



A JUDGE'S GUIDE TO
IMPROVING LEGAL REPRESENTATION OF
CHILDREN



STATE
JUSTICE
INSTITUTE

ABA CENTER
ON CHILDREN
AND THE LAW



**A JUDGE'S GUIDE TO IMPROVING
THE LEGAL REPRESENTATION OF CHILDREN**

Edited by

Kathi L. Grasso, Esq.

**American Bar Association
Center on Children and the Law
A Program of the Young Lawyers Division**

Primary Contributing Authors

**Kathi L. Grasso, Esq.
Howard A. Davidson, Esq.
Brian Finley, Esq.
Miriam A. Rollin, Esq.**

**Prepared under Award No. SJI-96-12C-E-156
for the State Justice Institute**

MAY 1998

DEDICATION

This book is dedicated to the
many judges, referees, masters, lawyers, CASAs, and others
who work diligently in our nation's juvenile and family courts
to ensure that children and youth have
meaningful access to justice.

PROJECT ADVISORY BOARD

Judge Thomas Hornsby
693 Ponte Verde Boulevard
#206-D
Ponte Vedra Beach, FL 32082

Thomas Grippando, Esq.,
Deputy Director,
Cook County Office of the Public Guardian
2245 West Ogden
Chicago, IL 60612

Judge Bonita Dancy
Circuit Court for Baltimore City
111 North Calvert Street Room 343
Baltimore, MD 21202

Ann Haralambie, Esq.
3443 N. Campbell Ave
Suite 115
Tucson, AZ 85719

Judge Nolan Dawkins
Juvenile and Domestic Relations Court
520 King Street 1st Floor
Alexandria, VA 22314

Joan Hollinger, Esq., Professor
University of California-Berkeley
School of Law
Berkeley, CA 94720

Donald Duquette, Esq.
Clinical Professor of Law and Director
Child Advocacy Law Clinic
University of Michigan Law School
313 Legal Research Building
Ann Arbor, MI 48109

Ruth L. Stone, Director
Piedmont CASA, Inc.
PO Box 603
Charlottesville, VA 22902

Staff Director, ABA Steering Committee on the Unmet Legal Needs of Children; Bernardine Dohm, Director, Children and Family Justice Center, Northwestern University School of Law; Patricia Puritz, Juvenile Justice Committee, ABA Criminal Justice Section; and Bridget Howard, Information Coordinator, ABA Center for Pro Bono.

This project would not have been accomplished without the diligence of ABA consultants and staff. Brian Finley, Esq., now an Assistant Public Guardian at the Cook County Office of the Public Guardian, initially volunteered his time to work on this project. Over the course of a year, he conducted numerous interviews of child advocacy program staff from around the country with the aim of identifying model approaches to the provision of legal services to children. In addition, he researched relevant statutory, case law and professional standards and produced several descriptive pieces on child advocacy programs included in Chapter IV.

Our gratitude is also extended to ABA consultant Miriam Rollin, Esq., past President of the National Association of Counsel for Children, who produced an original article examining the judicial role in advocating for systemic reform. It is a thoroughly researched and well-written piece that should be of great help to judges concerned about judicial ethics and permissible advocacy.

In addition to several of the people noted above, many others helped to provide relevant information on child advocacy programs for Chapters Three, Four and the Appendices. Given the number of people contacted by project staff, we apologize at the onset if we fail to acknowledge someone. Those who contributed include: Patrick Murphy of the Cook County Office of the Public Guardian; Rhonda Lipkin of the Maryland Legal Aid Bureau, Inc.; Lori Parker of the District of Columbia Counsel for Child Abuse and Neglect Program; Marita L. Kavalec of the Guardian Ad Litem Project of the Cuyahoga County Bar Association; Maureen Bishop of the University of Michigan Journal of Law Reform; Diane Geraghty of the ChildLaw Clinic of Loyola University Chicago School of Law; Dena Bauman of the National Legal Aid and Defender Association; Frank Vandervort of the Michigan Child Welfare Law Resource Center; Leslie Seid Margolis of the Maryland Disability Law Center and the National Association of Protection and Advocacy Systems; Lina Ayers and Missy Ruane of Maryland's Advocates for Children and Youth, School House Legal Services Program; Melinda Taylor of the Colorado Judicial Branch, Division of Planning and Analysis; Larry R. Rute of Kansas Legal Services, Inc.; Susan Guerra of the Twenty-Second Judicial Council, St. Louis, Missouri; Althea R. Stewart Jones of the Maryland Foster Care Improvement Project; Toni Curtis of Northwestern University School of Law, Children & Family Justice Center; Judy Nord of the Supreme Court of Minnesota, Research and Planning; Robert Klein of the New Mexico Administrative Office of the Courts; Andrea Poole of Shaening and Associates; Barbara Babb of the University of Baltimore School of Law; and Mary Volpa Mentaberry of the National Council of Juvenile and Family Court Judges.

We thank the ABA staff who were instrumental in conducting legal research and preparing this document for the printer. Susan Neill, the project paralegal, identified nearly every article that had ever been produced on the subject of children's legal representation, collected judicial

ACKNOWLEDGMENTS PERMISSION TO REPRINT

Chapters Two and Four of this manual include excerpts from already published works. The excerpts were formatted differently than in their original publications and generally footnotes were omitted.

We thank the numerous publishers and authors who gave the American Bar Association Center on Children and the Law permission to reprint excerpts that appear in the full text of the following books, articles and periodicals. They are listed in the order in which they appear in the judge's guide.

CHAPTER TWO

Green, B.A., Dohrn, B., Foreward: Children and the Ethical Practice of Law, 64 Fordham L. Rev. 1281 (1996). Copyright© 1996 by Fordham Law Review. Excerpts pp. 1284-1290, 1294-1296 were reprinted with the permission of the Fordham Law Review.

American Bar Association Presidential Working Group on the Unmet Legal Needs of Children and their Families, America's Children At Risk: A National Agenda For Legal Action (1993). Copyright© 1993 by the American Bar Association. Excerpts pp. 3-4, 7 were reprinted with the permission of the American Bar Association and its Steering Committee on the Unmet Legal Needs of Children.

Haralambie, A.M., The Role of the Child's Attorney in Protecting the Child Throughout the Litigation Process, 71 N.D.L.Rev. 939 (1995). Copyright© 1995 by North Dakota Law Review. Excerpts pp. 958, 979-80, 981-83 were reprinted with the permission of the North Dakota Law Review.

Peters, J.K., The Lawyer for Children at the Interdisciplinary Meeting, 2(3) Child Maltreatment 226 (August 1997). Excerpts pp. 228-29, 243, Copyright© 1997 by Sage Publications, Inc. Excerpts pp. 228-29, 243 were reprinted with the permission of Sage Publications, Inc.

Ross, C.J., From Vulnerability to Voice: Appointing Counsel for Children, 64 Fordham L. Rev. 1571 (1996). Copyright© 1996 by Fordham Law Review. Excerpts pp. 1578, 1583-86, 1588 were reprinted with the permission of the Fordham Law Review.

Federle, K.H., The Ethics of Empowerment: Rethinking the Role of Lawyers in Interviewing and Counseling the Child Client, 64 Fordham L. Rev. 1655 (1996). Copyright© 1996 by Fordham Law Review. Excerpts pp. 1684-1688 were reprinted with the permission of the Fordham Law Review.

Curle, P.S., Herman, G., Representing the Best Interests of Children: The Wisconsin Experience, 13 J. Am. Acad. Matrim. Law 123 (Summer 1995). Copyright© 1995 by American Academy of Matrimonial Lawyers. Excerpts pp. 123-24, 132 were reprinted with the permission of the Journal of the American Academy of Matrimonial Law.

Bischoff, K.S., The Voice of A Child: Independent Legal Representation of Children in Private Custody Disputes When Sexual Abuse is Alleged, 138 U. Pa. L. Rev. 1383 (1990). Copyright © 1990 by University of Pennsylvania. Excerpts pp. 1389-91 were reprinted with the permission of the University of Pennsylvania Law Review.

Michigan Journal of Law Reform. Excerpts pp. 7-8 were reprinted with the permission of the author and the University of Michigan Journal of Law Reform.

Woloshin, N.J., The University of Michigan Law School, Child Welfare Program, *Opening a Child Welfare Office* (March 1996). Excerpts p. 3 were reprinted with the permission of Clinical Professor of Law Donald Duquette and the National Court Appointed Special Advocate Association (adapted material included in this publication).

In addition to the copyrighted works listed above, the ChildLaw Clinic of Loyola University Chicago School of Law, through its director Diane Geraghty, granted the editor permission to adapt the ChildLaw Center's website description and brochures for the descriptive piece on the ChildLaw Center.

The Support Center for Child Advocates, through its executive director Frank Cervone, granted the editor permission to reproduce the description of its program.

APPENDICES

American Bar Association, *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (1996). Copyright© 1996 by the American Bar Association. Permission to reprint was granted by the American Bar Association.

National Council of Juvenile and Family Court Judges, *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (1995). Excerpts pp. 22-23 were reprinted with the permission of the National Council of Juvenile and Family Court Judges, the publisher.

Oregon State Bar Indigent Defense Task Force, *Principles and Performance Standards, Chapter Three, Specific Standards for Representation in Juvenile Dependency Cases* (1996). Excerpts pp. 29-32 were reprinted with the permission of the Oregon State Bar.

Adopted by the Judicial Council of Virginia, *Standards To Govern the Appointment of Guardians Ad Litem Pursuant to § 16.1-266, Code of Virginia, Information Guide for Virginia Attorneys* (1995). Excerpts pp. 2-5 of the guide were reprinted with the permission of the Executive Secretary of the Virginia Supreme Court.

State Bar of Michigan, *Guidelines for Advocates for Children in Michigan Courts, Children's Task Force Final Report* (1995). Excerpts pp. 92-94 were reprinted with the permission of the Task Force Co-Chair Donald Duquette.

How Can Courts Effectively Monitor Attorneys' Representation of Children?	64
Courts and Funders Must Recognize the Correlation Between Attorney Performance, Compensation and Caseload	65
What Are the Elements of a Model Contract?	68

CHAPTER FOUR

Providing Legal Representation To Children: Program Models	71
Contracting with Specialist Child Advocacy Programs	71
The Cook County Office of the Public Guardian	72
The Maryland Legal Aid Bureau, Inc.	75
Creating A Judicially-Administered Statewide GAL Office	80
Utah's Office of the Guardian Ad Litem	81
Contracting with Private Attorneys or Maintaining Appointment Lists	83
The Washington, D.C. Counsel for Child Abuse and Neglect Program	83
The Guardian Ad Litem Project of the Cuyahoga County Bar Association	85
Judicial Oversight in Davenport, Iowa	87
The Law School's Role: Child Advocacy Clinics and Curriculum	88
The University of Michigan Law School Child Advocacy Law Clinic	89
ChildLaw Center at Loyola University Chicago School of Law	90
The Role of the Volunteer Attorney	91
What Should Courts and Attorneys Do If They Want to Establish Quality Legal Programs for Children?	95

CONCLUSION	99
-----------------------------	-----------

APPENDICES

I	Additional Publications on Children's Legal Representation and Directory of Helpful Websites
II	ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases & Previous ABA Policies Related to Legal Representation of Abused and Neglected Children
III	Information on ABA National Court Improvement Activities and E-Mail Discussion Groups
IV	Standards for Lawyer Training
V	New Mexico Guardian Ad Litem Model Contract
VI	Children's Law Courses in Law School
VII	ABA Presidential Challenge to Improve Legal Representation for Children

INTRODUCTION

INTRODUCTION

Why Did the ABA Produce This Manual?

Exactly thirty years have passed since the United States Supreme Court—in *In Re Gault*—first took note of the importance of court-appointed legal representation for children. Although the focus of that case was on juvenile delinquency proceedings, what the Court stated therein is no less true for children affected by non-delinquency judicial proceedings related to their custody and status.

All children whose lives may be significantly impacted by court action should have qualified and competent legal representation because, in accord with the words of Justice Fortas in *Gault*, they need “. . . the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, [and] to insist upon regularity of the proceedings. . . .” Since the *Gault* case in 1967, state legislatures have expanded statutory provisions beyond delinquency to provide for appointment of lawyers to represent children in abuse/neglect and custody/visitation cases. This book is intended to help judges and court administrators improve the caliber and scope of that representation.

As this nation’s courts—with the aid of federal financial support—have begun to look at systemic reforms in the handling of child protection cases, most have noted significant deficiencies in legal representation for children. Some examples are:

- Lawyers ill-prepared to represent clients;
- Lawyers failing to confer with clients;
- No formal or inadequate training for lawyers;

- Low levels of—and delays in providing—compensation to lawyers; and
- In many jurisdictions, inordinately high lawyer caseloads.

State court improvement task forces have begun to look at *upgrading the quality of lawyering for children* as a key part of their reform agenda.

Presiding judges, masters, referees, commissioners, and court administrators have, until now, lacked a single, accessible source of materials designed to aid them in improving children’s legal representation. We hope this manual provides that resource.

The authors of this manual believe—based on their own experiences in representing children—that high caliber lawyering for children can make a critical difference in the outcome of family-related cases. Good lawyers for children can expedite the resolution of disputes, help minimize unnecessary contentiousness between the adult parties, facilitate the settlement of contested issues, and—most importantly—utilize their legal skills to assure that their child clients’ educational, health, and social service needs are properly addressed.

This Manual’s Focus

This manual examines how courts can better access, utilize, and support lawyers appointed to represent children *both when a lawyer is appointed as legal counsel for the child and when a lawyer is appointed as “guardian ad litem” for the child*. We recognize that often lawyers will be asked to represent children in the dual capacity of “lawyer/guardian ad

- *Chapter One* focuses on the views of judges and others as to why courts and children alike will benefit from high caliber legal representation for children. It also examines the role judges can play in advocating for additional resources to enhance children's legal representation, taking into consideration judicial ethics.
- *Chapter Two* presents selected readings on pertinent issues and the various types of cases in which children are well-served by the appointment of independent counsel.
- *Chapter Three* covers topics that must be addressed if courts are to assure high quality legal representation for children, such as attorney training, supervision, compensation, and caseloads. It offers suggestions on how judges can identify qualified lawyers to handle cases in which children have health, mental health, education, and other special needs.
- *Chapter Four* further defines the elements of a model child advocacy program by describing different approaches to providing quality legal representation for children.

CHAPTER ONE

CHAPTER ONE

IMPROVING CHILDREN'S LEGAL REPRESENTATION: AN IMPORTANT JUDICIAL ROLE

Why Should Court-Involved Children Have Lawyers?

Court Proceedings Have an Immense Impact on Children's Lives

Children's lives are profoundly affected by the decisions judges make in family-related cases. Will a child be separated, temporarily or permanently, from his or her parents? Will a child be protected from life-threatening harm? With whom will a child live? How much contact will a child have with noncustodial parents, relatives, and siblings? How will a child's educational, physical health, mental health, and other needs be met? Judges who hear child welfare and family law cases often need King Solomon-like wisdom in making decisions, as no two cases are alike. *Every* court decision has the potential to impact a child for a lifetime.

The court process itself can be traumatic to children. In some cases, adult litigants assume fierce adversarial postures. Whether it results in a battle between the State and parent (as in child protection proceedings) or a war between father and mother over custody and visitation, the hostility exhibited in high-conflict cases can be harmful to a child. Delay in case resolution, where permanent outcomes for children rarely coincide with children's true needs, is also a common systemic problem.

Why Now is the Time to Address Children's Legal Representation

Courts currently have a unique *window of opportunity* to make systemic changes in the

method, quality, and scope of legal representation for children. The major reasons, stated below, illustrate that opportunity.

First, federal money is now available to improve children's legal representation. A federal program of grants to state court systems for improved judicial handling of abuse, neglect, foster care, and adoption cases has moved into an *implementation of reforms phase*. Under the federal *Family Preservation and Support Act*, Congress set aside \$35 million in entitlement grants to state courts over a 4-year period [Public Law 103-66, §§ 13711(d)(2) and 13712]. The *Adoption and Safe Families Act of 1997* extended this program through 2001 [Public Law 105-89, §§ 305(a)(3)]. Many state court systems have already chosen to focus on legal representation issues in their court improvement *assessments and plans*.

Other federal money that may aid in upgrading local legal representation for children includes *Children's Justice Act* and *Child Abuse Prevention and Treatment Act* funds. States receive these funds through the United States Department of Health and Human Services.

Second, in 1995, the National Council of Juvenile and Family Court Judges released *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*. The Guidelines (at p. 22) state that courts "should take active steps to ensure that the parties . . . have access to competent representation" and that parties "must be competently and diligently represented in

skills are vital to the adequate protection of children's interests.

We can best illustrate the often-pivotal impact on children's lives of judges and judicial administrators *promoting high quality legal representation for children* by providing some case examples, drawn from juvenile court practice.

Lawyers Can Help Monitor and Promote the Rights of Court-Involved Children

Late in the afternoon, 16 year-old Jennifer's court-appointed dependency attorney receives a call from her client's therapist. The therapist voices serious concerns about Jennifer being placed in a private psychiatric hospital by the local child welfare agency. Although Jennifer has behavior problems, the therapist believes they do not warrant a highly restrictive in-patient hospitalization that could potentially be harmful to her. Jennifer's case worker, however, has said she has "no other place" to put her.

No assessment or treatment plan recommends psychiatric hospitalization. The child welfare agency believes it has authority to consent to the hospitalization without either a court hearing or specific compliance with civil mental health commitment statutes.

After attempting to negotiate with the agency's lawyer for a safe, less restrictive placement for Jennifer, Jennifer's lawyer immediately travels to the courthouse to file pleadings seeking injunctive relief to have Jennifer removed from the psychiatric hospital to a more appropriate living

situation. She requests an expedited hearing. At this hearing, you—as judge—make a determination that Jennifer's placement is inappropriate and potentially harmful. You order the placement to be changed immediately to a foster care or group home setting.

Lawyers Can Provide An Independent Voice for the Child

At a child abuse removal hearing, your special master makes a recommendation that Mark, a 16 month-old child with developmental disabilities, be returned immediately to his parents. Mark has suffered a suspicious physical injury, a serious spiral fracture of his leg. His pediatrician believes the injury to be the result of abuse. In a previous case, another court determined that Mark's brother had been abused by his father.

Mark's court-appointed lawyer files an appeal of the master's recommendation and seeks Mark's removal from the parental home. You—the judge—order that Mark be placed in foster care pending an adjudicatory hearing.

Clear, Judicially-Promulgated Uniform Rules and Guidelines Can Lead to Improved Lawyering

A 17 year-old boy, Bob, faces waiver to the adult criminal court system. He has been charged with stealing cars and carrying a weapon. The court-appointed lawyer in his on-going civil child abuse and neglect case has been instructed—pursuant to a written set of guidelines issued by the court for

originally taken care of her. This is Debra's wish. The county agency to which Debra is committed objects to this position, arguing that she should be reunited with her biological mother.

After a trial in which Debra's lawyer presents expert and other evidence, as well as legal argument, you order that Debra be placed with her first foster family and that a plan of adoption be pursued. Debra is eventually adopted.

Courts Can Identify and Assign Special Cases To Children's Lawyers With Special Skills

Linda is blind, deaf, and non-verbal. She has been diagnosed with serious developmental delays. Throughout the course of her lifetime, she has had minimal contact with her biological family, who were found to have abandoned her. For the most part, she has been institutionalized, living and being educated at a school for the blind.

Linda's court-appointed lawyer—who has represented profoundly disabled children—negotiates with the multiple state agencies which provide for different aspects of her care. She has insisted that these agencies find Linda an alternative, more homelike placement.

With the approval of you—the judge hearing a case review scheduled by Linda's lawyer—the parties agree to her living on the weekends and holidays with a specialized foster family. The agencies agree to provide that family with appropriate training

and wrap-around services to ensure the placement's success. The hope is that Linda will be able to live with this family full-time or be adopted by them.

Improving Children's Legal Representation is An Important Judicial Role

The American Bar Association, the National Council of Juvenile and Family Court Judges, and others have long advocated for advancements in the scope and quality of legal representation for children. In 1979, the Institute for Judicial Administration/American Bar Association *Juvenile Justice Standards*, in the volume on *Standards Related to Counsel for Private Parties*, indicated that provision of "satisfactory legal representation in juvenile and family court cases" was "the proper concern of all segments of the legal community" and that courts should "ensure that competent counsel and adequate supporting services are available for representation . . ." [Standard 2.1(a)]. This Standard went on to say that careful and candid evaluation of representation in cases involving children "should be undertaken" by judicial groups among others.

When these Standards were first drafted in the mid-1970's, court-appointed representation for children in *other than delinquency cases* was still a rarity, except in a few states (e.g., New York). The *Counsel for Private Parties* volume, in its commentary to Standard 2.1(a), noted the importance of addressing proceedings beyond delinquency cases (citing, for example, New York's pioneering pre-*Gault* Family Court Act requirement of appointment of counsel for children in "need of supervision" and "neglect" cases). It recognized several types of cases where children had unmet legal

until the placement process has run its course.” In the second situation, they assert that maltreated children “require party status and representation by a lawyer who is independent of both child care agencies and the parents [and that] [s]uch children must have their interests represented and protected by counsel until the least detrimental placement has been arranged.” In the third situation, the authors indicate that legal representation is critical to assure that the child’s “interests are treated as paramount in determining who shall have custody.”

As to the *role* of the appointed lawyer, the authors (at p. 280) cite— after stating that counsel “must avoid becoming rubber stamps for court or agency”—an early appellate case on the responsibilities of counsel for children. In *de Montigny v. de Montigny*, 70 Wis.2d 131, 141, 233 N.W.2d 463, 468-69 (1975) the court held:

The guardian *ad litem* is more than an adjunct to the court. He is an attorney for the children and their interests. He must perform his duties in accordance with the standards of professional responsibility adopted by this court Nominal representation that fails to assure that children are treated as parties to the action is insufficient and constitutes a breach of the duties of professional responsibility.

The Judge as Leader in Improved Child Representation¹

This section examines various issues related to leadership activities by juvenile court judges to improve child representation and otherwise improve the lives of children and families, beyond their work as courtroom

decision makers in particular cases. First, it will explore the reasons why juvenile court judges should engage in such activities. Then, it will review the types of leadership activities in which juvenile court judges can and should engage. Next, it will explain how various provisions of the Code of Judicial Conduct relate to juvenile court judges’ leadership activities. Finally, it will describe other potential impediments to such activities.

This section is based, in large part, on interviews of juvenile court judges identified as leaders in the field both by nationally prominent attorneys in child welfare and juvenile justice arenas, and by their judicial colleagues. Note that the interviewees are not (and were not intended to be) a random sampling of juvenile court judges from around the country.

Why Should Judges Lead in Advocating Improved Child Representation?

As stated earlier, the decision-making role of juvenile and family court judges in child-related cases is a critical one affecting the safety and well-being of children, families, and the community. However, many judges (and the national membership organization which serves them, the National Council of Juvenile and Family Court Judges) believe that their role does not end with their decisions on the bench. They believe that their roles *off the bench* as advocates for improved child representation and other system improvements for children and families are also quite important.

Judges say that their work for child and family systems improvements is “part of the job,”² and describe that work as “extremely important,”³ “imperative,”⁴ “an obligation”⁵ and “a responsibility.”⁶ Some judges were critical of their colleagues who only render

judges to engage in leadership to improve the lives of children and families.

