Special Committee on Child & Parent Representation

2017-2018 Final Report and Recommendation
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2017-2018 Final Report and Recommendations

I. Background

In 1999 Florida Bar President Edith Osman created The Florida Bar Commission on the Legal Needs of Children, whose purpose was to determine: 1) what needs children have in the court system; 2) which of those needs are being met and; 3) which of those needs are not being met. The final report, issued in 2002, addressed the need to improve access to the courts via the quality of representation for children in Florida. The commission’s search for the best representation model proved to be an emotional, contentious issue. Some of the questions asked were: What kind of representation do children deserve? Lawyers, guardians ad litem, a combination? What kinds of cases should trigger mandatory representation so that children no longer get lost in the court system without a voice?

Commissioners wrestled with the issue of whether every child in Florida should have a lawyer in every dependency case, when children have been abused, abandoned or neglected—or was a lay guardian ad litem adequate to protect the child's well-being? The debate has been framed by some in the dependency area as "best interest" of the child as represented by the guardian ad litem versus the "expressed wishes" of the child. This is an oversimplification of this complex issue. After three years of extensive debate, a recommendation was unanimously approved by the full commission for a comprehensive model of representation for children that included the creation of a Statewide Office of Children’s Advocate which would house both the Guardian ad Litem and legal counsel for children.

In 2003, President Miles McGrane declared the “Year of the Child,” and made the Legal Needs of Children (hereinafter “LNOCC”) a standing committee of The Florida Bar with a mission of implementing the work of the commission. In 2009, President Jesse Diner furthered the work shepherding a resolution urging the enactment of consensus legislation through the Board of Governors. The consensus legislation did not include the commission recommendation of a single statewide office that would house both the Guardian Ad Litem Program and legal counsel for children.

Although the legislation developed by the Bar was not enacted in 2010, in 2014 the Legislature enacted section 39.01305, F.S., to provide counsel to certain very vulnerable children. While the 2014 law was a major breakthrough in creating a right to counsel for some of Florida’s
dependent children it did not follow the implementation recommendations of the commission’s report. The report recommended that representation be provided by entities overseen by a statewide office that would provide oversight, guidance, training, technical and administrative support. In contrast, the current law provides counsel to children via a decentralized registry system.

II. Current Situation

The availability and quality of counsel for children varies greatly across jurisdictions. Justice for children is often determined by geography. Foster children who live in counties that fund legal aid programs are far more likely to have lawyers than those who do not. Paid counsel is appointed from registries operated by local judicial circuits without uniformity of requirements for participation. There is no comprehensive training, oversight, or guidance.

Much work has been done in Florida on the issue of children’s representation since the issuance of the 2002 Commission on the Legal Needs of Children Report (hereinafter “2002 Report”). However, the central premise of the recommendation on representation – the creation of a Statewide Office of Children’s Advocate -- has not been implemented. Moreover, Florida still lags behind the rest of the nation in providing counsel to children in child welfare cases.

Florida is a leader in providing attorneys to parents in dependency proceedings. However, we lag behind other states in ensuring that parents’ attorneys have the training, resources, and support to provide high quality representation. Counsel for all children and some parents are provided via locally-operated registries that have no quality assurance or oversight mechanism and are not compensated in a fashion that promotes quality representation.

A growing body of evidence demonstrates that children in the child welfare system fare better when both they and their parents receive high quality representation. Evidence shows that the length of stay in care is directly impacted by the quality of representation for both children and parents. That evidence, along with information on what constitutes quality representation can be found in the Children’s Bureau Guidance on High Quality Representation for all Parties in Child Welfare Proceedings, issued January 2017, by the U.S. Department of Health and Human Services, Administration on Children, Youth, and Families.¹

In Florida, the need for counsel is magnified by the structure of our child welfare system, which is the most complex and fragmented system in the country. Instead of a single agency that investigates, initiates court proceedings, provides case management, and licenses foster parents, in some counties those functions are handled by four entirely separate agencies, two of whom

¹ https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf
under contract with a privatized lead agency and two of whom are under contract with the Department of Children and Families (hereinafter “DCF”). It’s easy for children to slip through the cracks with so many moving parts. High quality counsel with sufficient support can ensure that children get the services they need and reduce the amount of time that children stay in state care.

III. Legislative Position & Special Committee Mission

As part of the Florida Bar’s legislative activities, The Bar works to advise and assist the courts and other branches of government concerning current law and proposed or contemplated changes in the law. The Board of Governors, as part of its 2016-2018 Biennium Legislative Positions, adopted the following:

To adequately promote and protect the legal rights and remedies of children, supports the development of a comprehensive system and structure for child representation that includes Guardian ad Litem representation, Public Defender representation, and legal representation by both government paid counsel and pro bono attorneys by way of legislation substantially similar to the draft legislation approved by the Standing Committee on the Legal Needs of Children on November 16, 2009 which would create a statewide program of legal representation with some or all of the following components:

(a) no child shall be denied the right to have the representation by an attorney for the child appearing on the child’s behalf in a dependency case whether volunteer or state paid;

(b) provides for representation that is paid for by the state of Florida in conjunction with local, foundation or pro bono support in certain critical categories of dependency cases, recognizing that the ability to create such mandatory representation depends on the amount of new and dedicated revenue appropriated by the Florida Legislature and subject to the protection of the funding of the GAL program and funding for the Courts; and/or

(c) permits representation of children in other discretionary categories of children in dependency cases and for other children, recognizing that the ability to create such discretionary representation depends on the amount of new dedicated revenue appropriated by the Florida Legislature and subject to the protection of the current funding of the GAL program and funding for the courts.

In September of 2017, Florida Bar President Michael Higer appointed the Special Committee on Child & Parent Representation with the mission of bringing to fruition the Bar’s years of work on dependent child representation. The special committee was also asked to: 1) address the concurrent need for high quality representation for parents in dependency proceedings, and; 2) make recommendations on how Florida can ensure that the legal representation provided to children and parents in dependency proceedings will promote their safety and well-being to achieve best possible outcomes.

At its initial meeting, President-Elect Michelle Suskauer, on behalf of President Higer, charged the committee with the following --

Build from the past to create a future where Florida’s dependent children and their parents receive high quality representation. Draft legislation that will make Florida’s provision of counsel an exemplar to the nation. Propose specific actions that the Florida Bar can undertake to improve the quality of representation for children and parents.

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IV. Committee Organization

The committee held its organizational teleconference on October 19, 2017, with Chairman Robert Butterworth presiding. Each committee member was offered the opportunity to provide their background, accomplishments and interest in the representation of children and parents in dependency proceedings. The committee members are:

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<th>Name</th>
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<tr>
<td>Robert A. Butterworth</td>
<td>Chair</td>
<td>Fort Lauderdale, Florida</td>
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<td>Jesse H. Diner</td>
<td>Vice Chair</td>
<td>Fort Lauderdale, Florida</td>
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<td>Miles A. McGrane, III</td>
<td>Vice Chair</td>
<td>Fort Lauderdale, Florida</td>
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<tr>
<td>Edith G. Osman</td>
<td>Vice Chair</td>
<td>Miami, Florida</td>
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<td>Jay Cohen</td>
<td>Board Liaison</td>
<td>Fort Lauderdale, Florida</td>
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<td>Alan Abramowitz</td>
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<td>Robert A. Bertisch</td>
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<td>Candice K. Brower</td>
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<td>Gainesville, Florida</td>
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<td>Sec. Michael P. Carroll</td>
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<td>Dept. of Children &amp; Families</td>
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<td>Sen. William Galvano</td>
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<td>Bradenton, Florida</td>
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<td>Gerard F. Glynn</td>
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<td>Marisa L. Gonzalez</td>
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<td>Prof. Shani King</td>
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<td>University of Florida</td>
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<td>Carlos J. Martinez</td>
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<td>Public Defender, 11th Circuit</td>
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<td>Craig A. McCarthy</td>
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<td>Judge Kelly Jo McKibben</td>
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<td>Dennis W. Moore</td>
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The committee discussed what is keeping State of Florida from providing all children and parents with high quality representation. It was noted that there is a need for a statewide entity to provide representation of children in dependency actions, and there is not an established right for all children to be provided with their own counsel. To qualify for an attorney under section 39.01305, F.S., a child must meet one of five statutory criteria of special needs:

1. Resides in a skilled nursing facility or is being considered for placement in a skilled nursing home;
2. Is prescribed a psychotropic medication but declines assent to the psychotropic medication;
3. Has a diagnosis of a developmental disability as defined in s. 393.063;
4. Is being placed in a residential treatment center or being considered for placement in a residential treatment center; or
5. Is a victim of human trafficking as defined in s. 787.06(2)(d).

The statute requires that before a court can appoint an attorney for the child, the court must request a recommendation from the Statewide Guardian ad Litem Office (hereinafter “GAL”) for an attorney who is willing to represent a child pro bono. If such an attorney is available within 15 days after the court’s request, the court must appoint that attorney. However, the court may appoint a compensated attorney within the 15-day period if the GAL informs the court that it will not be able to recommend an attorney within that time period.

The committee noted that the State of Florida has not adopted standards of practice to which attorneys for children are held accountable. The LNOCC previously produced practice guidelines for attorneys who work in the fields of dependency. Although these guidelines are not approved by The Florida Bar Board of Governors, and are thus non-binding, they have been most helpful to children’s attorneys throughout the state.

In addition, there are no established uniform criteria, and no one has the responsibility or can be held accountable for ascertaining whether attorneys are providing even minimally competent representation, let alone high-quality representation.

Committee members were divided into 8 teams of 3-4 committee members and given a specific area to address. The team assignment reports were completed by December 2017 and distributed to the committee for review. Committee staff synthesized the team reports and prepared 4 documents from the team recommendations: 1) a draft bill on appointment, support and oversight of counsel; 2) a draft bill expanding the population of children entitled to counsel; 3) a list of proposals for Bar action; and 4) a list of recommendations that were not incorporated into any of the first three documents. All four documents were provided to the committee the week prior to the January 18, 2018, meeting of the committee during the Bar’s Winter Meeting. At the January meeting, team members presented the recommendations of their teams and other committee members were able to ask questions and provide comments.

Proceeding from the January meeting, the committee convened a series of conference calls to review each of the documents prepared by staff. The Bar proposals were discussed over two conference calls (February 7th and March 1st) and were revised per the suggestions of committee members. Votes were not taken on those calls, but the revised proposals 1-10 were voted on by subsequent email vote. The bill addressing appointment, support and oversight of counsel – called the Statewide Office of Dependency Representation (hereinafter “SODR”) bill, was addressed in a meeting on March 28th. Numerous amendments were provided in advance and were discussed and voted on the 28th. The SODR bill was revisited on May 4th when the committee adopted the amendment that removed the GAL from the SODR. The bill expanding the categories of children entitled to counsel (“expansion bill”), was discussed in the April 25th meeting of the committee. There was no quorum present, but the issues raised were addressed in a revised version of the bill, that was discussed and approved at the May 4th meeting of the committee. The committee did not have an opportunity to discuss the miscellaneous recommendations contained in the Recommendations Not Otherwise Incorporated, though committee members were invited to submit edits prior to publication as an attachment to this report. Two additional proposals (11 & 12) for action by the Florida Bar were discussed and adopted at the May 4th meeting. A third proposal was tabled and referred to LNOCC.

Throughout the committee process, representatives of the GAL asserted the position that much of the work being undertaken by the committee was unnecessary because of the representation currently provided to children by the GAL. At the request of the chairman on March 15th, the GAL made a presentation to the committee to describe how it functions. The GAL described its team model of representation in which the volunteer guardian, along with a GAL staff social worker and attorney work together to determine what is in the child’s best interest. There was insufficient time for all committee members to have their questions answered on March 15th. Several committee members then submitted questions in writing, the answers to which were provided on April 30th and are attached as Attachment 4. The Committee did not have sufficient time to fully explore the issues brought to light by the GAL's presentation. In light of the unresolved ethical concerns, the Committee asks that these questions continue to be explored formally by the Florida Bar.

On May 3rd, committee member Angela Vigil submitted a memorandum setting forth the need for children to have counsel in addition to the functions provided by the GAL. On May 4th the
committee agreed to adopt a modified version of Ms. Vigil’s memo to serve as the conclusion for this report.

An initial draft of this report was provided to the committee on April 30th. A revised draft, along with the minority report of the GAL, were provided on May 10th and adopted by the committee by e-mail on May 14th.

VI. Team Reports

Most of the substantive examination of issues was completed by the teams in the fall of 2017 and was shared in reports submitted in December 2017.

The report of the teams are as follows:

Child Representation

Responsibility/Accountability Team (Team 1): Creating a mechanism for ensuring that an entity is (or entities are) responsible & accountable for: ascertaining where more lawyers are needed, recruiting lawyers, training lawyers, ascertaining that lawyers meet minimal criteria, and that their performance is reviewed.

Team 1 proposed a Statewide Office of Dependency Representation (or a similar concept/name) with two subdivisions of: 1) Division of the GAL, and; 2) Division of Child Attorney. The team envisions the need for a director of the statewide office and a director for each of the subdivisions. Team 1’s recommendation was determined after efforts were made to reach out to the GAL to explore the possible management of both functions/responsibilities (GAL and Child Attorney representation) by the GAL but the GAL was uncomfortable with this approach and had their own suggestions and input on many of these questions.

The Statewide Office of Dependency Representation (or a similar concept/name) would ultimately be responsible to oversee the two subdivisions. The Division of Child Attorney should handle all the following functions:

a) Ascertaining where geographically there are not enough lawyers available to represent children;
b) Recruiting lawyers to represent children;
c) Providing training for lawyers who represent children;
d) Ascertaining whether lawyers meet the minimum criteria;
e) Determining whether the attorneys are performing to the expectations of the funder, contract and established standards performance of the attorneys.

The Division of the GAL should continue with their current functions as well as providing training for lawyers as there would be shared responsibility and coordinated efforts, so as not to duplicate training efforts, by the two subdivisions. The two subdivisions would be accountable for their own staff/attorneys' performance and the two subdivisions would coordinate attorney training efforts.
In ascertaining where geographically there are not enough lawyers available to represent children, Team 1 found that data from the DCF shows that approximately 27,000 of Florida’s 30,000 dependent children are not represented by counsel. The 3,000 children provided counsel either have a qualifying special need under section 39.01305, F.S., or reside in Broward, Hillsborough, Palm Beach or Miami Dade County. Since 2014, approximately 1 million a year in appropriated section 39.01305, F.S., funding has been used for direct representation of special needs children, the Miami-Dade Pro Bono project is funded through a Children’s Trust, and the three legal aid programs providing counsel to a limited number of qualifying dependent children in their respective counties are funded by Children Services Counsel (CSC) special district ad valorem taxes. The remaining 63 counties, including 7 counties with CSCs, no longer fund counsel for children after the 2001 Florida Constitution Article V amendment shifting funding responsibility for the court system from the counties to the state.

Data from The Florida Bar shows that there are currently 87,897 members eligible to practice & in good standing throughout the State of Florida, thus it is likely that the lack of counsel for children may be related more to available funding than geography. Recruitment and uniform specialized dependency training of pro bono attorneys could provide some of the 27,000 unrepresented dependent children with counsel until laws change and funding becomes available.

Team 1 also reviewed how to provide training for lawyers who represent children. Training for counsel for children is available through the ABA Conference on the Children and the Law, National Association of Counselors for Children, FL Child Protection Summit, FL Disabilities Conference and various free online resources including the Florida Center for Child Welfare, GALP, and Florida Children’s First.

