

**WRITTEN SUBMISSION FROM
THE PRO BONO AND LEGAL SERVICES COMMITTEE TO THE
NEW YORK STATE UNIFIED COURT SYSTEM
COMMISSION ON PARENTAL LEGAL REPRESENTATION**

The Pro Bono and Legal Services Committee of the New York City Bar Association (hereinafter “Committee”) welcomes this opportunity to provide testimony to the New York State Unified Court System’s Commission on Parental Legal Representation (hereinafter “Commission”). In accordance with the Commission’s invitation to address the topics of “structural issues” and the “model and scope of representation,” we offer the following comments based on the experience of the legal services providers and law firm pro bono representatives who comprise the majority of the Committee’s membership. While our testimony addresses only a small portion of the many issues now before the Commission, we hope that you find it useful in your effort to recommend reforms that will ensure quality representation for persons eligible for assigned counsel in Article 10 cases in New York’s Family Courts.

The Committee is composed of representatives from law firms, legal service providers, corporations, and law schools committed to enhancing access to justice for the City’s most vulnerable residents, including parents defending against Article 10 abuse/neglect cases. Attorneys working at law firms in New York City donate hundreds of pro bono hours every year to assist institutional providers with the representation of such parents through co-counseling trials, drafting motions, and handling appeals.

Based on the Committee’s collective experience representing parents in Article 10 cases, we urge the Commission to recommend sufficient financial support to fund institutional parent defender offices in every county in the state, modeled after the successful offices flourishing in Brooklyn, Manhattan, Queens, and the Bronx. In order to enable these new offices to provide the type of high-quality representation we have seen in New York City, the Commission should also recommend case caps like those that currently exist for criminal attorneys and attorneys for children. Finally, the Commission should advocate a plan to fund pre-petition advice and representation for families being investigated by the Administration for Children’s Services (“ACS”) whose cases have not yet been filed in Family Court.

The Committee can attest to the high quality of representation of parents in Article 10 cases by institutional parent defender offices, which were established more than ten years ago in New York City. Our experience bears out what the New York City Criminal Justice Coordinator determined in 2013: that parent defender offices are well-equipped to keep children out of foster

care.¹ Parents represented by institutional providers receive multidisciplinary, client-centered representation from experienced attorneys, social workers, parent advocates, and other civil legal services attorneys. Law firm partnerships with parent defender offices provide unique opportunities for associates to co-counsel complex cases with on-going mentorship from experienced lawyers. These partnerships would not be possible without the existence of parent defender offices, whose specialized expertise and institutional knowledge allow pro bono counsel to receive the training and support that they require to be effective partners. We believe that some New York City law firms might further extend their pro bono support outside the City through providing remote assistance with motion practice during contested hearings and appeals, but such collaboration would require partnering with experienced parent defender offices.

Case caps would also help to ensure that institutional providers can provide high-quality representation to parents who face allegations of abuse and neglect. Since the creation of institutional parent defender offices, the caseloads of attorneys representing parents have steadily grown. Increased caseloads, which are due in part to the fact that Article 10 cases may last many years, have been compounded by the surge of cases over the past two years represented by a 54 percent increase in Article 10 filings in New York City.² Increased caseloads require attorneys to spend more time in court litigating emergency hearings and dealing with client emergencies, leaving attorneys with less time outside of court to resolve cases through strategic planning and negotiation. Case caps have been in place for attorneys representing criminal defendants or children for nearly a decade, allowing these attorneys to spend more time on individual cases, improving the quality of representation for clients, and ameliorating burnout and high turnover. It is time for the state to implement case caps for attorneys representing parents in child welfare cases, and to provide sufficient funding to allow parent defender offices to hire enough staff to represent, directly and through pro bono volunteers, all of the parents needing their assistance.

Funding pre-petition advocacy to parents or caregivers experiencing ACS intervention is another critical step that the Commission can support to promote better outcomes for child welfare-involved families. We believe that pre-petition legal advocacy can reduce the number of cases filed by ACS, with a similar decrease in the number of children entering foster care, thereby reducing costs overall.

For all of these reasons, the Committee urges the Commission to advocate for the implementation and funding of these proposals to improve the quality of public defense for parents facing Article 10 allegations statewide.

Please feel free to contact the Committee's Co-Chairs, Jennifer Brown at JBrown@mofo.com and Amy Barasch at abarasch@herjustice.org, if you have any questions about the Committee's recommendations.

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¹ Administration for Children's Services and NYC Criminal Justice Coordinator, Data Analysis Comparing Child Welfare Outcomes for Institutional Family Defense Providers Versus 18b Attorneys (2013), available at <http://bds.org/wp-content/uploads/2018.08.16-BDS-testimony-to-the-Commission-on-Parental-Representation-FINAL.pdf> (see attachment pp. 15-24).

² Abigail Kramer & Angela Butel, *Child Welfare Surge Continues: Family Court Cases, Emergency Child Removals Remain Up* (The New School Center for New York City Affairs, July 2018), available at <http://www.centernyc.org/child-welfare-surge-continues> (finding a 54 percent jump in Family Court petitions between October 2016 and May 2018, compared with a corresponding timespan beginning in 2014).