



**Caseload Standards for Parents' Attorneys  
in New York State  
Family Court Mandated Representation Cases**

**June 4, 2021**

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**Indigent  
Legal Services**

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## *Caseload Standards for Parents' Attorneys in New York State Family Court Mandated Representation Cases*

### **Introduction**

**For decades, reports have chronicled the crisis in parental representation, particularly regarding child welfare proceedings. Instances of inadequate representation, delays in access to representation, and the outright denial of representation, are all too frequent.**

*The New York State Unified Court System's Commission on Parental Legal Representation, February 2019<sup>1</sup>*

In New York State, adult litigants who are unable to afford legal representation have a constitutional and statutory right to be represented by a publicly funded lawyer (“assigned counsel”) in a wide variety of family-related court proceedings. In 1972 the New York State Court of Appeals recognized that parents charged by the State with abuse or neglect have a constitutional right to assigned counsel.<sup>2</sup> Subsequently, in 1975 the Legislature recognized that adult litigants involved in certain family court matters “may face the infringements of fundamental rights and interests” and that they “therefore have a constitutional right to counsel in such proceedings.”<sup>3</sup> Accordingly, New York law codifies a parental right to assigned counsel in a broad range of family-related matters.<sup>4</sup> Unique among the states in their breadth,<sup>5</sup> these matters include cases brought in Family, Surrogate’s, and Supreme Court involving child custody and visitation, abuse/neglect, foster care placement and review, termination of parental rights, “destitute child”, adoption, paternity, and family offense (domestic violence) proceedings. Additionally, assigned counsel is available to a person charged with contempt of court for violation of a prior court order (including willful violation of a child support order), and persons in any other proceeding in which the judge concludes that the constitution of the State of New York or of the United States, requires the assignment of counsel.<sup>6</sup>

As with publicly funded representation in criminal cases, in Family Court parental representation matters the right to assigned counsel is effectuated by County Law § 722, which requires counties and New York City to have a plan for assigned counsel where constitutionally and statutorily mandated. Notably, County Law § 722 establishes the right to assigned counsel in Family Court matters and criminal matters as mandates of equal import.

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<sup>1</sup> Commission on Parental Legal Representation, *Interim Report to Chief Judge DiFiore*, at 6, New York State Unified Court System, (February 2019), [http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR\\_Commission-Report.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf).

<sup>2</sup> *Matter of Ella B.*, 30 N.Y.2d 352 (1972).

<sup>3</sup> Family Court Act § 261.

<sup>4</sup> See County Law Article 18-B (Section 722); Family Court Act §§ 261, 262. and 1120; § 407 of the Surrogate’s Court Procedures Act; § 35(8) of the Judiciary Law.

<sup>5</sup> See generally, National Coalition for a Civil Right to Counsel website, [http://civilrighttocounsel.org/major\\_developments?jurisdiction=New%20York](http://civilrighttocounsel.org/major_developments?jurisdiction=New%20York), but for comparisons of the rights in each state, see <http://civilrighttocounsel.org/map>.

<sup>6</sup> N.Y. Family Court Act §262(b). See also the Appendix, Family Court Scope of Right to Counsel chart.

Family Court Act § 261 rightly emphasizes the “indispensable” role played by attorneys in the “practical realization of due process of law” and in assisting judges “in making reasoned determinations of fact and proper orders of disposition.”<sup>7</sup> Our courts have repeatedly emphasized that litigants in our family justice system are entitled to *meaningful representation and effective assistance of counsel*.<sup>8</sup> However, for far too long attorneys assigned to represent impoverished parents<sup>9</sup> in New York’s family courts have labored under conditions that profoundly compromise their ability to adhere to their professional obligations. Chief Judge Janet DiFiore observed in her 2018 State of Our Judiciary address that New York’s parental representation system “has suffered from many of the same deficiencies that once afflicted our criminal defense system, including excessive attorney caseloads, inadequate training, and insufficient funding for support staff and services.”<sup>10</sup> She therefore established the Commission on Parental Legal Representation (“the DiFiore Commission” or “the Parental Representation Commission”) “to examine the current state of representation for indigent parents in constitutionally and statutorily mandated family-related matters, and to develop a plan to ensure the future delivery of quality, cost-effective parental representation across the state.”<sup>11</sup>

