

**DeKalb County Child Advocacy Center  
Compliance Report**

**Covering the Period**

**September 13, 2006 – March 13, 2007**

**Submitted by Karen B. Baynes, Compliance Agent**

## Chapter 1. Background: The *Kenny A* Lawsuit

The *Kenny A* lawsuit is a federal court class action lawsuit filed June 6, 2002 against the State of Georgia, Sonny Perdue, Governor of Georgia; B.J. Walker, Commissioner of the Georgia Department of Human Resources; Steve Love, the Acting Director of the Georgia Division of Family and Children Services; Beverly Jones, Director of Fulton County DFCS; Walker Solomon II, Director of DeKalb County DFCS, Fulton and DeKalb counties on behalf of foster children in state custody through Fulton and DeKalb Departments of Family and Children Services. The *Kenny A* lawsuit has been resolved through three separate consent decrees; one with the State and one with each county.

In all, the Plaintiffs assert fifteen causes of action under federal and state law. There are a number of federal law claims alleging violations of federal constitutional and statutory rights of foster children to:

- substantive and procedural due process under the Fourteenth Amendment;
- liberty, privacy, and association under the First, Ninth, and Fourteenth Amendments; and
- federal statutory rights under the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997; the Multiethnic Placement Act of 1994, as amended by the Interethnic Adoption Provisions of 1996 (Count XV); and the Early and Periodic Screening, Diagnosis, and Treatment Program of the Medicaid Act.

There are also a number of state law claims alleging violations of foster children's' rights and protections including the following:

- substantive due process and equal protection under the Georgia Constitution;
- violations of O.C.G.A. §§ 49-5-12, 15-11-58, 15-11-13, and 20-2-690.1;
- nuisance;
- breach of contract; and
- inadequate and ineffective legal representation.

The single claim against DeKalb County is for failure to provide adequate, appropriate and meaningful legal representation for children alleged to be deprived and involved in Juvenile Court deprivation actions.

In February 2005, Judge Marvin Shoob of the United States District Court in Georgia's Northern District issued an Order denying the defendants' Motion for Summary Judgment. In his order, Judge Shoob stated the following:

Even if there were not a statutory right to counsel for children in deprivation cases and TPR proceedings, the Court concludes that such a right is guaranteed under the Due Process Clause of the Georgia Constitution, Art. I, Sect. 1, Paragraph 1. It is well settled that children are afforded protection under the Due Process Clauses of both the United States and Georgia Constitutions and are entitled to constitutionally adequate

procedural due process when their liberty or property rights are at stake....The Court finds that children have fundamental liberty interests at stake in deprivation and TPR proceedings. These include a child's interest in his or her own safety, health, and well being, as well as an interest in maintaining the integrity of the family unit and having a relationship with his or her biological parent.

Judge Shoob also held that the foster child's liberty interest continues even after the child is placed in state custody:

At that point, a special relationship is created that gives rise to rights to reasonably safe living conditions and services necessary to ensure protection from physical, psychological and emotional harm . . . Thus, a child's fundamental liberty interests are at stake not only in the initial deprivation hearing but also in the series of hearings and review proceedings that occur as part of the deprivation case once the child comes into state custody.

As a result of this order, and on-going negotiations, DeKalb County entered into a consent decree with the Plaintiffs on February 10, 2006 (Attached hereto as Exhibit A).

The first Reporting Period spanned from September 13, 2006 – March 13, 2007. During that time period, the Compliance Agent spent a considerable amount of time conducting stakeholder interviews, file reviews, and court observations. The following chapter outlines the Consent Decree and current activity levels regarding each of its requirements. Chapter 3 will discuss potential barriers to effective representation that are both internal and external to the DeKalb Child Advocacy Center as well as remedies undertaken or recommendations for future Reporting Periods.

It is important to note that due to the nature of this legal practice, outcomes for children cannot always be directly correlated to the level of effort and zealous representation provided by their attorneys. Many other external factors exist that both enhance and impede the attorneys' abilities to ensure positive and developmentally appropriate plans and results for child-clients. The Compliance Agent also notes that the standard reiterated throughout the Consent Decree is "reasonable exercise of professional judgment." This prevents a "20/20 hindsight" perspective on case reviews and instead supports a review that places the reviewer in the stead of the Child Advocate Attorney during the various decision points of a case. When a question arose from a file / client profile review, follow-up discussion with the particular attorney provided additional information needed to assess performance. In some instances inadequate documentation in the file / client profile did not reflect actual case management and practice. While this may not have impacted the current representation of the child-client, the documentation of efforts, case notes, and a file that fully and accurately reflects the case is vital to preserving the record and for the emergency transfer of cases among Child Advocate Attorneys. These and other observations are noted and discussed in the sections that follow.

## Chapter 2. The Consent Decree

### Consent Decree Section 5 – Caseload Obligation

In accordance with Section 5 of the Consent Decree, DeKalb County has ensured that no full-time Child Advocate Attorney has been responsible for more than 130 cases at any given time. In addition, no less than full-time attorney has held a caseload that proportionately exceeded this maximum number of cases. The Compliance Agent has been given full access to the Client Profiles Case Management System and runs periodic reports to ensure compliance with this agreed upon caseload. The total number of child clients fluctuated throughout the time period, but at no time exceeded more than 1000. Thus, at no time during the first compliance period did any of the Child Advocate Attorneys exceed the maximum caseload requirement of 130 cases.

