The District of Columbia Family Court Appointed Counsel System:
Report and Recommendations

Council for Court Excellence
October 2005

Council for Court Excellence

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I. Introduction

This report is the result of the Council for Court Excellence's independent research on how legal representation is provided to children and indigent adults in neglect and abuse cases in the District of Columbia.

CCE has been engaged in research, education, advocacy, and evaluation related to child neglect and abuse practice in the District of Columbia Superior Court for more than twenty years. From 1983 through 1986, CCE sponsored more than thirty training sessions for judges, attorneys, social workers, and other professionals on a variety of child development, child welfare, and juvenile justice topics. CCE published the comprehensive *Practice Manual for Child Abuse and Neglect Cases in the District of Columbia* initially in 1988, with a second edition published in 1996, and a third edition forthcoming in early 2006. CCE co-sponsored the first of the now-annual *Neglect Practice Institutes* in the late 1980s. Since 1999, CCE has facilitated the collaboration among leaders of the city's judicial and executive branches, through the D.C. Child Welfare Leadership Team, to implement the Adoption and Safe Families Acts and the D.C. Family Court Act of 2001. CCE has published progress reports to the community in late 2002 and mid-2004 on the results of those implementation efforts aimed at improving the city's child protection system, with a third progress report forthcoming in early 2006.

CCE's motivation for undertaking this appointed counsel system study in 2004 was to identify system improvements that hold the promise of retaining current attorneys in this challenging and important area of practice in the District of Columbia Superior Court's Family Court, attracting additional highly qualified attorneys to the practice, and improving the overall quality of court-appointed legal services in the Family Court.

The Council for Court Excellence researched D.C. practice through analysis of reports, statutes, administrative orders, and other documents. CCE also conducted interviews and focus

groups among all stakeholder groups and distributed and received responses to questionnaires and surveys. The goal of the interviews, focus groups, questionnaires, and surveys was to supplement the document review by gathering a sampling of perspectives and opinions from all stakeholders in the court-appointed-attorney system, but not to conduct a formal evaluation. The results CCE reports should be viewed in that light. CCE is especially appreciative of the many lawyers, judges, social workers, court and agency staff members, birth and foster parents, and teens who contributed their views to our research through interviews, focus groups, questionnaires, and surveys, and whose contributions have enriched this report. To widen our view and identify promising practices in use elsewhere, CCE also studied reports on how other jurisdictions provide court-appointed or publicly-funded legal representation in both family and criminal cases.

CCE provided a draft of this report to the D.C. Superior Court in February 2005, seeking their comments, corrections, and response to the report's findings and recommendations. The court's response, a June 10, 2005 letter from Chief Judge Rufus G. King, III, is included as an Appendix to this report. We have made some editorial changes to this final report in response to the Court's letter.

CCE also provided a draft of this report in July 2005 to the Family Court Trial Lawyers Association, the Children's Law Center, Lawyers for Children America, and the CCAN office of the Family Court, seeking their comments, corrections, and response to the report's findings and recommendations. We thank them for their responses and have made every effort to incorporate their feedback into this final report.

Finally, CCE thanks Reliable Copy Service, Inc., which has printed this report as a public service.

II. The District of Columbia Indigent Representation System

D.C. Code §16-2304, passed in 1985, provides that children named in neglect proceedings and their parents, guardians, or custodians are entitled to representation by counsel, and that parties unable to afford counsel are entitled to have counsel appointed for them. More than a decade before the D.C. Code mandated appointment of counsel in child neglect proceedings, the Code mandated appointment of counsel in criminal cases, so the Superior Court has thirty years' experience operating court-appointed-counsel systems.

Since 1975 the District of Columbia Bar has conducted four studies of the District of Columbia Superior Court's systems for providing court-appointed legal counsel in criminal or family cases. Each study's report has described problems and recommended changes. The Austern-Rezneck Report was issued in April 1975, and the Forrest Report was issued in February 1980. Both reports covered only the criminal appointment system, though most policy issues addressed are equally germane to the child neglect appointment system. In addition, though it had a far broader mandate, the D.C. Bar's Horsky Committee Report in 1980 also addressed the condition of the Superior Court's appointed counsel system for family law cases. The starting point for CCE's current research was the most recent of the four Bar reports, *Report of a Special Committee of the District of Columbia Bar Regarding Court Appointment of Counsel Programs in the Superior Court*, issued December 21, 1993, and known as the Muse Report.

The Muse Report noted that the problems it found in 1993 in the court-appointment system had been identified and solutions recommended by the prior Bar committees over the preceding two decades, but that little reform had been accomplished in those two decades.

The Muse Report examined both the Criminal Justice Act (CJA) system (for appointment of counsel in criminal cases) as well as the CCAN system (for appointment of counsel in family

cases). Many of the problems identified were common to both systems, as were the recommendations for change. The areas targeted for reform fell into four main categories: (A) appointment and removal of counsel, (B) the voucher system, (C) training and educational programs, and (D) the relationship between the Superior Court bench and the court-appointed attorneys for the indigent.

At the time of the Muse study, lawyers accepting appointments through the Superior Court's Counsel for Child Abuse and Neglect (CCAN) Branch were the only source for court appointments in family cases. Since the Muse Report, two additional sources of attorneys available for court-appointment in family cases have evolved, The Children's Law Center and Lawyers for Children America. CCE examined these organizations' roles as well as that of the CCAN lawyers in the Family Court's current system of providing legal representation.

With the unfortunate history of little systemic change in two decades in mind, the Muse Committee attempted to fashion practical solutions it believed were capable of implementation in the short term. Their hope for prompt change was not realized.

The D.C. Bar's Board of Governors adopted the Muse Report in early 1994 and transmitted it on February 2, 1994 to Chief Judge Eugene Hamilton of the D.C. Superior Court, with a letter outlining the major recommendations and requesting the Court's consideration of the suggested improvements. Sixteen months later, an Implementation Committee was formed to monitor progress to implement the recommendations and to create a constructive forum where issues of concern to CJA and CCAN attorneys could be discussed with judges. The Implementation Committee included the judges heading the Family and Criminal Divisions of the Court and the Chief Judge's designee, heads of the Family Division Trial Lawyers

Association and the Superior Court Trial Lawyers Association, and representatives from the D.C. Bar.

The Implementation Committee met several times per year between 1995 and 2000. The agenda for the Implementation Committee meetings remained largely the same: voucher issues for CJA and CCAN lawyers, education and training, and bench/bar relations. Apart from establishing a pilot program in 1996 for attorney appointments in serious felonies, little progress was made to advance the Muse Report recommendations.

The pace of reform began accelerating in 2000. Since 2000 Superior Court has created committees to deal with some of the issues in the CJA and CCAN systems, and changes have occurred – including implementation of some of the recommendations of the Muse Report.

CCE's 2004 research found that some aspects of the four substantive areas identified by the Muse Report, and by previous D.C. Bar studies, remain problematic in the Family Court, so this report is organized topically to address each of those four issues:

(A) appointment and removal of counsel,
(B) the voucher system,
(C) training and educational programs, and
(D) the relationship between the Superior Court bench and the court-appointed attorneys for the indigent.

Within each topic, this report first discusses the 1993 Muse Report, then describes system changes between the Muse Report and the present, next presents CCE's findings about promising practices elsewhere, and finally provides CCE's recommendations for reform of the D.C. system.

III. Appointment and Removal of Counsel

A. The Muse Report

At the time the Muse Report was written in 1993, there were no eligibility criteria for lawyers wishing to be appointed to represent criminal defendants, other than completing a brief form requesting basic information. Although all appointments were made by a judge, the appointing judges were frequently unfamiliar with the lawyers on the list for appointments and depended upon prior screening done by personnel in the CJA office, who were not trained for that purpose and had no guidelines to follow. The result was a system where judges often felt that attorneys appointed to handle serious cases were not qualified to do so, and attorneys felt that appointments were subject to favoritism and an "old boy" network with no chance for younger lawyers to gain the experience needed to advance to more difficult cases.

The Muse Report found that in child neglect and abuse cases, any attorney could register to be eligible for case appointments to represent children or adults. New registrants were required to attend a two-day training seminar and to meet with a CCAN Office staff member to review policies and procedures, and were thereafter deemed eligible. Continuing attorneys were required to accrue 16 hours of related training annually to maintain eligibility. The CCAN Office determined which parties needed and qualified for appointed counsel, and used a variety of factors to recommend counsel for particular cases, including such subjective perceptions as counsel's reliability and past performance in cases, and input contributed by the CCAN director and staff as to the attorney's abilities. Once the CCAN office developed a recommendation for the appointment of counsel, that recommendation was taken in the form of a Court Order to the judge, who could modify the Order in any way deemed appropriate.

The result in both criminal and family systems was a method of appointment of counsel that the lawyers felt was arbitrary and without meaningful standards, and that the judges felt

allowed incompetent counsel to be appointed to serious cases. Some lawyers felt their ability to be zealous advocates was chilled, as they believed judges would not appoint them to cases if they represented their clients too vigorously. In sum, the appointment system lacked both objective qualifications that attorneys had to meet and standards and protocols for judges to follow in making appointments.

The Muse Report made no proposal to address the CCAN appointment process. As to the CJA appointment process, the Muse Report recommended a pilot program for the appointment of counsel in Felony I and Accelerated Felony cases. Though it applied solely to criminal appointments, the underlying rationale for the proposal is equally relevant to the child neglect appointment process. The pilot recommended that appointments to serious felony cases should be made from a panel of attorneys who had been screened and deemed qualified by an appointment committee composed of members of the Bar and explicitly excluding any judicial members, though the court would participate in selecting members of the Appointment Committee itself:

> Adopting the recommendations of predecessor committees and of many of the judges whom we interviewed, we believe that judicial officers should not serve on the Appointment Committee. Direct involvement of judges in the selection of counsel in criminal cases has a potential chilling effect on vigorous defense representation. The Appointment Committee should also exclude any persons who are currently prosecutors.[1]

B. System Changes Between the Muse Report and Today

(1) CJA System. In May 1994, an Appointment Committee was formed to develop a plan to implement a certification program for all attorneys seeking appointment to Felony I and Accelerated Felony cases handled under the Criminal Justice Act, as recommended in the Muse Report. The proposal, which recommended establishing criteria for appointment based on bar

1 *Report of a Special Committee of the District of Columbia Bar Regarding Court Appointment of Counsel Programs in the Superior Court (hereafter "Muse Report")*, December 21, 1993, p.28.

membership, prior jury trial experience, and judicial attestations, was approved by the Superior Court Board of Judges in 1996. The certification program began in 1997 under the direction of the D.C. Courts' Joint Committee on Judicial Administration. Apart from this serious-felony certification project, which took from 1994 to 1997 to develop and implement, progress on Muse Report recommendations languished.

In the fall of 1999, the Superior Court created an Ad Hoc Committee on Criminal Justice Act Procedures chaired by Judge Noel Kramer. This committee overlapped and eventually replaced much of the work that the Bar implementation committee had attempted to do, except that its sole focus was on CJA cases, not CCAN cases. The Court's committee had representation from the CJA Bar, the Public Defender Service (PDS), the D.C. Bar, and the Court. It met regularly and discussed a variety of issues relating to CJA practice, including call-in procedures, setting a fee schedule for certain offenses, and training.

Because of the large pool of CJA attorneys (670) at that time and declining numbers of new criminal cases, most CJA attorneys favored a way to reduce the number of new attorneys entering the system to accept CJA appointments. Following the recommendation of Judge Kramer, on February 8, 2000 the Court issued Administrative Order 00-03, which set a March 1, 2000 moratorium on acceptance of new summary resume cards, after which only attorneys with resume cards on file would be appointed to cases. On May 12, 2000, Administrative Order 00-19 designated an Ad Hoc CJA Panel Committee charged with recommending a panel of no more than 250 attorneys from which appointments would be made in criminal cases prosecuted by the United States (the U.S. panel) and a panel of no more than 100 attorneys from which appointments would be made in criminal cases prosecuted by the District of Columbia (the D.C. panel). Subsequent administrative orders addressed such matters as late vouchers, voucher

procedures, and investigative services, and Administrative Order 02-33 addressed continuing legal education requirements for CJA attorneys.

By 2004, the Superior Court recognized a need for more attorneys on the U.S. panel, and Administrative Order 04-02 reopened the CJA U.S. panel to new applicants in July 2004.

(2) CCAN System. The D.C. Superior Court Family Court routinely appoints attorneys to represent every child, and every indigent mother, father, or other legal caretaker when a child neglect or child abuse case is filed in the Court. The same D.C. Code section that mandates representation for parties in child neglect or abuse cases directs the Family Court to maintain a register of attorneys interested in such appointments and to determine financial eligibility of parties for such appointments. The Superior Court established the Counsel for Child Abuse and Neglect (CCAN) Office in 1982, and that office is charged with discharging these statutory functions as well as offering assistance to the attorneys appointed in child neglect and abuse and related cases.

The Muse Report made no proposal to address the CCAN appointment process, and between 1993 and 2002 there was no formal change to that process. Outgoing Chief Judge Eugene Hamilton issued Administrative Order 00-32 in September 2000 to set eligibility standards, practice standards, training requirements, and case limits for CCAN appointments, but incoming Chief Judge Rufus King rescinded the Order before it was put into effect.

New Entities. Partly in response to a dramatic, substantial increase in child neglect and abuse case filings during the 1990s, two additional entities providing attorneys for appointment in child neglect and abuse cases were formed in the District of Columbia: The Children's Law Center in 1996, and Lawyers for Children America in 1998. Thus, the D.C. Superior Court now uses three sources to meet its mandate to provide legal services to children and indigent adults

involved in child neglect and abuse cases: the CCAN bar, the Children's Law Center (CLC), and Lawyers for Children America (LFCA). Using appropriated funds, the Superior Court funds the services provided through the CCAN bar and since summer 2003 has also funded Guardian ad Litem (GAL) services provided by CLC to children. LFCA provides its most of its legal services pro bono, without public cost.

