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New Perspectives on Child Protection

CHILDREN'S RIGHTS AND THE NEED FOR PROTECTION

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I. Introduction

The abuse and neglect system is premised on the child's need for protection. The language of the system itself seems to suggest that the child's need for protection is a right—a right, for example, to be cared for and nurtured or to be placed in a permanent and safe loving home. Thinking about rights in this way, as needs the child may have that warrant protection, is entirely consistent with an interest theory of rights.¹ Under this account, certain individual interests generate rights although the theory itself leaves open the question of which specific interests actually give rise to rights. Thus rights are those interests deemed worthy of protection; to that extent, any duties which arise are the result of saying that a particular interest is worthy of protection.

Those who claim that children do have rights under an interest theory invariably identify as rights those interests which strongly correlate to the child's need for protection.² For example, the child's interest in being cared for, nurtured, and loved is worthy of protection as a right. The child's basic interests, like the need for food, shelter, and love, *422 may warrant protection as a right and may take priority over other kinds of interests as rights, like the need for an education. It may even be said that the child's status as a child creates a specific set of rights based on the child's developmental and other needs. Interest theory, therefore, does have the advantage of permitting us to speak about the rights of children without reference to their power to obligate others.

Thinking about rights in this way does overcome one of the central difficulties in constructing rights for children. Generally, to have a right, one must have the capacity to exercise that right. In turn, one also must have the capacity to insist that those with a duty perform that obligation—once one has decided to seek enforcement of the right. Since children generally are thought to lack capacity, suggesting that children have rights seems a particularly fruitless exercise for it would seem they have no present ability to demand performance of the corresponding duties triggered by the exercise of rights. To have a right, without the power to enforce the right, would not be much of a right.

Interest theory, at least facially, purports to resolve this problem of having a right without having the present ability to exercise it. Because the right is an interest, based on the child's need, the right exists regardless of the obligor's identity or performance. So the child may be said to have a right to be cared for regardless of the identity of the individual who has a corresponding duty to provide that care. Moreover, if that duty holder fails to perform his duty, the right still exists. Thus the interest theory provides an account of children's rights that is not tied to the capacity of the rights holder.

The difficulty, of course, is that even under this theory, someone other than the child must enforce the child's right. Because those interests identified as giving use to rights are invariably protective, they inevitably reaffirm the incompetencies of children. Interests, then, even those that give rise to rights, continue to promote children's incapacities. If we could be sure that there would always be someone else to enforce the child's rights, then this theory would seem to be a good one. But the mere fact that the right being enforced rests on the child's need for protection that *has not been met in the first instance* suggests that an

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interest-based approach is inherently flawed. Furthermore, there is little assurance that the adult who does enforce the right will do so in a way that serves the child's interests.

Our experiences with a rights theory, premised on the child's need for protection, indicate that children are often disadvantaged by such an approach. The best interests standard, for example, affirmatively disadvantages children. The standard itself is indeterminate, so it is very *423 difficult to identify what interests are "best" or the rights and duties which flow from those interests. Moreover, if there is some content given to the standard, it usually is structured in the language of parental rights and responsibilities. For children in the abuse and neglect system, an interest-based approach to rights, under which the child's best interests is the guiding principle, has had profound consequences. Children are not seen as active participants in a process that may alter significantly their relationships with their parents.

If, however, we reconsider rights as a means to power, in which capacity is not a central principle, then we may begin to construct a coherent account of children's rights. From this view, which I have called an empowerment rights perspective,³ rights have value because they redress imbalances of power inherent to our personal relationships and social interactions. In this way, our rights talk is opened up to include the disempowered and the marginalized, whose voices have not been heard. In turn, this may make new rights claims possible. For children, this means that they now have status as rights holders and as such, have a voice to make claims, claims that must be respected.

The child welfare system's protective goals, however, generally constrain any discussion of children's rights. Although not entirely precluding the construction of a theory of children's rights, the emphasis on children's vulnerabilities has created some oddities in the structure of abuse and neglect proceedings. This article considers the nature of representation accorded the child in an abuse and neglect proceeding and the collateral consequences of that representation in the context of rights theory. As is argued, the notion of best interests seldom, if ever, redounds to the child's advantage. The article then turns to a discussion of the empowerment rights perspective and considers the consequences in the abuse and neglect system for children.

II. The Right to Be Represented and Some Collateral Consequences

What rights do we presently accord children in abuse and neglect proceedings? The answer to that question varies from jurisdiction to jurisdiction and may depend as much on local practice norms as on statutes or court rules. Moreover, the nature and extent of these rights provide clear indications of the value we place on children's participation in cases affecting their interests. This section considers the extent *424 of a child's rights in abuse and neglect proceedings by looking at the nature and scope of the right to representation. Who that representative is, the role played, and the collateral consequences of choosing a particular representative provide insight into the nature of the child's rights in these proceedings.

Federal law requires each state seeking federal funding to provide every child whose case results in a judicial proceeding with a guardian ad litem.⁴ The original statute did not indicate who may be appointed a guardian ad litem or what that person's responsibilities were beyond representing the "rights, interests, welfare, and well-being of the child."⁵ Recent amendments to that provision now indicate that the guardian ad litem may be an attorney, a court-appointed special advocate, or both. The statute states that the guardian ad litem is appointed to represent the child and that her responsibilities specifically include "obtaining first-hand, a clear understanding of the situation and needs of the child; and ... making recommendations to the court concerning the best interests of the child."⁶ These changes were precipitated, in part, by a growing concern about the quality of the legal representation provided to the child.⁷

Despite this federal directive, there is a plethora of approaches to providing children with a representative in an abuse or neglect proceeding at the state level.⁸ Although at least one author has suggested that there are as many systems for representing children as there are states,⁹ it is nevertheless possible to discern certain commonalities.¹⁰ *425 For example, the role of representative will be filled by either an attorney, a guardian ad litem who may be an attorney or a court-appointed special

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advocate.¹¹ Approximately twenty-three states currently permit the appointment of a court-appointed special advocate by state statute or court rule,¹² while at least forty-one states mandate or permit the appointment of a guardian ad litem.¹³ About twenty-five states require or permit the court to appoint counsel for the child,¹⁴ although many ***426** state statutes are less clear about the attorney's role and her obligations to her minor client.¹⁵

Regardless of who acts as the child's representative, most states require that that representative (including, in some instances, the child's attorney)¹⁶ act in the child's best interests.¹⁷ Although the representative must act to further or protect the child's interests, she generally is given little guidance as to what those interests are.¹⁸ Some statutes attempt to provide content to the best interests standard by identifying factors the representative should take into account when considering the child's interests. One state statute, directing a guardian ad litem to "defend the legal and social interests of the child," defines social interests as "the usual and reasonable expectations of society for the appropriate parental custody and protection and quality of life for juveniles without regard to the socioeconomic status of the parents."¹⁹ Similarly, the guardian ad litem may determine the child's best interests by considering a number of factors, like the child's age, culture, and ethnicity, and the degree of attachment to family members.²⁰ Some statutes even prohibit the child's attorney from taking a certain position if it would conflict with the protection and safety of the minor.²¹

The emphasis on best interests indicates a generalized dissatisfaction with the court's ability to ascertain best interests of the child through the adversarial process. In part this stems from a cynical view about ***427** parents and their claims to act in their child's best interests. But it also suggests a deeper disappointment with state systems and institutions and a real skepticism about the approach taken by child protective services agencies. What many of the statutes intimate is that the court needs help in ascertaining best interests, assistance that is unlikely to be provided by the other parties to the abuse or neglect proceeding. These statutes thus typically charge the child's representative with the task of finding best interests and reporting those findings to the court.