During the summer of 2018, the DiFiore Commission held hearings on the conditions under which parental representation is delivered, and excessive attorney caseloads was a common thread during these hearings.<sup>12</sup> Litigants, attorneys, and judges confirmed that excessive attorney caseloads are a major contributor to inadequate representation, delays, and the outright failure to deliver due process. In its February 2019 *Interim Report to Chief Judge DiFiore* the Commission called for “significant and swift State action to address systemic problems, thus enabling attorneys to provide effective representation and Family Courts to make sound decisions that will best meet the needs of families.”<sup>13</sup> The Commission put forth several recommendations to transform family defense,<sup>14</sup> including that a State-funded study be conducted “to determine the

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<sup>7</sup> *Id.*

<sup>8</sup> *E.g. Matter of Nassau County Dept. of Social Services v. King*, 149 A.D.3d 942, 944 (2nd Dep’t 2017); (holding that the statutory right to counsel afforded under Family Court Act would be meaningless unless the assistance of counsel is effective); *Matter of Brown v. Gandy*, 125 A.D.3d 1389, 1390 (4th Dep’t 2015); *Matter of Eileen R. (Carmine S.)*, 79 A.D.3d 1482 (3rd Dep’t 2010).

<sup>9</sup> For ease of reference, the term “parent” is used broadly to refer to a biological parent or other “legally responsible” person who is eligible for assigned counsel under New York Family Court Act § 262 and in Family Court Act Article 10 (Child Protective) proceedings.

<sup>10</sup> Janet DiFiore, *The State of Our Judiciary*, New York State Unified Court System (February 6, 2018), <http://www.nycourts.gov/ctapps/news/soj2018.pdf>.

<sup>11</sup> DiFiore Commission Interim Report at 6.

<sup>12</sup> The Commission held a hearing in each of the four appellate divisions to gather information and suggestions for reforms needed to ensure quality representation for persons eligible for assigned counsel in family law matters. The commission solicited testimony from county government officials, institutional providers, assigned counsel programs and attorneys, clients, and other stakeholders. <https://www.nycourts.gov/courts/ad4/Clerk/Notice-PR/2018-07-18-NYS-Commission-on-Parental-Legal-Representation-Public-Hearing.shtm>.

<sup>13</sup> DiFiore Commission Interim Report at 6.

<sup>14</sup> The Commission’s interim recommendations are primarily directed toward parental representation in child protective proceedings, and include: (1) timely provision of relevant information to parents about the right to counsel, and the right to legal representation for parents during a child protective agency investigation and sufficiently in advance of the first court appearance; (2) establishment of a State Office of Family Representation (the Office) to provide oversight of parental representation and implementation of a statewide network of institutional offices and well-resourced attorneys to ensure the delivery of client-centered, interdisciplinary, holistic parental representation throughout the state; (3) development of uniform standards of eligibility for assigned counsel that would apply in all Family Court proceedings, and would include a presumption of eligibility for counsel

relative weights of all categories of Family Court Act §262 cases to ensure that attorneys with mixed case dockets have manageable caseloads, and therefore the time to provide effective representation for all clients.”<sup>15</sup>

To implement the Commission’s recommendation regarding caseloads, and building on a shared interest in ensuring high quality representation for assigned counsel eligible litigants in family court matters, the Unified Court System’s Office of Court Administration (OCA) and the New York State Office of Indigent Legal Services (ILS) collaborated to collect the data necessary to examine caseloads. This data was foundational to ILS’ production of this report, *Caseload Standards for Parents’ Attorneys in Family Court Mandated Representation Cases*. As part of its broad statutory mandate “to monitor, study and make efforts to improve the quality” of mandated representation,<sup>16</sup> ILS is authorized to receive, analyze, and evaluate data and information about attorney caseloads,<sup>17</sup> and to make recommendations to ensure that all recipients of mandated representation “are provided with quality representation from fiscally responsible providers.”<sup>18</sup> OCA provided crucial financial and technical support to ILS in developing these first-ever caseload standards for New York’s parental representation assigned counsel.

The caseload standards issued today by ILS marks an important advance toward achieving the DiFiore Commission’s vision for transforming parental representation in New York.<sup>19</sup> The standards are intended to ensure that parents’ attorneys have sufficient time and resources to provide ethically responsible, high quality representation, thereby improving the quality of judicial decision-making, and promoting justice and fairness for all litigants in New York’s family courts.<sup>20</sup> They also provide a basis for a preliminary calculation of needed attorney and non-attorney support staffing levels.