As of May 1, 2007, no full-time Child Advocate Attorney was responsible for more than 90 cases. The following chart reflects the distribution of caseloads:

<b>Attorney</b>	<b>Total Caseload</b>
<b>Karimah Boston</b>	<b>83</b>
<b>Rachel Davidson (k)</b>	<b>27</b>
<b>Glenda Harper</b>	<b>79</b>
<b>Donna Hibler</b>	<b>75</b>
<b>Danielle Lynch</b>	<b>90</b>
<b>Mary Moore (k)</b>	<b>49</b>
<b>Aver Oliver</b>	<b>76</b>
<b>Jennifer Satija</b>	<b>80</b>
<b>Trenny Stovall***</b>	<b>8</b>
<b>Dyca Tricoche</b>	<b>79</b>
<b>Temika Williams</b>	<b>76</b>
<b>Fatimah Ziyad</b>	<b>78</b>

\*\*\* Director Trenny Stovall represents a total of eight (8) children from three (3) families in an effort to maintain continuity in the attorney-client relationship and to address specialized issues within the cases.

(k) Attorneys Rachel Davidson and Mary Moore work on a full-time, contractual basis for the DCCAC.

They have been employed in this capacity since January 1, 2007. Both have been recommended for hire and are in the review process as candidates for employment with DeKalb County.

<b>TOTAL NUMBER OF CLASS MEMBERS REPRESENTED BY DCCAC</b>	<b>- 800</b>
<b>TOTAL NUMBER OF FULL TIME ATTORNEYS</b>	<b>-11</b>
<b>TOTAL NUMBER OF PART TIME ATTORNEYS (Rosalind Zollicoffer)</b>	<b>- 1</b>
<b>*Mrs. Zollicoffer serves in an “as needed” capacity and does not maintain a caseload</b>	
<b>CASELOAD OF EACH ATTORNEY</b>	<b>- SeeTable</b>
<b>TOTAL NUMBER OF CHILD-CLIENTS REPRESENTED BY DCCAC</b>	<b>- 800</b>

In addition to complying with the caseload obligations, DeKalb County has also staffed the office in accordance with Section 5(B) that requires nine full-time Child Advocate Attorneys within 120 days after entry of the Consent Decree and 11 full-time Child Advocate Attorneys no later than March 31, 2007, not including the Director. Although some thought has been given to hiring another attorney, given the current caseloads and productivity of the office, the Compliance Agent does not find that an additional Attorney is needed at this time. Instead those resources are better utilized in the continuing efforts regarding training and additional tools and equipment to improve the efficiency and effectiveness of each attorney, investigator and paralegal currently employed with the office. Should the caseloads increase or productivity in other areas decrease, staffing with additional attorneys will be revisited during future compliance periods.

Defendant DeKalb County has fully supported the staffing and resource needs of the Child Advocacy Center. Requests for additional staff, tools such as tablets and Blackberrys, and increasing reimbursements for travel have all been granted. The space for the Center in the new courthouse is large enough for future expansion and contains child friendly areas for client interviews and observations. The new Client Profiles Database Management System is now fully operational and all staff within the office has completed comprehensive training on its use.

The CAC Director and the Chief Judge of the Juvenile Court meet regularly to discuss processes and the Child Advocate Attorney efforts in the litigation process. These conferences have been proven very productive and have greatly contributed to process improvement. The meetings also provide an opportunity for the Court to discuss any concerns or issues regarding child advocate action.

## **Consent Decree Section 6 – Reporting Requirements**

In accordance with Section 6 of the Consent Decree, DeKalb County is required to provide the following documents to the Compliance Agent:

- A. Report showing (i) the number of Class Members then being represented by DeKalb County Child Advocate Attorneys, (ii) the number of child Advocate Attorneys engaged full-time in such representation, (iii) the number of Child Advocate Attorneys engaged part-time in such representation, and (iv) the caseload of each Child Advocate Attorney;
- B. Copies of all child Advocate Attorney training and CLE records completed during the Reporting Period;

- C. Copies of all Child Advocate Attorney performance reviews and evaluations completed during the Reporting Period;
- D. Copies of any complaints alleging or appearing to allege inadequate and ineffective legal representation by a Child Advocate Attorney and documents relating to any such complaint; and
- E. Copies of any updates or revision to any of the documents attached to the Consent Decree as Appendix A, B, or C adopted during the Reporting Period.

The documents provided are attached hereto as Exhibit B. All documentation was independently verified by the Compliance Agent by running periodic caseload reports, attending training sessions, conducting court observations, and initiating follow-up discussions with the Director and various stakeholders such as Chief Juvenile Court Judge Peagler and DeKalb County Department of Family and Children Services Director Walker Solomon, III.

### Training

During the Reporting Period, the DeKalb County Child Advocacy Center has been proactive in providing training and in-service opportunities for its attorneys, investigators and paralegals. Resources and time have been allotted for attorneys to participate in state-wide continuing legal education courses including Child Welfare Attorney Training, Professionalism and Ethics Update, Georgia Evidence Civil Cases, Juvenile Law Seminar, and Family Law. In addition, the office is planning to send attorneys to national training opportunities such as NACC's NITA training and the ABA's National Child Welfare Law Symposium.

The Center has developed a comprehensive New Attorneys Orientation that not only includes office policies, protocol, and procedures, and use of the Client Profiles Case Management System, but also significant time and effort is devoted to providing each new attorney with clear expectations regarding compliance with the standards set forth in the Consent Decree. The Compliance Agent had an opportunity to attend several *Kenny A* training workshops conducted each Wednesday afternoon for the entire office. The Director discussed each performance standard in detail, the expected activities regarding each, and used live case scenarios to illustrate compliance and elicit questions. Other in-service training has included SAAG & DFCS Staffing, Investigator Role, and Intern Policy and Use. The Office has also instituted periodic in-service opportunities for community-based service providers to introduce and update the Center's staff to resources available for foster children. This has enabled the attorneys to become more equipped and proactive in providing recommendations for their clients to the court as well as the Department of Family and Children Services.

