partnering agencies identify how policies and practices interact to create disproportionality and work to ameliorate this effect.
- That the Judicial Council support efforts to involve courts in local collaborations to reduce disproportionality, including in counties that are participating in Casey Family Programs' California Disproportionality Project.
- That the Judicial Council, California Department of Social Services, trial courts, and county child welfare agencies develop a statewide dependency court standard for determining predetention reasonable efforts to find alternative placements or provide intensive services to prevent detention.

Providing Extended Support for Transitioning Youth

I started my work in child welfare services over 20 years ago, providing group care to neglected teenagers. And I have to say that the most troubling aspect of that experience was 18th birthdays. I watched far too many young people celebrate their 18th birthday with nowhere to go because their funding for foster care services was terminated on that day.

—Professor Mark Courtney
Ballmer Chair in Child Well-Being, School of Social Work, University of Washington;
Former social worker

The fact that more than 5,000 of our youth in foster care “age out” of the system every year without reunifying with their own families or being placed in other permanent families is an enormous problem for this state. We know that these young people are more likely to drop out of school, have serious mental health needs, experience homelessness and unemployment, and end up in the criminal justice system. We recommend aggressive action to provide needed support for transitioning youth.

Key Recommendation

- That the Judicial Council work with federal and state leaders to support or sponsor legislation to extend the age when children receive foster care assistance from age 18 to age 21. This change should apply to those children who at age 18 cannot be returned home safely, who are not in a permanent home, and who choose to remain under the jurisdiction of the court. If the court terminates jurisdiction before a youth's 21st birthday, the youth should have the right to reinstatement of jurisdiction and services.

Action Steps

Implementation of this recommendation is imminently possible because the federal Fostering Connections to Success Act, passed in 2008, now permits states to use federal funding to extend foster care assistance to age 21. We urge that the following steps be taken to ensure that California opts in to the provisions in this act that would permit federal funding for foster care through age 21:

- That the Judicial Council work with the Administrative Office of the Courts, California Department of Social Services, and the

Legislature to ensure that California is able to secure federal funding to extend foster care to age 21.

- That the Judicial Council develop rules of court as necessary to implement the federal and/or state legislation, and provide continuing court oversight for youth transitioning to adulthood.
- That the California Department of Social Services and county child welfare agencies develop protocols for working with transitioning youth who may want continued services beyond age 18.
- That the Judicial Council and trial courts develop protocols to address any changes to caseloads for the courts and attorneys that are created by extending juvenile court jurisdiction to age 21.
- That the Judicial Council and partnering agencies work with state and federal leadership to ensure adequate funding for transitional housing.
- That the Administrative Office of the Courts, in the absence of new legislation, provide training to trial courts on the authority of courts to order services to youth to age 21 under current law.

Hailed as the most significant federal legislation for foster youth in more than a decade, the Fostering Connections to Success Act provides important new resources for foster youth and the families who care for them.

**Spotlight on Early Implementation:
Fostering Connections to Success Act**

Late in 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351). Hailed as the most significant federal legislation for foster youth in more than a decade, the new law provides important new resources for foster youth and the families who care for them.

The new law is directly responsive to 20 of the Blue Ribbon Commission's recommendations, which were shared with members of Congress prior to the new law's passage.

Commission recommendations addressed by the new law include:

- Increased supports for relative caregivers (kin);
- Improved outreach and communication with relatives who may be able to assist with care for foster youth;
- More flexible use of federal funds to support child abuse prevention efforts;
- Supports for foster youth until age 21, including housing and other transitional services;
- Requirements that siblings be placed together;
- Requirements that child welfare agencies coordinate with educational agencies to ensure that children are enrolled in school full-time and can remain in the same school whenever possible;
- Extension of federal funding for foster care to tribal governments; and
- Use of federal child welfare training funds for court personnel, attorneys, relative caregivers and others working with children in the child welfare system.

State legislation to implement a number of these provisions has already been introduced in California. Commission members are helping to support these efforts under the auspices of the Judicial Council. Once enacted in state statute, local foster care commissions will be able to assist with implementation.

COURT REFORM

Reducing Caseloads for Judicial Officers, Attorneys, and Social Workers

Staggering caseloads for attorneys and judicial officers in juvenile dependency court sharply limit the time and attention that either an attorney or the court can give to any one case. When the average hearing time devoted to each case is 10 to 15 minutes instead of the recommended 30 to 60 minutes, it is no wonder that parents and children consistently report that they did not understand what happened in court. We believe that lowering caseloads is a necessary first step towards implementing our recommendations for more meaningful hearings. (This section discusses judicial caseloads. Attorney and social worker caseloads are addressed later in the section on Resources and Funding.)

Key Recommendations

- That the Judicial Council undertake a new judicial caseload study focused specifically on juvenile dependency courts. The study should take into account the court's unique oversight and case management responsibilities and address the use of case managers to support judges in meeting their workloads.
- That, pending completion of the study, presiding judges evaluate their current allocation of judgeships and resources and make adjustments as necessary. If reallocation of existing resources is not sufficient, the Judicial Council should seek additional funding to ensure full implementation of the standards and statutory requirements.

Action Steps

The first step in addressing judicial caseloads is to determine the appropriate caseload for judicial officers. This determination will then enable the courts to determine the appropriate allocation of judicial resources to juvenile courts and will give the judicial branch the ability to advocate more effectively for additional resources. We recommend the following implementation steps:

- That the Judicial Council continue its ongoing statewide assessment of judicial needs based on caseload data and continue to seek the resources to implement recommendations from the study.
- That the Judicial Council, in conjunction with the trial courts, undertake a judicial juvenile court caseload study tailored to take into account the court's unique oversight, case management and community responsibilities.
- That the Judicial Council explore the use of case managers to support judges with their caseloads and consider the effect of case managers when determining the appropriate caseload.

The dependency system is blessed with many caring and dedicated social workers, attorneys, and judicial officers. However, no one, no matter how dedicated and caring, can do a complete and thorough job if they have four times as many cases as they should.

Clear standards for each of these professions and a source for funding to ensure that there are enough social workers, attorneys, and judicial officers are essential.

—Hon. Margaret Henry
Judge of the
Superior Court,
County of Los Angeles

Ensuring a Voice in Court and Meaningful Hearings

Spotlight on Early Implementation: Youth Participation in Hearings that Affect Their Lives

Ensuring that foster youth have a voice in court – a key commission recommendation – was the impetus behind recently signed state legislation.

Assembly Bill 3051 requires courts to ensure that children over age 10 have the opportunity to attend hearings on their dependency case (including provision of transportation, if necessary) and that they are permitted to address the court when they are present at a hearing. Some counties, most notably Los Angeles, have already made great strides in this area. And, several of the newly forming local foster care commissions have targeted getting children to court as one of their top priorities.

Our commission frequently heard from foster youth who expressed a sincere and real desire to be present when decisions are made regarding their young lives. Often youth are not aware of hearings, and even if they are, transportation and scheduling issues can present major roadblocks.

Related commission recommendations call for removing other barriers that prevent both youth and parent participation in hearings, including scheduling hearings that do not conflict with school and work, setting hearings for specific dates and times, and exploring telephonic and other new technology options to ensure full participation.

As we studied the juvenile court process, we sought first-hand accounts from participants about their experiences in dependency court through a variety of settings: focus groups, public forums, formal testimony at commission meetings, public hearings, youth summits, and social worker symposia. We learned that participants have an earnest desire to be heard and understood by the judge and to offer their personal perspectives to the court on the issues that could have a profound impact on their future. Whether they appear in person at a hearing, submit written information, or are effectively represented by an attorney, participants want to tell their side of the story. The desire to share their *own* voice -- their concerns, aspirations, and personal perspectives -- was echoed by all participants in the legal process. This finding echoed a 2005 Survey of Trust and Confidence in the California Courts and identified the opportunity to be heard as a critical component of procedural fairness.

In response to the legislation and the clear message we heard about the desire for meaningful participation in court hearings, we prioritized the following recommendations for early action.

Key Recommendations

- That judicial officers and other stakeholders identify and remove barriers that prevent children, parents, and caregivers from attending hearings.
- That the Judicial Council provide judicial officers and court participants with education and support to create courtroom environments that promote communication with, and meaningful participation of, all parties, including children, and that this take into account age, development, language, and cultural issues.
- That the Judicial Council require the appointment of independent counsel for all children in juvenile dependency appeals.
- That the Judicial Council provide an expedited process for all juvenile dependency appeals by extending the application of rule 8.416 of the California Rules of Court to all dependency appeals.

Action Steps

To implement these recommendations, we must engage the Judicial Council, trial courts, local foster care commissions, appellate courts, local child welfare agencies, appellate representation projects, attorneys representing parents, children and agencies and other partnering agencies. The Judicial Council has already referred appellate counsel and expedited appeal recommendations to appropriate internal committees for the development of rules of court. We believe the following additional steps should be taken to ensure dependency court participants a voice in court:

- That local foster care commissions identify and assess county barriers to parties' attendance at hearings and tailor local strategies to overcome these barriers. This is one of the four

priority areas that the Blue Ribbon Commission asked local commissions to consider at the local summit meeting in December 2008. The Administrative Office of the Courts staff will provide support for these efforts.

- That state level child welfare stakeholders develop strategies to reduce barriers to participation, including legislation as necessary, and support local foster care commission efforts to remove the barriers to attendance and participation at hearings. The Child Welfare Council should provide leadership and support in this area.
- That trial courts make use of established procedures to increase parties' attendance and participation at hearings, including the setting of time certain hearings that are available at times that do not conflict with school, employment or other case plan or court obligations. Trial courts should also act to reduce unnecessary delays and cancellations of hearings.
- That the Judicial Council adopt a rule of court implementing the Assembly Bill 3051 (Jones) to facilitate attendance of children at hearings. The rule of court will include information on implementation steps that will ensure meaningful participation.
- That the Judicial Council adopt a rule of court providing for alternative ways for parties to participate in court, such as telephonic appearances, and standards by which these alternatives may be used. This step has already been referred to the Judicial Council's Rules and Projects Committee.

Ensuring Adequately Trained and Resourced Attorneys, Social Workers, and Court-Appointed Special Advocates (CASA)

Making sure that parties can attend hearings is only the first step toward meaningful hearings. Once in court, participants in dependency court are mystified by the process – they often feel frustrated, overwhelmed or rushed as they attempt to navigate the court system, to understand their rights, and to participate in a meaningful way in court. The commission saw these issues as crucial and slated for initial action recommendations to increase resources to reduce caseloads and expand training.

Key Recommendations

- That the Judicial Council advocate for the resources, including stable funding, to implement caseload standards for attorneys and social workers, and to develop and implement caseload standards for social services agency attorneys.
- That the Administrative Office of the Courts expand multidisciplinary training and opportunities for court professionals and other participants, including caregivers, educational representatives, CASA volunteers, and tribal leaders. training should include conferences as well as distance learning opportunities.

I didn't know that we could write a letter to the judge. I didn't know that we could do something to let our voice be heard and let the judge see that there was a family...approved and waiting for him.

—Foster parent and
focus group participant
San Francisco

**Spotlight on Early Implementation:
New Training Resource for Courts, Attorneys, & Social Workers**

In line with Blue Ribbon Commission recommendations calling for improved training for the courts, juvenile dependency attorneys, and social workers, the Administrative Office of the Courts' Center for Families, Children & the Courts recently launched the California Dependency Online Guide, a free technical assistance Web site for juvenile dependency judicial officers, attorneys, social workers, and other professionals working in child welfare or related fields.

This new training resource provides a variety of legal and educational resources including a searchable dependency case law database, a conference calendar, sample briefs, motions and writs, county-by-county listings of service providers and experts, and a large number of publications and training materials.

The Blue Ribbon Commission recommended improved training for court and other personnel because the court's ability to make fair, timely, and informed decisions requires well qualified attorneys, social workers, and other child welfare professionals who can present accurate and timely information to the courts about the children and families in the child welfare system.

Those wishing to subscribe to this important new resource should visit www.courtinfo.ca.gov/dependencyonlineguide.

Contact:
dependencyguide@jud.ca.gov, or
call AOC Center for Families,
Children & the Courts, 415-865-4563.

Action Steps

To implement these recommendations we need the help of the Judicial Council, trial courts, tribes and/or tribal courts, state legislative leadership, local child welfare agencies, dependency court attorneys, CASA, and other partnering agencies or organizations. We urge the following steps be taken to implement our recommendations:

- That the Administrative Office of the Courts continue its Court Appointed Counsel Study and Dependency Representation, Administration, Funding & Training (DRAFT) project to reduce caseloads and provide training for attorneys representing parents and children in juvenile dependency proceedings.
- That the Judicial Council work with partnering agencies and other state leadership to advocate for resources to implement existing caseload standards for all attorneys who provide representation in juvenile court and for social workers.
- That the Judicial Council work with trial courts, partnering agencies, and local foster care commissions to determine what type of multidisciplinary training and support is needed in local jurisdictions and the opportunities that exist to provide the training and support.
- That the Administrative Office of the Courts develop educational programs and technical support for judicial officers that address the efficient and optimal use of existing resources.
- That the Judicial Council establish pilot projects in small, medium, and large courts to test various approaches to making hearings more meaningful and use the lessons learned to develop policies and practices that can be implemented statewide.