Lack of Other Powerful Voices Regarding Juvenile Court Child-Related Improvement

Children do not have a voice of their own,¹⁶ and many children in the juvenile and family courts still do not have effective representation, and often do not have representation at all.¹⁷ Many of the lawyers that represent children are inexperienced and/or overworked, and receive low compensation.¹⁸ Moreover, these lawyers are generally not considered the “powerful players” in the legal community; more “powerful players” are found among lawyers and parties in criminal and other civil courts.¹⁹ In addition, the confidentiality laws applicable to juvenile court proceedings and records often prevent other potentially powerful voices (the media and the public) from learning about the functioning of the juvenile courts and related systems.²⁰

Judges Have Unique Knowledge of Problems, Without Any Vested Interests Other Than The Child's

One juvenile court judge observed that “judges have a unique perspective on many of the problems of children and families in the community, because judges sit at a unique juncture at which the problems collide—the juvenile court.” He added that judges “come from a more objective perspective” than public or private service provider representatives (who also may understand many of the problems that children and families face, but who may have a vested interest in one approach to addressing a particular problem); by contrast, the only interest of the judge is that “agencies function as efficiently and effectively as they can” to best meet the needs of children and families.²¹

Children's Needs Are Great

If the juvenile court and related systems were functioning perfectly and had all the resources they needed, it would not be as important for judges to take on the advocacy role, in addition to their decision-maker role. However, the unmet needs of children and families in the system are so great now, that role is crucial.²²

Judge Edwards has eloquently described the importance to society of the juvenile court's role in addressing family dysfunction which exhibits itself through child abuse and neglect or delinquency.²³ Improvements in the system are needed in order for the juvenile court to effectively engage in its role in addressing family dysfunction.²⁴

Judges Are Respected and Influential Leaders

As Judge Robert Page observed, “[t]he family court judge is a publicly recognized community leader in the area of society's response to the problems of its families. This leadership role must be fully utilized to develop needed services and facilities to meet the needs of the family court.”²⁵ Judge Edwards remarks that “[n]o other person has the position . . . or the prestige to speak on behalf of children and families whose problems are so serious that they must come before the juvenile court.”²⁶

In a survey of judges conducted by NCJFCJ, many judges cited “community expectations” that they speak out and “do something” on issues involving delinquent and deprived children.²⁷ Judge Stephen Herrell, the current president of the NCJFCJ, adds that “we got these jobs [as juvenile court judges] because we were leaders in the community; that shouldn't end when we put on our robe.”

truant children, Bell South corporation which developed a video conferencing system for the court to monitor students in the schools, the Atlanta Bar Foundation which recruited and trained the lawyers, and a large law firm which contributed funds to staff the effort—an effort that has had “remarkable success”,³⁵

- Judge Jones, who spearheaded the creation of the Charlotte-based Children’s Law Center (a non-profit organization to provide quality legal representation to children) by convening a steering committee which raised funds, hired a director, sought and obtained incorporation and non-profit status and did other necessary advocacy for this and other related programs,³⁶ and
- Judge Shookhoff, who created a project for improved representation of children in delinquency cases through better recruitment, qualifications, training, and standards, and who is now engaging in a similar project for improved representation of children in dependency/neglect cases; to accomplish this, he is again bringing together representatives of relevant organizations and constituencies.³⁷

Juvenile court judges have served as community leaders and catalysts for change in creating Court Appointed Special Advocate (CASA) programs, Foster Care Review Board programs, and a variety of other court-related services and programs around the country.³⁸ After all, when the judge invites you to a meeting in his/her chambers, you go; judges can use that power to ensure that critical needs of children and families in the community are addressed.³⁹

The Judge as Policy Advocate

Judge Edwards writes that:

[the] public role [of a juvenile court judge] also includes commenting on and, if necessary, drafting legislation which the judge believes is necessary to complete the work of the juvenile court. It is remarkable that juvenile court legislation is often written without significant input from the juvenile court judiciary and that in some jurisdictions juvenile court judges are among the last to learn of legislative changes in their court system.⁴⁰

Similarly, the NCJFCJ has included in its list of permissible juvenile court leadership activities “testimony or public advocacy or consultation on children’s issues for the consideration of legislative or other public bodies or officials.”⁴¹ The NCJFCJ has also stated that “each community, under leadership of the juvenile and family court, should analyze the needs of children and encourage legislative [and] executive . . . support for adequate resources” for programs for children.⁴²

Nearly all of the judges interviewed had testified and/or consulted with legislative and/or executive branch officials at the local, state and/or national level, to share views (based on judicial experiences) on the potential impact—positive and/or negative, intended and/or unintended—of policy actions either proposed or possible (including those related to resources). For example, juvenile court judges have testified and/or consulted with officials on: the importance of judicial discretion in delinquency waivers to adult court;⁴³ the value of subsidized adoptions as an alternative to long-term foster care;⁴⁴ the need for reunification services;⁴⁵ the utility of support for a statewide GAL program;⁴⁶ the

bench and bar committees, advisory groups, commissions, and other organizations working to improve the law, the legal system, and the administration of justice. The NCJFCJ, in describing permissible leadership activities for juvenile court judges, lists “representation of the juvenile or family court on Citizen’s Committees, Advisory Groups, Agency or Intergovernmental Coordination Committees, etc. in the interests of children or families.”⁵⁷

Most of the judges interviewed mentioned their participation on a variety of such committees, groups and commissions.⁵⁸ For example, one judge’s current professional affiliations include: the National Commission on Crime Control and Prevention; Executive Committee, Tennessee Council of Juvenile and Family Court Judges; Tennessee Supreme Court Statewide Commission on Foster Care; Indigent Defense Commission of the Supreme Court of Tennessee; Family Law Code Revision Commission, Tennessee Bar Association; Nashville Bar Foundation; National Council of Juvenile and Family Court Judges; Juvenile Justice Committee of the American Bar Association Criminal Justice Section; Advisory Board, American Bar Association Due Process Advocacy Project; and the American, Tennessee and Nashville Bar Associations.⁵⁹

When juvenile court judges in a state have united and worked toward system improvements, the results have been impressive, particularly in the legislative arena. According to Judge Edwards, “[t]hose states with Juvenile Court Judges Associations have had a much greater impact upon state legislation dealing with juvenile court than those states which have not.”⁶⁰ Judge Edwards started the Juvenile Court Judges of California, a group which includes every juvenile court judge in the state, and

which testifies and advocates, through its member judges, on all state policies affecting children in the state.⁶¹

An interesting model for such judicial policy advocacy through an association of judges is found in the Pennsylvania Juvenile Court Judges’ Commission. Recognized by the National Council of Juvenile and Family Court Judges for having the nation’s outstanding legislative program in both 1987 and 1994, the Juvenile Court Judges’ Commission (JCJC) has a “long history of significant involvement in issues relating to both juvenile delinquency and child welfare.”⁶² The JCJC was established by the state legislature in 1959, and is located administratively within the Office of General Counsel and is, therefore, a state level executive branch agency; however, the members of the Commission are all judges, nominated by the Chief Justice of the Supreme Court and appointed by the Governor for three-year terms.

The JCJC “serves as the liaison between the juvenile courts and the Legislature to ensure passage of legislation that is in the best interests of all children coming within the jurisdiction of the court” and “provides juvenile courts . . . and the Legislature with necessary information regarding the status and provisions of all pending and recently enacted legislation.”⁶³ The JCJC also performs other functions, including research, training, publications, consultation, etc.⁶⁴ The JCJC has been a “major player” regarding child welfare and juvenile justice policy in the state.

Impact of the ABA Model Code of Judicial Conduct and State Adopted Versions

By now, any judge reading this may be thinking, “*that’s all very nice, but don’t the*

For example, a judge may write or lecture on a legal issue, analyzing the present law and its history, its virtue and its shortcomings; he may commend the present law or propose legal reform without compromising his capacity to decide impartially the very issue on which he has spoken or written. There is a significant difference between the statement, 'I will grant all divorce actions that come before me—whatever the strength of the evidence to support the statutory ground for divorce—because I believe that all persons who no longer live in harmony should be divorced,' and the statement, 'I believe that limited statutory grounds for divorce are not in the public interest. The law should be changed to allow persons who no longer live in harmony to obtain a divorce.' The latter does not compromise a judge's capacity to apply impartially the law as written, although it clearly states his position about improvements in the law.⁷⁷

Further, the vast majority of the state codes reviewed (43 out of 49) explicitly permit a judge to appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, or the administration of justice. Five of the remaining six jurisdictions vary the language somewhat, but do not significantly restrict such activities: one state adds the qualification "to the extent that it would generally be perceived that a judge's experience provides special expertise in the area"⁷⁸; one state adds the qualification "if in doing so the judges do not cast doubt on their capacity to decide impartially any issue that may come before them"⁷⁹; one state adds a fourth topic for appearances—"matters relating to the judiciary"⁸⁰; one state specifies the topics as "the judiciary or the administration of justice"⁸¹; and one state does not have any

specific provision on this area.⁸² Only one of the 49 state codes reviewed puts a significant limitation on such testimony before legislative or executive bodies: New Jersey requires prior notice to and approval by the Supreme Court for such appearances. One judge from that state (now retired), stated that he knew of no occasion on which such approval has been requested or given to a juvenile court judge.⁸³

In addition, the vast majority of state codes reviewed (42 of 49) explicitly permit a judge to otherwise consult with an executive or legislative body or official *either* on matters concerning the administration of justice (18 jurisdictions)⁸⁴, as provided in the older (1972) ABA Model Code, *or* on matters concerning the law, the legal system, or the administration of justice (24 jurisdictions)⁸⁵, as provided in the 1990 ABA Model Code. Of the remaining seven states, one state provides for consultation on all three issues, but adds the qualification "to the extent that it would generally be perceived that a judge's experience provides special expertise in the area"⁸⁶; one state provides for activity on all three issues, but adds the qualification "if in doing so the judges do not cast doubt on their capacity to decide impartially any issue that may come before them"⁸⁷; one state adds a fourth topic for consultation—"matters relating to the judiciary"⁸⁸; one state specifies the topics as "the judiciary or the administration of justice"⁸⁹; one state specifies the topics as "administration of justice or proposed legislation"⁹⁰; and one state does not have any specific provision on this area⁹¹. Again, only New Jersey has a significant restriction: judges may consult on matters concerning the administration of justice "with which the judge is charged with responsibility by the Rules of Court" (although this provision could be interpreted broadly, unlike the aforementioned New Jersey code provision requiring Supreme Court approval).

Further Canons Addressing Participation and Fundraising

The ABA Model Code canons and commentary (and states' adopted versions of those canons and commentary) provide rather specific guidance on two areas of activity that are part of the judicial leadership actions described *supra*: participation (especially through leadership positions) in governmental and non-governmental organizations, and fundraising activities.

The ABA Model Code and the codes of judicial conduct in nearly all of the jurisdictions reviewed include some version of a provision on the following issues:

- 1) judges may participate in governmental commissions, etc., if the body is devoted to the improvement of the law, the legal system or the administration of justice;⁹⁹
- 2) judges may serve as an officer, director, trustee, or non-legal advisor of a non-profit organization devoted to the improvement of the law, the legal system or the administration of justice;¹⁰⁰
- 3) judges are NOT permitted to serve in such positions in such a non-profit organization IF it is likely that the organization will be engaged in proceedings that would come before the judge or engaged frequently in adversarial proceedings in any court within the same appellate jurisdiction as the judge;¹⁰¹
- 4) judges serving in such positions in such non-profit organizations may assist in planning fund-raising, but are NOT permitted to personally solicit funds;¹⁰² and

- 5) judges may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system and the administration of justice.¹⁰³

Of course, these provisions are subject to the same three overall requirements (for maintaining impartiality, upholding respect for the judicial office, and spending the time necessary to fulfill judicial duties) that were discussed *supra* with regard to other extra-judicial activities. In addition, organizations with which the judge is affiliated cannot practice discrimination [see ABA model code, canon 2(C)]. Further, at least two jurisdictions put some further limits on judges activities in these areas: in New Jersey, judges' leadership positions in bar associations are restricted, and judges may not even *assist* in fundraising; in Oklahoma, participation in governmental commissions, etc. requires specific approval by the Supreme Court. Note that states also differ as to some of the details of these provisions in the canons and/or commentary: e.g., some states allow judges' names and titles to be listed on organizational letterhead used for fundraising purposes,¹⁰⁴ while other states do not.¹⁰⁵ (The language differences in these areas are too complicated and numerous to detail here; each judge should check the specific rules in that state.)

There are not many advisory opinions on fundraising activities; perhaps the rule—forbidding any direct fundraising solicitations by judges, while allowing judges to support specific projects or programs under consideration by public or private funders—is fairly clear in this area. However, there are numerous advisory opinions on judges' participation in various commissions, boards and committees; unfortunately, the advisory opinions do not seem to follow any

leadership activities to improve the lives of the children and families that appear before them. Such leadership roles can include roles as community leader/convener, executive and legislative policy advocate, public educator and committee participant. Many judges have already been engaging in leadership activities toward a variety of system improvements, including improved representation for children in juvenile court proceedings. The ABA Code of Judicial Conduct and almost all of the states' adopted versions of that code do not preclude such leadership activities, and most states' codes even encourage these activities, to the extent they do not conflict with other requirements of the code.

Overall, any impediments to judicial leadership activities (from the ambiguities in the code of judicial conduct or otherwise) are far outweighed by the urgent need for juvenile court judges to engage in these activities; and changes should be made in the code of judicial conduct in the near future to remove those ambiguities. It is important for each judge to examine the needs in the community and the approaches with which he or she is most comfortable in determining the leadership activities to undertake.¹¹³ But the voices of the nation's juvenile court judges can and must be heard in order to help improve the lives of the children and families whose troubles cause them to appear in juvenile court.

18. J. Ainsworth, The Court's Effectiveness in Protecting the Rights of Juveniles in Delinquency Cases. The Future of Children, 6 Juv. Ct. 66, 67 (Winter 1996). See also L. Edwards & I. Sagatun, Who Speaks for the Child? 2 U. Chi. L. Sch. Roundtable 79, 83 (1995).
19. Telephone interview with Judge Leahy.(Summer 1997)
20. Edwards, supra note 10.
21. Telephone interview with Judge Shookhoff.(Summer 1997)
22. Telephone interview with Judge Jones.(Summer 1997)
23. Edwards, supra note 10, at 1.
24. Telephone interview with Judge FitzGerald.(Summer 1997)
25. R. Page, "Family Courts": An Effective Judicial Approach to the Resolution of Family Disputes, 44 Juv. & Fam. Ct. J. 43 (1993).
26. Edwards, supra note 10.
27. Key Issues Curriculum Enhancement Project Faculty Consortium. Resolving the Ethical, Moral and Social Mandates of the Juvenile and Family Court, supra note 11, at 11.
28. Telephone interview with Judge Herrell.(Summer 1997)
29. Letter from Judge Edwards to Miriam A. Rollin of 8/25/97.
30. Key Issues Curriculum Enhancement Project Faculty Consortium. Resolving the Ethical, Moral and Social Mandates of the Juvenile and Family Court, supra note 11. See also Standards of Judicial Administration Recommended by the California Judicial Council, (West 1991) (providing another detailed list of judicial leadership activities).
31. NCJFCJ, supra note 12, at 4.
32. Deprived Children: A Judicial Response—73 Recommendations, 1986 Metropolitan Ct. Judges Committee Rep. 12.
33. Telephone interview with Judge Edwards.(Summer 1997). Telephone interview with Judge FitzGerald. (Summer 1997). Telephone interview with Judge Hatchett. (Summer 1997). Telephone interview with Judge Herrell. (Summer 1997). Telephone interview with Judge Leahy.(Summer 1997). Telephone interview with Judge Lewis.(Summer 1997). Telephone interview with Judge Shookhoff.(Summer 1997). Telephone interview with Judge Town.(Summer 1997)
34. Edwards, supra note 14, at 428-30.
35. Telephone interview with Judge Hatchett.(Summer 1997)
36. Telephone interview with Judge Jones.(Summer 1997)
37. Telephone interview with Judge Shookhoff.(Summer 1997)
38. Telephone interview with Judge FitzGerald.(Summer 1997). Telephone interview with Judge Herrell.(Summer 1997). See also Edwards, supra note 10, at 30-31 (providing additional examples).
39. Telephone interview with Judge Leahy.(Summer 1997)
40. Edwards, supra note 10.
41. Key Issues Curriculum Enhancement Project Faculty Consortium. Resolving the Ethical, Moral and Social Mandates of the Juvenile and Family Court, supra note 11, at 39.
42. Deprived Children: A Judicial Response—73 Recommendations, supra note 32.
43. Telephone interview with Judge Town.(Summer 1997)

which is also governed by the ABA Code of Judicial Conduct. [See e.g., *In re McCully*, 1997 WL 370345 (Utah).]

73. *In re Gridley*, 417 So.2d 950 (Fla. 1982).
74. *In re Miller*, 644 So.2d 75 (Fla. 1994).
75. Judge Miller wrote that the defendant “should more properly be castrated and hung by the neck,” and that “I left the Constitution and the Bill of Rights lying in tatters on the floor of my court room. I am not ashamed to say that I wept when I sentenced this man.” He also stated that “[n]o where in the Constitution does it say that we have to run our criminal justice system in such a crack-brained fashion.” *Miller*, 644 So.2d 76,7 (Fla. 1994).
76. Telephone interview with Judge Levy.(Summer 1997)
77. R. Copple, From the Cloister to the Street: Judicial Ethics and Public Expression, 64 Denv. U. L. Rev. 586 & n.84 (1988).
78. Delaware.
79. Idaho.
80. New Mexico.
81. Maryland.
82. Texas.
83. Judge Leahy.
84. Alaska, Colorado, Connecticut, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Mississippi, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Washington.
85. Alabama, Arizona, Arkansas, California, D.C., Florida, Hawaii, Indiana, Maine, Michigan, Minnesota, Missouri, Nebraska, Nevada, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Utah, Vermont, West Virginia, Wisconsin, Wyoming.
86. Delaware.
87. Idaho.
88. New Mexico.
89. Maryland.
90. Virginia.
91. Texas.
92. The states which include the “encourage” language are: Alabama, Arkansas, Colorado, Connecticut, Delaware, D.C., Florida, Georgia, Hawaii, Indiana, Kansas, Maryland, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Washington, West Virginia, Wisconsin, Wyoming.
93. Commentary to the ABA Code of Judicial Conduct, Canon 4 (B).
94. Advisory Opinion 88-6 (Issue 2), New Mexico (1988).
95. Advisory Opinion 90-396, Alabama (1990).
96. Advisory Opinion 88-133, New York (1988); Advisory Opinion 78-5, Oregon (1978).
97. Advisory Opinion 96-8, Arizona (1996), included as Attachment I to this paper.
98. Advisory Opinion 94-9, Washington (1994), included as Attachment II to this paper.
99. ABA Code of Judicial Conduct, Canon 4 (C)(2).
100. ABA Code of Judicial Conduct, Canon 4 (C)(3).
101. ABA Code of Judicial Conduct, Canon 4 (C)(3)(a).

CHAPTER TWO

CHAPTER TWO

SELECTED READINGS ON THE REPRESENTATION OF CHILDREN

The following excerpts provide further insight into the importance of children having independent legal representation in a variety of forums. These nationally recognized authors convey the interests at stake when adults make life-impacting decisions affecting children. They stress the importance of children having access to quality legal representation in child abuse and neglect, civil child custody, adoption, appeals and other types of cases. As noted in this book's acknowledgments, permission to reprint these excerpts has been granted by the publishers and/or authors.

The first piece provides a concise presentation of issues addressed at a 1995 national conference of legal experts who convened to examine ethical considerations in representing children. The appendices include a bibliography citing additional publications that may be of interest to the reader.

A Comprehensive Overview of the Issues

SOURCE: Bruce A. Green & Bernardine Dohrn, **Foreword: Children and the Ethical Practice of Law**, 64 *Fordham L. Rev.* 1281, 1284-1290, 1294-1296 (1996)(Footnotes Omitted).

By their involvement in this Conference, the cosponsors and participants demonstrated their conviction that improving professional representation will matter to the lives of children. What happens in court shapes children's futures. Whether or not children have lawyers and how their lawyers serve them, for better or worse, influences the

quality of judicial decisions. The quality of lawyers' work, in turn, is profoundly affected by the laws, judicial decisions, and professional standards that guide and support their professional conduct. Lawyers serving children, however, presently receive inadequate guidance and support.

Each year, courts determine the basic needs and future prospects of millions of children. Lawyers represent hundreds of thousands of these children. Only twenty-nine years ago, the Supreme Court held in *In re Gault* that children have constitutional rights—including a right to counsel in delinquency cases where their liberty is at stake. This decision constitutes a historical milestone recognizing the legal, civil, constitutional, and human dignity of children. In the ensuing three decades, the domain of children's law has exploded.

Children are the silent presence in courtrooms adjudicating hundreds of thousands of cases of domestic violence each year, and are the subjects of increasing judicial attention in family law matters of divorce, custody, visitation, and adoption. Children appear in legal settings involving grave issues of termination of parental rights and adoption, involuntary civil commitment, and health decisions ranging from surgery and abortion to the right to die and organ donation. Children live in prison including on death row. They are expelled from school, and need or are inappropriately forced into special education or home schooling. Children are the *raison d'être* but not participants in child support, parentage, and social security disability proceedings.

Unfortunately, recent studies show that lawyers often serve children poorly. This is scarcely surprising. Typically, the court assigns and the state compensates children's lawyers. Inadequate compensation and overwhelming caseloads often make it impossible to give each child's case the time it deserves.

Moreover, many lawyers are professionally unqualified to serve children. A contemporary legal education may provide no training at all in interviewing and counseling clients, much less in interviewing and counseling child clients in light of developmental differences from adult clients. Law schools rarely educate students to understand the racial, ethnic, class, and cultural backgrounds of those who comprise the child-client population—backgrounds vastly different from those of most lawyers. Law schools do not prepare lawyers to overcome the obstacles these differences present in communicating with children, evaluating children's goals, and understanding children's options. Traditionally, law schools teach about legal institutions, but not about the social institutions relevant to children; they train law students to work with lawyers, but not with social workers, psychologists, and other professionals whose work influences judicial determinations about children. Only a handful of law schools have in recent years developed programs focusing particularly on the legal representation of children. Assigned lawyers who only occasionally represent children may not have the incentive or the opportunity to obtain the post-graduate training or experience necessary to assist children competently. In many cases, lawyers may be so ill-prepared that a child would be better served by a dedicated nonlawyer representative with the time to concentrate on one family.

Given the importance of how lawyers practice, professional norms matter, as do institutional structures that facilitate or frustrate implementation of those norms. Children's lawyers confront ethical questions that are immediate, frequent, and palpable. Such quandaries are not an academic matter. Ethical concerns arise not only when an eight-year-old client wants to return home to a previously abusive parent, but also when an abandoned newborn can be placed for adoption on the condition that she never have knowledge of her siblings or biological family, when a ten-year-old refuses to visit a noncustodial parent, or when a child tells her lawyer about drugs or domestic violence in her foster home on the condition that the lawyer will keep the confidence. Professional standards influence lawyers' responses to these problems because most lawyers want to serve their clients well and ethically. Where professional standards give clear guidance as to appropriate professional practices, lawyers will strive to uphold them even in the face of pressure to do otherwise.

Even lawyers who represent children regularly and are qualified to do so, however, find clear answers unavailable. Lawyers may face uncertainty about the very nature of their role, since, in proceedings involving children, lawyers have been assigned to serve variously (or simultaneously) as the child's lawyer, the child's guardian *ad litem*, or the court's independent fact finder. How does the lawyer explain her role to the child client? How does she develop trust and solicit information? Can she switch back and forth between the attorney role and the guardian *ad litem* role?

Even when the lawyer's role is clearly stated, significant uncertainty about what professional obligations the role implies has led lawyers for children to perceive their

lawyers should overcome the numerous, seemingly insurmountable, barriers to the creation of anything resembling the traditional attorney-client relationship.

An added difficulty is that, in representing children, the ordinary expectations of the attorney-client relationship may not even apply. Thus, Rule 1.14 of the Model Rules described minority as a potential disability, acknowledging that a child's minority may affect the lawyer-client relationship. It implies that a lawyer's ordinary relationship with a client—including for example, the duty to serve the client loyally and to preserve the client's confidences, the duty to serve the client zealously and competently, and the duty to defer to the client's decisions about the goals of the representation—may sometimes differ when the client is a child. Yet, neither the rule nor the accompanying commentary provide meaningful guidance about how and when the child's minority will affect the lawyer's ordinary professional obligations. If the child's "capacity" is the factor determining whether the client sets the goals of the representation, then how does the lawyer determine the child's "capacity"? If the child cannot set the goals of the representation—as is clearly the case when the client is an infant—what responsibilities does the lawyer assume on behalf of that child client?

Making decisions on behalf of a nonverbal child presents an even more daunting lawyering challenge than doing so on behalf of an incapacitated adult client. For example, the lawyer confronts more difficult issues in representing a six-month-old neglected infant whose mother is drug-addicted and obviously loves her infant than in determining how to manage the assets of an incapacitated older client who had a lifetime of experience with money matters and family relationships.

With a young child, no lifetime footprints guide the lawyer about the person's intent or wishes or nature. Consequently, the discretion accorded the lawyer or guardian *ad litem* for a preverbal child is unparalleled in scope. The opportunity, indeed inevitability, of bias and personal value-determined judgments in such a situation, including the class, race, ethnic, and religious assumptions that underlie notions of child rearing and family life, is vast and undisclosed.

The attorney-client relationship is a principal-agent relationship. It is difficult, however, to think of children as "principals" in any meaningful sense, given their relative, if not utter, powerlessness to control or fire the lawyers who act in their name. In relationships with child clients, only professional norms guide lawyers' conduct. Thus, while in other attorney-client relationships clear standards may be desirable but unnecessary, here they are essential. This Conference sought to identify the gaps in professional standards for lawyers representing children, recommend statutory reforms and practice guidelines, and help launch broad reforms in children's lawyering.

.....
The Conference adopted Recommendations concerning the panoply of issues addressed by the individual Working Groups. Some endorsed changes in the law, including structural reform; others provided practical guidance to lawyers serving within the framework of existing laws and institutions; others identified subjects on which lawyers for children should be trained and educated; others suggested issues on which further study should be undertaken.

The Recommendations deserve to be read closely by lawyers, judges, policy makers, and others who are concerned about children and the law. One cannot summarize the

agency in any case, and should not jointly represent a child and the child's parent in various categories of cases, including delinquency, termination of parental rights, or child custody proceedings.

Sixth, in deciding how to represent a child, a lawyer should exercise judgment within analytic frameworks that are appropriate and principled. The Conference developed such frameworks for decision making in several areas, including, most importantly, the determination of whether the child has capacity to direct the representation and the determination of what position or range of positions to present to the court when the child cannot direct the representation.

Seventh, in interviewing and counseling a child and in making decisions relating to the representation, the lawyer must be sensitive to differences of race, ethnicity, class, and culture between the lawyer and the child. For example, the lawyer must be sensitive to the danger that these differences may inappropriately influence the lawyer's own perception of the child's ability to direct the representation. Decisions that seem unsettling to the lawyer may be rooted in the child's racial, ethnic, cultural, or class background, which should be respected.

Eighth, children's lawyers have a lot to learn. To represent children competently, lawyers must undertake training and develop expertise that is substantially different from that ordinarily necessary for representing adults. Among other things, lawyers must know how to interview and counsel children; must understand child development; must become educated about the role of culture, race, ethnicity, and class in the choices that a child client might make; and must be conversant with the work of social workers and psychologists and know how to work as

a team with these and other nonlawyer professionals. The Conference proposed the establishment of a process for certifying lawyers as "child advocates," which would entail both training in these subjects and mentoring by more experienced lawyers. It also recommended that family court judges receive comparable training and that law schools broaden their curricula to include clinical offerings and other courses of study relating to the representation of children.