### Performance Reviews and Evaluations

In reviewing the performance reviews and discussing evaluations with the Director, the Compliance Agent finds that the current process is deliberate and thorough. The Director reviews files, observes court hearings, and discusses specific cases with stakeholders to

ensure that each attorney is performing at maximum capacity. In instances when improvement is needed, a plan is developed with clear expectations and time frames. Since personnel information is somewhat sensitive, the performance reviews and evaluation for each attorney is provided in hard copy to plaintiffs' counsel, the Defendant County, and the Court. However, these documents should not be distributed in any public forum.

### Complaints

During the Reporting Period, no complaints were received regarding alleged inadequate and ineffective legal representation by a Child Advocate Attorney in DeKalb County.

### Updates or Revisions to Appendices A, B, or C of the Consent Decree

Appendix C – DeKalb County child Advocacy Center Policies and Procedures sets forth the following requirements:

Child Advocate Attorney of the DCCAC must demonstrate the following experience and knowledge: A minimum of two (2) years of litigation experience; a strong commitment to children's issues and involvement in the juvenile justice, child welfare systems or related areas preferred; demonstrate a working knowledge of O.C.G.A. chapter 15 section 11, Child Abuse Prevention and Treatment Act of 2003 (CAPTA), and the Adoption Assistance and Child Welfare Act of 1980 as amended by the Adoption and Safe Families Act (ASFA) of 1997.

During the Reporting Period, the Director in an effort to adequately staff the office discussed revising this section such that a minimum of two (2) years of litigation experience is strongly preferred. The job description has been changed accordingly. This enabled an expanded pool of applicants to include those former law students who have been actively engaged with the office through its internship program. Given the proactive training and in-service activity of the office, in addition to the strong internship program, this revision does not appear to impact the zealous and effective representation of the class as contemplated in the Consent Decree. For future staffing the office should make every effort to attract the most qualified and experienced attorneys possible. This may require future reclassification and salary increase considerations by the County.

The only other revision or update is also found in Appendix C. Under the section entitled Departmental Procedures and Operations, the Client Database Instructions have been deleted and replaced with Client Profiles Case Management System. The new Client Profiles Case Management System was developed and implemented after the parties entered into the Consent Decree. This revision therefore reflects the current tools and practice employed by the office in managing its cases.

## **Consent Decree Section 7 – Responsibilities of Child Advocate Attorneys**

Section 7 of the Consent Decree outlines the nine specific responsibilities of Child Advocate Attorneys. Each of these areas of responsibilities is further supported by Core Principles, Standards for Juvenile Advocacy Representation, and the Policies and Procedures contained in Appendices A, B, and C. In order to ascertain performance levels during the Reporting Period, the Compliance Agent conducted file reviews, client profile reviews, court observations, stakeholder interviews, and attorney interviews.

During the Reporting Period the office caseload consisted of 800 child-clients. In order to gain an understanding of current practice and performance, 80 cases were randomly selected with stratification to ensure that each attorney was adequately represented in the pool. In each of those cases, the files and client profiles were reviewed using an objective checklist tool that included each of the expected performance measures (attached hereto as Exhibit C). For each measure, the Compliance Agent evaluated the representation efforts using the following scale: (0) for not applicable; (1) for poor performance; (2) for needs improvement; (3) for satisfactory performance; and (4) for excellent performance. Follow-up interviews with attorneys and/or stakeholders were conducted to glean further explanation of information gathered during the file / client profile review. Some scoring was then adjusted up or down to reflect all of the information gathered.

The Compliance Agent also conducted periodic court observations to gain a greater understanding of in-court practice and advocacy efforts. An attempt was made to observe each attorney during different phases of a case. Although an objective checklist tool has been developed for use during court observations, it was not developed until after the compliance period. Thus, although this tool will be used during future Reporting Periods, the first Reporting Period only includes general findings and prevailing themes discovered during court observations.

Stakeholder interviews were conducted with the Chief Judge and the Director of the DeKalb County Department of Children Services and his executive team. The interviews served as a tool to gain general information regarding the perceived performance and functioning of the Child Advocacy Center and its attorneys as well as to address potential barriers to effective representation. Future stakeholder interviews may include the Special Assistant Attorney Generals, Child Clients, and community-based service providers such as foster parents, group homes and counselors.

In the following sections, each of the nine performance responsibility areas and expected performance standards are outlined. Following each section is a brief description of findings regarding the current performance level. The objective checklists produced during file / client profile reviews are attached to this report hereto as Exhibit D. Finally, each section outlined below contains a brief discussion of potential barriers to effective



representation and performance, steps taken to alleviate potential barriers, and any recommendations for future action.

### Responsibility #1

To prepare for, attend and participate in all court-ordered, judicial hearings and proceedings: to stay as reasonably aware and informed as possible of the existence and outcome of non-judicial reviews, meetings and conferences; and to attend such non-judicial reviews, meetings, and conference when necessary in the reasonable exercise of professional judgment.

*(See also Performance Standards 1, 7, 8, and 9)*

During the Reporting Period, the Compliance Agent conducted court observations of individual attorneys, conducted file / client profile reviews, and interviewed stakeholders such as judges, DFCS personnel, Child Advocate Attorneys, and the Director of the DeKalb County Child Advocacy Center.

