

# Child Welfare Attorneys National Compensation & Support Survey – 2017

**To provide high quality representation to the parents and children that become involved in the child welfare system, attorneys need adequate support including compensation and infrastructure. Representing any party in child welfare cases can be emotionally taxing. Having structural supports can optimize strong practice and improve outcomes for families.**



The ABA National Alliance on Parent Representation has periodically distributed surveys regarding parent attorney pay, rates, and support structures. This was in response to interest in the field, expressed by child welfare attorneys at conferences and on listservs. We distributed an updated survey in 2017 to track any changes over time. This was the first of these to also cover children's attorneys.

Overall results confirm that compensation and support structures remain an area of concern nationally. These obstacles result in parents and children not always receiving the high-quality representation they need to ensure the best outcomes for their families. These results show that the support given to families and their attorneys falls short of the ABA Standards of Practice and often fails to adhere to the Family Justice Initiative's Attributes of High-Quality Legal Representation.

Continued systemic obstacles to quality representation include:

- Inadequate overall compensation
- Pay structures that do not fully recognize the significance of out-of-court work
- Appointment systems which do not allow parents' attorneys to be prepared at the first hearings

Some specific areas did suggest improvements are being made. For one, there is an apparent increase in multi-disciplinary supports for parent attorneys.

We hope these results can be useful to states, tribes, or counties that want to improve their systems.

To contact the project regarding this document please call or write:

Mimi Laver                      202-662-1736                      [mimi.laver@americanbar.org](mailto:mimi.laver@americanbar.org)

Scott Trowbridge              202-662-1747                      [scott.trowbridge@americanbar.org](mailto:scott.trowbridge@americanbar.org)

by Krista Ellis, Scott Trowbridge, JD, Mimi Laver, JD, and Elizabeth Thomson, JD

## Surveys Received

The survey was distributed over the ABA Parent Attorney and Child Abuse/Neglect listservs as well as the National Association of Counsel for Children listserv and in person at the ABA and NACC Conferences. In total, 432 responses were received. Of those responses, there were 250 collected for parents' attorneys and 182 collected for children's attorneys. Thirty-five (35) states are represented.<sup>1</sup>

## Characteristics of Respondents

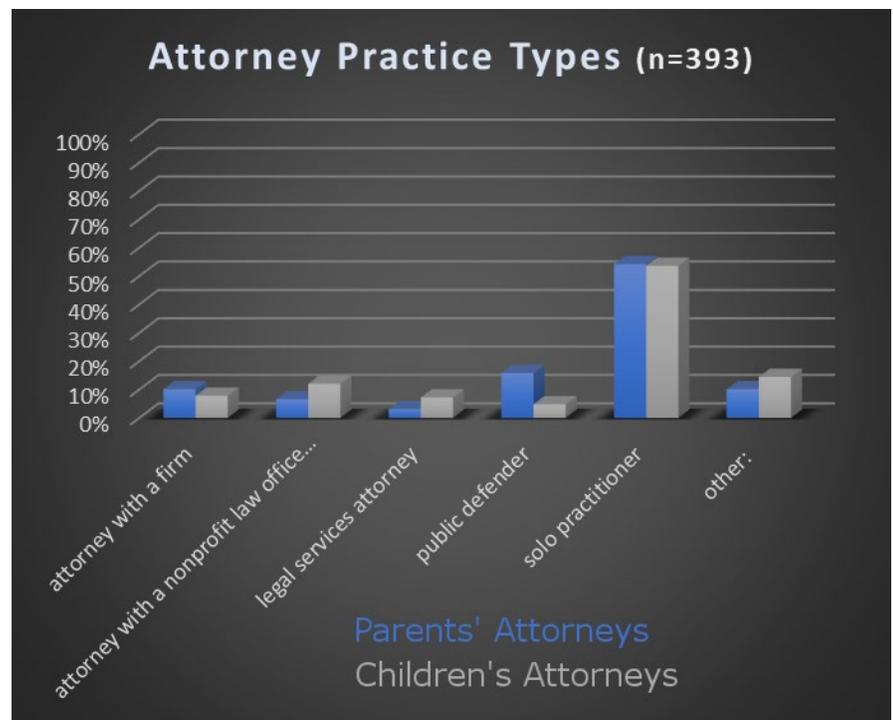
As noted above, responses came primarily from listserv members and conference attendees. These sources of respondents should be kept in mind in drawing inferences from the results as many of these represent stakeholders who are more active and invested in child welfare representation. This may tend to mean these results come, in some cases, from those with stronger attorney support structures. Anticipating this however, many questions asked about local or state jurisdiction practice *generally*, which should mitigate this bias to an extent.

