

Public Advocate for the City of New York

**A DANGEROUS CYCLE:
ATTORNEY TURNOVER AT ACS LEAVES
CHILDREN UNPROTECTED**

**A REPORT BY PUBLIC ADVOCATE BETSY GOTBAUM
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EXECUTIVE SUMMARY

The January 2006 death of seven-year-old Nixzmary Brown at the hands of her abusive stepfather sparked a citywide call for reform of the Administration for Children's Services (ACS) after it was discovered that the city agency missed multiple opportunities to save the child's life. Less than one month after Nixzmary's death, Public Advocate Betsy Gotbaum received a letter from a group of attorneys employed by ACS informing her that they were concerned that their agency's actions were putting children in harm's way. The group informed the Public Advocate that conditions for ACS' Family Court attorneys in the agency's Family Court Legal Services division had been unbearable for a long time and were getting worse because of increased workload in their division prompted by Nixzmary's death. The high caseloads and low morale among staff were causing a mass exodus of ACS Family Court attorneys, leaving ACS less effective in prosecuting child abuse and neglect cases.

After meeting with several other key individuals involved in the Family Court, all of whom voiced similar concerns about ACS' Family Court operations, the Public Advocate's Office launched an investigation to determine why attorneys were leaving ACS and the effect attorney attrition had on the child welfare system. The Office found that 22.6 percent of ACS Family Court attorneys leave the agency each year, costing the agency and city taxpayers an estimated \$3.4 million annually. The investigation found that attorneys leave the agency at a rate nearly five times higher than ACS' stated attrition rate goal.

Using *The City Record: Official Journal of the City of New York*, the Public Advocate's Office identified 96 ACS Family Court attorneys who left the agency between January 1, 2004, and March 31, 2006. The Attorney Directory, available through the New York State Office of Court Administration, was then used to obtain current contact information for 38 of the 96 attorneys. Between April 1 and June 12, 2006, the Public Advocate's Office interviewed 25 former ACS attorneys.

The interviews revealed that, as attorneys left, their cases were shifted to other attorneys, causing a rise in caseloads and increasing burnout among the remaining staff, thus perpetuating the ACS Attrition Cycle. In fact, 88 percent of those surveyed indicated they carried caseloads above the American Bar Association recommended level of 50 cases and 60 percent of those surveyed said their caseloads were unmanageable. One-third of all attorneys surveyed carried caseloads of 100 cases or more.

The Public Advocate's Office found that as caseloads rose, ACS attorneys were not able to give appropriate attention to each case. Those surveyed indicated that they would often go to court unprepared because they had too many cases. When ACS attorneys are not prepared for court, their ability to effectively protect New York City's most vulnerable children is threatened, a state of affairs that may contribute to delays in securing a permanent home for children already in care; it may also expose the agency to costly civil litigation.

ACS must strengthen its protection of abused and neglected children in New York City by addressing Family Court attorney attrition before further tragedies occur. ACS should

hire more attorneys to ease the burden of excessive attorney caseloads in Family Court. The agency should also create an enhanced human capital resource management plan to help retain attorneys. As part of this plan they should create a law school loan repayment assistance program to ease the burden of the high cost of a legal education and make child welfare public service a more viable option for recent graduates. They should also create and implement a comprehensive exit survey to identify areas of dissatisfaction among departing attorneys. ACS could use the information from this survey to address problem areas.

INTRODUCTION

On January 11, 2006, seven-year-old Nixzmary Brown died at the hands of her abusive stepfather in a Brooklyn apartment. Nixzmary was the victim of repeated physical, sexual, and emotional abuse over a period of several months. During this time, those close to her became increasingly suspicious of her prolonged school absences and rapid weight loss, leading some to call the State Central Register (SCR) Child Abuse and Maltreatment Hotline¹ for help. The Administration for Children Services (ACS) received these reports but failed to act appropriately.²

Responsibility for Nixzmary's death lies with her abusive stepfather. It appears, however, that ACS, the city agency assigned the difficult task of ensuring the safety and well-being of New York City children,³ failed to properly investigate these allegations and may have missed opportunities to save her life. The brutality of Nixzmary's death, combined with ACS' missteps, sparked a public outcry that forced the city to rethink the way it protects children.

In the weeks following Nixzmary's death, the city launched a massive effort to improve its child protective services system. To the credit of ACS Commissioner John Mattingly, this effort resulted in a number of improvements at ACS, including enhanced coordination with the New York Police Department and the New York City Department of Education; the creation of *ChildStat*, a computer system designed to monitor key child welfare indicators throughout the city; and a new investment of city money and redistribution of ACS resources to better protect children in high-need communities.⁴

The heightened awareness of child abuse caused by Nixzmary's death led to a dramatic rise in the number of reports of possible abuse and neglect. While it is good news that New Yorkers are focusing more attention on the safety and well-being of the children in their communities, any dramatic rise in reports further taxes an already overburdened and inflexible child welfare system.

¹ NYS Social Service Law §422 creates within the NYS Office of Child and Family Services a state central register capable of receiving allegations of child abuse and neglect and relaying those allegations to the appropriate child welfare agency.

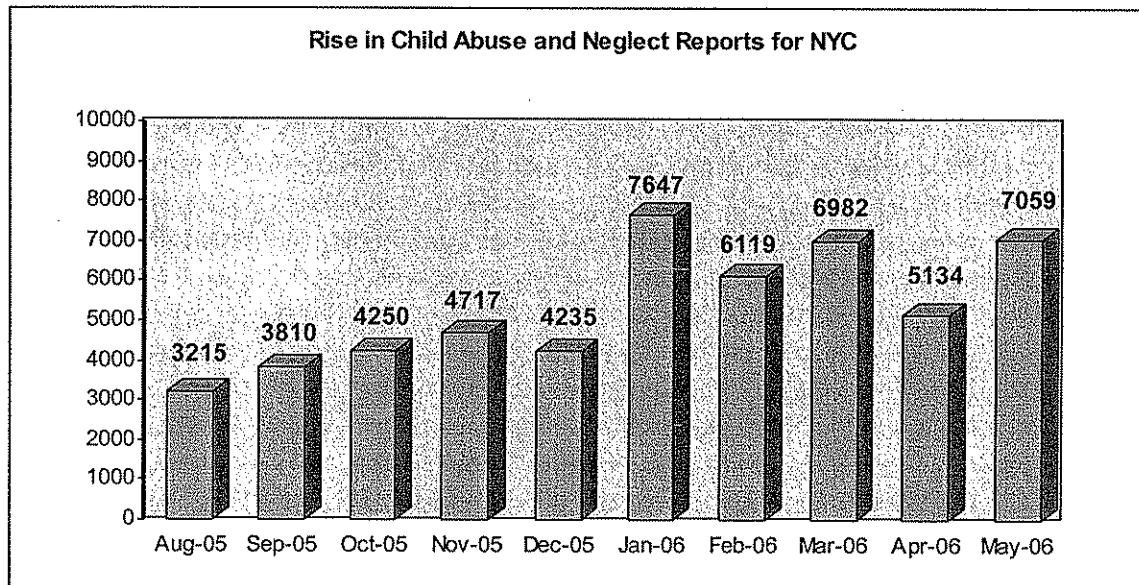
² Ruttenberg, J, et al, "Caseworkers Missed Chances to Save Nixzmary, Report Says," *The New York Times*, January 31, 2006.

³ Administration for Children's Services, *Mission Statement*, available at www.nyc.gov/html/acs/html/about/mission.shtml. Accessed 6/23/06.

⁴ Bloomerg, M., *Report of the Interagency Task Force on Child Welfare and Safety*, available at www.nyc.gov/html/acs/downloads/pdf/pub_interagency_report.pdf.

