



SUPREME COURT OF TEXAS
Children's Commission

*2018 Study of Legal Representation
in Child Protective Services Cases*



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The Legal Representation Study was funded by the Children’s Commission Court Improvement Program. The views expressed herein have not been approved by the Supreme Court of Texas, and should not be construed as an advisory or ruling on specific cases or legal issues. This report is solely intended to address the improvement of the law, the legal system, and the administration of justice.

Children’s Commission Leadership and Staff

The Children’s Commission was created by order of the Supreme Court of Texas in 2007 to help improve the handling of child protection cases through improvements in judicial practice, child-welfare policy and legislation, technology, training, and court improvement projects. Children’s Commission membership includes officials from DFPS and Child Protective Services (CPS), non-profit foundations and state bar leaders, private attorneys, legislators, judges, and other leaders in child welfare. The Children’s Commission also consults with an advisory group that represents the many and varied disciplines involved in the child-welfare system. The Commission’s mission is to strengthen courts for children, youth and families in the Texas child-protection system and thereby improve the safety, permanency, and well-being of children. To fulfill this mission, a sustained effort to support and improve legal representation is an integral component of the Commission’s statewide efforts.



Honorable Eva Guzman, Chair, Children’s Commission

Justice Eva Guzman has been a member of the Supreme Court of Texas since October 2009. Before serving on the Supreme Court, Justice Guzman served as an Associate Justice on the Houston-based Texas Fourteenth Court of Appeals, having been appointed in 2001 by then Gov. Rick Perry. She also served as a trial court judge on the 309th Family District Court after her appointment by then Gov. George W. Bush. Justice Guzman has been recognized by many organizations for her service on and off the bench. She has served as the Chair of the Children’s Commission since June 2010.



Honorable Dean Rucker, Jurist in Residence and Chair, Legal Representation Committee, Children’s Commission

Judge Dean Rucker serves as the Presiding Judge of the Seventh Administrative Judicial Region of Texas. He is also the Senior Judge of the 318th Family District Court, sitting by assignment. Judge Rucker is board certified in family law by the Texas Board of Legal Specialization. He is a member of the State Bar of Texas Family Law Section and serves on the Family Law Council, the Formbook Committee, and the Legislative Committee. He is a member of the Texas Family Law Foundation and serves as the Judicial Advisor on its Board of Directors. Judge Rucker is the Vice-Chair of the State Bar Pattern Jury Charge Oversight Committee.

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Message from Legal Representation Committee Chair

It has been my privilege to serve as the chair of the LRC for the past decade. Starting with a statewide survey of legal representation in late 2009, the Children's Commission has consistently demonstrated a deep commitment to improving legal representation for children and parents involved in the state's child-welfare system. The Commission learned much from responses to the 2009-2010 study and released a report in 2011 on the state of legal representation in Texas. The data spurred many Commission projects aimed at improving the quality of attorney training, as well as making training available to any attorney seeking assistance at little to no cost. This new report on legal representation positions Texas to elevate this area of practice even further by creating an environment that demands accountability and promotes equal access to resources for all attorneys providing legal representation in CPS-related cases. Ensuring that court-appointed attorneys earn adequate compensation and adhere to appropriate standards of practice are critical elements of a high-functioning legal representation system that produces fair and just outcomes for Texas families.



Hon. Dean Rucker

Executive Summary

In 2017, the Texas Legislature passed House Bill 7 which included a requirement to conduct a statewide study and produce a report on legal representation in Child Protective Services (CPS) cases across Texas. The study mandated by House Bill 7 provides a timely update to the Children's Commission Legal Representation Committee's (LRC) January 2011 report (herein after referred to as the 2011 Children's Commission study) regarding the quality of legal representation in CPS cases.¹

Children's Commission staff, working in concert with the LRC, the LRC Study Subcommittee, the Texas Department of Family and Protective Services (DFPS), and the University of Texas at Austin Texas Institute of Child & Family Wellbeing, designed, vetted, and distributed survey questions regarding the state of legal representation in Texas CPS cases. Perspectives from parents, youth currently in care, relatives, foster parents, attorneys, mediators, judges, and other professionals involved in the child-welfare system were solicited through these survey questions regarding the strengths, barriers, and efficacy of the current court-appointment system. Representatives from the same organizations that developed the surveys reviewed the results which included various participants' answers to various questions, open-ended responses, and feedback gathered through a focus group of parents currently involved in CPS cases.

Chief among the findings is that Texas needs consistent, high-quality legal representation of children and parents involved in CPS cases, a meaningful system of oversight, adequate compensation for attorneys, training requirements and standards of practice, and an accountability process to ensure that attorneys who represent clients in CPS cases adhere to the highest standards of legal representation, thus fostering integrity in the legal process.

The primary conclusion of this report is that a Legal Representation Task Force should be created by the Supreme Court of Texas or by the Texas Legislature to explore the best ways to respond to the needs revealed by the survey data. The primary focus of the Task Force would be to examine the feasibility of implementing systemic oversight and accountability of the Texas court-appointment system in CPS cases. The full set of recommendations is included in the final section of this report.

Findings from this study should be interpreted within the context of the study limitations. In most cases, though the population of a group of participants can be estimated, there is no precise means to verify if the participants who responded represent the normative opinions of that group. Though the survey participants are representative of their stakeholder group, they are not randomly chosen representatives of the whole stakeholder population. They represent those stakeholders who self-selected to provide their opinions about court-appointed representation. Also, the parent and relative surveys did not yield a statistically significant response and therefore are not included in the report. However, comments gathered at a parent focus group meeting, as well as comments from many others who participated in the survey, are included. Despite these limitations, the study findings provide valuable insights into legal representation in Texas CPS cases by offering a large set of responses from various stakeholders in the child-welfare system who are in a unique position to give feedback about their experiences.

¹ Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families. (2011). *Legal Representation Study: Assessment of Appointed Representation in Texas Child Protection Proceedings* at 80 (2011 Children's Commission Study). Available at: <http://texaschildrenscommission.gov/media/1143/lrs.pdf>.

Child-welfare cases are often fraught with related issues of substance use and addiction, poverty, inadequate and insecure housing, domestic violence, mental health issues, various levels of interpersonal and historic trauma, and disproportionality and disparities. Additionally, because of geographical and other barriers, there are certain regions and jurisdictions in Texas which face particular challenges in attracting quality attorneys to provide legal representation to the parents and children involved.

While there is room for improvement, the survey data and report reveal that there are many dedicated court-appointed attorneys across the state who zealously represent vulnerable children and parents and who are making a positive difference in the lives of their clients. Equally important, these devoted attorneys, along with their counterparts who represent the state of Texas in CPS cases, provide critical legal representation in high-stakes cases. Attorneys who seek out court appointments to represent children and parents, as well as those who represent DFPS are, for the most part, dedicated and committed individuals who see this work as a calling. This area of the law is one of the most important to our collective sense of justice. Quality legal counsel in CPS cases is essential for all parents and children to help ensure that courts strike the appropriate balance between the rights and duties for all involved.

Survey Design Overview

The Children’s Commission LRC created a Study Subcommittee to oversee the design of the survey, the analysis of the data, and the drafting of this report. The LRC Study Subcommittee consisted of attorneys for parents, attorneys for children, and attorneys representing DFPS, along with a judge, a Court Appointed Special Advocates (CASA) director, parent advocates, and a foster care alumni.

To design the survey, draft questions were created by Children’s Commission staff and submitted to the LRC Study Subcommittee for review. The LRC Study Subcommittee reviewed survey drafts for each target population, and edited, added, and removed questions until reaching a consensus about the most critical survey questions to include. The survey questions were then reviewed by Scott Trowbridge of the American Bar Association (ABA) Center on Children and the Law and the ABA Capacity Building Center for Courts. Other organizations, including the Texas Foster Family Association and the DFPS Statewide Youth Leadership Council, assisted the Children’s Commission by reviewing the questions and providing feedback prior to distribution of the survey.

The survey elicited information about how particular aspects of the CPS court-appointment system are currently functioning, how that functioning impacts the quality of legal representation provided through court appointments of attorneys for parents and for children on CPS dockets across the state of Texas, and potential reforms that could impact the quality of such representation.

Survey Implementation

Data were collected through three different surveys that targeted the following populations: 1) professionals, 2) parents/relative caregivers, and 3) children over the age of 12 in DFPS conservatorship (also referred to as “youth in care” herein). The parent/relative caregiver and children’s surveys were made available in English and Spanish. Questions in each survey were tailored to the specific population being surveyed.

Participant Outreach

There were no publicly available, comprehensive lists from which to draw a random sample of survey participants. The following professionals were eligible to complete the professional survey: CPS caseworkers (investigations and conservatorship workers); CASAs (staff and volunteers); mediators; DFPS attorneys; court-appointed attorneys who represent parents and children; judges; foster parents; and court coordinators. Unless otherwise indicated in this report, attorneys for children and parents are referred to as “court-appointed attorneys” or “attorneys ad litem.” Attorneys representing DFPS, including DFPS Regional Attorneys as well as County and District Attorneys representing DFPS, are referred to as “DFPS attorneys.” Finally, a professional could start the survey, but if any professional indicated that he or she did not work on CPS cases, they were excluded from the survey.

Non-professional survey participants included parents and relatives of children who were currently or formerly involved with CPS, including any caregiver or other adult involved in a CPS case. There were no other inclusion or exclusion criteria. Parents and relatives were informed about the survey through flyers written in English and Spanish. These flyers were distributed to child-welfare judges across Texas to post in their courtrooms, as well as county law libraries, CPS offices, and domestic violence shelters. Additionally, survey access was available through the Texas Legal Services Family Helpline’s website, and callers to the Helpline were made aware of their ability to participate in the survey by Helpline attorneys. To increase access to the survey, parents and relatives were able to participate by texting a keyword to a five-digit number so the survey could be taken over a mobile phone.

CPS caseworkers offered youth on their caseloads the opportunity to complete the survey. Youth age 12 and older completed an online survey, either alone or with the assistance of the caseworker. The CPS caseworker determined whether the survey was appropriate for each specific youth.

The survey did not distinguish between youth who are in Temporary Managing Conservatorship (TMC) of DFPS and are statutorily required to have a court-appointed attorney, and youth in Permanent Managing Conservatorship (PMC) of DFPS, who are not required to have a court-appointed attorney. However, to be eligible to participate, youth had to confirm that they currently had an attorney and that they knew the identity of their attorney. Youth who did not currently have an attorney but confirmed that they previously had an attorney were also allowed to participate; only 4% of youth participants fell into this category.

Of the 50,293 children in DFPS conservatorship at any time in Fiscal Year (FY) 2017, 11,740 (or 23% of the total) were 12 years old or older.² Though children 11 and younger did not participate in the survey, the survey attempted to represent their experiences through data gathered from stakeholders who have regular direct contact with children of all ages such as CPS caseworkers, CASAs, and foster parents.

² DFPS Data Book 2017. Available at: https://www.dfps.state.tx.us/About_DFPS/Data_Book/Child_Protective_Services/Conservatorship/Children_in_Conservatorship.asp.

Participating Stakeholders

Table 1 describes the participants who completed the survey by profession. A total of 2,824 professionals and 737 youth in care completed surveys.

Despite attempts to increase their participation, parent and relative participation in the survey was extremely low compared to all other populations. Because the results could not be reliably interpreted due to the small sample size, the LRC Study Subcommittee made the decision not to include the results of those surveys in this report. However, the results of these surveys are on file with Children’s Commission and will be made available once any personal information submitted through an open-ended comment has been redacted to preserve anonymity. To incorporate parents’ perspectives in this study, the Children’s Commission conducted a focus group on June 8, 2018 with parents at a meeting of the Statewide Parent Collaboration Group, an advisory body to DFPS. Quotes from parents who attended the focus group meeting are included in this report.

To provide context for the estimated percent of the subgroup population that completed the survey, data were obtained from various sources to estimate the subgroup population size. Table 1 provides a count of the various professional and non-professional participants and includes counts from the 2011 Children’s Commission’s study for context.³

WHICH OF THE FOLLOWING BEST DESCRIBES YOUR ROLE WITH THE CHILD-WELFARE SYSTEM?

	2011 Frequency	2018 Frequency	2018 Population Estimate	2018 Frequency as % of Population
Court-Appointed Attorneys	94	251	1,974	13%
CASA Volunteers/Supervisors	16	790	10,424	8%
Court Coordinators	25	41	418	10%
Attorneys Representing DFPS	38	111	*	*
CPS Caseworkers	0	962	4,900	20%
Foster Parents	11	555	10,715	5%
Judges	69	57	267	21%
Mediators	0	57	167	34%
Youth in Care	51	737	11,740	6%
Total Responses	304	3561	40,605	
No Role Identified**		95		
GRAND TOTAL	304	3,466	40,605	8%

*Estimate unavailable. See Appendix A.

** Did not meet survey eligibility criteria.

Table 1

³ See Appendix A for population estimate calculations.

In addition to examining the different subgroups of participants, Table 2 describes the participants who completed the survey by profession and DFPS region. Participants were asked what county they primarily work in or live in. The counties were then matched to the corresponding DFPS regions.

NUMBER OF PARTICIPANTS FROM EACH DFPS REGION BY PROFESSION

DFPS Region	Court-Appointed Attorneys	CASAs	DFPS Attorneys	CPS Caseworkers	Foster Parents	Judges	Mediators	Total for Region
1	7	10	8	47	41	2	4	119
2	11	4	8	55	17	5	0	100
3	50	357	13	210	65	13	10	718
4	16	98	5	50	29	4	1	203
5	7	7	5	34	33	1	0	87
6	39	97	28	121	161	9	14	469
7	38	73	13	134	72	5	6	341
8	26	23	6	138	74	7	6	280
9	26	37	8	28	17	1	2	119
10	4	1	3	20	4	1	0	33
11	18	61	5	99	28	5	1	217
TOTAL	242	768	102	936	541	53	44	2686

Table 2

Data Collection

Only electronic surveys were completed. Surveys were administered through the Qualtrics system at the University of Texas at Austin (UT Austin), Steve Hicks School of Social Work, Texas Institute of Child and Family Wellbeing (TXICFW).⁴ All participants were anonymous to TXICFW and the Children’s Commission. No identifying information was requested through the survey questions.

Multiple agencies distributed surveys through distribution lists. Those agencies are listed in Table 3. The 2018 professional surveys were open from March 12 to April 13, with reminders sent between the beginning and end of the period. The parent and relative surveys were open from March 20 to June 1. The surveys for youth in care were open from April 5 to June 1.

Survey	Targeted Group	Agency Distributing
Professionals	CPS Caseworkers	DFPS
	CASAs	Texas CASA
	Mediators	Children’s Commission Texas Association of Mediators State Bar of Texas Alternative Dispute Resolution Section
	DFPS Attorneys	DFPS Children’s Commission
	Court-Appointed Attorneys	Children’s Commission Texas Lawyers for Children
	Judges	Children’s Commission
	Court Coordinators	Children’s Commission Office of Court Administration
	Foster Parents	Texas Foster Family Association
Parents	Parents	Courts CPS parent engagement groups DFPS offices County law libraries Texas Legal Services Family Helpline
	Relatives	Courts CPS parent engagement groups DFPS offices County law libraries Texas Legal Services Family Helpline
Youth	Youth in Care age 12 and older	CPS caseworkers

Table 3

⁴ The Child & Family Research Institute (CFRI) was created in 2010 to encompass both training and research related to child and family issues, with a strong emphasis on child-welfare issues. In 2016, CFRI changed its name to the Texas Institute for Child & Family Wellbeing (TXICFW) to encompass the expanded scope of its work. TXICFW connects communities to research, training, and programs that promote the wellbeing and resilience of children, families, and the people who serve them. More information is available at: <https://txicfw.socialwork.utexas.edu/>.

Data Analysis

Quantitative data collected via Qualtrics are summarized in this document in aggregate form using descriptive statistics including means and crosstabs. Because participants were given the option to decline to answer any question, the number of participants who answered a particular question is represented by “n=” followed by the number of participants answering that question.

In addition to closed-ended questions, some questions allowed participants to write open-ended responses that were captured by the survey. These open-ended responses were coded using context analysis. Children’s Commission staff read through all open-ended responses and created categories by grouping responses to each question. Staff then coded all open-ended responses into one of the categories. These responses were used to provide additional context to the quantitative data. Where relevant, direct quotes from survey participants and parent focus group members have been included as a way to explain, support, or personalize the data.

Dr. Monica Faulkner with TXICFW consulted with the UT Austin Institutional Review Board (IRB) for Human Subject Research which determined that this project was not human subject research because the information collected was essentially a program evaluation that would not contribute knowledge to the broader field outside of its intended scope. A Memorandum of Understanding (MOU) was signed thereafter by UT Austin, the Children’s Commission, and DFPS to authorize the Children’s Commission to collect data from youth in foster care who were 12 years old and older.

Study Limitations

Findings from this study should be interpreted within the context of certain study limitations. The primary limitation is that this study cannot be interpreted to be wholly representative of any group of survey participants. In most cases, though the population of a group (such as foster parents) can be estimated, it is not precisely known - and there is no means of knowing - if the participants who responded represent the normative opinions of that group.

Though the survey participants are representative of their stakeholder group, they are not randomly chosen representatives of the whole stakeholder population. They represent those stakeholders who self-selected to give their opinion about court-appointed representation when offered the opportunity. Each population has a basis for self-selecting that the survey cannot account for. For example, court-appointed attorneys’ self-selection may mean responses from that group represent the portion of court-appointed attorneys who are interested in systemic improvements and dedicated to providing quality representation. Since the basis for each population’s self-selection cannot be known, the results must be viewed with that limitation in mind.

Self-selection also means survey results from different populations do not all represent the same “slice” of the population, which is an important limitation when comparing results across populations. For example, the court-appointed attorneys about which other stakeholders responded may not represent the same group of court-appointed attorneys who responded to this survey. Similarly, judges who responded to the survey may not be the same judges about whom foster parents, CASA volunteers, and others have responded.

Despite these limitations, the study findings provide valuable insights into legal representation in Texas CPS cases because they provide a large set of responses from various stakeholders in the child-welfare system who are in a unique position to give feedback about their experiences.

Study Findings

1. Appointment Methods

The Family Code provides for the appointment of attorneys for children and parents in a CPS case but does not mandate a specific method or procedure for such appointment. Texas courts use various approaches including rotating lists of private attorneys, county-run offices of representation, public defender offices, and individual contracts with attorneys executed by counties or local jurisdictions. In some jurisdictions, multiple methods are used concurrently.

In the 2011 Children’s Commission study, 86% of judges reported that their jurisdictions appoint private attorneys either randomly, based on the judge’s experience with particular attorneys, or by rotating through a list of attorneys eligible for court appointment. Three percent reported providing legal representation through contract attorneys, who are paid a flat salary per month, and 12% reported providing legal representation through a hybrid model of appointed private attorneys and a representation office (such as a Public Defender’s Office or an Office of Child Representation).

In 2015, the Texas Legislature enacted Chapter 37 of the Texas Government Code which outlined certain requirements for appointing attorneys ad-litem. Each court is required to establish and maintain a list of attorneys who are qualified to serve as attorneys and guardians ad-litem and who are registered with the court.⁵ Courts are required to sequentially appoint the attorney whose name appears next on the list, but the court has discretion to appoint another attorney if such an appointment is agreed to by all parties or upon a finding of good cause by the court.⁶ The requirements do not apply to appointments of CASA or Domestic Relations Offices.⁷

The 2018 study indicates that appointment methods have not changed significantly since 2011. Although no figure is included, 82% of court coordinators surveyed stated that their jurisdictions appoint attorneys by rotation from a list, and only 8% of mediators, 5% of CASAs and 5% of DFPS attorneys reported that their jurisdictions used any appointment method other than rotation-based appointments from a list of attorneys. Attorneys also reported experiencing little change to their appointments after the enactment of Chapter 37, with 40% reporting no change, 19% reporting fewer appointments, 8% noticing an increase in their appointments, and 33% either unsure of any change or reporting that Chapter 37 did not apply to their county.

⁵ Tex. Gov’t Code § 37.003(a)(1)-(2).

⁶ Tex. Gov’t Code § 37.004(a); (c)-(d).

⁷ Tex. Gov’t Code § 37.002.

1.1 Adequacy of Appointment Method

The study surveyed multiple stakeholder groups regarding the attorney appointment method.

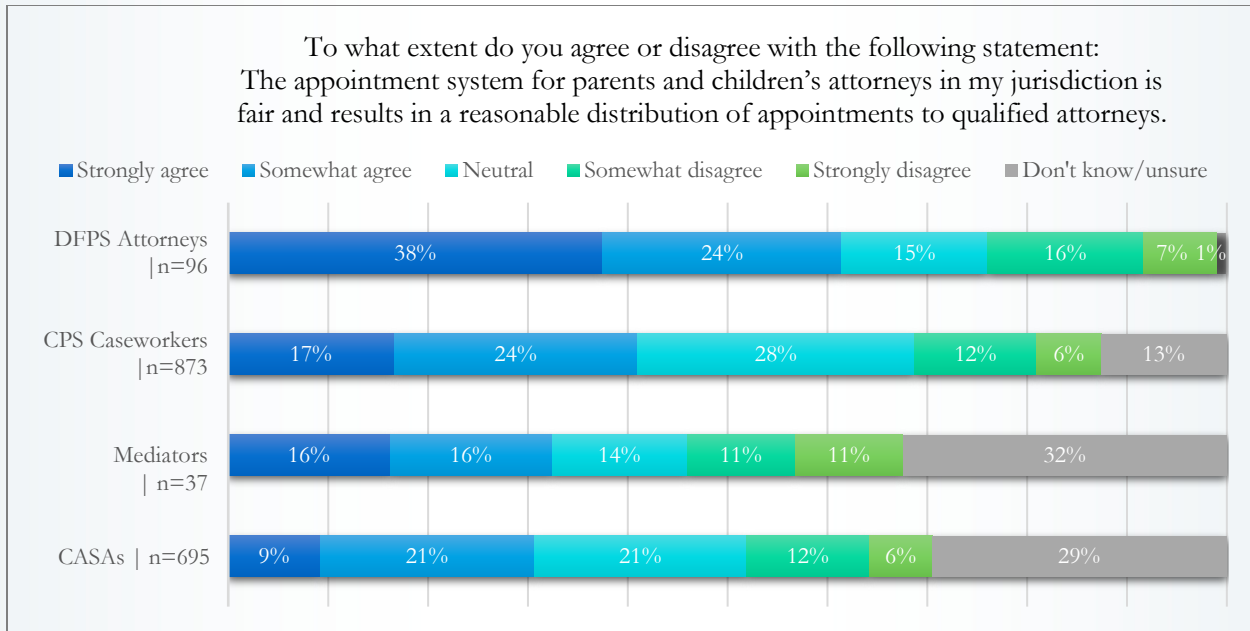


Figure 1

A significant percentage of CASAs, CPS caseworkers, and mediators answered that they do not know if the appointment system is fair. In contrast, attorneys representing DFPS had a stronger opinion that the distribution of appointments is fair.

1.2 Potential Improvements to Appointment Method

The study surveyed court-appointed attorneys' opinions about whether certain aspects of the appointment method need to be changed.

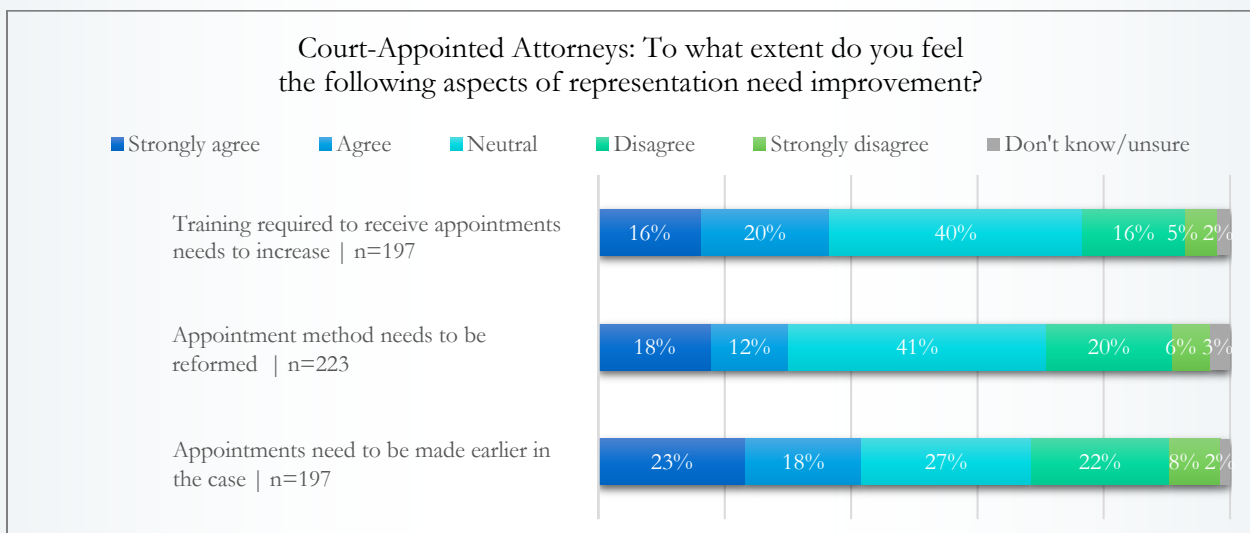


Figure 2

Court-appointed attorneys were largely neutral on whether increasing training requirements or reforming the appointment system would be beneficial. However, 41% had a favorable view of making appointments earlier in the case.

1.3 Appointment Method Independent of Judiciary

In addition to training requirements and earlier appointments, stakeholders were asked to estimate whether an appointment method that is independent of the judiciary would be beneficial to the system or impact the quality of representation in their jurisdiction.

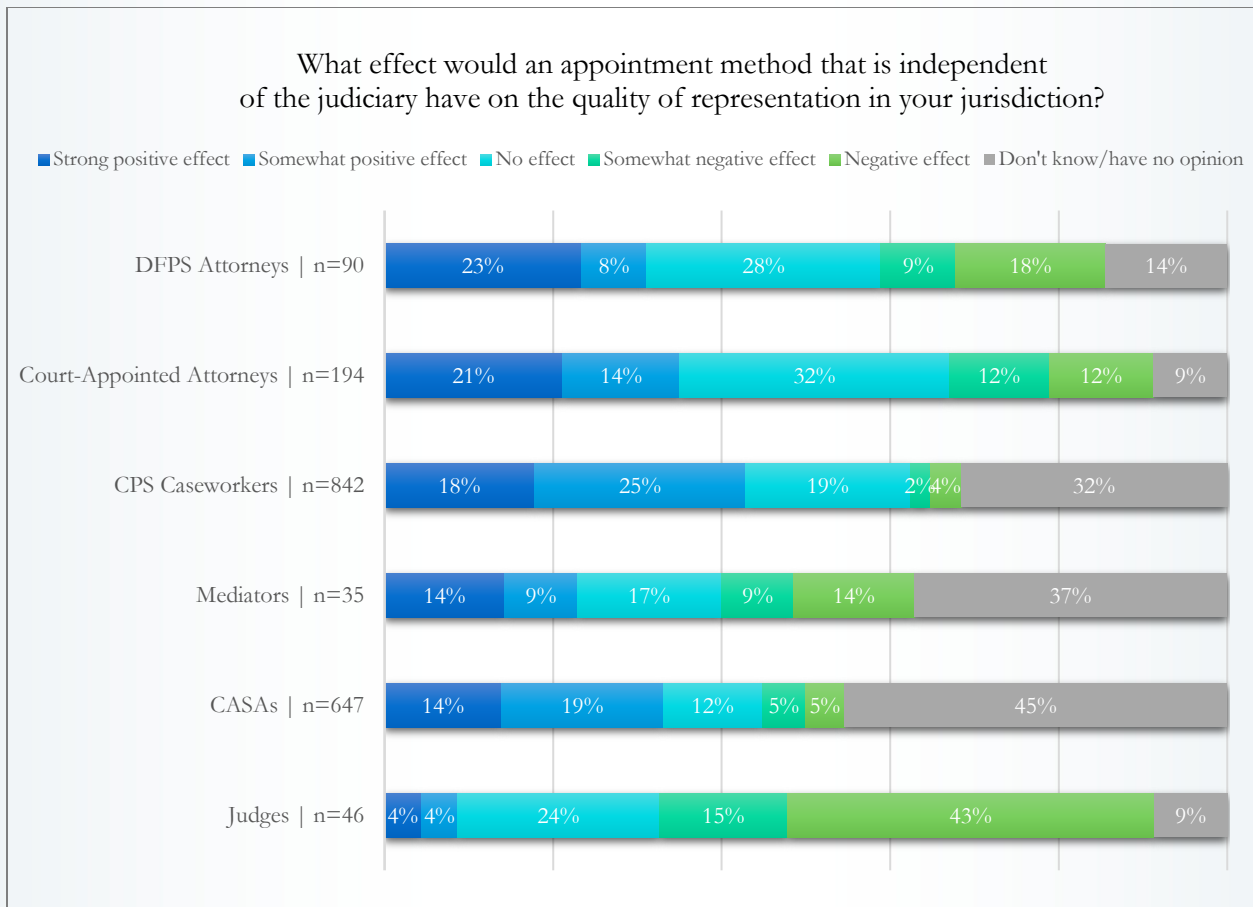


Figure 3

Among judges, 58% indicated an independent system would have a negative effect on the quality of representation. Other stakeholders indicated an appointment method that is more independent of the judiciary could be a positive change.

2. Quantity of Available Attorneys

In the 2011 Children’s Commission study, 73% of judges stated that they had enough attorneys available for appointments in CPS cases. The 2018 Children’s Commission study took a different approach to this question by focusing on the perception of the pool of quality attorneys from non-judicial stakeholders.

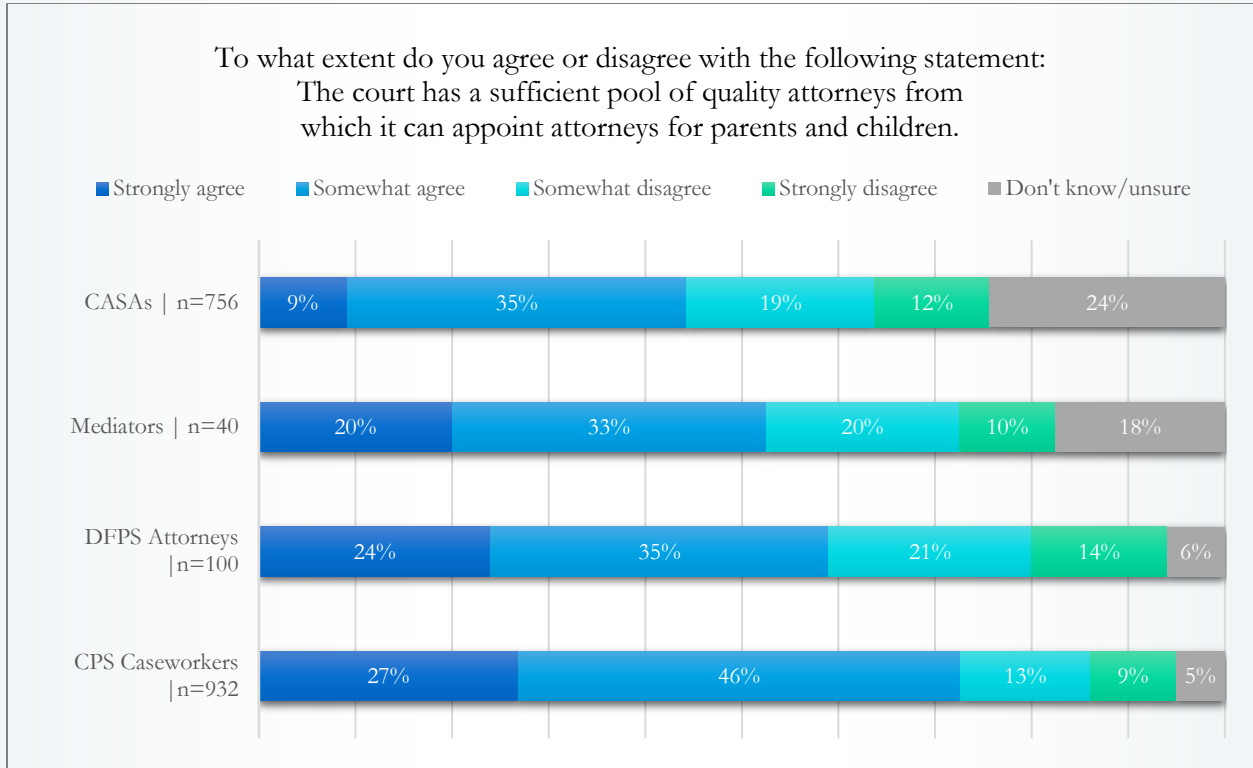


Figure 4

“I have worked with some excellent appointed attorneys for both children and parents.”
– CASA

Overall, stakeholders perceive that the existing pool of quality attorneys is adequate. However, the data are not broken down at a regional or county level so there may be challenges present at the local level that are not represented by Figure 4. It is also important to note that when stakeholders report that there is a sufficient number of attorneys to choose from, this does not mean that all appointments are necessarily assigned to quality attorneys.

3. Timing of Appointment

The Family Code mandates appointment of counsel for the child immediately after filing the petition for conservatorship, but before the full Adversary Hearing.⁸ However, the provision addressing the timing of the appointment of parents’ attorneys is much less certain.

The Family Code mandates appointment of an attorney to represent the interests of an indigent parent of the child who responds in opposition to a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of a conservator of a child.⁹ Unlike the provision relating to the appointment of an attorney for a child, attorney appointments for parents are not mandatory by a certain date. Rather, the Family Code leaves the timing of the appointment up to the court and imposes on the court the duty to admonish each parent of their right to a court-appointed attorney.¹⁰

The timeline of a CPS case provides context to fully understand the importance of the timing of appointing parents’ attorneys.

Day	Event	
0	<i>Ex Parte</i> Emergency Hearing authorizing DFPS to take possession of child (Tex. Fam. Code §§ 262.102, 262.104) The court issues a temporary ex parte order authorizing DFPS’s emergency possession of the child either before (§ 262.102) or shortly after (§ 262.104) DFPS takes possession of the child.	← Required appointment of children’s attorneys. Discretionary appointment of parents’ attorneys.
14	Full Adversary (“14-day”) Hearing (Tex. Fam. Code § 262.201) At this hearing, the parent has the opportunity to contest DFPS’s removal of the child. DFPS has the burden of proving its right to retain possession of a child because of a continuing danger. The court is required to return the child to the parent, unless the court finds sufficient evidence of continuing danger to the child. If the court finds a continuing danger, the court will issue an order for TMC.	Most parents’ attorneys appointed at or sometime after 14-day hearing.
45	DFPS to File Service Plan (Tex. Fam. Code § 263.101) Not later than 45 days after the TMC order, DFPS must file a service plan detailing the necessary actions and responsibilities of the parent to achieve the plan goal.	
60	Status Hearing (Tex. Fam. Code § 263.201) No later than 60 days after the TMC order, the court reviews child’s status and service plan.	
180	First Permanency Hearing (Tex. Fam. Code § 263.304) Court reviews child’s placement and service plan progress.	
300	Second Permanency Hearing (Tex. Fam. Code § 263.304) Court reviews child’s placement and service plan progress.	
300-365	Trial/Final Order (unless dismissal date extended) (Tex. Fam. Code § 263.401) Court holds final trial on the merits regarding termination of parental rights.	

Table 4

⁸ Tex. Fam. Code § 107.012.

⁹ Tex. Fam. Code § 107.013(a)(1).

¹⁰ Tex. Fam. Code §§ 107.013(a-1); 262.201(c).

Importance of Early Appointment of Counsel

The United States Department of Justice (D.O.J.) has recognized that “advance appointment of [a parent’s] attorney is necessary for effective representation.”¹¹ The D.O.J. explained, “The earlier the appointment occurs, the sooner the interests of the parent begin to be represented. Early appointment may enable the case to proceed faster, minimizing the length of separation between parent and child and clearing the way for delivery of needed services earlier rather than later.”¹²

The D.O.J. identified the emergency removal hearing (comparable to the full Adversary Hearing under Texas law) as a critical stage of child abuse and neglect litigation and explained that “[a]ctive and effective representation of the parents is important to ensuring that the emergency removal hearing fulfills its functions.”¹³ The D.O.J. recognized that “[p]arents’ attorneys are important not only before and during the emergency removal hearing but throughout all stages of the litigation and many parents are facing difficult life crises, including the trauma of having their child taken from them.”¹⁴

The D.O.J. also noted, “If the parents’ attorneys are not involved prior to the emergency removal hearing, the court is more likely to place children away from the parents.”¹⁵ The D.O.J. recognized that “effective representation of parents” may help accomplish the following:

- Prevent the unnecessary removal of a child from home by carefully evaluating the level of danger in the home and considering possible safe alternatives to removal.
- Limit the trauma both the child and parents may experience because of their separation by proposing early and frequent parent-child visits (supervised only as necessary).
- Speed casework when a child must be removed, by proposing early evaluations of the parents and the family unit and by making a more complete record, during the hearing, of the facts leading up to the removal of the child.
- Ensure that the child receives services that are needed immediately, such as medical care, psychological evaluation, and trauma counseling.
- Prevent any unnecessary interruption in the child’s education and ensure that educational services for the child will be appropriate.¹⁶

¹¹ Office of Juvenile Justice and Delinquency Prevention, U.S. Dep’t of Justice. (2008). *Court Performance Measures In Child Abuse and Neglect Cases: Technical Guide* at 107 (D.O.J. Technical Guide). Available at: <http://www.ncjrs.gov/pdffiles1/ojjdp/223570.pdf>.

¹² *Id.* at 104.

¹³ *Id.* at 101. *See also* Tex. Fam. Code § 262.201.

¹⁴ *Id.* at 102.

¹⁵ *Id.*

¹⁶ *Id.* at 101–102.

3.1 Early Appointment of Parent Attorneys

In the 2011 Children’s Commission study, judges were asked when the appointment of parents’ attorneys usually occurred; 21% responded that this occurred prior to the Adversary Hearing, 30% at the Adversary Hearing, 17% prior to the Status Hearing, and 12% prior to the first Permanency Hearing.

In 2015, Section 107.0141 was added to the Family Code to allow, but not require, judges to appoint an attorney for a limited purpose prior to the Adversary Hearing. An attorney appointed for a parent under that section has all the powers and duties of an attorney appointed under Section 107.0131. In addition, an attorney appointed for a parent has specific duties to locate and identify the parent, and if he or she is located, to inform him or her of the right to counsel, to assist in making claims of indigence, and to help the parent prepare for the Adversary Hearing. Since such appointments are optional, appointment practices across the counties are inconsistent thus not all parents are able to access this type of representation from the beginning of the case.

In the 2018 Children’s Commission study, the same question regarding the timing of appointment was posed to DFPS and court-appointed attorneys.