Spotlight on Early Implementation: Early Support for Court Performance Measures

Early in the commission's three-year process, we embraced the collection and reporting of performance measures in juvenile dependency court and developed draft court performance measures that were adopted in 2008. Several factors contributed to our momentum:

- The courts were already in the process of developing a California Case Management System and were beginning to design the juvenile dependency court module.
- The California Department of Social Services was about to redesign and upgrade their statewide Child Welfare Services automated case management system.
- The California Legislature also expressed its support for court-based performance measurement through passage of the Child Welfare Leadership and Performance Accountability Act of 2006, Assembly Bill 2216. This bill directed the Judicial Council to adopt performance measures that enable the courts to establish benchmarks and track their progress "in improving safety, permanency, timeliness and well-being of children and to inform decisions about the allocation of court resources."³

In one of our first actions, the commission drafted a resolution about the need for gathering better and more complete data related to dependency cases and for the electronic sharing of appropriate information between the courts and child welfare agencies. This resolution was adopted by the Judicial Council at its October 20, 2006 meeting. (See the resolution in Appendix B.)

Two of our committees then developed draft court performance measures, which were incorporated into a draft rule of court, which was circulated for comment as part of the Judicial Council's rule making process. On October 24, 2008, the Judicial Council adopted rule 5.505 of the California Rules of Court and its companion guide: *Implementation Guide to Juvenile Dependency Court Performance Measures*, with an effective date of January 1, 2009.

With the adoption of performance measures for California, the Judicial Council took a significant step to implement our recommendation calling for the Judicial Council to "establish and implement a comprehensive set of court performance measures." When the California Case Management System goes online with its family and juvenile law case module, the performance measures will begin to help the courts improve outcomes for the state's most vulnerable families.

*The
implementation
of performance
measures will
help
California's
courts improve
outcomes for
our most
vulnerable
families.*

³ CAL. WELF. & INST. CODE § 16545 (West 2008).

COLLABORATION BETWEEN COURTS AND THEIR CHILD WELFARE PARTNERS

Facilitating Data and Information Exchange

One of the greatest challenges to reforming the juvenile dependency and foster care systems is the difficulty of exchanging data and information among courts and their partner agencies. The difficulty results from a variety of factors, including confidentiality laws, and in many instances the way in which they are interpreted and implemented; automated case management systems that are unable to communicate with each other; and a lack of communication and collaboration among agencies and between agencies and the courts.

Key Recommendation

- The Judicial Council, trial courts, and the California Department of Social Services should work cooperatively with all departments, agencies, and other stakeholders to ensure optimal sharing of information to promote decision-making that supports the well-being of children and families in the child welfare system.

Action Steps

To achieve that goal, we focused on the following implementation steps:

- That the Judicial Council continue to develop and implement the California Case Management System, which will include information-sharing capabilities with other partners' data systems.
- That statewide stakeholders work to reduce or remove barriers to sharing information, through Memoranda of Understanding or through legislation, where needed. Support is being provided for this work through the ongoing efforts of the Child Welfare Council Data Linkage Committee.
- That the Judicial Council and partnering agencies, in conjunction with the Child Welfare Council, hold a summit of agency and county counsel to identify and resolve barriers to sharing information.
- That local commissions develop tailored strategies to reduce or remove local barriers to sharing information.
- When information-sharing capabilities have progressed sufficiently to warrant coordinated implementation, that the Judicial Council adopt a rule of court addressing information and data sharing and provide support with an implementation guide.

If attorneys are not trained in everything from child development to understanding children's' linguistic stages to special education to mental health to health to substance abuse to domestic violence – all of those things – they cannot do a good job as attorneys in dependency court.

There is a lot more that you need besides a Bar card to really represent children well in this system. And very little of it is taught in law school.

—Leslie Heimov
Executive Director,
Children's Law Center
of Los Angeles

Collaboration in Action: Helping Foster Youth through Data-sharing

One of the Blue Ribbon Commission's central recommendations focuses on sharing information and data among the courts and agencies that serve foster children and their families.

The commission heard repeatedly about the problems, delays and other consequences of agency systems not communicating with one another, whether it was a judge not having all of the relevant information about a youth in order to make informed decisions on his or her behalf, foster youths' educational records not following them from one school to another, or a foster parent encountering repeated roadblocks when trying to ensure adequate medical care for a young person who is in their charge.

We also heard about several good examples of local agencies and officials tearing down administrative barriers to information and data-sharing, and applaud the efforts of those who are "just making it happen."

One good example at the local level is in San Diego County, where the Office of Education spearheaded the collaboration of nine agencies and the juvenile court to set up a system to share foster youths' education and health records. They created an interagency agreement that permits participant agencies to access foster youth information on a web-based secure database.

The database receives daily and weekly downloads from child welfare and education offices, including all 42 of San Diego's school districts, ensuring that the information is current for those who need access to it. Data include foster youths' grades, attendance, unofficial transcripts, immunization records, school placement history, and various test scores and other data.

Strong leadership from the county's juvenile court paved the way for this level of information and data sharing, which enables all stakeholders to have the information necessary to comply with legislative mandates that require a foster child's health and educational records follow the child when there are school transfers or foster care placement changes.

Collaborative partners in San Diego include health and human services, child welfare services, the juvenile court, probation, CASA, the public defender, the alternate public defender, education, and the county school districts.

The issue of sharing information as a barrier is self-imposed. There are no real barriers to the sharing of information. Honestly, it is a little tiny fence that can be kicked over. Make it work.

—Hon. Colleen Nichols
Judge of the Superior Court,
County of Placer

Establishing Local Foster Care Commissions

Though we are a statewide commission, we realize that change for children and families in the foster care system will take place only if there are changes at the county level and in the local juvenile courts.

The courts can no longer afford to be silent partners, or unheard partners in the child welfare system. The court can and should be a moving force in collaboration...we all jointly share responsibility for making the system better.

—Frank Ospino
Supervising Attorney,
Public Defender's Office,
Orange County

Key Recommendation

- That the presiding judge of the juvenile court and the county social services or human services director should convene multidisciplinary commissions at the local level to identify and address local systemic concerns, address the recommendations of the Blue Ribbon Commission, and build the capacity to provide a continuum of services.

Action Steps

The local commissions are designed to provide leadership on foster care issues in their communities. They will also be a forum for addressing systemic barriers to improving the lives of foster children and for establishing communication protocols among individuals, agencies, and courts. We agreed on the following implementation steps to get the local commissions up and running:

- That the Judicial Council will convene a summit of county teams to start the process of establishing local commissions. (This step is complete. The summit, held in December 2008, is discussed on page 43.)
- That county teams develop concrete steps to set up local commissions or identify existing committees or workgroups that could be expanded to become local commissions and adopt action plans to address local concerns and Blue Ribbon Commission recommendations. (This step is underway. See page 43 for more information.)
- That local commissions assess, develop, and coordinate the delivery of services; identify barriers to information sharing; communicate with the California Child Welfare Council; and, raise public awareness of foster care issues and the needs of children in foster care.
- That the Administrative Office of the Courts provide support to local commissions.

These local foster care commissions will likely be the keystones to statewide implementation of our recommendations. We see them as crucial partners in meeting the challenge of better safeguarding our children, reducing the need for foster care, and improving the foster care system.

**Spotlight on Early Implementation:
Summit Launches Local Foster Care Commissions**

The Blue Ribbon Commission believes that the key to effective implementation of our recommendations lays in the counties, where families live, where our judges preside in dependency courts, where services are delivered and major decisions made. We know that bringing our recommendations to life requires teamwork and collaboration between the courts and the local public and private agencies that serve foster children and their families. That's why the creation of local foster care commissions is one of our central recommendations.

To encourage the quick formation of these local commissions, we hosted a summit on December 10, 2008 and invited the presiding judge and the child welfare director from each county in the state to send a team. More than 400 participants from 50 counties enthusiastically rose to the challenge of developing local foster care commissions focused on identifying and addressing local child welfare systemic concerns, addressing and implementing the recommendations of the Blue Ribbon Commission, and building the capacity to provide a continuum of services. (A copy of the county team workbook used to focus team discussions is attached as Appendix C.)

The summit's success was exciting. With nearly all California counties and juvenile courts participating, there was consensus among the courts and their partner agencies that foster children and their families deserve better services from the courts and the agencies that serve them.

Following the summit, most county teams have now taken concrete steps to create their own local commissions or retool existing collaborations to address foster care issues. These newly formed local commissions have targeted a number of Blue Ribbon Commission recommendations to focus on, including: access to services, visibility of foster care as an issue, getting children to court, information sharing, disproportionate representation of minorities, and educational opportunities.

Formation of these local foster care commissions is a critical step in implementing many of our recommendations and making reform of the juvenile court and foster care systems a reality. Our children, our families, and our communities will all benefit from the dedication and hard work of these new local commissions.

Formation of local foster care commissions is a critical step in implementing many of the Blue Ribbon Commission's recommendations and making reform of the juvenile court and foster care systems a reality.

Improving Indian Child Welfare

One key to collaboration is real participation – not just consultation, but culturally appropriate partnerships. And for Indian communities that means equality. You cannot do it on a big brother, little brother basis – that simply will not work. You build a history of working together in a way that each person at the table knows that they are valued.

—Hon. William Thorne
Associate Presiding Judge,
Utah Court of Appeal;
Tribal court judge

As noted earlier, there is a significant disparity between the percentages of American Indian children in foster care compared to the percentage of American Indians in the general population in California. In addition, there is often a chasm in terms of resources, policies, trust, and communication between tribes or tribal courts and the state trial courts. Hon. William Thorne, the Associate Presiding Judge of the Utah Court of Appeal and a tribal court judge, noted in testimony before the commission that “[t]he only children in the country who are not covered by title IV-E are Indian children in tribal court custody, so that there is a tremendous difference in resources, especially for the poor tribes, about what services are available...”

In many counties there is an historic distrust between tribes and child welfare agencies and trial courts. Much of this distrust is due to a lack of understanding or mutual respect for each other’s cultures and institutions. American Indian children and their families suffer because of the lack of resources and the lack of trust and coordination between tribes and counties and state courts.

The recent passage of the Fostering Connections to Success Act provides a timely boost of resources in this area by offering Indian tribes, for the first time, direct access to title IV-E funds, which provide federal assistance through the federal foster care and adoption assistance programs; hundreds of thousands of other children have had access to these federal funds for years. The act also requires the United States Department of Health and Human Services to provide technical assistance and implementation services to help tribes set up child welfare services that qualify for title IV-E funding.

Key Recommendation

The commission selected the following recommendation for early action in this area:

- That the Administrative Office of the Courts work with state trial courts and tribal courts to establish protocols for identifying and sharing jurisdiction between state and tribal courts and for sharing services, case management, and data among superior courts, tribal courts, and county and tribal service agencies. The protocols established should encourage a mutual understanding of and respect for the procedures in both the state and tribal courts and the challenges that all communities face in providing services for children and families. The Administrative Office of the Courts should collaborate with the state to develop and offer judicial education and technical assistance opportunities to tribal court officers and staff and legal education to tribal attorneys, lay advocates, and service providers.

Action Steps

We identified the following implementation steps to improve communication and collaboration between tribal courts and state trial courts:

- That local foster care commissions work with tribes, tribal courts, and tribal service agencies in their jurisdictions to determine the needs of tribal children and families and the resources available to meet their needs.
- That teams, both local and statewide, work together to develop models and protocols for sharing jurisdiction, data, and services.
- That the Judicial Council evaluate current projects in the judicial branch for opportunities to address Blue Ribbon Commission recommendations related to tribal issues.
- That the Administrative Office of the Courts provide education on Indian child welfare issues where needed.

RESOURCES AND FUNDING**Prioritizing Foster Care**

One of the most compelling values that drove our work as a commission was the strong, powerful voice of the children and youth whose lives have been shaped by California's foster care system. Those individual voices were convincing and cannot be ignored. The commission believes that foster children and youth in this state must be able to count on our courts, child welfare agencies, and other stakeholders to care for them as they would be cared for in any loving family. We must take early action.

Key Recommendation

- In order to meet the needs of children and families in the foster care system, the Judicial Council, Congress, the Legislature, the courts, and partnering agencies should give priority to children and their families in the child welfare system in the allocation and administration of resources, including public funding – federal, state, and local – and private funds from foundations that support children's issues.

Action Steps

Implementation of this recommendation can be accomplished by the following steps:

- That the Judicial Council and trial courts lead by example, by
 - Assigning judges (not subordinate judicial officers) to hear dependency cases,
 - Setting 3-year minimum judge's rotations in dependency courts,

I learned that I just could not expect a nurturing home while I was in the system. Social workers are overloaded, attorneys have too many clients, the judges are getting tired at the end of the day, and it feels like there is really no time for anyone to talk to the child about how it's going.

—Lanette Scott
Former foster youth

- o Implementing performance measures and using them to determine resource allocation to juvenile dependency court,
 - o Implementing the California Case Management System for dependency court, and
 - o Conducting a judicial juvenile court workload study and setting caseload standards for judges based on the workload study.
- That partnering agencies identify existing mandates where services to families in dependency are already prioritized and ensure that they are being followed.
 - That local foster care commissions and partnering agencies identify additional programs where foster youth and families should be given priority for services.