The best interests model also suggests a distrust of a strong rights-based approach in which children have advocates for their own preferences, wishes, and desired outcomes. A best-interests model generally leaves little room for child advocacy. There is often doubt, from a best interests perspective, that a child, through the articulation of her own preferences, could approximate an outcome that would be in her best interests. These misgivings seem to stem from views about the child's capacity and competency, particularly when the child is very young, and about emotional attachment and clouded judgment when the child is older. In any event, it seems that best interests may be and are ascertained without reference to the child's express preferences.

Because of this approach, the kind of representative the child will most likely have in an abuse or neglect case is one whose obligations do not include promoting or advocating the child's express wishes or preferences. Many state statutes thus express a preference for the appointment of a guardian ad litem for the child.²² The guardian's obligations specifically include protecting the child's best interests; consequently, many state laws do not obligate the guardian ad litem to advocate for the child's express wishes,²³ and may be silent as to the guardian ad litem's obligation to report the child's wishes or preferences to the court.²⁴ Several of these statutes also impose a direct obligation ***428** to the court. Thus the guardian ad litem usually is required to conduct independent investigations, make findings of fact, and provide the court with written recommendations.²⁵

The court-appointed special advocate or CASA model also corresponds to a best interests approach. Like a guardian ad litem, the court-appointed special advocate is charged with protection of the child's best interests.²⁶ The advocate also may have duties to the court similar to those owed by the guardian ad litem.²⁷ Moreover, in some jurisdictions, a special advocate may be appointed as or in lieu of a guardian ad litem.²⁸ Some statutes permit the court to appoint a special advocate in addition

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to a guardian ad litem or the attorney for the child;²⁹ under *429 these circumstances, the statute may specifically direct the child's representative to cooperate with the special advocate.³⁰

Although there are strong financial incentives to appoint an unpaid community volunteer,³¹ the willingness to adopt a special advocate model also may suggest some dissatisfaction with an adversarial system as well as an underlying suspicion about the correctness of case outcomes. Statutorily imposed obligations to assist the child's representative³² and insure that the child's attorney fulfill her obligations to the child³³ imply that an additional advocate is necessary for the protection of the child's best interests. The special advocate's duties also may include the provision of *independent* factual information to the judge³⁴ or the assurance to the court that it has before it all *relevant* information.³⁵ The advocate may be charged with helping—and, in some instances, even insuring—that the *court* fulfill its obligations to the child.³⁶ These statutes suggest a legislative judgment that the court has been unable to reach an appropriately child-centered and child-protective decision, either because the judge lacks the relevant and appropriate information or fails to perform his duties to protect the child. Requiring the special advocate to assist the child in “obtaining *430 a permanent, safe, and homelike placement”³⁷ is yet another illustration of the concern that the child may not experience a positive case outcome unless some individual, other than those typically involved in the case, is specifically charged with that task.

The statutory relationship between the special advocate or the guardian ad litem and the child's attorney also suggests some skepticism about the adversarial role. Because there is a strong preference under federal law for the appointment of a guardian ad litem (who may be a special advocate), most states will appoint a guardian ad litem for the child in an abuse or neglect proceeding.³⁸ Although many states provide for the concurrent appointment of an attorney for the child, that appointment may be conditional.³⁹ This clear preference for a guardian ad litem does suggest that the court would be unable to ascertain best interests without the assistance of an advocate whose sole responsibility lies in representing the child's best interests. But it also indicates that the adversarial approach, in which all parties, including the child, advocate for their own interests, is particularly ill-suited to the task of ferreting out the truth about what is in the child's interest.

The best interests approach thus does not comport with the attorney-as-representative model. Moreover, attempts to harmonize the best interests approach with the attorney's traditional role have been somewhat incoherent. For example, many state laws permit or require the court to appoint an attorney as guardian ad litem.⁴⁰ Unfortunately, some *431 of these statutes fail to clarify the attorney's role. Thus the attorney may be required to act in the child's interest without any real understanding of what that obligation requires or even how to ascertain what is in the child's interests.⁴¹ Moreover, the statutes are often silent as to the attorney's obligations to the child when the child disagrees with the assessment of the attorney as guardian ad litem.⁴²

The incoherence between the best interests approach and the attorney-as-representative model is even more pronounced when the statute authorizes the appointment of counsel for the child in an abuse or neglect proceeding. Typically, the lawyer may be required to act as both counsel to the child as well as the guardian ad litem,⁴³ although she may receive little guidance from the court when those two roles conflict. In other *432 jurisdictions, the lawyer is merely instructed to act in the child's interests or to protect the child's welfare.⁴⁴ Other statutes explicitly create a hybrid method of representation but, rather than clarifying the attorney's role, these laws have, in practice, generated some disagreement and continuing confusion.⁴⁵ The appointment of counsel also may occur when the child and the guardian ad litem disagree;⁴⁶ however, even under these circumstances, the appointment of counsel is generally permissive rather than mandatory.⁴⁷

The best interests approach has certain concomitant consequences for children in abuse and neglect proceedings. Many of the rights normally accorded any party to a judicial proceeding are often characterized, in the context of abuse and neglect

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cases, as duties of the court-appointed special advocate or the guardian ad litem. It is unclear, however, whether these duties have corresponding rights that vest in the child. Consequently, the special advocate or the guardian ad litem is obligated by statute to subpoena and examine witnesses on behalf of the child, and cross examine other witnesses; these duties do not flow from enforcement of the child's rights.⁴⁸ The representative's other duties may include filing motions, pleadings and briefs,⁴⁹ taking appeals, *433⁵⁰ and participating in all hearings affecting the child.⁵¹ The incoherence of this approach is evident in those jurisdictions in which the guardian ad litem or the court-appointed special advocate is a party to the proceedings and has acknowledged rights.⁵²

One of the more curious aspects of the law's equivocality on the issue of the corresponding rights of the child is the recognition that the child's *representative* has certain rights in abuse or neglect proceedings. Some states specifically provide legal counsel for the court-appointed special advocate or guardian ad litem when that individual is not an attorney. The appointment is permissive in some instances,⁵³ mandatory in others.⁵⁴ Counsel's obligations generally are to the special advocate or the guardian ad litem and require representation of the child's representative in the "performance of his duties."⁵⁵ The lawyer for the guardian ad litem also may act as the lawyer for the child but, if there is a conflict between the child and the guardian ad litem, the court may *434 appoint separate counsel for the child's representative.⁵⁶ Additionally, at least one state gives the court discretion to appoint legal counsel for the special advocate or guardian ad litem when it would be necessary to protect the *minor's* interests.⁵⁷ Because the court also has discretion in appointing counsel for the minor,⁵⁸ the child may be denied legal counsel while a third adult individual, not personally affected by the proceeding, would be represented.