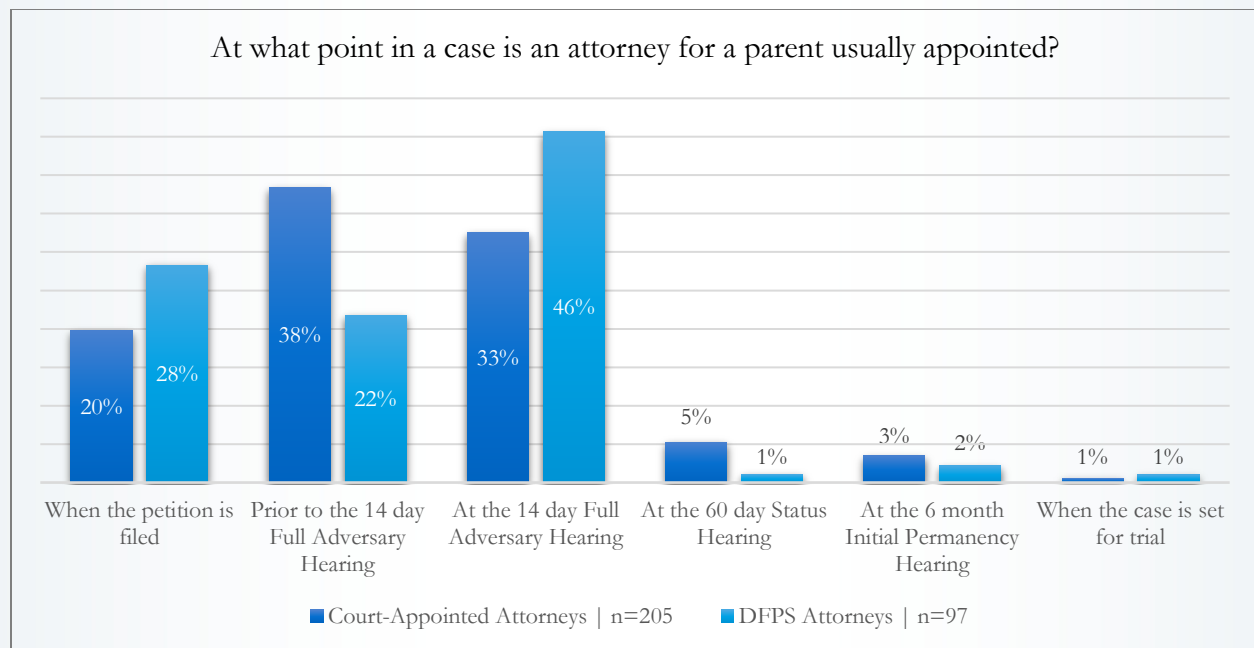


Figure 5

It appears from the 2018 responses that the trend toward early court appointment of parents’ attorneys is increasing with 58% of court-appointed attorneys and 50% of DFPS attorneys reporting that appointments are being made prior to the Adversary Hearing, in comparison to the 20% reported by judges in 2011 Children’s Commission study. Appointments after the Adversary Hearing made up 33% of appointments reported from judges in the prior study. In the 2018 study, court-appointed attorneys and DFPS attorneys reported at 9% and 3%, respectively, that parent attorney appointments were being made after the Adversary Hearing. These responses indicate that the majority of appointments of parents’ attorneys are now made before or at the Adversary Hearing.

However, the 2018 study reports that over a third of parents are appointed an attorney at the Adversary Hearing. This timing means that parents arrive at the most critical hearing in the case where the court will adjudicate the removal of their children without having the benefit of legal counsel to help them prepare.

“I didn’t have an attorney at that time. My kids had an attorney, CPS had an attorney. Everyone seemed to have an attorney except for me. I didn’t understand why I didn’t get any representation.”

- Focus Group Parent

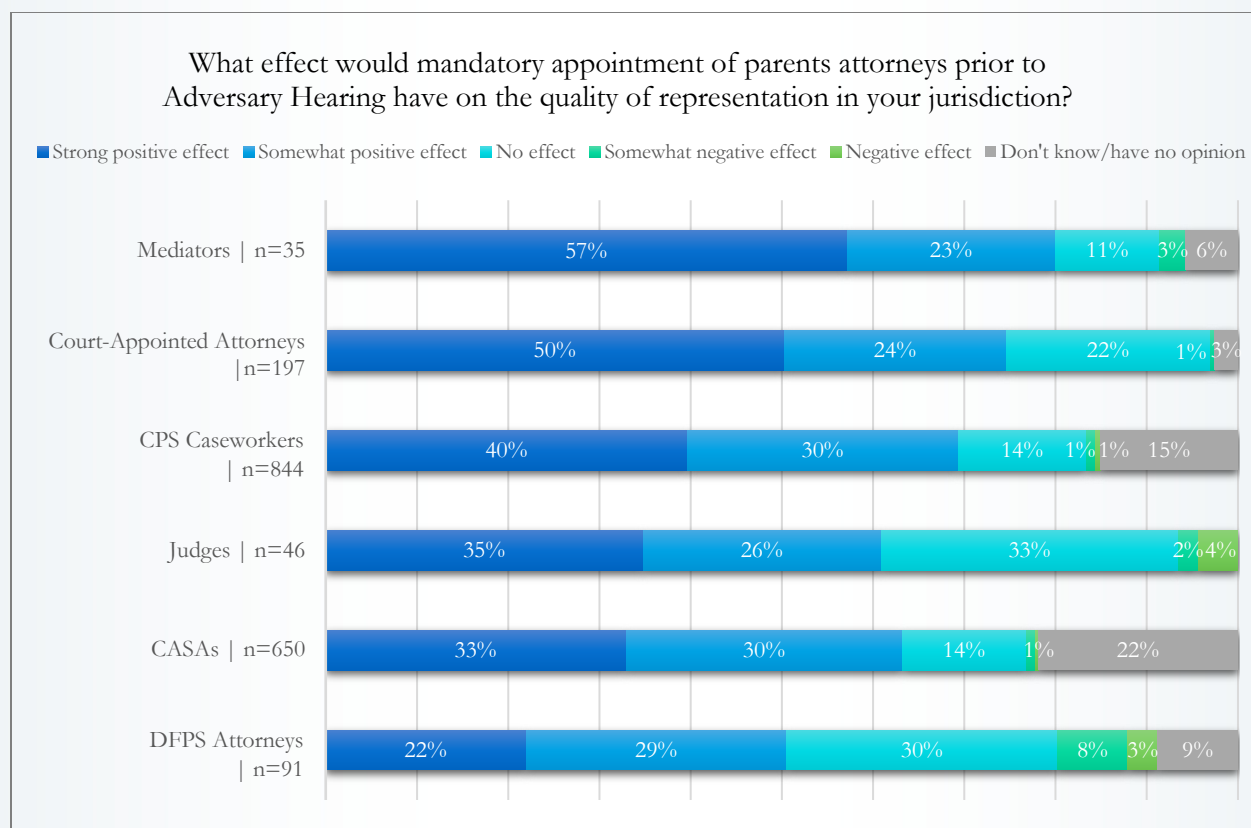


Figure 6

The data illustrate that mandatory appointment of parents’ attorneys prior to the Adversary Hearing has broad support across all the stakeholders surveyed. It stands out that the strongest support given to early appointment was by mediators. Mediators usually only encounter a case near its end, so the intensity of their support for appointment at the beginning of a case perhaps indicates their belief that the outcome of the case might have been different if all parties had the benefit of legal counsel from the beginning.

“Some of the attorneys are outstanding. The impact of those who are not zealous advocates is immeasurably harmful to children and families.”

- Mediator

The survey also asked DFPS attorneys practicing in jurisdictions that appoint parents' attorneys prior to the Adversary Hearing how early appointment generally affects the case.

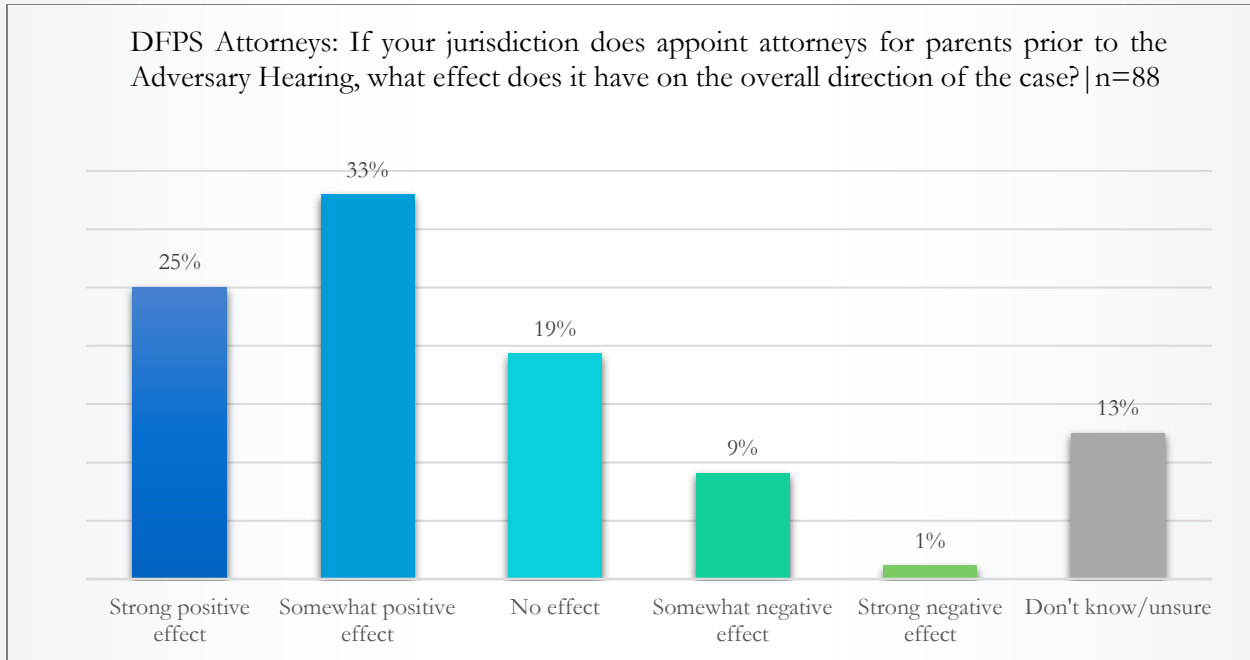


Figure 7

DFPS attorneys who reported that their jurisdiction implemented the practice of early appointment for parents' attorneys rated its positive effect (25% strong positive, 33% positive) higher than DFPS attorneys generally (22% strong positive, 29% positive). See Figure 6 for comparison.

“In the counties where parents are automatically appointed attorneys before adversary, the entire case goes more smoothly and there are fewer cases files [sic] that really shouldn't be.”

- DFPS Attorney

4. Qualifications and Training

The Family Code requires that an attorney ad-litem appointed for either a parent or child must complete at least three hours of Continuing Legal Education (CLE) relating to the representation of children or representation of parents respectively.¹⁷ The type of training is specific to the type of appointment, meaning that an attorney who receives appointments for both parents and children must have at least six hours of relevant training as soon as practicable, and must acquire an additional six hours annually.¹⁸

Currently, there is no statewide tracking of the CLE training requirement, and enforcement thereof is left solely to the county or to the judge making the appointments. Counties can set their own number of required training hours in addition to those required by the Family Code. Although not included as a figure, 74% of court coordinators surveyed reported that their jurisdiction does require that attorneys complete training specific to child-welfare law before they can become eligible for the appointment list.

4.1 Qualifications for Appointment

The study surveyed court-appointed attorneys and court coordinators about the training required in their jurisdictions to receive court appointments.

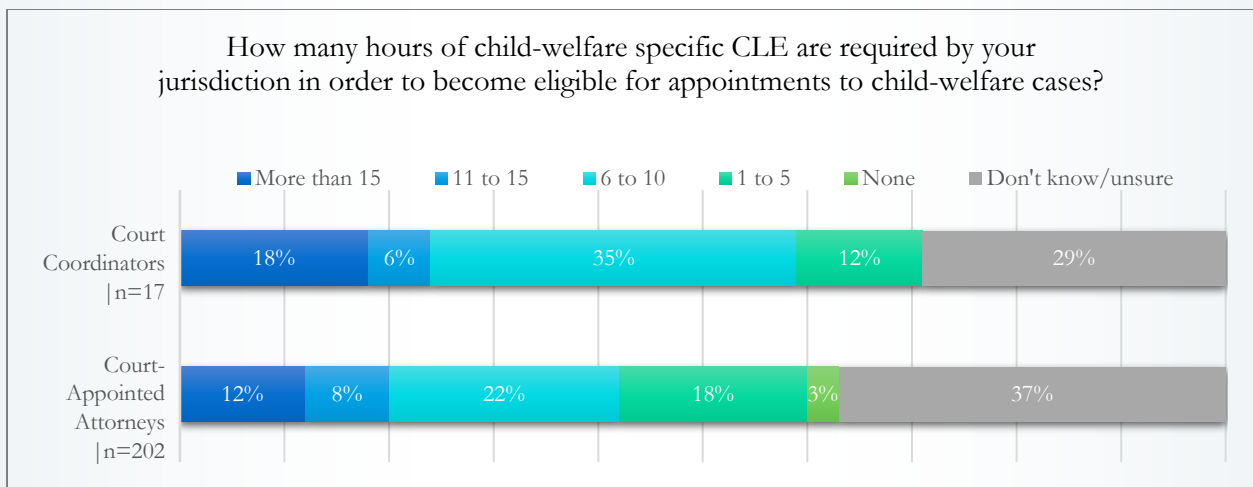


Figure 8

While 42% of court-appointed attorneys and 71% of court coordinators reported the required training hours in their jurisdiction are equal to or above the amount required by the Family Code, a minority reported a number lower than the Family Code requires. About a third of the survey participants did not know or were unsure of the number of hours required to become eligible for appointments in their jurisdictions. This response may indicate a need for additional education and dissemination of training requirements and opportunities.

¹⁷ Tex. Fam. Code §§ 107.004(b-1); 107.0131(a)(1)(J). *See also* Tex. Fam. Code § 107.004(b).

¹⁸ Tex. Fam. Code §§ 107.004(b-1); 107.0131(c).

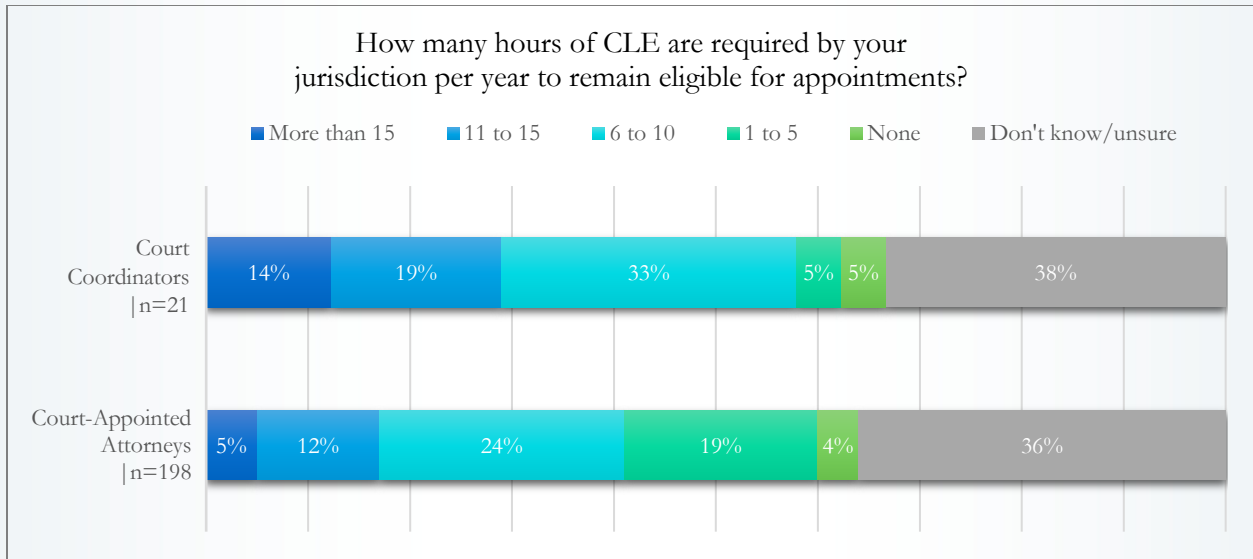


Figure 9

A majority of both court-appointed attorneys and court coordinators reported that their jurisdictions require some number of training hours be completed annually and most reported an amount of training hours similar to that required to remain eligible for appointments.

The study also surveyed court-appointed attorneys about whether their jurisdiction monitors their required training hours.

Court-Appointed Attorneys: Does your jurisdiction monitor your training hours? | n=196

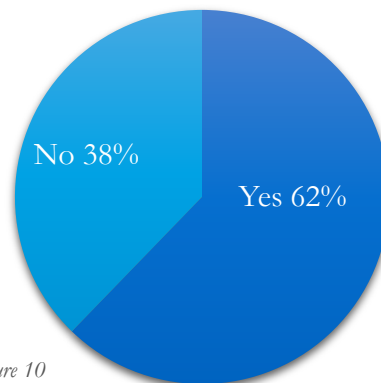


Figure 10

Among court-appointed attorneys, 38% reported that training hours are not monitored in their jurisdiction. Similarly, 37% of court-appointed attorneys reported not knowing the number of required training hours in their jurisdiction. *See Figure 8 for comparison.*

4.2 Standards of Practice

Though attorneys for parents and children are required by the Family Code to become familiar with the ABA standards of practice for attorneys who represent parents and children in abuse and neglect cases,¹⁹ Texas does not require compliance with the ABA standards as a condition of appointment, nor has Texas adopted its own standards of practice for court-appointed attorneys. The study surveyed stakeholders regarding the effect that the lack of enforceable standards of practice has on the legal representation of parents and children.

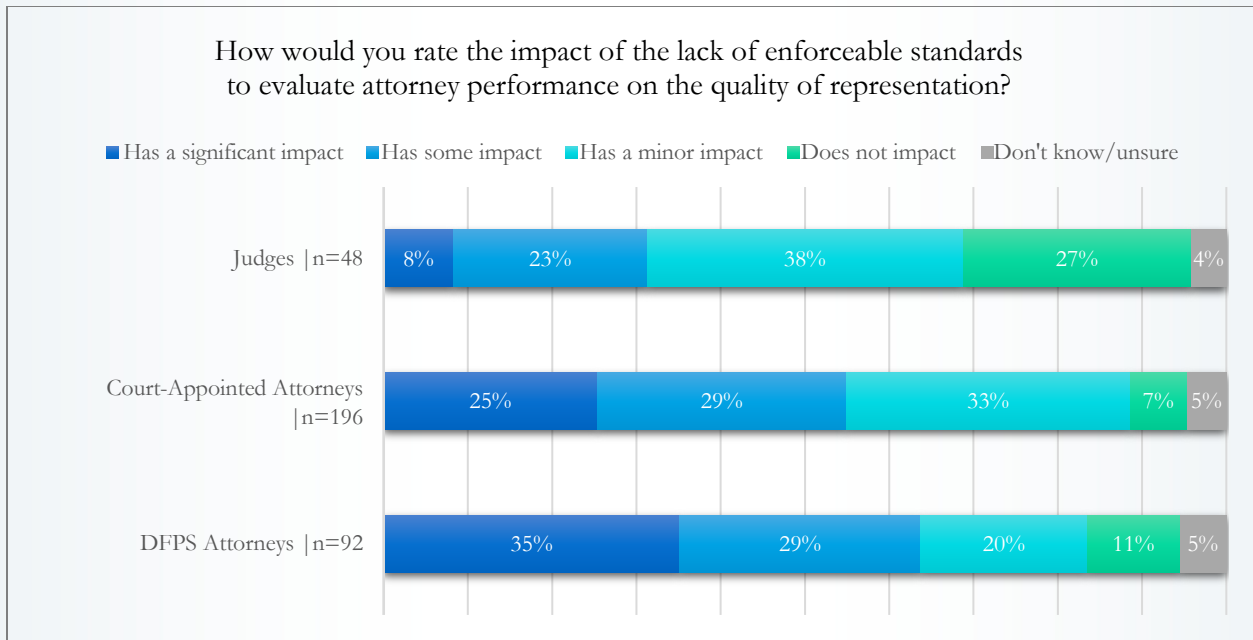


Figure 11

A majority of judges responded that the fact that Texas has not adopted standards of practice for representation is of minor or no significance, yet a majority of both court-appointed attorneys and DFPS attorneys indicated that the lack of standards has a significant impact or some impact on the quality of representation.

¹⁹ Tex. Fam. Code §§ 107.004(a)(3); 107.0131(a)(1)(I).

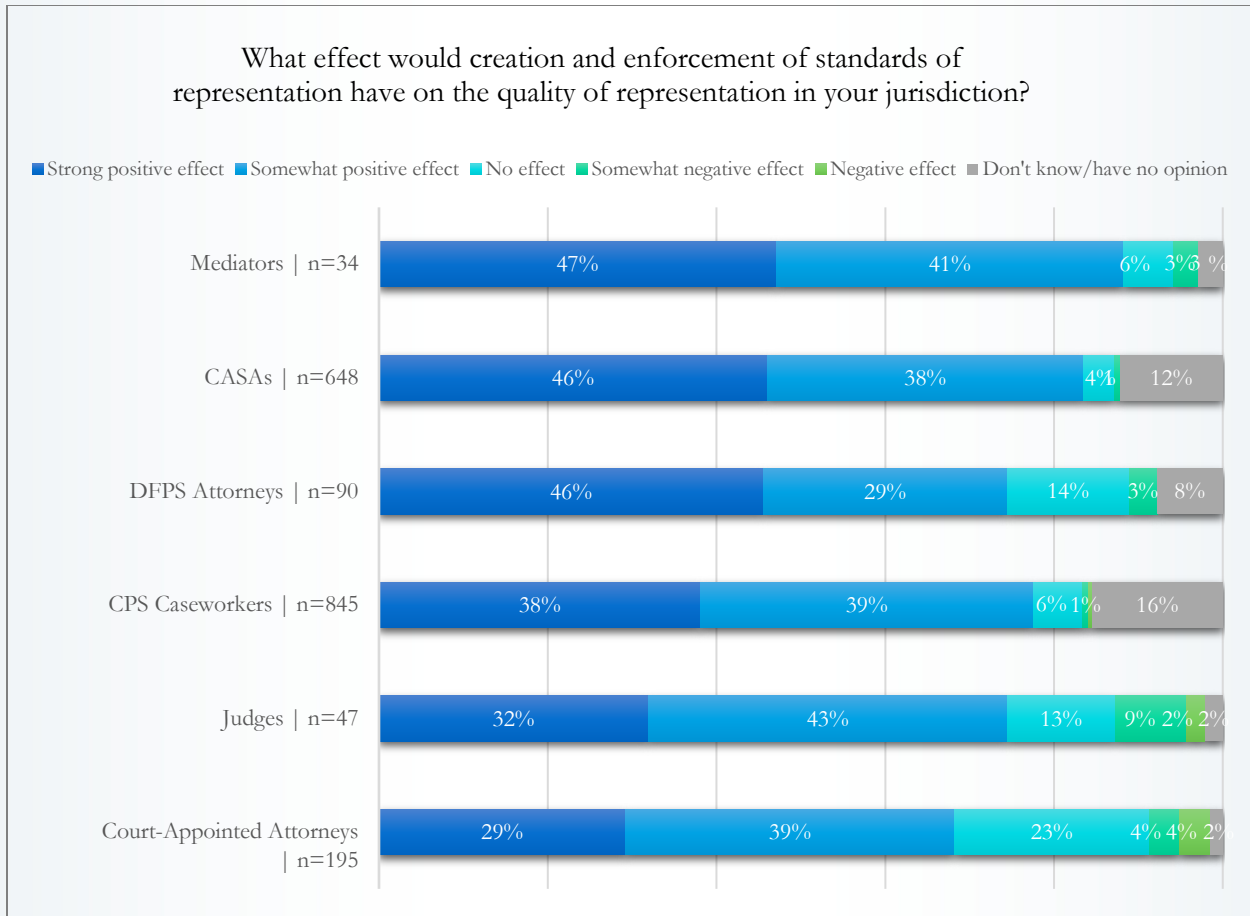


Figure 12

Across stakeholder groups, participants demonstrated a high level of confidence that the creation and enforcement of standards would improve the quality of representation. This includes 70% of court-appointed attorneys indicating that standards would have a positive effect.

“Good attorneys on the court-appointed list work very hard for their clients for little compensation and with little recognition. I do believe that higher standards for the court-appointed list and greater training are necessary. However, adequate compensation will have to be instituted to make it financially worth complying with those requirements.”

- Court-Appointed Attorney

4.3 Access to Training

The Family Code mandates that court-appointed attorney training be available at “low cost” to “persons throughout this state, including on the internet provided through the State Bar of Texas.”²⁰ Since the time of the 2011 Children’s Commission study, the amount of relevant CLE has increased substantially. As of July 2018, there were 17 courses specific to child-welfare law available on the Texas Bar CLE website totaling 37.25 CLE hours, with ten courses focused on child representation and seven focused on parent representation.²¹ Also, the State Bar of Texas generously offers CPS-related CLE at a discounted rate to court-appointed attorneys. This is particularly important in light of the responses from court coordinators regarding training opportunities in their jurisdiction.

Court Coordinators: Does the court provide training opportunities to attorneys? | n=29

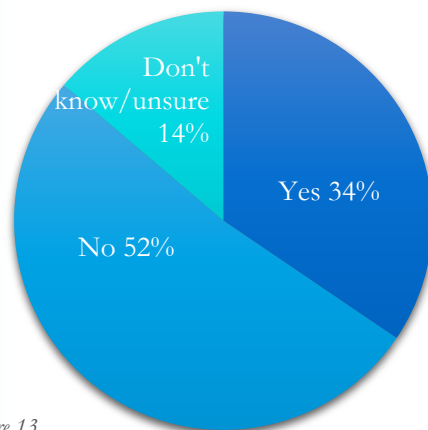


Figure 13

Fifty-two percent of court coordinators reported that their jurisdictions do not provide training opportunities to attorneys. The survey also asked court-appointed attorneys about whether their jurisdiction needed to improve specific aspects of training.

²⁰ Tex. Fam. Code §§ 107.004(c)(1); 107.0131(b)(1).

²¹ Available at:

<http://www.texasbarcle.com/CLE/OCSEARCHRESULTS.ASP?sCallingPage=OCSEARCH2.ASP#CPS>.

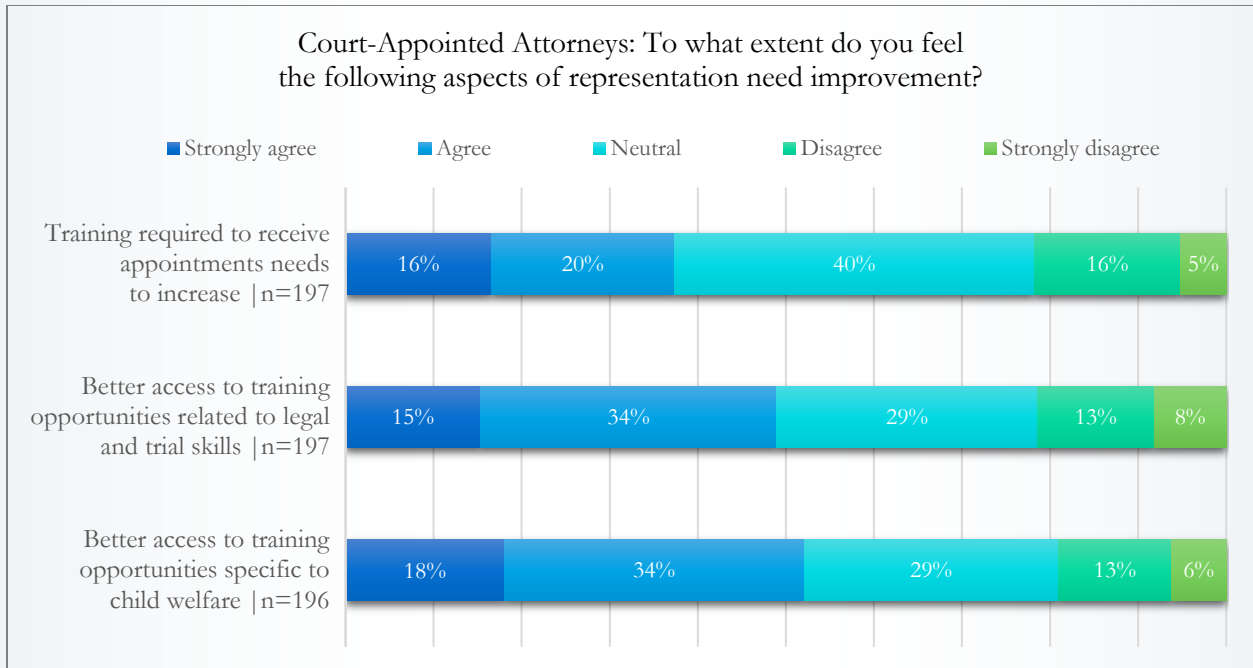


Figure 14

Court-appointed attorneys were mostly neutral on increasing the training requirements to receive appointments. However, many agreed that access to legal and trial skills, as well as training specific to child welfare, would be an improvement.

The survey also asked judges and DFPS attorneys whether the lack of access to high-quality training impacts the quality of representation in their jurisdictions.

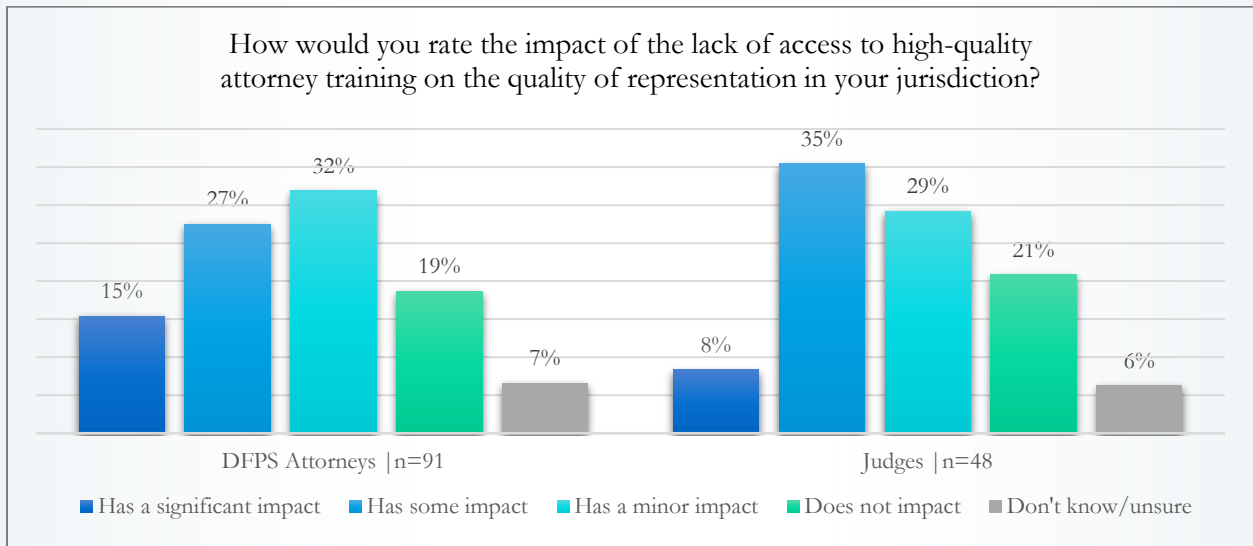


Figure 15

Overall, the DFPS attorneys and judges surveyed did not perceive the inability to access high-quality training in their jurisdiction as a significant barrier to quality representation.

4.4 Potential Improvements to Attorney Training

The study asked stakeholders how changes to court-appointed attorney training would impact the quality of representation.

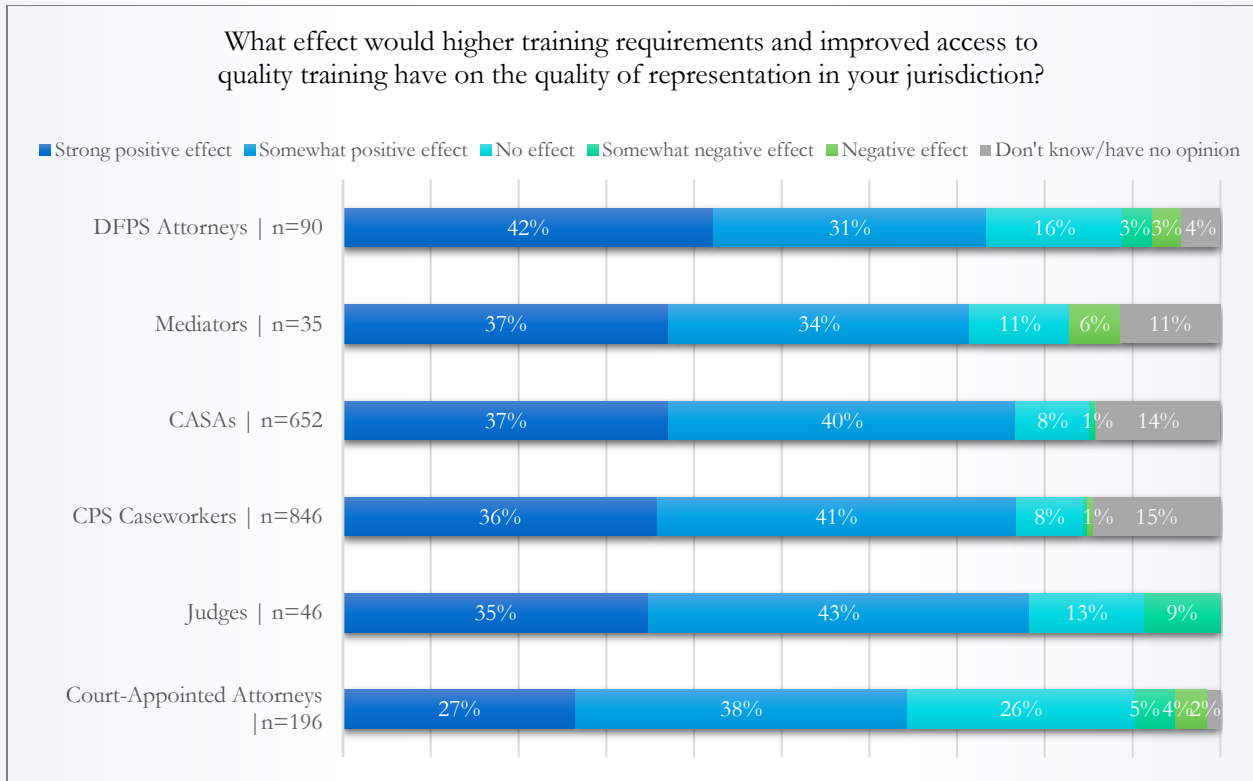


Figure 16

Increased training requirements and training access had significant support across all stakeholders surveys.

5. Quality Indicators

To assess the quality of representation that court-appointed attorneys provide to Texas parents and children, the study surveyed stakeholders about several different indicators of quality representation. The questions were designed to measure court-appointed attorneys' level of experience, their preparation at various stages of the case, signs of active representation, additional supports available to them in order to do their job, and their compliance with their statutory and ethical duties.

5.1 Level of Experience

The study measured the reported experience level of court-appointed attorneys and compared it to the reported experience of DFPS attorneys.

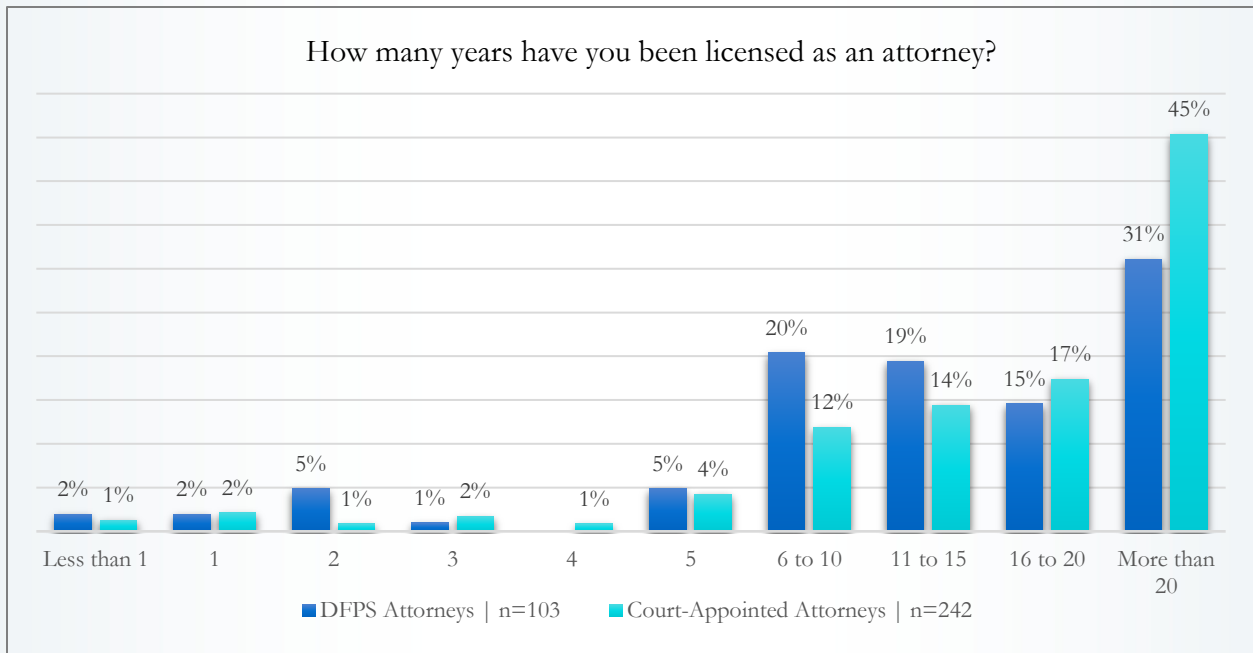


Figure 17

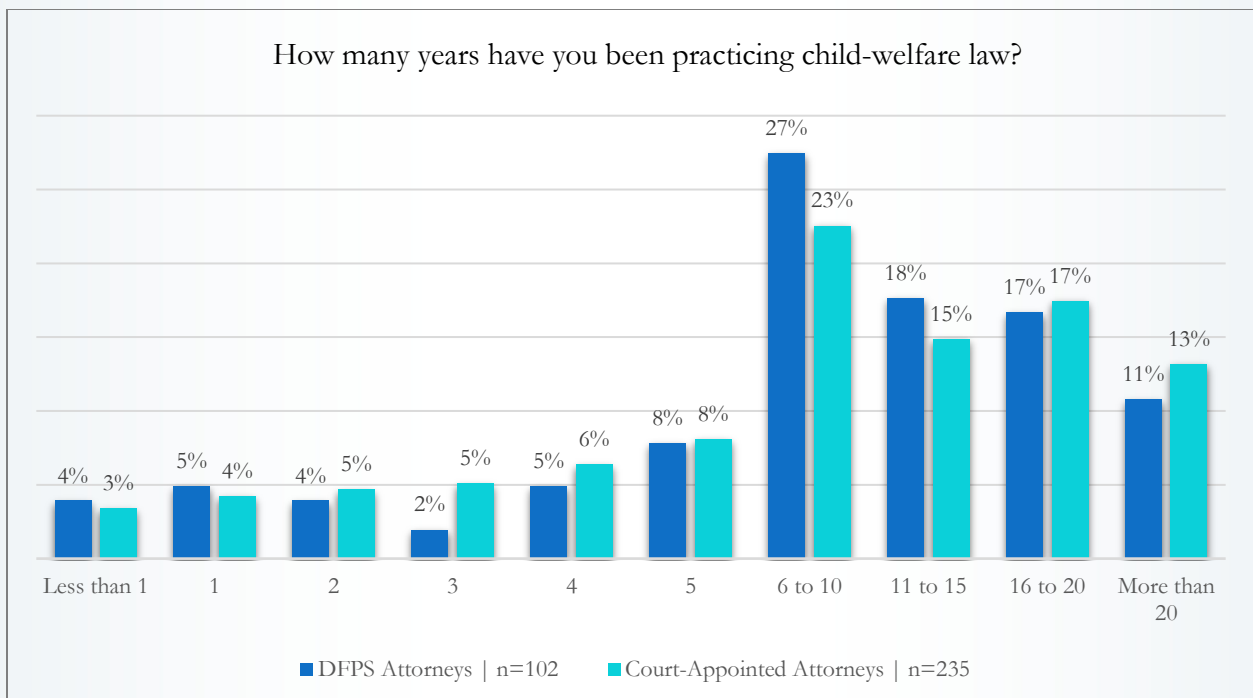


Figure 18

A majority of attorneys who responded to the survey have at least six years of experience practicing child-welfare law. Also, attorneys representing DFPS and those who represent children and parents are roughly equal in years of experience.