In the five months following Nixzmary's death, ACS received 32,941 reports of alleged abuse and neglect from the State Central Register. This represents a 62.9 percent increase in the number of reports they received in the five months preceding Nixzmary's death (see Figure 1 below).⁵ During the same period the average caseload for ACS caseworkers increased by 62.8 percent,⁶ and the number of caseworkers handling 30 cases or more increased by over 2,100 percent.⁷ During the same five-month period there was a 62.7 percent increase in the number of children admitted to foster care and a 12.2 percent decrease in the number of children discharged from care.⁸ According to ACS, during the same period there was a 122 percent increase in the number of children in Family Court cases filed for foster care placement.⁹ Although ACS does not publish timely monthly statistics on the total number of cases they argue in Family Court, the Public Advocate's Office received information that ACS Family Court attorneys were experiencing a dramatic rise in caseloads as well.

FIGURE 1.¹⁰



In the midst of this growth in the system, the Public Advocate received a letter from a group of ACS Family Court attorneys concerned about their agency's actions. They informed the Public Advocate that they were afraid that ACS was endangering the lives of children by grossly overworking their Family Court staff. The attorneys cited long-term problems in the operation of the ACS Family Court Unit that were worsening due to the spike in cases: agency attorneys had extremely large and growing caseloads, morale was at an all-time low, and attorney attrition was increasing. The attorneys said they believed the agency and its attorneys were "committing malpractice" every time they

⁵ Calculated by the Public Advocate's Office using data from New York City Administration for Children's Services (ACS), Office of Research & Evaluation, *ACS Update, May 2006, FY 2006*, available at www.nyc.gov/html/acs/downloads/pdf/stats_monthly_update.pdf. Accessed September 13, 2006.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

stepped into the courtroom. They were most concerned that the problems at ACS might result in children being sent back to abusive homes or families being unnecessarily broken up. In a subsequent conversation, they called the situation a “ticking time bomb.”

After meeting with these ACS attorneys, the Public Advocate met with other key individuals involved in the New York City Family Court, including judges, court officers, attorneys who represent children, and child welfare advocates. They all voiced similar concerns about ACS’ Family Court operations.

Pursuant to the New York City Charter, the Public Advocate is charged with reviewing the programs, operations, and activities of City agencies.¹¹ In April 2006, the Office of the Public Advocate initiated an investigation to assess the health of ACS Family Court operations and analyzed attorney caseloads, morale, and attrition rates and their effect on the safety and well-being of New York City’s most vulnerable children and families. As part of this investigation, the Public Advocate’s Office identified and contacted former ACS Family Court attorneys to inquire about their experiences at the agency. This report is based on the findings of that investigation.

*“I currently would not recommend the job as an ACS attorney to anyone.”
-Former ACS Attorney*

Betsy Gotbaum has made child welfare a cornerstone of her tenure as Public Advocate. Over the years, she has called on Mayor Bloomberg to improve child welfare services in New York City. In particular, she has called on the City to address the quality and availability of preventive services to keep families together whenever safely possible; enhance ACS’ ability to accurately and effectively investigate allegations of abuse and neglect; and strengthen ACS caseworker supervision.

In the Public Advocate’s annual child fatality reports, which review the deaths of children whose families were known to the child welfare system, she has made recommendations to reduce the number of preventable child deaths. In particular, Public Advocate Gotbaum has been instrumental in bringing attention to the fact that a disproportionate number of families known to the system have infants who die from improper sleeping position. In response to the Public Advocate’s findings, ACS designed and implemented an informational campaign called “Take Good Care of Your Baby,” which warns parents of the danger improper sleeping position poses to infants.

In 2004, Gotbaum’s work on child fatalities led to the discovery that a disproportionate number of child fatalities occurred in the city’s homeless shelter system. A review of deaths of children whose families were known to the child welfare system found that nearly one-quarter of all the deaths were children living in the shelter system. Gotbaum’s office also found that 33 children of families known to the child welfare system died while in the shelter system from 2000 to 2003. In response to these findings, Gotbaum introduced legislation in the City Council requiring the Department of Homeless Services (DHS) to train shelter staff as mandated reporters and post signage to remind shelter staff of their roles as mandated reporters, as well as a bill requiring DHS to post signage about

¹¹ NYC Charter §24.

the proper sleeping position for infants. The legislation was passed by the City Council and signed into law by the Mayor in March of 2005.¹²

The Public Advocate believes that ACS is stronger now than it has been in the past but realizes that many serious problems still plague the child welfare system. Overworked caseworkers and attorneys, inaccurate investigations of child abuse and neglect, inadequate supervision of staff, and a lack of basic resources for frontline staff are still prevalent. The Public Advocate recognizes that there is no easy solution to these complex problems. The recommendations presented in this report should not be interpreted as a quick fix to all of ACS' problems. Rather, they are intended to address conditions facing ACS attorneys specifically in order to better protect children.

BACKGROUND

The New York State Family Court System was created in 1962, pursuant to the Family Court Act, in order to establish an "omnibus tribunal capable of adjudicating every justiciable family related dispute."¹³ The Family Court system has purview over the following types of cases: Child Abuse or Neglect (Child Protective Proceedings), Adoption, Custody and Visitation, Domestic Violence (Family Offense), Foster Care Approval or Review, Guardianship, Juvenile Delinquency, Spousal Support, Paternity, Persons in Need of Supervision (PINS), and Child Support.¹⁴ In New York City, each borough has its own Family Court.

*"Experienced attorneys make better decisions when it comes to New York City's child welfare cases and they save ACS money. ACS needs a lot more experienced attorneys than it currently has."
-Former ACS Attorney*

Many New York City Family Court proceedings are heard before one of its 47 judges.¹⁵ In some cases, such as paternity and support, support magistrates hear the case. Each judge is appointed by the mayor of New York City for a

term of ten years. There are no juries in family court: the judge hears and decides the case.

ACS Family Court attorneys are Family Court's most comparable entity to prosecutors in criminal court. The ACS attorneys represent the City's position on child welfare matters before Family Court. For instance, the law requires that when a child must be removed from his or her home, ACS is required to present evidence to a Family Court judge to demonstrate that the child cannot live safely at home.¹⁶ The judge then makes the determination based on the facts and may mandate preventive services for the family, court-ordered supervision, or in severe cases, remove the child from the home and place him or her into foster care.

¹² New York City Local Law 26 of 2005.

¹³ Sobie, M., *The Family Court: A Short History*, available at www.courts.state.ny.us/history/family_ct/History_Fam_Ct.htm. Accessed June 22, 2006.

¹⁴ New York State Unified Court System, *New York City Family Court Overview*, available at www.courts.state.ny.us/courts/nyc/family/overview.shtml. Accessed June 23, 2006.

¹⁵ Under the New York Consolidated Law, New York City Family Court originally had 44 judges. See New York State Consolidated Law, Family Court Part 2 § 121.

¹⁶ ACS, *Legal Services*, available at www.ci.nyc.ny.us/html/acs/html/support_families/legal_services.shtml. Accessed August 18, 2006.

Unlike criminal prosecutors, however, ACS Family Court attorneys must also take into consideration the safety and well-being of the victim: the child. ACS attorneys must weigh the dangers presented in the home, the traumatic effect on a child removed from the home and the quickest way to get the child into a safe, permanent home when presenting their cases.

It is important to note, however, that while ACS attorneys are supposed to take into consideration the safety and well-being of the child, they do not directly represent abused and/or neglected children. In the City's Family Court system, children are represented by Law Guardians. These attorneys, often employed by not-for-profit organizations such as The Legal Aid Society or the New York Legal Assistance Group, are appointed by judges to represent the best interests of children in court.

ACS currently employs approximately 190 attorneys¹⁷ for Family Court. Each attorney works in one of five borough-based field offices throughout the city. ACS Family Court attorneys are part of the Family Court Legal Services (FCLS) division of the New York City Administration for Children's Services. FCLS is one of five divisions within the Child Welfare Programs branch of the agency; the other divisions are Child Protection, Family Support Services, Family Permanency Services, and Quality Assurance. FCLS provides legal representation and advice to ACS on child welfare matters. (See Appendix 2 for ACS' Organizational Chart).

