The ABC & Gs of Representing Youth

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RTC for Parents/Children:
The National Landscape

John Pollock | NCCRC Coordinator
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The Current Mixed Bag for Parents/Children

Right to counsel: majority of states

Parents in abuse/neglect cases and TPR cases
statutory, constitutional, court rule

Children in abuse/neglect cases and TPR cases (often to AAL)
statutory, constitutional, court rule

Civil contempt in family court
statutory, constitutional, court rule
The Current Mixed Bag

Right to counsel: many states

- Putative father in paternity proceedings: statutory, constitutional, court rule
- Parents in non-consensual adoption: statutory or constitutional
- Children in non-consensual adoption (often to AAL): statutory or constitutional
The Current Mixed Bag

Right to counsel: few states

- Custody (parents or child)
- Relinquishment of parental rights (parent or child)
- Divorce (if incapacity)
Birth Parents in state-initiated TPR

Tenants facing eviction

Health care access

RTC: the good, the improving, and the bad
During the 2023 legislative session, the NCCRC tracked almost 300 RTC-related bills introduced nationwide. About 94% of tracked bills were introduced in state legislatures. Of the 20 federal bills we tracked, 14 were immigration-related. There are several federal-level housing bills in the works.
Successful RTC-as-PDP Litigation

- **Historical litigation:**
  - Termination of parental rights: 12 states rejected *Lassiter*
  - Child support contempt
  - Paternity
  - Civil commitment
  - Guardianship

- **Recent litigation:**
  - Custody:
    - Private custody: AK, CA, MI
    - Child guardianship: MA
    - Child welfare/TPR: NJ (parents in admin proceedings), OH (adoption), PA (child in TPR)
  - Driver's licenses: NJ
  - Debtor's prison: MD, NJ, PA
## RTC Key Area:
### Children and Parents

<table>
<thead>
<tr>
<th>Child RTC legislation</th>
<th>Parent RTC legislation</th>
<th>Parent/child RTC litigation</th>
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<tbody>
<tr>
<td>● AZ (child welfare)*</td>
<td>● AR (adoptions)*</td>
<td>● HI (parents in A/N and TPR)**</td>
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<tr>
<td>● CO (child welfare, extended foster care)*</td>
<td>● HI (child welfare cases)</td>
<td>● IN (dependency class action for kids)</td>
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<td>● ND (child welfare)*</td>
<td>● IA (private child guardianships)*</td>
<td>● LA (parents in neglect cases)</td>
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<td>● NM (extended foster care)*</td>
<td>● MO (deleting adoption RTC)</td>
<td>● NJ (parents in admin. cases)**</td>
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<td>● WA (child welfare)*</td>
<td>● NC (when children placed in DSS custody due to delinquency)*</td>
<td>● NY (parents on A/N registry)</td>
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<td>● WV (parents in child welfare cases)*</td>
<td>● ND (private child guardianships)*</td>
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<td>● VA (extended foster care)</td>
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* → pending
** → successful resolution
Red → NCCRC involvement
NACC's Mission: NACC advances children’s and parents’ rights by supporting a diverse, inclusive community of child welfare lawyers to provide zealous legal representation and by advocating for equitable, anti-racist solutions co-designed by people with lived experience.

Training & Certification
NACC offers attorneys high-quality training, adaptable education materials, & Child Welfare Law Specialist certification program

Practitioner Network
NACC builds a sense of community by hosting conferences, networking opportunities, & an open forum for discussion

Policy Advocacy
NACC works to publish legal opinions, write amicus briefs, & advocate for policies aimed at improving child welfare in the US
Children in court need lawyers of their own.

We’re working to make sure they have them.
# Models of Legal Representation of Children

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<th>Description</th>
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| **Client-Directed** | - Advocates for the youth’s expressed wishes  
                    - Duties of loyalty and confidentiality  
                    - Maximizes youth voice/client participation  
                    - Recommended by the American Bar Association, the National Association of Counsel for Children, also The Gault Center Standards |
| **Best Interest**    | - Advocates for what the attorney thinks is in the youth’s best interest after investigation, counseling  
                    - Also the model for lay volunteers, Court Appointed Special Advocates (who may also be called Guardian ad Litem or GAL) |
| **Hybrid**             | - Advocates for both the child or youth’s expressed wishes and what the attorney thinks is in the child or youth’s best interest  
                    - If such a conflict between those positions develops, the roles are bifurcated. |
What Say Youth?

