



TEXAS CENTER  
★  
FOR THE JUDICIARY

**2018 Child Welfare Judicial Conference**  
2018 Study of Legal Representation in CPS Cases  
Judge Carlos Villalon, Jr., CPC - Rio Grande Valley West  
Dylan Moench, Children's Commission  
November 13, 2018

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### Participants

	2011 Frequency	2018 Frequency	2018 Population Estimate	2018 Frequency as % of Population
Court-Appointed Attorneys	94	251	1,974	13%
CASA Volunteers/Supervisors	16	790	10,424	8%
Court Coordinators	25	41	418	10%
Attorneys Representing DFPS	38	111	*	*
CPS Caseworkers	0	962	4,900	20%
Foster Parents	11	555	10,715	5%
Judges	69	57	267	21%
Mediators	0	57	167	34%
Youth in Care	51	737	11,740	6%
Total Responses	304	3,561	40,605	
No Role Identified**		95		
GRAND TOTAL	304	3,466	40,605	8%




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### Limitations

Though the survey participants are representative of their stakeholder group, they are not randomly chosen representatives of the whole stakeholder population. They represent those stakeholders who self-selected to give their opinion about court-appointed representation when offered the opportunity.

Self-selection also means survey results from different populations do not all represent the same "slice" of the population, which is an important limitation when comparing results across populations.




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## Appointment Method



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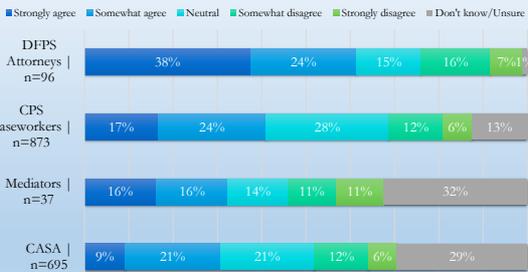
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To what extent do you agree or disagree with the following statement:  
The appointment system for parents and children's attorneys in my jurisdiction is fair and results in a reasonable distribution of appointments to qualified attorneys.



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## Quantity of Available Attorneys



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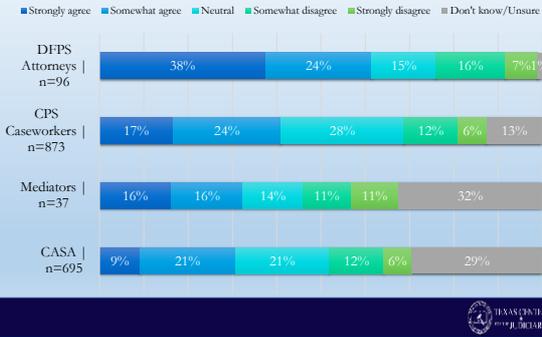
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To what extent do you agree or disagree with the following statement:  
The appointment system for parents and children's attorneys in my jurisdiction is fair and results in a reasonable distribution of appointments to qualified attorneys.




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## Timing of Appointment




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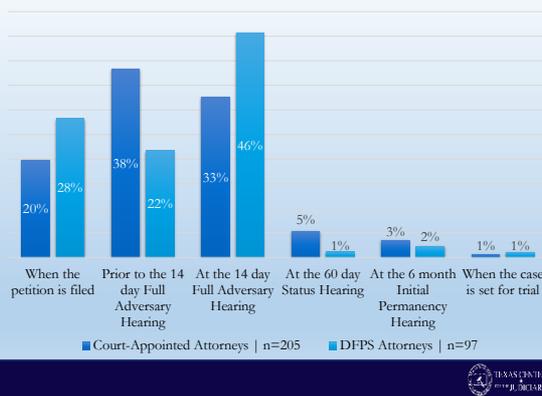
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At what point in a case is an attorney for a parent usually appointed?