A number of positive changes have been made at FCLS over the last year and a half. FCLS now requires that attorneys handle each case until it is closed, rather than allowing a case to be passed from one attorney to the next. It also requires attorneys to shadow ACS caseworkers to learn about frontline child protective services work, and it has replaced two ineffective supervisors in Queens and the Bronx.¹⁸ Yet it appears, based on the results of the Public Advocate's ACS Family Court attorney survey and related discussions, that much more work is needed for the FCLS to operate efficiently and effectively. Additionally, the Public Advocate is concerned that high attrition rates of ACS attorneys undermine some of the positive changes that have been made at FCLS, especially the requirement that one attorney see each case through to completion.

Parents and guardians of children in Family Court proceedings are offered free "18-b"¹⁹ attorneys if they cannot afford to pay for representation. These self-employed sole-practitioners are assigned by judges on an as-needed basis to indigent adults involved in Family Court proceedings.

Although ACS attorneys do not directly represent children, their presentation in court is critical to judges' decisions, which can be life-changing, and even life-saving, for children. ACS attorneys who are not well-prepared could potentially lose cases, causing children to return to abusive situations to be re-victimized. Alternatively, inexperienced or unprepared attorneys could provide inaccurate consultation to caseworkers regarding

¹⁷ Child Welfare Watch, *A Matter of Judgment: Deciding the Future of Family Court in NYC*, Vol. 12, Winter 2005-2006, page 15.

¹⁸ *Ibid*, page 14.

¹⁹ The name "18-b" is derived from Section 18 of Article B of the County Law, which establishes a legal mechanism for assigned counsel for indigent litigants in Family Court. County Law §18-b.

open child protective cases or argue for removal of children from homes in which other solutions, such as preventive services, may be more appropriate.

ACS attorneys also have a great deal of influence over how long children remain in the foster care system. Attorneys who are absent from Family Court proceedings, or move to adjourn because they are not prepared, can add months and even years to a child's stay in foster care, thus depriving foster care children stable placements. Such delays also drive up the city's foster care costs. Finally, it is critical that ACS attorneys do their jobs correctly because if they do not, the city could be held liable for their actions.

METHODOLOGY

In April 2006, the Public Advocate's Office reviewed back issues of *The City Record: Official Journal of the City of New York* to identify attorneys formerly employed by ACS. *The City Record*, a daily newspaper, prints information about personnel changes at City agencies. When a person begins or ends employment at a City agency, his or her name, salary, and civil service code are published.

The Public Advocate's Office reviewed all issues of *The City Record* from January 1, 2004 to March 31, 2006. Using the New York City civil service codes for ACS Family Court attorneys (30086 and 30087), the Public Advocate's Office identified 96 attorneys who had resigned from ACS during the aforementioned 27-month period. The Public Advocate's Office then obtained current contact information for 38 of the 96 former ACS attorneys from the New York State Unified Court System's Attorney Directory.²⁰ In April and June 2006, the Public Advocate's Office contacted and interviewed 25 of these former ACS attorneys. The remaining 13 attorneys either had incorrect contact information listed in the Directory or did not want to participate.

FINDINGS

The Administration for Children's Services is losing Family Court attorneys at an alarming rate, putting children at risk and costing the city millions of dollars.

- Ninety-six Family Court attorneys left ACS during the 27-month period between January 1, 2004 and March 31, 2006. On average, 43 Family Court attorneys left ACS per year over the review period, resulting in a 22.6 percent annual attrition rate. This rate is nearly five times higher than ACS' stated attrition goal of five percent.²¹
- ACS is losing an estimated \$3.4 million per year in costs associated with the attrition of its attorneys.²²
- Fifty-two percent of all attorneys surveyed left ACS after working less than 18 months and 80 percent left after working for ACS less than four years.

²⁰ Available at www.courts.state.ny.us/attorneys.

²¹ ACS, *A Renewed Plan of Action for the Administration for Children's Services*, July 2001.

²² The calculation of this figure is explained on page 14 of this report.

- Ninety-six percent of attorneys surveyed left New York City government altogether, resulting in a total loss to the city of dollars invested in training, as well as attorney experience.

ACS Family Court attorneys are dangerously overworked.

- As attorneys leave the agency, their cases are shifted to other attorneys, causing an increase in the remaining attorneys' caseloads. This serves to perpetuate a cycle of attorney attrition. New attorneys are not hired by the agency on an ongoing basis to replace attorneys as they depart; ACS hires new attorneys only twice per year.
- Sixty percent of attorneys surveyed indicated that at the time of their resignation their caseloads were too high.
- Eighty-eight percent of attorneys surveyed indicated that when they resigned from ACS they had caseloads of greater than 50, the maximum caseload recommended by the American Bar Association.²³ In fact, one-third had caseloads of 100 cases and above. One attorney indicated that she had a caseload of 150 cases prior to her resignation.
- Several attorneys indicated that they often worked through their lunch hours and late into the night nearly every day to meet the demands of their high caseloads.

New attorneys are drawn to ACS to do meaningful work in the child welfare field, but they leave quickly because of what former attorneys termed a "negative agency culture."

- Seventeen, or 70 percent, of those surveyed indicated that they accepted a position with ACS because they wanted to work in the child welfare field helping children and families.
- The "negative agency culture" was the most frequently cited reason for leaving ACS. The New York City residency requirement and low pay were also significant factors.

ACS Family Court attorneys are inadequately trained and supervised, and are undervalued by the agency.

- Twelve, or nearly half, of the attorneys surveyed thought the training they received from ACS did not adequately prepare them for the job or needed improvement.
- Poor attorney supervision was the most frequently cited disappointment of working at ACS.

²³ American Bar Association, *Standards of Practice for Lawyers Representing Child Welfare Agencies*, August 2004.

- Improved supervision and management was the most frequently cited change that would have made working at ACS a better experience.
- Most attorneys surveyed indicated that they did not feel appreciated by their supervisors or by ACS management.
- Seventy-five percent of attorneys surveyed indicated that at least one-third of the work they did at ACS was administrative and case work that should have been performed by paralegals, support staff and caseworkers.

DISCUSSION OF FINDINGS

The Workload of the ACS Family Court Attorney

ACS Family Court attorneys are dangerously overworked and, according to attorneys currently working at ACS, their caseloads are growing. To make matters worse, as caseloads rise, attorney burnout increases; as attorney burnout increases, attorney attrition increases; as attorneys quit, their caseloads are redistributed to the remaining attorneys, thus creating even higher caseloads and continuing the ACS Attrition Cycle.

Sixty percent of the attorneys surveyed indicated that their caseloads were unmanageable. One-third of the attorneys had caseloads of 100 cases and above; one attorney had a caseload of 150 before she left the agency. The American Bar Association deemed high caseloads “one of the major barriers to quality representation and a source of high attorney turnover”²⁴ and recommends that caseloads for Family Court attorneys not exceed 50 cases.²⁵ The Public Advocate’s Office found that 88 percent of attorneys surveyed had caseloads higher than the ABA recommended level.

Former ACS attorneys indicated that they were unable to give appropriate attention to their cases because of their high caseloads. Attorneys stated that they wished they had more time to properly prepare for Family Court proceedings, indicating that they had little, if any, time to do legal research, appeal decisions, or coordinate with caseworkers. Many spoke of “cheating” on cases, meaning that they would go to court unprepared, often looking at a case file for only a few minutes before arguing before the judge. Former attorneys stated that they often met with ACS or contract foster care agency caseworkers just moments before the trial with no further preparation; critical information would often come out at the trial without the prior knowledge of the attorney.

“ACS should be appealing many more court decisions but the attorneys don’t have time.”
-Former ACS Attorney

Former attorneys explained that much of their time was spent doing administrative work such as contacting caseworkers to inform them of upcoming court dates; contacting caseworkers who had missed court dates; and faxing, photocopying, and filing documents. The attorneys reported that the agency does have some paralegals, but they described them as “incompetent” or “inaccessible.”

²⁴ *Ibid.*

²⁵ See 23.

Most attorneys surveyed spoke about the long hours associated with the high caseloads at ACS. Attorneys indicated that they would often work through lunch hours and late into the evening in an effort to keep up with their workloads.