Ninth, the ethical and competent representation of children requires the support of an appropriate framework of laws, legal structures, and judicial decision making. Accordingly, the Conference recommended structural and legal reform to ensure, among other things, that children's lawyers be appointed by independent agencies based on objective criteria conducive to high-quality representation and that such lawyers receive reasonable compensation, have access to necessary services and information, and carry manageable caseloads. It recognized that judges' responsibility to children is not satisfied solely by the assignment of an attorney. Additional judicial responsibilities include advocating for the creation of children's law programs in law schools, legal services offices, and public defender agencies, establishing responsibilities and monitoring lawyers to ensure that they represent children competently and effectively; and, generally, taking the lead to improve the administration of justice for children and families.

Finally, there is much more work to be done. The Conference identified more than two dozen areas in which further study should be undertaken to enable lawyers to serve children effectively and appropriately. Many involved questions that can be answered only

disregard the express wishes of their clients. This kind of representation—where it occurs—is unacceptable and certainly would not be tolerated where the client was an adult able to pay the attorney’s bills.

Children’s cases are often “processed,” not advocated, and too frequently children’s interests are poorly represented. In the past decades, courts have been increasingly inundated with cases concerning family matters; rarely have resources for competent representation or services grown to meet the expanded needs. Many jurisdictions offer representation for low-income children and families only at certain stages in proceedings, or at the discretion of the court. Others provide representation through public defender organizations, assigned counsel panels, and so forth. As a result, many children are represented—when they are represented at all—by underpaid lawyers with overwhelming caseloads, minimal training and little supervision. Even the most dedicated and competent lawyers find it an uphill battle to provide adequate representation under such circumstances.

Meaningful protection of children’s rights requires that children be represented by highly skilled counsel at critical stages of critical proceedings. Competent professional representation in proceedings that involve children is vital in a system where decisions about children’s rights and liberties and those of their parents are decided.

.....
In 1979, the ABA adopted rigorous standards applicable to counsel for children. In most communities today, we are still a long way from meeting those standards and children’s needs for high quality counsel are ignored. The following standards, among others, stated by the ABA in 1979, remain largely unsatisfied today:

—Justice requires that all parties (including children as well as parents and other adults) subject to juvenile and family court proceedings are represented.

—Children and their parents (or guardians) should have independent counsel at all stages of legal proceedings concerning charges of delinquency, status offenses, and cases involving child abuse or neglect, custody and adoption, except in temporary emergencies where immediate participation of counsel cannot be arranged.

—Adequate supportive services investigatory, expert and other non-legal services which are a critical element of competent representation, must be provided to lawyers and their clients at every stage of legal proceedings.

—Defender organizations should not be forced to accept more cases than they can handle properly. Each client should receive prompt, full and effective counseling.

—Jurisdictions that use an assigned counsel program should make sure that they have an adequate pool of competent attorneys experienced in children’s issues, and adequate resources for supportive services such as investigations.

RECOMMENDATION: The rigorous standards endorsed by the ABA in 1979 should be implemented immediately to ensure that all children are well represented. Every attorney who handles cases involving children should strive to meet the ABA’s standards for counsel. Attorneys and judges should use all available means to help enforce those standards.

As an alternative to out-of-home placement, the child's attorney may be able to suggest safeguards which would allow the child to remain at home. For example, if one parent is protective, the abusive parent may be ordered to leave the home, often a more fitting result than removing the victim. Perhaps there is a responsible relative, such as a grandparent, who would be willing to move into the home to provide care and supervision. The child's attorney may know of services to the family which could address the reasons for removal from the home. For example, a physically unsafe dwelling may be repaired by friends or church groups. After school care might be located for a child removed for lack of supervision at home. While the child's attorney is not a social welfare agency or information and referral service, he or she can sometimes move relatively quickly to secure nonagency or agency-contracted services that a harried social worker with an enormous caseload would not find until much later. Zealous advocacy for one's client entails that kind of creativity.

.....
When the case does not settle, the child's attorney can suggest the child's alternatives to the court even though the agency may have rejected those suggestions. Those recommendations should be based upon evidence presented to the court. Therefore, if the child's attorney proposes an alternate placement or visitation supervisor, that person should testify, both to verify a willingness to serve in that capacity and also to allow the court to make some judgments about the person. The child's position on all aspects of the disposition should be presented to the court with as much detail as necessary to demonstrate the feasibility and appropriateness of the recommendations. The child's position during litigation is advanced by creative thinking and vigorous advocacy of that position.

Most child abuse cases do not end neatly, with a clear conclusion. If there is an adjudication, the court will set periodic review hearings. In addition, there may be periodic agency reviews or citizen review hearings. There may be compliance issues which arise between hearings. Circumstances may change for the child, parents, or agency (including changes in service providers). Representation during follow-up phases may be critical to the child's interests. The attorney can best serve the child's interest by remaining involved until the final disposition of the case (dismissal or termination of the court case). If the statute, case law, or order appointing the attorney do not provide for termination of representation, the attorney should either assume continued representation until the final disposition or seek court permission to continue representation.

The child's attorney should take steps during the litigation to preserve the record on appeal. In appropriate cases the child's attorney should initiate an appeal of an adverse ruling. Similarly, the child's attorney should take a position in any appeal filed by the parent, agency, or other party.

Advocacy at Interdisciplinary Meetings for Child in State Committed Care

SOURCE: Jean Koh Peters, The Lawyer for Children at the Interdisciplinary Meeting, 2(3) Child Maltreatment 226, 228-29, 243 (August 1997)(Endnotes/References Omitted).

Because child protective proceedings tend to involve professionals of so many disciplines, almost any case encounter apart from an on-the-record court hearing could constitute an interdisciplinary meeting. Government agency policies and state or federal law often mandate these meetings, which include

Representing Children In Custody and Visitation Disputes

SOURCE: Catherine J. Ross, From Vulnerability to Voice: Appointing Counsel for Children, 64 *Fordham L. Rev.* 1571, 1578, 1583-86, 1588 (1996)(Footnotes Omitted).

In our adversarial system of justice, the right to be heard is normally equated with the right to be heard through counsel who can navigate a complex judicial process. The importance of counsel to children cannot be overestimated. The Danish novelist Peter Høeg captures how difficult it is for children to give voice to their own views, unaccustomed as they are to doing so:

Speaking is not easy. All your life you have listened, or looked as if you were listening. The living word came down to you, it was not something you, personally, gave voice to. You spoke only after having put up your hand, and when you had been asked a question, and you said what was certain and correct [Peter Høeg, *Borderliners* 218 (1994)]

The hurdles to communication by children on their own behalf are ameliorated by the classic functions of the advocate's craft—listening, eliciting information, tracking down facts, and using all of those tools to advance a position.

.....
A clear example of a situation in which parents cannot represent their children's interests occurs when the parents are at odds with each other. In bitterly contested custody disputes, for example, each parent has an interest in the outcome of litigation that does not neatly line up with the child's independent interest. Of course, the majority of divorcing

parents make their own joint choices about custody and visitation, which are then entered in a judicial decree. Relatively few allow a stranger to make such a critical decision for them and their children, but when they do defer to the court, many other factors may be in play, including tradeoffs for financial consideration.

Although the child may in fact be the person with the greatest interest at stake in a custody or visitation decision, the child's wishes may not receive due consideration unless the child is represented by counsel. The lawyers for the parents have no obligation to act in the child's best interest; indeed, their duty to the parent may require quite the opposite behavior. More is at stake than simply communicating the child's preference. The child may require an attorney when the court decides whether the child should testify or whether the confidentiality of the child's communications with psychological counselors should be waived. As the highest court in Wisconsin urged in the divorce context, the child ought to be a player, not a football, in the game of life.

Furthermore, even where the court believes that it recognizes divisions between parents and child, the court may be misled regarding the nature of those divisions if the child lacks counsel. Emancipation proceedings initiated at the insistence of parents, rather than at the child's initiative, provide an apt illustration. In such proceedings, there is no adult to help the child define what is going on or to help tell the judge the real story from the child's point of view.

Second, parents may not be motivated by their children's needs and interests. Most courts properly "assume that the great majority of parents are well motivated and

the child exists or an actual conflict has been found, or the state has legal or physical custody of the child, all resulting in destruction of the presumption that an adult participant represents the child's interest; and (3) the child's interests in the outcome of the litigation are substantial, perhaps even implicating essential liberty interests.

SOURCE: Katherine Hunt Federle, The Ethics of Empowerment: Rethinking the Role of Lawyers in Interviewing and Counseling the Child Client, 64 *Fordham L. Rev.* 1655, 1684-88 (1996)(Footnotes Omitted).

As in abuse and neglect proceedings, the child has no definitive right to counsel in a disputed custody matter ancillary to a divorce proceeding. Some writers contend that the child does not need independent representation because the child's interests are adequately protected by one or both of the parents' attorneys. From this perspective, a custody dispute is an essentially private matter between two individuals and appointing an independent representative for the child would be unduly intrusive. Furthermore, the appointment of a child's representative would generate unnecessary delay, increase fees, and impose additional financial and psychological costs. There is also a possibility that the representative's assessment of the child's interests will receive undue weight, particularly when the representative agrees with an expert witness. If the attorney does receive an appointment to represent the child in a disputed custody case, the lawyer should offer no active assistance at trial.

Nevertheless, most states permit discretionary appointment of a representative for the child, although that representative may not be an attorney. Eight states

mandate the appointment of a representative, but that appointment is contingent upon the existence of certain conditions, such as an allegation of abuse or neglect. Only one state mandates the appointment of a representative when custody is contested. Some state statutes permit the court to appoint an attorney, an attorney or a guardian *ad litem*, or an attorney as the guardian *ad litem* to represent the child. While most of these statutes require the representation of the child's interests, it is unclear whether the child's preferences should be advocated in addition to or in lieu of the minor's best interests.

Among those who do see a role for an attorney in a custody proceeding, there are two views as to the nature of that role and the obligations of the lawyer to her child client. Some commentators evoke the lawyer autonomy paradigm and argue that the attorney's role is to ensure the protection of the child's best interests by advancing her view of what she believes will best serve the child. The attorney should zealously represent the minor's interests and present all relevant evidence as to the child in court. If there is a conflict between what the child wants and what the attorney thinks the child should have, the attorney need not be bound by the client's expressed preferences. Under these circumstances, the lawyer may argue her own opinion as to the child's best interests and specifically urge the court to discount the child's views.

Other writers, however, argue that the child's attorney should respect and promote her client's autonomy. Under this view, the attorney is a zealous advocate who should represent the child's expressed preferences rather than the attorney's own opinion of what is in the child's best interest. The lawyer is a representative of the child alone

opportunities for paternalistic intervention. From within a lawyer autonomy paradigm, the necessity for independent moral judgment requires the lawyer to engage the client and shape her objectives. Although this would infringe upon the client's autonomy, the lawyer is morally justified in refusing to further those objectives that are irresponsible. But even within the client autonomy model, the attorney may act paternalistically. From within this paradigm, a client may be said to be competent only if she is autonomous; thus, acting on behalf of the incapacitated client does not infringe upon the client's autonomy.

SOURCE: Patricia S. Curle & Gregg Herman, Representing the Best Interests of Children: The Wisconsin Experience, 13 J. Am. Acad. Matrim. Law. 123, 123-24, 132-33 (Summer 1995)(Footnotes Omitted).

It is a late Friday afternoon, two days before Christmas, when the runner walks into court asking the judge to sign a temporary restraining order. The affidavit, containing serious allegations against the father, asks the court to invoke the emergency provisions of the Uniform Child Custody Jurisdiction Act and take jurisdiction of the children. The children are in Wisconsin visiting their mother and live in Texas with their father, a man who travels under a Saudi Arabian passport. This Wisconsin county, due to budget cuts, has no staff to investigate the matter and report back to the Court. The Court must decide within the span of a week whether the claims are true and whether they constitute an emergency. Who can the judge turn to during this most hectic of weeks?

Fortunately, in the State of Wisconsin, children involved in a custody dispute are required to have their own legal

representative, a guardian ad litem (GAL). In this case the court staff, at the direction of the judge, called several well-known family lawyers and finally secured the promise of one to accept the guardian ad litem appointment and to both investigate the facts and be in a position to make a jurisdictional argument in one week's time. Not all judges or children are so fortunate.

Wisconsin has historically been a leader in the use of GALs to protect the interests of children in family court actions. Mandatory representation by a GAL goes beyond the recommendations of the guidelines proposed by the American Academy of Matrimonial Lawyers. Nonetheless, it is submitted that the Wisconsin experience shows that mandatory representation is necessary to protect children whose parents have divorced or are divorcing.

.....
In 1969, the Wisconsin court reversed two cases for failure to appoint a GAL [*Dees v. Dees*, 164 N.W.2d 282 (Wis. 1969); *Gochenaur v. Gochenaur*, 172 N.W.2d 6 (Wis. 1969)]. The failure to appoint a GAL in cases where the welfare of children was at stake now became reversible error.

.....
Parents contemplating a custody or placement dispute must remember that the cost of the children's attorney ultimately will be borne by them. The added cost is a small price when one considers the long term consequences. This tends to raise the cost of custody litigation, but it also levels the playing field because the benefits of having the children represented by an attorney in a custody or placement dispute are only gained when the attorney who represents them is a skilled family law practitioner. The Wisconsin proposed minimum training rule accomplishes this. While certainly no guarantee of competent representation, a

independent representation is discretionary. The trial judge is not in a position to determine whether the child's circumstances, from the child's point of view, have been fully litigated. Rather, the advocate for the child, who is obligated to represent the child's interests, should make this determination. As the court stated in *M.M. v. R.R.M.* [358 N.W.2d 86 (Minn. Ct. App. 1984)], when "the missing element [is] vigorous, independent representation of the children by counsel," the record available for the trial judge will be "woefully incomplete."

Finally, the discretionary standard is an inadequate safeguard when the consequences of a wrong decision are as devastating as those following incest. The legal representation of children is one affirmative step that can help the legal system operate in favor of abused children. While independent legal representation does not promise a complete solution to the dilemmas posed by sexual abuse allegations in divorce cases, the appearance of an attorney for the child may help a judge make "reasoned determinations of fact and . . . disposition."

The Appointment of Counsel When Domestic Violence is Alleged

SOURCE: Lauren Young, Children of Violent Homes, Greatest Victims—Littlest Voices: The Need for Children's Counsel in Disputed Custody Cases, 6 Md. J. Contem. Legal Issues 47, 47-8 (1994-1995) (Footnotes Omitted).

Jason, age twelve, was very upset when he called his lawyer. His sister, Keisha, had gone to court so a judge could decide where she should live. Keisha's parents had been fighting, the police came, and this time her parents decided to separate for good. Both

parents wanted custody of Keisha. Prior to Keisha's custody case, Jason told Keisha not to worry, that she would have a lawyer to help her. He told Keisha to tell her lawyer about everything that was happening at home, about the threats, the hitting, and about their mother's boyfriend. Jason later learned, however, that Keisha did not have a lawyer, and that no one had spoken to her about court proceedings. Several years earlier Jason had been placed into foster care due to physical abuse by his parents. He did not understand why he had a lawyer who spoke to him before and during court who told the judge what he wanted and what was happening to him at home but his sister did not. Jason's lawyer, Susan, was hard-pressed to answer her indignant young client.

Susan could explain that, in Maryland, the judge decides whether counsel should be appointed for Keisha, whether the judge should interview her in chambers, and whether to have counsel present. The judge will also decide what weight, if any, to give to Keisha's statements. However, Susan feared that this explanation of Keisha's rights would not satisfy Jason's sense of fairness. After all, children are the most deeply affected by custody proceedings. In the cases of Jason and Keisha, there were parallel allegations of family violence between the adults and towards the children, but the children were treated differently by the legal system. In Jason's case he was fully represented and had party status. In Keisha's case she was not even interviewed by the court.

Before Susan could respond to Jason, however, Jason was called away from the telephone. Promising to call back, Susan resolved to do some research before they spoke again. Her subsequent research

coordination of services frequently result in the failure to provide appropriate services for abused and neglected children with disabilities (NCJFCJ, 1986). There is an insufficient number of quality group homes and residential programs and a lack of mental health (Knitzer, 1982) and educational services (Bauer, 1993; Howing & Wedarski, 1992).

A large percentage of children in foster care have been shown to have disabilities. Bauer (1993) reported that 25% of the 400,000 children in foster care in the United States on any given day have disabilities. Richardson and her colleagues (Richardson, West, Day, & Stuart, 1989) found that 40% of all children in out-of-home care are developmentally delayed. In a study by McIntyre and Keesler (1986), nearly half the population of children in foster care manifested evidence of psychological disorders.

In recent years, researchers have proposed ways to improve the system of care for youngsters with the most severe emotional and behavioral disabilities (Behar, 1985; Friedman & Street, 1985; Nelson & Pearson, 1991). Attention has also been focused on the importance of advocacy efforts on behalf of children (American Bar Association, 1996; Richart & Bing, 1989) and particularly children with mental and developmental disabilities (Knitzer, 1982, 1989; Landau, 1990; Soler & Warboys, 1990). Although legal advocacy is commonly used as a mechanism for furthering rights and enforcing entitlements to services, it is less frequently recognized as an avenue for exposing the abuses and inadequacies of the various systems serving those with disabilities (Knitzer, 1989; Murphy & Bradley, 1979).

.....

One of the issues raised by this study is whether an advocacy organization that provides legal representation for children who have been abused or neglected should function in the role of case manager for them. Is this an appropriate role for the child's attorney? A benefit of a legal advocacy case management model is that the child's attorney knows how to use the law to secure services or protect the rights of the child. An advocacy case management model, in a sense, demands rights to which the child is legally entitled. When the entitlements are clear, this approach can be very powerful. A skilled advocate who understands the laws governing the various agencies that may have responsibility for serving the child can weave together a program of services using the laws to the child's advantage.

An effective legal advocacy case management model, however, requires more than legal knowledge. It requires that the advocate have some understanding of the effects of abuse or neglect on the child, as well as knowledge of appropriate educational and mental health alternatives, viable placement options, and institutions serving the child. It is an approach that requires more time than is typically available to those who are appointed to represent children who have been abused and neglected.

wanted. Perceiving their school careers as failures, many children with emotional disabilities drop out. Stories of discontinuity and failure are familiar and depressing to these children and parents, as well as to school personnel and student advocates.

This bleak reality flies in the face of a clear congressional mandate, in the Individuals with Disabilities Education Act (IDEA), that all students with disabilities receive a free, appropriate program of special education and related services. The underlying premise of the Act is that all children with disabilities can learn and that this learning should be appropriate to their individual needs.

The assumption that children with emotional disabilities are either bad children who need to be punished or sick children who need medical treatment has impeded the development of effective special education and related services for this group of children. Advocates, parents, educators, and public officials must work together to change these attitudes and to see children with emotional disabilities as learners. They must redefine the sphere of education to include the behavioral, social, and emotional skills needed by these children and consider the ways schools can change to become supportive environments in which all children will grow and develop. Little by little, we must reconstruct our views of our most troublesome children in order to put their learning first.

Special Education within the Context of Delinquency

SOURCE: Joseph Tulman, The Best Defense is a Good Offense: Using Special Education Advocacy in Delinquency Cases, 15 ABA Child Law Practice 97, 102 (September 1996) (Endnotes Omitted).

Lawyers who want to help children in the delinquency system should incorporate special education advocacy into their delinquency practice. By using special education rights and remedies to augment competent delinquency representation, lawyers can prevent placements in juvenile incarceration facilities and unnecessary placements in residential treatment facilities. Lawyers can also free children from juvenile prisons, detention centers, and restrictive mental health placements.

Under the Individuals with Disabilities Education Act (I.D.E.A.), the federal law adopted in every state, a child with a disability that adversely affects educational performance is entitled to special educational services. The child may also be entitled to a variety of "related services" (noneducational services such as counseling, transportation, and occupational therapy), and "transitional services" (services that help a disabled child make a successful transition from school to work, college, and independent living). Since the categories of "related services" and "transitional services" are broad, the lawyer can help the client identify and obtain many services that are consistent with his or her needs and wishes. A lawyer often will be able to convince a judge that these related and transitional services, along with individually-designed special educational services, provide a safe and productive alternative to detention or commitment incarceration.

Being released from incarceration or having a delinquency case dismissed, based at least in part on education-related arguments, can prompt that child to rethink his or her education rights. Lawyers can discuss with a child a strategy for obtaining services that might make school tolerable and even productive. Some children "choose" delinquency because they see no realistic chance of success in school and in the

Legal Advocacy for Child Victims in Criminal Proceedings

SOURCE: Mark Hardin, Guardians Ad Litem for Child Victims in Criminal Proceedings, 25 J. Fam. L. 687, 687-89, 691-95 (1986-87) (Footnotes Omitted).

The appointment of guardians ad litem for child victims in criminal proceedings is gaining increasing acceptance. Independent legal representatives have been appointed for child victims in criminal cases in many jurisdictions, and at least eight states now have statutes or court rules explicitly sanctioning this practice. In March 1986, the United States Attorney General's Advisory Board on Missing Children issued a report recommending that a next friend, guardian ad litem or court-appointed special advocate (CASA) be provided for child victims in criminal proceedings.

.....

The appointment of guardians ad litem for child victims in criminal cases has been stimulated in part by the victim's rights movement, which has, in recent years, succeeded in making it possible for victims of crime to become increasingly involved in the criminal process. At the same time, the growing involvement of guardians ad litem in civil child protection proceedings has helped to stimulate interest in the use of guardians ad litem in the criminal process. Providing a guardian ad litem for the child victim in criminal proceedings is seen not only as a means to better protect the child victim from trauma related to the criminal case, but also to assure greater coordination between the civil child protection proceeding and the closely related criminal case involving the same alleged perpetrator, child and acts of maltreatment.

Although there are helpful analogies between

the role of the guardian ad litem in the civil child protection proceeding and that of the guardian ad litem in the criminal case, there are critical differences that require careful thought when extending the use of guardians ad litem into the criminal court. Among the key differences between the civil and criminal proceedings is that their goals are different, in that the civil child protection proceeding is exclusively concerned with the protection and interests of the child, while the criminal prosecution is brought to punish the perpetrator and to safeguard the interests of society at large. Furthermore, the criminal process offers greater safeguards to the defendant. Accordingly, the role of the guardian ad litem in the criminal proceeding must be carefully circumscribed, and the guardian must possess special skills and knowledge related to the criminal process.

.....

Perhaps the principal practical argument in favor of providing guardians ad litem for child victims is that children are not adequately protected from traumatic experiences in the present criminal justice system. Sometimes prosecutors, in their zeal to obtain a conviction or because of a lack of expertise concerning child victims, overlook the impact of the proceedings on the child. This occurs in part because there is no one in the present system who is exclusively concerned with protecting the child's interests in the court proceeding. The special needs of the child victim in the court process include protection from harsh and improper questioning; protection from intimidation and harm by the alleged perpetrator before, during and after the trial; and coordination of the civil child protection and criminal proceedings. Unless the child has an independent advocate, there is no assurance that there will be a careful examination of the unique problems of each child in relation to the criminal process.

will be answered only through further experience with guardians ad litem in criminal cases and only after further study of how they operate.

.....
Some jurisdictions choose to selectively employ guardians ad litem for child victims. In this instance, it becomes important to identify the cases where the need is most critical. A guardian ad litem is most needed where the threat to the child is most extreme and the guardian is in a position to offer effective assistance. For example, the involvement of a child in a criminal proceeding against a household member is likely to be emotionally hazardous to the child. Not only are there substantial risks of future victimization, intimidation and pressure, but testifying against a family or household member may be particularly traumatic to the child. Avoiding unnecessary or unnecessarily harsh questioning becomes important in such cases.

When the alleged perpetrator of the crime is a member of the household, court orders may be necessary to protect the child before, during or after trial. Such orders might require the perpetrator to leave the household or refrain from contact with the child. In many jurisdictions, such orders can be issued only in the context of a criminal proceeding. Even where the juvenile court can issue orders governing the conduct of the alleged perpetrator, a protective order issuing from a criminal court may be far more effective than a juvenile court order, given the threat of incarceration and other criminal sanctions.

In cases where the alleged perpetrator of the crime is not a family member, the crime may have been so scarring and traumatizing that special protection should be accorded to the child to avoid unnecessary emotional harm. Particularly severe assault or sexual abuse

upon young children might justify the appointment of a guardian ad litem. This is especially true where a child is suffering from an emotional disturbance related to the crime. This might necessitate special study and attention to the manner of questioning the child.

Another situation in which the appointment of a guardian ad litem can be helpful occurs when the judge feels unsure concerning how to proceed with the child's testimony and feels a need for independent advice on how best to protect the child. Such information and advice can be obtained through the appointment of an independent guardian ad litem, or the court might appoint a psychologist, counselor or other expert individual to advise the court. Finally, a court might appoint a guardian ad litem to decide whether to assert a privilege or privacy right on behalf of a child.

CHAPTER THREE

CHAPTER THREE
THE JUDICIAL ROLE IN
IDENTIFYING, EDUCATING, AND RETAINING
EFFECTIVE CHILDREN'S ATTORNEYS

Judges and court administrators have a pivotal role in overseeing the provision of quality legal services to children coming under their courts' jurisdiction. How *practically* can court officials satisfy this responsibility? This chapter explores how judges can identify, educate, and retain attorneys who are capable of litigating on behalf of children and youth. It will only briefly refer to model legal representation programs which are described in greater detail in Chapter Four. Specifically, topics to be covered include:

- How judges, including those in rural jurisdictions, can be involved in the creation of educational programs;
- Already existing standards addressing attorney education;
- The importance of educational programs being of a multi-disciplinary nature;
- The appointment of attorneys with special competencies;
- The supervision, including sanctioning, of court-appointed attorneys;
- Reasonable compensation for attorneys representing children, including caseload considerations; and
- Recommendations for contracting with children's attorneys.