The Children's Law Center (CLC) was founded in 1996 by a few CCAN lawyers who shared a feeling that the court-appointment system and payment structure hampered their ability to do a good job or to develop comprehensive expertise and provide more comprehensive service to clients. CLC is a local nonprofit organization that provides a range of legal services to at-risk D.C. children, including acting as Guardians ad Litem in neglect cases and in complex custody and domestic violence cases. In addition, CLC provides representation to adult caregivers in permanency (adoption, guardianship, and custody) and companion neglect cases and handles special education matters and other legal advocacy related to overcoming non-medical barriers to health, such as SSI, Medicaid, and public benefits matters. CLC also runs a program to find pro bono lawyers for caregivers in adoption and guardianship cases. However, there is no statutory right to counsel for either group. Prior to 2003, CLC funding came from foundation grants and contributions from individuals and law firms. Prior to 2003, CLC attorneys occasionally sought and obtained vouchers for payment of court-appointed services.

Following a special Congressional appropriation to the Superior Court to support Guardian ad Litem representation, the D.C. Courts issued a Request for Proposal in May 2003 "seeking a qualified Contractor to provide Guardian Ad Litem (GAL) representation to abused or neglected children....The prospective contractor is also expected to provide training and technical assistance that is necessary to improve the quality of GAL representation in the Family Court."

In August 2003, the Superior Court awarded The Children's Law Center a one-year contract (with option to renew for two additional one-year periods) to increase the number of neglected children it represents. The contract expectation is that CLC will build its capacity so that it can eventually represent approximately one-third of the neglected children entering the system. The contract also provides that CLC will offer training and other resources to the private court-appointed (CCAN) lawyers to enhance their ability to provide high quality representation to the remaining children and indigent adults.

CLC provides legal services through supervising attorneys and staff attorneys, assisted by staff investigators. The CLC's goal is to have one supervising attorney for every four staff attorneys who are in their first year of practice, and one supervising attorney for every five to six staff attorneys with more than one year of practice. Each staff attorney has a primary supervisor. For additional support, the goal is to have two investigators for every five attorneys.

As of summer 2005, CLC had 18 supervising and staff attorneys, 12 of whom were dedicated to GAL representation. CLC will hire additional attorneys in fall 2005, the third year of the contract with the Superior Court, so that CLC can meet its goal of assuming representation in one-third of the Court's GAL cases. The target for each staff attorney is to handle 30 cases, and for each supervising attorney to carry a one-quarter caseload and supervise three or four attorneys.

Lawyers for Children America (LFCA) is a multi-state nonprofit organization established to help ensure that abused and neglected children have high quality legal representation. LFCA was founded in Hartford, Connecticut, and has offices in Washington, D.C.; Miami, Florida; and several cities in Connecticut. The program's national office is co-located with the Washington, D.C. program. The LFCA program model is to recruit and train volunteer attorneys to represent

children, with LFCA staff attorneys supporting and mentoring the volunteer attorneys as they handle their assigned cases. LFCA considered Washington, D.C. as a site for a regional office to support the Superior Court's mandate to ensure that each neglected or abused child has a Guardian ad Litem. In 1995, LFCA began talks with Chief Judge Eugene Hamilton, which resulted in a 1998 memorandum of understanding (MOU) to recognize the formal affiliation between LFCA and Superior Court and to guide LFCA's operating procedure. LFCA's 1998 MOU with the court called for new appointments of up to fifty neglect or abuse and related cases per year, though the 50-case figure served more as guide than ceiling. LCFA submitted a proposed revised MOU to the Superior Court in May 2004, and in July 2005 LFCA and the Superior Court signed an *Amended and Restated Memorandum of Understanding*.

The 2005 MOU no longer includes a cap on the number of cases to which the court may appoint LFCA volunteers. The amendment also stipulates that one attorney employed by LFCA is expected to oversee pro bono attorneys representing no more than 115 children. A third provision of the amended MOU guarantees that the Family Court will attempt to refer to LFCA at least 25 cases per quarter, so long as that remains consistent with the Court's overall resources and other obligations. However, it is understood that LFCA may request less than 25 case appointments during certain quarters.

LFCA's Washington, D.C. program consists of a regional director and a program director. Both are attorneys with expertise in neglect and abuse practice, and both are on the court's GAL panel. They handle small caseloads of their own, but they focus primarily on supporting volunteer attorneys for neglected or abused children. The 2005 MOU allows GAL panel attorneys who are on the LFCA staff to bill for their work in the cases in which they serve as GALs. The court will then pay LFCA, not the individual attorneys, for this work. Payment

will be at the same rate as for CCAN attorneys and will be subject to the same cap and compensation. Other changes in the 2005 MOU concern case appointment for LFCA attorneys, to be discussed later.

LFCA recruits attorneys primarily from large law firms, but LFCA also counts among its volunteers attorneys from federal government agencies and nonprofit organizations. LFCA trains the volunteer attorneys to act as Guardians ad Litem in neglect and abuse cases (and sometimes related matters). LFCA uses presentations at firms, newsletters, and circulation of announcements regarding LFCA trainings and volunteer opportunities to generate interest. In addition to the mentoring they receive from LFCA, volunteer attorneys from private firms use the support service resources of their firms in working on the GAL cases. Most LFCA volunteer attorneys handle just one case at a time.

CCAN System Changes. Formal change to the CCAN system began after passage of the D.C. Family Court Act of 2001, which required the Superior Court to publish practice standards for attorneys appointed to represent children and indigent parents in child neglect and abuse cases.

Qualifications of Attorneys. On April 26, 2002, the Superior Court issued Administrative Order 02-15 establishing a Family Court Panels Committee. This Order was in response to the mandate of D.C. Code §11-2602 that juveniles alleged to be delinquent be appointed counsel from "panels of attorneys designated and approved by the Court," and to the Court's decision to establish a similar system for appointments in other family law cases. The Order appointed a Committee of twelve Superior Court judicial officers and no other members, and listed the Committee's responsibilities. The order indicated that the Committee would be responsible for creating four panels of attorneys to correspond with four areas of practice: 1)

representation of children in neglect and abuse proceedings (Guardian ad Litem or GAL panel); 2) representation of adult parties in neglect and termination of parental rights proceedings (CCAN panel); 3) representation of children in juvenile proceedings (Juvenile panel); and 4) representation of children with special education needs (Special Education Advocate panel).[2] This CCE report addresses only the GAL and CCAN panels.

Following the issuance of this order, Family Court Presiding Judge Lee F. Satterfield issued a memorandum announcing the application process and encouraging attorneys from all experience levels to apply. A total of 351 people applied for one or more of the four panels by the November 1, 2002 deadline. On March 20, 2003, the Panels Committee released its report, which described the application review and panel selection process, as follows. Applications were provided to judges before whom the applicant attorneys had practiced. Those judges evaluated the applications both by administering a letter grade and by making additional comments. Their evaluations were then provided to the Committee for the final selection process. Committee members obtained copies of all applications but each was assigned approximately 30 applications to review comprehensively to present to the rest of the Committee. After these presentations, the Committee members were able to supplement the information provided by sharing their own observations of the attorneys being presented.[3]

The Panels Committee considered various factors in its selection of attorneys for the different panels. For the GAL panel, the Committee specifically chose attorneys who had significant relevant experience representing children, favorable judicial evaluations, and a lack of

[2] Administrative Order No. 02-15, April 26, 2002. To clarify, CCAN panel attorneys represent low-income parents who are parties in the case, as well as caregivers who have been made parties by the Court because they have cared for the children at issue in the case for 12 months or more. CCAN panel attorneys also represent some over-income caregivers for adoption and seek the limited payment available through adoption subsidy ($1,000 for uncontested adoption, $2,000 for contested adoption/per child) or payment through a CFSA adoption voucher with the maximum payment being $5,000 per family. The CFSA adoption voucher is now authorized through September 30, 2006.
[3] Report of the Family Court Panels Committee, March 20, 2003, pp. 8-10.

significant unfavorable judicial evaluations. For the CCAN panel, the Committee did not weigh previous experience as significantly as for the GAL panel; rather, an attorney's potential for diligence and good work was a primary factor. Applicants who were longtime CCAN practitioners were only disqualified from panel selection if they received more negative judicial evaluations than positive ones. Finally, attorneys were selected for the Juvenile and Special Education panels if they had specialized experience in the respective areas.[4]

In addition to evaluating applicants for the initial set of panels, the Panels Committee also made recommendations for the Chief Judge to consider in implementing the new panel system. Some of these recommendations included: 1) substituting GAL/CCAN panel attorneys for non-panel attorneys who had GAL cases, within six months of panel establishment, with an allowance for no substitution if the best interest of the child so required; 2) creating a Family Court Panel Oversight Subcommittee to implement and monitor the Family Court panels system; 3) estab-lishing policies and procedures for new applications and reapplications to the panels (such as applications being accepted on an ongoing basis with evaluation happening a few times a year, and rejected applicants being required to wait a year before reapplying to the panel from which they were rejected); 4) establishing programs to recruit and train new attorneys who are committed to this area of work; and 5) creating policies and procedures for maintaining large, qualified panels of attorneys – including procedures to respond to attorney deficiencies and behavior that calls for panel removal.[5]

In response to the March 20 Panels Committee report, the Superior Court issued Administrative Order 03-11 on March 26, 2003, officially establishing the four panels and naming the members of each. The Order also mandated that any non-panel attorneys who were at

[4] Ibid., pp. 10-12.
[5] Ibid., pp. 12-16.

the time receiving CCAN funds be replaced by panel attorneys within six months (noting the judicial right to bypass this rule in exceptional circumstances).[6]

In addition, fulfilling the mandate of the Family Court Act of 2001 to do so, Administrative Order 03-07, issued on February 28, 2003, established the first formal *Standards of Practice of CCAN Appointments.* The Standards had been developed by the Family Court Advisory Rules Committee, comprised of seven Family Court judicial officers, the Family Court staff Director and Coordinator, the Superior Court Research and Development Director, one representative of the Office of Corporation Counsel (now Office of the Attorney General), three private attorneys, and two representatives of the American Bar Association Center on Children in the Law. The Standards prescribe expectations for practitioners to meet in the following sequential categories: General Authority and Duties, Client Contact, Pre-Trial Actions, Hearings, Post-Hearing, and Appeal.

The Case Appointment System –

Panel Attorneys

CCAN and GAL panel attorneys sign up on the 10th day of every month for the days in the following month that they will be available for assignment to newly filed cases. The usual practice is for attorneys to select a maximum of three such days. To promote fair distribution of cases among attorneys, the CCAN office rotates the monthly sign-up process, beginning the sign-up with a different letter of the alphabet each month. To confirm their availability, attorneys are asked to call the CCAN office the night before any day for which they are on the new-assignment list, and then to check in with the CCAN office periodically throughout their assignment day until the cut-off time at 3:00.

[6] Administrative Order No. 03-11, March 26, 2003.

The GAL appointment process changed in February 2005 as a result of amendments to D.C. Code §16-2312 passed by the D.C. Council. The amendments change the timing of the initial neglect hearing from the day after a child's removal from home to within 72 hours after a child's removal, and they also mandate that the child's GAL be appointed within 24 hours of removal. The parents' attorneys continue to be appointed on the initial hearing date. The new law also requires that the GAL be invited to attend the Family Team Meeting which is convened by the Child and Family Services Agency (CFSA) within the 72-hour period between the child's removal and the initial court hearing.

To comply with the new law, the government files its initial complaint with the court within 24 hours of any child's removal from home. On receiving the complaint, the CCAN Office transmits the names of GAL panel attorneys who have signed up for appointments for that day to the appointing magistrate judge. The magistrate judge appoints the GAL, and the CCAN Office informs the GAL and the CFSA Family Team Meeting Office of the appointment so that CFSA can invite the GAL to the Family Team Meeting. Besides attending the Family Team Meeting, GALs are also expected to start their case investigation in preparation for the initial hearing a day or two later.

CCAN and GAL panel attorneys also sign up for Saturday appointments. Every week, the CCAN office sends a list to the judicial officer who is on Saturday duty. The attorneys do not call to reconfirm, but just show up in the courtroom at 9:00 a.m., sign in with the clerk, and the judge makes the appointments. GALs are usually informed of their Saturday and holiday appointments a day or two ahead of time, pursuant to the amendments to D.C. Code §16-2312 described above.

If there are more new cases on a particular day than panelists available to take them, the CCAN office contacts additional panel attorneys by phone to supplement the list.

To be eligible for appointment to cases through the CCAN Office, panel attorneys must complete 16 hours of continuing legal education (CLE) credits per year.

The Children's Law Center Attorneys

To obtain cases, CLC staff attorneys sign up in the same manner as CCAN attorneys. CLC attorneys sign up on the 10th of the month either by sending a representative from CLC to the CCAN office or by transmitting their list of available attorneys to the CCAN office.

Lawyers for Children America (LFCA) Volunteer and Staff Attorneys

To obtain a case assignment, a volunteer LFCA attorney and an LFCA staff attorney choose a date when they can spend the day at court. LFCA notifies the court in advance of the volunteer's availability, and the CCAN office adds the LFCA volunteer to the list of attorneys available for appointment as Guardian ad Litem on that date. The judges making appointments then have the option of appointing the volunteer. Since the inception of the Family Court panel system, LFCA has tried to make its attorneys available when the court is most in need of GALs. LFCA does this in two ways. First, before contacting a volunteer to schedule case pick up, LFCA sometimes calls the CCAN office to determine what days in the coming month the court is short GALs. Second, on some mornings when the CCAN office does not have enough GALs to accept appointments in new cases, the CCAN office may call LFCA to see if LFCA can provide a volunteer attorney.

Attorneys on staff at LFCA receive their own cases in a number of ways. Although the regional director and the program director are both on the GAL panel, they have not historically billed the court for their work. As described on page 12, the July 2005 MOU now provides for

payment. The 2005 MOU does not specify how GAL panel attorneys who are employed by LFCA will be appointed to cases. LFCA plans to request paid appointments the same way CCAN and CLC attorneys do. In addition, sometimes judges contact LFCA directly to ask that an attorney at LFCA handle a case that is particularly complicated or time-demanding. Finally, it is expected that the attorneys employed by LFCA will continue to receive cases by taking over for LFCA volunteers who must withdraw from cases for any reason.