The Compliance Agent finds that the practice in the DeKalb County Child Advocacy Center is generally proactive both in-court, as well as in preparation for court and other non-judicial reviews, meetings, and conferences. In addition, follow-up on cases and monitoring of services and court-ordered activities was evident in each of the cases reviewed or observed in court. There is an expectation in the office and the court that no case will go forward without the presence of the Child Advocate Attorney. According to interviews with the judges and the Child Advocate Attorneys every child in the class was represented in all judicial hearings during the Reporting Period. While there is varying levels of experience and expertise among the attorneys, less experienced attorneys are paired with more experienced attorneys for mentoring and inner-office staffing of cases. The following areas are worth noting for explanation or future considerations for improvement:

- The Citizen Panel Review is conducted in DeKalb County for a majority of the cases after a child has been in care for 6 months. Not all panel reviews were attended by Child Advocate Attorneys; however, the attorneys and their investigators are aware of each panel conducted and attend when deemed necessary in accordance with the requirements outlined in the Consent Decree. Attendance by the Child Advocate Attorneys is often difficult because the schedule conflicts with hearings taking place in court. The office does, however, keep track of the resulting recommendations for each panel review and submits objections to the court when determined to be in their client's best interests or desires. In the future, the Child Advocacy Center and the Court may want to consider revising this process such that the Child Advocate Attorneys or their investigators can attend these reviews on a more regular basis.
- In accordance with its own policies, the DeKalb County Department of Family and Children Services (DFCS) are required to conduct Family Team Meetings for

every child as they enter foster care. At the beginning of the Reporting Period, Child Advocate Attorneys were routinely informed of and invited to Family Team Meetings. The Attorneys reported that the meetings were extremely helpful in discovering information about their clients, their client's family, and many of the facts surrounding the case. If the attorney could not attend due to scheduling conflicts, an investigator from the office would attend each of the meetings. However, during the Reporting Period, DFCS changed its policy and no longer invited or allowed attorneys or investigators to attend.

The Compliance Agent met with Director Walker Solomon to address concerns regarding the new policy. Mr. Solomon explained that the Family Team Meetings were never intended for discovery purposes; that it was intended for the family; and that attorney presence was disruptive to the process. He did however, indicate that information gleaned during these meetings would be made available to the attorneys and that invitations to staffings were still occurring. The Compliance Agent highly recommends that the Child Advocacy Center Director and the Director of DFCS continue revisiting this shift in policy. Past participation in Family Team Meetings by the Child Advocate Attorneys greatly enhanced their ability to zealously and effectively represent their clients.

Unfortunately, the stated new policy regarding Family Team Meetings was further complicated by the SAAGs issuing a new policy that case managers were not to talk to the Child Advocate Attorneys about cases without the SAAG being present or giving express permission. In some instances, service providers revealed that they too were told not to communicate information with Child Advocate Attorneys about their clients. DFCS has committed to working internally to clear up the policy regarding Family Team Meetings and on-going communications with Child Advocate Attorneys. However, this occurrence greatly impaired the Child Advocate Attorneys' ability to prepare for hearings and they spent an inordinate amount of time during the Reporting Period trying to glean information that was once readily available. The Center has now turned to more consistent use of formal discovery motions while it continues to attempt resolution with DFCS and its SAAGs. This issue is further discussed in the section entitled *Barriers to Effective Representation*.

- The performance standards state that the child's lawyer should be aware at all time of the placement location and contact information for the client. . . While the Child Advocate Attorneys spend a great deal of time ascertaining their client's placement, this is not without great effort and systemic difficulty. The Director of the Child Advocacy Center has negotiated receipt of a monthly listing of every child in foster care in DeKalb County with their stated placement address. While DFCS provides this list on a routine basis, the Child Advocate Attorneys have discovered that the list is not frequently updated and that many of the placements listed are incorrect. The file reviews uncovered many emails and voice mails requesting placement information from DFCS. In addition, the shift in communications policy as described above was misinterpreted by some case

managers to include not discussing information such as placement with the Child Advocate Attorneys without permission from the SAAGs. Thus, although DFCS policy requires informing parties and the court of placement changes, this is not consistently occurring in DeKalb County. In addition, during the Reporting Period DFCS organized its caseloads such that an Intake Caseworker would conduct the initial investigation and then transfer the case to a placement worker. Thus, often during the initial hearings and investigation, the case manager interacting with the Child Advocate Attorneys had no information regarding the child's placement. DFCS is now reorganizing in order to alleviate this gap in information. This is worth noting in order to evaluate whether this barrier has improved during the next Reporting Period,

- The motions practice in DeKalb County Juvenile Court is mostly conducted orally in court. Court observations and file reviews indicate that the attorneys were generally proactive in making evidentiary objections as well as objections to court findings. The one area that is currently being explored by the Center for future use involves written discovery motions. Given the shift in policy / practice as described above, the Center has developed a form discovery motion that they have used judiciously in order to prevent total collapse in communication in a system that has historically been amicable among attorneys. Future Reporting Periods may warrant and reflect a greater written motions practice.
- Court Orders are prepared by the Special Assistant Attorney Generals (SAAGs) that represent DFCS. During the Reporting Period, the SAAGs would prepare the orders and forwarded them directly to the Juvenile Court Judges for approval and signature. Thus, the Child Advocate Attorneys would not have the opportunity to review the orders until they had been approved by the court. Many of the orders were found to be inaccurate and to contain findings that were not discussed in court such as favorable reasonable efforts findings. The Child Advocate Attorneys then expended time to request amendments and in some cases were forced to have hearings transcribed (there are no live court reporters during hearings in this jurisdiction) in order to support their requests. During a regularly scheduled meeting between the Director of the Center and Chief Juvenile Court Judge Peagler, the Judge informed the Director that she had met with the SAAGs to address this issue. The orders will now be forwarded to all attorneys involved in the case for review and revisions prior to court approval. Thus, during the second Reporting Period, this should not present as a time barrier to effective representation of children. In spite of the time consumed revising orders, the Compliance Agent found that the Child Advocate Attorneys kept all orders in the files and documented efforts in monitoring enforcement.
- It is unclear as to whether there is a consistent policy or practice in place to assess and determine whether a child-client should be present and participate during judicial hearings. Not many child-clients were observed in court during court observations. Some file reviews indicated that child-clients were interviewed at the court; however, no file reviewed documented a child's actual presence and

participation in court. Given the extremely high caseload of teen clients in this jurisdiction, either a clearly stated office policy or guidelines need to be developed or greater efforts of documenting this factor needs to take place during future Reporting Periods. When Child Advocate Attorneys did issue subpoenas to DFCS requiring the presence of child-clients in court, the subpoenas were sometimes ignored. This is discussed further in Chapter 3.

