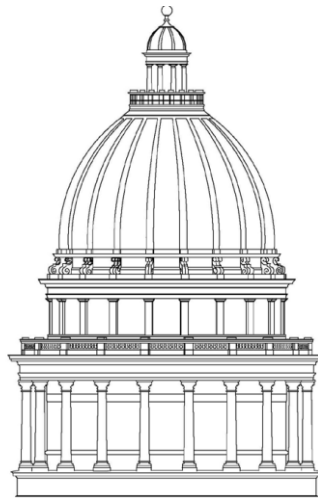


REPORT TO THE  
**UTAH LEGISLATURE**

Number 2019-08



**A Performance Audit of Child  
Welfare During Divorce Proceedings**

August 20, 2019

Office of the  
LEGISLATIVE AUDITOR GENERAL  
State of Utah





STATE OF UTAH

# Office of the Legislative Auditor General

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KADE R. MINCHEY, CIA, CFE  
AUDITOR GENERAL

August 20, 2019

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of Child Welfare During Divorce Proceedings** (Report #2019-08). A digest is found on the blue pages located at the front of the report. The Audit Scope and Objectives are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

A handwritten signature in black ink that reads "Kade minchey". The signature is written in a cursive, slightly slanted style.

Kade R. Minchey, CIA, CFE  
Auditor General



# **Digest of A Performance Audit of Child Welfare During Divorce Proceedings**

The mission of the Utah Judiciary is to “provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.” For many American families, divorce is a key entry point into the Judicial system. When divorce involves children, statute establishes rights and responsibilities for the divorcing parents and protects the best interests of children throughout the divorce process. Child protections during divorce are secured through the coordinated efforts of several state agencies, including Utah’s district and juvenile courts, the Attorney General’s Office, the Office of the Guardian ad Litem (GAL), and the Division of Child and Family Services (DCFS).

We were asked to examine the processes for protecting children involved in divorce cases that include allegations of abuse and neglect as well as visitation and custody disputes. We found that high-conflict, child-welfare-involved divorce cases are infrequent. However, statute requires protections for the children involved in these cases. To deliver these protections and reduce the harm inflicted on children by divorce, enhancing the efficiency of court operations while simultaneously improving outcomes for divorcing families is critical. Therefore, in addition to reviewing the adequacy of existing child protections, we also reviewed the need for enhanced efficiencies in case processing and validated court personnel training and oversight.

## **Chapter II Child Protections Appear Reasonable, Triage May Further Improve Protections**

**Appropriate Child Welfare Controls Are in Place to Protect Children During Divorce.** Divorce cases that involve children and include allegations of abuse and neglect are infrequent. In the past five years, only 1 percent of divorce cases involving children had a documented child welfare concern. Although these cases are infrequent, appropriate controls must be in place to protect the health and safety of the children involved. To document these controls, we reviewed *Utah Code* and Utah Court Rules and analyzed 10 cases to ensure appropriate controls and child protections were in place. We also interviewed many child welfare experts across many organizations to make sure that we had not overlooked any potential problems with Utah’s existing child welfare system. Collectively, this review led us to conclude that the existing system has sufficient controls in place to protect children during divorce. Although to enhance controls, it may be beneficial to require a DCFS referral prior to filing a child protective order in district court.

**Triage of Divorce Cases Could Further Enhance Child Protections.** We were asked to compare divorce time frames for a typical divorce with those for a divorce involving child welfare concerns. We found that the presence of child disputes in divorce proceedings drastically increases the time to disposition. The courts have independently reported this concern and made recommendations for improvement, such as triaging cases for enhanced efficiencies. When cases are triaged, they are assigned to a particular track based on their complexity. Triage holds promise for allocating limited court resources across cases more efficiently and effectively, as demonstrated in other states. A form of triage was piloted by the Second Judicial District over a decade ago and was effective at reducing disposition times. An updated triage is currently being used in a pilot program in Utah's Fourth and Seventh Judicial Districts with preliminary data showing promising results. We recommend moving forward with triage to enhance efficiencies.

### **Chapter III**

## **Training Requirements Vary by Expert, Special Masters' Role Needs Clarification**

**Child Welfare Experts Vary in Training Requirements and Court Oversight.** We reviewed compliance with training requirements for experts involved in district and juvenile court proceedings and learned that the requirements and oversight body vary by specialist. Court-affiliated personnel such as judges, commissioners, and GALs have specific training requirements and court oversight. We were able to document with relative ease that judges and commissioners met their annual training requirement. While it was more difficult to validate if GALs were meeting their annual training requirements, we found they were in compliance after reviewing multiple documents. In addition, child welfare experts such as special masters, custody evaluators, parenting coordinators, and visitation supervisors have varied training requirements and oversight bodies depending on their professional affiliation. Therefore, we could not easily validate if these entities have met and are meeting their annual training requirements. Given the important role these entities play in child welfare and divorce proceedings, we recommend that the courts provide additional oversight of these entities.

**Special Masters' Role Needs Clarification.** Special masters are lacking in oversight, guidance, and training requirements. Specifically, we found the following: The use and powers of special masters are unclear. There are no specific training requirements or minimum qualifications to act as a special master. There is no detailed tracking of special masters. We reviewed court rules for special masters and found they do not include specific training requirements, nor do they provide adequate guidance for judicial use. This lack of clarity was evident in interviews with those familiar with special masters, who reported inconsistencies in their use. Collectively, these interviews revealed that there is no consensus surrounding special masters' appointment and use. We recommend the Judicial Council adopt, in full or in part, ABA Guidelines for use of special masters in domestic cases.

# REPORT TO THE UTAH LEGISLATURE

Report No. 2019-08

## **A Performance Audit of Child Welfare During Divorce Proceedings**

August 2019

### Audit Performed By:

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# Chapter I

## Introduction

The mission of the Utah Judiciary is to “provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.” For many American families, divorce is a key entry point into the Judicial system. When divorce involves children, statute establishes rights and responsibilities for the divorcing parents and protects the best interests of children throughout the divorce process.<sup>1</sup> Child protections during divorce are secured through the coordinated efforts of several state agencies, including Utah’s district and juvenile courts, the Attorney General’s Office, the Office of the Guardian ad Litem (GAL), and the Division of Child and Family Services (DCFS).

We were asked to examine the processes for protecting children involved in divorce cases that include allegations of abuse and neglect as well as visitation and custody disputes. We found that high-conflict, child-welfare-involved divorce cases are infrequent. However, statute requires protections for the children involved in these cases. To deliver these protections and reduce the harm inflicted on children by divorce, enhancing the efficiency of court operations while simultaneously improving outcomes for divorcing families is critical. Therefore, in addition to reviewing the adequacy of existing child protections, we also reviewed the need for enhanced efficiencies in case processing and validated court personnel training and oversight.

