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**REPORT OF  
CHILDREN'S JUSTICE INITIATIVE  
PARENT LEGAL REPRESENTATION WORKGROUP  
TO  
MINNESOTA JUDICIAL COUNCIL**

**November 17, 2008**

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## **WORKGROUP PURPOSE**

In July 2008, the Minnesota Judicial Council approved the establishment of a Workgroup to study and report on legal representation of parents in Child In Need of Protection or Services (CHIPS), termination of parental rights (TPR), and other permanency cases.

## **STATEMENT OF THE PROBLEM**

Parents involved in child in need of protection or services (CHIPS), termination of parental rights (TPR), and other permanency cases need legal representation in order to be advised of and understand their rights and responsibilities, counseled regarding services available to meet their needs, encouraged regarding successful completion of their case plans, and informed of the consequences of failure to comply with court orders including the potential termination of their parental rights. When parents do not have legal counsel, the child's permanency is often delayed because of the additional time judges must spend ensuring that the parents, who often have chemical dependency or mental health challenges, fully understand their case plans and their rights and responsibilities. Access to legal counsel should be available at the earliest possible time, and court appointed legal representation must begin with the first hearing and continue until the child is returned home or another permanent placement is achieved, including through appeal, if any.

Currently there are no Minnesota statutes mandating a right to court-appointed, publically funded attorneys for custodial and non-custodial parents in CHIPS, TPR, and other permanency cases, or specifying who is to represent parents, or clearly identifying the funding source. As a result of the recent decision of the Board of Public Defense to cease representation of parents effective July 8, 2008, there is no longer a statewide process to appoint qualified attorneys to represent parents in CHIPS, TPR, and other permanency cases. There is no statewide funding and no standards of practice for attorneys representing parents. Instead, it is currently left to each county to decide whether they will pay for court-appointed legal representation for parents; what amount to pay attorneys; and what minimal practice standards to impose, if any.

## WORKGROUP PROCEDURES AND TIMELINE

The Workgroup met in August, September, and October 2008, during which time the members considered the statement of the problem; reviewed the work and reports of prior committees and workgroups related to this topic, including the Final Report of the CHIPS Public Defender Workgroup dated March 16, 2006; reviewed parent legal representation models from other states; and discussed short-term and long-term strategies to address the problem. Throughout the deliberations process the Workgroup members solicited feedback from their respective “constituent groups.” This report and recommendations are in response to the Judicial Council’s request to report on legal representation of parents in CHIPS, TPR, and other permanency cases.

## STATUTES REGARDING APPOINTMENT AND PAYMENT OF ATTORNEYS

Appendix B sets forth the federal and state statutes and rules regarding appointment of counsel for parents in CHIPS, TPR, and other permanency cases. The critical provisions are summarized as follows:

1. Children and parents involved in child protection cases have “the right to effective assistance of counsel.”<sup>1</sup>
2. The court shall appoint an attorney for a parent or guardian if the parent or guardian qualifies financially and the court determines that appointment of an attorney is appropriate.<sup>2</sup>
3. In a truancy case, the court shall appoint an attorney for the parent if out-of-home placement is being considered; otherwise, appointment of counsel for a parent in a truancy case is precluded.<sup>3</sup>
4. In cases governed by the Indian Child Welfare Act (ICWA),<sup>4</sup> the court shall appoint an attorney for both parents (regardless of party or participant status) if the parent is indigent;<sup>5</sup> failure to do so may be considered a violation of the ICWA, which may result in invalidation of the entire CHIPS or TPR action.<sup>6</sup>

<sup>1</sup> Minn. Stat. § 260C.163, subd. 3(a) (2008).

<sup>2</sup> *Id.* at subd. 3(b).

<sup>3</sup> *Id.* at subd. 3(c).

<sup>4</sup> 25 U.S.C. § 1901 – 1963.

<sup>5</sup> *Id.* at § 1912(b).

<sup>6</sup> *Id.* at § 1914.

5. If the court determines that a child age 10 or older is entitled to a court-appointed attorney, the child is entitled to be represented by a public defender.<sup>7</sup> The statutes do not designate who shall be appointed to represent parents or pay for such services.
6. The court may order the county to pay reasonable compensation for an attorney appointed by the court;<sup>8</sup> however, counties may refuse to pay such fees if an “attorneys’ fees” line item is not included in their budget.<sup>9</sup>

**JULY 2008 DECISION OF BOARD OF PUBLIC DEFENSE TO DISCONTINUE LEGAL REPRESENTATION OF PARENTS IN CHIPS, TPR, AND OTHER PERMANENCY CASES**

In the 1970s and 1980s, each county bore financial responsibility for attorneys’ fees for representation of parents in child protection cases, resulting in myriad payment schemes as well as a lack of statewide uniformity in attorney recruitment, training, and practices.

Beginning in the early 1990s, the state began assuming the cost of some public defender services from the counties. In 1990, the state assumed the costs of felony and gross misdemeanor services statewide and for juvenile delinquency and misdemeanor services in the 2<sup>nd</sup>, 4<sup>th</sup>, and 8<sup>th</sup> Judicial Districts. To offset the costs to the state of juvenile delinquency and misdemeanor public defender services, there was a reduction in Homestead and Agricultural Aid (HACA) to the counties in the 2<sup>nd</sup>, 4<sup>th</sup> and 8<sup>th</sup> Judicial Districts. Between 1993 and 1995 this reduction in HACA also occurred in the counties that make up the remaining seven Judicial Districts as the state assumed the cost of juvenile delinquency and misdemeanor services in those Judicial Districts.

When the state assumed the cost of juvenile delinquency and misdemeanor public defender services, there was little if any discussion regarding CHIPS and TPR cases. Discussions centered on the high volume cases, namely juvenile delinquencies and misdemeanors. It was during this time that the Board of Public Defense was charged with the duty of representing

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<sup>7</sup> Minn. Stat. § 611.14(4) (2008).

<sup>8</sup> *Id.* at § 260C.331, subd. 3(d).

<sup>9</sup> *Id.* at § 375.1691.

children in child protection cases.<sup>10</sup> Meanwhile, it was debatable whether the responsibility for funding representation of other parties in CHIPS and TPR cases belonged to the counties under Minnesota Statutes § 260C.331.

In 2003, 2005, and 2007 the Board of Public Defense made requests to the legislature for additional funding to provide for adequate representation of parents in CHIPS, TPR, and other permanency cases. The Board's funding requests were denied.

The State Board of Public Defense is faced with yet another fiscal crisis – a \$3.8 million deficit for fiscal year 2009. In recognition of unmanageable case loads and staff reductions, the Board, during a meeting on June 5, 2008, considered various options to deal with these reductions, and decided to eliminate “non-mandated services.”

Finding that public defenders are not statutorily mandated to represent parents in CHIPS, TPR, and other permanency cases, the Board announced that public defenders will no longer accept appointments to represent parents in such cases filed on or after July 8, 2008.<sup>11</sup> In addition, the Board announced that public defenders would withdraw from representing parents in pending CHIPS, TPR, and other permanency cases as soon as a disposition in the case has been made (i.e., following a CHIPS adjudication resulting from either an admission or a trial).

As required by Minnesota Statutes § 611.14(4), public defenders continue to accept appointments and continue to represent children age 10 and older involved in CHIPS, TPR, and other permanency cases, except in Ramsey County where the Children's Law Center represents children of all ages.<sup>12</sup>

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<sup>10</sup> *Id.* at § 611.14(4).

<sup>11</sup> The exception is in Hennepin County where the Hennepin County Board provides financial support to the District Public Defender Office.

