



Virginia Commission on Youth 2014 Legislative Studies and Initiatives

COURT APPOINTED ATTORNEYS IN CHILD WELFARE CASES DRAFT FINDINGS AND RECCOMENDATIONS

PUBLIC COMMENTS IN RED

Findings/Conclusions	Recommendations and Public Comments
<p>Finding 1 – Need for Improved Compensation Structure Compensation of court-appointed counsel for parents in child dependency cases in Virginia often does not reflect the amount of time and effort put forward by an attorney.</p> <p>The compensation rate is capped at \$120 in district court and \$158 in circuit court per appealable order. A waiver is not available, unlike in criminal matters. In addition, cases typically require more than one hearing.</p> <p>Counsel appointed to represent an indigent accused in a criminal case have been able to request waivers above the \$120/\$158 cap since the passage of Senate Bill 1168 in 2007. Currently, the budget appropriates \$4.2 million per year in the biennium from the general fund for increased reimbursements for court-appointed counsel pursuant to § 19.2-163, <i>Code of Virginia</i>.</p>	<p>1. Remove the statutory cap on fees for court-appointed counsel for parents in child welfare cases, and instead allow for the same hourly rate payment structure as Guardian Ad Litem are compensated.</p> <p style="text-align: center;">- or -</p> <p>2. Allow court-appointed counsel for parents in child welfare cases to submit a waiver application for additional compensation above the current cap in termination of parental rights cases.</p> <p><i><u>Potential revision to Recommendation 2 based on public comment:</u></i> Allow court-appointed counsel for parents in child welfare cases to submit a waiver application for additional compensation above the current cap for all stages of a child dependency case.</p> <p>The Virginia Poverty Law Center supports Recommendation 2, and adds that “we urge the Commission to support allowing fee cap waivers for all stages of a child dependency case.” The VPLC emphasizes that “the most critical work in these cases occurs preparing for and attending these earlier hearings [preliminary removal, adjudicatory, dispositional, and permanency] where decisions are made regarding the placement of the child and visitation and services for the parent.”</p>

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<p>Guardian Ad Litem (GALs) are compensated \$75/hour for in-court work and \$55 for out-of-court work. GALs are not capped at \$120/\$158 and there is no limitation on the payments for hours that are documented and approved by the judge who appointed the GAL.</p>	
<p>Finding 2 – Encourage Training and Support Efforts Lack of specialized training, support, and defined best practices for parents’ court-appointed counsel were all highlighted by stakeholders as being potential obstacles to quality representation.</p> <p>The Virginia Court Improvement Program provides comprehensive training for attorneys that serve as Guardian Ad Litem for children and parents, CASA volunteers, and Department of Social Services legal counsel. However, attorneys that serve as court-appointed counsel for parents in child welfare cases are not required to meet any additional qualifications.</p> <p>The Virginia Court Improvement Program already has a framework established to provide specified training for court-appointed counsel for parents in child welfare cases and has done so most recently in 2012. The main concern with additional training requirements is that since attorneys already view these types of cases as pro bono they will balk at the idea of additional training and stop accepting these appointments.</p>	<ol style="list-style-type: none"> 1. Request that Virginia’s Court Improvement Program assess the possibility of providing training specifically for court-appointed counsel representing parents in child welfare cases. 2. Request the Virginia Supreme Court adopt the 2006 ABA “Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases” in Virginia to establish best practices for court-appointed counsel for parents in child welfare cases. 3. Request the Supreme Court of Virginia, Office of the Executive Secretary, Court Improvement Program commission the ABA Center on Children and Law to conduct a comprehensive assessment of Virginia’s system of parental representation in child welfare cases. <p>The Virginia Poverty Law Center supports Recommendation 1, and states that “Virginia’s Court Improvement Program has presented excellent, no-cost training for parents’ attorneys in the past.”</p> <p>In addition, the VPLC offered the idea that “if the Court Improvement Program is able to provide ongoing training directed at improving the skills and knowledge needed to represent parents in child dependency cases, parents’ attorneys should be required to attend these trainings in order to qualify for the waiver of the fee cap as long as the trainings are offered at an affordable cost.”</p>