Focusing on child protection places limits on the extension of rights to children in other ways. For example, many states have not decided whether the child, who is the subject of an abuse or neglect petition, is a party to the proceeding. In those jurisdictions in which the issue has been considered, some states have concluded that the child is not a party to the proceeding.⁵⁹ Consequently, the child may lack standing to challenge the court's findings and subsequent dispositional orders.⁶⁰ As a subject of but not a party to the proceeding, the child has none of the rights accorded parties; thus, the child may not be entitled to notice or service, to call or cross examine witnesses, or to present evidence. The child's lack of standing may even preclude the child from initiating an abuse or neglect petition in her own behalf.⁶¹

III. Rethinking Rights

Nevertheless, there are state laws that do empower children in abuse and neglect proceedings. By specifically according the child rights, the state thus acknowledges the importance of the child's participation and viewpoint. One of the most important ways to ensure that the child is an active participant in the proceeding is to appoint counsel. Several states explicitly require the appointment of legal counsel for the child.⁶² *435 That lawyer must zealously defend the child's express wishes and preferences within the limits imposed by her state's ethical codes.⁶³ Counsel thus plays an important role in providing the child with access to the court.

In many states, the appointment of counsel is not mandatory but permissive; yet even in those jurisdictions, the court has the authority to appoint separate counsel for the child. Moreover, many of the reasons that warrant appointment underscore the value of the child's viewpoint and participation. If the child and her guardian ad litem disagree, or if the child's wishes conflict with the guardian ad litem's assessment of best interests, then the court may appoint separate legal counsel for the child.⁶⁴ The court also may appoint a lawyer for the child when the child's guardian ad litem is a layperson in order to protect the child's legal rights during the pendency of the proceedings.⁶⁵ A few jurisdictions authorize the appointment of counsel when the child has reached a certain age—typically twelve.⁶⁶

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Even in those jurisdictions in which the child is represented by a guardian ad litem, an attorney guardian ad litem, or a special advocate, the child's wishes are important. When the attorney is both lawyer and guardian ad litem, a conflict between the child's express wishes and best interests may warrant withdrawal as the guardian ad litem and will trigger the appointment of a new guardian ad litem or special advocate.⁶⁷ The attorney acting only as a guardian ad litem for the child also may be required to make the child's wishes known to the court, although she may not be acting as an advocate for the child's preferences. *436⁶⁸ The lay guardian ad litem or court-appointed special advocate, too, may be required to inform the court of the child's express wishes or preferences.⁶⁹ Although the child's representative may be under no obligation to argue for the child's preferences—and, in fact, may be required to discount the child's views by advocating for the child's best interests—she must tell the court about the child's wishes.

Several jurisdictions, by statute, court rule, or case law, have accorded children additional rights in abuse or neglect proceedings. That recognition may come simply in the form of a statement that children have the same rights as adults.⁷⁰ Thus the child is a party to the abuse or neglect proceeding and has all the rights that a party has in any proceeding.⁷¹ Other jurisdictions acknowledge that the child has standing—to file a petition in her own behalf, for example, or to appeal from a court ruling.⁷² The child also may have a right to notice, to be present, and to participate meaningfully in her case.⁷³ Meaningful participation may include the right to be heard, to cross-examine witnesses, and to see files.⁷⁴

*437 It is in these jurisdictions that we begin to see the possibilities of a rights theory in which children are empowered by rights rather than disabled by their vulnerabilities. From this view—what I have called elsewhere an empowerment rights perspective⁷⁵—children have rights in order to redress their powerlessness, not to promote it. That is, rights are a means to power and as such, serve to limit what others may do to and for the rights holder. Empowerment rights thus have the potential to minimize the victimization of children because enforcing a right would not depend on an acknowledgment of the child's dependence and vulnerability. In this sense, capacity is not central to an empowerment rights theory; in another, the child's very incapacity may militate in favor of empowerment rights.

Implicit in this construct are two basic principles. The first is that power is a fundamental, even basic aspect of human relationships. We recognize the fluidity and pervasiveness of power when we engage in complex negotiations with each other over its use in our everyday lives. In this sense, power may be possessed by everyone and, at least for the moment and within a specific context, each individual is as powerful as the next. Nevertheless, negotiations over power also occur within certain political, legal, and social frameworks that may limit the ways in which an individual asserts power. Although institutional limitations may provide a degree of certainty to interactions between individuals by limiting the scope of what is considered negotiable, they also provide opportunities for the accumulation of power and the subordination of individuals.

An empowerment rights perspective recognizes the centrality of power to our interactions as human beings and to our experiences as individuals within political, legal, and social institutions. From this perspective, power must be an essential part of our rights rhetoric if our theory of rights is to have any coherence. That theory also must recognize the need of individuals, groups, or institutions to accumulate power. A coherent theory of rights then must acknowledge the reality and experience of being *powerless*. By grounding notions of rights in a conception of power, an empowerment perspective permits us to focus on a particular interaction within its social, political, or legal context and to consider the ways in which personal and institutional constructs may intersect to disempower individuals.

This approach overcomes one of the central difficulties in constructing rights for children. If having a right means having the power to *438 compel another to perform an obligation, then children are thought to lack rights because they do not have the maturity and judgment we associate with being a rights holder. Even if rights flow from certain interests, those interests inevitably relate to the dependency and vulnerability of children. Reconceptualizing rights in terms of power, however, opens

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up our rights talk to all those who are disempowered and disadvantaged. Children's thoughts and voices are an essential part of this endeavor for they may enrich our rights talk with their experiences and perspectives.

The value of rights for children, therefore, lies in their potential to remedy powerlessness. From an empowerment perspective, rights have value because they recognize and counter the effects of disempowerment. In our society, to have power is to command respect and to be taken seriously; it permits the powerful to make claims, and to have those claims be heard and considered. But having power suggests that someone else is powerless and this, paradoxically, may reinforce existing hierarchies and perpetuate inequality. A coherent account of rights, therefore, must recognize this connection between power, respect, and inequality by insuring that the most powerless have rights and may make rights claims.

Empowerment rights thus offer the possibility of improving children's experiences by recognizing and remedying their powerlessness. There is a fundamental difference, however, between respecting children because they are powerful and protecting children because they are vulnerable. The latter approach actually disadvantages children; certainly, there is evidence to suggest that when we try to act on behalf of children, our efforts seldom have neutral consequences and, more frequently, may actually cause greater harm. Certainly, our experiences within the child protection system indicate that children may not be better off when they have to rely on adults for the promotion of their best interests. Although it would be naive to think that if children had such rights they would no longer experience victimization, we might insure that our children are at least treated with greater respect by the very institutions that claim to promote the child's welfare.

From an empowerment rights perspective, then, the child would be an active and respected participant in the proceedings affecting her custody. The emphasis would be on the vindication of children's rights rather than on their vulnerabilities and dependence. The new rights claims thus raised could, for example, require a commitment from the state to improving the economic conditions of children and their families through a reallocation of our financial resources, rather than simply removing children from their homes. Under this view, furthermore, one would expect the victimization of children to decrease as they come to be seen as powerful, rights-bearing individuals. In turn, this may decrease the opportunities for the neglect and abuse of children.