### Practice Type

Respondents were asked about the type of practice they represent parents and/or children in. "Other" included judicial officials, academics, or administrative attorneys not in direct practice. The majority of respondents in both surveys represent clients as solo practitioners - 54% of both parents' attorneys (n=227) and children's attorneys (n=166).

### Full time/Part Time

Most survey respondents spent a significant portion of their time working in child welfare, though most were not full time.<sup>2</sup>



<sup>1</sup> States and territories not represented include: Alabama, Hawaii, Indiana, Maine, Nebraska, Nevada, New Hampshire, North Dakota, Rhode Island, South Dakota, Virginia, Puerto Rico, and Virgin Islands. A few states represented a large portion of responses. For the Parents' Attorney Survey - California (24), Tennessee (40), and Texas (33). For the Children's Attorney Survey - New York (24), Tennessee (47), and Texas (30).

<sup>2</sup> 30% of those responding to the parents' attorney survey (n=226) and 42% of those responding to the children's attorney survey (n=163) indicated that their practice was focused on child welfare representation of parents, children, or a combination interested parties.

## When does representation *begin* for child welfare cases?

Timely appointment remains a concern. Crucial opportunities for advocacy can happen even before the first hearing, and high-quality representation at each hearing is dependent upon preparation. The majority of parents' attorneys are not appointed before the first hearing in the case. Timelines fare better for children's attorneys.

<b>Parents' attorneys are generally appointed in my jurisdiction: (n=226)</b>		
When the petition is filed	52	23%
At the first court appearance (72-hour hearing, removal hearing, shelter care hearing)	141	62%
At the adjudication/disposition hearing	3	1%
When a petition to terminate parental rights is filed or a hearing to terminate parental rights is set	1	0%
When requested by parent	13	6%
After financial application approved	6	3%
Never	1	0%
Unknown	1	0%
Other	8	4%

<b>Children's attorneys are generally appointed in my jurisdiction: (n=163)</b>		
When the petition is filed	101	62%
At the first court appearance (72-hour hearing, removal hearing, shelter care hearing)	44	27%
At the adjudication/disposition hearing	2	1%
When a petition to terminate parental rights is filed or a hearing to terminate parental rights is set	3	2%
When the shelter/instant order is signed	2	1%
When the child meets the statutory requirements	1	1%
Unknown	1	1%

