

Child Welfare Class Action Litigation: A Framework for Assessing Its Effectiveness in System Reform

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In 1973, Marcia Robinson Lowry launched, for the first time, a class action lawsuit against a public child welfare system, suing the New York City foster care system in *Wilder v. Sugarman*. In the case, Lowry asserted that New York City's practice of placing children in foster care with private agencies on the basis of religious affiliation harmed children and violated their federal constitutional rights (Bernstein, 2001). *Wilder* was named after one of the plaintiffs, 13-year-old Shirley Wilder, an abused child who had run away and whose childhood had been shaped by the foster care system. Within a year of Lowry's filing the lawsuit, Shirley would give birth to a son and relinquish him to the same foster care system that Lowry maintained had failed Shirley. Over the course of close to 20 years of litigation, New York City's practice of placing children in foster care based on religion changed, but other foster care practices were identified as detrimental to the safety and well-being of children.

Wilder ushered in an era of class action litigation against state, county, and city child welfare systems as a strategy to broadly reform foster care systems (Bernstein, 2001). Following *Wilder*, Children's Rights (Lowry's organization) and other child advocacy organizations, including the National Center for Youth Law, the Youth Law Center, the Bazelon Center for Mental Health Law, and state-based child advocacy organizations, brought more than 35 class action lawsuits against child welfare systems across the United States, including Arizona, Arkansas, Connecticut, the District of Columbia, Illinois, Kansas, Louisiana, Maryland, Missouri, New Jersey, New Mexico, New York, North Carolina, Rhode Island, Tennessee, Utah, and Washington State (Child Welfare League of America & American Bar Association, 2005). Since 2005, Children's Rights has initiated an additional four lawsuits: one against Mississippi, *Olivia A. v. Barbour*, settled in 2007 (Children's Rights, 2008a); a suit against Michigan, *Dwayne B. v. Granholm*, settled in 2008 (Children's Rights, 2008b); a suit against Oklahoma, *D.G. v. Henry*, filed in 2008 (Children's Rights, 2008c); and a suit against Rhode Island, *Sam and Tony M. v. Carcieri*, filed in 2008 (Children's Rights, 2008d). Other suits have been initiated by the National Center for Youth Law in Clark County, Nevada, *Clark K. v. Willden*, (National Center for Youth Law, 2008a), and by the Youth Law Center in Oregon, *A.S.W. v. Mink* (Youth Law Center, 2008).

Despite the prevalent use of class action lawsuits against child welfare systems as a reform mechanism, there has been relatively little work undertaken to determine how the impact of this strategy in achieving reform can best be evaluated. The process of evaluating class action litigation is undeniably complex given the issues that this type of litigation addresses and its goal of comprehensive system reform. However, given the resources devoted to the utilization of this strategy—in preparing for, litigating, and settling on the part of plaintiffs and defendants; the court costs involved; the ongoing implementation strategies and monitoring; and often, continuing appearances in court—a framework to guide a more in-depth evaluation of this strategy would seem essential. In this article, I describe

the nature of class action litigation, review the use of class action litigation against child welfare agencies, and consider the practice and policy issues that child welfare class action litigation has addressed. I then consider the larger context of class action litigation as a means of system reform and propose a framework that might be useful in assessing the effectiveness of this strategy in planning, implementing, and sustaining reform of child welfare systems.

The Contours of Child Welfare Class Action Litigation

Class action lawsuits against child welfare systems have much in common with respect to the general procedures that are used, but they also are as variable as the individual political, social, practice and policy environments of the jurisdictions that are the subject of these suits.

In a class action lawsuit, one or more parties file a complaint on behalf of themselves and all other people who are similarly situated; one party or a group of parties sue as representatives of a larger class of individuals (Law Library, 2008). Class action litigation has been used as a vehicle for seeking judicial redress for harms done to large groups of people in a variety of situations, including employment discrimination, toxic environmental exposure, prescription drugs, and defective medical devices (Hensler, Pace, Dombey-Moore, & Giddens, 2000; Viscusi, 2002) as well in the child welfare arena. In the United States, class action litigation may be brought in federal or state court. Federal class action lawsuits are governed by federal law (28 USC section 1331(d)) and by the Federal Rules of Civil Procedures. State law governs class action litigation brought in state court.