5.2 Attorney Preparation

The study surveyed CASAs, DFPS attorneys, and CPS caseworkers to assess how prepared court-appointed attorneys appeared at different stages of a CPS case. They were asked to rate parents' attorneys and children's attorneys separately. Figures 19-22 represent the cumulative responses from each of the three stakeholder groups to present an overall impression of the level of preparedness of both parents' attorneys and children's attorneys.²²

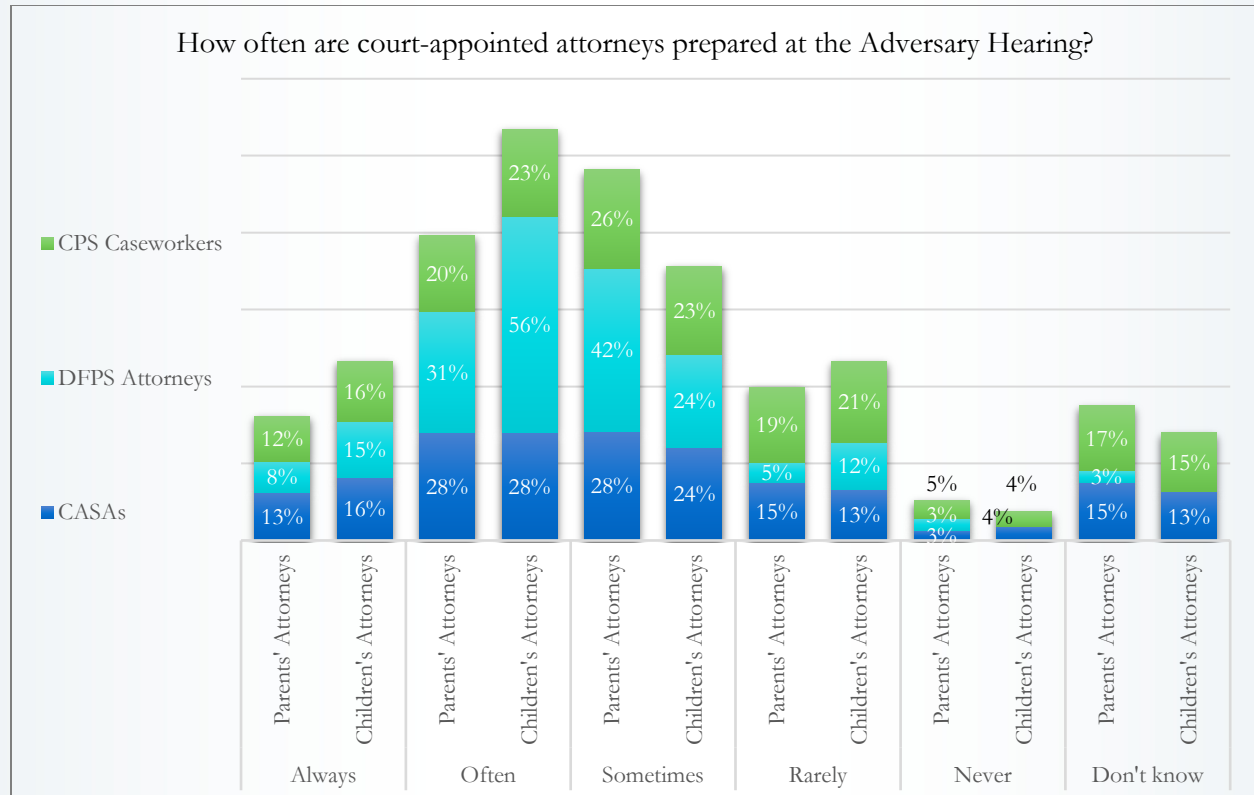


Figure 19

The Adversary Hearing occurs 14 days after a child has been removed from a parent and its purpose is to determine whether the child will be returned to their parent(s) or remain in the care of DFPS.

Most participants indicated that both parents' and children's attorneys were always or often prepared for the Adversary Hearing. Compared to children's attorneys, participants indicated that it was less common for parents' attorneys to be always or often prepared for this critical hearing. Serving as opposing counsel, 42% of DFPS attorneys responded that parents' attorneys are only sometimes prepared.

²² For Figures 19-22, the "n" values for parents' attorneys were: CASAs n=716, DFPS attorneys n=99, CPS caseworkers n=895, and the "n" values for children's attorneys were: CASAs n=710, DFPS attorneys n=96, CPS caseworkers n=891.

Children’s attorneys must be appointed when DFPS files its petition and thus they have several days to prepare for the Adversary Hearing. Parents’ attorneys are not required to be appointed prior to the Adversary Hearing, and the survey results indicate many jurisdictions do not appoint attorneys for parents until the Adversary Hearing. Therefore, parents’ attorneys may not have sufficient time to prepare prior to the hearing. This difference in the timing of the appointment could explain the observations about preparedness.

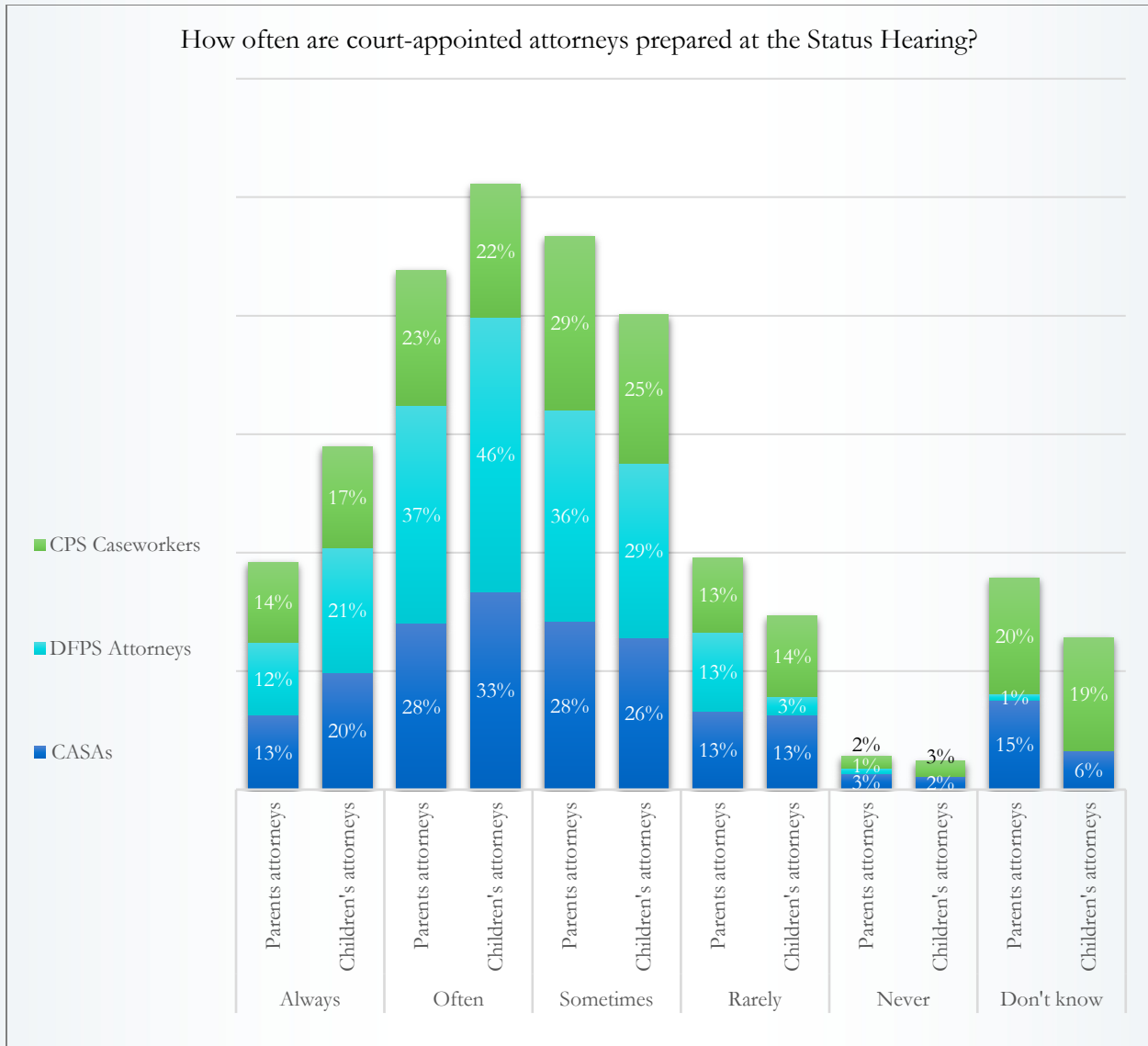


Figure 20

The Status Hearing occurs 60 days after the Adversary Hearing, and its purpose is for the court to determine whether the service plan, which the parents must complete in order to address the reasons for a child’s removal to foster care, was developed in consultation with the parent and is specifically tailored to meet the family’s needs. Study participants indicated the number of attorneys who are always or often prepared at the Status Hearing increased from the Adversary Hearing, but with parents’ attorneys remaining slightly less prepared than children’s attorneys.

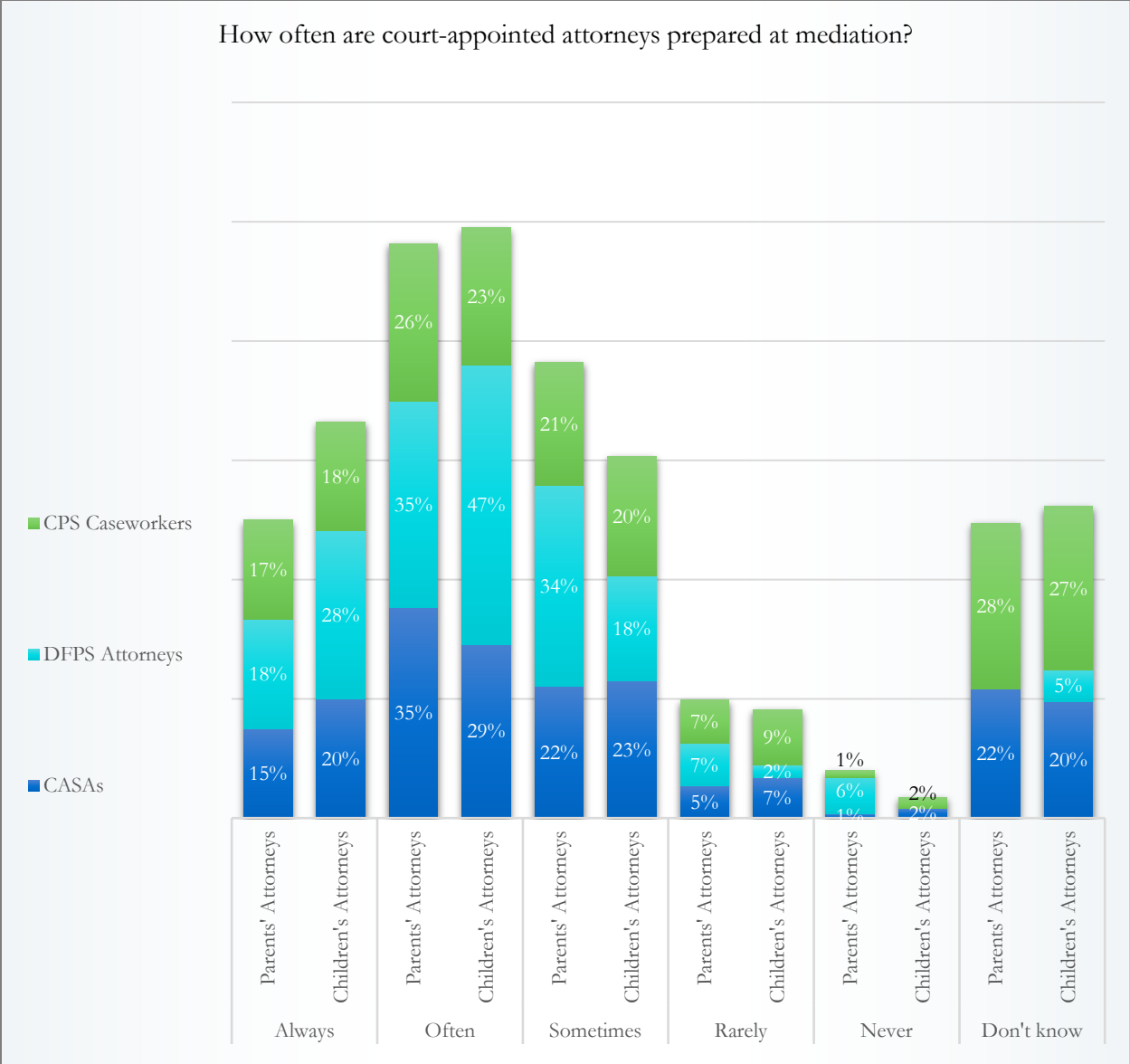


Figure 21

Mediation is used by many jurisdictions and usually occurs near the end of the case to attempt to resolve outstanding issues in the case without the need for trial. At this stage, survey participants indicated an increase in attorneys who are always or often prepared, and a significant decrease in attorneys who are rarely prepared. There is also a high number of participants reporting that they do not know. One possible explanation is the mediation practice of caucusing parties in separate rooms during much of the mediation, giving stakeholders diminished perspective on attorney preparedness. Additionally, mediation in CPS cases is not used in every jurisdiction.

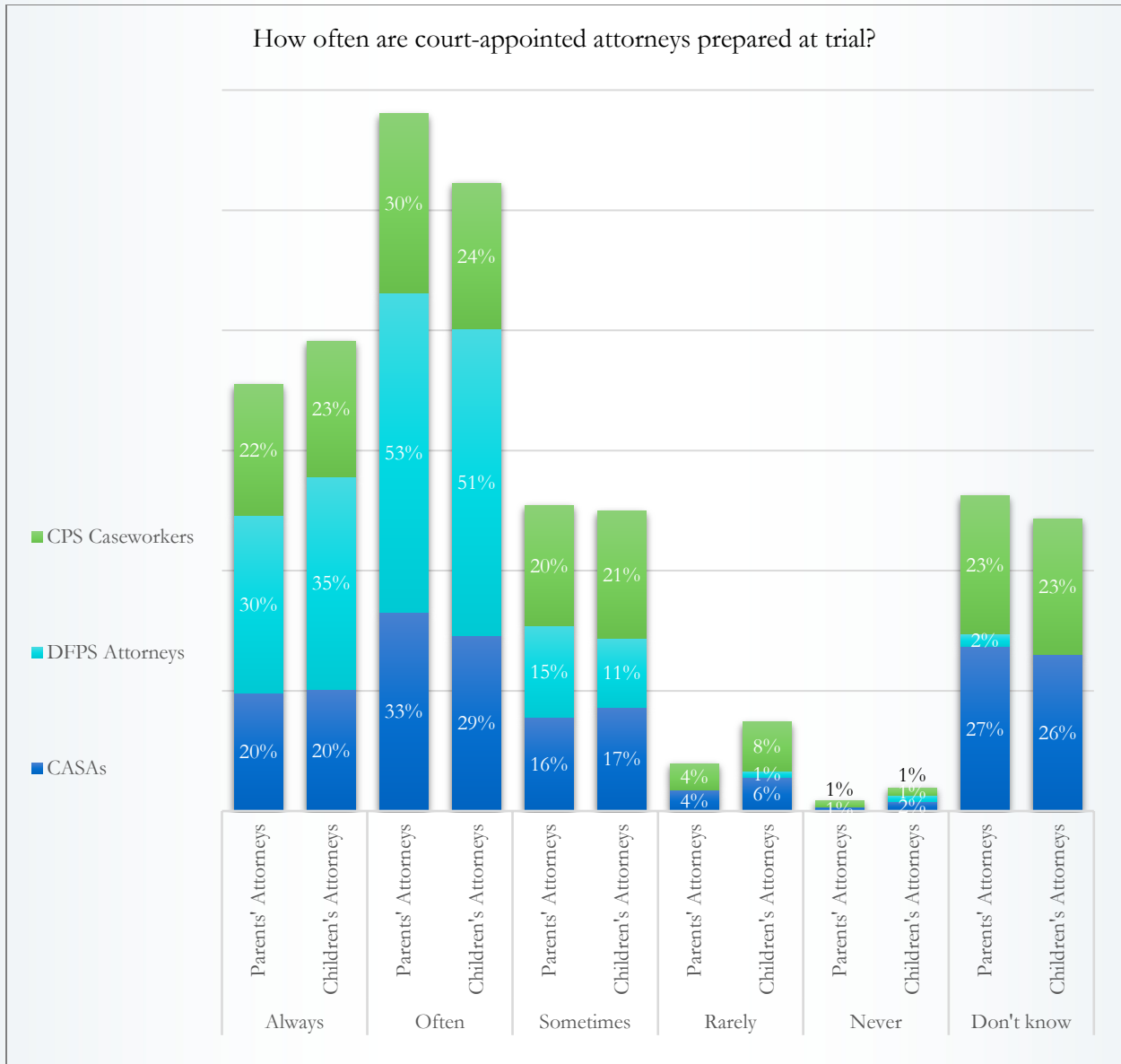


Figure 22

A trial can occur at the end of the case when the parties cannot come to an agreement. In general, parents' attorneys must present a case in chief at trial, compared to the child's attorney, who often has a more auxiliary role. In contrast to the other stages of the case, the data reflect a perception that more parents' attorneys are prepared at trial compared to children's attorneys. There is also a significant drop in attorneys who are only sometimes prepared and those who are never or rarely prepared at the time of the final trial. Overall, there is a clear trend indicating that court-appointed attorneys' preparedness increases as the case goes forward, and this trend is most visible amongst parents' attorneys.

5.3 Active Representation

Court-appointed attorneys were asked questions designed to measure the attorneys' active representation of clients. For example, the study surveyed court-appointed attorneys to estimate the number and types of hearings requested on behalf of their clients. Since these hearings are not part of the regular statutorily-mandated hearing schedule, setting such hearings requires initiative on the part of the attorney and may indicate active representation of a client.

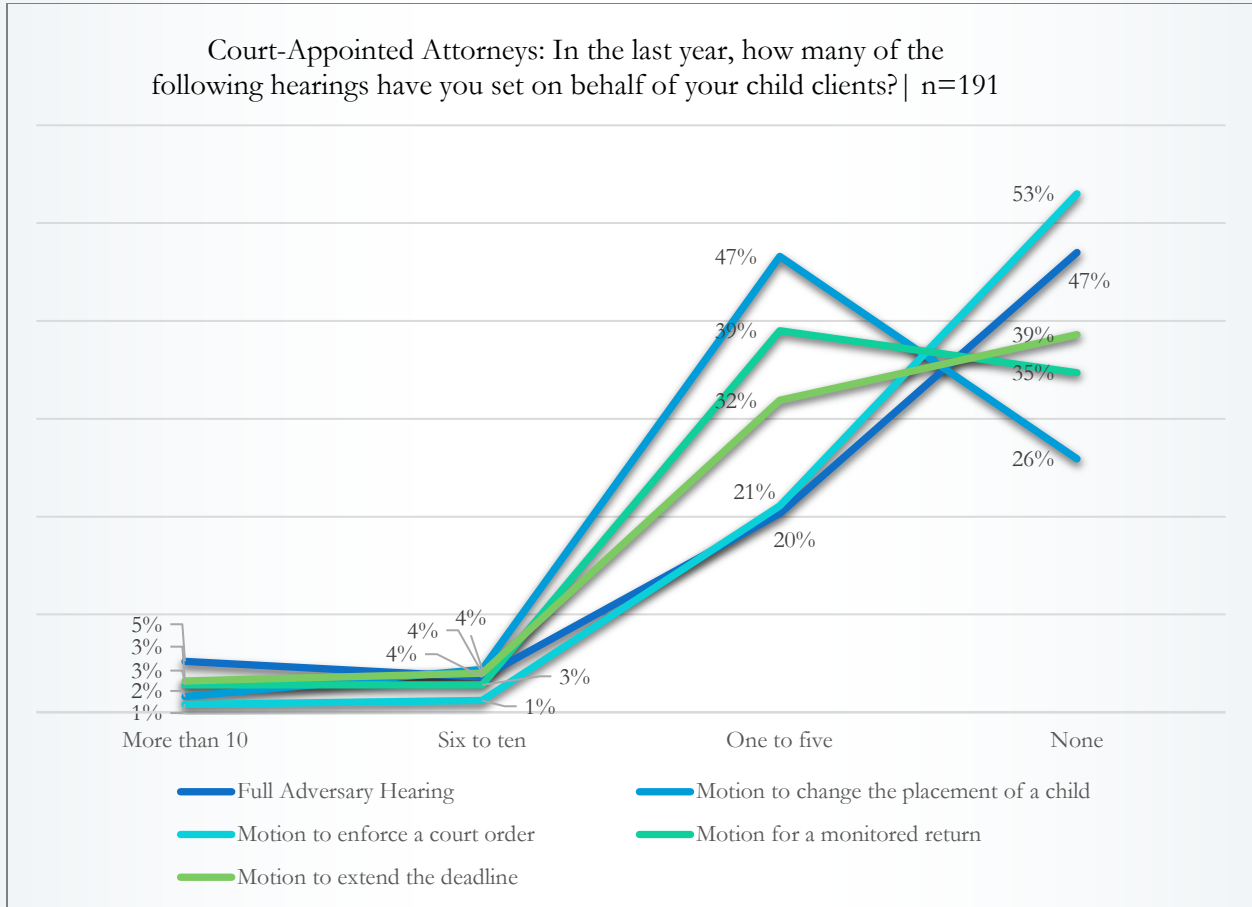


Figure 23

The number and type of motion hearings typically set were very similar between parents' and children's attorneys, and attorneys were likely to set either a small number of hearings (1-5) or none at all. Compared to parents' attorneys, children's attorneys set fewer hearings, and if they did set a hearing, it was most frequently to advocate for a change in placement for their client.

Court-Appointed Attorneys: In the last year, how many of the following hearings have you set on behalf of your parent clients? | n=192

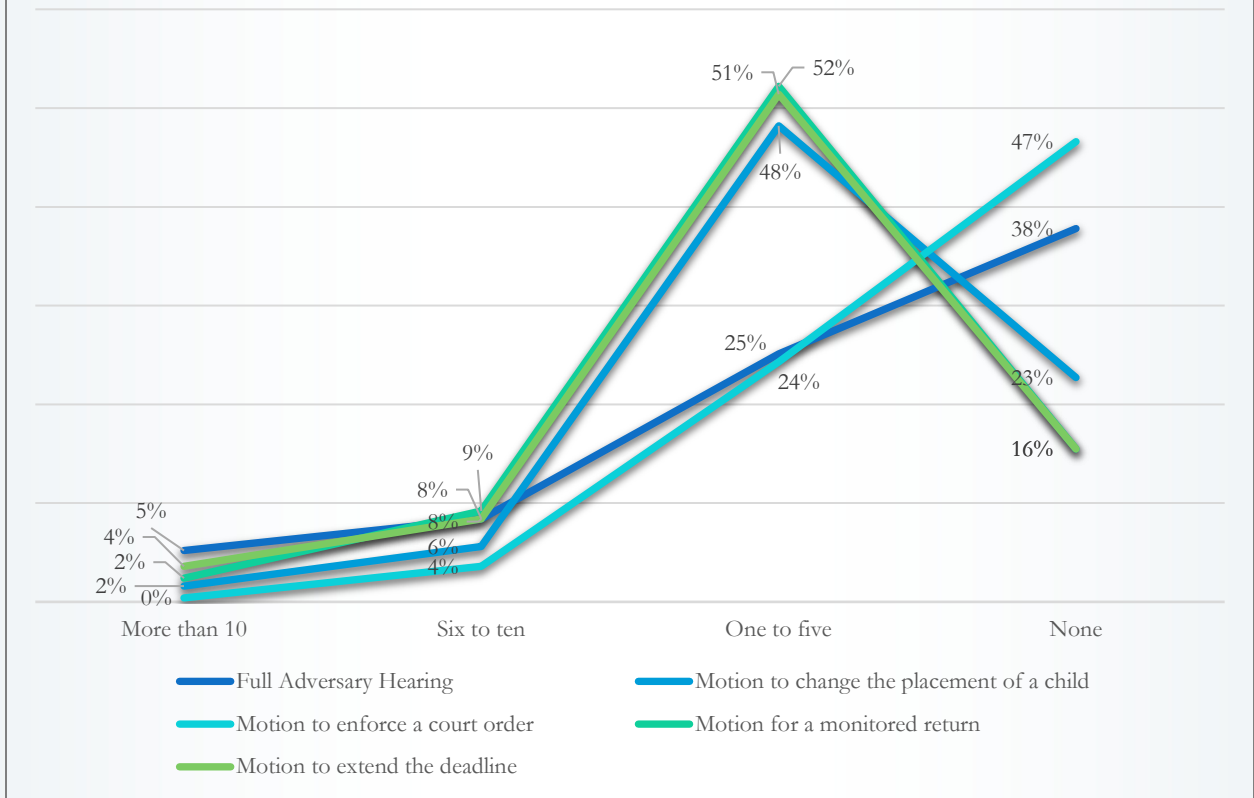


Figure 24

Both parents' and children's attorneys reported setting more hearings towards the end of the case (setting a motion to extend the deadline or filing a motion for a Monitored Return) than motions filed at the beginning of a case (motion for a Full Adversary Hearing) or hearings that could be requested at any point in the case (motion to enforce a court order). Combined with the results in Figures 19-22, Figures 23-24 appear to indicate that active representation is more likely to occur toward the end of the case rather than the beginning.

The study also surveyed other stakeholders about their perception of active representation by attorneys for parents and children.

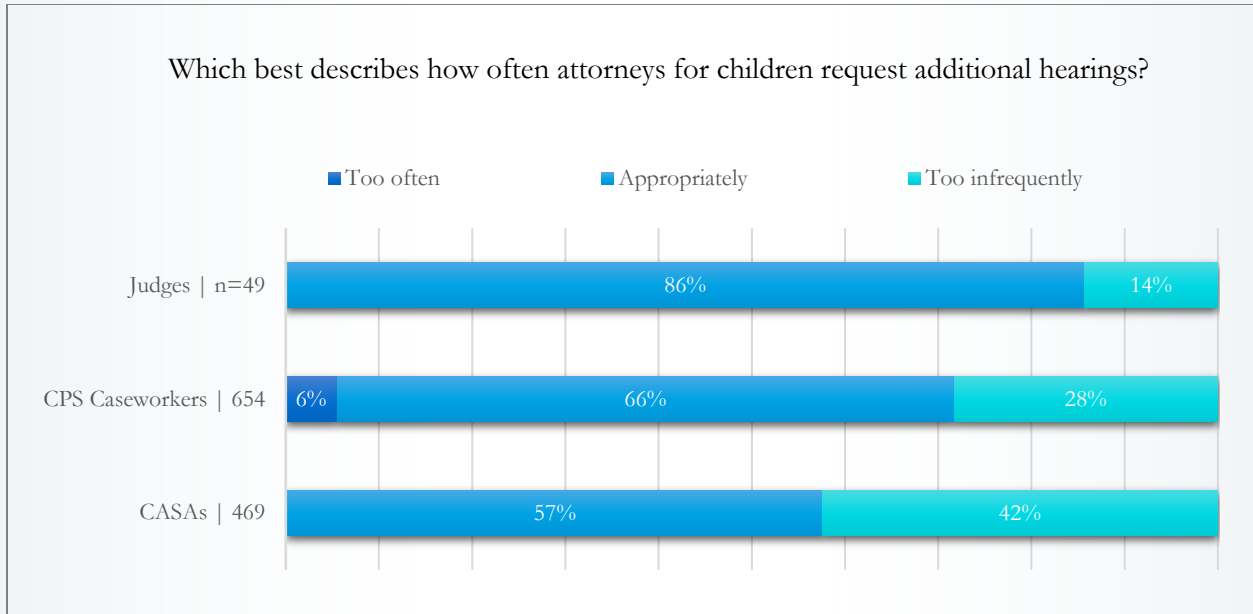


Figure 25

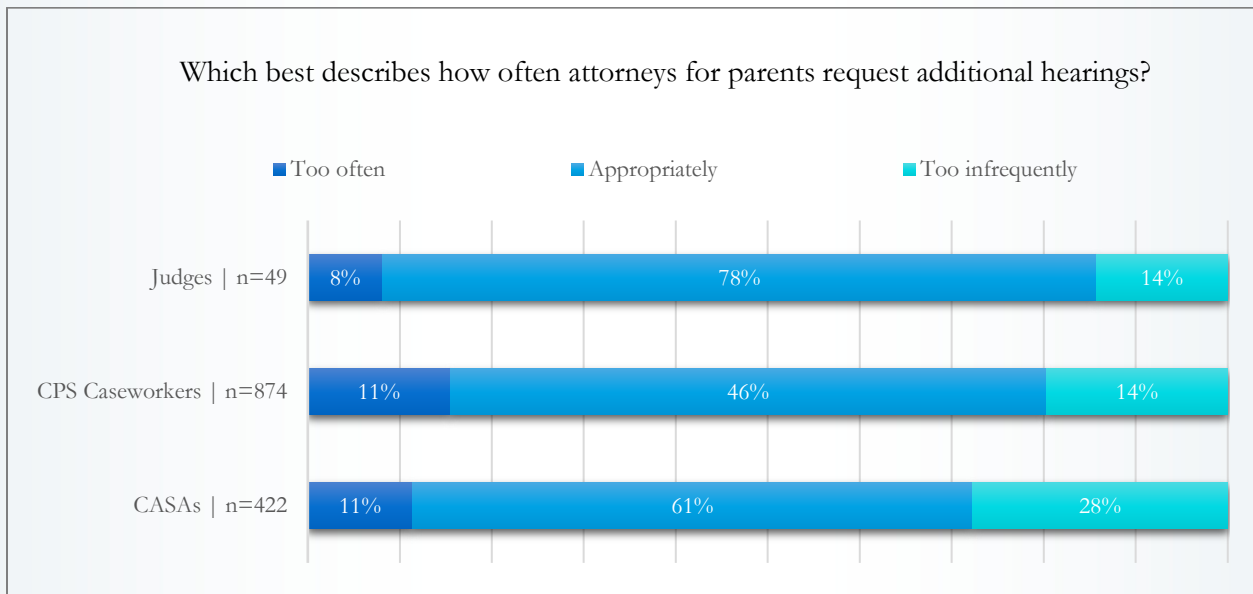


Figure 26

Figures 25 and 26 indicate a strong overall perception that court-appointed attorneys request hearings when appropriate. Seventy-eight percent of judges responded that they believe attorneys for parents set additional hearings appropriately.

6. Attracting Quality Attorneys

Judges and DFPS attorneys were asked about attracting quality attorneys to accept court-appointed CPS cases.

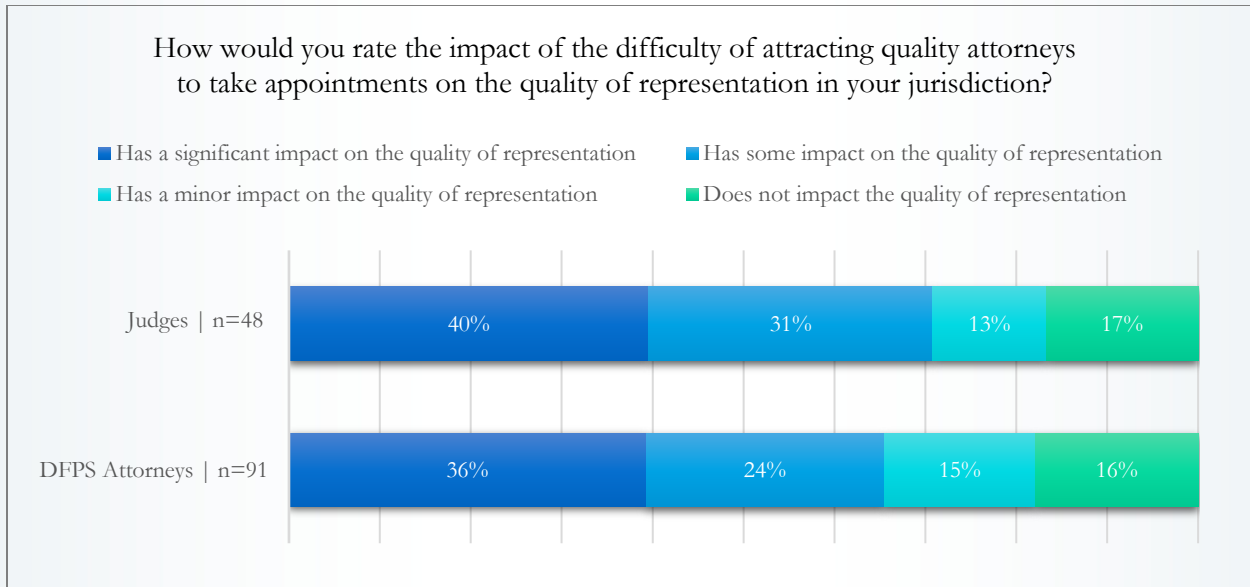


Figure 27

Between 60-71% of those surveyed reported that they believe quality representation suffers because it is difficult to attract high quality attorneys to take court appointments.

7. Attorney Compensation

The only guidance regarding court-appointed attorney compensation is in Family Code Section 107.015, which provides that appointed attorneys should be compensated using the county's general funds in accordance with the fee schedule that applies under Chapter 51 of the Family Code, relating to juvenile proceedings.²³ Thus, as written, the law requires that court-appointed attorneys for parents and children in CPS cases should be compensated comparably to court-appointed juvenile attorneys. However, it is not clear that counties use the same rate of pay in both CPS and juvenile cases.

²³ Tex. Fam. Code § 107.015.

7.1 Methods of Compensation

In the 2011 Children’s Commission study, a majority of judges reported that their jurisdictions compensated court-appointed attorneys based on an hourly rate.

2011 Survey of Judges: Method of compensating court-appointed attorneys in CPS cases.

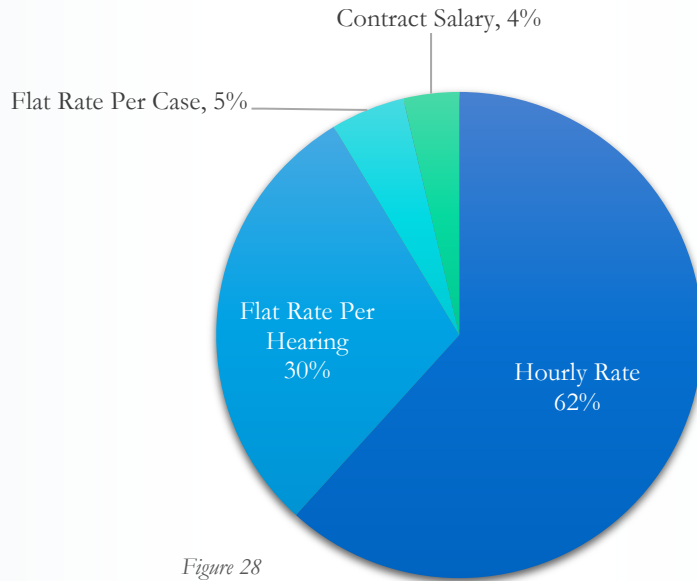


Figure 28

2018 Court-Appointed Attorneys: How are you compensated for your representation of children/parents? | n=199

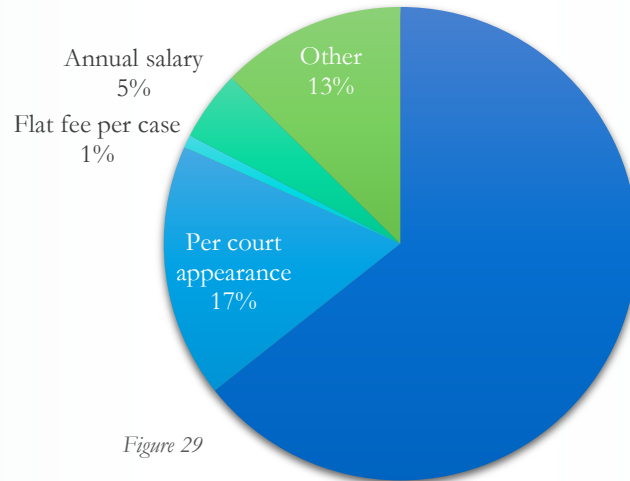


Figure 29

Although the 2018 study asked the same question to court-appointed attorneys rather than judges, compensation methods appear to have changed very little since 2011, with the exception of a significant drop in jurisdictions paying a flat rate per hearing.

The study also surveyed court coordinators about the methods and rates of compensation used in their jurisdictions for court-appointed attorneys.

COURT COORDINATORS REPORTING ON COMPENSATION METHODS AND RATES FOR PARENTS’ AND CHILDREN’S ATTORNEYS

N	Percentage	Compensation Method	Min.	Max.
17	41%	per hour for in-court work	\$60	\$100
21	51%	per hour for out-court work	\$50	\$100
2	5%	flat fee per case	\$250	\$500
5	12%	flat fee per hearing	\$75	\$450
1	2%	maximum amount paid per case	--	\$20K

Table 5

A combined 93% of court coordinators reported using a per hour compensation method for in-court and out-of-court work. The rates of compensation were also reported for in-court versus out-of-court work, with some jurisdictions paying slightly less for out-of-court work. Only a small percentage reported paying court-appointed attorneys a flat fee per case or a flat fee per hearing, but the amount of the fee varied significantly for each. The highest flat fee per case rate translates into just over six hours of attorney time at an average rate of approximately \$80 per hour, or the mean between \$60 and \$100 per hour. Some CPS cases can take from 12 to 24 months to resolve and would require an attorney to spend far more than six hours on a case.

The study also surveyed court-appointed attorneys regarding whether they are compensated for travel time, or for other out-of-court time.

Court-Appointed Attorneys: Are you compensated for travel time? | n=202

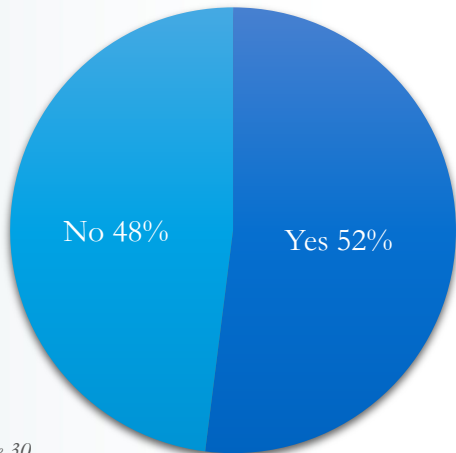


Figure 30

Court-Appointed Attorneys: Are you compensated for out-of-court time? | n=203

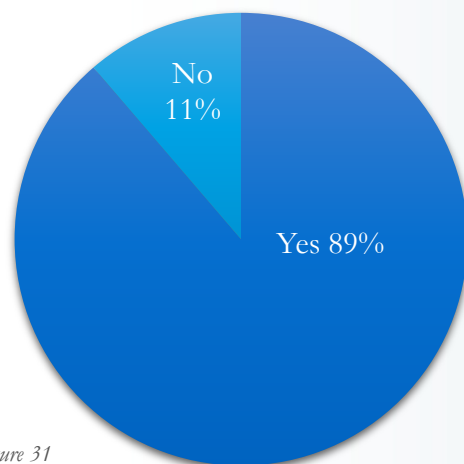


Figure 31

Attorneys must spend time outside of court to fulfill their statutorily mandated duties of representation, including investigating the facts of the case,²⁴ and participating in any DFPS case staffing.²⁵ Children’s attorneys have additional duties such as: 1) reviewing the medical care provided to the child,²⁶ 2) determining whether the child’s education needs are met,²⁷ and 3) reviewing the child’s safety, well-being, and the effects of trauma.²⁸ Attorneys for children must also visit their clients before each hearing.²⁹

Court-appointed attorneys responding to the survey indicated that they are not always compensated for travel time and though 89% of attorneys reported being compensated for out-of-court activities, 52% of court coordinators reported that attorneys are compensated at different and lower rates for these activities. Some court-appointed attorneys also indicated in their open-ended responses that their jurisdiction caps how much out-of-court time can be billed per case, which limits the amount of compensated out-of-court work that can be done on a case.

“What our county pays us for out-of-court time spent is truly shameful. The rate has never increased in the years that I have been an attorney.”

- Court-Appointed Attorney

²⁴ Tex. Fam. Code §§ 107.003(D); 107.0131(a)(1)(B).

²⁵ Tex. Fam. Code §§ 107.003(a)(2)(F); 107.0131(a)(2)(F).

²⁶ Tex. Fam. Code § 107.003(b)(1).

²⁷ Tex. Fam. Code § 107.004(d-2).

²⁸ Tex. Fam. Code § 107.004(d-3).

²⁹ Tex. Fam. Code §§ 107.003(a)(1)(A)(i); 107.004(d)(1).

7.2 Incentives for Quality Representation

In addition to measuring what compensation methods are currently used, the study surveyed stakeholders regarding what methods they think should be used. Judges and court-appointed attorneys were both asked what compensation structure motivates attorneys to do their best work in court-appointed CPS cases.

