

Arkansas Supreme Court Commission on Children, Youth and Families



Parent Counsel Study Committee

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ARKANSAS PARENT COUNSEL PROGRAM RELOCATION STUDY

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OVERVIEW

1. Brief Background, History and Progress

In the fall of 2007, the AOC transitioned from attorney appointments to contracts so all parent counsel attorneys would provide representation with equity, uniformity and to ensure compliance with the standards set forth in Administrative Order No. 15. At the start of the 2013 FY, there were 51 parent counsel attorneys statewide with no cohesive focus, collaboration or oversight. The composition and operation of the Program is significantly improved since that point.

Progress highlights:

- Roster has increased to 63 in-field attorneys.
- Solved conflicts problem created by lack of attorneys.
- Development and Implementation of five-part attorney evaluation process
- Increased involvement of stakeholders
- Development and Implementation of Parent Counsel Policy Manual
- Relaunch of Parent Counsel Listserv
- Expansion of relationship with Appeal Attorneys
- National exposure as model Parent Counsel Program
- Increased awareness of quality representation goals
- Increased budget to allow for better representation of clients

2. Program Goals:

While significant improvements have been made, there is plenty of room for improvement. No matter where the program is physically located, there will need to continue to be changes, growth and improvements.

Short-Term Goals: (1 year)

- Completion of first round of evaluations for all field attorneys
- Development of clear goals for improvement for each field attorney
- Improved feedback from parents
- Development and Implementation of Parent Counsel Brief Bank

Intermediate Goals: (2-3 years)

- Development and implementation of Attorney Handbook
- Demonstrable improvement in court room representation of parents
- Data mapping, provider bank, and improved data collection/usage

- Completion of NITA training for all field attorneys
- Improve recruitment policies and procedures
- Development of video training library

Long-Term Goals: (3-5+ years)

- Increased budget for program improvement, growth, development
 - Expert witnesses, social workers, parent partners, team representation approach, attorney mentors
- Incorporate ability to represent parents in matters related to, but not part of, DN proceedings
 - Divorce, Landlord/tenant, housing etc.
- Advance trial practice levels

On-Going Goals:

- Addressing Parents' Voice: the ability to participate in the case by expressing their viewpoint;
- Strive for Neutrality: consistently applied legal principles, unbiased decision makers, and a "transparency" about how decisions are made Development and Implementation of five-part attorney evaluation process
- Respectful treatment: individuals are treated with dignity and their rights are obviously protected
- Trustworthy authorities: authorities are benevolent, caring, and sincerely trying to help the litigants—this trust is garnered by listening to individuals and by explaining or justifying decisions that address the parents' needs.
- Improved advocacy: ensuring advocacy both in and out of the courtroom
- Improved communication: between attorney and client; between stakeholders
- Systemic change to effect improvement: Legislation, administration, internal and external relationships

3. Scorecard

Criteria listed below shall be deemed as either essential/mandatory or just desirable

The new location must include the following: (Essential/Mandatory)

- Continuation of five part evaluation protocol currently in place
- Ability to offer and maintain contracts
- Ability to incorporate 60+ attorneys and staff into existing structure
- Continuation of existing training/education opportunities
- Continuation of partnership with AAL/CASA programs
- Continuation of CIP /partnership support
- Continuation of Judicial support/input
- Continuation of DNet support/usage or development of case tracking database
- Increased Budget (See Budget section for further details)
- Adherence to the ABA Indicators of Success

The new location should include the following: (Desirable)

- Availability of increased use of latest technology

- Expanded staff including dedicated administrative assistant, financial officer, assistant director
- Office space for management/staff
- State employment/job share with benefits
- Potential for expansion of areas of representation

4. Conflicts

Any move will have to include provisions in the plan to deal with the conflicts that exist at each potential landing spot. These do not consider financial barriers.

- AOC
 - Current location: judicial support staff/ad litems/parent counsel/CASA under same umbrella
- Arkansas Public Defender Commission
 - Conflict between representation of DN proceeding and criminal proceeding
 - Possible Chinese wall solution
 - 16 part-time PAVPD Attorneys on current parent counsel roster
- UALR William H. Bowen School of Law
 - Clinical setting currently administers mediation for DN hearings
- Access to Justice/Legal Aid
 - Legal aid cannot represent incarcerated parents (federal)
 - Previously under PC contract – no staffing/court prep/meeting time allowed
- Stand-Alone Agency (Office of Indigent Representation)
 - No conflicts

5. Evaluation Process

Developed in early 2014 and implemented beginning with the 2014 FY (July, 2014). Every attorney who is currently under contract will have been evaluated, had a personal evaluation meeting and given clear, concise goals for improvement by the end of the 2015 FY (June 2016). This is the first evaluation of any kind of the attorneys in this program since its inception.