### Responsibility #2

To prepare, make and/or file oral and/or written motions, and responses to same, when necessary in the reasonable exercise of professional judgment.  
(*See also Performance Standards 7 and 8*)

As indicated above, the motions practice in DeKalb County Juvenile Court is predominately oral in nature. Very few pretrial motions or written motions of any kind were discovered during file reviews or discussed during court hearings. The need for greater use of discovery motions became more evident during the Reporting Period and the Center has developed a form tool that should become more present in future Reporting Periods. With the exception of Motions to Extend Custody and Motions for Non-reunification, other attorneys involved in this practice also rely heavily on oral motions in court. Future training modules for Child Advocate Attorneys should include instruction on the use of and response to written motions. As the Center begins to utilize its discovery motion, the court may experience an increase in written motions practice from other attorneys involved in the process as well.

### Responsibility #3

To attend to the possibility and/or existence of professional conflicts of interest and the resolution of same.  
(*See also Performance Standard 11*)

As outlined in the Performance Standards, the Child Advocate Attorneys decline to represent children when they or another attorney in the office has represented the Defendant parent or guardian; when a sibling group has conflicting accounts of the deprivation facts; and when positions taken on behalf of a sibling group are mutually exclusive and conflict in a material way. In addition, Child Advocate Attorneys were also observed attending to the existence of conflicts when their role as guardian ad litem conflicted with their role as attorney. There is some question as to when the attorneys are advising their clients of this dual role in order to safeguard attorney – client confidentiality. The file reviews lacked documentation of this vital step in establishing role and attending to potential conflicts. Although the Consent Decree is somewhat vague on the model of representation expected, the Director is clear in her expectation of a dual role model. In order to ensure a more uniform and consistent dual role practice,

the Director has agreed to add this topic to the training modules scheduled during the next Reporting Period.

One issue arose regarding resolving conflicts in several cases reviewed. When the Child Advocate Attorney raised the presence of a conflict and requested a separate guardian ad litem be appointed by the court, the court requested information regarding the nature of the conflict and then refused to appoint a separate guardian due to costs to the County. Both the Compliance Agent and the Director raised this issue with Chief Judge Peagler who agreed to address the issue with the other judges. She also has invited the Compliance Agent to meet with all of the juvenile court judges during one of their upcoming regularly scheduled meetings.

#### Responsibility #4

To investigate matters relevant to judicial proceedings affecting the legal interests of Class Member clients, including the formal process of propounding and responding to discovery, as well as informal investigation and discovery, and to conduct such investigation and discovery as is necessary in the reasonable exercise of professional judgment to adequately and effectively represent Class Member clients.

*(See also Performance Standard 6)*

Overall, the investigatory process in the Child Advocacy Center is quite deliberately employed and systemically monitored. The investigators that are hired to work with each Child Advocate Attorney have social work backgrounds and in many instances direct experience working with DFCS. This enables them to navigate that system effectively while conducting investigations. The communication between investigators and attorneys is consistent. Use of in person staffing, emails, and client profiles enable the teams to utilize the necessary skill sets of both attorneys and investigators.

The practice throughout the Reporting Period relied heavily on the informal process of discovery. Attorneys routinely call, email or visit DFCS case managers, service providers and other attorneys. During the Reporting Period, several of the SAAGs told case managers not to communicate directly with the Child Advocate Attorneys without the presence of the SAAGs. The Child Advocate Attorneys quickly adjusted their practice under the guidance of their Director and began to formally seek information through the SAAGs directly. This created quite a bottle neck as the SAAGs attempted to respond to all of the requests for information. Shortly after instituting the policy, some of the SAAGs withdrew this mandate and allowed the case managers to communicate with the Child Advocate Attorneys directly once again. Others did not. This has resulted in disparate and confusing case management practice.

The one area that has not been resolved using an internal discovery process involves information gleaned from the Family Team Meetings and several of the other comprehensive assessments conducted by DFCS. Although these documents were

present during file reviews, court observations and attorney interviews revealed that the documents are often shared the day of trial or upon seeking to enter them into evidence. The formal use of a discovery motion for certain cases will ensure on-going and timely sharing of information for case preparation and monitoring.

#### Responsibility #5

To establish and maintain an attorney-client relationship with each Class Member client and to maintain such contacts with the client as are necessary in the reasonable exercise of professional judgment to ensure adequate and effective legal representation.

*(See also Performance Standard 5)*

Training and expectations regarding the establishment and maintenance of an attorney-client relationship have been deliberate and consistently conveyed to all Child Advocate Attorneys throughout the Reporting Period. The Center has set forth protocol and procedures regarding the initial investigation, client interviews, and on-going client contact. These expectations are set forth in Appendix C in the section entitled *Attorney-Client Relationship*. In accordance with this section, each child-client is interviewed or seen no more than 30 days prior to the first setting of all scheduled formal hearings; child-clients should be seen and interviewed (if of a verbal age) in their living environments at least once a year; and a minimum of quarterly visits shall be conducted so long as children are in care, and any time an emergency or other circumstance arises that would require additional visits. Moreover, during those visits and additional contacts with child-clients, Child Advocate Attorneys are expected to explain the role of guardian-attorney to the child-client and regularly explain the status of the case and potential outcomes in order to keep the client informed and allow the client to participate in his/her representation.

