

**REQUEST FOR PROPOSALS
GUARDIAN AD LITEM PILOT PROJECTS**

In order to receive consideration, the written applications must be **RECEIVED** by 2:00 p.m. on . The applicant is responsible for assuring that a reliable method of delivery is chosen to ensure that the application is **RECEIVED** by 2:00 p.m. on the date listed above. Postmarks will not be used in any way to consider receipt of applications.

The application original and eight copies must be sent to or delivered to:

**Kansas Department of Social and Rehabilitation Services
Unit
Children & Family Policy
Docking State Office Building 5-South
915 SW Harrison Street
Topeka, KS 66612**

Contact Persons:

**Kansas Department of Social and Rehabilitation Services
Children and Family Policy**

PROJECT DESCRIPTION

This Request for Proposals (RFP) is being issued for interested judicial districts, private corporations, counties, or a combination of entities to submit an application for a grant for a demonstration project to enhance existing guardian ad litem services for children alleged or adjudicated to be in need of care in order to demonstrate that adequate representation for the child results in a cost efficient provision of safety, permanence and well being for the children served.

The RFP for demonstration projects intentionally does not narrowly define the demonstration project

to allow for each interested applicant to submit an application specifically tailored to meet local needs. Each project must be designed to serve a judicial district in coordination with existing systems. The projects will be required to demonstrate the maintenance of current effort and resources. The applicant has the discretion to determine the number and qualifications of personnel. Job descriptions for each position must be included in the application. The grants will be awarded to the projects most likely to demonstrate the value of collaboration between the state and community as well as between the applicant and existing systems in meeting the goals set out in the Kansas Code for Care of Children. Specifically the application should address a child's need for safety, permanence and well being. The application must specifically address Supreme Court Rule 100 and describe compliance plan and procedure.

It is intended that project personnel will provide trained, supervised attorneys to represent children directly and will provide support for attorneys already serving as guardians ad litem. Project personnel will include sufficient support staff. Project design will address staffing necessary to serve the expected population within acceptable caseload limits.

Grantees will function as independent contractors and not as agents, employees, partners, joint ventures or associates of grantor. Grantee accepts full responsibility for payment of unemployment insurance, workers compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work pursuant to this grant.

Grant applications will be reviewed and selection of projects overseen by the Supreme Court Task Force on Permanency Planning. The Task Force will review project reports and provide a report on the effectiveness of each project including recommendations for future or expansion of existing projects.

SCOPE OF WORK

The grantee will be responsible for coordinating this program, before submission of the application, with the judicial district to be served. Written comments from the Chief Judge and each judge presiding over child in need of care cases must be attached to the proposal upon submission, and these comments will be considered in the proposal selection process. The grant application should include information concerning data collection available within the judicial district. If the district includes children whose data are not included in a state system, the application must address data collection for this population.

While not funded by this grant, the application should address the representation of parents and the state. The parent's attorney is often in the best position to know which services are most likely to be effective in supporting a successful reintegration and may be able to assist the parents in recognizing when an alternative permanency is in the best interest of their child. Similarly the process is not efficient when the state is not represented by an attorney with the training, resources and support necessary to carry out the responsibilities assigned by the Kansas Code for Care of Children.

The grantee will be responsible for assuring that this program would not duplicate or replace any existing resource or program. The project personnel will work in conjunction with others serving as guardians ad litem and is not intended to replace or eliminate any of those professionals, but to enhance the existing representation of children.

Training is recognized as essential in providing children with the advocacy necessary to provide each child with safety, permanence and well being. The application must include a plan to address the training needs of both social services, legal and support staff. In addition to providing training, the grantee will develop a curriculum and manual. Both the curriculum and manual will be made available to others in the field. Training provided would be open to other guardians ad litem, attorneys representing parents, prosecutors as effective representation of all parties assists in providing children with safety, permanence and well being.

The grantee will be responsible for overseeing the project, providing personnel, obtaining and maintaining an adequate work place and adequate resources. This must include a sufficient secretarial/clerical support staff for professional positions. The job description of this support staff person must be included in the application. Additional personnel may include investigators, law clerks, social workers or others. The application must address the function of each position and include job descriptions. The application must address caseloads and methods to limit as necessary to insure adequate service for each child.

The grantee will be responsible for overseeing all services and personnel.

The grantee will be responsible for assuring that quarterly program reports are submitted to the SRS Grant Administrator. Grants/Contracts Management Unit, Children and Family Policy Division,

addressing progress toward meeting the outcomes and a descriptive narrative about any accomplishments and/or obstacles.

The grantee, or designee, will be responsible for providing to CFP monthly fiscal reports. Fiscal reports will be due by the 10th of the following month by submitting a completed ADM-3905.

A presentation to the Supreme Court's Task Force on Permanency Planning is required. All expenses, including travel, for attendance at this Task Force meeting are allowable under the grant awarded.

The grantee will be responsible for working closely with the court including court appointed special advocate programs (CASA) and citizen review boards (CRBs), local SRS, mental health center, community developmental disability organization, school system, other community agencies involved with a child receiving representation or support services from the project. Effective communication and coordination are perceived to facilitate safety, permanence and well being for children. Documented support from local entities will be considered favorably when reviewing the application.

The project will not in any way eliminate or replace current efforts or resources.

DELIVERABLES AND PERFORMANCE REQUIREMENTS:

Following are the expectations of project:

1. To accept appointments as guardian ad litem for children alleged or adjudicated to be in need of care and work diligently to eliminate any legal barriers to that child's safe maintenance with family, safe return to family or safe, permanent placement with an adoptive parent or permanent guardian. The project must demonstrate that children served in this capacity receive a significant benefit in increased safety and decreased separation from a permanent family.
2. To solicit requests and provide assistance to other guardians ad litem as necessary to remove legal barriers but without replacing or diminishing existing efforts. The project must demonstrate that children served in this capacity receive a significant benefit in increased safety and decreased separation from a permanent family. Assistance includes:
 - review referred cases;
 - identify legal barriers to accomplishing the case plan goal;
 - assist in or remove the legal barrier (i.e. lack of notice to a grandparent);
 - assist in filing and prosecution of motions, including, when necessary appellate review; and/or

file and prosecute motions, including when necessary, appellate review.