In ascertaining whether lawyers meet minimum criteria, Team 1 determined that in 2011 the ABA established model criteria for national child representation. In 2014, the LNOCC updated the Florida Guidelines of Practice for Lawyers who Represent Children in Abuse and Neglect Cases. In 2017, the US Dept. Health & Human Services, Administration of Children and Families Report cited the ABA Model and the Chapin Hall study of Palm Beach County Legal Aid’s Foster Children’s Project when issuing national findings that legal representation of children is associated with tailored and specific case plans and services, increases in visitation and parenting time, expedited permanency, and cost savings to state government due to reductions of time children and youth spend in care. The PBC Foster Children’s Project demonstrated how using CSC contracted permanency criteria expedited permanency for children 88.3 days faster than children without counsel.

The Division of Child Attorney could ascertain whether lawyers meet minimum criteria, (like the permanency criteria used by the evidence-based Foster Children’s Project Model and/or the ABA/FL Bar LNOCC guideline criteria) through a contract with individual attorneys and

7 https://www.chapinhall.org/research/report/expediting-permanency
organizations the Division of Child’s Attorney (DCA). This division could utilize available cloud technology to the review files of individually contracted attorneys and organizations statewide to measure objective minimum criteria compliance.

In determining whether the attorneys are performing to the expectations of the funder, contract and established standards performance of the attorneys, the 2002 Report noted “after three years of extensive debate, a recommendation was unanimously approved by the full Commission for a comprehensive model of representation for children.” (Page 9). Specifically, regarding children in dependency proceedings, the Commission recommended the creation of a Statewide Office of Children’s Advocate Entity, which would have a division of Legal Counsel and a Division of GAL. “In order to secure the fundamental rights of children to physical and emotional well-being and safety, and to protect children's legal interests, constitutional and statutory rights, Florida should fully fund independent advocacy that includes the availability of Legal Counsel and GAL for Children in certain legal and administrative proceedings.” 8

In 2014, the Florida Legislature enacted section 39.01305, F.S., which mandated court-appointment of attorneys for a dependent child within five special needs categories: 1) those who reside in or are considered for placement in nursing homes; 2) those who are prescribed psychotropic medications and do not assent to taking them; 3) those who have developmental disability; 4) those who are in or face placement in locked residential treatment facility, and; 5) those who are victims of human trafficking. However, the Justice Administration Commission (hereinafter “JAC”) is only responsible for administering payment and does not provide oversight to contracted attorneys, similar to JAC contracts with rotational parent attorneys and the JAC pass-through to GAL and ORC programs. Unfortunately, after three years without an oversight entity there has been a downward trend in section 39.01305, F.S., attorney appointments, less case assignments and many circuits are under-appointing attorneys with only about $3 million of the $8.8 million allocated by the Legislature to section 39.01305, F.S., special needs attorneys being spent on direct representation of children. Most of the remaining funds have been reabsorbed or allocated by the JAC for other purposes. LNOCC’s 2017 draft Statewide Office of Child’s Attorney (SOCA) legislative amendment attempted to fulfill the original vision of Senator Galvano by ensuring that section 39.01305, F.S., is properly implemented statewide and that all of Florida’s dependent children with certain special needs receive the effective legal representation and the outcomes that they deserve. If created, such an entity would be responsible for oversight, training and payment of section 39.01305, F.S., appointed attorneys providing direct representation to Florida’s dependent children9.

The Division of Child Attorney could provide needed oversight of available funds using cloud software technology to review files of individually contracted attorneys and organizations statewide and determine whether contracted performance criteria are met for payment.

As noted above, Team 1 recommended that the Statewide Office of Dependency Representation (or a similar concept/name) would be comprised of two separate subdivisions of: 1) Division of

8 https://goo.gl/E7yOhD (Representation highlights @ PDF pg. 16-18 & full appendix @ pg. 44-62)
9 https://goo.gl/ERCpkf
the GAL; and 2) Division of Child Attorney. The Division of Child Attorney would handle all the functions including oversight. The Division of the GAL should continue with their current functions as well as providing training for lawyers as there would be shared responsibility and coordinated efforts, so as not to duplicate training efforts, by the two subdivisions.

As mentioned in the 2002 Report “The independence of the Office of the Children’s Advocate [aka Team 1’s Division of Child Attorney] is of paramount importance. To help ensure that the Office of the Children's Advocate is not compromised in its actions on behalf of child clients, the office should be independent from other participants in the litigation. The office should be insulated from undue influence by outside agencies, the executive, legislative and judicial branches. The system of appointment should not denigrate independence of counsel or the guardian ad litem. Judges should not be able to select which publicly funded attorney or guardian ad litem to appoint in a specific case.”

Further guidance can be found in the Rhode Island Office of the Child Advocate (OCA) which is “an independent and autonomous Rhode Island state agency responsible for protecting the legal rights and interests of children in state care. These rights include, but are not limited to, a child’s right to appropriate placement, healthcare and education, and to be treated with dignity and respect.” http://www.child-advocate.ri.gov/index.php. The OCA was established with Title 42 Chapter 42-73 legislation.

Note: Although our team was not asked to address issues related to parents, the Statewide Office of Dependency Representation (or similar concept/name) could also accommodate a Division of Parents’ Attorney should the Florida Bar Special Committee desire a statewide entity to address parent issues as well.

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**Oversight, Guidance, Training, Technical and Administrative Support Team (Team 2):**

How should the responsible entity/ies be set up internally to meet the need for oversight, guidance, training, technical and administrative support?

In determining how should the responsible entity/ies be set up internally to meet the need for oversight, guidance, training, technical and administrative support, Team 2 concluded that minimum requirements for an oversight entity set up would be a state director, experienced staff attorney(s), and IT analyst(s). Team 2 noted that in 2002 the internal set-up for the creation of the $339,103 Statewide GAL Office was State Director (pay rate for Trial Court Administrator) $82,094, Staff Attorneys (x2) $111,127, Senior Court Analyst (x2) $91,424, Administrative Assistant I $ 28,071, Senior Secretary $ 26,387.

A Team 2 member commented that the circuit courts are responsible for the oversight of the pool of attorneys appointed under their jurisdiction pursuant to Ch. 27, F.S., and funds can be provided to legal aid organizations to cover the appointments under section 39.01305, F.S., for

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10 SEE PDF Page 18 of [https://goo.gl/E7yOhD](https://goo.gl/E7yOhD).
specified locations.

Team 2 looked at how should Florida ensure that the work performed by the attorneys provides those children with high quality representation. Team 2 concluded that any oversight entity shall use objective measurements of statutory permanency timeframes, along with ABA and Florida model child representation guidelines when contracting with individual attorneys and organizations to ensure high quality representation statewide, such as:

- See also attached Palm Beach County Legal Aid Foster Children’s Projects oversight performance criteria.

A Team 2 member commented that the Board of Governors always has rejected standards’ that regulate attorneys beyond The Florida Bar regulations. The Florida Bar did approve “guidelines” instead of “standards” for legal practice for child advocacy and those could be used as a guide post for training. However, the Family Law Section, for example, has been very clear they do not support regulation of attorneys in this fashion. The legal community and child advocates have not done all we can to maximize the quality of the representation of children appointed counsel under section 39.01305, F.S. As such, we can improve the quality of the attorney currently appointed by either mandating board certification or providing enhanced payment for certification. Most circuit courts will be receptive to best practices regarding requirements for inclusion in the pool of attorneys that will take appointments. There are circuits that have good requirements and these practices can be both improved and shared between circuits. We could also improve our pool of private counsel for special needs children in the same manner as was done for the appointments made in death penalty cases. We could increase CLE requirements and training. Irrespective of any other method of providing counsel for children there will always need to be a pool of private attorneys.

In reviewing whether separate mechanisms are in place for organizational providers vs. individual attorneys, Team 2 concluded that the oversight entity shall use the same contract terms for organizational and individual attorneys to ensure efficient analysis and uniform statewide quality. All contracts shall include objectively measurable terms. The National Association of Counsel for Children (NACC) may assist with state by state contract analysis.

A Team 2 member commented that objectively measurable deliverables are essential to any contract that would provide state funds to vendors for provision of contracted services. In terms of contracts with organizations, they preliminarily reviewed the deliverables provided by the

13 http://www.naccchildlaw.org/?page=Mission
Legal Aid Society of Palm Beach County (LASPBC) with the administrative folks at the GAL and believe that contracts can be drafted with similar deliverables for provision of counsel by private organizations. They will need to reflect the intended scope of representation described in section 39.01305, F.S.; however, the level of oversight provided by those measures is certainly within the range of possibility.

Oversight can be established by the contract between oversight entity and organizational and individual attorneys for payment. Oversight entity shall create an independent committee of statewide dependency experts to help develop performance measures for contracted attorneys in good standing with The Florida Bar. A Team 2 member commented that this should be done through reasonable contract requirements. The oversight entity should track contracted attorney’s performance achieving statutory permanency timeframes, ABA and Florida model child representation guidelines. A Team 2 member commented that tracking statutory time frames and applying reasonable oversight consistent with objective and reasonable deliverables as discussed above is appropriate.

See also: a) preparing the child to testify and taking any steps to minimize any harm that might be caused by testifying; b) petitioning the court for relief on behalf of the child and filing and responding to appropriate motions and pleadings; c) participating in depositions, discovery and pretrial conferences; d) participating in settlement negotiations to seek expeditious resolution of the case; e) making opening statements and closing arguments; f) calling, examining and cross examining witnesses and offering exhibits and introducing independent evidence; g) filing briefs and legal memoranda; h) ensuring that written orders are entered that accurately reflect the findings of the court; i) attending all staffings, reviews, hearings, permanency plan staffings, judicial reviews and the permanency hearing; j) providing representation upon appeal14. Boston’s Youth Advocacy Division (YAD) has also established a long checklist that includes court time, hours accounting, client visits, court observation, and judicial reviews15.

A Team 2 member commented that for organizations, these items are better addressed by training rather than oversight management. For example, they do not believe we need to monitor the practice of legal aid operations to level of detail described here. A Team 2 member commented that we could establish a training committee that could develop and recommend training for all attorneys providing representation to children. That could be provided to contracted organizations and private attorneys through the contract provider and the courts. Team 2 recommended that all counsel for dependent children should be required to take the same uniform training, but some allowances may be made for pro bono attorneys that are making limited appearances for specialized issues like immigration or master trusts.

NOTE: Florida currently does not have an oversight entity organization to ensure that the work performed by section 39.01305, F.S., attorneys provide children with effective high-quality representation. The JAC contracts with individual attorneys for administration of payment but does not provide oversight to ensure quality representation of children statewide. Unfortunately, after three years without an oversight entity there has been a downward trend in section

15 https://www.publiccounsel.net/ya/
39.01305, F.S., attorney appointments, less case assignments and many circuits are under appointing mandated attorneys with only about 3 million of the 8.8 million allocated by the Legislature to section 39.01305, F.S., special needs attorneys being spent on direct representation of children. Most of the remaining funds have been reabsorbed or allocated by the JAC for other purposes. Further guidance on the advantages and disadvantages of various oversight entity approaches considered for GAL can be found Exhibit 3 chart http://www.oppaga.state.fl.us/reports/pdf/0210rpt.pdf. This Florida Legislature Office of Program Policy Analysis and Government Accountability report provides invaluable analysis of various oversight entity approaches including the Court, Office of Child Advocate served by the JAC, Public Defender’s office, executive and not-for-profit while also addressing inherent conflicts of interest.

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**Transition Team (Team 3): Transitioning from current system of appointments to new system. What is the best way to create an orderly transition for children who are currently represented by counsel?**

Team 3’s work necessarily presumes that the committee will decide to move the appointment of paid counsel from the locally operated registry system to a different mechanism. The current registry system is designed to operate locally under the chief judge for the circuit. As a result, all circuits have different processes and criteria with varying requirements for training, experience etc. Further, currently, there is no qualitative process to track the lawyer’s representation and quality of work.

Team 3 supports the creation of a universal system that will create consistency and uniformity as well as designing minimum standards and criteria. Team 3 was also mindful of the importance of existing relationships, especially for children in the dependency system. Therefore, one of the primary considerations is ensuring that any existent attorney-client relationship is not disturbed. With that in mind, Team 3 believes that current appointments should migrate to the new system.

An attorney that has migrated with his or her case to the new system will be required to comply with established minimum standards to remain on the case once his or her contract comes up for renewal. The attorney, if he or she so chooses, will also be given the option to meet the established criteria for the appointment of new cases. Team 3 envisions the criteria for the appointment of new cases as more stringent and above minimum standards of practice, perhaps having a Continued Quality Improvement (CQI) process as a component and including an independent review of the attorney handling of the case. Otherwise, by meeting the established minimum standards the attorney will be able to continue to represent his or her client until the case is completed.

There should be two criteria that an attorney can choose from once the attorney has migrated to the new system from a prior appointment. To remain on the case, upon his or her contract coming up for renewal, the attorney will be required to meet established minimum standards. Should the attorney wish to continue to receive new appointments, the attorney will be required to meet the established standards for the appointment of new cases.
Team 3 recommended that current contracts should migrate to the new system. Once the contract comes up for renewal the newly designed standards will apply. Team 3 would also like to point out that there are attorneys currently providing legal representation to children that provide the service on a pro-bono basis and are currently not appointed under the JAC. Those attorneys and how they will become part of the system is an issue that will require further consideration.

 Expansion Team (Team 4): Expanding the population of children entitled to appointed counsel. What is the best way to add populations of children to receive counsel?

Given the current population of children who are represented, the unmet needs of many more, and the current population of attorneys providing counsel, the legislature should be the entity that determines the groups that will be receiving representation in increments and with the goal of 100% representation by a stated time frame. After Team 4’s discussion, Team 4 felt that 2021 would be a realistic goal for 100% representation.

To ensure a well-informed decision by legislators regarding the priority of representation, there should be a committee created to advise the legislature as to the highest priority expansion. This committee should meet yearly and should be made up of representatives from GAL, Regional Counsel, DCF, Community Based Care, Office of Child Advocacy, and LNOCC. It is also recommended that representatives from organizations that currently provide high quality child representation be included as well as representation from judiciary that is well versed in dependency proceedings.

In determining how should geographic differences in the current provision of counsel come into play, one of the functions of the advisory group should be identifying gaps as the expansion takes place as well as providing possible solutions for the consideration of the legislature and other statewide agencies that could positively impact those gaps.

Team 4 agrees that quality representation is a paramount consideration and that every child in the dependency system is entitled to quality representation. The challenges to high quality representation revolve around the availability of well-trained attorneys as well as geographical challenges to having such a pool. Some possible solutions to narrow the gaps are:

1. Florida Law Schools to develop Children and the Law clinics. The effect would be two-fold; to provide much needed interns to assist the lawyers handling these difficult cases and to train and encourage newly graduated lawyers to enter this field of law (similar to what happens with State Attorney’s Offices and Public Defender’s Offices);
2. Specific student loan forgiveness or deferment for work at the Office of Child Advocacy or lawyers contracted by said office;
3. Allot additional due process costs to lawyers appointed pro bono to encourage participation.

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**Parent Representation**

**Responsibility/Accountability Team (Team 5):** What mechanism should ensure that court appointed parents’ counsel have oversight, guidance, training, and technical and administrative support to provide holistic representation?

Team 5 concluded that separate mechanisms should indeed be in place for organizational providers and individual attorneys. Conceptualizing what type of mechanisms should oversee attorneys would be difficult, but separation of these mechanisms should be in place. The “separation” is between public or institutional employees and private, even if appointed, counsel. It is in the public interest to assess whether the flat rates paid to appointed counsel truly reflect the value of the work done. A mechanism should be in place to incentivize good work (E.g., enhancing rates/salaries for board certification).

One mechanism for regulation and quality control would be an accounting or reporting presented to qualify what attorneys do on their cases. Outcomes should not be indicative of the quality of representation. Additionally, Team 5 discussed file review as a means of measuring quality representation. The file review would have to be conducted by a person hired specifically to undertake this task, perhaps working for an independent agency.