The Child Advocacy Center has gone to great lengths to ensure compliance in this area. The Center is staffed with paralegals and investigators who systematically assist the Child Advocate Attorneys by keeping track of visits and other forms of client contacts. In order to comply with the quarterly visits, the Client Profiles System flags them for the attorneys and investigators. While the attorneys personally see their clients prior to the adjudicatory and dispositional hearings, as well as when critical incidents arise in the case or within the child's placement, the investigators also visit children in their placements on a quarterly basis and keep the attorneys apprised of the status of the placement and service provision. Although the visits and contacts by attorneys and investigators are well documented, the substance of the visits is not routinely outlined to include discussions regarding role and whether the child has expressed a particular desire or direction that would impact his/her representation or indicate the presence of a conflict for the attorney. During file / client profile reviews it was also not clearly documented as to whether the child-clients are regularly given the option of attending court and participating in hearings. However, during subsequent interviews with Child Advocate Attorneys, there was general agreement that these activities were taking place, but were

not being clearly documented in the case file. Future training on documentation of efforts as well as clearly defining and discussing role with child-clients will improve supporting evidence of performance within this responsibility area during future Reporting Periods. There was a glitch discovered in the Client Profiles System that impacted quarterly visits during the Reporting Period. This is discussed further in Chapter 3.

#### Responsibility #6

To maintain contacts with social workers, service providers and family members, as reasonably possible, and as necessary to adequately and effectively represent Class Member clients.

*(See also Performance Standard 6)*

Child Advocate Attorneys have documented contacts with social workers, service providers and family members through their file activity logs, client profile incident reports, as well as copies of emails sent and received regarding requests for information and monitoring of services. Although school records were present in some of the files reviewed, they were not present in all of the files of school aged children. This may be an area that needs some improvement in the future. The activity logs and incident reports indicated when witnesses or service providers were interviewed; however, the results of the interview and any information gleaned were not always well documented. This could hamper cases that have to transfer to another attorney in the instance of an emergency absence or departure of an attorney from the Center's employment. Again, documentation training may lead to improvement in this area for future Reporting Periods.

Overall, the Child Advocate Attorneys have exhibited proactive, zealous attempts to maintain these vital contacts on behalf of their clients. Some of the communication issues with DFCS and shifts in policies discussed in the above sections as well as the upcoming section on *Barriers to Effective Representation* often impair or complicate this process. Whenever there are case specific concerns that remain unresolved between Child Advocate Attorneys and case managers, the Directors of the Child Advocacy Center and DeKalb DFCS have established a cooperative process for assessment and immediate response. In each instance where this case specific process has occurred, the issues were resolved promptly and immediately.

#### Responsibility #7

To monitor the implementation of Juvenile Court orders relating to the child, to raise issues of non-compliance, and to advocate the child's best interests with the Court and other judicial decision-makers, as necessary in the reasonable exercise of professional judgment.

*(See also Performance Standard 10)*

During file reviews, all completed court orders were present. As discussed above, the process for court order production, review and approval has been difficult during this Reporting Period. The Special Assistant Attorney Generals (SAAGs) produce court orders on behalf of the court. During the reporting period these orders were then sent directly to the Judge for approval and signature. Upon reaching the Child Advocate Attorneys, the orders were often found to be factually incorrect, missing required statutory language, and not reflective of the testimony and findings during the actual hearings. This was verified through file reviews and documentation of subsequent Child Advocate Attorney initiated motions to amend court orders. Upon the request of the Director of the Child Advocacy Center, Chief Judge Peagler has now met with the SAAGs and established a new protocol that will require all draft orders to be sent to attorneys for each of the parties for review and comment prior to approval. This should be reflected during the next Reporting Period.

Documentation of monitoring of the orders was prevalent throughout each of the file / client profile reviews. Child Advocate Attorneys routinely monitor activities set forth in the court orders to include the developed and court approved case plan that was present in each of the files reviewed. In some cases, there seemed to be a lag time in zealously moving cases to permanence, however, during attorney interviews decisions made reflected reasonable exercise of professional judgment and therefore do not warrant further discussion.

#### Responsibility #8

To participate in settlement negotiations as necessary in the reasonable exercise of professional judgment.

*(See also Performance Standard 1)*

The settlement negotiation process occurs during different phases of a case and in the midst of various activities. Regular staffings are held for each case and at the beginning of the Reporting Period, Child Advocate Attorneys routinely attended these staffings to discuss the perspective of each party and attempted to negotiate a common plan. The rift in communication with DFCS has hampered this opportunity, but hopefully improvements will be made during the next Reporting Period. In addition, negotiations are often held in the hallways prior to actual court hearings. During court observations the Compliance Agent observed Child Advocate Attorneys actively engaged in settlement negotiations on behalf of their clients.

The Compliance Agent has not had the opportunity to meet with the SAAGS. Although they represent DFCS, who is under its own consent decree, there has been some resistance to zealous and effective representation of child-clients and the requests being made by the Child Advocate Attorneys on behalf of their clients. A meeting of all stakeholder attorneys involved in the process may improve conditions by clarifying expectations and the role of the Compliance Agent as set forth in the Consent Decree.



Responsibility #9

To prepare, file and participate in appeals affecting the legal interests of Class Member clients as necessary in the reasonable exercise of professional judgment.  
*(See also Performance Standard 12)*

During file/ client profile reviews and court observations, preserving issues for appeal, preparing, filing and participating in appeals is an area that is currently not well attended to by the Child Advocate Attorneys. Not many cases are appealed by any of the attorneys involved in these cases and therefore the practice does not reflect any anticipation of or utilization of proactive strategic appellate recourse for court findings. Future training modules are being dedicated to determining when an issue is ripe for appeal, process and procedures for filing appeals, and the importance of appellate decisions in this area of litigation. In spite of the absence of documented appeals considerations, no case reviewed seemed to be hampered by its absence. Without deliberate consideration however, future cases may be harmed and therefore the Center should pay particular attention to this responsibility during future Reporting Periods.