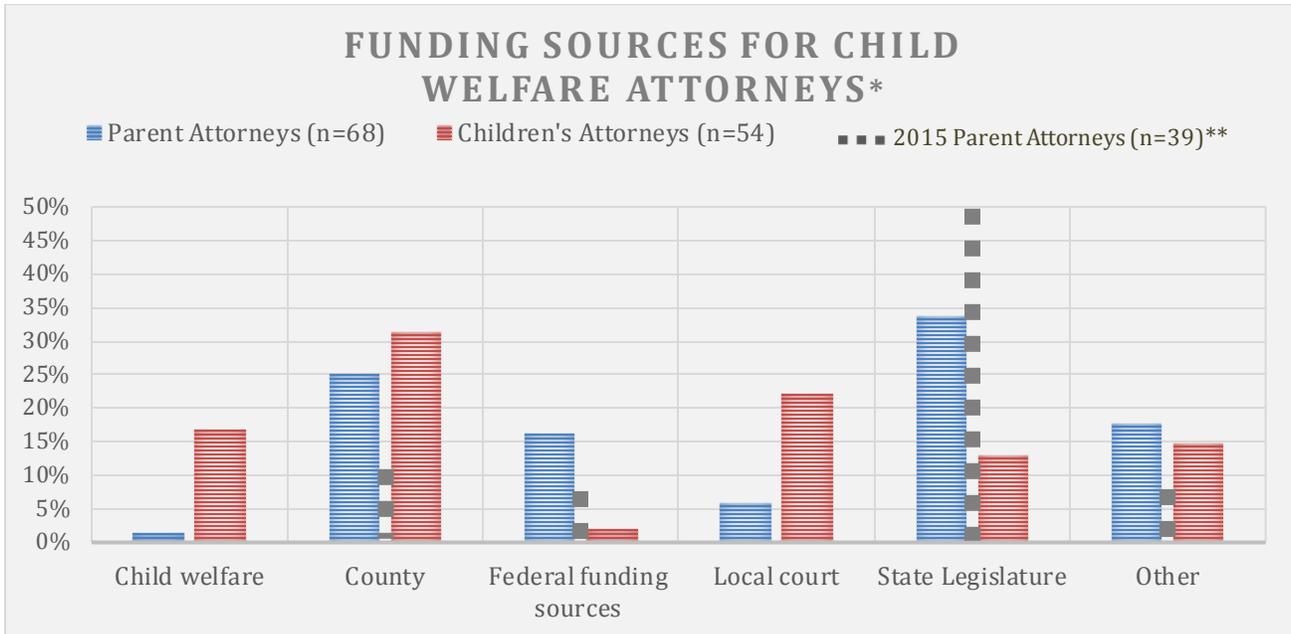
## When does representation *end* for child welfare cases?

Access to high quality representation throughout the child welfare process is important for both parents and children. Anecdotal reports had been received about attorney appointment ending at arbitrary times earlier in cases, but the surveys indicated that most cases continue appointment through to logical stopping points such as when cases are dismissed from court.<sup>3</sup>

<sup>3</sup>42% of parents' attorneys (n=226) and 68% of children's attorneys (n=164) indicated that representation generally ends when the case is closed or dismissed by their trial court. 34% of parents' attorneys (n=226) indicated representation ends when the court terminates parental rights (TPR) or selects another permanent plan for the child. An additional 7% of respondents for the parents' attorney survey specified that representation may end when the case is dismissed or TPR, whichever occurs first.

## Where Does the Funding for Child Welfare Representation Come From?

Respondents were asked about funding sources for parent and child representation in their jurisdiction. “Other” responses typically referred to funding provided by outside funding such as grants, nonprofits, or fundraisers. The majority of parents’ attorneys (34% of n=68) identified state legislatures as their funding source. In contrast, the majority of children’s attorneys (49% of n=39) indicated the county as their funding source.