It also appears that ACS Family Court attorneys are often unable to use the annual leave and compensatory time they accrue. Former ACS attorneys surveyed indicated that they were restricted from using their leave time because of high caseloads and staffing shortages. They reported that supervisors often did not approve their requests for annual leave because they were short on staff.

Attorneys who are unable to or discouraged from using annual leave and compensatory time often accrue large balances and are paid for this time at the end of their employment at ACS. For example, attorneys who are not allowed to take annual leave for two years accrue 36 days of leave. If they also regularly work a 45-hour week, accruing 10 hours of compensatory time per week, they will accrue an additional 148 days. Combining annual leave and compensatory time, such attorneys will accrue a total of 184 days or an extra nine months of paid leave. The accrual of such large balances may create an unintended incentive for attorneys to leave ACS.

High Caseloads Slow Family Court Proceedings and Result in Lengthy Foster Care Placements

An overburdened Family Court system, including high ACS attorney caseloads, results in a long foster care placement process for New York City children. Former ACS attorneys reported that it was a fairly common practice among attorneys at ACS to request adjournments of court proceedings because they were unprepared. This practice delays the provision of services to children and families involved in the child welfare system and lengthens the amount of time children spend in the system. A 2002 federal audit of the child welfare system in New York State noted that New York City's Family Court system suffered from chronic delays as a result of adjournments and listed the prolonged foster care placement process as a critical area in need of improvement.²⁶

Obtaining "permanency" means that a child has a safe, stable, and legally binding relationship with an adult that will foster healthy child development.²⁷ Under the Adoption and Safe Families Act of 1997,²⁸ the landmark federal legislation that defined permanency as a major goal of child welfare systems, permanent placements include: adoption, legal guardianship, permanent placement with a relative, reunification with parents, or other planned permanent living solutions.²⁹ Foster care placement is not a permanent solution for children. Placements often change, meaning that foster children often move from one home to the next. In fact, in New York City, over 55 percent of children in foster care have three or more placements during their stay in care.³⁰

²⁶ United States Department of Health and Human Services, Administration for Children and Families, *Final Report of the Child and Family Services Review of New York State – Region*, January 2002.

²⁷ New York State Citizen's Coalition for Children, Inc., *Permanency for Children*, October 2002. Available at www.nysccc.org/linkfamily/legal/Permansupports.htm. Accessed 6/24/06.

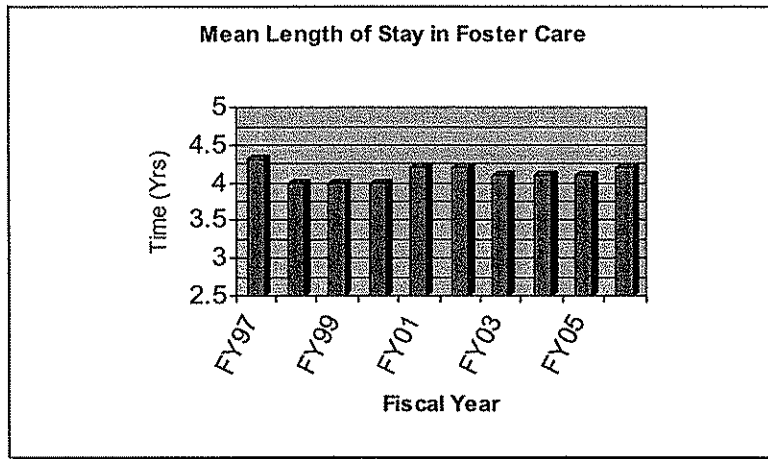
²⁸ Public Law 105-89.

²⁹ Scopetta, N. ACS Memorandum. *Implementation of the Adoption and Safe Families Act Part IV – Guidelines for Choosing a Child's Permanency Plan*, May 21, 2001.

³⁰ Fiscal Year 2005 data. The City of New York, *Preliminary Mayor's Management Report FY2006*, Available at www.nyc.gov/html/ops/html/mmr/mmr_sub.shtml.

The average length of stay in foster care in New York City is the second lengthiest in the country.³¹ At 49.9 months,³² or just over four years, New York City's average length of stay in care is more than a year and a half longer than the national average of 31 months.³³

Figure 2. Mean Length of Stay in Foster Care in New York City



Over the last ten years, the foster care population in New York City has plummeted by 60 percent. However, the city has been unable to make any meaningful improvement in the average length of time it takes for a child to reach permanency once in care. Unfortunately, the mean length of stay in foster care has hovered around four years for the last decade

(see Figure 2).³⁴

High Attrition Rates for ACS Family Court Attorneys Limits ACS' Effectiveness in Court and is Costly to the City

As measured by the Public Advocate's Office, the attrition rate of Family Court attorneys at ACS over a recent 27-month period averaged 22.6 percent annually. By comparison, the attrition rate for Assistant District Attorneys in the Queens District Attorney's Office is approximately 10 percent annually,³⁵ while the rate in the Brooklyn District Attorney's Office is approximately 6.4 percent annually.³⁶ The attrition rate of all federal government attorneys is 6.5 percent annually.³⁷

³¹ Only Illinois has a longer average length of stay at 51 months. Child Welfare League of America, National Data Analysis System, *Mean Length of Stay for Children in Out-of-Home Care*. Available at http://ndas.cwla.org/data_stats. Accessed 6/22/06.

³² The City of New York. *Preliminary Mayor's Management Report FY2006*, Supplemental Indicator Tables. Available at www.nyc.gov/html/ops/html/mmr/mmr_sub.shtml.

³³ United States Department of Health and Human Services, Administration for Children and Families. *Adoption and Foster Care Analysis and Reporting System Report #10*, April 2005. Available at www.acf.hhs.gov/programs/cb/stats_research/index.htm. Accessed 6/22/06.

³⁴ The City of New York. *Mayor's Management Reports Fiscal Years 1997 – 2005*, and *Preliminary Mayor's Management Report FY 2006*, Supplemental Indicator Tables. Available at www.nyc.gov/html/ops/html/mmr/mmr_sub.shtml.

³⁵ Phone call to Mark Woltman, Public Advocate's Office, from Kevin Ryan of the Queens DA's Office; June 27, 2006.

³⁶ Email to Mark Woltman, Public Advocate's Office, from Michael Poretzky of the Brooklyn DA's Office; June 27, 2006.

³⁷ United States Office of Personnel Management. *Employment Statistics, Fiscal Year 2005*.

Eighty-four percent³⁸ of the attorneys ACS hires are recent³⁹ graduates of law school. This means that experienced attorneys who leave are routinely replaced with inexperienced attorneys. New attorneys require training and extra supervision before they can handle a full caseload independently; according to former ACS attorneys, it takes approximately six months for a new attorney to become comfortable in the court room and familiar with Family Court policies and procedures.

Experienced attorneys are needed at ACS to handle the many complex cases of abuse and neglect that the agency litigates. ACS itself reports that “reducing (attorney) attrition improves the quality of front-line legal practice by increasing the number of experienced attorneys in the division (of family court legal services) who can handle complicated cases and supervise less experienced staff.”⁴⁰

“ACS Family Court supervisors think attorneys are leaving because it’s a stressful job with low pay, but they are leaving because of poor supervision and lack of support from the agency.”
-Former ACS Attorney

ACS has failed to realize its Family Court attorney annual attrition goal of five percent established by the agency in 2001. According to the findings of the Public Advocate’s Office survey, after almost five years, the agency’s attorney attrition rate is nearly five times higher than its stated goal.

High attorney attrition comes at a substantial financial cost to the city, which must recruit, train, and supervise new attorneys while paying out benefits and leave time to those that resign. Determining the cost of employee turnover requires calculating the costs due to a person leaving, recruitment costs, training costs, lost productivity costs, and

new hire costs.⁴¹ Human resource experts estimate the loss of an employee at around 150 percent of his or her yearly salary.⁴² This means that ACS loses somewhere between \$66,453 and \$100,500,⁴³ depending upon seniority, for each Family Court attorney who leaves the agency. The average salary of the 96 attorneys who left ACS during the 27-month period reviewed for this report was \$53,874.⁴⁴ Based on these numbers, it is estimated that ACS lost \$7.8 million due to attorney attrition. In other words, ACS is losing an estimated \$3.4 million per year as a result of Family Court attorney attrition.