3. To provide training material and opportunities for attorneys, social workers and others. The training for attorneys will comply with all requirements of the Supreme Court and specifically address the child's sense of time and the skills necessary to move the legal process forward. The training for social workers must include forensic skills to enable social workers to effectively contribute to legal process. Conjoint training of attorneys and social workers to promote effective collaboration on behalf of children. Material produced must include a curriculum and manual which is made available for other judicial districts and communities. The application should include a method for evaluating the effectiveness of training provided.
4. To educate communities through networking, presentations and participation in community efforts on behalf of children.
5. To be funded by this grant for a three year period. The application must reflect plans to continue after grant funds are eliminated and must include a description of current efforts and resources. The application must clearly include a maintenance of current efforts and resources. Applications which include community resources or other matching funds will receive favorable consideration. All grant funding is contingent upon continued availability of funding.
6. To collect and analyze data as necessary to evaluate the project and progress toward goals. Data collection may include data already collected by social services agencies, the Office of Judicial Administration, the judicial district to be served, and others. The application must identify these sources and include documentation of the available data and a statement that the entities committed to necessary collaboration. The data is expected to include:
 - number of legal system delays (i.e. continuances, length of time between significant legal events like temporary custody, adjudication, disposition)
 - number of children served
 - comparison of time to permanency for children served and other children
 - client satisfaction
 - number of social workers trained
 - number of attorneys trained
 - pre and post test results of those trained

FOLLOWING ARE PERFORMANCE OUTCOMES:

1. Children served by the project will achieve permanency more quickly and as safely as children who are not served by the project.

2. Children served by the project will return to foster care less often than children who are not served by the project.
3. Children served by the project, when separated from family, will have fewer placements.
4. Children served by the project will experience less abuse or neglect.
5. The families of children served by the project will more often participate in case planning conferences.
6. Children served by the project will receive their Kan Be Healthy screens more quickly.

GRANT APPLICATION:

To be considered for review, every application must include the following:

- a) completed grant application, using the form provided by SRS, including performance outcomes and budget, per this RFP;
- b) position descriptions;
- c) written support from the judicial district including both the Chief Judge and all judges regularly assigned to child in need of care cases; and
- d) written commitment of support from community (i.e. schools, CASA, CRB, local SRS, prosecutors, mental health professionals, foster parent associations.)

This RFP shall become part of the grant agreement for the application(s) selected for award.

Each proposal must be no more than 20 pages including all attachments.

CLOSING DATE FOR SUBMITTING PROPOSALS:

Written applications must be RECEIVED by 2:00 p.m. by the date listed on page 1 of this RFP. The applicant is responsible for assuring that a reliable method of delivery is chosen to ensure that the application is RECEIVED by 2:00 p.m. Postmarks will not be used in any way to consider receipt of proposal.

REQUIRED COPIES:

A signed original and eight copies should be sent to:

**Kansas Department of Social and Rehabilitation Services
Children and Family Policy**

**Docking State Office Building 5-South
915 SW Harrison Street
Topeka, Kansas 66612
Attn:**

ESTIMATED ANNUAL DEMAND FOR SERVICES:

This grant will be for three state fiscal years which will end 6-30-200. The SRS Grant Administrator will be the point of contact for this. The amount of grant funds available for the first year will be \$_____. Amount of grant funds available the second year will be \$_____. Amount of grant funds available the third year will be \$_____.

COST OF APPLICATION:

All costs incurred in preparing and submitting an application in response to this RFP will be the responsibility of the applicant and will not be reimbursed by SRS.

RIGHT TO AWARD, REJECT OR NEGOTIATE:

SRS, Children and Family Policy Division, reserves the right to award a grant on the basis of applications submitted. Therefore, applications should be submitted with all required information and on the most favorable terms (maximum benefit for dollars expended) which the applicant can propose. SRS Children and Family Policy Division reserves the right to reject any and all applications or to negotiate separately in any manner which serves the best interests of Kansas and the goals of this project. Selection will be overseen by Supreme Court Task Force on Permanency Planning.

APPEAL PROCEDURE:

Private or nonprofit grantees may appeal any final act or decision made by the Kansas Department of Social and Rehabilitation Services relative to the provisions of the grant award and according to regulations governed by K.S.A.75-3306 et. seq as amended.

TERMINATION:

1. Any award or agreement may be canceled by either party at any time, with or without cause, upon 30 days notice, in writing, and delivered by mail or in person.
2. **WARNING:** This program is administered by the Kansas Department of Social and Rehabilitation Services. Rules and regulations governing the program are subject to change. From time to time it will be necessary for the Secretary of SRS to revise the rules and regulations and eligibility requirements in accordance with statutory provisions when such changes are necessitated by money limitations or other circumstances. This means that eligibility for participation in a program and the continuation of programs is subject to program and money changes. Participation is subject to change after notice.

AGREEMENT WITH LAW AND DEPARTMENT POLICIES:

All awards and agreements must be subject to the laws of the United States of America, the State of Kansas, and policies of the Department of Social and Rehabilitation Services. In accepting the award, the grantee agrees to the following:

1. The respondent and others interested in this agreement are hereby notified and understand that any agency of the State of Kansas and all boards, commissions, departments, agencies, bureaus, and institutions, and all community assemblies and groups may be immune from liability and suit under provisions of K.S.A. 75-6101 et. seq and the parties agree that no provision herein, express or implied, special or otherwise, directly or indirectly, shall be deemed to constitute a waiver of this immunity, notwithstanding any such provision to the contrary.
2. Grantee represents that by acceptance of this grant the Grantee is not in violation of any criminal or civil offense that indicates a lack of business integrity or business honesty. This includes conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or grant or subcontract or subgrant or in the performance of such contract or grant or subcontract or subgrant, conviction under state or federal statutes or embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; conviction under state or federal antitrust statutes, and any other offenses to be so serious or compelling as to affect responsibility as a state contractor. For the purpose of this declaration, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly or acting in concert with one or more individuals or entities, owned or controlled 25% or more of its equity, or otherwise controlled its management or policies.
3. To comply with the requirements of Civil Rights Act of 1964 (P.L. 88-352 and K.S.A. 44-1030), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706) and the Americans with Disabilities Act of 1990 (P.L. 101-336). The Department will not do business with any individual or firm whose employment or service delivery practices discriminate against any

person on the grounds of race, color, national origin, ancestry, religion, age, sex, handicap or political affiliation. To do so may be deemed by the Secretary of SRS to be a breach of the grant.

4. Interest in all property herein described, if any, or any personal liability to him/her arising from this agreement, to whatever extent, shall be considered to be covered by applicable insurance by the grantee to extent required. Notwithstanding any language to the contrary, no interpretation shall be to find the State of Kansas or any of its agencies responsible for loss or damage to persons or property nor to hold grantees harmless from such occurrences. To maintain books, records, documents and other evidence, and certified accounting procedures and practices approved by the Department which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this agreement, and to summarize these costs in such a manner so as to directly identify them with the delivery of the specific services outlined in the project agreement.

6. Nothing in this RFP shall be interpreted to indicate any effort or ability of SRS to influence or interfere with the appropriate relationship between the guardian ad litem and the child client.