While empowering children may reduce opportunities for their abuse or neglect, it would be simplistic to assume that children would never experience any form maltreatment or neglect at the hands of their parents. But the process by which a child welfare system would respond to instances of abuse or neglect would be very different if children were empowered. Perhaps the most obvious change would occur in the current systems for the removal and placement of children. From an empowerment rights perspective, the removal of the child over the child's objections would be an unacceptable response to allegations of abuse or neglect. It should be clear from an empowerment rights perspective that removal is a coercive state intervention and should be used only rarely. Moreover, the *child*, as the wronged party, should not be removed from the home; rather, the child's home should be made safe for the child.

Thinking about rights in terms of the powerlessness of the rights holder also permits us to see the ways in which the state may unnecessarily intervene in the lives of children and their families. Certainly, state interventions on the basis of abuse or neglect have racist and classist implications. From an empowerment rights perspective, however, it may be easier to understand how a dominant vision of what is a good family may actually have hierarchical and exclusionary consequences. Furthermore, empowerment rights, because they empower the powerless, create zones of respect into which we would be reluctant to enter casually. The respect a rights-based approach engenders for children and their families would also insure greater tolerance for the different ways in which we may structure our personal lives.

Even if an abuse or neglect case proceeds through the legal system, children would have greater participation in that process under an empowerment rights perspective. As an empowered rights holder, the child's participation in the legal proceedings affecting her interests would be assured. Moreover, to insure that the child's views and preferences are heard, the child would be represented by independent counsel who would advocate her client's expressed wishes. The child's involvement in the process

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could also be expected to facilitate a more immediate and permanent resolution of the case; certainly, the court may be more inclined to guard against needless delay. Finally, the child herself may be more likely to express satisfaction with the outcome of *440 the case because she will feel empowered by her participation in the process.

Many of the objections to the empowerment of children seem to center on the claim that children are too young to make decisions for themselves. Of course, this ignores the fact that the child herself does not make any decision; she, like any other party, has input into the court's decision making process but it is the court which makes the final decision. The concern that young children make bad decisions also seems misplaced. In my experience representing children, I cannot say that young children made bad decisions. Rather, they have expressed their hopes and desires clearly and, usually, quite sensibly.

In sum, perpetuating children's dependencies and vulnerabilities will not protect them and may actually harm them. Empowering children to participate in proceedings affecting their relationships with their parents, however, should ensure a more accurate and just determination. Respect for children means taking their claims seriously and that can only be accomplished if we acknowledge that children are powerful individuals whose voices must be heard.

Footnotes

- a1 Associate Professor of Law, The Ohio State University College of Law, and Director, Justice for Children Project. The author expresses her thanks to Amy Steinkamp, Class of 2001, and Melissa Jamison, Class of 2002, for their research assistance.
- 1 Under this account, a right is an interest that has been identified as worthy of protection by imposing some obligation. Not all interests generate rights. To determine which interests are identified as rights, one must look to a particular substantive account. For a more detailed discussion of interest theory, *see* Katherine Hunt Federle, *Looking Ahead: An Empowerment Perspective on the Rights of Children*, 68 TEMPLE L. REV. 1585, 1589-91 (1995).
- 2 Among the interests identified as rights are the right to be cared for and nurtured, the right to food, shelter, and love. Katherine Hunt Federle, *Looking for Rights in All the Wrong Places: Resolving Custody Disputes in Divorce Proceedings*, 15 CARDOZO L. REV. 1523, 1531-32 (1994).
- 3 Federle, *supra* note 2, at 1593-97 (outlining the basic principles of an empowerment rights perspective).
- 4 "In every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who may be an attorney or a court-appointed special advocate (or both), shall be appointed to represent the child in such proceedings." 42 U.S.C.A. § 5106a(b)(2)(A)(ix) (West 2000).
- 5 42 U.S.C. § 5105 (1988).
- 6 42 U.S.C.A. § 5106a(b)(2)(A)(ix)(I)B(II) (West 2000). This new provision amends an earlier provision of the Child Abuse Prevention Treatment Act of 1974 (CAPTA). The CAPTA provision also required each state seeking federal funding to provide a guardian ad litem to every child whose case resulted in a judicial proceeding.
- 7 In 1988, Congress authorized a study of the effectiveness of legal representation of children in abuse and neglect cases. Pub. L. No. 100-294, 102 Stat. 102 (1988). The findings of the study eventually led to the current requirements for representation of the child. *See* LARRY CONDELLI, U.S. DEPT OF HEALTH & HUMAN SERVICES, NATIONAL EVALUATION OF THE IMPACT OF GUARDIANS AD LITEM IN CHILD ABUSE OR NEGLECT JUDICIAL PROCEEDINGS, VOL. I: EXECUTIVE SUMMARY 15-19 (1988) (finding that CASA models excelled as method of guardian ad litem representation).
- 8 For a comprehensive and thoughtful analysis of the representation of children in child protective proceedings, *see* JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS (1997).
- 9 *Id.* at 26. Koh Peters characterized the results of her survey of state systems for representing children as "chaos." *Id.*