Team 5 agreed that the Bar is self-policing, Regional Counsel is self-policing, and solo practitioners are self-policing. If there is a contract for public funds to be expended on appointed counsel, it could be said that the attorneys should be subject to some sort of file review or reporting requirement to ensure quality representation. If separate mechanisms exist, however, there should be an additional level of scrutiny to ensure that attorneys have the support they need to vigorously defend parents in court.

Moreover, specifically conflict registry attorneys should be under contract with JAC, the chief judge, or an agency/entity that does not yet exist, which commits the attorney to maintain a certain number of CLEs, to remain vigilant in case law and statutory changes, and to remain committed to the practice of parent representation. Breach of this contract would be removal of the attorney from the conflict list.

Team 5 concluded that the requirement to participate in oversight could be established by contract, court rule, or administrative order. If a contract were used, the contract should not simply be limited to a commitment to meet a certain experience level; it should also indicate that the attorney agrees to maintain a certain number of CLE hours specific to dependency law. The criteria should be standardized statewide, with an option for each jurisdiction to expound and expand upon those criteria to improve the quality of parent representation.

Team 5 also discussed possible actual oversight by chief judges to maintain a list of registry attorneys with high standards.
Team 5 agreed that there should be something quantifiable (e.g., a certain level of training required, certain number of CLEs required, etc.) established as minimal criteria. Attorneys should have to report their CLEs to The Florida Bar and will be held to that responsibility to report. If the attorney does not report those hours, disqualification from the list would result. Minimal standards should be set forth as statewide minimum standards, and each jurisdiction could have the discretion to impose additional standards for parent representation. Enough jurisdictions throughout the country have criteria and expertise to indicate that another independent committee need not reinvent the wheel. There should be a document or practice that we adopt, even if in modified form. This would require researching outside jurisdictions to evaluate and draft minimal standards.

This committee could develop the standards and promulgate those as the minimum acceptable standards for parent representation in Florida, without the need for independent committee. Certainly, however, those standards would be subject to the Bar and court rule.

Team 5 determined that for the oversight of performance (file review, court observation, time records, etc.), that court observation would be welcome by whomever wishes to observe. File review and time record-keeping are not preferable, but Team 5 recognizes the need for oversight to ensure quality representation. Some type of reporting mechanism could be useful, in addition to maintaining the above-mentioned minimum CLE requirement.

In reviewing who should determine what training is recommended or required for children’s attorneys, Team 5 answers this question with a “both/and” response. There are specialized trainings several times per year, including the RC4 parents’ representation conference held yearly. The public interest law section holds trainings for juvenile board certification in March/April. The Team discussed setting up a system whereby entities can teach attorneys to train so that it reaches more people, such as a Train the Trainer system. Training entities are abundant in Florida; it is simply a matter of funneling people to the trainers. There should be a person or group that synthesizes the training available and makes it readily available (low/no cost, several times per year) to parent attorneys. A few questions the subcommittee posed are:

1. Where would that person or group be housed?
2. Could this be a new committee?
3. The Supreme Court?

It is contemplated that there would be an office of statewide training that is created because of this. The trainer should be publicly funded: perhaps through a state university willing and able to house such an entity.

Online training could also be very useful. Online training would not be the primary source of information, but videos can assist with practice.

In looking at who should develop and deliver training, Team 5 determined that this should be a university setting-type training with professors on the broader committee. We could recruit a law firm to also do something of this nature for the purposes of reporting. Inns of court specializing in dependency law are not plentiful, and that could be an avenue to deliver information and
exchange ideas. A Train the Trainer could be held in a central location and then funnel the trainers to the local jurisdictions to deliver training to parent attorneys.

Any public employee whose job is to represent parents should be required to undergo training and meet minimum standard requirements. Team 5 has reservations about the requirement to partake in training, as it could be criticized for being mandatory. For first-time private attorneys, it would certainly be reasonable to have to certify that the attorney has received entry-level basics training.

There should be classes available at different levels, and attorneys should all be required (if this becomes a requirement) to take classes in dependency appellate law. These trainings should be available and offered at no/low cost. If a clinic at a law school that is self-funded could undertake the task, that would be helpful.

Team 5 would find it extremely beneficial to have access to licensed paralegals and licensed social workers, as they are well suited to assist one another. Attorneys should also have greater access to expert witnesses, which are an obvious barrier to achieving good results to parents, given the disparity in funding for parent representation versus DCF.

JAC keeps a list of investigators who are accessible by court-appointed counsel. It would be beneficial to be able to use the same investigators who are available for criminal cases and apply their skills to dependency cases. Social work schools should be able to avail students to parent attorneys and assist where needed. Interpreters for people with cognitive abilities would assist with a wide range of parents in the dependency system. Parent/peer mentors would be an invaluable resource for assisting clients to navigate the system. The resources needed are only those that are crucial to due process. The above resources are indeed crucial, necessary, and are not currently as available as needed.

Team 5 recognized the need to have a centralized, virtual location where case law is updated and a forms-bank containing motions and statutory updates is updated regularly. Additionally, Regional Counsel and other state entities have much less restricted access to clerks’ systems (in some jurisdictions, “Odyssey”), but registry attorneys do not have this same access as they should. Parent attorneys should also have limited access to Florida Safe Family Network (DCF’s computer system), as parents and their counsel are the only party to the case who is unable to access FSFN. There could be a funded position to make the resources available, which would be somewhat of an editing-type role. There should be something under one roof, which includes forms and a database readily accessible at no cost.

In conclusion, separate mechanisms should be in place to ensure high quality work by parents’ attorneys. The requirement to participate in oversight could be established in several ways, and each could be just as effective as long as minimal criteria, which are uniform statewide, are established to ensure that parent representation is meaningful. A number of elements could be included in the oversight process, including court observation. There is no need to reinvent the wheel as it pertains to training. Many resources currently exist; it is a matter of researching those resources and agreeing upon the best manner in which to disseminate the information.
There are many areas in which parents’ attorneys are woefully without even adequate resources to defend their clients against DCF. Access to more meaningful resources and access to a wider array of technology would greatly improve the quality of representation.

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**Resources Team: Sufficiency of resources at Regional Counsel (Team 6):** What is needed to ensure high quality representation for all parents and how can additional resources be acquired?

The Offices of Criminal Conflict and Civil Regional Counsel (a/k/a Regional Counsel) are divided into 5 districts and each district has distinct needs. To accurately assess these needs on a statewide level the team respectfully requests the following:

**Proposal 1:** The committee should recommend that the legislature grant the request to fund a position within the Regional Counsel’s office, 1st DCA Region (RC1) in Tallahassee entitled “Legislative Affairs Coordinator.” (Submitted in this year’s amended LBR from RC1). This position would work for all five Regional Counsel and be tasked in part with gathering the statewide data needed to accurately quantify the workload to ensure needs are met and to help the legislature to determine appropriate funding.

**Proposal 2:** The committee should Request that Regional Conflict Counsel be added to the Governor’s recommendation regarding developing a weighted caseload model and conduct a workload assessment the same as it is done for the state attorneys and public defenders.

**Proposal 3:** Language should be considered to be added to the Governor’s recommendation to read the following --- “CRIMINAL CONFLICT AND CIVIL REGIONAL COUNSEL. The Office of Program Policy Analysis and Government Accountability (OPPAGA) shall develop a weighted caseload model and conduct a workload assessment of the Criminal Conflict and Civil Regional Counsel in all 5 Regions. In developing the weighted caseload model, OPPAGA shall analyze caseload statistics based on the complexity of the various kinds of cases filed and the amount of time needed for regional conflict counsel to resolve these cases. OPPAGA shall also analyze whether the expansion of specialty courts has impacted the workload needs of Criminal Conflict and Civil Regional Counsel. OPPAGA shall recommend any needed adjustments to the number of FTE necessary to meet the workload needs of each Criminal Conflict and Civil Regional Counsel office by January 1, 2019.”

**Proposal 4:** The committee should recommend that there be enforcement of the statutes requiring collection of fees for the civil indigent defense trust fund. This is a resource that would have a significant impact on the Regional Counsel’s available funding, as the fee is to be collected from every parent seeking appointment of counsel. This lack of collection as required by law has a negative impact on Regional Counsel’s funding.

In fiscal year 2016-2017, RC1 alone was appointed 1712 cases in dependency cases. If all application fees were collected as required by statute from that, they would have collected $77,715. In that same fiscal year, 14,204 parents were appointed registry attorneys in dependency cases (including appeals and TPR’s, per JAC) statewide. If the indigent civil defense
trust fund amounts were collected from that ($45 per parent), which would net a total of $639,180 for the fund and this would be for all the Regional Counsel. This could satisfy shortfalls without requiring additional money from the legislature. The statutes state in pertinent part:

57.082 - Determination of civil indigent status.

(1) APPLICATION TO THE CLERK. --A person seeking appointment of an attorney in a civil case eligible for court-appointed counsel, or seeking relief from payment of filing fees and prepayment of costs under s. 57.081, based upon an inability to pay must apply to the clerk of the court for a determination of civil indigent status using an application form developed by the Florida Clerks of Court Operations Corporation with final approval by the Supreme Court.

…

(d) A person who seeks appointment of an attorney in a proceeding under chapter 39, at shelter hearings or during the adjudicatory process, during the judicial review process, upon the filing of a petition to terminate parental rights, or upon the filing of any appeal, or if the person seeks appointment of an attorney in a reopened proceeding, for which an indigent person is eligible for court-appointed representation must pay a $50 application fee to the clerk for each application filed. … If the applicant has not paid the fee within 7 days, the court shall enter an order requiring payment, and the clerk shall pursue collection under s. 28.246. The clerk shall transfer monthly all application fees collected under this paragraph to the Department of Revenue for deposit into the Indigent Civil Defense Trust Fund, to be used as appropriated by the Legislature. The clerk may retain 10 percent of application fees collected monthly for administrative costs prior to remitting the remainder to the Department of Revenue. If the person cannot pay the application fee, the clerk shall enroll the person in a payment plan pursuant to s. 28.246.

…

(5) APPOINTMENT OF COUNSEL. --In appointing counsel after a determination that a person is indigent under this section, the court shall first appoint the office of criminal conflict and civil regional counsel, as provided in s. 27.511, unless specific provision is made in law for the appointment of the public defender in the particular civil proceeding. The court shall also order the person to pay the application fee under subsection (1), or enroll in a payment plan if he or she is unable to pay the fee, if the fee remains unpaid or if the person has not enrolled in a payment plan at the time the court appoints counsel. However, a person who is found to be indigent may not be refused counsel.

(6) PROCESSING CHARGE; PAYMENT PLANS.--A person who the clerk or the court determines is indigent for civil proceedings under this section shall be enrolled in a payment plan under s. 28.246 and shall be charged a one-time administrative processing charge under s. 28.24(26)(c). A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if it does not exceed 2 percent of the person's annual net income, as defined in subsection (1), divided by 12. The person may seek review of the clerk's decisions regarding a payment plan established under s. 28.246 in the court having jurisdiction over the matter. A case may not be impeded in any way, delayed in filing, or delayed in its progress, including the final hearing and order, due to nonpayment of any fees or costs by an indigent person. Filing fees waived from payment under s. 57.081 may not be included in the calculation related to a payment plan established under this section.
28.246 - Payment of court-related fines or other monetary penalties, fees, charges, and

Florida Bar

Bar Support Team & Bar Foundation (Team 7): Florida Bar Actions what can the Bar do to support and enhance quality of representation in the Executive and Judicial Branches for both parents and children? Standards of representation and rules of court are two areas that this may include. It also addressed steps the Florida Bar can take that will support and strengthen the work of the Florida Bar Foundation and its grantees in providing high quality representation.

Team 7 met and made the following recommendations to the committee:

1. That The Florida Bar, through its key contacts, communicate all the recommendations of this special committee to any statewide candidates in upcoming elections;

2. That the Juvenile Rules Committee propose a rule for the Supreme Court to adopt mandating that attorneys who represent children and parents in dependency proceedings be familiar with the Florida Guidelines of Practice for Lawyers who Represent Children in Abuse and Neglect Cases and ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases. The level of mandate regarding compliance with these guidelines and standards will be left to the Rules Committee to propose. To make this a meaningful mandate the Florida Bar should make an ongoing commitment to provide continuing education on these guidelines and standards including making this a part of the certification process for the Juvenile Law specialty.

3. That the Judicial Administration Commission, Regional Counsels or any other entity that funds representation of children and parents in dependency proceedings mandate that attorneys follow the Florida Guidelines of Practice for Lawyers who Represent Children in Abuse and Neglect Cases and ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases or a similar set of minimum standards of representation.

4. That the Board of Governors review the Florida Guidelines of Practice for Lawyers who Represent Children in Abuse and Neglect Cases and ABA Standards of Practice for
Attorneys Representing Parents in Abuse and Neglect Cases to evaluate whether these can be strengthened through an endorsement by the Florida Bar in a way to allow them to be used in a bar disciplinary action or enforced in some other way.

5. That the Juvenile Rules Committee propose changing the Rules of Juvenile Procedure to eliminate the term “attorney ad litem” and replace it with attorney for the child or some similar phrase.

6. That The Florida Bar Board of Governors’ create a legislative position that the State of Florida provide adequate resources for quality counsel for all parties in dependency proceedings including funds for these attorneys to get training and qualify for certification.

7. That The Florida Bar allocate some Bar funds as short-term seed money to the Bar Foundation to create a Quality Improvement Center model or similar model of quality training in Florida for attorneys who represent children and parents in dependency proceedings. This model was created by a five-year U.S. Health and Human Services grant involves intensive training on core principles followed by coaching and follow up meetings to ensure retention and incorporation of best practices.

VII. Florida Bar Recommendations

The Committee has approved the following recommendations to the Board of Governors for consideration:

1. The Special Committee recommends that The Florida Bar adopt a legislative position in support of the Regional Counsel's request to fund a position within the Regional Counsel’s office, 1st DCA Region (RC1) in Tallahassee entitled “Legislative Affairs Coordinator.” (Submitted in this year’s amended LBR from RC1).

   NOTE: This proposal was approved by the Special Committee at the Winter Meeting and forwarded to the Board of Governors for approval. The proposal was expedited though the Legislative Committee, and the Board of Governors approved the proposal on January 26, 2018. With the sunsetting of all Florida Bar legislative positions for the 2016-2018 Biennium, the Special Committee requests that the Board of Governors continue advocacy of this position for the 2018-2020 Biennium.

2. The Special Committee recommends that The Florida Bar adopt a legislative position in support of the Regional Counsel's request to be added to the Governor’s recommendation regarding developing a weighted caseload model and conduct a workload assessment the same as it is done for the state attorneys and public defenders. The recommended

language is:

“CRIMINAL CONFLICT AND CIVIL REGIONAL COUNSELS The Office of Program Policy Analysis and Government Accountability (OPPAGA) shall develop a weighted caseload model and conduct a workload assessment of the Criminal Conflict and Civil Regional Counsels in all 5 Regions. In developing the weighted caseload model, OPPAGA shall analyze workload data based on the complexity of the various kinds of cases filed and the amount of time needed for regional conflict counsel to adequately prepare and resolve these cases. OPPAGA shall also analyze to what extent the expansion of specialty courts has impacted the workload needs of Criminal Conflict and Civil Regional Counsels. OPPAGA shall recommend any needed adjustments to the number of FTE necessary to meet the workload needs of each Criminal Conflict and Civil Regional Counsels office.”

3. The Special Committee recommends that The Florida Bar adopt a position in support of enhanced enforcement of the statutes requiring collection of fees for the civil indigent defense trust fund.

4. The Special Committee recommends that The Florida Bar, through its Key Contact Program, communicate the recommendations of the Special Committee that are approved by the Board of Governors to any statewide candidates in upcoming elections.