How Can Judges Be Involved in Educating Attorneys for Children?

Judges Need To Be Knowledgeable

Though many judges presiding over child-related cases are very knowledgeable regarding the legal representation of children, not all judges are, especially those appointed to the bench with minimal or no experience in representing clients in family, juvenile, or dependency matters. In order to ensure a higher level of competency among children's attorneys, judges themselves must be as well-versed on topics relevant to the legal representation of children, as the attorneys appointed to represent children.

State and local court authorities should consider several options. As was discussed in this book's first chapter, as part of court improvement programs, the administrative offices of most state courts are developing training programs for the bench and bar on a variety of topics relevant to child-related litigation. Court leaders should mandate that all judges handling child-related cases attend these programs. Ideally, this training should occur prior to a judge's assignment to the family, juvenile or dependency court bench, and periodically thereafter.

Whenever possible, judges should attend programs sponsored by the National Council of Juvenile and Family Court Judges (NCJFCJ). For information, contact:

research and other support to lawyers, the judiciary and others working with children involved with Michigan's child welfare system. Benefits of becoming a resource center member include the opportunity to network with other professionals, receive a newsletter on recent case law and relevant topics, and participate for a reduced fee in interdisciplinary educational programs. Additional information on developing a resource center can be acquired from:

Frank Vandervort, Program Manager
Michigan Child Welfare Law
Resource Center
313 Legal Research Building
Ann Arbor, Michigan 48109-1215
Phone: (313) 763-5598
Fax: (313) 763-5899

Create "The Brown Bag Lunch" Series

Besides more comprehensive educational programs, a simple, cost-effective way of implementing ongoing training is to establish a "Brown Bag Luncheon" series. At least one time per month, or ideally once a week, a guest speaker would be invited to the courthouse to address some aspect of child-related litigation. One would only need the meeting room, a program facilitator, and one to two hours for presentation with audience participation. A training advisory group could be instrumental in coordinating this series.

If such programs are developed, consideration should be given to videotaping the sessions to enable lawyers, court personnel, and others unable to attend to review at a later date. With time, the court would have an extensive video library for use by both new and more experienced lawyers.

Judges Can Meet With Attorneys Prior To Their Appointment

As part of the educational process, judges can schedule meetings with attorneys before they are appointed to represent children. Described in greater detail in Chapter IV, Judge John Mullen of Davenport, Iowa convenes meetings of up to five practitioners for approximately two hours. He addresses the appointment process, professionalism, expectations for conduct in and out of court, conflicts of interest, and other pertinent issues.

The Special Needs of Rural, Less Urban Communities

Many judges and lawyers working in less urban communities have voiced concern about the lack of training programs available to them, especially if long distances have to be traveled to urban centers where educational programs are usually offered. Judges in more rural areas should consider regional training, pooling the resources of neighboring judicial systems with the aim of developing formal educational conferences. As suggested with the "brown bag" luncheon series, videotapes are also useful for providing ongoing educational opportunities.

A state judicial system might also want to coordinate a video satellite conference. Such a conference would enable the rural bar and others to participate in a "live" conference from their own jurisdictions. Speakers' presentations would be communicated to audiences around the state from a central location. At the same time, the audience could phone in their questions to the speakers. Prior to the conference, speakers would be encouraged to develop written handouts for distribution to the statewide audience.

- Oregon's *Principles and Performance Standards*, Chapter Three, Specific Standards for Representation In Juvenile Dependency Cases (June 1996), pp. 29-32;
- Virginia's *Standards to Govern the Appointment of Guardians Ad Litem Pursuant to §16.1-266, Code of Virginia*, pp. 2-5;
- State Bar of Michigan, *Children's Task Force Final Report* (September 21, 1995), III, 92-94.
- *In Re Jeffrey R.L.*, 435 S.E.2d 162, 177-78; 190 W. Va. 24, 39-40 (1993).

The following summarizes many of the provisions of the above-cited standards for training content. A child's lawyer should have knowledge of:

The Law: all applicable federal and state statutory, regulatory, case law, court rules, and appellate procedure relevant to litigating a child-related case; includes the Adoption Assistance and Child Welfare Act, P.L. 96-272, 42 U.S.C. §§ 620-627, 670-679 (1980); the Adoption and Safe Families Act, P.L. 105-89, _____ U.S.C. §§ _____ (1997); the Child Abuse Prevention and Treatment and Adoption Reform Act, P.L. 104-235, 42 U.S.C. §§ 5101 et seq. (1996); and the Indian Child Welfare Act, P.L. 95-608, 25 U.S.C. §§ 1901-1923, 1951 (1978);

Ethical Considerations: a thorough comprehension of ABA, state, and other professional standards, as well as academic writing, designating the responsibilities of the child's attorney, such as having face-to-face contact with a child client and actively investigating and litigating the child's case;

Court Practice: how local and appellate courts process child abuse and neglect cases, including the court's expectations regarding compliance with codes of professional responsibility, its policy on rescheduling cases in light of permanency planning considerations, and its pretrial conference or settlement procedures;

Litigation and Negotiation: how to conduct oneself in the courtroom, including presenting opening and closing argument, examining and cross-examining expert and other witnesses, conducting pre-trial discovery, introducing documentary and other evidence, and representing the child on the appellate level; how to effectively negotiate a case settlement, including drafting a written settlement agreement with court order;

Permanency Planning Considerations: in light of the importance of stability and nurturance in a child's life, how to assess the appropriateness of case planning for children and youth (e.g., reunification, adoption, independent living, relative placement, and long-term foster care) and expedite the process;

Child Development: for purposes of interviewing the child or teenage client, developing a litigation strategy, and identifying a client's special needs, information on the developmental stages of childhood and the impact of abuse and neglect, domestic violence, and parental conflict on child development;

Cultural Competency: given the very diverse child client population an attorney may encounter, information on cross-cultural concerns addressing such issues as their impact on placement decisions, the

adjustment disorders (28.6%), conduct disorders (20.5%), anxiety disorders (13.8%); or emotional disorders (11.9%);⁸

- Of the 77% of eligible children screened, 15% had indicated either a previous attempted suicide or were suspect for suicidal ideation, and 7% admitted to, or were suspect for homicidal ideation;⁹ and
- 48.7% showed evidence of psychological disorders; foster children were 2 to over 32 times at higher risk for psychological disorders, than children raised in their own homes.¹⁰

Educational Issues

- One third of children eligible for school were not enrolled or were in need of alternative services, such as special education; 56% of school aged children were found to have potential school-related problems.¹¹

In representing children and youth with special needs, what additional skills should an attorney have?

As is evident from the above findings, children's attorneys must be able to identify their clients' needs and advocate for appropriate services. If they are to competently represent the child client, they must become informed about a variety of disciplines, including medicine, psychology, psychiatry, education, nutrition and social work.

In addition to representing children in dependency and family court proceedings, attorneys must be prepared to advocate in other forums. An attorney may determine that the client's interests are best served through advocacy at special education or

agency fair hearings, multidisciplinary team or agency meetings, civil commitment hearings, and delinquency proceedings.

Attorneys must also have the necessary client counseling skills to communicate with clients with developmental, physical, and mental disabilities. For example, they must know how to communicate with clients who may have severe mental retardation, who may be unable to communicate verbally, and who are suffering serious emotional distress.

Not only must children's attorneys be familiar with dependency and domestic relations law, they must be able to identify legal issues relevant to:

- special education (e.g., Individuals with Disabilities Education Act);
- school discipline;
- medical care decision making;
- commitment/placement in mental health facilities;
- alternative placements, including therapeutic foster care;
- public benefits (e.g., SSI, Medicaid, EPSDT, state health insurance programs for uninsured children, housing, federal and state welfare reform);
- disability law (e.g., Americans with Disabilities Act);
- subsidized adoption or guardianship benefits;
- multi-agency service delivery;
- independent and transitional living services for youth and adults;

appointed to represent children in abuse and neglect cases had access to Center staff knowledgeable in special education, civil commitment to mental health facilities, the Americans with Disabilities Act, and community services available to individuals with disabilities.

Even if a P & A cannot provide representation to individual clients, it can be an excellent resource for courts and attorneys who need information on experts who can evaluate or provide treatment to children with disabilities. P & A staff may also be available to teach at continuing legal education programs for court-appointed attorneys or may produce publications of use to advocates.

For more information on the P & A in your community, contact:

National Association of Protection and Advocacy Systems (NAPAS)
900 Second Street, NE
Suite 211
Washington, DC 20002
Phone: (202) 408-9514;
(202) 408-9521 (TDD)
Fax: (202) 408-9520
E-mail: HN4537@handsnet.org

School House Legal Services

Courts might want to encourage the establishment in their communities of a program that has worked successfully in Maryland to provide children with legal representation in special education proceedings. Known as "School House Legal Services," the program has the following mission:

SHLS recruits, trains, and supervises attorneys and paralegals to provide free legal representation to children from low

income families experiencing discipline and truancy problems. As a result of [SHLS] advocacy, students are more likely to remain in school, with fewer discipline problems, and are linked to community services. [SHLS]' second focus is public education in the form of trainings and workshops. These services are provided to parents, teachers, therapists, and personnel from government and non-profit agencies who are responsible for working with children.¹²

Additional information on this program can be obtained from:

Advocates for Children and Youth
School House Legal Services
34 Market Place
Bernstein Building, 5th Floor
Baltimore, Maryland 21202
Phone: (410) 547-9200
Fax: (410) 547-8690

Utilize and Nurture Law School Programs

Another resource for courts are law school clinical programs that specialize in representing children and their families in court and administrative proceedings addressing dependency, child custody, special education, public benefits, and mental health concerns. See this manual's Chapter IV which provides additional insight into law school clinical resources, as well as the appendices for a listing of law school child law programs.

Don't Overlook Attorney Specialists Within Your Local Public Defender Offices

The office designated in your jurisdiction to provide legal representation to defendants in criminal and delinquency cases may have a special unit designated to represent individuals

statewide guardian ad litem services. In addition to dealing with GAL training, qualifications, and compensation, the directive requires “[t]he appointing judge or magistrate [to] monitor the actions of the appointee to ensure compliance with the duties and scope specified in the order of appointment.”¹³

Additional insight on Colorado practice, can be obtained from:

Melinda Taylor
Colorado Judicial Branch
Division of Planning and Analysis
1301 Pennsylvania St., Suite 300
Denver, Colorado 80203-2416
Phone: (303) 837-2342

Judges Must Observe An Attorney's Conduct in the Courtroom and Terminate Appointments for Nonperformance

If a child's attorney does not *actively* represent a child client's interests in the courtroom, the court should be concerned about the quality of the legal representation being provided. If an attorney appointed to represent a child consistently states that he or she is in agreement with another party's position (e.g., in dependency cases, the local department of social services), just sits at counsel's table and does nothing, or fails to present independent evidence or argument, the court should consider terminating that attorney's appointment or contract to represent children, as well as referring the attorney to the appropriate disciplinary body.

Courts and Funders Must Recognize the Correlation Between Attorney Performance, Compensation and Caseload

If judges are to hold attorneys accountable to a high standard of performance, those appropriating funds for the provision of legal

services to children must be made aware of the correlation between attorney performance, compensation and caseload. Some courts may find it difficult to impose sanctions against ill-performing attorneys if the attorneys claim that they are not being adequately paid for the legal work that needs to be done or are forced to carry high caseloads.

Attorneys Representing Children Should Be Paid an Adequate Wage

Attorneys representing children and parents should receive compensation that is reasonable and commensurate with the amount and complexity of work involved in dependency and other child-related litigation. The *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (February 5, 1996) strongly urge states to establish uniform levels of compensation for attorneys for children statewide. Part II, J-3. In determining a reasonable rate of compensation, consideration should be given to:

- the number of children involved in a case;
- whether the children have any significant developmental, physical, or emotional disabilities,
- the complexity of court proceedings (e.g., contested versus noncontested, appellate litigation);
- the hourly rate of other attorneys representing parties in the case;
- the financial status of the parties; and
- current hourly fees in the community for private bar legal representation in domestic relations, adoption or similar cases.¹⁴

for experts, investigative services, paralegals, research costs, and other services, such as copying medical records, long distance phone calls, service of process, and transcripts of hearings as requested.” Part II, J-2. As indicated in the accompanying commentary to this standard, access to experts and other litigation-related costs is essential to providing competent legal representation.

Judges Should Not Cut Reimbursement Requests When Quality Representation Has Been Provided

In commentary to Part II, J-3, the ABA Standards also “implicitly reject the practice of judges arbitrarily ‘cutting down’ the size of lawyer requests for compensation. . . .” It is recommended that judges only decrease reimbursement requests that are “deemed unreasonable” in light of case complexity and time spent.

*Attorney Caseloads Must Be Reasonable*¹⁶

No comprehensive study has been conducted establishing the ideal caseload for an attorney representing a child. However, this does not mean that reasonable caseload standards cannot be defined based on the experiences of children’s attorneys. An attorney representing a child should have a caseload that enables him or her to provide ethically competent legal representation.

First, if a court enters into a contract with an attorney or agency to provide representation for a child, a realistic estimate should be made regarding the numbers of hours it will take to represent *each* child involved in a case through *each* stage of the court proceedings. Courts should be mindful as to how “case” is defined for purposes of caseload evaluation. It may be far more work to represent a sibling group, than one child. Every child is an

individual deserving of the attorney’s time and skills.

Second, the Court should carefully review the ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect cases and their states’ existing standards relevant to representing children. The ABA and some state standards outline the duties of an attorney representing a child. Estimates should be made regarding the amount of time it takes to fulfill ethically mandated responsibilities.

Third, those funding legal services for children must be aware that dependency and other child-related proceedings are not “simple” proceedings, only requiring a child’s attorney to appear in court and rubber stamp the positions of other parties. Child-related litigation is highly complex, especially given standard of representation issues, the special needs of children, the multidisciplinary nature of this legal practice, the number of applicable federal and state laws, and the inadequacy of services for children and families in many jurisdictions.

Fourth, consideration must be given to whether hearings are contested and thus lengthier versus hearings in which settlements are presented. Courts may want to refer to the aforementioned NCJFCJ *Resource Guidelines* which recommend time frames for hearing length in noncontested or routine cases (e.g., preliminary protective hearings—60 minutes)¹⁷ in arriving at estimates for attorney time spent in court.

Keep in mind that more effective advocacy may mean longer hearings because attorneys will be prepared to try cases and provide more detailed testimony and other evidence to the court. This may in fact diminish the number of hearings over a case’s life as more time will

hearings or appearances in other forums (attached New Mexico contract has a relatively detailed list);

- The type of hearings in which the child's attorney will be representing a child, including whether representation extends to parental rights termination, adoption, appellate, special education and other proceedings;
- The expectation regarding the length of time in which an attorney will provide representation to a child (e.g., that the attorney will represent until a permanency plan has been implemented in a case);
- Pre- and post-appointment training and experience requirements;
- The repercussions should an attorney fail to provide competent, ethical legal representation or satisfy contractual obligations;
- The attorney's recourse should a conflict of interest arise during his or her term of appointment (e.g., sibling group with members having differing interests) or representation is required in other forums (e.g., tort actions, special education proceedings, civil mental health commitment hearings);
- How an attorney will be compensated for services provided, including fees to be paid, the number of cases to be handled, the definition of a case, and the procedure for seeking reimbursement;
- Whether or not attorneys will be paid separately for appeals;
- How litigation costs will be paid (e.g., payment of expert witness fees); and

- Reasons for contract termination.

Models of Legal Representation

By highlighting different models of legal representation, this guide's next chapter will further explore many of the topics addressed above. In particular, an effort will be made to more fully identify the elements of a model program for providing lawyer services to children.

CHAPTER FOUR

CHAPTER FOUR

PROVIDING LEGAL REPRESENTATION TO CHILDREN: PROGRAM MODELS

By examining how different communities provide legal representation to children, judges will be better equipped to work within their jurisdictions to institute effective advocacy programs. This chapter relates the experiences of several jurisdictions that have established systems of lawyer appointment designed to enhance the quality of representation.

The descriptions are not intended to be all inclusive. Throughout the country, many programs exist that have committed attorneys providing highly competent legal representation. Due to page limitations, all of them could not be included in this guide. The programs presented are representative of various ways to access legal representation for children. These approaches include:

- Contracting with specialist child advocacy law firms;
- Creating a judicially-administered statewide attorney/GAL office;
- Contracting with private attorneys or maintaining special appointment lists;
- Identifying law school clinical resources; and
- Establishing pro bono lawyer programs.

As with any legal practice, child advocacy legal programs must be vigilant to the caseload, training and compensation concerns of their attorneys and support staff. *The reader should note that the program-specific caseload and compensation*

information stated below is not intended to create standards for caseload and compensation. Criteria has been provided in Chapter Three to give courts guidance in evaluating the issues of caseload and compensation.

Also, included in this chapter's final section are excerpts from *Opening a Child Welfare Law Office* produced by the University of Michigan Law School, Child Welfare Program. This information will be helpful to anyone contemplating the establishment of a child advocacy law office, including one that will handle a limited number of cases or be involved in coordinating volunteer attorney activities.

Contracting with Specialist Child Advocacy Law Programs

Contracting with law offices that specialize in representing children can be one of the most effective ways of improving the quality of representation for children. As reflected in the following discussion of two specialist child advocacy programs, such systems have the potential to:

- provide for greater uniformity in the selection, training and supervision of competent legal staff;
- handle more expertly a greater number of cases; and
- implement systemic reform in the best interests of children.

Satisfied with the Chief Judge's actions—the dismantling of the GAL Office, the appointment of Patrick Murphy, and the improvements Murphy had made to the office—LAF entered into a consent decree with the parties and the lawsuit was dismissed.

When Murphy took the helm in 1987, he immediately doubled the legal staff to twenty lawyers. This number increased to forty in 1988 and has steadily increased to its current size of 125 lawyers.

Appropriated by the Cook County Board, the budget for the OPG's child protection division is now approximately \$11 million per year. The rise in the OPG budget has been attributed to two factors: 1) recognition on the part of County officials of the need to provide children with competent representation; and 2) the dramatic increase in caseloads during the 1980s and early 1990s.⁵

Structure

The Child Protection Division of the Cook County Juvenile Court hears all child abuse and neglect cases in Cook County. It has fifteen calendars/courtrooms.⁶ Twelve courtrooms are considered active and three are dedicated to hearing contested termination of parental rights petitions (TPRs). The OPG assigns units of attorneys and staff to cover each courtroom exclusively.

Active Calendars

Attorneys in the twelve active calendars handle cases from beginning to end, except for contested TPRs.⁷ Each courtroom is staffed with six to seven OPG attorneys and one lead (supervising) OPG attorney. Each

staff attorney carries a full caseload of 200-300 cases, most with multiple siblings. The cases are assigned to specific attorneys on the calendar. That attorney will theoretically follow the case from beginning to end unless there is a contested termination of parental rights; the case is then transferred to the terminations calendar. The staff attorneys are considered “odd” or “even.” Odd attorneys are in court on odd days and even attorneys are in court on even days. This enables attorneys to have out of court days to prepare their cases and visit children in placement.

The lead or supervising attorney does not carry a full caseload. Instead, he or she supervises the work of the GALs in his or her courtroom, acts as a resource for the GALs, assists on sensitive and complex cases, and contributes to the management of the overall functioning of the courtroom. Attorneys must discuss major upcoming court cases or decisions with their lead attorneys, such as motions to change visitation or return children home and case closure.

Each calendar has support staff consisting of a paralegal, a child interviewer, a secretary, and a law clerk. The paralegal is responsible for completing research assignments for the staff attorneys, as well as distributing the daily court call sheet. The child interviewer is responsible for interviewing children on the calendar. The law clerk, who is shared with another calendar, is responsible for serving motions and assisting in maintaining the calendar's files. The secretary, who is also shared with another calendar, handles the typing and other clerical tasks.

Supervision

As stated, each calendar has one lead attorney with designated supervisory responsibilities. Above the lead attorneys are courtroom supervisors. Three courtroom supervisors supervise five courtrooms each. The courtroom supervisors provide support for lead attorneys, handle and/or monitor complex litigation and sensitive cases, and participate in administrative functions and training.

In charge of the courtroom supervisors is the Deputy Public Guardian who is responsible for the operation of the office. Overseeing the entire operation is the Public Guardian, Patrick Murphy, who serves at the pleasure of the Chief Judge of the Juvenile Division.

Expert Services

OPG sets aside \$75,000 per year for expert witnesses and \$60,000 for medical consultants. Many experts and consultants offer services at no charge or at substantially discounted rates.

Evaluations

Attorneys are evaluated after three months by their supervising attorney and the Deputy Public Guardian. Thereafter, evaluations are conducted annually.

Compensation

The entry level GAL I earns \$35,696 annually. The next level GAL II earns \$42,979. Currently, in order for a GAL to be promoted to a GAL II, a GAL II must leave the office. A lead attorney, GAL III, earns \$51,863. Courtroom supervisors are GAL IVS and earn in the mid \$60,000 range.

In Summary

Building a large bureaucracy to handle tens of thousands of cases is a daunting task. Like other large programs, the OPG has its critics. However, it appears the OPG has put together a well-staffed and well-supervised program to fittingly represent its clients. Although the budget of about \$11,000,000 per year is costly, it appears that the money is well spent as the OPG has not only been at the forefront in child representation, but has been a force in initiating change in child welfare law in Illinois.

The highlights of the OPG include: (1) the "odd" and "even" attorney system that gives attorneys out-of-court time to prepare cases and visit children; (2) the separate professional appeals unit that frees up courtroom attorneys from handling time-consuming appeals; (3) a special litigation unit that actively pursues lawsuits and other remedies to effectuate systemic change; (4) supervising attorneys in each active courtroom; and (5) the assignment of attorneys specifically to one courtroom.

Individuals with questions about the Cook County Office of the Public Guardian should direct their inquiries to:

Robert Harris
Deputy Public Guardian
Cook County Office of the Public Guardian
2245 W. Ogden Ave., 4th Floor
Chicago, IL 60612
(312) 433-4300

The Maryland Legal Aid Bureau, Inc.⁸

In 1981, Maryland's Legal Aid Bureau, Inc.,⁹ initiated negotiations with high level Maryland officials out of concern that

Structure

The present forty-four month contract with the state appropriates \$13,465,347 to the Bureau to provide representation in all stages of child abuse and neglect court proceedings, including parental rights termination cases and appeals. It is estimated that in 1998, the Bureau will represent approximately 7,000 children. About 4,000 of these children will be in Baltimore City and 1,000 will be in Prince George's County, a highly populated suburb outside of Washington, D.C.

Currently, children are served by two specialty units located in Baltimore City and Prince George's County and by six local county offices, some of which serve rural communities. The Baltimore Unit is comprised of three supervising attorneys, seventeen staff attorneys, fourteen legal assistants, one masters level social worker, and six support personnel. The Prince George's County Office has eight full-time CINA attorneys. In other county offices, approximately five attorneys are CINA specialists and eight have diverse caseloads with a portion devoted to CINA representation.

The Bureau hopes to maintain and increase staff over the coming years recognizing the importance of manageable caseloads to providing competent legal representation. The current program goal is to have specialty attorneys represent children in no more than 200 to 220 cases at any given time. Caseloads will vary depending on whether an attorney is a full-time CINA attorney, has a certain level of experience, has legal assistant support, and has to travel extensively to conduct home visits or go to court.

Training

Since 1982, the Legal Aid Bureau has trained staff by conducting its own internal educational programs and encouraging attendance at outside conferences. To date, programs have been presented on such subjects as the role of counsel for children, the evaluation of medical and psychological evidence of abuse and neglect, youth law issues, the child client interview, cultural competency, and special education law.

A statewide training coordinator maintains videotapes and written materials for use by newly hired staff and others unable to attend sessions due to scheduling conflicts. She is also instrumental in organizing the Bureau's periodic "new lawyer" litigation skills training, a several day program in which attorneys represent clients in "mock" legal proceedings, including a several hour parental rights termination trial. In the past, more experienced attorneys have attended advanced trial skills training, based on the National Institute of Trial Attorneys (NITA) model.

In addition to participating in formal training programs, new staff are given time to meet with their supervisors, review training materials and videotapes, and observe courtroom proceedings prior to entering their appearances in cases. This period of orientation will vary depending on the previous legal experience of an attorney.

Educational opportunities also result from regular staff communication. Approximately one year after the Legal Aid Bureau undertook the representation of children, staff formed a statewide child advocacy task force to ensure that advocates were apprised of current child welfare litigation, legislation, and relevant community activities. Fifteen

Preston filed a class action in federal district court seeking equitable relief and monetary damages on behalf of children in Baltimore City's foster care system.

The complaint alleged, *inter alia*, that children were at risk of being abused and neglected while entrusted to the care of the Baltimore City Department of Social Services (BCDSS). In issuing a preliminary injunction in July 1987, the Honorable Joseph C. Howard agreed and found that "[t]here was a great likelihood that many children in foster care administered by BCDSS [were] at risk of suffering irreparable harm." 669 F. Supp. at 532. In July 1988, the parties entered into a consent decree providing in part that BCDSS adequately monitor the progress of children placed in its homes and ensure the provision of appropriate medical, mental health and educational services.

A unified advocacy system has also given the program increased influence with the state legislature, government officials, and local bar associations. During its first decade of representing children, Legal Aid Bureau staff testified before the Maryland State legislature on several occasions requesting enactment of legislation beneficial to children. They have been active in submitting comments on proposed state regulations regarding foster care and protective services, as well as participating on bar association committees and state task forces addressing children's issues.