**PROPOSED CHANGES TO ADMINISTRATIVE ORDER NO. 100
RE: GUIDELINES FOR GUARDIANS AD LITEM**

1 The Supreme Court guidelines are recommended for the representation of children by
2 guardians *ad litem* in cases pursuant to the Kansas Code for the Care of Children, K.S.A. 38-1501
3 *et seq.*; the Parentage Act, K.S.A. 38-1110 *et seq.*; and Domestic Relations, K.S.A. 60-1601 *et seq.*
4 unless departure is authorized by the presiding judge or designee for good cause shown.

5 The appointing judge or designee should:

6 1) issue an Order appointing the guardian *ad litem* on a form substantially as attached, and

7 2) insure compliance with this Administrative Order.

8 A guardian *ad litem* should:

9 1) Conduct an independent investigation consisting of the review of all relevant documents
10 and records including those of social service agencies, police, courts, physicians (including mental
11 health), and schools. Interviews either in person or by telephone with the child, parents, social
12 workers, relatives, school personnel, court appointed special advocates (CASAs), caregivers, and
13 others having knowledge of the facts are recommended. Continuing investigation and regular ongoing
14 contact with the child are mandatory.

15 2) Determine the best interests of the child by considering such factors as the child's age and
16 sense of time; level of maturity; culture and ethnicity; degree of attachment to family members,
17 including siblings; as well as continuity, consistency, permanency and the child's sense of belonging
18 and identity.

1 3) File appropriate pleadings on behalf of the child. Appear for and represent the child at all
2 hearings. All relevant facts should be presented to the court, including the child's position. If the child
3 disagrees with the guardian *ad litem*'s recommendations, the guardian *ad litem* must inform the court
4 of the disagreement. The court may, on good cause shown, appoint an attorney to represent the
5 child's expressed wishes. If the court appoints an attorney, that individual serves in addition to the
6 guardian *ad litem*. The attorney must allow the child and the guardian *ad litem* to communicate with
7 one another but may require such communications to occur in the attorney's presence.

8 ~~3 4) Provide reports at every hearing, such reports being written or oral at the discretion of~~
9 ~~each judicial district the judge.~~

10 ~~4) Appear at all hearings to represent the best interests of the child. All relevant facts should~~
11 ~~be presented to the court and the child's position, if not consistent with the determination of the~~
12 ~~guardian *ad litem* as to best interests, shall be presented.~~

13 5) Explain the court proceedings and the role of the guardian ad litem in terms the child can
14 understand.

15 6) Make recommendations for specific appropriate services for the child and the child's family.

16 7) Monitor implementation of service plans and court orders.

17 ~~8) File appropriate pleadings on behalf of the child.~~

18 ~~9 8) Participate in prerequisite education prior to appointment as a guardian *ad litem* which~~
19 ~~consists of ten (10) hours not less than six (6) hours including one (1) hour of professional~~
20 ~~responsibility, and participate in annual continuing education consisting of four (4) hours not less than~~
21 ~~six (6) hours. Areas of education should include, but are not limited to, dynamics of abuse and~~
22 ~~neglect; roles and responsibilities; cultural awareness; communication and communication with~~

1 children skills and information gathering and investigatory techniques; advocacy skills; child
2 development; mental health issues; permanence and the law; community resources; ~~court observation~~
3 professional responsibility; special education law; substance abuse issues; school law; and the code
4 for the care of children. Such hours of continuing education, if approved by the Continuing Legal
5 Education Commission, shall apply to the continuing legal education requirements of Supreme Court
6 Rule 802 and the minimum total hours annually required by that rule are not modified by these
7 guidelines. The appointing judge or designee shall have the authority to approve the prerequisite
8 education and continuing education not otherwise approved by the Continuing Legal Education
9 Commission. Guardians ad litem shall be responsible for maintaining a record of their own
10 participation in prerequisite and continuing education programs. Upon the request of the appointing
11 judge or designee, the guardian ad litem shall be required to provide evidence of compliance with this
12 order. Such prerequisite education may be waived by the ~~Administrative~~ appointing Judge or
13 designee upon showing of ~~ten (10) hours of education in this field within the last three (3) years or~~
14 ~~practice in this field during that time~~ a need for emergency temporary appointment. The educational
15 requirements shall be completed within six (6) months of appointment. The ~~These~~ educational
16 requirements shall not be effective for a period of six (6) months from the date ~~these guidelines are~~
17 this order is adopted by the Supreme Court.

18 **[History:** New order effective April 19, 1995.]

Comments

It appears that some judicial districts are not in compliance with the Order, so initial language was added suggesting some duties to the judge who appoints the guardians *ad litem* pursuant to the Kansas Code for Care of Children (CINC Code), the Parentage Act or the Domestic Relations statutes or to the judge's designee if the selection has been delegated or contracted to others. Non-judicial contracted individuals are apparently making the selection of guardians *ad litem* in Shawnee and Wyandotte Counties. It was pointed out that the Office of Judicial Administration does not currently have the capability of administering this Order, and it makes more sense to have it enforced by the local judicial districts.

The attached appointing order form would assist the guardian *ad litem* in gathering relevant records about the child and in obtaining the cooperation of specified individuals having relevant information needed for an independent investigation.

Under the duties assigned to guardians *ad litem*,

1) The only change was to replace the word "regular" with "ongoing" in describing mandatory contact with the child. No one on the subcommittee felt comfortable in stating a definition for "regular," and many stated that "ongoing" more accurately described the original intention of the Order.

2) The only change was to add "permanence" to the factors to be considered in determining the child's best interests. This is consistent with other state and federal requirements.

3) Several changes were made to make the Order more consistent with the language of the enabling statute (K.S.A. 38-1505). There is confusion whether an attorney-client relationship exists between the guardian *ad litem* and the child or whether the guardian *ad litem* is merely an officer of the court. The statute clearly identifies the child as the client. Therefore, all corresponding duties including confidentiality and reasonable communication flow primarily to the child rather than to the court.

The GAL is directed to file appropriate pleadings on behalf of the child and to appear for and represent the child at all hearings. While the GAL is also directed to determine the best interests of the child and to communicate that determination to the court, this is not equivalent to requiring the GAL to divulge every confidence of the child to the court.

When the child disagrees with the GAL's determination and recommendation of best interests, the GAL must inform the court of the disagreement and the child's position must be presented. In the court's discretion, depending on all the circumstances, a separate attorney/advocate for the child may be appointed to represent the child and present only that position to the court.

To avoid problems with Kansas Rule of Professional Conduct 4.2 (Supreme Court Rule 226), it was clarified that the GAL is to maintain ongoing contact with the child even if the child is separately represented. The attorney/advocate for the child must allow reasonable communication

between the GAL and the child but may require this communication to occur in the attorney's presence. This would necessarily require the GAL to contact the attorney to arrange for communication with the represented child.

4) The only change was to remove "each judicial district" and replace it with "the judge" as judicial districts are rarely able to exercise discretion.