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**We were asked to examine the processes for protecting children involved in divorce cases that include allegations of abuse and neglect.**

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### High-Conflict, Child-Welfare-Involved Divorce Cases Are Rare

Cases involving divorcing parents with child welfare concerns are among the most complex and sensitive matters that courts hear. Cases involving child visitation disputes, custody disputes, and allegations of abuse and neglect require significant court resources in order to identify and protect the best interests of children and make appropriate

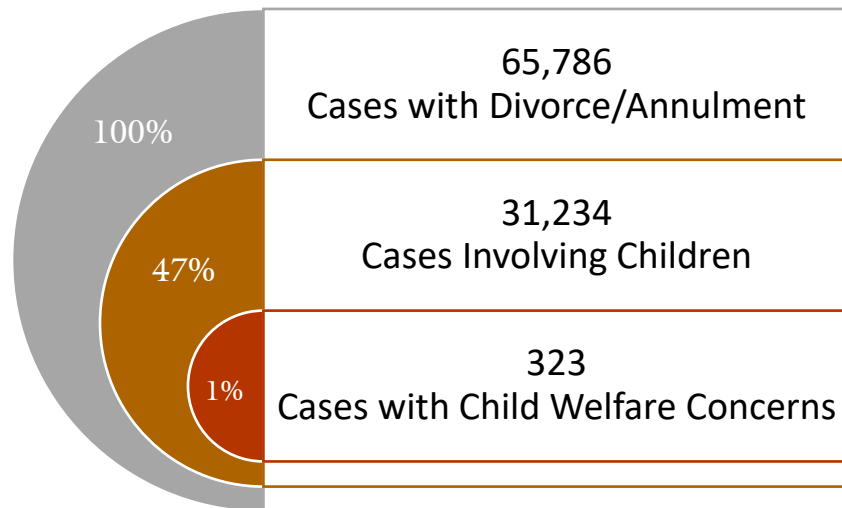
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<sup>1</sup> According to the Children’s Bureau, the term “best interests of the child,” does not have a standard definition but, “generally refers to the deliberation that courts undertake when deciding what type of services, actions, and orders will best serve a child as well as who is best suited to take care of a child. . .with the child’s ultimate safety and well-being the paramount concern.”

information available to judicial decision makers. Fortunately, these cases are rare. We found relatively few divorce cases involving child welfare concerns, as shown in Figure 1.1.<sup>2</sup>

In district court, a GAL may be appointed to represent minors when allegations of abuse and neglect are present or when there are custody disputes. The presence of a GAL is one of the only ways we could track the presence of a child welfare concern in the courts' database system. Therefore, it is possible that additional high-conflict divorce cases involving children have not been captured in our data.

**Figures 1.1 Few Divorce Cases Involve Child Welfare Concerns.** During the last five years, only 1 percent of all divorce cases involving children also involved child welfare concerns.



Source: Administrative Office of the Courts data for all divorce cases from 2014 to 2018.

In the last five years, Utah courts processed nearly 66,000 divorce cases. Just under half of these cases involved children and only a small fraction of these cases—1 percent—included child welfare concerns.

Although there are relatively few divorce cases involving child welfare concerns, statute requires protection of the children in these cases. The “best interests of the child” is the definitive standard used to

**Although there are relatively few divorce cases involving child welfare concerns, statute requires protection of the children in these cases.**

<sup>2</sup> Divorce cases with child welfare concerns were identified by the presence of a GAL attorney, which is tracked in Utah Courts database, CORIS.

resolve child disputes in divorce and parenting proceedings.<sup>3</sup> This standard, in addition to other factors set forth in statute, is used by judicial decision makers in determining parent time and child custody arrangements. Because protecting children is paramount, we reviewed court data, documented statutory protections, reviewed case files for systematic concerns, interviewed many specialists within Utah's child welfare system, and reviewed best practices in other states. These activities helped us identify if existing child protections are adequate. This review, however, would not be complete without an understanding of changing needs of divorcing families and how this change is driving innovation across courtrooms.

Over the last few decades, the characteristics of divorce cases have changed rapidly. A variety of factors have led to increased case complexity, including a significant increase in the number of self-represented parties and more high-conflict and highly contested divorces. These changes have been met with new, innovative practices such as mandatory alternative dispute resolution (i.e., mediation), mandatory divorcing parent education, the Online Court Assistance Program (OCAP), and the Divorce Education for Children program, as well as a number of new court specialists available to aid judges in their decision-making processes. We credit the courts for responding to the changing needs of divorcing families with innovative practices and anticipate that they will continue to enhance child protections and improve court operations through additional efficiencies, as recommended in this audit.

## Audit Scope and Objectives

We were asked in the audit request to review “possible systemic mishandling” of child welfare cases amid divorce proceedings. Specifically, the audit request asked us to determine if the institutions charged with protecting the interests of children whose parents are undergoing divorce are adequate. Based on the audit request, we focused our scope on both district court divorce proceedings and the

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**A variety of factors have led to increased divorce case complexity including a significant increase in the number of self-represented parties.**

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**We were asked to determine if the institutions charged with protecting the interests of children whose parents are undergoing divorce are adequate.**

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<sup>3</sup> *Utah Code* 30-3-10 provides that the court will consider the best interests of the child without “preference for either parent solely because of the gender of the parent . . . .”

surrounding institutions that protect children whose parents are divorcing.

In addition to the overarching audit request, we were also asked nine questions that related specifically to child welfare. After performing a risk assessment, we determined that two questions could not be answered due to insufficient data. Two additional questions only received a limited review. We performed a more in-depth review on the remaining five questions, which are discussed in the following chapters:

- Chapter II reviews the courts' capacity to protect children involved in divorce proceedings and documents the need for enhanced efficiencies for divorce case processing.
- Chapter III reviews the adequacy of court staff training and the role of special masters in court proceedings.

The following section addresses the two limited-review questions. These questions appear here because they are largely informational and did not result in an audit recommendation but are important topics for discussion.

### **Parental Alienation and Domestic Violence Factor into Judicial Decision Making**

#### **Parental Alienation Is Sometimes Used in Court Decisions.**

The audit request asked us to review the extent to which Parental Alienation Syndrome (PAS) is used in determining abuse and neglect allegations. Parental Alienation Syndrome is a controversial term invoked in cases involving child custody disputes. The idea is that one parent falsely alleges domestic violence or child abuse in order to "alienate" the child from the other parent and obtain a child custody or visitation advantage. This parent may try to influence a child to believe untrue claims about the other parent. The main critique of PAS is that a child's behavior and attitude toward the "alienated" parent are based on false allegations, making allegations that are valid difficult to prove. Our literature review indicated that PAS has been rejected multiple times for inclusion in the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association because it lacks a scientific basis. It has also been rejected by the legal community for not being evidence based and, therefore, is not

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**Parental Alienation Syndrome has been rejected by the legal community for not being evidence based.**

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admissible in court. While not admissible in court, we found, PAS is occasionally used in district court decisions.