Inadequate Training and Supervision of ACS Attorneys

Nearly half of all attorneys surveyed indicated that, in their opinion, they were inadequately trained by ACS or that the training they received needed improvement. Currently, all new ACS attorneys attend classes for approximately four weeks at the ACS Children’s Center located in Manhattan. The training is offered twice per year and is

³⁸ As measured by the Public Advocate’s Family Court attorney survey.

³⁹ “Recent” meaning it is the attorney’s first job after school.

⁴⁰ New York City Administration for Children’s Services, *A Renewed Action Plan for the Administration for Children’s Services*, July 2001.

⁴¹ Bliss, W. *Cost of Employee Turnover*. The Advisor. Available at www.isquare.com/.

⁴² *Ibid.*

⁴³ Based on the starting salary of an ACS attorney and maximum salary for a veteran ACS attorney; see page 15.

⁴⁴ As reported in *The City Record: The Official Journal of the City of New York*, January 1, 2004-March 31, 2006.

scheduled to coincide with the two rounds of attorney recruitment ACS conducts each year.

According to those surveyed, the training does provide new attorneys with an understanding of the relevant law. However, former ACS attorneys complained that the centralized training was mostly done in a traditional classroom setting and lacked sufficient mock trial proceedings and training in the particular borough in which each attorney was to be assigned.

*“The culture of ACS is not about protecting children but about protecting themselves from bad press.”
-Former ACS Attorney*

According to former attorneys, all newly-hired attorneys are supposed to go through a borough-based training once they complete the centralized training program, but most admitted that once in their boroughs they were put right to work and received little or no further training. Attorney practice and strategy in each borough differs greatly, due to varying procedures at each field office and the particular judges assigned to the borough’s Family Court. Attorneys indicated that knowing these nuances are of vital importance to success on the job.

One of the most frequent complaints made by those surveyed was that the quality of supervision they received was poor. In fact, according to the survey, the former attorneys’ biggest disappointment with the position was the inadequacy of supervision. Attorneys indicated that many of their supervisors were out of touch with the current Family Court system and that many supervisors had not been before a Family Court judge in ten to fifteen years. Former attorneys from all five boroughs indicated that supervision on cases was provided to the supervisors’ “favorites,” and only rarely to new attorneys. When asked how to make the job of ACS attorney more fulfilling, the most common recommendation made by the attorneys surveyed was for ACS to retain better supervisors.

Nearly all the former attorneys surveyed indicated that, upon leaving the agency, ACS did not perform an exit interview. They indicated that upon their resignation they were required to report to ACS headquarters at 150 Williams in Manhattan to turn in their agency identification and fill out paperwork regarding their benefits and contact information. ACS, however, did not ask them why they were leaving or about their experiences working for the agency.

The Economics of an ACS Family Court Attorney: Low Pay, Few Promotions, Expensive Rent, and High Debt

Most former ACS attorneys surveyed indicated dissatisfaction with the relatively low salaries at ACS. While low pay was not as significant a factor in the decision to leave as the “negative culture” at ACS, it was a factor nonetheless. In fact, as working conditions worsened at ACS, attorneys reported that the low pay became more significant to them. Currently, a starting ACS Family Court attorney earns \$44,302⁴⁵ per year, and a senior attorney can earn a maximum salary of \$67,000 after several years of service.⁴⁶

⁴⁵ New York Citywide Job Vacancy Notice, Agency Attorney Intern/Level I. Note that Agency Attorney Intern is the title of an entry-ACS attorney.

⁴⁶ Child Welfare Watch, *From Prosecution to Permanency*, Vol. 12, Winter 2005-06.

Attorneys surveyed indicated that the relatively low salaries and growth potential were not enough to cover their law school debt and the high costs associated with living in New York City, a requirement of the agency.⁴⁷ Currently, the average debt of a law school graduate in the United States is \$50,000 – \$75,000,⁴⁸ and many of those surveyed stated that they had tens of thousands of dollars in law school debt.

“Most new attorneys at ACS take about six-months to figure out their work, by 12 months they are burned-out, and by 18 months they leave ACS.”

-Former ACS Attorney

Law schools often have loan repayment assistance programs (LRAP) for graduates who pursue careers in public or non-profit sectors. However, LRAP requirements are established by each respective law school, and many of the attorneys interviewed reported that their position at ACS did not meet the LRAP eligibility requirements at their school.

In a recent victory for ACS attorneys, the United States Court of Appeals for the Second Circuit determined that working as an attorney for ACS meets the requirements for loan forgiveness status under the regulations of the federally subsidized Perkins Loan.⁴⁹ Under the rules of the Perkins Loan,⁵⁰ students are eligible for a 100 percent cancellation of their Perkins Loan liability if they work directly with at-risk children. Prior to this ruling, ACS attorneys were denied loan forgiveness under this program because some schools determined that the ACS Family Court attorneys did not work directly with children. While this ruling could eventually be overturned on appeal by the Supreme Court, it is still a substantial victory for ACS attorneys with federal Perkins Loan law school and undergraduate debt.

ACS should consider creating its own loan repayment assistance program as an intra-agency human capital management tool to help recruit and retain attorneys who would otherwise leave for higher-paying jobs because of high law school debt. The program should be designed to reward attorneys for staying with ACS for a designated period of time with penalties for those who opt into the program and leave before completing the mandatory period of service.

The United States federal government has had great success in recruiting and retaining more government workers after expanding its student loan repayment program. Under the federal plan, qualified employees with student loans are eligible for up to \$10,000 in assistance per year, with a maximum aggregate benefit of \$60,000. As per the repayment agreement, participating employees are required to stay employed by the federal government for a period of

“All my experience at ACS is now benefiting New York’s Orange County Department of Social Services.”
-Former ACS Attorney

⁴⁷ The ACS residency requirement has been lifted. See page 18.

⁴⁸ Jones, L. *As Salaries Rise, So Does Debt*, The National Law Journal, Feb. 2006

⁴⁹ 412 F.3d 71. 2005 U.S. App., Docket No. 03-6257. June 14, 2005.

⁵⁰ The Perkins Loan is a federally subsidized, low-interest student loan awarded to undergraduate and graduate students with financial need. United States Department of Education. Student Guide – Perkins Loans. 2005.

no less than three years. If employees decide to leave their position, they must repay the federal government for the assistance they received.⁵¹

In 2003, under an amendment to the Federal Employee Student Loan Assistance Act,⁵² the federal government tripled the amount of funding available for student loan repayments. Over the course of fiscal year 2003, the first year of expanded student loan assistance benefits, the federal government reported that it was able to successfully recruit and retain three times more employees⁵³ than the previous year. After this increase in employee recruitment and retention, the federal government determined the program to be “a valuable human capital management tool that enables agencies to recruit highly qualified employees into federal service and keep talented employees in the federal workforce,”⁵⁴ resulting in expansion of the program.

Since fiscal year 2002, the federal government has continued to expand the program by nearly 1,000 percent. In fiscal year 2005, 4,409 employees received \$28 million in student loan assistance, the average benefit being \$6,350 per participant per year. In fact, federal attorneys are the top beneficiary of this program, comprising nearly 11 percent of the total.⁵⁵ ACS should develop a similar loan assistance program to help recruit and retain more attorneys.

The City Neglects to Adequately Improve ACS Family Court Operations

As part of its comprehensive plan to strengthen its response to abuse and neglect, developed after the death of Nixzmary Brown, the city committed \$1.5 million to hire 32 new ACS family court attorneys.⁵⁶ While this initiative is a step in the right direction, this investment is too small to provide the relief the system needs. According to the group of attorneys that originally contacted the Public Advocate’s Office, their borough office alone needs 30 new attorneys to enable them to properly perform their job.⁵⁷

The Public Advocate’s investigation revealed that an average of 43 attorneys left per year during the 27-month period reviewed. While the current number of attorneys on-staff was not available to the Public Advocate’s Office as of the date of this report, reports from the field indicate that several attorneys have left the agency since the announcement that ACS would hire 32 new attorneys. With that in mind, it is likely that many of the new attorneys are only replacements for those who left and not additional attorneys who could help reduce caseloads. Furthermore, if past attrition rates are any indication, 32 attorneys will likely leave in just under nine months, making all the new attorneys, in effect, replacements for the attorneys who will leave in the near future.