Whether filed in federal or state court, a class action lawsuit is filed with one or several named plaintiffs on behalf of a proposed class that consists of a group of individuals or business entities who have suffered a common injury or injuries. After the complaint is filed, the plaintiff must file a motion to have the class certified. The defendants may object to whether the issues are appropriately handled as a class action, whether the named plaintiffs are sufficiently representative of the class, and their relationship with the law firm or firms handling the case. Generally speaking, a class action lawsuit must meet the following requirements: (1) the class must be so large as to make individual suits impractical; (2) there must be legal or factual claims in common; (3) the claims or defenses must be typical of the plaintiffs or defendants; and (4) the representative parties must adequately protect the interests of the class. In many cases, the party seeking certification must also show (5) that common issues between the class and the defendants will predominate the proceedings, as opposed to individual fact-specific conflicts between class members and the defendants, and (6) that the class action is a superior vehicle over individual litigation for resolution of the disputes at hand (Rubenstein, 2005).

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In child welfare class action litigation, the class is often all children in the state's, county's, or city's foster care system, and the named plaintiffs are individual children whose experiences and foster care outcomes are representative of the experiences and outcomes of the larger population of children in foster care. One of the key first steps in class action litigation is having the class of children certified. When the class is certified and the case moves forward, the case may be resolved in a variety of ways. Most often, the case is resolved through a settlement agreement, occurring between the plaintiffs and the child welfare agency, and through a consent decree, a judicial decree that expresses a voluntary agreement between parties

to a suit approved by the court. Rarely, the case is fully litigated and ultimately resolved through an order of the court.

Table 1 provides examples of child welfare class action lawsuits brought by Children's Rights, the National Center for Youth Law, the Youth Law Center, and the Bazelon Center for Mental Health Law (formerly known as the Mental Health Law Project). Cases in this table were selected to illustrate the types of suits brought by each organization, the range of issues that these lawsuits have identified as needing systemic reform, and the status of each lawsuit.

Table 1. Child Welfare Class Action Litigation: Selected Cases

State	Lawsuit	Focus of Lawsuit	Status
Alabama (Bazelon Center for Mental Health Law, 1991)	<i>R.C. v. Hornsby</i> (also <i>R.C. v. Fuller</i>) Filed by the Bazelon Center for Mental Health Law	Large backlog of uninvestigated child abuse and neglect reports. Children in foster care for extended periods of time. Children with serious emotional problems on long waiting lists for services, often ultimately provided in institutional settings far from their homes.	Settled in 1991; the state developed a strengths-based perspective and a collaborative model for serving children and families; placed emphasis on family preservation; developed a new model for child welfare safety, permanency and well-being; developed a new system of home- and community-based care for emotionally or behaviorally disturbed children already in or likely to need foster care.
Connecticut (Children's Rights, 2008e)	<i>Juan v. Rowland</i> Filed by Children's Rights	Failure to adequately investigate reports of child abuse and neglect. Failure to provide appropriate placements for children. Extremely high caseloads. Poor training for foster parents and inadequate reimbursements for children's care.	Settled in 1991: required infrastructure improvements, including staff increases, the development of a training academy and data system improvements; in 2003, plaintiffs filed a motion to hold the agency in contempt when reforms were not being implemented; the court ordered the state to transfer management authority over the child welfare system to the federal court; in 2004, a comprehensive exit plan was developed; in 2005, management authority was returned to the state; plaintiffs initiated contempt proceedings; in July, 2008, the court required the agency to take aggressive action.
District of Columbia (Children's Rights, 2008f)	<i>Lashawn A. v. Barry</i> (also <i>Lashawn A. v. Fenty</i>) Filed by Children's Rights	Extremely high caseloads. Lack of services. Overcrowded foster homes. Virtually no adoptions being arranged for children in foster care who are free for adoption.	Court order in 1991; plaintiffs and the District's child welfare agency developed a comprehensive Remedial Order to correct management and service delivery problems; after 3 years, the agency failed to meet the requirements of the plan and was placed under court-supervised receivership and was placed in the hands of a receiver in 1995; improvements were noted in a number of areas; receivership ended in controversy; the District regained control of the agency in 2000, after establishing a cabinet-level Child and Family Services Agency (CFSA) and committing to major reform; in 2008, plaintiffs filed a motion of contempt against the District, citing large backlogs of unresolved abuse and neglect investigations, failure to move children quickly into permanent homes, and frequent moves for children in foster care; that motion was pending at the time of this writing.
Florida (Youth Law Center, 2007)	<i>Susan C. v. Florida Department of Children and Family Services</i> Filed by Youth Law Center	Filed against the Florida Department of Children and Family Services and a private contract foster care agency, asserting: Failure to find appropriate and licensed foster care placements for children. Requiring foster children to sleep for multiple nights in an agency conference room.	Settlement with the private contractor in 2006, in which the agency agreed to set a policy prohibiting overnight stays in offices, conference rooms, or other unlicensed placements; in 2006, court ordered the Department and private contract agencies to obey Florida state law and to only use licensed facilities for the placement of children; case ended in 2007 when the Department agreed to abide by the court's order.