We reached out to a limited sample of district court judges and commissioners to determine whether PAS is used in Utah's courts. The majority reported that they do not use PAS in weighing child abuse and neglect determinations, although some judges reported factoring PAS into their judicial decision making. We do not draw any conclusions from this finding, as our review was limited, but we discuss PAS and the following topic for informational purposes only.

**Domestic Violence Co-Occurs with and Compounds Child Maltreatment.** Exposure to domestic violence is a significant risk factor for child maltreatment, with co-occurrence rates ranging between 30 and 60 percent. Children exposed to domestic violence, for example, have higher rates of health problems owing in part to the impact that a stressful environment has on young, developing brains. A parent who is a victim of domestic violence is also faced with a number of challenges that impact a child's safety, such as where to find housing, money, child care, and access to legal services.

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**Domestic violence exposure is a significant risk factor for child maltreatment, with co-occurrence rates ranging between 30 and 60 percent.**

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We were asked to examine if a parent who is a victim of domestic violence has adequate resources to provide court-ordered parent time. Because this is an area of significant impact to parents and children alike that extends beyond the scope of our audit, we were unable to adequately address this question. We documented, however, that there are resources available to victims of domestic violence. According to the domestic violence program coordinator for the courts, free legal services are available to victims of domestic violence. There are also locations where children can be safely exchanged between parents. We also found that while training on domestic violence is available to court personnel, it is not mandatory (as discussed in Chapter III). Policy makers and child welfare experts may benefit from additional tools and resources on the National Center for State Courts website on domestic violence.<sup>4</sup>

We believe the courts could benefit from additional initiatives, such as triaging divorce cases by level of complexity and ensuring

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<sup>4</sup> More information on domestic violence is available at:  
<https://www.ncsc.org/Topics/Children-Families-and-Elders/Domestic-Violence/Resource-Guide.aspx>

court specialists have clear guidance and oversight, as discussed in the remaining chapters of this report. These initiatives, and others, could help address new challenges facing the courts and maintain efficient and effective court operations.



## Chapter II

# Child Protections Appear Reasonable, Triage May Further Improve Protections

One concern raised in the audit request was whether the safeguards entrusted to protect children during the divorce process are sufficient. To address this concern, we performed the following tasks:

- A statute review, which revealed many controls designed to protect both the interests of children and the rights of parents.
- A limited analysis of 10 cases involving child abuse and neglect allegations, which demonstrated, in these cases, that the district courts are exercising these controls.
- Interviews of key child welfare experts from a variety of organizations to determine if additional child protections are needed. These experts reported that the existing system appears to be working effectively to protect children.

In a related review of divorce time frames, we found that cases with child welfare or custody disputes, which resulted in the appointment of a guardian ad litem (GAL) or custody evaluation, significantly delays divorce time frames. The courts have also documented this pattern; they recommend that custody evaluation be used judiciously and that all divorce cases be triaged in a way that allows for efficient and effective case processing. Triage is a form of case management that assigns cases to a particular track based on complexity. We support the courts' recommendation for both limited use of custody evaluations as well as the study and expansion of triage statewide.

### Appropriate Controls Are in Place To Protect Children During Divorce

Divorce cases that involve children and include allegations of abuse and neglect are infrequent. In the past five years, only 1 percent of divorce cases involving children had a documented child welfare concern. Although these cases are infrequent, appropriate controls must be in place to protect the health and safety of the children involved. To document these controls, we reviewed *Utah Code* and Utah Court Rules and analyzed 10 cases to ensure appropriate

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**Only 1 percent of all divorce cases involving children in the last five years had a documented child welfare concern.**

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**We documented a number of statutory child protections designed to protect children throughout the divorce process.**

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controls and child protections were in place. We also interviewed many child welfare experts across many organizations to make sure that we had not overlooked any potential problems with Utah's existing child welfare system. Collectively, this review led us to conclude that the existing system has sufficient controls in place to protect children during divorce. Although to enhance controls, it may be beneficial to require a DCFS referral prior to filing a child protective order in district court.

### **Statute Is Designed to Balance the Protections of Children with the Protections of Parental Rights**

We documented several statutory provisions that protect children throughout the divorce process while also recognizing the fundamental constitutional rights of parents to care for and manage their children.<sup>5</sup> These provisions are designed to protect children in the least intrusive and least restrictive way possible. For example, one case we reviewed involved children removed from a home who were later reunited with their father after a safety plan was made and child protections were secured. Statutory protections include the following:

- Individuals have a duty to report child abuse and neglect to the Division of Child and Family Services (DCFS) when they observe abuse or neglect or have reason to believe these offenses are occurring.
- Once an allegation is received, it is DCFS' statutory responsibility to 1) receive the referral and 2) determine whether the allegations are supported after an investigation is performed.
- The district court may appoint a private GAL to represent the best interests of the minor. When families cannot afford to pay for this, a pro bono private GAL or a publicly funded GAL may be assigned.

Additionally, the Child Protection Division of the AG's office has a team of experienced child abuse prosecutors and assistants who strive to protect children in imminent danger of abuse and neglect. DCFS works with the AG to open a juvenile court case on behalf of a child

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<sup>5</sup> Utah Code 62A-4a-201 states, "a parent possesses a fundamental liberty interest in the care, custody, and management of the parent's children."

when a DCFS referral is supported and court oversight is needed to protect the child.

Most supported referrals, however, never result in court involvement. There are a variety of reasons for this. Court oversight may be deemed unnecessary because it is determined that the child is protected, or sufficient evidence may be lacking. Moreover, the legal standard for DCFS to support an allegation is less than the legal standard of proof required of the AG's office to file a petition in the juvenile court. In situations where a juvenile court case is not opened, DCFS may provide alternative services, such as a referral to community programs or the development of a child safety plan.

Our review of statute and rule indicates that the child welfare system has been carefully designed to protect children. We were asked, however, to review whether district courts, specifically, are protecting children. We were given five cases to review that purportedly documented inadequate child protections. Our case file review findings are included in the following section.

### **Reviewed Cases Indicate Child Welfare Agencies Are Following Appropriate Steps in Protecting Children**

To review that appropriate child welfare controls are in place, we reviewed 10 divorce cases involving children with child welfare concerns. Because we do not typically audit outcomes of individual cases and do not want to second-guess judicial discretion, we focused our review on the court *process* which, according to relevant stakeholders, is designed to protect children.

Our sample included five cases provided to us, which were the impetus for this audit, and an additional five randomly selected cases involving divorce and child welfare concerns. We then validated these 10 cases against the courts' existing process, shown in Figure 2.1, to ensure each case had the appropriate controls and child protections in place.