⁵¹ United States Office of Personnel Management, *Report to Congress: Federal Student Loan Repayment Program*, Fiscal Year 2005.

⁵² Public Law 108-123, amended November 11, 2003.

⁵³ United States Office of Personnel Management, *Report to Congress: Federal Student Loan Repayment Program*, Fiscal Year 2003, page 8.

⁵⁴ *Ibid.*

⁵⁵ See 51.

⁵⁶ ACS, Press Release. *Mayor Bloomberg Announces Comprehensive Strategy to Strengthen City’s Response to At-Risk and Abused Children*, January 24, 2006. Available at www.nyc.gov/html/acs.

⁵⁷ Letter to Public Advocate’s Office, Feb. 7, 2006. Name withheld to protect identity. See Appendix 3.

ACS LIFTS ATTORNEY RESIDENCY REQUIREMENT

During the course of the Public Advocate's investigation into the attrition rate of ACS Family Court attorneys, Commissioner Mattingly lifted the agency's residency requirement for ACS Family Court attorneys. This is a step in the right direction for the agency and is one of many changes needed to help stop the exodus of ACS attorneys.

Some of the former attorneys interviewed by the Public Advocate's Office had moved out of the City to Long Island, upstate counties, New Jersey, and Connecticut and indicated that the residency requirement was a significant factor in their decision to leave ACS. During the course of this investigation, the Public Advocate's Office identified a handful of attorneys who stated that they would come back to work at ACS if the residency requirement was lifted. The Public Advocate's Office recommends that ACS notify all Family Court attorneys who have left the agency within the last 36 months that the residency requirement has been lifted. This could help ACS bring experienced attorneys back to the agency.

RECOMMENDATIONS

ACS should take the following actions to decrease the attrition rate of Family Court attorneys:

- Hire more attorneys so that it can reduce attorney caseloads to the ABA-recommended maximum of 50 cases.
- Recruit and train new attorneys on an ongoing basis to help ensure adequate staffing throughout the year.
- Create a respite team of experienced ACS attorneys to assist field offices during times of increased cases or decreased staff. The respite team would also help ensure attorneys are able to use their accrued leave and compensatory time. This would prevent attorney burnout and the accrual of large amounts of annual leave and compensatory time, which may act as an incentive to leave ACS.
- Improve supervision of attorneys by regularly evaluating supervisory attorneys. Provide supervisory attorneys with a continuing education program and require that they practice a minimum number of cases per year in New York City Family Court to ensure that their knowledge remains current. As part of this process, ACS should regularly, anonymously survey Family Court attorneys to evaluate the quality of supervision they receive, as well as the availability and quality of paralegal and support staff.
- Hire skilled paralegals to help ease the workload of attorneys. ACS should assign paralegal staff to Family Court attorneys based on caseload to reduce the burden of additional non-legal work.

- Implement a comprehensive qualitative exit survey for all attorneys leaving the agency to better identify and address the causes of attorney attrition in each field office.
- Extend ACS' new attorney training to include more experiential lessons based in the attorneys' borough of future practice. One former attorney suggested that a more effective training course would include two weeks of classroom training, then two weeks of "shadowing" attorneys in their assigned borough, followed by two weeks of mock trials and more classroom instruction. This model would give attorneys knowledge of the practice within their assigned borough and would provide an opportunity to have classroom discussions and ask questions about what they had observed in the field.
- Work with area law schools to make sure that the position of ACS Family Court attorney meets the requirements for all law schools' loan repayment assistance programs.
- For those attorneys whose law school debt is not covered by their schools' loan repayment assistance program, create a program to help attorneys pay off their debt while working in ACS' Family Court Legal Services division. This loan repayment program should be designed to create an incentive to commit to a number of years of service to the agency. ACS could establish such a program with an annual investment of approximately \$1.2 million. With this investment, ACS could provide loan repayment assistance to 200 of its attorneys.⁵⁸
- Inform newly-hired attorneys of their federal Perkins Loan forgiveness options. Furthermore, ACS' Human Resources Department should assist eligible ACS attorneys in filing the required Perkins Loan reimbursement documentation.
- Contact attorneys who left the agency within the last three years to inform them of the residency requirement waiver and encourage them to return to the agency.

ACS should take the following actions to provide proper public oversight over their Family Court operations reforms:

- Report the number of ACS Family Court attorneys, their caseloads, as well as attorney attrition rates in the Monthly Updates it posts on its website.

⁵⁸ Based on the federal government's average of \$6,350 in loan repayment per participating employee per year.

Appendix 1 – Public Advocate’s ACS Attorney Survey

**New York City Office of the Public Advocate:
ACS Attorney Survey**

(CONFIDENTIAL)

(CONFIDENTIAL)

Name:

Date of Interview:

Dates of Employment:

Borough of Employment:

Please double click on the boxes below to check your answer, or print out and check by hand.

1. Was this your first job out of Law School?

Yes No

2. How did you discover the position with ACS? (Did recruiters come to your campus?)

3. How were you trained for the job? Do you feel it was the training adequately prepared you for the position? What could ACS improve about their training for family court Attorneys?

4. Why did you accept the ACS position?

5. Why did you leave ACS?

6. Was the job different from your expectations? How?

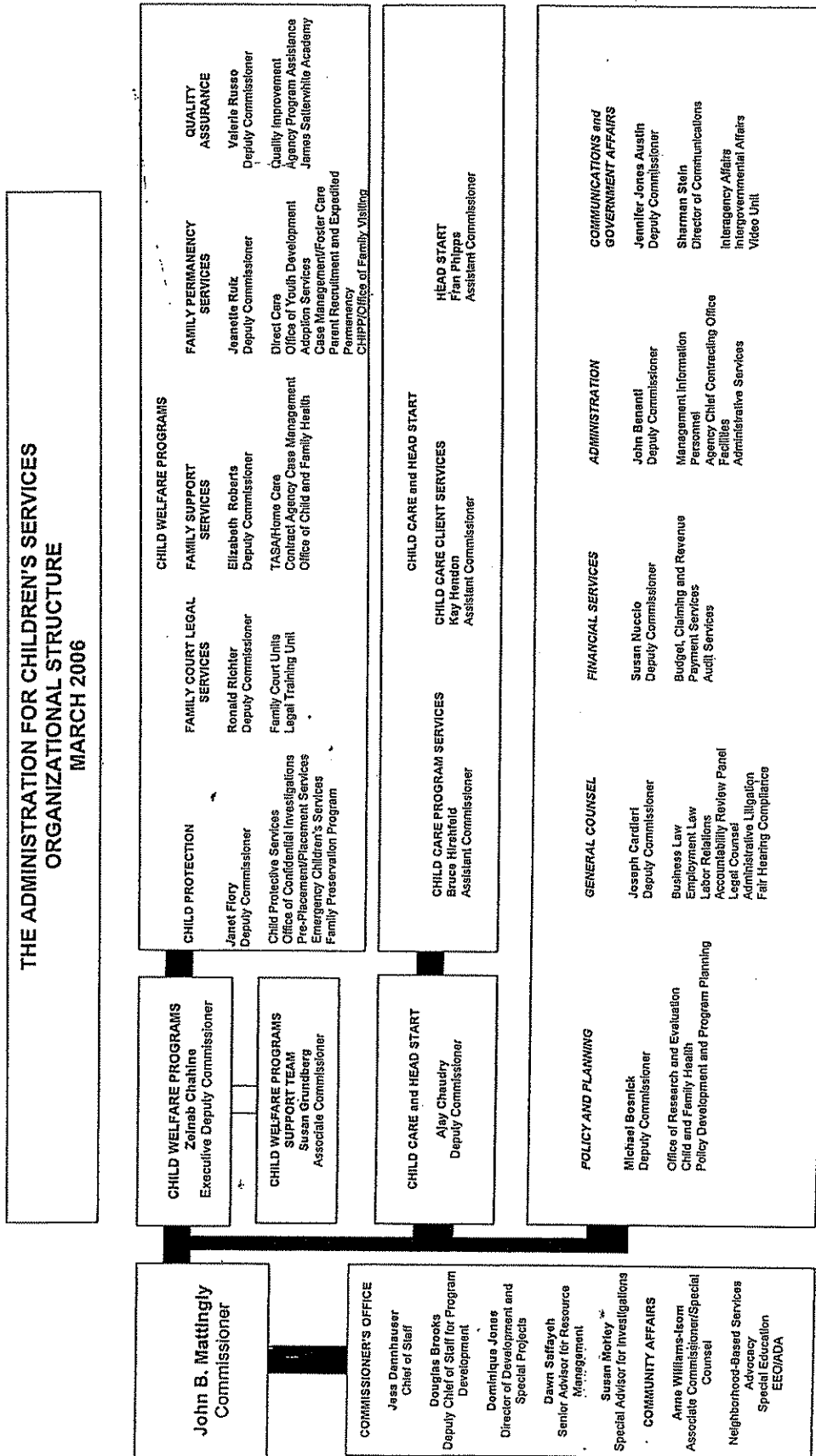
7. What did you like about the job?