Advocating for Flexible Funding for Child Abuse Prevention and Services

Under what circumstance is any expenditure deserving of higher priority than the care of the court's own children, for whom they are legally and morally responsible?

—Children's Advocacy
Institute
May 13, 2008

Financial support for children and families in the child welfare system is built on a patchwork of funding streams, each with its own rules and restrictions. In addition to state and county funding, child welfare dollars come from at least a half-dozen federal sources, some of which require matching funds from state, county, and local agencies. Delays in services result when providers, social service agencies, and the courts struggle to determine the pertinent funding source for services.

Key Recommendations

- That the Judicial Council work with other branches of federal, state, and local governments to identify barriers to funding for services and to develop solutions.
- That the Judicial Council urge Congress to change any federal law that prevents federal funds from being coordinated among several agencies to support specific services.

Action Steps

The passage of the Fostering Connections to Success Act carries with it some options for changing the way federal funds are used. In light of this new legislation, we identified the following implementation steps:

- That the Judicial Council join the Child Welfare Council and partnering agencies to continue to assess the Fostering Connections to Success Act and identify which Blue Ribbon Commission recommendations should be met by implementation of the legislation in California.
- That the Judicial Council, California Department of Social Services, Child Welfare Council and other stakeholders work with the executive branch and state legislative leadership to enact appropriate provisions of the Fostering Connections to Success Act.

- That the Judicial Council continue to work with statewide stakeholders to advocate for increased flexibility in the use of federal funds.

When we can successfully coordinate federal funding among our local and statewide agencies and can appropriately target our federal foster care funds for maximum impact, we will be well on the way to successfully implementing many of the commission's service and funding-related recommendations.

Expanding Educational Services

We know that too many of our children who "age out" of foster care drop out of school, struggle with serious mental health needs, experience homelessness and unemployment, and end up in the criminal justice system. Education of our foster children and youth is critical to ensure a bright future for them. For that reason, our education recommendations are a top priority for early action.

Key Recommendations

- That courts and partnering agencies ensure that foster children receive the full education they are entitled to, including the support they need to graduate from high school. This includes tutoring and participation in extracurricular activities. The courts should require other agencies to justify any denial of such services to foster youth in school.
- That the Judicial Council urge Congress and the state Legislature to strengthen current education laws to explicitly include all foster children and to fill funding gaps, such as the lack of support for transportation to maintain school stability.
- That the Child Welfare Council prioritize foster children's educational rights and work with educators to establish categorical program monitoring to oversee compliance with education laws and regulations that support foster youth in school.
- That the California Department of Education designate foster youth as "at-risk" students to recognize that foster care creates challenges and obstacles to a child's education that other children do not experience and to increase the access to local education programs for foster youth.
- That Foster Youth Services grants be expanded to include all foster children age five or older, including those in kinship placements. Close to one third of foster children are placed with kin, and the Foster Youth Services program is not currently funded to serve those children.
- That the Judicial Council urge legislative bodies and higher education officials to expand programs, such as Guardian Scholars, statewide to ensure that all current and former foster youth who attend college have access to housing and other

In order to improve academic outcomes and level the playing field for our students in foster care, we must focus on their education once we have ensured that they are safe and free from harm.

—Michelle Lustig
Foster Youth
Services Coordinator,
San Diego Office
of Education

support services and to waive tuition and other educational fees for current and former foster youth.

Action Steps

These recommendations can be implemented through the following steps:

- That trial courts, local foster care commissions, local education agencies, and other stakeholders collaborate to assess and eliminate barriers to ensuring full educational opportunities for foster children.
- That the Judicial Council, together with other stakeholders, advocate with state and federal leaders to strengthen the educational rights of foster children and secure resources for implementation of existing education laws for all foster and former foster children.
- That the Judicial Council work with stakeholders, including the California Child Welfare Council and educators, to ensure compliance with laws and regulations supporting foster youth in school.
- That the Judicial Council work with the Child Welfare Council and other stakeholders to develop a plan to implement each individual recommendation in this area where work has not already begun.

Successful implementation of these recommendations will have a profound effect on both foster and former foster children. When our foster children can be assured that they will receive the type of education to which they are entitled, we will have taken major steps toward making sure that foster children have the same opportunities as our own children to become self-sufficient and productive members of our communities.



ADMINISTRATIVE OFFICE
OF THE COURTS
455 Golden Gate Avenue
San Francisco, CA
94102-3688
Tel 415-865-4200
TDD 415-865-4272
Fax 415-865-4205
www.courtinfo.ca.gov

FACT SHEET

September 2008

Dependency Representation, Administration, Funding, and Training (DRAFT) Program

At the direction of the Judicial Council, the DRAFT Program was established as a pilot in 2004. DRAFT is overseen by the DRAFT Program Implementation Committee (DRAFT committee), chaired by Associate Justice Richard D. Huffman. The purpose of the DRAFT Program is to test caseload standards for court-appointed attorneys in juvenile dependency cases, as developed under legislative mandate, to identify uniform rate and compensation structures for those attorneys and to determine the implementation costs and practice improvements associated with both.

Background

Juvenile courts in each of California's counties preside over cases that are filed by county social services agencies when a child has been, or is suspected of being, abused or neglected. Parents and children in these cases are statutorily entitled to legal representation, but usually cannot afford to pay for their own lawyers. The court appoints lawyers to represent indigent parents and all children, and the state pays for the lawyers through funds administered by the Administrative Office of the Courts (AOC).

Prior to the implementation of the Lockyer-Isenberg Trial Court Funding Act of 1997, each court arranged for representation in dependency cases, and funding was provided by the county. The transition to state funding of the trial courts modified this system by shifting funding responsibility to the state, with local courts continuing to select and administer attorney services. As a result, significant disparities have existed among California's 58 counties in terms of attorney caseloads, performance standards, and compensation.

DRAFT

In June 2004, the Judicial Council directed AOC staff to pilot uniform dependency counsel caseload, compensation, and performance standards as part of the DRAFT

Dependency Representation, Administration, Funding, and Training Pilot Program
Page 2 of 2

Pilot Program. Pilot program implementation began July 1, 2004, with 10 volunteer court systems.¹ DRAFT includes the following components:

- Competitive bidding via standardized requests for proposals.
- Attorney caseload, compensation, and performance standards implemented through direct contracting, which include the following:
 - o Caseload standards developed as a result of a statewide workload study in 2002;
 - o Regional compensation standards developed by the DRAFT committee; and
 - o Attorney performance standards developed by the DRAFT committee.
- Attorney caseload and workload reporting requirements, which include the following:
 - o Opened and closed cases, reported monthly; and
 - o Time spent, per case, on specified in-court and out-of court activities, reported monthly.
- Training and technical assistance, which include the following:
 - o A remotely accessible, comprehensive initial training program for new practitioners;
 - o Local multidisciplinary trainings addressing county-specific barriers to permanency; and
 - o A juvenile dependency Web site to house training materials, in-court reference manual, sample motions and briefs, and a comprehensive repository of California dependency cases.
- Outcome evaluation, which includes the following:
 - o Attorney performance evaluations, to be conducted by judicial officers, peers, and clients; and
 - o Permanency evaluation utilizing child welfare reunification, guardianship, and placement data.

In October 2007, the Judicial Council adopted a recommendation to expand the DRAFT program to include up to ten additional courts.²

Contact:

Leah Wilson, Project Manager, Center for Families, Children & the Courts,
leah.wilson@jud.ca.gov

¹ The Superior Courts of Imperial, Los Angeles, Marin, Mendocino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Cruz, and Stanislaus Counties.

² The Superior Courts of Alameda, Amador, Del Norte, El Dorado, Lake, Plumas, Sacramento, Santa Clara, Solano and Sonoma Counties.

CHILDREN'S ADVOCACY INSTITUTE
University of San Diego School of Law
Robert C. Fellmeth (SBN 49897)
Edward Howard (SBN 151936)
Christina McClurg Riehl (SBN 216565)
5998 Alcala Park
San Diego, California 92110
Telephone: (619) 260-4806
Facsimile: (619) 260-4753

WINSTON & STRAWN, LLP
Jonathan M. Cohen (SBN: 168207)
Robyn Callahan (SBN: 225472)
101 California Street, 39th Floor
San Francisco, CA 94111-5894
Telephone: (415) 591-1000
Facsimile: (415) 591-1400

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

E.T., K.R., C.B. and G.S., by their next friend,
Frank Dougherty, on their behalf and on behalf of
all those similarly situated,

Plaintiffs,

v.

RONALD M. GEORGE, Chair of the Judicial
Council of California, in his official capacity;
WILLIAM C. VICKREY, Administrative Director
of the Administrative Office of the Courts of the
Judicial Council, in his official capacity; and
JAMES M. MIZE, Presiding Judge of the Superior
Court of the County of Sacramento, in his official
capacity,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
JUDGMENT AND PERMANENT
INJUNCTIVE RELIEF**

42 U.S.C. § 1983 and Pendent State Law
Claims

CLASS ACTION

Plaintiffs E.T., K.R., C.B. and G.S. ("Plaintiffs"), on behalf of themselves and others similarly
situated, allege the following claims against the Honorable Ronald M. George, William C. Vickrey,
and the Honorable James M. Mize, in their official capacity ("Defendants").

///

///

I. JURISDICTION AND VENUE

1. This action arises under Title 42 of the United States Code, § 1983, as Plaintiffs allege they have been deprived of their rights under the federal Constitution and federal statutes. This Court has jurisdiction over the action under 28 U.S.C. §§ 1331 and 1343.

2. The pendent state claims alleged in this action arise from the same facts as the federal claims, such that all claims alleged would ordinarily be prosecuted in a single action. This Court therefore has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367(a).

3. All events alleged in this action occurred in the County of Sacramento, California. Venue therefore lies in this Court under 28 U.S.C. § 1391(b)(2).

II. SUMMARY OF CASE

4. This lawsuit seeks a Dependency Court for Sacramento's abused and neglected children that comports with basic Due Process and the effective, adequate, and competent assistance of counsel for the children of Sacramento County in dependency proceedings.

III. PARTIES**A. The Plaintiffs**

5. Plaintiff E.T. is a resident of the County of Sacramento. She is presently in foster care and is 14 years old. At all times relevant to this lawsuit, E.T. was a resident of the County of Sacramento.

6. Plaintiff K.R. is a resident of the County of Sacramento. She is presently in foster care and is 13 years old. At all relevant times to this lawsuit, K.R. was a resident of the County of Sacramento.

7. Plaintiff C.B. is a resident of the County of Sacramento. She is presently in foster care and is 17 years old. At all times relevant to this lawsuit, C.B. was a resident of the County of Sacramento.

8. Plaintiff G. S. is a resident of the County of Sacramento. He is presently a ward of the court and is 18 years old. At all times relevant to this lawsuit, G.S. was a resident of the County of Sacramento.

///

B. The Defendants

9. The Honorable Ronald M. George ("Chief Justice George") is Chair of the Judicial Council, the body responsible for overseeing the statewide administration of justice in the California courts. Chief Justice George is responsible, in his official capacity, for the administration of the Judicial Council, including the allocation of the judicial branch budget (and allocation of relevant funds for courts and court-appointed child representation in Dependency Court proceedings); the promulgation of rules of court administration, practice, and procedure; and establishing the direction and setting priorities for the continual improvement of the court system. Chief Justice George is sued only in his official capacity.

10. Defendant William C. Vickrey ("Mr. Vickrey") is the Administrative Director of the Administrative Office of the Courts of the Judicial Counsel (the "AOC"). The AOC is the staff agency of the Judicial Council and is responsible for a variety of programs and services to improve access to a fair and impartial judicial system. The Center for Families, Children, and the Courts, a division of the AOC, has implemented a program called "DRAFT" (as described below), which provides court funding to participating California counties. The children's court-appointed counsel are paid for through funding from DRAFT by virtue of the County of Sacramento's participation in the program. Mr. Vickrey is responsible, in his official capacity, for the administration of the AOC. Mr. Vickrey is sued only in his official capacity.

11. The Honorable James M. Mize ("Judge Mize") is the Presiding Judge of the Superior Court of the County of Sacramento ("Sacramento County Superior Court"). Judge Mize is responsible, in his official capacity, for leading the court, establishing policies, and allocating resources in a manner that promotes access to justice for all members of the public, provides a forum for the fair and expeditious resolution of disputes, maximizes the use of judicial and other resources, increases efficiency in court operations, and enhances service to the public. Cal. R. Ct Rule 10.603. He has the authority to assign judges to departments, such as Sacramento County Superior Court's Dependency Court. *Id.* Rule 10.603(b)(1)(A). He also has a duty to approve the allocation of funds in a manner that promotes the implementation of state and local budget priorities and that ensures equal access to justice and the ability of the court to carry out its functions effectively. *Id.* Rule

10.603(b)(6)(C). His duties also include implementing the legislative mandate requiring the appointment of counsel to children in dependency proceedings pursuant to Section 317 of the California Welfare and Institutions Code. Judge Mize is sued only in his official capacity.