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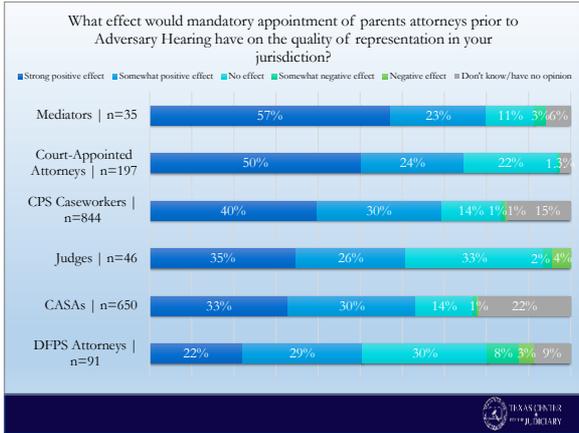
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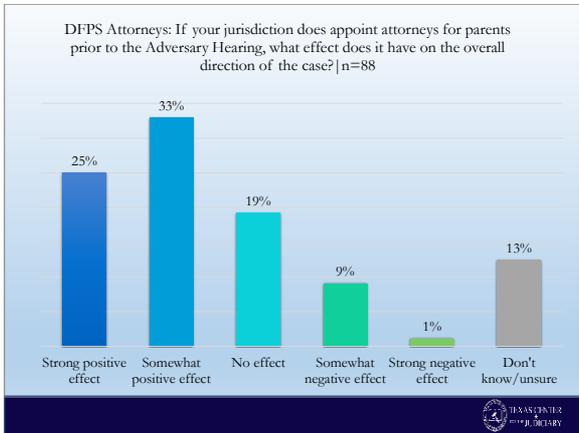
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## Qualifications and Training

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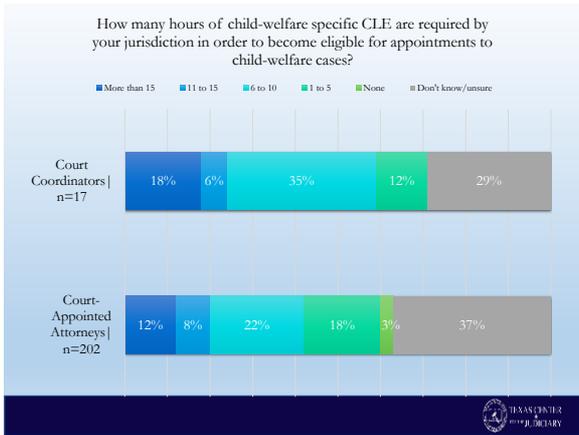
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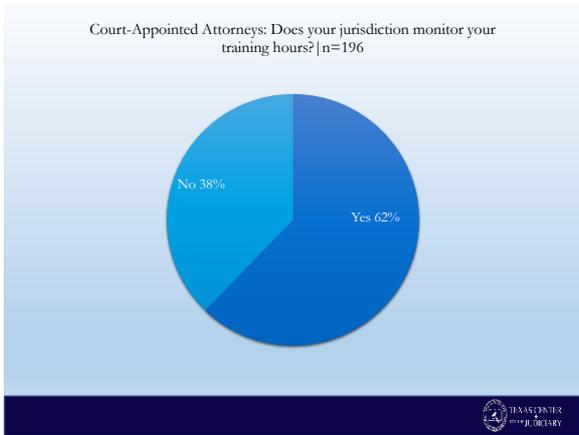
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## Standards of Practice

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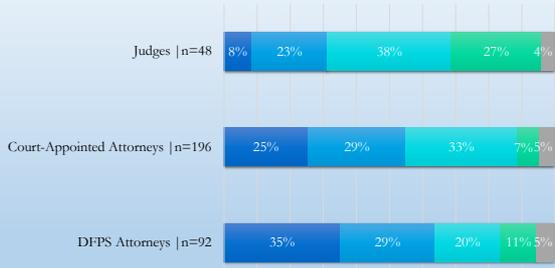
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How would you rate the impact of the lack of enforceable standards to evaluate attorney performance on the quality of representation?

■ Has a significant impact ■ Has some impact ■ Has a minor impact ■ Does not impact ■ Don't know/Unsure




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What effect would higher training requirements and improved access to quality training have on the quality of representation in your jurisdiction?