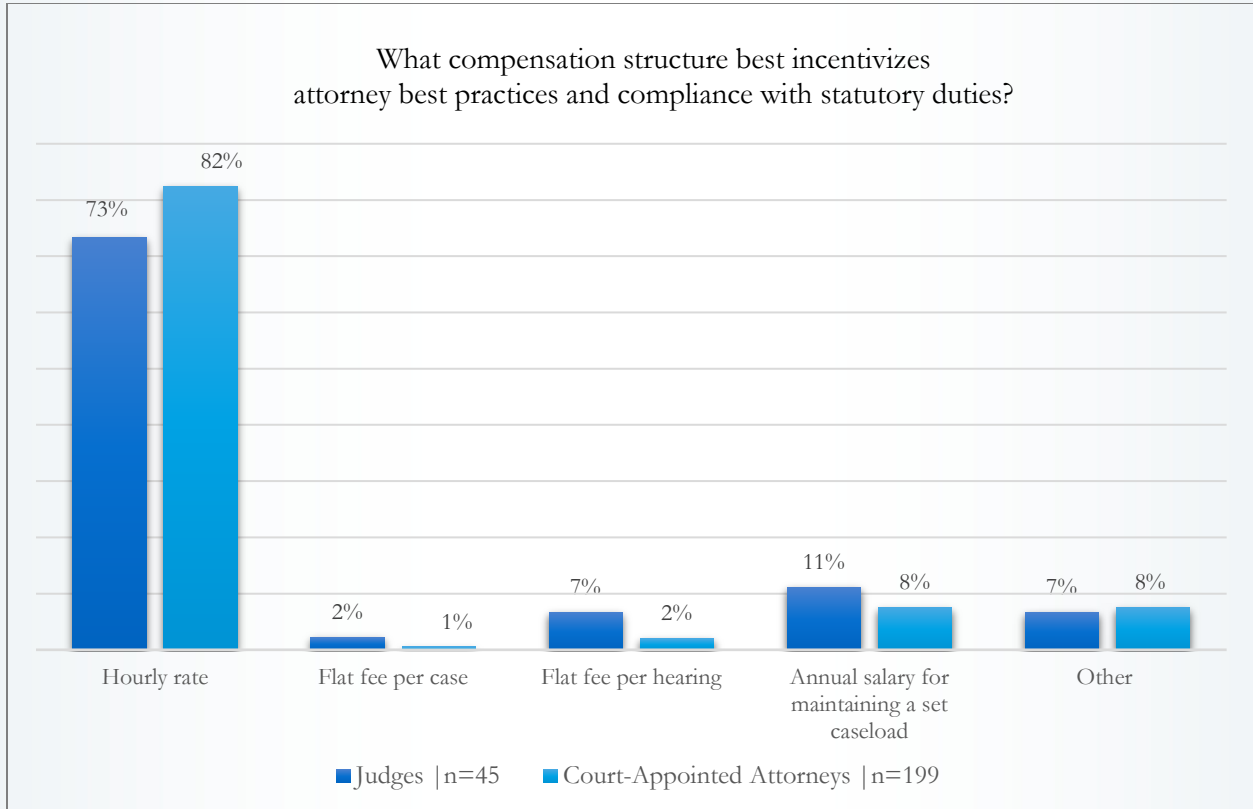


Figure 32

Both court-appointed attorneys and judges demonstrate a belief that an hourly rate is the compensation structure that best incentivizes attorney performance.

“Enterprising attorneys will zealously represent their client’s interests when they know they will be adequately compensated for the actual work they do.”

- Court-Appointed Attorney

7.3 Adequacy of Compensation

While most court-appointed attorneys indicated that an hourly rate is the best compensation structure, 70% viewed the compensation received as inadequate.

Court-Appointed Attorneys: Do you feel you are adequately compensated for the time you spend on child protection cases? | n=201

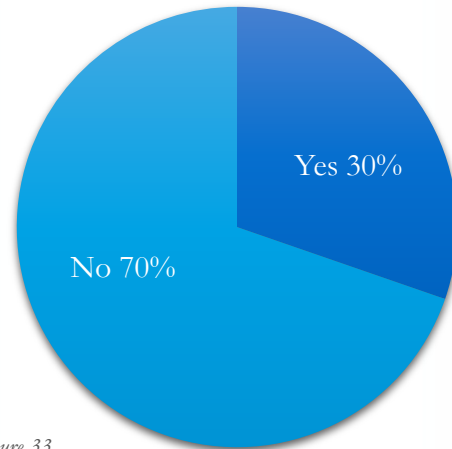


Figure 33

“[There is an] unspoken rule to self-reduce reported hours or court will reduce for you.”

- Court-Appointed Attorney

Court-appointed attorneys were also invited to submit written responses to the question posed in Figure 33 to explain their answers. Two themes emerged from these open-ended responses. First, some attorneys fear that if they submit bills representing all the work performed, the number of court appointments assigned to the attorney may be reduced. Second, the compensation structure in some jurisdictions incentivizes attorneys not to perform their duties as required, or not to take CPS cases at all.

“To do right by the client inevitably means I have to work for free many hours a week.”

- Court-Appointed Attorney

Court-appointed attorneys were then asked if they “under-bill” when they submit their bills for payment and the majority responded yes.

Court-Appointed Attorneys: Do you submit billable hours that are below the actual amount of hours you worked on a case? | n=200

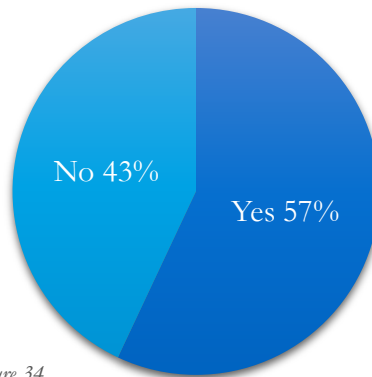


Figure 34

Court-appointed attorneys who submitted written comments stated that fear of not receiving additional or future appointments was a driving factor to not bill the court for all the time spent working a case.

“I don’t expect that my full hours would be approved, and I fear that further appointments might not be forthcoming.”

- Court-Appointed Attorney

Court-appointed attorneys were also asked directly whether they felt pressure not to take actions on behalf of their client.

Court-Appointed Attorneys: Do you feel pressure not to take certain actions in your client’s legal interest out of concern you may lose future appointments? | n=199

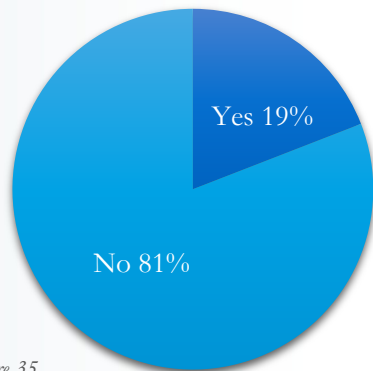


Figure 35

Court-Appointed Attorneys: Do you feel pressure not to take certain actions in your client’s legal interest out of concern you will not be compensated? | n=198

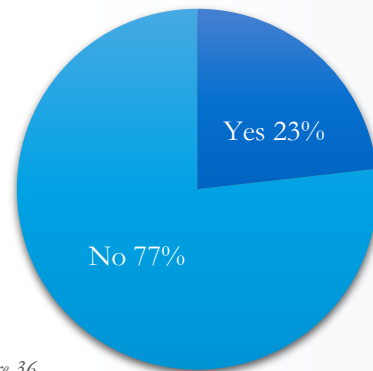


Figure 36

Although some open-ended comments indicated a disincentive to perform duties, the majority of attorney participants stated that they did not forgo actions based on a fear of not being paid for the work. In fact, the survey responses indicate that the attorneys are taking actions on behalf of their clients even though there is a possibility they will not be paid for the work.

The study also surveyed court-appointed attorneys regarding what hourly rate they would consider appropriate in their jurisdictions.

	Min.	Max.	Mean	Std. Deviation
What hourly rate would you consider fair and reasonable compensation for representing parents and children in your jurisdiction? n=193	25	200	120.55	37.21

Table 5

The rates reported averaged out to \$120 per hour for work on behalf of parents and children in CPS cases. The survey did not ask what rate attorneys typically charged in private family law cases. However, many attorneys provided open-ended comments indicating they charge more for such cases.

“The hourly rate [in my jurisdiction] is less than 1/3 of [what an attorney can charge in] private cases, and the rate has not increased in more than 15 years. But we do this for the cause, not the compensation.”

– Court-Appointed Attorney

When the court-appointed attorney responses are broken down by DFPS region, there is significant variation across attorneys in different regions.

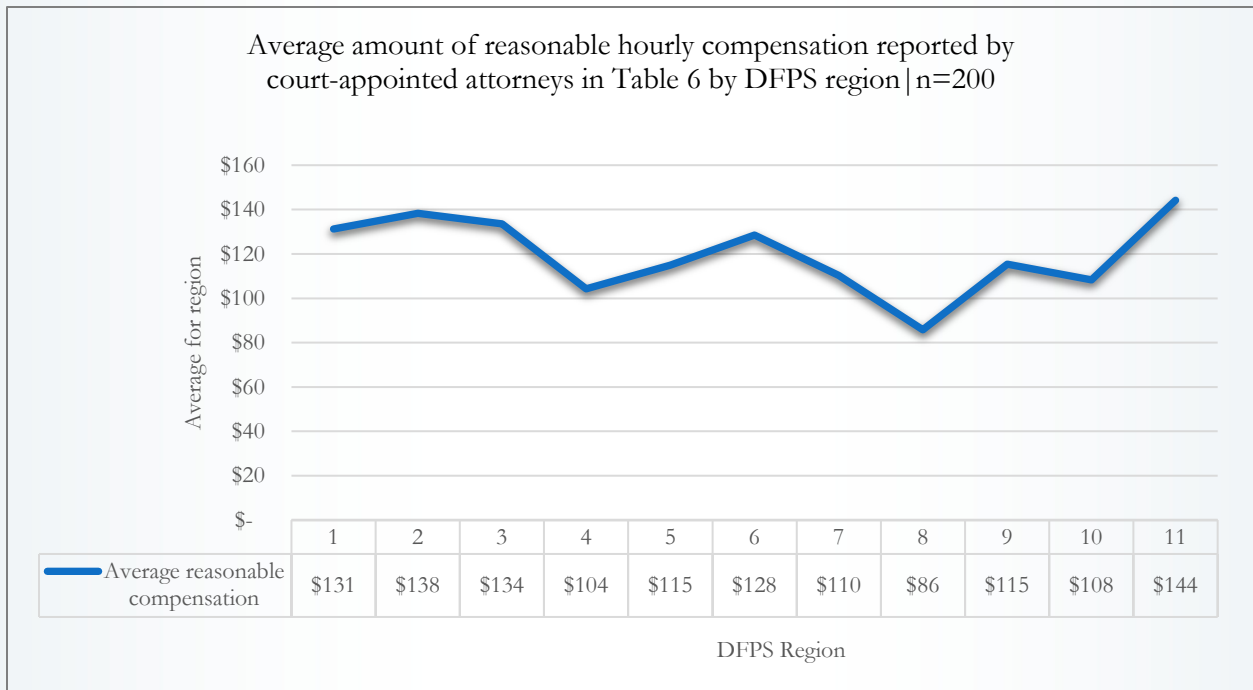


Figure 37

The study surveyed court-appointed attorneys regarding two changes they would like to see related to their compensation.

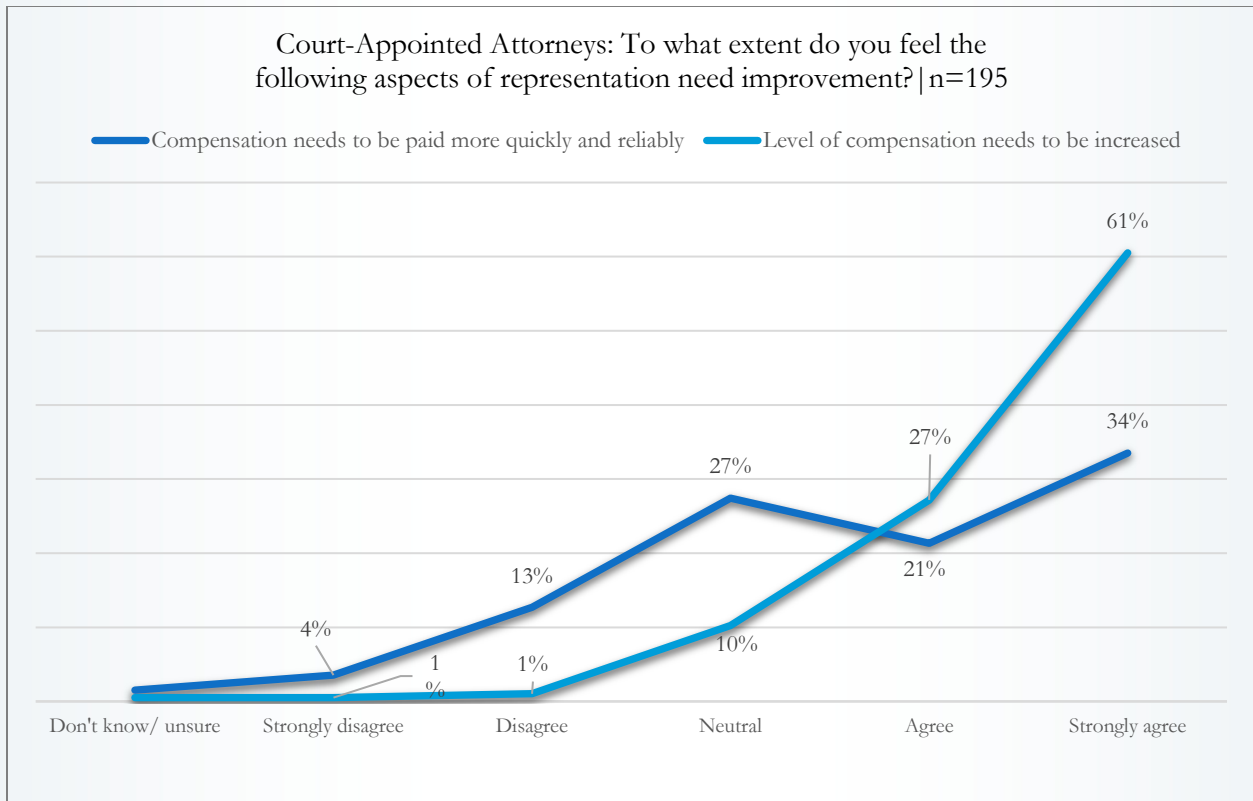


Figure 38

A 61% majority strongly agreed that compensation needs to increase, consistent with the participants who reported that they are not adequately compensated and that they under-bill for their work. There was also strong support for having compensation paid more quickly and reliably but the study did not inquire about the current length of time or reliability of received payments.

Additionally, findings from a National Quality Improvement Center (QIC) study³⁰ help provide context to the reporting regarding the adequacy of compensation. Attorneys in the QIC study completed a baseline survey which elicited the attorney's view about compensation for their work. Attorneys were then asked to complete a different survey 45 days after appointment to a case and then again at 180-day intervals, which asked about the frequency of contact between the attorneys and their clients, their clients' families, teachers, caseworkers, and other collateral contacts as well as the amount of time engaged in various case-related activities such as assessment, investigation, and preparation.

³⁰ Orlebeke, B., Zhou, X., Skyles, A., & Zinn, A. (2016). *Evaluation of the QIC-ChildRep Best Practices Model Training for Attorneys Representing Children in the Child Welfare System*. Chicago, IL: Chapin Hall at the University of Chicago. Available at: https://www.chapinhall.org/wp-content/uploads/QIC-ChildRep_Chapin_Hall_Evaluation.pdf.

A random sample of the QIC responses were then analyzed to compare attorneys' behaviors with their views on their compensation. While subject to limitations,³¹ the QIC study found that attorneys who viewed their compensation as very inadequate were the same attorneys who reported a higher rate of contact with children, a higher rate of contact with children's families, and higher rate of investigation and document review than other attorneys.³² See *Appendix D*.

7.4 The Impact of Compensation on Quality

The 2018 Children's Commission study also surveyed other stakeholders about the adequacy of compensation for court-appointed attorneys and its effect on the quality of representation.

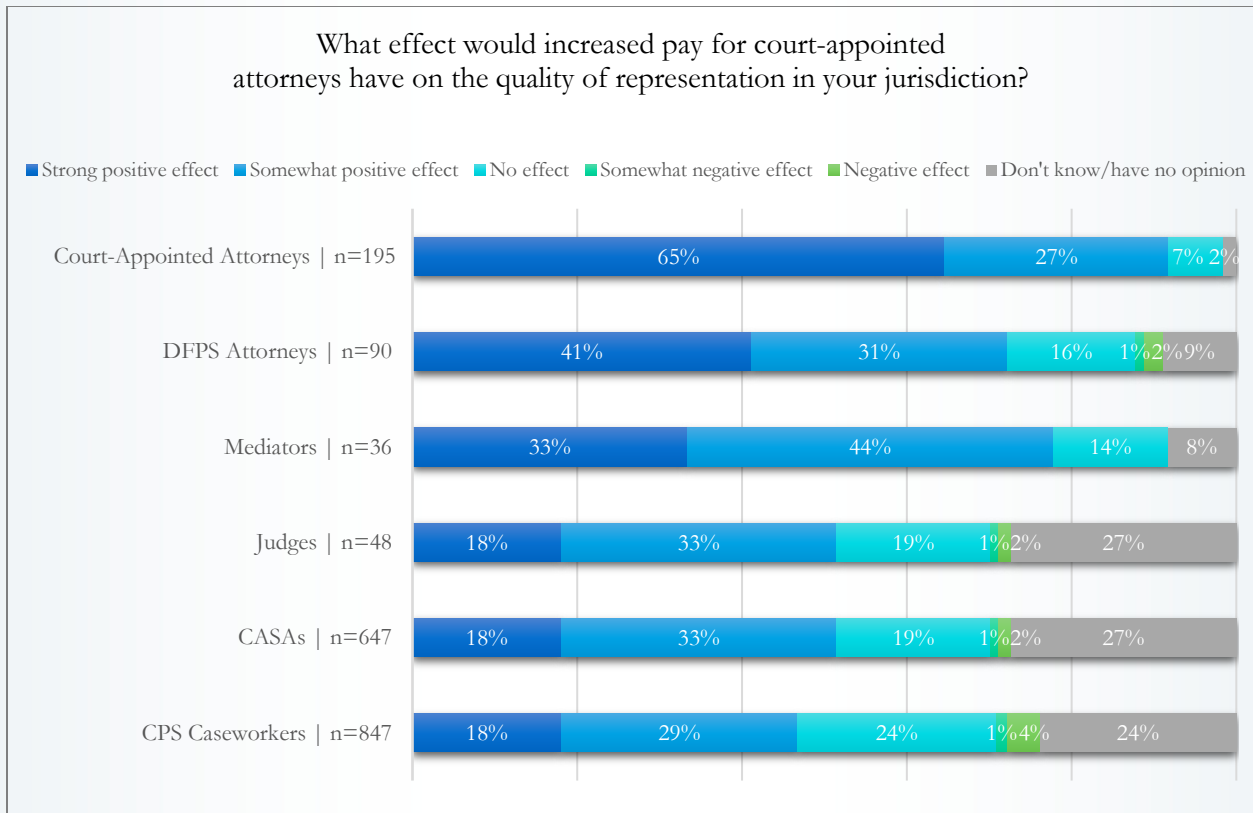


Figure 39

Overall, participant responses reflect that increased pay would influence the quality of representation provided to clients. Although approximately one-quarter of judges, CASA volunteers, and CPS caseworkers did not know or had no opinion about the effect, no stakeholder group feared a negative effect from increasing attorney pay.

³¹ Donald Duquette et al. (2016). *Children's Justice: How to Improve Legal Representation of Children in the Child-Welfare System*, at 146.

³² *Id.* at 158.

The study also surveyed stakeholders about possible changes to how attorneys are paid for court-appointed work.

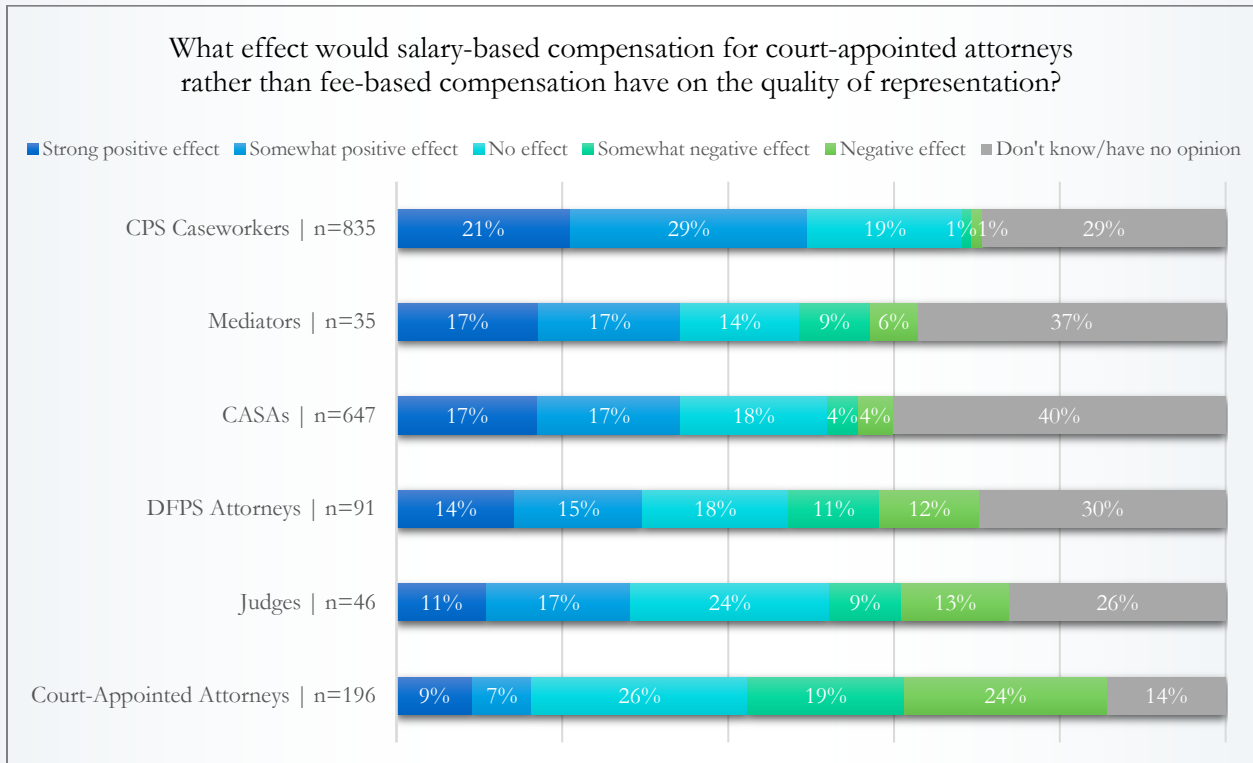


Figure 40

A large portion of participants across stakeholder groups reported not knowing or having no opinion about the effect of salary-based compensation. Many stakeholders may not understand how attorneys are paid (hourly by the county or salaried through an employer of some type). Also, there appears to be skepticism across all stakeholders about the benefits of salary-based compensation, with one quarter of court-appointed attorneys indicating a concern about a negative effect. This may stem from the long-standing tradition of being paid by the hour.

The study also surveyed whether billing determinations should be made by a person or entity independent of the judge who makes the appointments.

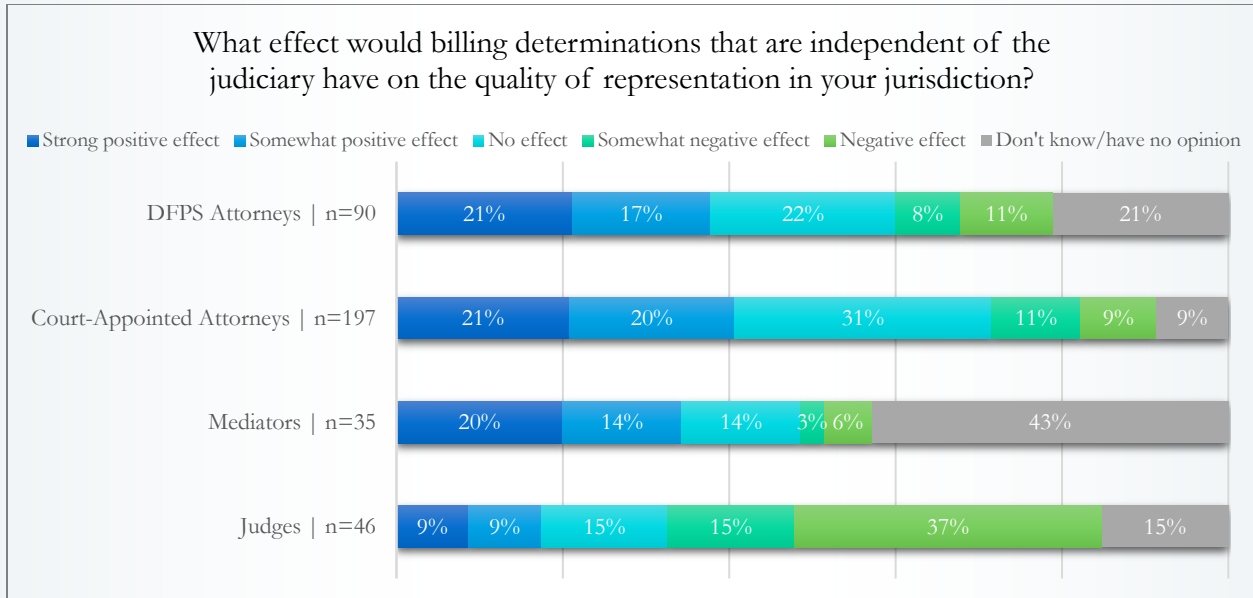


Figure 41

Judges prefer to maintain the authority to review bills and determine the amount of compensation appropriate for court-appointed work, but mediators, DFPS attorneys, and court-appointed attorneys had a more positive view of the idea of independent billing determinations. It is interesting to note that court-appointed attorneys were neutral about whether billing determinations made independently of the judiciary would impact the quality of their representation.

8. Statewide Court-Appointed Attorney Costs

For the 2011 Children’s Commission study, there was no existing source of data for statewide spending on court-appointed attorneys in CPS cases. Therefore, to estimate the total statewide spending on court-appointed attorneys for parents and children in CPS cases, a survey of 28 sample counties was conducted, covering both rural and urban regions across Texas. The sample counties comprised 54% of Texas’ population and 51% of the children in DFPS’s conservatorship. The sample data were extrapolated using both the ratios for population and children in DFPS’s conservatorship and it was estimated that counties spent between \$34.6 and \$36.6 million in CPS cases in 2009.³³

For the 2018 Children’s Commission study, OCA provided data reported by counties pursuant to Texas Government Code Section 36.004, enacted by the 84th Texas Legislature in 2015. Chapter 36 requires the clerk of each court to submit a report to OCA each month on court appointments for attorneys ad-litem, guardians ad-litem, mediators, and competency evaluators.³⁴ The report must include the style of the case, the number of cases to which each person was appointed, and the total amount of compensation paid to each person for each month.³⁵ There is no requirement to identify whether the case is a CPS case, whether the attorney represents a parent or a child, or whether the attorney represents more than one child in any given case.

Despite the reporting requirement, the exact amount of money spent on court-appointed attorneys per child in CPS cases is still difficult to estimate. However, using the data provided under Chapter 36, OCA and the Children’s Commission estimate that at least \$56 million was paid to attorneys appointed to parents and children in CPS cases across the state in FY 2017.³⁶

9. Attorney Resources

Representation of parents and children in CPS cases involves a particularly complicated area of law where constitutional rights are frequently intertwined with complex social issues. Unlike a traditional adversarial proceeding, cases typically evolve through a series of statutorily-required hearings and often require a concerted, collaborative effort between parties and other professionals. The rules governing these proceedings stem both from statutory law and administrative policies and regulations, which can be confusing to litigants. Both children and parents rely on their attorneys to guide them through this complex system and advocate for their interests. The study surveyed stakeholders regarding whether court-appointed attorneys had access to the resources necessary to provide quality representation.

9.1 Multi-Disciplinary Support

Though many attorneys are trained in a variety of social issues which influence CPS cases, an attorney may determine that the issues in a particular case require more expertise from others such as social workers, investigators, or medical experts. Although this type of assistance is available in some jurisdictions on a case-by-case basis, it is not routinely or readily available across the state.

³³ 2011 Children’s Commission Study, *supra* note 1, at 80. Available at: <http://texaschildrenscommission.gov/media/1143/lrs.pdf>.

³⁴ Tex. Gov’t Code § 36.004(a).

³⁵ Tex. Gov’t Code § 36.004(a)(1)-(6).

³⁶ See Appendix B for calculation of court-appointed attorney costs.

The study surveyed judges and DFPS attorneys to assess the current effect that access to multi-disciplinary support has on the quality of representation.

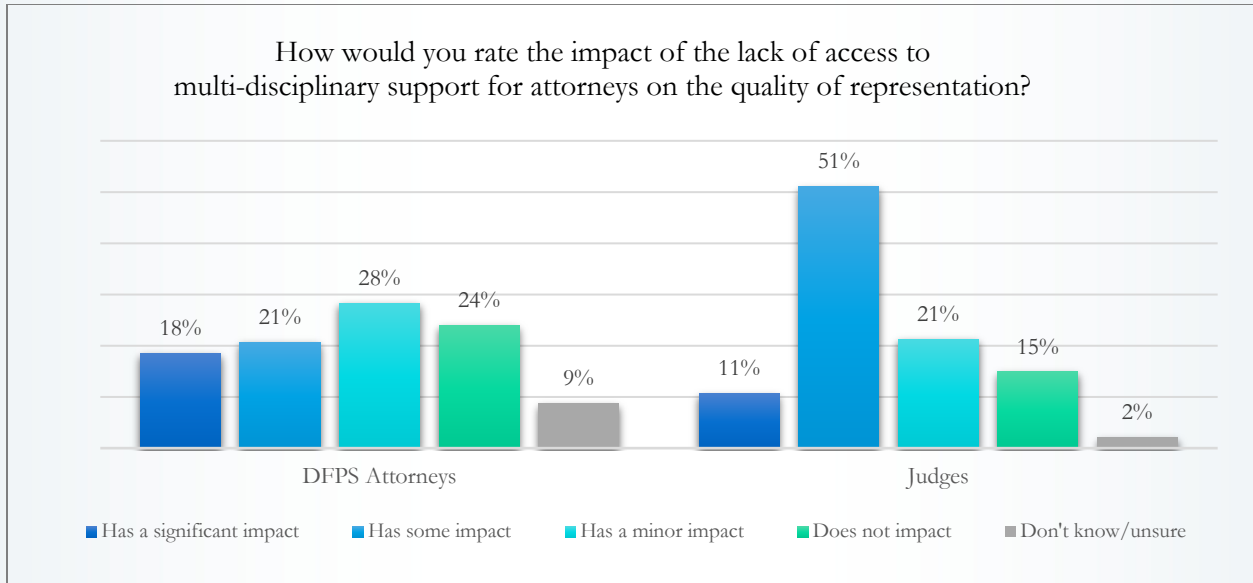


Figure 42

Sixty-two percent of judges and 39% of attorneys representing DFPS reported that the lack of access to multi-disciplinary support has at least some impact on the quality of representation provided.

The study also surveyed stakeholders about the impact of increasing access to multi-disciplinary support.

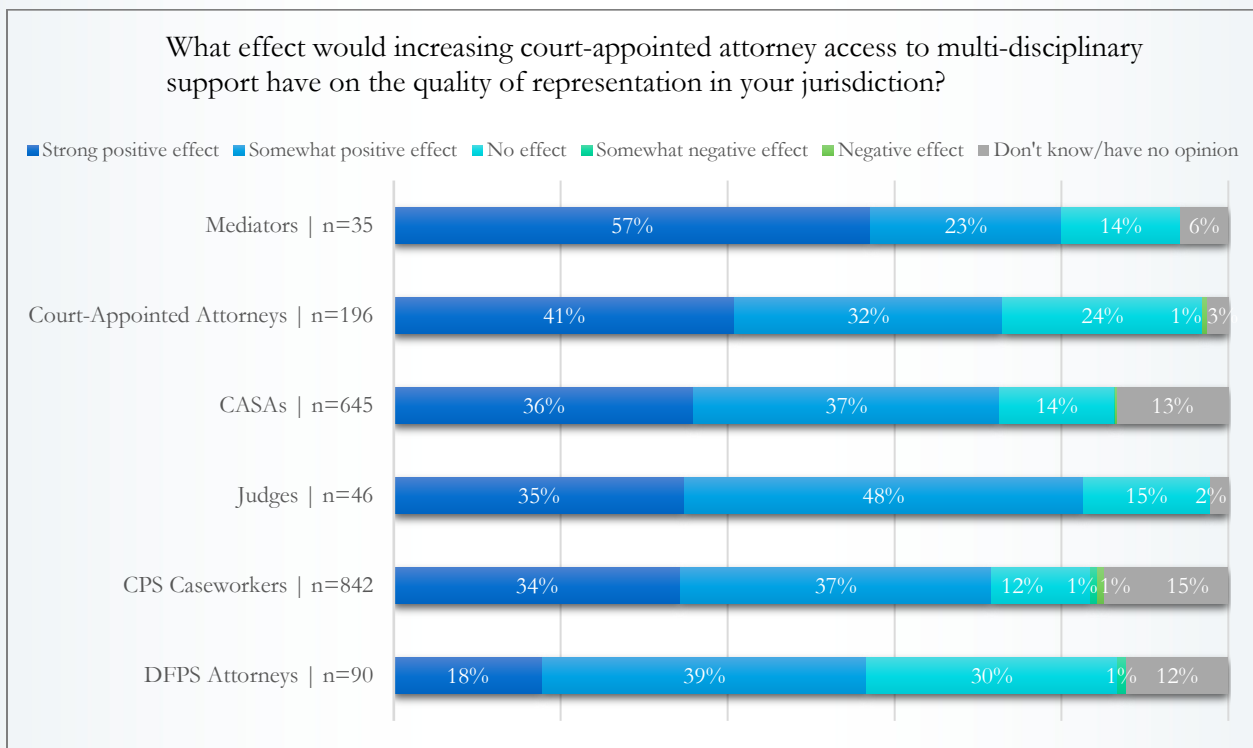


Figure 43

The above data indicate a strong and broad consensus that improved access to multi-disciplinary support would improve the quality of legal representation. Almost no stakeholders were concerned about a possible negative effect by providing more multi-disciplinary support. Over 83% of judges indicate this support would have a positive effect. This is noteworthy because judges must approve expenditures associated with obtaining multi-disciplinary support. Among attorneys representing DFPS, 57% indicated that access to multi-disciplinary support would have a strong or somewhat positive effect.

9.2 Legal Research and Form Banks

The study surveyed DFPS attorneys, court-appointed attorneys, and judges about the impact of providing access to a form bank and legal research databases.

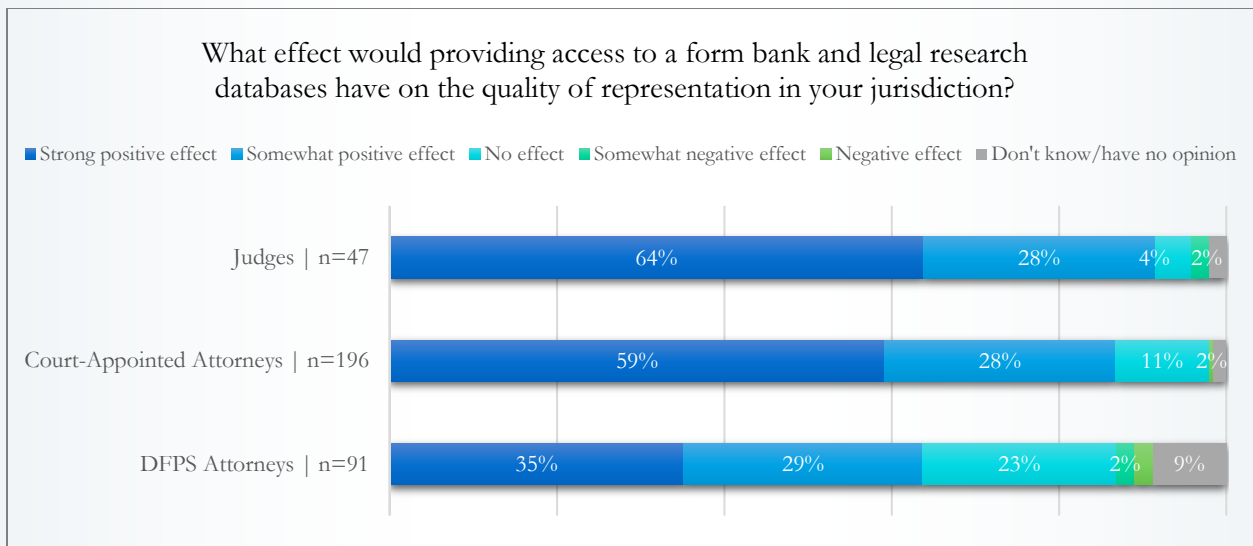


Figure 44

Court-appointed attorneys showed overwhelming support for access to legal research and form banks. Interestingly, 77% of court-appointed attorneys who responded to the survey identified as solo practitioners. One of the challenges of being a solo practitioner is the lack of institutional knowledge and expertise that builds naturally at law firms or government offices where one can find mentors and pre-existing pleadings and other templates from which to draft new ones. Perhaps the support for access to form banks and legal research databases in response to this query reflects a heightened need among solo practitioners to develop expertise and benefit from the expertise of colleagues.

10. Attorneys for Children

Youth in care were offered the opportunity to provide feedback about their experiences with their attorneys and the survey questions were designed to elicit their perspective on the quality of representation they received.

10.1 Attorney-Client Relationship

The Texas Disciplinary Rules of Professional Conduct Preamble summarizes the various aspects of an attorney-client relationship:

As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client.³⁷

These Rules also clarify that an attorney owes a client competent and diligent representation, meaning that attorneys must not accept a legal matter they know to be beyond their competence, and must not neglect the matter or fail to carry out the obligations the attorney owes to the client.³⁸

A client must trust that the attorney will maintain the client's confidences and provide appropriate counseling and advocacy in order to affect the outcome of the case. Likewise, the attorney must be confident in the information provided by the client to effectively counsel and advocate for the client's desired outcome. Court-appointed attorneys who do not fulfill their obligations erode their clients' trust and without that trust between attorney and client, quality representation is jeopardized.

³⁷ Tex. R. Prof. Conduct Preamble, 2.

³⁸ Tex. R. Prof. Conduct 1.01.

Youth in care were asked about trust in their court-appointed attorney, and whether they trusted their attorney to be their advocate in court.

Youth in Care: Did you feel like you could trust your attorney? | n=633

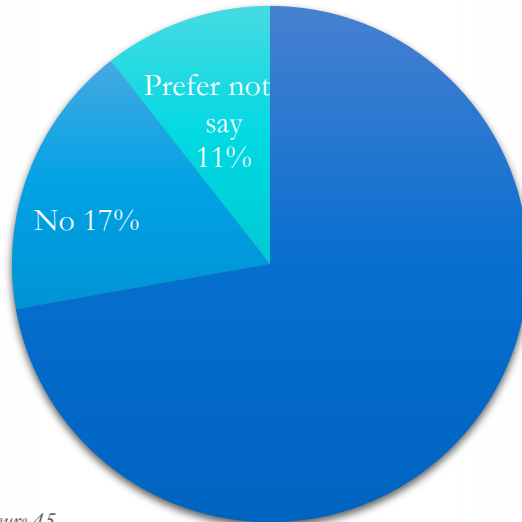


Figure 45

Youth in Care: Did you trust your attorney to make sure the judge heard your side of the story and what you wanted before the judge made a decision? | n=627

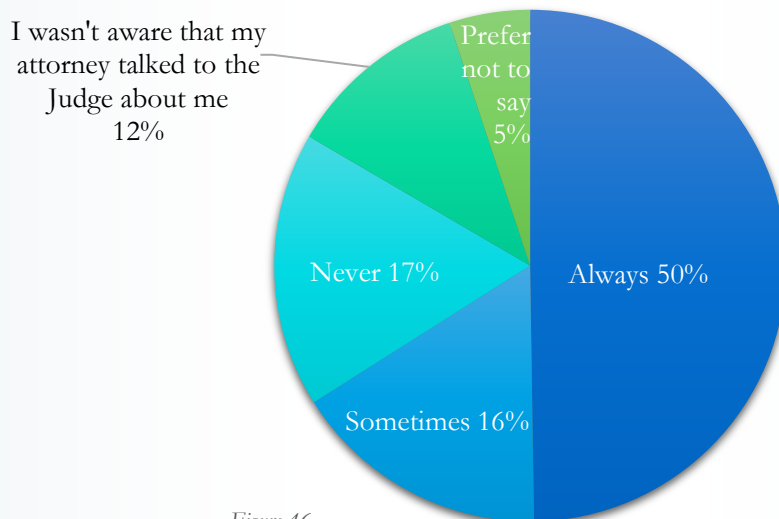


Figure 46

Although 70% of youth responses indicated that they trusted their attorney, they expressed less confidence in whether their attorney would ensure that the judge was informed about their wishes. Half of the youth in care surveyed reported that they trusted their attorney to represent their perspective and wishes. Almost a third of youth surveyed did not understand the role of their attorney or did not believe the attorney fulfilled that role in court.