IV. CLASS ACTION ALLEGATIONS

12. Plaintiffs bring this suit as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and all other similarly-situated persons as members of a Class initially defined as follows:

All children currently and hereafter represented by court-appointed counsel in juvenile dependency proceedings in the Sacramento County Superior Court.

13. Numerosity. The proposed Class is sufficiently numerous, as approximately 5,100 children are currently represented by court-appointed counsel in dependency proceedings in the County of Sacramento. Class Members are so numerous that joinder of all members is impracticable. Class Members can be identified by records maintained by the court-appointed attorneys and Defendant Judge Mize.

14. Typicality. Plaintiffs' claims are typical of the claims of members of the Class because Plaintiffs and Class Members have been, and currently are, being harmed by Defendants' wrongful conduct as detailed herein. Specifically, Plaintiffs' and Class Members' claims arise from Defendants' inadequate provision of Dependency Courts and counsel. This, in turn, causes the following harms to Plaintiffs; harms typical of the harms suffered by members of the Class:

a. Class Members, including Plaintiffs, are not, or are not adequately, represented by their counsel;

b. Class Members, including Plaintiffs, are not meaningfully interviewed by their counsel nor do they meet regularly with them such that counsel cannot effectively represent the child's desires or best interests, nor assess the child's well-being or the child's wishes on such issues as placement, reunification, and eligibility for, and enrollment in, programs, services, or the refusal to enroll in such services;

c. Class Members, including Plaintiffs, do not benefit from counsel engaging in further investigations, whether beyond the scope of the dependency proceeding or not, as may be

1 reasonably necessary to ascertain facts about the child's best interests and needs;

2 d. Class Members, including Plaintiffs, do not benefit from witnesses that, but for
3 the overwhelming caseloads of the children's appointed attorneys, would be interviewed, called to
4 testify, or effectively examined on either direct or cross, resulting in a situation where the child and
5 the court are deprived of facts which, if known by the court or the child's counsel, may alter the
6 outcomes in Dependency Court;

7 e. Class Members, including Plaintiffs, are, through their counsel, denied contact
8 with social workers and other professionals associated with their case and denied the ability to work
9 with other counsel and the court to resolve disputed aspects of a case without contested hearing;

10 f. Class Members, including Plaintiffs, do not have sufficient contact with their
11 counsel to establish and maintain an adequate and professional attorney-client relationship;

12 g. Class Members, including Plaintiffs, through their counsel, are not able to
13 obtain copies of all pleadings and relevant notices; not able to participate in depositions, negotiations,
14 discovery, pre-trial conferences, and hearings; not able to inform other parties and their
15 representatives that their counsel is representing the Class Member and obtain reasonable notification
16 prior to case conferences, changes of placement, and other changes of circumstances affecting the
17 Class Member and their family; not able to attempt to reduce case delays and ensure that the court
18 recognizes the need to speedily promote permanency for the child; unable to counsel the child
19 concerning the subject matter of the litigation, the child's rights, the court system, the proceedings,
20 the lawyer's role, and what to expect in the legal process; unable to develop a theory and strategy of
21 the case to implement at hearings, including factual and legal issues; and unable to identify
22 appropriate family and professional resources for the child;

23 h. Class Members, including Plaintiffs, are denied the right to have their
24 individual rights adjudicated by a neutral tribunal because (1) the caseloads of the hearing officers for
25 the Dependency Court are too large to permit the children and their counsel a meaningful opportunity
26 to be heard, and (2) the caseloads of the judicial officers are too large to permit the officers to obtain
27 and evaluate the sufficiency of the information provided to them in and of itself and proportional to
28 the liberty interest and other constitutional-level interest at stake for the children.

i. Class Members, including Plaintiffs, as a result of the aforementioned, are denied full and fair hearings on determining every facet of Dependency Court, including, but not limited to, placement; termination of parental rights; reunification; relationships with relatives and siblings; educational needs; emotional, physical, and mental well-being; medical needs; and eligibility for and enrollment in various programs, particularly when they age out of the system at eighteen years old.

j. Accordingly, and due to the effects enumerated above, Class Members, including Plaintiffs, are deprived of their due process rights under the federal and California Constitutions, and their rights under federal and state statutes.

15. Common Questions of Law and Fact. There are questions of law and fact common to the Class, pursuant to Rule 23(a)(2) of the Federal Rules of Civil Procedure as the claims of every Class Member are based upon the excessive caseloads shouldered by court-appointed counsel and the Dependency Courts of the County of Sacramento. Among these common questions of law and fact are:

- A. Whether Plaintiffs and Class Members have a right under the federal and California Constitutions to adequate and effective legal representation in dependency proceedings and related appeals;
- B. Whether Plaintiffs and Class Members have a state law entitlement to competent assistance of counsel with a caseload that ensures adequate representation and federal law entitlements under the Child Welfare Act and Child Abuse Prevention and Treatment and Adoption Reform Act;
- C. Whether the caseloads of court-appointed dependency counsel in the County of Sacramento are so excessive that federal and state constitutional rights are abridged in violation of 42 U.S.C. § 1983, and state and federal statutory standards are breached, in that:
 - i. Counsel cannot provide adequate or effective legal assistance to Plaintiffs and Class Members;

- ii. Defendants have not protected Plaintiffs' and Class Members' health and safety under 42 U.S.C. § 671(a)(22) of the Child Welfare Act;
- iii. Defendants have not provided Plaintiffs and Class Members with guardians ad litem who can meet the obligations set forth in 42 U.S.C. § 5106a(b)(2)(A)(ix) of the Child Abuse Prevention and Treatment and Adoption Reform Act;
- iv. Defendants have not provided counsel with caseloads that ensure adequate representation as required by CAL. WELF. & INST. CODE § 317(c); and
- v. Counsel cannot provide competent legal representation as required by CAL. WELF. & INST. CODE § 317.5;

D. Whether the Dependency Courts of the County of Sacramento are so overburdened with cases that they cannot provide a fair and adequate tribunal to hear the dependency proceedings to which Plaintiffs and Class Members are subject, thus depriving Plaintiffs and Class Members of their due process rights under the Federal and California Constitutions; and

E. Whether injunctive relief and a declaratory judgment is appropriate.

16. Adequacy. Plaintiffs, through their next friend, Frank Dougherty, will fairly and adequately protect the interests of Class Members and have retained counsel competent and experienced in complex class actions and civil rights litigation. Plaintiffs, through their next friend, Frank Dougherty, are committed to vigorous prosecution of this action and have no interests antagonistic to or in conflict with those of Class Members.

17. Certification under Rule 23(b)(2): Certification is appropriate under Fed. R. Civ. P. 23 (b)(2) because:

18. The prosecution of separate actions by individual Class Members is likely and would create a risk of inconsistent or varying adjudications with respect to individual Class Members, which would establish incompatible standards of conduct for Defendants to ensure that they provide court-appointed counsel and Dependency Courts that comply with legal requirements;

19. Defendants are obligated by law to treat all Class Members alike with respect to the due process rights afforded to each Class Member under the federal and state constitutions, the Federal Child Welfare Act, the Child Abuse Prevention and Treatment and Adoption Reform Act and

the California Welfare and Institutions Code. The prosecution of separate actions by individual Class Members as to the caseloads of Dependency Courts and court-appointed counsel in the County of Sacramento would create a risk of adjudications that would, as a practical matter, be dispositive of the interests of other Class Members who are not parties to the individual adjudications, or substantially impair or impede their ability to protect their interests; and

20. By failing to provide sufficient Dependency Courts and court-appointed counsel, Defendants have acted, or refused to act, on grounds generally applicable to the Class, thereby making final injunctive relief and declaratory relief appropriate as to the Class as a whole.

21. Notice. Plaintiffs will provide notice to the Class if the Court, in its discretion, requests that notice be given pursuant to Rules 23(b)(1) and 23(b)(2) of the Federal Rules of Civil Procedure.

V. FACTS CONCERNING DEFENDANTS' LEGAL VIOLATIONS

A. Preliminary Background Facts

22. In Sacramento County, crushing and unlawful caseloads are illegally frustrating both the ability for Dependency Courts to adjudicate and provide children with a meaningful opportunity to be heard, as well as the effective, adequate and competent assistance of counsel, to the enduring harm of Sacramento's abused and neglected children.

23. Dependency Court and, by extension, foster care, fundamentally is a legal process. In this legal process, the Dependency Court judge acts as the State, which is *in loco parentis* (standing in place of the parents). The judge decides whether the child will be removed from the care of his parents and whether, and under what circumstances, the child will be reunited with them. Dependency proceedings, therefore, are usually life-altering for the child. The judge determines not only if a right to an existing parent will be abridged, but all of the building blocks of the child's life: whether the child will have contact with a previous parent, who will actually serve as parent, where the child will live, whether siblings will be in the household or never seen again, what school the child will attend, and even what medicines the child will be given.

24. The legal system within which the judge makes these decisions remains, at its core, an adversarial one. As with any other adversarial legal proceeding, the ability of the Dependency Court

1 judge to render sensible and informed decisions is contingent upon both the information brought to
2 him or her by counsel, and a judicial caseload that permits the judge to consider carefully what he has
3 been provided.

4 25. Both state and federal statutes and the state and federal constitutions provide that
5 children in dependency proceedings have a right to counsel. And as with any right to counsel, the
6 right must be a meaningful one. The child is guaranteed the right to assistance of counsel that is – as
7 a real-world, practical matter – effective, competent, and adequate.

8 26. Plaintiffs are informed and believe, and on the basis of such information and belief
9 allege that caseloads currently carried by counsel for children in dependency proceedings in the
10 County of Sacramento are so large that such counsel are not able to effectively, adequately, or
11 competently represent their clients, violating state and federal statutes and the state and federal
12 constitutions.

13 27. For these reasons and those detailed herein, children subject to dependency
14 proceedings in the County of Sacramento – one of the most important legal proceedings of their lives
15 – are denied their guaranteed rights under state and federal law to effective, adequate, and competent
16 assistance of counsel, and to a fair and adequate tribunal to hear and decide the dependency
17 proceedings to which they are subject.

18 **B. Dependency Proceedings**

19 28. Dependency proceedings are conducted to protect the safety and well-being of an
20 abused or neglected child whose parents or guardians either cannot or will not do so, or who
21 themselves pose a threat to the child. During removal from parental custody, the State holds a
22 “jurisdictional” hearing and thereafter may take parental jurisdiction of the child. The State then
23 decides the child’s placement pending the litigation. That placement may be in family foster care,
24 with a family foster agency, with relatives, or in an institutional foster care. After a child is removed
25 from his or her parents, subsequent court proceedings and reviews are required to determine whether
26 to reunite the child with his or her parents, or to focus instead on finding a permanent and stable
27 placement for the child. If reunification services are terminated, the State takes permanent
28 jurisdiction of the child under a permanent placement plan. That plan may include adoption,

guardianship, or continued foster care custody. While in foster care, the child depends upon the court, and therefore also his or her counsel, for decisions pertaining to everything from extra-curricular activities to visitation to clothing allowances to whether the child should be administered certain drugs. A child is entitled to appeal and seek writs from the various judgments of the Dependency Court.

C. An Overburdened Dependency Court System

29. Plaintiffs are informed and believe, and on the basis of such information and belief allege that California's Dependency Courts and foster care system are similarly overwhelmed and unreasonable. In the words of the Blue Ribbon Commission on Children in Foster Care (the "Blue Ribbon Commission"), headed by California Supreme Court Justice Carlos Moreno, "California's Dependency Court system is overstressed and under-resourced," with "[f]ull-time judicial officials in California carry[ing] an average of 1,000 cases, which has a direct impact on the level of time and attention any one case receives." Administrative Office of the Courts of the Judicial Council of California, CHILDREN IN FOSTER CARE: FINAL RECOMMENDATIONS OF THE BLUE RIBBON COMMISSION ON CHILDREN IN FOSTER CARE TO IMPROVE THE JUVENILE DEPENDENCY COURTS AND FOSTER CARE SYSTEM IN CALIFORNIA 13, 16 (2008) (hereinafter Blue Ribbon Commission Report). These statistics are borne out in the caseloads of the Sacramento Dependency Courts. The County of Sacramento presently has only 5 judicial referees (who preside over dependency proceedings) responsible for approximately 5,100 active dependency cases. A former lead dependency referee from Sacramento estimates that such caseload affords referees roughly two minutes of courtroom time per case. A foster child appearing in a Sacramento Dependency Court with ineffective counsel therefore cannot reasonably expect the judicial referee to serve as a backstop and look out for his or her best interests. The referee is just as overburdened as counsel.

30. Plaintiffs are informed and believe, and on the basis of such information and belief allege that Courts saddled with such workloads cannot afford to give sufficient attention to these life-changing proceedings proportionate to their importance to the liberty and other constitutional-level interests of Sacramento County's abused and neglected children. Former Sacramento County Lead

1 Dependency Referee Carol Chrisman has observed, “When you calculate it out, it’s two minutes per
2 case – enough time for everyone to say submit or object, but not much more.” Karen de Sá, Broken
3 Families, Broken Courts, San Jose Mercury News, Feb. 8, 2008. This is certainly not enough time to
4 make the appropriate parental decisions for the children under the court’s care.