■ Strong positive effect ■ Somewhat positive effect ■ No effect ■ Somewhat negative effect ■ Negative effect ■ Don't know/have no opinion




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## Quality Indicators




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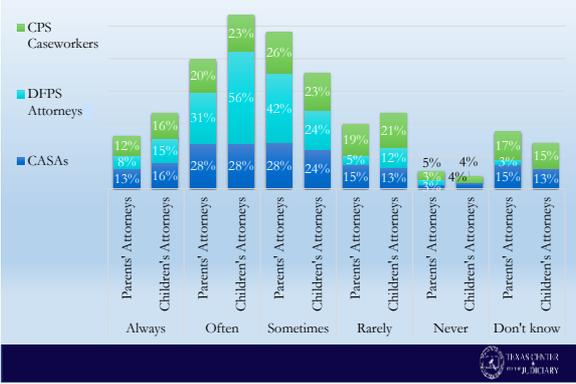
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How often are court-appointed attorneys prepared at the Adversary Hearing?




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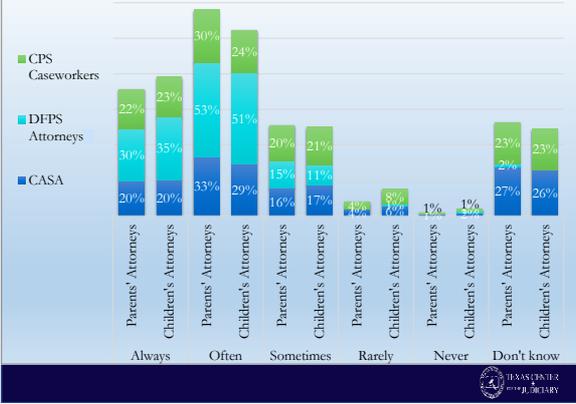
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How often are court-appointed attorneys prepared at trial?




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## Compensation

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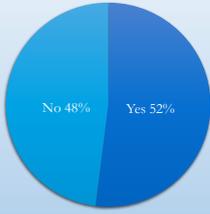
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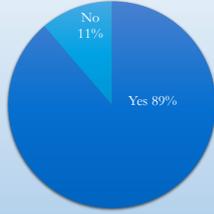
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Court-Appointed Attorneys:  
Are you compensated  
for travel time? | n=202



Court-Appointed Attorneys:  
Are you compensated for  
out-of-court time? | n=203




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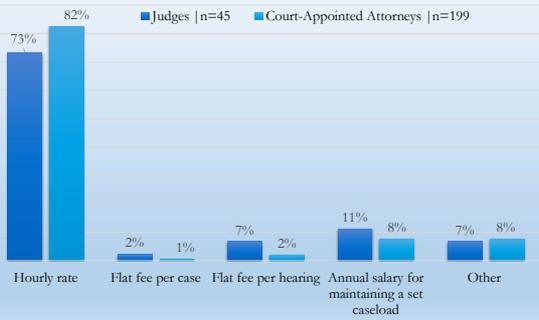
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What compensation structure best incentivizes  
attorney best practices and compliance with statutory duties?




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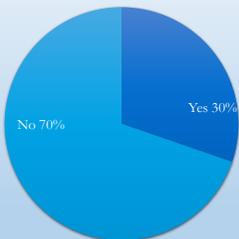
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Court-Appointed Attorneys: Do  
you feel you are adequately  
compensated for the time you  
spend on child protection  
cases? | n=201



Court-Appointed Attorneys: Do  
you submit billable hours that are  
below the actual amount of hours  
you worked on a case? | n=200




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What effect would billing determinations that are independent of the judiciary have on the quality of representation in your jurisdiction?




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### Statewide Court-Appointed Attorney Costs

Using the data provided under Chapter 36, OCA and the Children's Commission estimate that at least \$56 million was paid to attorneys appointed to parents and children in CPS cases across the state in FY 2017.