5.  
   a. The Special Committee recommends that the Juvenile Rules Committee propose a rule for the Supreme Court to adopt mandating that attorneys who represent children and parents in dependency proceedings be familiar with the Florida Guidelines of Practice for Lawyers who Represent Children in Abuse and Neglect Cases and ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases. The level of mandate regarding compliance with these guidelines and standards will be left to the Rules Committee to propose.
   b. The Florida Bar should make an ongoing commitment to provide continuing education on the Florida Guidelines of Practice for Lawyers who Represent Children in Abuse and Neglect Cases and ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases including making this a part of the certification process for the Juvenile Law specialty.

6. The Special Committee requests that the Justice Administrative Commission, the chief judges of the circuit courts, the Offices of Criminal Conflict and Civil Regional Counsel or any other entity that funds or has an administrative role in the provision of representation of children and parents in dependency proceedings mandate that attorneys
follow the Florida Guidelines of Practice for Lawyers who Represent Children in Abuse and Neglect Cases and ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases or a similar set of minimum standards of representation.

7. The Special Committee recommends that the Board of Governors review the Florida Guidelines of Practice for Lawyers who Represent Children in Abuse and Neglect Cases and ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases to evaluate whether these can be strengthened through an endorsement by The Florida Bar in a way to allow them to be used in a bar disciplinary action or enforced in some other way.

8. The Special Committee recommends that the Juvenile Rules Committee propose changing the Rules of Juvenile Procedure to eliminate the term “attorney ad litem” and replace it with attorney for the child or some similar phrase.

9. The Special Committee recommends that The Florida Bar adopt a legislative position that the State of Florida provide adequate resources for quality counsel for all parties in dependency proceedings including funds for these attorneys to get training and qualify for certification.

10. The Special Committee recommends that The Florida Bar allocate some Bar funds as short-term seed money to The Florida Bar Foundation to create a Quality Improvement Center model or similar model of quality training in Florida for attorneys who represent children and parents in dependency proceedings. This model was created by a five-year U.S. Health and Human Services grant involves intensive training on core principles followed by coaching and follow up meetings to ensure retention and incorporation of best practices.

11. The Supreme Court to adopt that requires all parties, and permits all participants, in Chapter 39 proceedings to notify the court that the Guardian ad Litem may have a conflict of interest with the child that might necessitate the appointment of counsel for the child.

12. The Special Committee recommends that The Florida Bar adopt a legislative position in support of amending section 27.5304, F.S., to allow increased compensation for board certified attorneys – either in dependency court only or for all registries:

For dependency only:

27.5304 Private court-appointed counsel; compensation; notice. —
(6)
(e) Attorneys appointed pursuant to section 39.01305 who are Board Certified by the Florida Bar may be compensated at an enhanced rate of 10% over the limits established by law.

For all attorneys:
27.5304 Private court-appointed counsel; compensation; notice. —
(e) Attorneys entitled to compensation under this section who are Board Certified by the Florida Bar may be compensated at an enhanced rate of 10% over the limits established by law.

VIII. Legislative Recommendations

a. Statewide Office of Dependency Representation (SODR)

The committee, through the team assignments, recognized the need to propose legislation to address the way that the State of Florida provides attorneys to children and parents who are not represented by Regional Counsel. This proposed legislation does not expand the number of kids who get attorneys, does not change the GAL, and does not change how Regional Counsel operate. The bill continues current support for both pro bono representation and for the existing programs providing attorney representation to children without state funding.

What the legislation does is create an overarching structure (“SODR”) that includes a Division of Parent Representation and Division of Child Representation. The Executive Director of SODR would be determined in the same manner as the GAL Director is currently selected, and the ED of SODR will appoint the heads of the Parent and Children Division. The Committee initially approved a version of the bill that would place the GAL under the Statewide Office of Dependency Representation per the recommendation of the original commission report. The committee ultimately decided to remove the GAL from the bill thus this legislation makes no changes to the GAL structure or operation.

The legislation creates a Dependency Representation Commission to serve as a stand-alone advisory entity. The duties of this Commission are to: 1) recommend Candidates for head of SODR to the Governor; 2) set criteria for attorneys to be eligible for appointment to parents and children under SODR (not Regional Counsel); 3) establish standards of practice; 4) advise divisions on development of performance measures and oversight, and; 5) advise the Legislature on the need for expansion of representation.

The legislation creates a Division of Children’s Attorney which: 1) provides attorneys to all children entitled to state funded counsel; 2) has the authority to contract with individuals and entities to provide attorneys to children; 3) ensures counsel appointed meet criteria established by Commission; 4) provides counsel with access to technology and resources; 5) ensures counsel has sufficient preparation, knowledge and skills, and lists 10 specific items that attorneys are responsible for, and; 6) has oversight responsibility for attorneys appointed to children under the
law. The Division of Children’s Attorney would collect, report and track reliable data, develop performance measures and standards through the commission, and review the performance of attorneys with the goal of helping them achieve and maintain high quality performance, but done in a way to preserve client confidentiality and avoid conflicts of interest.

The legislation creates a Division of Parents’ Attorneys which; 1) provides attorneys to all parents entitled to court appointed counsel who are not represented by Regional Counsel; 2) has the authority to contract with individuals and entities to provide attorneys to parents; 3) ensures that counsel appointed meet criteria established by Commission; 4) provides counsel with access to technology and resources; 5) ensures counsel has sufficient preparation, knowledge and skills, and; 6) has oversight responsibility for attorneys appointed to parents by the division. The Division of Parents’ Attorneys would review the performance of attorneys with the goal of helping them achieve and maintain high quality performance but done in a way to preserve client confidentiality and avoid conflicts of interest. The Division of Parents’ Attorney does not have oversight over Regional Counsel but would have a duty to coordinate and share resources.

The proposed SODR legislation is included as Attachment 1.

b. Expansion of Child Representation

The Team that was asked to look at the issue of expanding the population of children entitled to appointment of counsel recommended that the Legislature identify additional priority populations for whom to provide the right to counsel. It suggested a committee of stakeholders to advise the Legislature as to the needs of children, and that the State seek to provide counsel to all children by the year 2021. The idea for a committee to make recommendations to the Legislature is incorporated as a responsibility of the Dependency Representation Commission in the SODR bill.

Staff took the draft language for the SOCA (Statewide Office of Children’s Attorney) bill that was drafted by the LNOCC and adapted it as the expansion bill for the committee’s consideration. The intent section of the expansion bill includes the goal of appointing counsel to all children by the year 2021. The bill itself, however, does not effectuate that goal. Like the SODR bill, the expansion bill retains the goals of promoting pro bono and existing programs providing attorney representation to children without state funding.

The expansion bill has three major components. First, the expansion bill defines “child’s attorney” and then uses that term to replace the term “attorney ad litem” throughout Chapter 39. It also addresses children’s right and need for protection of their legal rights.

Second, the expansion bill cross references the SODR bill by making the mechanism for appointing paid counsel per section 39.01305, F.S., go through the Division of Children’s Attorneys rather than using the existing JAC registry system. It also references the Statewide Office in other provisions of the law regarding services of process and participation in the

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17 The SODR must provide adequate compensation and provide due process costs to indigent parents with retained counsel.
Children’s Cabinet.

Finally, the expansion bill adds four additional categories of children who should be entitled to the appointment of counsel: children in licensed placements (foster care or group homes); children who have not achieved permanency within 12 months of being sheltered; children for whom the court determines there is the need for appointment of counsel; and, children for whom there is a conflict because the guardian ad litem is presenting a position or recommendation to the court that is contrary to the express wishes of the child.

The proposed legislation is included as Attachment 2.

IX. Recommendations Not Otherwise Incorporated

Several of the teams made recommendations that were not either directed at The Florida Bar or suitable for inclusion in either piece of legislation. Those recommendations may be directed at third parties or may offer advice on implementation of the proposed legislation. This important and thoughtful work is included as Attachment 3. The contents are reported as provided by the teams and were not approved by the committee.

X. Minority Report of the Statewide Guardian ad Litem (GAL)

Members of the committee representing the GAL were generally opposed to the recommendations in the final report. With the approval of the Chairman, the GAL was given the opportunity to file a minority report, which is included as Attachment 5.

XI. Conclusion

Dependency proceedings are complex legal processes that often involve expert health and mental health testimony, implicate numerous federal and state laws, and require an understanding of multiple service delivery systems. That is why DCF relies on counsel to represent its interests, based on a ruling by the Florida Supreme Court that the agency was being represented in court by case workers engaged in the unauthorized practice of law. That is why the rights in question and the power of the state provide parents with the right to be represented in these proceedings through court-appointed counsel. And, that is why the GAL employs lawyers to advocate for the positions espoused in court by its volunteer guardians to promote the child’s best interests.

Children would not be expected to represent themselves in court proceedings on their own. However, a child’s rights must be represented to the court if the court is going to be able to listen and balance the best interests of the children and other parties before it. Despite being at the center of the proceedings, in Florida, the child is the only party to a dependency proceeding without a complete statutory right to counsel, leaving the most vulnerable party powerless and
voiceless in the courtroom. The GAL is required by statute to express to the court what the child wants but it is not bound to follow the child’s direction if it believes that the child’s wishes are contrary to what the GAL program finds to be in the child’s best interests.

As a result, the child's wishes may go unheard. The child's right to be heard goes unrealized. The wishes of a child may be not only unheard but, when in conflict with the GAL, they are certainly not argued unless the child has counsel. The child will be forced to argue for herself if she is permitted or encouraged to enter the courtroom at all. The child needs a voice only a lawyer can provide.

A lawyer for a child helps the child and therefore improves the quality of decision-making by the court.

Florida Rules of Professional Conduct acknowledge that, sometimes, a client may be functioning under a disability - in this case, the disability is based on the minority status of the child. The rules do not say that persons under disabilities do not get lawyers. Instead, they counsel lawyers to provide representation in accordance with all of the rules that govern a normal attorney-client relationship.

**Rule 4-1.14 Client Under a Disability - (a) Maintenance of Normal Relationship.**
*When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.*

A child’s participation in the legal process can assist the child in making better and more informed decisions. The lawyer should explain the practical effects of taking various positions, the likelihood that a court will accept particular arguments, and the impact of such decisions on the child, other family members, and future legal proceedings. When a child makes better decisions and enunciates his or her needs and desires, the court is better informed and able to decide how and whether those requests should be answered.

When a child is represented it benefits everyone in the court and the system:

- Legal representation in dependency proceedings helps ensure the integrity of the system by fostering the child’s trust and understanding of the system that is making fundamental decisions about her life.
As with any lawyer, a child's lawyer works for the child and is directed by the child client. A child's lawyer "shall abide by a client's decisions concerning the objectives of representation, subject to subdivisions (c), (d), and (e), and shall consult with the client as to the means by which they are to be pursued. See Florida Rules of Professional Conduct, Rule 4-1.2 Scope of Representation.

The therapeutic and procedural justice dimensions of the attorney-client relationship for children involved in the child welfare system helps a child feel part of the decision-making process that governs her life. The child who participates in decisions involving his or her own future is more likely to embrace those decisions. See, e.g., ABA Model Act, Report at 21 (“Children who are represented by a lawyer often feel the process is fairer because they had a chance to participate and to be heard. Consequently, children are more likely to accept the court’s decision because of their own involvement in the process”).

Where the child's voice is heard and presented by an attorney, the court will have a complete record upon which to make a fair decision. Courts rely on the information presented to them to make the best decisions they can. A represented child who wants to participate is better able to participate in his or her court case and who has had effective counsel to understand the legal issues involved, the scope of possibilities and the impact of different decisions because their lawyer is obligated to advise them under the Florida Rules of Professional Conduct, Rule 4-1.4(b). Hearing such an informed and advised child is imperative to sound decision-making by a court.

All dependent children need lawyers to advocate for the wishes and legal rights, in addition to their need for best interest representation through the GAL program. This was a key reason the Bar President astutely comprised this special committee. No other interests should be permitted to distract or delay this committee from its mission of securing high quality lawyers for dependent children.
Section 1. Statewide Office of Dependency Representation; legislative findings and intent; creation; appointment of executive director; duties of office. —

(1) Legislative Findings and Intent. —

(a) The Legislature finds that providing legal services through organizational providers is more efficient, cost-effective and amenable to promoting quality, than the use of individual contract attorneys. It further finds that numerous existing organizational providers, including the Office of Criminal Conflict and Civil Regional Counsel and several Legal Aid and Legal Services programs, currently provide legal services and should continue to do so.

(b) The Legislature recognizes that established local organizations exist that are providing attorney representation to children in certain jurisdictions in the state. Some of these organizations have significantly improved the outcomes for children and have been embraced and supported in their communities. The Legislature does not intend that funding provided under this law to be used to supplant or replace already proven organizations providing legal representation for children. Instead, such funding should be used to meet the additional legal representation requirements of the act through a cooperative partnership with existing local organizations or through expansion of those organizations. Further, the Legislature intends that the act continue to encourage the expansion of pro bono representation for children and not be used to discourage or otherwise limit the ability of a pro bono attorney to appear on behalf of a child.

(c) The state's current method of providing counsel to indigent parents and children through a registry system operates at the circuit court level and does not have uniform and consistent criteria for attorney participation. Children and parents should have access to counsel who meet the same minimal criteria regardless of location.

(d) It is therefore the intent of the Legislature to create the means to provide children and parents in Chapter 39 proceedings with high quality counsel and in doing so, recognize that the Guardian ad Litem Program is a valuable component to the overarching provision of dependency representation.

(2) Statewide Office of Dependency Representation. —There is created a Statewide Office of Dependency Representation within the Justice Administrative Commission. The Justice Administrative Commission will provide administrative support and service to the office to the extent requested by the executive director within the available resources of the commission. The Statewide Office of Dependency Representation will not be subject to control, supervision, or direction by the Justice Administrative Commission in the performance of its duties.

(a) The head of the Statewide Office of Dependency Representation is the executive director, who will be appointed by the Governor from a list of a minimum of three eligible applicants submitted by the Dependency Representation Commission. The executive director must be a member of the Florida Bar in good standing. The Governor
will appoint an executive director from among the recommendations, or the Governor may reject the nominations and request the submission of new nominees. The executive director must have knowledge in dependency law and knowledge of social service delivery systems available to meet the needs of parents and children who are abused, neglected, or abandoned. Each Director must be a member of the Florida Bar in good standing. The executive director will serve on a full-time basis and will personally, or through representatives of the office, carry out the purposes and functions of the Statewide Office of Dependency Representation in accordance with state and federal law. The executive director will report to the Governor. The executive director will serve a 3-year term, subject to removal for cause by the Governor. Any person appointed to serve as the executive director may be permitted to serve more than one term.

(b) The Statewide Office of Dependency Representation will have two divisions: the Division of Parents’ Attorneys; and the Division of Children’s Attorneys. Each Division will operate independently and will take measures to ensure that case-specific information is retained within each division so that no conflict or appearance of conflict of interest can arise out of the operation of the divisions under one administrative entity, and to protect attorney-client communications.

2. The executive director of the Statewide Office of Dependency Representation will appoint directors to serve as the heads of the Division of Parents’ Attorneys and the Division of Children's Attorneys. The directors must have knowledge in dependency law and knowledge of social service delivery systems available to meet the needs of parents and children who are abused, neglected, or abandoned.

(c) The Office will be responsible for providing the infrastructure to support the Divisions. The Office will be responsible for providing technology and other tools to enhance performance and accountability. The Office will develop external resources such as social workers, investigators, and experts to enhance availability to counsel.

(d) The Office will be responsible for coordinating training endeavors among the Divisions.

