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Managing the Unmanageable

A PRELIMINARY LOOK AT THE IMPACT OF AGENCY CHILD WELFARE CASELOAD SIZE

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Attorney Relationship to Agency in NC Counties

- ◆ Social Services Attorney
 - ◆ Reports to Director
- ◆ County Attorney
 - ◆ Reports to County Attorney or County Manager
- ◆ Privately Contracted Attorney
 - ◆ Director?
 - ◆ Social Services Board?
 - ◆ County Manager?

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“Representing a child welfare agency is a difficult yet important job. There are many, sometimes conflicting, responsibilities.”

- ◆ -Standards of Practice for Lawyers Representing Child Welfare Agencies, American Bar Association, 2004.

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“Love love love this job, but it can be tough.”

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2014 Legal Unit Court Stats

1. 2/2 successful Court of Appeals trials. Waiting on judgments on 8 more Court of Appeals trials that have been submitted.
2. 2/2 successful Supreme Court PDR objections.
3. LWS Child Support cases. (In most only those not include arbiting CSR on non-exempt cases and preparation on cases that did not end up litigated).
4. In DMS Court (only cases actually heard in cases, statistics don't include cases that were scheduled and prepared for, and weren't heard due to continuances or other issues)
 - a. Juvenile Petitions - 79
 - b. Intervention Petitions - 1
 - c. Continuances Hearings - 1
 - d. CPS Review - 4
 - e. Child Support Hearings - 133
 - f. Post-Adjudication - 90
 - g. Adjudication - 90
 - h. Depositions - 90
 - i. Motions - 30
 - j. On Day Review - 66
 - k. 6-Month Review - 314
 - l. Permanent Planning Review - 184
 - m. Miscellaneous Review - 35
 - n. All Hearings - 4
 - o. CPR Petition - 10
 - p. CPR Hearings - 5
 - q. Post-CPR/RLJ Hearings - 41
 - r. Court PP Adjudicated - 103
 - s. Adjudicated - 13

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Attorney Practice Standards - General

- ◆ Fully understand and comply with all relevant federal and state laws, regulations, policies, and rules
- ◆ Remain current on new case law and statutes
- ◆ Promote timely hearings and reduce continuances
- ◆ Protect and promote the agency's credibility
- ◆ Cooperate and communicate

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Attorney Practice Standards – Advice and Counsel

- ◆ Counsel the client/agency about all legal matters related to individual cases as well as policy issues and periodically monitor cases.

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Attorney Practice Standards – Court Preparation

- ◆ Develop a case theory and strategy to follow at hearings and negotiations
- ◆ Prepare or help prepare the initial petition and all subsequent pleadings
- ◆ Timely file all pleadings, motions, and briefs
- ◆ Obtain all documents and information needed
- ◆ Participate in any depositions, negotiations, discovery, pretrial conferences, mediation, and hearings

Attorney Practice Standards – Court Preparation

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- ◆ Participate in settlement negotiations and attempt speedy resolution of the case when appropriate
- ◆ Develop a case timeline and tickler system
- ◆ Subpoena and prepare all witnesses, including the client
- ◆ Ensure proper notice is provided to all parties and necessary others

Attorney Practice Standards - Hearings

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- ◆ Attend and prepare for all hearings
- ◆ Prepare and make all appropriate motions and evidentiary objections
- ◆ Present case in chief, present and cross-examine witnesses, prepare and present exhibits
- ◆ Opening and closing arguments when appropriate
- ◆ Prepare proposed findings of fact, conclusions of law, and orders

Attorney Practice Standards – Post Hearings

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- ◆ Follow all court orders pertaining to the attorney for the agency
- ◆ Ensure accuracy of court orders
- ◆ Review orders with agency
- ◆ Take reasonable steps to ensure agency complies with orders
- ◆ Discuss possibility of appeal with agency

Attorney Practice Standards - Appeals

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- ◆ If decision made to appeal, timely file necessary motions and notice of appeal
- ◆ Respond to appeals by other parties
- ◆ File all necessary paperwork while appeal is pending
- ◆ Communicate results of appeal and implications to client

Attorney Caseload Size

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- ◆ Issue has received little attention
- ◆ One study said 40-50 cases (families) per attorney is reasonable (ABA)
- ◆ A caseload over 60 cases is unmanageable (ABA)

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"I do the work of at least two attorneys."

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"We really, really need another attorney – I am getting to desperation point. I feel this awful Catch-22 where I desperately need help and cannot do all my work, but my superiors think I am inefficient or unable to do my job if I bitch too much. It is soul-killing."

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"We now have 3 experienced attorneys in our office and so my stress level is under control."

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"I feel like I am constantly shortchanging my social workers and my cases because I am pulled in so many different directions."

18

"I often have very little time to prepare for court, and I am left to wing it."