## **I. Manageable Caseloads: An Essential Foundation for Meaningful and Effective Assistance of Counsel in Parental Representation**

Caseload limits establish the minimum conditions under which it is possible to provide adequate representation to clients. While compliance with caseload standards does not necessarily equate to high quality representation, “evidence of non-compliance is an indication that it would be

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in child welfare proceedings, to be established by legislation; (4) a State-funded study to determine appropriate maximum caseload standards for attorneys representing parents in Family Court proceedings; (5) that the State pay for all costs associated with parental representation in child welfare proceedings to ensure quality representation and eliminate disparities among localities; and (6) increase in hourly rates for assigned attorneys to \$150 per hour, and institution of a mechanism for periodic review and adjustment.

<sup>15</sup> *Id.* at 39. The Commission’s Recommendation 4 – Caseload Standards reads in full: “We recommend that the State fund a study to determine appropriate maximum standards for attorneys representing parents in Family Court proceedings. Until such a study has been completed, we recommend that caseload maximum for attorneys representing parents in child welfare cases of 50 to 60 clients per attorney be established by legislation or rule.” *Id.* at 34.

<sup>16</sup> [Executive Law § 832\(1\)](#).

<sup>17</sup> Executive Law § 832(3)(b) (ii) and (iii).

<sup>18</sup> Executive Law sec 832(3)(c).

<sup>19</sup> DiFiore Commission Interim Report at 35.

<sup>20</sup> These proposed standards are for trial level family court proceedings, and do not include appellate level representation. The development of appellate level caseload standards for family court will require the collection and analysis of additional data specific to the work of attorneys in appellate court matters.

presumptively impossible for any lawyer, no matter how competent, to provide adequate representation.”<sup>21</sup> Witnesses before the DiFiore Commission confirmed the extent and impact of the crushing caseloads carried by family defenders across the state on the quality of parental representation. For example, in 2016 four attorneys in one public defender office handled 999 family court cases; in 2017 they handled 1062 cases.<sup>22</sup> The Commission heard that it is not uncommon for parent attorneys to carry well over 100 family court matters at once, often in addition to criminal court cases.<sup>23</sup> Faced with such overwhelming caseloads, “attorneys have less time to file motions, to read discovery in advance to assess defenses, to reach out to opposing counsel to propose settlement of cases, to think long term about their cases, including how to avoid a parents’ rights from being terminated, to refer clients for collateral services, and to strategize with social workers about how to resolve cases according to a family’s needs.”<sup>24</sup> As one public defender explained:

Our office staff often feel like firefighters who only have time to tamp down the flames, but we never have the time or resources to put out the entire fire. Staff attorneys are in court all day making court appearances, from 9:00 a.m. to 4:30 p.m. Meetings with clients occur between court appearances, during lunchtime, or briefly after work. Telephone calls are returned before or after court, and often in a rushed manner. Staff attorneys simply do not have enough time to meet with all of their clients to learn about the underlying issues, develop and enhance the attorney-client relationship, and strategize with their clients on how to best obtain the desired result. The result is that attorneys are forced to triage their cases to the detriment of a significant percentage of their clients.<sup>25</sup>

In light of similar testimony from numerous witnesses, including litigants, attorneys, and judges, the DiFiore Commission concluded that excessive and unmanageable caseloads “often prevent attorneys from carrying out even basic lawyering tasks, with negative effects on the attorney-client relationship, judicial case management and decision-making, and outcomes for children.”<sup>26</sup> At a minimum, these basic lawyering tasks include but are not limited to: initial and on-going client consultation and correspondence; case investigation and information gathering including consultation with investigators and social workers; discovery demands and document review; drafting memoranda, motions and orders to show cause; and filing a Notice of Appeal.

The fair and efficient administration of justice by the courts is also profoundly impacted. One judge shared that “crushing caseloads” of assigned counsel often results in delays in hearing cases; adjourned trials or truncated hearings; and multiple unnecessary court appearances.<sup>27</sup>

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<sup>21</sup> New York State Office of Indigent Legal Services, *An Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York*, at 3 (November 2013).