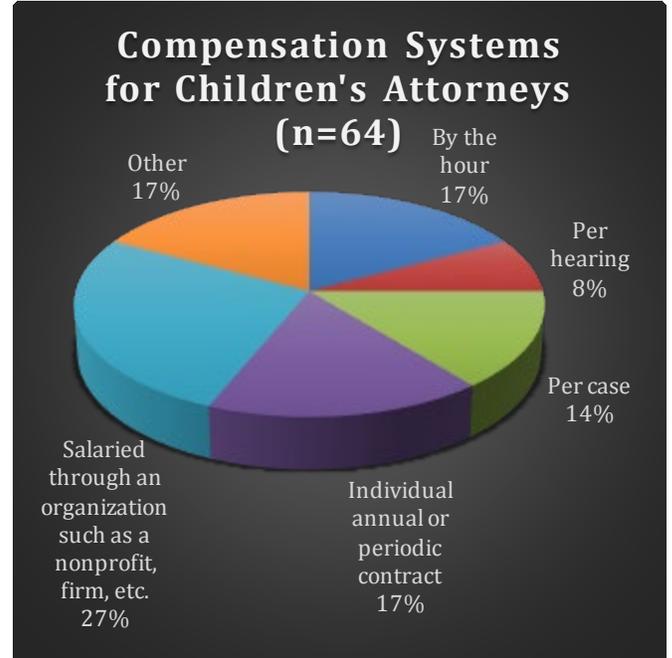
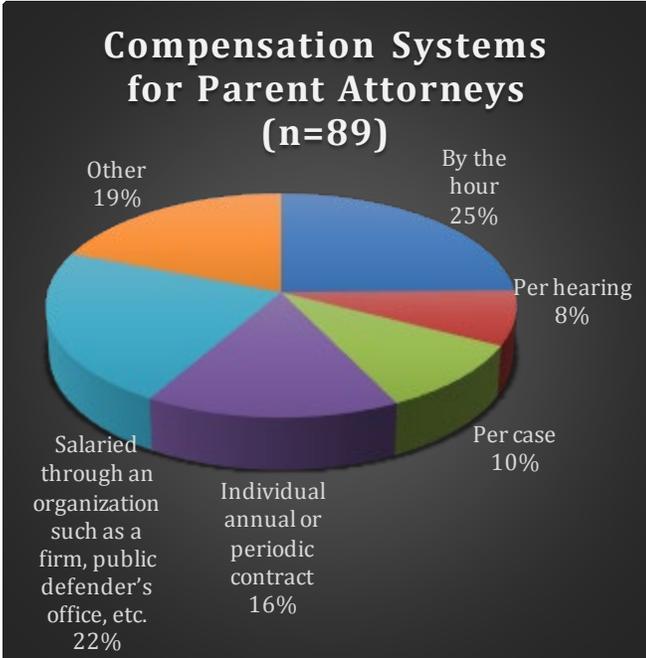
*\*The Parents’ Attorney Survey received responses from 31 states and the Children’s Attorney Survey received responses from 27 states; because respondents were encouraged to check all that apply, some states indicated multiple sources of funding.  
\*\*2015 Data represent responses received only by parents’ attorneys. Children’s attorneys were not surveyed in 2015.*



## How much does an average child welfare attorney earn?

Since respondents are from various states and jurisdictions that may practice under different practice models, respondents were asked to identify the compensation system(s) for child welfare attorneys in their jurisdiction “Other” typically included responses that compensation varied by the jurisdiction (such as counties) and/or distinguished a different compensation existed for “conflict” attorneys in their area.<sup>4</sup>

Unfortunately, these numbers have not increased much since the 2015 survey...



We asked respondents to indicate the typical pay range for child welfare attorneys. Unfortunately, these numbers have not increased much since the 2015 survey in which the responses for the hourly rates had a *median* low of \$55 and a high of \$65. Similar to 2015, the results of these surveys fall short of the Family Justice Initiative’s System Attributes concerning compensation.<sup>5</sup> Additionally, many obstacles for adequate pay reported in previous years still remain such as lack of compensation for travel time and for wait time.

	Parents’ Attorneys	
	low	high
Hourly	\$55/hour	\$65/hour
Per Hearing	\$117/event	\$174/event
Per Case	\$446/case	\$642/case
Annual Contract	\$62,929/year	\$80,790/year
Salaried	\$52,694/year	\$86,329/year

	Children’s Attorneys	
	low	high
Hourly*	\$48/hour	\$58/hour
Per Hearing*	\$140/event	\$315/event
Per Case*	\$338/case	\$684/case
Annual Contract	\$47,947/year	\$66,714/year
Salaried	\$49,314/year	\$93,147/year

\*Some respondents indicated the rate is per child.

<sup>4</sup> Outliers: For hourly pay, examples of outliers include: TX - \$20 and California - \$98. For the category of per-hearing, examples of outliers include: Texas - \$60-\$70, Minnesota - high of \$100, and California - \$150-\$900. For the category of per-case, examples of outliers include: Connecticut - \$500 and Oregon - low of \$850 for filing through jurisdiction to high of \$2600 for a termination of parental rights case. For the category of annual contracts, examples of outliers include: Oklahoma - \$3,000 and Oregon - \$200,000-\$250,000. For the salaried category, examples of outliers include: Louisiana - \$25,000-\$30,000 and Arkansas - \$90,000-\$198,000.