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### Attorney Resources




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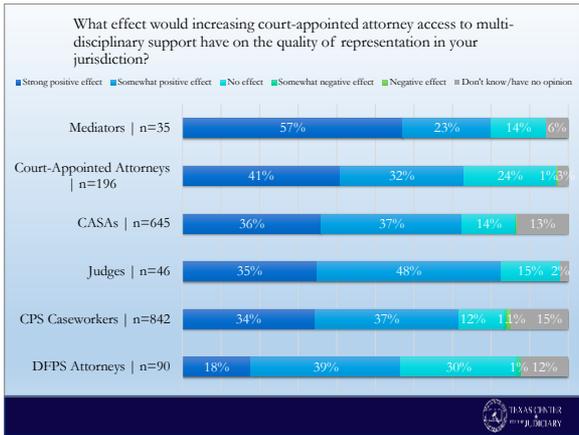
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## Attorneys for Children

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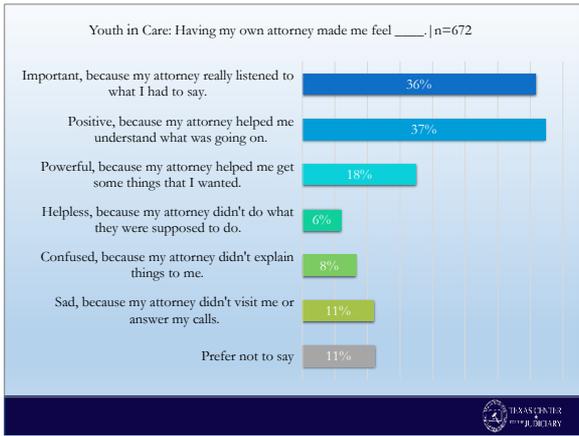
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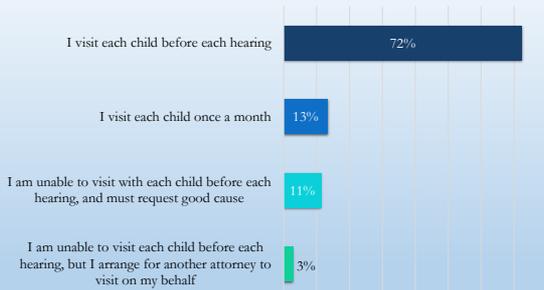
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Court-Appointed Attorney: Typically, how often do you personally visit your child clients during your representation? | n=210




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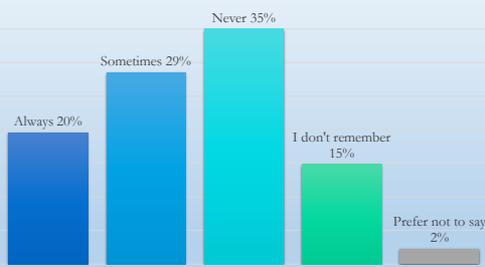
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Youth in Care: Did your attorney visit you before each court hearing? | n=635




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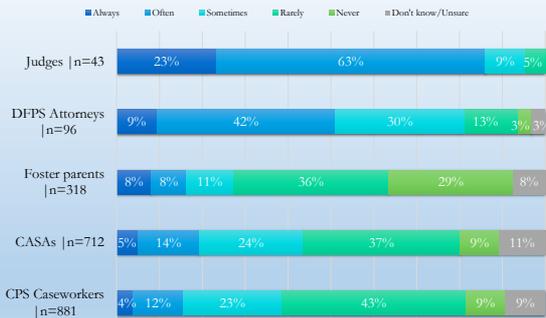
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How often do children's attorneys comply with their statutory duty of meeting with their clients prior to each hearing?