- Data Comparison to State Averages
- File Review
- Survey and/or Interviews of Stakeholders
- Client Interviews/Surveys/Focus Groups
- Courtroom Observation
- Attorney Self-Evaluation

6. Indicators of Success

The ABA spent over three years soliciting input from parent counsel programs across the country, including Arkansas, developing indicators of what defines quality parent representation. Arkansas, while a leader in this area nationally, still has some areas that can be addressed. These indicators are an important part of what the program does and strives to do.

- Attorney Appointments
 - Appointments should be timely, immediate, and address specific needs of parents
- Reasonable Caseloads
 - Need to take into account pay scale, other obligations, preparation and out of court needs.
- Continuity of Representation
 - Continuation of stability of the program and attorneys
- Access to Multi-Disciplinary Staff
 - Independent social workers, expert witnesses, investigators etc.
- Parent Attorney-Specific Training and Support
 - Continuation of parent counsel content trainings, adding/improving training methods/ideas
- Representation Out of Court
 - Ensuring availability of time, compensation to spend quality time out of courtroom with clients
- Representation at Court
 - Continue training/education for in-court performance improvements
- Attorney Advocacy
 - Education in the areas of parent communication, personal bias, problem solving etc
- Appeals
 - Improvement in preserving the record, proper arguments/objections, notice, specialty law
- Prevention
 - Entirety of process, early appointment, removal requirements, least restrictive alternatives
- Parental Satisfaction
 - Quality representation, satisfaction with process not outcome; increased community trust

7. Budget

The most obvious and daunting hurdle facing any relocation proposal. Every option to move is going to require some additional funding just to meet the basic set up that exists in the current location as well as allow for growth potential. Anything less would be a setback to the program and parent representation overall.

Current Budget:

- Total \$2,500,250.00
- Supports 63 field attorneys and 2 contract staff (Currently carrying 2665 cases)
- Contains contract, mileage and minimal expense monies only (Since July 2015)
- Does not include any training/education budget
- Does not include any staff budget

Proposed Budget

Regular Salaries	1,606,000.00
Personal Services Matching	375,000.00
Operating Expense	150,000.00
Conference and Travel	12,000.00
Education/Training	45,000.00
Professional Fees	1,850,000.00
Reimbursements	190,000.00
Technology	16,000.00
NITA Training	13,583.33
Office Space	13,200.00
TOTAL	4,270,785.33

8. High-Level Timeline/Schedule

- 2017 Legislative Session
- 2016 Legislative Session (fiscal only)

Remain at AOC

Advantages	Disadvantages	Considerations
<ul style="list-style-type: none"> • Already established • AOC absorbing overhead • Devil you know • Extra support • Easier access to CIP • Access to CIP TA from feds • Joint trainings/cross trainings • Cost-effective trainings • Ample training opportunities • Many parent counsel content here • Resources available at AOC • PC feel the program is improving • Better option of securing funding through the judiciary • Independent of executive branch • Have autonomy in practice • Funding is central services 	<ul style="list-style-type: none"> • Perception of conflict • Perception that PC isn't treated fairly compared to AAL • As-is there are no state employees • Under same banner as AAL and judges • Belief that PC are lumped into judges' legislative basket • Perception that there is no separation of powers 	<ul style="list-style-type: none"> • Addition of state positions? • Looking at hybrid system similar to AAL program • Ensuring equitable funding compared to need • Increase pay w/ increase caseload • Move PC out from under Juv. Division- separate supervision from AAL • Funding for social workers specifically for PC

Stand Alone w/ State Employees

Advantages	Disadvantages	Considerations
<ul style="list-style-type: none"> • No conflict • Benefits • Full-time, dedicated staff • Autonomous • Merges appellate and trial attorneys • Possibility of career growth as employees 	<ul style="list-style-type: none"> • Getting lost in the shuffle • Costs more • In the executive- no safety for budget cuts, issues in legislative priorities 	<ul style="list-style-type: none"> • What branch? • Create under judicial branch • How do they access CIP funds? • Need a board or commission? • Hybrid system of state employees and contracts

Stand Alone w/ Expanded Services

Advantages	Disadvantages	Considerations
<ul style="list-style-type: none"> • Same advantages as above • Possibility of a more wrap-around style • Creates need for more accountability • Expanded areas of representation • Social workers 	<ul style="list-style-type: none"> • Cost • Possibly need to apply for outside funding 	<ul style="list-style-type: none"> • State agency or nonprofit or create a nonprofit within the agency • Time is ripe

For – Remaining at AOC:

Maybe we can just move to another area of AOC so that we're not all under the same person.

