

Executive Director
Robert C. Fellmeth

Council For Children
Gary F. Redenbacher, Chair
Gary Richwald, M.D., M.P.H., Vice-Chair
Robert L. Black, M.D.
John M. Goldenring, M.D., M.P.H., J.D.
Louise Horvitz, M.S.W., Psy.D.
Hon. Leon S. Kaplan (Ret.)
James B. McKenna
Thomas A. Papageorge
Gloria Perez Samson
Alan Shumacher, M.D.
Owen Smith

Emeritus Members
Birt Harvey, M.D.
Paul A. Peterson
Blair L. Sadler



Children's Advocacy Institute



University of San Diego School of Law
5998 Alcalá Park / San Diego, CA 92110
(619) 260-4806 / (619) 260-4753 (Fax)

717 K Street, Suite 509
Sacramento, CA 95814
(916) 444-3875 / (916) 444-6611 (Fax)

Reply to: San Diego Sacramento

www.caichildlaw.org

Explanation of Need to Appeal Federal District Court Dismissal in *E.T. v. George* **2:09-cv-01950 FCD DAD**

On July 16, 2009, four class representative foster children in Sacramento County filed a class action in federal district court. The complaint alleged that the children subject to dependency court jurisdiction have a constitutional right to counsel which is being violated in Sacramento County where attorneys often have caseloads above 380. These excessively high caseloads also violate federal statutes which require *guardians ad litem* to help protect foster children. In California, budgetary decisions regarding the representation of foster children are arranged by the Administrative Office of the Courts, controlled by the State Supreme Court. Accordingly, they were the main defendants.¹

The District Court decided the case at the 12(b)6 motion- to-dismiss level where he issued an order dismissing the case. Interestingly, the judge did not contest the constitutional right of children to counsel, nor did he dispute that caseloads may be excessive in violation of constitution or federal law. Rather, he invoked the doctrine of “abstention” to refuse to even examine the practices of state courts in these matters. The Court feared a perceived administrative burden that he might have had to take on and, therefore, decided not to reach the substantive issues of the case. In addition to directly impacting the ability of these foster children in Sacramento County to challenge the excessive caseloads of their attorneys, this decision means that foster children under the jurisdiction of the state court do not have the right to go to federal court to challenge policy decisions made by their state court - even if those policy decisions violate the child’s federal rights.

The Children’s Advocacy Institute is now appealing the District Court’s decision to the Ninth Circuit Court of Appeal. Our appeal seeks a declaration, by the court, that excessively high caseloads of attorney *guardians ad litem* for foster children violate those children’s constitutional and statutory rights.² When foster children are not adequately represented in court, their cases linger in the courts for a longer time, costing the state more. Without adequate legal representation, these children are likely to achieve permanency later and less frequently, and therefore suffer more frequent placement disruptions, and diminished relationships with their parents and siblings.³

¹The State Supreme Court, in its self-heralded “Blue Ribbon Commission” report, sets 188 as the maximum allowable caseloads for these attorneys.

²This case presents an opportunity to extend the gains of a district court decision in Georgia that held foster children have a constitution right to counsel and recommended caseload levels of 100 children per attorney.

³A.E. Zinn & J. Slowriver, *Expediting Permanency: Legal Representation of Foster Children in Palm Beach County* (2008), available at <http://www.chapinhall.org/research/report/expediting-permanency>.

As we work on this appeal we are reaching out to you for your organization's support. We believe that this case presents a critical opportunity to stand up for the civil and due process rights of abused and neglected children. This case could have far-reaching implications in helping to shine a light on what happens when attorneys and others working with this vulnerable population simply have too many cases to perform their jobs effectively. There is some precedent in recognizing the importance of reasonable caseloads. If this case succeeds, this body of law can expand and benefit countless children. We hope that you will support our efforts to help these children reach better outcomes by signing on to the amicus brief.