(3) Dependency Representation Commission

(a) Composition. The Dependency Representation Commission will be composed of thirteen persons, three persons appointed by the Governor, one of whom will serve as Chair, two persons appointed by the Chief Justice of the Supreme Court, two persons appointed by the President of The Florida Bar, one of whom specializes in representing children and the other who specializes in representing parents, one person appointed by agreement of the majority of the individual Criminal Conflict and Civil Regional Counsel, one person appointed by the Project Directors Association of Florida’s Legal Aid and Legal Services Programs, one person appointed by the Statewide Guardian Ad Litem Association, one person appointed by the Secretary of the Department of Children and Families, and one person appointed by the Florida Coalition for Children who must be an executive with a Community-Based Care Lead Agency. The chair of the Commission
will identify a former dependent child and parent to sit on the committee ex officio.

1. Commission members will serve a term of 2 years and may be reappointed for 2 additional 2-year terms. The terms will be staggered.

2. Commission members will not receive compensation for their service but may be reimbursed for expenses incurred in the performance of their duties.

(b) Meetings. The Commission may meet as frequently as is needed to complete its work, but must meet at least quarterly. Meetings may be held telephonically or by other electronic means.

(c) Duties.

1. The Commission will provide for statewide advertisement and the receiving of applications for the position of executive director of the Statewide Office of Dependency Representation. It will review applicants, interview candidates and submit a list of 3 candidates to the governor.

2. The Commission will set the criteria for the training, experience and education necessary for appointment as counsel for children and parents in dependency proceedings. It may set minimum criteria and recommend that additional criteria be implemented as the availability of counsel increases.

3. The Commission will establish standards of practice for attorneys practicing in dependency court.

4. The Commission will recommend a course of training for attorneys who represent parents and children.

5. The Commission will assist the divisions with the development of performance measures and methods of oversight to be used in contracts with legal entities and attorneys.

6. The Commission will advise the Legislature on priority needs for expansion of representation.

(4) The Division of Children’s Attorneys will have the responsibility to ensure that all children who are entitled to state-funded counsel receive counsel who have the training, support, and access to resources to protect their rights and provide high quality representation.

(a) The Division of Children’s Attorneys will have the authority to contract with any type of legal entity, including but not limited to law firms, legal services programs, law school clinics, and individual attorneys. The Division of Children’s Attorneys must ensure that counsel are adequately compensated and provided access to resources,
including due process costs, in order to deliver high quality legal services. The Division of Children’s Attorneys will fund reasonable due process costs for pro bono attorneys representing children. The Division of Children’s Attorneys will ascertain where additional attorneys are needed and develop additional resources.

(b) The Division of Children’s Attorneys will ensure that all counsel provided under this section meet the criteria established by the Dependency Representation Commission and are members of the Florida Bar in good standing.

(c) The Division of Children’s Attorneys will ensure that counsel provided under this section are adequately trained. It will provide uniform and high-quality training to all attorneys who represent children in chapter 39 proceedings.

(d) The Division of Children’s Attorneys will identify and endeavor to provide attorneys with access to technology, social workers, investigators, experts and other resources needed to provide high quality representation by developing resources that are available for the attorneys to engage by contract.

(e) The Office must ensure that its attorneys possess the skills, thoroughness, preparation and knowledge of services available to children.

(f) The Division of Children’s Attorneys will have responsibility for all attorneys appointed under this section and will include performance measures and the duty to cooperate with performance review in all contracts.

1. The Division of Children’s Attorneys will collect, report, and track reliable and consistent case data.

2. The Division of Children’s Attorneys, in consultation with the Commission, will develop statewide performance measures and standards.

3. The Division of Children’s Attorneys will have the authority to review the performance of the attorneys and entities with which it contracts with the goal of helping them to achieve and maintain high quality performance. It must ensure that review measures preserve client confidentiality and avoid conflicts of interest.

(5) The Division of Parents' Attorneys will have the responsibility to ensure that all parents who are entitled to court-appointed counsel receive counsel who have the training, support, and access to resources to provide high quality representation. The Division of Parents' Attorneys is responsible for providing counsel to parents determined eligible for court-appointed counsel who cannot be served by the Office of Criminal Conflict and Civil Regional Counsel.

(a) The Division of Parents' Attorneys will have the authority to contract with any type of legal entity, including but not limited to law firms, legal services programs, law school clinics, and individual attorneys. The Division of Parents' Attorneys must ensure
that counsel are adequately compensated and provided access to resources, including due
process costs, in order to deliver high quality legal services. The Division of Parents'
Attorneys will fund reasonable due process costs for indigent parents who have retained
counsel. The Division will ascertain where additional attorneys are needed and develop
additional resources.

(b) The Division of Parents' Attorneys will ensure that all counsel provided under
this section meet the criteria established by the Dependency Representation Commission
and are members of the Florida Bar in good standing.

(c) The Division of Parents' Attorneys will ensure that counsel provided under
this section are adequately trained. It will make uniform and high-quality training to all
attorneys who represent parents in chapter 39 proceedings.

(d) The Division of Parents' Attorneys will identify and endeavor to provide
attorneys with access to technology, social workers, investigators, experts and other
resources needed to provide high quality representation by developing resources that are
available for the attorneys to engage by contract.

(e) The Division of Parents' Attorneys will have responsibility for all attorneys
appointed under this subsection and will include performance measures and the duty
cooperate with performance review in all contracts. It will coordinate and share resources
with the Offices of Criminal Conflict and Civil Regional Counsel, but will not have
authority to oversee the work of those offices. The Division of Parents' Attorneys will
have the authority to review the performance of the attorneys and entities with which it
contracts with the goal of helping them to achieve and maintain high quality performanc
It must ensure that review measures preserve client confidentiality and avoid conflicts of
interest.

(f) The Division of Parent’s Attorneys, in consultation with the Commission, will
develop statewide performance measures and standards. In developing the performance
measures the Division shall consider, but are not limited to objective measurements of
statutory permanency timeframes, along with ABA models parents’ representation
guidelines.

Section 2. Transfer of existing program.—
All funds and positions associated with the payment of registry attorneys who
represent parents and children with certain special needs registry will be transferred
within the Justice Administrative Commission to the Statewide Office of Dependency
Representation by a type two transfer pursuant to s. 20.06(2) on January 1, 2020.

Note:
See 20.03 (10) “Commission,” unless otherwise required by the State
Constitution, means a body created by specific statutory enactment within a department,
the office of the Governor, or the Executive Office of the Governor and exercising
limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor.
Section 1. Ch. 39.001 is amended as follows:

39.001 Purposes and intent; personnel standards and screening. --

(3) GENERAL PROTECTIONS FOR CHILDREN. --It is a purpose of the Legislature that the children of this state be provided with the following protections:

(j) Promotion and protection of their legal rights.

Section 2 ch. 39.01 is amended as follows:

Ch 39.01 Definitions. --As used in this part, the term:

(__) “Attorney for the child” An attorney appointed by the court, assigned by the Division of Children's Attorneys in the Statewide Office for Dependency Representation, or retained to provide independent legal representation in a traditional attorney-client relationship in any proceeding.

Section 3. Ch. 39.01305 is amended as follows:

39.01305 Appointment of an attorney for a dependent child with certain special needs. —

(1)(a) The Legislature finds that:

1. All children in proceedings under this chapter have important interests at stake, such as health, safety, and well-being and the need to obtain permanency. As parties to the legal proceedings which affect their fundamental rights, and their daily lives, due process compels, and research shows, that all such children should be provided their own attorney in addition to the appointment of the Guardian ad Litem program. It is the goal of the Legislature that by the year 2021, all children subject to Chapter 39 proceedings, be appointed an attorney.

2. A dependent child who has certain special needs has a particular need for an attorney to represent the dependent child in proceedings under this chapter, as well as in fair hearings and appellate proceedings, so that the attorney may address the child’s medical and related needs and the services and supports necessary for the child to live successfully in the community.

(b) The Legislature recognizes the existence of organizations that provide attorney representation to children in certain jurisdictions throughout the state. Further, the statewide Guardian Ad Litem Program provides best interest representation for dependent children is appointed in every jurisdiction in accordance with state and federal law. The Legislature, therefore, does not intend that funding provided for representation under this section supplant proven and existing organizations representing children. Instead, the Legislature intends that
funding provided for representation under this section be an additional resource for the representation of more children by the Statewide Office for Dependency Representation, Division of Children's Attorneys in these jurisdictions, to the extent necessary to meet the requirements of this chapter, with the cooperation of existing local organizations or through the expansion of those organizations. The Legislature encourages the expansion of pro bono representation for children. This section is not intended to limit the ability of a pro bono attorney to appear on behalf of a child.

(c) Given the constitutional rights at stake for children who enter into Chapter 39 proceedings, the Legislature determines that Florida’s children are best served by both a Guardian Ad Litem and a Children’s Attorney.

(2) As used in this section, the term “dependent child” means a child who is subject to any proceeding under this chapter. The term does not require that a child be adjudicated dependent for purposes of this section.

(3) An attorney shall be appointed The court shall appoint an attorney pursuant to subsection (4) shall be appointed for a dependent child who:

(a) Resides in a skilled nursing facility or is being considered for placement in a skilled nursing home;

(b) Is prescribed a psychotropic medication but declines assent to the psychotropic medication;

(c) Has a diagnosis of a developmental disability as defined in s. 393.063;

(d) Is being placed in a residential treatment center or being considered for placement in a residential treatment center; or

(e) Is a victim of human trafficking as defined in s. 787.06(2)(d);

(f) Is placed in licensed care;

(g) Has not achieved permanency within 12 months of shelter;

(h) Has a judicial order finding the appointment of an attorney appropriate; and

(i) Is in a conflict situation. When a conflict arises because the guardian ad litem is presenting a position or recommendation to the court that is contrary to the express wishes of the children.

(4)(a) Before a court may appoint an attorney, who may be compensated pursuant to this section, the court must request a recommendation from the Statewide Guardian Ad Litem Office for an attorney who is willing to represent a child without additional compensation. If such an attorney is available within 15 days after the court’s request, the court must appoint that attorney. However, the court may appoint a compensated attorney within the 15-day period if the
Statewide Guardian Ad Litem Office informs the court that it will not be able to recommend an
attorney within that time period.

(b) After an attorney is appointed, the appointment continues in effect until the attorney is
allowed to withdraw or is discharged by the court or until the case is dismissed. An attorney who
is appointed under this section to represent the child shall provide the complete range of legal
services, from the removal from home or from the initial appointment through all available
appeal proceedings. With the permission of the court, the attorney for the dependent child may
arrange for supplemental or separate counsel to represent the child in appellate proceedings. A
court order appointing an attorney under this section must be in writing.

(4) Appointment of Attorney.

(a) The court shall appoint the Division of Children’s Attorneys or another attorney in any
dependency proceeding pursuant to criteria of 39.01305. The court shall consider at the
inception of each case and at each Judicial Review hearing the appropriateness of appointing an
attorney for the child if an attorney has not already been appointed. If no attorney is appointed,
the court shall put on the record its reasoning as to why criteria of 39.01305 is not met.

(i) The assignment of an attorney by the Division of Children’s Attorney must be made within
fifteen days of court appointment to ensure effective representation of the child.

(ii) The court may appoint an attorney for the child to represent siblings so long as there
is no conflict of interest. The Division of Children’s Attorneys shall secure separate
representation for siblings for whom there is a conflict of interest.

(iii) The appointed attorney shall represent the child in all stages of the proceedings.
Representation is not limited to dependency court, it includes proceedings such as administrative
hearings and appellate proceedings that are needed to address the child’s educational, medical
and related needs and the services and supports necessary for the child to live successfully in the
community.

(iv) Only the child, after consultation with an attorney, may waive representation.
Neither the parent, guardian ad litem, nor a representative of the child may waive representation
of the child. The court shall ascertain whether the right to counsel is understood. When right to
counsel is waived, the court shall determine whether the waiver is knowing and intelligent. The
court shall enter its findings in writing with respect to the waiver of counsel for the child.

(b) An order of appointment of a child’s attorney shall be in writing and on the record and clearly
set forth the terms of the appointment, including the grounds for the appointment and access to
the child and information as provided under this Chapter. The court may either appoint the
Division of Children’s Attorneys or a specific private attorney. Private attorneys, may access
due process costs, but are not eligible for compensation from the Division of Children’s Attorneys.

(i) If appointed, the Division of Children’s Attorney, or its contracted provider shall designate the attorney assigned to the child and will notify the parties and the court of the name of the assigned attorney as soon as practicable. Additionally, the organization or program shall notify the parties and the court of any changes in the individual assignment.

(ii) Unless otherwise provided by a court order, an appointment of an attorney for the child continues in effect until the attorney is discharged by court order at the conclusion of the proceeding or dismissal of the case. The attorney may, with the permission of the court, arrange for supplemental or separate counsel to handle proceedings at an appellate stage. If the matter is in a Unified Family Court the appointment continues until the conclusion of all proceedings in that court.

(c) When appointed, the attorney for the child shall have access to:

(i) the child; and

(ii) confidential information regarding the child, including the child's educational, medical, and mental health records, responsible social services agency files, court records including court files involving allegations of abuse or neglect of the child, any delinquency records involving the child, and other information relevant to the issues in the proceeding, and screenings, assessments, evaluations, and reports that form the basis of any recommendation made to the court.

(5) Unless the attorney has agreed to provide pro bono services, an appointed attorney or organization must be adequately compensated. All appointed attorneys and organizations, including pro bono attorneys, must be provided with access to funding for expert witnesses, depositions, and other due process costs of litigation. Payment of attorney fees and case-related due process costs are subject to appropriations and review by the Statewide Office of Dependency Representation for reasonableness. The Justice Administrative Commission shall contract with attorneys appointed by the court. Attorney fees may not exceed $1,000 per child per year. Funding designated by the legislature under this section shall be directly paid to the appointed attorney or organization by the Statewide Office for Dependency Representation, with any unspent remainder going towards the Division of Children's Attorneys for administrative oversight and training of attorneys.

(6) The department shall develop procedures to identify a dependent child who has a special need meets the criteria specified under subsection (3) and to request that a court appoint an attorney for the child.

(7) The department may adopt rules to administer this section.
Section 4: Ch. 39.0139 is amended as follows:

39.0139 Visitation or other contact; restrictions. —

(4) HEARINGS. -- A person who meets any of the criteria set forth in paragraph (3)(a) may visit or have other contact with a child only after hearing and an order by the court that allows the visitation or other contact. At such a hearing:

(a) Prior to the hearing, the court shall appoint an attorney for the child ad litem or a guardian ad litem for the child if one has not already been appointed. Any attorney for the child ad litem or guardian ad litem appointed shall have special training in the dynamics of child sexual abuse.

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Section 5. Ch. 39.407 is amended as follows:

39.407 Medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody

(3) (f)1. The department shall fully inform the court of the child’s medical and behavioral status as part of the social services report prepared for each judicial review hearing held for a child for whom psychotropic medication has been prescribed or provided under this subsection. As a part of the information provided to the court, the department shall furnish copies of all pertinent medical records concerning the child which have been generated since the previous hearing. On its own motion or on good cause shown by any party, including any guardian ad litem, or attorney for the child, or attorney ad litem who has been appointed to represent the child or the child’s interests, the court may review the status more frequently than required in this subsection.

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(6) Children who are in the legal custody of the department may be placed by the department, without prior approval of the court, in a residential treatment center licensed under s. 394.875 or a hospital licensed under chapter 395 for residential mental health treatment only pursuant to this section or may be placed by the court in accordance with an order of involuntary examination or
involuntary placement entered pursuant to s. 394.463 or s. 394.467. The court must appoint both a guardian ad litem and an attorney for each child prior to placement. All children placed in a residential treatment program under this subsection must have a guardian ad litem appointed.

... (c) 3. All available modalities of treatment less restrictive than residential treatment have been considered, and a less restrictive alternative that would offer comparable benefits to the child is unavailable.