<sup>22</sup> Testimony of Rylan Ritchie, Albany County Public Defender’s Office, on file with the Office of Indigent Legal Services.

<sup>23</sup> Testimony of New York State Bar Association; Linda Gehron.

<sup>24</sup> Testimony of Lisa Schreibersdorf, on file with the Office of Indigent Legal Services.

<sup>25</sup> Testimony of Tim Donaher and Adele Fine, Monroe County Public Defender Office, on file with the Office of Indigent Legal Services.

<sup>26</sup> DiFiore Commission Interim Report at 35.

<sup>27</sup> DiFiore Commission Interim Report at 37.

Additionally, witnesses stressed the detrimental effect of excessive caseloads on recruitment and retention of attorneys willing to do this important work.<sup>28</sup>

Ultimately, inefficiencies and delays caused by attorneys' unmanageable caseloads cascade into the lives of their clients beyond the courtroom. Litigants often wait for hours, days, or weeks before meeting their assigned attorney for the first time. Sometimes, if the matter is on the docket for that day, they wait hours for their case to be called or recalled, and "[t]here have even been instances where no attorney was available at all and the litigant was told to return another day."<sup>29</sup> The impact on New York's families can be devastating, as parents represented by overburdened assigned counsel "are often unable to maintain stable employment, access services, or have any sense of stability if they are engaged in protracted litigation...On many occasions, [they] have acquiesced to an unfavorable settlement, or simply withdrawn their petition, because they could not continue to come to court with no end in sight."<sup>30</sup>

Reasonable caseloads lead to more just outcomes as they enable attorneys to dedicate the time needed to effectively represent each client. Successful advocacy requires significant motion and trial practice that is only possible when caseloads are manageable. For example, in Family Court Article 10 ("child protective") cases involving the potential or actual removal of children from their families by the state, manageable caseloads permit attorneys to request, on short notice, a hearing for the return of a child to the parent pursuant to Family Court Act §§ 1027 and 1028; make frequent motions related to visits, services, and placement; pursue interim appeals; and engage in contested litigation on numerous issues.<sup>31</sup> Moreover, out of court, manageable caseloads allow attorneys to meet with and be responsive to clients, and help to prevent the trauma of removal of children from their families or to shorten the length of time they are separated. Testimony submitted by a public defender to the Commission succinctly explains the necessity and value of caseload limits for family defenders:

The current system of high caseloads and insufficient staff is doing a disservice to our clients and the families of New York State. We implore you to set meaningful caseload limits for attorneys and ensure proper funding for localities to hire attorneys to implement these limits as well as to provide our attorneys with the tools they need to provide quality representation (social workers, investigators, legal assistants and parent advocates). It should be noted that this monetary investment would translate into time - time to spend providing quality representation for each individual client; time to assist the families of New York.<sup>32</sup>

After evaluating the testimony and information provided, the DiFiore Commission concluded that "the constitutional promise of meaningful and effective representation for parents is all too often not delivered."<sup>33</sup> The goal of the caseload standards presented here is to ensure that

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<sup>28</sup> DiFiore Commission Interim Report at 36.

<sup>29</sup> DiFiore Commission Interim Report at 37.

<sup>30</sup> DiFiore Commission Interim Report at 37-38.

<sup>31</sup> DiFiore Commission Interim Report at 38.

<sup>32</sup> Written testimony of Mark Funk, Conflict Defender, Monroe County, on file with the Office of Indigent Legal Services.

<sup>33</sup> DiFiore Commission Interim Report at 38.

attorneys have the time necessary to provide quality representation to each client. As described below, the recommended standards take into account that parents' attorneys typically represent clients "in all categories of Family Court mandated representation cases, and often, in criminal court cases as well."<sup>34</sup> As expressed by the DiFiore Commission, the expectation is that "the value of publicly paid legal services will be significantly enhanced" with "appropriate caseload caps and the State funding needed to comply with the caps."<sup>35</sup>