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Table 1. Child Welfare Class Action Litigation: Selected Cases (cont'd)

Georgia (Children's Rights, 2008g)	<i>Kenny A. v. Perdue</i> Filed by Children's Rights	Extended stays for children in emergency shelters. High rates of maltreatment of children in foster care. Multiple moves while children are in foster care. Extended time in foster care. Inadequate health care and educational services.	Settlement agreement reached in July of 2005, requiring the state to meet specific reform benchmarks in 31 areas of service to children; two independent monitors to report on the state's performance; in August 2008, plaintiffs filed a contempt motion against the state, citing its failure to meet court-ordered requirements; the motion was pending at the time of this writing.
Tennessee (Children's Rights, 2008h).	<i>Brian A. v. Bredesen</i> Filed by Children's Rights	High rates of placement of children in institutional and other group settings. Placement of children in emergency shelters and other temporary facilities for extended periods of time. Extremely high caseloads for case-workers. Multiple moves for children in foster care.	Settlement agreement reached in 2001; in 2003, plaintiffs filed a contempt motion against the state which was resolved with a new agreement between the parties regarding a technical assistance committee; oversight of implementation currently in place.
Utah (National Center for Youth Law, 2007).	<i>David C. v. Leavitt</i> Filed by the National Center for Youth Law	Abuse and neglect investigations and child protective services. Quality and safety of out-of-home placement. Health care and mental health care for foster children. Caseloads and staff training. Case planning, case review, and permanency planning.	Settlement reached after class certification in May 1993; in 1996, the Monitoring Panel concluded that the state had complied with only 4 of the settlement agreement's 95 areas; plaintiffs filed a motion to enforce and asked the court to appoint a receiver; receiver not appointed but court ordered that a Comprehensive Plan be developed; in 1998, plaintiffs sought to extend the settlement's 4-year term and to implement the Comprehensive Plan; in 2002, plaintiffs filed a Motion to Enforce the Settlement Agreement; oversight of implementation continued; in 2007, parties finalized agreement to terminate the lawsuit; court approved the agreement.
Washington State (National Center for Youth Law, 2008b).	<i>Braam v. State of Washington</i> Filed by the National Center for Youth Law	Multiple placements while children are in foster care. Other practices causing children in foster care emotional and psychological harm.	Settlement reached in 2004 that created a blueprint for reform of the child welfare system in that state; independent, five-member oversight panel of national child-welfare experts established to develop and monitor reform during the 7-year settlement period (2004–2011); panel's initial report in 2006 found that the Department had not completed 32 of 45 action steps required during the first monitoring period; the Department required to propose a compliance plan; oversight to continue through 2011.