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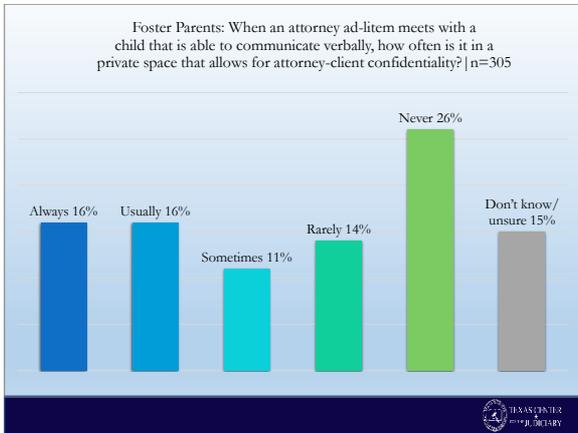
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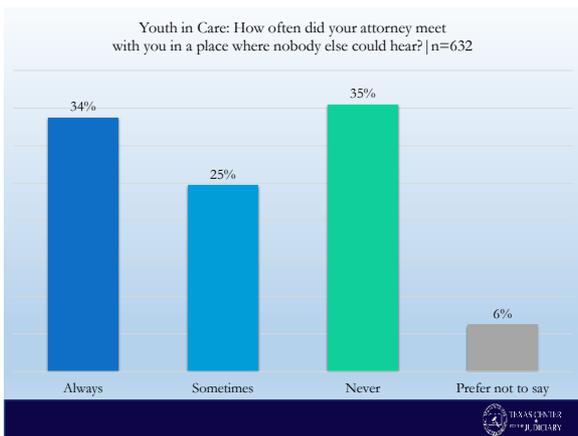
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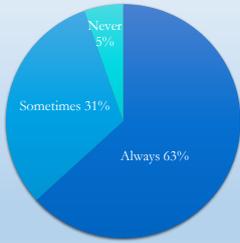
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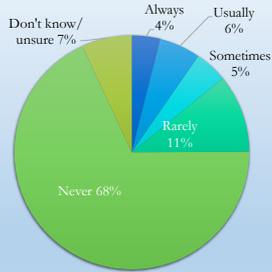
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Court-Appointed Attorneys: How often do you inform your verbal clients of their statutory right to attend court? | n=204



Foster Parents: How often do attorneys for children discuss with you that the child has a right to attend court and meet with the judge? | n=310




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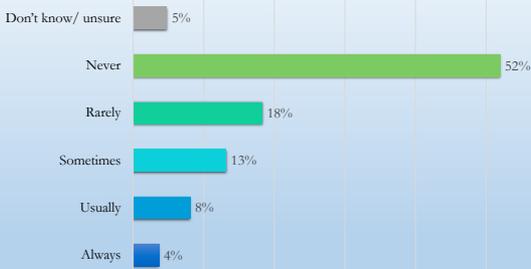
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Foster Parents: If the children in your care are school-aged, how often do children's attorneys consult with you regarding the child's educational needs? | n=273




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## Attorneys for Parents

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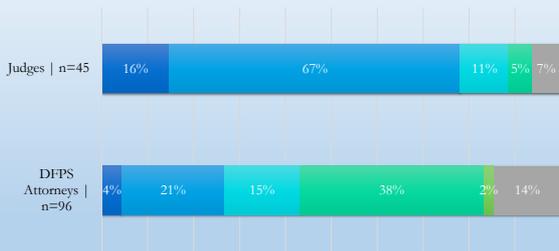
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How often do parents' attorneys comply with their statutory duty of meeting with their clients prior to each hearing?

Always Often Sometimes Rarely Never Don't know/Unsure




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## Quality of Court-Appointed and DFPS Attorneys




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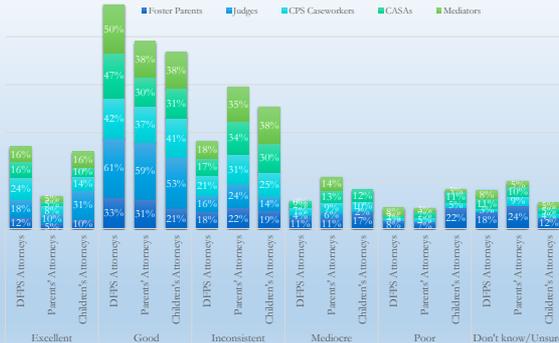
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In your experience, how would you rate the quality of legal representation displayed by attorneys for DFPS, parents, and children?