## **II. Process for Developing the Parental Representation Caseload Standards**

Pursuant to Recommendation Number 4 from the *2019 Commission on Parental Legal Representation Interim Report to Chief Judge DiFiore*,<sup>36</sup> ILS engaged in a multi-pronged approach to develop caseload standards for attorneys providing mandated parental representation. First, at the recommendation and with the financial support of OCA, ILS partnered with Welfare Research Inc. (WRI) to conduct a Family Court Caseload Study. Second, ILS analyzed OCA data on all petitions disposed in calendar year 2018 as a means of understanding the average length of time from filing to disposition for various petition types, as well as the types of petitions filed within each county. Lastly, ILS engaged in ongoing dialogue with providers of mandated parental representation throughout all stages of the standards development process.<sup>37</sup>

### **A. Family Court Caseload Study**

In May 2019, ILS and OCA began discussions on the parameters of a caseload study modeled after studies in several states, including Texas, Missouri, New York, and Massachusetts, that typically utilized a three-phase process for developing caseload standards. OCA contracted with Welfare Research Inc. (WRI) to carry out the three-phase caseload study and act as ILS' research partner. The Caseload Study consisted of an attorney Time Keeping Study where attorneys recorded time spent on specific tasks each day; a Time Sufficiency Survey to elicit attorneys' perspectives on how much time attorneys need to provide quality representation for each type of petition; and a Delphi Panel of NYS parental representation providers aimed at reaching consensus on how much attorney time is needed on each petition type to provide quality representation for clients.

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<sup>34</sup> DiFiore Commission Interim Report at 34.

<sup>35</sup> DiFiore Commission Interim Report at 38.

<sup>36</sup> DiFiore Commission Interim Report, Recommendation Number 4 at 34, "We recommend that the State fund a study to determine appropriate maximum caseload standards for attorneys representing parents in Family Court proceedings. Until such a study has been completed, we recommend that caseload maximum for attorneys representing parents in child welfare cases of 50 to 60 clients per attorney be established by legislation or rule."

<sup>37</sup> In developing the Parental Representation Caseload Standards, ILS also reviewed numerous other caseload/workload studies for reference. Though their methodologies were informative, those studies were limiting in their utility as New York has a broader right to counsel in parental representation matters compared to other states. *See generally*, National Coalition for a Civil Right to Counsel website, [http://civilrighttocounsel.org/major\\_developments?jurisdiction=New%20York](http://civilrighttocounsel.org/major_developments?jurisdiction=New%20York), but for comparisons of the rights in each state, see <http://civilrighttocounsel.org/map>. Studies from California (2008), Pennsylvania (2015), Idaho (2018), and North Carolina (2019) only included child welfare cases (abuse, neglect, termination of parental rights, and violation of support orders).



WRI and ILS solicited attorneys from across the state to participate in the Time-Keeping Study (August – October 2019), which was conducted in three waves to allow for greater attorney participation.<sup>38</sup> Over 100 public defense attorneys submitted electronic responses to the Time Sufficiency Survey over a two-week period in October 2019. Survey participants were asked to report their perspective on the minimum number of hours needed to provide quality representation in thirteen different Family Court petition proceedings. Attorneys were also invited to comment on the impact of not having sufficient time to provide quality representation for their clients.

The November 2019 Delphi Panel, hosted at ILS and led by an independent facilitator retained by WRI, was a guided discussion involving 21 providers of mandated parental representation aimed at reaching consensus on the average number of attorney hours needed to provide quality representation in trial level parental representation cases.<sup>39</sup> Delphi Panel participants were provided with the findings from both the Time Keeping Study and Time Sufficiency Survey and those findings were referenced throughout the day-long process.

Following the Delphi Panel, WRI submitted the Caseload Study Final Report to ILS in December 2019. This report was not designed to identify caseload standards. Rather, it described the outcomes of each of the three phases, setting the stage for ILS to take the next steps in developing caseload standards.

## **B. Review of 2018 OCA Petition Data**

ILS submitted a request to the Office of Court Administration seeking to obtain data on all family court petitions disposed in calendar year 2018. In February 2020, ILS received a spreadsheet that included the filing date, disposition date, court, county, and petition type for over 550,000 family court petitions disposed from January 1 through December 31, 2018.<sup>40</sup>

ILS' analysis of the 2018 OCA data was focused on three key areas: 1) the average time-to-disposition for each petition type;<sup>41</sup> 2) differences in time-to-disposition by petition type and county/region; and 3) the distribution of petition types within counties/regions. While the OCA data does not include the number of attorney hours spent on each type of petition, the file and disposition dates are still informative in relation to the average length of time during which attorneys are assigned to their clients' cases.