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"The addition of two paralegals is fairly recent and has helped in many ways – some of which we are continuing to develop. Doing this type of work is emotionally rewarding and that offsets, for me, the stressful situations we see and experience. I always feel the goal is worth the stress and hard work. We (CPS attorneys) consult regularly with each other to vent, share knowledge, and strategize and that is very important. We do need more time to train and consult with our social workers and are making efforts to focus on that aspect of the work."

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Caseload Survey

Representation by County Size



Caseload Size by Family

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- ◆ Average number of families per FTE = 93 (71)
- ◆ Small Counties = 98 (68)
- ◆ Medium Counties = 81 (67)
- ◆ Large Counties = 99 (100)

*Median in parentheses

Caseload Size by Children

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- ◆ Average number of families per FTE = 243 (128)
- ◆ Small Counties = 179 (120)
- ◆ Medium Counties = 132 (109)
- ◆ Large Counties = 166 (163)
- ◆ Average number of children per family = 1.75

*Median in parentheses

Caseload Survey

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- ◆ 86% of NC attorneys have support staff
- ◆ Average weekly hours in court for child welfare - 11.49
- ◆ Average weekly hours preparing for child welfare hearings - 13.38
- ◆ Average weekly hours drafting child welfare orders & filings - 12.11
- ◆ Average weekly hours advising child welfare agency - 8.02
- ◆ Average annual hours providing child welfare in-service training - 10.13

"The work is emotionally consuming, and it is much harder to keep up with orders than I imagined."

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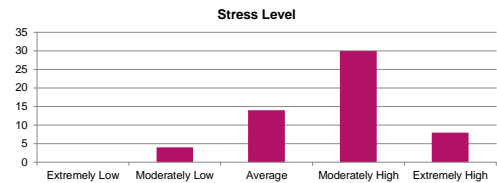
Mental Health Data

25

- ◆ Remember the Compassion Fatigue CLE and the Getting Lost in Our Lives CLE?
- ◆ The data we collected support and verify the content of those programs.

How would you describe your stress level?

26



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"I feel like I cannot think from one thing to another ever. I am constantly in demand either by phone, text, in person, document preparation, etc. It sometimes feels like no one realizes they are not the only person I am answering to. Balancing is nearly impossible sometimes."

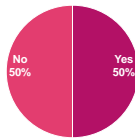
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"I have too many matters going on at one time and too many people demanding my attention at one time. For instance I get phone calls and texts while I am in court for DSS from workers who are back at the agency needing immediate assistance."

Have you abandoned hobbies, interests or activities you used to do?

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Abandoned Hobbies?



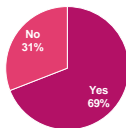
"I have resigned from all extra activities for 2016 in hopes my attitude and disposition will improve."

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Have you avoided or put off new hobbies or interests?

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Avoided New Hobbies

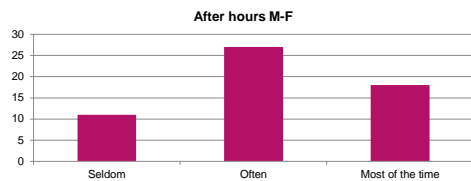


"The A/N/D caseloads and drafting orders are impossible to do within 40, or even 50, hours per week. Once contested trials (last 2 hours or more) are added in to the mix, the work comes closer to 60 hours per week."

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How often do you work after normal business hours M-F?

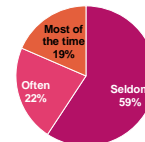
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How often do you work weekends?

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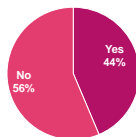
Work Weekends



Has your work stress spilled over into your family life?

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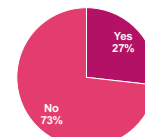
Spill Over to Family



Have you lost an important personal relationship either due to stress or no time?

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Lost a Relationship



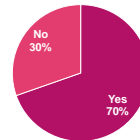
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"I have noticed in recent years that the emotional trauma from dealing with all the most serious cases in child welfare has begun to take its toll on me. I think of families and children and their circumstances often when I am away from work, and I often wake up in the middle of the night with thoughts of a certain child."

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Have you ever experienced symptoms of compassion fatigue?

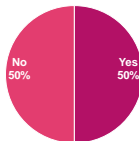
Symptoms of Compassion Fatigue



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Have you ever suffered from depression?

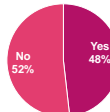
Depression



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Do you exercise 3 times a week?

Exercise 3x/wk

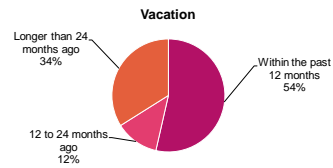


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"I haven't had a vacation since 2008."

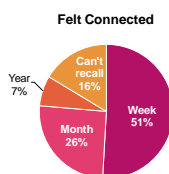
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When is the last time you took a real vacation?