5) Left as is.

6) Left as is.

7) Left as is.

8) New language was added reducing the number of prerequisite hours of related education from 10 to 6 hours but increasing the annual requirement from 4 to 6 hours. It was pointed out that it is very difficult to find programs offered for 10 or 4 hours of credit. Six-hour seminars are fairly common and should be sufficient to provide the basic required information.

Additional topics suggested for inclusion are professional responsibility issues, special education law, substance abuse issues, school law, investigative techniques and communication skills specifically tailored to children.

The appointing judge or designee may approve prerequisite and continuing education not approved by the CLE Commission. GAL's shall be responsible for maintaining a record of their own participation in education programs. The educational requirements could be waived by the appointing judge or designee, appointing judge or the designee upon a showing of a need for emergency temporary appointment. Even in the case of an emergency appointment, the educational requirements must be completed within 6 months of the appointment. All guardians *ad litem* covered by this Order would have 6 months from the effective date of the amendments to comply with the educational requirements.

[The subcommittee noted that Kansas Legal Services currently offers day-long seminars in various locations around the state each year. Occasionally the Kansas Bar Association offers a seminar that would meet these requirements. It is hoped that the pilot project would include funds for the development, with support from the Office of Judicial Administration, of a videotaped program that could be shown at additional locations at low or no cost to guardians *ad litem*.]

PROPOSED CHANGES TO ADMINISTRATIVE ORDER NO. 100
RE: GUIDELINES FOR GUARDIANS AD LITEM

1 The Supreme Court guidelines are recommended for the representation of children by
2 guardians *ad litem* in cases pursuant to the Kansas Code for the Care of Children, K.S.A. 38-1501
3 *et seq.*; the Parentage Act, K.S.A. 38-1110 *et seq.*; and Domestic Relations, K.S.A. 60-1601 *et seq.*
4 unless departure is authorized by the presiding judge or designee for good cause shown.

5 The appointing judge or designee should:

- 6 1) issue an Order appointing the guardian *ad litem* on a form substantially as attached, and
- 7 2) insure compliance with this Administrative Order.

8 A guardian *ad litem* should:

9 1) Conduct an independent investigation consisting of the review of all relevant documents
10 and records including those of social service agencies, police, courts, physicians (including mental
11 health), and schools. Interviews either in person or by telephone with the child, parents, social
12 workers, relatives, school personnel, court appointed special advocates (CASAs), caregivers, and
13 others having knowledge of the facts are recommended. Continuing investigation and ongoing contact
14 with the child are mandatory.

15 2) Determine the best interests of the child by considering such factors as the child's age and
16 sense of time; level of maturity; culture and ethnicity; degree of attachment to family members,
17 including siblings; as well as continuity, consistency, permanency and the child's sense of belonging

1 and identity.

2 3) File appropriate pleadings on behalf of the child. Appear for and represent the child at all
3 hearings. All relevant facts should be presented to the court, including the child's position. If the child
4 disagrees with the guardian *ad litem*'s recommendations, the guardian *ad litem* must inform the court
5 of the disagreement. The court may, on good cause shown, appoint an attorney to represent the
6 child's expressed wishes. If the court appoints an attorney, that individual serves in addition to the
7 guardian *ad litem*. The attorney must allow the child and the guardian *ad litem* to communicate with
8 one another but may require such communications to occur in the attorney's presence.

9 4) Provide reports at every hearing, such reports being written or oral at the discretion of the
10 judge.

11 5) Explain the court proceedings and the role of the guardian *ad litem* in terms the child can
12 understand.

13 6) Make recommendations for specific appropriate services for the child and the child's family.

14 7) Monitor implementation of service plans and court orders.

15 8) Participate in prerequisite education prior to appointment as a guardian *ad litem* which
16 consists of not less than six (6) hours including one (1) hour of professional responsibility, and
17 participate in annual continuing education consisting of not less than six (6) hours. Areas of education
18 should include, but are not limited to, dynamics of abuse and neglect; roles and responsibilities;
19 cultural awareness; communication and communication with children skills and information gathering
20 and investigatory techniques; advocacy skills; child development; mental health issues; permanence
21 and the law; community resources; professional responsibility; special education law; substance abuse

1 issues; school law; and the code for the care of children. Such hours of continuing education, if
2 approved by the Continuing Legal Education Commission, shall apply to the continuing legal
3 education requirements of Supreme Court Rule 802 and the minimum total hours annually required
4 by that rule are not modified by these guidelines. The appointing judge or designee shall have the
5 authority to approve the prerequisite education and continuing education not otherwise approved by
6 the Continuing Legal Education Commission. Guardians ad litem shall be responsible for maintaining
7 a record of their own participation in prerequisite and continuing education programs. Upon the
8 request of the appointing judge or designee, the guardian ad litem shall be required to provide
9 evidence of compliance with this order. Such prerequisite education may be waived by the appointing
10 Judge or designee upon showing of a need for emergency temporary appointment. The educational
11 requirements shall be completed within six (6) months of appointment. These educational
12 requirements shall not be effective for a period of six (6) months from the date this order is adopted
13 by the Supreme Court.

14 **[History:** New order effective April 19, 1995.]

Mark Hardin
ABA Center on Children and the Law
Permanency Partnership Forum II
June 4, 1997

**APPROPRIATE WORKLOADS FOR
JUDICIAL OFFICERS
AND ATTORNEYS**

- I. INTRODUCTION: A CORE ISSUE
- II. POLITICAL AND INTELLECTUAL TASKS
- III. DEVELOPING WORKLOAD OR CASELOAD STANDARDS
 - A. Elements of Good Workload or Caseload Standards
 - B. Estimating and Adding Up Hearing Times
 - C. Examples of Caseload Calculations
- IV. MAKING THE CASE FOR REDUCED CASELOADS

**QUESTIONS TO ADDRESS IN
A REVIEW HEARING**

Preliminary Matters

- Was reasonable notice of the hearing provided to all the parties?
 - Was the notice timely?
 - Was the notice sufficiently clear to inform the parties of the nature and purpose of the hearing?
- Were the parties informed of the review hearing's time and date at the last court hearing?
- If a substantial time has elapsed since the last hearing, were all parties provided a reasonable reminder of the hearing?
- Are all the parties present? If not, why?
- Should the review hearing be reset to obtain the presence of a party whose involvement is important?
- Have the agency and guardian ad litem each submitted a written disposition review report?
- Were the parties provided written reports with sufficient time to review the contents before the hearing?
- Is the hearing adversarial or are the parties in agreement?
- If the parties have agreed, have they done so voluntarily?

What is the case plan?

- What is the long-term plan to achieve permanency for the child?
- Is there a need for continued placement of the child?
- What conditions or problems led to the state's intervention with the family?