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- 10 Koh Peters describes three major trends. First, she notes that 35 states (and Guam, the Northern Mariana Islands, and Puerto Rico) explicitly tie the child's best interests to the representative's role. Second, there is little uniformity of agreement about what best interests are or what it means to represent those interests. Third, the reliance on certain models of representation (primarily court-appointed special advocate programs, which use community volunteers to act on behalf of the child) appears to be based as much on funding concerns as on a belief in the value of the program. *Id.* at 30-32.
- 11 A court-appointed special advocate, or CASA, typically is a trained lay volunteer from the community who may act as a guardian ad litem or friend of the court. The CASA concept originated with King County (Seattle) Superior Court Judge David Soukup in 1977. A national organization was formed in 1982, and in 1992, Congress provided funding for expansion of CASA representation. The three basic roles of the CASA are to act as fact finder for the judge, to speak for the child in the courtroom, and to monitor the child's case to ensure that it progresses as swiftly as possible. *Id.* at 29 n.13.
- 12 ARIZ. R. PROC. JUV. CT. R. 22.1 (West 1999); ARK. CODE ANN. § 9-27-316(G) (Michie 1999); CAL. R. CT. R. 1424 (West 1999); COLO. REV. STAT § 19-1-206 (1999); DEL. CODE ANN. tit. 31, § 3601 *et seq.* (1999); GA. CODE ANN. § 15-11-55 (1999); ILL. COMP. STAT. ANN. ch. 705, § 405/2-17.1 (West 1999); IND. CODE ANN. § 31-34-10-3 (Michie 1999); IOWA CODE ANN. § 232.89 (5) (West 1999); KAN. STAT. ANN. § 38-1505(A) (1999); KY. REV. STAT. ANN. § 620.100(1)(D) (Michie 1998); LA. JUV. CT. ADMIN. tit. IV, art. 424 (West 1999); ME. REV. STAT. ANN. tit. 4, § 1501 (West 1999); MD. CTS. & JUV. PROC. CODE ANN. § 3-834.1 (1999); MO. REV. STAT. § 210.160(5) (1999); N.H. REV. STAT. ANN. § 169-C:10(1) (1999); OKLA. STAT. ANN. tit. 10, § 7003-3.7(C) (West 1999); OR. REV. STAT. § 419A.170 (1999); R.I. GEN. LAWS § 40-11-14 (1999); S.D. CODIFIED LAWS § 26-8A-20 (Michie 1999); TENN. CODE ANN. § 37-1-149(B)(1) (1999); TEX. FAM. CODE ANN. § 107.031 (West 1999); UTAH CODE ANN. § 78-3A-314(4) (1999); WASH. REV. CODE ANN. § 13.34.100(2) (West 1999).
- 13 ALA. CODE § 12-15-1 (1999); ALASKA STAT. § 47.10.050 (Michie 1999); ARIZ. REV. STAT. § 8-221(I) (1999); COLO. REV. STAT. § 19-1-111(1) (1999); CONN. GEN. STAT. § 17a-103(2) (1999); D.C. CODE ANN. § 16-2304 (1999); DEL. CODE ANN. tit. 10, § 925(14) (1999); FLA. STAT. ANN. § 39.822 (West 1999); GA. CODE ANN. § 15-11-55(b) (1999); HAW. REV. STAT. ANN. § 587-34(a) (Michie 1999); IDAHO CODE § 16-1618(a) (1999); ILL. COMP. STAT. ANN. ch. 705, § 405/2-17(1)(a) (West 1999); IND. CODE ANN. § 31-33-15-1 *et seq.* (Michie 1999); IOWA CODE ANN. § 232.71C(3) (West 1999); KAN. STAT. ANN. § 38-1505 (1999); ME. REV. STAT. ANN. tit. 22, § 4005 (West 1999); MISS. CODE ANN. § 43-21-121 (1999); MO. REV. STAT. § 210.160(1) (1999); MONT. CODE ANN. § 41-3-303 (1999); NEB. REV. STAT. ANN. § 43-272 (Michie 1999); NEV. REV. STAT. § 432 B.500 (1999); N.H. REV. STAT. ANN. § 169-C:10(I) (1999); N.J. CT. R. 1969 R.5:8B; N.M. STAT. ANN. § 32A-4-10(c) (Michie 1999); N.D. CENT. CODE § 50-25.1-08 (1999); OHIO REV. CODE ANN. § 2151.281 (Anderson 1999); OKLA. STAT. ANN. tit. 10, § 7003-3.7 (West 1999); PA. CONS. STAT. ANN. § 6382 (West 1998); R.I. GEN. LAWS § 40-11-14 (1999); S.C. CODE ANN. § 20-7-110 (Law. Co-op 1999); S.D. CODIFIED LAWS § 26-8A-9 (Michie 1999); TENN. CODE ANN. § 37-1-149 (1999); UTAH CODE ANN. § 78-3a-912 (1999); VT. STAT. ANN. tit. 33, § 5525 (1999); VA. CODE ANN. § 16.1-266 (Michie 1999); WASH. REV. CODE ANN. § 26.44.053 (West 1999); W. VA. CODE ANN. § 56-4-10 (Michie 1999); WIS. STAT. ANN. § 48.235 (West 1999); WYO. STAT. ANN. § 14-3-211 (Michie 1999).
- 14 ALASKA STAT. § 47.10.050 (Michie 1999); ARIZ. REV. STAT. § 8-221(A) (1999); CAL. WELF. & INST. CODE ANN. § 317 (West 1999); CONN. GEN. STAT. § 17a-103(2) (1999); GA. CODE ANN. § 15-11-30-(b) (1999); HAW. REV. STAT. ANN. § 587-34(c) (Michie 1999); IOWA CODE ANN. § 232.89(4) (West 1999); KY. REV. STAT. ANN. § 620.100 (Michie 1998); LA. CHILDREN'S CODE tit. VI, art. 607 (West 1999); MASS. GEN. LAWS ANN. ch. 119, § 29 (West 1999); MD. CTS. & JUV. PROC. CODE ANN. § 3-834 (1999); MINN. R. JUV. PROC. R. 40.01 (West 1999); MISS. CODE ANN. § 43-21-201 (1999); MONT. CODE ANN. § 41-3-401(13) (1999); NEV. REV. STAT. § 432B.420 (1999); N. H. REV. STAT. ANN. § 169-C:10(II) (1999); N.J. STAT. ANN. tit. 9:6-8.23 (West 2000); OHIO R. JUV. PROC. R. 4 (West 1999); OKLA. STAT. ANN. tit. 10, § 7003-3.7 (West 1999); OR. REV. STAT. § 419B.195 (1999); PA. CONS. STAT. ANN. § 6333 (West 1998); S.D. CODIFIED LAWS § 26-8A-18 (Michie 1999); TEX. FAM. CODE ANN. § 107.011 (West 2000); VT. ST. FAM. P. FAM. CT. R. 6 (1999); WASH. REV. CODE ANN. § 13.34.100(6) (West 1999); W. VA. CODE § 49-6-2 (1999); WIS. STAT. ANN. § 48.235 (West 1999); WYO. STAT. ANN. § 14-3-211 (Michie 1999).
- 15 For a discussion of these statutes, *see supra* notes 41-48 and accompanying text.