<sup>12</sup> Because the Children's Law Center of Minnesota (CLC) (a 501(c)(3) non-profit organization) believes that all children should be represented by counsel in CHIPS, TPR, and other permanency proceedings, the CLC may be appointed to represent children of all ages, both privately and as court-appointed attorneys, in Hennepin and Ramsey counties, as well as in other counties under certain circumstances.

## APPOINTMENT OF ATTORNEYS FOR PARENTS SINCE JULY 2008

As a result of the July 2008 decision of the Board of Public Defense, courts and counties across the state have been faced with the challenge of recruiting attorneys – specifically, qualified attorneys – to represent parents in child protection cases. In some counties, attorneys who once were full-time public defenders, but now are reduced to part-time status due to public defense budget cuts, are being appointed as private attorneys to represent parents. In other counties, family law attorneys or other attorneys, some with little to no child protection background or experience, are being appointed to represent parents. In rural counties, recruiting attorneys to represent parents is an even greater challenge due to the smaller number of attorneys available.

Also as a result of the decision of the Board of Public Defense, county commissioners are faced with the challenge of deciding whether their county will or will not pay for the fees of these other attorneys. As noted above, Minnesota Statutes § 375.1691 provides that the county may refuse to pay for attorneys' fees if an "attorneys' fees" line item is not included in their budget. No case law exists regarding the statute. However, in discussions with judges, social services agency directors, and county commissioners about the statute's application, it is clear that the statute is being interpreted in various ways:

- Some interpret the statute to mean that if court-ordered attorneys' fee are not part of the county's budget for the existing fiscal year, the county in its discretion may, but is not required to, pay the court-ordered fee. If the county refuses to pay the court-ordered fee out of the budget for the current fiscal year, the court may ask the county to pay the attorneys' fees in the next fiscal year for which a budget is approved, and again the county may, but is not obligated to, pay the court-ordered item.
- Others interpret the statute to mean that, while the county may refuse to pay the court-ordered fee out of the county's budget for the current fiscal year if a line item for such fee does not exist, the county must pay the charge out of the next approved budget.

Since July 2008, a majority of the county boards have agreed to pay for court-appointed attorneys' fees, at least temporarily.<sup>13</sup> Some counties have agreed to pay for attorneys' fees only through December 2008, other counties have agreed to pay for attorneys' fees through June 2009, and still others have agreed to indefinitely pay for attorneys' fees.<sup>14</sup> In those counties that have agreed to pay for attorney's fees, some are paying an hourly wage ranging from \$24 to \$100 per hour, while others are paying a monthly fee or a lump sum.<sup>15</sup> Some counties have set a cap on the total number of hours of legal representation allowed per case and others have set a cap on the total fee that may be charged per case.<sup>16</sup> Some counties have contracted with law firms to provide legal representation to parents, and other counties have contracted with individual attorneys to represent parents.<sup>17</sup>

In a few counties, the county boards have declined to include an "attorneys' fees" line item in their county budgets and have refused to pay for attorneys' fees even if they are court ordered.<sup>18</sup> Some counties have declined to pay for attorneys' fees on the grounds that the statute authorizing the court to order the county to pay reasonable compensation for an attorney is part of the statutory section entitled "Costs of Care," which they argue relates only to services and care for children, meaning that the legislative intent was for that section to apply solely to compensation for court-appointed counsel for children, not to compensation for court-appointed counsel for parents.

Finally, some judges have attempted to use the *In Forma Pauperis (IFP)*<sup>19</sup> statute as a way to have the state, rather than counties, pay for attorneys' fees. *IFP* funds are a charge upon the State, rather than upon the county.<sup>20</sup> The *IFP* statute applies only in civil matters.<sup>21</sup> That statute, however, is specific in its language and intent and provides that if a person has been granted *IFP* status the court may order payment of service of process fees, witness fees, deposition expenses,

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<sup>13</sup> See Appendix C for a statewide summary of how counties are paying for attorneys' fees.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Minn. Stat. § 563.01 (2008).

<sup>20</sup> *Id.* at § 563.01, subd. 2.

<sup>21</sup> *Id.* at subd. 3.



transcript expenses, and appellate briefs. By its silence, the *IFP* statute arguably precludes ordering payment of attorneys' fees.

## WORKGROUP FINDINGS

Based upon the collective experience and expertise of the Workgroup members, as well as empirical data when available, the Workgroup makes the following findings regarding legal representation of parents in CHIPS, TPR, and other permanency cases.

- 1. The objective of child protection court proceedings is to timely achieve child safety, permanency, and wellbeing. In proceedings involving Indian children, the objective is to protect the best interests of the Indian child and to promote the stability and security of Indian tribes and families.**

The federal Adoption and Safe Families Act of 1997<sup>22</sup> emphasizes that the overriding objective in every child protection proceeding is to timely provide a safe, stable, permanent home for each abused and neglected child.<sup>23</sup> This policy is reflected in Minnesota Statutes, which provide that “[t]he paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child.”<sup>24</sup> Minnesota’s Statutes promote reunification of the child with the parent and preservation of family ties, if it is safe for, and in the best interests of, the child.<sup>25</sup>

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<sup>22</sup> 42 U.S.C. § 601, et. seq. (1997).

<sup>23</sup> *Id.* at § 622, § 625, § 629, § 671, and § 675.

<sup>24</sup> Minn. Stat. § 260C.001, subd. 2 (2008).

<sup>25</sup> *Id.* The purpose of Minnesota’s child protection laws is to “secure for each child alleged or adjudicated in need of protection or services and under the jurisdiction of the court, the care and guidance, preferably in the child’s own home, as will best serve the spiritual, emotional, mental, and physical welfare of the child; . . . to preserve and strengthen the child’s family ties whenever possible and in the child’s best interests, removing the child from the custody of parents only when the child’s welfare or safety cannot be adequately safeguarded without removal; and, when removal from the child’s own family is necessary and in the child’s best interests, to secure for the child custody, care and discipline as nearly as possible equivalent to that which should have been given by the parents.” *Id.*

The Indian Child Welfare Act (ICWA)<sup>26</sup> provides that “it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.”<sup>27</sup> Minnesota established Indian family preservation as a state policy in 1985 when it passed the Minnesota Indian Family Preservation Act (MIFPA).<sup>28</sup>

## **2. Representation of parents in child protection cases by qualified and culturally competent attorneys for parents improves outcomes for children and families.**

“All parties in child welfare proceedings should be adequately represented by well-trained, culturally competent, and adequately compensated attorneys or guardians ad litem.”<sup>29</sup> The Workgroup recommends that access to legal counsel should be available at the earliest possible time, and court-appointed legal representation must begin with the first hearing and continue until the child is returned home or another permanent placement is achieved, including through appeal, if any.

“Quality representation of children in child abuse and neglect proceedings has been closely tied to improved outcomes for children. Representation of parents, however, is only recently

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<sup>26</sup> 25 U.S.C. § 1901 – 1963.

<sup>27</sup> *Id.* at § 1902.

<sup>28</sup> Minn. Stat. § 260.751 – 260.835 (2008). In Minnesota in 2007, 14,800 children spent some time in out-of-home care. While White children comprised the largest number of children in foster care, the proportion of American Indian children was higher than their representation in Minnesota’s child population. Of the total children in foster care in 2007, 12.3% were American Indian and yet they comprised only 1.6% of Minnesota’s child population. *Minnesota’s Child Welfare Report for 2007: Report to the 2008 Minnesota Legislature*, Minn. Dept. of Human Services, Section II, p. 5 (August 2008) [hereinafter “*Minnesota Child Welfare Report for 2007*”].