Youth in care were also asked how their court-appointed attorney made them feel. The question allowed them to select all answers that applied to the relationship with their attorney.

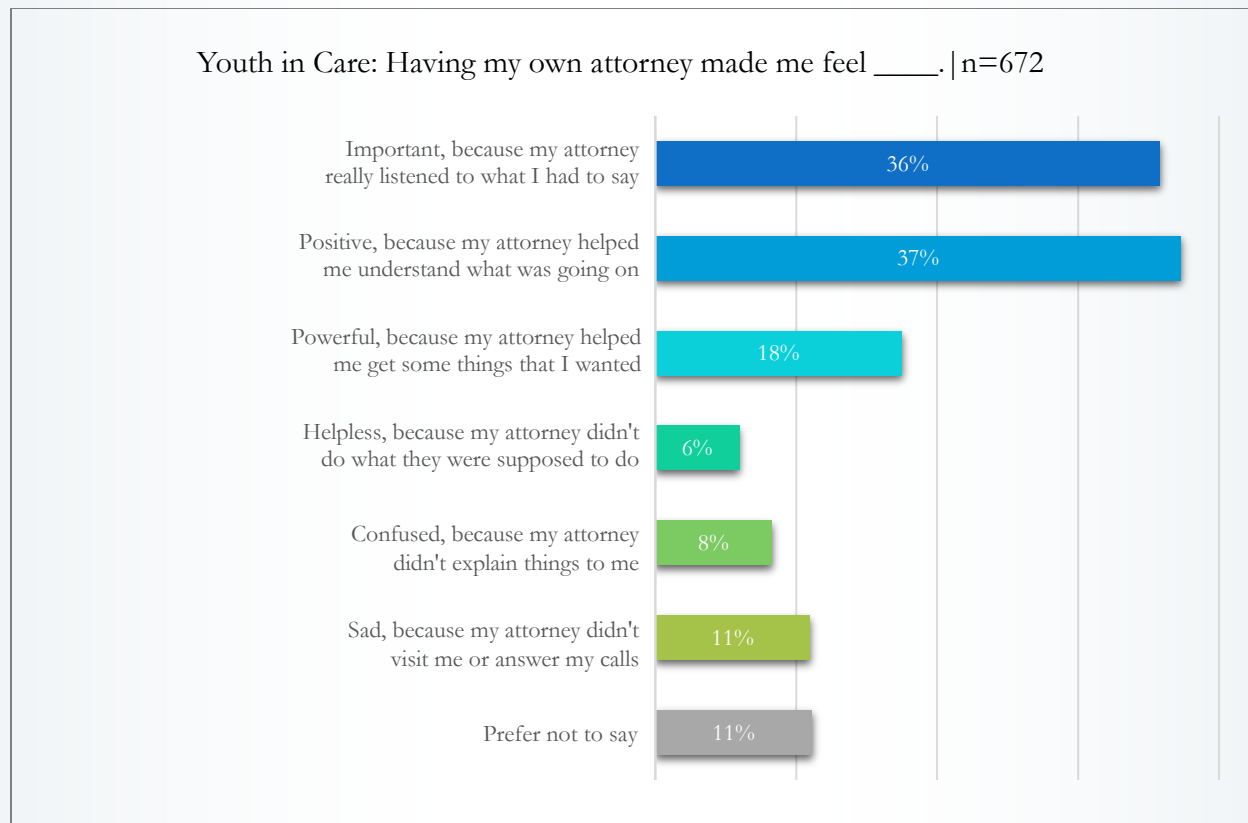


Figure 47

The youth reported more positive than negative feelings about their attorneys. Youth perceived listening and explaining the legal process more favorably than obtaining an outcome. One possible conclusion from this response is that youth in care value having an attorney who they can trust to be their advocate, even if the youth's desires are not granted in full by the judge on their case. Effective counseling of child clients is a practice that every court-appointed attorney can provide, regardless of the circumstances of the case, whereas securing a particular outcome is often beyond an attorney's control.

“She [the attorney] does her best in trying to understand what I want for the outcome in this case. Though her efforts may come out fruitless, I can see that she is trying her best in what she’s representing for my brother and I.”

- Youth in Care

The survey also solicited information about whether youth in care wished to change attorneys.

Youth in Care: Did you ever want to get a different attorney? | n=632

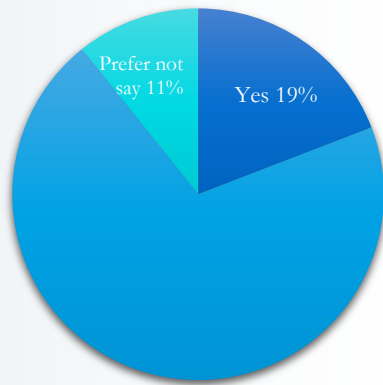


Figure 48

Youth in Care: Why did you want a different attorney? | n=119

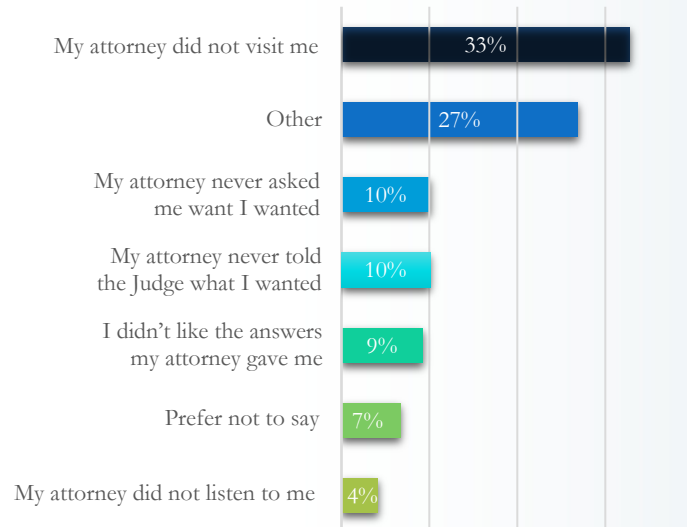


Figure 49

Of the 19% of youth who wanted a different attorney at some point in the case, almost a third cited the lack of contact as the primary reason for wanting the change rather than the inability of their attorney to achieve the youth's preferred outcome in the case. Youth who selected "other" were given the opportunity to explain why they wanted a new attorney in their own words.

"Because she forgets most of the things I tell her."

- Youth in Care

"I didn't like his language towards me and my mom."

- Youth in Care

10.2 Statutory Requirements

Meeting with the Child

A court-appointed attorney is required to interview his or her child client if the child is over four years of age, and the interview must be held within a reasonable time after receiving the appointment to represent the child.³⁹ Attorneys also have a separate statutory duty to meet their client prior to each hearing if the child is over four years old.⁴⁰ If the child is younger than four, the attorney must meet with the child's caregiver.⁴¹ In FY 2017, children exiting DFPS conservatorship spent an average of 19 months in care.⁴² Following the hearing schedule set out in the Family Code, a child in care for a 19 month period would have at least five statutorily required hearings, requiring multiple meetings with the client or his or her caregiver.

³⁹ Tex. Fam. Code § 107.003(a)(1)(A)(i).

⁴⁰ Tex. Fam. Code § 107.004(d)(1)(A).

⁴¹ Tex. Fam. Code § 107.004(d)(1)(A)-(B).

⁴² DFPS Data Book 2017. Available at: https://www.dfps.state.tx.us/About_DFPS/Data_Book/Child_Protective_Services/Conservatorship/Exits.asp.

The study surveyed court-appointed attorneys regarding how often they visit their child clients.

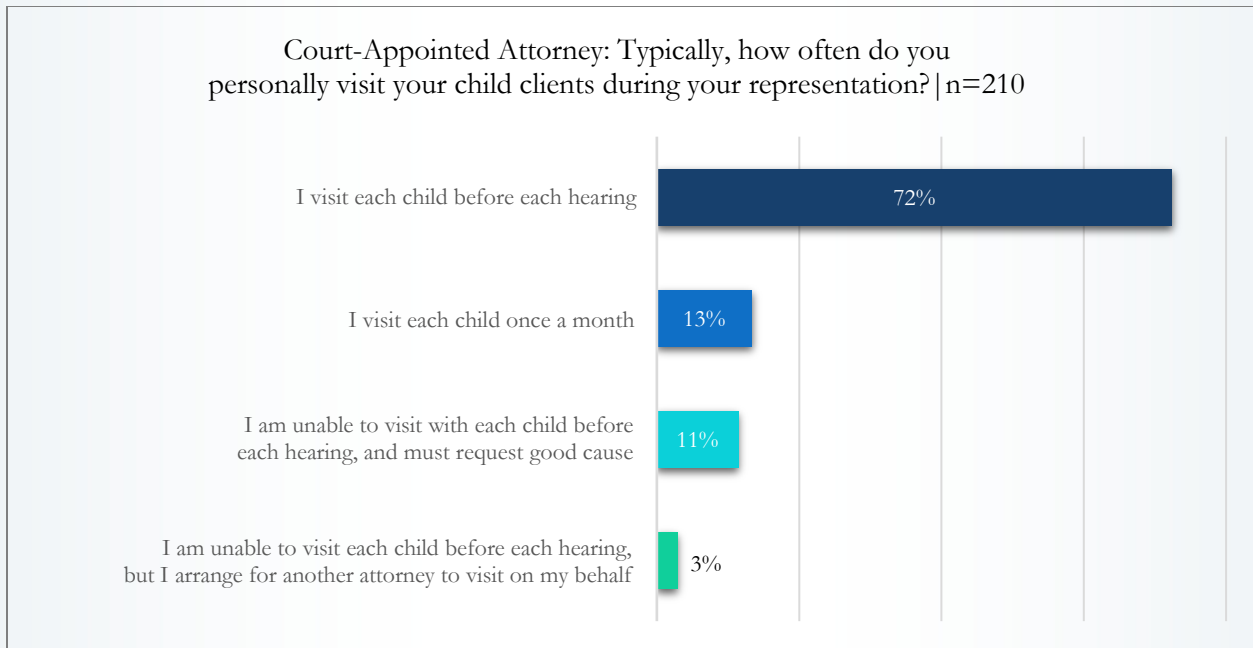


Figure 50

A combined 85% of court-appointed children’s attorneys reported that they either visited as required by the Family Code or visited more frequently than required. A small percentage of participants reported requesting a good cause exception to the requirement that they meet with their client prior to the hearing.

Since attorneys for children are not required to always meet a child in the child's home, the study surveyed court-appointed attorneys about where they usually meet with their child clients.

Court-Appointed Attorney: Where do you usually meet with your child clients? | n=207

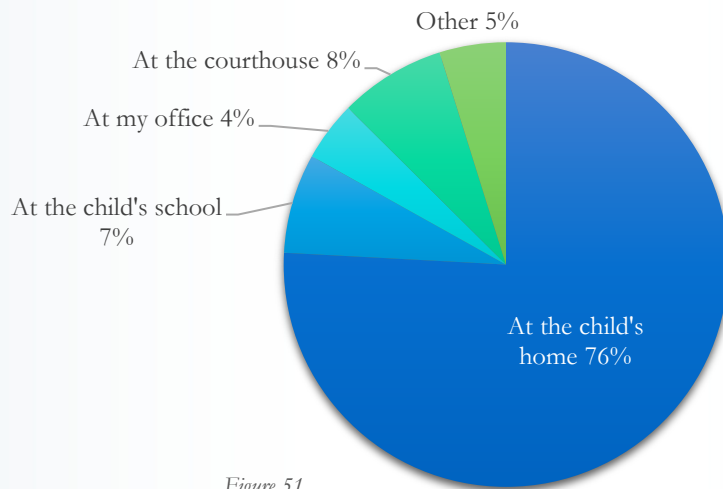


Figure 51

The vast majority reported meeting their child client in the child's placement. However, 65% of foster parents reported the attorneys appointed to children in their care rarely or never visit their clients before hearings. See Figure 54.

The study also surveyed youth in care about how often their attorneys visited them.

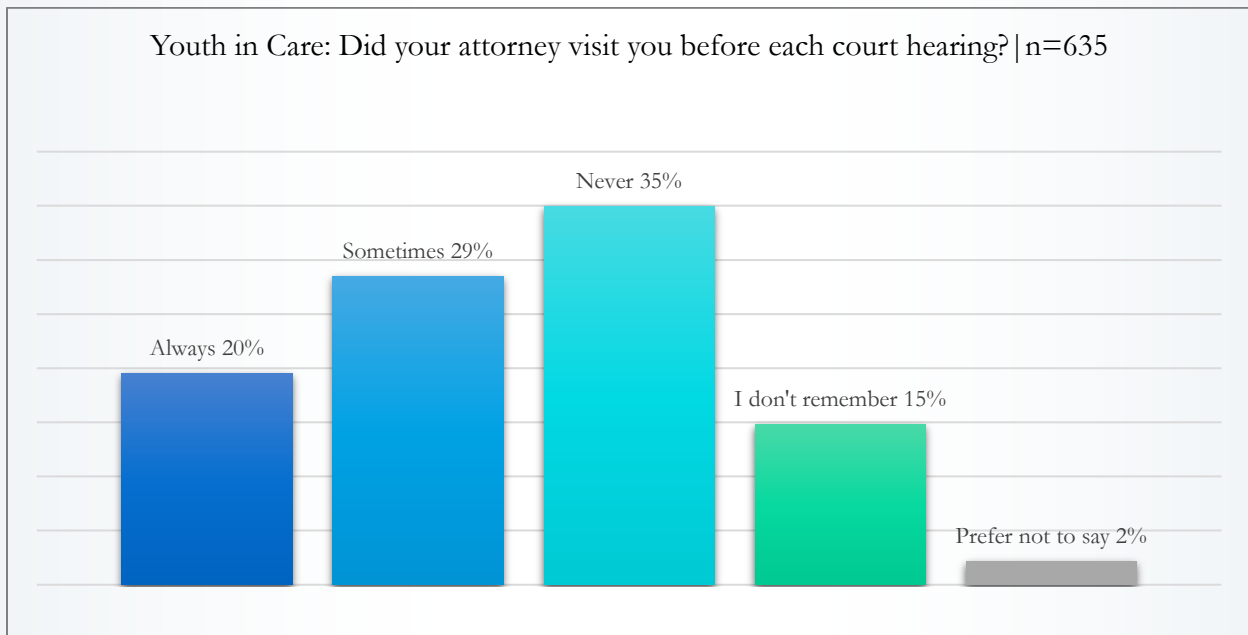


Figure 52

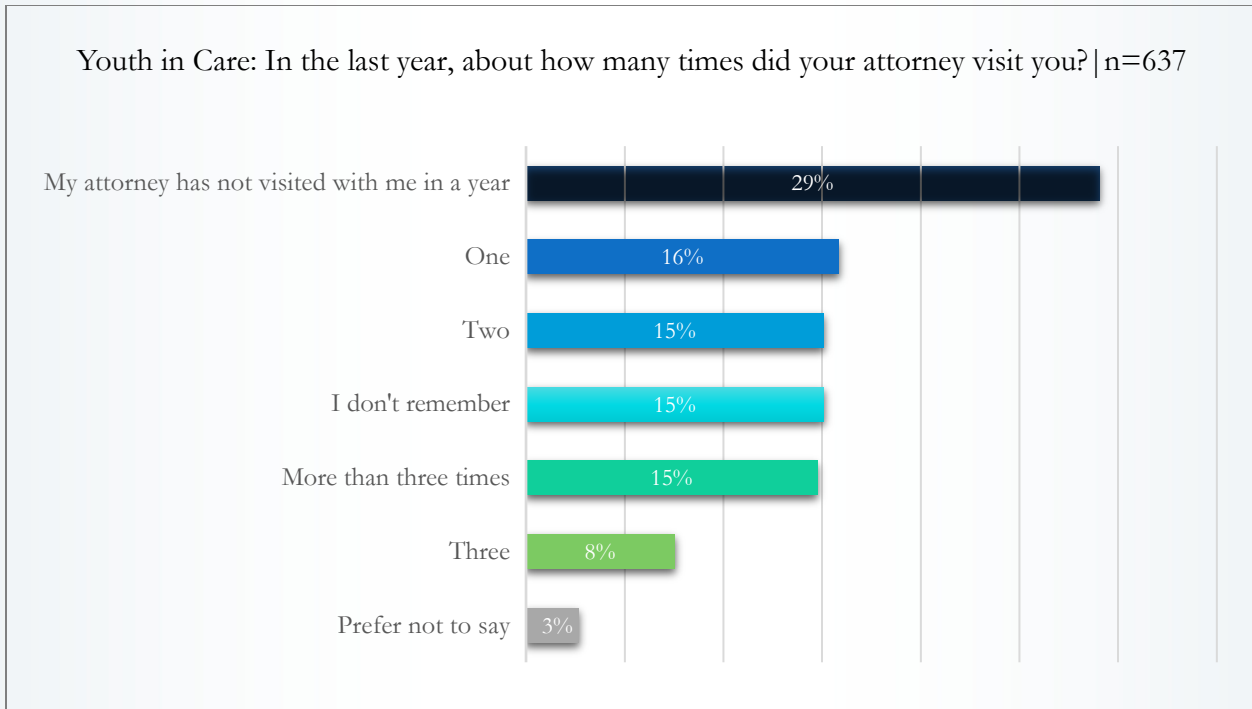


Figure 53

“I think my attorney forgot about me because he hasn’t came [sic] to see me in a long time.”

- Youth in Care

Twenty percent of children responded that their attorneys always visited before each court hearing. Twenty-nine percent of youth reported not seeing their attorney in over a year.

“It’s their life, their story, and yet they don’t even meet their attorneys.”

- Foster Parent

Due to the self-selection limitation noted earlier in the report, the court-appointed attorneys who responded that they see their client before each hearing may have in fact done so, but the youth in care who responded to this survey had a different experience with their court-appointed attorneys.

Other stakeholders were also surveyed about their perception of whether court-appointed attorneys met with clients before each hearing.

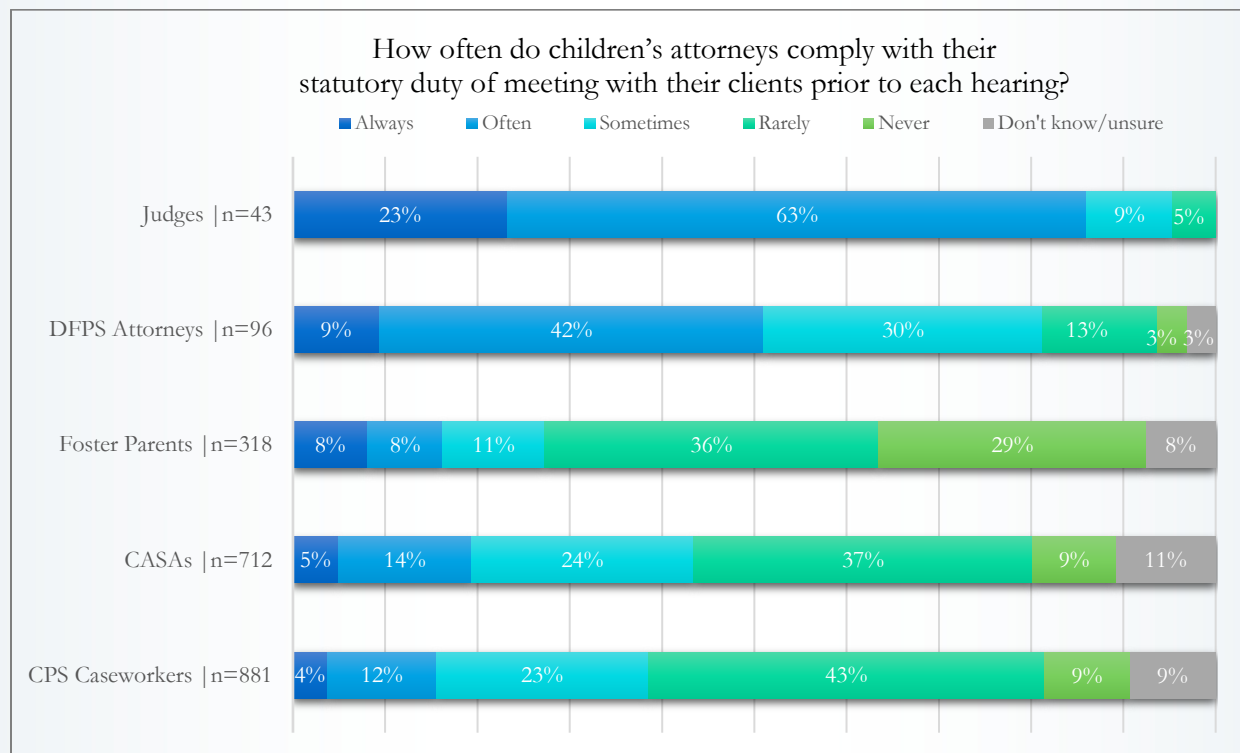


Figure 54

Low percentages of foster parents, CASAs, and CPS caseworkers reported that attorneys always or often visit their clients prior to each hearing while higher percentages reported that attorneys rarely or never visit clients.

“The only way I know they have an attorney is when the name is listed in the placement papers. Not even a phone call to ask how the baby is prior to court. It’s sad because the babies we foster are medically fragile and not basic level.”

- Foster Parent

Eighty-five percent of judges reported that they believe attorneys meet with their clients always or often before each hearing. In general, judges are informed about activities related to a case when evidence is presented at a hearing and typically do not have knowledge of case-related issues outside of court between hearings.

“Judges indicate that they are aware of this dynamic, but so much occurs outside of the courtroom that it would be impractical for them to have as clear an assessment as I know they would like.”

- CASA

Requesting Good Cause

If a court-appointed attorney for a child cannot meet with his or her client prior to a hearing, the attorney may ask the court to find good cause that meeting with the child is not feasible or in the best interest of the child.⁴³ Judges were asked about the good cause requests made by attorneys in their jurisdictions.

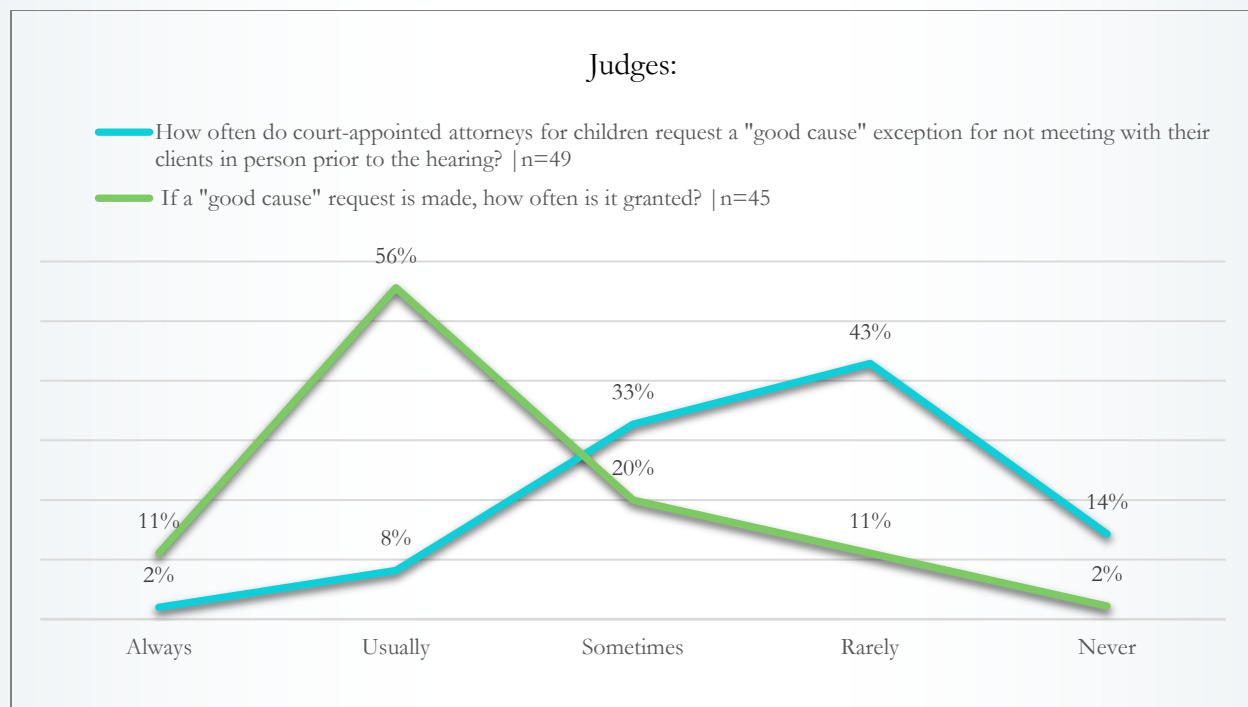


Figure 55

Figure 55 indicates that judges report receiving a small number of good cause exceptions for meeting with a client, which are usually granted. Court-appointed attorney survey results from Figure 50 appear to be consistent.

The low number of good cause requests reported by judges may help explain the judges' perspective that court-appointed attorneys are generally meeting with their clients in person when other stakeholders are reporting something different.

⁴³ Tex. Fam. Code § 107.004(e).

Timeliness of Meeting

The Family Code was amended in 2011 to specify that the attorney-child meeting must take place a sufficient time before each hearing to allow the attorney to prepare for the upcoming hearing.⁴⁴ The study asked foster parents their perception about how attorneys meet this requirement.

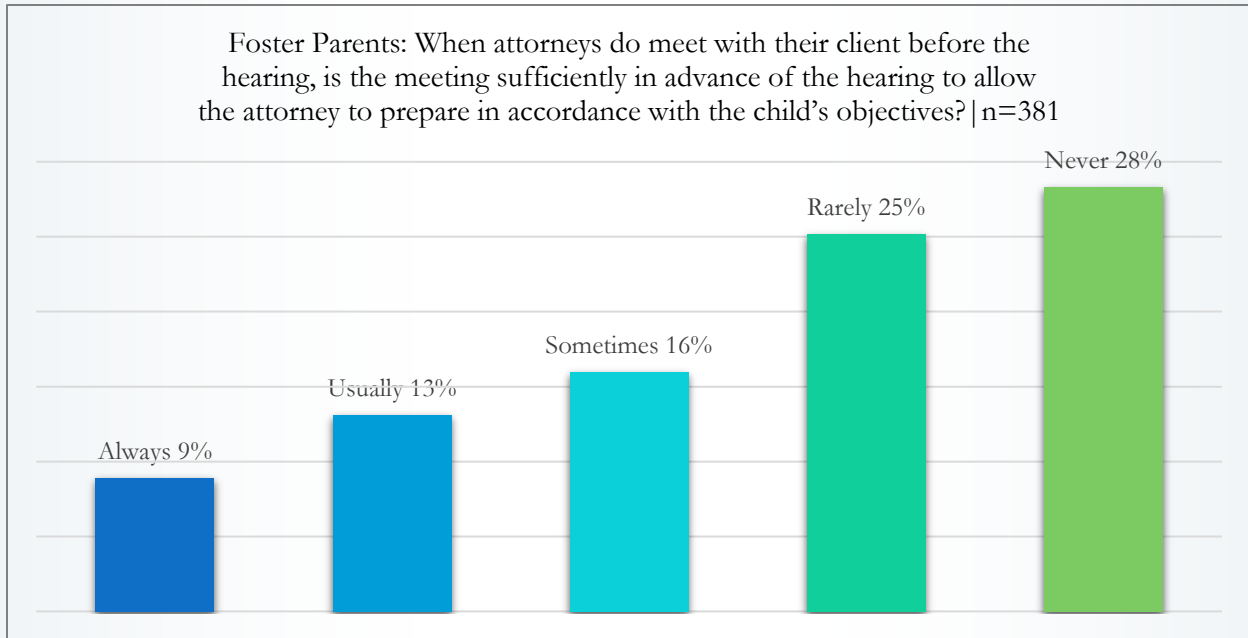


Figure 56

While “sufficiently in advance” is subjective, 22% of foster parents surveyed reported that court-appointed attorneys always or usually met with children in their care sufficiently in advance of the hearing with 53% reporting that attorneys rarely or never meet with the children sufficiently in advance of the hearing.

⁴⁴ Tex. Fam. Code § 107.004(d-1)(1).

Attorney-Client Privilege and Confidentiality of Meetings with Child Clients

Every attorney has a duty to keep information provided by his or her client confidential.⁴⁵ Establishing a confidential relationship with a client and determining together which information can be shared and with whom is key to building trust in the attorney-client relationship.

Youth in care were asked if their attorney explained the concept of attorney-client privilege.

Youth in Care: Did your attorney explain that they aren't allowed to tell anyone else the things you talk about with them, unless you say it's ok? | n=632

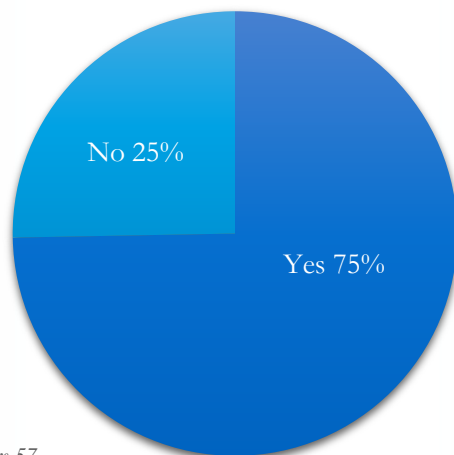


Figure 57

Among youth in care, 75% indicated that their attorney took the time to explain the concept of attorney-client privilege.

“She [the attorney] is a very nice lady and I want her to stay my attorney until the end of my court because I can trust her a lot and I don’t really trust anyone else about my business unless it’s her.”

- Youth in Care

The Family Code also requires that the meeting with the child take place in a private setting, allowing for confidential communication.⁴⁶ The statute envisions a private conversation between the youth and the attorney, not necessarily a conversation in a secluded location, as this may not be appropriate.

⁴⁵ Tex. R. Prof. Conduct 1.05.

⁴⁶ Tex. Fam. Code § 107.004(d-1)(2).

The study also asked foster parents whether attorneys for children met with clients privately.

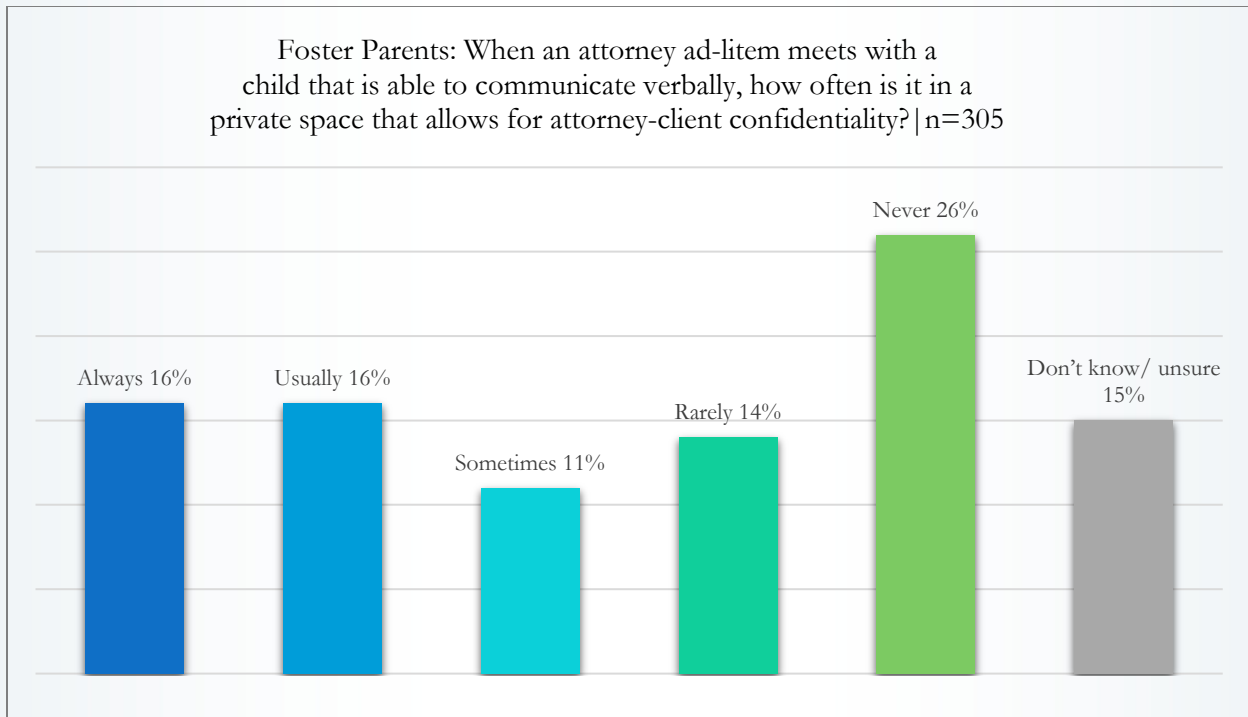


Figure 58

Thirty-two percent of foster parents reported that court-appointed attorneys always or usually meet with their clients in a way that allows for confidentiality, while 40% reported that this occurs rarely or never.

“Typically, the AAL meets with me/the children prior to court in an open, and very public, area. Nothing is private. Nothing is thought out.”

- Foster Parent

Youth in care were also asked about whether the setting of their meeting with their attorney provided a sense of privacy and confidentiality.

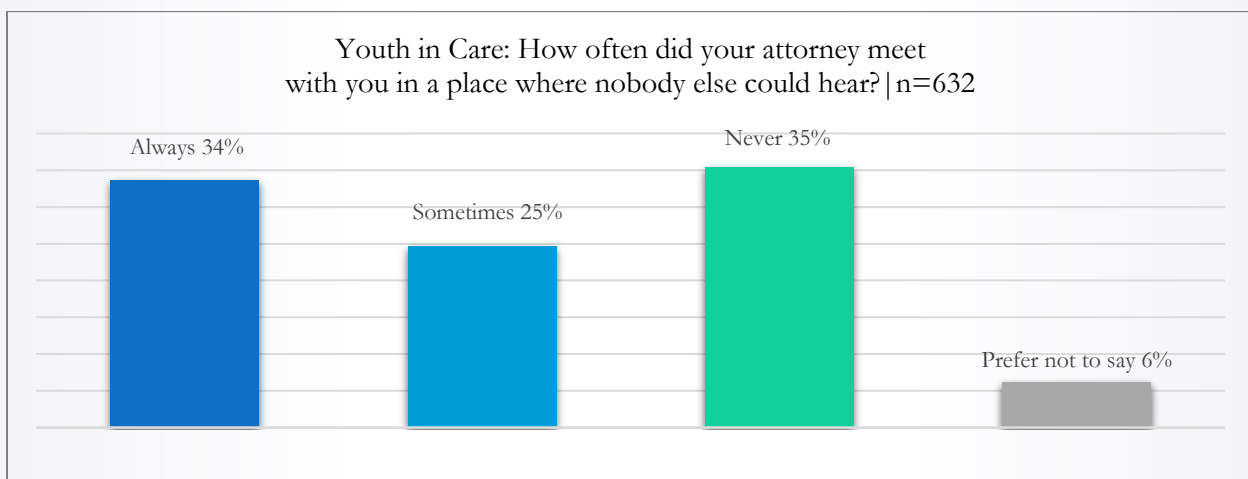


Figure 59

The responses from youth in care indicate that the meetings are not always private.

Though there are exceptions, it is also typically a best practice for attorneys to elicit from and share information with each child individually, taking into consideration the appropriateness of any setting in which information is shared or obtained.

Court-Appointed Attorneys: If you are visiting multiple child clients in the same home, do you meet with them individually or at the same time?
| n=206

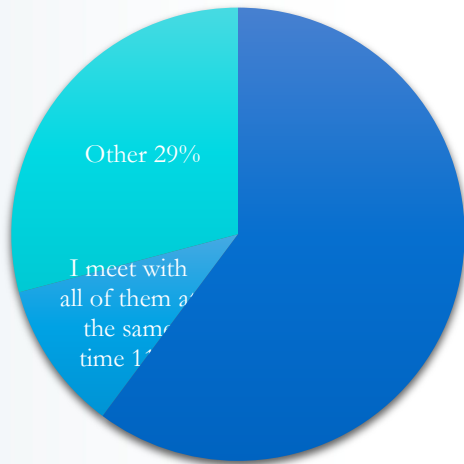


Figure 60

Foster Parents: If an attorney ad-litem is visiting multiple children in the same home, how often do they meet with each child individually?
| n=256



Figure 61

When court-appointed attorneys who represent children were surveyed about meeting with child clients separately, 60% reported understanding and following the practice. In contrast, 55% of foster parents reported that in their experience, attorneys rarely or never meet with their clients individually.

Eliciting the Child's Objectives of Representation

Attorneys for children are required by the Family Code to seek out and represent the child's objectives, and to follow those expressed objectives when the child is capable of forming an attorney-client relationship.⁴⁷

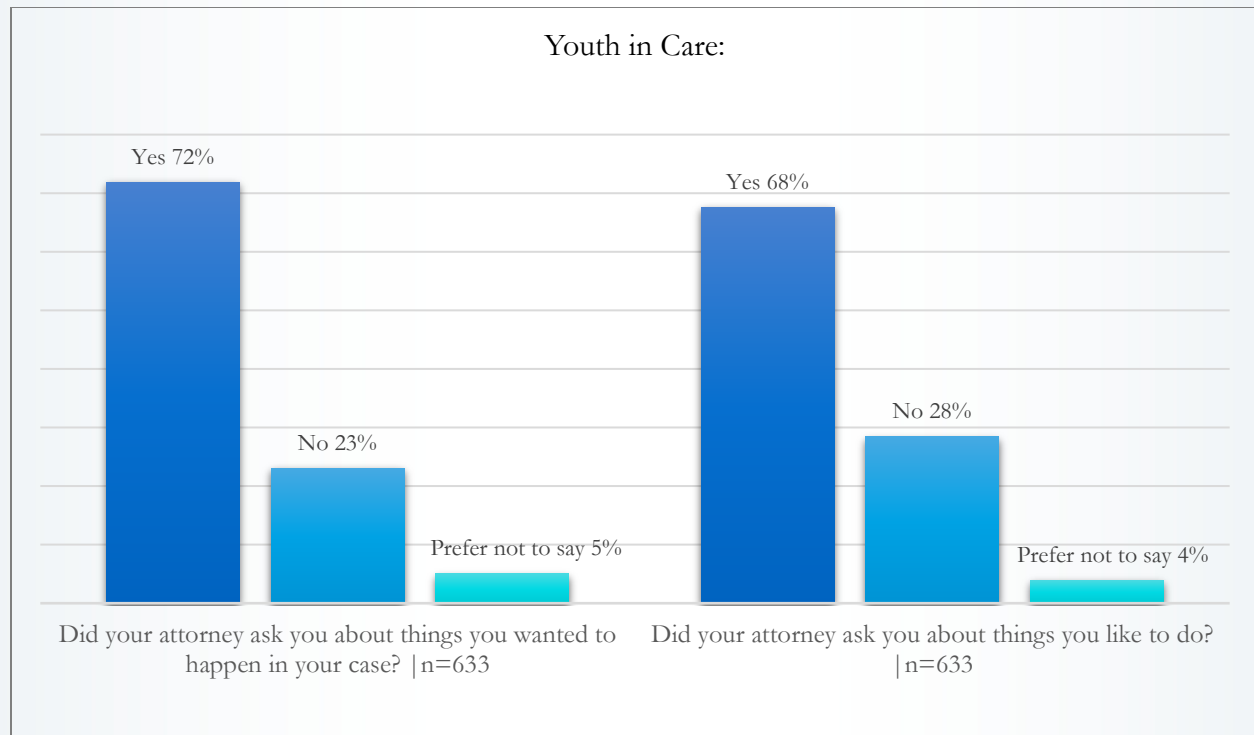


Figure 62

Over two thirds of the youth in care surveyed indicated that their attorneys elicited their interests and objectives for the case.