It should be noted that current federal law prohibits legal services programs from undertaking class action litigation and significantly limits legislative advocacy. At the time of the filing of *L.J. v. Massinga* and the Bureau's legislative advocacy, legal services offices could participate in class

action lawsuits, as well as advocate in legislative forums..

Lessons Learned

Before a legal services program negotiates with potential funders to provide representation for children, it is imperative that the program evaluate the impact of such advocacy on the provision of general legal services to its client eligible population. A program receiving state funding to provide general legal services must be careful that state authorities and the program itself not divert general legal services funds to child advocacy representation.

State representatives must be informed that the provision of quality legal services to individuals experiencing housing, consumer, health care, and public benefits problems is equally important to the prevention and eradication of child abuse and neglect. The employment of staff who have expertise in poverty law will improve the ability of child advocates to identify and resolve with staff support problems that may not necessarily be highlighted in an abuse or neglect case.

Furthermore, a program must not allow funding sources to dictate the terms of the agreement relating to staffing needs and caseloads. A legal services program must negotiate for sufficient funding so that attorneys can competently represent their clients' interests.

If staff want to be strong advocates for children, they must have reasonable caseloads that allow for adequate trial preparation and client contact.

Underestimating staffing needs and capital costs at the onset is a grave mistake. It will result in frequent staff turnover that will detrimentally impact clients' interests.

Utah's Office of the Guardian Ad Litem

Office Mission and Structure

Created in July 1994, the Office of the Guardian Ad Litem is a state office of the Judicial Branch of government which advocates for the best interest of abused and neglected children within the court system. The Office of the Guardian Ad Litem promotes the policies of the [Utah] Child Welfare Reform Act: that children in foster care not remain in limbo, that their cases be monitored, and that they not remain in foster care for more than twelve months without a permanency decision. GAL attorneys represent abused and neglected children under specific statutory guidelines that ensure representation for each child.

The Office of the GAL strives to provide adequate representation for each child for whom the office is appointed whether or not the child is in foster care. In addition to representing children in dependency cases, office attorneys are also appointed to represent children in custody actions where there are allegations of abuse and neglect, in protective order proceedings involving domestic violence, and in some criminal actions in the district and circuit courts.

In Utah, the child is considered a party to civil proceedings concerning custody or abuse and neglect allegations. This means that the GAL attorney can call and cross-examine witnesses, conduct discovery, file motions and participate to the same extent as the attorneys for the parents and the state.

During the first eighteen months of the office's existence, over 4,000 children were represented by the office. The office employs approximately thirty attorneys to represent children throughout Utah.

GAL attorneys collaborate with many others, such as assistant attorneys general, the Division of Family Services, doctors, nurses, therapists, local inter-agency councils, teachers, prosecutors, the Child Protection Team, the Fatality Review Board, the Children's Justice Centers, and the Utah Chapter of the National Association to Prevent Child Abuse. In addition, attorneys are members of the National Association of Counsel for Children, the Utah State Bar Needs of Children Committee, and the American Bar Association. All of these people and agencies help office staff gather research and important instruction on how to effectively represent clients.

An Attorney Plus A CASA

Because of the great number of children in need of GAL representation, CASA volunteers are also appointed to assist the attorneys. The CASA is asked to handle only one case at a time so that the CASA can spend extensive time with the child to obtain factual information to assist the attorney in his or her case preparation. CASAs are present in most judicial districts, with over 500 throughout the state. These volunteers spend an average of eight hours per month on each of their assigned cases, with some volunteers contributing as much as thirty hours in a given month. CASAs are not appointed in lieu of an attorney.

Mandatory Attorney and Volunteer Training

The initial mandatory training for attorneys is an intensive twenty-seven hour program. Topics covered include: the Child Welfare Reform Act; mental health; the Children's Justice Center; interviewing children; the Division of Family Services Child Welfare Manual; child protective services; adoption; child development; termination of parental

Contracting with Private Attorneys or Maintaining Appointment Lists

Many jurisdictions depend on attorney lists and panels as a mechanism for the appointment of GALs. In these jurisdictions, it is the judge's responsibility to make GAL and/or parent counsel appointments. This process can be time consuming and frustrating for judges and clerks if it means thumbing through lists and contacting individual attorneys. Some believe this system can harbor favoritism and cronyism.

The following descriptions relate how several jurisdictions have attempted to address some of the problems inherent in appointing attorneys from panels or lists. As elaborated in Chapter Three, and as reflected below, if courts contract with individual attorneys to handle a specified number of cases or appoint attorneys from a list maintained by the court, the court must ensure that:

- attorneys are trained and qualified to represent children;
- attorneys provide representation in accordance with professional and ethical standards;
- contracts are renewed to allow for continuity of representation;
- attorney caseloads are reasonable; and
- attorney compensation is adequate.

To restate, the reader should note that the program-specific caseload and compensation information stated below is not intended to create standards for caseload and compensation.

The Washington, D.C. Counsel for Child Abuse and Neglect Program¹⁴

Washington, D.C. utilizes a GAL/attorney appointment system that is administered by the Counsel for Child Abuse and Neglect Program (CCAN), a branch of the Family Division of the D.C. Superior Court. In identifying attorneys for an appointment list, CCAN evaluates attorneys' qualifications and requires them to undergo training prior to their appointment as child or parent's counsel in any neglect case. Creating a list of qualified attorneys allows judges to more easily appoint attorneys for children and parents when their cases first come to court.

CCAN also trains and certifies its own attorney and legal support staff to act as a resource for court appointed counsel. Below is a summary of the responsibilities of CCAN's staff, its appointment process, its training, and its attorney compensation formula.

The Staff

The CCAN has four staff members: an attorney program director, a social worker, a reappointment clerk and a staff assistant. Besides being responsible for the general oversight of the office, the program director manages the attorney sign-up process, coordinates the mandatory initial attorney training programs and bi-monthly luncheon seminars, and communicates with attorneys who need direct assistance on individual cases and responds to legal and procedural questions. The staff social worker is also available to respond to social services inquiries and conducts financial eligibility interviews of parents.

legal departments to represent children in D.C. Superior Court neglect proceedings on a pro bono basis.

Payment System

The CCAN office is not directly responsible for paying CCAN lawyers. Instead, it is the responsibility of the Financial Operations Division of the D.C. Family Court. When an attorney is appointed to a case, he or she is automatically issued a new appointment voucher by the financial operations division. The new appointment voucher covers claims for legal services rendered from the initial hearing through disposition. Separate vouchers are available for other stages of the case (e.g., termination of parental rights). The attorney must complete a voucher in order to get paid.

The current hourly rate for legal services for CCAN lawyers is \$50 per hour. Compensation per case is subject to the following limitations, exclusive of expenses:

Initial Hearing Through Disposition:	\$1,100
Subsequent Proceedings (reviews, motions):	\$1,100 per year
Termination of Parental Rights:	\$1,500
Appeals:	\$750

Claims in excess of these amounts may be approved or extended by the presiding judge in complex representation when the payment is necessary to provide fair compensation.

Allowable reimbursable expenses include long distance telephone calls, duplication of briefs, fees paid for obtaining records, and case related travel expenses. Expert service vouchers may be available to CCAN appointed counsel to assist counsel and their

clients in preparing for trial, motion or review hearings. These vouchers can be used for expert witnesses and other services needed to provide legal representation and must have prior court approval.

Questions regarding CCAN should be directed to the program director at the address below.

Lori Parker, Esq.
CCAN Program Director
Superior Court of the District of Columbia
Room 4416
500 Indiana Ave., NW
Washington, D.C. 20001
(202) 879-1406

The Guardian Ad Litem Project of the Cuyahoga County Bar Association (Cleveland, Ohio)¹⁵

The Cuyahoga County Juvenile Court GAL Project had its beginnings with the Guardian Ad Litem for Children Project established jointly in 1978 by the Juvenile Court and the Federation for Community Planning. The purpose of the original project was to respond to the court's growing need for qualified attorneys to serve as GALs for children and sometimes parents in a variety of cases. In order to lodge the project within the most appropriate organization, the Juvenile Court approached the Cuyahoga County Bar Association, which took responsibility for managing the program in 1980. Through the lobbying efforts of several child advocates, the Cuyahoga County Board of Commissioners agreed to provide annual funding for the payment of GAL fees and the administrative costs of the program.

The contact person for this program is:

Marita L. Kavalec, Esq.
Administrator
Guardian Ad Litem Project of the
Cuyahoga County Bar Association
2163 East 22nd Street
Cleveland, Ohio 44115
Phone: (216) 443-3377
Fax: (216) 443-3413

Judicial Oversight in Davenport, Iowa¹⁶

Many who consider the legal representation of children typically focus on larger cities, such as Chicago, New York or Washington D.C. However, less populated communities have also experienced rising abuse and neglect dockets without the necessary commitment of resources to combat the problem.

History

Over the last decade, Scott County, encompassing Davenport, Iowa, has seen a steady rise in its abuse and neglect caseload. *In a less populated community, such as Scott County, it can sometimes be difficult to identify a sufficient number of trained GALs to represent children in all dependency and custody cases.* Yet, the experience of Scott County exemplifies how the judiciary's commitment to improving the quality of representation for children can make a positive difference in the lives of children.

It all started in the mid 1980's when John Nahra and John Mullen, two Davenport attorneys specializing in family and juvenile law, decided to confront the problem of the poor quality of GAL representation. They felt that too often GALs were uninformed and uninvolved "rubber stamps." They thought this stemmed, in part, from a lack of

input from the bench on managing the attorneys who practiced in juvenile court, as well as inadequate specificity as to GAL duties.

The Mandate of "Informed Active Advocacy"

In 1985, seeking changes in GAL representation, John Nahra was appointed to be a juvenile court judge. The first thing the judge did was to convene a meeting of all juvenile practitioners pronouncing the requirement of "*informed active advocacy*" for children.

Additionally, Judge Nahra uncovered racial bias in the licensing of foster homes—the homes where minority children were assigned had a lower standard for licensing. As a result, he required every guardian ad litem to visit each child in his or her foster home to ensure that foster homes were safe and appropriate. This requirement was the start of a detailed list of GAL duties that still exists today.

In 1986, Judge Nahra was appointed to the District Court Bench. John Mullen was appointed to replace Judge Nahra.

Judge Mullen continued the advocacy of Judge Nahra. First, over the next two years, Judge Mullen was instrumental in the adoption of a GAL duty list. The list includes requirements on interviewing the child client, collecting data from medical, school and mental health records, conferring with foster parents, and attending placement review staffings. In 1994, the Iowa legislature adopted duties and responsibilities for GALs similar to Scott County's long standing rules. See Iowa Code Ann. § 232.2(22).

clinical law programs. Properly supervised law students can not only learn a great deal about the law and lawyering, but also provide an important service to individual children.

A supportive judge can assign the appropriate cases to a child advocacy clinic, contract a fee for service to cover a portion of the clinic costs, provide expertise in developing the curriculum, and lend credibility and prestige in raising additional funds. A judicial connection may be just the encouragement a law school needs to designate a portion of its clinical education resources to children's legal cases.

To identify law schools in your states with juvenile law curriculum or clinical programs, refer to this manual's appendices which contain a listing of law school programs developed by a subcommittee of the ABA Section on Litigation, Task Force on Children. A partial listing can also be accessed via the University of Michigan Law School's Child Advocacy Law Clinic's website (www.law.umich.edu/childlaw).

Presented below are descriptions of two law school programs which expose students to child-related legal practice. They are the Child Advocacy Law Clinic of the University of Michigan Law School and the Child Law Center and Clinic of Loyola University Chicago School of Law.

The University of Michigan Law School Child Advocacy Law Clinic

[This excerpt was originally published as a pamphlet, Duquette, D., *Developing a Child Advocacy Law Clinic: A Law School Clinical Legal Education Opportunity* at p. 7. The pamphlet now appears as an article (adapted) at 31 U. Mich. J.L. Reform 1

(1997). Reprinted with permission of Clinical Professor of Law Donald Duquette and the University of Michigan Journal of Law Reform.]

Since 1976, the Child Advocacy Clinic of the University of Michigan Law School has offered a specialized clinical legal education experience to law students in cases of alleged child abuse and neglect. The student attorneys handle cases in three distinct roles—as attorney for the child, the parents, and the agency—in different Michigan counties to avoid conflicts of interest. Sixteen to twenty law students take the one semester course for seven academic credits and work in teams of two. The Clinic is very popular among students and is nearly always oversubscribed. A typical caseload over a semester includes one termination of parental rights case representing the agency, one case representing parents accused of child maltreatment, and three cases representing children in child protection or guardianship cases. In addition to their usual cases, many students handle other types of cases, including impact litigation, appeals, amicus briefs and do special projects such as legislation or independent research.

The legal representation is guided by an interdisciplinary team of teachers and consultants. The student attorneys meet in the classroom for six hours per week in the first two thirds of the semester and four hours per week thereafter. The class introduces students to child welfare law and policy and teaches an interdisciplinary approach to child protection and foster care as well as covering subjects that have become traditional for clinical law programs—trial practice, interviewing, counseling, negotiation, alternative dispute resolution, and legal ethics. The course is mandatory pass/fail, meaning that

Besides the J.D. program, the ChildLaw Center offers two additional degree programs—a Master of Laws (LL.M.) for attorneys seeking specialized training in child advocacy and a Master of Jurisprudence (M.J.) for non-lawyers wishing to enhance their understanding of how the legal system impacts on children, particularly those who have experienced the trauma of abuse, neglect or community violence.

Students can also participate in Loyola's ChildLaw Clinic. Under the supervision of faculty, students can provide direct legal representation to child clients in a range of proceedings, including child abuse and neglect cases, juvenile delinquency proceedings and contested child custody matters. Externships are also available for students to earn credit while receiving field experience in such offices as the Inspector General of the Department of Children and Family Services, the Cook County Public Guardian, and other child welfare organizations, agencies and foundations.

In conjunction with the American Bar Association Center on Children and the Law, Loyola students edit the *Children's Legal Rights Journal*, a quarterly publication for professionals in law, medicine, social work, education and other disciplines who work with children and families.

The courses offered by the ChildLaw program are described in the Loyola School of Law Bulletin. In addition to these courses, the Center has prepared special materials identifying recommended and optional related law school courses and available non-law school classes.

Professor Diane Geraghty serves as director of ChildLaw programs. Stacey Platt is Associate Director and Anita Weinberg is director of Children's Legislative and Policy

Programs. To obtain additional information on this children's law degree program, refer to Geraghty, Diane, *The Role of Legal Education in the Emerging Legal Specialty of Pediatric Law*, 26 Loyola University Chicago Law Journal 131 (1995) and contact:

Loyola University Chicago School of Law
Office of Admission
One East Pearson
Chicago, Illinois 60611
Phone: (312) 915-7170
Fax: (312) 915-7906
Website: www.luc.edu/schools/law/childlaw

The Role of the Volunteer Attorney

Courts should not rely *solely* on the services of volunteer attorneys to provide representation to children in dependency, child custody, and other child-related litigation. Especially in jurisdictions in which the court presides over a substantial number of cases, there will never be a sufficient number of attorneys willing to provide their services for free. Moreover, the majority of legal services programs for the poor have experienced a serious diminishment in their federal funding. This means that in most communities volunteer attorneys are being asked to represent more individuals in housing, public benefits, and other types of domestic relations cases.

This is not to say, however, that volunteer attorneys should not provide legal representation to children. Trained volunteers do have a role to play in ensuring that children are afforded access to quality legal representation. They can represent children in cases in which paid attorneys or child advocacy legal programs have a conflict (e.g., individual children of sibling group have differing interests; law firm already represents parent). They can offer their

Support Center legal and social services are offered to child victims in four core programs: Child Abuse and Neglect; Medically Needy Children; Kids 'n Kin; and Adoption. Children are referred to the Support Center by the courts, the District Attorney's Office, the Department of Human Services, hospitals, and private social service agencies.

Special service initiatives include:

- *Children's Paralegal Program*, offering paralegals and legal assistants the opportunity to serve children in casework, legal research and initiatives for systemic reform;
- *Kids 'N Kin: The Caregiving Program*, a joint venture with the Philadelphia Society for Services to Children that provides in-home legal and social services to relative caregivers;
- *Teen Permanency Project*, a collaborative initiative with the Adoption Center of Delaware Valley to promote adoption and other permanency options for older adolescents; and
- *Volunteer Attorneys for Medically Needy Children*, an advanced volunteer program targeted at children under five with serious medical needs.

Other 1996 and 1997 Center programs include:

- *Law Enforcement Child Abuse Project*, a monthly, interagency colloquium that identifies barriers to service and implements changes in Philadelphia's child protective services system;
- *Adoption and Foster Care Task Force*, a

multidisciplinary effort that works for systemic reform and shared information on the child welfare system;

- *Philadelphia Task Force on Kinship Care*, a policy reform initiative to study and implement changes in laws, regulations, entitlements, the court system, health care, support services, training and research; and
- *Caseload Review Permanency Program*, offering volunteer attorneys the feedback and strategic planning skills of experienced lawyers, social workers and mental health professionals.

For more information on the Support Center for Child Advocates, contact:

Frank P. Cervone, Executive Director
Support Center for Child Advocates
801 Arch Street, Suite 608
Philadelphia, PA 19107
Phone: (215) 925-1913
Fax: (215) 925-4756

What can judges do to develop pro bono programs?

Judges interested in expanding pro bono legal services to children might want to first contact their community's already existing pro bono programs to determine if these entities are coordinating pro bono legal services to children, and their interest in doing so if they do not. Another option is to contact larger law firms that often employ pro bono coordinators who might encourage their law firms to get involved in representing children.

Descriptions of pro bono programs for children can be found in *A Directory of Pro Bono Children's Law Programs*, produced

What should courts and attorneys do if they want to establish quality legal programs for children?

The following excerpt from *Opening a Child Welfare Office* provides guidance to those interested in creating a program designed to provide quality legal services for children. Included in this publication are descriptions of eight children's law offices. Though the document is addressed to lawyers interested in establishing children's law offices, it has relevance for judges interested in improving the quality of legal representation for children. Judges are encouraged to share this information with lawyers in their communities. The document can be obtained from The University of Michigan Law School, Child Welfare Law Program as stated in this chapter's section on law school programs.

[Reprinted with the permission of Clinical Professor of Law Donald Duquette; this excerpt outlining five key steps is from Woloshin, N.J., The University of Michigan Law School, Child Welfare Law Program, *Opening a Child Welfare Law Office* (March 1996) 3. As stated in the publication, it has been adapted from "Starting a CASA Program," a publication of the National CASA Association, Seattle, Washington 1991.]

There are several key steps in the development of a Children's Law Office Program.

- The first step is to become knowledgeable about the problems of the child abuse and neglect in your community. Ask how a children's law office program might meet existing needs. Much of this knowledge about your community and its response to

abused and neglected children can be gained by researching the answers to questions [outlined in the full publication]. Talk with staff and volunteers from other programs.

- The second critical step is to seek the support of the local bar. This is true especially if [a children's law] office will use pro bono attorneys. It may help to talk to the lawyers who practice in juvenile court and with members of the bar association's pro bono panel.
- The third critical step is to seek the support of the juvenile judge. This may be easy in some cases when the judge has been the one to initiate planning for the program or has let it be known that he/she would like to have the program. If you do not know the judge's stance, make contact very early in your planning process. The judge is a good resource for much of the information about abuse and neglect.
- If the judge does not want the program and does not offer support, the program will not likely succeed. Initial reluctance on the judge's part is not unusual and should not discourage you. Often you can counter his/her objections by providing information about how the program operates and what the benefits are.
- The fourth step is to determine the factors that will facilitate the development of a Children's Law Office. Identify the barriers which will have to be overcome before the program can succeed. Knowledge and good planning will assist you in foreseeing problems and obstacles, and will help you be ready to meet them head on. Volunteer

ENDNOTES

1. This description of the Cook County Office of the Public Guardian was authored by the staff of that office, including Brian Finley, Esq., Thomas Grippando, Esq., and Patrick Murphy, Esq.
2. In addition to representing abused and neglected children, the OPG also has other divisions (e.g., adult guardianship) that are not considered in this description.
3. In Re: G.S., etc., et al. v. M. Leonard Goodman, etc., et al., 86 CH 11721 (Plaintiff's brief filed December 15, 1986).
4. Id. at pp. 14-28.
5. The OPG represented 8,000 clients when Murphy took the helm in 1987.
6. The term "calendar" is used interchangeably with the term "courtroom" but it also describes the team of lawyers that are assigned to a specific courtroom. For example, courtroom A of the juvenile court is staffed with OPG attorneys from calendar 1. When motions are filed for that courtroom, it is described as 1-A.
7. One of the twelve calendars is called Calendar 49. It exclusively handles cases involving children placed under private guardianship and is not discussed in detail in this article.
8. The discussion of Maryland's Legal Aid Bureau is based on a paper presented by Kathi L. Grasso, then Chief Attorney, Legal Aid Bureau, Inc., Baltimore's Child Advocacy Unit, on "Child Advocacy Within Legal Services Programs," Juvenile Law Session, National Legal Aid and Defenders Association Annual Conference, Kansas, MO, November 17, 1989. Any opinions expressed in this discussion of the Legal Aid Bureau are those of the author, Kathi L. Grasso, and not of the Legal Aid Bureau, Inc. or its current director and deputy director. Current statistical information on the program was provided by the Deputy Director Rhonda Lipkin.
9. The Legal Aid Bureau, Inc., is a private non-profit law firm providing general legal services to individuals with limited income throughout Maryland. The program receives funding from such sources as the Legal Services Corporation, the Maryland Legal Services Corporation, United Way of Central Maryland, and the State of Maryland.
10. Maryland Legal Services Corporation, *Legal Representation to Children in Maryland Child In Need of Assistance (CINA) Cases: A Preliminary Report by the Maryland Legal Services Corporation* (October 8, 1990), 19.
11. The Administrative Office of the Courts of the State of Maryland, *The Maryland Judiciary's Foster Care Court Improvement Project: Improving Court Performance for Abused and Neglected Children* (September 1997), 32.
12. *Ibid.*, 32-33. The Ohio findings were reported in Maryland's 1992 *Final Report of the Governor's Commission on Legal Services Contracts*. As stated in that report, this experiment conducted by the Columbus Bar Association and the local Legal Aid Society involved competitive bidding to provide legal services to people with low-incomes. The findings were reported in a March 1990 letter describing the project as a "failure." *Ibid.*, 17.
13. This description of Utah's Office of the Guardian Ad Litem was adapted from an article entitled *Utah Office of the Guardian Ad Litem* originally published in 9 Utah Bar Journal 21 (May 1996) and authored by Kristin G. Brewer. Permission to reprint this article in adapted form was granted by the author Kristin Brewer and the office of the Utah State Bar which holds the copyright.
14. This description of the D.C. Council on Child Abuse and Neglect (CCAN) was produced by Brian Finley, Esq., currently an Assistant Public Guardian of the Cook County Office of the Public Guardian, and formerly volunteer attorney of the CCAN, in consultation with Lori Parker, CCAN Program Director.
15. This description of the Guardian Ad Litem Project of the Cuyahoga County Bar Association was produced by Marita L. Kavalec, Administrator of the GAL Project.
16. The Davenport, Iowa section was produced by Brian Finley, Esq., currently with the Cook County Office of the Public Guardian, in consultation with the Honorable John Mullen.

CONCLUSION

Judges must take the lead in ensuring that children have access to quality legal representation. They have the power to mandate that children's attorneys be educated on both legal and non-legal topics relevant to child advocacy. Taking into consideration judicial ethics, they can work to increase funding to allow for comprehensive attorney training, adequate compensation, and reasonable caseloads. With input from their communities, they can evaluate the various program models presented in this book to determine the most effective ones for their jurisdictions.

Judges should share this manual with lawyers and others in their communities who are interested in improving legal representation for children. Judges, referees/masters, court administrators, lawyers, social workers, and others working with children can be partners in creating child advocacy systems that serve children's interests.

This book is only a beginning. We must work to implement its recommendations and, at the same time, continue to identify innovative approaches to accessing justice for children and youth. This book's authors welcome your continuing input.

APPENDICES

APPENDIX I

Additional Publications on Children's Legal Representation

and

Directory of Helpful Websites

AMERICAN BAR ASSOCIATION PUBLICATIONS

Periodicals of the ABA Center on Children and the Law

The *ABA Child Law Practice* is published monthly and keeps lawyers, judges and other professionals abreast of case law, legislative and research developments, particularly in the areas of child maltreatment, adoption, termination of parental rights, child and adolescent health, civil rights, juvenile justice, school law, day care, and tort actions involving children and families. For a complimentary copy and to inquire about a subscription, contact Lisa Waxler: (202) 662-1743; E-mail: waxlerl@staff.abanet.org.

Child CourtWorks is published quarterly and keeps judges, court administrators, attorneys, social workers, court appointed special advocates, foster parents and others informed of new developments and innovations across state court improvement projects and offers suggestions for productive juvenile dependency court reform. Subscription inquiries and news article suggestions should be made to Eva J. Klain at (202) 662-1681 or klaine@staff.abanet.org.

Children's Legal Rights Journal is a quarterly publication co-edited by the Loyola University Chicago School of Law and the ABA Center on Children and the Law. The Journal includes articles of a legal and multidisciplinary nature, book reviews and legislative updates. Subscription inquiries should be addressed to: William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209; Phone: 1-800-828-7571.

The Center on Children and the Law has produced many other books that are relevant to the legal representation of children. For a listing of other ABA Center on Children and the Law publications, refer to the Center's website <http://www.abanet.org/child> or contact Lisa Waxler: (202) 662-1743; e-mail: waxlerl@staff.abanet.org.

