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Response to “Out of Sight, Out of Mind When Children in Foster Care in California Don’t Meet Their Court Appointed Attorneys”

The undersigned dependency counsel organizations serve as the court-appointed attorneys for over 28,000 children, approximately 60% of the children in California who are in foster care, non-minor dependents in Extended Foster Care, and youth who reside with their parent(s) under court supervision. On April 16, 2024, a publication entitled “Out of Sight, Out of Mind When Children in Foster Care in California Don’t Meet Their Court Appointed Attorneys” was released by Advokids, Western Center on Law and Poverty, and Akin Gump. This publication espouses that more than half of the children in California’s foster care system have never had contact with their attorney and puts forth a series of recommendations. Importantly, their sweeping claim about the lack of contact between children’s attorneys and their clients is based on seriously flawed research and erroneous data. The conclusions drawn are irresponsible, misleading, and potentially damaging to the overall goals of high-quality representation, accountability, and adequate funding. Given the widespread distribution of the publication and the resulting proposed legislation (AB 3049), it is imperative that any policy and legislative decisions moving forward are based on accurate facts and the illustrative data shared below.

Attorneys for Children Play an Essential Role in the Child Welfare System & Oversight is Critical

We do agree with the drafters that "The legal representation of children and youth in foster care is an integral and essential aspect of the state's and counties' responsibilities to protect the interests and support the well-being of abused and neglected children." This is supported by numerous studies, which have found that competent legal representation contributes to or is associated with improved perceptions of fairness by parties, increases in visitation and parenting time, better crafted case plans, and expedited permanency. In fact, this collective of dependency counsel organizations, in partnership with the Legislature, has been fighting to lower caseloads over the past decade to procure the kind of advocacy every child needs and deserves. It was only in FY 2022-23 that the State budget included adequate funding to meet the state’s *maximum* recommended caseload standards of 141 child clients per attorney, which is still well above the caseload standards recommended by the National Association of Counsel for Children and the American Bar Association. California must continue to assess dependency attorney caseloads and ensure there are sufficient resources and appropriate accountability.

The “Out of Sight” Publication is Based on Flawed Research

The specific recommendations of the “Out of Sight” publication primarily focus on oversight over client contact, which we agree is fundamental to any attorney-client relationship. However, the claim that "most children in foster care in California have likely never met with [their] lawyer" is simply not true. In order to reach this conclusion, the drafters collected information almost entirely from caregivers who self-selected to fill out surveys, including some who responded more than one time and others who had previously contacted the survey sponsors seeking assistance, as well as a very small population of former foster youth. The organizations behind the report did not receive IRB approval to conduct a study, and the

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methodology used does not meet any of the basic requirements to be considered research or evidence. The sample size, just over 1,000 responses, is inadequate to be considered representative of California's child welfare population of more than 50,000 children and their caregivers.

Notably, the survey asked for information that some caregivers would not have. For example, the report concluded attorneys "rarely" conduct an independent investigation by contacting the child's doctors, therapist, and other treatment providers. In actuality, caregivers are typically not entitled to or provided with that kind of information. Attorneys do not report their activities or steps taken in an investigation to caregivers. In California, children in foster care have a right to attorney/client privilege. There are many instances where a caregiver would not know whether the attorney communicated with the youth, service providers, witnesses, important people in the child's life, or professionals with whom the youth has a confidential relationship, such as a child's therapist. This is especially the case with older youth or when a youth has reached out to the attorney to ask that the meeting not take place in the home because of concerns about the caregiver. In these situations, the attorney may have contact with their child clients at court, in school, at the social worker's office, on the phone, etc. It is not surprising that of those surveyed, the former foster youth reported a much higher likelihood of having attorney contact than was reported by caregivers.

Furthermore, the report takes the position that interaction with an attorney's agent is problematic and should not be considered "contact" for purposes of meeting ethical duties. This is not aligned with California's Rule of Court 5.660 regarding standards of representation for dependency attorneys, which specifically states that attorneys **or their agents** are expected to meet regularly with clients. There are thousands of non-verbal infants in foster care in California. Many dependency law offices employ social work investigators who are trained in child development and who visit infants in their homes regularly to assess their well-being. Their expertise is value-added and allows for a more in-depth assessment of the child's well-being than a typical attorney can provide. Similarly, some children's law offices employ peer partners (former foster youth) and survivor advocates. Experience has shown these advocates are able to quickly establish trust with some of the hardest-to-reach older youth who, due to their history of trauma and broken promises, may be understandably reluctant to engage. Not only is this allowed by law, it is also consistent with federal guidance that recommends a multidisciplinary law office as the current best practice in legal representation for children.¹

The Data in the "Out of Sight" Report is Grossly Inaccurate

Unfortunately, prior to conducting the surveys or reaching conclusions, the drafters of the report did not consider the data dependency organizations keep regarding client contact, nor did they request the ability to survey our current clients. Even after learning that many dependency organizations track client contact, among many other activities, in order to receive federal funding, the drafters still moved forward

