



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

MEMORANDUM

DATE: April 27, 2017

TO: Senator Jackie Winters, Co-Chair
Representative Duane Stark, Co-Chair
Joint Committee on Ways and Means, Subcommittee on Public Safety

FROM: Fred Boss, Deputy Attorney General
Joanne Southey, Deputy Chief Counsel, Civil Enforcement Division
Oregon Department of Justice

SUBJECT: Juvenile Dependency Representation

This testimony is presented for consideration at the Informational Hearing on Juvenile Dependency Representation.

BACKGROUND

The Child Advocacy Section (ChAS) of the Oregon Department of Justice (DOJ) is charged with providing consistent, timely, and accurate legal counsel to assist in preventing the abuse and neglect of children, enhancing the welfare of abused children and preserving family life when appropriate by increasing parenting capacity.

ChAS provides legal advice and representation to the Department of Human Services Child Welfare Program (DHS) to ensure its adherence to state and federal laws and policies regarding dependent vulnerable children. There are approximately 48 ChAS AAGs and related dedicated support staff located in six different offices across the state: Portland, Salem, Eugene, Medford, Pendleton and Bend.

ChAS consults with and provides advice to DHS throughout the life of a juvenile case, but generally does not appear in all dependency court hearings to represent DHS. Involvement may be limited to consultation with caseworkers on individual cases or appearance in contested court hearings and trials. Although state law prohibits state agencies from appearing in court proceedings without DOJ representation, those restrictions have not been uniformly enforced in dependency proceedings for DHS. Consequently, DHS caseworkers have routinely appeared without legal counsel. In contrast the other parties are represented mostly by court appointed attorneys at almost every hearing. The State is represented by the DA at the early jurisdictional stage of the case if they elect to appear. The temporary law which authorizes DHS to appear

unrepresented will sunset in June 2018 (Section 3, Chapter 106, Oregon Laws 2014, as amended by Section 1, Chapter 776, Oregon Laws 2015).

DHS caseworkers are at a disadvantage as they are often the only unrepresented party at these proceedings. The lack of legal counsel for DHS at hearings frequently results in delays in achieving permanency for children in the custody of DHS, including appeals and reversals of trial court rulings. Prolonged foster care placement results in an increased cost to the state, as well as a detrimental impact on the child. Whether the child's plan is to be safely returned to a parent or changed to another more appropriate permanent plan, it serves DHS, families, and the court when ChAS attorneys represent DHS and attend court hearings to present evidence, call witnesses, ensure that the correct legal findings are made and that permanency can be achieved in the shortest timeframe available for the child.

In the event a parent or guardian is unwilling or unable to provide a safe and stable home for a child, ChAS attorneys represent DHS in juvenile court proceedings to ensure a safe and appropriate long-term plan for the child, which can include guardianship or adoption, often with relatives or long-term care providers. Legal counsel and litigation support is also provided in all adoption (otherwise known as termination of parental rights) cases state-wide, with the exception of one county.

Across the state, ChAS attorneys can provide oversight to ensure DHS is following agency policies and laws as well as acting consistently with statewide directives. Should a ChAS attorney disagree with a DHS employee's position in a case or practice in a county, internal review processes raise the issue to the highest appropriate level in both agencies, be that the worker's supervisor or the Child Welfare Director.

Many ChAS cases involve complex legal issues that need to be addressed outside of court hearings – paternity, discovery, immigration, placement, records, health care decisions, to name a few. ChAS attorneys also assist with other DHS branch issues, such as records requests, subpoenas, consent issues, probate guardianships, financial benefits issues. ChAS attorneys also confer with other DOJ divisions who may be providing related legal services to DHS. ChAS attorneys also attend court improvement meetings in local counties across the state, as well as Multidisciplinary Team (MDT) meetings where DOJ is providing full legal representation.

While DHS is not currently able to secure legal representation at every court hearing, ChAS attorneys conduct a legal file review of every DHS Child Welfare case involving a child under the jurisdiction of the juvenile court at the five-month, and if needed, the eleven-month mark. Attorneys identify any concerns early on in a case and provide limited legal advice.

Outside of juvenile dependency court, ChAS attorneys also support and represent DHS in the administrative arena in certification of foster and adoptive home cases and advising DHS Child Welfare Central Office. That work is distinct and not considered part of the juvenile dependency representation.