As Table 1 shows, child welfare class action lawsuits focus on a range of issues that are common across public child welfare systems, including the following:

- Failure to properly investigate reports of child abuse and neglect in a timely manner
- Failure to place children with foster families when they enter care, relying instead on unlicensed settings or institutional, group, or emergency shelter settings
- Failure to ensure the safety of children in foster care
- Failure to provide children with needed health and educational services
- Failure to ensure adequate parent-child and sibling visits with children in out-of-home care
- Failure to ensure permanent families for children in foster care

- Failure to ensure that social workers have manageable caseloads, sufficient training, and effective supervision
- Failure to provide children and families with adequate planning and review (Child Welfare League of America & American Bar Association, 2005).

As these demonstrate, the key issues span the range of responsibilities of public child welfare systems: child protective services investigations, placement of children in foster care, child safety, services for children in foster care, and permanency planning. They also encompass infrastructure issues believed to promote more positive outcomes for children, such as manageable caseloads and staff training.

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Between 1995 and 2005, 35 consent decrees and court orders were issued resolving child welfare class action lawsuits (Child Welfare League of America & American Bar Association, 2005). These consent decrees and orders addressed a range of issues within seven categories: protective services, out-of-home placement, services, adoption, case planning, judicial/legal issues, and caseworkers. As Table 2 shows, caseworker training is, by far, the most common issue addressed, and 25 consent decrees/court orders focus on this issue. Consistent with general observations regarding the types of issues in child welfare class action litigation, the issues on which these suits most often focused were child protective services (investigations and assessment), foster care placement (placing children together, appropriateness of placement/least restrictive placement, support for relative placements, residential facility placement, and reduction in the number of placements), safety (improved response to child abuse/neglect in foster care), child welfare practice issues (parent-child visits and caseworker visits with parents), services (education and mental health services) and the child welfare infrastructure (caseload sizes, case reviews, case planning; permanency, and adequacy of foster parent reimbursement) (Child Welfare League of America & American Bar Association, 2005).

It is interesting to note the least frequently addressed issues in these 35 consent decrees/court orders. Few consent decrees (two, three, or four) addressed the following practice issues:

- Child protective services intake, including screening of cases for investigation
- Licensing of group homes; minimizing placement disruptions
- Ending inappropriate punishment of foster children
- Permanency goal updating; reductions in the length of time that children remain in foster care; subsidized guardianship/adoption; nondiscriminatory adoption practice
- Family preservation services; family reunification services; housing services; provision of respite care; postadoption services
- Sufficient work space and supplies for caseworkers

Finally, judicial and legal concerns were among the least frequently addressed issues in consent decrees/court orders with only one decree addressing parents' opportunity to be heard in proceedings involving their children, two addressing procedural safeguards, and

Table 2. Most Frequently Addressed Issues in Child Welfare Class Action Litigation Consent Decrees, 1995–2005

Issue	Number of Decrees/Court Orders
Caseworker Training	25
Foster Parent Training	17
Child Protective Services Assessments	16
Adequate Numbers of Qualified Foster/Adoptive Homes	16
Medical Care for Children in Foster Care	16
Education for Children in Foster Care	15
Case Review for Children in Foster Care	14
Caseloads	14
Caseworkers' Visits With Child	14
Child Protective Services Investigation	13
Residential Facility Placement	13
Placing Siblings Together	13
Promoting Parent-Child Visits	13
Appropriateness of Placement and Placement in Least Restrictive Environment	12
Licensing of Foster Parents	12
Support for Relative Placements	12
Mental Health Care for Children in Foster Care	12
Permanency for Children in Foster Care	12
Caseworker Staffing	12
Adequacy of Foster Care Reimbursement Rates	11
Improved Responses to Alleged Abuse/Neglect in Care	10
Reduction in the Number of Placements	10

Source: Child Welfare League of America & American Bar Association, 2005.