Making Appointments from the Daily Lists

As described on page 17, since February 2005 GALs are usually appointed a day or two before the initial hearing, when the government files new neglect complaints. Each morning the CCAN office calls or emails the two magistrate judges who are hearing new referrals to confirm the list of attorneys available for appointments that day. Thus, GAL and CCAN panel attorneys, CLC attorneys, and LFCA volunteer and staff attorneys may be on the list for any particular day, and the judicial officers presiding over initial hearings have discretion to choose among these attorneys for each appointment.[7] There is no mandate that the judges follow the lists in any order, however, because there is no written judicial policy governing distribution of new-case appointments among all available attorneys. There is also no written judicial policy governing distribution of case reappointments (where the original attorney was removed or withdrew) among all available attorneys.

[7] From Interview with Wilma Brier, CCAN Office Director, October 2003. However, this process is not applicable to the Special Education Advocates, because they are rarely appointed at the initial hearing. The CCAN office or a judge's chambers contacts these Advocates directly, when the need arises. In addition, Juvenile appointments are handled by the Superior Court's CJA office.

Opinions About Creation of the Panel System

Attorneys CCE heard from expressed conflicting feelings about the creation of the panel system. Some attorneys felt that the creation of the panel system was absolutely necessary. Comments supporting this belief were as follows:

- Insofar as it is an attempt to improve the quality of representation, the institution of panels was necessary.
- It was ludicrous to allow anyone who took the training and showed up on the 10th of the month to be able to pick up cases. It was through these indiscriminate appointments that the CCAN bar received a negative reputation.

Magistrate judges and associate judges also felt that the creation of the panel system was important, stating:

- There has been a sea change with CCAN attorneys since the implementation of the panel.
- [GAL] attorneys interact more and more with children. The accountability that has been placed on them has resulted in the improvement of most of their cases.
- The court must be confident about the attorneys that are representing cases. It is important that the attorneys are competent.
- Some CCAN attorneys were an embarrassment.

Some Assistant Attorneys General (AAGs) also supported the creation of the panel system, stating that "the weed-out was a positive improvement" and that "it is a good thing that some are not on the GAL panel."

However, some CCAN attorneys described a general belief that the creation of the panel system was unfair. Not all negative comments about panel creation came from attorneys who were excluded from the panels. Some comments are as follows:

- Feelings are so strong about the panel creation that there is a cloud of depression and anger in the courthouse.
- I was asked to mentor a GAL attorney who made the panel. Those people now have my cases.
- What is critical in the CCAN practice is the commitment of attorneys to work with poor and problematic families. If specific skills needed to be enhanced, training should have been offered. If specific attorneys were presenting problems, those attorneys should have been spoken to privately or referred to bar counsel.
- I saw some whom I viewed as competent attorneys who were in the practice for years, if not decades, excluded. This left me with a bad impression.

Opinions About Selection of Panel Attorneys

Several current CCAN or GAL panel attorneys, and some rejected applicants, felt that the panel selection process was not sufficiently transparent or impartial. As one CCAN attorney stated, "anything secret is suspect." Another attorney expanded on this view, stating:

- The Court needs to state reasons for rejection. I know the Court seemed to take the position that an employer does not owe a rejected job applicant an explanation for passing that person over for the job. On the other hand, the exclusion of persons who were in the practice for years was more in the nature of being fired from a position, in which case I believe an explanation is necessary.

CCAN attorneys also expressed their feeling that the selection process was based on favoritism. As one attorney stated, "there was a certain amount of 'payback' in which troublesome or unpopular lawyers were punished." Another attorney expressed a similar belief that "there were some [attorneys] who were dumped entirely who were not incompetent, but had personality problems. There was obviously lots of favoritism involved."

Other attorneys expressed similar sentiments:

- There were some people who should have been eliminated from the panel; however, others were clearly eliminated because there was a judge or judges who did not like them. Others were clearly included on the panel because there were judges who liked them - it was not based upon how well they represented their clients. What was incredible was that the selection committee claimed that some lawyers did not make a panel(s) because not enough judges knew of their work, yet the Court awarded a very lucrative contract to The Children's Law Center, which hired new law school graduates (not yet licensed lawyers in some instances) as GALs, and their work is totally unknown and they have no prior experience in this area. How does the Court justify its actions? It was an arbitrary decision….
- [The selection process was] opaque, and unfair. No criteria for selection were ever published. Those rejected were never told why, nor given guidance as to what they might do to better their chances to be accepted if they reapplied. No active or retired CCAN attorneys participated in the process. No provisions were made for new candidates for the panels to apply. That should be an ongoing process; but how will judges select attorneys who have never done the work?
- I was selected for the only panel for which I applied, so I have no personal ax to grind, but the process was not transparent at all and I know of well-qualified people who were rejected. I am certain that the terms of implementation of the system were not fully made clear during the application period. For instance, some older attorneys chose not to apply

> for panels, planning to keep their current cases but not pick up new ones. Then, afterwards, judges removed them from some of their cases in compliance with Judge King's order (Administrative Order 03-11).

These viewpoints were not limited to panel attorneys. Several Assistant Attorneys General (AAGs) expressed similar opinions.

Opinion was split on whether judges should be in charge of selecting attorneys for panels. Some attorneys and judges felt that judges should have some input, but should not be the sole decision-makers. These individuals also felt that some type of input from the Bar on the candidates would be beneficial. The Court addressed this particular concern in Administrative Order 04-15, issued July 24, 2004. This Order re-opened the panels selected in 2002 to new applicants on an annual basis, with an annual application deadline of September 17 and decisions within 60 days thereafter. The Order also mandated that the Family Court Panel Oversight Subcommittee (still composed entirely of judicial officers) consider the recommendations of a new Advisory Family Court Panels Selection Committee composed of attorneys from the Family Court Trial Lawyers' Association, the Superior Court Trial Lawyers' Association, and the Public Defender Service.

In addition, some panel attorneys, AAGs, and magistrate judges believed that not enough attorneys were selected for the panels. This feeling was most pronounced regarding the GAL panel. Some expressed the opinion that it is now more difficult to schedule hearings because of the dearth of GALs and that some GALs are overburdened because they have too many cases. Having sufficient attorneys available for appointment is crucial to the Court's ability to meet the stringent deadlines required by the federal and D.C. Adoption and Safe Families Acts for processing child neglect and abuse cases

CCE also gathered opinions from consumers in the Family Court's appointed counsel system – biological parents, foster and adoptive parents, and teenage children – through surveys and focus groups. The sample size of respondents from those four groups was quite small, and their views may or may not be representative of their peers. However, CCE found a strong opinion among the limited number of respondents from those four groups that the legal representation provided leaves much to be desired. Foster parents had comments such as the following about their perceptions regarding GAL involvement with their foster children:

- You can't make recommendations about a child that you don't know.
- Often, the GAL will call the night before a hearing. One GAL referred to a female child as a boy.
- The judges need to ask the hard questions of the GAL: "When was the last time you saw the child, before yesterday?"

Teenage foster children who communicated with CCE echoed this perception, stating:

- My lawyers and GAL really don't care about what I say. They don't even know me.
- My attorney visits me the day before Court (or – Once or twice my attorney came to visit, but only on court dates).
- We should not have to keep up with the attorney. They should do their job without our having to tell them what to do.

Finally, biological parent respondents, who are represented by attorneys on the CCAN panel, also appeared to be discouraged. They stated:

- My lawyer is a joke.
- I don't want my attorney to speak for me because he doesn't know me.
- We all have an attorney, but the attorney does not do anything.

Perhaps if the adults and adolescents being represented by court-appointed attorneys felt that they have a voice in improving the representation system, through a systematic solicitation by the court of their opinions, they would feel more confidence in their attorneys' effectiveness. Although consumers have the opportunity to express their grievances in open court, there is an

inherent conflict between being able to express misgivings about one's attorney while also relying on that attorney to zealously advocate on one's behalf.

Opinions About The Case Appointment Process.

As with the issue of creation of the panel system, there is a division of opinion on operation of the appointment system. Some of the comments made to CCE are as follows:

- The judges before whom you appear should not be making the appointments. There is a lot of favoritism going on for irrational reasons. One judge throws me cases. That's nice but it isn't fair. It was much fairer when the judges stayed out of it… There is a lot of signing up when you know the judge will throw work your way and avoiding judges you do not like. It would be much fairer if it was done by the [CCAN] office, because they would attempt to do it fairly.
- Appointed counsel are not independent counsel in this system.
- There's no formal monitoring of who's getting cases, unless [the] CCAN [office] does it.
- There needs to be a system where judges are not just appointing people at random. The attorneys who are getting a lot of cases don't want all that many, some are getting none, and so on. We need a system.
- Judges place their friends on cases before them. The decisions are not based upon competence or the ability to relate to various clients. In addition, I believe that some magistrate judges and judges select lawyers who they believe are safe – lawyers who will not appeal their decisions nor challenge them. I have heard some lawyers who recognize that the magistrate judge selects them for cases over other lawyers unfairly say that they felt they could not challenge the judge on certain legal issues because of fear of retaliation or loss of court appointments in the future.
- Judges shouldn't be able to remove [appointed counsel] summarily and when they do, they should have to issue an appealable order in writing.
- Judges feel that in the name of being expeditious, they should just remove people. Once you're appointed, that should be sacred. If it slows down the case, it slows down the case. You should need a reason. And, the judges aren't even providing explanations.
- I have been on a case since 1995. I've been the only continuity in the case… [A]t one point, the Magistrate Judge on the case asked me to recommend a Special Education Advocate (SEA), and I did so. I then got a call a few days later and found out that the magistrate judge had removed me without my knowledge and appointed the SEA as GAL instead—even though he's not even on the GAL panel!

The strong negative feelings expressed about the judicial appointment process are not new. Twelve years ago, the Muse Committee concluded in its report that the appointment process was arbitrary, and governed by uninformed, subjective opinion."[8] Although the Court has made great

8 Muse Report, p. 19.

strides in creating pre-screened panels of qualified attorneys since the time of the Muse report, it does not appear from CCE's research that this has led to an increased perception of fairness in individual case appointments or reappointments. The need for fairness has been increased since the Muse Report by the addition in the 1990s of the two additional sources of attorneys, CLC and LFCA. The addition of new sources coupled with recent significant declines in new case filings has exacerbated the concern of the CCAN/GAL bar that there be a transparent, objective system for appointing counsel. With all attorneys now available for appointment deemed qualified by either their inclusion on a panel, their employment by CLC, or their mentoring by LFCA, one would expect that attorneys would be appointed to new cases on an objective basis, according to their position on the daily sign-up list, barring any exceptional expertise needed for a particular case that warrants a departure. One would expect a similar objective protocol for handling case reappointments. Such system has not been established, and this has led to morale problems among the bar.

Recent Changes to the Family Court Panel Attorney System

On April 28, 2004, the Superior Court published its *Plan for Furnishing Representation in Neglect Proceedings in the District of Columbia*, providing the framework for the appointed counsel system. Among other matters, this "CCAN Plan" mandated periodic reexamination of the composition of the panels of attorneys available for appointment in child neglect and abuse cases. In July 2004, the Superior Court issued Administrative Order 04-15, which implements some of the recommendations made in the March 2003 report of the Panels Selection Committee and some matters touched on by the CCAN Plan. The Administrative Order establishes a Family Panel Oversight Subcommittee comprised of Family Court judges, with responsibility to review applications for admission to any Family Court panel. In addition to reopening the panels for

admission of new applicants, Administrative Order 04-15 states that the Committee must consider the recommendations of other attorneys in making admissions decisions,[9] and may seek the views of other judges in coming to decisions about accepting or rejecting applicants.

Order 04-15 also implements some other recommendations made in March 2003 by the Panels Selection Committee. The Order permits the Committee to consider applications and make appointments to the panels at any time, and it mandates that new applications be considered at least annually and that decisions be made on applications within 60 days of submission.[10] Administrative Order 04-15 also creates provisional panel membership, meaning that attorneys whose qualifications do not merit full panel membership can be placed on the panels temporarily with the expectation that after one year, based on work product, they will be considered for full membership. Finally, the Order states that attorneys who apply and are rejected for panel membership must wait one year before reapplying.

Attorneys who are accepted for the GAL or CCAN panels are required to complete a two-day training and a court observation session in order to be eligible for appointment in neglect or abuse cases. In addition, panel attorneys must certify that they have read and understood the Superior Court Child Neglect and Abuse Attorney Practice Standards, the District of Columbia Rules of Professional Conduct, and the Superior Court Rules and Statutes Governing Neglect Proceedings.

The CCAN office pairs new attorneys who are selected for the panels with experienced attorney mentors who volunteer to provide assistance to new panel attorneys as they start taking cases. In addition, the CCAN Director attends the first initial hearing to which each new attorney

[9] Administrative Order No. 04-15, July 23, 2004, p. 2 (stating that the Committee shall consider the recommendations of the Family Court Advisory Attorney Selection Committee, composed of attorneys from the Public Defender Service, Family Court Trial Lawyer's Association and the Superior Court Trial Lawyer's Association).
[10] Administrative Order No. 04-15, July 23, 2004, pp. 1-2.

is assigned and provides feedback after the hearing. The Director is also available for extensive consultation with the new attorneys to guide them as they become familiar with the practice.

Findings About Promising Practices Elsewhere for Appointment and Removal of Counsel

CCE studied numerous reports on how other jurisdictions screen attorneys and appoint them to individual cases. Some reports deal with criminal appointments; others with child neglect appointments. We believe the principles of the examples we cite have applicability to both systems.