## **Chapter 3. Barriers to Effective Representation**

As discussed above, during the Reporting Period, several areas of concern arose that presented challenges and barriers to effective representation for the class. Many of these concerns were discussed and renegotiated and will reflect different practice during future Reporting Periods. Other potential barriers still exist and warrant some attention moving forward. Regardless of whether a remedy has taken place it is important to note what external and internal factors were at play during the time period that may have impacted the review of current performance levels and ultimately outcomes for child-clients.

### **1. DFCS Policies Regarding Communications and Interactions with CAC**

During the Reporting Period, DeKalb DFCS, through its SAAGs, issued a directive to its case managers prohibiting them from having direct communications with Child Advocate Attorneys. The new policy indicated that all communications and inquiries regarding case management or litigation issues were to be conducted between Child Advocate Attorneys and SAAGs only. While on its face, it seems ethical, reasonable and appropriate that communication should occur among attorneys when parties are represented, this policy severely interferes with the timely and effective management of abuse and neglect cases.

SAAGs are private attorneys who balance their private civil/criminal cases while maintaining extremely large deprivation caseloads, much larger than those of Child Advocate Attorneys or case managers. When the Child Advocate Attorneys requested information regarding their clients from the SAAGs, in accordance with this new policy, there was often a significant delay, if any response was provided at all. In addition to the SAAGs' demanding schedules, DFCS case managers who hold the requested information spend a significant amount of time in Court and in the field which further impedes communication with their SAAG. This results in a delay of timely responsiveness to Child Advocate Attorney requests, which greatly impairs the Child Advocate Attorneys' ability to maintain current and accurate information regarding case status, issues, concerns and intervention. Additionally, an increase in continuance requests and therefore delayed case resolution occurred as parties were often relegated to case specific discussions at Court, prior to or during hearings.

The Director of the Center posits the following argument in her on-going discussions with DFCS and its SAAGs:

It is worth noting the distinction between traditional opposing party-attorney relationships and that of the Child Advocate Attorney and the case manager. In this instance, all parties and advocate-attorneys are charged with maintaining and ensuring the best interests, adequacy of care and protection of children while in the custody of the state. Inherently, this creates a separate and inter-dependent relationship between the Child Advocate Attorney, whether serving as a client directed attorney or guardian-attorney, and the case manager who effectively serves as "parent" for children in its care. In no other circumstance would a legal

representative of a minor be prohibited from interacting with the parent responsible for that minor. This policy creates a significant obstacle to the mandated responsibilities of the Child Advocate Attorney to monitor the care received by his/her clients.

The Compliance Agent further observed that the process is affected by the inconsistent application of the stated policy. It appears that it is unclear whether any information can be provided to the Child Advocate Attorney or whether certain fundamental information, such as placement information, can appropriately be provided to the Child Advocate Attorneys. The delay in providing certain basic case information such as child placement and/or resource information greatly interferes with the Child Advocate Attorneys' duty to maintain contact with their clients, prepare for trial, adequately represent/protect that client's interest and monitor their circumstances while in care. While some case managers are willing/able to provide basic client information, others interpret the policy as disallowing any contact with the Child Advocate Attorney whatsoever. And still others have asked for contact via email only, which is then forwarded to the SAAG for approval to respond. Also, some SAAGs allow contact and ask that they just be courtesy-copied, while others allow direct communication for some inquiries but not other information (which is determined on a case by case basis). This has resulted in confusion and frustration for Child Advocate Attorneys and DFCS case managers.

The Child Advocate Attorneys have also reported experiences with persons and entities related to DFCS who state that they have been directed against communicating with the Child Advocate Attorney. These include service, medical, program, mental health and placement providers. Many of these persons have contractual relationships with the Department and therefore feel bound to follow its policies and procedures. Again, this can severely interfere with the ability of Child Advocate Attorneys to investigate cases and/or monitor concerns and adequacy of intervention.

The inability to maintain open communication with the Department has also affected compliance in other ways including, prohibiting Child Advocate Attorneys from participating in various aspects of client care and monitoring such as administrative hearings, being aware of or weighing in on medical or mental health concerns and recommending intervention. With delayed communication, the Child Advocate Attorney is sometimes made aware of the concern regarding his/her client after the period of effective intervention.

The new communication policy has also impacted written reports such as the Comprehensive Child and Family Assessment reports conducted on each child and family entering foster care. While these reports used to be routinely shared with the Child Advocate Attorneys, the new policy has led to the Child Advocate Attorneys filing formal motions for access to the records. The Department through its SAAG then submits the records to the Court for in-camera inspection and then the Court must decide if said information is relevant and appropriate to distribute to the Child Advocate Attorney to have. Unfortunately, the documents are often not provided within the court ordered time frame (if at all) even following a motion and order. Court hearings are often continued

for the Child Advocate Attorney to have an opportunity to review said documents and prepare for trial. This has the unintended consequence of also delaying permanence for the child-clients in these circumstances.

Although the Director of DeKalb DFCS expressed some concern regarding compliance with HIPPA and other regulations regarding confidentiality, he assured the Compliance Agent that the policy was not intended to encompass basic information such as placement, and information specific to the Child Advocate Attorneys clients. Thus, either additional training or more communication is needed throughout the agency and its SAAGs to encourage consistent application of the policy. The Child Advocate Attorneys have responded by issuing subpoenas for documents directly to the entity that generates these reports. However, the lack of communication with DFCS continues to impact this effort as well. Child Advocate Attorneys are sometimes unaware of whether assessments have occurred or of the existence of intervention and resource providers. Moreover, civil practice discovery rules and processes do not contemplate the short time frames in deprivation matters and are therefore inadequate.

The Compliance Agent recommends further discussion among all stakeholders in order to alleviate or mitigate this communication issue and allow all parties to effectively provide representation and services to children in foster care.