The analysis revealed that across New York, child abuse cases had the longest average time-to-disposition, and the average time-to-disposition in child abuse cases was nearly twice as long in

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<sup>38</sup> In total, 57 attorneys began data entry into the electronic case management system (DefenderData), with 30 attorneys entering data for at least six weeks on tasks performed in 1,805 cases.

<sup>39</sup> The data collected on appellate representation in family court during both the Time Keeping Study and the Time Sufficiency Survey was insufficient to aid in the development of appellate standards. Therefore, the Delphi Panel discussion was limited to assessing the appropriate number of attorney hours needed only for trial level petitions.

<sup>40</sup> The analysis of the OCA data was limited to petitions for which representation was mandated however the database did not include data on conditional surrenders.

<sup>41</sup> The analysis was limited to petitions filed on or after January 1, 2016 which accounted for 99.2% of all 2018 petitions disposed. In other words, the analysis is based on petitions disposed in 2018 which were filed between 2016 and 2018.

NYC compared to the counties outside of NYC. Custody/visitation petitions accounted for a larger percentage of all petitions disposed outside of NYC, while neglect petitions accounted for a larger percentage of all petitions disposed in NYC. This information was critical in understanding how caseloads are affected by the differences in practice revealed during the three phases of the Caseload Study.

### **C. Active Consultation with Providers**

Throughout the process of developing these caseload standards, ILS actively sought input from mandated representation providers. Members of the ILS Parental Representation Advisory Committee (PRAC) provided feedback on the attorney task lists and definitions that underpinned both the Time Keeping Study and Time Sufficiency Survey portion of the Caseload Study. Subsequently, following ILS' review of the WRI Final Report, the analysis of the OCA Data, and the development of these proposed standards, ILS convened a discussion group of mandated representation providers from both institutional provider offices and assigned counsel panels across the state to elicit their informed opinions on these standards and their potential impact on provider practice.

In advance of this convening, ILS circulated a memo to the discussion group members outlining the standards development process, the rationale for the final average minimum attorney hours needed per petition type, and a chart of the proposed standards and weights for each petition type. During the web-based discussion, providers shared their perspective on whether the proposed average minimum attorney hours for each petition type were sufficient to provide quality representation. Following a rigorous conversation, the providers agreed that these caseload standards would create an environment conducive to providing quality representation.<sup>42</sup> Furthermore, discussion group members provided invaluable insight on their various practices, while acknowledging the need to create standards that reflected the range of circumstances providers confront throughout the state.

### **III. Determination of Appropriate Standards**

Notably, ILS decided to develop caseload standards based on new petition assignments instead of standards based on "pending caseloads." This decision was the result of extensive internal discussion on the following issues. First, with multiple petition types and more variation in the amount of attorney time required for each, caseload standards based on new assignments are more straightforward than a pending caseload standard. Weighting based on new assignments can account for both providers whose caseloads always include child welfare petitions (as in New York City) as well as those who less frequently represent clients in those circumstances (some non-New York City providers). A pending caseload standard based on the number of clients currently represented could not account for these differences – instead the number of attorney hours spent representing a client on a single neglect petition would be viewed the same as that of an attorney representing a client on a willful violation of support petition.

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<sup>42</sup> Providers were asked to consider these average minimum hours in the context of a well-resourced office with additional non-attorney staff to support the work of the attorneys and provide needed assistance to clients.

Secondly, ILS has already implemented criminal caseload standards based on new cases assigned.<sup>43</sup> During the Commission’s public hearings, it became evident that many mandated provider offices (institutional and assigned counsel program offices) across the state and the attorneys therein represent clients in both criminal court and family court matters. Supervising attorneys’ ability to monitor individual attorney compliance with caseload standards would be needlessly difficult if there were new case assignment standards for criminal cases and “pending caseload” standards for family court cases.

Finally, these standards provide a mechanism for supervisors to monitor the work of individual attorneys to prevent excessive attorney caseloads. Supervisors can be thoughtful in assigning new cases to individual attorneys, assessing both the number and complexity of the attorney’s existing cases when determining whether to assign additional cases to the attorney. An attorney not at risk of exceeding caseload limits may still have new assignments delayed if assigning new cases would negatively impact the quality of representation provided by that attorney.