5 31. Plaintiffs are informed and believe, and on the basis of such information and belief
6 allege that the Judicial Council is well aware of this problem. The Blue Ribbon Commission
7 recommended that the Judicial Council undertake a new judicial caseload study focused specifically
8 on juvenile dependency courts and, pending completion of the study, that presiding judges evaluate
9 their current allocation of judgeships and resources and make adjustments as necessary. Blue Ribbon
10 Commission Report, at 22. The Judicial Council accepted this recommendation in full but has not yet
11 released any guidelines or made any institutional changes.

12 32. Plaintiffs are informed and believe, and on the basis of such information and belief
13 allege that while social workers serve as an arm of the judicial court, they are in no position to take
14 up the slack to protect foster children given their own heavy workloads, executive and Board level
15 mismanagement, and CPS’s failure to follow through on oversight by the Board of Supervisors. A
16 study commissioned by the California Department of Social Services concluded that the optimal, per-
17 week caseload for social workers, by program, is as follows: 9.88 emergency response cases, 10.15
18 family maintenance cases, 11.94 family reunification cases, and 16.42 permanent placement cases.
19 American Humane Association, SB2030: CHILD WELFARE SERVICES WORKLOAD STUDY iii
20 (2000). But some Sacramento social workers carry caseloads that are more than double these
21 recommended levels. See MGT of America, Inc., REVIEW OF THE SACRAMENTO CHILD
22 PROTECTIVE SERVICES DIVISION, FINAL REPORT (March 23, 2009) (“MGT Report”).
23 Moreover, they do so while laboring under long-standing policies that “plac[e] more emphasis and
24 focus on documentation and desk-work activities than . . . on meeting with children and families and
25 performing out-of-office fieldwork.” *Id.* at 6. Against this backdrop, the ability of the children’s
26 appointed attorneys to conduct thorough and independent investigations are all the more critical.

27 33. With the courts and social workers incapable of protecting their wards, the last
28 remaining guardian for a child in Dependency Court is his or her attorney.

C. Court-Appointed Counsel In Dependency Proceedings

34. Section 317 of the California Welfare and Institutions Code requires that (1) counsel be appointed for children in almost all dependency cases, and (2) appointed counsel have caseloads and training that ensure adequate representation. CAL. WELF. & INST. CODE § 317(c). Section 317.5 further mandates that all parties who are represented by counsel in dependency proceedings, including minors who are the subject of dependency proceedings, are entitled to competent counsel. CAL. WELF. & INST. CODE § 317.5.

35. Section 317(c) states the primary responsibility of counsel for children in Dependency Court:

“shall be to advocate for the protection, safety, and physical and emotional well-being of the child.” Cal. Welf. & Inst. Code § 317(c).

36. Section 317(e) imposes specific mandatory, minimum duties of counsel for children in dependency proceedings:

37. The counsel for the child shall be charged in general with the representation of the child's interests. To that end, the counsel shall make, or cause to have made, any further investigations that he or she deems in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses, and he or she shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. He or she may also introduce and examine his or her own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child. In any case in which the child is four years of age or older, counsel shall interview the child to determine the child's wishes and to assess the child's well-being, and shall advise the court of the child's wishes. Counsel for the child shall not advocate for the return of the child if, to the best of his or her knowledge, that return conflicts with the protection and safety of the child. In addition, counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings. The attorney representing a child in a dependency proceeding is not required to assume the responsibilities of a social worker and is not expected to provide

nonlegal services to the child. The court shall take whatever appropriate action is necessary to fully protect the interests of the child. CAL. WELF. & INST. CODE § 317(e) (emphasis added).

38. State law recognizes the nexus between effective representation of children in dependency proceedings and caseloads for their lawyers. Section 317(c) provides that:

The appointed counsel shall have a caseload and training that ensures adequate representation of the child. The Judicial Council shall promulgate rules of court that establish caseload standards, training requirements, and guidelines for appointed counsel for children and shall adopt rules as required by Section 326.5 no later than July 1, 2001.

CAL. WELF. & INST. CODE § 317(c) (emphasis added).

39. The California Rules of Court expand upon these standards. California Rule of Court 5.660(d) provides in pertinent part:

(4) Standards of representation

Attorneys or their agents are expected to meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally, to contact social workers and other professionals associated with the client's case, to work with other counsel and the court to resolve disputed aspects of a case without contested hearing, and to adhere to the mandated timelines. The attorney for the child must have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship. The attorney for the child is not required to assume the responsibilities of a social worker and is not expected to perform services for the child that are unrelated to the child's legal representation.

* * * *

(6) Caseloads for children's attorneys

The attorney for a child must have a caseload that allows the attorney to perform the duties required by section 317(e) and this rule, and to otherwise adequately counsel and represent the child. To enhance the quality of representation afforded to children, attorneys appointed under this rule must not maintain a maximum full-time caseload that is greater than that which allows them to meet the requirements stated in (3), (4), and (5). Cal. R. Ct. Rule. 5.660(d)(4) & (6) (emphasis added).

40. The ABA also has prescribed the basic obligations of dependency counsel. Counsel must, at a minimum:

A. Obtain copies of all pleadings and relevant notices;

- B. Participate in depositions, negotiations, discovery, pre-trial conferences, and hearings;
- C. Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;
- D. Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;
- E. Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;
- F. Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and
- G. Identify appropriate family and professional resources for the child.

American Bar Association, STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (1996). Discharging just these basic obligations is necessarily time-consuming.

41. As stated above, California law requires the Judicial Council to "promulgate rules of court that establish caseload standards, training requirements, and guidelines for appointed counsel." CAL. WELF. & INST. CODE § 317(c). In October 2007, the Judicial Council adopted a caseload standard of 188 clients per attorney, assuming that each full-time attorney is aided by one-half of the time of a full-time investigator or social worker. While the Judicial Council's standard would help to mitigate inadequate representation, even that number may not go far enough. NACC, for instance, recommends that a full-time attorney represent no more than 100 clients at a time.

D. Federal and State Rights Implicated By Excessive Court and Attorney Caseloads

42. Children subject to dependency proceedings or in foster care are entitled to due process under both the Fourteenth Amendment of the Federal Constitution and Article I, § 7 of the California Constitution. In proceedings to terminate parental rights, these children have, at the very least, a fundamental liberty interest in their own safety, health, and well-being, as well as an interest in maintaining the integrity of their family units and relationships with their biological parents or subsequent caregivers. These interests continue to be at stake even after these children are placed in state custody because a "special relationship" is created that gives rise to rights to reasonably safe living conditions and services necessary to ensure protection from physical, psychological, and

1 emotional harm. As a result of these interests, these children are constitutionally entitled to adequate
2 and effective assistance of counsel under the Due Process Clauses of the State and Federal
3 Constitutions in both dependency proceedings and ensuing appeals. Their overworked, court-
4 appointed lawyers are unable to meet this constitutional standard.

5 43. Children in dependency proceedings also are entitled under the Due Process Clauses
6 of the State and Federal Constitutions to a fair and adequate tribunal to hear and decide their case so
7 that they have a meaningful opportunity to be heard; thus, Dependency Court hearing officers are
8 routinely unable to obtain and evaluate the sufficiency of the information provided to them in and of
9 itself, and proportional to the liberty interests and other constitutional-level interests at stake for the
10 children. Because of their excessive caseloads, the Dependency Courts of the County of Sacramento
11 are unable to meet this constitutional standard.

12 44. As set forth above, Sections 317 and 317(c) of the California Welfare and Institutions
13 Code afford children in dependency proceedings with a state law entitlement to competent assistance
14 of counsel with a caseload that ensures adequate representation. These children also have federal law
15 entitlements arising from the Child Welfare Act, 42 U.S.C. §§ 670 et seq., and the Child Abuse
16 Prevention and Treatment and Adoption Reform Act (“CAPTA”), 42 U.S.C. § 5101 et seq. These
17 entitlements are cognizable property interests under the Due Process Clauses of the State and Federal
18 Constitutions. Children in dependency proceedings are unconstitutionally deprived of these property
19 interests when they are provided with court-appointed counsel that cannot provide competent or
20 adequate representation.

21 45. Moreover, the actions and inactions of the Defendants have resulted in the deprivation
22 of the substantive due process rights conferred upon these children by the Fourteenth Amendment of
23 the United States Constitution.

24 46. Article I, § 1 of the California Constitution ensures that “[a]ll people are by nature free
25 and independent and have inalienable rights. Among these are . . . pursuing and obtaining safety.”
26 Because children in dependency proceedings are subject to overloaded tribunals and have court-
27 appointed counsel that are unable to safeguard their protection, safety, and physical and emotional
28 well-being, Defendants’ actions and inactions violate this inalienable right.

1 47. For all periods relevant to this Complaint, California has agreed to administer its foster
 2 care program pursuant to the Child Welfare Act, related regulations, and policies promulgated by the
 3 Secretary of the United States Department of Health and Human Services. 42 U.S.C. § 671(a)(22) of
 4 the Child Welfare Act provides that “the State shall develop and implement standards to ensure that
 5 children in foster care placements in public or private agencies are provided quality services that
 6 protect the safety and health of the children.” The systemic failings of dependency proceedings
 7 caused by Defendants’ actions and inactions violate § 671(a)(22) of the Child Welfare Act in at least
 8 two ways: (1) in the County of Sacramento, children in dependency proceedings are, in and of
 9 themselves, not “quality services that protect the health and safety of children”; and (2) because
 10 attorneys for children cannot and do not provide effective representation, which means that children
 11 are not able to obtain access to health and safety programs that they are eligible for, have no safety
 12 net, and are not adequately protected given the excessive caseloads of their court-appointed counsel
 13 and court referees. Court-appointed counsel are, among other things, unable to “investigate their
 14 [child clients’] interests beyond the scope of the juvenile proceeding” or “report to the courts other
 15 interests of the children that may need to be protected by the institution of other administrative or
 16 judicial proceedings,” as required by CAL. WELF. & INST. CODE § 317(e).

17 48. Plaintiffs are informed and believe, and on the basis of such information and belief
 18 allege that for all periods relevant to this Complaint, the State of California has received federal
 19 funding pursuant to CAPTA to assist California in supporting its programs for abused and neglected
 20 children. To receive federal money under CAPTA, a state must submit a State Plan outlining the
 21 areas of child protective services the state intends to address with the funding, and it must ensure that
 22 it is complying with the statutory provisions. See 42 U.S.C. § 5106a(b)(1)(A), (b)(2)(A)(ix).
 23 CAPTA specifically requires:

24 [T]hat in every case involving an abused or neglected child which
 25 results in a judicial proceeding, a guardian ad litem, who has
 26 received training appropriate to the role, and who may be an
 27 attorney or a court appointed special advocate who has received
 28 training appropriate to that role (or both), shall be appointed to
 represent the child in such proceedings—

(I) to obtain first-hand, a clear understanding of the situation and
 needs of the child; and

(II) to make recommendations to the court concerning the best interests of the child.

42 U.S.C. § 5106a(b)(2)(A)(ix) (emphasis added).

49. Accordingly, every child who is subject to dependency proceedings in the County of Sacramento must be represented by a properly trained guardian ad litem who is charged with representing the child in those proceedings for these purposes. Court-appointed counsel serve as guardians ad litem for these children. For all the reasons given above, these children are deprived of their federal rights under 42 U.S.C. § 5106a(b)(2)(A)(ix) because their guardians ad litem can neither obtain a first-hand, clear understanding of a child's situation and needs, nor make recommendations to the court concerning the best interests of the child.

E. The Caseloads of the Court-Appointed Attorneys Prevent Them from Providing Adequate, Effective, or Competent Legal Assistance to Their Clients

50. Pursuant to a Standing Order of the Superior Court of the County of Sacramento, third party, court-appointed attorneys are automatically appointed to represent each child who is the subject of dependency proceedings in that county, and are also appointed as the child's guardian ad litem.

51. Plaintiffs are informed and believe, and on the basis of such information and belief allege that the staff attorneys for the non-profit agency, who serve as court-appointed counsel for the approximately 5,100 children subject to dependency proceedings in the County of Sacramento, carry as many as 395 cases at a time – more than double the 188 caseload standard established by the Judicial Council of California ("Judicial Council"), and nearly four times the number promulgated by the National Association of Counsel for Children ("NACC"). And, their caseloads are growing dramatically. By the end of 2008, these court-appointed attorneys handled over 235 new cases per month. By contrast, they handled around 175 new cases per month one year earlier. As a consequence, the appointed lawyers for these children are unable to adequately perform even the minimum tasks required of such counsel under law and in accordance with the American Bar Association's ("ABA") standards. The overloaded lawyers rarely meet with their child clients in their foster care placements, rely on brief telephone contact or courtroom exchanges to communicate,

1 have no time to conduct complete case investigations or client-specific legal analysis, virtually never
2 file extraordinary writs or pursue appeals, and are forced to rely on overworked county social
3 workers and thus cannot meaningfully assess each client's placement or conduct an informed review
4 of Child Protective Services' ("CPS") placement decisions.