<sup>5</sup> *Fundamentals of Quality Legal Representation for Children and Parents in Child Welfare Proceedings*, Family Justice Initiative (“Ensure parents’ and children’s attorneys compensation rates are adequate for the attorneys practice, accounting for overhead and other costs borne by private professionals. At a minimum, parents’ attorneys’ and children’s attorneys’ compensation should be equal to county or child welfare agency attorney’s compensation, and consistent with other publicly-funding attorneys’ compensation, including criminal defense attorneys.”).

## In-Court versus Out-of-Court Payments

The Family Justice Initiative’s Individual Attorney Attributes advise that it is necessary for attorneys to spend time on cases outside the courtroom to provide quality representation to clients, whether parents or children.<sup>6</sup> It is necessary for parents’ and children’s attorneys to diligently pursue case goals, engage with clients, meet and communicate regularly with clients, and engage in case planning and advocate for appropriate services and visitation on an ongoing basis. In some jurisdictions, out-of-court is not paid under the hourly or per-hearing system, or more often, paid at a lower rate.

The majority of attorneys under the hourly system indicated out-of-court time is paid (97% of parents’ attorneys and 99% of children’s attorneys). However, the majority under the per-hearing payment system indicated that out-of-court time is *not* paid. However, it is difficult to compare the percentages due to the low response rate regarding this question for ‘per hearing’ type.

Is out-of-court time paid under the system?								
	Parents’ Attorneys				Children’s Attorneys			
	Hourly (n=130)		Per-Hearing (n=17)		Hourly (n=96)		Per-Hearing (n=16)	
Yes	126	97%	6	3%	95	99%	4	25%
No	4	3%	11	65%	1	1%	12	75%

**Hourly Payment Structures.** The majority parents’ attorneys (n=130) indicated that out-of-court time was paid under the hourly system. Of the areas in which out-of-court time was paid under the hourly system, about half of those responding to the parents’ attorney survey (n=131) and a quarter of those responding to the children’s attorney survey (n=95) noted that out-of-court pay differed. Many of the respondents in both surveys indicated that the rate of pay for out-of-court to be \$10-\$20 lower than the payment for time spent in-court. The most common response indicated the out-of-court rate to be \$40/hour while in-court rate was \$50/hour.<sup>7</sup>

Is out-of-court time paid at the same rate under the <i>hourly</i> system?				
	Parents’ Attorneys (n=131)		Children’s Attorneys (n=95)	
Yes	66	50%	25	26%
No	65	50%	70	74%

**Per Hearing Payment Structures.** The majority of respondents from the per-hearing payment structure indicated that out-of-court time was *not* paid the same.<sup>8</sup> When asked if out-of-court pay was covered in some other way under the per-hearing payment structure, the majority of respondents indicated that out of court payments sometimes occur on an hourly basis or upon request by motion to the court.

<sup>6</sup> *Fundamentals of Quality Legal Representation for Children and Parents in Child Welfare Proceedings*, Family Justice Initiative