- What are the case plan goals? What behavioral changes are required?
- What services were to be offered to accomplish the case plan goals?
- Do all the parties understand their respective obligations under the case plan?

Case Plan Issues Concerning the Parents

- Has the original case plan produced the intended effect?
- What are the perceptions of the agency, the guardian ad litem and the parents concerning the progress toward achieving the case plan goals?
 - Have any of the case plan goals been achieved?
 - Which goals have not been achieved?
 - What has prevented the achievement of a case plan goal?
 - What needs to occur to accomplish the remaining case plan goals?
 - Were the services set forth in the case plan provided on a timely basis? If not, why?
 - Did the parents participate in the services offered? If not, why?
 - Are there barriers that interfered with the parent's participation in services? How can these barriers be eliminated?
 - What has been the level of the parent's participation in services?
 - Have the services been beneficial? Why or why not?
 - Are there better, more appropriate and/or more accessible services that should be provided instead of a service set forth in the case plan?
 - Do the parties fully understand their respective responsibilities under the case plan? Have there been misunderstandings about what the plan requires?
 - Do all the service providers for the family understand the case plan and its goals?

- Has the agency made reasonable efforts to rehabilitate the family and eliminate the need for placement of the child?
- Do the parties understand the consequences of failing to complete their obligations under the case plan?
- Have the time frames set forth in the case plan been met? If not, why?
- Do the time frames remain reasonable? Should the time frames be revised?
- Are any modifications of the case plan needed?
- Have the court's orders been complied with? If not, why?

Have additional problems or issues been identified since the disposition hearing that must be addressed to achieve reunification or other long-term plan for the child?

- Do the parties agree that an additional problem exists?
- Is there a need for an evidentiary hearing regarding the issue?
- What is the new problem? What needs to occur for the problem to be resolved? What is the best service to address the problem?
- Has a case plan amendment been made to reflect the new issue?
- Are there any unresolved case disputes that are blocking the case planning process?
- Is the agency making reasonable efforts to eliminate the need for placement of the child?

Services and Placement Issues Concerning the Child

- Is the child in an appropriate placement which adequately meets all physical, emotional, and educational needs?
- Is the child receiving any special services?
 - How is the child progressing in the special services?
 - What do the service providers report?

- Are there recommendations for additional or more appropriate services?
- Does the child have any special physical needs? How are these needs being met?
- Does the child have any special mental health or psychological needs? How are these needs being met?
 - What issues are being addressed by the child's therapist? What are the goals of the child's therapy?
 - Is the child's therapist aware of the long-term plan for achieving permanency for the child and working towards that goal with the child?
- Are the child's educational needs being met? Are any significant behavior or academic problems reported by the school? How are these issues being addressed?
- Where is the child placed? Has the child been moved to a new placement since the last hearing? If yes, why?
- Has the child's guardian ad litem visited regularly with the child?
- Has the child expressed any concerns that should be reported to the court? Should an in-camera interview be arranged?
- How has the child adjusted to the placement? Are any significant behavioral problems reported? Are any issues or concerns reported by the foster parents or placement facility?
- Is the placement sensitive to the child's ethnic background?
- How is the child responding to separation from the parents?
- Do the parents have any issues or concerns regarding the child's placement or the services being provided?
- Has the agency kept the parents informed of significant issues concerning their child?
- Should the child be moved to a less disruptive and more family-like setting?
- Should the child be moved to a more structured and therapeutic placement?
- Have any relatives expressed an interest in assuming custody of the child since the disposition hearing?

- If reunification is imminent, have arrangements been made to continue services for the child upon reunification?

Visitation Issues

- What are the terms of visitation? Should they be modified?
- Have the parents visited the child regularly? If not, why? How can barriers to visitation be resolved?
- Has the interaction between the child and parents during visits been appropriate? What can be done to address inappropriate behavior at visits?
- How has the child responded to visits?
- Have siblings have given an opportunity to visit each other?
- Should the terms of visitation be revised? Should the duration and frequency of visits be increased or decreased? Can visits be unsupervised?

Permanency Planning Issues

- What, if anything, remains to be done to accomplish the long-term plan?
- Is the court-approved, long-term permanent plan for the child still the best plan?
- What time frame should be set forth for achieving reunification or other goals in the plan for the child?
- Is there a reasonable prospect for achieving the current plan on a timely basis?
- Should service set forth in the case plan and the responsibilities of the parties be clarified or modified due to additional information or changed circumstances?
- Are there additional court orders needed in order to move the case toward successful completion?

Additional Areas

The following additional areas may be addressed for children who are awaiting adoption or in long-term foster care at the time of review.

Children Awaiting Adoption

- Has an adoptive home been located for the child? Is the child placed in that home? What transitions need to be made for the child to be placed in adoptive home?
- What remains to be done to finalize the child's adoption? When can the adoption be finalized?
- What efforts is the agency making to locate an adoption home for the child?
- Does the agency have a specific, well designed recruitment plan for the child?
- How is the agency preparing the child for adoption and addressing the child's separation and loss issues?

Children in Long-Term Foster Care

- If the child's caretakers are unwilling to adopt the child, will they enter a long-term care agreement with the agency?
- What is being done to prepare the child to be emancipated and to live independently as an adult?
- Does the child have relationships with "significant others" who are outside the child welfare system and who are committed to maintaining a long-term relationship with the child with the child's adulthood (e.g., relatives, mentors, etc.)? How can the agency foster such relationships?
- Should the long-term permanent plan for the child be re-evaluated due to changes of circumstances? Can the child be reunified with a parent? Can the child be placed with a relative? Should the child be permanently committed and placed adoptively?

**HOURS PER CASE AND CASELOAD OF JUDICIAL OFFICERS
 IN HYPOTHETICAL JURISDICTION¹**

Note: The following illustrates, in simplified form, how to calculate appropriate caseloads for judges and other judicial officers (e.g., referees, hearing officers, magistrates) handling child protection cases. While this handout assumes that judicial officers are handling these cases on a full-time basis, it is easy to make corrections for judicial officers handling them on a part-time basis. For example, a judge spending 50% of the time handling child protection cases would be expected to handle 50% of the cases of a judge spending 100% of the time.

Average Hours Per Case Through Reviews

Shelt. Care	Pretr. Hear.	Adjud.	Dispos.	Rev.	Rev.	Rev.	Permanency Planning		
1	.5	.5	.5	.5	.5	.5	1	=	5.0
Totals Uncontested								=	5.0 hours per case

Adjustments

If 20% of cases are dismissed at disposition, subtract .5 hours (2.5 hours for review and permanency planning hearings x 20%) per case.

For miscellaneous motions (contempt, modifications of disposition, etc.) add .5 hours per case.