These caseload standards draw from key aspects of the ILS criminal caseload standards adopted as part of the *Hurrell-Harring* Settlement in December 2016.

- First, the criminal caseload standards are based on the premise that an individual attorney working full-time during a calendar year would have 1,875 available working hours taking into consideration vacation time, sick leave, and training. These parental representation caseload standards presume the same.
- Second, the criminal court caseload standards are presented in three ways (maximum number of cases per year; minimum average attorney hours per case; standardized weight by case type), and these parental representation caseload standards are presented in the same manner:
  - The maximum number of petitions per year if the attorney represented clients involved in only one type of petition, e.g., an attorney who only handled custody proceedings;
  - The minimum average attorney hours per petition that are necessary to provide quality representation; and
  - A standardized weight for each type of parental representation petition (Paternity Equivalent Weight) to assess caseload compliance for attorneys and offices that handle a mixed caseload.<sup>44</sup>
- Third, some criminal case categories were combined such that they were weighted the same, e.g., misdemeanors and violations, and various types of post-disposition activities were combined, resulting in seven criminal caseload categories. These parental representation caseload standards are also grouped to create seven categories based on the average hours needed to provide quality representation.

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<sup>43</sup> New York State Office of Indigent Legal Services, *A Determination of Caseload Standards pursuant to § IV of the Hurrell-Harring v. The State of New York Settlement* (December 8, 2016), <https://www.ils.ny.gov/files/Caseload%20Standards%20Report%20Final%20120816.pdf>.

<sup>44</sup> In the criminal caseload standards, this weighting factor is called the Misdemeanor Equivalent because misdemeanor and violation cases are those requiring the lowest number of average hours and are therefore weighted as one (1). All other weights are ratios comparing the maximum number of those cases to the maximum number of misdemeanor/violation level cases. The Parental Representation Caseload Standards use a Paternity Equivalent Weight such that one paternity petition is equivalent to nine neglect petitions.

## ILS Parental Representation Caseload Standards

The table below outlines ILS’ parental representation caseload standards for various family court proceedings. The table is divided into the following columns:

- **Proceeding Type** – Proceeding types for which representation is mandated and a proposed standard has been developed.
- **Minimum Average Number of Hours** – This column groups proceeding types to create seven categories based on the minimum average number of hours required to provide quality representation. This column assumes 1,875 available working hours per year.
- **Maximum Proceedings per Year** – The Minimum Average Number of Hours are divided into 1,875 available work year hours to determine the maximum number of proceedings that a single full-time attorney could handle if that attorney only represented clients in that single proceeding type.<sup>45</sup>
- **Paternity Equivalent Weight** – Paternity proceedings were determined to require the least amount of time of all proceedings and therefore became the base for calculating all other proceeding weights (weight = 1). For example, based on the Minimum Average Number of Hours, an attorney should handle no more than 150 Willful Violation of Support proceedings (1,875 work year hours / 12.5 Minimum Average Number of Hours); therefore, Willful Violation of Support proceedings are weighted at 2 (300 maximum paternity / 150 maximum willful support violations).

Proceeding Type	Minimum Average Number of Hours	Maximum Proceedings per Year	Paternity Equivalent Weight
Paternity	6.25	300	1
Willful Violation of Support	12.5	150	2
Willful Violation Other	15.6	120	2.5
Family Offense	15.6	120	2.5
Guardianship	18.75	100	3
Violation of Conditional Surrender	18.75	100	3
Adoption	18.75	100	3
Modification of Prior Order	25	75	4
Custody/Visitation	25	75	4
Conditional Surrender	31.25	60	5
Neglect	56.25	33.3	9
Abuse	56.25	33.3	9
TPR	56.25	33.3	9

<sup>45</sup> For example, Adoption proceedings are assigned 18.75 Minimum Average Number of Hours. If we divide that into 1,875 available work year hours, an attorney who only handled adoption proceedings should handle no more than 100 newly assigned adoption proceedings per year (1,875 / 18.75 = 100).

As with ILS' criminal caseload standards, these parental representation caseload standards are presented in two ways. For institutional providers, the Maximum Proceedings per Year prescribe the number of new assignments for each full-time attorney during a calendar year, with the Paternity Equivalent Weight allowing for an assessment of a mixed family court caseload. By scaling the parental representation caseload standards against the same 1,875 attorney work hours per year used in the criminal caseload standards, overall attorney and provider caseload compliance can also be assessed for mixed criminal and family court caseloads based on new case/petition assignments.