5 52. These staggering caseloads are far in excess of those set forth by the Judicial Council
6 and NACC and have led partly responsible for a high attorney turnover. Plaintiffs are informed and
7 believe, and on the basis of such information and belief allege that twenty-two attorneys have left the
8 nonprofit organization, which provides counsel for the foster children pursuant to the court-
9 appointments, just within the last two years, with the majority of these attorneys having been
10 employed for less than one year. For each attorney that departs, the child client must muster the
11 strength to share his or her story, yet again, with a strange adult that the child is told to trust – an
12 adult the child is told will be there to fight for him or her. Unfortunately, the child has already seen a
13 myriad of "trustworthy adults" leave him or her behind for better opportunities. Insufficient funding
14 makes it impossible for nonprofit organizations to offer its attorneys salaries commensurate with
15 those paid by the County of Sacramento to similarly-tasked attorneys, which also contributes to the
16 high attrition rate. In fact, these court-appointed attorneys are paid significantly less than what
17 attorneys with comparable backgrounds earn if they work for the County of Sacramento. To make
18 matters worse, high turnover exacerbates attorney caseloads by forcing the attorneys who remain on
19 staff to shoulder the caseloads of the departed attorneys while their replacements are trained.

20 53. These overloaded attorneys cannot adequately, effectively, or competently represent
21 the foster children of the County of Sacramento as required by federal and state statutory and
22 constitutional law. The court-appointed attorneys are unable to meet regularly with their clients. In
23 fact, months may pass between meetings. The needs of a child change on a weekly, if not daily,
24 basis. This is particularly true when they are shuffled around between new homes and schools.
25 Without regular contact, the court-appointed attorneys are incapable of adequately assessing or
26 representing their clients' needs. Moreover, they routinely are unable to contact social workers and
27 other professionals associated with their clients' cases, greatly hindering their abilities to develop
28 their clients' cases or identify appropriate family and professional resources for the children. Often, a

1 foster care placement that is in trouble can be saved when appropriate resources are in place. When
2 these resources are not properly addressed, the child is simply moved, leading to phenomenon known
3 as “foster care drift”. Throughout this drift, the child’s needs are not addressed but, instead, the
4 problems are simply moved along. Further, critical pleadings, motions, responses, and objections
5 often are neglected. Overworked social workers sometimes miss or are forced to ignore court orders.
6 Without an attorney to file motions to enforce the court orders, a child may go without, for example,
7 mandated visits with family members. The delay of court-ordered visitation can then lead to a delay
8 of family reunification and permanence – the goal of the dependency system. And when a child
9 inevitably shifts from one attorney to another due to regular turnover, the new attorney wastes
10 precious time trying to come up to speed and risks missing key issues.

11 54. Plaintiffs are informed and believe, and on the basis of such information and belief
12 allege that the appeals process does not fare any better. Due to their excessive caseloads, the court-
13 appointed attorneys are rarely able to spend any or sufficient time pursuing their clients’ interests on
14 appeal or by extraordinary writ. Extraordinary writs are a vital tool in dependency proceedings as it
15 is through this avenue that many of the juvenile court’s interim orders, such as placement decisions,
16 are reviewed. This problem is exacerbated by the fact that the nonprofit organization’s staff does not
17 have enough time or money to establish a writ or appellate division or to train its attorneys in the
18 specialized practice of seeking writs. As a result, in the last four years, these court-appointed
19 attorneys have taken only two extraordinary writs – one of which was handled by outside pro bono
20 counsel. This means that hundreds of children have been forced to remain in placements or adhere to
21 visitation plans simply because there was no attorney available to take the next legal step in their
22 case.

23 **F. Unlawful Caseloads are Due to Inadequate Funding**

24 55. Plaintiffs are informed and believe, and on the basis of such information and belief
25 allege that for years, the Superior Court of Sacramento paid for the court-appointed attorneys’
26 services pursuant to the MOU. In 2008, however, the Superior Court of Sacramento agreed to
27 participate in California’s Dependency Representation, Administration, Funding, and Training
28 (“DRAFT”) program. Initiated in July 2004, DRAFT was established by the Judicial Council to

1 centralize the administration of court-appointed counsel services within the AOC. Accordingly,
2 when Sacramento County joined the DRAFT program, the AOC became responsible for paying for
3 the court-appointed attorneys' services.

4 56. Plaintiffs are informed and believe, and on the basis of such information and belief
5 allege that if the AOC had followed its own guidelines for DRAFT in funding the court-appointed
6 attorneys, these attorneys could have met the recommended judicial council caseload standards.
7 Assuming an aggregate caseload of 4,500 children, DRAFT guidelines provide that the court-
8 appointed attorneys should receive funding sufficient to maintain 24 staff attorneys, 3.5 supervisors,
9 and 12 social workers. The guidelines do not envision that supervisors will carry cases.
10 Accordingly, each case-carrying attorney would be responsible for 188 cases and be assisted by a
11 half-time social worker.

12 57. Plaintiffs are informed and believe, and on the basis of such information and belief
13 allege that the staggering caseloads of attorneys and Dependency Court judges result from the
14 funding practices of Defendants. The AOC's funding is disparate and seemingly arbitrary, at least to
15 the extent that caseloads are concerned. For example, the AOC provides the children's court-
16 appointed attorneys with essentially the same level of funding that it provides to Alameda County
17 (roughly \$2.6 million) even though Alameda County has less than half of Sacramento's caseload
18 (2,300 dependency cases as compared to Sacramento's 5,100). Indeed, despite the growth of the
19 caseload in 2008, the AOC has threatened to reduce the funding for the children's court-appointed
20 attorneys by 10%.

21 58. Plaintiffs are informed and believe, and on the basis of such information and belief
22 allege that to make matters worse, the AOC expects to reduce DRAFT funding state-wide by 10% in
23 its next funding round. Consequently, we will likely see the already-insufficient funding for court-
24 appointed attorneys reduced by 10%.

25 VI. FACTUAL ALLEGATIONS REGARDING THE PLAINTIFFS

26 A. E.T.

27 59. E.T. is a 14-year-old girl who is in her third foster care placement in less than one
28 year. She is a special education student who has been diagnosed with depression. She was assigned

1 a court-appointed attorney in October 2008, and she has had two attorneys in the short time since
2 then.

3 60. Her lawyers have had little contact with her. Although her case has had 14 court
4 hearings, her attorneys have met with her briefly only three times. Further, the County filed an
5 amended petition with the Court, and her attorney was unable to discuss it with her beforehand.

6 61. E.T.'s lawyers have been unable to stabilize her foster care placements. She has only
7 been visited by a lawyer at one placement.

8 62. E.T.'s lawyers also have been unable to investigate E.T.'s mental health issues and
9 notify the Dependency Court on her behalf of any problems. Thus, consistent with the other
10 Plaintiffs, E.T.'s attorneys have not, and are not, investigating this special education student's
11 interests beyond the scope of the juvenile proceeding.

12 **B. K. R.**

13 63. K.R. is a 13-year-old girl who is in her fifth foster care placement. She suffers from
14 severe behavioral problems, including oppositional defiance disorder. She was assigned a court-
15 appointed attorney in early 1996. When her case was reopened in September 2005, she was again
16 assigned a court-appointed legal representative. K.R. has had six attorneys since then.

17 64. K.R.'s lawyers have had almost no contact with her. Although her case has had 17
18 court hearings since September 2005, she has been interviewed only once outside of court (by a
19 social worker). Further, her lawyers have not visited any of K.R.'s foster care placements, nor have
20 they had any contact with school personnel.

21 65. Court-appointed counsel's investigation has been limited to some interviews with
22 K.R.'s relatives years ago, early in the representation. Virtually nothing has been done to investigate
23 K.R.'s interests beyond the scope of the Dependency Court proceeding. Her attorneys have been
24 unable to file pleadings, motions, responses, or objections as necessary to protect her interests.
25 Further, K.R.'s lawyers have failed to stabilize her foster care placements, determine whether she
26 requires any services from the DHHS, or secure a proper educational placement.

27 **C. C.B.**

28 66. C.B. is a 17-year-old, developmentally disabled girl in over her tenth foster care

1 placement. She was assigned a court-appointed attorney on February 17, 1999, and she has had 10
2 attorneys over the last 10 years.

3 67. C.B.'s case has had five court and administrative hearings. Her lawyers did not meet
4 with her before the majority of those hearings.

5 68. Further, C.B.'s lawyers have been unable to file pleadings, motions, responses, or
6 objections as necessary to protect her interests. They likewise have done little to investigate C.B.'s
7 needs and emotional health beyond the scope of the juvenile proceeding, or to ensure that she is in a
8 stable foster care placement. For instance, they have not visited her in at least 7 of her 10
9 placements.

10 69. C.B. has a sibling who has been adopted and has a post-adoption contact agreement to
11 allow C.B. to see her sibling. C.B.'s lawyers have been unable to ensure compliance with this
12 agreement. In addition, she has an adult sibling and no efforts have been made by her attorneys to
13 contact him.

14 70. C.B. operates at an early grade school level with social skills that are similarly
15 inconsistent with her age. C.B.'s lawyers have been unable to investigate her educational interests to
16 assess whether her interests need to be protected by the institution of other administrative or judicial
17 proceedings.

18 71. In addition, C.B. will "age out" of the foster care system when she turns 18 in
19 September. Her attorneys have not had any time to assess whether C.B.'s psychological and
20 developmental issues require that she be allowed to remain in the system until she is 21.

21 **D. G.S.**

22 72. G.S. is a 18-year-old, emotionally disturbed boy in his tenth foster care placement. He
23 has had 11 attorneys since he first entered the dependency system on May 3, 2001.

24 73. G.S.'s case has had 28 court and administrative hearings. His lawyers did not meet
25 with him before the majority of those hearings – including the original detention hearing.

26 74. Further, G.S.'s lawyers have been unable to file pleadings, motions, responses, or
27 objections as necessary to protect his interests. They likewise have done little to investigate G.S.'s
28 needs and emotional health beyond the scope of the juvenile proceeding, or to ensure that he is in a

1 stable foster care placement. For instance, they have not visited him in at least 9 of his 10
2 placements.

3 75. G.S.'s lawyers also have been unable to ensure compliance with court orders. For
4 example, the Sacramento County Department of Health and Human Services ("DHHS") has been
5 ignoring a court order that G.S. be allowed to be visited by his siblings. G.S.'s counsel nonetheless
6 has done nothing to enforce this order, and G.S. continues to have no access to his siblings.

7 76. In addition, G.S.'s attorneys have not yet assessed whether G.S.'s psychological issues
8 will require that he be allowed to remain in the system until he is 21 have made no efforts thus far to
9 address his potential imminent transition to life outside of the foster care system.

10 VII. CLAIMS

11 FIRST CLAIM

12 **Deprivation of Federal Constitutional Rights in Violation of 42 U.S.C. § 1983**

13 77. The preceding paragraphs are incorporated as if set forth here in full.

14 **A. Procedural Due Process Violations From Excessive Attorney Caseloads**

15 78. The foregoing actions and inactions of Defendants have deprived Plaintiffs and Class
16 Members of their right to adequate and effective legal representation in both dependency proceedings
17 and subsequent appeals, in violation of Plaintiffs' and Class Members' right not to be deprived of
18 liberty and property without due process of law under the Fourteenth Amendment to the United
19 States Constitution.

20 79. The foregoing actions and inactions of Defendants also deprive Plaintiffs and Class
21 Members of state and federally created liberty or property rights without due process of law, in
22 violation of the Fourteenth Amendment to the United States Constitution. The state law entitlement,
23 of which Plaintiffs and Class Members have a protected interest, arises from the right to have
24 competent assistance of counsel with a caseload that ensures adequate or competent representation, as
25 guaranteed by CAL. WELF & INST. CODE §§ 317(c) and 317.5. The federal law entitlements, of
26 which Plaintiffs and Class Members have a protected interest, arise from the Child Welfare Act, 42
27 U.S.C. §§ 670 et seq., and CAPTA, 42 U.S.C. §55101 et seq.

28 ///

B. Substantive Due Process Violations From Excessive Attorney Caseloads

80. Further, the foregoing actions and inactions of Defendants constitute a failure to exercise an affirmative duty to protect the welfare of Plaintiffs and Class Members, which is a substantial factor leading to, and the proximate cause of, violation of Plaintiffs' and Class Members' constitutionally protected liberty and privacy interests. The foregoing actions and inactions constitute a policy, pattern, practice and/or custom that is inconsistent with the exercise of reasonable professional judgment and amounts to deliberate indifference to Plaintiffs' and Class Members' serious and constitutionally protected rights and liberty and privacy interests. As a result, Plaintiffs and Class Members have been, and are being, deprived of the substantive due process rights conferred upon them by the Fourteenth Amendment of the United States Constitution. Defendants have arbitrarily and capriciously deprived Plaintiffs and Class Members of their due process rights in the absence of any countervailing state interest.