ABA Publications on Pro Bono Child Advocacy

Promoting the Adoption of Children: What Lawyers Can Do (August 1997) briefly outlines how lawyers and bar associations can make a difference in a child's life by getting involved in the field of adoption. It was developed at the request of former ABA President N. Lee Cooper and is a publication of the Steering Committee on the Unmet Legal Needs of Children, in conjunction with the ABA Family Law Section, the Section of Litigation Task Force on Children, the Young Lawyers Division (YLD), and the ABA Center on Children and the Law. It is available for \$5.00.

Make a Difference in a Child's Life: 25 Projects for Lawyers (August 1996) briefly describes 25 specific, proven, successful and inexpensive projects that members of the bar can implement. Projects include representing children in courtrooms, creating rooms in courthouses for children, providing alternative dispute mechanisms in schools for children to resolve their disputes and mentoring or tutoring children inside and outside the schools. Among the substantive issues are:

Ethical Issues in the Legal Representation of Children (March 1996) is a special edition of the Fordham Law Review. It is a comprehensive volume of articles produced by nationally recognized authors. It can be obtained for a small fee from the Fordham Law Review, Fordham University School of Law, 140 West 62nd Street, New York, New York 10023; Phone: (212) 636-6876.

Child Advocacy Symposium (Fall 1997) is a special edition of the University of Michigan Journal of Law Reform containing numerous articles of relevance to legal representation of children. This book can be obtained for a small fee by faxing a letter or writing to: Maureen Bishop, Business Manager, University of Michigan Journal of Law Reform, University of Michigan Law School, 625 S. State Street, Ann Arbor, MI 48109-1215; Phone: (313) 763-6100.

BOOKS ON LEGAL REPRESENTATION AND RELATED TOPICS

Debra Ratterman Baker et al., *What I Wish I'd Learned in Law School: Social Science Research for Children's Lawyers* (Washington, DC: American Bar Association 1997).

Donald C. Bross, Laura Freeman Michaels, eds., *Foundations of Child Advocacy* (Longmont, Colorado: Bookmakers Guild, Inc. 1987).

Gay Courter, *I Speak For This Child: True Stories of a Child Advocate* (New York: Crown Publishers, Inc. 1995).

Al Desetta, ed., *The Heart Knows Something Different: Teenage Voices From the Foster Care System* (New York: Youth Communication/Persea Books 1996).

Donald N. Duquette, *Advocating for the Child in Protection Proceedings: A Handbook for Lawyers and Court Appointed Special Advocates* (Lexington, MA: Lexington Books 1990).

Risa J. Garon, Danielle Donner, et al., *Attorneys Representing Children: Guidelines for Interviewing and Assessing Children and Parents Experiencing Separation and Divorce* (Columbia, MD: The Children of Separation and Divorce Center, Inc. 1998).

Ann M. Haralambie, *The Child's Attorney: A Guide To Representing Children in Custody, Adoption, and Protection Cases* (Washington, DC: American Bar Association 1993).

Karen Aileen Howze, *Making Differences Work: Cultural Context in Abuse and Neglect Practice for Judges and Attorneys* (Washington, DC: American Bar Association 1996).

Susan L. Keilitz et. al., *Domestic Violence and Child Custody Disputes: A Resource Handbook for Judges and Court Managers* (National Center for State Courts 1997).

Diane Geraghty, *The Role of Legal Education in the Emerging Legal Specialty of Pediatric Law*, 26 Loy. U. Chi. L.J. 131 (1995).

Rebecca H. Hartz, *Guardians Ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness*, 27 Fam. L.Q. 327 (1993).

Angela D. Lurie, *Representing the Child-Client: Kids are People Too*, 11 N.Y.L. Sch. J. Hum. Rts. 205 (1993).

National Council of Juvenile and Family Court Judges, *Deprived Children: A Judicial Response, 73 Recommendations*, 37 Juv. Fam. Ct. J. 1 (1986).

William Wesley Patton, *Standards of Appellate Review for Denial of Counsel and Ineffective Assistance of Counsel in Child Protection and Parental Severance Cases*, 27 Loy. U. Chi. L.J. 195 (1996).

William Wesley Patton, *Law Schools' Duty to Train Children's Advocates: Blueprint for an Inexpensive Experientially Based Juvenile Justice Course*, 4 Juv. Fam. Ct. J. 3 (1994).

Dianne L. Redleaf, *Legal Services Outreach to Foster Children*, 20 Clearinghouse Rev. 1487 (April 1987).

Christina Dugger Sommer, *Empowering Children: Granting Foster Children the Right to Initiate Parental Rights Termination Proceedings*, 79 Cornell L.Rev. 1200 (1994).

Marvin R. Ventrell, *Rights and Duties: An Overview of the Attorney-Child Client Relationship*, 26 Loy. U. Chi. L.J. 259 (1995).

National Institute of Mental Health
www.nimh.nih.gov

**National Association of Protection
and Advocacy Systems**
www.protectionandadvocacy.com

National Mental Health Association
www.nmha.org

**Centers for Disease Control and
Prevention**
www.cdc.gov

Handsnet
www.handsnet.org
[national nonprofit that manages online
network linking 5,000 public interest and
human services groups; free 30-day trial
membership, then subscription fee]

**National Adolescent Health
Information Center**
[website being developed]
University of California, San Francisco
School of Medicine
Department of Pediatrics
Division of Adolescent Medicine
1388 Sutter Street, Suite 605-A
San Francisco, California 94109
(415) 502-4856
E-mail: nahic@itsa.ucsf.edu

American Medical Association
www.ama-assn.org
[Link to Medical Science and Education and
Adolescent Health On-Line]

American Psychological Association
www.apa.org

American Psychiatric Association
www.psych.org

**American Academy of Child
and Adolescent Psychiatry**
www.aacap.org

**UCLA Center for Mental Health in
Schools**
www.lifesci.ucla.edu/psych/mh/

American Dietetic Association
www.eatright.org

American Nurses Association
www.nursingworld.org

National Association of Social Workers
www.naswdc.org

APPENDIX II

**ABA Standards of Practice for Lawyers Who Represent
Children in Abuse and Neglect Cases**

and

**Previous ABA Policies Related to Legal Representation
of Abused and Neglected Children**



**AMERICAN BAR ASSOCIATION
STANDARDS OF PRACTICE FOR LAWYERS
WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES**
Approved by the American Bar Association House of Delegates, February 5, 1996

PREFACE

All children subject to court proceedings involving allegations of child abuse and neglect should have legal representation as long as the court jurisdiction continues. These Abuse and Neglect Standards are meant to apply when a lawyer is appointed for a child in any legal action based on: (a) a petition filed for protection of the child; (b) a request to a court to change legal custody, visitation, or guardianship based on allegations of child abuse or neglect based on sufficient cause; or (c) an action to terminate parental rights.

These Standards apply only to lawyers and take the position that although a lawyer *may* accept appointment in the dual capacity of a "lawyer/guardian ad litem," the lawyer's primary duty must still be focused on the protection of the legal rights of the child client. The lawyer/guardian ad litem should therefore perform all the functions of a "child's attorney," except as otherwise noted.

These Standards build upon the ABA-approved JUVENILE JUSTICE STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES (1979) which include important directions for lawyers representing children in juvenile court matters generally, but do not contain sufficient guidance to aid lawyers representing children in abuse and neglect cases. These Abuse and Neglect Standards are also intended to help implement a series of ABA-approved policy resolutions (in Appendix) on the importance of legal representation and the improvement of lawyer practice in child protection cases.

In support of having lawyers play an active role in child abuse and neglect cases, in August 1995 the ABA endorsed a set of RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES produced by the National Council of Juvenile and Family Court Judges. The RESOURCE GUIDELINES stress the importance of quality representation provided by competent and diligent lawyers by supporting: 1) the approach of vigorous representation of child clients; and 2) the actions that courts should take to help assure such representation.

These Standards contain two parts. Part I addresses the specific roles and responsibilities of a lawyer appointed to represent a child in an abuse and neglect case. Part II provides a set of standards for judicial administrators and trial judges to assure high quality legal representation.

Commentary

The lawyer has an obligation to explain clearly, precisely, and in terms the client can understand the meaning and consequences of action. See DAVID A. BINDER & SUSAN C. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977). A child client may not understand the legal terminology and for a variety of reasons may choose a particular course of action without fully appreciating the implications. With a child the potential for not understanding may be even greater. Therefore, the child's attorney has additional obligations based on the child's age, level of education, and degree of language acquisition. There is also the possibility that because of a particular child's developmental limitations, the lawyer may not completely understand the child's responses. Therefore, the child's attorney must learn how to ask developmentally appropriate questions and how to interpret the child's responses. See ANNE GRAFFAM WALKER, HANDBOOK ON QUESTIONING CHILDREN: A LINGUISTIC PERSPECTIVE (ABA Center on Children and the Law 1994). The child's attorney may work with social workers or other professionals to assess a child's developmental abilities and to facilitate communication.

B. GENERAL AUTHORITY AND DUTIES

B-1. Basic Obligations. The child's attorney should:

- (1) Obtain copies of all pleadings and relevant notices;
- (2) Participate in depositions, negotiations, discovery, pretrial conferences, and hearings;
- (3) Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;
- (4) Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;
- (5) Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;
- (6) Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and
- (7) Identify appropriate family and professional resources for the child.

Commentary—

The child's attorney should not be merely a fact-finder, but rather, should zealously advocate a position on behalf of the child. (The same is true for the guardian ad litem, although the position to be advocated may be different). In furtherance of that advocacy, the child's attorney must be adequately prepared prior to hearings. The lawyer's presence at and active participation in all hearings is absolutely critical. See, RESOURCE GUIDELINES, at 23.

Although the child's position may overlap with the position of one or both parents, third-party caretakers, or a state agency, the child's attorney should be prepared to participate fully in any proceedings and not merely defer to the other parties. Any identity of position should be based on the merits of the position, and not a mere endorsement of another party's position.

disability is contextual, incremental, and may be intermittent. The child's ability to contribute to a determination of his or her position is functional, depending upon the particular position and the circumstances prevailing at the time the position must be determined. Therefore, a child may be able to determine some positions in the case but not others. Similarly, a child may be able to direct the lawyer with respect to a particular issue at one time but not at another. This Standard relies on empirical knowledge about competencies with respect to both adults and children. See, e.g., ALLEN E. BUCHANAN & DAN W. BROCK, DECIDING FOR OTHERS: THE ETHICS OF SURROGATE DECISION MAKING 217 (1989).

B-4. Client Preferences. The child's attorney should elicit the child's preferences in a developmentally appropriate manner, advise the child, and provide guidance. The child's attorney should represent the child's expressed preferences and follow the child's direction throughout the course of litigation.

Commentary—

The lawyer has a duty to explain to the child in a developmentally appropriate way such information as will assist the child in having maximum input in determination of the particular position at issue. The lawyer should inform the child of the relevant facts and applicable laws and the ramifications of taking various positions, which may include the impact of such decisions on other family members or on future legal proceedings. The lawyer may express an opinion concerning the likelihood of the court or other parties accepting particular positions. The lawyer may inform the child of an expert's recommendations germane to the issue.

As in any other lawyer/client relationship, the lawyer may express his or her assessment of the case, the best position for the child to take, and the reasons underlying such recommendation. A child, however, may agree with the lawyer for inappropriate reasons. A lawyer must remain aware of the power dynamics inherent in adult/child relationships. Therefore, the lawyer needs to understand what the child knows and what factors are influencing the child's decision. The lawyer should attempt to determine from the child's opinion and reasoning what factors have been most influential or have been confusing or glided over by the child when deciding the best time to express his or her assessment of the case.

Consistent with the rules of confidentiality and with sensitivity to the child's privacy, the lawyer should consult with the child's therapist and other experts and obtain appropriate records. For example, a child's therapist may help the child to understand why an expressed position is dangerous, foolish, or not in the child's best interests. The therapist might also assist the lawyer in understanding the child's perspective, priorities, and individual needs. Similarly, significant persons in the child's life may educate the lawyer about the child's needs, priorities, and previous experiences.

The lawyer for the child has dual fiduciary duties to the child which must be balanced. On one hand, the lawyer has a duty to ensure that the child client is given the information necessary to make an informed decision, including advice and guidance. On the other hand, the lawyer has a duty not to overbear the will of the child. While the lawyer may attempt to persuade the child to accept a particular position, the lawyer may not advocate a position contrary to the child's expressed position except as provided by these Abuse and Neglect Standards or the Code of Professional Responsibility.

home. A child may desire to live in a dangerous situation because it is all he or she knows, because of a feeling of blame or of responsibility to take care of the parents, or because of threats. The child may choose to deal with a known situation rather than risk the unknown world of a foster home or other out-of-home placement.

In most cases the ethical conflict involved in asserting a position which would seriously endanger the child, especially by disclosure of privileged information, can be resolved through the lawyer's counseling function. If the lawyer has taken the time to establish rapport with the child and gain that child's trust, it is likely that the lawyer will be able to persuade the child to abandon a dangerous position or at least identify an alternate course.

If the child cannot be persuaded, the lawyer has a duty to safeguard the child's interests by requesting appointment of a guardian ad litem, who will be charged with advocating the child's best interests without being bound by the child's direction. As a practical matter, this may not adequately protect the child if the danger to the child was revealed only in a confidential disclosure to the lawyer, because the guardian ad litem may never learn of the disclosed danger.

Confidentiality is abrogated for various professionals by mandatory child abuse reporting laws. Some states abrogate lawyer-client privilege by mandating reports. States which do not abrogate the privilege may permit reports notwithstanding professional privileges. The policy considerations underlying abrogation apply to lawyers where there is a substantial danger of serious injury or death. Under such circumstances, the lawyer must take the minimum steps which would be necessary to ensure the child's safety, respecting and following the child's direction to the greatest extent possible consistent with the child's safety and ethical rules.

The lawyer may never counsel a client or assist a client in conduct the lawyer knows is criminal or fraudulent. See ER 1.2(d), Model Rules of Professional Conduct, DR 7-102(A)(7), Model Code of Professional Responsibility. Further, existing ethical rules requires the lawyer to disclose confidential information to the extent necessary to prevent the client from committing a criminal act likely to result in death or substantial bodily harm, see ER 1.6(b), Model Rules of Professional Conduct, and permits the lawyer to reveal the intention of the client to commit a crime. See ER 1.6(c), Model Rules of Professional Conduct, DR 4-101(C)(3), Model Code of Professional Responsibility. While child abuse, including sexual abuse, are crimes, the child is presumably the victim, rather than the perpetrator of those crimes. Therefore, disclosure of confidences is designed to protect the client, rather than to protect a third party from the client. Where the child is in grave danger of serious injury or death, the child's safety must be the paramount concern.

The lawyer is not bound to pursue the client's objectives through means not permitted by law and ethical rules. See DR-7-101(A)(1), Model Code of Professional Responsibility. Further, lawyers may be subject personally to sanctions for taking positions that are not well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

B-5. Child's Interests. The determination of the child's legal interests should be based on objective criteria as set forth in the law that are related to the purposes of the proceedings. The criteria should address the child's specific needs and preferences, the goal of expeditious resolution of the case so

child prior to court hearings and when apprised of emergencies or significant events impacting on the child.

Commentary—

Meeting with the child is important before court hearings and case reviews. In addition, changes in placement, school suspensions, in-patient hospitalizations, and other similar changes warrant meeting again with the child. Such in-person meetings allow the lawyer to explain to the child what is happening, what alternatives might be available, and what will happen next. This also allows the lawyer to assess the child's circumstances, often leading to a greater understanding of the case, which may lead to more creative solutions in the child's interest. A lawyer can learn a great deal from meeting with child clients, including a preverbal child. See, e.g., JAMES GARBARINO, ET AL, WHAT CHILDREN CAN TELL US: ELICITING, INTERPRETING, AND EVALUATING CRITICAL INFORMATION FROM CHILDREN (1992).

C-2. Investigate. To support the client's position, the child's attorney should conduct thorough, continuing, and independent investigations and discovery which may include, but should not be limited to:

- (1) Reviewing the child's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case;

Commentary—

Thorough, independent investigation of cases, at every stage of the proceedings, is a key aspect of providing competent representation to children. See, RESOURCE GUIDELINES, AT 23. The lawyer may need to use subpoenas or other discovery or motion procedures to obtain the relevant records, especially those records which pertain to the other parties. In some jurisdictions the statute or the order appointing the lawyer for the child includes provision for obtaining certain records.

- (2) Reviewing the court files of the child and siblings, case-related records of the social service agency and other service providers;

Commentary—

Another key aspect of representing children is the review of all documents submitted to the court as well as relevant agency case files and law enforcement reports. See, RESOURCE GUIDELINES, at 23. Other relevant files that should be reviewed include those concerning child protective services, developmental disabilities, juvenile delinquency, mental health, and educational agencies. These records can provide a more complete context for the current problems of the child and family. Information in the files may suggest additional professionals and lay witnesses who should be contacted and may reveal alternate potential placements and services.

- (3) Contacting lawyers for other parties and nonlawyer guardians ad litem or court-appointed special advocates (CASA) for background information;

Commentary—

While some courts will not authorize compensation for the child's attorney to attend such collateral meetings, such attendance is often very important. The child's attorney can present the child's perspective at such meetings, as well as gather information necessary to proper representation. In some cases the child's attorney can be pivotal in achieving a negotiated settlement of all or some issues. The child's attorney may not need to attend collateral meetings if another person involved in the case, such as a social worker who works the lawyer, can get the information or present the child's perspective.

C-3. File Pleadings. The child's attorney should file petitions, motions, responses or objections as necessary to represent the child. Relief requested may include, but is not limited to:

- (1) A mental or physical examination of a party or the child;
- (2) A parenting, custody or visitation evaluation;
- (3) An increase, decrease, or termination of contact or visitation;
- (4) Restraining or enjoining a change of placement;
- (5) Contempt for non-compliance with a court order;
- (6) Termination of the parent-child relationship;
- (7) Child support;
- (8) A protective order concerning the child's privileged communications or tangible or intangible property;
- (9) Request services for child or family; and
- (10) Dismissal of petitions or motions.

Commentary—

Filing and arguing necessary motions is an essential part of the role of a child's attorney. See, RESOURCE GUIDELINES, at 23. Unless the lawyer is serving in a role which explicitly precludes the filing of pleadings, the lawyer should file any appropriate pleadings on behalf of the child, including responses to the pleadings of the other parties. The filing of such pleadings can ensure that appropriate issues are properly before the court and can expedite the court's consideration of issues important to the child's interests. In some jurisdictions, guardians ad litem are not permitted to file pleadings, in which case it should be clear to the lawyer that he or she is not the "child's attorney" as defined in these Standards.

C-4. Request Services. Consistent with the child's wishes, the child's attorney should seek appropriate services (by court order if necessary) to access entitlements, to protect the child's interests and to implement a service plan. These services may include, but not be limited to:

- (1) Family preservation-related prevention or reunification services;
- (2) Sibling and family visitation;
- (3) Child support;
- (4) Domestic violence prevention, intervention, and treatment;
- (5) Medical and mental health care;
- (6) Drug and alcohol treatment;
- (7) Parenting education;
- (8) Semi-independent and independent living services;
- (9) Long-term foster care;

D. HEARINGS

D-1. Court Appearances. The child's attorney should attend all hearings and participate in all telephone or other conferences with the court unless a particular hearing involves issues completely unrelated to the child.

D-2. Client Explanation. The child's attorney should explain to the client, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.

D-3. Motions and Objections. The child's attorney should make appropriate motions, including motions *in limine* and evidentiary objections, to advance the child's position at trial or during other hearings. If necessary, the child's attorney should file briefs in support of evidentiary issues. Further, during all hearings, the child's attorney should preserve legal issues for appeal, as appropriate.

D-4. Presentation of Evidence. The child's attorney should present and cross examine witnesses, offer exhibits, and provide independent evidence as necessary.

Commentary—

The child's position may overlap with the positions of one or both parents, third-party caretakers, or a child protection agency. Nevertheless, the child's attorney should be prepared to participate fully in every hearing and not merely defer to the other parties. Any identity of position should be based on the merits of the position (consistent with Standard B-6), and not a mere endorsement of another party's position.

D-5. Child at Hearing. In most circumstances, the child should be present at significant court hearings, regardless of whether the child will testify.

Commentary—

A child has the right to meaningful participation in the case, which generally includes the child's presence at significant court hearings. Further, the child's presence underscores for the judge that the child is a real party in interest in the case. It may be necessary to obtain a court order or writ of habeas corpus ad testificandum to secure the child's attendance at the hearing.

A decision to exclude the child from the hearing should be made based on a particularized determination that the child does not want to attend, is too young to sit through the hearing, would be severely traumatized by such attendance, or for other good reason would be better served by nonattendance. There may be other extraordinary reasons for the child's non-attendance. The lawyer should consult the child, therapist, caretaker, or any other knowledgeable person in determining the effect on the child of being present at the hearing. In some jurisdictions the court requires an affirmative waiver of the child's presence if the child will not attend. Even a child who is too young to sit through the hearing may benefit from seeing the courtroom and meeting, or at least seeing, the judge who will be making the decisions. The lawyer should provide the court with any required notice that the child will be present. Concerns about the child being exposed to certain parts of the evidence may be addressed by the child's temporary exclusion from the court room during the taking of that evidence, rather than by excluding the child from the entire hearing.

present during hearings. Further, where the rule sequestering witnesses has been invoked, the order of witnesses may need to be changed or an exemption granted where the support person also will be a witness. The child should be asked whether he or she would like someone to be present, and if so, whom the child prefers. Typical support persons include parents, relatives, therapists, Court Appointed Special Advocates (CASA), social workers, victim-witness advocates, and members of the clergy. For some, presence of the child's attorney provides sufficient support.

D-8. Questioning the Child. The child's attorney should seek to ensure that questions to the child are phrased in a syntactically and linguistically appropriate manner.

Commentary—

The phrasing of questions should take into consideration the law and research regarding children's testimony, memory, and suggestibility. See generally, Karen Saywitz, supra D -7; CHILD VICTIMS, CHILD WITNESSES: UNDERSTANDING AND IMPROVING TESTIMONY (Gail S. Goodman & Bette L. Bottoms, eds. 1993); ANN HARALAMBIE, 2 HANDLING CHILD CUSTODY, ABUSE, AND ADOPTION CASES §§ 24.09-24.22 (2nd ed. 1993); MYERS, supra D-6, at Vol. 1, ch 2; Ellen Matthews & Karen Saywitz, Child Victim Witness Manual, 12/1 C.J.E.R.J. 40 (1992).

The information a child gives in interviews and during testimony is often misleading because the adults have not understood how to ask children developmentally appropriate questions and how to interpret their answers properly. See WALKER, SUPRA, A-3 Commentary. The child's attorney must become skilled at recognizing the child's developmental limitations. It may be appropriate to present expert testimony on the issue and even to have an expert present during a young child's testimony to point out any developmentally inappropriate phrasing.

D-9. Challenges to Child's Testimony/Statements. The child's competency to testify, or the reliability of the child's testimony or out-of-court statements, may be called into question. The child's attorney should be familiar with the current law and empirical knowledge about children's competency, memory, and suggestibility and, where appropriate, attempt to establish the competency and reliability of the child.

Commentary—

Many jurisdictions have abolished presumptive ages of competency. See HARALAMBIE, SUPRA D-8 AT §24.17. The jurisdictions which have rejected presumptive ages for testimonial competency have applied more flexible, case-by-case analyses. See Louis I. Parley, Representing Children in Custody Litigation, 11 J. AM. ACAD. MATRIM. LAW. 45, 48 (Winter 1993). Competency to testify involves the abilities to perceive and relate.

If necessary, the child's attorney should present expert testimony to establish competency or reliability or to rehabilitate any impeachment of the child on those bases. See generally, Karen Saywitz, supra D-8 at 15; CHILD VICTIMS, SUPRA D-8; Haralambie, supra D-8; J. MYERS, SUPRA D-8; Matthews & Saywitz, supra D-8.

D-10. Jury Selection. In those states in which a jury trial is possible, the child's attorney should participate in jury selection and drafting jury instructions.

the only source of continuity for the child. Such continuity not only provides the child with a stable point of contact, but also may represent the institutional memory of case facts and procedural history for the agency and court. The child's attorney should stay in touch with the child, third party caretakers, case workers, and service providers throughout the term of appointment to ensure that the child's needs are met and that the case moves quickly to an appropriate resolution.

Generally it is preferable for the lawyer to remain involved so long as the case is pending to enable the child's interest to be addressed from the child's perspective at all stages. Like the JUVENILE JUSTICE STANDARDS, these ABUSE AND NEGLECT STANDARDS require ongoing appointment and active representation as long as the court retains jurisdiction over the child. To the extent that these are separate proceedings in some jurisdictions, the child's attorney should seek reappointment. Where reappointment is not feasible, the child's attorney should provide records and information about the case and cooperate with the successor to ensure continuity of representation.

E. POST-HEARING

E-1. Review of Court's Order. The child's attorney should review all written orders to ensure that they conform with the court's verbal orders and statutorily required findings and notices.

E-2. Communicate Order to Child. The child's attorney should discuss the order and its consequences with the child.

Commentary—

The child is entitled to understand what the court has done and what that means to the child, at least with respect to those portions of the order that directly affect the child. Children may assume that orders are final and not subject to change. Therefore, the lawyer should explain whether the order may be modified at another hearing, or whether the actions of the parties may affect how the order is carried out. For example, an order may permit the agency to return the child to the parent if certain goals are accomplished.

E-3. Implementation. The child's attorney should monitor the implementation of the court's orders and communicate to the responsible agency and, if necessary, the court, any non-compliance.