Foster Parents Judges CPS Caseworkers CASAs Mediators




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# Oversight and Accountability



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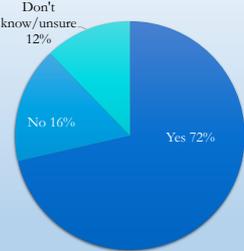
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Judges: Do you feel monitoring attorney accountability is an appropriate task for the judiciary? | n=49



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Judges: Do you have sufficient time and resources to review attorney compliance with statutory duties and performance standards? | n=51



Judges: Do you use a formal review process to evaluate attorney performance for compliance with statutory duties or other standards of representation? | n=53



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Court-Appointed Attorneys: Is there a mechanism in place for a parent or child to obtain a new attorney if he/she is dissatisfied? | n=199



Judges: Do you have a formal procedure if a parent or child has a complaint about their representation? | n=50




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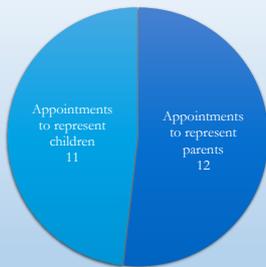
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Court-Appointed Attorneys: In the past year, approximately how many cases have you been appointed to? | n=216, 205




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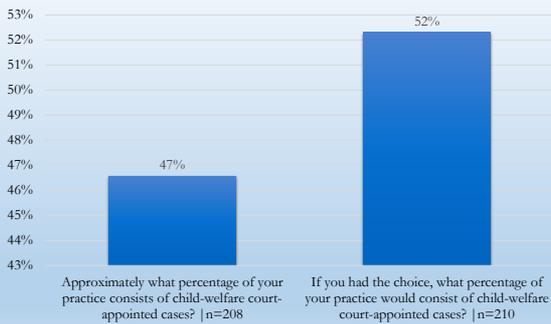
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Child-welfare cases as a percentage of court-appointed attorneys' practice




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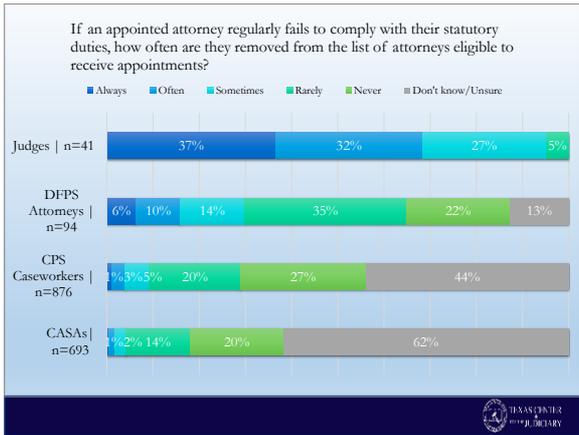
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## Stakeholder Support for Reform

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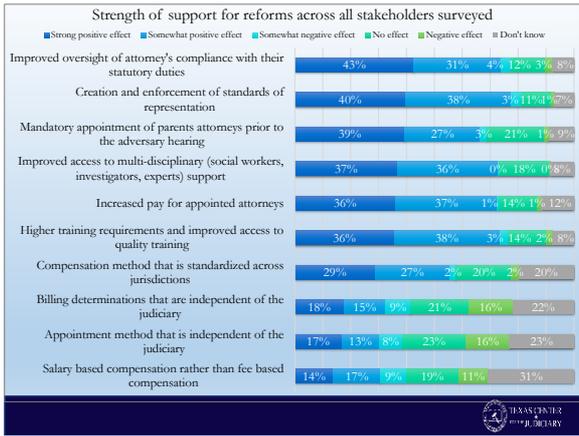
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## Conclusions



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## System Strengths

1. Texas has an existing pool of quality attorneys interested in representing clients in CPS cases.

2. Quality court-appointed attorneys have the capacity to take more cases.

3. Quality attorneys often make a difference in the lives of Texas parents, children, and families.



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## Areas in Need of Improvement