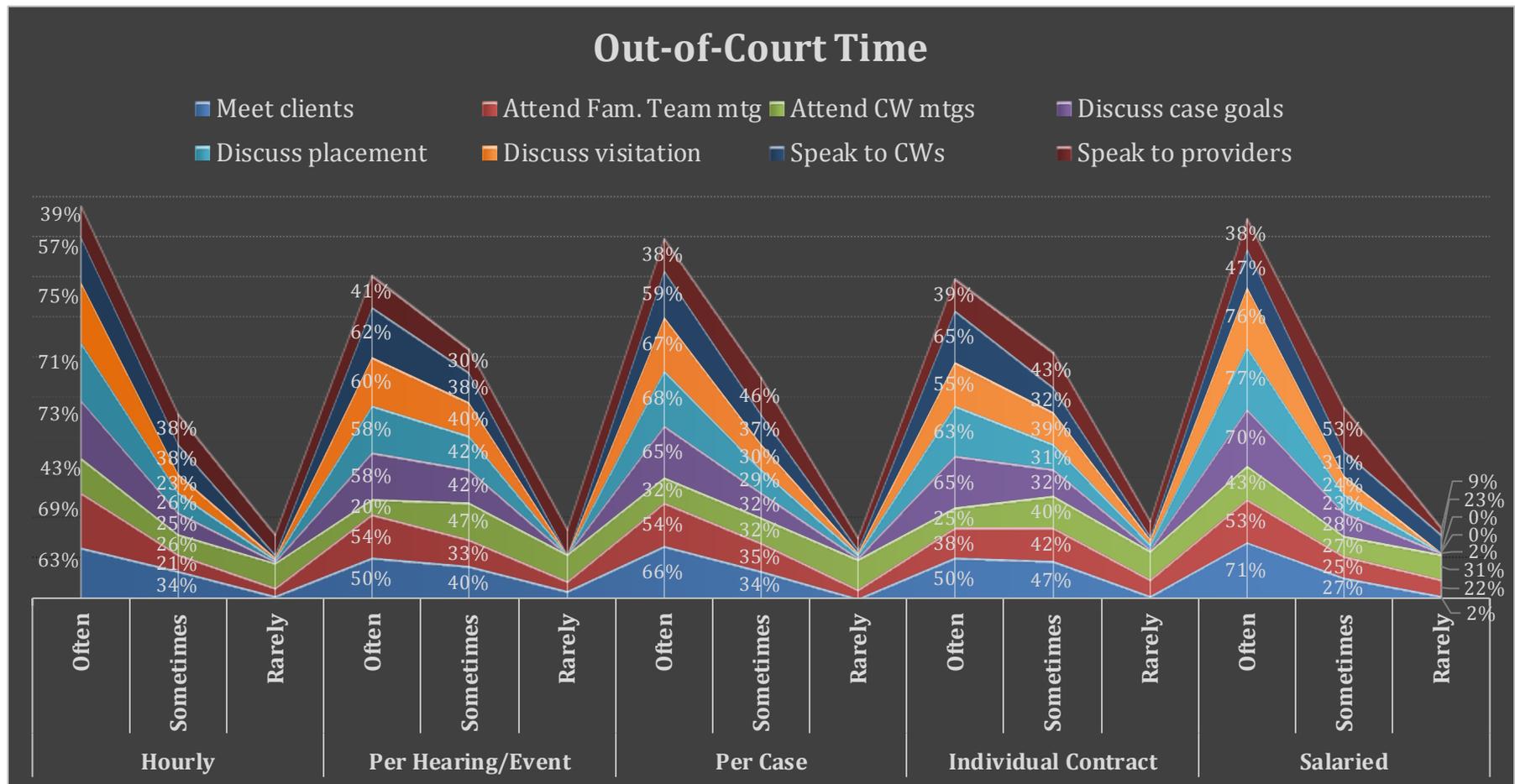
<sup>7</sup> Many of the responses indicating a pay different of \$10 came from attorneys practicing in Tennessee.

<sup>8</sup> Only 35% of those responding to the parents’ attorney survey (n=17) and 25% of those responding to the children’s attorney survey (n=16) indicated that out-of-court-time was paid the same.

## What meetings/events do child welfare attorney attend during out-of-court time?

Because high quality representation by child welfare attorneys includes regularly meeting with clients, advocating for services and visitation, and participating in the creation of a fair case plan, respondents were asked to select how often they were able to attend certain meetings/events. The graph below depicts the responses under each payment system for all attorneys. The layered responses illustrate a trend depicting how attorneys under different payment systems spend their time out-of-court. The results of the surveys suggest that participation in these tasks may have a relationship to the attorney's payment system, with per hearing and individual contracts having less frequency. The height of the colored areas portrays the responses for the respective meetings/events. Regardless of payment system, respondents seem to discuss visitation often; however, it is not as common for respondents to speak with providers.