- The Federal *Model Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act* provides advisory guidelines for the use of Criminal Justice Act (CJA) attorney panels in federal court districts. The Plan provides for courts to fix the size of the CJA panel. Panel attorneys are to be chosen by a Panel Selection Committee consisting of a U.S. District judge, a federal magistrate judge, an experienced panel attorney, and the Federal Public Defender (if there is one). Attorneys selected for the panel are to serve three-year terms, with one-third turnover each year and a 'fallow period' of one year between terms. The Committee is to meet at least once each year to consider applications, make appointments, amend its bylaws if necessary, and ensure that all panel attorneys are still able and willing to perform their services. The Plan also provides that the Committee may establish a training panel whose inexperienced members could be assigned by a judge to assist a full-fledged panel member on a case without compensation. The Plan also provides for rotational, non-

discretionary case assignments under ordinary circumstances, with exceptions at the Court's discretion.[11]

- The Vera Institute of Justice is a 40+ year-old New York-based research and operating organization dedicated to improving the services people rely on for safety and justice. A 2003 report by the Vera Institute on federal CJA panel programs recommends that CJA panels be large enough to secure adequate representation but restricted enough to give attorneys sufficient experience on a continuing basis, to encourage them to invest in support services and specialization, and to attract attorneys by conferring greater prestige on panel service. The Vera Institute report notes the importance of having at least one and preferably multiple defense attorneys on the selection committee. It also notes that any provision for fixed terms is meaningless without substantial review of attorney performance, as opposed to summary reappointment or a very high burden for removal from the panel.[12] According to the report, selection committees have considered "an attorney's investigative and litigation skills, rapport with clients, strength in procedural and substantive legal knowledge and analysis, and administrative matters such as billing accuracy" in their reviews.[13]
- The state courts in Massachusetts place criminal panel oversight outside the court. According to the Vera Institute report, the Massachusetts courts maintain "a system of professional administrators who work independently of the court and the defender to manage aspects of the assigned counsel system, principally panel selection and review."

11 *Guide to Judiciary Policies and Procedures*, vol. VII, "Guidelines for the Administration of the Criminal Justice Act and Related Statutes," Appendix G, "Model Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act," pp. G12-G18.
12 Jon Wool et al., *Good Practices for Federal Panel Attorney Programs: A Preliminary Study of Plans and Practices,* (hereafter "Vera Report"), Vera Institute of Justice, June 2003, pp. 7-10.
13 Vera Report, p. 22.

Staff attorneys in twelve regions are responsible for "supervising the court-appointed bar advocates and evaluating new attorneys for admission to the panels. These staff attorneys conduct performance evaluations, investigate complaints, and provide training for the bar advocates."[14]

- The Colorado Office of the Child's Representative[15] (OCR) contracts with attorneys on an annual basis to provide representation to indigent children. In its first year of operation, OCR began to pare down the ranks of contractual attorneys by requiring anyone who wanted to practice as a GAL to interview and submit an application form. OCR now repeats this process annually, recruiting attorneys throughout the state and supplementing the application and interview with feedback from evaluation forms given to judges, court personnel, and CASA volunteers. Attorneys currently under contract must complete a less extensive reapplication in order to retain their contracts. The OCR also accepts and investigates complaints against attorneys, which can influence the decision to rehire or cause immediate termination.[16]
- The Federal District of Oregon uses a CJA panel administrator within the Federal Public Defender's office. The Oregon administrator is involved in the office's appointment of attorneys to cases. To avoid conflicts of interest with the staff public defenders, a strict rotation is used to make appointments, only the federal public defender himself is involved, and attorneys may choose to have conflicts resolved by the presiding judge.[17]

14 Vera Report, p. 33.
15 Founded in 2000, the Office of the Child's Representative began in July 2001 to administer indigent defense programs statewide. The OCR is responsible for maintaining the quality of representation by establishing standards for practice, compensation, training, and caseloads.
16 Colorado Office of the Child's Representative, <http://www.coloradochildrep.com/>.
17 Vera Report, p. 19.

Recommendations Related to Appointment and Removal of Counsel

- **Fixed Panel Terms** - We support the panels in concept, and we strongly commend the Court for committing to maintain the quality and vitality of the panels through regular screening and acceptance of new applicants. But to adequately monitor the performance of attorneys who are selected for the panels, we recommend that the Court consider the federal Model Plan's provision for fixed-duration terms of panel membership, requiring panel attorneys to reapply and undergo substantive evaluation (as the Vera Institute report recommends) after a given period of service.
- **Increased Transparency and Participation in Panel Selection** – We strongly commend the Court's clarification of the panel selection process in Administrative Order 04-15, particularly the provisions for regular consideration of applications and mandatory consultation of the Advisory Family Court Panels Selection Committee. We recommend, however, that the Court consider further ways to alleviate the friction caused by the initial selection process in 2003. Greater disclosure of qualification criteria and methods of evaluation, written explanations to attorneys denied selection, inclusion of persons other than judges on the Panel Oversight Subcommittee (as the Muse and Vera Institute reports recommend), and a process for appealing the recommendations of the Family Court Panel Oversight Subcommittee or the decision of the Chief Judge might all bolster attorneys' confidence in the system and improve bench-bar relations.
- **Increased Predictability of Case Appointment System** – We recommend that the Court consider making changes to the current system by which judges appoint attorneys to individual cases. Because all attorneys on a panel, employed by CLC under the contract with the Court, or mentored by LFCA under the MOU with the Court should be

considered qualified to practice in their field, the Court should adopt a standardized, disclosed protocol for new-case appointment and for case reappointment. Such a protocol should be followed for the great majority of case appointments but should permit judicial officers to depart from the protocol when they determine that the requirements of a particular case warrant such a variance. Such a system should provide for the equitable distribution of cases among the CCAN/GAL panel bar, CLC, and LFCA, reflecting the various case-carrying capacities of those three sources. A more predictable case assignment system would foster a healthier relationship between bench and bar, could improve attorney morale, and could improve relations among the CCAN/GAL panel bar, CLC, and LFCA. The system might include a far stronger role for the CCAN Office or for another entity more independent of the court (as in Massachusetts and Oregon). An attorney supervisor with a broader portfolio of responsibilities, as described in the Promising Practices portion of Section IV of this report, might also play a role in case assignment.

IV. The Voucher System

A. The Muse Report

At the time of the Muse Report, both CJA and CCAN system lawyers were paid at a statutorily set hourly rate of $50 and were subject to statutorily set payment caps per case. The Muse Report was highly critical of the voucher systems for payment of appointed counsel. All vouchers, even for services within the statutory limit, required the identification of the service performed and the time spent, in one-minute increments. None of the forms was computerized. The Superior Court Finance Office reviewed the vouchers initially, then forwarded them to the trial judge for review and approval. There were no written procedures guiding this process and no limits put on the time within which payment had to be made. Because each judge developed individual policies on vouchers, practices varied widely. When a lawyer expended time that he or she believed warranted compensation in excess of the set cap, it was necessary for the lawyer to submit a written explanation which had to be approved first by the trial judge and then by the Chief Judge. Muse Report criticisms of this system included the following: lawyers in CJA and CCAN cases were dependent upon the judges before whom they appeared for their economic livelihood, "and that dependence threatens the professional independence of the lawyer"[18]; the process of completing vouchers by hand in one-minute increments was time-consuming and cumbersome; each judge had his or her own criteria for reducing vouchers as well as his or her own timetable for processing vouchers; attorneys were rarely told why vouchers were reduced; and there was no meaningful method of appeal for an attorney who believed that a voucher was

18 The Muse Report, at p. 15, quoted Rule 5.4(c) of the D.C. Rules of Professional Conduct -- "A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services" – and then concluded: "A system where the judge controls a lawyer's fees is thus fraught with risks to the right of clients to the independent judgment of their counsel."

unjustly reduced. The Muse Report also highlighted a special inequity in the CCAN payment scheme:

> CCAN lawyers are subject to the same [case payment] limits whether they are representing multiple children or a single child. Frequently, no credit or payment is given for the extra work required with additional children. (Muse Report at 17)

The Muse Report recommended that the Court take immediate steps to implement a computerized system, with appropriate safeguards, whereby vouchers not in excess of the statutory limits would be processed and approved by the Finance Office, without the need for review by the trial judge. In addition, the Muse Report recommended that the voucher form be simplified. Several changes were viewed as particularly important for CCAN lawyers:

> The Committee believes it is particularly important that this computerized process be applied to CCAN cases and is discussing with the office of the Court Administrator approaches that would address the special problems in the CCAN voucher process that have led to extraordinary delays in payment. The Committee also proposes that the Court reevaluate the method of payments in CCAN cases so that it can eliminate the inequities that occur in cases where a lawyer represents multiple siblings, and facilitate payments prior to final disposition.[19]

B. System Changes Between the Muse Report and Today

The Implementation Committee formed eighteen months after the Muse Report discussed several voucher-related issues: computerization, billing in fractions of hours rather than minutes, periodic submission of vouchers for payment prior to final disposition of cases, and establishing an appeal process for voucher reductions. Relations between the Superior Court and appointed counsel were especially tense during the summers of 1998 and 1999, when the court's fiscal difficulties stemming from transfer of court funding authority from the D.C. Council to the federal government caused vouchers to go unpaid for months.

In October 2002, the D.C. Courts' Joint Committee on Judicial Administration addressed the criminal appointed counsel system by approving major revisions to the *Plan for Furnishing*

19 Muse Report, p. 26.

Representation to Indigents (known as the CJA Plan). The revised CJA Plan specified that attorneys could now account for their time on standard vouchers in tenths of an hour (as opposed to minutes) and simplified the voucher procedure by setting a guideline fee system for certain offenses. Other provisions established criteria for judges to consider in requests for waiver of maximum counsel fees to decide whether representation was complex or extended, set standards for reductions to vouchers, and prescribed steps and time limitations for reconsideration and appeal of reduced vouchers. In addition to the substantive changes regarding vouchers, vast strides have been made to computerize the system for submission of CJA vouchers, so that many criminal-representation vouchers are now submitted and approved electronically.

Payment for CCAN Cases

Payment for court-appointed-and-compensated legal representation is governed by statute. D.C. Code §11-2604(a) mandates that attorneys be compensated at a fixed rate of $65 per hour,[20] (compared to the $50 rate cited by the Muse Report, which remained unchanged until March 2002). This payment amount applies to attorney services both in and out of court. The D.C. Code also sets the maximum compensation per case: $1600 (thus, 24.6 hours) for all proceedings from the initial hearing through the disposition hearing; $1600 (24.6 hours) each "case year" (the date of disposition marks the start of the "case year") for all post-disposition proceedings other than termination of parental rights (TPR); $2200 (33.8 hours) for TPR proceedings; and $1100 (16.9 hours) for appeals.[21] The Court can authorize payment above the cap in a particular case upon request by the attorney, as described on page 38. The Court has made no change to the policy criticized by the 1993 Muse Report which limits GAL panel

[20] D.C. Code §11-2604(a) (2001).
[21] D.C. Code §16-2326.01(b)(1-4) (2001).

attorneys to each of the payment caps even when they have been appointed to represent more than one child in a sibling group.

The Court has set an annual payment limitation of $135,200 (2080 hours) per person for all defender services provided as appointed counsel through the Court,[22] which applies to both family and criminal case appointments. A court-appointed CCAN/GAL panel lawyer would need to handle an active caseload of approximately 84 child neglect or abuse cases, each billing at (but not beyond) the statutory maximum, to reach the $135,200 gross income maximum, or 42 cases to gross $67,600 annually.[23] The target caseload for Children's Law Center staff attorneys is 30 cases.

CLC staff attorneys are paid for GAL services from funds provided by the CLC contract with the Superior Court, and the starting salary for new law school graduates is $40,000 per year, plus a full benefits package. CLC attorneys are allotted $750 per year to attend relevant educational programs in other states, and $500 per year to pay for incidental expenses for the children whose cases they are handling.

Neither LFCA nor LFCA's volunteer attorneys receive court compensation for the work of attorneys who volunteer through LFCA. The LFCA regional director and program director are salaried employees of LFCA. The majority of LFCA's funding comes from foundations, firms, individual donations, and United Way contributions. LFCA also receives substantial in-kind donations from large law firms.

[22] Administrative Order 04-29, issued December 23, 2004, raised the previous limit of $130,000, with the new limit effective for all cases filed on or after October 1, 2004.

23 Panel attorneys are generally self-employed, and thus must pay all taxes, insurance, retirement, educational, and office expenses from these gross amounts.

The Voucher System

CCAN and GAL panel attorneys are paid for their professional services on child neglect and abuse cases through the use of vouchers. On the voucher forms, attorneys provide appointment and case information, and descriptions of work provided both in and out of court. The CCAN office issues vouchers to attorneys who have received appointments at initial hearings.[24] The Superior Court Finance Office issues vouchers for reappointments, TPRs, adoptions, and replacements for lost vouchers.[25]

The Superior Court issued Administrative Order 04-05 on April 23, 2004, to revise Sections I and II of the Plan for Furnishing Representation in Neglect Proceedings in the District of Columbia. Some of the changes relating to vouchers include: 1) changing the deadline for submitting vouchers from 60 days to 120 days after disposition or, for cases in review status, 120 days after the end of the case year; 2) delineating how claims will be processed for payment; 3) reiterating maximum counsel fees and defining the circumstances in which these may be waived; 4) changing the requirements for time recordation on the vouchers from minutes to tenths of an hour[26] and 5) clarifying the process for appealing reductions in vouchers.

[24] Appointments are made by the judicial officer presiding over the initial hearing. The CCAN office enters the order of appointment into the Courtview data system, thereby providing the information to the Finance Office as well. The voucher number assigned to the case applies to all vouchers submitted from the initial hearing through disposition, and to all vouchers submitted for subsequent review hearings. A staff person from the Finance Office places the voucher into the attorney folder located in the Finance Office. There is usually a 24-hour turnaround period between initial appointment of a GAL and the voucher being issued by the Finance Office. CCAN panel attorneys are not given payment vouchers for representing parents until the CCAN office has made the required determination of financial eligibility of the parents. If the voucher takes longer to be issued, the Finance Office requests that the attorney wait three to five days before inquiring about the voucher's whereabouts. The CCAN Office also suggests that a CCAN panel attorney who doesn't receive the initial appointment voucher should come to the CCAN office to ask whether eligibility has been determined, whether data has been entered, and whether the voucher has been issued.