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three addressing the timeliness of court proceedings and children's legal representation (Child Welfare League of America & American Bar Association, 2005).

The variation seen across consent decrees/court orders may be attributed to a number of factors. Individual state consent decrees/court orders may reflect an assessment of the specific issues that were of greatest concern in the particular jurisdiction and/or an assessment of the areas on which the litigation had the greatest probability of making systemic improvements. The absence of attention to legal and judicial issues may be based on the fact that litigation is directed against the child welfare agency and sets limitations on orders regarding judicial and legal practices. Nonetheless, the variation across consent decrees/court orders, the focus on some issues and not others in individual consent decrees, and the greater prevalence of a focus on infrastructure issues such as training raise questions about the extent to which systemic reform is being achieved through these mechanisms.

An Assessment of Class Action Litigation

There has been considerable debate about the benefits of class action litigation. Proponents of class action litigation maintain that a key benefit is it aggregates a large number of individualized claims into one representative lawsuit. Bringing claims in one lawsuit on behalf of a class can increase the efficiency of the legal process and lower the costs of litigation. When there are common questions of law and fact, aggregating claims into a class action can avoid the necessity of repeating "days of the same witnesses, exhibits and issues from trial to trial" (*Jenkins v. Raymark Indus. Inc.*, 1986, at 473). Class action lawsuits also are seen as overcoming "the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights" (*Amchem Prods., Inc. v. Windsor*, 1996, at 617). A class action lawsuit can ensure that a defendant who engages in widespread harm—but who does so minimally against each individual plaintiff—must compensate those individuals for their injuries or rectify the harm done to all. Class action lawsuits also avoid the possibility that different court rulings could create incompatible standards of conduct for the defendant to follow.

With respect to child welfare class action litigation, proponents emphasize that this approach never has been used as the first choice for resolving the complex problems of child welfare system but is "often the last hope for disempowered constituencies with no other means of access to institutions that profoundly shape their lives" (Center for the Study of Social Policy [CSSP], 1998, p. 4). Proponents of child welfare class action litigation further maintain that this type of litigation is usually made necessary by a failure of the political process and the need to hold policy makers and child welfare program administrators accountable for outcomes for a disempowered clientele (CSSP, 1998).

However, there are criticisms of class action lawsuits. One criticism is that class members often receive little or no benefit from class actions (Epstein, 2002; Greve, 2005). In the arena of child welfare class action litigation, children and youth in foster care are not awarded money settlements as is the case with mass tort and other types of class action litigation. However, child welfare agencies charged with serving children and families often commit significant

resources to defending these lawsuits, which, it is claimed, would be more appropriately used to provide services and supports for children and families and strengthen the infrastructure of child welfare systems. Criticisms regarding benefits to clients often also extend to the fees paid to plaintiff attorneys when the litigation is successfully concluded on behalf of the plaintiff class (Class Action Litigation Information, n.d.). Some have expressed concerns about the attorney-client relationship in class action litigation, noting that the ethical dilemmas created by the nature of the lawyer-client relationship in the class action are not sufficiently addressed by current ethics regulations or existing class action decisional law (Scott, 2002).

Other criticisms have been raised specifically with regard to child welfare class action litigation. One is that this type of litigation is often protracted, spanning in some cases more than 2 decades (see Table 1). Questions are raised about the effectiveness of litigation in the planning and implementation of system reform, particularly in light of the need in a number of cases for plaintiffs' attorneys to return to court in efforts to hold child welfare agencies in contempt or to enforce implementation of plans (see Table 1). Of particular concern is the issue of sustainability when reforms are achieved. As one example, the Bazelon Center for Mental Health Law reported that *R.C. v. Hornsby* in Alabama spurred significant improvement in engaging families and meeting children's needs, largely because it was driven by principles of good practice and grounded on partnerships among state agency workers, families, foster parents, communities, and the providers of all the services a child and family need. The Bazelon Center noted that the political climate in Alabama has always been a factor in implementing the *R.C.* decree, as it has been in advancing systemic reform in any context. Following many years of successful implementation of *R.C. v. Hornsby*, Governor Fob James took office in 1995, and in March 1996, he appointed a new child welfare commissioner who shared his negative views of judicial solutions. The collaborative reform spirit that had prevailed under the former child welfare commissioner and his successors faded quickly. Much of the infrastructure that supported the reform effort was dismantled.