<sup>29</sup> See *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, National Council of Juvenile and Family Court Judges, p. 5 (Fall 2000) [hereinafter *Permanency Guidelines*]. See also *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*, American Bar Association, Standards 5 and 9 and commentary.

receiving the same attention.”<sup>30</sup> In an effort to increase the quality of representation of parents in child protection cases, Washington State’s Office of Public Defense recently initiated a pilot program in two juvenile courts. The pilot focused on “improving the skills of defense attorneys through increased training, limited caseloads, and increased levels of communication between attorneys and their clients.”<sup>31</sup> Positive improvements were reported in a January 2003 review of case files comparing the enhanced public defender system to a control group of other attorneys involved in similar cases.<sup>32</sup> “Most notable were improvements in the rate at which hearings took place, the rate of family reunification, and the rate at which cases were opened and resolved. Ultimately, pilot cases showed a significant correlation between the quality and efficiency of attorney practices and the outcome of child protection cases.”<sup>33</sup> As a result of the pilot project, “the average number of days within which a permanency hearing was held decreased from 344.8 to 251.9.”<sup>34</sup> Another “major finding of the evaluation is a 53.3 percent increase in the rate of reunification. . . . In addition, the rate of termination of parental rights decreased by 44 percent between the pre-pilot sample and the post-pilot sample.”<sup>35</sup> The evaluation report concludes that “the statistical results of this pilot project show the significant impact that quality representation of parents may have in dependency and termination proceedings.”<sup>36</sup>

Attorneys for parents “are needed both to avoid unnecessary delays in the case and to assure that the parties are capably represented. Among the most serious causes of delay in child protection litigation is the lack of tight procedures for appointment of counsel. Where parties are unaware of their right to counsel, where they do not know how to go about arranging for counsel to be appointed, and where the court is slow to make appointments, the litigation can be needlessly impeded.”<sup>37</sup>

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<sup>30</sup> “*Quality Representation of Parents Improves Outcomes for Families*,” *Child Court Works*, ABA Center on Children and the Law, p. 1 (Vol. 6, Issue 1) (April 2003).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at p. 2.

<sup>37</sup> *Court Rules to Achieve Permanency for Foster Children: Sample Rules and Commentary*, American Bar Association, pp. 22-23 (1989) [hereinafter “*Court Rules to Achieve Permanency for Foster Children*”].

**3. Representation of parents in child protection cases by qualified and culturally competent attorneys is an important element of a cost-effective investment to avoid long-term expenses, such as extended foster care costs.**

Representation of parents in CHIPS, TPR, and other permanency cases by qualified and culturally competent attorneys will minimize an increase in foster care costs, litigation costs, court costs, and costs to other child protection system stakeholders. The Workgroup members believe that a Minnesota longitudinal study should be conducted, similar to the New York City study described below, to determine the cost savings resulting from legal representation of parents.

The Center for Family Representation was recently granted a contract for parent representation in child protection cases in New York City. In an effort to determine their effectiveness, the Center conducted an evaluation of the fiscal cost savings resulting from appointment of attorneys for parents in child protection cases from July 1, 2007, to March 30, 2008. Their evaluation showed, as more fully explained below, that as a result of representation of parents there was a combined savings of \$3,107,662 during that period.

The cost of foster care in New York City ranges from \$1,755 per month to \$7,969 per month, depending upon the child's needs. Prior to commencement of the Center's evaluation, the median length of stay for children in out-of-home placement in New York City was 11.5 months. The evaluation showed that with the appointment of counsel for parents, the length of out-of-home placement for 116 children was decreased by several months, resulting in a savings of \$2,340,837 in foster care costs from July 2007 through March 2008.

The evaluation also showed potential savings in litigation costs, such that 15.4% of cases involving 38 children concluded after the initial hearing without further court appearances. Assuming the lowest rate of foster care costs, this translated to a potential savings of \$766,826 from July 2007 through March 2008.

The evaluation also showed that with the appointment of counsel for parents, re-entry of children into foster care was reduced such that children re-entered foster care in only 5 of 418 cases, a reduction of 10.2% from the 2007 rate of re-entry of 11.4%.

During the period when public defenders were responsible for representing parents in Minnesota child protection cases, there generally was statewide uniformity in appointment of counsel for custodial parents in CHIPS, TPR, and other permanency cases. However, due to extensive caseloads, after 2004 public defenders were not able to accept appointments to represent non-custodial parents who also are required under federal and state law to be involved in case plans for their children. Instead, either no counsel was appointed or other attorneys (not necessarily trained in child protection matters) were appointed to represent non-custodial parents at county expense.

Now that the public defenders are no longer representing either custodial or non-custodial parents, the appointment of counsel for such parents varies from county to county and sometimes from judge to judge within each county. In addition, while attorneys are being appointed for custodial parents in most counties, the quality of representation once again varies from county to county.

#### **4. Representation of parents improves judicial decision-making.**

Lack of quality legal representation for parents increases the likelihood that the case will be prolonged and that the parent will not successfully complete the case plan, thereby resulting in permanent removal of the child from the parent's care. If attorneys are not appointed, or "[i]f attorneys fail to take timely action to correct errors or to resolve cases, the quality and timeliness of the court's decision-making suffers."<sup>38</sup>

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<sup>38</sup> *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, National Council of Juvenile and Family Court Judges, p. 22 (Spring 1995) [hereinafter *Resource Guidelines*]. See also "*Child Abuse and Neglect Cases: Representation as a Critical Component of Effective Practice*," National Council of Juvenile and Family Court Judges, p. 5 (March 1998).

Lack of quality legal representation for parents also increases the length of each of the numerous hearings by requiring the judge to deal directly with the parent and his/her progress, or lack of progress, on the case plan designed to reunite the family. Based upon long-standing and widely-accepted principles of child development,<sup>39</sup> federal and state statutes mandate that if a child has been ordered into out-of-home placement, the judge must commence a hearing to determine the permanent placement of the child within 365 days of the date the child was removed from home.<sup>40</sup> Prior to making any permanency decision, the judge must, through a series of hearings,<sup>41</sup> oversee the social service agency's efforts to rehabilitate and maintain the family or to provide permanent alternative care for the child victim.

The decisions judges must make in child protection cases are among the most difficult made in any case type. At each stage of the case, most of which involve very serious and complex family problems resulting in child abuse or neglect,<sup>42</sup> the judge must make critical decisions about the child's best interests, the county's efforts to provide corrective services to the child and family, and the parent's progress on the case plan that is designed to rehabilitate the parents and reunify the family. "The importance of skilled advocates in child protection cases is clear: advocates, to a large extent, control the flow of information to the court. Attorneys present testimony, frame issues, and present arguments to the court. Without diligent and skilled attorneys, the court is

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<sup>39</sup> *Id.* at p. 13. "It has long been recognized that children follow general patterns of motor, cognitive, and emotional development. These are the basic "developmental milestones" that usually need to be achieved in order for the next developmental task to be attempted and ultimately mastered. . . . The legal process can be a long and tedious one. Adults can tolerate such a process; a child cannot. The young child who is in the process of developing and achieving basic motor and cognitive landmarks cannot tolerate, without significant scarring, prolonged caretakers with whom he is temporarily placed. Consequently, a permanent placement must be quickly found for the child." Donald Bross and Laura Freeman Michaels, *Foundations of Child Advocacy*, pp. 3-4, 17 (1987).

<sup>40</sup> Adoption and Safe Families Act of 1997, 42 U.S.C. § 675(5)(c); Minn. Stat. § 260C.201, subd. 11 (2008).