[25] For reappointment vouchers, the attorney must bring the reappointment order to the Finance Office and fill out a separate voucher request form, and will then receive the voucher within one to two days. A voucher for TPR and Adoption actions is requested at the time the motion is filed or received. An attorney must fill out a separate voucher request form and the Finance Office issues it. A separate voucher number is assigned to TPR and Adoption actions. The turn-around time for producing these vouchers is also one to two days.

[26] Administrative Order 04-05, *CCAN Plan Amendments,* (hereafter CCAN Plan), April 23, 2004. Regarding the billing, the Finance Office has determined that, if an attorney's case year falls on or after April 23, 2004, any case

Attorneys must submit their vouchers requesting payment for any work done from the initial hearing through disposition within 120 days after disposition. For any work done post-disposition, vouchers may be submitted after any hearing but must be submitted no later than 120 days after the "case year anniversary date" (one year after the disposition date is the case year anniversary date). Vouchers for TPRs or adoptions must be submitted within 120 days of completion of representation. Finally, attorneys must submit vouchers within 120 days of the termination or suspension of their representation in a case.[27] Vouchers submitted after this 120-day period are considered only if the attorney documents that he or she was unable to submit the claim due to physical or mental incapacity or death.[28] Attorneys who have a voucher returned to them because of an error must either correct and resubmit the voucher within the original 120 day submission deadline, or correct and resubmit the voucher within 15 days of the date the rejected voucher is placed in the attorney's folder. If attorneys meet this 15-day deadline, the voucher resubmission date will be the original voucher submission date.[29]

Processing of Vouchers Within the Statutory Cap

Attorneys submit vouchers directly to the Superior Court Finance Office, located at 616 H Street, NW, 6th Floor. Whenever an attorney submits a voucher, Finance Office auditors review previous vouchers in the case to assess whether the voucher or the attorney is within the statutory payment limits. The auditors then print out previous voucher claims and attach them to

activity from that point forward should be billed in tenths of an hour. Any case activity falling on or prior to April 22, 2004 should be billed in minutes. Regarding the 120 day rule for voucher submission, any case activity falling on April 14, 2004 or before shall be submitted within the old system's 60-day deadline, whereas case activity falling on April 15, 2004 or after shall be submitted within the new 120-day deadline.

[27] CCAN Plan, pp. 16-17. This is a change from the previous 60-day deadline for voucher submission.

[28] CCAN Plan, p. 17.

[29] Administrative Order 04-09, *Late Resubmitted Vouchers*, June 15, 2004. According to the Finance Office, when a voucher is submitted on time but an error is found, staff will put a cover sheet on the voucher stating what the error is. An attorney has 15 days from the date the voucher is placed back into the attorney's folder to correct the error, and the original "clocking date" (i.e., date the auditor put sheet on it) will be honored. If the sheet is removed from the voucher when resubmitted, or if the voucher is resubmitted after 15 days and the resubmission occurs after the 120-day deadline has passed, the attorney will not be paid.

any new voucher requests for the case judge's review.[30] The Finance Office then sends vouchers by interoffice mail to the case judges for review and approval.[31] Just as was the case at the time of the Muse Report, it appears that each judicial officer has a different method for processing and reviewing vouchers. While there is still no deadline for voucher review to be completed, review must comply with the terms set by the Prompt Payment Act,[32] so attorneys can receive interest on vouchers paid after 45 days from receipt. Regardless, vouchers may not be paid without judicial approval. Judges send the vouchers back to the Finance Office through interoffice mail once their review is complete. After judicial review and approval, Finance Office payroll specialists re-audit the vouchers briefly. The vouchers are then entered into the voucher tracking system for payment preparation.[33]

Processing of Vouchers in Excess of the Statutory Cap

An attorney whose voucher exceeds the statutory payment limit in a neglect or abuse case must attach a letter to the case judge seeking waiver of the cap to the voucher form. The Superior Court Finance Office submits this letter along with the voucher to the judge. The judge then

[30] Interview with Wallace Lewis, Finance Office.

[31] When the vouchers have been presented for payment, Finance Office defender services technicians pre-audit the vouchers. They review vouchers for compliance with Administrative Orders or requirements that may have been established by the Finance Office or by the CCAN Plan. The vouchers are also math-checked for accuracy and compliance with hourly fee and statutory limitations. Pre-audits are conducted within a 24-hour turnaround time. Three technicians perform this auditing process. After the audit is complete, the auditors enter the vouchers into a voucher tracking system. The vouchers are then placed into folders in the Finance Office which are emptied on Mondays, Wednesdays, and Fridays and sent to the judges through interoffice mail. Interoffice mail is delivered twice a day to the Court.

[32] The Prompt Payment Act states that the Court will apply interest to all vouchers that have not been paid within 45 days of receipt. Thus, interest accrues on vouchers beginning on the 46th day after receipt. However, once a payment decision has been made on a voucher, the Prompt Payment Act "clock" stops. According to the Finance Office, judges exceed the time limit of the Prompt Payment Act frequently during the year, but ultimately a small amount of interest overall is paid to attorneys.

[33] Once the vouchers are entered into the voucher tracking system, the vouchers are submitted to the Court's IT system to be compared to master pay records to check for errors. Once the vouchers come back to the Finance Office with no errors or duplicates, they are uploaded into the program for the General Services Administration which processes the Court's payroll. The payroll batch is then transferred to Kansas City where it is processed in two days, checked for errors, processed for distribution with attached interest, and then distributed by electronic funds transfer or hard-copy checks.

reviews the letter and may approve or deny the excess-compensation request.[34] If the judge approves it, the judge must attach a recommendation of approval of the voucher and submit it to the Superior Court Chief Judge for final review. The Chief Judge may either approve or deny the voucher and return it to the Finance Office. If the voucher is denied, a copy of the front page of the denied voucher is returned to the attorney's folder.

The April 2004 CCAN Plan specifies that judges may reduce vouchers only if they find that (1) the work claimed was not performed, (2) the work claimed was not necessary, or (3) an unreasonable amount of time was spent for the work performed.[35] The Superior Court Finance Office estimated to CCE that case judges reduce approximately 20% of vouchers. The Finance Office also estimated to CCE that fewer than 5% of vouchers are denied entirely by case judges, generally for late submission.

Process for Appealing Voucher Reductions

Voucher appeal processes and deadlines are prescribed in the CCAN plan. Attorneys may appeal reductions in vouchers within 30 days of payment or notice of denial. The case judge has 60 days to review the appeal. If the appeal is denied, the judge shall explain why the voucher was reduced either in writing or in person, or may annotate the voucher with an explanation.[36] If the case judge denies the appeal, the attorney may appeal reductions to the Chief Judge or his

[34] The CCAN Plan, pp. 11-13, provides that in determining whether the maximum limit on counsel fees shall be waived, the case judge and the Chief Judge shall consider the following factors: 1) the nature and complexity of the neglect allegations; 2) the complexity of the issues to be litigated in pre-trial motions and at trial; 3) any difficulties presented by the mental and physical health of the child(ren) and/or parents; 4) whether unusual or complex legal, scientific mental health, mental retardation, special education, adoption and/or other legal and child protection issues are involved in the case; 5) the length of time the case has been pending and the length of the proceedings; 6) the number of children and their placements and the number of other parties in the matter; 7) the travel time and distance involved in the case; 8) the number of child protection agencies and social service providers involved in the case; and 9) any other facts and circumstances that reflect the unusual or extraordinary nature of the case.
[35] CCAN Plan, p. 14.
[36] CCAN Plan , p. 15.

designee within 30 days of payment or denial of the initial appeal,[37] though the Plan prescribes no deadline for the Chief Judge's review.

Opinions: The Voucher System is Burdensome to Attorneys

According to CCE's research, attorneys were split as to whether the current voucher system is fair to attorneys, but a majority of attorneys CCE heard from believe the current voucher system is inefficient and burdensome for attorneys. Some of the comments expressed are as follows:

- I have had difficulty obtaining vouchers. Filling out vouchers is time-consuming. Vouchers are returned for nit-picking infractions.
- Activities on behalf of children often don't fit the category options on the voucher forms—i.e., Individualized Education Plan (IEP) meetings don't fall into "conference," so everything just goes into "other."
- The case year system is confusing… The vouchers are time consuming to complete and require too much detail.
- Finance [Office] often gets [case year dates] wrong and then we have to duke it out (taking time to get records) or just cave in to what they say is the date. There are also lots of mistakes in auditing.
- The Court is looking for ways not to pay you.
- I was on the Voucher Committee…[T]he Finance Office will change their practice without notice to anybody, return vouchers left and right. Now they're talking about moving the office to H Street. They should have an office in the court. If you're going to support us, let us do our work! We shouldn't have to obsess over 'voucher law.' I once tried to turn in a voucher five minutes after the office closed - there were people laughing inside, and they threatened to call security.
- [Under the new plan], once they put vouchers in your file, you have fifteen days to correct them. What happens if you go on vacation? You're not notified; if you don't check constantly, tough luck! And now you have to go up to H Street![38]
- The many workers in the Finance Office seem to believe that everything is a favor and one should be thankful if anything is done, regardless of whether it takes over one year."

In addition to the aforementioned comments, some attorneys were unsure of the transition timeframes for vouchers straddling the date of the new changes (as explained in footnote 26). A

[37] CCAN Plan, p. 15.

[38] The Finance Office response to this is that attorneys still have 120 days to submit their vouchers, so unless they have waited until the 105th day, the 15-day correction deadline would not be a problem, because they could still resubmit their voucher before the cut-off date.

few attorneys who responded to CCE, however, did feel that the new voucher system worked to their benefit and that the change to tenths of an hour in billing would help.

Opinions: Payment Caps Should Reflect the Number of Individuals Represented in a Case

An overwhelming majority of attorneys who responded to CCE said that the Court should not continue to apply the same payment caps for representation of multiple children in a family as for representation of one child (or one parent). One attorney provided an anecdote that describes many attorneys' perception of the problem:

> The attorney for an absent father can file a few motions, come to court, etc. and earn up to $1600 a year. A GAL who represents multiple children and must make home visits, school visits, track down social workers for referrals, and pursue permanency also gets $1600 a year. When the children in one family are in different homes – i.e., one in a foster home, one in residential treatment, one in a teen mother program – they are really three separate cases, yet the GAL is held to the same limit as other attorneys. The only exception is that every time a GAL submits a voucher that exceeds the limit, he or she must write a full explanation and request an exception. The standard should be $1600 per person represented.

Some magistrate judges CCE heard from agreed with this view, stating that the statutory dollar limit on GAL compensation should be applied per respondent and not to the sibling group as a whole. As discussed previously, this problem was also identified twelve years ago by the Muse Committee, which recommended in 1993 that the Court eliminate this inequity when the Court appoints a lawyer to represent more than one sibling.

Opinions: Hourly Payment Rate

Not surprisingly, two-thirds of the GAL and CCAN panel attorneys surveyed felt that the current hourly payment rate is not fair to attorneys. There is a perception that there is no system for increasing the rates over time, and that the attorneys unfairly receive less per hour than federal court-appointed attorneys do. Federal public defenders are paid $90 per hour to argue a case in federal court and $160 per hour if it is a death penalty case. Some GAL and CCAN panel

attorneys pointed out that their current $65 per hour fee is less than many plumbers, electricians, handymen, and yard workers charge for their services.

Opinions: Judges' Role in Reviewing Vouchers

CCE's research found a division among attorneys about whether judges should be in charge of reviewing vouchers. Some of the attorneys who supported the judicial role did so because they believe it is important that someone familiar with legal billing practices and the work performed be in charge of voucher review, and that if this did not fall to judge, there would not be another qualified individual to assume this role.

On the other hand, numerous attorneys CCE heard from felt that judges should not be involved in voucher review at all. Practitioners cited many reasons for this, including:

- The judges do have extensive contact with the attorneys and should have input in the process, but having judges control the selection adds to the already strong inherent conflict of interest that attorneys face in this system. Judges largely control the appointment of attorneys to cases and then judges have to approve the attorneys' payment vouchers. This gives attorneys a built-in conflict between representing clients vigorously and pleasing the judges. Though most people try to do their jobs effectively, and most judges do not hold it against attorneys who challenge them, I view this as a structural flaw in the system that must to some degree, perhaps hard to measure, foster a "go along, get along" system.
- While it may be valuable to have a reviewer who is familiar with the case, I believe the task of reviewing vouchers is burdensome to judges, given other judicial activities, and would be better left to a panel of impartial attorneys.
- [Voucher review] sometimes exposes them [the judge] to information that you do not want the judge to know about your client.
- An administrative person could still bring vouchers to the attention of the judge if there were issues requiring it. I feel it puts the judge in a difficult position, having to weigh the value of our work, and also may sometimes betray some attorney-client privilege, as to who[m] we consulted with on behalf of our client, and so on.
- I have had no problem with payment by the judges in the past, but it can be somewhat intimidating to argue with a judge who will be determining what to pay you.
- The worst is judges sitting on vouchers because they are disorganized…Waiting months to get paid because some judge is disorganized is inexcusable.

Some magistrate judges and associate judges also expressed displeasure with the current voucher review system. Some of the comments CCE received were:

- The judges should not make decisions on payment. Judges must avoid the appearance of impropriety. There is a potential for the judge to appear biased.
- This may be an unpopular statement to make, but I would rather not deal with vouchers.
- Honestly, I don't do line-by-line review of vouchers.
- I do not have three days to go through the stack; I glance and make sure it is reasonable.
- It is one more administrative task that I have to do.
- …Judges must be very careful about cutting vouchers; if they do not trust an attorney enough to pay him/her what he claims, how can they trust the judgments and advice that the attorney gives them or his/her clients?

Although improvements to the judicial review process have taken place since the 1993 Muse Report – such as establishing guidelines for how judges should deal with excess payments and appeals, and passing the Prompt Payment Act – there are still concerns about the fundamental propriety of judicial voucher review that resonate with both judges and attorneys. In addition, the subjectivity of judicial review remains unremedied, despite recommendations made by the Muse Committee to render the system more objective. The Muse Committee recommended that the Court implement a voucher payment system whereby non-excess vouchers would be processed by the Finance Office through a computerized system, removing the judges from standard payment request reviews entirely.[39] Unfortunately, this recommendation has not been adopted, nor is any movement toward it reflected in the April 2004 CCAN plan.