Finally, despite the prevalent use of class action lawsuits against child welfare systems, it is not clear to what extent systemic reform, the thrust of this type of litigation, has been accomplished. It is clear that organizations that bring these lawsuits are able to point to specific results from individual lawsuits. Children's Rights (2008i), for example, noted the following outcomes in three of its lawsuits:

- In Washington, DC, reforms resulting from litigation efforts more than tripled the annual number of adoptions of children in foster care.
- In Connecticut, litigation and monitoring ensured that more than 90% of abuse and neglect allegations are investigated promptly—and the quality of the investigations has markedly improved. The state's rate of abuse among children in foster care placements has dropped 80% over the past 5 years.
- Tennessee has cut the number of children living in orphanage-style institutions and other nonfamily settings in half since 2002.

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These types of outcomes reflect progress on key outcome indicators, but they do not address the extent to which class action litigation has accomplished comprehensive, sustainable system reform. Because child welfare class action litigation is designed to reform failing child welfare systems, it appears that a framework is needed for evaluating its impact in affecting broad changes in child welfare system design and implementation and the achievement of improved outcomes for children, youth, and families served by child welfare systems.

A Framework for Assessing the Impact of Child Welfare Class Action Litigation

Evaluating the systemic impact of child welfare class action litigation can be strengthened by a framework setting forth the key inquiries that can guide the development of an evaluation methodology. Such a framework has not been developed to date, no doubt because the organizations that bring class action lawsuits are focused initially on successfully prosecuting the litigation and then are focused on postlitigation monitoring of child welfare systems for adherence to implementation plans. State, county, and city child welfare systems are focused on meeting the requirements of implementation plans and assessing their own performance, rather than evaluating the impact of the lawsuit on their efforts. Given that more than 35 child welfare class action lawsuits have been filed and prosecuted and additional lawsuits are pending, an assessment of the effectiveness of this approach to system reform seems wise, particularly given the costs associated with this system reform mechanism.

A possible framework to begin evaluation of the impact of class action litigation on child welfare system reform would have three key components: (1) inquiries to assess whether class action litigation is the appropriate mechanism for child welfare system reform in the particular jurisdiction; (2) inquiries to assess the impact of class action litigation on system design and implementation; and (3) inquiries to assess the impact of class action litigation on substantive outcomes for children and families.

Inquiries to Assess the Class Action Litigation as the Appropriate System Reform Mechanism

The following domains of inquiry might prove useful in determining the viability of class action litigation as an appropriate child welfare system reform mechanism in a particular jurisdiction at any given time.

The Environment

Executive and Legislative Leadership. Is leadership at the executive and/or legislative levels concerned about the jurisdiction's child welfare system? Is the leadership open to changes in the child welfare system at the systemic level? How would executive and legislative leadership respond to a class action lawsuit against the child welfare agency?

Child Welfare Leadership. What is the leadership within the child welfare agency? How long has the commissioner/director of the child welfare agency been at his or her post? What has been his track record? What efforts has she made to strengthen the child welfare system and improve outcomes for children and families?

How strong is the child welfare agency's senior management team? How would the child welfare leadership respond to a class action lawsuit? Is the current leadership able to implement system reform?

Existing Financial Resources. How well is the child welfare system resourced? Are there adequate financial resources for all key child welfare functions? What resources would be available to implement systems reform efforts?

Existing Child Welfare Expertise. What is the level of child welfare expertise in the jurisdiction: professors at schools of social work, child welfare researchers, expert practitioners, and child welfare policy analysts? How involved are these child welfare experts with the child welfare system and implementation of new programs, practices and policies? To what extent would these child welfare experts be resources in assessing the child welfare system and supporting and implementing reform efforts?