<sup>41</sup> Hearings in child protection proceedings include: an Emergency Protective Care (EPC) Hearing, which must be held within 72 hours of the child's removal from home; an Admit/Deny hearing, which must be held within 10 days of the EPC hearing and during which the parent must enter an admission or denial to the allegation(s) in the petition; a Pre-Trial Conference and Trial if the parent denies the allegations in the petition; an Adjudication/Disposition Hearing during which the court must determine the child's legal and physical custody and issue an order establishing a case plan designed to provide services to the child and family necessary to rehabilitate the parent and reunify the family; Review Hearings, which must be held at least every 90 days following disposition to determine whether the parent is making progress on the case plan and what additional services, if any, are required; and a Permanent Placement Determination Hearing if the child has not been returned home within 365 days of the date the child was removed from home. *See* Minnesota Rules of Juvenile Protection Procedure 30, 34, 36, 39, 40, 41, and 42.

<sup>42</sup> In Minnesota in 2007, about 14,800 children were removed from their homes due to abuse or neglect. Of that number, non-medical neglect accounted for about 59% of the traditionally investigated maltreatment reports and 64% of Family Assessment cases; allegations of physical abuse were assessed in 27% of traditional investigations and 37% of Family Assessment cases; and sexual abuse comprised 24% of traditional investigations. *Minnesota's Child Welfare Report for 2007*, *supra* note 30 at pp. 8-9.

unaware of vital facts and does not consider important legal and factual arguments. In short, it is very difficult for judges to make sound and timely decisions without competent attorneys.”<sup>43</sup>

The statutes, rules, and procedures that must be followed in CHIPS, TPR, and other permanency cases are extraordinarily complex. Such laws and procedures are sometimes a challenge for judges and attorneys who are trained in the legal process. Alcohol and drug dependency, mental health issues, poverty, and a lack of education often affect the ability of parents to make progress on their case plans and to have their child returned to their care.<sup>44</sup> It is a significant challenge for parents with these social and medical problems to comprehend and comply with the laws and statutes, thus emphasizing the need for access to legal counsel at the earliest possible opportunity in the proceedings.

Legal representation of parents also avoids increased state and county costs for county attorneys, child protection workers, guardians ad litem, tribes, and other child protection system stakeholders who are required to spend additional time and make additional efforts to work with unrepresented parents.

**5. Representation of parents by qualified and culturally competent attorneys will not only improve outcomes for children and families, it may also improve performance on the national standards under the federal Child and Family Services Review (CFSR).**

In 2007 the Children’s Bureau of the federal Administration for Children and Families (ACF) conducted a Child and Family Services Review (CFSR)<sup>45</sup> in Minnesota. The CFSR is the federal government’s program for assessing the performance of state child welfare agencies regarding their achievement of positive outcomes for children and families related to the goals of child safety, permanency, and well-being. Each state undergoes a CFSR approximately every four years.

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<sup>43</sup> “*Judicial Expertise and Legal Representation*,” *Child Court Works*, ABA Center on Children and the Law, pp. 1-2 (Vol. 6, Issue 3) (August 2003) [hereinafter “*Judicial Expertise and Legal Representation*”].

<sup>44</sup> In Minnesota in 2007, 19% of Minnesota’s child protection cases involved parents with alcohol abuse problems, 30% involved parents with drug abuse problems, and 42% of the cases involved parents with mental health problems. *Minnesota Child Welfare Report for 2007*, *supra* note 28 at p.20.

<sup>45</sup> See Appendix D for an overview of the Child and Family Services Review.

Minnesota received its CFSR final report in May 2008. The report finds that Minnesota is not in substantial conformity with any of the seven Outcomes and with two of the seven System Factors.<sup>46</sup> Of clearest significance to the work of the Parent Representation Workgroup are the results which establish that Minnesota does not meet the national standard for:

- children who exit and re-enter foster care within 12 months (if a child is removed from home and then returned to the parent's care, the child should not re-enter foster care within the next twelve months); and
- two or fewer moves in foster care (a child should not be moved from foster home to foster home).

As a result of the CFSR findings, DHS is required to develop a Program Improvement Plan (PIP) designed to address the areas identified as needing improvement. Minnesota will have two years to meet the targets identified in the PIP. Failure to timely achieve the targets in the PIP means Minnesota is not improving outcomes for abused and neglected children and their families, and may result in a financial penalty of up to \$9.2 million to the State.

As noted in prior sections of this report, appointment of qualified and culturally competent attorneys for parents in child protection cases is critical to assist parents to achieve the goals stated in their case plans. For example, attorneys for parents can help to ensure that it is safe for the child to return to the parent so that the child's re-removal from the parent and re-entry into foster care does not occur. Likewise, attorneys for parents can help to identify relatives who are able to care for children, thus decreasing the likelihood of multiple moves in foster care. The role of attorneys to assist with timely achieving case plan goals and decreasing moves in foster care not only improve outcomes for children and their families, but also may improve performance on federal standards.

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<sup>46</sup> See Appendix E, which is a *Summary of Minnesota's Performance on the 2007 Federal CFSR Measures*.



## CONCLUSIONS

The Parent Legal Representation Workgroup spent several months discussing the crisis in the child protection system caused by lack of resources to provide appropriate legal representation to indigent parents. Included was recognition of the critical role played by qualified, well-trained, culturally competent, and adequately compensated attorneys with realistic caseloads, not just in protecting the legal rights of parents in child abuse and neglect proceedings, but in counseling parents about their rights and responsibilities and facilitating better outcomes for their children.

The Workgroup concludes that the Legislature must address the current crisis in child protection cases caused by the lack of resources for adequate parent legal representation in CHIPS, TPR, and other permanency cases. The need for adequate funding for qualified, well-trained, culturally competent attorneys with realistic caseloads that permit them to fully participate in the collaborative resolution of these cases is immediate.

The Legislature, in consultation with child protection system stakeholders and the Children's Justice Initiative, should take the leadership in designing and implementing a statewide entity whose primary mission is to provide advocacy and legal representation for parents in child-protection cases to ensure a permanent safe and nurturing home for every Minnesota child.

## RECOMMENDATIONS

Based upon the collective experience and expertise of the Workgroup members, as well as empirical data when available, the Workgroup makes the following recommendations regarding legal representation of parents in CHIPS, TPR, and other permanency cases.

**Recommendation 1:** The Legislature should amend Minnesota Statutes § 260C.163, subd. 3, to provide that:

- Parents or legal guardians have a right to legal representation;
- Indigent parents or indigent legal guardians who are parties to CHIPS, TPR, and other

permanency cases and who desire an attorney have a mandatory right to a court-appointed attorney;

- Indigent parents, regardless of party status, involved in TPR cases and who desire an attorney have a mandatory right to a court-appointed attorney;
- Indigent parents of an Indian child or indigent Indian custodians, regardless of party status, involved in CHIPS, TPR, and other permanency cases have the mandatory right to a court-appointed attorney;
- Legal representation should be provided by qualified and culturally competent attorneys; and
- Access to legal counsel should be available to parents who are parties to CHIPS, TPR, and other permanency cases at the earliest possible time, and court-appointed legal representation must begin with the first hearing. Legal representation should continue for parents who are parties until the child is permanently returned home or another permanent placement is achieved and the court's jurisdiction is terminated, including through appeal, if any.