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- 16 *See, e.g.*, CAL. WELF. & INST. CODE ANN. § 317 (West 1999); WYO. STAT. ANN. § 14-3-211 (Mich. 1999).
- 17 *See, e.g.*, D.C. CODE ANN. § 16-2304 (1999); HAW. REV. STAT. ANN. § 587-34(b) (Michie 1999); MISS. CODE ANN. § 43-21-121 (1999); S.D. CODIFIED LAWS § 26-8A-20 (Michie 1999); TENN. CODE ANN. § 37-1-149(b)(1) (1999).
- 18 For a thorough review of the statutes and practice norms in the representation of children in abuse and neglect proceedings, *see* Koh Peters, *supra* note 8.
- 19 NEB. REV. STAT. § 43-272.01(2)(b) (1999).
- 20 Kan. Sup. Ct., Admin. Order No. 100.
- 21 CAL. WELF. & INST. CODE ANN. § 317(e) (West 1999).
- 22 *See supra* note 13. Approximately 32 of those states require the appointment of a guardian ad litem for the child in an abuse or neglect proceeding.
- 23 *See, e.g.*, COLO. REV. STAT. § 19-3-602(3) (West 1999) (guardian ad litem, who must be an attorney, appointed to represent child's best interests); MINN. GEN. R. PRAC. R. 908.01(a)-(b) (West 1999) (guardian ad litem shall advocate for best interests of child and may consider child's wishes, as appropriate); MO. SUP. CT. STANDARDS FOR GUARDIAN *AD LITEM* Std. 2.0 cmt (1999) (lawyer guardian ad litem not lawyer for the child and, therefore, advocates best interests); WIS. STAT. ANN. § 48.235(2)-(3) (West 1999) (guardian ad litem shall be an advocate for best interests of child and shall consider but not be bound by child's wishes).
- 24 *Compare* ME. REV. STATE. ANN. tit. 22, § 4005 (1)(E) (West 1999) (guardian ad litem must tell court of child's express wishes), *and* NEV. REV. STAT. § 432B.500 (1999) (guardian ad litem should inform court of child's desires but exercise independent judgment concerning child's best interests), *and* S.C. CODE ANN. § 20-7-122(5) (Law. Co-op 1999) (guardian ad litem to provide court with written report which must include wishes of child), *and* WIS. STAT. ANN. § 48.235(3)(a) (West 1999) (guardian ad litem must inform court when child's wishes "substantially inconsistent" with child's best interests; court may appoint counsel), *to* R.I. GEN. LAWS § 40-11-14 (1999) (guardian ad litem to represent child).
- 25 *See, e.g.*, COLO. REV. STAT. § 19-3-203 (West 1999) (conduct investigations and make recommendations to the court); FLA. R. JUV. PROC. R. 8.617 (West 1999) (investigate allegations of petition and file written report with court); ME. REV. STAT. ANN. tit. 22, § 4005 (West 1999) (investigate to ascertain the facts and file written report of investigation, findings, and recommendations); PA. CONS. STAT. ANN. § 6382 (b) (West 1998) (make further investigation necessary to ascertain the facts and submit recommendations to the court); UTAH CODE ANN. § 78-3a-912(3) (1999) (conduct thorough and independent investigation and make clear and specific recommendations to the court).
- 26 *See, e.g.*, ARK. CODE ANN. § 9-27-316(g)(3)(c) (Michie 1999) (assist attorney ad litem in representing juvenile's best interests); DEL. CODE ANN. tit. 31, § 3601 (1999) (creation of Court-Appointed Special Advocate Program to ensure that best interests of child represented in abuse, neglect, or dependency proceeding); IND. CODE ANN. § 31-32-3-6 (Michie 1999) (represent and protect best interests of child); KY. REV. STAT. ANN. § 620.500(1) (Michie 1998) (community volunteers provided to court to represent child's best interests); LA. JUV. CT. ADMIN. tit. IV, art. 424 (West 1999) (special responsibility to advocate for child's best interests); MD. CTS. & JUV. PROC. CODE ANN. § 3-834.1 (1999) (insure that service and case planning in child's best interests); TENN. CODE ANN. § 37-1-149 (1999) (special advocate to act in child's best interests).
- 27 *See, e.g.*, COLO. REV. STAT. § 19-1-208 (West 1999) (duties include conducting independent investigation and making recommendations to the court); DEL. CODE. ANN. tit. 31, § 3606 (1999) (conduct independent investigation and report results to court); LA. JUV. CT. ADMIN. tit. IV, art. 424 (West 1999) (provide independent factual information to the court); OKLA. STAT. ANN. tit. 10, § 7003-3.7(C)(3) (West 1999) (special advocate has same power, duties, and responsibilities as guardian ad litem); OR. REV. STAT. § 419A.170 (1999) (investigate all relevant information and advocate for child).
- 28 *See, e.g.*, ILL. COMP. STAT. ANN. ch. 705, § 405/2-17.1(1) (West 1999) (court-appointed special advocate may also serve as guardian ad litem in counties with a population under 3 million); IOWA CODE ANN. § 232.89(5) (West 1999) (court may appoint special advocate to act as guardian ad litem); N.H. REV. STAT. ANN. § 169C:10(I) (1999) (court shall appoint guardian ad litem

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or court-appointed special advocate guardian ad litem); OHIO REV. CODE ANN. § 151.281(J)(1) (West 1999) (court shall appoint qualified volunteer as guardian ad litem whenever volunteer available and appointment is appropriate); OKLA. STAT. ANN. tit. 10, § 7003-3.7(C)(1) (West 1999) (whenever court-appointed special advocate available to court to serve as guardian ad litem, priority given to appointment of special advocate).

29 IND. CODE ANN. § 31-33-15-1 (Michie 1999) (court may appoint guardian ad litem, special advocate, or both for the child); KAN. STAT. ANN. § 38-1505a(a) (1999) (in addition to guardian ad litem, court may appoint special advocate); LA. JUV. G. ADMIN. tit. IV, art. 424 (West 1999) (court may appoint special advocate); MD. CTS. & JUV. PROC. CODE ANN. § 3-834(c) (1999) (in addition to, but not instead of, appointment of attorney, court may appoint court-appointed special advocate); MISS. CODE ANN. § 43-21-121 (1999) (may appoint special advocate in addition to guardian ad litem); MO. REV. STAT. § 210.160(5) (1999) (court may designate volunteer advocates to assist in performance of guardian duties); R.I. GEN. LAWS § 40-11-14 (1999) (child alleged to be abused or neglected shall have guardian ad litem and/or court-appointed special advocate); UTAH CODE ANN. § 78-3a-912(4) (1999) (attorney guardian ad litem may be assisted by trained volunteer).

30 COLO. REV. STAT. § 19-1-209(1) (1999) (guardian ad litem shall cooperate and share information with any CASA volunteer).

31 KOH PETERS, *supra* note 8, at 32. Koh Peters notes that CASA programs have become important because of the lack of available resources with which to pay attorneys.

32 *See, e.g.*, ARK. CODE ANN. § 9-27-316(g)(3)(C) (Michie 1999) (assist attorney ad litem); MO. REV. STAT. § 210.060(5) (1999) (court may designate volunteer advocates to assist in performance of guardian ad litem duties).

33 *See, e.g.*, OR. REV. STAT. § 419A.170(2) (1999) (insure that the child's attorney fulfills her obligations).

34 *See, e.g.*, DEL. CODE ANN. tit. 31, § 3603(e) (1999) (provide independent factual information to Family Court); LA. JUV. CT. ADMIN. tit. IV, art. 424 (West 1999) (provide independent factual information to the court).

35 *See, e.g.*, OR. REV. STAT. § 419A.170(2) (1999) (assure that all relevant facts brought before the court).

36 *See, e.g.*, LA. JUV. G. ADMIN tit. IV, art. 424 (West 1999) (assist court in fulfilling its duties and responsibilities to children brought into court); OR. REV. STAT. § 419A.170(2)(C) (1999) (insure that court fulfill its obligations to the child).

37 KAN. STAT. ANN. § 38-1505a (1999) (primary duties include assisting child in obtaining permanent, safe, and homelike placement).

38 *See supra* note 13 and accompanying text.

39 *See, e.g.*, HAW. REV. STAT. ANN. § 587-34(c) (Michie 1999) (when child and guardian ad litem disagree, court shall evaluate necessity for appointing special counsel for child to serve as child's legal advocate as court deems to be in child's best interests); ME. REV. STAT. ANN. tit. 22, § 4005(1)(F) (West 1999) (child or guardian ad litem may request court to appoint legal counsel for the child); MISS. CODE ANN. § 43-21-121(4) (1999) (court shall appoint attorney to represent child when layperson appointed as guardian ad litem); NEV. REV. STAT. ANN. § 432B.420(1) (1999) (court may appoint attorney for child when appropriate); N.H. REV. STAT. ANN. § 169-C:10(II) (1999) (court may appoint attorney to represent child's interests when child's expressed interests conflict with guardian ad litem's recommendations for dispositional orders); N.C. GEN. STAT. § 7A-586(a) (1999) (appoint attorney for child to assure protection of child's legal rights when non-attorney is appointed guardian ad litem); S.C. CODE ANN. § 20-7-1510(B) (1999) (counsel for the child will be appointed if guardian ad litem finds appointment necessary to protect rights and interests of child); WASH. REV. CODE ANN. § 13.34.100(6) (West 1999) (if child is 12 years of age or older and requests legal counsel or if guardian ad litem or court determines child needs independent representation, court may appoint attorney to represent child's position); WIS. STAT. ANN. § 48.235 (West 1999) (if guardian ad litem determines that best interests "substantially inconsistent" with wishes, must inform court and court may appoint counsel).

