

Appendix VIII
Public Attorney Position and Compensation
Analysis

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The Commission found that certain public sector attorneys who provide attorney services in family related matters within the Colorado court system are not properly compensated and lack training. Recommendations numbers 53 and 54 recommend increased compensation for public attorneys who represent children as well as improvements in training. The recommendations are based, in part, upon a comparative analysis between the current system for paying public attorneys who represent children and the current system for paying alternate defense counsel. This appendix presents this side-by-side analysis as well as additional discussion about other public sector attorneys.

It is important to recognize that some public sector attorneys are not at issue, in particular the Public Defenders' Office and Office of Alternate Counsel. However, as the problems of the public sector attorneys who represent children are assessed (under-compensated and/or not properly trained), for purposes of a comparative analysis, the successes achieved by these agencies will be used. These offices serve as an example of the results that can be achieved for all public sector attorneys within the Colorado court system.

The Public Defender's Office hires attorneys at competitive salary rates, provides extensive training, litigation and mentoring support throughout the state, and has the resources to ensure continual support. As a result, the Public Defender's Office is able to attract and retain qualified attorneys and consistently provide effective attorney services to the public. In fact, the Colorado Public Defender's Office is noted nationally for its highly qualified, effective attorneys. This office is an example of the quality and competency that all public sector attorney groups could achieve if given adequate resources and support.

Another example of a state agency providing quality attorney services is the Office of the Alternate Defense Counsel, which provides effective defense attorneys who are expertly trained. Although they are not compensated by salary, they are paid a competitive hourly rate for attorney services rendered. If the resources and funding were available to support all public sector attorneys in the same manner as these offices, similar successes could be expanded to all public sector attorneys. It should be noted that the Commission understands the continuous effort required by both offices to maintain the level of funding and high quality attorneys.

Equally qualified public attorneys are in the District Attorneys' Offices throughout most of the state. Once again, most offices, where proper funding and resources are available, pay competitive salaries, provide mentoring and extensive training and are recognized nationally for their highly competent deputy district attorneys. However, because these offices are funded by the county according to the decisions of the boards of county commissioners and available resources, the compensation level for these offices and attorneys is not entirely consistent throughout the state. Therefore, the statewide compensation and training for these public sector attorneys' will be further addressed below.

A. Guardians Ad Litem. Children who have entered the court system through no fault of their own, either because they have been abused, neglected or are the victims of a high conflict divorce, have a right to a qualified attorney to represent their best interest. Yet, this vulnerable and voiceless population who cannot hire an attorney, cannot enter a courtroom and cannot voice their needs, are provided with attorneys who get paid a flat fee of \$1,000 for two years of representation for that child’s case. As opposed to the level of compensation of a court-appointed defense attorney who is paid either a competitive hourly rate for services rendered or is salaried. The problem is we cannot ensure that the child will receive quality legal representation when their attorneys are paid \$1,000 for two years of work.

The following side-be-side comparative analysis illustrates the differences between the alternate defense counsel system and the system currently in place for children’s counsel.

| State Paid Defense Counsel | State Paid Children’s Counsel |
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| <p>1. Constitutionally mandated attorney services. Those accused of a crime have a right to an attorney.</p> | <p>1. Statutorily mandated attorney services. Children who are the subject of a dependency and neglect case (abused) have a right to an attorney who will solely represent their best interest.</p> |
| <p>2. How does the attorney’s client enter the system? Must be accused of committing a crime and although the innocent do get accused others have committed offenses against society.</p> | <p>2. How does the attorney’s client enter the system? A child must be abused or abandoned -through no fault of their own.</p> |
| <p>3. What does a good defense attorney do? Protect the innocent and the rights of the accused, mitigate one’s conviction (plea negotiation) or sentence (presents to the court sentencing alternatives).</p> | <p>3. What does a good GAL do? Protect vulnerable children who have already been victimized. A competent GAL who can properly investigate and work a case prevents a child from multiple placements in the system. Prosecutes and properly litigates a case on behalf of the child when a county attorney or department of social services fails to do so. Advocates for and causes quicker permanency in a child’s life. Relentlessly looks out for the child’s best interest when the court or system otherwise fails the child.</p> |
| <p>4. Should attorneys who provide services be experts or experienced in the area of criminal defense? The office of Alternative Defense Counsel would never provide an attorney not experienced in the area of criminal defense to any defendant. The level of representation under the creation of this office has been raised so that anyone accused has competent legal counsel. To provide a defendant with anything less, for instance someone whose practice is primarily probate would be unacceptable and could result in imprisonment of an innocent person.</p> | <p>4. Should an attorney who provides services be an expert or experienced in the area of children’s law? An attorney who represents children must have specific training and experience in the area of issues concerning children. That is the reason most states impose minimum training standards. For instance an attorney who does not understand the basics of child development will be unable to litigate an appropriate recommendation as to whether a child should be moved from current placement at the age of two. A competent attorney requires vast knowledge in areas such as trauma to the brain and brain development, sibling separation and attachment disorder, long term effects of</p> |