For assigned counsel programs, these standards prescribe the average minimum number of hours an attorney is expected to devote per petition, e.g., when assessing an attorney's representation of all clients in custody proceedings, the attorney is expected to devote on average at least 25 hours of their time per custody petition.

## **Conclusion**

In constructing these *Caseload Standards for Parents' Attorneys in Family Court Mandated Representation Cases*, we have been guided throughout by our successful experience in developing caseload standards for criminal cases. In each instance, the goal is to provide lawyers adequate time to devote to every client's case; to enable the lawyer to provide each client with the effective assistance of counsel that is guaranteed by our Constitution and our laws.

In September, 2014 – before the settlement in the *Hurrell-Harring v. State of New York* (HH) litigation, before our creation of criminal caseload standards pursuant to that Settlement, before the 2017 enactment of Executive Law § 832 (4) and the submission of our December 1, 2017 Plan for statewide implementation of the HH reforms – we proposed initial caseload standards to the ILS Board that were applicable to all mandated representation cases, contingent upon the appropriation of state funding for their effectuation. At its September 2014 meeting, the Board unanimously approved those early caseload standards.

Those 2014 standards were based upon our early annual statewide caseload reports, at a time when the data submitted by some 150 providers was scattered and imprecise. As to criminal cases, the standards were soon superseded by our 2016 development and publication of the HH Settlement caseload standards. Those HH Settlement standards were fully funded by the state in the five lawsuit counties and were extended statewide by the enactment of Executive Law § 832 (4) in 2017, with state funding beginning a year later. It is high time now for informed, data-driven caseload standards to be applied to parental representation as well as criminal defense representation. The representation in each practice area is equally mandated by law; equally consequential for clients and for society; equally plagued by racial and economic disparity. We ask the Board to approve these Standards; whereupon we will advocate for the state funding needed to implement them.

## APPENDIX

All of the listed situations below are pursuant to County Law § 722, with the exception of the last listed situation in Supreme Court, wherein the authority/responsibility is vested by State Judiciary Law § 35(5). [Thanks to New York State Defender’s Association for producing the original chart, from which these details have been selected.]

Person facing contempt of court or finding of willful violation of prior order (except under Jud L 755)	FCA 262(a)(vi), 453
Respondent in FCA article 5 proceeding in relation to the establishment of paternity	FCA 262(a)(viii)
Respondent in FCA article 6, part 3 (custody & visitation) proceeding	FCA 262(a)(iii)
Parent seeking custody or contesting substantial infringement of right to custody where court has jurisdiction to determine custody	FCA 262(a)(v); Surrogate’s Court Procedure Act [SCPA] 407(1)(a)(iv)
Parent of a child in an adoption proceeding who opposes adoption	FCA 262(a)(vii); SCPA 407(1)(a)(iii)
Petitioner and respondent in FCA article 8 (family offense) proceeding	FCA 262(a)(ii), 821-a, 846
Respondent in FCA article 10 (abuse and neglect) or 10-A (permanency hearing) proceeding	FCA 262(a)(i), 1021, 1023, 1024
Petitioner in FCA article 10, part 8 (visitation rights in abuse and neglect) proceeding	FCA 262(a)(i)

Parent, foster parent, or other person with physical or legal custody in FCA article 10, 10-A, SSL 358-a, 384, or 384-b proceeding	FCA 262(a)(iv)
Respondent in SSL 384 or 384-b proceeding	SCPA 407(1)(a)(i), (ii)
Non-custodial parent or grandparent served with notice pursuant to SSL 384-a(2)(e)	FCA 262(a)(iv)
Adult in a Family Court or Surrogate's Court proceeding where judge determines that counsel is mandated under federal or state constitution	FCA 262(b); SCPA 407(1)(b)
Appeal of Family Court proceeding	FCA 1120(a): anyone entitled to counsel under FCA 262; any other party (discretionary)
Appeal of Surrogate's Court proceeding	County L 722; SCPA 407(1)(a)(v)
Proceedings in Supreme Court where, if the case was in Family Court, the court would be required to assign counsel under FCA 262	Jud L 35(8)