**Recommendation 2:** The Legislature should identify a separate statewide funding source to provide qualified and culturally competent legal representation for parents, Indian custodians, and legal guardians in CHIPS, TPR, and other permanency matters. This funding source should be dedicated either to a separate entity or a separate division of the Board of Public Defense.<sup>47</sup>

Respectfully Submitted,

Members of the Parent Legal Representation Workgroup

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<sup>47</sup> This entity or division could be expanded to provide representation in all other civil matters where courts are mandated to appoint counsel at public expense, including but not limited to such matters as contempt, paternity, civil commitment, and psychopathic personalities. The Workgroup considered the option of developing a pool of pro bono attorneys to represent parents. The Workgroup does not recommend this option because:

- The number of attorneys who are willing to provide pro bono representation to parents in child protection cases is low.
- Even if the pool of volunteer attorneys was large enough, pro bono attorneys typically do not have the specialized training and practice skills required to represent parents in these legally complex and emotionally challenging cases. For example, they often do not have the “counseling” skills required of attorneys to fully represent parents in CHIPS, TPR, and other permanency cases.
- In order to financially maintain their legal practices, attorneys who offer pro bono services to represent clients in CHIPS, TPR, and other permanency cases typically are able to take on only one or two cases at a time. It would not be feasible to recruit enough pro bono attorneys to handle the nearly 5,000 CHIPS and TPR cases filed each year in Minnesota.
- It is well documented that pro bono programs are not less expensive to administer than paid programs. In fact, because of the specialized supervision and recurring training necessary due to frequent turnover in volunteers, pro bono programs can be more expensive than paid programs.

**APPENDIX A: WORKGROUP MEMBERSHIP**

**Chair**

Hon. Helen Meyer, Associate Justice, Minnesota Supreme Court

**Members**

James Backstrom, Dakota County Attorney; Minnesota County Attorney Association

Judith Brumfield, Scott County Human Services; Minnesota Association of County Social Services Agencies

Marvin Davis, Adoptions Operations, Minnesota Department of Human Services

Michael Ford, Quinlivan & Hughes; Minnesota State Bar Association

Rep. Debra Hilstrom, Minnesota House of Representatives

Hon. Jon Maturi, Chief Judge 9<sup>th</sup> Judicial District, Itasca County

Sen. Mee Moua, Minnesota Senate

Irene Opsahl, Supervising Attorney, Legal Aid Society of Minneapolis

Judy Peterson, Guardian Ad Litem Program Manager, 2<sup>nd</sup> Judicial District

Hon. John Rodenberg, 5<sup>th</sup> Judicial District, Brown County

Jessica Ryan, ICWA Attorney, Bluedog, Paulson & Small, P.L.L.P.

Nancy Schouweiler, Dakota County Commissioner; Association of Minnesota Counties

Hon. Terri Stoneburner, Minnesota Court of Appeals

Erin Sullivan Sutton, Child Safety and Permanency, Minnesota Department of Human Services

Hon. Judith Tilsen, 2<sup>nd</sup> Judicial District, Ramsey County

John Tuma, Metropolitan Inter-County Association

William Ward, Chief Public Defender, 10<sup>th</sup> Judicial District

**Staff Attorney**

Judith Nord, Staff Attorney, State Court Administrator's Office

**APPENDIX B: STATUTES AND RULES REGARDING APPOINTMENT AND PAYMENT OF ATTORNEYS**

**MINN. STAT. § 260C.163, SUBD. 3: HEARINGS – APPOINTMENT OF COUNSEL**

(a) The child, parent, guardian or custodian has the right to effective assistance of counsel in connection with a proceeding in juvenile court.

(b) Except in proceedings where the sole basis for the petition is habitual truancy, if the child, parent, guardian, or custodian desires counsel but is unable to employ it, the court shall appoint counsel to represent the child who is ten years of age or older or the parents or guardian in any case in which it feels that such an appointment is appropriate.

(c) In any proceeding where the sole basis for the petition is habitual truancy, the child, parent, guardian, and custodian do not have the right to appointment of a public defender or other counsel at public expense. However, before any out-of-home placement, including foster care or inpatient treatment, can be ordered, the court must appoint a public defender or other counsel at public expense in accordance with paragraph (b).

(d) Counsel for the child shall not also act as the child’s guardian ad litem.

(e) In any proceeding where the subject of a petition for a child in need of protection or services is not represented by an attorney, the court shall determine the child’s preferences regarding the proceedings, if the child is of suitable age to express a preference.

**MINN. STAT. § 611.14: RIGHT TO REPRESENTATION BY PUBLIC DEFENDER**

The following persons who are financially unable to obtain counsel are entitled to be represented by a public defender:

(1) a person charged with a felony, gross misdemeanor, or misdemeanor including a person charged under sections 629.01 to 629.29;

(2) a person appealing from a conviction of a felony or gross misdemeanor, or a person convicted of a felony or gross misdemeanor, who is pursuing a postconviction proceeding and who has not already had a direct appeal of the conviction;

## **APPENDIX**

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(3) a person who is entitled to be represented by counsel under section 609.14, subdivision 2; or

(4) a minor ten years of age or older who is entitled to be represented by counsel under section 260B.163, subd. 4, or 260C.163, subd. 3.

<b>MINN. STAT. § 611.16: REQUESTS FOR APPOINTMENT OF PUBLIC DEFENDER.</b>
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Any person described in section 611.14 or any other person entitled by law to representation by counsel, may at any time request the court in which the matter is pending, or the court in which the conviction occurred, to appoint a public defender to represent the person. In a proceeding defined by clause (2) of section 611.14, application for the appointment of a public defender may also be made to a judge of the Supreme Court.

<b>25 U.S.C. § 1912(B): PENDING COURT PROCEEDINGS (ICWA CASES)</b>
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**Appointment of Counsel.** In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

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### **MINN. STAT. § 260C.331, SUBD. 3(D): ATTORNEYS' FEES MAY BE A CHARGE UPON THE COUNTY**

The following expenses are a charge upon the county in which proceedings are held upon certification of the judge of juvenile court or upon such other authorization provided by law: . . . Reasonable compensation for an attorney appointed by the court to serve as counsel, except in the Eighth Judicial District where the state courts shall pay for counsel to a guardian ad litem until the recommendations of the task force created in Laws 1999, chapter 216, article 7, section 42, are implemented.

### **MINN. STAT. § 375.1691: JUDICIAL ORDER AFTER BUDGET PREPARATION**

Notwithstanding any law to the contrary, a judicial order compelling payment out of county funds shall not be paid unless approved by the county board, if a budget request for the item was not submitted to the county board prior to adoption of the budget in effect for the fiscal year. If the county board refuses to approve payment, the order may be paid in the first fiscal year for which a budget is approved after receipt of the order. This section does not apply to a judgment or other award against the county that is a result of litigation to which the county or a county official in an official capacity was a party.

### **JUV. PROT. RULE 25. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL.**

#### **Rule 25.01. Right to Representation**

Every party and participant has the right to be represented by counsel in every juvenile protection matter, including through appeal, if any. This right attaches no later than when the party or participant first appears in court.

**1999 Advisory Committee Comment (amended 2003)**

Rule 25.01 sets forth the basic principle that each person appearing in court has the right to be represented by counsel. Each person, however, does not necessarily have the right to court-appointed counsel as provided in Rule 25.02.

**Rule 25.02. Appointment of Counsel**

**Subd. 1. Child.** Each child has the right to effective assistance of counsel in connection with a juvenile protection matter. Counsel for the child shall not also act as the child's guardian ad litem.

(a) **Juvenile Protection Matters.** Except in proceedings where the sole basis for the petition is habitual truancy, if the child desires counsel but is financially unable to employ it, the court shall appoint counsel to represent the child who is ten (10) years of age or older and may appoint counsel to represent a child under age ten (10) in any case in which the court determines that such appointment is appropriate.