81. These substantive due process rights include, but are not limited to, the right to protection from unnecessary harm while in government custody; the right to a living environment that protects foster children's physical, mental, and emotional safety and well-being; the right to services necessary to prevent foster children from deteriorating or being harmed physically, psychologically, or otherwise while in government custody, including, but not limited to, the right to safe and secure foster care placements, appropriate monitoring and supervision, appropriate planning and services directed toward ensuring that the child can leave foster care and grow up in a permanent family, and adequate medical, dental, psychiatric, psychological, and educational services; the right not to be deprived of liberty by retention in government custody or locked detention facilities beyond necessity; the right to treatment and care consistent with the purpose of assumption of custody by the County of Sacramento; the right not to be retained in custody longer than is necessary to accomplish the purposes to be served by taking the child into custody; and the right to receive care, treatment, and services determined and provided through the exercise of accepted, reasonable, professional judgment.

C. Procedural Due Process Violations From Excessive Judicial Caseloads

82. Further, the foregoing actions and inactions of Defendants deprive Plaintiffs and Class

Members of a fair and adequate tribunal to hear and decide the dependency proceedings to which they are subject. Thus, Dependency Court hearing officers are routinely unable to obtain and evaluate the sufficiency of the information provided to them in and of itself, and proportional to the liberty interests and other constitutional-level interests at stake for the children. Accordingly, Plaintiffs and Class Members have no meaningful opportunity to be heard in their dependency proceedings, thus depriving them of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

83. The violation by Defendants, and each of them, of the foregoing procedural and substantive due process rights deprives Plaintiffs and Class Members of their federal rights, privileges, and immunities under color of state law in violation of 42 U.S.C. § 1983.

84. Plaintiffs and Class Members have suffered injury that is irreparable in nature as the proximate result of the failure of Defendants, and each of them, (1) to enable the SCA to provide Plaintiffs and Class Members with adequate, effective, and competent assistance of counsel and (2) maintain a Dependency Court system with a reasonable caseload that is capable of providing Plaintiffs and Class Members with a meaningful opportunity to be heard. Plaintiffs and Class Members are without an adequate remedy at law.

SECOND CLAIM

Deprivation of Rights under the Federal Child Welfare Act in Violation of 42 U.S.C. § 1983

85. The preceding paragraphs are incorporated as if set forth here in full.

86. As set forth above, the Dependency Court system in Sacramento County is overloaded. CPS social workers are overworked and labor under internal, systemic policies that have been criticized by outsiders for years, and thus cannot be relied upon to provide complete or accurate information about children involved in dependency proceedings. Accordingly, the children's court-appointed attorneys are not fully informed. That, coupled with their excessive caseloads, renders the attorneys unable to adequately, effectively or competently represent the interests of their child clients or meet their minimum responsibilities in doing so, as expressed in state and federal law. Judicial referees likewise carry overly burdensome caseloads that make it impossible to safeguard the health and safety of children in Dependency Court proceedings when the counsel for children who are the

centerpiece of the proceeding are unable to meet their obligations, thus depriving Dependency Courts with argument, authorities, and information that because of their own caseloads they cannot obtain for themselves. Accordingly, the actions and inactions of Defendants place Plaintiffs and Class Members at risk and constitute a failure to “develop or implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children,” in violation of 42 U.S.C. § 671(a)(22) of the Child Welfare Act.

87. The violation by Defendants, and each of them, of the foregoing federal rights deprives Plaintiffs and Class Members of their federal rights, privileges, and immunities under color of state law in violation of 42 U.S.C. § 1983.

THIRD CLAIM

Deprivation of Rights under the Child Abuse Prevention and Treatment and Adoption Reform Act in Violation of 42 U.S.C. § 1983

88. The preceding paragraphs are incorporated as if set forth here in full.

89. As set forth above, Plaintiffs’ and Class Members’ overworked, court-appoint counsel – as their guardians ad litem – are incapable of representing their child clients in dependency proceedings. Among other things, their counsel cannot conduct meaningful investigations within and beyond the scope of the juvenile proceeding to obtain, first-hand, a clear understanding of their child clients’ situation and needs and are unable to make any recommendations to the Dependency Court concerning the best interests of their child clients. As a result of the foregoing actions and inactions of Defendants, Plaintiffs and Class Members have been deprived of their right to a guardian ad litem in dependency proceedings in violation of 42 U.S.C. § 5106a(b)(2)(A)(xiii) of CAPTA.

90. The violation by Defendants, and each of them, of the foregoing federal rights deprives Plaintiffs and Class Members of their federal rights, privileges, and immunities under color of state law in violation of 42 U.S.C. § 1983.

FOURTH CLAIM

Violation of Art. I, § 1 of the California Constitution

91. The preceding paragraphs are incorporated as if set forth here in full.

92. The foregoing actions and inactions of Defendants constitute a failure to provide

1 Plaintiffs and Class Members with fair and adequate tribunals and with adequate and effective legal
 2 counsel whose duty is to safeguard, and whose adequate and effective assistance is necessary to
 3 safeguard, their protection, safety, and physical and emotional well-being, thereby violating their
 4 inalienable right to pursue and obtain safety under the California Constitution. CAL. CONST. Art. I,
 5 § 1.

6 **FIFTH CLAIM**

7 **Violation of Art. I, § 7 of the California Constitution**

8 93. The preceding paragraphs are incorporated as if set forth here in full.

9 94. The foregoing actions and inactions of Defendants have deprived Plaintiffs and Class
 10 Members of their right to adequate and effective legal representation in both dependency proceedings
 11 and subsequent appeals, in violation of Plaintiffs' and Class Members' right not to be deprived of
 12 liberty and property without due process of law under the California Constitution. CAL. CONST.
 13 Art. I, § 7.

14 95. The foregoing actions and inactions of Defendants also deprive Plaintiffs and Class
 15 Members of state and federally created liberty or property rights without due process of law. The
 16 state law entitlement of which Plaintiffs and Class Members have a protected interest arises from the
 17 right to have competent assistance of counsel with a caseload that ensures adequate representation, as
 18 guaranteed by CAL. WELF & INST. CODE §§ 317(c) and 317.5. The federal law entitlements, of
 19 which Plaintiffs and Class Members have a protected interest, arise from the Child Welfare Act, 42
 20 U.S.C. §§ 670 et seq., and CAPTA, 42 U.S.C. §55101 et seq.

21 96. Further, these actions and inactions deprived Plaintiffs and Class Members of a fair
 22 and adequate tribunal to hear and decide their dependency proceedings. Accordingly, Plaintiffs and
 23 Class Members have no meaningful opportunity to be heard in their dependency proceedings, thus
 24 depriving them of due process of law.

25 **SIXTH CLAIM**

26 **Welf. & Inst. Code § 317(c)**

27 97. The preceding paragraphs are incorporated as if set forth here in full.

28 98. As a result of the foregoing actions and inactions of Defendants, Plaintiffs and Class

Members have been deprived of their right to representation by counsel with caseloads that ensure adequate representation in dependency proceedings, in violation of CAL. WELF & INST. CODE § 317(c).

SEVENTH CLAIM

Welf. & Inst. Code § 317.5(b)

99. The preceding paragraphs are incorporated as if set forth here in full.

100. As a result of the foregoing actions and inactions of Defendants, Plaintiffs and Class Members have been deprived of their right to representation by competent counsel in their dependency proceedings in violation of CAL. WELF & INST. CODE § 317.5.

PRAYER FOR RELIEF

1. For the foregoing reasons, Plaintiffs request the following relief:

2. For an order certifying the proposed Class herein under Rule 23b (2) of the Federal Rules of Civil Procedure and appointing Plaintiffs' and Plaintiffs' counsel of record to represent that Class;

3. For a declaratory judgment that due to Defendants' actions or inactions, Defendants, and each of them, violated, continue to violate, and/or will violate:

A. Plaintiffs' and Class Members' rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

B. Plaintiffs' and Class Members' rights under 42 U.S.C. § 671(a)(22) of the Child Welfare Act;

C. Plaintiffs' and Class Members' rights under 42 U.S.C. § 5106a(b)(2)(A)(xiii) of CAPTA;

D. Plaintiffs' and Class Members' inalienable right to safety under Art. I, § 1 of the California Constitution;

E. Plaintiffs' and Class Members' rights under the Due Process Clause of Art. I, § 7 of the California Constitution;

F. Plaintiffs' and Class Members' right to representation by counsel in their dependency proceedings with a caseload that ensures adequate representation under CAL.

WELF. & INST. § 317(c); and

G. Plaintiffs' and Class Members' right to representation by competent counsel in their dependency proceedings under CAL. WELF. & INST. § 317.5;

4. Defendants, and each of them, be temporarily and permanently enjoined from currently and continually violating Plaintiffs' and Class Members' constitutional and statutory rights under state and federal law;

5. For an order mandating that Defendants provide the additional resources required to comply with the Judicial Council of California and the National Association of Counsel for Children's recommended caseloads for each court-appointed attorney;

6. Costs and attorney's fees under 42 U.S.C. § 1988; and

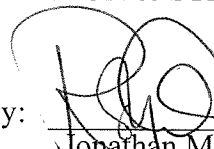
7. Such other relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial for all issues that are so triable.

Dated: July 16, 2009

WINSTON & STRAWN LLP

By: 

Jonathan M. Cohen
Robyn Callahan
Attorneys for Plaintiffs

APPEAL, CIVIL, CLOSED

**U.S. District Court
Eastern District of California - Live System (Sacramento)
CIVIL DOCKET FOR CASE #: 2:09-cv-01950-FCD-DAD**

E.T., et al. v. Ronald M George, et al.
Assigned to: Judge Frank C. Damrell, Jr
Referred to: Magistrate Judge Dale A. Drozd
Case in other court: USCA, 10-15248
Cause: 42:1983 Civil Rights Act

Date Filed: 07/16/2009
Date Terminated: 01/07/2010
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights:
Other
Jurisdiction: Federal Question

Plaintiff

E. T.

represented by **Robyn T. Callahan**
Winston & Strawn
101 California Street
39th Floor
San Francisco , CA 94111
415-591-1567
Fax: 415-591-1400
Email: rcallahan@winston.com
ATTORNEY TO BE NOTICED

Jonathan Michael Cohen
Winston & Strawn LLP
101 California Street
San Francisco , CA 94111
(415) 591-1000
Fax: (415) 591-1400
Email: jcohen@winston.com
ATTORNEY TO BE NOTICED

Plaintiff

K.R.

represented by **Jonathan Michael Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robyn T. Callahan
(See above for address)
LEAD ATTORNEY

Plaintiff

C.B.

represented by **Jonathan Michael Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robyn T. Callahan
(See above for address)
LEAD ATTORNEY

Plaintiff

G.S.

represented by **Jonathan Michael Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robyn T. Callahan
(See above for address)
LEAD ATTORNEY

Plaintiff

Frank Dougherty
on Behalf of E.T., K.R., C.B. and
G.S.

represented by **Jonathan Michael Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robyn T. Callahan
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Ronald M. George
Chair of the Judicial Council of
California, in his official capacity

represented by **Robert A. Naeve**
Jones Day (Irvine)
3161 Michelson Drive
Suite 800
Irvine , CA 92612
(949) 851-3939
Fax: (949) 553-7539
Email: rnaeve@jonesday.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

William C. Vickrey
Administrative Director of the

represented by **Robert A. Naeve**
(See above for address)

*Administrative Office of the Court of
the Judicial Council, in his official
capacity*

*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Defendant

James M Mize
*Presiding Judge of the Superior
Court of the County of Sacramento,
in his official capacity*

represented by **Robert A. Naeve**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Movant

SEIU California State Counsel

represented by **Jonathan D Weissglass**
Altshuler, Berzon, Nussbaum, Rubin
& Demain
177 Post Street
Suite 300
San Francisco , CA 94108
415-421-7151
Fax: 415-362-8064
Email:
jweissglass@altshulerberzon.com
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
07/16/2009	<u>1</u>	CIVIL COVER SHEET by E. T., K. R. (Cohen, Jonathan) (Entered: 07/16/2009)
07/16/2009	<u>2</u>	COMPLAINT <i>FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTIVE RELIEF</i> against all defendants by E. T., K. R.(Cohen, Jonathan) (Entered: 07/16/2009)
07/16/2009		RECEIPT number #CAE200018481 \$350.00 fbo E.T., K.R., C.B. and G.S by Robyn Callahan Davis on 7/16/2009. (Streeter, J) (Entered: 07/16/2009)
07/16/2009	<u>4</u>	SUMMONS ISSUED as to *Ronald M. George, William C. Vickrey, James M Mize* with answer to complaint due within *20* days. Attorney *Jonathan M Cohen* *Winston & Strawn LLP* *101 California Street, 39th Fl.* *San Francisco, CA 94111-5894*. (Streeter, J) (Entered: 07/16/2009)
07/16/2009	<u>5</u>	CIVIL NEW CASE DOCUMENTS ISSUED; (Attachments: # <u>1</u> Consent Forms, # <u>2</u> VDRP Forms) (Streeter, J) (Entered: 07/16/2009)
08/03/2009	<u>6</u>	STIPULATION <i>Extending Time until 9/4/09 for Defendants to Respond to Plaintiffs' Complaint</i> by Ronald M. George. Attorney Naeve, Robert