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**Most supported DCFS referrals never result in court involvement.**

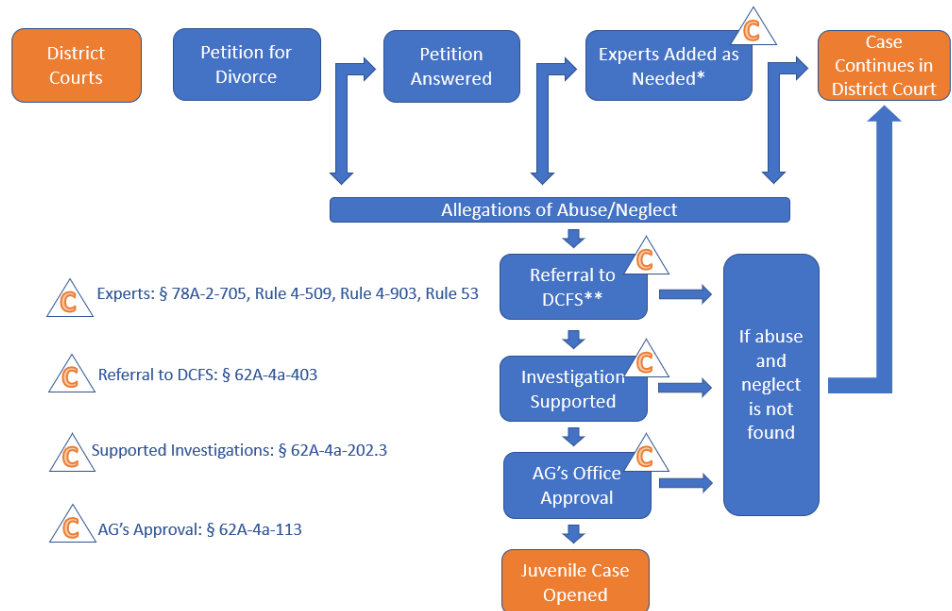
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**Our review of statute and rule indicates that the child welfare system has been carefully designed to protect children.**

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**Figure 2.1 Divorce Process from District Court to Juvenile Court When Abuse and Neglect Are Present.** When allegations of abuse or neglect arise during the divorce process, controls are in place to protect the welfare of children as the divorce proceeds through district court. Statutory controls are indicated by the .



Source: Office of the Legislative Auditor General, based on Administrative Office of the Courts interviews and statutory review.

\*Experts include a guardian ad litem, a custody evaluator, a parent coordinator, and a special master.

\*\*Anyone who suspects that child abuse or neglect is occurring has a responsibility to contact the Division of Child and Family Services.

Figure 2.1 illustrates the divorce process when allegations of abuse and neglect are present. This figure represents those cases that have supported findings of abuse and neglect, resulting in juvenile court involvement. Most district court cases will not move through the entire process.

As the figure shows, an allegation is referred to DCFS, which responds with a child protective service investigation that determines if the allegation is supported. All supported allegations must meet the statutory definition of abuse and neglect. For a case as to be opened in juvenile court, the AG's office must establish that there is sufficient evidence. The juvenile courts are well prepared to address child welfare concerns, as they have judges and specialists who receive extensive

**All supported allegations must meet the statutory definition of abuse and neglect.**

training and experience with child welfare. Safety plans, as well as child and family teaming are common practices in juvenile courts.<sup>6</sup>

Because the juvenile courts are very equipped to handle child welfare cases, our focus was on child protections at the district court level. After reviewing the 10 cases, we found that all cases followed the process outlined in Figure 2.1. While we could not definitively prove all children in these cases were protected, our review demonstrated that essential controls are in place and the system is designed to protect children.

### **Child Welfare Experts Report Existing Process Has Functioning Controls for Protecting Children**

To supplement our case file review, we interviewed key child welfare experts across institutions to identify if there were control weaknesses in the existing system that we missed. We interviewed stakeholders from DCFS, the Administrative Office of the Courts (AOC), the juvenile courts, the Child Protection Division of the AG's office, and the GAL's office. Despite concerns raised that provided the basis for this audit, all key stakeholders reported that the current system has functioning controls to protect children.

The audit request letter raised the concern that children whose parents are divorcing are treated differently than their peers in the child welfare system who are not involved in the divorce process. The experts we spoke to did not report that this was a valid concern. In contrast, DCFS' director stated that all children, regardless of the presence of divorcing parents, are treated with the same child protective service protocols. There was, however, one discrepancy in practice between juvenile and district courts in instances of child protective orders that warrants AOC's review.

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**Our review demonstrated that essential controls are in place and the system is designed to protect children.**

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<sup>6</sup> Teaming includes children and their families who convene with child welfare experts staffed to their case to achieve the goal of safety, permanency, and well-being.

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**A DCFS referral is not required when a standard protective order is requested in district court.**

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### **When a Protective Order Involves a Child in District Courts, a DCFS Referral Should Be Considered**

When a child is being abused or is in imminent danger of being abused, a **child protective order** may be filed on behalf of the child. To do so, a DCFS referral must first be made. A DCFS referral is not required when a **standard protective order** is requested in district court, even if the order involves children. This is because the document used in district courts refers to protective orders in general and not specifically to child protective orders. We recommend that DCFS work with the Court's Standing Committee on Children and Family Law and eventually the Judicial Council to review this difference in practice and determine if a change is warranted.

Long delays in case processing time frames were also raised as a concern by several experts. This particular concern is the focus of the following section.

### **Triage of Divorce Cases Could Further Enhance Child Protections**

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**We found that the presence of child disputes in divorce proceedings drastically increases the time to disposition.**

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We were asked to compare divorce time frames for a typical divorce with those for a divorce involving child welfare concerns. We found that the presence of child disputes in divorce proceedings drastically increases the time to disposition. The courts have independently reported this concern and made recommendations for improvement, such as triaging cases for enhanced efficiencies. When cases are triaged, they are assigned to a particular track based on their complexity. Triage holds promise for allocating limited court resources across cases more efficiently and effectively, as demonstrated in other states. A form of triage was piloted by the Second Judicial District over a decade ago and was effective at reducing disposition times. An updated triage is currently being used in a pilot program in Utah's Fourth and Seventh Judicial Districts with preliminary data showing promising results. We recommend moving forward with triage to enhance efficiencies.