Adjustments for Early Dismissal and Misc. Hearings (+.5 - .5) = 0 hours per case

If 10% of adjudications are contested, add 7.5 extra hours in court x 10% per case.

Additional Time for Contested Hearings = .75 hours per case

¹The figures included in this handout do not represent official policy of the American Bar Association. They are not intended as a national standard, but rather to illustrate how judicial caseloads might be calculated. Figures in a particular jurisdiction can be different, particularly depending on the numbers and length of hearings per case, the frequency and length of contested hearings, and the role and preparation of attorneys.

Total Hours Per Case Before Term. of Parental Rights (TPR) = 5.75 hours per case
Termination of Parental Rights Cases (30% of Total Cases Filed)

Pret	TPR Trial	TPR Trial (contested) (½ of cases)	Rev (uncontested) (½ of cases)	Adoption Hearing	=	
.25	10 (5)	1 (.5)	.5	.25	=	6.5

Totals Per Termination of Parental Rights (TPR) Case = 6.5 hours per case

Average TPR Hours Per All Cases 6.5 x 30% = 2 hours per case
 (30% of cases eventually involve a petition for TPR)

Totals for Pre TPR and TPR
 Pre TPR Hours Per Case (7.5) + TPR Hours (2) = **9.5 hours per case**

Hours per Year

52 weeks per year x 5 days = 250 days - 10 holidays - 15 vacation - 10 sick = 215 days per year

215 days per year x 6 hours per day on the bench = 1290 hours - 10% admin. = 1161 hours per year on the bench

New Cases Per Year per Judicial Officer, Number of Judicial Officers Required

1161 hours per year ÷ 9.5 hours per case = **122 new cases per year per full time judicial officer (with each family being one case)**

Note: If an average family has 1.8 children, multiply the above caseload by 1.8 so that each child can represent one case.

122 new cases per year per judicial officer x 1.8 = **220 new cases per year per full time judicial officer (with each child being one case)**

Note: New petitions filed for 550 children per year ÷ 220 new cases per judicial officer = **2.5 Full Time Equivalent (FTE) judicial officers**

HOURS PER CASE AND CASELOAD OF STAFF ATTORNEYS IN HYPOTHETICAL JURISDICTION²

Note: The following illustrates how to calculate appropriate caseloads for staff attorneys representing agencies, children, and indigent parents. Note that caseload figures may vary for attorneys representing agencies, parents, and children. For example, if home visits are expected of attorneys for children the figures below for their preparation time are arguably substantially too low. Note also that appeals are not included. Also not included are ancillary proceedings such as special education hearings, domestic violence cases, etc.

Average Hours Per Case Through Reviews

In Court (Incl. Waiting)	S.C.	Pret	Adj	Disp	Rev	Rev.	Rev.	P.P.	=	5.0
	1	.5	.5	.5	.5	.5	.5	1		
Preparation	.5	1	2.5	2	2.5	2	2	3.5	=	16.0
Transportation	1	1	1	1	1	1	1	1	=	8.0
Totals Uncontested									=	29 hours per case

Assume that the number of cases dismissed early is roughly balanced by the number of extra ad hoc hearings.

If 10% of adjudications are contested, add 7.5 extra hours in court,
 14.5 hours extra preparation, 1 hour extra transportation = 23 additional
 hours per case x 10%

Additional Time Contested = **2.3 hours per case**

**Total Hours Per Case Before
 Termination of Parental Rights (TPR)** = **31.3 hours per case**

²The figures included in this handout do not represent official policy of the American Bar Association. They are not intended as a national standard, but rather to illustrate how attorney caseloads might be calculated. Figures in a particular jurisdiction can be quite different, particularly depending on average transportation time, waiting time in the courthouse, and the typical length and frequency of contested hearings.

Termination of Parental Rights (30% of Total Cases)

	Pret	TPR Trial (contested) (½ of cases)	TPR Trial (uncontested) (½ of cases)	Rev	Adopt.	=	
In Court	.25	10 (5)	1 (.5)	.5	.25	=	6.5
Preparation	2	25 (12.5)	5 (2.5)	1	.25	=	17.75
Transpor.	1	2	1	1	1	=	6.0

Totals Per Termination of Parental Rights (TPR) Case = 30.25 hours per case

Average TPR Hours Per All Cases 30.25 x 30% = 9.1 hours per case
(30% of cases end with TPR)

Totals for Pre TPR and TPR

Pre TPR Hours Per Case (31.3) + TPR Hours (9.1) = **40.4 hours per case**

Hours per Year

52 weeks per year x 5 days = 250 days - 10 holidays - 15 vacation - 10 sick = 215 days

215 day year x 8 hours per day = 1720 hours - 30% admin. & training = 1204 hours per year

New Cases Per Year per Attorney, Number of Attorneys Required

1204 hours per year ÷ 40.4 hours per case = **30 new cases per year per full time attorney (with each family being a new case)**

Note: If an average family has 1.8 children, multiply the above caseload by 1.8 so that each child can represent one case.

30 new cases per year per attorney x 1.8 = **54 new cases per year per full time attorney (with each child being one case)**

Note: New petitions filed for 550 children per year
÷ 54 new cases per full time attorney = **10.2 FTE attorneys**

Mark Hardin
ABA Center on Children and the Law
Permanency Partnership Forum II
June 4, 1997

**EXPLAINING WORKLOADS FOR
JUDICIAL OFFICERS
AND ATTORNEYS**

Most non technical audiences will want to know:

- (1) What are the approved caseload standards, expressed in terms of the number of cases per judicial officer or attorneys?
- (2) Who were the experts who arrived at these standards?
- (3) What are these standards based on? (The answer is the experience of leading courts and the estimates and calculations of leading experts.)
- (4) Why are current caseloads so far from the suggested standards?

Figure 1

TYPICAL SEQUENCE OF HEARINGS:
For Child in Foster Care Who Cannot Be Returned Home