In recommending the end of judicial review of most vouchers, the Muse Report quoted the identical conclusion which had been voiced eighteen years earlier by the D.C. Bar's Austern-Rezneck Report of 1975:

> Should the voucher power continue to be in the hands of the judges? We have concluded that it should not. No matter how conscientiously exercised, the authority judges have over payments to counsel is fraught with conflicts of interest.[40]

39 The Muse Committee noted that statutory provisions in place at the time required that excess vouchers be submitted for judicial approval.
40 Muse Report, p. 17.

Findings About Promising Practices Elsewhere for the Voucher System

- According to the Vera Institute report, a number of jurisdictions have implemented innovative voucher practices. In Colorado, the state defender agency allows CJA attorneys to submit all compensation and expense reimbursement requests over the Internet.[41] Since 2001, appointed attorneys in Massachusetts have been able to submit vouchers through an online e-billing system.[42] The state courts in Massachusetts maintain "a centralized automated auditing and monitoring system to increase the level of accountability for bar advocates by tracking each attorney's billing history."[43] Under this system, attorneys can submit quarterly vouchers rather than having to wait until case closure and can appeal voucher reductions or dismissals to a state review subcommittee.[44]
- A 2001 report by the Federal Judicial Center profiles the striking results of a pilot program to institute "attorney supervisors" for Criminal Justice Act administration. The pilot was begun in three federal districts in response to the 1990 recommendation of a committee appointed under the Judicial Improvements Act to review CJA services. These districts are: 1) the Central District of California; 2) the Northern District of California and 3) the District of Maryland.

Central District of California

The supervising attorney in the Central District of California has full authority to review and approve or modify vouchers. One of three assistants reviews vouchers for mathematical or technical errors, and the supervising attorney performs the reasonableness review. Although the

41 Vera Report, p. 34.
42 Robert L. Spangenberg et. al., *Western Massachusetts Child Welfare Cases: The Court-Appointed Counsel System in Crisis*, The Spangenberg Group, October 20, 2003, pp. 10-11.
43 Vera Report, p. 33.
44 Vera Report, p. 34.

supervising attorney has no criminal or litigation experience, he did supervise attorney compensation in a previous capacity.

One of the most striking findings of this program is that from 1998 (before the pilot's implementation) to 2000 (after), the proportion of California Central attorneys reporting voucher reductions rose from 65% to 72%. But despite the increase, the proportion of attorneys who said that they were always or usually given an explanation of proposed or imposed voucher reductions soared from 39% to 97%, the proportion who said they were always or usually given a reasonable chance to contest the reductions rose from 36% to 94%, and the proportion who said the reductions were always or usually reasonable rose from 11% to 66%.[45] These survey results are an important testament to the perceived fairness of the supervising attorney system in the Central District.

Northern District of California

The supervising attorney in the Northern District of California has criminal defense experience. He has no authority to approve or modify vouchers but does make recommendations to judges in capital habeas cases and others with high compensation expenses.

District of Maryland

In the District of Maryland, the supervising attorney, who has criminal defense experience, has authority to approve or modify interim vouchers and all others within statutory caps, and she makes recommendations to judges in other cases. She also serves on, staffs, acts as counsel for, and often runs meetings of the CJA Committee for the district, acting as "the primary panel manager."[46]

45 Tim Reagan et al., *The CJA Supervising Attorney: A Possible Tool in Criminal Justice Act Administration*, pp. 32, 86-87, Federal Judicial Center, April 2001 [hereinafter Federal Judicial Center Report].
46 Federal Judicial Center Report, pp. 27-28.

While the clerk's office makes most felony appointments by rotation and magistrates make appointments in misdemeanor cases, the supervising attorney personally "coordinates appointments in cases requiring judgment or discretion." Among her responsibilities is to manage a system for evaluating attorney performance. At the close of every case a panel attorney handles, the supervising attorney e-mails the case judge to solicit comments about the attorney's performance. Thus, by the time an attorney applies for reappointment to the panel, there is a large file of evaluations.

In Maryland, according to the report, "[j]udges speak very highly of an improvement in panel management" under the supervising attorney. Between 1998 and 2000, their ratings of "how often case assignments fit the experience level and capabilities of panel attorneys" improved somewhat.[47] Their ratings of the quality of representation increased from 1998 (69% 'good' or 'excellent' for the Felony Panel and 65% for the Misdemeanor Panel) to 2000 (86% and 80% respectively).[48]

Maryland panel attorneys called the supervising attorney a "fantastic resource" and a "tremendous asset." They also expressed satisfaction with the ability to direct all administrative questions to a single person and to receive assistance with investigative and expert services.[49] The implementation of the supervising attorney position increased the efficiency of the voucher system by relieving judges' administrative burdens: "In 1998 active district judges in Maryland reported that they typically spent 3 hours per month reviewing vouchers and magistrate judges reported that they typically spent 1.5 hours per month. After the CJA supervising attorney was hired to review vouchers and make recommendations to the judges, the active district judges

47 Federal Judicial Center Report, pp. 46-47.
48 Federal Judicial Center Report, p. 51.
49 Federal Judicial Center Report, p. 83.

typically reported 1.5 hours per month and the magistrate judges typically reported 0.4 hours per month."[50]

The salaries of the three pilot-project CJA supervising attorneys range from $96,661 to $118,545.[51]

Federal Judicial Center Conclusions

The Federal Judicial Center has found overall positive effects of the implementation of supervisory attorneys in these Districts. The report concludes:

> that vouchers actually requiring a careful discretionary review - as opposed to the majority of vouchers that are more obviously reasonable in their entirety - are susceptible to inconsistent outcomes if different decision makers are reviewing them. On the other hand, if one person with good and reliable judgment reviews all of the vouchers for the district, results are likely to be more consistent, while still acceptable to both the court and the attorneys."[52]

Recommendations Related to the Voucher System

- **Remove Voucher Review From Judicial Officers** – Ending judicial review of vouchers has been recommended to the D.C. Superior Court for thirty years, and we renew that recommendation. CCE's research revealed sentiments among both attorneys and judges that the Court should consider removing voucher review from the province of judges. Such a shift might raise the efficiency and consistency of the voucher system, and it would alleviate what some perceive as the impropriety of having judges control the payment of attorneys appearing before them. Furthermore, having voucher reviews done at the staff level, rather than by judges, would reduce the overall cost to the Court of the indigent representation system. We recommend that the Court remove voucher review from judicial officers and that in doing so it consider various innovations in voucher

50 Federal Judicial Center Report, p. 127.
51 Federal Judicial Center Report, p. 17.
52 Federal Judicial Center Report, pp. 83-84.

management, including authorizing an attorney supervisor (as in the Federal Judicial Center's pilot project described above) to handle at least technical and possibly reasonableness reviews.

- **Ease Voucher Filing** – Based on recurrent feedback from panel attorneys, we recommend that the Court examine ways to facilitate the voucher filing process. Better training and support, possibly through an attorney supervisor or an expanded role for the highly valued CCAN Office, and expanded use of computer technology including e-filing and online tracking of voucher submissions - as is now done in the CJA system - would ease the administrative burden on panel attorneys and enable them to focus more of their time on representing their clients.
- **Transparency in Voucher Review** – We also recommend that the Court build upon the success of the April 2004 CCAN Plan by continuing to make the voucher review process clearer and more transparent. The Court should consider providing attorneys with written explanations for voucher reductions, which will potentially increase the efficiency of the appeals process described by the CCAN Plan.
- **Compensation Cap and Rate Increases** – We acknowledge that oft-repeated calls for increased compensation of CCAN-system attorneys - particularly in the District of Columbia, where court-appointed attorneys are fairly well paid by national standards - may be difficult to implement. But we do recommend that the Court make two common-sense changes. First, the Court should promptly apply payment caps per child rather than per family when a single attorney represents multiple children in a family. Second, the Court should seek statutory authority for a mechanism to adjust the hourly payment rate periodically consistent with cost of living increases. For the longer term, the Court should

examine whether an appointed attorney can do a competent job under the Family Court's attorney practice standards and within the accelerated case-management deadlines required by the Adoption and Safe Families Act when the annual payment caps per case permit them to spend only 16 to 25 hours per year representing their client. If the conclusion is "no," as we believe it is, the Court should seek appropriate statutory and budgetary adjustments and should invite support for those adjustments from external stakeholders.

V. Training and Educational Programs and Practice Standards

A. The Muse Report

At the time the Muse Report was written, there were no eligibility criteria for lawyers wishing to be appointed to represent criminal defendants, other than completing a brief form requesting basic information. No preappointment training was required, and appointing judges had no knowledge of whether CJA attorneys attended any of the monthly trainings made available by the Public Defender Service.

Training standards were somewhat higher for neglect attorneys, but there were no published practice standards for appointed counsel. For child neglect or abuse cases, attorneys were required to attend a two-day training seminar before being deemed eligible for assignment to cases. After an attorney completed the seminar, one of the CCAN office staff would meet with him or her to review policies and procedures. In addition, to maintain eligibility for appointments, a lawyer had to complete an additional sixteen hours of relevant continuing legal education annually.

The Muse Report recommended that the Bar, the Public Defender Service, Superior Court, and relevant voluntary bars meet, with the goals of establishing mandatory training programs for new CJA and CCAN lawyers, recommending skill and experience criteria appropriate for various levels of CJA and CCAN appointments, evaluating existing training programs and sponsoring additional programs if necessary, and determining whether to offer skill-based credentials to CCAN and CJA lawyers. The Muse Report suggested that one way of accomplishing these goals would be to establish a D.C. College of Trial Lawyers.

B. System Changes Between the Muse Report and Today

CCAN and GAL panel attorneys are still required to attend at least sixteen hours of relevant continuing legal education annually. The Family Court Act of 2001 requires the Family

Court to provide ongoing multidisciplinary training to everyone involved in the Family Court. The Family Court has a training committee that schedules periodic free training in the Court and provides an annual full-day multidisciplinary training institute each fall. There is also a two-day Neglect Practice Institute offered annually by the Foundation of the Bar Association of the District of Columbia. The D.C. Bar and its sections provide periodic training courses on family law topics.

To facilitate training opportunities, the CCAN office has long organized brown bag lectures on a regular basis, and it also publishes a monthly newsletter highlighting training issues and case law decisions. The CCAN office sends out a weekly email update to panel attorneys and others with time-sensitive information that cannot wait for the monthly newsletter. The CCAN office also provides ongoing legal and social work consultation, mentoring, and coaching to attorneys who request it or are willing to accept it when it is offered. Other CCAN office resources available to attorneys include case law summaries for all neglect, adoption and TPR cases decided by the D.C. Court of Appeals, selected case summaries for other relevant cases, a pleadings bank, and informational folders on topics related to child neglect and abuse law.

Lawyers joining the Children's Law Center receive a six-week training which covers basic substantive law in neglect, adoption, special education, domestic violence, public benefits, custody, and housing, plus trial skills and child development. New staff attorneys are accompanied by a supervisor when they appear in court. New staff attorneys have regular case-review meetings with supervisors, and experienced attorneys meet with their supervisor bi-weekly. CLC requires its staff attorneys to visit the children whose cases they are handling a minimum of once per month, though especially in the first month of representation visits are

more frequent. CLC is developing a continuing education program for its own attorneys, and hopes to open these sessions to the Bar on a monthly basis in the coming year. One of the expectations underlying the Superior Court's GAL contract with CLC was that CLC's increased institutional capacity would result in such increased training opportunities being made available to the GAL and CCAN panel bar.

The attorneys on staff at Lawyers for Children America applied for and were accepted to the Guardian ad Litem panel. LFCA requires its volunteer attorneys to attend a multidisciplinary, one or two-day training, which includes topics such as the Adoption and Safe Families Act, child welfare law in the District of Columbia, legal ethics in neglect and abuse cases, and a presentation by a mental health professional on how to relate to children who have been neglected or abused. LFCA provides extensive written materials, and volunteers must observe a neglect or abuse court proceeding with an LFCA program director before working on a case. An LFCA program director always attends the first hearing with a volunteer attorney. In addition, the program directors may attend subsequent hearings and review documents to assist with decision-making on select issues. Program directors ask for copies of all court pleadings, keep records on all cases, and are available to the volunteer attorneys for consultation. LFCA guidelines require volunteer attorneys to visit the children in their cases at least every 4-6 weeks. Program directors initiate contact with volunteer attorneys in cases that warrant that action. In addition to the supervision and support that they provide to the volunteers, the LFCA program directors each handle their own caseload of 2-7 cases, as GAL panel members. In 2005, each program director supports about 60 volunteers.

LFCA also provides volunteer attorneys with consultants from the mental health profession, through a long-term contract with the Yale Child Study Center at the Yale School of

Medicine. LFCA program directors refer volunteer attorneys to psychiatrists, psychologists, and social workers at the Yale Child Study Center. The Yale clinicians educate and advise LFCA volunteer attorneys about a variety of issues related to child development and mental health.

LFCA expects attorneys to attend continuing legal education programs as needed throughout the year, some of which LFCA provides, and updates volunteers on new developments via a newsletter. Most trainings are offered in collaboration with other organizations, and volunteers are encouraged to attend the CCAN office's periodic brown bag lunchtime meetings which address particular topics in the neglect and abuse field.

Besides requiring ongoing multidisciplinary training, the Family Court Act of 2001 required the D.C. Superior Court to establish standards of practice for attorneys appointed as counsel in the Family Court.[53] On February 28, 2003, the Court issued Administrative Order No. 03-07 to prescribe and implement these standards. Although the standards apply to all attorneys appointed to cases in the Family Court, some provisions apply only to certain attorney groups. For example, only attorneys on the CCAN and GAL panels must attend the sixteen hours of formal training on neglect and abuse-related topics to maintain their eligibility as panel attorneys.[54] Pro bono attorneys who are appointed to represent children must ensure that they receive necessary training in child welfare but are not covered by the 16-hour rule.[55]

Opinions About Training and Educational Programs

CCE's research found that a majority of panel attorneys believe that current training for panel attorneys is adequate, but that more training opportunities would be valuable and welcomed. Judges concurred that there should be continuous, ongoing training offered to all practitioners. CCAN and GAL panel attorneys expressed some resentment that their current

[53] See D.C. Code §11-1103, Standards of Practice for Appointed Counsel.
[54] Child Abuse and Neglect Attorney Practice Standards, p. 1.
[55] Child Abuse and Neglect Attorney Practice Standards, p. 2.