Commentary—

The lawyer should ensure that services are provided and that the court's orders are implemented in a complete and timely fashion. In order to address problems with implementation, the lawyer should stay in touch with the child, case worker, third party caretakers, and service providers between review hearings. The lawyer should consider filing any necessary motions, including those for civil or criminal contempt, to compel implementation. See, RESOURCE GUIDELINES, at 23.

F. APPEAL

F-1. Decision to Appeal. The child's attorney should consider and discuss with the child, as developmentally appropriate, the possibility of an appeal. If after such consultation, the child wishes

PART II—ENHANCING THE JUDICIAL ROLE IN CHILD REPRESENTATION

PREFACE

Enhancing the legal representation provided by court-appointed lawyers for children has long been a special concern of the American Bar Association [*see, e.g.*, JUVENILE JUSTICE STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES (1979); ABA Policy Resolutions on Representation of Children (Appendix)]. Yet, no matter how carefully a bar association, legislature, or court defines the duties of lawyers representing children, practice will only improve if judicial administrators and trial judges play a stronger role in the selection, training, oversight, and prompt payment of court-appointed lawyers in child abuse/neglect and child custody/visitation cases.

The importance of the court's role in helping assure competent representation of children is noted in the JUVENILE JUSTICE STANDARDS RELATING TO COURT ORGANIZATION AND ADMINISTRATION (1980) which state in the Commentary to 3.4D that effective representation of parties is "essential" and that the presiding judge of a court "might need to use his or her position to achieve" it. In its RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES (1995), the National Council of Juvenile and Family Court Judges stated, "Juvenile and family courts should take active steps to ensure that the parties in child abuse and neglect cases have access to competent representation. . . ." In jurisdictions which engage nonlawyers to represent a child's interests, the court should ensure they have access to legal representation.

These Abuse and Neglect Standards, like the RESOURCE GUIDELINES, recognize that the courts have a great ability to influence positively the quality of counsel through setting judicial prerequisites for lawyer appointments including requirements for experience and training, imposing sanctions for violation of standards (such as terminating a lawyer's appointment to represent a specific child, denying further appointments, or even fines or referrals to the state bar committee for professional responsibility). The following Standards are intended to assist the judiciary in using its authority to accomplish the goal of quality representation for all children before the court in abuse/neglect related proceedings.

G. THE COURT'S ROLE IN STRUCTURING CHILD REPRESENTATION

G-1. Assuring Independence of the Child's Attorney. The child's attorney should be independent from the court, court services, the parties, and the state.

Commentary—

To help assure that the child's attorney is not compromised in his or her independent action, these Standards propose that the child's lawyer be independent from other participants in the litigation. "Independence" does not mean that a lawyer may not receive payment from a court, a government entity (e.g., program funding from social services or justice agencies), or even from a parent, relative, or other adult so long as the lawyer retains the full authority for independent action. For ethical conflict reasons, however, lawyers should never accept compensation as retained counsel for the child from a parent accused of abusing or neglecting the child. The child's attorney should not prejudge the case. The concept of independence includes being free from prejudice and other limitations to uncompromised representation.

JUVENILE JUSTICE STANDARD § 2.1(d) states that plans for providing counsel for children "must be designed to guarantee the professional independence of counsel and the integrity of the

in the context of proceedings that were not originally initiated by a petition alleging child maltreatment.

Commentary—

These ABUSE AND NEGLECT STANDARDS take the position that courts must assure the appointment of a lawyer for a child as soon as practical (ideally, on the day the court first has jurisdiction over the case, and hopefully, no later than the next business day). The three situations are described separately because:

(1) A court may authorize, or otherwise learn of, a child's removal from home prior to the time a formal petition is instituted. Lawyer representation of (and, ideally, contact with) the child prior to the initial court hearing following removal (which in some cases may be several days) is important to protect the child's interests;

(2) Once a petition has been filed by a government agency (or, where authorized, by a hospital or other agency with child protection responsibilities), for any reason related to a child's need for protection, the child should have prompt access to a lawyer; and

(3) There are cases (such as custody, visitation, and guardianship disputes and family-related abductions of children) where allegations, with sufficient cause, of serious physical abuse, sexual molestation, or severe neglect of a child are presented to the court not by a government agency (i.e., child protective services) but by a parent, guardian, or other relative. The need of a child for competent, independent representation by a lawyer is just as great in situation (3) as with cases in areas (1) and (2).

H-2. Entry of Compensation Orders. At the time the court appoints a child's attorney, it should enter a written order addressing compensation and expense costs for that lawyer, unless these are otherwise formally provided for by agreement or contract with the court, or through another government agency.

Commentary—

Compensation and expense reimbursement of individual lawyers should be addressed in a specific written court order is based on a need for all lawyers representing maltreated children to have a uniform understanding of how they will be paid. Commentary to Section 2.1(b) of the JUVENILE JUSTICE STANDARDS observes that it is common for court-appointed lawyers to be confused about the availability of reimbursement of expenses for case-related work.

H-3. Immediate Provision of Access. Unless otherwise provided for, the court should upon appointment of a child's attorney, enter an order authorizing that lawyer access between the child and the lawyer and to all privileged information regarding the child, without the necessity of a further release. The authorization should include, but not be limited to: social services, psychiatric, psychological treatment, drug and alcohol treatment, medical, evaluation, law enforcement, and school records.

Commentary—

Because many service providers do not understand or recognize the nature of the role of the lawyer for the child or that person's importance in the court proceeding, these Standards call

I. THE COURT'S ROLE IN LAWYER TRAINING

I-1. Judicial Involvement in Lawyer Training. Trial judges who are regularly involved in child-related matters should participate in training for the child's attorney conducted by the courts, the bar, or any other group.

Commentary—

JUVENILE JUSTICE STANDARDS § 2.1 indicates that it is the responsibility of the courts (among others) to ensure that competent counsel are available to represent children before the courts. That Standard further suggests that lawyers should "be encouraged" to qualify themselves for participation in child-related cases "through formal training." The Abuse and Neglect Standards go further by suggesting that judges should personally take part in educational programs, whether or not the court conducts them. The National Council of Juvenile and Family Court Judges has suggested that courts can play an important role in training lawyers in child abuse and neglect cases, and that judges and judicial officers can volunteer to provide training and publications for continuing legal education seminars. See, RESOURCE GUIDELINES, at 22.

I-2. Content of Lawyer Training. The appropriate state administrative office of the trial, family, or juvenile courts should provide educational programs, live or on tape, on the role of a child's attorney. At a minimum, the requisite training should include:

- (1) Information about relevant federal and state laws and agency regulations;
- (2) Information about relevant court decisions and court rules;
- (3) Overview of the court process and key personnel in child-related litigation;
- (4) Description of applicable guidelines and standards for representation;
- (5) Focus on child development, needs, and abilities;
- (6) Information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in his or her home;
- (7) Information concerning family dynamics and dysfunction including substance abuse, and the use of kinship care;
- (8) Information on accessible child welfare, family preservation, medical, educational, and mental health resources for child clients and their families, including placement, evaluation/diagnostic, and treatment services; the structure of agencies providing such services as well as provisions and constraints related to agency payment for services; and
- (9) Provision of written material (e.g., representation manuals, checklists, sample forms), including listings of useful material available from other sources.

Commentary—

The ABUSE AND NEGLECT STANDARDS take the position that it is not enough that judges mandate the training of lawyers, or that judges participate in such training. Rather, they call upon the courts to play a key role in training by actually sponsoring (e.g., funding) training opportunities. The pivotal nature of the judiciary's role in educating lawyers means that courts may, on appropriate occasions, stop the hearing of cases on days when training is held so that

where necessary judges should “urge state legislatures and local governing bodies to provide sufficient funding” for quality legal representation.

Because some courts currently compensate lawyers only for time spent in court at the adjudicative or initial disposition stage of cases, these Standards clarify that compensation is to be provided for out-of-court preparation time, as well as for the lawyer's involvement in case reviews and appeals. "Out-of-court preparation" may include, for example, a lawyer's participation in social services or school case conferences relating to the client.

These Standards also call for the level of compensation where lawyers are working under contract with the court to provide child representation to be comparable with what experienced individual counsel would receive from the court. Although courts may, and are encouraged to, seek high quality child representation through enlistment of special children's law offices, law firms, and other programs, the motive should not be a significantly different (i.e., lower) level of financial compensation for the lawyers who provide the representation.

J-2. Supporting Associated Costs. The child's attorney should have access to (or be provided with reimbursement for experts, investigative services, paralegals, research costs, and other services, such as copying medical records, long distance phone calls, service of process, and transcripts of hearings as requested.

Commentary—

The ABUSE AND NEGLECT STANDARDS expand upon JUVENILE JUSTICE STANDARDS § 2.1(c) which recognizes that a child's attorney should have access to "investigatory, expert and other nonlegal services" as a fundamental part of providing competent representation.

J-3. Reviewing Payment Requests. The trial judge should review requests for compensation for reasonableness based upon the complexity of the case and the hours expended.

Commentary—

These Standards implicitly reject the practice of judges arbitrarily "cutting down" the size of lawyer requests for compensation and would limit a judge's ability to reduce the amount of a per/case payment request from a child's attorney unless the request is deemed unreasonable based upon two factors: case complexity and time spent.

J-4. Keeping Compensation Levels Uniform. Each state should set a uniform level of compensation for lawyers appointed by the courts to represent children. Any per/hour level of compensation should be the same for all representation of children in all types of child abuse and neglect-related proceedings.

Commentary—

These Standards implicitly reject the concept (and practice) of different courts within a state paying different levels of compensation for lawyers representing children. They call for a uniform approach, established on a statewide basis, towards the setting of payment guidelines.

- (1) Expand, with the aid of the bar and children's advocacy groups, the size of the list from which appointments are made;
- (2) Alert relevant government or private agency administrators that their lawyers have an excessive caseload problem;
- (3) Recruit law firms or special child advocacy law programs to engage in child representation;
- (4) Review any court contracts/agreements for child representation and amend them accordingly, so that additional lawyers can be compensated for case representation time; and
- (5) Alert state judicial, executive, and legislative branch leaders that excessive caseloads jeopardize the ability of lawyers to competently represent children pursuant to state-approved guidelines, and seek funds for increasing the number of lawyers available to represent children.

the standards and policies of the American Bar Association; and
BE IT FURTHER RESOLVED, that State and local bar associations are urged to actively support programs of training and education to ensure that lawyers practicing in juvenile court are aware of the American Bar Association's standards relating to representation of children and provide advocacy which meets those standards.

BAR ASSOCIATION AND ATTORNEY ACTION
FEBRUARY 1984

BE IT RESOLVED, that the American Bar Association urges the members of the legal profession, as well as state and local bar associations, to respond to the needs of children by directing attention to issues affecting children including, but not limited to: ... (7) establishment of guardian ad litem programs.

BAR AND ATTORNEY INVOLVEMENT IN CHILD PROTECTION CASES
AUGUST 1981

BE IT RESOLVED, that the American Bar Association encourages individual attorneys and state and local bar organizations to work more actively to improve the handling of cases involving abused and neglected children as well as children in foster care. Specifically, attorneys should form appropriate committees and groups within the bar to ... work to assure quality legal representation for children....

JUVENILE JUSTICE STANDARDS
FEBRUARY 1979

BE IT RESOLVED, that the American Bar Association adopt (the volume of the) Standards for Juvenile Justice (entitled) Counsel for Private Parties...

APPENDIX III

**Information on ABA National Court
Improvement Activities**

and

E-Mail Discussion Groups

ABA Center on Children and the Law

**FOR INFORMATION ON ABA NATIONAL COURT
IMPROVEMENT ACTIVITIES**

Contact:

Mark Hardin or Eva Klain, ABA Center on Children and the Law
740 15th Street, N.W., Washington, DC 20005-1009

Telephone: (202) 662-1750 (Mark); (202) 662-1681 (Eva)

Fax: (202) 662-1755

E-Mail: markhardin@staff.abanet.org (Mark); klaine@staff.abanet.org (Eva)

Join our national e-mail discussion groups on child abuse and neglect cases.

For a description of the group and instructions how to join, see the following pages. Note that there is a separate e-mail discussion group, open only to attorneys and judges, on how to handle child abuse and neglect cases.

The website of the ABA Center on Children and the Law includes information on court improvement. Its address is:

<http://www.abanet.org/child>

To get on the court improvement national mailing list or for further information on the ABA Center on Children and the Law, contact:

Mark Hardin
ABA Center on Children and the Law
740 15th Street, N.W.
Washington, DC 20005-1022

Telephone: (202) 662-1746

Fax: (202) 662-1755

E-Mail: markhardin@staff.abanet.org

To receive copies of court self assessment reports from different states, contact:

Administrative Assistant, Court Improvement Program at above address, telephone, etc.
Note: There will be a small charge for the cost of copying and mailing.

Join the e-mail discussion group for lawyers and judges on how to litigate child abuse and neglect and related cases.

About this group: This e-mail discussion group is open only to attorneys and judges. It will discuss issues that arise in the litigation of civil and criminal child abuse and neglect and related cases. It will discuss legal precedents, tactical concerns, and practical solutions to specific issues that arise during litigation. The purpose of the group is to help attorneys and judges explore how to better handle their cases, and not to discuss general issues of court reform and improvement.

By joining the group, you get the opportunity to ask questions to other professionals throughout the United States, learn of recent litigation developments, “listen in” to the group discussion of practical litigation issues faced by other practitioners.

Examples of possible issues for discussion are evidentiary issues, interpreting and applying specific state and federal laws, proving or defending specific types of allegations (e.g., sexual or physical abuse), case law, literature that is useful to attorneys and judges in the field, and upcoming conferences and meetings.

The group is managed by Mark Hardin of the ABA Center on Children and the Law.

To join the group, do *one* of the following:

- (1) Contact the ABA Center on Children and the Law website at <http://www.abanet.org/child/childcase.html> and follow instructions.
- (2) Send the following message to listserv@abanet.org: subscribe child-case
Note: Send that in the body of the message. Don't reference a subject.
- (3) **Complete the form on the next page** and mail, fax, e-mail or personally deliver it to Mark Hardin as follows: (mail) ABA Center on Children and the Law, 740 15th Street, Washington, DC 20005, (telephone) (202) 662-1750, fax (202) 662-1755, (e-mail) markhardin@abanet.org

APPENDIX IV

Standards for Lawyer Training

STANDARDS FOR LAWYER TRAINING

As discussed in further detail in this book's Chapter III, lawyers for children must be trained on a variety of legal and multidisciplinary topics in order to competently represent their clients. The following excerpts of national and state standards provide guidance to those jurisdictions interested in developing similar requirements for attorney training and experience. They are excerpts from the standards of the American Bar Association, the National Council of Juvenile and Family Court Judges, and the states of Oregon, Virginia, Michigan, and West Virginia.

AMERICAN BAR ASSOCIATION STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (1996) (PART II, 1-2)

I. THE COURT'S ROLE IN LAWYER TRAINING

I-1. Judicial Involvement in Lawyer Training. Trial judges who are regularly involved in child-related matters should participate in training for the child's attorney conducted by the courts, the bar, or any other group.

Commentary—

JUVENILE JUSTICE STANDARDS § 2.1 indicates that it is the responsibility of the courts (among others) to ensure that competent counsel are available to represent children before the courts. That Standard further suggests that lawyers should "be encouraged" to qualify themselves for participation in child-related cases "through formal training." The Abuse and Neglect Standards go further by suggesting that judges should personally take part in educational programs, whether or not the court conducts them. The National Council of Juvenile and Family Court Judges has suggested that courts can play an important role in training lawyers in child abuse and neglect cases, and that judges and judicial officers can volunteer to provide training and publications for continuing legal education seminars. See, RESOURCE GUIDELINES, at 22.

I-2. Content of Lawyer Training. The appropriate state administrative office of the trial, family, or juvenile courts should provide educational programs, live or on tape, on the role of a child's attorney. At a minimum, the requisite training should include:

- (1) Information about relevant federal and state laws and agency regulations;
- (2) Information about relevant court decisions and court rules;
- (3) Overview of the court process and key personnel in child-related litigation;
- (4) Description of applicable guidelines and standards for representation;
- (5) Focus on child development, needs, and abilities;
- (6) Information on the multidisciplinary input required in child-related cases,

Commentary—

In addition to training, particularly for lawyers who work as sole practitioners or in firms that do not specialize in child representation, courts can provide a useful mechanism to help educate new lawyers for children by pairing them with more experienced advocates. One specific thing courts can do is to provide lawyers new to representing children with the opportunity to be assisted by more experienced lawyers in their jurisdiction. Some courts actually require lawyers to “second chair” cases before taking an appointment to a child abuse or neglect case. See, RESOURCE GUIDELINES, at 22.

**NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES
RESOURCE GUIDELINES: IMPROVING COURT PRACTICE
IN CHILD ABUSE AND NEGLECT CASES (1995)
(Pages 22-23)**

The court can play an important role in training attorneys in child abuse and neglect cases. Judges and judicial officers can volunteer to provide training and publications for continuing legal education seminars.

Before becoming involved in an abuse and neglect case, attorneys should have the opportunity to assist more experienced attorneys in their jurisdiction. They should also be trained in, or familiar with:

- Legislation and case law on abuse and neglect, foster care, termination of parental rights, and adoption of children with special needs.
- The causes and available treatment for child abuse and neglect.
- The child welfare and family preservation services available in the community and the problems they are designed to address.
- The structure and functioning of the child welfare agency and court systems, the services for which the agency will routinely pay, and the services for which the agency either refuses to pay or is prohibited by state law or regulation from paying.
- Local experts who can provide attorneys with consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in the home.

8) Education of the Handicapped Act of 1975, 20 USC secs. 1400-1485 (1982, Supp. 1987).

9) Pub. L. 93-112, Title V, sec 504, Rehabilitation Act of 1975, 20 USC sec. 794 (1982).

- b. **Be familiar with:**
 - i. the causes and available treatment for child abuse and neglect;
 - ii. the child welfare and family preservation services available through State Offices for Services to Children and Families (formerly Children's Services Division (CSD) referred to hereinafter as SOSCF) and available in the community and the problems they are designed to address;
 - iii. the basic structure and functioning of SOSCF and the juvenile court, including court procedures, the functioning of the Citizen Review Boards (hereinafter referred to as CRB) and Court Appointed Special Advocates (hereinafter referred to as CASA) programs.
 - c. Counsel new to dependency cases are encouraged to work with a mentor for the first three months and at a minimum should observe or co-counsel each type of dependency hearing from shelter care through review of permanent plan prior to accepting appointments.
 - d. In termination of parental rights cases, counsel for children or parents must meet the standards for dependency cases and have handled dependency cases for a minimum of six months as a full-time juvenile defender or must have handled at least 25 juvenile dependency cases that have gone past the jurisdictional phase.
3. Counsel should develop a basic knowledge of child development and adequate communication skills to communicate with child clients and witnesses.
- a. Interviewing techniques should be age appropriate and take into consideration the type of abuse the child is alleged to have suffered.
 - b. Communicating with a child client, especially with regard to legal matters, may require efforts beyond those normally required for effective communications with adult clients. Counsel for children should therefore be especially sensitive to the child's stage of development, including:
 - i. cognitive, emotional and social growth stages;
 - ii. level of education;
 - iii. cultural context; and
 - iv. degree of language acquisition.

- ix. resources for the treatment and recognition of non-organic failure to thrive;
- x. educational, mental health and other resources for special needs children;
- xi. the use and appropriateness of psychotropic drugs for children;
- xii. domestic violence, its effect on children and appropriate resources;
- xiii. immigration law issues in juvenile court;
- xiv. transitional aspects of placement and the child's return home;
- xv. the importance of placing siblings together when appropriate;
- xvi. the appropriateness of various types of placement;
- xvii. the efforts that should be made to ensure a smooth, timely transition;
- xviii. the effect of the placement on visitation by parents, siblings and other relatives;
- xix. the effect of the placement on the service needs of the child;
- xx. the transracial, transcultural and language aspects of the placement;
- xxi. risk assessment prior to reunification;
- xxii. the basics of case planning;
- xxiii. accessing private insurance for services;
- xxiv. consolidated cases in the family court;
- xxv. the Indian Child Welfare Act, Native American families and appropriate resources;
- xxvi. the Uniform Child Custody Jurisdiction Act (UCCJA);
- xxvii. the Parental Kidnapping Protection Act;
- xxviii. the Interstate Compact for the Placement of Children;
- xxvix. the Interstate Compact on Juveniles;
- xxx. guardianships;
- xxxi. adoption placement references.

Certification of attendance and a brief description of the course content of such education programs shall be submitted for approval to the Office of the Executive Secretary of the Supreme Court of Virginia on the required form in accordance with paragraph E of these standards.

COMMENT:

Standard B.2

The continuing education requirement of six hours every two years may be successfully fulfilled by attendance at a qualified MCLE approved program or any other non-MCLE approved program which assists a lawyer in better representing children as a guardian ad litem. The goal is to permit lawyers to participate in interdisciplinary programs with other professions which also focus on serving children and families.

Examples of such programs include: training for Court-Appointed Special Advocates (CASA); programs on domestic violence; mental health programs on the effect of divorce on a child; presentations on accessing school services or understanding school records; and programs on the availability of community resources, such as social services, financial assistance and youth centers.

C. Demonstrate familiarity with the court system and a general background in juvenile law by completion of one of the following in the three-year period prior to seeking initial qualification as a guardian ad litem:

1. Participation as an attorney or as a third-year law student under Part 6, § IV, Para. 15, of the Rules of the Supreme Court of Virginia, in four cases in the juvenile and domestic relations district court involving children, excluding traffic cases; or

2. Service as a guardian ad litem or provision of assistance to a qualified guardian ad litem in two cases involving children in the juvenile and domestic relations district court.

The lawyer seeking qualification shall in the letter of request required by paragraph E.1. hereof certify that he/she has complied with the applicable provisions of this standard C.1. or C.2.

COMMENT:

Standard C.1.

The requirement to “participate” in four cases in the juvenile court either as an attorney or qualified third-year law student may be met by serving either as lead counsel or co-counsel.

**STATE BAR OF MICHIGAN
CHILDREN'S TASK FORCE FINAL REPORT (1995)
GUIDELINES FOR ADVOCATES FOR CHILDREN IN MICHIGAN COURTS
(Pages 92-94)**

III QUALIFICATIONS

A. Attorneys

1. The court is encouraged to appoint attorneys either as legal counsel or GAL for a child who are adequately qualified to represent children. The State Bar of Michigan, law schools, Michigan Judicial Institute and providers of continuing legal education are encouraged to provide training for attorneys. Qualifications for children's attorneys shall include experience and/or training in the following:

- a) role of the child advocate
- b) applicable statutory code and case law in the area of practice, i.e. juvenile, domestic relations, probate and local practice
- c) child development
- d) sexual abuse
- e) child abuse and neglect
- f) foster care
- g) domestic violence
- h) mental health
- i) ethical considerations which are unique to child law practice
- j) school law
- k) resource availability both as to social services programs and financial assistance programs
- l) substance abuse
- m) effects of divorce on a child
- n) custody-visitation
- o) adoption
- p) cultural and ethnic sensitivity
- q) any other topic which the child advocate may select as helpful to a given caseload.

2. The attorney is encouraged to engage in ongoing training in the subjects listed in Section III.A(1).

3. The State Bar of Michigan Juvenile Law Section and Family Law Section is encouraged to develop a reading list of suggested books, articles, periodicals and journals which deal with the specialized issues in child advocacy law and practice and make it available to all for a minimum cost.

THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
In re JEFFREY R.L., 435 S.E.2d 162, 177-78; 190 W. Va. 24, 39-40 (1993)

[In *In Re Jeffrey R.L.*, the Supreme Court of Appeals of West Virginia reversed a lower court decision not to terminate parental rights. As part of the decision, the Court adopted "Guidelines for Guardians Ad Litem in Abuse and Neglect Cases." The Guidelines are attached to that decision as Appendix A. The following is an excerpt from the decision specifically addressing training requirements for West Virginian attorneys representing children. Footnotes have been omitted.]

In addition to the guidelines adopted herein, we believe attorneys who act as guardians ad litem should participate in special continuing legal education relating to the representation. The attorneys in this State are required under Chapter VII, section 5.2 of the Constitution, By-Laws and Rules and Regulations of the West Virginia State Bar to satisfy the following requirements: P 5.2. After the above two year phase-in period, each active member of the state bar shall complete a minimum of twenty-four hours of continuing legal education, as approved by these rules or accredited by the Commission, every two fiscal years. At least three of such twenty-four hours shall be taken in courses on legal ethics or office management. On or before July 31, 1990, and every other July 31 thereafter, each attorney must file a report of completion of such activities. The commission recommends that such report be completed on Form C—Certification of Completion of Approved MCLE Activity.

Furthermore, W.Va.Code, 49-6-2(a) [1992] provides that attorneys who represent children in abuse and neglect proceedings should complete a minimum of three hours of continuing legal education on representation of children in child abuse and neglect cases per year. Those three hours are merely included in the 24 hours of continuing legal education already required by the West Virginia State Bar. W.Va.Code, 49-6-2(a) [1992] further provides that "where no attorney who has completed this training is available for such appointment, the court shall appoint a competent attorney with demonstrated knowledge of child welfare law to represent the child."

We believe that, because the practice of guardians ad litem is rather unique, and at times complex, guardians ad litem need specialized education and training to fulfill their responsibilities. While this Court, rather than the legislature, controls the practice of law in this State, we find that the three hour per year requirement of specialized continuing legal education under W.Va.Code, 49-6-2 [1991] is in accord with what this Court intends to be the practice for guardians ad litem. Therefore, we find that a minimum of three hours of continuing legal education per year, relating to representation of children, for guardians ad litem to complete is necessary to ensure the effective representation of children.