“I love my attorney so much...When she asked what we wanted she would get it done in no time.”

– Youth in Care

Advising the Child

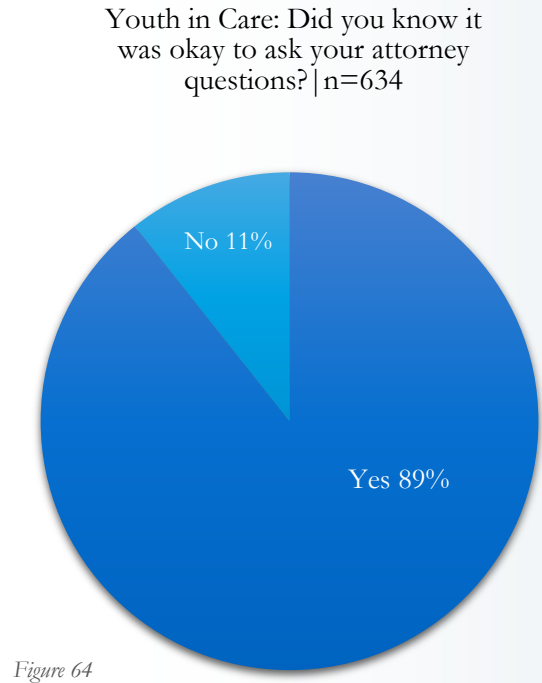
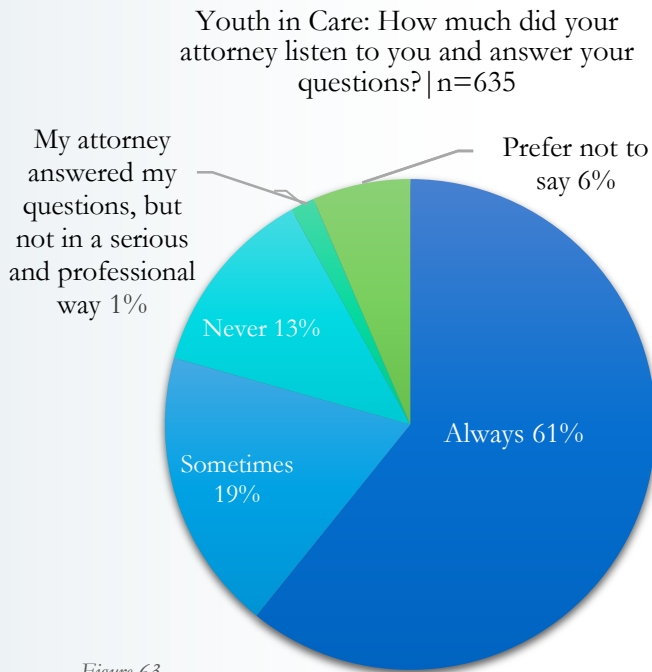
All attorneys in Texas have a duty to provide their clients with independent professional judgment and candid advice.⁴⁸ Additionally, the Family Code also requires court-appointed attorneys to advise the child, explain the legal process, answer the child's questions, and let child know what to expect.⁴⁹

⁴⁷ Tex. Fam. Code §§ 107.003(a)(1)(B); 107.004(a)(2).

⁴⁸ Tex. R. Prof. Conduct 2.01.

⁴⁹ Tex. Fam. Code § 107.004(a)(1).

The study surveyed children regarding their experiences with their attorneys offering them professional judgment and advice.



Responses from youth indicate an understanding of their attorney’s role as an advisor, and that court-appointed attorneys did a satisfactory job of answering their questions.

“He helps a lot and I trust him if I have something to say. He is always here for me when I have questions.”

- Youth in Care

Youth in care were also asked about whether their attorneys explained the court process.

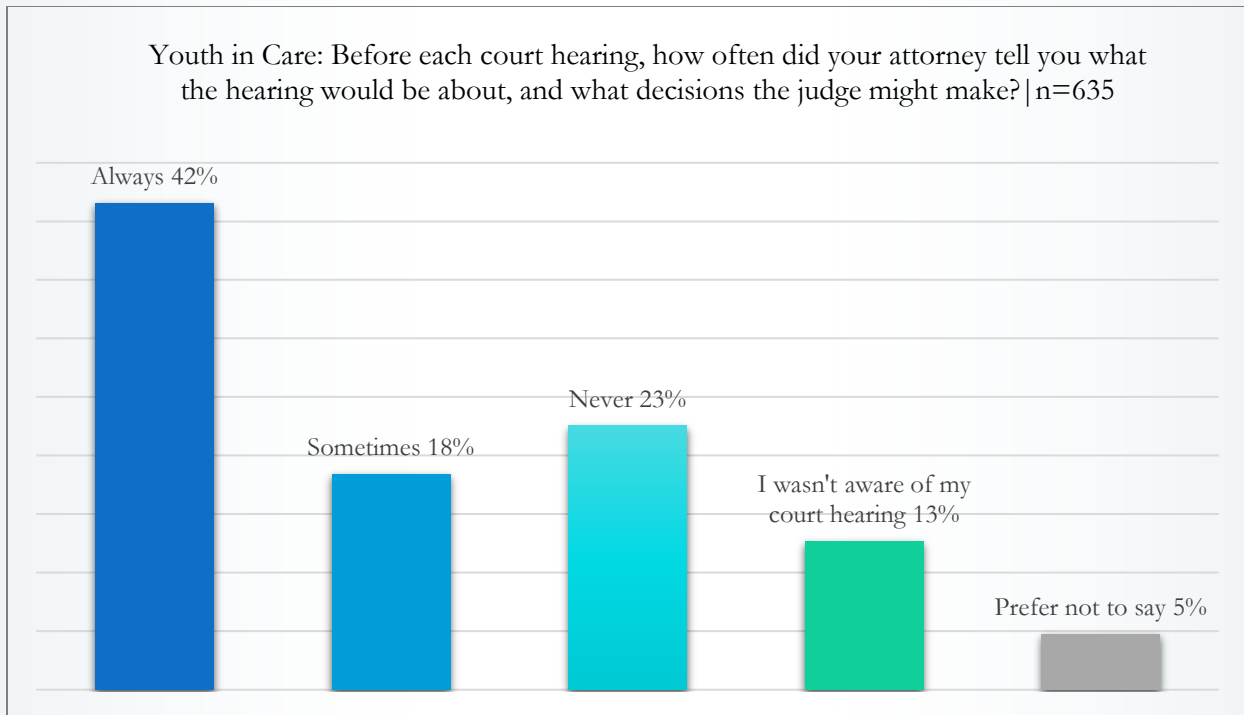


Figure 65

Among youth participants, 41% reported always receiving information regarding what to expect as a result of a court hearing. Over a third of youth responded that they were unaware of the hearing or what would transpire at the hearing.

“He is awesome! He is always there for me. He answers all of my questions. Every time we have court he always calls to tell me about what is going to happen.”

- Youth in Care

“I didn’t know my attorney was supposed to visit me or talk to me about my hearing because she never did.”

- Youth in Care

Pursuing Client-Directed Advocacy

Texas has a client-directed model of child representation, meaning that if children are competent to form an attorney-client relationship,⁵⁰ the attorney must advocate based on the client’s directives, not what the attorney determines is in the best interest of the child.⁵¹ The study surveyed stakeholders about their assessment of how court-appointed attorneys demonstrate client-directed representation.

“I don’t know him [the attorney], I don’t have contact with him, I don’t know if he is for me or against me.”

- Youth in Care

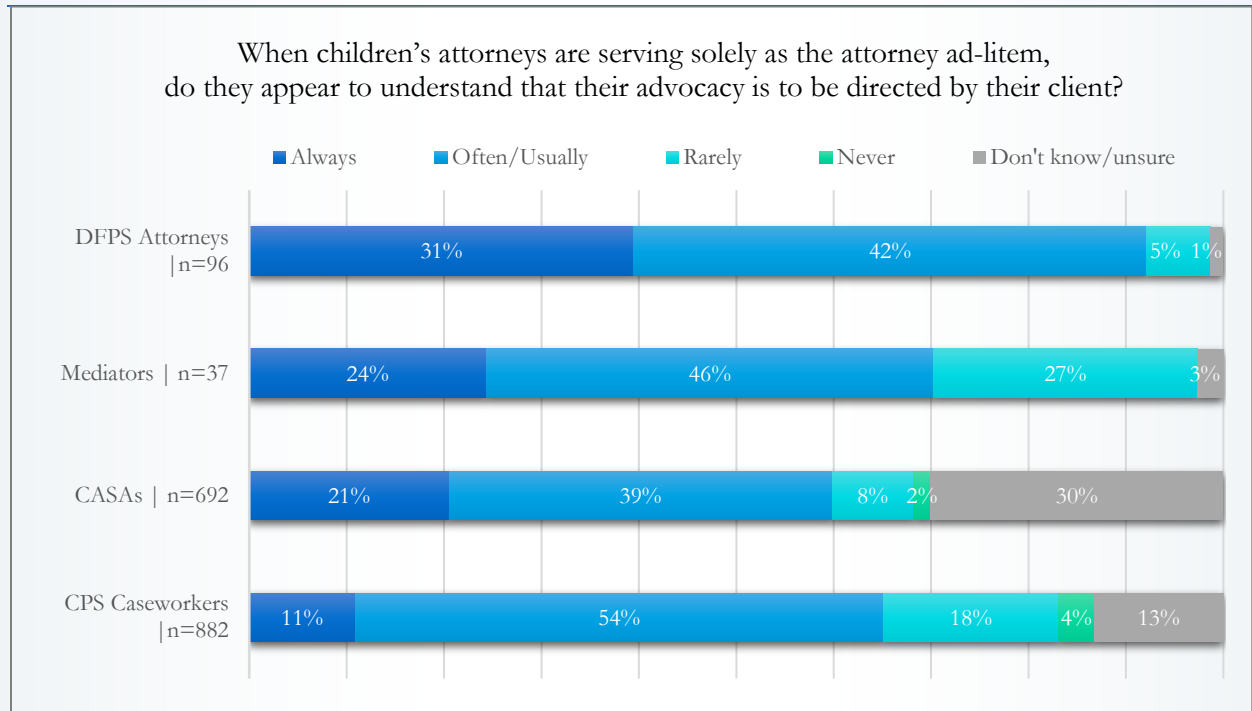


Figure 66

DFPS attorneys and mediators indicated that, in large part, court-appointed attorneys always or often/usually understand the client-directed role. However, CASAs and CPS caseworkers’ responses show a lesser degree of confidence that attorneys understand this role.

⁵⁰ See Tex. Fam. Code § 107.008 for the circumstances when an attorney may substitute judgment.

⁵¹ Tex. Fam. Code § 107.004(a)(2).

Child's Presence in Court

One part of client-directed advocacy that is unique to children's attorneys is advocating for the child to exercise his or her statutory right to attend court. The Family Code states that children must attend Permanency Hearings unless excused by the court.⁵² An attorney's duty includes explaining to the child their right to attend court and advocating for the child to attend if the child wants to attend.

The study surveyed attorneys and foster parents about their experiences with children's statutory right to attend court. An attorney could comply with this duty without directly communicating with the foster parent, but the foster parent's responsibility for daily care of the child means that the foster parent would need to be informed of the child's absence from home or school while attending court.

Court-Appointed Attorneys: How often do you inform your verbal clients of their statutory right to attend court? | n=204

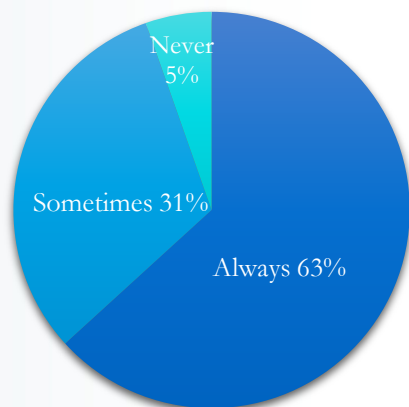


Figure 67

Foster Parents: How often do attorneys for children discuss with you that the child has a right to attend court and meet with the judge? | n=310

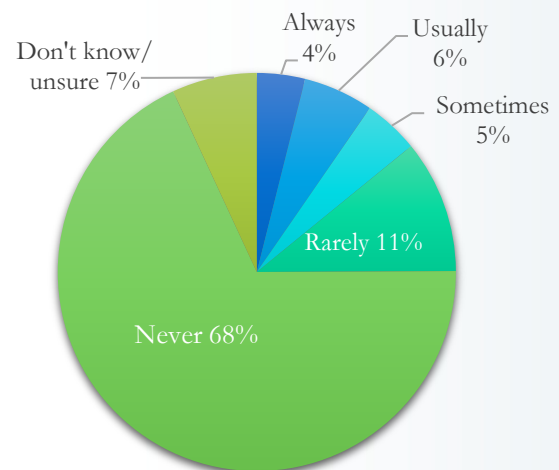


Figure 68

“My attorney never comes around, I don’t know his name or her name. I don’t even know if he knows me. He/she doesn’t call me or nothing. I don’t even go to my court hearings or anything. I have know [sic] idea if my attorney cares about what I say or how I feel.”

- Youth in Care

“I always felt like [my attorney] was interested in me. She helped me get documents I needed. She helped me get placed with my sister. I appreciate that she never quit working for me.”

- Youth in Care

A majority of court-appointed attorneys indicated they always inform their clients about this statutory right to attend court. Foster parents reported that a majority of the time the court-appointed attorneys for children in their care never discuss the child's right to attend court with the foster parent.

⁵² Tex. Fam. Code § 263.301.

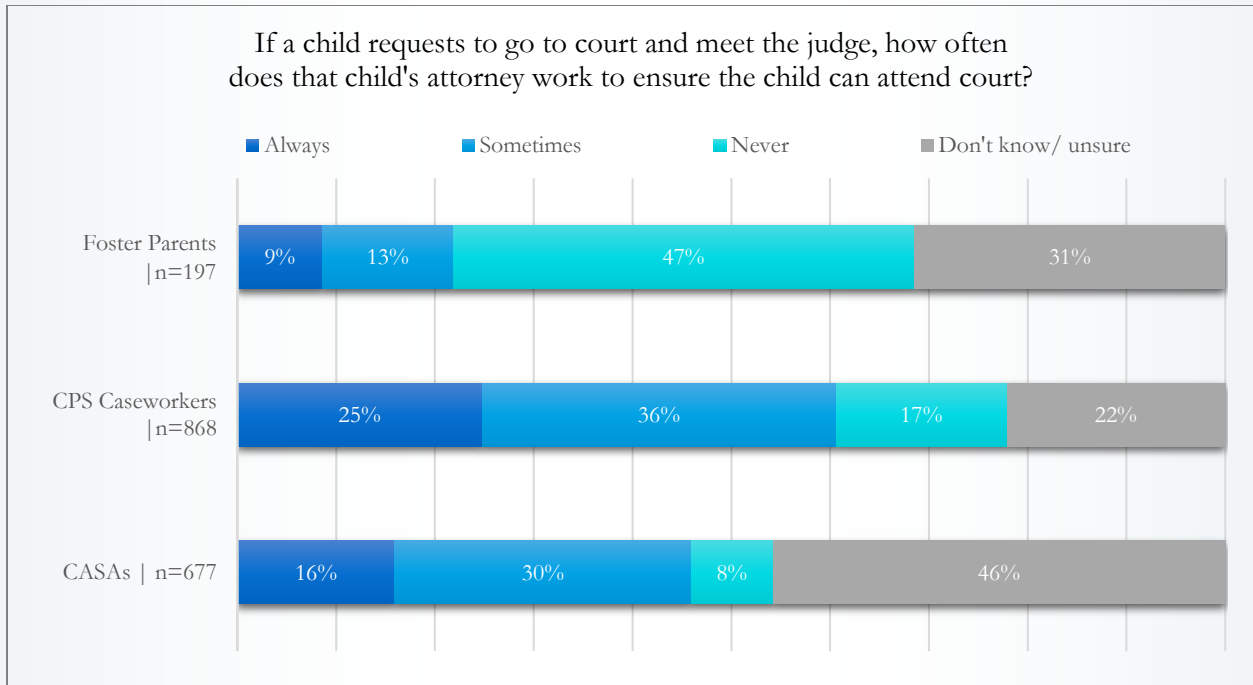


Figure 69

The high percentage of participants answering do not know justifies treating these answers with caution, particularly since only the child and the attorney know for certain whether the child expressed to the attorney a desire to attend court. However, the results indicate that CASAs and CPS caseworkers believe that court-appointed attorneys work to get children to court at a significantly higher rate than foster parents report.

Advocating on the Child's Behalf

Court-appointed attorneys for children also have a statutory duty to take any action consistent with the child's interests that the attorney considers necessary to expedite the proceedings.⁵³ One way an attorney for a child can accomplish this goal is by advocating for a child's needs to be met by their placement without having to bring the matter to the court's attention.

The study surveyed youth in care about whether court-appointed attorneys assisted them in this way.

Youth in Care: How much did your attorney help you get what you need from your foster parents or treatment center staff? | n=626

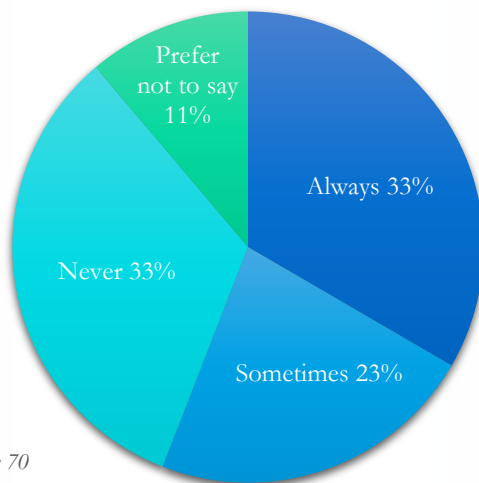


Figure 70

The responses from the youth in care indicate that some attorneys for children provide assistance to their clients outside of court, but the responses also indicate that the practice is inconsistent.

Investigating the Facts of the Case

Court-appointed attorneys representing children have a statutory duty to investigate the facts of the case⁵⁴ and as part of that investigation are specifically authorized to access information that would otherwise be privileged.⁵⁵ None of the questions directly addressed the issue of whether court-appointed attorneys for children complied with this duty, but several comments were submitted.

“The[y] just read case reports and give their guidance. True representation of the child and their best interest cannot be done from pieces of paper.”

- Foster Parent

“Some [attorneys] are amazing and go out of their way to gather information and provide strong representation for their clients. These attorneys make huge impacts on the case and are a testament to the system of representation.”

- CASA

⁵³ Tex. Fam. Code § 107.003(a)(1)(G).

⁵⁴ Tex. Fam. Code §§ 107.003(a)(1)(D);107.004.

⁵⁵ Tex. Fam. Code § 107.006.

Assessing the Child's Educational Needs

Attorneys for children in care have a statutory duty to determine whether the child's educational needs and goals are identified and addressed prior to each hearing.⁵⁶ Foster parents often serve as the default education decision-maker and/or "parent" for special education related decisions.⁵⁷ For this reason, the survey asked foster parents about whether attorneys consulted them about the child's educational needs and goals.

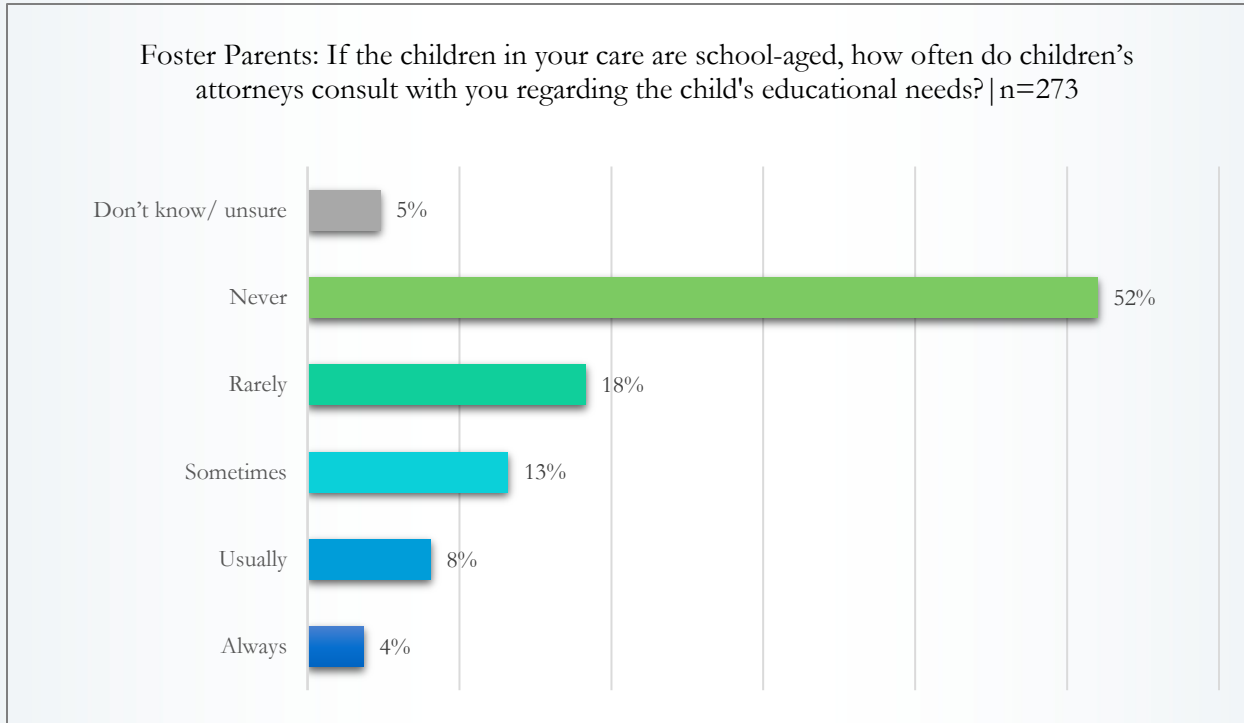


Figure 71

Of foster parents surveyed, 70% reported that attorneys for children in their care rarely or never consult with them about the child's education, and only 12% reported that attorneys always or often consult with them. It is important to note that contacting foster parents is not the only possible way an attorney might assess the child's educational needs.

⁵⁶ Tex. Fam. Code § 107.004(d-2).

⁵⁷ Tex. Fam. Code §§ 263.004; 263.0025.

10.3 Ethical Requirements

Communicating with the Client

Every attorney has a duty to competently and diligently represent his or her client, and a duty to not neglect the client's case or frequently fail to carry out his or her obligations to the client.⁵⁸ One of those obligations is to communicate with the client. An attorney has an ethical duty to keep his or her client reasonably informed and must promptly respond to reasonable requests for information⁵⁹ and render candid advice.⁶⁰

"I have been placed outside of my home county for the majority of my time in placement. My ad-litem has always maintained consistent phone contact with me and has even traveled to see me."

- Youth in Care

These rules exist not simply as a courtesy to clients, but because legal matters are time-sensitive and neglected communication may result in legal harm to the client if information is not acted upon timely. Child-welfare law is no exception and the need for responsiveness may be even more acute as the child's safety and/or well-being is often the subject of client communication.

"He [the attorney] did not talk to me about what was going to happen in my case. I have not spoken to him in the last eight months. How am I supposed to know what is going on if I have not talked to him?"

- Youth in Care

⁵⁸ Tex. R. Prof. Conduct 1.01(b)(1)-(2).

⁵⁹ Tex. R. Prof. Conduct 1.03(a).

⁶⁰ Tex. R. Prof. Conduct 2.01.

The study surveyed court-appointed attorneys about how promptly they responded to their child client’s requests for information. The survey also asked foster parents how quickly attorneys responded, both when the foster parent called the attorney, and when a child in their care called the attorney. Finally, the study surveyed children about the responsiveness of their attorneys.

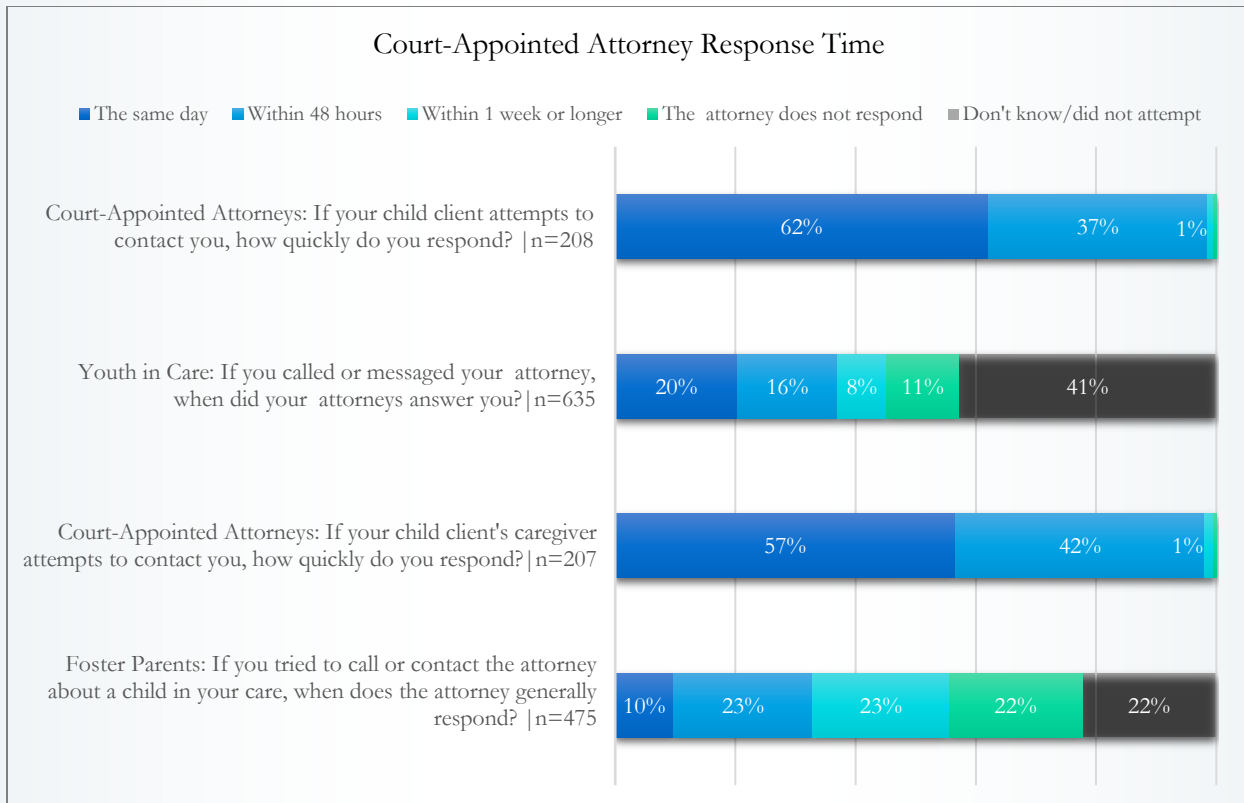


Figure 72

Whether it was a child calling or a child’s caregiver calling, 90% of court-appointed attorneys reported that they responded the same day or within 48 hours. Of the youth surveyed, 35% reported that court-appointed attorneys responded the same day or within 48 hours. Thirty-two percent of foster parents reported similarly. Though a foster parent (or other caregiver) is not the attorney’s client, for children who are not yet verbal the foster parent is often the most direct and timely source of information for the attorney about the child’s needs. As noted previously, the attorneys who responded to the survey are not necessarily the same attorneys referenced by other stakeholder groups.

11. Attorneys for Parents

Court-appointed attorneys for parents have identical ethical duties to their clients as children’s attorneys and nearly identical statutory duties. Unfortunately, the low number of parent responses to the survey do not allow the study to provide data regarding parents’ direct experiences with their attorneys. However, other stakeholders were asked to give their assessment of parents’ attorneys’ compliance with their duties based on their interactions with parents and parents’ attorneys. Additionally, information solicited at a focus group of the Parent Collaboration Group has been included to represent parents’ perspectives.

11.1 Statutory Requirements

Meeting with Parent Clients

Like attorneys for children, attorneys for parents are required by the Family Code to meet with their clients prior to every hearing.⁶¹ The study surveyed stakeholders regarding their estimation of how often parents’ attorneys meet with their clients in advance of court. Judges and DFPS attorneys were asked their perception of whether parents’ attorneys were meeting with clients prior to court hearings.

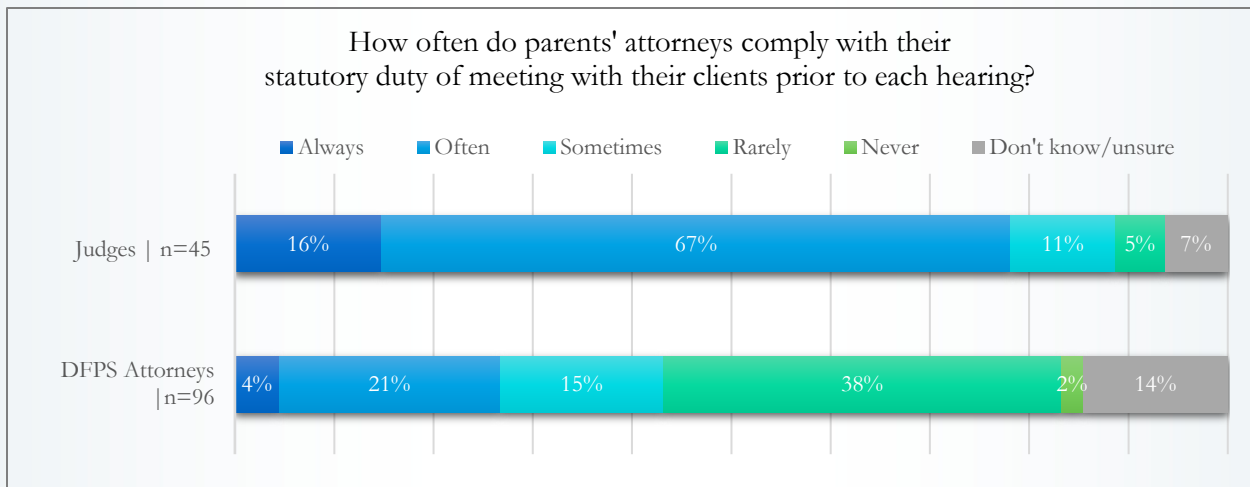


Figure 73

⁶¹ Tex. Fam. Code § 107.0131(a)(1)(G).

CASAs and CPS caseworkers were asked a slightly different question based on their increased level of interaction with parents compared to judges and DFPS attorneys.

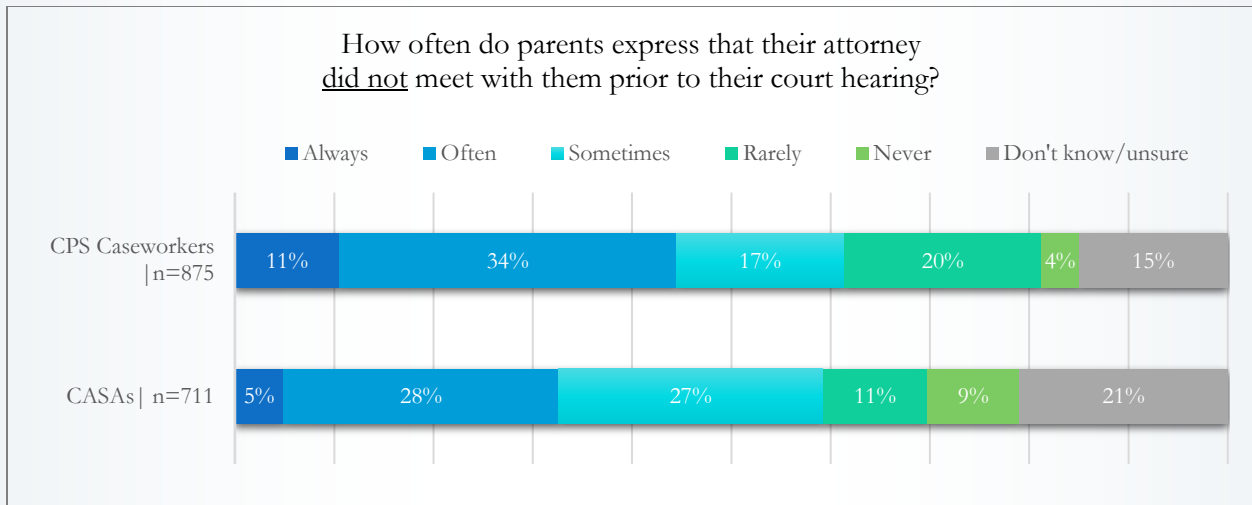


Figure 74

Eighty-five percent of judges reported that it is their perception that attorneys for parents always or often meet with their clients prior to court. Judges interact with parents and their attorneys only in a formal court setting and their perceptions are presumably limited to that setting.

About a third of CPS caseworkers and CASAs reported that parents always or often expressed that their attorney did not meet with them prior to court hearings. DFPS attorneys reported similarly to CASA and CPS caseworkers.

“Almost all parents complain of not being able to get into [sic] contact with their attorney.”

- CASA

Conducting an Investigation

An attorney for a parent is required by the Family Code to investigate the facts of the case.⁶² The low number of parents’ survey responses were inadequate to accurately assess compliance with this duty and no other survey questions addressed the issue directly. However, a theme regarding this duty arose during the parent focus group meeting. Examples of those responses have been provided below but the study cannot speak to whether those responses are representative of parents involved in CPS cases.

“Advocate for me. Investigate, find out what I have to say and find out what people around me have to say. Then make your opinion or case.”

- Focus Group Parent

“My attorney finally spoke up and said, “I want individual therapy for her.” The therapist ended up writing a letter to the judge. That’s when I think our relationship changed and I trusted her for the first time.”

- Focus Group Parent

⁶² Tex. Fam. Code § 107.0131(a)(1)(B).

11.2 Ethical Requirements

Advising the Client

As with children’s attorneys, parents’ attorneys have a duty to provide their clients with independent professional judgment and candid advice.⁶³

*A client is entitled to straightforward advice expressing the lawyer’s honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client’s morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.*⁶⁴

There are few facts more unpleasant for a parent to consider than the prospect of the termination of the parent-child relationship with his or her child(ren), and few alternatives which a client may be disinclined to confront. Those realities illustrate the need to provide parents in CPS cases with quality legal advice. Parents in the focus group shared how their attorney’s advice impacted them.

“In the beginning, I wanted to rush the process. I just wanted my kids back right then and there. He saw I was doing my progress, but when CPS was taking their time on doing their part, he started getting on them. Telling them “hey she’s done what she was asked, why aren’t you doing your part?”

– Focus Group Parent

“The attorneys were doing what they could to help me. They made me feel like there was hope, and they weren’t out to get me.”

– Focus Group Parent

⁶³ Tex. R. Prof. Conduct 2.01.

⁶⁴ Tex. R. Prof. Conduct 2.01, Comment 1.

Communicating with the Client

Just like an attorney for a child, a parent’s attorney has a duty to keep the parent informed about the status of the case and promptly comply with reasonable requests for information.

The study surveyed court-appointed attorneys about their responses to their parent clients’ requests for information.

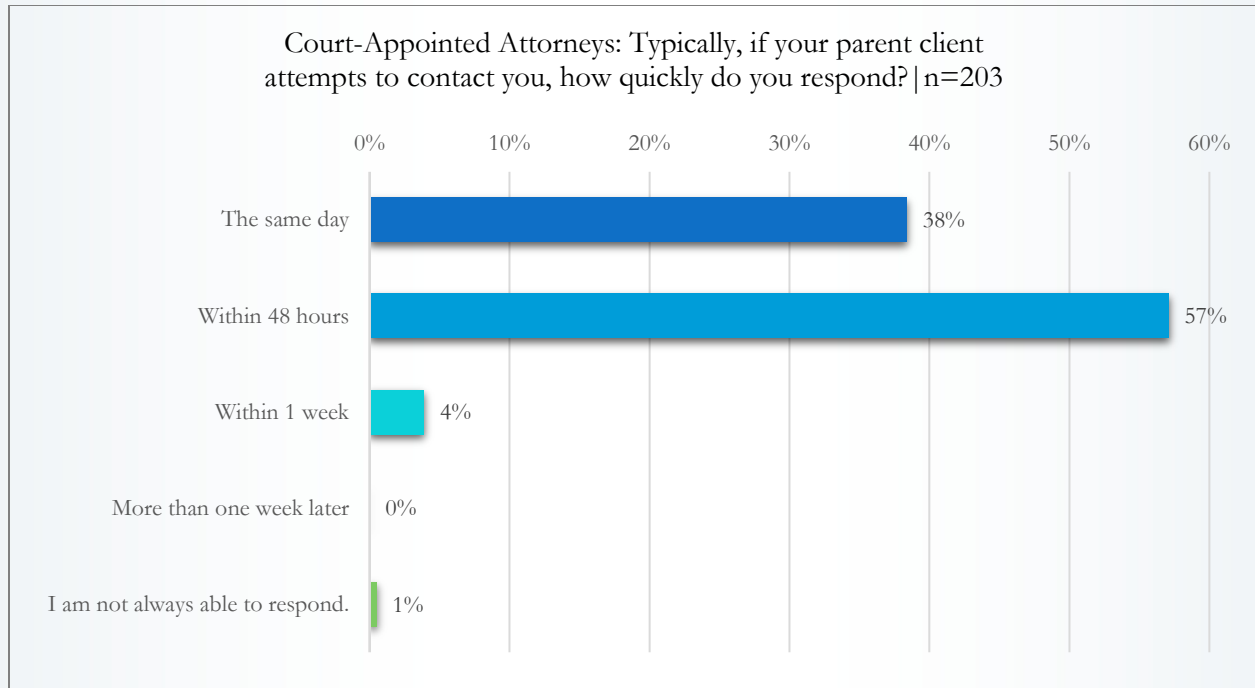


Figure 75

“After the first time we met, he would answer all my calls and texts and stuff like that, so my attorney was pretty good.”

- Focus Group Parent

“I left him emails, and voicemails, and he never returned my calls.”

- Focus Group Parent

Due to the small number of parent responses, court-appointed attorneys’ responses cannot be compared to responses from parents themselves. However, parents from the focus group also described their experiences communicating with their court-appointed attorneys.

“A lot of times I’d have hard time getting ahold of him. Court, that’s basically the only time I would see him. I think the communication with my attorney letting me know this is what’s going on this is where you’re at, would have helped a lot.”

- Focus Group Parent

Undivided Loyalty

All attorneys owe their clients a duty of undivided loyalty, meaning they may not represent a client if the attorney has an interest that conflicts with the client's legal interest. A conflicting interest could result from an attorney's obligation to another current client, a former client, or the attorney's own interest.⁶⁵

*Loyalty is an essential element in the lawyer's relationship to a client.*⁶⁶

Establishing that loyalty between parent clients and court-appointed attorneys can be difficult given many parents' negative feelings toward anyone associated with the removal of their child from their care. When loyalty is established, it may have a powerful effect on clients who may otherwise feel powerless.

"For me, my attorney was amazing. He was always concerned and trying to help me out. Never judged me for anything."

- Focus Group Parent

Attorney-Client Privilege with Parent Representation

*Free discussion should prevail between lawyer and client in order for the lawyer to be fully informed and for the client to obtain the full benefit of the legal system. The ethical obligation of the lawyer to protect the confidential information of the client not only facilitates the proper representation of the client but also encourages potential clients to seek early legal assistance.*⁶⁷

As with children's attorneys, every parent's attorney has a duty to keep information provided by their client confidential.⁶⁸ Unlike children's attorneys, the Texas Legislature did not establish statutory rules for how parents' attorneys must conduct meetings with their clients. However, the same principle of confidentiality still applies and the same purpose of building trust between an attorney and his or her client still applies.