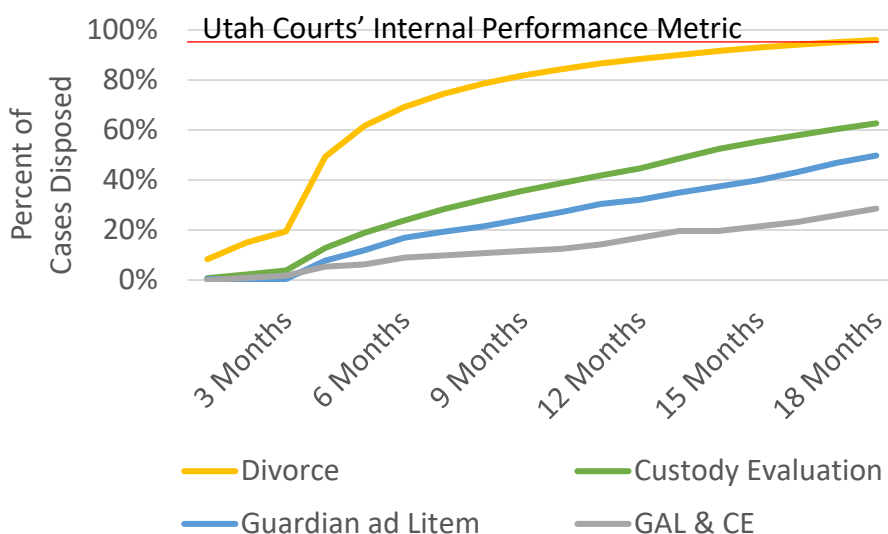
## Disputes over Children Significantly Extend Divorce Time Frames

The average divorce in Utah takes six months from filing date to disposition. Not surprisingly, increased complexity extends time frames:

- A custody evaluation extends time to disposition by 10 months on average, for a total of 16 months.
- Involving a GAL, which indicates the presence of a child welfare concern, extends time to disposition on average by 16 months, for a total of 22 months.
- When both a GAL and a custody evaluation are present, the time to disposition is lengthened by 20 months, for a total of 26 months.

Figure 2.2 demonstrates a significant increase in divorce time frames when there is a child welfare concern, as indicated by the appointment of a GAL or the ordering of a custody evaluation.

**Figure 2.2 A Comparison of Divorce Time Frames with a Guardian ad Litem or Custody Evaluation (CE) over Five Years.** In cases involving conflict over children, as indicated by the presence of a GAL or custody evaluation, time frames are significantly extended.



Source: Raw data from Administrative Office of the Courts, analysis performed and graphic generated by the Office of the Legislative Auditor General. Note: Data was used from 2014 to 2018.

When both a GAL and a custody evaluation are present, which are indicators of case complexity, the time to disposition is lengthened by 20 months, for a total of 26 months.

The standard set by the courts is 95 percent of divorce cases disposed within 18 months, as shown by the red line.

As shown in Figure 2.2, divorce cases meet the standard set by the courts—95 percent of cases disposed within 18 months—as shown by the red line. Cases involving a GAL or custody evaluation are not included in this calculation. When a custody evaluation is ordered, only 63 percent of cases meet the standard. Only 50 percent of cases meet the standard when a GAL is assigned. The inclusion of both a custody evaluation and a GAL results in only 29 percent of cases being completed within 18 months.

### **The Courts Are Aware that Custody Evaluations Extend Divorce Time Frames**

We discussed divorce time frames with court administrators, who were not surprised by our findings. In fact, in 2017, the Committee on Children and Family Law released a report to the Judicial Council regarding domestic case processing.<sup>7</sup> The report concluded that “The process of getting a final order in a domestic case takes too long, costs too much money, and is too complicated.” In particular, the report found that “cases in which custody is disputed take the longest and cost the most.”

One reason for this is that custody evaluations are ordered too frequently and are inappropriate in most circumstances. The report, which was adopted by the Judicial Council, recommended that custody disputes be triaged based on the nature of the dispute and occur only at the request of the parties or when warranted by extraordinary circumstances. Under the triage model, unrequested custody evaluation orders would become the rare exception rather than the rule. We support the courts’ recommendation to limit custody evaluations. While helpful, this change alone will not achieve faster divorce resolutions and better outcomes. The courts need to expand the practice of triaging all cases statewide to improve case processing efficiencies and family outcomes.

### **Triage Could Help the Divorce Process Be More Efficient While Also Promoting Positive Family Outcomes**

Utah’s single-track case processing may not be optimizing courts’ and parties’ time and resources, since each case is subject to the same linear and tiered process. For example, in some districts, parties are

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**In 2017, Utah Courts released a report that found “cases in which custody is disputed take the longest and cost the most.”**

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**We support the courts’ recommendation to order custody evaluations at the request of the parties or when extraordinary circumstances warrant it.**

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<sup>7</sup> Domestic Case Process Improvement Subcommittee. Jun 26, 2017.



required to see a commissioner before their case can be heard by a judge. In contrast, some states utilize triage, which is a way of more efficiently and effectively processing cases by assigning each case to the appropriate track based on its unique characteristics. These characteristics are identified early in the case based on validated factors such as length of marriage or separation, marital property and debt, and age of children. The case is then assigned to one of three tracks:

Track 1: Cases with straightforward issues (the majority of cases), which can be fast-tracked directly to trial

Track 2: Cases involving complex issues requiring extraordinary discovery, which will be sent to pretrial

Track 3: Cases involving custody disputes, which will be sent to pretrial or a custody evaluation settlement conference

While most cases are uncontested and can be fast-tracked and quickly resolved, heavily contested divorce cases involving custody disputes or child welfare concerns are understandably more complicated, requiring more experts and services and, consequently, more resolution time. The overarching goal of triage is to provide the best results for the family by assigning the appropriate amount and type of case management; the primary focus is not on achieving shorter disposition times. Our expectation, however, is that triage will cause a net decrease in the average divorce time frame.

Triage is beneficial to divorcing families with child welfare concerns because it can provide the appropriate resources at the right time, resulting in better outcomes and reduced family conflict. While research indicates that most divorcing couples will move beyond their conflict in two or three years, as many as one-third of divorcing couples will have heightened conflict over their children for many years. This conflict has significant implications for child outcomes, families, and court systems.

Numerous courts, including those in Alaska, Miami, Florida, Colorado, and Connecticut have developed domestic relations triage processes. Some of these courts have demonstrated efficiency gains since the adoption of triage. For example, Alaska's Early Resolution Program (ERP), which employs triage, found favorable outcomes for triaged cases when compared with traditional, single-track cases. These

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**Triage is a more efficient and effective way of processing cases by assigning each case to the appropriate track based on its unique characteristics.**

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**Alaska's Early Resolution Program found favorable outcomes for triaged cases when compared with traditional, single-track cases.**

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**Preliminary data shows promising results in all three Utah triage study sites.**

outcomes include faster times to disposition, lower cost per case, and fewer post-decree modifications.

Utah's Second Judicial District has been utilizing a domestic case management program, which is a form of triage, for over a decade. This program has shown that triage has reduced disposition times by 47 days according to court reported data (from 2007 to 2018).

More recently, the Fourth and Seventh Judicial Districts have piloted an updated triage program, also called the Domestic Case Manager Program. Notably, these programs have case managers who move cases along efficiently. Preliminary data shows promising results in both sites.

**Figure 2.3 Results of Triage Pilot Projects in the Fourth and Seventh Judicial Districts.** Preliminary data shows promising results for both triage pilot sites.