16-hour annual training requirement, as prescribed by the Practice Standards, is not imposed also on attorneys from the CLC and LFCA. A recommendation was also offered that there should be some training which all panel, CLC, and LFCA attorneys attend, rather than separate trainings for each group. Under the terms of its contract with the Superior Court, the Children's Law Center is expected to provide ongoing training to CCAN and GAL panel practitioners. Not all panel attorneys are open to this arrangement. For example, one attorney made the comment that a "brand-new" attorney shouldn't be training someone who's been practicing for twenty years.

Attorneys offered specific examples of additional ongoing training that would enhance their practice skills. Especially recommended was more trial-practice training or, as an alternative, mentoring and coaching, because of the perception that many of the cases settle and trial experience is hard to obtain. Some mentioned that training opportunities for advanced practitioners are lacking. Some attorneys CCE surveyed in mid-2004 felt that it would be helpful to have more training on resources that are available for individuals with mental illness. The Family Court's 3rd Annual one-day Interdisciplinary Training Institute in October 2004 was wholly devoted to mental health issues.

Findings About Promising Practices Elsewhere for Training and Educational Programs

- The Colorado Office of the Child's Representative places attorneys who need assistance in contact with experienced colleagues who can help, and it maintains a pleadings bank and collection of case summaries.[56]
- The Vera Institute report notes that although mandatory training may seem superfluous in a system with rigorous standards for appointment and review of panel attorneys, any non-mandatory system of training accomplishes little. The attorneys who choose to attend are

56 Colorado Office of the Child's Representative, <http://www.coloradochildrep.com/>.

the same every time, and they tend to be the most conscientious and the least in need of training to begin with.[57] The report identifies various good training practices, including "recording sessions on video and maintaining a video library that panel members can access at their convenience, maintaining brief banks and disseminating e-mail newsletters of highlights in current law and practice, and maintaining defender office web sites that include training materials and resources."[58]

- The federal District of Oregon, according to the Vera Institute report, requires new panel attorneys to participate in representation as apprentices to more experienced attorneys. Although it does not mandate training except for new attorneys, Oregon offers voluntary programs for all panel attorneys at which attendance is taken and absence is noted in personnel files for review by the selection committee.
- Various districts, according to the Vera Institute report, use a carrot-and-stick approach to encourage participation in training by, for example, "linking attendance to the frequency of case appointments or…having the chief judge sponsor training programs and send out the invitations."[59]
- Before serving on Children and Family Law (CAFL) trial panels in Massachusetts, attorneys must apply for, gain admission to, and complete a five-day training course. They must then work with a mentor to develop a "skills profile," meeting at least quarterly for a minimum of eighteen months and receiving feedback on assignments until the mentor deems them ready for solo practice. The court compensates mentors for their work as if they represented a client. Experienced trial attorneys seeking to join the CAFL

57 Vera Report, pp. 10-12.
58 Vera Report, p. 24.
59 Vera Report, pp. 23-24.

panels must complete a similar process, but they are exempt from the two-day trial skills portion of the training. The appellate certification process is parallel but separate.[60]

- Georgia, North Carolina, South Dakota, and Tennessee all maintain pamphlets, trial manuals, or attorney notebooks to assist attorneys in child welfare cases and to supplement their training with a written synopsis of applicable laws and procedures.[61]
- The National Association of Counsel for Children (NACC) has a pilot project to develop a training certification program for attorneys in neglect and abuse cases. Because a professional certification is valid only in a state that has approved it, the NACC program currently operates in only three states (California, Michigan, and New Mexico). The NACC certification program has, however, been approved by the American Bar Association, and NACC is trying to have it approved nationwide. In order to be certified under the program, attorneys must have good standing in their state bar association, "substantial involvement" in neglect and abuse practice (at least 30% of their total workload) for three years prior to application, substantial child welfare continuing legal education in the three years prior to application, five references (including one from a judge and, preferably, one from an opposing counsel), a substantial writing sample, and a passing grade on the NACC's written competency exam in the field. The certification costs $500, which may be subsidized. Although NACC does not foresee that its certification will replace the standards of individual states with a national benchmark, it does hope that certification will ultimately become a recognized asset on an attorney's résumé.

60 Massachusetts Committee for Public Counsel Service, Children and Family Law Program <http://www.state.ma.us/cpcs/CAFL/>.
61 American Bar Association, National Child Welfare Resource Center on Legal and Judicial Issues, *Court Improvement Progress Report 2003 National Summary*, p. 42.

Recommendations About Training and Educational Programs

- **Structure Monitoring and Support for "Provisional" Attorneys** – We strongly commend the Court's July 2004 decision to institute provisional status for inexperienced panel attorneys. The recruitment and training of new practitioners is crucial to maintaining the quality of the appointed-counsel bar, and some attorneys new to family practice will choose to self-employ rather than seek to become staff attorneys with CLC. We recommend that the Court structure the provisional system (in ways the Court has not yet described) to ensure that new attorneys receive careful monitoring and support. One possible innovation, a mandatory mentorship program, would both prepare provisional attorneys for full panel membership and condition them for future excellence.

- **Expand Training** – CCA has heard widespread praise for the current training of CCAN attorneys, as well as attorneys at The Children's Law Center and Lawyers for Children America. Based on significant feedback from attorneys, however, we recommend that the Court consider either providing voluntary trainings in more diverse topics (including trial and mediation practice) or mandating such trainings, as the new Juvenile Delinquency and Persons in Need of Supervision (PINS) practice standards do.

- **Improve Resources and Function of the CCAN Office** – Panel attorneys have consistently praised the CCAN office for providing valuable support and resources. But they have also expressed concerns that the office could serve attorneys far more effectively with modest improvements like a functional copier and more office space. We recommend that the Court provide these improvements, and consider making additional resource investments to increase the role of the CCAN office in addressing broader systemic challenges.

Opinions About Practice Standards

Practice Standards are a Good Idea

CCE's research indicates that most panel attorneys believe that formal practice standards are a good idea, and a majority of attorneys CCE contacted feel that the Family Court's current practice standards are reasonable. However, others believe that the specificity of some current standards, such as the frequency of GAL visits with clients, is demeaning.

Practice Standard Enforcement

CCE's research also indicates that most panel attorneys believe there should be some mechanism to enforce the practice standards. There was a perception among all three attorney groups (CCAN and GAL panel attorneys, CLC attorneys, and LFCA attorneys) that the February 2003 standards are not being strictly enforced, though some attorneys felt that additional enforcement was unnecessary because a judge can already remove an attorney from a case if the judge is unhappy with the attorney's performance. Several panel attorneys felt that the practice standard expectation of providing quality services is undermined by the necessity of taking many cases in order to survive financially. Attorneys felt that some of their colleagues had more cases than they could handle well, and the Court facilitated this by continually appointing these individuals to new cases.

Some attorneys and judges believed that an effective method of evaluation would include peer review.

Findings About Promising Practices Elsewhere for Practice Standards

- The Judicial Council of California's Administrative Office of the Courts conducted a 2003 statewide caseload study that used an extensive process of structured estimation, surveys, and focus groups both to analyze the current caseload of court-appointed counsel in dependency proceedings and to determine a caseload standard to ensure quality in representation. The

study concludes that "a maximum per attorney caseload of 155 cases is recommended," but it provides for no means of enforcing this standard.[62]

- The Washington State Office of Public Defense initiated a pilot program in 2000 to assess the effects of caseload reductions, the provision of additional resources, and training on the quality of representation to parents in the dependency and termination cases of two counties' juvenile courts. In one county with representation by public defenders, the program provided additional staff attorneys. In another county, with a panel of part-time practitioners, the pilot program reduced panel caseloads by 35%, giving each attorney a half-time caseload of 45. All the attorneys received training at both regularly scheduled conferences and a pilot conference and seminars, and they worked with caseloads of at most 90.[63] The report found that pilot program attorneys with low caseloads achieved a higher rate of reunification, won more negotiated agreements and court orders for visitation or correspondence, spent more time on cases, communicated more with parents, prepared more effectively, required fewer continuances, and enjoyed better social worker and paralegal services than their counterparts outside the pilot program.[64] A December 2003 study reports that the state cut the pilot maximum caseload to 80 for 2003 and recommends that courts statewide begin to implement better practices in light of the pilot program.[65]
- The Maryland "Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings" provide specifically that "[i]f the court becomes aware that an attorney is not following the Guidelines," it may "alert the individual

62 The Judicial Council of California Administrative Office of the Courts, *Interim Report: The Caseload Study for Court-Appointed Dependency Counsel*, November 10, 2003, p. 51.
63 Washington State Office of Public Defense, *Dependency and Termination Parents' Representation Pilot: Evaluation*, February 2002, pp. 7-9.
64 *Dependency and Termination Parents' Representation Pilot: Evaluation*, pp. 12-15.
65 Washington State Office of Public Defense, *Dependency and Termination Equal Justice Committee Report*, December 2003, p. 26.

attorney…alert relevant government agencies or firms…alert the entity(ies) responsible for administering the contracts for children's representation…[or] appoint another attorney for the child."[66]

- New Mexico incorporates its new practice standards (for GALs and parents' attorneys) in its attorney contracts, as well as in training and monitoring.[67]

Recommendations Regarding Practice Standards

- **Refine Practice Standards Periodically** – We have heard strong praise from all corners for the Court's adoption in early 2003 of practice standards. In order for these standards to be as effective as possible, however, they must be attuned not only to theoretical ideals of practice but also to the realities and challenges of the front lines. We recommend that the Court open an ongoing dialogue with the bar - including CLC and LFCA attorneys as well as panel attorneys - about the standards and establish a regular mechanism for refining the standards whenever appropriate.
- **Enforce Practice Standards** – Although practice standards serve a valid purpose in a merely advisory capacity, as guidelines for how attorneys can best serve their clients, the standards are ultimately effective only to the extent that they are adequately and consistently enforced. We recommend that the Court consider ways to ensure that its practice standards truly measure attorney performance in individual cases. The Court should seek written feedback regularly from judges, AAGs, other appointed attorneys in the case, clients, social workers, and foster parents. Such written feedback should be provided immediately to the appointed attorneys, who should be invited to respond if they wish, and both the original

66 Maryland Administrative Office of the Courts, *The Maryland Judiciary's Foster Care Court Improvement Project: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings*, p. 12.
67 National Child Welfare Resource Center on Judicial Issues, *State Summaries: New Mexico*,. <www.abanet.org/scripts/cip/allstatesum.jsp?y=03#New%20Mexico>

feedback and the attorney responses should be retained in the attorney's CCAN office file for evaluation during a required re-application process under the fixed-term system recommended in Section III on Appointment and Removal of Counsel.

VI. Relations Between the Superior Court Bench and Court-Appointed Attorneys for the Indigent

A. The Muse Report

The Muse Report described the relationship between the Bench and the court-appointed Bar as "fraught with tension and pressure."[68] The report cited a number of reasons for this state of affairs, including an outdated perception that court-appointed lawyers were less competent than retained or PDS staff counsel, causing them to perceive they were being treated less favorably than other lawyers; little respect by both judges and court personnel for lawyers' time and schedules; disparate treatment from that given PDS lawyers, who were perceived as elite; and poor communication between Bench and Bar.

The Muse Report recommended that the Superior Court promptly implement procedures for meaningful communications between the Bench and Bar. Procedures suggested included having division heads meet regularly with the designated representatives of the CJA and CCAN bars; establishing a four-person committee consisting of designees of the Chief Judge, Bar President, and representatives of the CJA and CCAN bars to meet regularly and evaluate problems; and establishing a panel for confidential referral of attorneys who could benefit from counseling relating to litigation practice, ethics, or substance abuse.

B. System Changes Between the Muse Report and Today

Opinions About Relationships Between CCAN/GAL Panel Attorneys and Judges

A significant number of panel attorneys CCE heard from had strong beliefs that their relationships with the judicial officers were strained and that too often they were treated disrespectfully by members of the bench. Some judicial officers CCE heard from also reported tension between Bench and Bar, though others felt relationships were good. It is clear from

68 Muse Report, p. 22

CCE's research that judges and panel attorneys are not communicating effectively, as the two groups often have fundamentally different perceptions about the strength and quality of their professional relationships.

This is a similar phenomenon to that observed by the Muse Committee twelve years ago, although the tension then was based on a different series of events. The Muse Committee noted that communications between the Court and the court-appointed lawyers had been unsatisfactory and proposed regular meetings with representatives from the attorney practice groups, a multidisciplinary committee to evaluate problems related to the court-appointed lawyer role, and a counseling panel to assist attorneys on litigation practice, ethics, or other behavioral problems. Notably, very few of these recommendations were acted upon. It is clear that steps need to be taken to help facilitate better communication among all of these practice groups, and between practitioners and consumers of their services.

Opinions About Relationships Among Legal Service Providers

There was a strong feeling expressed to CCE among all of the entities providing representation that all three groups (the panel attorneys, CLC attorneys, and LFCA staff and volunteer attorneys) should meet and exchange information on a regular basis. There was the consensus that communication among the three organizations is not at its best at the present time and that this hinders improving the overall quality of legal representation in the Family Court.

The CCAN Office

According to CCE's research, most attorneys feel that the CCAN office is a good resource for attorneys and a benefit to their practice. Although most attorneys feel that the CCAN office is receptive to concerns, well-managed, and well-staffed, attorneys also stress that the physical space allotted to the CCAN office needs improvement. For example, many attorneys

desire an office that has more space and a copy machine that functions well, more work space for meeting with clients, more phones, and more access to computers for researching case law.