(b) **Truancy Matters.** In any proceeding where the sole basis for the petition is habitual truancy, the child does not have the right to appointment of a public defender or other counsel at public expense. However, before any out-of-home placement, including foster care or inpatient treatment, can be ordered, the court must appoint a public defender or other counsel at public expense to represent the child.

(c) **Indian Child.** In any juvenile protection matter involving an Indian child, the court may, in its discretion, appoint counsel for an Indian child upon a finding that such appointment is in the best interests of the child.

(d) **Request; Timing.** The court may sua sponte appoint counsel for the child, or may do so upon the request of any party or participant. Any such appointment of counsel for the child shall occur as soon as practicable after the request is made.

**Subd. 2. Parent or Legal Custodian.** Each parent or legal custodian has the right to effective assistance of counsel in connection with a juvenile court proceeding.

(a) **Juvenile Protection Matters.** Except in proceedings where the sole basis for the petition is habitual truancy, if the child's parent or legal custodian desires counsel but is financially unable to employ it, the court shall appoint counsel to represent the parent or legal

custodian in any juvenile protection matter in which the court determines that such appointment is appropriate.

(b) **Truancy Matters.** In any proceeding where the sole basis for the petition is habitual truancy, the parent or legal custodian does not have the right to appointment of a public defender or other counsel at public expense. However, before any out-of-home placement, including foster care or inpatient treatment, can be ordered, the court must appoint a public defender or other counsel at public expense to represent the parent in accordance with subdivision 2(a).

(c) **Indian Custodian.** In any juvenile protection matter involving an Indian child, if the child's parent or Indian custodian is unable to afford it, the court shall appoint counsel to represent the parent or Indian custodian.

(d) **Timing.** The appointment of counsel for the parent, legal custodian, or Indian custodian shall occur as soon as practicable after the request is made.

**Subd. 3. Guardian Ad Litem.** The court may appoint separate counsel for the guardian ad litem if necessary. A public defender may not be appointed as counsel for a guardian ad litem.

**Subd. 4. Child's Preference.** In any juvenile protection matter where the child is not represented by counsel, the court shall determine the child's preferences regarding the proceedings, if the child is of suitable age to express a preference.

### **Rule 25.03. Reimbursement**

When counsel is appointed for a child, the court may inquire into the ability of the parent or legal custodian to pay for the attorney's services and, after giving the parent or legal custodian a reasonable opportunity to be heard, may order the parent or legal custodian to pay the attorney's fees. The parent or legal custodian shall have an ongoing duty to disclose any change in the person's financial circumstances.



**Rule 25.04. Notice of Right to Representation**

Any child, parent, or legal custodian who appears in court and is not represented by counsel shall be advised by the court on the record of the right to representation pursuant to Rule 25.

**Rule 25.05. Certificate of Representation**

An attorney representing a client in a juvenile protection matter, other than a public defender or county attorney, shall on or before the attorney's first appearance file with the court a certificate of representation.

**Rule 25.06. Withdrawal or Discharge of Counsel**

An attorney representing a party in a juvenile protection matter, including a public defender, shall continue representation until such time as:

- (a) all district court proceedings in the matter have been completed, including filing and resolution of all post-trial motions under Rules 45 and 46;
- (b) the attorney has been discharged by the client in writing or on the record;
- (c) the court grants the attorney's ex parte motion for withdrawal upon good cause shown; or
- (d) the court approves the attorney's ex parte written substitution of counsel.

If the court grants an attorney's ex parte motion for withdrawal, the withdrawing attorney shall serve upon all parties and the county attorney a copy of the order permitting withdrawal.

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### APPENDIX C: SUMMARY OF HOW COUNTIES ARE PAYING FOR ATTORNEYS' FEES

\* = Nearly every county board that has agreed to pay for attorneys' fees has agreed to do so only "under protest."

Dist.	County	County Pay Only in 2008*	County Pay in 2008 and Future*	County Not Pay at all	County Not Decided Yet	Fee	How many attorneys employed or under contract?
1	Carver		X			\$75 per hour	3 part-time PDs and private attorneys
1	Dakota		X			Monthly contract for a flat monthly fee, with additional hourly compensation for extended trials	3 attorneys
1	Goodhue		X Through December 2009			Monthly contracts for a flat monthly fee of \$1,250, with additional hours compensation for extended trials	4 attorneys
1	LeSueur	X	Will review after 2008 for 2009			\$75 per hour	Area Attorneys (including the Public Defenders), but no one is under contract
1	McLeod		X County will pay through 2009			County has approved additional funding for FY08 and FY09 \$75 per hour	12 attorneys on appointment list
1	Scott		X			\$100	3 attorneys from one law firm on contract
1	Sibley		X			County has approved additional funding for FY08 and FY09 \$75 per hour	11 attorneys on appointment list
2	Ramsey	X				2008 four attorneys with total cap of \$75,000; 2009 no decision yet (court request for \$180,000 and county manager requested \$125,000, and board will decide)	
3	Dodge	Board has agreed to pay with monthly reviews of these fees. Not sure if they will continue in 2009.				Same court appointed attorney rate of \$100/hour	Roughly 8-10 family law attorneys
3	Fillmore				X	On July 9 Board received resolution to not fund; no decision yet	
3	Freeborn	Board has agreed to pay PD atty fees this year until the line item is used up, which			Jan-Dec 2009, we have requested \$150,000 extra in line item for atty fees but	We have a list of local attorneys that do court appointments and are paid \$100/hour. The county has sent out a proposal to the local bar to see if anyone will do it for less; not sure what they have heard back on that.  (continued next page)	

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Dist.	County	County Pay Only in 2008*	County Pay in 2008 and Future*	County Not Pay at all	County Not Decided Yet	Fee	How many attorneys employed or under contract?
		is almost gone.			budget has not been approved by the board yet, sometime in December		
3	Houston	X			X county has not resolved the issue for 2009	\$5,000 cap for 2008 with an additional \$2,000 to handle conflict matters if needed.	2 attorneys
3	Mower	X				\$20,000 cap for 2008; no decision for future	
3	Olmsted				X	County refused to pay as of July 2008. Judges nevertheless began appointing attorneys for parents at county expense. The county is reconsidering the issue and is likely to budget for the expense for 2009. Believes the county will also pay for the remainder of 2008 but may delay actual payment until after the first of the year. Recruited at least two attorneys.	
3	Rice			X		County decided not to pay, with or without a court order. A couple of attorneys have agreed to take the appointments, which are being made. They will stop taking appointments when the county doesn't pay.	
3	Steele	X				\$85/hour for four attorneys for 2008; no decision yet on 2009	
3	Wabasha			X		County Board has declined to pay for 2008 and no plans to do so for 2009	
3	Waseca				X	Emails sent; Will know after Board meeting 7/18	
3	Winona		X			\$100 per hour	There is not a contract; there are a total of 7 private attorneys on the list. The county will consider a contract after tracking for 6-12 months.
4	Hennepin		X			\$24 - \$51/hour County Board funds public defender system and will continue to do so	
5	Blue Earth		X Term of contract 9/1/08 through 8/31/09			The county now has a contract for 2 attorneys from 9-1-08 through 8-31-09. Rate of payment: \$60/hr with billable maximums: \$875 for CHIPS; \$1260 for CHIPS trial; \$3,360 for TPR trial	
5	Brown		X			\$75/hour	4 family law attorneys
5	Cottonwood		X			\$75.00/hr; not sure if will remain the same for 2009	2 attorneys; using our Legal Services contract as a guide – but these attorneys are not under the contract