One parent in the focus group described how a breakdown in the attorney-client relationship affected their trust in the attorney.

"I assumed there was no attorney-client privilege because of the way he acted; I assumed he was a part of CPS. The fact that he ignored my calls, the fact that he ignored me. The fact that he went into the court room without me, signed documents without my knowledge, saying we were going to reschedule."

- Focus Group Parent

⁶⁵ Tex. R. Prof. Conduct 1.06.

⁶⁶ Tex. R. Prof. Conduct 1.06, Comment 1.

⁶⁷ Tex. R. Prof. Conduct 1.05, Comment 1.

⁶⁸ Tex. R. Prof. Conduct 1.05.

Conversely, another parent focus group participant described the effect it had on her when her attorney was conscientious about maintaining confidentiality.

“We would meet [and] he would make sure nobody else was around, even borrowing the judge’s chambers or another room. It made me feel good, it made me feel like there was hope. Like someone actually did care.”

– Focus Group Parent

12. Quality of Court-Appointed and DFPS Attorneys

The study surveyed judges, CPS caseworkers, foster parents, mediators, and CASAs to compare the quality of representation between attorneys representing DFPS, attorneys representing parents, and attorneys representing children. They were each asked to rate the three types of attorneys separately. Figure 76 represents the cumulative responses from each of the four stakeholder groups to present an overall impression of the quality of DFPS attorneys, parents’ attorneys, and children’s attorneys.⁶⁹

Across all stakeholders surveyed, all attorneys were rated as good or excellent more often than inconsistent, mediocre, or poor. DFPS attorneys were rated the most consistently good or excellent and had the fewest number of inconsistent, mediocre, or poor ratings. Parents’ attorneys had the fewest excellent ratings, the highest number of inconsistent ratings, and the highest number of mediocre ratings. Children’s attorneys had the second highest number of excellent ratings, but also the highest number of poor ratings.

Judges rated all types of attorneys as good or excellent at higher percentages compared to all other stakeholder groups.

⁶⁹ The “n” values for Figure 76 are as follows – Foster Parents: DFPS attorneys n=454, parents’ attorneys n= 447, children’s attorneys n=451. Judges: DFPS attorneys n=49, parents’ attorneys n= 49, children’s attorneys n=49. CPS Caseworkers: DFPS attorneys n=890, parents’ attorneys n=886, children’s attorneys n=887. CASAs: DFPS attorneys n=695, parents’ attorneys n= 687, children’s attorneys n=687. Mediators: DFPS attorneys n=38, parents’ attorneys n= 37, children’s attorneys n=37.

In your experience, how would you rate the quality of legal representation displayed by attorneys for DFPS, parents, and children?

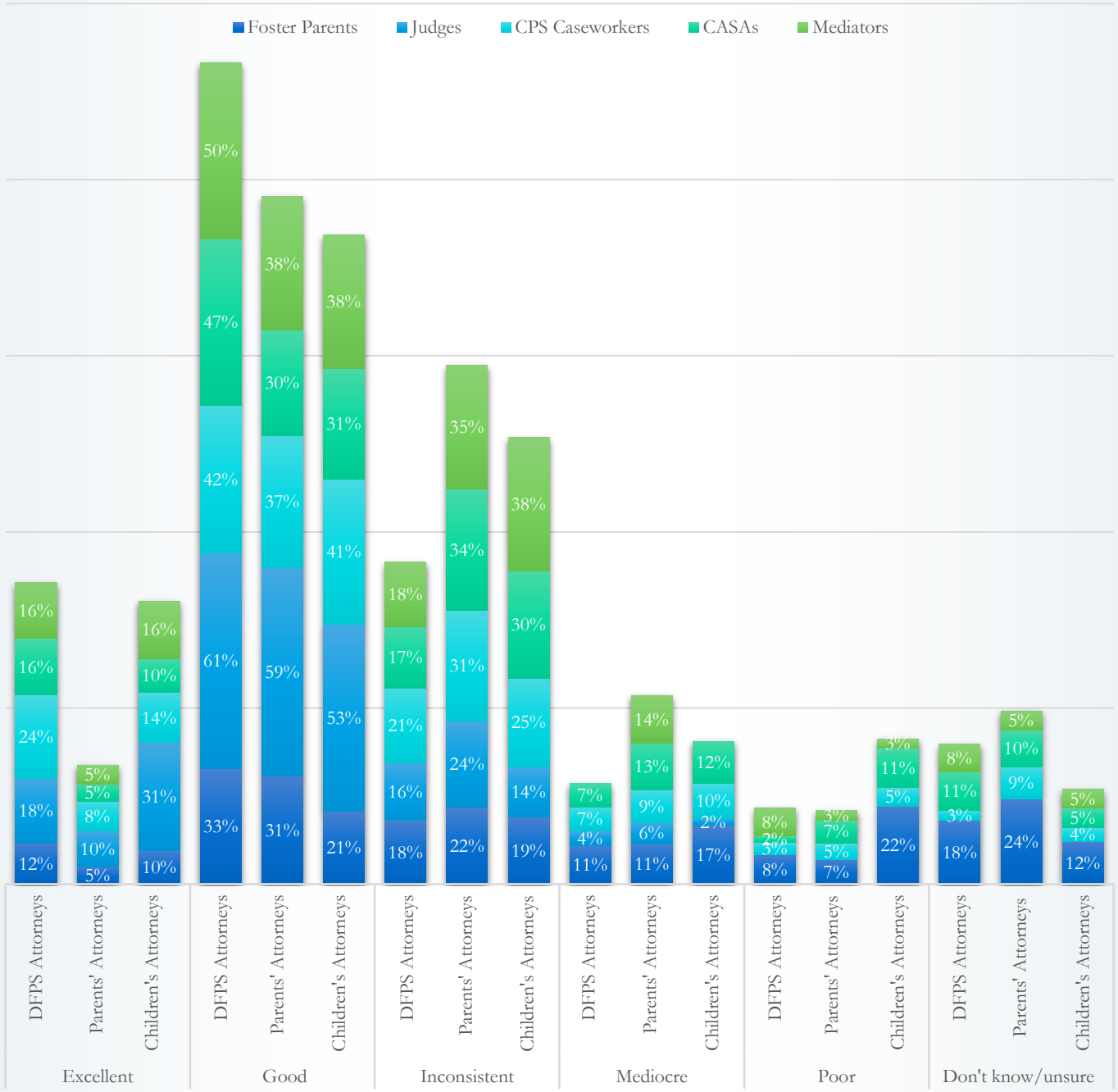


Figure 76

13. Oversight and Accountability

Though the Family Code specifies that court-appointed attorneys for parents and children are not exempt from the State Bar grievance process,⁷⁰ the Family Code does not establish or require a specific system of oversight for court-appointed attorneys for parents and children. Chapter 37 of the Texas Government Code imposes some oversight on the judiciary by requiring courts to establish and maintain a list of attorneys who are qualified to take court appointments.⁷¹ Chapter 36 of the Government Code requires courts to issue monthly reports to OCA listing the names of appointed attorneys, the cases to which they are appointed, and the amounts paid to these attorneys.⁷² Chapter 36 does not define qualified attorney, nor are there requirements for how the appointment lists should be established or maintained. Such determinations are left up to individual courts.

13.1 Systems of Oversight

The study surveyed judges to assess what oversight systems for court-appointed attorneys currently exist. The survey first inquired whether judges believed overseeing court-appointed attorney accountability was an appropriate task for judges.

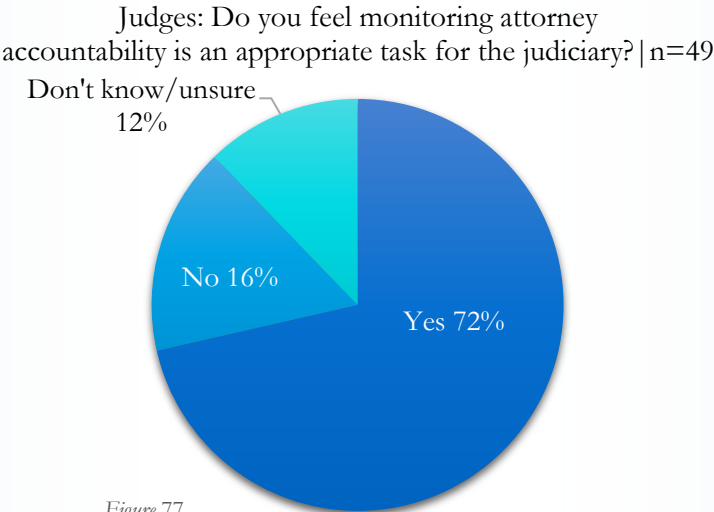


Figure 77

⁷⁰ Tex. Fam. Code §§ 107.0045; 107.0133.
⁷¹ Tex. Gov't Code § 37.003(a)(1).
⁷² Tex. Gov't Code § 36.004.

Judges: Do you have sufficient time and resources to review attorney compliance with statutory duties and performance standards? | n=51

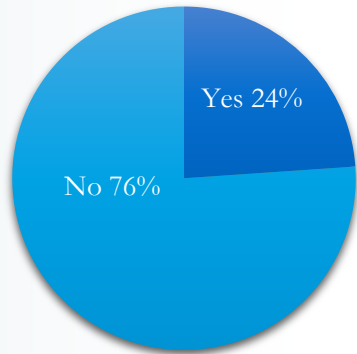


Figure 78

Judges: Do you use a formal review process to evaluate attorney performance for compliance with statutory duties or other standards of representation? | n=53

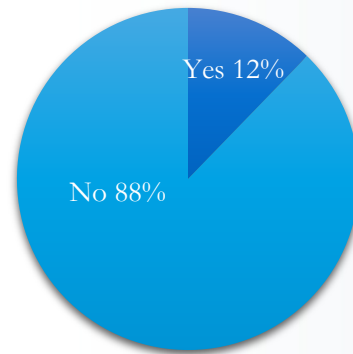


Figure 79

While 72% of judges responded that oversight was an appropriate task for the judiciary, 76% of judges reported that they did not have sufficient time and resources to oversee attorney compliance, and 88% reported they have no system in place to oversee compliance.

Non-judicial stakeholders were also asked about the existence of local oversight systems.

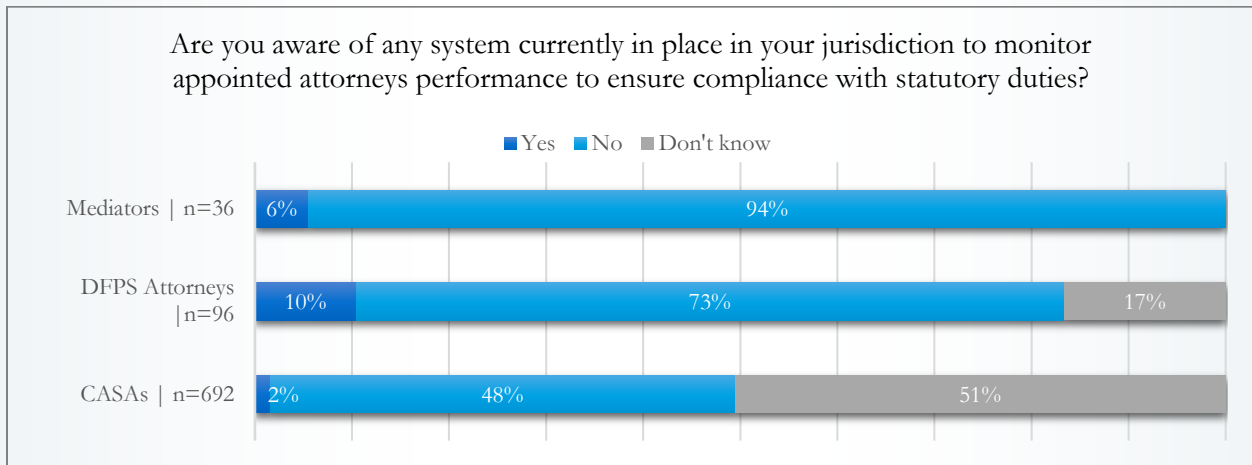


Figure 80

Among mediators, DFPS attorneys, and CASAs, 10% or fewer responded that they were aware of a system of oversight to ensure accountability.

13.2 Evaluating Attorney Performance

There are multiple indicators that can be used to ascertain whether a court-appointed attorney is in compliance with his or her statutory duties.

One method of monitoring attorney performance is a formal procedure for clients to voice complaints about their representation.

Court-Appointed Attorneys: Is there a mechanism in place for a parent or child to obtain a new attorney if he/she is dissatisfied? | n=199

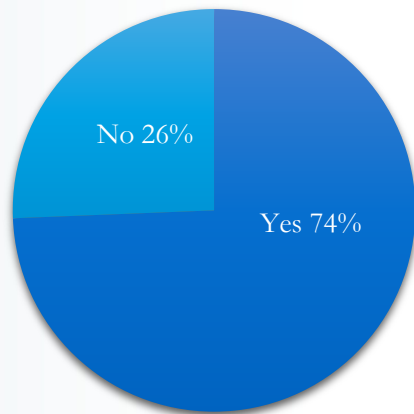


Figure 81

Judges: Do you have a formal procedure if a parent or child has a complaint about their representation? | n=50

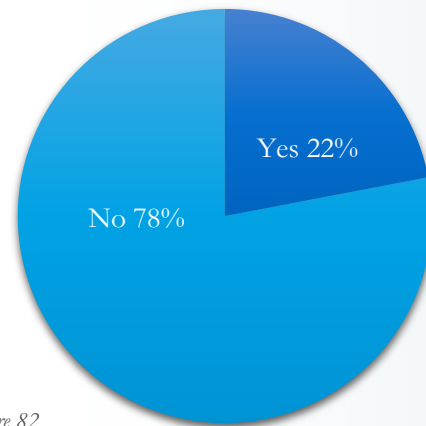


Figure 82

A majority of attorneys responding to the survey indicated there was a complaint procedure in place while a majority of judges reported that there was no such procedure.

Another tool for assessing attorney performance is to survey clients directly about their satisfaction with the representation provided to them.

Court-Appointed Attorneys: Do you survey your clients about their satisfaction with your representation? | n=202

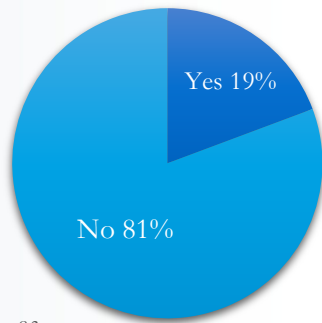


Figure 83

Judges: Do you formally survey parents or children or have another way to determine their satisfaction with court appointed representation? | n=50

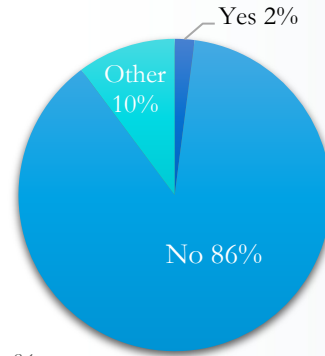


Figure 84

Over 80% of both judges and court-appointed attorneys reported that they did not use a client survey to gauge satisfaction with the quality of legal representation received by the client. Thus, there is little to no data available regarding client satisfaction. Data gathered by the 19% of attorneys reporting that they survey clients regarding satisfaction are presumably only available to those individual attorneys for personal improvement.

The study surveyed court-appointed attorneys about how they self-report their case-related activities in their bills.

Court-Appointed Attorneys: Do you specify the actions taken on behalf of your client in your bill? | n=200

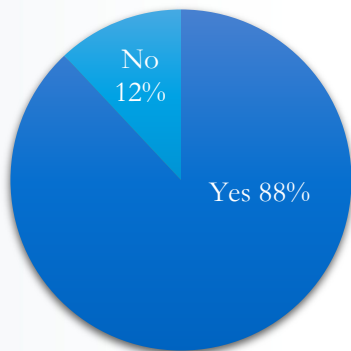


Figure 85

Court Coordinators: Is data collected from attorney billing used in the evaluation process? | n=27

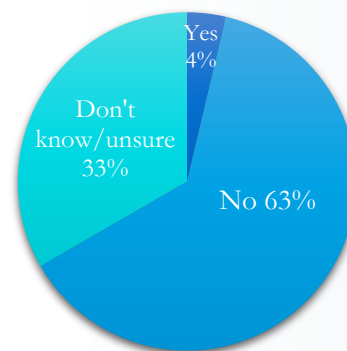


Figure 86

Nearly 90% of court-appointed attorneys indicated that they specified actions taken on behalf of their client in the bill they submit to the court. However, court coordinators reported that only 4% of courts use attorney billing data as part of a process to evaluate attorney performance.

13.3 Caseloads

Another function of oversight is to monitor attorneys' caseloads. Quality representation is only possible if the attorney has the time and resources to handle all the assigned cases.

*A lawyer's workload should be controlled so that each matter can be handled with diligence and competence.*⁷³

Although there is no established national standard for caseloads for attorneys for parents and children, the National Association of Counsel for Children (NACC) recommends a caseload cap of 100 individual clients at a time, assuming a caseload that includes clients at various stages of cases, and recognizing that some clients may be part of the same sibling group.⁷⁴ The recommendation was based on a rough calculation that the average attorney has 2000 hours available per year, assumes 20 hours of work per child per year, and also assumes that the lawyer has adequate support staff.⁷⁵

A 2008 caseload study by the Judicial Council of California recommended a caseload of 77 clients per full-time attorney to achieve optimal standards of performance.⁷⁶ A Pennsylvania workgroup broke down the time and expected tasks required throughout the life of a case and compared that to attorney hours available in a year. They concluded that caseloads for children's lawyers should be set at 65 cases per full-time lawyer.⁷⁷ The ABA launched the Family Justice Initiative (FJI) in 2016 in an effort to improve the quality of legal representation in CPS cases nationwide. The FJI's Quality Representation Workgroup has released an initial draft of Prioritized Attributes of Quality Legal Representation. That draft recommends a caseload limit of 60 total clients to be a "necessary" attribute of a quality representation system. Texas has not adopted caseload standards for attorneys who represent children in abuse and neglect cases. Currently, any enforcement of standards would meet with the same barriers as holding attorneys accountable to their duties under the Family Code.

⁷³ Tex. R. Prof. Conduct 1.01, Comment 6.

⁷⁴ Clarification re: NACC Recommendations for Representation of Children in Abuse and Neglect Cases, Part III (A)(2), Comment A, as cited in Child Welfare Law and Practice. Available at:

http://c.ymcdn.com/sites/www.naccchildlaw.org/resource/resmgr/certification/red_book_stmt_clarification.pdf.

⁷⁵ NACC, Pitchal, Freundlich, and Kendrick. (December 2009). *Evaluation of the Guardian ad litem System in Nebraska* at 42-43. Available at:

https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/nebraska/final_nebraska_gal_report_12.pdf.

⁷⁶ Judicial Council of California Administrative Office of the Court Center for Families Children and the Courts. (2008). *Dependency Counsel Caseload Standards A Report to the California Legislature*. Available at:

<http://www.courts.ca.gov/documents/DependencyCounselCaseloadStandards2008.pdf>.

⁷⁷ Pennsylvania State Roundtable Report. (2014). *Moving Children to Timely Permanency*. Available at:

[http://www.ocfcpcourts.us/assets/upload/Resources/Documents/2014%20Legal%20Representation%20Report\(4\).pdf](http://www.ocfcpcourts.us/assets/upload/Resources/Documents/2014%20Legal%20Representation%20Report(4).pdf).

The study surveyed court-appointed attorneys about whether their jurisdictions monitor their caseloads; 87% reported no awareness of a caseload cap or guideline in place.

Court-Appointed Attorneys: Does your jurisdiction have a caseload cap or measures in place to keep your caseload manageable? | n=108

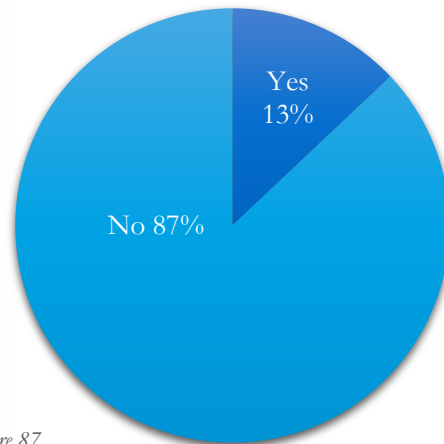


Figure 87

The survey also asked court-appointed attorneys about their annual caseloads. There are some limitations to using the data to extrapolate an average client caseload, including a lack of information regarding whether such appointments included representation of one or more children. In other words, one court-appointed case could be counted as an appointment, even if the attorney was appointed to represent multiple siblings in one family, each of whom would be a separate client. Also, it is unknown whether the attorney's appointments continued past the 12-month statutory deadline in CPS cases, which could indicate that the attorney's caseload exceeded 24 appointments in one year. Finally, the survey did not ask if the attorney's work included representing clients in non-CPS matters such as divorce, housing and landlord-tenant, or securing public benefits, which are common legal needs of families involved with CPS.

Court-Appointed Attorneys: In the past year, approximately how many cases have you been appointed to? | n=216, 205

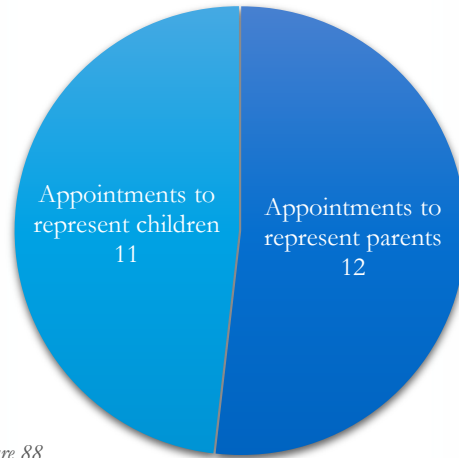


Figure 88

On average, responding attorneys reported receiving approximately 24 total appointments per year. Court-appointed attorneys were surveyed directly about their current capacity to take on a greater number of child-welfare related appointments.

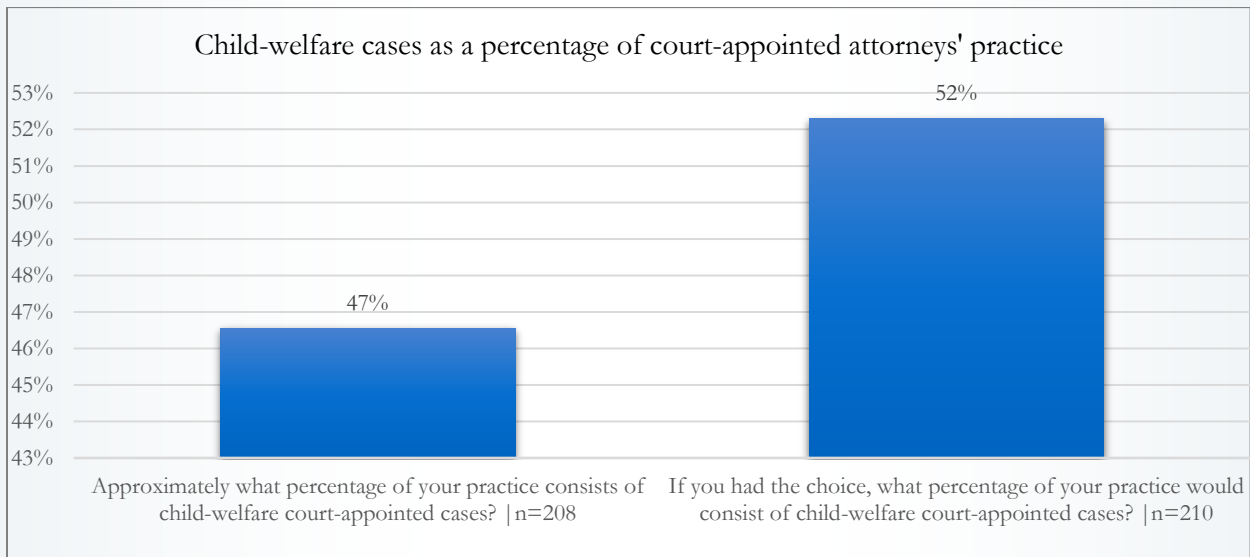


Figure 89

While child-welfare cases currently account for an average 47% of surveyed attorney caseloads, attorneys indicated a preference for these cases to increase to 52% of their caseloads.

13.4 Accountability for Court-Appointed Attorneys

The study surveyed stakeholders about whether attorneys on their jurisdiction’s appointment list are held accountable if they fail to perform.

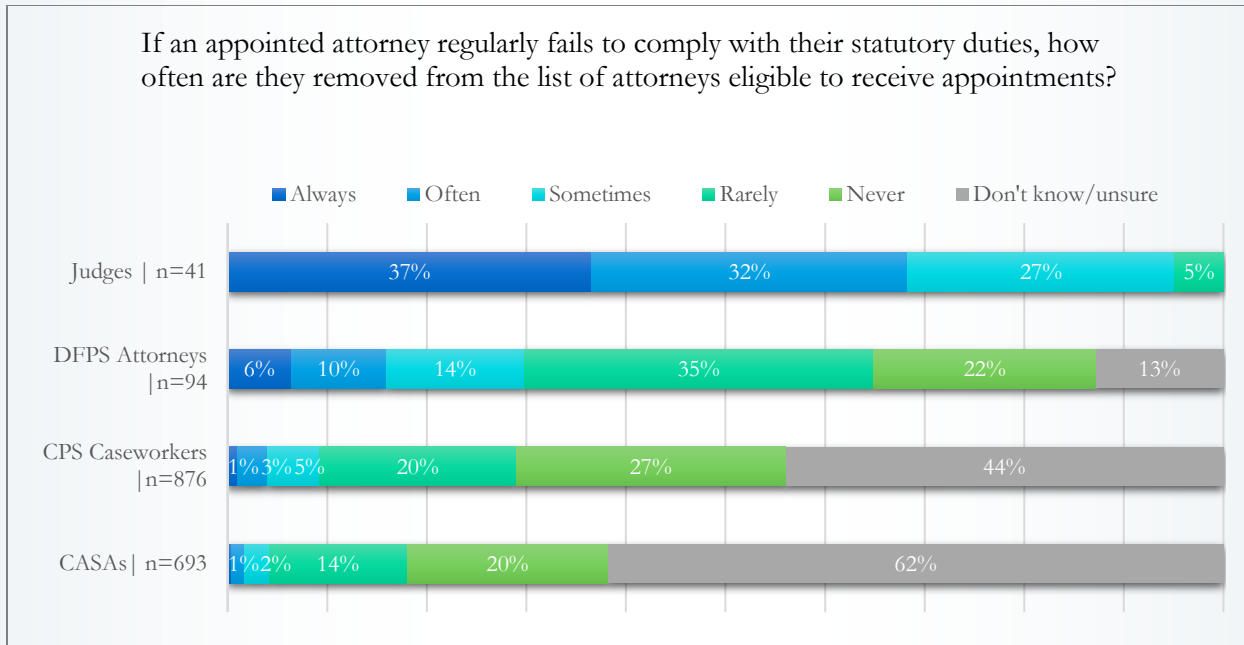


Figure 90

Sixty-nine percent of judges reported that they always or often remove attorneys from appointment lists if the attorney fails to fulfill their statutory duties. However, only 16% of DFPS attorneys, 4% of CPS caseworkers, and 1% of CASAs reported having knowledge of this consequence. In fact, the majority of DFPS attorneys, nearly half of CPS caseworkers, and about one-third of the CASAs reported that even when attorneys fail to fulfill their statutory duties, they are not removed from the appointment list.

“There are attorneys on the appointment list who do not do their jobs and are wholly ineffective for their clients.”

- DFPS Attorney

13.5 Impact of Oversight on the Quality of Representation

The study surveyed court-appointed attorneys about the need for improved oversight.

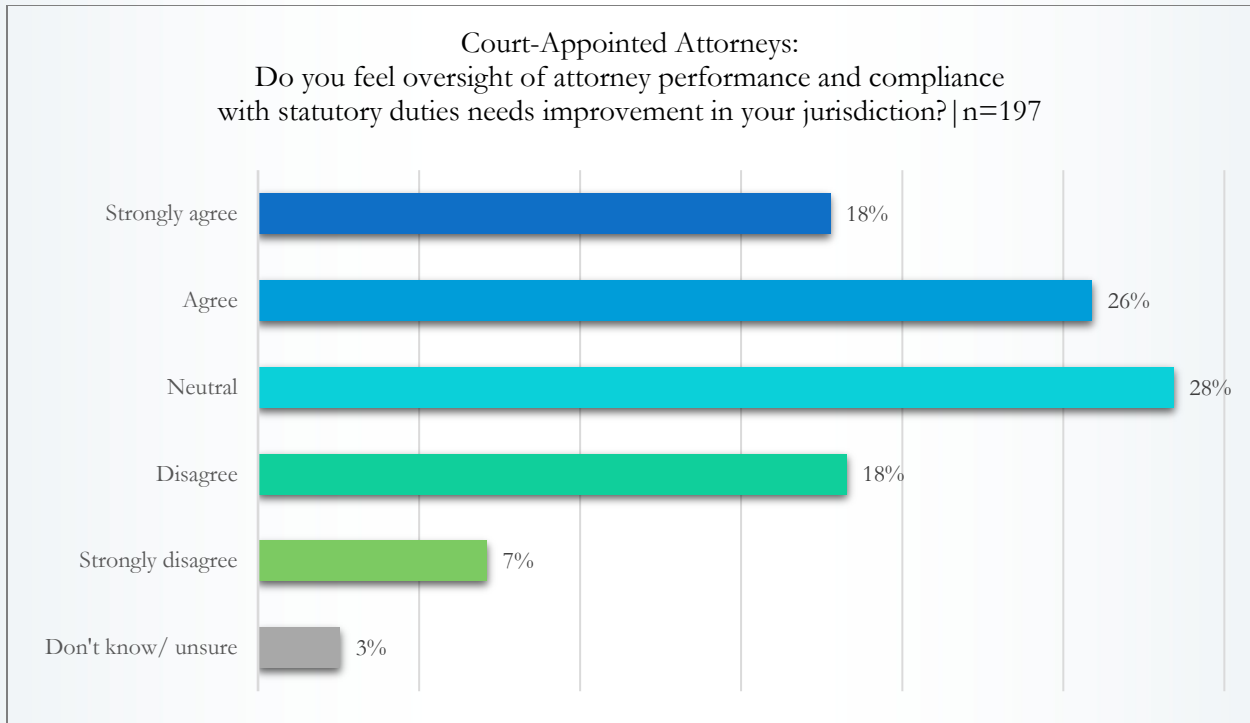


Figure 91

Among court-appointed attorneys, 44% agreed that improvements to attorney oversight is needed, while 25% disagreed that any change is needed.

Judges and DFPS attorneys were asked about how the lack of oversight impacts the quality of legal representation by court-appointed attorneys.

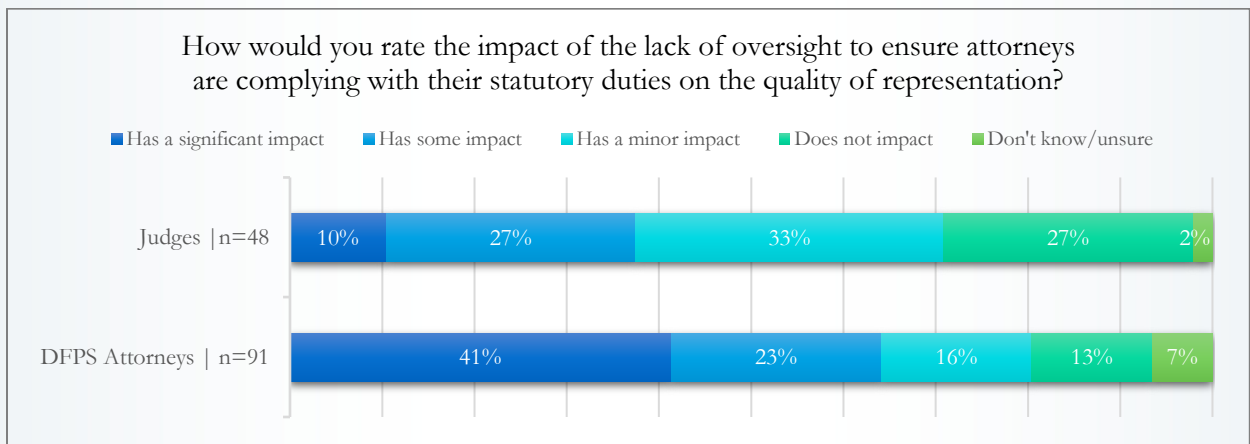


Figure 92

Sixty percent of judges reported that the lack of oversight either does not impact or has a minor impact on the quality of legal representation, compared to 64% of DFPS attorneys who report that the lack of oversight has a significant impact or some impact.

13.6 Improving Oversight

The survey also asked stakeholders their opinion on what effect improving oversight would have on the quality of representation.

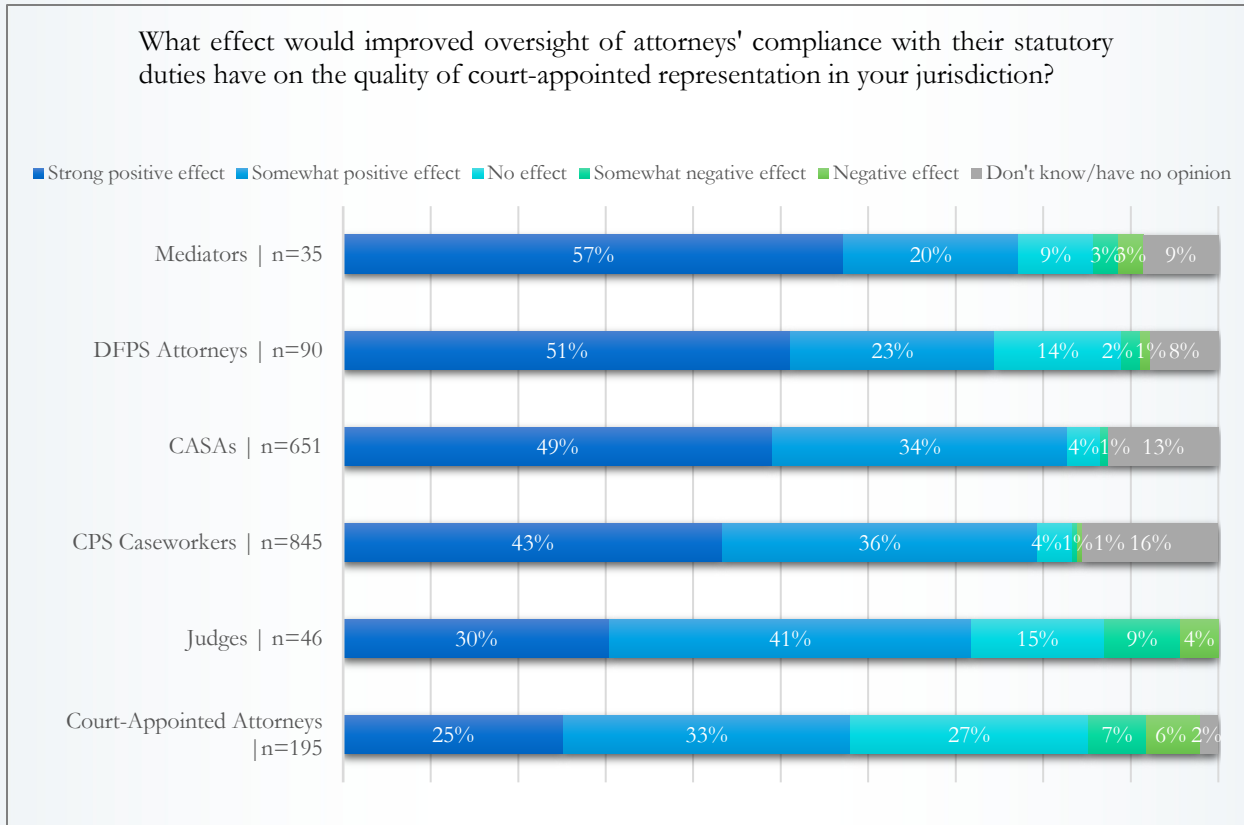


Figure 93

All stakeholders surveyed had a positive view of increasing attorney oversight, with significantly high percentages believing it would have a strong, positive effect.

Stakeholder Support for Reform

Finally, the study analyzed the responses from DFPS attorneys, judges, CASAs, CPS caseworkers, and mediators regarding each of the possible reforms mentioned in the surveys. The cumulative support across all stakeholders surveyed was tallied for each reform.

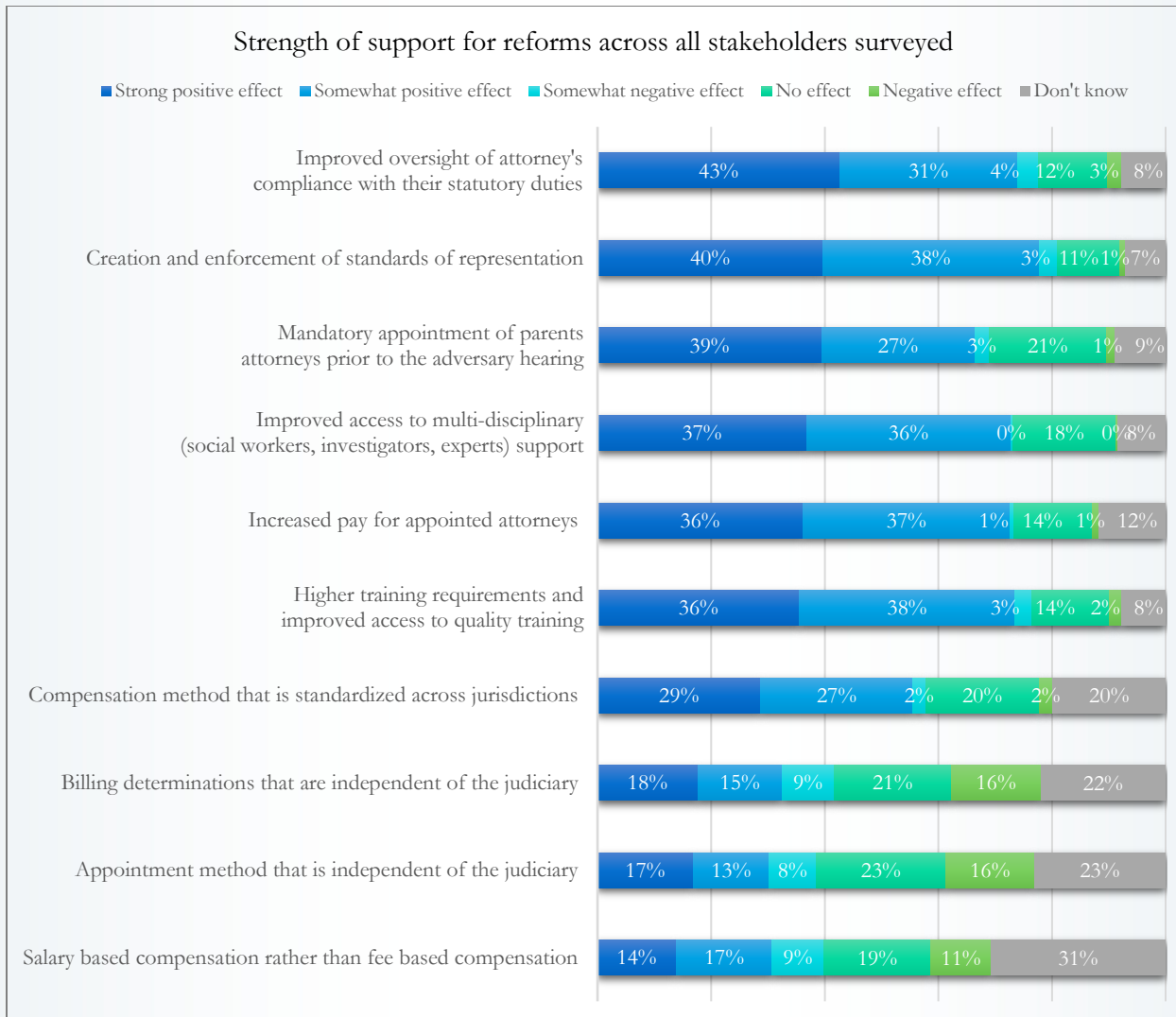


Figure 94

Improved oversight received the highest rating across all stakeholders for strong positive effect on the quality of representation, followed closely by the creation and enforcement of standards of representation and mandatory early appointment of parents' attorneys. Improved access to multi-disciplinary support, increased attorney pay, and increased training requirements all received similar levels of support. The reforms affecting the method of compensation (hourly vs. salary) and appointment methods received significantly less support.