1. There is currently little oversight of the court-appointed attorney system.

2. Lack of oversight results in lack of accountability for non-compliance.

3. Current payment methods do not incentivize best practices or compliance with statutory duties.

4. The representation provided to the State is rated higher than representation provided to Texas families.

5. Court-appointed attorneys need access to resources to provide quality legal representation.



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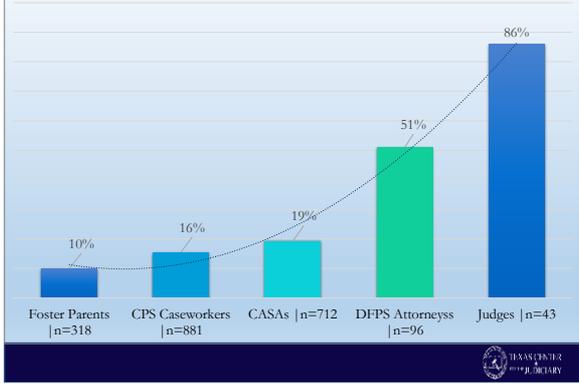
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Percentage of participants reporting that court-appointed attorneys always, usually, or often meet with child clients in advance of hearings



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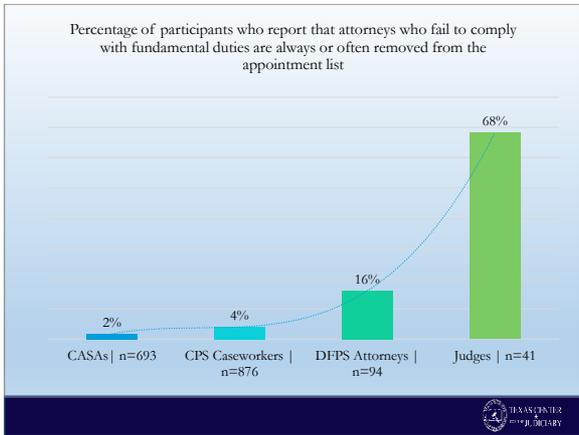
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Percentage of participants who report that attorneys who fail to comply with fundamental duties are always or often removed from the appointment list



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## Recommendations

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## Creation of a Legal Representation Task Force

### Charge to the Task Force

- The Task Force on Court-Appointed Legal Representation should be charged with making specific recommendations regarding the creation, implementation, and evaluation of a high-functioning, high-quality legal representation system with the necessary and appropriate oversight and accountability. This legal representation system should include consideration of necessary powers, duties, access to information, policy, legislative, and practice changes.



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## Action Steps for Judges



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## Actions Steps

Ask attorneys when and where they last met with their clients.

Provide an information sheet on the attorney-client relationship.

Publicize the method to request new representation or express concerns about an attorney.

Require documentation of attorney training hours.



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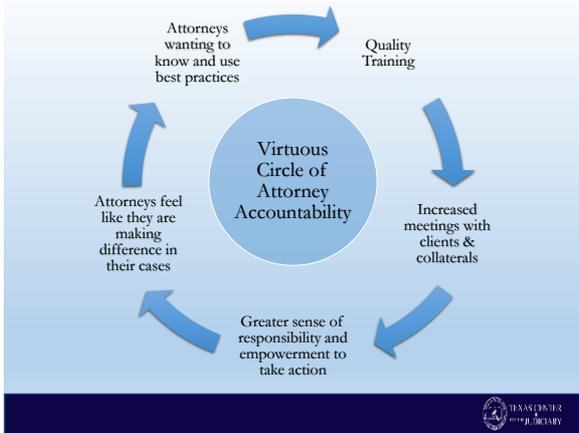
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**Questions**

**Judge Carlos Villalon**  
[Carlos.Villalon@txcourts.gov](mailto:Carlos.Villalon@txcourts.gov)

**Dylan Moench**  
[Dylan.Moench@txcourts.gov](mailto:Dylan.Moench@txcourts.gov)

TEXAS CENTER FOR JUDICIARY

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