40 ALA. CODE § 12-15-1 (1999) (guardian ad litem means a licensed lawyer appointed by the court); ARK. CODE ANN. § 9-27-316 (Michie 1999) (court has authority to appoint attorney ad litem to represent child's best interests); COLO. REV. STAT. § 19-1-103 (1999) (guardian ad litem must be an attorney in dependency and neglect proceeding); D.C. CODE ANN. § 16-2304(b)(3) (1999) (court to appoint attorney as guardian ad litem in every case involving a neglected child); FLA. STAT. ANN. § 39.820(1) (West 1999)

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(guardian ad litem may be an attorney); GA. CODE ANN. § 15-11-55(b) (1999) (attorney may be appointed as guardian ad litem for child in deprivation cases); ILL. COMP. STAT. ANN. ch. 705, § 405/2-17 (West 1999) (guardian ad litem may be an attorney); IND. CODE ANN. § 31-9-2-50 (Michie 1999) (guardian ad litem includes attorney); IOWA CODE ANN. § 232.89(4) (West 1999) (same person may serve as child's counsel and guardian ad litem); KAN. STAT. ANN. § 38-1505(a) (1999) (guardian ad litem must be attorney); MICH. COMP. LAWS ANN. § 722.630(10) (West 1999) (lawyer-guardian ad litem to represent child); MISS. CODE ANN. § 43-21-121(4) (1999) (court may appoint suitable attorney as guardian ad litem for child); MO. SUP. CT. STDS. FOR GUARDIAN AD LITEM, Std. 1.0 (1999) (only lawyer may be guardian ad litem); NEB. REV. STAT. § 43-272(3) (1999) (court shall appoint an attorney as guardian ad litem); NEV. REV. STAT. § 432B.420(3) (1999) (attorney appointed to represent child may also be appointed child's guardian ad litem); N.H. REV. STAT. ANN. § 169-C:10 (1999) (court may appoint attorney as guardian ad litem); N.Y. Fam. Ct. Act § 242 (1999) (law guardian is an attorney); N.C. GEN. STAT. § 7B-1202 (1999) (court may appoint attorney as guardian ad litem when local guardian ad litem office has conflict); OHIO REV. CODE ANN. § 2151.281(H) (Anderson 1999) (if guardian ad litem is an attorney, may also serve as counsel for the child); PA. CONS. STAT. ANN. § 6382 (West 1999) (guardian ad litem shall be an attorney at law); S.D. CODIFIED LAWS § 26-8A-18 (Michie 1999) (guardian ad litem may be an attorney); UTAH CODE ANN. § 78-3a-912(1) (1999) (court may appoint attorney guardian ad litem); VA. CODE ANN. § 16.1-266(A) (Michie 1999) (court must appoint "discreet and competent" attorney as guardian ad litem); W. VA. CODE § 56-4-10 (1999) (court shall appoint "discreet and competent" attorney as guardian ad litem); WIS. STAT. ANN. § 48.235(2) (West 1999) (guardian ad litem shall be an attorney); WYO. STAT. ANN. § 14-3-211(a) (Michie 1999) (attorney representing child shall also serve as guardian ad litem).

41 *See* KOH PETERS, *supra* note 8, at 32-33.

42 *See id.*

43 *See, e.g.*, IND. CODE ANN. § 31-32-3-3 (Michie 1999) (attorney representing child may be appointed child's guardian ad litem or court appointed special advocate); IOWA CODE ANN. § 232.89(4) (West 1999) (same person may serve as child's counsel and guardian ad litem); NEV. REV. STAT. § 432B.420(3) (1999) (attorney appointed to represent child may also be appointed child's guardian ad litem); OHIO REV. CODE ANN. § 2151.281(H) (Anderson 1999) (attorney may be both counsel and guardian ad litem but if conflict exists, court to appoint new guardian ad litem); S.C. CODE ANN. § 20-7-1570 (Law. Co-op 1999) (when guardian ad litem is an attorney, court may decide whether to appoint counsel for child on case-by-case basis).

44 *See, e.g.*, CAL WELF. & INST. CODE ANN. § 317(e) (West 1999) (counsel to represent minor's interests but shall not advocate for child's return if return conflicts with minor's safety); NEV. REV. STAT. § 128.100 (1999) (attorney to represent child as counsel and guardian ad litem); N.H. REV. STAT. ANN. § 169-C:10(II) (1999) (court may appoint attorney to represent interests of child); WYO. STAT. ANN. § 14-3-211(a) (Michie 1999) (attorney representing child shall also serve as guardian ad litem).

45 *See, e.g.*, N.Y. FAM. CT. ACT § 241 (1999) (law guardian to help protect child's interests and express child's wishes to court).

46 *See, e.g.*, HAW. REV. STAT. ANN. § 587-34(c) (Michie 1999); N.H. REV. STAT. ANN. § 169-C:10(II) (1999); WIS. STAT. ANN. § 48.235 (West 1999).

47 HAW. REV. STAT. ANN. § 587-349(c) (Michie 1999) (court shall evaluate necessity for appointing special counsel for child); N.H. REV. STAT. ANN. § 169-C-10(II) (1999) (court may appoint counsel for child); WIS. STAT. ANN. § 48.235 (West 1999) (court may appoint counsel).

48 *See, e.g.*, ARK. CODE ANN. § 9-27-316(f)(3)(c) (Michie 1999) (attorney ad litem shall present witnesses and exhibits when necessary to protect child's best interests); COLO. REV. STAT. § 19-3-203(3) (1999) (guardian ad litem shall introduce, examine, and cross-examine witnesses); DEL. CODE ANN. tit. 31, § 3607(c) (1999) (court-appointed special advocate may introduce, examine, and cross-examine witnesses); ME. REV. STAT. ANN. tit. 22, § 4005(1)(c) (West 1999) (guardian ad litem may subpoena, examine, and cross-examine witnesses); MO. REV. STAT. § 211.462(3)(1) (1999) (guardian ad litem may examine, cross-examine, and subpoena witnesses); NEB. REV. STAT. § 43-272.01(2)(e) (1999) (guardian ad litem may present evidence and witnesses and cross-examine); PA. CONS. STAT. ANN. § 6382(b) (West 1998) (guardian ad litem shall examine and cross-examine witnesses); UTAH CODE ANN. § 78-3a-912(3)(0) (1999) (attorney guardian ad litem shall present witnesses and exhibits when necessary to protect the best