As to *why* they rarely participated in particular events/meetings, many respondents indicated it was due to three main reasons: *they were not compensated, they did not have time, and/or they were not allowed or permitted to participate.*



## Are there caseload caps for child welfare attorneys?

**Hourly Payment Structures.** In 2015, two-thirds of respondents (n=59) indicated that there were *no* caseload caps in the hourly payment system. The data from the 2017 surveys suggest that caps have not necessarily increased for parent attorneys in the last years. Only one-third of those responding to the parents' attorney survey (n=105) indicated caseload caps exist in their jurisdiction. Of those responding to the children's attorney survey (n=75), the majority (53%) reported caps present in their jurisdiction.

In both surveys, the majority of respondents that indicated the presence of caps in the hourly system specified caps as monetary caps. For example, the most common cap reported in both surveys was \$750-\$100 per case or \$1,500-\$2,000 if the case was determined to be complex and extended. Some respondents in the children's attorney survey indicated that they are often capped on the number of children/clients with open cases. For example, respondents in the children's survey indicated a common caseload cap to be 75-100 children per attorney.

**Per Case Payment Structures.** The 2015 report reflected that most parents' attorneys responded that no cap existed (n=15). When asked the same question in 2017, the majority of respondents from both surveys indicated no caps are present in that system.

**Annual Contract Payment System.** Here respondents were first asked to share the average caseload of annual contract attorneys in their jurisdiction. The majority of both surveys indicated the average caseload to be between 50-99 cases.<sup>9</sup> Some respondents reported that caseloads may be as large as 150-200 cases for parents' attorneys or 300 children for children's attorneys.

When asked about caseload caps, about half of the respondents to both surveys indicated no caseload caps existed for full-time attorneys under the annual contract payment system. This is similar to the reported caseload caps under the periodic contract systems from 2015 in which 67% (n=24) reported no caps. Of the caseload caps reported for full-time contract attorneys in 2017, the *median* caps included 80 cases for parents' attorneys and 75 cases for children's attorneys.

**Full-time Salaried Attorneys.** Respondents were asked about caseload caps for full time attorneys. The majority of parents' attorneys indicated no caps exist. For those that reported caps, the *median* cap was 80 open cases per attorney. Alternatively, few children's attorneys reported the absence of caps for those practicing full time. The majority indicated the cap in their jurisdiction to be 150 cases (all respondents reporting a caseload cap at 150 were from New York). If the responses from New York are removed, the *median* cap would be 100 cases per attorney.

The Family Justice Initiative's System Attributes establish that attorneys have a reasonable caseload of no more than 60 clients at a time for full-time attorneys.<sup>10</sup> Currently, the trends represented by the survey responses indicate that more caps are being set for parent and children's attorneys; however, the caps in most jurisdictions still require caseloads that exceed 60 clients.

---

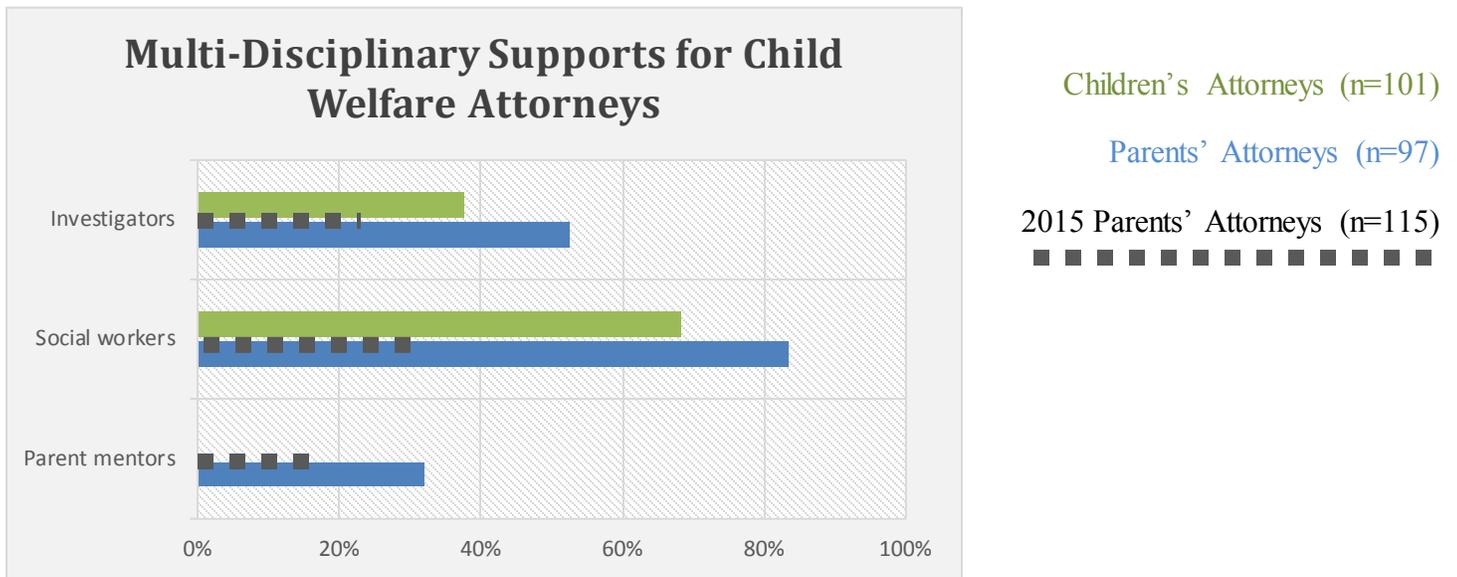
<sup>9</sup> 55% of parents' attorneys (n=11) and 47% of children's attorneys (n=15) reported caseloads between 50-99 cases per attorney.