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| <p>If one's sister was arrested and needed an attorney, would the family hire an attorney who handled primarily probate matters – or would they hire the best defense attorney they could find?</p> | <p>multiple placement, alternative placement options, effects on children exposed to alcohol and drugs while still a fetus, etc.</p> |
| <p>5. Why would the office of Alternate Defense Counsel never consider compensating his defense attorney on a flat fee basis, especially in cases where the accused is charged with serious felony?</p> <p>Most criminal cases resolve themselves within a year. If the office of Alternate Defense Counsel attorneys were paid a flat fee of \$1,040 for each case appointed, attorneys would have to take an extremely high volume of cases to be allowed to practice as defense attorneys. They would have to choose which cases to litigate, if any, for \$1040. The accused would not get the same quality representation currently provided. There is a built in incentive to do as little as possible in each case to make it cost effective. If flat fee existed in defense cases, we know most accused would be prevented from the opportunity for a fair trial and adequate representation. For instance, an attorney would be unlikely to participate in a preliminary hearing, file motions to address the illegally obtained evidence, litigate the suppression hearing, prepare and proceed to a jury trial for a flat fee. Most cases would likely result in plea bargain and competent representation of one's constitutional rights might disappear. The current quality services for those accused would drop. To properly work a case, defense attorneys must be paid an hourly state rate for services rendered.</p> <p>Summary:</p> <ul style="list-style-type: none"> • Defense attorneys do not take more cases than they can handle. • They do not get compensated until they do the work. Therefore, they front load and commence work on their cases immediately. • Every case is given proper attention | <p>5. What would be the specific benefits to the state if children's attorneys were compensated the same as other state paid attorneys? The consumer, the tax payers, would get the same quality of services for children that are currently provided to those accused of crimes in a responsible and cost effective manner. For instance, if attorneys are paid state rate hourly fee for services rendered, they do not have to take a higher volume of cases than they can properly handle. All children in all cases will get the necessary competent representation. That does not necessarily mean the same amount of time is spent on each case. Just as in criminal cases, some cases resolve quickly while others are more complicated. An attorney is able to give the appropriate amount of time to each case, which naturally will vary. In jurisdictions where GALs are still paid hourly, their individual bills vary consistent with Alternate Defense Counsel. Attorneys will be able to front load their services just like defense attorneys (this includes seeing the child immediately, investigating the case up front, going into and assessing the foster care placement, etc.). Once a defense attorney is appointed, he or she immediately starts to work a case because they do not receive any payment until they do so. Cases are set immediately for preliminary hearing, etc. With the contract system an attorney who represents a child receives upfront payment and can commence work on the case at anytime, including very late in the process. The attorney does only as much as possible with the required heavy case load or as little as the attorney wants.</p> <p>Under an hourly system, attorneys will be able to take on a manageable case load just like defense attorneys. There are only so many billable work hours in the week. When an attorney cannot accept an appointment for a few weeks they can share that information with the court just as defense attorneys. We do not have to tell defense attorneys not to take too many cases.</p> |

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| <p>whether it is resolved by way of disposition or trial because they are paid hourly and can give the case the appropriate amount of hours needed.</p> | <p>When complicated cases stabilize, counsel is able to accept new appointments just as defense attorneys do. The current contract payment makes it impossible for children to get the attention they need. Under an hourly system, the attorneys will be able to take a reasonable case load as do defense attorneys, and work on the case immediately (see the child within a few days, observe the foster home placement, do an independent investigation, file motions, etc.) Immediate and upfront involvement from all those involved in a case, especially the child’s attorney, causes timely and meaningful results for children.</p> |
| <p>6. Outcomes for the accused if representation not adequate. People are convicted and may go to prison and or jail. When an adult believes they have been inadequately represented, there is a system in place to give them the opportunity to explain their concerns.</p> | <p>6. Outcomes for children who do not receive adequate representation. Children are not reunited with their family. They are moved to multiple homes. They change schools when they just finally found a friend at the last school. They act out. They are troubled children who are hard to love. Their pain and problems haunt them throughout their entire lives. Children in the system complain through their behavior and the state bears the cost of this behavior long into the future. Children are never able to ascertain or complain about inadequate attorney representation.</p> |
| <p>7. Cost of effective representation. Office of Alternate Defense Counsel is able to provide quality defense attorneys in a cost effective manner with a budget of \$11.2 million. They represent an average of approximately 7,000 clients a year. The state hourly rate is significantly lower than that charged by attorneys who are privately paid. Yet, this reduced rate is fair and allows the state to contract with competent attorneys and provide quality services.</p> | <p>7. Cost of effective representation. It would require a slight increase over the next few years to provide consistent competent legal services to children. The Office of the Child’s Representative represents almost 10,000 children a year. The total estimated cost would be \$7.7 million.</p> <p>Currently, the taxpayer pays \$6.1 million for services and is not getting the best value for this investment. With a slight increase the taxpayer will get attorneys who are competent, not required to take a case load that prevents them from effective representation, and if paid hourly will be allowed to front load their attorney services once appointed.</p> |

