



MINNESOTA
JUDICIAL
BRANCH

EXECUTIVE SUMMARY

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

November 17, 2008

**MINNESOTA JUDICIAL BRANCH
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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.

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.
2. Representation of parents in child protection cases by qualified and culturally competent attorneys for parents improves outcomes for children and families.
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.
4. Representation of parents improves judicial decision-making.
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).

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.

Respectfully Submitted,

Members of the Parent Legal Representation Workgroup

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 9th 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, 2nd Judicial District
Hon. John Rodenberg, 5th 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
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