8. What would have made the job a better experience?

9. What are you doing now?
10. What was your average caseload?
11. How much of your time was spent doing legal work and how much of your time was spent doing other work (casework, administrative, etc..)? How much of your legal work was spent in the courtroom versus out-of-courtroom (doing research, etc..)? How much of your time was spent waiting for your next hearing?
12. If practiced in Brooklyn, what was your opinion of the dedicated parts system?
13. Did ACS offer you an exit interview? Did you take an exit interview?

ADDITIONAL COMMENTS:

Appendix 2 – ACS Organizational Chart



Appendix 3 – ACS Email to Public Advocate's Office

From: [REDACTED] (ACS) [mailto:[REDACTED]@dfa.state.ny.us]
Sent: Tuesday, February 07, 2006 5:48 PM
To: Ombudsman Email; Anat Jacobson
Subject: Urgent ACS problem that needs to be addressed by the Public Advocate
Importance: High

Good Afternoon Ms. Jacobson:

I am an attorney with ACS working in Brooklyn Family Court. As you know ACS has been under intense scrutiny lately and the number of cases we are filing has risen sharply. The problem is that all of the attorneys in Brooklyn were overwhelmed well before this public crisis. We have too many cases to handle them properly. We have discussed this at length with our supervisors but there has been no improvement.

We are all committing malpractice everyday because we are not able to properly prepare our cases. We don't have time to follow-up with caseworkers to check on compliance with court orders. We don't have time to prep witnesses. We can't process our subpoenas in the required time. And now with the new legislation (that went into effect Dec. 21st and substantially increased both the quantity of court hearings and the substantive depth required) we don't have time to look for and correct the Permanency Hearing reports. We often go on the record minutes after receiving the report or update from the CW. And we often have to delay researching legal motions because we are in court for solid days at a time or because we are addressing some emergency.

We can't handle caseloads of 85 - 115 cases. It is literally not possible. I know the Commissioner of ACS is very concerned with court delays and quite frankly the biggest delay is that we have to seek adjournments because we are not prepared. That may mean the caseworker isn't there and we didn't have time to speak to them the week before and remind them. Or it may mean that we don't have the subpoenaed medical records yet and we haven't had time to follow-up. Or it may mean that we haven't yet provided the case record to counsel and we haven't had time to follow-up with our paralegals. Or it may mean that we are forced to put too many cases on our schedule for a given day and we simply can't finish them all.

If we had a reasonable number of cases they would all be properly prepped and the number of court delays would be greatly reduced.

The below excerpt is from "Standards of Practice for Lawyers Representing Child Welfare Agencies" published by the American Bar Association in August of 2004. It states that a caseload of 45-50 is reasonable while over 60 is "unmanageable". (You can find a link to the entire document in a pdf at <http://www.abanet.org/child> <<http://www.abanet.org/child/rc1ji/online.html>> /rc1ji/online.html)

2. Determine and set reasonable caseloads for agency attorneys

Action: An agency attorney manager should determine reasonable caseload levels for the agency attorneys and then monitor the attorneys to ensure the maximum is not exceeded. Consider a caseload/workload study, review written materials about 20 such studies, or look into caseload sizes in similar counties to accurately determine the ideal caseload

for attorneys in the office. Be sure to have a consistent definition of what a "case" is - a family or a child. When assessing the appropriate number of cases, remember to account for all agency attorney obligations, case difficulty, the time required to thoroughly prepare a case, support staff assistance, travel time, level of experience of attorneys, and available time (excluding vacation, holidays, sick leave, training and other non-case-related activity). If the agency attorney manager carries a caseload, the number of cases should reflect the time the individual spends on management duties.

Commentary: High caseload is considered one of the major barriers to quality representation and a source of high attorney turnover. It is essential to decide what a reasonable caseload is in your jurisdiction. How attorneys define cases and attorney obligations vary from place-to-place, but having a manageable caseload is crucial. One study found that a caseload of 40-50 active cases is reasonable, and a caseload of over 60 cases is unmanageable.

I understand that there are new attorneys being hired later this spring but that will have little effect on our workload. With 32 being hired for all 5 boroughs the number coming to Brooklyn will barely replace attorneys who have quit. (We have an unbelievably high turnover rate due in part to the high caseload and in part to our low salary.) We need 30 new attorneys for Brooklyn alone.

I know we are a city agency and hiring is a complicated political issue but all attorneys, even those employed by city agencies, have a duty to provide competent representation.

We need the Public Advocate to address this issue with the ACS Commissioner and the City Council. I would be happy to meet with your office to discuss this further as would many of my colleagues.

Thank you,

[REDACTED]

Attorney

Family Court Legal Services

NYC Administration for Children's Services

330 Jay Street, 12th floor

Brooklyn, New York 11201

phone: 718-802-[REDACTED]

fax: 718-802-[REDACTED]

[REDACTED]@dfa.state.ny.us



Appendix 4 – Letter from ACS Family Court Attorneys to
Commissioner John Mattingly dated September 1, 2005.
(Copy received by Public Advocate’s Office on 2/11/2006)

**ADMINISTRATION FOR CHILDREN’S SERVICES
FAMILY COURT LEGAL SERVICES
BROOKLYN FAMILY COURT UNIT**

330 JAY STREET – 12th FLOOR
BROOKLYN, NEW YORK 11201

PHONE: (718) 802-2790
FAX: (718) 802-2799

September 1, 2005

Dear Commissioner Mattingly:

This letter is respectfully submitted on behalf of the undersigned FCLS attorneys in the Kings County Office. On June 3, 2005, our office was informed by Ron Richter and Nancy Thomson that you had decided to reorganize our office’s practice in the Family Court by assigning each attorney to an individual judge. Mr. Richter and Ms. Thomson expressed that your commitment to this project was deeply rooted in your knowledge of and experience with the child protective court practice in this and other jurisdictions, and in your belief that this proposed system will expedite permanency for children in foster care. They further explained that you viewed ACS as the leader of the child protective system in New York City, which carries an obligation to spearhead significant and dramatic changes to promote progress in the court system.

Appreciating that, we, Kings County FCLS attorneys, feel compelled to express our reservations about the project. We submit that a vast majority of the front-line Kings County FCLS attorneys do not agree with the implementation of the dedicated parts, or “one attorney / one judge” project. We further believe that implementation of the proposed system at this time is premature and will undermine the quality of legal representation provided to the Commissioner.

To begin, there is no readily apparent correlation between the designation of each attorney to one particular judge and expediting permanency or reducing the length of stay of a child in foster care. While we are cognizant of the fact that other jurisdictions in large cities employ this system, the recent pilots in Kings County have not borne anticipated results because of a lack of cooperation from other institutional groups.