A copy of the written findings of the evaluation and suitability assessment must be provided to the department, and to the guardian ad litem, the attorney for the child, and if the child is a member of a Medicaid managed care plan, to the plan that is financially responsible for the child's care in residential treatment, all of whom must be provided with the opportunity to discuss the findings with the evaluator.

(d) Immediately upon placing a child in a residential treatment program under this section, the department must notify the guardian ad litem, attorney for the child, and the court having jurisdiction over the child and must provide the guardian ad litem, attorney for the child, and the court with a copy of the assessment by the qualified evaluator.

(e) Within 10 days after the admission of a child to a residential treatment program, the director of the residential treatment program or the director's designee must ensure that an individualized plan of treatment has been prepared by the program and has been explained to the child, to the department, to the attorney for the child, and to the guardian ad litem, and submitted to the department. The child must be involved in the preparation of the plan to the maximum feasible extent consistent with his or her ability to understand and participate, and the guardian ad litem, the attorney for the child and the child's foster parents must be involved to the maximum extent consistent with the child's treatment needs. The plan must include a preliminary plan for residential treatment and aftercare upon completion of residential treatment. The plan must include specific behavioral and emotional goals against which the success of the residential treatment may be measured. A copy of the plan must be provided to the child, to the guardian ad litem, to the attorney for the child, and to the department.

(f) Within 30 days after admission, the residential treatment program must review the appropriateness and suitability of the child’s placement in the program. The residential treatment program must determine whether the child is receiving benefit toward the treatment goals and whether the child could be treated in a less restrictive treatment program. The residential treatment program shall prepare a written report of its findings and submit the report to the guardian ad litem to the attorney for the child, and to the department. The department must submit the report to the court. The report must include a discharge plan for the child. The residential treatment program must continue to evaluate the child’s treatment progress every 30 days thereafter and must include its findings in a written report submitted to the department. The
department may not reimburse a facility until the facility has submitted every written report that is due.

Section 6. Ch. 39.4085 is amended as follows:

39.4085 Legislative findings and declaration of intent for goals for dependent children. --

20) To have the guardian ad litem appointed to represent, within reason, advocate for their best interests and, where appropriate, an attorney appointed to represent their legal interests. The guardian ad litem and the child’s attorney ad litem shall have immediate and unlimited access to the children they represent.

(21) To have all their records available for review by their guardian ad litem and their attorney ad litem if they deem such review necessary.

Section 7. Ch. 39.502 is amended as follows:

39.502 Notice, process and service. --

(12) All process and orders issued by the court shall be served or executed as other process and orders of the circuit court and, in addition, may be served or executed by authorized agents of the department, or the guardian ad litem or the Statewide Office of Dependency Representation.

(13) Subpoenas may be served within the state by any person over 18 years of age who is not a party to the proceeding and, in addition, may be served by authorized agents of the department, or the guardian ad litem or the Statewide Office of Dependency Representation.

Section 8. Ch. 39.801 is amended as follows:

39.801 Procedures and jurisdiction; notice; service of process. —

(3)(a) Notice of the date, time, and place of the advisory hearing for the petition to terminate parental rights and a copy of the petition must be personally served upon the following persons, specifically notifying them that a petition has been filed:

1. The parents of the child.

2. The legal custodians of the child.

3. If the parents who would be entitled to notice are dead or unknown, a living relative of the child, unless upon diligent search and inquiry no such relative can be found.
4. Any person who has physical custody of the child.

5. Any grandparent entitled to priority for adoption under s. 63.0425.

6. Any prospective parent who has been identified under s. 39.503 or s. 39.803.

7. The guardian ad litem and the attorney for the child or the representative of the Guardian ad Litem Program, if the program has been appointed.

Section 9. Chapter 393.125 is amended as follows:

393.125 Hearing rights.—

(1) REVIEW OF AGENCY DECISIONS.—

(a) For Medicaid programs administered by the agency, any developmental services applicant or client, or his or her parent, guardian advocate, attorney for the child or authorized representative may request a hearing in accordance with federal law and rules applicable to Medicaid cases and has the right to request an administrative hearing pursuant to ss. 120.569 and 120.57. These hearings shall be provided by the Department of Children and Families pursuant to s. 409.285 and shall follow procedures consistent with federal law and rules applicable to Medicaid cases.

(b) Any other developmental services applicant or client, or his or her parent, guardian, guardian advocate, attorney for the child or authorized representative, who has any substantial interest determined by the agency, has the right to request an administrative hearing pursuant to ss. 120.569 and 120.57, which shall be conducted pursuant to s. 120.57(1), (2), or (3).

(c) Notice of the right to an administrative hearing shall be given, both verbally and in writing, to the applicant or client, and his or her parent, guardian, guardian advocate, attorney for the child or authorized representative, at the same time that the agency gives the applicant or client notice of the agency’s action. The notice shall be given, both verbally and in writing, in the language of the client or applicant and in English.

Section 10. Ch. 402.56 is amended as follows:

402.56 children's cabinet; organization; responsibilities; annual report.—

(4) MEMBERS. --The cabinet shall consist of 16 18 members including the Governor and the following persons:

12. The director of the Division of Children’s Attorney;

13. The director of the Division of Parent’s Attorney.
Special Committee on Child & Parent Representation
Team Recommendations Not Otherwise Incorporated

CHILD REPRESENTATION (TEAMS 1-4)

I. Responsibility/Accountability (Team 1):

1. Recruiting lawyers to represent children: Recruitment and uniform specialized dependency training of Pro Bono attorneys could provide some of the 27,000 unrepresented dependent children with counsel until laws change and funding becomes available.

2. Ascertaining whether lawyers meet the minimum criteria: The Division of Child Attorney could ascertain whether lawyers meet minimum criteria, (like the permanency criteria used by the evidence-based Foster Children’s Project Model and/or the ABA/FL Bar LNO C guideline criteria) through a contract with individual attorneys and organizations the Division of Child’s Attorney (DCA). This division could utilize available cloud technology to the review files of individually contracted attorneys and organizations statewide to measure objective minimum criteria compliance.

   [ABA

   Bar Standing Committee on the Legal Needs of Children updated the Florida Guidelines of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases:
   http://www4.floridabar.org/TFB/TFBResources.nsf/Attachments/5857B88CB9C5417A85257B870
   075DFAF/%24FILE/LegalNeedsofChildren_Dependency.pdf ]

3. Determining whether the attorneys are performing to the expectations of the funder, contract and established standards performance of the attorneys.: The Division of Children’s Attorney could provide needed oversight of available funds using cloud software technology to review files of individually contracted attorneys and organizations statewide and determine whether contracted performance criteria are met for payment.

4. Training: The Division of the Guardian ad Litem Program should continue with their current functions as well as item 1.1 c. (providing training for lawyers) as there would be shared responsibility and coordinated efforts, so as not to duplicate training efforts, by the two subdivisions.

5. Independence of the Division of Child Attorney: To help ensure that the Office of the Children's Advocate is not compromised in its actions on behalf of child clients, the office should be independent from other participants in the litigation. The Office should be insulated from undue influence by outside agencies, the executive, legislative and judicial branches. The system of appointment should not denigrate independence of counsel or the guardian ad litem. Judges should not be able to select which publicly funded attorney or guardian ad litem to appoint in a specific case.” SEE PDF Page 18 of  https://goo.gl/E7yOhD

Further guidance can be found in the Rhode Island Office of the Child Advocate (OCA) which is “an independent and autonomous Rhode Island state agency responsible for protecting the legal rights and interests of children in state care. These rights include, but are not limited to, a child’s right to appropriate placement, healthcare and education, and to be treated with dignity and
II. Oversight, Guidance, Training, Technical and Administrative Support (Team 2)

6. Requirements for oversight entity: Minimum requirements for an oversight entity set up would be a state director, experienced staff attorney(s), and IT analyst(s).

7. Ensuring the work performed by the attorneys provides those children with high quality representation:
The Oversight entity should use objective measurements of statutory permanency timeframes, along with ABA and Florida model child representation guidelines when contracting with individual attorneys and organizations to ensure high quality representation statewide.

   - See also attached Palm Beach County Legal Aid Foster Children’s Projects oversight performance criteria

Mr. Moore commented that we can improve the quality of the attorney currently appointed by either mandating board certification or providing enhanced payment for certification. Most circuit courts will be receptive to best practices regarding requirements for inclusion in the pool of attorneys that will take appointments. There are circuits that have good requirements and these practices can be both improved and shared between circuits. We could also improve our pool of private counsel for special needs children in the same manner as was done for the appointments made in death penalty cases. We could increase CLE requirements and training. Irrespective of any other method of providing counsel for children there will always need to be a pool if private attorneys.

8. Use of separate mechanisms be in place for organizational providers vs. individual attorneys: The Oversight entity shall use the same contract terms for organizational and individual attorneys to ensure efficient analysis and uniform statewide quality. All contracts shall include objectively measurable terms. The National Association of Counsel for Children (NACC) may assist with state by state contract analysis. [http://www.naccchildlaw.org/?page=Mission](http://www.naccchildlaw.org/?page=Mission)

Mr. Moore commented that objectively measurable deliverables are essential to any contract that would provide state funds to vendors for provision of contracted services. In terms of contracts with organizations, they preliminarily reviewed the deliverables provided by LASPBC with the administrative folks at the GAL Office and believe that contracts can be drafted with similar deliverables for provision of counsel by private organizations. They will need to reflect the intended scope of representation described in 39.01305; however, the level of oversight provided by those measures is certainly within the range of possibilities.
9. Elements considered be included in the oversight of performance? Boston’s Youth Advocacy Division (YAD) has also established a long checklist that includes court time, hours accounting, client visits, court observation, and judicial reviews. https://www.publiccounsel.net/ya/

Mr. Moore commented that for organizations, these items are better addressed by training rather than oversight management. For example, they do not believe we need to monitor the practice of legal aid operations to level of detail described here. See, comment to paragraph 2.1.a. For the private attorney appointments see, comment to paragraph 2.1.

10. Training. All counsel for dependent children should be required to take the same uniform training. Some allowances may be made for pro bono attorneys that are making limited appearances for specialized issues like immigration or master trusts.

11. Administrative and Technical Support: Social workers, investigators, and experts may be contracted after oversight entity or organizational provider pre-approval

12. Technology: The oversight entity should contract with a cloud software provider to provide technology support and effective access to digital files. For example, Microsoft Office 365 could enable contracted individual attorneys and organizational providers to maintain Microsoft One Note case files synchronized on One Drive Cloud and password accessible by oversight entity for random quality audits/billing. Skype for business could facilitate meetings/collaboration and training as needed.

Mr. Moore commented that this is dependent upon the ability to negotiate reasonable requirements with courts and contracted organizations. We would need to also ensure compliance with Bar regulations regarding maintenance and access to client records.

Transition (Team 3):

Transition of current appointments to a new system:

13. Transition must be mindful of and directed at supporting the continuation of existing attorney/client relationships, however, current appointments should migrate to the new system. An attorney that has migrated with his or her case to the new system should be required to comply with established minimum standards to remain on the case once his or her contract comes up for renewal. The attorney, if he or she so chooses, should also be given the option to meet the established criteria for the appointment of new cases. The criteria for the appointment of new cases should be more stringent and above minimum standards of practice, perhaps having a Continued Quality Improvement process as a component and including an independent review of the attorney handling of the case. Otherwise, by meeting the established minimum standards the attorney will be able to continue to represent his or her client until the case is completed.

14. There should be two criteria that an attorney can choose from once the attorney has migrated to the new system from a prior appointment. To remain on the case, upon his or her contract coming up for renewal, the attorney should be required to meet established minimum standards. Should the attorney wish to continue to receive new appointments, the attorney will be required to meet the established standards for the appointment of new cases.

15. The current contracts should migrate to the new system. Once the contract comes up for renewal the newly designed standards will apply.
Expansion (Team 4):
Expanding the population of children appointed counsel:
16. The legislature should be the entity that determines the groups that will be receiving representation in increments and with the goal of 100% representation by 2021.

17. To ensure a well-informed decision by legislators regarding the priority of representation, there should be a committee created to advise the legislature as to the highest priority expansion. This committee should meet yearly and should be made up of representatives from; Guardian Ad Litem, Regional Counsel, Department of Children and Families, Community Based Care, Office of Child Advocacy\(^1\) and Florida Bar Legal Needs of Children Committee. It is also recommended that representatives from organizations that currently provide high quality child representation be included as well as representation from judiciary that is well versed in Dependency proceedings.

One of the functions of the advisory group discussed in the first question should be tasked with identifying gaps as the expansion takes place as well as providing possible solutions for the consideration of the legislature and other Statewide agencies that could positively impact those gaps.

Increasing the pool of high quality counsel available to undertake representation.

18. Encourage Florida Law Schools to develop child Children and the law clinics. The effect would be two-fold; To provide much needed interns to assist the lawyers handling these difficult cases and to train and encourage newly graduated lawyers to enter this field of law (like what happens with State Attorney’s Offices and Public Defender’s Offices).

19. Create Student Loan Forgiveness or Deferment for work at the office of Child Advocacy or lawyers contracted by said office.

20. Allot additional due process costs to lawyers appointed pro bono to encourage participation.

Parent Representation (Teams 5 & 6)

Responsibility/Accountability (Team 5):

21. Oversight mechanisms should differ for organizational providers and individual attorneys:

22. Examine compensation systems. It is in the public interest to assess whether the flat rates paid to appointed counsel truly reflect the value of the work done. A mechanism should be in place to incentivize good work (E.g., enhancing rates/salaries for board certification).

23. Accountability for performance: One mechanism for regulation and quality control would be an accounting or reporting presented to qualify what attorneys do on their cases. Outcomes should not be indicative of the quality of representation. Additionally, this subcommittee discussed file review as a means of measuring quality representation. The file review would have to be conducted

\(^1\) The Office of the Child Advocate is the Statewide office that would be funded by the JAC responsible for child representation. This would be similar in structure to the Office of Regional Counsel.
by a person hired specifically to undertake this task, perhaps working for an independent agency. The subcommittee agreed that the Bar is self-policing, Regional Counsel is self-policing, and solo practitioners are self-policing. If there is a contract for public funds to be expended on appointed counsel, it could be said that the attorneys should be subject to some sort of file review or reporting requirement to ensure quality representation.

24. If separate mechanisms exist, however, there should be an additional level of scrutiny to ensure that attorneys have the support they need to vigorously defend parents in court.

25. Conflict registry attorneys should be under contract with JAC, the chief judge, or an agency/entity that does not yet exist, which commits the attorney to maintain a certain number of CLEs, to remain vigilant in case law and statutory changes, and to remain committed to the practice of parent representation. Breach of this contract would be removal of the attorney from the conflict list.

Oversight:

26. Contracts should not simply be limited to a commitment to meet a certain experience level; it should also indicate that the attorney agrees to maintain a certain number of CLE hours specific to dependency law.

27. The criteria should be standardized statewide, with an option for each jurisdiction to expound and expand upon those criteria to improve the quality of parent representation.

28. Oversight could be provided by chief judges who maintain a list of registry attorneys with high standards.

Criteria for representing parents:

29. Minimal criteria should be quantifiable (E.g., a certain level of training required, certain number of CLEs required, etc.) established as minimal criteria. Attorneys should have to report their CLEs to the Florida Bar and will be held to that responsibility to report. If the attorney does not report those hours, disqualification from the list would result.

30. Minimal standards should be set forth as statewide minimum standards, and each jurisdiction could have the discretion to impose additional standards for parent representation.

31. Enough jurisdictions throughout the country have criteria and expertise to indicate that another independent committee need not reinvent the wheel. There should be a document or practice that we adopt, even if in modified form. This would require researching outside jurisdictions to evaluate and draft minimal standards.

32. This committee could develop the standards and promulgate those as the minimum acceptable standards for parent representation in Florida, without the need for independent committee. Certainly, however, those standards would be subject to the Bar and court rule.