¹ "Some government and private specialty law offices utilize a multidisciplinary team approach, which pairs or provides attorneys with access to independent social workers and/or includes a peer parent advocate. Evaluations of models that employ these types of teams are yielding very positive results." *High-Quality Legal Representation for All Parties in Child Welfare Proceedings*, <https://www.acf.hhs.gov/sites/default/files/documents/cb/im1702.pdf>. Similarly, the Judicial Council of California, through the Federally Funded Dependency Representation Program (FFDRP), requires dependency attorneys to adopt one or more of the Family Justice Initiative Attributes of High-Quality Representation. https://www.courts.ca.gov/documents/FFDRP-FAQs_2023_12.pdf One such attribute includes "Attribute 2: Interdisciplinary Practice Model Ensure attorneys have access to work in an integrated manner with interpreters, experts, social workers, and investigators, as needed. Ensure attorneys have access to work in an integrated manner with parent allies/peer parent mentors and youth advocates/youth ambassadors, as needed." <https://familyjusticeinitiative.org/wp-content/uploads/sites/48/2020/03/fji-implementation-guide-attribute2-2.pdf>

publishing inaccurate data. Below represents a sample of the data from our own attorney case management systems.

Los Angeles, Placer, and Sacramento Counties

- From July 1, 2021 – December 18, 2023, of the 23,959 new clients Children’s Law Center of California (“CLC”) was appointed to represent, 23,881 (>99%) met with either their attorney, the attorney’s agent (mostly younger, non-verbal clients) or both in-person.
- Additionally, there were 255,049 total contacts by CLC staff with clients or caregivers for the 23,959 clients; or on average 10.6 contacts per client.
- Of CLC’s new clients in 2023 (9,091 in total), 9058 (>99%) met with either their attorney, the attorney’s agent (mostly younger, non-verbal clients), or both in person.
- On average, a client was seen in person 3.5 times by CLC staff in 2023, with the first in-person contact by the attorney on average at 16.2 days and the agent at 37.2 days after being appointed.

Marin

- Of the 92 children or non-minor dependents represented by DLS, **90%** of them were seen in person at either their placement, court, or an alternative location by their court-appointed attorney or a DLS master's level social worker or both between January 1, 2023, and March 31, 2024. This only includes *in-person* contact and does not include video visits, phone calls, texts, emails, communication with caregivers of nonverbal clients, etc. (and includes clients brand new to the organization as of the day of March 31, 2024).

Yolo

- Of the 331 children or non-minor dependents represented by DLS, **88%** of them were seen in person at either their placement, court, or an alternative location by their court-appointed attorney or a DLS master's level social worker or both between January 1, 2023, and March 31, 2024. This only includes *in-person* contact and does not include video visits, phone calls, texts, emails, communication with caregivers of nonverbal clients, etc. (and includes clients brand new to the organization as of the day of March 31, 2024).

Stanislaus²

- Of the 158 children or non-minor dependents represented by DLS, **84%** of them were seen in person at either their placement, court, or an alternative location by their court-appointed attorney or a DLS master's level social worker or both between January 1, 2023, and March 31, 2024. This only includes *in-person* contact and does not include video visits, phone calls, texts, emails, communication with caregivers of nonverbal clients, etc. (and includes clients brand new to the organization as of the day of March 31, 2024).

Alameda

- Of the 1,087 children or non-minor dependents represented by East Bay Children’s Law Offices (“EBCLO”) on April 9, 2024, **86%** of them were seen in person at either their placement, court,

² DLS only represents approximately 33% of the children in Stanislaus.

or an alternative location by their court-appointed attorney or a Youth Advocate Social Worker or both between January 1, 2023, and April 9, 2024. This only includes *in-person* contact and does not include video visits, phone calls, texts, emails, communication with caregivers of nonverbal clients, etc. (and includes clients brand new to the organization as of the day of April 9, 2024).

San Diego

- Of the 1,954 children or non-minor dependents represented by Children’s Legal Services (“CLS”) on April 8, 2024, **88%** of them were seen in person at either their placement, court, or an alternative location by their court-appointed attorney or an investigator between January 1, 2023, and April 8, 2024. This only includes *in-person* contact and does not include video visits, phone calls, texts, emails, communication with caregivers of nonverbal clients, etc. (and includes clients brand new to the organization as of the day of April 9, 2024).

Importantly, in addition to reviewing this data, each organization conducted an in-depth analysis regarding the youth who have not had in-person contact. The vast majority were not seen in person either because they are non-minor dependents (age 18-21) who do not wish to have in-person contact – often preferring to connect over video – or the cases were newly filed and attorneys were only recently appointed to represent the youth.

Conclusion

In conclusion, while we appreciate the focus of the “Out of Sight” report on the important role of children’s attorneys in the foster care system, and we agree oversight and accountability are critical to ensure children in every California county are provided high-quality multidisciplinary representation, the report is replete with misinformation and sweeping conclusions based on inaccurate data. We must move forward with a true understanding of the issue to make the best decisions possible for children and families. We welcome the opportunity to discuss mechanisms for increased accountability, adequate resources to provide high-quality representation and meaningful access to cutting-edge preventive interventions.



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