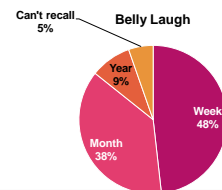
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When is the last time you felt really connected to someone (not romantically)?



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When was the last time you recall a good, deep belly laugh (no alcohol)?



45

"I don't have time to decompress with a family and a full time caseload as well as multiple counties."

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What do you do to decompress?

Video games	Attend or watch sporting events	Exercise	Drink
Hobbies	Plan retirement	Vent/discuss w/ coworkers	
Go out to eat	Projects in house or yard	Drink coffee/tea	Watch TV
Read	Spend time with family or friends	Go to parties & events	
Go to movies	Quiet time in nature	Listen to music	Sleep
Drive	Eat junk food	Plan/Take Vacation	Cook
Eat lunch alone	Stay spiritually connected, pray, Bible study	Travel	Shop
			Therapy

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A note about correlations....

- ◆ We tried to correlate stress level and MH responses to identify trends.
 - ◆ Assumption: smaller case load = less stress (not true for survey participants)
 - ◆ Assumption: smaller case load might mean less support staff and therefore higher stress (not true on both counts)
- ◆ We are left wondering why respondents surveyed showed high levels of stress (and symptoms of CF, D, loss of relationship) when having < 60 cases and support staff.
 - ◆ Hope our working groups might have some ideas of questions we did not ask or factors we did not control for.

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"The number of cases may not be as important as type."

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“One difficult/contested abuse case can swallow weeks or months of your life, and there’s no predicting when they’ll come along.”

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How all this relates to competence...



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Professional Responsibilities

- ◆ First duty to all clients: Rule 1.1,
 - ◆ “...Competent representation requires the legal knowledge, skill, *thoroughness*, and *preparation* reasonably necessary for the representation.” [emphasis added]
 - ◆ Does “reasonably necessary” take into consideration the lawyer’s caseload?
- ◆ Cmt. [5], Thoroughness and Preparation:
 - ◆ “... The required attention and preparation are determined, in part, by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity or consequence.

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“I am often not as prepared as I could be, and I am often surprised during trial, but things are so busy that I often have no choice...”

Competence: A pattern of behavior

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- ◆ A single error does not necessarily constitute a violation of the duty of competence.
- ◆ "A lawyer who makes a good-faith effort to be prepared and to be thorough will not generally be subject to professional discipline, although he or she may be subject to a claim for malpractice." Rule 1.1, cmt. [9].
- ◆ However:
- ◆ "Repeated failure to perform legal services competently is a violation of this rule. ... For example, a lawyer who repeatedly provides legal services that are inadequate or who repeatedly provides legal services that are unnecessary. ... This pattern of behavior does not have to be the result of a dishonest or sinister motive, nor does it have to result in damages to a client giving rise to a civil claim for malpractice in order to cast doubt on the lawyer's ability to fulfill his or her professional responsibilities. Rule 1.1, cmt. [10].

Diligence: control your workload

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- ◆ Rule 1.3, *Diligence*
 - ◆ "A lawyer shall act with reasonable diligence and promptness in representing a client."
- ◆ Cmt. [2]:
 - ◆ "A lawyer's work load must be controlled so that each matter can be handled competently."

Diligence and burdensome caseloads

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- ◆ "... Breach of the duty of diligence sufficient to warrant professional discipline occurs when a lawyer consistently fails to carry out the obligations that the lawyer has assumed for his or her clients. A pattern of delay, procrastination, carelessness, and forgetfulness regarding client matters indicates a knowing or reckless disregard for the lawyer's professional duties.... *A pattern of negligent conduct is not excused by a burdensome case load or inadequate office procedures.*"
- ◆ Rule 1.3, cmt. [7][emphasis added].

Delegate

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- ◆ Rule 5.3 *Responsibilities Regarding Nonlawyer Assistance*
 - ◆ (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.
- ◆ **Delegation to nonlawyers is allowed as long as they are adequately supervised.**
 - ◆ Legal tasks that constitute the practice of law may be delegated if (1) not the representation of a party before a tribunal, and (2) the work or work product is supervised and reviewed by the lawyer.
 - ◆ Professional responsibility for work cannot be delegated.

But don't cut corners...

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- ◆ The ends do not justify the means
...even if the cause is *just*.

Sources

58

- ◆ Standards of practice for Lawyers Representing Child Welfare Agencies, August 2004, American Bar Association, found at:
http://www.americanbar.org/content/dam/aba/administrative/child_law/agency-standards.authcheckdam.pdf
- ◆ Laver, Mimi. Foundations for Success: Strengthening your Agency Attorney Office, 1999, American Bar Association.

WHAT CAN BE DONE?

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- ◆ 1. What do DSS directors need to know about his problem?
- ◆ 2. What single policy change could make the most difference?
- ◆ 3. What factors other than caseload size need to be considered?