

1 A JOINT MEMORIAL

2 REQUESTING THE ADMINISTRATIVE OFFICE OF THE COURTS TO CONVENE
3 THE FAMILY REPRESENTATION TASK FORCE MADE UP OF EXPERTS ON
4 CHILDREN'S LAW AND THE NEW MEXICO LEGAL SYSTEM, TO RECOMMEND
5 MODELS FOR LEGAL REPRESENTATION OF CHILDREN AND PARENTS IN
6 CHILDREN'S COURT PROCEEDINGS ON ABUSE AND NEGLECT.

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8 WHEREAS, New Mexico's children's courts receive over six
9 hundred new child abuse and neglect petitions every year; and

10 WHEREAS, New Mexico's children's courts have about two
11 thousand pending cases of child abuse and neglect annually;
12 and

13 WHEREAS, New Mexico courts are statutorily required to
14 provide legal representation to all children and parents,
15 guardians or custodians involved in abuse and neglect cases;
16 and

17 WHEREAS, child abuse and neglect cases involve one of
18 the most basic and fundamental rights: the right to the
19 companionship and care of one's family; and

20 WHEREAS, child abuse and neglect cases result in
21 significant trauma and have the potential to permanently
22 sever the parent-child relationship; and

23 WHEREAS, high-quality legal representation for children
24 and families is important to protect due process rights and
25 procedural fairness; and

1 WHEREAS, high-quality legal representation improves
2 judicial decision making by providing the court with
3 accurate, timely and complete information about the children
4 and parties and provides a platform for the voices of
5 children and parents; and

6 WHEREAS, high-quality legal representation leads to
7 better long-term outcomes for children and their families in
8 child welfare matters; and

9 WHEREAS, timely placement permanency for children leads
10 to reduced costs to the state in terms of foster care support
11 payments, case worker time and court time, as well as
12 resources and services for children and families; and

13 WHEREAS, child welfare law is a highly specialized and
14 complex area of law; and

15 WHEREAS, the United States department of health and
16 human services' administration for children and families
17 released an information memorandum in 2017 focused solely on
18 the importance of quality legal representation in abuse and
19 neglect cases; and

20 WHEREAS, national research shows that improved
21 representation is associated with better child welfare
22 outcomes, both in urban and rural areas, including: an
23 increased rate and speed of placement permanency; fewer
24 foster care placements; more efficient case processing;
25 cost-effectiveness; and court and client satisfaction; and

1 WHEREAS, New Mexico struggles to provide adequate
2 compensation and infrastructure to ensure proper oversight,
3 recruitment, retention, auditing, training, evaluation and
4 support to its abuse and neglect contract attorneys; and

5 WHEREAS, poor-quality legal representation can lead to
6 longer stays in foster care, longer case processing times,
7 infrequent and less meaningful client interaction and less
8 vigorously developed case resolutions; and

9 WHEREAS, national research provides the following
10 components of a structure that promotes quality legal
11 representation for children and families:

- 12 A. clearly defined roles and expectations;
- 13 B. reasonable caseloads;
- 14 C. fair compensation and benefits;
- 15 D. high standards of practice;
- 16 E. specialized child welfare law training;
- 17 F. effective supervision of legal personnel;
- 18 G. client feedback mechanisms; and
- 19 H. access to an interdisciplinary model of
20 representation; and

21 WHEREAS, there is a need to study and provide
22 recommendations on effective abuse and neglect case
23 representation structures that are conducive to protecting
24 the rights of New Mexico children and parents;

25 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE

1 STATE OF NEW MEXICO that the administrative office of the
2 courts be requested to convene the "family representation
3 task force", made up of experts on children's law and the
4 New Mexico legal system, to recommend models for legal
5 representation of children and parents in children's court
6 proceedings on abuse and neglect and to improve outcomes for
7 children and parents served by New Mexico's children's legal
8 system; and

9 BE IT FURTHER RESOLVED that the family representation
10 task force be requested to recommend strategies for ensuring
11 that parties in children's court cases are prepared to
12 proceed in child welfare matters and to enable courts to
13 resolve children's court proceedings as justly, efficiently
14 and quickly as possible; and

15 BE IT FURTHER RESOLVED that the administrative office of
16 the courts be requested to invite the following individuals
17 to participate on the family representation task force:

18 A. a member of the senate, appointed by the
19 president pro tempore of the senate;

20 B. a member of the house of representatives,
21 appointed by the speaker of the house of representatives;

22 C. the chief children's court attorney of the
23 children, youth and families department;

24 D. court personnel, appointed by the chief justice
25 of the supreme court as follows:

- 1 (1) two children's court judges;
- 2 (2) three attorneys who practice, or
- 3 formerly practiced, in the child welfare system in the
- 4 following capacities:
 - 5 (a) one respondent's attorney;
 - 6 (b) one guardian ad litem; and
 - 7 (c) one youth's attorney;
- 8 E. one member of the children's court improvement
- 9 commission, appointed by the co-chairs of the commission;
- 10 F. the chief public defender, or the chief public
- 11 defender's designee;
- 12 G. the director of the administrative office of
- 13 the courts, or the director's designee;
- 14 H. the executive director of New Mexico legal aid,
- 15 or the executive director's designee;
- 16 I. the director of the legislative finance
- 17 committee, or the director's designee;
- 18 J. the director of the American bar association's
- 19 center on children and the law;
- 20 K. a representative of the national council of
- 21 juvenile and family court judges;
- 22 L. a former foster youth;
- 23 M. a permanency planning worker from the children,
- 24 youth and families department;
- 25 N. the children, youth and families department's

1 coordinator for the federal Family First Prevention Services
2 Act; and

3 O. a parent who has previously been involved in
4 the state's child welfare system; and

5 BE IT FURTHER RESOLVED that the family representation
6 task force be requested to consider the feasibility, costs
7 and benefits of creating a system for providing legal
8 representation to parties in child welfare matters,
9 including:

10 A. financial considerations in establishing and
11 maintaining a child welfare legal representation agency;

12 B. proposed governance and administrative
13 functions for a child welfare legal representation agency;

14 C. how a child welfare legal representation system
15 could ensure attorney accountability, oversight and
16 evaluation;

17 D. how to create a structure in a child welfare
18 legal representation system for providing training and
19 litigation support to parties and legal counsel;

20 E. the extent to which the child welfare legal
21 representation system could provide legislative advocacy;

22 F. identification of potential conflicts of
23 interest between parties and a child welfare legal
24 representation system;

25 G. the provision of legal representation and

1 litigation support for child welfare matters on appeal; and

2 H. identification of costs associated with moving
3 a child welfare legal representation system into an existing
4 agency or creating a new entity or entities, considering the
5 legal, practical and philosophical considerations of such a
6 move; and

7 BE IT FURTHER RESOLVED that, if the family
8 representation task force recommends creation of a new child
9 welfare legal representation agency, the task force be
10 requested to make recommendations on the establishment of:

11 A. trial and appellate standards;

12 B. relevant, accessible and role-specific
13 training;

14 C. a mentoring and retention program and
15 opportunities for law students in that mentoring and
16 retention program;

17 D. a compensation structure that achieves parity
18 and adequate representation;

19 E. improvements in and establishment of
20 accessibility to experts, social workers, paralegals and
21 administrative supports;

22 F. a formal complaint process; and

23 G. strategies for personnel recruitment,
24 retention, support and resources in rural districts; and

25 BE IT FURTHER RESOLVED that in order to recommend

1 changes to the legislature, the family representation task
2 force be requested to conduct surveys of other states to
3 identify models of effective representation and funding that
4 lead to improved outcomes for children and families; and

5 BE IT FURTHER RESOLVED that the family representation
6 task force be requested to produce a report to the
7 legislature and any relevant interim committees prior to the
8 2021 legislative session; and

9 BE IT FURTHER RESOLVED that the family representation
10 task force be requested to include the information requested
11 in this joint memorial in the report and also identify in the
12 report:

13 A. statutory changes needed to support proposed
14 models of legal representation;

15 B. an identification of the obstacles in counties
16 statewide to providing children and parents with legal
17 representation in children's court proceedings; and

18 C. an identification of optimal attorney caseload
19 levels and other resources necessary to provide appropriate
20 legal representation in children's court proceedings
21 statewide; and

22 BE IT FURTHER RESOLVED that the chief justice of the
23 New Mexico supreme court be requested to appoint a chair of
24 the family representation task force; and

25 BE IT FURTHER RESOLVED that the administrative office of

1 the courts be requested to provide staff support to the
2 family representation task force; and

3 BE IT FURTHER RESOLVED that the family representation
4 task force be requested to submit a report that includes the
5 recommendations of the task force, including recommendations
6 for legislation, to the appropriate interim committees of the
7 legislature by July 15, 2020; and

8 BE IT FURTHER RESOLVED that copies of this memorial be
9 transmitted to the president pro tempore of the senate; the
10 speaker of the house of representatives; the secretary of
11 children, youth and families; the chief justice of the
12 New Mexico supreme court; the chief public defender; the
13 director of the administrative office of the courts; the
14 director of the legislative finance committee; the executive
15 director of New Mexico legal aid; and the president of the
16 American bar association. _____

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