Training.

33. There should be a person or group that synthesizes the training available and makes it readily available (low/no cost, several times per year) to parent attorneys. An office of statewide
training or similar entity should be publicly funded: perhaps through a state university willing
and able to house such an entity.

34. Online training could also be very useful. Online training would not be the primary
source of information, but videos can assist with practice.

35. Training should be in a university setting-type training with professors on the broader
committee. We could recruit a law firm to also do something of this nature for the purposes of
reporting. Inns of court specializing in dependency law are not plentiful, and that could be an
avenue to deliver information and exchange ideas.

36. There should be a Train the Trainer held in a central location and then funnel the trainers to the
local jurisdictions to deliver training to parent attorneys.

37. Any public employee whose job is to represent parents should be required to undergo training
and meet minimum standard requirements. This subcommittee has reservations about the
requirement to partake in training, as it could be criticized for being mandatory. For first-time
private attorneys, it would certainly be reasonable to have to certify that the attorney has received
entry-level basics training.

38. There should be classes available at different levels, and attorneys should all be required (if this
becomes a requirement) to take classes in dependency appellate law. These trainings should be
available and offered at no/low cost.

Access to other professionals
39. Additional resources should be developed for use by lawyers:
   • Investigators: JAC keeps a list of investigators who are accessible by court-appointed
counsel. It would be beneficial to be able to use the same investigators who are available for
criminal cases and apply their skills to dependency cases.
   • social workers: Social work schools should be able to avail students to parent attorneys and
assist where needed.
   • Interpreters for people with cognitive abilities would assist with a wide range of parents in
the dependency system.
   • Parent/peer mentors would be an invaluable resource for assisting clients navigate the
system.

Technology
40. Attorneys should be provided a centralized, virtual location where case law is updated and a
forms-bank containing motions and statutory updates is updated regularly.

41. Attorneys should be provided access to court and child welfare online systems (e.g. FSFN,
JAWS, “Odyssey”).

42. There should be a funded position to make the resources available, which would be somewhat
of an editing-type role. There should be something under one roof, which includes forms and a
database readily accessible at no cost.
Re: Response to Questions

Dear Mr. Courtemanche:

I am in receipt of Mr. Higer’s email dated April 26, 2018. Please accept this correspondence as the response to the questions previously asked of me by the Committee members and identified in that email. Several of the questions can be answered by reference to the PowerPoint presentation provided to the Committee along with my presentation. Most of these practices are not new and are embodied within the Guardian ad Litem Program’s (“GALs”) standards, policies and training which can be viewed at www.guardianadlitem.org. Since the Committee has premised its work on the (disputed) notion that the GAL does not represent children, I am struggling to see how these answers could impact any of the Committee’s work to expand client-directed representation to all children, much less establish an office for registry attorneys. Nevertheless, I appreciate the opportunity to provide information to the Committee members related to GAL representation.

Question 1:
When the GAL is "prepping" a child for the purposes of a hearing or Motion e.g. child hearsay statement, and the child provides testimony that is contrary to their identified "best interest" representation, how does the GAL attorney address in the context of legal representation?

Response:
Pursuant to Rule 8.215, Rules of Florida Juvenile Procedure and GAL policy, the GAL attorneys, referred to as Child’s Best Interest or CBI Attorneys, must express the child’s wishes to the court and other parties regardless of whether the child’s preferences conflict with the Program’s determination as to what is in the child’s best interest. The GAL adheres to this requirement in all aspects of its representation including preparation of the child to testify in dependency proceedings. The child’s wishes are also stated in the GAL report that is filed with the court and served on all parties. See, §39.822(4), Fla. Stat. (2017); Rule 8.215(c)(1), Fla.R.Juv.P.
**Question 2:**
Since the GAL attorney does not have attorney-client privilege with the child and the child is an unrepresented party- how is confidentiality of communications addressed?

**Response:**
The child is a party represented by the GAL under both federal and Florida law. See, Overview of the Florida Guardian ad Litem Multidisciplinary Model of Representation Power Point Presentation (“PP.”), at slides 3, 16-17 and 19-20. Most children in our caseload would not really benefit from trying to explain to them what a courtroom and an attorney is and does for them. GAL volunteers and staff must always be honest with children and youth, in an age appropriate way, about our role as Guardians ad Litem and how we advocate for the “best interest of the child.” The CBI attorney makes it clear when speaking to a child about their case that there is no attorney-client protected communication and that what they say could potentially be heard by the court or others involved in the case.

**Question 3:**
Since the GAL program uses a team to represent children’s best interest, can you explain who on the team is responsible for each of these things?

- **ascertaining what legal rights the child has.**

**Response:**
The team defers to the CBI attorney on questions of law. However, the GAL attorney is not alone in ascertaining what rights a child might have. The attorney works within the GAL team model of advocacy PP. at 23, that is centered and driven by the best interest of the child with the child’s voice considered to be an integral part of the team’s decision-making and advocacy. PP. at 24.

- **informing children what their legal rights are**

**Response:**
As stated above, due to their young age, over half of the children under dependency court jurisdiction are not verbal or otherwise cannot communicate and hold a conversation about anything, much less legal rights. For those that are of sufficient age and maturity, the CBI attorney is required to counsel the child as to their rights. The CBI Attorney partners with the GAL team to counsel the child in a developmentally appropriate manner concerning the subject matter of the litigation, the child’s rights, the court system, the proceedings, the lawyer’s role, and what to expect in the legal process.

- **making sure the child’s legal rights are asserted?**

**Response:**
As stated above, the entire team is responsible for protecting the child’s interest. However, the team defers to the CBI attorneys on questions of law. PP. at 31. CBI attorneys routinely file a broad range of motions related to child placement, visitation and related safety issues. They also file, as necessary, petitions for dependency and for Termination of Parental Rights. In addition,
they regularly file various motions such as motions for medical procedures, motions to appoint surrogate parent (education), motions to have a homestudy conducted, motions for child hearsay, motions for evaluations, motions for protective order for child, motions for restrictions/conditions on child testimony, motions on the child’s right to be at hearing, and motions for appointment of a medical surrogate, to name a few.

- explaining the law to children and answering their legal questions?

**Response:**
See response to bullets 1 and 2 above.

- counseling the child about potential courses of action?

**Response:**
See response to bullets 1 and 2 above.

- giving the child legal advice?

**Response:**
See response to bullets 1 and 2 above.

**Question 4:**
Who directs the GAL attorney's representation?

**Response:**
The CBI attorney’s representation is guided by input from the volunteer and/or the GAL case workers, referred to as Case Advocate Managers or CAMs, as the authorized representative of the GAL Program. See, PP. at 25-27. However, the child’s needs drive the CBI attorney’s representation through a collaborative team advocacy model that is child centered and driven by the best interest of the child. The child’s voice considered to be an integral part of the team’s decision making and advocacy. The CBI attorney must use his or her judgement, and knowledge of the law and child welfare issues to facilitate the most appropriate advocacy of the child's best interests. See, PP. at 31-33. The CBI attorney must at all times advocate for the child and the best interests of the child: the paramount consideration in every decision or action of the CBI attorney.

- Is the lawyer on the GAL team obligated to speak directly with the volunteer? (when and how often?)

**Response:**
Yes, as the particular case requires. See response to question 3, bullets 1 and 2, above. In addition, as part of the multidisciplinary team, the CBI attorney communicates regularly with both the volunteer and the CAM. This includes communication with the volunteer in person at staffings, by phone or email. The CAM and volunteer is generally present or kept informed as
the team functions together, shares information and makes decisions for the child in a collaborative manner.

- **Is the lawyer on the GAL team obligated to speak directly with the child? (when and how often?)**

**Response:**
Yes. See response to question 3, bullets 1 and 2, above.

- **How does any of the foregoing change if the GALP knows that the child's position differs from the GALP’s position.**

**Response:**
None of the foregoing [in Questions 1 – 3] changes. However, pursuant to Rule 8.215, Florida Rules of Juvenile Procedure and GAL policy, the CBI Attorney must express the child’s wishes to the court and other parties regardless of whether the child’s preferences conflict with the Program’s determination as to what is in the child’s best interest. The child’s wishes are also stated in the GAL report that is filed with the court and served on all parties pursuant to section 39.822(4), Florida Statutes (2017), and Rule 8.215(1)(c), Florida Rules of Juvenile Procedure. Further, CBI Attorney will request the appointment of an Attorney ad Litem in any case in which it would further the child’s best interests.

- **What is the obligation of the GAL attorney to the court when the volunteer or staff person has a different position than that promoted by the GALP?**

**Response:**
The CBI Attorney provides the GAL position or recommendation to the court. The GAL team model of advocacy allows for and encourages conflicts over case issues and advocacy decisions to be resolved within the team. When a conflict arises as to an issue of fact, the team shall defer to the GAL and CAM. When a conflict arises as to an issue of law, the team shall defer to the CBI Attorney. If a conflict cannot be resolved within the team the matter is escalated through the chain of command.

**Question 5:**
Does the GALP have a written rule or operating procedure for implementing Florida Rule 4-4.3(a), Florida Bar Rule, “Dealing with Unrepresented Persons?”

**Response:**
No. See response to question 2, above. The children are represented by the GAL.

- **What is the GAL Team or attorney required to do when the child disagrees with the “best interests” position of the GALP?**
Response:
See response to question 4, bullet 3, above.

- Do GAL best interest attorneys or other GAL team members have communications with or counsel children on cases when the GAL team position is adverse to the child’s expressed wishes?

Response:
See response to question 3, bullet 2, above.

- How can GAL attorneys engage in witness preparation for children when there is no attorney-client privilege?

Response:
See response to question 1, and question 4, bullet 2, above. It is common for attorneys in a wide variety of legal proceedings to prepare non-client witnesses for testimony.

Thank you for the opportunity to address these questions. Should any member have any additional questions please feel free to have them call me and I will be happy to discuss these matters with them. I can be reached at (850) 445-5934.

Sincerely yours,

Dennis Moore
General Counsel

DWM/ctt
Minority Report
Special Committee on Child and Parent Representation

I. OVERVIEW

The charge to the Special Committee was to make recommendations on how Florida can ensure that the legal representation provided to children and parents in dependency proceedings will promote their safety and well-being to achieve the best possible outcomes. The Minority does not agree that the recommendations are sufficiently well-founded or will measurably improve the safety or well-being of children. Specifically, the Minority disagrees with the two legislative proposals and Proposals 4-11, for the following reasons:

- The legislative proposal to create a Statewide Office of Dependency Representation (SODR) is based on the opinions of certain committee members that the performance of Registry attorneys is deficient and was not supported by empirical evidence or stakeholder input.
- The SODR proposal codifies in statute an unprecedented system of attorney oversight and management which the Minority believes is unnecessary and contrary to the fundamental principles of the Bar.
- The legislative proposal to provide every child in dependency with a client-directed attorney by 2021 will not necessarily improve the safety and well-being of children, and the right to counsel will be illusory for a majority of children who lack the cognitive ability to direct counsel, and could be detrimental to others who are not willing to accept counsel by their attorneys.
- The Expansion of Representation legislative proposal picks a side in a historically contentious debate, and is neither consistent with 2002 LNOC Report or the 2009 Legislative Position adopted by the Board of Governors.
- Many of the recommendations have already been considered and rejected by the policy makers, including the Florida Legislature and the Constitutional Revision Commission.

From its very first meeting, the Committee took the position that parents and children in Florida were not receiving high quality representation. This is qualitatively different than starting from the notion that representation in Florida can be improved, and predictably, this created a divide among committee members who believed stakeholders should work together
to make the current system better and those who believed an entirely new construct had to be created.

To illustrate, a segment of Committee members said that the registry attorneys representing children with special needs and parents were deficient. This determination was not debated. The specific needs that were not being met were not identified. Evidence of deficient performance was not presented, and neither the chief judges who are responsible for the registries nor the Justice Administrative Commission was asked to provide input or information. Even though some members objected, the committee forged ahead to solve the perceived problem of deficient performance through the creation of the new SODR office to ensure quality and sufficient oversight.

Similarly, in support of its Expansion Bill, the Committee presented as fact the statistic that only 10% of children in dependency court were represented. Certain members maintained that the GAL Program does not represent children, and is unable to advocate for the legal interests of children. However, there are over 170 attorneys employed by the Guardian ad Litem Program as well as hundreds of pro bono attorneys in court every day representing over 25,000 children and section 39.821 expressly states that the guardian ad litem is appointed to represent the child. Nonetheless, the disputed notion that children have no one to advocate for them became the foundation for the Expansion Bill providing client-directed attorneys to all children and the basis for all recommendations to “improve representation of children”.

Members who do not support these two concepts – that registries are inherently deficient and all children need a client-lawyer relationship – found themselves in the Minority. As discussed in more detail within, the Committee recommendations should not be approved because they are not based on evidence and do not reflect a statewide perspective from people practicing every day in the system - chief judges and registry attorneys in particular. The Report makes sweeping recommendations reversing policy decisions by the Legislature which arguably exceed the scope of its charge. Significant philosophical differences relating to how attorneys should be governed and the model of representation for children were raised but not resolved. Most importantly, it is not clear that the solutions proposed by the Committee measurably improve the problems facing children and families in dependency court today.
II. Concerns with the Legislative Proposal to Establish a Statewide Office of Dependency Representation (SODR)

a. The legislative proposal to create a Statewide Office of Dependency Representation (SODR) is based on the opinions of certain committee members that the performance of Registry attorneys is deficient and was not supported by empirical evidence or stakeholder input.

Because certain Committee members do not believe that registry attorneys are providing high quality representation to parents or children with special needs as identified in section 39.01305, the Committee proposes legislation to create a new state office. The Committee did not articulate what the specific concerns with representation were, if they were statewide, or if they only plagued children but not parents. The Committee chose not to consult with registry attorneys, chief judges, the JAC or the Office of State Courts Administrator to get specific information about isolated or systemic issues. Instead of offering targeted solutions to documented problems, the Report appears to be a general indictment of the way the Legislature has chosen to provide attorneys to indigent persons pursuant to Chapter 27 of the Florida Statutes. This legislative proposal should be rejected, if for no other reason than no one has defined the problem with the registries in dependency court in a way to know whether the Committee’s proposal has any chance of solving it.

Rather than identifying specific deficiencies in procedures or performance, the Committee takes the position that because attorneys are from a registry they cannot provide adequate representation, as indicated on page 3 of the Report:

Counsel for all children and some parents are provided via locally-operated registries that have no quality assurance or oversight mechanism and are not compensated in a fashion that promotes quality representation.

To underscore this sentiment, the Committee’s legislative proposal expressly states that attorneys affiliated with government offices provide better quality than individual contract attorneys:
The Legislature finds that providing legal services through organizational providers is more efficient, cost-effective, and amenable to promoting quality, than the use of individual contract attorneys.

SODR Legislative Proposal, page 30, line 6. Criticism of a decentralized registry system because it is locally-operated is an indictment of all registries and of the management by chief judges. Suggesting that a state office is needed in order for lawyers to perform competently invites regulation of the profession by the Legislature which the Bar has long opposed. It also undermines the independence of the judiciary.

At page 6, the Committee Report reiterates the proposition that because attorneys are appointed by a registry system, it is impossible to ensure quality representation:

[T]here are no established uniform criteria and no one has the responsibility or can be held accountable for ascertaining whether attorneys are providing even minimally competent representation, let alone high-quality representation.

Setting aside the issue that attorneys have an ethical obligation to ensure they can provide competent representation prior to taking such an appointment, many judicial circuits require minimum levels of education and experience in dependency prior to being admitted to their local registry, for example in the 6th and 11th Judicial Circuits.