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Dist.	County	County Pay Only in 2008*	County Pay in 2008 and Future*	County Not Pay at all	County Not Decided Yet	Fee	How many attorneys employed or under contract?
5	Faribault	X				\$75.00/hour; not sure about 2009	
5	Jackson		X			\$75 per hour through 2009	
5	Lincoln						
5	Lyon		X		X	Believes county will pay, but has not discussed with county board	
5	Martin				X	No meeting scheduled; interim agreement to pay \$75/hour	
5	Murray						
5	Nicollet		X Pay through 1/31/09		X	2 are getting \$1,450 a month-conflict person \$75/hr	3 family law attorneys
5	Nobles		X Reconsider in July 2009			Flat fee of \$1,500 on all Chips/TPR cases	2 attorneys; One attorney is a local private attorney who practices in all areas and is also a county public defender on commitments, etc. The other attorney is a part-time state public defender/private attorney.
5	Pipestone		X				
5	Redwood						
5	Rock						
5	Watonwan					\$75 per hour through 2009	
6	Carlton		X			\$80 per hour	
6	Cook						
6	Lake				X	Meeting held; awaiting decision	
6	St. Louis		X			County board signing a 12 month contract	
7	Becker		X Contract 9/15/08 – 12/31/08 Proposal for 1/1/09 to 12/31/09			Contracted with 2 local attorneys at \$1,200 per month each	Two attorneys
7	Benton	X	Believe to be true			Attorneys are paid based upon the type of appointment. CHIPS = \$500 Permanency = \$1000 (If originated as CHIPS) Permanency = \$1500 (If originated as permanency) Termination = \$3000  There is no cap on hours as they are paid by the case.	Six local attorneys.
7	Clay		X Agreement through 12/31/09 Requestin			\$50 per hour	Two Attorneys (1 – public defender; 1 – private attorney) Additional attorney who handles conflict cases.

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Dist.	County	County Pay Only in 2008*	County Pay in 2008 and Future*	County Not Pay at all	County Not Decided Yet	Fee	How many attorneys employed or under contract?
			g proposal for 1/1/09 through 12/31/09				
7	Douglas		X			\$75 per hour	Six attorneys
7	Milles Lacs	X Current contract expires Dec 31 2008 the County has not ruled out extending this in 2009.				New CHIPS case: \$500 per case; Permanency case: \$1,000 in addition to CHIPS ; \$1500 if newly appointed at time of filing Permanency Petition; Qualifying TPR cases: \$,3000 per case	Three attorneys have signed a contract with the county to do this work. Part-time PD and 2 private attorneys (one of whom was a PD prior to being laid off)
7	Morrison		Yes Yearly contract			\$85 conflict	1 Part-time public defender. Conflicts are distributed to another part-time public defender
7	Otter Tail		Contract for Jan through Dec, 2009			2008 three attorneys for \$1,350 per month plus costs and expenses and mileage; also 1 attorney for FDT at \$50/hour and 1 attorney for CJI at no compensation	3 attorneys (2 part-time PD's and 1 Private Attorney)
7	Stearns		X			Attorneys are paid based upon the type of appointment. CHIPS = \$500 Permanency = \$1000 (If originated as CHIPS) Permanency = \$1500 (If originated as permanency) Termination = \$3000  There is no cap on hours as they are paid by the case.	Six local attorneys.
7	Todd	X				Did not address 2009+; waiting for Legislature to do its job \$85 per hour.	2 attorneys
7	Wadena	X				New CHIPS case: \$500 per case; Permanency case: \$1,000 in addition to CHIPS ; \$1500 if newly appointed at time of filing Permanency Petition; Qualifying TPR cases: \$,3000 per case	None are under a contract. They are on a list of who is willing to do these types of cases. Part-time Public Defenders and family law attorneys
8	Big Stone		X			\$75/hour	3 attorneys
8	Chippewa		X			\$75/hour	4 attorneys
8	Grant		X			\$75/hour	8 attorneys
8	Kandiyohi	X				\$75/hour	3 attorneys
8	Lac Qui Parle		X			\$75/hour	5 attorneys
8	Meeker		X			\$75/hour	6 attorneys

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Dist.	County	County Pay Only in 2008*	County Pay in 2008 and Future*	County Not Pay at all	County Not Decided Yet	Fee	How many attorneys employed or under contract?
8	Pope		X			\$75/hour	6 attorneys
8	Renville		X			\$75/hour	4 attorneys
8	Stevens		X			\$75/hour	6 attorneys
8	Swift		X			\$75/hour	6 attorneys
8	Traverse		X			\$75/hour	3 attorneys
8	Wilkin		X			\$75/hour	4 attorneys
8	Yellow Medicine		X			\$75/hour	4 attorneys
9	Aitkin		X			Tentative agreement, no formal decision yet	
9	Beltrami	X				\$80/hour; ordering already-appointed PDs to continue irrespective of stage of proceeding; added a third contract attorney	
9	Cass				X	Request for 2008-2009 made in August; decision to be made in late September	
9	Clearwater				X	Meeting in late July; won't know until then	
9	Crow Wing			X		Appointed private counsel and sent bill to county – don't know if they have or will pay	
9	Hubbard				X	Board to meet in October to discuss	
9	Itasca				X	Meeting planned; awaiting decision; \$75 per hour	
9	Kittson		X			Board has agreed to add dollars to the budget for these cases. We are anticipating little financial impact	
9	Koochiching						
9	Lake of Woods						
9	Mahnomen		X		\$75/hour	I have not been told that they are not paying, and intend to send the bills to the County	
9	Marshall	X					
9	Norman		X		\$75/hour	I have not been told that they are not paying, and intend to send the bills to the County	
9	Pennington	X					
9	Polk		X			\$75 per hour	
9	Red Lake		X			\$75 per hour	
9	Roseau		X			Board has agreed to add dollars to the budget for these cases. We are anticipating little financial impact	
10	Anoka		X			Two retainer type contracts – \$5,000/mo for a managing law firm and attorney, \$4,500/mo for another attorney in private practice, up to five attorneys at \$75 per hour who may get appointed in cases involving multiple parents	1-7 depending on the circumstances of the case – multiple children and/or parents

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Dist.	County	County Pay Only in 2008*	County Pay in 2008 and Future*	County Not Pay at all	County Not Decided Yet	Fee	How many attorneys employed or under contract?
10	Chisago					\$100/hour-anticipating doing a contract for 2009 after general costs are assessed from 2008. Anticipate a cap with the contract-currently bills over \$500 are reviewed by the court and the court administrator-under \$500 are reviewed by the court administrator	8 attorneys are currently on the CHIPS court-appointed attorney list.
10	Isanti		X			Contract for 9 months to 7-1-09	
10	Kanabec		X			\$85 per hour, no windshield time, no office expenses, case work only	Call list has approximately 6 family law attorneys
10	Pine		X			The County is paying for attorneys to represent parents in CHIPS and TPR cases at a flat rate of \$75.00 per hour. We have established a roster of private attorneys including some part time public defenders for appointment. This is to be reviewed at year end to analyze whether a contract might be more cost effective	
10	Sherburne		X			Contracts for 2009 to be approved on 11-18-08 County Board Meeting \$85/hour	2 attorneys
10	Washington						
10	Wright	X	X (?)			Contract for 6 months through 12/08 for first appointment in a case. Attorneys appointed from approved list are paid \$100 per appearance unless receive specific approval for hourly pay at \$85 per hour	1 under contract, 4 additional attorneys on approved list

### APPENDIX D: OVERVIEW OF CHILD AND FAMILY SERVICES REVIEW (CFSR)

#### **CFSR Purpose and Timing**

In 2007 the Children’s Bureau of the Federal Administration for Children and Families (ACF) conducted a Child and Family Services Review (CFSR) in Minnesota. The CFSR is the federal government’s program for assessing the performance of state child welfare agencies with regard to achieving positive outcomes for children and families regarding the goals of child safety, permanency, and well-being. Each state undergoes a CFSR approximately every four years.