Previous Child Welfare System Reform Efforts. Have efforts previously been made to reform the child welfare system? If so, by whom and how? With what results? Have all reasonable nonlitigation reform efforts been tried—without success? What can be learned from previous reform efforts in relation to the prospects of success of a class action lawsuit?

Current Reform Efforts and Public and Private Reform Initiatives. Are there reform initiatives currently underway—through the public child welfare agency or through private efforts (foundation-funded efforts or efforts by private agencies)? If so, by whom and with what focus? With what results? How would a class action lawsuit relate to these efforts? What coordination would be needed?

Advocacy Groups. Are child welfare advocacy groups active in the jurisdiction on child welfare issues? What is their assessment of the current functioning of the child welfare system? To what extent would these advocacy groups be resources in assessing the child welfare system and supporting and implementing reform efforts?

The Child Welfare System Infrastructure

Existing Child Welfare Agency Infrastructure. Where is the child welfare agency situated in the state agency organizational framework? How is the agency itself organized? How strong is the agency's infrastructure in terms of staffing levels, expertise, and capacity for planning and implementing reform efforts? Would significant changes be needed in the child welfare agency infrastructure to strengthen the agency's capacity to implement systemic reform?

Child and Family Services Review (CFSR) Results. What have been the substantive and systemic results of the Child and Family Services Reviews (CFSR) for the jurisdiction? What are the strengths and the "areas needing improvement"? Is there consensus at the agency and advocacy levels that these areas need improvement? If the jurisdiction has completed the second round of the CFSR, has there been improvement in the results? If yes, where? If no, why not?

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Performance Improvement Plan (PIP) and Ongoing Progress Reports.

What has the jurisdiction planned to do to improve substantive and systemic outcomes as measured by the CFSR? What progress is evident from the progress reports? Where has progress not been made?

Desired Outcomes

Substantive Outcomes for Children and Families. What are the key substantive outcomes—in terms of safety, child and family well-being and permanency—that a class action lawsuit would address? What are the priority substantive outcomes that need to be achieved? What are the probabilities that a class action lawsuit could affect these outcomes?

Systemic Outcomes. What are the systemic issues that a class action lawsuit would address? What are the priority systemic factors that would need to be changed to achieve the desired substantive outcomes for children and families? What are the probabilities that a class action lawsuit could impact these systemic factors?

Cost Effectiveness of Litigation

Projected Costs. What are the projected costs of litigating the plaintiffs' case and the likely attorney fees award that would be awarded if the case is successfully prosecuted? What are the projected costs of defending the case? What are the projected court costs?

Projected Benefits. What impact can be expected from a class action lawsuit in generating new resources to serve children and families involved in the child welfare system?

Project Cost Savings. What is the projected impact of cost savings to child welfare system as a result of system reform that a class action may bring about?

This first level of analysis involves an assessment of the current political, service, and resource environment, the current child welfare agency structure, the planning and implementation processes associated with federal mandates, the desired outcomes, and cost effectiveness projections—and conceivably other factors. The current environment is likely to present factors that both support and potentially undermine the viability of systemic reform through class action litigation. As an example, the executive and legislative leadership may have focused on the quality of the child welfare system through Blue Ribbon Commissions or legislative reports that have not led to systemic improvements (a factor that suggests that litigation may very well be an appropriate reform mechanism), but there have been frequent turnovers in child welfare leadership and senior management staff and there is limited child welfare expertise within the agency (a factor that may suggest that the agency lacks the capacity to implement systemic reform, irrespective of the method used). The need to clearly articulate desired outcomes is paramount, with either consensus reached among the plaintiffs, advocates and key leaders in the state (a factor that would support litigation) or lack of agreement as to what needs to be changed (a factor that may undermine the success of a litigation strategy). A cost-effectiveness analysis would result in projections that the costs of litigation would be counterbalanced by greater benefits to clients and the system itself (indicative that litigation is a viable option) or would not be counterbalanced (indicative that litigation may not



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be the appropriate option). The overall assessment of these—and perhaps other—factors could provide a foundation for evaluating the viability of pursuing class action litigation and, it is important to note, provide a basis for subsequent assessments of the systemic impact of class action litigation when it is pursued.