I don't see any advantage to going to a stand-alone. For one, funding is an issue. Two, we would have no support and would quickly get lost in the agency landscape. And three, things are getting better and better for us at AOC, why would we want to break that momentum?

I think the program is fine just the way it is now. It has gotten better each year and there is no reason to believe it won't continue to do so. No one I have talked to has ever felt pressure from the AOC to compromise their client's position, I know I have never felt any pressure. However, sometimes the appearance of impropriety may have to be considered.

Besides if it ain't broke, don't fix it.

I see no reason to change anything.

We've watched it grow and evolve over that time. The program works very well right now and I don't understand what the problem is.

I am not aware of "what needs fixing," so I would go along with option 1.

No sense messing with things just when they are starting to move in the right direction.

Things are the best they've ever been for parent counsel. Why change now?

I don't know about any conflict like you described. All I know is this is the most supported and appreciated I've felt in my many years of doing parent counsel work and now they want to change things?

This all sounds like more unnecessary noise. I see no problem with being at the AOC, they've done a lot for parent counsel.

Just stay where we are. It's easier.

What is the reasoning behind changing anything? If it "ain't broke don't fix it". Or should I ask what is broken?

No one is telling me how to run my cases or that I have to do certain things in a case, so I don't see the conflict at this level in my area.

I understand how someone could see a conflict. However, I won't refuse to do my job because someone may think they are supposed to have sway.

I join in the apparent confusion, i.e. what is the problem we are trying to address?

Against – Remaining at AOC:

Remaining at AOC does nothing to cure the conflict, and I do believe there is a conflict. The Judges who sit on the bench for our cases are the same ones who report to Connie, who in turn oversees parent counsel. How can that not be a conflict?

(Option) 1 doesn't seem to solve the ultimate problem, we'll just deal with it again sooner or later, plus I think the program needs to be able to self-advocate.

Connie and Renia wield too much power. Anything the Judges or ad litem do or say is considered the gospel. Parent counsel are not treated the same way.

For – Going Stand-Alone with State Employees

Having a professional program of full time employees that can specialize and actually spend time doing nothing but DN specific work would really help get the system back to a functional place and very much serve the clients.

Because of my wife's past health issues those benefits are very important to me. That leads me to believe that there are other contractors who would probably like to have access to those benefits.

In the early 90's before the public defender commission was set up, I was a contract public defender for two counties. My experience in that area tells me that we would be better off and I think our clients better served by having a stand-alone agency, whose directors are focused on that agency and not other matters. I cannot point to any deficiency between my office and yours nor any deficiency to my clients under the present system.

I think each entity-DHS /PC/ad litem should be a separate entity

Against – Going Stand-Alone with State Employees

I think the state employee option may appeal to some, but I chose long ago not to be a full-time state employee.

The problem with being a stand-alone agency is we would get lost in the shuffle. There are a lot of agencies out there fighting for limited dollars.

Stand alone is not a good idea. I think we'll end up taking a step back if we had to move somewhere on a limited budget.

Obviously, the funding for either of the stand-alone options is of concern. Do you really think we can get that much money?

If we added state employees, I am concerned that the contractors who have been doing this work for years would be cut out by full time attys.

For – Going Stand-Alone with Expanded Services

I would love to have a staff of social workers, counselors it would give us an option to counter the DHS witnesses we can't afford.

I am for number 3-currently it is difficult to compete with DHS' unlimited budget and access to police/forensic etc. -although the money for depositions and subpoenas has helped and been useful.

Ideally, the third option is the best. Social workers for parent counsel? That would be awesome.

Against – Going Stand-Alone with Expanded Services

There is no way we get enough money to do number 3 and it's a waste of time pursuing it.

Thoughts on Public Defender:

Public Defender -option is worst. There are several of us that are part time deputy prosecuting attorneys, so we would be terminated. There are a total of 17 parent counsel attorneys that are either part-time PAs or PDs.

Isn't there a conflict with us going to the public defender? Which case trumps? I guess it could work if there was a Chinese wall or something, but it might look bad.

I can tell you we get WAY more support, training and help than they do at the public defender's office. I have never been to a training for that and we get several every year with AOC.

The PD's office is the best option because we all deal with the same clients.

If we moved to the public defender, I would worry they would try to dictate how I tried my cases since there is some overlap with some criminal cases.

Miscellaneous Thoughts or Considerations:

In fact, under all 3 options the funding for both sides of the "conflict" comes ultimately from the same place, the State of Arkansas.

Who would we as a stand-alone agency have to answer to?

Would we be self-regulating and what kind of issues would that expose us to as an agency?

Would our trainings continue to run concurrent with opposing counsel? There is value in cross-training with the AALs and that should continue.