Youth in court overwhelmingly indicate a desire to:

- Be heard;
- Be engaged in and helped to understand their legal proceedings;
- Be told what is happening in their case.

“Consider high-quality legal representation as a proactive measure to ensure children and youths are successful in all areas of their lives.”

NACC National Advisory Council on Children’s Legal Representation
Mission - To promote access to justice for children and families.

Structure - Nonprofit grant-funded entity in the American Bar Association with team of attorneys and core staff who work on projects across the country unified by two goals: to improve legal representation, and to improve the legal systems that impact children and families’ lives.

Approach - Collaboration and coalition building at local, state and national levels to build the capacity of legal practices and systems that serve children well and to help change those that do not.

www.ambar.org/child
Assessment Background

• Changes in California state budget allocation
• 2014-2018
• Three significant findings
• Coincided with policy change at the Children’s Bureau
Key Finding

Funding changes for child and parent counsel had a direct impact on several factors that affect legal representation quality, such as attorney recruitment and retention, multidisciplinary legal practice, caseloads, workload per case, and case delays.

Primary areas affected by funding changes fall into two categories: Staffing and Time
In addition to attorney funding, other child welfare system factors influenced the quality of child and parent legal representation. These included agency policy, court funding and structure, and client access to services.

A child welfare agency’s approach to filing petitions only in cases presenting the greatest risk to child safety can reduce total caseload numbers per attorney while increasing the complexity of the workload in each case, court backlogs can limit attorney time in and out of the courtroom, and a child or parent client’s ability to access services as part of a case plan can directly affect attorney advocacy in the case.

Factors outside the child welfare system also affected the quality of legal representation available to children and parents in the sites studied. For example, homelessness and poverty were regularly reported as significant challenges for effective legal representation.
Multidisciplinary Models of Representation

- Attorney works with other team members such as investigators, social workers, paralegals, and peer advocates (for youth) and parent advocates (for parent clients).
- Increase the legal services provider’s ability to meet the out-of-court case needs of children and families, including connecting children with highly specialized attorneys and supports.
Leveraging Federal IV-E Funding to Pay for Child Representation

Strategies:
● Get Creative!
● Encourage legal representation programs that provide parent and child representation to seek IV-E funding

Considerations:
● IV-E is an open entitlement reimbursement plan.
● State match
● Applies to all models
Pending Federal Rule on Children’s Representation

**AGENCY:**
Children’s Bureau (CB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:**
Notice of proposed rulemaking (NPRM).

**SUMMARY:**
ACF proposes to allow a title IV-E agency to claim Federal financial participation (FFP) for the administrative cost of an attorney providing: legal representation in foster care proceedings of a title IV-E agency or any other public agency or tribe that has an agreement in effect under which the other agency has placement and care responsibility of a title IV-E eligible child; independent legal representation of a child who is either a candidate for title IV-E foster care, or in title IV-E foster care (hereafter, referred to as a child “who is eligible for title IV-E foster care”), the child’s parent(s), and the child’s relative caregiver(s) in foster care and other civil legal proceedings when such legal representation is found necessary by the Secretary to carry out the requirements in the title IV-E agency’s title IV-E foster care plan; and legal representation of an Indian child’s tribe, when the child’s tribe intervenes in any state court proceeding for the foster care placement or termination of parental rights of an Indian child who is in title IV-E foster care or an Indian child who is a candidate for title IV-E foster care when such legal representation is found necessary by the Secretary to carry out the requirements in the title IV-E agency’s title IV-E foster care plan.

- **Aim:** to codify federal funding under Title IV-E for legal services
- **Language specifically includes tribal organizations**
- **Many comments urged CB to provide additional clarity**