TASKFORCE RECOMMENDATIONS

The Governor's Task Force on Legal Representation in Childhood Dependency was charged with recommending models to ensure adequate representation for children and parents served by the child welfare system. The Task Force, which included four members of the Legislature, submitted a final report to the Legislature in July 2016 which recommended that DOJ assume the entire juvenile dependency court representation of DHS (with a contemplated potential exception for Multnomah County). This model is intended to promote attorney-caseworker collaboration, improve caseworker job satisfaction and retention, avoid the risk of unlawful practice of law by case workers, and improve the overall efficiency and cost-effectiveness of the child welfare system. The model does not exclude a district attorney from appearing on behalf of the state as a legal party in dependency cases.

The Task Force and a subcommittee evaluated approximately five other proposed plans of agency representation and identified four top priority attributes any successful plan must include: 1) availability of attorneys; 2) consistency of representation and accountability; 3) cost effectiveness and cost efficiency; and 4) outcome-oriented practice. Other important attributes were also considered and evaluated.

This has resulted in separate but coordinating DHS and DOJ Policy Option Packages for the 2017 session, with phased-in implementation of full legal representation over two biennia.

PROPOSED IMPLEMENTATION PLAN FOR FULL JUVENILE DEPENDENCY COURT REPRESENTATION OF DHS

DHS and DOJ, in consultation with ODAA, have identified a proposed plan for implementation of agency representation in juvenile dependency courts statewide in three phased-in tiers by January 1, 2019 (the date by which full dependency court legal representation is required to be complete per HB 2345). DHS and DOJ worked together to address anticipated stability of county DA offices appearing at the jurisdictional phase of dependency cases, and also adjusted for regional and office staffing rollout. This proposal is intended to take into account county-based need and readiness, although there may still be a need to fine-tune for regional and fiscal impact. The final plan is due to the legislature by September 2017.

If appropriate, the counties in Phase I will receive a six-month Intergovernmental Agreement (IGA) from DHS to continue to supplement the DA offices' appearances during the jurisdictional phase of the dependency cases (some counties have withdrawn from any court appearances, in which case an IGA would not be provided). The counties in Phase II will receive a one-year IGA and the counties in Phase III will receive a two-year IGA. If the county enters into an IGA, the matching federal funds owed to the state would continue to be forfeited to the counties for the duration of the agreement.

This proposed order of implementation results in each phase representing approximately one-third of total child welfare cases statewide. It is intended to recognize all counties where DOJ is already representing DHS in all jurisdictional work or a significant portion of the work, or where DHS has been advised the county will no longer appear, and includes those counties into Phase I. Phases II and III include counties that are able to continue to appear, and is intended to consider county-based need, regional staffing and fiscal impact.

Anticipated Phase I, implementation by January 1, 2018:

Benton, Coos, Gilliam, Grant, Hood River, Josephine, Lane, Lincoln, Linn, Morrow, Polk, Sherman, Tillamook, Wasco, Wheeler,

Anticipated Phase II, implementation by July 1, 2018:

Columbia, Crook, Deschutes, Douglas, Harney, Jackson, Jefferson, Klamath, Lake, Malheur, Umatilla, Yamhill

Anticipated Phase III, implementation by January 1, 2019:

Baker, Clackamas, Clatsop, Curry, Marion, Multnomah, Union, Washington, Wallowa

PERFORMANCE STANDARDS AND QUALITY CONTROL MEASURES

As noted in the Oregon Task Force on Dependency Representation's report, implementing or improving current performance standards for all dependency practitioners can promote quality representation, consistency of practice, and timely resolution of permanency for children and families. The report recommended Oregon promulgate relevant performance standards for all dependency attorneys who represent the government.

In anticipation of these recommendations, DOJ, in coordination with the Oregon State Bar (OSB), has already created draft agency attorney performance standards. DOJ, along with OSB, representatives from OJD, OPDS, and ODAA, met over many months to discuss and construct the standards. The workgroup used the American Bar Association model standards as a guide and also considered and coordinated with the OSB dependency standards for parents' and children's attorneys. The document in its current form is specific only to agency attorneys and awaits finalization depending, in part, on the resolution of the legal representation issue raised in HB 2345.

In furtherance of other Task Force Report recommendations, DOJ has committed to training new practitioners to the agency attorney performances standards and to cross-train to the parents' and children's performance standards. Once the standards have been approved by the Bar, DOJ will assist in training Oregon judges and other interested groups (DHS caseworkers or CASAs, for example) as to the specific standards along with other dependency practitioners as recommended by the Task Force.

Senator Jackie Winters, Co-Chair
Representative Duane Stark, Co-Chair
April 26, 2017
Page 5

Quality assurance measures are contemplated in the Task Force report and are included in on-going discussions regarding implementation of full juvenile court dependency representation of DHS. DOJ is committed to identifying and tracking outcome and output measures and will continue to collaborate with all appropriate juvenile dependency practitioners in a standing workgroup led by the Oregon Judicial Department.

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