What type of mobility and growth or expansion would be available to parent counsel as a stand-alone agency?

Where would funding come from and would it be consistent or would we potentially be building a house of cards?

I know at the Department you can't propose legislation that hasn't been vetted by the higher ups. Wouldn't moving us to the executive branch stunt our ability to create better legislation for parents?

Budget	Remain at AOC as is	Move to Public Defender	Stand-Alone as is	Stand Alone with State Employees	Stand Alone with Admin	Stand Alone Expanded with Admin
Regular Salaries		Program Coordinator (2)	Executive Director, Fiscal Officer, Admin Assist, Appeals Atty (3)	Executive Director, Fiscal Officer, Admin Assist, Appeal Atty (3)	Executive Director, Fiscal Officer, Admin Assist, Appeal Atty (3)	Exec. Director, Fiscal Off, Admin Assist, 3 managing attys, Social Worker Coord., 21 FT Attorneys, 6 Legal Secretaries, 4 FT Social Workers, Appeals Atty (3)
Personal Services Matching	\$0	\$71,108	\$399,192	\$1,534,570	\$431,441	\$2,087,239
Parent Survey	Parent Surveys	Program Coordinator	Parent Surveys	Parent Surveys	Parent Surveys	Parent Surveys
Conference/Education and Travel	AAL/PC Fall Conference - 1/2 of current costs, Children in the Courts - hotel, registration, PC ABA Conference - 3 people, hotel, registration, flight (CIP)	Meals, Lodging, Conferences, Seminar Fees AAL/PC Fall Conference - 1/2 of current costs, Children in the Courts - hotel, registration, PC ABA Conference - 3 people, hotel, registration, flight	Meals, Lodging, Airfare, Fall Conference, Children in the Courts, ABA National Conference, Quarterly Trainings	Meals, Lodging, Airfare, Fall Conference, Children in the Courts, ABA National Conference, Quarterly Trainings	Meals, Lodging, Airfare, Fall Conference, Children in the Courts, ABA National Conference, Quarterly Trainings	Meals, Lodging, Airfare, Fall Conference, Children in the Courts, ABA National Conference, Quarterly
Professional Fees	2382 cases at \$855 per case, Director, Assistant Director	2382 cases at \$855 per case, Director, Assistant Director	D/N Contractors - 2382 Cases at \$855 per case,	FT Atty = 1575 cases D/N Contractors = 1200 cases at \$855 per case.	D/N 2382 cases at \$855 per case, ADM/N 1200 cases at \$855 per case	Full Time Attorneys - 1575 cases, D/N Contractors - 1200 cases at \$1000 per case, ADM/N Contractors - 1200 cases at \$1000 per case
Reimbursements	Court mileage, attorney mileage, attorney expense	Court mileage, attorney mileage, attorney expense	Mileage, Subpoena, Expert Witness	Mileage, Subpoena, Expert Witness	Mileage, Subpoena, Expert Witness	Mileage, Subpoena, Expert Witness
Technology	Website, LexisNexis, Survey Monkey, Prezi, Tech Grant (CIP)	Network Services Expense, Data Processing Supplies, Cartridges, Toners, Ink, Desktop, Laptops, Printers, Plotters, Scanners, LexisNexis	LexisNexis, Survey Monkey, Prezi, Technology (IT/Data/Website)	LexisNexis, Survey Monkey, Prezi, Technology (IT/Data/Website)	LexisNexis, Survey Monkey, Prezi, Technology (IT/Data/Website)	LexisNexis, Survey Monkey, Prezi, Technology (IT/Data/Website)
NIJA Training						
Office/Operating Expense	Telephone, Rent Data Processing Equip (Copier), Parking - \$44, Office Space Rent, Office Supplies, Furnishing & Accessories	Telephone, Rent Data Processing Equip (Copier), Parking - \$44, Office Space Rent, Office Supplies, Furnishing & Accessories	Office Space, Furniture, Computer/Equipment, Supplies Phones, Copier Rental, Software	Office Space, Furniture, Computer/Equipment, Supplies Phones, Copier Rental, Software	Office Space, Furniture, Computer/Equipment, Supplies Phones, Copier Rental, Software	Office Space, Furniture, Computer/Equipment, Supplies Phones, Copier Rental, Software
CIP Total	\$0	\$45,538	\$57,454	\$57,454	\$61,255	\$226,340
Total Current PC/PD	\$2,500,225	\$13,583	\$13,583	\$13,583	\$13,583	\$13,583
New Money	+350,000	\$2,500,225	\$2,795,802	\$2,795,802	\$2,795,802	\$2,795,802
TOTAL	\$2,630,534	\$2,844,613	\$3,231,707	\$3,644,086	\$4,656,595	\$6,488,372