### 4th District Pilot

- 1% more cases disposed
- 46 fewer days to disposition

### 7th District Pilot

- 4% more cases disposed
- 38 fewer days to disposition



*Source: Data from Administrative Office of the Courts. Note: Comparison data was taken from July 1<sup>st</sup>, 2017 to December 31<sup>st</sup>, 2017 and July 1<sup>st</sup>, 2018 to December 31<sup>st</sup>, 2018.*

Once the courts have had the opportunity to study the pilot program, we support the expansion of the program to additional districts if it proves beneficial at improving family outcomes and reducing divorce disposition lengths. To ensure efficiency gains are lasting and quality is not impacted, the courts may want to consider tracking the number of cases that are reopened (i.e., post-decree modifications) following a case closure as an added outcome metric to their pilot program. The courts may also want to consider measuring the age of active pending cases as Colorado does, to identify stalled cases in need of court intervention.

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**As an added outcome metric on their triage pilot program, the courts may want to consider tracking the number of cases that are reopened following a case closure.**

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In summary, the current child welfare system entrusted to protect children is working. By reviewing statute and rule, examining cases, and interviewing multiple child welfare experts, we believe appropriate controls are in place to protect children. However, we also found that divorce time frames are significantly extended by child welfare and/or custody concerns, as indicated by the presence of a GAL or a custody evaluation. To address this concern, we agree with the courts' own internal assessment that custody evaluations should be used sparingly and that each case should be assigned an appropriate track according to its unique characteristics. This will require the courts to expand the triage program in additional judicial districts.

## **Recommendations**

1. We recommend that the Division of Child and Family Services work with the Court's Standing Committee on Children and Family Law and eventually the Judicial Council to review whether it would be beneficial to require a referral to the Division of Child and Family Services when a standard protective order involving children is requested in district court.
2. We recommend that the Judicial Council amend Utah Court Rule to allow for custody evaluations to be ordered only at the request of the parties or when extraordinary circumstances warrant it in accordance with the Domestic Case Processing Improvement Subcommittee's recommendation.
3. We recommend that the Administrative Office of the Courts in consultation with the Court's Standing Committee on Children and Family Law and eventually the Judicial Council study the

outcomes of their triage pilot sites and if the data demonstrates that triage is effective at reducing divorce disposition lengths and improving family outcomes, expand the program to other districts.

## **Chapter III**

### **Training Requirements Vary by Expert, Special Masters' Role Needs Clarification**

We were asked to determine if court personnel and child welfare experts in divorce cases receive adequate training, specifically on child abuse and neglect, as well as domestic violence. We found wide variation in training requirements based on the specialists used and their professional affiliations. Court personnel such as judges, commissioners and Guardians ad Litem (GALs) have specialized training requirements and court oversight. We were able to document that they comply with annual training requirements. Public and private GALs, as well as juvenile court judges, are the only court personnel required to have specific abuse and neglect training. While not mandatory, all court personnel and child welfare experts can choose to receive specific child abuse and neglect training as well as domestic violence training.

In contrast, it was difficult for us to evaluate if child welfare experts who are added to cases when conflict between parents escalates, such as custody evaluators, parent coordinators, and special masters, are meeting their annual training requirements.

Because child welfare experts impact families undergoing divorce, especially when child abuse and neglect allegations are present, appropriate court oversight of these experts is critical. We found court oversight of experts inconsistent and recommend that it be enhanced for some child welfare specialists. We further recommend that the courts adopt guidelines for the use of special masters as recommended by the American Bar Association (ABA), to establish consistent procedures for their appointment and use.

#### **Child Welfare Experts Vary in Training Requirements and Court Oversight**

We reviewed compliance with training requirements for experts involved in district and juvenile court proceedings and learned that the requirements and oversight body vary by specialist. Court-affiliated personnel such as judges, commissioners, and GALs have specific training requirements and court oversight. We were able to document

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**We were asked to determine if court personnel and child welfare experts in divorce cases receive adequate training.**

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**We had difficulty determining if guardians ad litem are meeting their annual training requirement because it is unclear and not systematically tracked.**

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with relative ease that judges and commissioners met their annual training requirement. We initially had difficulty determining if GALs were meeting their annual training requirement because the requirement is unclear and is in need of being tracked more systematically. Ultimately, we were able to validate that their annual training requirements were met through compiling multiple documents. In addition, child welfare experts such as special masters, custody evaluators, parenting coordinators, and visitation supervisors have varied training requirements and oversight bodies depending on their professional affiliation. Therefore, we could not easily validate if these entities have met and are meeting their annual training requirements. Given the important role these entities play in child welfare and divorce proceedings, we recommend that the courts provide additional oversight of these entities.

### **Court Personnel Largely Comply with Annual Training Requirements**

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**We validated that court judges and commissioners comply with annual training requirements.**

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All juvenile and district court judges and commissioners are required to receive at least 30 hours of annual training. These training hours include the Utah State Bar's biennial requirement of 24. We validated that court judges and commissioners satisfied their annual training requirements. While we received documentation on individual training events for GALs, we had difficulty determining if they are meeting their annual training requirements because the requirement is unclear and is in need of being tracked more systematically. However, annual training, specifically child welfare training, is occurring. Figure 3.1 shows an overview of compliance with annual continuing legal education (CLE) requirements of typical court staff.

**Figure 3.1 Annual Continuing Legal Education Requirements for Typical Court Participants. While offered, specific training on child welfare and domestic violence is not required for judges and commissioners in district courts.**

	Public Guardian ad Litem	Private Guardian ad Litem	District Court Judges & Commissioners	Juvenile Court Judges
Annual Training Requirement (Hours)	20	12	30	30
Annual Training Requirement Fulfilled?	Yes	Yes	Yes	Yes
Child Abuse and Neglect Training Required?	Yes	Yes	Offered/Not Required	Yes
Domestic Violence Training Required?	Offered/Not Required	Offered/Not Required	Offered/Not Required	Offered/Not Required

Source: Office of the Guardian ad Litem and Administrative Office of the Courts

Note: The Office of the Guardian ad Litem reported requiring approximately 20 hours of training annually for public GALs; private GALs are only required to fulfill their annual 12 hours of training to comply with Utah State Bar requirements, three of which must be child-welfare specific.

As child welfare specialists, juvenile court GALs and judges receive extensive child abuse and neglect training. We discussed training requirements with the courts' education director and found that the courts provide ongoing abuse and neglect training opportunities to all juvenile court judges. While training on topics related to child welfare is not mandatory for district court judges and commissioners, they too are offered this type of training. Interestingly, 62 percent of district court judges reported having three or more years of experience with family law prior to being appointed as a judge. In the next section, we review the training and oversight of child welfare experts.

### Child Welfare Experts Need Additional Court Oversight

When a divorce case involving children has an elevated level of complexity or conflict, child welfare experts are added to the case to help address the underlying concerns. Each of these experts plays an important role in bringing about resolution to complicated child welfare cases. Child welfare experts hold the following positions:

- **Public and Private Guardians ad Litem**—Attorneys appointed to represent the best interests of children and teens in cases of alleged abuse, neglect, and dependency.
- **Special Masters**—Quasi-judicial officers appointed by the courts who are given limited powers to manage parenting disputes such as child custody, visitation or parent time, and

**While not mandatory in district court, child abuse and neglect training is provided to all judges and commissioners.**

**Child welfare experts play an important role in bringing about resolution to complicated child welfare cases.**

child support. Special masters will be discussed at greater length later in this chapter.