B. Respondent Parent’s Counsel. Parents who have been listed in a D&N petition have a right to court-appointed counsel if they are indigent. These state-paid public sector attorneys are compensated \$795 for two years of representation on the case. A competent respondent parent’s counsel provides a meaningful and important service to the family and the court. They protect the parent’s rights if the children are improperly removed, and, more importantly, they assist the families in getting timely and meaningful services so the children can more quickly return to a

safe home. The longer the child stays out of a home the more costly it is to the child, family, community, and state.

However, because these attorneys are typically compensated much less than other public sector attorneys, it is hard to attract and maintain a consistent pool of competent respondent parent's counsel throughout the state. This group of public sector attorneys provides a much needed service to the parents, families, children, the court system and the community. They should be compensated to ensure the level of quality representation that exists in other areas of public sector attorneys previously mentioned.

C. County/City Attorneys. Many county attorneys and city attorneys are well compensated by their respective boards of county commissioner/city councils and are specifically trained to ensure they are capable of performing the significant, demanding and varied nature of their job. However, statewide there are wide fluctuations in salary levels that can understandably lead to wide fluctuations in the quality of attorneys who provide services to children and families.

County attorneys make decisions that have a critical and long-lasting impact on the lives of children and families. They decide when children should be immediately considered by the court for removal from their homes, when children should be protected by a case filing, and tender the proposed treatment plan which determines initially what services will be provided to the family.

Given the magnitude of the county attorney's responsibilities, it is paramount they be qualified and trained in all areas including effective litigation, statutory mandates and all areas of child development. An overzealous or incompetent county attorney can have a damaging and devastating effect on families and children

Therefore, it is critically important that there be consistent compensation and training throughout the state to ensure that all families and children are exposed to competent, high quality county attorneys.

D. District Attorneys. Similar to county/city attorneys, compensation for district attorneys is determined by the boards of county commissioners and city councils. The District Attorneys' Offices that are properly funded and staffed tend to be in the more highly populated jurisdictions. These offices are able to attract, maintain and train competent deputy district attorneys because they are appropriately funded. However, these offices are mentioned only because the level of expertise and compensation is not uniform throughout the state and can vary in those counties that do not have the opportunity to provide adequate resources and funding.

Decisions made by the District Attorneys' Office in any criminal case can have a huge impact in the lives of families and children. Deputy district attorneys decide when to make, if any, plea offers they believe appropriate. These decisions affect either the family of the alleged defendant/perpetrator or affect the family of the alleged victim. The district attorneys' office has the power and authority to not only make appropriate plea offers, but to divert the accused from the criminal justice system, protect the abused or non-family victim from their perpetrators by recommending a appropriate sentence of incarceration, or allow the accused family member to

continue to live within his or her community on a probationary sentence while he or she rehabilitates.

District Attorneys' Offices and their deputy district attorneys provide a real service to families and children and their community when they have the opportunity to do so when properly funded. For example, many of the offices within the state are very progressive and effective at prosecuting domestic violence cases, which allows for a more likely conviction. This in turn will help the family by either incarcerating the parent who is presenting a danger to the family or get the perpetrator needed help through probation. In child abuse cases, most of the District Attorneys' Offices in Colorado recruit and expertly train their attorneys how to effectively yet sensitively prosecute cases involving children so as to reduce the trauma and re-victimization of the child victim. Many District Attorneys' Offices are able to offer special programs and services to children in delinquency cases such as diversion programs. Finally, the deputy district attorneys and offices can be instrumental in the community for establishing programs that serve our youth such as juvenile assessment centers or alternate diversion programs. It is services such as these provided by the District Attorneys' Offices that benefit and assist families and children.

It should be noted that all the District Attorneys' Offices throughout the state provide training through an annual conference. However, the real and most effective training for young attorneys comes from the mentoring of the more seasoned trial lawyers within the office who have litigated complicated motions hearings and trials. If that office and community is unable to attract and most importantly retain good attorneys because of compensation issues, they will lose this most meaningful training which allows that public sector attorney to develop skills and understanding needed for the more complicated criminal matters.

Further, due to elections and turnover of new District Attorneys, in a minority of counties, the District Attorney is not re-elected which results in an office that is not firmly established with a staff of attorneys who have years of experience to apply to their cases and provide to other deputy district attorneys. This vital institutional knowledge of the office is lost and must be continually regained, if at all.

Again, it is critically important that there be consistent compensation and training throughout the state to ensure that all families, communities, and court systems are provided with competent, high quality deputy district attorneys.