<sup>10</sup> *Fundamentals of Quality Legal Representation for Children and Parents in Child Welfare Proceedings*, Family Justice Initiative ("Generally, caseloads with over 60 clients will not be manageable for attorneys who lack supports of an interdisciplinary practice model, including access to social workers, investigators, and/or paralegals." (citing MARK E COURTNEY, JENNIFER L. HOOK, & MATT ORME, EVALUATION OF THE IMPACT OF ENHANCED PARENTAL LEGAL REPRESENTATION ON THE TIMING OF PERMANENCY OUTCOMES FOR CHILDREN IN FOSTER CARE (Partners for Our Children Feb. 2011))).

## What multi-disciplinary supports are available to attorneys?

The Family Justice Initiative’s System Attributes indicate it is necessary for attorneys to have “access to work in an integrated manner with interpreters, experts, social workers, and investigators as needed.” Respondents were asked about multi-disciplinary supports in their jurisdictions. Respondents reported the availability of multi-disciplinary support at a much higher rate than those that responded in 2015.<sup>11</sup>

*The graph represents the type of support most commonly reported among respondents, not per jurisdiction.*



## How are multi-disciplinary supports funded?

Respondents indicated a variety of funding sources for these supports. The most common included:

Funding Sources for Multidisciplinary Supports					
Parents' Attorneys (n=72)			Children's Attorneys (n=46)		
County/City	8	11%	County /City	6	13%
State	10	14%	State	11	24%
OPD Programs	19	26%	OPD Programs	4	9%
Court	15	21%	Court	5	11%
Combination Fed/State/Local	4	6%	Combination Fed/State/Local	3	7%
Grants	4	6%	Grants	2	4%
Only Agency Resources (DHS)	12	17%	Only Agency Resources (DHS)	15	33%
Other	10	14%			

<sup>11</sup> “Other” responses in the parents’ attorney survey included 26 “no” or “none”, 3 specified paralegals, 2 indicated expert witnesses, and a few explaining supports varied by county. In the children’s attorney survey, “other” included 19 “no” or “none”, 8 specified paralegals, 5 noted other advocates, such as parent advocates.

## Conclusion

While the results of the 2017 Child Welfare Attorneys National Compensation and Support Survey fall short of the ABA Standards of Practice and the Family Justice Initiative's Attributes of High-Quality Legal Representation, they suggest trends of increased multi-disciplinary supports and compensation in many jurisdictions when compared to prior surveys. The ABA National Alliance on Parent Representation looks forward to conducting further surveys for both parents' and children's attorneys in the future to monitor changes in practices and goals of improving the child welfare system.