- **Parent Coordinators**—Licensed individuals appointed to assist parties in resolving conflicts about parenting issues.
- **Custody Evaluators**—Licensed individuals appointed to conduct an impartial evaluation of the respective parties.
- **Visitation Supervisors**—Volunteers or agencies that oversee parental visitation and/or transportation of children.

We reviewed the training requirements for these staff and found variation in their annual training requirements, as shown in Figure 3.2.

**Figure 3.2 Annual Continuing Education Requirements of Child Welfare Experts by Professional License.** Parent coordinators, custody evaluators, and special masters vary in training requirements based on their professional affiliations.

	Board Certified Psychiatrist	Licensed Marriage and Family Therapist	Licensed Clinical Social Worker
Annual CLE Requirement	20	20	20
	Parent Coordinator Custody Evaluator	Parent Coordinator Custody Evaluator	Parent Coordinator Custody Evaluator
	Licensed Psychologist	Attorney	Volunteer
Annual CLE Requirement	24	12	N/A
	Parent Coordinator Custody Evaluator Special Master*	Guardian ad Litem Special Master*	Visitation Supervisor

*\* Special masters are not required to be attorneys or licensed psychologists. However, it was reported to us that the majority of special masters are attorneys or licensed psychologists.*

Child welfare experts vary in annual training requirements based on their professional affiliations. For example, a parent coordinator who is a licensed psychologist requires 24 annual training hours, while a parent coordinator who is a licensed clinical social worker only needs 20 hours. Oversight for most of these professional affiliations is provided by the Division of Occupational and Professional Licensing.

Child welfare experts vary in annual training requirements based on their professional affiliations.



Generally, these experts are brought onto a case as complexity increases. For example, a custody evaluation might be ordered when there is drug use in the home and the judge is unclear about proper placement of the child. A special master might be assigned when there is intense conflict between the divorcing parents and immediate temporary decisions are required. These experts are intended to provide an extra layer of protection to children. Consequently, their opinions are factored into judicial decisions, as indicated in the case files we reviewed. For example, one judge we interviewed reported greatly respecting the GAL's opinion and frequently supporting the GAL's recommendation in rendering a judgment. Because these experts' opinions factor into judicial decision making and impact the lives of children and their families, we believe it is reasonable to expect some court oversight of these individuals. We found, however, that some child welfare experts receive limited and variable court oversight depending on the position they serve in as well as their professional affiliations.

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**Child welfare experts are intended to provide an extra layer of protection to children.**

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**Most Experts Are Not Part of a Vetted Roster Maintained by the Courts.** Custody evaluators, parent coordinators, visitation supervisors, and special masters play an important role in the court process. One court administrator stated that these third-party professionals act as “tools that a judge can employ to ensure the best interests of the child are being represented.” Despite this important role, the courts do not maintain a vetted roster demonstrating professional standards. This is surprising given that the courts maintain a vetted roster for mediators as well as public and private GAL attorneys through the Office of GAL. For example, in reference to the private GAL program, Utah Courts state:

Because children are involved, it is necessary for the Office to screen [private GAL] applicants who demonstrate the requisite ability and proficiency to represent them . . . .

Given the precedent that exists for other child welfare experts regarding training and oversight, as well as the weight of child welfare matters, we believe training and oversight should extend to all experts who play a critical role in cases involving children. This would add consistency across various roles. It would also improve the Administrative Office of the Courts' (AOC) ability to enhance child protections and high-quality services to the public for these child welfare experts. Further, should complaints against an expert arise and

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**Guardians ad litem, custody evaluators, and parent coordinators must have specific child development training and maintain professional licensure.**

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the complaint be assessed and deemed valid, the AOC can exercise its authority in removing the expert from the roster. This gives the AOC the capacity to vet individuals and strengthens the competencies required of all experts. We recommend that the AOC determine an implementation strategy, an appropriate oversight body, and identify the additional resources necessary to implement this recommendation. Moreover, the Judicial Council will need to enact a rule enabling the AOC this authority.

**Court Administrative Rules Outline Minimal Training Requirements for Most Experts.** Public and private GALs, custody evaluators, and parent coordinators must have specific child development training and maintain professional licensure. For example, according to *Court Rule 4-509*, parenting coordinators must have, “completed graduate level coursework in child development . . . , at least 3 years of post-licensure clinical practice substantially focused on child/marital/family therapy; and a working familiarity with child custody/parent-time law . . . .”

Notably, no similar requirements for visitation supervisors and special masters exist. Since supervised visits are often provided free of charge by volunteers, it may be unnecessarily cumbersome to require minimum qualifications for them. Special masters, however, should be held to a higher standard as they become increasingly used in high-conflict divorce cases, as discussed in this final section.

## **Special Masters’ Role Needs Clarification**

Special masters are lacking in oversight, guidance, and training requirements. Specifically, we found the following:

- The use and powers of special masters are unclear.
- There are no specific training requirements or minimum qualifications to act as a special master.
- There is no detailed tracking of special masters.

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**There are no specific training requirements or minimum qualifications to act as a special master.**

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We reviewed court rules for special masters and found they do not include specific training requirements, nor do they provide adequate guidance for judicial use. This lack of clarity was evident in interviews with those familiar with special masters, who reported inconsistencies in their use. Collectively, these interviews revealed that there is no consensus surrounding special masters' appointment and use.

This is not a concern unique to Utah. In fact, the ABA, recognizing the "lack of methodical and consistent approach to the appointment and use of special masters," developed and adopted guidelines in January 2019.

### **Use and Powers of Special Masters Are Unclear**

The special master, in the context of a divorce proceeding, is a person appointed by the courts to manage parenting disputes when parents are having difficulty cooperating or co-parenting. Special masters' authority is derived from the *Federal Rules of Civil Procedure*, Rule 53 and *Utah Rules of Civil Procedure*, Rule 53, wherein "master" is defined as "a referee, an auditor, and an examiner." Such vague language does not provide clear guidance for judicial use.

**With Limited Guidance, Judges are Unclear About the Appropriate Use of Special Masters.** We performed a small, informal survey of eight judges, three commissioners, and three special masters in the Second, Third, and Fourth Judicial Districts to better understand how special masters are used.

Rule 53 states that the referral for services by a special master "shall, in the absence of the written consent of the parties, be made only upon showing that *some exceptional condition requires it*" (emphasis added). Not surprisingly, there are discrepancies in how judges and commissioners use special masters. Some reported that both the petitioner and the respondent had to consent before the appointment of a special master, while others viewed special masters' authority as statutorily sanctioned, allowing their use without the parties' consent. For example, one special masters told us she has been appointed "even when the parties don't stipulate." In contrast, a commissioner reported that "appointment may only occur if stipulated to by both parties." There are also discrepancies in special masters' power.