It is inherently unfair to subject the Kings County FCLS unit to a project that has little, if any, support from the front-line attorneys when there is no apparent agreement from the other institutional groups to participate. Any possible scheduling benefits of the dedicated parts system cannot be achieved with FCLS as the only participant. Subjecting FCLS attorneys to a practice that cannot be fully implemented is premature and will serve only to frustrate the ability of FCLS attorneys to economically performing their duties.

Any success of this “one attorney / one judge” system is contingent upon the full cooperation from all the institutional groups involved in the New York City child protective court system. In the past, the Juvenile Rights Division of the Legal Aid Society has not fully complied with “clusterization” and has not acquiesced to the “one attorney / one judge” proposal. They have stated that they are not willing to participate in this system in the fall. Members of the 18-b panel have never participated in the “clusterization” or specialization of the child protective court system. Without complete participation, the purpose of the project can not be achieved and success is doubtful.

While we support the idea that ACS should take the initiative to implement and propose changes to promote progress, the realization of progress must be weighed against the outcome of past attempts. As you should know, Kings County FCLS has implemented a practice of assigning each attorney to a cluster of only two judges and their two referees. This current practice was formulated through a compromise of some of the institutional groups and has been in effect for some time. However, the success of this current practice has been frustrated by the lack of cooperation from the other institutional groups. For instance, the Legal Aid Society has not coordinated intake or office days with our office. Therefore, currently, one FCLS attorney may have entirely different office and intake days than a law guardian assigned to their case. Even disregarding respondent’s counsel, such a situation can present the Court with only one or two days per week to accommodate an adjourn date. Instead of committing further to a system that has not received full cooperation, we would suggest that ACS influence those other institutional groups to coordinate with our office in the current system of attorneys being clustered with two judges.

Unfortunately, it seems too often that proposals are implemented in the name of progress without properly addressing the potential problems. Similarly, it seems that implementation of this project is premature. The proposed system has inherent flaws that we believe have not been properly addressed and threaten to detrimentally affect the daily practice in our office. We, attorneys who are working within the New York City foster care system everyday, submit to you the following problems with this proposed system:

- There does not appear to be a policy to address the inevitable resignation of FCLS attorneys and the reassignment of those cases. It is unmanageable for one team to have to absorb one attorney’s full caseload, which could be as high as 100 cases. Recently, we have already seen the effects of this when we had 3 attorneys resign from one cluster. (It is noted in the ABA’s August 2004 “Standards of Practice for Lawyers Representing Child Welfare Agencies” that “high caseload is considered one of the major barriers to quality representation and a source of high attorney turnover.” That ABA committee recommends a caseload of no more than 60 cases per attorney, which is a much lower number than what most Kings County FCLS attorneys currently have.) It should be noted that the Kings County FCLS office has an unusually high turnover rate due, in part, to the difficult Kings County Family Court bench. It has been reported that our office has lost approximately 85 attorneys over the past five years.
- Additionally, cases before the Kings County Family Court have been scheduled months in advance, according to our previous intake schedule. Implementation of

this project will require rescheduling of attorneys' intake days, office days, and court days. There does not appear to be any method to address the practical aspects of that required reorganization.

- When a particular team is scheduled for intake, the Judge assigned to that team will be unable to hear cases on that intake day because the FCLS attorneys will be unable to appear in their assigned part on that day. Such a practice will effectively remove one full day from the court calendar per week.
- FCLS attorneys will be unable to put any cases on dates in which the Judge has scheduled vacation.

Restricting attorneys to appear before one Judge fundamentally limits the professional development of FCLS attorneys. Each Judge differs from another in expectations, practice, temperament, and legal analysis. This project limits attorneys' ability to receive a broad range of judicial experience that thwarts the professional development of the attorney and ultimately harms the quality of representation to ACS. Additionally, we submit that subjecting FCLS attorneys alone to this system will damage attorney morale. A difficulty at ACS FCLS is hiring and retention of qualified attorneys. Subscribing to a system of "one attorney / one judge" will only exacerbate that problem.

Another serious concern is the appearance of impropriety to the public and to respondents which will come with the "one attorney / one judge" system. It is important for Family Court litigants to experience a sense of fairness and justice. By exclusively appearing before one judge, familiarity will inevitably ensue. The autonomy that is a hallmark of the adversarial system of justice and which is a necessary part of an FCLS attorney's professional responsibility to his/her client could be undermined by the notion that the judge, law guardian, respondents and ACS are all part of a team working together.⁵⁹ This familiarity could result in its own form of pressure, which may have the effect of influencing how the Commissioner's attorneys litigate, creating in turn the potential for an ethical quandary on the part of the FCLS attorney. (*See*, New York Lawyer's Code of Professional Responsibility Canon 7.)

We also feel it necessary to express our frustration with the manner in which management has presented ACS' position regarding implementation of this project since its inception. From the beginning, there has been very strong opposition to this project from the front-line attorneys in this office. Nonetheless, a compromise was reached between ACS and the Court to dedicate FCLS attorneys to two judges and two referees with the "cluster system" in 2003. In or about March 2005, we were informed by FCLS management that ACS has further agreed to dedicate FCLS attorneys to one judge with assurances that this was limited to a specific two-month period of time. We were informed by management that the success of this pilot project would be evaluated after the two month period and that we would have an opportunity to submit our opinion before this project became permanent. However, on June 3, 2005, we were simply informed that the project was becoming permanent. Not only was this contrary to the assurances made by FCLS management but it is also divergent from your Message on the

Commissioner's Page of the ACS Website that states: "We will find ways to have everyone's voice heard in critical decisions affecting children, families, and the design of the work itself."

As front-line workers, we certainly recognize the need for change in the child protective system to reduce the number of children in foster care. We commend your initiative to close lower performing foster care agencies. And we support your initiatives that aim to reduce the number of children in foster care. However, there are a number of factors, other than the design of Family Court legal practice, that affect the back-log of cases in Family Court. Some of the other factors which should be addressed to reduce delays in children reaching permanency are as follows:

1. *Timely filings and quality of EOP/PH petitions.*

Hopefully this problem will be eliminated with the new permanency legislation. However, the quality and timely service of sworn permanency reports will be a new challenge to address.

2. *Caseworker court appearances.*

Too often caseworkers appear late, or fail to appear in court. Workers are frequently unprepared. Often workers without direct knowledge appear.

3. *Improving the transition of cases between units.*

Under ACS' current operation, case management is transferred by DCP to OCACM after 60 days, and thereafter from OCACM to ACM. In pre-disposition cases, this transition from DCP to OCACM removes case management responsibility from the ACS representative who appears in court. In general, these transitions are often delayed and result in the reassignment of the case to someone without knowledge of the case. Inevitably, this results in a period of time whereby ACS is unable to adequately formulate positions and make recommendations regarding extremely important decisions, i.e. increasing visitation, releasing a child to a parent, etc..

4. *Assignment of foster care agencies in a timely fashion.*

During the initial court appearances of a child protective case where a child is removed, the ACS caseworker is unable to provide the name of the agency caseworker assigned to a case. As a result, an agency caseworker often does not appear in court for those initial appearances and often is unaware of important court orders. Foster care agencies often assign cases to workers on vacation or on leave, which results in a delay of services.

5. *Ensuring immediate provision of services to respondent parents and subject children.*

One of the major obstacles toward reunification is the delay in implementing the necessary and appropriate services expeditiously.

6. *Improved monitoring of the adequacy and compliance with services.*

ACS and the foster care agencies need to improve the degree of supervision over the services being provided to a family. Often a worker will rely entirely on statements of a respondent parent to determine whether or not that parent is

complying with services. All too often, ACS and the foster care agencies do not speak directly with the service providers about what issues are being addressed in the services.

7. Visitation.

Often agencies do not consider or plan for expanded visitation until there is a court order.

Sincerely,

cc: Ronald Richter, Esq.
Nancy Thomson, Esq.
Paul Savarese, Esq.
Gloria Johnson, Esq.