#### **CFSR Identification of “Strengths” and “Areas Needing Improvement”**

The CFSR assesses State performance on seven Outcomes (comprised of 23 items) and seven Systemic Factors (comprised of 22 items). Each item under an Outcome or Systemic Factor is rated as either a “strength” or an “area needing improvement” based on whether state performance on the item meets Federal policy requirements. With respect to the seven Outcomes, a state may be rated as having “Substantially Achieved,” “Partially Achieved,” or “Not Achieved” the Federal outcome. For a state to be in substantial conformity with an Outcome, 95% of the cases reviewed must be rated as having substantially achieved the Outcome. With respect to the CFSR standards, the CFSR documentation states as follows:

The ACF has set very high standards of performance for the CFSR. The standards are based on the belief that because child welfare agencies work with our country’s most vulnerable children and families, only the highest standards of performance should be acceptable. The focus of the CFSR process is on continuous quality improvement; high standards are set to ensure ongoing attention to the goal of achieving positive outcomes for children and families with regard to safety, permanency, and well-being.

#### **CFSR Final Report and Program Improvement Plan**

At the conclusion of the 12-month CFSR process, the Children’s Bureau issues a final report for the state which includes findings identifying “strengths” and “areas needing improvement.” A state that is not in substantial conformity with a particular outcome must develop (in conjunction with the ACF) and implement a Program Improvement Plan (PIP) to address the areas of concern



associated with that outcome. The state has two years within which to achieve the agreed upon improvements specified in the PIP, and must submit regular progress reports. Failure to achieve the goals in the PIP may subject the state to financial sanctions in the form of mandatory return of some of the state's federal foster care funding. In the first round of CFSRs, six states were assessed financial penalties because of failure to achieve the goals specified in their PIPs, although three of those states are appealing those penalties.

As a result of the findings related to Minnesota's CFSR, the Department of Human Services is required to develop a PIP designed to address the areas identified as needing improvement. Once the PIP is approved, Minnesota will have two years to meet the targets identified in the PIP. Failure to timely achieve the targets in the PIP means Minnesota is not improving outcomes for abused and neglected children and their families, and may result in a financial penalty to the state of up to \$9.2 million.

### **Minnesota Findings – Areas Needing Improvement**

The CFSR report states that Minnesota did not achieve substantial conformity with any of the seven Outcomes and with two of the seven System Factors, including the Case Review System factor which is of relevance to the work of the Expedited Appeals Subcommittee.

As stated in Section B above, among the federal standards dealing with the Case Review System factor is the mandate that adoptions must be finalized within 24 months of a child's removal from home. In Minnesota, this outcome was identified as an "Area Needing Improvement" because "the State did not meet the national standard [for] . . . Timeliness of Adoptions." The Report states "DHS had made diligent efforts to achieve adoptions in a timely manner in 43 percent of the cases. This percent is less than the 90 percent or higher required for a rating of Strength. In the State's 2001 CFSR, this item was also rated as an Area Needing Improvement."

The CFSR report states that a contributing factor to the negative finding is Minnesota's court practices and, specifically, the appellate process:

[A]lthough the State has a process in place for filing termination of parental rights (TPR) for children who have been in foster care, in both the Statewide

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Assessment and the on-site review, concerns were identified with timely filing or achievement of TPR. These delays were attributed for the most part to court practices, such as delays in scheduling, continuances, appeals, and problems with establishing paternity.

## APPENDIX

### APPENDIX E: SUMMARY OF MINNESOTA'S PERFORMANCE ON FEDERAL MEASURES FOR 2007

SUMMARY OF MINNESOTA'S PERFORMANCE ON FEDERAL MEASURES FOR 2007	National Standard	Goal	Minnesota Performance CY/FY 2007
<b>Safety Indicator 1: Absence of Maltreatment Recurrence</b>	94.6%	↑	95.2%
<b>Safety Indicator 2: Absence of CA/N in Foster Care</b>	99.68%	↑	99.64%
<b>Permanency Composite 1: Timeliness and Permanency of Reunification</b>	122.6	↑	117.5
<i>Component A: Timeliness of Reunification</i>			
C1.1 Reunification in less than 12 months for children exiting foster care	75.2%	↑	84.4%
C1.2 Median stay in foster care to reunification (months)	5.4	↓	4.3
C1.3 Entry cohort of children who reunify in less than 12 months	48.4%	↑	58.1%
<i>Component B: Permanency of Reunification</i>			
C1.4 Children who exit and re-enter foster care in less than 12 months	9.9%	↓	25.3%
<b>Permanency Composite 2: Timeliness of Adoptions</b>	106.4	↑	94.9
<i>Component A: Timeliness of Adoptions of Children Discharged From Foster Care</i>			
C2.1 Adoption in less than 24 months for children exiting to adoption	36.6%	↑	50.1%
C2.2 Median length of stay to adoption (months)	27.3	↓	23.9
<i>Component B: Adoption for Children Meeting ASFA Time-In-Care Requirements</i>			
C2.3 Children in foster care for 17 or more months (on day 1 of the year) who were adopted by the end of the year	22.7%	↑	17.2%
C2.4 Children in foster care for 17 or more months (on day 1 of the year) who achieved legal freedom within 6 months of start of the year	10.9%	↑	2.6%
<i>Component C: Adoption of Children Who Are Legally Free for Adoption</i>			
C2.5 Legally free children adopted in less than 12 months	53.7%	↑	32.6%
<b>Permanency Composite 3: Achieving Permanency for Children in Foster Care</b>	121.7	↑	104.5
<i>Component A: Achieving permanency for Children in Care for Extended Periods of Time</i>			
C3.1 Children (age 17 or younger on day 1 of the year) in foster care 24+ months discharged to permanent home before the end of year and age 18	29.1%	↑	15.2%
C3.2 Children (age 17 or younger on day 1 of the year) with TPR discharged from foster care to a permanent home prior to age 18	98.0%	↑	85.6%
<i>Component B: Children Emancipated Who Were in Foster Care for Extended Periods Of Time</i>			
C3.3 Children emancipated/age 18 who were in foster care for 3 years or longer	37.5%	↓	41.7%
<b>Permanency Composite 4: Placement Stability</b>	101.5	↑	87.9
C4.1 Two or fewer placement settings for children in foster care less than 12 months	86.0%	↑	84.8%
C4.2 Two or fewer placement settings for children in foster care for 12 to 24 months	65.4%	↑	55.3%
C4.3 Two or fewer placement settings for children in foster care for 24+ months	41.8%	↑	31.2%

- The National Standard is computed at the 75th percentile of all states' performance, using federal AFCARS data for the period April 1, 2003, through September 30, 2004.
- Goal column arrow indicates if the performance goal for each measure is either higher or lower than the national standard.
- MN performance on each *permanency composite* is calculated for FFY 2007 from October 1, 2006, through September 30, 2007, from AFCARS data. Source: Children's Bureau, Administration of Children and Families.
- MN performance on each *measure* is calculated for CY 2007 from January 1 through December 31, 2007, from SSIS data.
- Source: FY = Fiscal year. CY = Calendar year. Minnesota Department of Human Services.

Green Shading = Meets national standard

Red Shading = Below national standard

Yellow Shading = Above median and below national standard.