**Special Masters' Powers Are Unclear.** Rule 53 is directed toward "masters" generally and is silent on the topic of divorce or

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**There are no specific training requirements or minimum qualifications to act as a special master.**

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**The special master, in the context of a divorce proceeding, is a person appointed by the courts to manage parenting disputes.**

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**Ambiguity surrounding the use and powers of special masters appears to discourage judges from utilizing them as a resource.**

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**We could not identify any standard in statute or rule to establish special master training requirements.**

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custody. Therefore, some judges we interviewed interpreted this to mean special masters do not have authority in custody matters, while others viewed special masters as quasi-judicial. For example, one case we reviewed had an order describing the position as a “quasi-judicial officer.” This same order stated that “Special Master decisions are effective as orders . . .” and as such are protected by quasi-judicial immunity. Such discrepancies regarding the power of special masters signal the need for additional clarification.

In sum, judges may not be fully utilizing special masters as a resource in a time of rising district court caseloads and more self-represented parties. As the ABA report states:

Today, there is an underutilized dispute resolution tool that could aid in the “just, speedy and inexpensive” resolution of cases: appointment of special masters.

Complex cases can strain judicial resources and divert time to some cases at the expense of others. The courts report that alternative dispute resolution tools such as mediation have already been used effectively in Utah’s courts. But special masters can further aid in freeing up valuable judicial time. In order to enhance the benefits of special masters in domestic cases, we recommend that the Judicial Council or Supreme Court increase guidance through full or partial implementation of the ABA guidelines.<sup>8</sup> At a minimum, such guidelines should include training requirements, a vetting process, and a post-evaluation process.

### **There Are No Specific Training Requirements or Minimum Qualifications for Special Masters**

Special masters do not have minimum training requirements or qualifications. In fact, nowhere in statute or court rule could we find any standard to establish special master training requirements. Additionally, since a roster has not been developed for eligible practitioners, unqualified individuals may be eligible to participate as a special master. Given the impact special masters have on judicial decision making, we question why a roster with minimum training requirements and qualification has not been established.

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<sup>8</sup> *ABA Guidelines for the Appointment and Use of Special Masters in Federal and State Civil Litigation*, adopted January 28, 2019.

We recognize that most, if not all, practicing special masters possess some sort of certification, typically a juris doctorate or psychology license. Without clear guidance, however, the position may be susceptible to the appointment of unqualified individuals.

One likely reason for the absence of regulation surrounding special masters is the variety of functions they perform. A special master can be appointed in any civil case, not just domestic cases. As such, special masters can have a background in engineering, accounting, law, or psychology, to name a few. They draw upon their unique backgrounds to perform the functions of a special master.

ABA guidelines suggest that the selection of special masters ought to be done in a manner that ensures “qualified and appropriately skilled and experienced candidates are identified and chosen.” According to the ABA, this may be accomplished through the development of “local rules and practices for selecting, training, and evaluating special masters, including rules designed to facilitate the selection of special masters from a diverse pool of potential candidates.” Consequently, we recommend that the AOC clarify the minimum qualifications in rule.

### **Detailed Tracking Is Not Available for Special Masters**

Despite special masters’ ability to make decisions and orders in a case, they are not tracked in the court database system (CORIS). Since they are not tracked, neither their performance as individuals nor their impact as a whole can be evaluated.

In contrast, private GALs and custody evaluators are flagged in the system in such a way as to be able to isolate the frequency of their use. This practice enables insights as to when and how the positions are being used. We recommend that special masters be tracked in the CORIS system so that performance can be evaluated.

It is important to note that the use of special masters in Utah is relatively uncommon, occurring mostly in the Fourth District. However, special masters were consistently involved in the high-conflict divorce cases we reviewed and were present in multiple districts. If the use of special masters increases, as is anticipated in the ABA guidelines, the courts need to be ahead of this trend and institute clear guidance and training requirements. The courts will also need to

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**We recommend that the courts implement the special master guidelines set forth by the American Bar Association.**

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**Special masters are not tracked in the court database systems.**

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track special masters to monitor their frequency as well as their impact on the cases they serve.

## **Recommendations**

1. We recommend that the Judicial Council enact a rule enabling the Administrative Office of the Courts oversight of custody evaluators, parent coordinators, and special masters.
2. Following Judicial Councils' rule, we recommend that the Administrative Office of the Courts implement a roster of vetted custody evaluators, parent coordinators, and special masters.
3. We recommend that the Judicial Council or Supreme Court adopt guidelines in Court Administrative Rule for the use of special masters in domestic cases. These guidelines, at a minimum, should include training requirements, a vetting process, and a post-evaluation process.
4. We recommend that the Administrative Office of the Courts track special masters in the court database system (CORIS).

## **Agency Responses**

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## Administrative Office of the Courts

Chief Justice Matthew B. Durrant  
Utah Supreme Court  
Chair, Utah Judicial Council

July 11, 2019

Hon. Mary T. Noonan  
Interim State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

Mr. Kade Minchey  
Legislative Auditor General  
W315, Utah State Capitol  
Salt Lake City, Utah 84114

Dear Mr. Minchey,

Thank you for the opportunity to respond to the recently completed audit entitled *A Performance Audit of Child Welfare During Divorce Proceedings*. We reviewed the audit, and many of the audit findings and recommendations are consistent with actions the Utah courts are already in the process of implementing.

A few of the audit recommendations in Chapter II and III would require resources for the courts. Expanding the court's pilot programs that triage divorce cases for enhanced efficiencies would, for most locations, require dedicated clerks. A requirement to maintain and establish a court roster and provide oversight for custody evaluators, parent coordinators, and special masters would require additional court staff. Court oversight would also add an additional layer of regulation for the mental health professionals who serve as custody evaluators. These professions are currently regulated by the Division of Occupational and Professional Licensing, which, by statute, is responsible for establishing criteria for licensing and oversight of professional conduct.

We want to acknowledge the manner in which the staff of your office conducted this audit. As usual, they were professional in all respects. I will be available to respond to any questions when the audit is presented to the Legislative Audit Committee.

Sincerely,

A handwritten signature in blue ink that reads "Mary Noonan" with a small flourish at the end.

Judge Mary T. Noonan  
Interim State Court Administrator

Cc: Chief Justice Matthew B. Durrant

The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.

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DIVISION OF CHILD AND FAMILY SERVICES

DIANE MOORE  
Director

June 28, 2019

To: Kade Minchey | Auditor General  
Office of the Utah Legislative Auditor General

From: Diane Moore | Director  
Division of Child and Family Services, Department of Human Services

Thank you for the opportunity to review the findings of the "Child Welfare During Divorce Proceedings" audit. We appreciate your time in assessing this critical area and for allowing us to provide information. We look forward to continued dialogue with stakeholders on this issue.

Kindest Regards,

Diane Moore  
Director, Division of Child and Family Services

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