		A. added. (Naeve, Robert) Modified on 8/4/2009 (Krueger, M). (Entered: 08/03/2009)
08/27/2009	7	NOTICE of CHANGE of ADDRESS by Robert A. Naeve. (Naeve, Robert) (Entered: 08/27/2009)
08/31/2009	8	SUMMONS RETURNED EXECUTED: Ronald M. George served on 7/16/2009, answer due 8/5/2009; William C. Vickrey served on 7/16/2009, answer due 8/5/2009; James M Mize served on 7/16/2009, answer due 8/5/2009. (Cohen, Jonathan) (Entered: 08/31/2009)
09/02/2009	9	EX PARTE APPLICATION by Ronald M. George, William C. Vickrey, James M Mize for extension of time to respond to complaint and relief from page limitations. (Attachments: # 1 Proposed Order granting extension of time and relief from page limitations)(Naeve, Robert) Modified on 9/3/2009 (Kaminski, H). (Entered: 09/02/2009)
09/03/2009	10	EX PARTE APPLICATION [<i>OPPOSITION TO DEFENDANTS'</i>] by K.R., C.B., E. T., G.S., Frank Dougherty for a Further Extension of Time in Which to Respond to the Complaint. (Cohen, Jonathan) (Entered: 09/03/2009)
09/03/2009	11	DECLARATION of Jonathan M. Cohen in Support of Opposition to Defendants' Ex Parte Application re 10 Ex Parte Application. (Cohen, Jonathan) (Entered: 09/03/2009)
09/03/2009	12	ORDER signed by Judge Frank C. Damrell, Jr on 8/3/09: Defendants shall have to and including September 18, 2009 in which to file a motion to dismiss or other responsive pleading in this matter. No further extension request will be entertained or granted. Relief from the July 16, 2009 Order Requiring Joint Status Report shall be granted with respect to Defendants' motion to dismiss. (Kaminski, H) (Entered: 09/03/2009)
09/14/2009	13	DEFENDANT(S) STATUS REPORT by Ronald M. George, William C. Vickrey, James M Mize. (Naeve, Robert) (Entered: 09/14/2009)
09/14/2009	14	PLAINTIFF(S) STATUS REPORT by K.R., C.B., E. T., G.S., Frank Dougherty. (Cohen, Jonathan) (Entered: 09/14/2009)
09/18/2009	15	MEMORANDUM in SUPPORT of 16 MOTION to DISMISS by Ronald M. George, William C. Vickrey, James M Mize. (Naeve, Robert) Modified on 9/21/2009 (Krueger, M). (Entered: 09/18/2009)
09/18/2009	16	MOTION to DISMISS by Ronald M. George, William C. Vickrey, James M Mize. Motion Hearing set for 10/16/2009 at 10:00 AM in Courtroom 2 (FCD) before Judge Frank C. Damrell Jr.. (Naeve, Robert) (Entered: 09/18/2009)
09/18/2009	17	[DUPLICATE ENTRY - SAME AS DOCUMENT 15] MEMORANDUM by Ronald M. George, William C. Vickrey, James M Mize in SUPPORT of 16 MOTION to DISMISS. (Naeve, Robert)

		Modified on 9/21/2009 (Krueger, M). (Entered: 09/18/2009)
09/18/2009	18	REQUEST for JUDICIAL NOTICE by Ronald M. George, William C. Vickrey, James M Mize in re 16 Motion to Dismiss. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(Naeve, Robert) (Entered: 09/18/2009)
09/18/2009	19	APPENDIX by Ronald M. George, William C. Vickrey, James M Mize re 16 MOTION to DISMISS filed by Ronald M. George, James M Mize, William C. Vickrey. (Attachments: # 1 Exhibit 1-3, # 2 Exhibit 4 (pages 1-19), # 3 Exhibit 4 (pages 20-42), # 4 Exhibit 5-6)(Naeve, Robert) (Entered: 09/18/2009)
09/21/2009	20	MINUTE ORDER by CRD M. Krueger for Judge Frank C. Damrell, Jr on 9/21/2009: Due to congestion of the Court's Law and Motion Calendar, Defendants' Motion to Abstain and to Dismiss 16 presently set for October 16, 2009 is CONTINUED to Friday, October 30, 2009 at 10:00 AM in Courtroom 2 (FCD) before Judge Frank C. Damrell Jr. (TEXT ONLY) (Krueger, M) (Entered: 09/21/2009)
10/02/2009	21	MINUTE ORDER by CRD M. Krueger for Judge Frank C. Damrell, Jr on 10/2/2009: In light of Defendants' pending Motion to Dismiss 16 set for hearing on October 30, 2009, the Court shall defer the scheduling of this action. The parties shall submit a Joint Status Report, if necessary, within 30 days after issuance of an order on the motion. (TEXT ONLY) (Krueger, M) (Entered: 10/02/2009)
10/16/2009	22	MOTION Leave to File Amicus Brief; Proposed Amicus Brief by SEIU California State Counsel. Attorney Weissglass, Jonathan D added. Motion Hearing set for 10/30/2009 at 10:00 AM in Courtroom 2 (FCD) before Judge Frank C. Damrell Jr.. (Attachments: # 1 Motion for Leave to File Amicus Brief; Porposed Amicus Brief, # 2 Request for Judicial Notice in Support of Amicus Brief, # 3 Proposed Order, # 4 Proof of Service)(Weissglass, Jonathan) (Entered: 10/16/2009)
10/16/2009	23	OPPOSITION by K.R., C.B., E. T., G.S., Frank Dougherty to 16 MOTION to DISMISS. Attorney Callahan, Robyn T. added. (Callahan, Robyn) (Entered: 10/16/2009)
10/16/2009	25	APPENDIX by K.R., C.B., E. T., G.S., Frank Dougherty re 23 Opposition to Motion filed by C.B., K.R., E. T., G.S., Frank Dougherty. (Attachments: # 1 Exhibit 1 through 11, # 2 Exhibit 12 through 20, # 3 Exhibit 21 through 24, # 4 Exhibit 25 through 34)(Callahan, Robyn) (Entered: 10/16/2009)
10/16/2009	26	CERTIFICATE of SERVICE by K.R., C.B., E. T., G.S., Frank Dougherty re 24 Request for Judicial Notice, 23 Opposition to Motion, 25 Appendix,. (Callahan, Robyn) (Entered: 10/16/2009)
10/19/2009	27	CLERK'S NOTICE Plaintiffs Request for Judicial Notice [24] FILIED

		IN ERROR, counsel to re-file. [TEXT ONLY] (Reader, L) (Entered: 10/19/2009)
10/19/2009	29	SECOND AMENDED REQUEST for JUDICIAL NOTICE by K.R., C.B., E. T., G.S., Frank Dougherty in re 23 Opposition to Motion. (Callahan, Robyn) Modified on 10/27/2009 (Benson, A.). (Entered: 10/19/2009)
10/19/2009	30	ORDER signed by Judge Frank C. Damrell, Jr on 10/19/2009 GRANTING 22 the SEIU California State Council's Motion for Leave to File Amicus Brief. (Krueger, M) (Entered: 10/19/2009)
10/23/2009	31	OPPOSITION by Defendants Ronald M. George, William C. Vickrey, James M Mize. (Naeve, Robert) (Entered: 10/23/2009)
10/23/2009	32	REPLY by Ronald M. George, William C. Vickrey, James M Mize re 16 Motion to Dismiss. (Naeve, Robert) (Entered: 10/23/2009)
10/26/2009	33	MINUTE ORDER by CRD M. Krueger for Judge Frank C. Damrell, Jr on 10/26/2009: Due to a conflict with the Court's calendar, the Hearing on Defendants' Motion to Abstain and to Dismiss 16 is RESET for November 6, 2009 at 10:00 AM in Courtroom 2 (FCD) before Judge Frank C. Damrell Jr. (TEXT ONLY) (Krueger, M) (Entered: 10/26/2009)
11/06/2009	34	MINUTES (Text Only) for proceedings held before Judge Frank C. Damrell, Jr: MOTION HEARING held on 11/6/2009 re 16 MOTION to ABSTAIN and to DISMISS filed by Defendants. The Court heard oral argument, and orders supplemental briefing. Plaintiffs' supplemental brief due within 14 days (November 20, 2009), and defendants' reply due 14 days thereafter (December 4, 2009). A Further Hearing is SET for 1/22/2010 at 10:00 AM in Courtroom 2 (FCD) before Judge Frank C. Damrell Jr. Plaintiffs Counsel Jonathan Cohen and Ed Howard present. Defendants Counsel Robert Naeve (and Leah Wilson) present. Court Reporter: Michelle Babitt. (Krueger, M) (Entered: 11/06/2009)
11/20/2009	35	Plaintiffs' SUPPLEMENTAL BRIEF in OPPOSITION 23 to Motion to Dismiss. (Callahan, Robyn) Modified on 11/25/2009 (Mena-Sanchez, L). (Entered: 11/20/2009)
11/20/2009	36	DECLARATION of Jonathan M. Cohen in SUPPORT of Plaintiff's SUPPLEMENTAL BRIEF 35 . (Callahan, Robyn) Modified on 11/25/2009 (Mena-Sanchez, L). (Entered: 11/20/2009)
12/04/2009	37	SUPPLEMENTAL REPLY by Ronald M. George, William C. Vickrey, James M Mize re 16 MOTION to DISMISS. (Naeve, Robert) Modified on 12/7/2009 (Kaminski, H). (Entered: 12/04/2009)
12/04/2009	38	DECLARATION of Robert A. Naeve re 37 Supplement. (Naeve, Robert) (Entered: 12/04/2009)

01/07/2010	39	ORDER signed by Judge Frank C. Damrell, Jr. on 1/7/2010 GRANTING Dft's 16 Motion to Dismiss. CASE CLOSED. (Engbretson, K.) (Entered: 01/07/2010)
01/07/2010	40	JUDGMENT dated *1/7/2010* pursuant to order signed by Judge Frank C. Damrell, Jr. on 1/7/2010. (Engbretson, K.) (Entered: 01/07/2010)
01/11/2010	41	AMENDED MEMORANDUM and ORDER signed by Judge Frank C. Damrell, Jr on 1/11/10 ORDERING that in conclusion, the court again acknowledges that plaintiffs'claims present a troubling depiction of the state of Sacramento County's dependency court system. The facts alleged relative to the named minor plaintiffs demonstrate a serious lack of responsiveness by the state's current system to the needs of children. However, to remedy these wrongs, this court must reallocate state financial resources, reorder state legislative priorities, and revise state judicial policies. This proposed federal judicial takeover of these functions of state government not only strikes at the core principles of federalism and comity, but assumes an institutional competence that a federal district court simply does not possess. Therefore, for the foregoing reasons, defendants' motion to dismiss is GRANTED. (Becknal, R) (Entered: 01/11/2010)
02/02/2010	42	NOTICE of APPEAL by K.R., C.B., E. T., G.S., Frank Dougherty as to 41 Memorandum, Opinion & Order. (Cohen, Jonathan) (Entered: 02/02/2010)
02/02/2010	43	STATEMENT of CIVIL APPEALS DOCKETING STATEMENT by Plaintiffs K.R., C.B., E. T., G.S., Frank Dougherty re 42 Notice of Appeal. (Cohen, Jonathan) (Entered: 02/02/2010)
02/03/2010		RECEIPT number #CAE200023479 \$455.00 fbo Frank Dougherty by Robyn Callahan Davis on 2/3/2010. (Matson, R) (Entered: 02/03/2010)
02/03/2010	45	APPEAL PROCESSED to Ninth Circuit re 42 Notice of Appeal filed by C.B., K.R., E. T., G.S., Frank Dougherty. Filed dates for Notice of Appeal *2/2/2010*, Complaint *7/16/2009* and Appealed Order / Judgment *1/11/2010*. Court Reporter: *M. Babitt*. *Fee Status: Paid on 2/3/2010 in the amount of \$455.00* ** (Attachments: # 1 Appeal Notice) (Duong, D) (Entered: 02/03/2010)
02/04/2010	46	USCA CASE NUMBER 10-15248 for 42 Notice of Appeal filed by C.B., K.R., E. T., G.S., Frank Dougherty. (Engbretson, K.) (Entered: 02/04/2010)
02/09/2010	47	TRANSCRIPT REQUEST by K.R., C.B., E. T., G.S., Frank Dougherty re 42 Notice of Appeal (Callahan, Robyn) (Entered: 02/09/2010)
02/09/2010	48	TRANSCRIPT REQUEST by K.R., C.B., E. T., G.S., Frank Dougherty re 42 Notice of Appeal (Callahan, Robyn) (Entered: 02/09/2010)
02/10/2010	49	TRANSCRIPT of Proceedings held on 11/6/09, before Judge Frank C.

Damrell, Jr, filed by Court Reporter Michelle Babbitt, Phone number 916-448-7938 E-mail mbabbitt@caed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 3/3/2010. Redacted Transcript Deadline set for 3/15/2010. Release of Transcript Restriction set for 5/11/2010. (Babbitt, M) (Entered: 02/10/2010)

PACER Service Center			
Transaction Receipt			
06/02/2010 09:22:36			
PACER Login:	mw0044	Client Code:	999997.02827-14394
Description:	Docket Report	Search Criteria:	2:09-cv-01950-FCD-DAD
Billable Pages:	6	Cost:	0.48