Summary of Recommendations

Recommendations Related to Appointment and Removal of Counsel

- **Fixed Panel Terms** - We support the panels in concept, and we strongly commend the Court for committing to maintain the quality and vitality of the panels through regular screening and acceptance of new applicants. But to adequately monitor the performance of attorneys who are selected for the panels, we recommend that the Court consider the federal Model Plan's provision for fixed-duration terms of panel membership, requiring panel attorneys to reapply and undergo substantive evaluation (as the Vera Institute report recommends) after a given period of service.

- **Increased Transparency and Participation in Panel Selection** – We strongly commend the Court's clarification of the panel selection process in Administrative Order 04-15, particularly the provisions for regular consideration of applications and mandatory consultation of the Advisory Family Court Panels Selection Committee. We recommend, however, that the Court consider further ways to alleviate the friction caused by the initial selection process in 2003. Greater disclosure of qualification criteria and methods of evaluation, written explanations to attorneys denied selection, inclusion of persons other than judges on the Panel Oversight Subcommittee (as the Muse and Vera Institute reports recommend), and a process for appealing the recommendations of the Family Court Panel Oversight Subcommittee or the decision of the Chief Judge might all bolster attorneys' confidence in the system and improve bench-bar relations.

- **Increased Predictability of Case Appointment System** – We recommend that the Court consider making changes to the current system by which judges appoint attorneys to individual cases. Because all attorneys on a panel, employed by CLC under the contract with the Court, or mentored by LFCA under the MOU with the Court should be considered qualified to practice in their field, the Court should adopt a standardized, disclosed protocol for new-case appointment and for case reappointment. Such a protocol should be followed for the great majority of case appointments but should permit judicial officers to depart from the protocol when they determine that the requirements of a particular case warrant such a variance. Such a system should provide for the equitable distribution of cases among the CCAN/GAL panel bar, CLC, and LFCA, reflecting the various case-carrying capacities of those three sources. A more predictable case assignment system would foster a healthier relationship between bench and bar, could improve attorney morale, and could improve relations among the CCAN/GAL panel bar, CLC, and LFCA. The system might include a far stronger role for the CCAN Office or for another entity more independent of the court (as in Massachusetts and Oregon). An attorney supervisor with a broader portfolio of responsibilities, as described in the Promising Practices portion of Section IV of this report, might also play a role in case assignment.

Recommendations Related to the Voucher System

- **Remove Voucher Review From Judicial Officers** – Ending judicial review of vouchers has been recommended to the D.C. Superior Court for thirty years, and we renew that recommendation. CCE's research revealed sentiments among both attorneys and judges that the Court should consider removing voucher review from the province of judges. Such a shift might raise the efficiency and consistency of the voucher system, and it would alleviate what some perceive as the impropriety of having judges control the payment of attorneys appearing before them. Furthermore, having voucher reviews done at the staff level, rather than by judges, would reduce the overall cost to the Court of the indigent representation system. We recommend that the Court remove voucher review from judicial officers and that in doing so it consider various innovations in voucher management, including authorizing an attorney supervisor (as in the Federal Judicial Center's pilot project described above) to handle at least technical and possibly reasonableness reviews.

- **Ease Voucher Filing** – Based on recurrent feedback from panel attorneys, we recommend that the Court examine ways to facilitate the voucher filing process. Better training and support, possibly through an attorney supervisor or an expanded role for the highly valued CCAN Office, and expanded use of computer technology including e-filing and online tracking of voucher submissions - as is now done in the CJA system - would ease the administrative burden on panel attorneys and enable them to focus more of their time on representing their clients.

- **Transparency in Voucher Review** – We also recommend that the Court build upon the success of the April 2004 CCAN Plan by continuing to make the voucher review process clearer and more transparent. The Court should consider providing attorneys with written explanations for voucher reductions, which will potentially increase the efficiency of the appeals process described by the CCAN Plan.

- **Compensation Cap and Rate Increases** – We acknowledge that oft-repeated calls for increased compensation of CCAN-system attorneys - particularly in the District of Columbia, where court-appointed attorneys are fairly well paid by national standards - may be difficult to implement. But we do recommend that the Court make two common-sense changes. First, the Court should promptly apply payment caps per child rather than per family when a single attorney represents multiple children in a family. Second, the Court should seek statutory authority for a mechanism to adjust the hourly payment rate periodically consistent with cost of living increases. For the longer term, the Court should examine whether an appointed attorney can do a competent job under the Family Court's attorney practice standards and within the accelerated case-management deadlines required by the Adoption and Safe Families Act when the annual payment caps per case permit them to spend only 16 to 25 hours per year representing their client. If the conclusion is "no," as we believe it is, the Court should seek appropriate statutory and budgetary adjustments and should invite support for those adjustments from external stakeholders.

Recommendations Related to Training and Educational Programs

- **Structure Monitoring and Support for "Provisional" Attorneys** – We strongly commend the Court's July 2004 decision to institute provisional status for inexperienced panel attorneys. The recruitment and training of new practitioners is crucial to maintaining the quality of the appointed-counsel bar, and some attorneys new to family practice will choose to self-employ rather than seek to become staff attorneys with CLC. We recommend that the Court structure the provisional system (in ways the Court has not yet described) to ensure that new attorneys receive careful monitoring and support. One possible innovation, a mandatory mentorship program, would both prepare provisional attorneys for full panel membership and condition them for future excellence.

- **Expand Training** – CCA has heard widespread praise for the current training of CCAN attorneys, as well as attorneys at The Children's Law Center and Lawyers for Children America. Based on significant feedback from attorneys, however, we recommend that the Court consider either providing voluntary trainings in more diverse topics (including trial and mediation practice) or mandating such trainings, as the new Juvenile Delinquency and Persons in Need of Supervision (PINS) practice standards do.

- **Improve Resources and Function of the CCAN Office** – Panel attorneys have consistently praised the CCAN Office for providing valuable support and resources. But they have also expressed concerns that the office could serve attorneys far more effectively with modest improvements like a functional copier and more office space. We recommend that the Court provide these improvements, and consider making additional resource investments to increase the role of the CCAN Office in addressing broader systemic challenges.

Recommendations Related to Practice Standards

- **Refine Practice Standards Periodically** – We have heard strong praise from all corners for the Court's adoption in early 2003 of practice standards. In order for these standards to be as effective as possible, however, they must be attuned not only to theoretical ideals of practice but also to the realities and challenges of the front lines. We recommend that the Court open an ongoing dialogue with the bar - including CLC and LFCA attorneys as well as panel attorneys - about the standards and establish a regular mechanism for refining the standards whenever appropriate.

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Superior Court of the District of Columbia
Washington, D.C. 20001

Rufus King III
Chief Judge

(202) 879-1600

June 10, 2005

June B. Kress, Executive Director
Council for Court Excellence
1717 K Street, NW
Suite 510
Washington, DC 20036

Dear Ms. Kress,

Thank you for the opportunity to provide comments relating to the draft report on the Counsel for Child Abuse and Neglect (CCAN) system at the Superior Court of the District of Columbia. We view this program as a model in providing legal representation to indigent parties in cases involving abused and neglected children. One year ago, the Joint Committee on Judicial Administration approved the Plan for Furnishing Representation in Neglect Proceedings. The policies and procedures in this plan were based on recommendations from a committee led by Judge Alprin, which consisted of judicial officers and attorneys who practice before the Court in abuse and neglect cases. Judge Alprin worked diligently and successfully to achieve a consensus in the committee regarding the recommendations that formed the revisions in the plan. These revisions strengthened our CCAN program.

I will address the four aspects of the plan that the report describes as problematic: the appointment and removal of counsel; the voucher system; training and educational programs; and the relationship between the Superior Court bench and court-appointed counsel for the indigent. I will also offer comment on the appropriateness of including comments from a few attorneys relating to the magistrate judges.

The appointment and removal of counsel

The current selection process described in Administrative Order 04-15 addresses fairness for the attorneys and our obligation to select qualified attorneys to handle cases of parents and children involved in the child welfare system. It is helpful to bear in mind that the purpose of the process is not to license attorneys to handle child welfare cases but to select those attorneys the Court wishes to appoint to perform the public responsibility of providing legal counsel to the indigent. Initially, there was no role for attorneys in the process for selecting CCAN panel attorneys. However, after the initial round of selections in 2003, Superior Court leadership met with members of the CCAN bar to suggest improvements in the process. As a result of those meetings, I appointed an advisory committee composed of attorneys to review applications and make recommendations about attorneys to the Panels Oversight Subcommittee. The committee

can also initiate queries on any aspect of the CCAN program. We have no current plans to include persons other than judges on the Panel Oversight Subcommittee, because we believe that the input from the attorneys on the advisory committee is sufficient to assist the subcommittee in selecting qualified attorneys for the panels. Equally important is the ability of the judges who are ultimately responsible for the selections to be able to discuss freely the applicants, many of who appear before committee judges or their colleagues. This method of evaluation by the Panels Oversight Subcommittee was explained in a letter to attorneys and in the administrative orders related to the selection process. The criteria relied on by members of the subcommittee are clearly set forth in the CCAN practice standards and the related administrative orders.

We agree that removal procedures should be established, and we are currently in the process of establishing removal procedures whose purpose will be to provide a mechanism for maintaining panels of highly qualified attorneys to represent indigent litigants.

It is essential that attorneys appointed to represent parents and children in neglect cases are qualified to handle the specific cases to which they are appointed. While we will endeavor to ensure that all panel attorneys receive appointments and that decisions on which attorneys to appoint to cases are not arbitrary, the attorneys have no property right to CCAN appointments. Sometimes, it is necessary for judicial officers to specially select attorneys for a particular case based on their familiarity with unique issues or their ability to handle complex matters. Judicial officers with knowledge of the attorneys and the particulars of the case must have some flexibility in making appointments of counsel. Accordingly, while we will examine whether some attorneys are arbitrarily excluded from appointments, we feel that in order to ensure adequate representation for parents and children judicial officers must have discretion in the appointment of attorneys.

The voucher system

The April 2004 CCAN plan made the review of vouchers process clearer and more transparent. As with other parts of the Plan, the voucher provisions were the result of consensus recommendations from a committee consisting of judges and members of the CCAN bar as well as the Family Court Trial Lawyer's Association. The plan included a process for providing explanations and a process for appeal when vouchers are reduced.

The recommendation that judicial review of vouchers should end is a recommendation that warrants further consideration. However, the report is not clear on whether removing the review of vouchers from judges would adequately address the costs to the court and the CCAN program. Judges remain in the best position to ensure that effective representation is provided and taxpayers' money used appropriately, because the quality of the work performed. Historically, efforts to replace it with a paid staff of attorneys to review the claims for compensation from the perspective of the practicing bar have foundered, primarily on the issue of how best to provide the review

function that is now being provided without out-of-pocket cost to the Court or the CCAN fund.

While this approach is in some ways problematic, it has so far proved the most effective for balancing the provision of competent counsel who are adequately compensated with the need to assure public dollars are spent appropriately. The programs cited appear to relate to criminal cases, where there is only one attorney appointed whose role is uncomplicated. Given the special and often complex nature of legal representation in family cases, it is unclear from the report how the programs cited can translate into an appropriate program for review of vouchers in the court's CCAN program. Nevertheless, the recommendation is a thoughtful one and should be addressed in further discussions between the Court and CCE.

Training and educational programs

Our training and educational program for attorneys and judges is a model. In addition to the annual Family Court Interdisciplinary Conference, the Family Court continues to present bi-monthly cross training programs and brown bag lunch training programs for attorneys. Also, the Children's Law Center, pursuant to its contract with the court, has provided additional training to the members of the bar. Our training program is on par with or more extensive than the programs from other jurisdictions cited in the report. The Family Court Annual Reports provide extensive details on the types of training provided through the Family Court over the last several years. We will continue to look at innovative training opportunities for members of the bar and for judges and topics of interest to the bar, but we also recognize that there is an obligation on bar members to not rely solely on training opportunities provided by the court.

The relationship between the Superior Court bench and court appointed attorneys for the indigent

Family Court leadership meets regularly with representatives from the bar and participates in brown bag lunch meetings with panel attorneys. Many panel attorneys participate on the Family Court Implementation Committee and its subcommittees. We will continue to communicate with panel attorneys to address their concerns. In addition, I have maintained an open door policy under which all attorneys are welcome to raise any issues with me during regular weekly hours.

We are concerned, however, that the comments included in the report relating to magistrate judges serve no useful purpose. Given that the Family Court has undergone significant changes and improvements over the past years and has made significant reforms, including enhancing the quality of legal representation, it is expected that some members of the bar may be have strong feelings about the changes. Typically, those members are the most vocal. The Family Court includes members of the CCAN bar on the juvenile and neglect subcommittees of the Family Court Implementation Committee, and works closely with members of the bar -- both as members of the Family Court Training Committee and on an ad hoc basis -- in planning numerous programs. With all

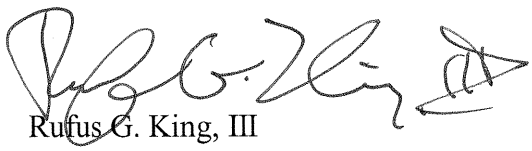
of our efforts to work constructively with lawyers, the comments of bar members referred to in the draft are unlikely to represent a fair cross section of attorneys who are appointed in these cases. As such the comments serve little purpose in furthering the important discussions on how we can continue to improve relationships between the court and the bar and therefore, we request that they be excluded from the final report or at least summarized as concerns in some quarters and not widespread.

Conclusion

The comments contained herein do not cover all of the recommendations or statements made in the report. Some of the recommendations require further review, and we will continue to study the report and implement changes as appropriate. Others, such as the restructuring of the voucher review process, are problematic, but I look forward to ongoing discussions with you and Council staff to see if we can find common ground. We also will continue to work with members of the bar to address their concerns and to improve our system of legal representation. It is important that the members of the panels we appoint to cases involving neglected children are highly qualified so that we can continue to achieve positive outcomes for children and families in the District of Columbia.

Thank you for the opportunity to review the draft. I will keep you informed of progress implementing the recommendations.

Sincerely,



Rufus G. King, III

cc: Hon. Lee F. Satterfield

The District of Columbia Family Court Appointed Counsel System:
Report and Recommendations

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