Inquiries to Assess the Systemic Impact of Child Welfare Class Action Litigation

A second component of assessment would focus on the impact of child welfare class action litigation at the systemic level. This assessment could include the following domains related to system functioning:

System Development and Infrastructure: To what extent has class action litigation

- Strengthened the agency's organizational structure through enhanced management activities and/or more robust integration of programs and services
- Resulted in more comprehensive and effective staff training and professional development
- Strengthened supervision as quality assurance mechanism
- Resulted in the recruitment and retention of highly qualified staff
- Led to manageable caseloads in each service area
- Generated the resources needed to support staff, including computers, supplies, and access to transportation to visit with clients

Practice Model: To what extent has class action litigation

- Resulted in clearly articulated principles that drive practice and service delivery
- Led to a strong practice model that responds to the needs of children, youth, and families for safety, well-being, and permanency

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- Led to a practice model based on active engagement of families, children, and youth and shared planning and decision making
- Promoted strong leadership commitment to the practice model
- Generated the resources needed to support the practice model

Service Delivery: To what extent has class action litigation

- Resulted in the development full array of services, ranging from family support and preventive services to post-permanency services
- Resulted in resources to ensure an adequate number of trained staff to provide quality services
- Ensured evaluation and accountability mechanisms that provide key information on the results of the services provided and methods for continuous quality improvement

Coordination With Other Systems and Initiatives: To what extent has class action litigation resulted in the child welfare system's effective coordination with

- The courts
- The medical system
- The mental health care system
- The education system
- Services that address housing and homelessness
- Private child welfare agencies

Assessing systems reform by examining infrastructure, the resulting practice model, service delivery, and coordination with other systems and initiatives could provide foundational evaluation domains for interim and final assessments of the impact of litigation on child welfare system reform. It can be expected that any child welfare class action lawsuit would address each of these domains (though, depending on the jurisdiction, to a greater or lesser extent). The evaluative questions are the degree to which a lawsuit brings about these impacts and what level of impact across these domains would be expected to consider the lawsuit "effective." These are not easy questions, but the clear articulation of the domains where impact should be expected may provide a starting point for assessment.

Inquiries to Assess Substantive Outcome

Improvements for Children, Youth, and Families

The third—and vital—component in assessing the impact of child welfare class action litigation on systemic reform would focus on the extent to which strengthening infrastructure, the agency's practice model, service delivery, and coordination with other systems and initiatives results in improved outcomes for children, youth and families. This assessment would draw on the federal outcomes monitored through the Child and Family Service Reviews (CFSRs) and the desired outcomes articulated in the initial assessment phase regarding the intended consequences of class action litigation. In this phase, evaluation would test the hypothesis that systemic changes (system development and infrastructure, practice model, service delivery, and cross system and cross initiative collaboration) produce improved substantive outcomes for children, youth, and families.

These core elements form a working framework on which evaluation methodologies could be developed to assess the effectiveness of child welfare class action litigation in effecting system reform. It is at best preliminary but provides some of the key considerations that can shape a robust evaluation approach.

Conclusion

Class action litigation against state, county, and city child welfare systems has become an established reality since *Wilder* was filed in 1973. Since that time, at least 35 suits have been filed. Several are pending resolution; many have been resolved through consent decrees or court orders; and most systems under consent decrees and court orders continue to be monitored by the organizations that initiated these suits. Much has been learned over the course of the last 35 years, and more could be learned through more systematic efforts to assess the impact of class action litigation on child welfare system reform. This article provides a beginning framework that could guide more in-depth work in developing evaluation methodologies that provide a clearer understanding of the impact of child welfare class action litigation on the complex task of reforming child welfare systems.

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