## **2. Communication Gap During Case Transfer From DFCS Intake Case Manager to Placement Case Manager**

In DeKalb County DFCS, case management responsibilities are distributed between the investigator (responsible for initial investigation, intake, safekeeping, detentional, and adjudication) and the placement case manager (responsible for placement of the child and case management after the child has been adjudicated deprived.) The unintended result is often a lack of comprehensive knowledge of the case history, investigation results, placement and child status information, etc. by both workers. In some instances, the investigator, who attends the detentional hearing, will not have met the child nor have placement information for the child. The investigator also may not know which placement case manager has been assigned to the case. This leads to a number of issues that affect the Child Advocate Attorneys ability to manage the case and prepare for trial. While initial contact is with the investigator at probable cause, that person may not know where the child is placed or any other information about the child since he/she came into care, including results of assessments. The Child Advocate Attorney must then expend a significant amount of time merely identifying the placement worker for this information.

DeKalb County DFCS has indicated that they are shifting to a model in which all of its case managers will be cross-trained and maintain their cases from intake and investigation through placement. If this does not occur, stakeholders should attempt to create alternative solutions to this consistent issue.

### **3. Subpoenas Requesting Child Clients Be Brought To Court Are Sometimes Ignored Without Recourse**

The Child Advocate Attorneys must rely upon DFCS to make their clients available and to transport them to court. After oral requests went unmet, the Child Advocate Attorneys have begun to issue subpoenas for the presence of children in court. In spite of this formalized process, DFCS continues to fail to make some of those children available. Case managers often provide no explanation or justification for noncompliance without recourse from the court. The Child Advocate Attorneys report that the court sometimes places the burden on the Child Advocate Attorney to show why a child's presence in court is necessary. This would appear to come from an assumption that children should not attend and or participate in hearings unless there is a specific and compelling concern. Generally, the Child Advocate Attorneys are currently only issuing subpoenas for cases in which: 1) child-clients have specifically requested to attend; 2) their presence is necessary to the matter before the court (i.e., - testimony or child hearsay rule); or 3) after significant efforts, the advocate has been unable to contact the child.

The Child Advocacy Center is attempting to address this issue with the DFCS administration and by requesting that the Court convey the significance of subpoenas and the duties of parties to comply, as well as the potential penalties for non-compliance. The Child Advocate Attorneys also have begun requesting the presence of child-clients be ordered by the court at future settings and are prepared to make a showing of the significant efforts to make client-contact prior to such motions.

The Compliance Agent recommends that this issue be further addressed during a stakeholders meeting to include DFCS, the juvenile court judges, the Child Advocate Attorneys and the SAAGs.

### **4. Case Management System Implementation**

During the Reporting Period the CAC implemented Client Profiles, a comprehensive automated computerized case management system. The system greatly assists with compliance in numerous ways including case tracking, notifications, and documentation. The system allows

- User time maintenance and documentation.
- Scanning function allows for electronic formatting of paper files.
- Remote access to electronic files.
- Search function identifies all matters, persons and entities associated with interested party.
- Automatically compiles statistical information regarding caseload management.
- Customized reporting function.
- Journal function monitors all user action on matters.
- Multi-user function allows for simultaneous activity by multiple users per matter.
- Scheduling functions prompt user of tasks, timelines and actions due.

- Files/matters can be easily closed when a child exits care and re-opened if a child re-enters care.

Client Profiles was selected for use by the CAC because of its multi-functionality and structure for use by large capacity users and diverse practice area law firms. However, the program had to be modified to specifically manage the unique practice area of child welfare law and related case management and monitoring actions. Some unanticipated results required reconfiguration of certain program functions and processes once the system was activated.

One such unanticipated result that affected compliance in a small number of cases was the scheduling function that notifies the Child Advocate Attorneys of impending quarterly client contact deadlines. Most quarterly visits are conducted by department investigative staff. However, when files were inputted into the system, some notifications were directed to attorneys only while others were set up to notify both the attorney and investigator. The department learned by analysis of a system generated report that some visits had not been completed within the required timeframe while others reported as “completed” as to the notification, but no other documentation as to any visitation efforts was contained in the documentation fields of the system. Upon further investigation, it was determined that since investigators primarily conduct quarterly visits, attorneys were “marking” the quarterly contact notifications as “completed” in order to remove them from their pending tasks lists. The unanticipated result was that once marked as “completed” the task would be removed from all notified users including the investigators whether the task had been completed or not. Quarterly contact notifications were being removed from pending tasks lists before investigators were even aware of their existence. Additionally, in the process of inputting the more than 800 case files, in a few rare instances, some notifications had been set up to forward to attorneys only.

The CAC immediately conducted an audit of the entire system and identified all cases where quarterly visits had not been conducted within the requisite time frames. Approximately 35 matters were identified. The department then scheduled and completed all such efforts within two weeks. The department also re-trained staff to ensure that all future notifications properly notified relevant staff and that staff only responded to and noted as “completed” those tasks for which they themselves were responsible.

## **5. Special Assistant Attorney Generals**

During the Reporting Period, several potential barriers were raised by the Child Advocate Attorneys regarding Special Assistant Attorney Generals (SAAGs). Additional potential issues were gleaned during file reviews. However, the Compliance Agent has not had the opportunity to meet with the SAAGs regarding these issues in order to elicit a balanced perspective. Thus, these issues will be addressed during the next Reporting Period.

## Chapter 4. Conclusions

The first Reporting Period spanned from September 13, 2006 – March 13, 2007. Although there are several areas for considered improvements, as discussed above, the DeKalb County Child Advocacy Center has made significant strides in complying with the requirements as outlined in the Consent Decree. The Compliance Monitor submits this report along with supporting documentation to the parties for review and discussion regarding next steps and whether substantial compliance has been achieved. Should there be a need for follow-up, the Compliance Monitor will make herself available for conference calls or in-person meetings. Although tools have been developed for objective file reviews and court observations, their use is still being perfected and they will have greater utility during future Reporting Periods.