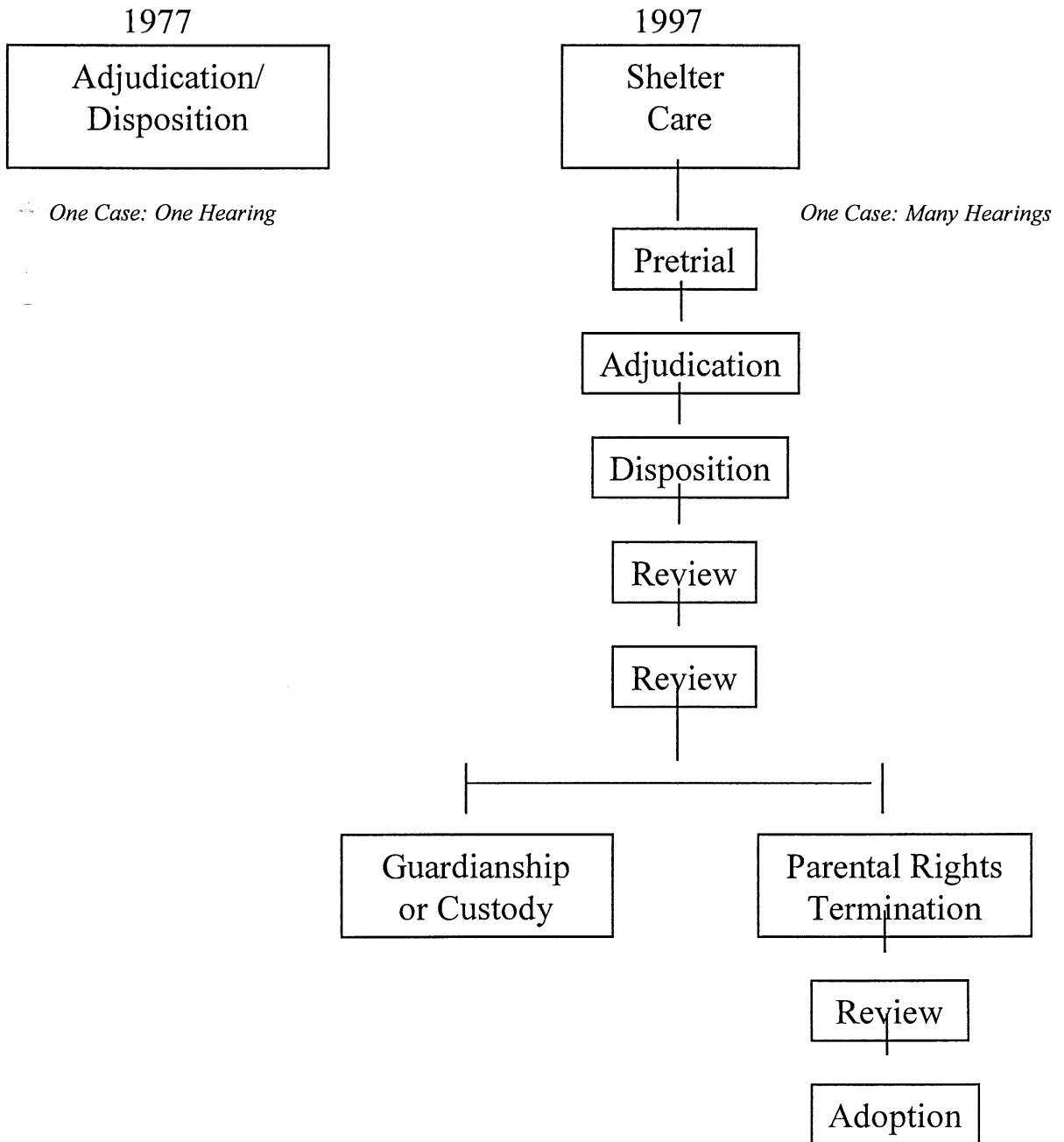


Figure 2

**ISSUES TYPICALLY RESOLVED BY JUVENILE
COURTS IN ABUSE AND NEGLECT CASES**

1977	1997
	Need for emergency placement
	Sufficiency of efforts to prevent placement
	Necessity of emergency relief other than placement (e.g., removal of perpetrator)*
Validity of allegations	Validity of allegations
Custody, if allegations proven	Custody, if allegations proven
	Visitation*
	Sufficiency of case plan*
	Sufficiency of efforts to implement case plan*
	Child's long-term legal status (periodic review)
	Termination of parental rights*
	Review of sufficiency of efforts to place the child for adoption*
	Grant adoption petition*

**Function not performed by all juvenile courts*

Figure 3

**DUTIES OF JUVENILE COURTS UNDER P.L. 96-272
THE ADOPTION ASSISTANCE AND CHILD WELFARE ACT OF 1980**

Direct Requirements

Evaluation of the reasonableness of services to preserve or reunite families.
Periodic review hearings in foster care cases.
Adherence to deadlines for permanency planning decisions.
Procedural safeguards concerning placement and visitation.

Indirect Impact

More termination of parental rights cases.
More adoption, guardianship, and relative custody cases.

DUTIES OF JUVENILE COURTS UNDER SOME STATE LAWS

All federal requirements plus:

Review of emergency placements
Consideration of orders to remove alleged perpetrator from child's home.
Adjudication of abuse and neglect within set time limits
Permanency planning hearing within one year
Termination of parental rights hearing within set time limits

Figure 4

TYPICAL PARTICIPANTS IN CHILD PROTECTION CASES

1977
Caseworker
Custodial parent(s)

1997
Caseworker
Custodial parent(s)
Noncustodial or Putative Parent
Parents' attorney(s)
Child's attorney or guardian ad litem
Agency attorney*
CASA volunteers*
Foster Parents*

**In some states or jurisdictions, they do not frequently participate in hearings*

APPROPRIATE WORKLOADS FOR JUDICIAL OFFICERS AND ATTORNEYS

(MENTION OUTLINE AND HANDOUTS)

I. INTRODUCTION: A CORE ISSUE

Workloads for judicial officers and attorneys is a real *core* issue in court improvement.

Without appropriate workloads many other improvements become difficult or impossible.

Without appropriate workloads, we can't have hearings that are timely, fair, and thorough.

Yet, improving workloads is perhaps the most challenging issue for court improvement projects.

Improving workloads costs money.

II. POLITICAL AND INTELLECTUAL TASKS

To effectively address workloads, we have political tasks, intellectual tasks, and tasks that are both political and intellectual.

Political tasks include building support for improvements in workloads.

It is too hard to fight for improved workloads solely within the court system.

You need the support of the agency and others outside the agency -- foster parents,

CASA volunteers, private providers of services.

They can tell eloquent stories about waiting in court, painful court delays, and children without permanent homes.

They can explain how court delays drive up agency costs.

They can help avoid zero sum games of fighting for scarce resources *within* the court system.

In Maine, the agency actually found the money for the courts to add judges.

But along with building support, you need to make a strong *case* for improving workloads.

The case must be clear, convincing, and intellectually defensible.

We have to be able to articulate workload standards that are simple and understandable to everyone.

We have to be able to defend the standard when people question it.

Having said that we need intellectually defensible standards, we can't make them too complicated in the interests of science.

The standards have to be simple and clear enough to be understood and remembered.

Remember: It is *good enough* to have simple workload standards that are very thoughtful estimates.

Thoughtful estimates are an improvement of our current muddle.

III. DEVELOPING WORKLOAD OR CASELOAD STANDARDS

A. Elements of Good Workload or Caseload Standards

What is a good workload or caseload standard?

It is a simple statement of how many cases a judicial officer or attorney should be expected to handle.