APPENDIX V

New Mexico Guardian Ad Litem Model Contract

GUARDIAN AD LITEM MODEL CONTRACT

[This draft model guardian ad litem contract was developed under the auspices of the New Mexico Administrative Office of the Courts (AOC). According to Shaening and Associates, the researchers that worked with the AOC in conducting New Mexico's court improvement assessment (letter to the ABA dated 1/15/97), the assessment revealed "that attorneys working under contract spend more time on their cases, have more client contact, participate in more training, and are generally better informed than attorneys appointed from State Bar Association lists."

As part of New Mexico's court improvement implementation phase, an advisory committee of judges and attorneys was brought together with the aim of developing "model contracts" to improve legal representation. The model contract presented in this appendix is a result of this committee's work. In drafting this contract, "the advisory committee identified an extensive list of possible contract provisions through a review of the literature, including existing proposed professional standards, and a review of current GAL and respondent attorney contracts."

Although this is a contract for use in negotiating agreements with attorney/GALs, it can be modified for attorneys who are not considered GALs (e.g., representing the "interests" of the client). See Chapter III for discussion of the elements of a model contract.]

THIS AGREEMENT is made and entered into this _____ day of _____, 19__, by and between the State of New Mexico, _____ Judicial District Court, hereinafter referred to as "the Court", and _____, hereinafter referred to as "the Contractor" whose address is _____.

IT IS AGREED AS FOLLOWS:

1. SCOPE OF WORK

A. The Contractor shall provide Guardian ad Litem representation in the _____ Judicial District for children who are the subject of abuse or neglect proceedings or Family in Need of Court Ordered Services (FINS) proceedings, including proceedings for the termination of parental rights, adoption proceedings, or other abuse/neglect or FINS proceedings designated by the Court;

B. The Contractor shall represent clients to the best of his/her ability in accordance with the Code of Professional Responsibility, S.C.R.A. 16-101 et. seq. NMSA 1978, and all other applicable laws;

E. The Contractor shall respect the confidentiality requirements of the New Mexico Children's Code (Section 32A-4-33);

F. The Contractor shall participate in all abuse/neglect and Family in Need of Court Ordered Services (FINS) proceedings involving the child to whom they are assigned including all hearings, depositions, negotiations, and pre-trial conferences; should an attorney fail to attend a proceeding, without good cause, the Contractor will be subject to Court sanction;

G. The Contractor shall continue representation of all cases assigned during the contract period through dismissal; in the event of a change of venue, the originating guardian ad litem shall remain on the case until a new guardian ad litem is appointed by the court in the new venue and the new guardian ad litem has communicated with the former guardian ad litem.

H. As required in the Children's Code (Section 32A-1-7), the Contractor shall represent the child during any appellate proceedings;

I. A guardian ad litem may retain separate counsel to represent the child in a tort action on a contingency fee basis or any other cause of action in proceedings that are outside the jurisdiction of the Children's Court. When a guardian ad litem retains separate counsel to represent the child, the guardian ad litem shall provide the Court with written notice within ten days of retaining separate counsel. A guardian ad litem shall not retain or subsequently obtain any pecuniary interest in an action filed on behalf of the child outside of the jurisdiction of the Children's Court without permission of the Children's Court, pursuant to rules promulgated by the Supreme Court.

J. The Contractor agrees to participate in at least twelve (12) hours training each year in those areas of the law in which the Contractor performs service pursuant to this agreement;

K. The Contractor agrees to meet with the Judge on a quarterly basis, or at any time the Court shall direct, to discuss any aspect of representation under this Agreement; the Contractor has the right to arrange other meetings with the Judge; the Contractor agrees to meet with the court administrator upon request;

L. At the child's Permanency Hearing, when appropriate, the Contractor shall present evidence showing that the child's return home would place the child at risk or injury;

2. COMPENSATION

A. Compensation for the Contractor's service shall be paid exclusively from funds

4. TERMINATION

A. This Agreement shall terminate at the end of the contract term. This Agreement may be sooner terminated without cause by either of the parties hereto upon written notice delivered to the other party at least 30 days prior to the intended date of termination, or pursuant to paragraph 8, *infra*. By such termination, neither party shall nullify obligations already incurred. For all cases appointed during any month for which the Contractor received compensation as set forth in paragraph 2, *supra*, the Contractor shall provide service through disposition even if disposition occurs after the termination of the contract period;

B. Default by either party is cause for termination, provided that written notice is given the other party at least 30 days before such termination shall occur. Default is construed to include any of the following events:

1. if the Contractor fails to provided the services set forth herein; or
2. if either party fails to comply with the terms of the Agreement.

5. STATUS OF CONTRACTOR

A. The Contractor and the Contractor's agents and employees are independent contractors performing professional services and are not employees of the State of New Mexico and shall not accrue leave, retirement, insurance, bonding, use of state vehicle, or receive benefits afforded to the employees of the State of New Mexico as a result of this Agreement.

B. The Contractor shall avoid employment that would be in conflict with the attorney's duties under this agreement or give the appearance of impropriety.

6. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without prior written approval of the AOC.

7. SUBCONTRACTING/DELEGATION

A. The Contractor may subcontract or delegate the attorney services and obligations under the Agreement provided that the Contractor warrants that all subcontractors and delegates meet the requirements of this Agreement. The contractor assumes responsibility for all work performed under this Agreement, including those cases that are subcontracted or delegated. Further, the Contractor assumes the entire responsibility for compensating the subcontractee from funds that the Contractor receives pursuant to this Agreement. The

12. PRODUCT OF SERVICES: COPYRIGHT

All written material developed specifically for the Court by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Court not later than the termination date of this Agreement. No such material developed, in whole or in part, by the Contractor under this Agreement shall be subject of an application for copyright by or on behalf of the Contractor.

13. CONFLICT OF INTEREST

The Contractor warrants that the Contractor presently has no interest and shall not acquire any interests, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement. The Contractor shall comply with all statutory provisions that require disclosure to the Office of the Secretary of State of amounts received under state contracts when and if such provisions become applicable.

14. PROHIBITION AGAINST DUAL COMPENSATION

The charges for services rendered under this Contract are reimbursable or subject to compensation only to the extent that such services relate exclusively and directly to the purpose of this Contract, and supplemental or additional payment for such services is not received by the Contractor from any other source.

15. EQUAL EMPLOYMENT OPPORTUNITY

The Contractor, in the performance of this Agreement, shall not discriminate against any employee, client or other person on the basis of race, color, religion, national origin, sex, age or disability.

16. NOTICE

The Procurement Code imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

17. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings are merged into this written Agreement. No prior agreement of understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the Agreement.

APPENDIX VI

**Children's Law Courses in Law Schools
1996 - 1997**

**Developed by a Subcommittee of the
ABA Section of Litigation, Task Force on Children**

**Bernardine Dohrn, Director
Children and Family Justice Center
Northwestern University School of Law**

Kathleen McCree Lewis, Esq.

Kimberly Freeland, Law Student

**CHILDREN'S LAW COURSES IN LAW SCHOOLS
1996 - 1997**

SCHOOL	COURSE	PROFESSOR	SYLLAB/
Akron, Univ. of *	Family Law Juvenile Law	Dana Castle	<i>As Reported by Students</i>
American University Washington D.C.	Criminal Justice Clinic	Robert Dinerstein, Director Binny Miller Shirley Brandman	
Arizona, Univ. Of Tucson, AR	Federal Indian Law Tribal Law Seminar Indian Law Clinic-GAL	Prof. Robert Hershey	Reported by Native American Rights Fund
Arizona State Univ. Tempe, AZ	Indian Cultural Property; American Indian Justice Federal Indian Law Ariz. Tribal Law Seminar		Reported by Native American Rights Fund
ARKANSAS**, Univ. of at Little Rock	Juvenile Law	Justine Dunlap	x
BALTIMORE, Univ. of	Domestic Relations Child and the Family Juvenile Justice	Barbara Babb Odeana R. Neal	x x x
BOSTON COLLEGE LAW SCHOOL	Family Law: Child, Parent and State Juvenile Justice; Juvenile Rights Advocacy	Ruth Arlene W. Howe Francine Sherman Sanford Katz	x
Brigham Young Univ.	Children and the Law Family Law Children's Clinic	Lynn D. Wardle James H. Backman Susan Griffith	
Brooklyn Law School	Children and the Law	Jennifer Rosato	<i>as reported by students (ARBS)</i>

*Normal Type - *as reported by students*

**ALL CAPS - AS REPORTED BY FACULTY

SCHOOL	COURSE	PROFESSOR	SYLLAB/
BUFFALO, Univ. of	Child Welfare Law	Sue Vivian Mangold	x
	Evidence and the Child Victim		x
	Introduction to Family Violence	Sue Vivian Mangold	x
CALIFORNIA WESTERN SCHOOL OF LAW	Child Abuse & Neglect-Interdisciplinary Training	Janet Weinstein	x
Chicago, University of School of Law	Mandel Legal Aid Clinic Criminal Justice Project	Randolph Stone, Dir Herschella Conyers	
Colorado, Univ. of Boulder, CO	Federal Indian Law Indian Law Clinic	V. Deloria, Jr. C. Wilkinson	Reported by Native American Rights Fund
COLUMBIA LAW SCHOOL	Family Law Children and Law Child Abuse Children & Law Externs. Prisoners & Family Advocacy Clinic	Martha Fineman; Carol Sanger. C. Sanger, Jane Spinak C. Sanger, Philip Genty C. Sanger, J. Spinak Philip Genty	
Cornell University Law School Ithaca, NY	Law Guardian Externship	Bill Kell Kathy Abrams JoAnne Miner	
CREIGHTON UNIV. SCHOOL OF LAW	Children, Family & The State Juvenile Law	Catherine M. Brooks Nancy Walker, Ph.D. Hon. Doug Johnson (adjunct)	
Dayton, Univ. of	Family Law Children & the Law	Cooley Howorth Randall Kimberly E. O'Leary	ARBS
D.C. Law School	Juv. Law Clinic	Joseph B. Tulman Tony Lee Susan Sutler Mary Hynes	

*Normal Type - as reported by students

**ALL CAPS - AS REPORTED BY FACULTY

SCHOOL	COURSE	PROFESSOR	SYLLAB/
Denver, Univ. Of College of Law	Children's Legal Clinic Advocacy & Trial Skills for Children's Attorneys	Shari Shink	
DICKINSON SCHOOL OF LAW	Juvenile Law	Robert E. Rains	x
Drake University	Family Law	Andiea Charlow	ARBS
Emory Law School	Child Advocacy Program	Janette Pratt, Clinical Program. Director 404-727-6785	
George Washington Univ. Law School	Child, Family & State Family Law Seminar Domestic Abuse Clinic	Ross Ross Maier	
Georgia State Univ.	Family Law Juvenile Justice	B. Hartfield	ARBS
Georgetown University Washington, D.C.	Juvenile Justice Clinic Family Poverty Law	Paul Holland Wallace Mlyniec Randi Mandelbaum	
Golden Gate University San Francisco	Children's Law Office *under formation	Carole Brill SF 414-391-2440	
Hamlin University School of Law, St. Paul MN	Child Advocacy Clinic	Oleisky Mary Jo Brooks, Svpr. Atty	ARBS
HARVARD UNIV. SCHOOL OF LAW	Children and the Law Family Law Inclusionary Education	Martha Minow Prof. Weissbourd, Noam, Minow & White	x
INDIANA UNIV.- Indianapolis	Family Law-The Law of Children	Dr. June Starr	x
Iowa, Univ. Of Iowa City, IA	Native American Rights	Prof. James Anaya Prof. Robert N. Clinton	Reported by the Native American Rights Fund

*Normal Type - as reported by students

**ALL CAPS - AS REPORTED BY FACULTY

APP VI - 3

SCHOOL	COURSE	PROFESSOR	SYLLAB/
Kansas University Law School Lawrence, KS	Juvenile Law Clinic	Shelley	
LOUISIANA STATE UNIV. LAW CENTER	Juvenile Law Seminar Child Custody Mediation	Lucy S. McGough	
LOYOLA, LOS ANGELES	Advanced Children & The Law Children & The Law	Jan C. Costello	x
Loyola University, Chicago	CIVITAS ChildLaw Ctr Children and the Law Adolescents and the Law Family Law	Diane Geraghty, Faculty Director, Michael Dsida, Clinic Atty.	
Loyola University - School of Law, New Orleans, LA	Clinic	Evangeline Abriel, Luz Molina, Cynthia Tolbert (Delinquency Only) Catherine Lafleur	
MARYLAND, Univ. of	Children, Parents & Law Seminar Juvenile Justice	Jana B. Singer Susan Leviton, Head of Children's Specialty	x
Massachusetts School of Law, Andover, MA	Juvenile Law	Paula Dickenson	
MIAMI, Univ. of SCHOOL OF LAW	Children & The Law Privatization & Children Foster Care Research Seminar	Robert Rosen Bernard Perlmutter	
Michigan, Univ. of Ann Arbor, MI	Welfare Law & Policy Family Law Child Advocacy Law	Chambers Legman Don Duquette, Director Suellyn Scarnecchia	ARBS
MINNESOTA, Univ of	Juvenile Justice	Barry C. Feld	x
MISSOURI, Univ. of, KANSAS CITY	Children in the Law	Mary Kay Kisthardt	x
Missouri, Univ. of, Kansas City	Family Law Women & the Law		ARBS

*Normal Type - as reported by students

**ALL CAPS - AS REPORTED BY FACULTY

SCHOOL	COURSE	PROFESSOR	SYLLAB/
NEBRASKA, Univ. of - LINCOLN	Civil Clinical Law	Kevin Ruser	
New England School of Law, Boston, MA		Prof. Robert Word	
New Mexico, Univ. of	Indian Law; Indian Child Welfare	Ruth Kovnat Mario E. Occhallino Scott A. Taylor Barbara Bergsman	Reported by Native American Rights Fund
New York Law School	Family Law Children and the Law Children's Legal Issues	Newman	ARBS
NEW YORK UNIV. New York, NY	Family Law Child Parent & State Family Defense Clinic Juvenile Law Juvenile Rights Clinic	Sylvia Law Martin Guggenheim Martin Guggenheim Randy Hurtz Madeline Kurtz	x x
Northeastern University School of Law Huntington Avenue, Boston, MA	Juvenile Law	Dean David Hall Adjunct Prof. Hon. Roderick Ireland	
NORTHERN ILL. UNIV. COLLEGE OF LAW	Family Law Family Law Seminar Family Practice Juvenile Law Children & the Law	Natalie Loder Clark Lawrence Schlam	
Northern Kentucky University-College of Law Covington, KY	Children's Law Clinic Introduction to KY Juvenile Law	Kim Brooks David Davison Judge Martin Sheehan Karen Tapp	

*Normal Type - as reported by students

**ALL CAPS - AS REPORTED BY FACULTY

SCHOOL	COURSE	PROFESSOR	SYLLAB/
NORTHWESTERN UNIV. SCHOOL OF LAW	Juvenile Law Children & Family Justice Center Child Protection Juvenile Justice, Education and Disability Domestic Violence	Tom Geraghty Bernardine Dohrn, Dir. Bruce Boyer/Zelda Harris Steve Drizin/Cheryl Steve Drizin/Cheryl Graves, Angela Coin, Lisa Copland Derrick Ford/Laura Miller	x
NOTRE DAME LAW SCHOOL	Family Law Comparative Law--U.S. & U.K. Juvenile Law	J. Eric Smithburn	
NOVA SOUTHEASTERN- FLA.	Family Law Juvenile Law Street Law Bioethics, Family Law	Michael J. Dale Michael J. Dale Judge Diaz/Mickey Rogue; Bernard Perlmutter, William Adams, Brian Blackwelder Prof. Coleman	x x <i>ARBS</i>
Ohio State University	Juvenile Law	Katherine Federle	
Oklahoma, Univ. of Norman, OK	Indian Law		Reported by the Native American Rights Fund
Oklahoma City University, School of Law	American Indian Law Indian Civil Rights Act Child Abuse Cases Native American Legal Assistance Clinic		Reported by the Native American Rights Fund
OREGON, Univ. of	Children and the Law	Leslie Joan Harris	x
Pace Univ. School of Law	Juv. Justice Family Law	Soble	<i>ARBS</i>

*Normal Type - as reported by students

**ALL CAPS - AS REPORTED BY FACULTY

SCHOOL	COURSE	PROFESSOR	SYLLAB/
UNIVERSITY OF PENNSYLVANIA	Child, Parent and State Children's Rights Seminar	Barbara Bennett Woodhouse	x
PITTSBURGH, Univ. of	Juvenile Law Child Welfare Law Clinic	Francis B. McCarthy David Herring, Superv. Attorney	x
PUERTO RICO LAW SCHOOL, Univ. of	Juvenile Law Legal Aid Clinic Project for the Representation of Minors and Disabled	Maria L. Jimenez Ana Matanzo	x
QUINNIPIAC COLLEGE SCHOOL OF LAW- CT.	Juvenile Law Family Law	Sheila Taub David Rosettenstein Gregory Loken	
RICHMOND LAW SCHOOL, Univ. of	Children and the Law Youth Advocacy Clinic Mental Disabilities Clinic	Robert E. Shepherd Kathe Klare Kathe Klare	x
Roger Williams Univ.	Family Law "Family Court"	Hon. Judge Howard Lipsey	ARBS
San Diego, University of Law School	Juvenile Criminal Clinic Child Advocacy Institute Family Law Juvenile Law	Laura Berend/Jean Montoya Sharon Kalerkiarian Professor Horton Professor Roche	
Seton Hall University Newark, NJ	Juvenile Justice Clinic Family Law Clinic	Harriet London, Svp. Atty; Phillip Ross, Dir. Of Trial Practic Susanne M. Osgood, Barbara Coles Bolella, Horatius A. Greene	
Univ. Of South Carolina, School of Law Chapel Hill, SC		Annette Appell Pam Mohr	
South Dakota, Univ. of	Family Law	Robert Baron	ARBS

*Normal Type - as reported by students

**ALL CAPS - AS REPORTED BY FACULTY

SCHOOL	COURSE	PROFESSOR	SYLLAB/
South Dakota, Univ. of Vermillion SD	Indian Law		Reported by the Native American Rights Fund
SOUTHERN CALIF., Univ. of	Alternatives to Litigation: Mediation Arbitration Admin.. Law: The Development of Juvenile Courts	Charles Whitebread	x
Southern Ill. Univ.	Family Law Children & The Law	Beck O'Neill	ARBS
St. Mary's University San Antonio, TX	Criminal Justice Clinic	Mark Stevens, Svp. Atty Sally Justice, Svp. Atty	
St. Thomas University	Juvenile Law Street Law	Omar Saleem Prof. Roman	ARBS
Stetson University	Family Law Domestic Relations	Craig/Ruth Ruth Thurman	ARBS
St. John's University	Juvenile Justice		ARBS
SUFFOLK UNIV. LAW SCHOOL	Children and the Law I Children's Law I & II	Thomas Finn Finn, Polk, Kindergren	x ARBS
SYRACUSE UNIV. SCHOOL OF LAW Syracuse, NY	Children's Rights & Family Law Clinic Children & the Law	Liz Goldenberg, Dir. Sarah Ransey	
TEMPLE UNIVERSITY PHILADELPHIA	Juvenile Law Street Law clinic	Marina Angel, Theresa Glennon David Trevaskis	
TENNESSEE, Univ. of COLLEGE OF LAW	Advocacy for Families and Children	Dean H. Rivkin	
TEXAS TECH UNIV.	Juvenile Justice Process	Daisy Hurst Floyd	x

*Normal Type - as reported by students

**ALL CAPS - AS REPORTED BY FACULTY

SCHOOL	COURSE	PROFESSOR	SYLLAB/
Texas, Univ. of, Austin, TX	Children's Rights Clinic Juvenile Justice Clinic	Cynthia Bryan, J. Andrew Hathcock; John J. Sampson, Beecher Threatt, Elaine Carpenter	
Touro Law Center	Domestic Violence Clinic	Professor Silverman	ARBS
TULANE UNIVERSITY	Juvenile Law	David Kanter	x
Tulsa, University of Tulsa, OK	Native American Rights	Judith Royster	Reported by the Native American Rights Fund
UTAH, Univ. of- SALT LAKE CITY	Child, Parent & State	Lee Teitelbaum	
Valparaiso University Law School, Valparaiso, IN	Clinic	Marcia L. Gienapp	
VANDERBILT UNIV.	Children and the Law Legal Clinic Family Law Juvenile Practice Clinic Civil Practice Clinic	Susan Brooks Clayton, Brooks Alex J. Hurder	x ARBS
Villanova University School of Law, Villanova, PA	Juvenile Justice Clinic (delinquency)	Anne Bowen Poulin	
Washburn Law School Topeka, KS	Family Law, Advanced Family Law, Children & the Law; Family Law Seminar New Children's Clinic	Linda Elrod Nancy Maxwell Lynette Petty Sheila Reynolds Julie K. Field, Dir. of Clinic	
Washington, Univ. of	Family Law Children and the Law	Appleton	ARBS
WEST VA. UNIV. SCHOOL OF LAW	Child, Family & State Family Law	Lisa Kelly Cynthia Mabry	

*Normal Type - as reported by students

**ALL CAPS - AS REPORTED BY FACULTY

SCHOOL	COURSE	PROFESSOR	SYLLAB/
Western New England	Divorce & Family Representing Children	Teresa Bryant	ARBS
WHITTIER LAW SCHOOL - CALIF.	Juvenile Law	William W. Patton	x
WIDENER UNIV. SCHOOL OF LAW - DELAWARE	Juvenile Rights Seminar	Phyllis T. Bookspan	x
Wisconsin, University of Madison, WI	Indian Law Indian Law Seminars Great Lakes Indian Law Center Center for Public Representation; Guardian Ad Litem Clinic	Dr. Richard Monette Carol Biermier, Ctr. Dir. Louise G. Trubek, Sr. Atty/Clinical Director	
Yale University School of Law, New Haven, CT	Jerome N. Frank Legal Services Organization	J. L. Pottenger, Dir. Carroll Lucht Robert A. Solomon Kathleen A. Sullivan Stephen Wizner	

December 16, 1997

*Normal Type - as reported by students

**ALL CAPS - AS REPORTED BY FACULTY

APP VI - 10

APPENDIX VII

**ABA Presidential Challenge To Improve
Legal Representation For Children**

AMERICAN BAR ASSOCIATION CHALLENGE ON IMPROVING LEGAL REPRESENTATION IN CHILDREN'S CASES

In 1997, State and Local Bar Associations throughout the nation were asked by then ABA President N. Lee Cooper to make the following pledge on enhancing the quality of representation in judicial proceedings affecting children, youth, and their families

Legal Representation in Juvenile and Child Welfare Court Proceedings

Many children in America still wait for justice.

They are abused and neglected children, young people accused of wrongdoing, and children wanting permanent homes. They need love, guidance and stability, and -- for those involved with our judicial system -- they also need the best attorneys available. They need attorneys who can explain the proceedings in ways that a child can comprehend, and attorneys who have time to listen to their concerns and fears. They need attorneys who will grasp what it means to a child to "be in court," and ensure that -- when a court or agency decides the course of a child's life -- that the very best resources have been brought to bear on behalf of that child and family.

That type of justice is still all too rare for America's children.

In child abuse and neglect cases, the legal representation of parents, children, and child protection agencies is often seriously deficient. It is not unusual for attorneys for parties to be absent from hearings that can determine parental rights to visitation, custody, and services concerning their children. Similarly, in juvenile delinquency cases, many children who have been charged with wrongdoing are forced to navigate hearings and trials by themselves without benefit of their constitutional right to counsel.

In all types of cases, it is common for attorneys practicing in juvenile or family proceedings not to have met with or discussed the case with their clients until just a few minutes before the hearing. Such inadequate representation frequently occurs because caseloads are so high that attorneys have to be constantly in court. In other cases, appointed attorneys are paid low lump sum fees no matter what services they do or do not perform. In still other cases, new and inexperienced attorneys are appointed who do not know how to go about representing parents, children, or agencies. These circumstances often arise because there is little understanding of the important role attorneys play in these proceedings, and consequently, their work is not valued.

- (b) *We will work to help clarify the appropriate roles and ethical duties of counsel in juvenile delinquency proceedings, such as obligations to follow the direction of clients, to explain the proceedings and options, and to investigate each case adequately.*
- (c) *We will work to persuade our legislature to strengthen the representation of children, parents, and child protection agencies in child abuse and neglect cases, as well as to ensure that children accused of crimes of delinquency receive effective assistance of counsel.*
- (d) *We will work to create a pro bono program to serve children and their families on issues such as income support, housing, health care, government benefits and other legal problems which can no longer be addressed by legal services programs.*
- (e) *We will support and develop activities that elevate the status of juvenile and family court practice by lawyers – such as awards, public education programs, specialized training classes and materials development.*
- (f) *We will appoint high level bar officers to participate in current federally funded state child abuse and neglect court improvement efforts, and support reforms in child abuse and neglect court proceedings such as statewide implementation of the “Resource Guidelines for Improving Court Practice in Child Abuse and Neglect Cases” endorsed by the ABA, the Conference of Chief Justices, and the National Council of Juvenile and Family Court Judges, and court re-organization and re-structuring programs in juvenile and family proceedings.*
- (g) *We will create a bar committee, if one does not presently exist, to conduct annual assessments of state and/or local juvenile defender services and other government-supported programs providing representation to children or parents in child abuse and neglect-related cases, in terms of access to counsel, individual lawyer caseloads, adequacy of compensation, availability of support services, and training.*