Additionally, there is a statutory mechanism to address deficient performance of registry attorneys in section 27.40, Florida Statutes:

(9) Any interested person may advise the court of any circumstance affecting the quality of representation, including, but not limited to, false or fraudulent billing, misconduct, failure to meet continuing legal education requirements, solicitation to receive compensation from the client the attorney is appointed to represent, or failure to file appropriate motions in a timely manner.

No effort was made to ascertain whether concerns have been raised to chief judges using this provision. No one asked whether the attorneys currently doing the registry work would have any interest in working with a state office as the SODR proposal contemplates.
The JAC provided the GAL Program with an estimate that there are nearly 200 attorneys in private practice on dependency court registries and approximately 1700 on all registries. Anecdotally, some of them have reported no interest in becoming part of a state office. Currently, pro bono attorneys are able to represent children even before a registry attorney is appointed. The impact of the proposal on pro bono attorneys was also not addressed.

There are various mechanisms that could be used to improve the registries. Additional training and practice aids could be developed and distributed. Efforts to improve compensation and recruit more pro bono attorneys should be pursued. Approving the SODR proposal to create a state office for quality assurance and monitoring of attorneys reflects poorly on dependency practitioners and the Bar generally, particularly given the absence of documented evidence of a need for such a sweeping policy change.

b. The SODR proposal codifies in statute an unprecedented system of attorney oversight and management which the Minority believes is unnecessary and contrary to the fundamental principles of the Bar.

The establishment of the SODR to resolve perceived problems with practice by attorneys in dependency court is accompanied by various proposals to strengthen the Florida Guidelines of Practice for Lawyers who Represent Children in Abuse and Neglect Cases and other monitoring. These recommendations suffer from the same lack of informed input described for the proposal above. They should also fail for the additional reasons that the Board of Governors has previously rejected efforts to convert them into standards and their adoption is directly contrary to current standing positions of other sections of the Bar.

The Committee report repeats over and over that there is no accountability for ensuring attorneys are providing “even minimally competent representation.” (Report p. 6) Rule 4-1 requires lawyers to provide competent representation and specifies that “Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” Rule 4-1.3 requires diligence and rule 4-4.14 communication. As noted above, judges then have the ability to set additional requirements under their authority in section 27.40, Florida Statutes.
The Committee abdicates the Bar’s authority to regulate its members to a newly created state office that will establish standards of practice for attorneys practicing in dependency court (SODR proposal, page 32, line 117) and ensure that its attorneys possess the skills, thoroughness, preparation and knowledge of services available to children. (SODR proposal, page 33, line 157). While not specifically included in the legislative proposal, the Committee envisioned that this quality control could be accomplished by methods such as “using cloud software technology to review files of individually contracted attorneys and organizations statewide and determine whether contracted performance criteria are met for payment.” (See page 44.)

The Committee further recommends in Proposals 5, 6 and 7 (page 23) that the Florida Guidelines of Practice for Lawyers who Represent Children in Abuse and Neglect Cases and the ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases be institutionalized to govern practice in the following ways:

- by establishing a “Dependency Representation Commission” consisting of 13 members appointed by the Governor to, among other things, establish standards of practice for attorneys practicing in dependency court. Attachment 1, Lines 82-118.
- by being submitted to the Juvenile Rules Committee for adoption as a rule making it mandatory for attorneys who represent children and parents in dependency proceedings be familiar with the Guidelines
- by making the Guidelines be part of the certification process
- by requiring the Justice Administrative Commission, Regional Counsels and “any other entity that funds representation of children and parents in dependency proceedings” to mandate that attorneys follow the guidelines.

This level of micromanagement of attorney practice is unprecedented. It is contrary to the historical position of the Board of Governors with regard to the independence of Bar members and the judiciary generally. It is also specifically contrary one of the two current Family Law Section legislative positions, which states the section “opposes legislation re attorney ad litem representation that seeks to regulate the profession, instruct and/or train lawyers on how they should represent their clients, and that allows another governmental branch agency to train lawyers.” This is of particular concern since Proposal 4 (at page 23) authorizes lobbying of the recommendations of the Committee “to any statewide candidates in upcoming elections.”
Implementation of these recommendations will set up a system which treats attorneys within Juvenile Law disparately. While the Guidelines indicate they specifically do not apply to those attorneys representing children using a best interests model and it is unknown whether they would be relevant to attorneys employed by the Department of Children and Families, these hundreds of attorneys would be responsible for some level of knowledge and compliance. Additionally, attorneys providing client-directed representation to children and those representing parents would be at an advantage in seeking Juvenile Law Certification because the certification process would require knowledge of Guidelines unique to their work.

Finally, and related to the Committee’s departure from the Bar’s usual stance that its members are self-regulating, the Committee approved Proposal 11, at page 24, to initiate rulemaking by the Juvenile Rules Committee that any party or participant could notify the court that the GAL has a conflict of interest. Again, the Committee cited no evidence of problems where attorneys working for the GAL were failing to identify or properly handle conflicts of interest. It was unclear whether all Committee members appreciated the distinction between a legal conflict of interest and the situation where a guardian ad litem has a difference of opinion from the expressed wishes of a child. There was no discussion of how this was related to the Committee’s charges on safety and well-being. Further, it is not the role of the rules committee to determine when a conflict exists for a particular party or practitioner. The GAL Program maintained that its attorneys act in compliance with Bar Rules related to conflicts of interests, but was again in the Minority in objecting to adoption of this position.

III. Discussion of Expansion of Representation Bill

a. The legislative proposal to provide every child in dependency with a client-directed attorney by 2021 will not necessarily improve the safety and well-being of children, and the right to counsel will be illusory for a majority of children who lack the cognitive ability to direct counsel, and could be detrimental to others who are not willing to accept counsel by their attorneys.

The debate regarding whether children are best served by representation of their best interests or through client-directed representation has existed for decades. The debate is not about
whether children need high quality representation and advocacy of their legal interests – the question is the model.

For over 30 years, Florida has provided GAL representation of children using a best-interests model. The GAL Program has over 170 attorneys on staff and hundreds of pro bono attorneys to protect and further children’s legal interests. Historically, judges used their inherent authority to appoint attorneys ad litem on a case by case basis when they deemed it necessary. In 2014, section 39.01305 was passed, which established a right to counsel for certain children with certain special needs.

A large segment of the Special Committee favors use of the client-directed model for all children. These members took the position that the GAL does not represent children. The GAL Program pointed out that section 39.821 expressly states that the guardian ad litem is appointed to represent the child, which is echoed in Rule 8.215(b), but this did not impact the Committee’s decision to identify children who have a GAL as “unrepresented.” See Report p. 8 (stating that 27,000 of Florida’s 30,000 dependent children are not represented by counsel). Committee members further decided that attorneys representing children through the GAL Program cannot protect or further the legal interests of children.

The fact is all children are under the disability of non-age which has been recognized in both the Florida constitution and in Florida Statutes and most children in the dependency system simply lack the capacity to understand the proceedings or assist counsel because they are under the age of 6.1 “A guardian ad litem [GAL] is a special guardian appointed by the court to prosecute or defend, on behalf of an infant or incompetent, in a suit to which he is a party, and such guardian is considered an officer of the court to represent the interest of the infant or incompetent in the litigation.”2

Federal law requires the appointment of a guardian ad litem to represent the child in every abuse and neglect proceeding.3 Further, under the implementing regulations [of CAPTA], states are required to ensure appointment of a guardian ad litem who will “represent and

1 This doctrine requires “an adult person of reasonable judgment and integrity to conduct the litigation for the minor in judicial proceedings.”
protect the rights and best interests of the child.” 4 And that is exactly what the GAL does in the state of Florida, protects the rights and best interests of the individual child in the dependency proceedings. The GAL’s 170 attorneys owe the same duty of care to the child as the intended beneficiary of the appointment as they owe to the person accepting the appointment.

A vote was not taken on any of these issues and the benefits and shortcomings of various models were not debated. Rather, after its first conference call the Committee developed teams to set about prioritizing which categories of children would get representation first in the Expansion Bill and what standards client-directed counsel for children would be required to abide by. As the Report notes, it was only after the substantive work of the committee was done in the fall and winter, and numerous votes taken, that the GAL was asked to present on its model in March.

The Expansion Bill’s provision of a client-directed attorney for all children raised numerous questions for members. The GAL Program representatives maintained that the best interests model is the most appropriate for most children, with the ability to appoint an attorney ad litem when that is in the child’s best interests. Some members of the Minority had concerns about how children who are pre-verbal or who didn’t have the ability to reason could direct counsel. In those cases, estimated to be over half of the children in the child welfare system, others felt providing client-directed counsel would be duplicative of the representation provided by the GAL.

Though the Committee Report offers that legal representation of children is associated with improved outcomes, there are no studies that specifically compare outcomes of client-directed legal representation with outcomes in a best interests model of legal representation. For every study showing positive outcomes for the client-directed model, there is a study that shows positive outcomes for the best interests model. The conclusion to be drawn from national research is that high quality representation is critical and that a model of representation with

more resources and lower caseloads will produce better outcomes than a model of representation with fewer resources.\(^5\)

It was also not evident that current experience with the Special Needs Registry indicated that more client-directed representation was necessary. Instead, the Report indicates that since the Registry was established, “there has been a downward trend in section 39.01305, F.S., attorney appointments, less case assignments and many circuits are under-appointing attorneys with only about $3 million of the $8.8 million allocated by the Legislature to section 39.01305, F.S. special needs attorneys being spent on direct representation of children.” This trend was attributed to lack of an oversight entity, however, the evidence the Committee received on this point indicates just the opposite is true and no data was collected to validate this conclusion.

Analyzing three years of spending for a relatively new program such as this in the collective does not establish a trend. In fact, the only evidence presented to the Committee on this subject indicated just the opposite. The Justice Administrative Commission provided the Committee with a statement that they would be running at a deficit for these appointments this year. To the minority this seems to indicate a normal trend when attempting to determine appropriate appointments related to specified categories within a pool of tens of thousands of children.

Another concern for some members of the Minority is that children do not (sometimes cannot) act in their own best interests. Despite their circumstances, what most children in dependency court want is to go home, but often, the abuse or neglect that brought them to court prevents that, at least for a time. The Rules Regulating the Bar require an attorney appointed for a child to counsel the child against a poor decision, but if the child rejects the attorney’s counsel, the attorney must still represent the child’s position.

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\(^5\) The Final Report references the Chapin Hall study of Palm Beach County Legal Aid’s Foster Children’s Project. The Minority acknowledge the good work done by Foster Children’s Project for the children of Palm Beach County, but cannot agree the study provides sufficient evidence that client direction or confidentiality specifically produce better outcomes. The authors of the study stated the study was an initial step toward understanding the effect of providing legal representation to children in child welfare proceedings. Zinn & Peters, Expressed-Interest, 53 Fam. Ct. Rev. at 599, (2015). There is much to learn from the great work of Foster Children’s Project, but further study is needed before its findings can be used for sweeping policy change.
The attorney is not allowed to substitute his or her judgment for that of the child. Under a client directed model, attorneys may not seek protective action to “protect the client from what the lawyer believes are errors in judgment.” Additionally, under the attorney-client privilege children could omit or refuse to disclose information that might otherwise be presented to a judge making decisions about the child’s safety and well-being. The Rules Regulating The Florida Bar provide no exception to the privilege for either children under the jurisdiction of dependency court or for persons who are a danger to themselves generally.

As an example of such a scenario, the GAL has cited a Miami case called *R.L.R. v. State*. A child with a long history of running from DCF placements, had run away. DCF expressed concern for the child’s placement and the trial court ordered the child’s attorney to disclose the child’s location “for the proper administration of justice.”

Though the attorneys knew where the child was, they could not tell the court the child’s location or cell phone number because the child expressly told them not to disclose. On appeal, Third District Court of Appeal acknowledged the concern for the child’s safety, but found no applicable exception to attorney-client privilege and stated:

> To find that there is a “dependency exception” or, as specifically put forth in this case, that there is an exception where the client may be a danger to himself, would require this court to carve out an altogether new exception to the attorney-client privilege. That, however, is the rule-making function of the legislature or, possibly, the Florida Bar—not of this Court.

As noted previously, attorneys have an ethical obligation to counsel their clients, and this is no doubt this is done successfully every day by attorneys ad litem and guardians ad litem with clients of all ages. While cases like *R.L.R.* may not be the norm, the fact remains that not every child will act in his or her own best interests, despite the best efforts of ethical, well-trained attorneys.

For these reasons, the Minority does not support the Expansion of Representation bill as written.
b. The Expansion of Representation legislative proposal picks a side in a historically contentious debate, and is neither consistent with 2002 LNOC Report or the 2009 Legislative Position adopted by the Board of Governors.

The effect of the Expansion Bill is to pick a side in a very contentious debate that has existed in Florida and nationally for decades. The Florida Bar has not done so before. The issue of the appropriate model of representation for children was contentious in 2002 when the Bar first started this work and multiple members Committee acknowledged it was contentious within this Committee.

In addition to the Committee, there are literally hundreds of attorneys who practice law in dependency court and in appellate courts throughout Florida who believe providing the best interests representation with an option for judges to appoint an attorney ad litem on a case by case basis is most appropriate for abused and neglected children. There are scores of judges who share this opinion.

The Expansion of Representation bill abandons the consensus achieved by the 2002 Legal Needs of Children Report. After three years of debate, members agreed that certain categories of children should be eligible for appointment of counsel, and provided for a rebuttable presumption related to the child’s capacity and ability to direct counsel. The 2002 Report did not adopt a position that every child – regardless of age or capacity – must have a client-directed attorney. When a similar proposal providing legal counsel to children for children without regard to age or capacity was presented to the Legislature in 2010, it failed.

c. Many of the recommendations have already been considered and rejected by the policy makers, including the Florida Legislature and most recently the Constitutional Revision Commission.

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⁶ The Committee did not conduct a substantive review of the US Department of Health and Human Services memo which it relies upon for propositions such as support for client-directed representation of children. Some members of the Minority disagree with the Report’s characterizations of the memo and specifically any assertion that there is consensus that client-directed representation is the preferred model of representation.
The policy of the state of Florida for over 30 years has been to provide all children with representation using a best interests model by appointing a guardian ad litem and an attorney ad litem on a case by case basis. The Legislature has on multiple occasions had the opportunity to consider the possibility of providing a right to counsel for all children and has declined.

Most recently, however, the need to provide client-directed representation was debated before the Constitutional Revision Commission. Many of the same arguments were made by many of the same people on this Committee. Concerns were raised about alienating pro bono attorneys and how such representation would be funded. Though the Commission’s analysis found that the cost was indeterminate, estimates varied widely from under $50 million to over $100 million, and Chair Lisa Carlton expressed her unwillingness to “hand a bill to the legislature.” The proposal was defeated by a vote of 5-2.

Some Members of the Minority believe that the political realities of expansion of representation should be debated prior to voting to support the Expansion Bill, particularly since any such expansion will be competing with resources for the courts, the public defenders, the regional counsels and the guardian ad litem.

IV. CONCLUSION

While the Minority disagrees with the final products of the Committee, the discussions brought to light the present needs of abused and neglected children and their families in Florida. Those needs differ from those identified in the 2002 Report, which have formed the blueprint for the Bar’s advocacy for children for 16 years: child welfare has now been privatized, an entirely new system for representing parents exists, the GAL Program has been moved from the supervision of the judiciary to an independent office, children have a statutory right to counsel in certain categories, and substance abuse and opioid addiction are affecting every aspect of the court system.

The work of the Committee can still be used to build from the past to create a better future for children, as President-Elect Suskauer urged. The issues should be considered by the Legal Needs of Children Committee, the forum specifically created by the Bar to address issues related to children, which can further evaluate the initial discussion, broaden it to include additional relevant stakeholders, gather needed data and research, and take the necessary time to debate disagreements and create consensus where possible.