A good workload standard should say the following:

In this jurisdiction, each full time judge should be expected to take on this number of new cases per year.

In this jurisdiction, a full time staff attorney representing children should be expected to take on this number of new cases per year.

A full time staff attorney representing parents should be expected to take on this number of new cases per year.

These are clear, simple, and understandable by policy-makers.

B. Estimating and Adding Up Hearing Times

How do we arrive at these numbers and how do we defend them?

The most important thing to remember is that workload standards focus on how many cases a judge or attorney can handle and still do *good work*.

Therefore, we look at all of the steps that go into well conducted hearings and estimate how long each type of hearings *should* take.

We have some good experience in Cincinnati and Grand Rapids -- to identify all of the tasks needed to hold a throughout hearing and estimate the necessary length of hearings.

Next, taking into account how long each type of hearing should take, we add up the numbers of hearings in a typical case and figure how long it takes it take a judge to try an entire typical case.

Then we can figure out how many cases a judge can handle.

To repeat: we estimate the length of each type of hearing, add up the total average bench time

per case, and then we figure out how many cases a judge has time to handle.

In a couple of minutes, we will review a chart that does this.

Behind these estimates is a central principle:

A caseload standard estimates how much work a judicial officer can handle and still do a good job.

When we set a caseload workload standard, we have in mind just what work we are expecting the judge or attorney to do.

The National Council has some great lists of steps that a judge needs to take to conduct a good preliminary protective hearing, adjudication, disposition, etc.

They prove that these hearings must be conducted in hour or half hour blocks.

If someone argues for shorter blocks, just show them the National Council lists and ask them what steps they would eliminate.

(REFER TO HANDOUT PAGES)

Also remember: A key function of these hearings is for the judge to communicate to the parties and to hear and understand them.

There must be enough time to make this communication possible.

C. Examples of Caseload Calculations

(REFER TO HANDOUT PAGES)

Let's look at an example:

That's the handout entitled "Hours Per Case and Caseload of Judicial Officers in Hypothetical Jurisdiction"

The handout divides the case into two parts, prior to termination of parental rights and the termination of parental rights and afterwards.

Let's look at *pre* termination of parental rights:

It lists the types of hearings and estimates the time for each.

The figures add up to 5 hours for uncontested hearings.

There are also adjustments for cases that are dismissed early and more miscellaneous motions.

In this example, they balance off.

There is an estimate for the average added time per case for the small percentage of contested cases.

The total is 5.75 hours per case in this particular jurisdiction.

Turning to termination of parental rights and post termination, there are similar estimates.

The average 6.5 hours per case is multiplied by 30% because only about 30% of cases go to the point of termination.

So the estimated average is 2 hours per case.

Add the pre termination hours and termination hours and we get 9.5 hours per case in our hypothetical jurisdiction.

Next, we calculate the hours per year that a judicial officer should sit on the bench.

The norm is 6 hours per day, subtracting time for vacation, training, meetings, etc.

It comes to 1161 hours in this jurisdiction.

Divide the 1161 hours by 9.5 hours, we get 122 new cases per year per full time judge.

However, since the above hearing times were for family groups, we need to adjust the figures upward if we want to treat each child as a case.

In our jurisdiction, there are 1.8 children per judicial officer.

That brings the caseload up to 220 new cases per year per full time judicial officer.

This, incidentally, is similar to Grand Rapids or Cincinnati.

In our hypothetical jurisdiction there are 550 children per year who are the subject of new petitions.

Divide that by the 220 caseload and you need 2.5 full time equivalent (FTE) judicial positions.

In the next two pages of the handout, I have a similar set of calculations for staff attorneys.

There is only one major difference: I have had to add in the time that the attorneys spend in traveling to court and preparing their cases.

Of course, travel time will vary a lot among jurisdictions.

I have made a fundamental assumption in setting out these sample figures:

Attorneys are supposed to prepare there cases.

Attorneys control the flow of information to the judge.

The judge depends on attorneys to provide the judge with complete and accurate information on which to base decisions.

To perform their function attorneys need time to prepare their cases and that includes time to meet with their clients.

You can review these calculations at your leisure.

IV. MAKING THE CASE FOR REDUCED CASELOADS

One final point:

When you are making the case for reduced caseloads, most audiences will not be interested in the degree of detail represented in these charts.

Here is what they will want to know:

(REFER TO HANDOUT)

- (1) What are the approved caseload standards, expressed in terms of the number of cases per judicial officer or attorneys?
- (2) Who were the experts who arrived at these standards?

- (3) What are these standards based on? (The answer is the experience of leading courts and the estimates of leading experts.)
- (4) Why are current caseloads so far from the suggested standards?

(REPEAT THE QUESTIONS)

As for the fourth question -- why are now so out of whack -- it is important to be able to answer that.

It is because the demands on courts have sharply increased over the last 15 years.

That this happened when Congress and legislatures imposed new duties.

That new duties were imposed on courts -- review, permanency planning hearing,

termination of parental rights, etc. to ensure permanency for children.

Remember the charts:

(REFER TO HANDOUTS)

They may be stale for us.

But they make a dramatic case for the need for enhanced caseloads.

(SHOW CHARTS)

A couple of final points about making the case:

Here are a couple of even simpler formulas.

Attorneys should be spending no more than $\frac{1}{3}$ of their time in court and no more than $\frac{1}{4}$ for contested cases.

Finally, when you are arguing for lower caseloads for agency attorneys, you can make some pretty strong cost effectiveness arguments.

Estimate the cost of agency attorneys.

Estimate the desirable number of cases per attorneys.

Estimate the reduced number of months in foster care with lower attorney caseloads.

Add up the numbers.

An example: If you have our attorney caseloads from 108 cases to 54 cases we will reduce the average length of stay by 3 months.

\$50,000 is $\frac{1}{2}$ salary and related costs.

54 cases per attorney x \$1500 (three months stay each) = a savings of \$81,000.

Incidentally, how will the attorneys reduce the length of stay by three months?

A few:

Early notice to all parties, getting court orders for full case information early in the case (prior treatment), getting better findings at adjudication and review (building the TPR case), enforcing court orders, filing TPRs earlier, handling appeals, measuring and comparing attorney performance.

Mark Hardin
ABA Center on Children and the Law
Permanency Partnership Forum II
June 4, 1997

**APPROPRIATE WORKLOADS FOR
JUDICIAL OFFICERS
AND ATTORNEYS**

- I. INTRODUCTION: A CORE ISSUE
- II. POLITICAL AND INTELLECTUAL TASKS
- III. DEVELOPING WORKLOAD OR CASELOAD STANDARDS
 - A. Elements of Good Workload or Caseload Standards
 - B. Estimating and Adding Up Hearing Times
 - C. Examples of Caseload Calculations
- IV. MAKING THE CASE FOR REDUCED CASELOADS