Conclusions

This section of the report represents observations, conclusions, and suggested reforms based on the survey results, open-ended comments, the parent focus group meeting, and a review of representation models from other states.

“This work can be frustrating, rewarding, sad and happy all at the same time.”

– Court-Appointed Attorney

System Strengths

1. Texas has an existing pool of quality attorneys interested in representing clients in CPS cases.

Survey responses indicate that most jurisdictions have an adequate pool of attorneys to choose from, and that many, if not most, court-appointed attorneys provided good or excellent representation to their clients. However, because of geographical and other barriers, there are certain regions and jurisdictions in Texas which face particular challenges in attracting quality attorneys to their appointment lists. Texas has many quality attorneys interested and available to handle child protection cases, but they are not evenly distributed across the state.

“I love having an extra set of eyes watching out for my kids’ best interest. My husband and/or I always attend court to advocate for our kids, and the attorneys are an integral part of our kids’ ‘team.’”

- Foster Parent

2. Quality court-appointed attorneys have the capacity to take more cases.

The interest in the legal community in recognizing child-welfare as a complex area of law, and specifically interest among attorneys to develop expertise in this field, has increased significantly since the 2011 Children’s Commission study. On February 14, 2017, the Supreme Court of Texas officially recognized Child-Welfare Law as the twentieth area of certified legal specialization for Texas attorneys. Subsequent to this recognition by the Supreme Court of Texas, the Texas Board of Legal Specialization established a board certification and approved 65 applications from attorneys across the state who are seeking to become board certified. The inaugural Child-Welfare Law Certification exam will be held in October 2018.

Also, on January 26, 2018, the State Bar of Texas approved the Child Protection Law Section as the newest section of the State Bar. The section had 632 members as of July 2018 and held a two-day advanced child protection CLE in April 2018 which was attended at full capacity by 113 attorneys from across the state.

The court-appointed attorneys surveyed indicated both a capacity and a desire to be appointed to more cases. The results also indicate that some attorneys could take more court appointments and still remain below both the ABA and NACC recommended guidelines.

“Our attorney ad-litem was excellent! He genuinely cared about the safety, well-being [sic] and happiness of our child. He visited with her every month and before each court date...I felt that he went above and beyond to ensure she had found a good Forever Home.”

- Foster Parent

3. Quality attorneys often make a difference in the lives of Texas parents, children, and families.

Though it is not possible to quantify the difference which an individual attorney can make on case, many of the open-ended responses convey how court-appointed attorneys often make a positive impact for Texas families.

“He [the attorney] was amazing. He actually got my kids placed with my relatives, which was the original plan from the beginning.”

- Focus Group Parent

Areas in Need of Improvement

While there are positive aspects of court-appointed legal representation indicated by the survey, such as the existence of quality representation in many jurisdictions and capacity to take on more work, the survey also indicates that the current court-appointment system does not yield much accountability and demonstrates an inability to monitor or control for poor attorney performance. In other words, many of the responses indicate that in some jurisdictions, poor attorney performance is neither identified nor corrected while quality representation is rarely identified, encouraged, or rewarded.

“For the majority, there are some really great attys [sic] appointed in our cases (for children and parents) but for the attys [sic] that do not appropriately represent their clients (not visiting kids, not knowing what is happening in the case with their clients services, etc.), they are still getting appointments and there does not seem to be a system to essentially weed them out.”

- CASA

The result is inconsistent and inadequate legal representation for some children and parents. Such inconsistency is reflected powerfully in the open-ended responses which are included throughout this report. Some benefit from having dedicated, knowledgeable attorneys on their cases while others are represented by attorneys who fail to perform even basic duties and responsibilities. A stronger accountability and monitoring system could help ameliorate this situation and promote consistently high-quality legal representation for all.

The survey data help us understand why the current system is not performing the essential function of quality control.

1. There is currently little oversight of the court-appointed attorney system.

There is no formal oversight system for court-appointed attorneys in CPS cases. Chapter 37 of the Government Code requires some oversight and essentially places that duty on the individual courts. Although Chapter 37 imposes duties on courts, there is little guidance regarding how else an appointment system or method should be monitored, or which entity, other than the court, should perform such monitoring. There is also no funding specifically allotted to providing or conducting oversight. The majority of judges surveyed reported a lack of resources to review attorney performance.

Moreover, there are no mechanisms for oversight of court-appointed attorneys. The vast majority of judges who responded to the survey indicated that they do not review attorney performance. Also, although attorneys include information about certain actions taken and duties performed as part of their bill when seeking payment from the county, it does not appear that this information is monitored or used to evaluate attorney performance. There is limited to no opportunity for clients to voice complaints about their attorneys, other than perhaps in court during a hearing. Moreover, many attorneys are unaware of any training requirements and there is no mechanism in place to monitor the completion of required training.

“They’re not really held accountable by anyone and their clients are kids who don’t know any better.”

- Foster Parent

2. Lack of oversight results in lack of accountability for non-compliance.

To ensure high quality representation, the system must have some level of accountability to guarantee that public funds spent on pursuing and defending a CPS case yield the best results as quickly as possible. At the same time, there are many quality attorneys who are uncompensated for much of the work performed, with over half of the court-appointed attorneys reporting that they frequently forgo requesting payment for all the work they do, and one-third reporting not being compensated for work which they are ethically and statutorily required to do.

The survey participants reported that some court-appointed attorneys regularly fail to meet basic duties like meeting clients, returning messages, and conducting an investigation. However, a majority of stakeholders indicated that attorneys were rarely removed from appointment lists for failing to perform their statutorily mandated duties and many of the open-ended responses reported a lack of consequences for poor attorney performance. Judges were the exception and reported that it was their perception and belief that court-appointed attorneys appearing before them fulfilled their duties.

“If they were representing any other client this type of representation would not be adequate or allowed.”

- CASA

Adding to this is the fact that children and indigent parents do not have the ability to select their attorney. They cannot hire the attorney of their choice based on the attorney’s qualifications, experience, and reputation, nor can they fire the attorney for failure to perform. Thus, the absence of meaningful accountability allows inadequate performance to exist and persist.

“The lack of oversight, monitoring, and accountability for attorneys seems to be the biggest problem. Everyone in the courtroom is aware of which attorneys do their job and which don’t.”

- CASA

Why is there a disconnect between the job which judges perceive that attorneys are doing and what other parties associated with a case believe or know to be true? To illustrate the connection between performance, accountability, and oversight, Figures 95 and 96 have been extrapolated from Figures 54 and 90.

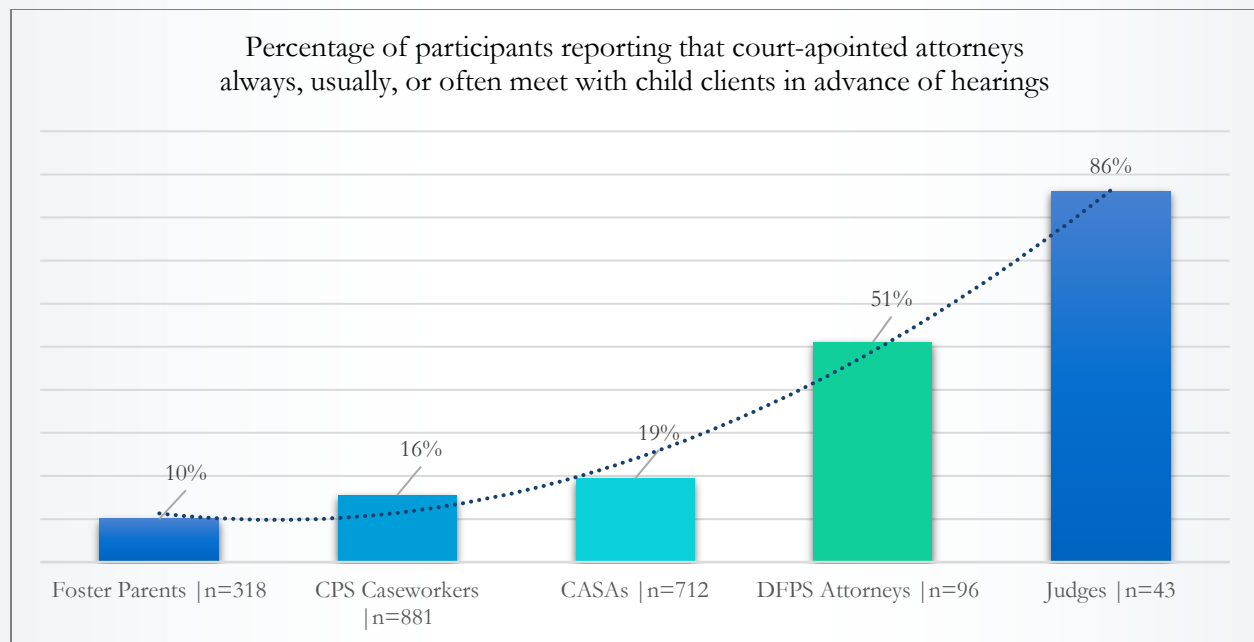


Figure 95

Regarding the attorney’s duty to meet with a client before a hearing, stakeholders who had the most direct contact with the child reported that often the child’s attorney did not visit with the child prior to the court hearing. However, judges reported a belief that attorneys are visiting with children prior to hearings. There is a 76 percentage point gap between these stakeholder groups.

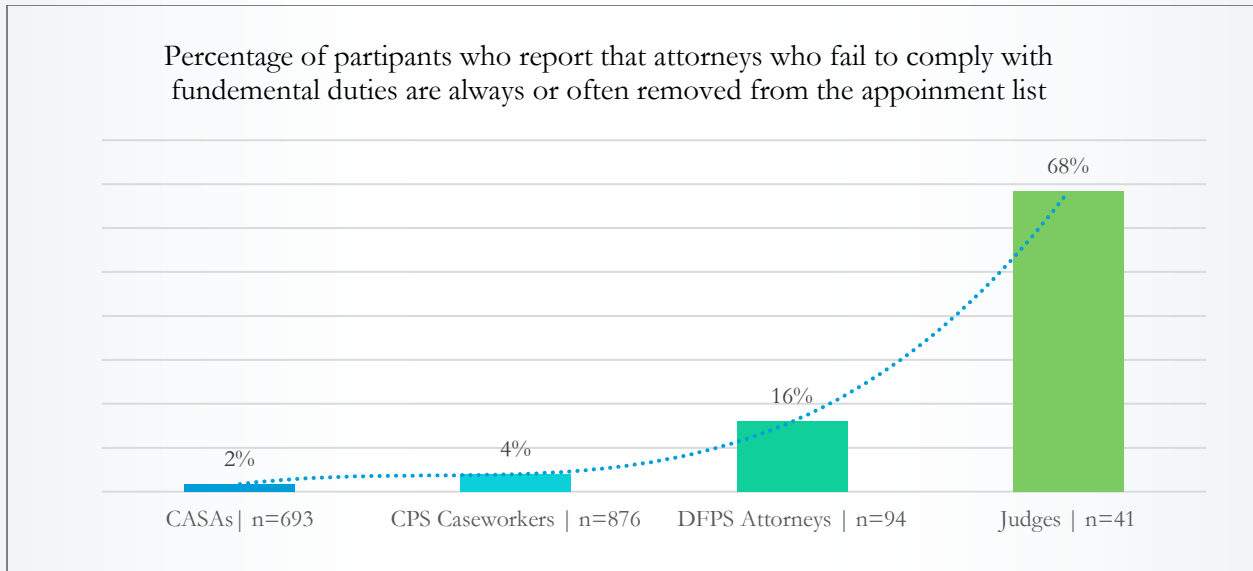


Figure 96

The results in Figures 95 and 96 are similar with regard to whether attorneys who do not perform their duties are being removed from the appointment list. Judges reported that attorneys who do not perform their job are removed from appointment list; however, the perception of other stakeholders associated with these cases differed. The open-ended responses shed some light on this disparity by explaining that information about attorney performance that might justify removal from the appointment list never reaches the judge.

“Attorneys don’t want to “throw” each other under the bus, so nothing is generally said to the Court about the attorneys that don’t perform their duties.”

- DFPS Attorney

“I would say it is NOT realistic to expect a hopeful adoptive parent (or even many foster parents) to report an ethics violation.”

- Foster Parent

The purpose of the statutory hearings is to evaluate the child’s welfare and the parents’ progress in services, not to evaluate the performance of the attorney. However, a judge can only take action with regard to an attorney’s appointment or performance if the judge is aware of any issues. The hearings may not be the appropriate forum for this type of information to reach the judge.

“The judge does not always have all of the facts and nuances of a case. It is unfair to ask a judge to make those types of assessments without some type of evidentiary hearing[sic] or process in place that would allow for due process for attorney and all other participants.”

- Judge

3. Current payment methods do not incentivize best practices or compliance with statutory duties.

“There is ZERO incentive to do a good job.”

- Court-Appointed Attorney

A system that does not track attorney performance cannot punish bad performance, and equally, it cannot reward good performance. The system currently provides no incentives for court-appointed attorneys to seek out additional training, obtain national or state certification of expertise, or perhaps value the satisfaction of their clients. There were no open-ended responses indicating that any jurisdiction identified or rewarded court-appointed attorneys for good performance.

In response to the question *“Do you feel you are adequately compensated for the time you spend on child protection cases?”* attorneys responded that the fee structure and rate of compensation disincentivizes quality legal work. For example, lack of compensation for an attorney’s travel time does not provide an incentive for that attorney to meet with a client. Additionally, lower compensation for out-of-court time does not provide an incentive to an attorney to investigate the case or to attend other required meetings.

“Although my jurisdiction pays for travel to meet with client’s [sic] face to face, all other matters outside of hearings are uncompensated. Family Code mandated ad-litem involvement in medical care: uncompensated. Family Code mandated ad-litem involvement in educational decision making: uncompensated. Family Code mandated placement review meetings: uncompensated. Family Code mandated ad-litem involvement in circle of support meetings: uncompensated. The list goes on.”

- Court-Appointed Attorney

4. The representation provided to the State is rated higher than representation provided to Texas families.

The survey data report that attorneys for DFPS were perceived as good or excellent more often than were court-appointed attorneys and that representation of DFPS was more likely to be consistent than representation of parents or children. The survey data also indicated that DFPS attorneys were likely to have more child-welfare law experience than court-appointed attorneys and more likely to be in the middle of their careers.

Perhaps a reason that stakeholders rated representation of DFPS to be of higher quality and consistency than that of court-appointed attorneys is because DFPS attorneys are hired by DFPS or by a County or District Attorney based on certain minimum qualifications. They are also trained, and their performance is usually monitored by a more senior attorney or supervisor. This environment yields a level of accountability in the legal representation provided to the State of Texas which is not present in the legal representation provided to children and families.

5. Court-appointed attorneys need access to resources to provide quality legal representation.

The State of Texas recognizes the need for families to have legal representation to defend against a suit filed by DFPS and has enacted statutes to ensure that legal representation is provided. Our legal system is based on an adversarial model and relies on zealous representation by each side to present the trier of fact with all the relevant information to reach a just conclusion. Zealous advocacy in CPS cases is as important as in any other type of case. However, there are many aspects of the court-appointment system that prevent zealous advocacy from consistently occurring. Additionally, the nature of CPS cases also requires that parties and stakeholders collaborate and work together for the best outcome for the child and family.

Zealous advocacy and collaboration are more robust and can flourish in an environment where attorneys have equal access to resources necessary to provide quality representation. Some participants observed that the resources available to the state in pursuing its case are greater than those available to attorneys who take court appointments. Creating an environment where access to investigators, social workers, expert witnesses, and other resources is available to court-appointed attorneys could yield a more equitable playing field.

“Independent representation of parents and children by attorneys not affiliated with the Department or the government is the only check on the power of CPS.”

- Court-Appointed Attorney

Benefits of Quality Representation

1. Quality representation can divert families from the child-welfare system.

Quality representation is especially crucial at the beginning of a CPS case. There are several things that an engaged attorney can do to alleviate the need for removal of a child. An attorney's interview with his or her client might uncover information about relatives willing to be a placement for the child, thus diverting the child from entering foster care. An independent investigation by a dedicated attorney may reveal mitigating circumstances which would prevent a removal to foster care. Legal counseling can result in a parent recognizing that changes must be made, so that steps can be taken to eliminate the danger to the child before a court makes a decision to remove the child to foster care. To ensure that this expectation is always met, all parties must have legal representation from the beginning of the case until the case is completely resolved and the child is no longer in DFPS conservatorship.

The QIC study discussed previously evaluated real-world implementations of the QIC Best Practice Model for children's attorneys by comparing practice model attorneys to a control group. The practice model attorneys agreed to be trained on the QIC model and to adhere to its requirements. Practice model attorneys received an initial two full days of training and in each subsequent quarter were provided supplemental training and individual discussions with a resource attorney. These elements of support were intended to reinforce the attorneys' retention and adherence to the QIC model. The study found that children in Washington State represented by attorneys trained on the QIC best practice model were 40% more likely to experience permanency within 6 months than children represented by the control group attorneys.⁷⁸ However, the same impact was not found when the QIC model attorney was appointed at a mid-point in the case rather than at the beginning, even though the model attorney was highly trained. Accordingly, "the big impact of QIC trained attorneys appears to be at the beginning of the case."⁷⁹

As the 2018 Children's Commission study data reveal, indicators of Texas court-appointed attorneys' preparedness and active representation were most deficient at the beginning of the case. In Texas, this important stage of the case has the most room for improvement in representation, and therefore presents the greatest opportunity to achieve better outcomes for children and parents.

2. Quality representation can help accelerate a family's case to a timely exit.

Quality legal representation can help move a case forward in several ways. If a child or parent needs additional services, their attorney is in the best position to advocate for those services. If a child's placement breaks down, the child's attorney can make sure that his or her client's input is heard about placement options and advocate for what his or her client wants. A parent's attorney can challenge the reliability of DFPS' allegations and advocate for expanded access and visitation as a parent client makes progress, rather than wait for the next hearing. If progress isn't being made by a parent or child client, a trained attorney can identify why existing services are not working as intended. When termination is the outcome, a zealous court-appointed attorney can be the difference between a child languishing in foster care and finding a permanent home.

⁷⁸ Orlebeke, B., Zhou, X., Skyles, A., & Zinn, A. (2016). *Evaluation of the QIC-ChildRep Best Practices Model Training for Attorneys Representing Children in the Child Welfare System*. Chicago, IL: Chapin Hall at the University of Chicago at 81. Available at: https://www.chapinhall.org/wp-content/uploads/QIC-ChildRep_Chapin_Hall_Evaluation.pdf.

⁷⁹ Duquette, *supra* note 31, at 185; *See generally* Appendix D.

3. Reunifications and permanent relative placements are more likely when parents have high-quality legal representation.

Quality representation is needed throughout the entire CPS case. At latter stages of the case, critical issues arise such as frequent placement changes, extensions of the deadline, Monitored Returns, or whether to take a case to trial. A well-trained attorney can explore options if a child cannot be reunified with his or her biological family and effectively counsel the parent client if reunification cannot be achieved.

Another pilot program from Washington State which provided for enhanced legal representation for parents tracked outcomes for children who were involved in the project and those who were not. The Washington State study found that not only did reunification rates increase in counties served by the program, but also found that where reunification and adoption were ruled out, permanent placement with relatives was achieved 83% faster.⁸⁰

4. Quality legal representation appointed at the beginning of each case could save the State of Texas and Texas counties money.

To put the costs of court-appointed attorney compensation in perspective, it is helpful to understand some of the costs related to the placement of children in DFPS conservatorship. A CPS case can take 12 to 18 months to reach a legal resolution, and some cases last longer than 18 months. If the case is resolved by awarding PMC of the child to DFPS, the case remains active until the child finds a permanent home and exits the foster care system, which in some cases can take several years.

According to DFPS, there were 50,293 children in CPS conservatorship and 32,584 children in paid foster care placement during FY 2017.⁸¹ In the same fiscal year, DFPS reported an operating budget of \$442 million for foster care payments.⁸² Taken together with the estimated court-appointed attorney costs, these numbers indicate approximately \$13,582 was spent per child on foster care in FY 2017 compared to approximately \$1,151 spent on legal representation per child.⁸³

In FY 2017, 5,690 children exited to family reunification averaging 13.1 months in care and 13,161 children exited to non-reunification outcomes averaging 22.7 months in care.⁸⁴ During the pendency of the average case, the federal, state, and local coffers spend tens of thousands of dollars to provide out-of-home placements for the child and for services to the family working toward reunification.

⁸⁰ Courtney, M.E. and Hook, J.L. (2011). *Evaluation of the Impact of Enhanced Parental Legal Representation on the timing of Permanency Outcomes for Children in Foster Care*. Seattle: Partners for Our Children at the University of Washington. Available at: https://partnersforourchildren.org/sites/default/files/2011_evaluation_impact_of_enhanced_parental_legal_representation_discussion_paper.pdf;

See generally Appendix C.

⁸¹ DFPS Data Book 2017. Available at: http://www.dfps.state.tx.us/About_DFPS/Data_Book/Child_Protective_Services/Placements/Substitute_Care_During_Fiscal_Year.asp.

⁸² DFPS FY 2018 Operating Budget. Available at: https://www.dfps.state.tx.us/About_DFPS/Budget_and_Finance/Operating_Budgets/FY18-Operating_Budget.pdf.

⁸³ *See* Appendix B.

⁸⁴ DFPS Data Book 2017. Available at: https://www.dfps.state.tx.us/About_DFPS/Data_Book/Child_Protective_Services/Conservatorship/Exits.asp.

Many children who are not reunified exit to subsidized adoptions and Permanency Care Assistance agreements with relatives, which are continuing financial obligations that the state must pay every year until the child turns 18. DFPS reported spending a total of \$267,020,567 on such payments in FY 2017.⁸⁵

Studies have shown that improving the quality of representation can shorten the time which a child spends in substitute care. Two different studies on the Washington State Office of Public Defense (OPD) found that quality parent representation increased reunifications for parents who reunified by 11%, as well as decreased the time to reach that outcome by one month. The Washington OPD study also revealed that the time for a child who did not reunify to reach adoption or guardianship decreased by up to 12 months. The Oregon Parent Child Representation Program (PCRP) measured the effect of quality representation for both parents and children and found a five month increase in the time to reunification. *See Appendix C.*

“It’s basically become forced pro bono work. I feel unable to make the visits I have a statutory duty to make because I have to be able to afford gas and my bills. It would be nice to know I’m being paid for the work I do and allowed to do it as the code requires.”

- Court-Appointed Attorney

To the extent that high quality legal representation from the beginning of the case can help decrease the amount of time children are in foster care, the state potentially saves money spent on foster care and foster care services, and the counties save money spent on legal fees for court-appointed attorneys.

“There is no more important work that an attorney can do or work that is more likely to impact a child’s life than whether he/she is allowed to grow up with family.”

- Court-Appointed Attorney

⁸⁵ DFPS FY 2018 Operating Budget. Available at: https://www.dfps.state.tx.us/About_DFPS/Budget_and_Finance/Operating_Budgets/FY18-Operating_Budget.pdf.

Recommendations

Termination of parental rights is sometimes referred to as the “death penalty” of civil law, both because this legal outcome is irreversible and because severing the legal relationship between a parent and their child impacts a family tremendously (both for current and future generations of that family). Termination of parental rights is at stake for every Texas family with a child removed to DFPS’s care. The quality of representation provided to families must match in significance. However, the current system of court-appointed attorney representation in Texas does not provide a consistent level of high quality representation to all parents and children, nor is there an oversight system in place to ensure that such representation is high quality. Addressing this problem is no easy task, and there is no “one size fits all” solution for a state as big as Texas.

Creation of a Legal Representation Task Force

Texas is a large, diverse, and complex state. While every child and family involved in a Texas CPS case deserves quality legal representation, there is no easy or quick way to accomplish systemic improvement in every jurisdiction in the state. Therefore, it is recommended that the Supreme Court of Texas or the Texas Legislature establish a Task Force on Court-Appointed Legal Representation to determine how Texas can thoughtfully design systemic improvements.

Charge to the Task Force

The Task Force on Court-Appointed Legal Representation should be charged with making specific recommendations regarding the creation, implementation, and evaluation of a high-functioning, high-quality legal representation system with the necessary and appropriate oversight and accountability. This legal representation system should include consideration of necessary powers, duties, access to information, policy, legislative, and practice changes.

Powers that may be necessary in establishing appropriate oversight and accountability include the following:

1. Setting qualifications for attorneys to receive court appointments;
2. Establishing standards of practice for attorneys who accept appointments;
3. Requiring compliance with standards of practice as a condition of appointment;
4. Establishing training requirements for court-appointed attorneys, including minimum number of hours, specific core trainings, and specific courses for annual renewal;
5. Supporting the establishment of local models of representation such as a public-defender, managed assigned counsel, or office of child or parent representation;
6. Tracking attorney caseloads and setting caseload limits;
7. Setting compensation at a level sufficient to attract quality attorneys in the jurisdiction;
8. Evaluating attorney performance;
9. Removing attorneys from appointment eligibility;
10. Appealing a decision and applying for reappointment.

Duties that may be necessary to support a high-functioning system of oversight and accountability include the following:

1. Providing access to training opportunities to meet all training requirements;
2. Providing access to support for attorneys necessary to ensure quality performance;
3. Access to form banks and legal research databases;
4. Access to multi-disciplinary support as needed; and
5. Reimbursement for travel and out-of-court time necessary to comply with the attorneys' duties.

Access to information is also critical to a well-functioning oversight system, and include the following:

1. Attorneys' self-reported records of compliance;
2. Input from other stakeholders;
3. A standard procedure for verification and the time and staff necessary to implement the verification procedure;
4. A process for clients to voice complaints about their representation that is made available to every client as well as a process to obtain another attorney;
5. A standardized procedure for investigating complaints and the time and staff necessary to investigate; and
6. A standardized procedure for assessing client satisfaction with representation.⁸⁶

The Task Force should also consider what policy, legislative, practice, and training reforms are necessary to support a high-functioning, high-quality legal representation system for every child and family in Texas.

⁸⁶ Unlike a complaint procedure which would only receive input from those dissatisfied with their representation, a satisfaction survey could be made available to all clients with the purpose of assessing the average or typical client experience.

Appendix A: Population Estimates

Stakeholder	Population Estimate	Source
Court-Appointed Attorneys	1,974	The population of court-appointed attorneys was estimated using reports provided to OCA as required by Chapter 37 of the Texas Government Code. OCA used the style of the case to identify appointments which were likely to be CPS cases and then calculated the total number of individual attorneys who received appointments in FY 2017.
CASA	10,424	Texas CASA FY 2017 volunteers. Available at https://texascasa.org/about/
Court Coordinators	418	OCA maintains a statewide list of court coordinators. The Children’s Commission used that list to distribute the court coordinator survey and the population estimate is the number of court coordinators who received the survey.
DFPS Attorneys	*	*Depending on the county, DFPS is represented by either regional DFPS attorneys, the County Attorney’s Office, or the District Attorney’s Office. While the Commission was able to identify the number of DFPS regional attorneys, it was not able to identify or reliably estimate the number of County and District Attorneys who represent DFPS. Therefore, a reliable estimate of the total population of attorneys who represent DFPS was not attainable.
CPS Caseworkers	4,900	DFPS Data Book FY 2017. Available at https://www.dfps.state.tx.us/About_DFPS/Data_Book/Employee_Statistics/CPS/CPS-Staff_Demographics.asp . This population estimate includes only CPS conservatorship and investigative caseworkers as they were the only caseworkers who received the survey.
Foster Parents	10,715	DFPS Vision, Volume 1, Issue 2. April 2018. Available at https://www.dfps.state.tx.us/About_DFPS/News/DFPS_Vision/issues/2018-04-DFPS_Vision.pdf .
Judges	267	OCA maintains a statewide list of judges handing CPS cases which is used by the Children’s Commission to distribute its Jurist in Residence letters. The Jurist in Residence letter was used to distribute the survey and the population estimate is based on the number of judges who received the survey.
Mediators	167	The population of mediators was estimated using reports provided to OCA as required by Chapter 37 of the Texas Government Code. OCA used the style of the case to identify appointments which were likely to be CPS cases and then calculated the total number of individual mediators who received appointments in FY 2017.
Youth in Care Ages 12+	11,740	DFPS Data Book FY 2017. Available at https://www.dfps.state.tx.us/About_DFPS/Data_Book/Child_Protective_Services/Conservatorship/Children_in_Conservatorship.asp .

Appendix B: Calculating Court-Appointed Attorney Costs

Because each of Texas's 254 counties has its own appointment system, there is no central database that tracks the funds spent on court-appointed attorneys for parents and children in CPS cases. Chapter 36 of the Texas Government Code requires the clerk of each court to submit a report to OCA each month on court appointments for attorneys ad-litem, guardians ad-litem, mediators, and competency evaluators. The report must include the style of the case, the number of cases to which each attorney was appointed, and the total amount of compensation paid to each attorney for each month. The current reporting structure does not identify whether the appointment is a CPS case, whether the attorney represents a parent or a child, or whether the attorney represents more than one child in the case.

To estimate the amount spent in FY 2017, OCA used the style of the case to identify appointments which were likely to be CPS cases. Using that method, of the total amount of funds reported to OCA under Chapter 36, it is estimated that \$52,110,083 was spent on court-appointed attorneys in CPS cases. Additionally, Travis, Dallas, McLennan, and Smith counties have alternative representation systems, and therefore expend funds that are not reported to OCA under Chapter 36. Travis County appoints the Office of Child Representation and the Office of Parent Representation to the majority of its CPS cases. Dallas County appoints the Dallas County Public Defender to represent parents and children. McLennan and Smith counties contract with law firms rather than individual attorneys to handle appointments. The estimated total cost of those alternative representation programs in FY 2017 was \$4,682,315. There were also 34 counties that should have reported expenditures to OCA, but did not. According to the DPFS Data Book, those same 34 counties had a total of 994 children in DFPS conservatorship in FY 2017. Presumably, the 34 non-reporting counties incurred legal expenses for the 994 children and their parents who had court-appointed attorneys. Thus, a low estimate of the amount spent on CPS-related legal representation in FY 2017 is \$56,792,398.

Appendix C: Representation Models from Other States

Washington State Office of Public Defense, Parent Representation Program

The Washington State OPD provides state-funded attorney representation and case support to indigent parents, custodians, and legal guardians involved in the state child-protection system. OPD began as a pilot program in 2000 in three counties, has since been expanded to 34 of Washington's 39 counties, and will complete its final expansion to the remaining counties in July 2018.⁸⁷

OPD enters into contracts in each program county with private attorneys, law firms, and public defender agencies.⁸⁸ Private attorneys may work on a full or part-time basis and receive a monthly salary that is prorated depending on their caseload. OPD requires adherence to professional standards of practice set by OPD as a condition of contract. The standards outline the attorney's role, set caseload limits, require communication with clients on specified schedules and topics, and require completion of trainings hosted by OPD.⁸⁹ OPD provides attorneys access to expert services, independent social workers, case support services, and oversight through a client complaint procedure as well as an evaluation and performance review prior to contract renewal.⁹⁰

The gradual phase-in of the OPD program across Washington has allowed for two large, third-party evaluations of the outcomes for children in counties before and after OPD was implemented, and the outcome differentials between OPD and non-OPD counties. In 2009, a study by OPD in consultation with the Washington State Center for Court Research found that after the implementation of OPD, 15 counties experienced a 10% increase in family reunification and a 11% increase in cases which resolved within 28-31 months compared to their pre-OPD outcomes.⁹¹ In the 14 non-OPD counties there was a 1% decrease in reunifications and a 1% increase in timely case resolutions in the same time period.⁹² Reunifications in post-OPD counties also proved more enduring than those made previously. After counties adopted OPD, the rate of refiled abused or neglect cases within one year on reunified families dropped from 5% pre-OPD, to 3% post-OPD, and dropped from 8% to 5% for refiling within two years.⁹³

A second study by the University of Washington followed 12,104 children between 2004 and 2008 and revealed a reunification rate 11% higher for children living in OPD counties. Additionally, the study estimated that the children in OPD counties achieved reunification one month sooner than non-OPD counties and children who were adopted or placed in guardianship achieved those outcomes one year sooner than children in non-OPD Counties.⁹⁴

⁸⁷ Wash. State Office of Pub. Def. Available at: <https://www.opd.wa.gov/program/parents-representation/9-pr/55-history>.

⁸⁸ Wash. State Office of Pub. Def. (2016). *Annual Report*. Available at: http://www.opd.wa.gov/documents/00497-2016_Annual_Report.pdf.

⁸⁹ Wash. State Office of Pub. Def. (2009). *Parents Representation Program Standards of Representation*. Available at: http://www.opd.wa.gov/documents/0061-2012_PR_P_Attorney_Standards.pdf.

⁹⁰ Courtney & Hook, *supra* note 80 at 2.

⁹¹ Wash. State Office of Pub. Def. (2010). *Reunification and Case Resolution Improvements in Office of Public Defense Parents Representation Program Counties* at 2-3. Available at: http://www.opd.wa.gov/documents/0049-2010_PR_P_Evaluation.pdf.

⁹² *Id.* at 4.

⁹³ *Id.* at 7.

⁹⁴ Courtney & Hook, *supra* note 80, at 4.

Oregon Parent Child Representation Program

Modeled after Washington's OPD, Oregon established the Parent Child Representation Program (PCRP) in two counties in 2014, expanded to a third county in 2016, and received funding in 2018 to expand to two additional counties.

The PCRP model contains four core components: (1) caseload limit of 80 open cases, (2) multi-disciplinary representation and access to social work case managers, (3) heightened accountability through data tracking case management, and (4) oversight training and support through an attorney program manager.⁹⁵

Attorneys in the PCRP spent 28% of their time meeting with clients. Social work case managers were required to spend 85% of their time in direct service work.⁹⁶ As part of its oversight efforts, PCRP attempts to contact each client who is old enough to provide feedback, as well as surveying other stakeholders regarding attorney performance.

PCRP counties experienced an increase in reunifications in FY 2016 from 61% to 67%, but in FY 2017 saw the percentage decrease to 53%. The decrease reflected a statewide trend in fewer reunifications which may correlate to other changes in Oregon's child-welfare system that occurred in FY 2016.

Other metrics indicated improved outcomes for children in PCRP counties. In FY 2017, 77% of children in PCRP counties attained permanency with 24 months compared to 66% in non-PCRP counties, and for children who were reunified, the PCRP counties averaged a 7-month time to reunification compared to the statewide average of 12 months.⁹⁷ The percent of clients who report being "very satisfied" with their representation increased from 58% in 2014 to 74% in 2017.⁹⁸

⁹⁵ Parent Child Representation Program (2016). *Annual Report* at 4. Available at: <https://digital.osl.state.or.us/islandora/object/osl:43028>.

⁹⁶ *Id.* at 10.

⁹⁷ *Id.* at 4-5.

⁹⁸ *Id.* at 23.

Colorado Office of the Child's Representative

The Colorado Office of the Child's Representative (OCR) was created by the Colorado General Assembly in 2000 to improve representation of children by establishing minimum practice standards, providing litigation support and accessible high quality statewide training, and conducting attorney oversight.⁹⁹ The office contracts with over 250 attorneys who represent youth in child abuse and neglect, delinquency, domestic relations, paternity, truancy, and probate cases.¹⁰⁰

OCR compiles a list of qualified attorneys through a comprehensive evaluation strategy which consists of a statewide annual appraisal of existing attorney services, a tri-annual extensive contract application process, ongoing assessment, and periodic audits of attorney activity.¹⁰¹ OCR then distributes the list to judges and court staff within each judicial district by July 1st of each year, and issues contracts to attorneys on its list.¹⁰²

OCR establishes rates of compensation, currently set at \$75 an hour, and pays compensation directly to court-appointed attorneys.¹⁰³ Practice standards are set by the Colorado Supreme Court and OCR requires adherence to those standards as a condition of contract. The contract also requires 10 hours of CLE per year (including required core competencies). OCR offered 78 hours of CLE in FY 2017 and has 238 hours of archived CLE available on its website.¹⁰⁴ OCR provides litigation support, legal references and research, and expert resources to attorneys as well as case law updates, motions banks, and a statewide attorney listserv.

To conduct oversight, OCR sends annual electronic surveys aimed at assessing attorney performance to stakeholders in all judicial districts.¹⁰⁵ Attorneys are required to submit detailed billing statements into a data system that tracks home visits and other contacts with children, phone calls, meetings, document preparation, court hearing type and outcomes, and placement changes.¹⁰⁶ OCR staff reviews the data to ensure the work is adequate and expenditures are appropriate. Also, OCR conducts random audits of attorney work including interviews of children/youth, parents, and caregivers, structured court observations, and stakeholder feedback.¹⁰⁷ Finally, OCR investigates formal complaints and takes corrective action if merited, including termination of attorney contracts.¹⁰⁸

The OCR has 8 full-time employees and is funded through an appropriation by the State Legislature to the Judicial Department.¹⁰⁹ OCR spends 95% of funds on attorney services for children and 5% on administrative costs.¹¹⁰

⁹⁹ Colorado Office of the Child's Representative. (2017). *Annual Report* at 6. Available at: <http://www.coloradochildrep.org/wp-content/uploads/2017/09/FINAL-GA-Report.pdf>.

¹⁰⁰ *Id.* at 6.

¹⁰¹ *Id.* at 9.

¹⁰² *Id.* at 9.

¹⁰³ *Id.* at 19.

¹⁰⁴ *Id.* at 17.

¹⁰⁵ *Id.* at 10.

¹⁰⁶ *Id.* at 23.

¹⁰⁷ *Id.* at 13.

¹⁰⁸ *Id.* at 14.

¹⁰⁹ *Id.* at 6.

¹¹⁰ *Id.* at 8.

Appendix D: National Quality Improvement Center Study

From 2012-2015, the National Quality Improvement Center (QIC) on the Representation of Children evaluated real-world impact of the QIC Best Practice Model for children’s attorneys.¹¹¹ The data collected covered 240 attorneys and 4000 children from jurisdictions in Washington and Georgia. Attorneys were recruited to participate so the sample of attorney participants would likely represent the typical range of ability, experience, and motivation of attorneys representing children in each state. Attorneys were then randomly assigned to either the practice model group or to a control group. The practice model attorneys agreed to be trained on the QIC model and to adhere to its requirements. Attorneys and the outcomes for children in their cases were monitored over the course of three years for both the practice model group and the control group. The researchers collected data from the attorneys’ training program including attendance, evaluations, and trainer notes as well as interviews with attorneys and other stakeholders. The study also had access to administrative data about the children’s cases through the respective state agencies. Finally, the researchers issued a baseline survey to all participating attorneys, and then issued child-specific milestone surveys to the attorneys over the course of each case.

The study found that QIC-trained lawyers initiated more contact with the children they represented, increased communications with others involved in their cases, and were more actively involved in conflict resolution and negotiation activities than the control group of non-QIC trained attorneys, resulting in measurable improvement in case outcomes for at least some children.¹¹² Specifically, children represented by QIC treatment attorneys in Washington were 40% more likely to experience permanency within six months of placement.¹¹³

¹¹¹ Orlebeke, B., Zhou, X., Skyles, A., & Zinn, A. (2016). *Evaluation of the QIC-ChildRep Best Practices Model Training for Attorneys Representing Children in the Child Welfare System*. Chicago, IL: Chapin Hall at the University of Chicago. Available at: https://www.chapinhall.org/wp-content/uploads/QIC-ChildRep_Chapin_Hall_Evaluation.pdf.

¹¹² National Quality Improvement Center on the Representation of Children in Child Welfare. (2016). *2009-2016 Activities Report*. Available at: https://firstfocus.org/wp-content/uploads/2016/09/QIC-ChildRep_Activities_Report-20162.pdf.

¹¹³ *Id.* at 3.