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- interest of the minor); *In re Jeffrey R.L.*, 435 S.E.2d 162, 178-79 (1993) (appendix to opinion, consisting of guidelines for guardians ad litem in abuse and neglect cases, requires guardian ad litem to subpoena, prepare testimony of, and cross-examine witnesses).
- 49 ARK. CODE ANN. § 9-27-316(f)(3)(A) (Michie 1999) (attorney ad litem may file written motions, responses, objections); DEL. CODE ANN. tit. 31, § 3607(a) (1999) (court-appointed special advocate may file pleadings, motions, and briefs); NEB. REV. STAT. § 43-272.01(2)(h) (1999) (guardian ad litem may file petition in juvenile court on behalf of child); UTAH CODE ANN. § 78-3a-912(3) (I) (1999) (attorney guardian ad litem shall file written motions, responses, or objections when necessary to protect child's best interests); *In re Jeffrey R.L.*, 435 S.E.2d 162, 178-79 (1993) (appendix to opinion, consisting of guidelines for guardians ad litem in abuse and neglect cases, requires guardian ad litem to file written and timely motions).
- 50 COLO. REV. STAT. § 19-3-203(3) (1999) (guardian ad litem shall appeal matters); UTAH CODE ANN. § 78-3a-912(3)(p) (1999) (attorney guardian ad litem shall participate in all appeals); *In re Jeffrey R.L.*, 435 S.E.2d 162, 178-79 (1993) (guidelines for guardians ad litem in abuse and neglect cases mandate exercise of child's appellate rights when necessary).
- 51 COLO. REV. STAT. § 19-3-203(3) (1999) (guardian ad litem shall participate in proceedings to degree necessary to adequately represent child); DEL. CODE ANN. tit. 31, § 3607(f) (1999) (court-appointed special advocate shall participate in proceedings to degree necessary to adequately represent child); PA. CONS. STAT. ANN. § 6382(b) (West 1998) (guardian ad litem shall participate in proceedings to degree appropriate for adequately representing the child).
- 52 *See, e.g.*, MINN. R. PRAC. FOR DIST. CT. R. 909 (West 1999) (guardian ad litem, as a party to the proceeding, has certain rights, among which are right to subpoena and cross examine witnesses).
- 53 *See, e.g.*, IND. CODE ANN. § 31-32-3-4 (Michie 1999) (guardian ad litem or court-appointed special advocate may be represented by an attorney); MINN. R. JUV. PROC. R. 40.02 (West 1999) (court may appoint separate counsel to represent guardian ad litem when conflict exists between child and guardian ad litem).
- 54 DEL. CODE ANN. tit. 31, § 3603(1)(d) (1999) (establishment of Court-Appointed Special Advocate Program will include an attorney to provide legal representation and advice for court-appointed special advocates and volunteer attorneys); MO. SUP. CT. STUDS. FOR GUARDIAN AD LITEM Std. 4.0 (1999) (when court-appointed special advocate volunteer has need for legal advice and assistance, services of a lawyer shall be obtained by volunteer program); ILL. COMP. STAT. ANN. ch. 705, § 405/2-17(1)(b) (West 1999) (non-attorney guardian ad litem shall be represented in performance of duties by counsel); MINN. R. JUV. PROC. R. 40.02 (West 1999) (guardian ad litem shall be represented by child's counsel).
- 55 ILL. COMP. STAT. ANN. ch. 705, § 405/2-17(1)(b) (West 1999).
- 56 MINN. R. JUV. PROC. R. 40.02 (West 1999).
- 57 IND. CODE ANN. § 31-32-2-4 (Michie 1999).
- 58 IND. CODE ANN. § 31-6-7-2 (Michie 1999) (juvenile court must appoint counsel for child alleged to be delinquent and may appoint counsel for child in any other proceeding).
- 59 *See, e.g., In re R.S.*, 647 N.Y.S.2d 361 (N.Y. Fam. Ct. 1996) (children are not parties to child protective matters and thus may not be deposed as parties).
- 60 *See, e.g., In re Anthony S.*, 675 N.Y.S.2d 759 (N.Y. Fam. Ct. 1998) (child not party to termination of parental rights proceeding so cannot seek relief from judgment).
- 61 *See, e.g., Kingsley v. Kingsley*, 623 So. 2d 780 (Fla. Dist. Ct. App. 1993) (minor lacks capacity to bring termination of parental rights petition in own right).
- 62 ALASKA STAT. § 47.10.050 (Michie 1999); ARIZ. REV. STAT. § 8-221(A) (1999); CONN. GEN. STAT. § 17a-103(2) (1999); GA. CODE ANN. § 15-11-30(b) (1999); HAW. REV. STAT. ANN. § 587-34(c) (Michie 1999); IOWA CODE ANN. § 232.89 (4) (West 1999); KY. REV. STAT. ANN. § 620.100 (Michie 1998); LA. CHILDREN'S CODE tit. VI, art. 607 (West 1999); MASS.

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GEN. LAWS ANN. ch. 119, § 29 (West 1999); MINN. R. JUV. PROC. R. 40.01 (West 1999); MISS. CODE ANN. § 43-21-201 (1999); MONT. CODE ANN. § 41-3-401(13) (1999); N.H. REV. STAT. ANN. § 169-C:10(II) (1999); OHIO R. JUV. PROC. R. 4 (West 1999); OKLA. STAT. ANN. tit. 10, § 7003-3.7 (West 1999); OR. REV. STAT. § 419B.195 (1999); PA. CONS. STAT. ANN. § 6333 (West 1998); VT. ST. FAM. CT. R. 6 (1999); WASH. REV. CODE ANN. § 13.34.100(6) (West 1999); W. VA. CODE ANN. § 49-6-2 (1999); WIS. STAT. ANN. § 48.235 (West 1999); WYO. STAT. ANN. § 14-3-211 (Michie 1999).

- 63 See KOH PETERS, *supra* note 8, at 34-39, for a discussion of the ethical rules and standards of practice governing attorneys who represent children.
- 64 See, e.g., HAW. REV. STAT. ANN. § 587-34(c) (Michie 1999) (when child and guardian ad litem disagree, court may appoint counsel for child); N.H. REV. STAT. ANN. § 169-C:10(II) (1999) (when child's expressed interests conflict with guardian ad litem's assessment of best interests, court may appoint counsel for child); WIS. STAT. ANN. § 48.235 (West 1999) (if best interests and child's wishes substantially inconsistent, court may appoint counsel for child).
- 65 See, e.g., MISS. CODE ANN. § 43-21-121(4) (1999); N.C. GEN. STAT. § 7A-586(a) (1999) (when non-attorney appointed as guardian ad litem, court shall appoint lawyer for child).
- 66 See, e.g., WASH. REV. CODE ANN. § 13.34.100(6) (West 1999) (court may appoint counsel for child age twelve or older at child's request).
- 67 See, e.g., IOWA CODE ANN. § 232.89(4) (West 1999) (if same person cannot properly represent legal interests and best interests, court may appoint separate guardian ad litem); OHIO REV. CODE ANN. § 2151.281(H) (Anderson 1999) (if conflict exists in filling both roles, court must appoint new guardian ad litem).
- 68 See, e.g., ARK. CODE ANN. § 9-27-316(5)(B) (Michie 1999) (must communicate juvenile's wishes to court in addition to presenting determination of best interests); Kans. Sup. Ct. Admin. Order 100 (1999) (child's position presented to court if not inconsistent with guardian ad litem's determination of best interests); UTAH CODE ANN. § 78-3A-912(8)(a) (1999) (attorney guardian ad litem shall communicate minor's wishes to court but difference between child's best interests and wishes not to be considered a conflict for attorney); VA. JUV. & DOM. REL. R. 8:6 (1999) (advise court of child's wishes where wishes conflict with assessment of best interests); WIS. STAT. ANN. § 48.235(3)(a) (West 1999) (guardian ad litem shall inform court of child's wishes when substantially inconsistent with best interests); *In re Jeffrey R.L.*, 435 S.E.2d 162, 179 (1993) (must apprise court of child's wishes).
- 69 See, e.g., ME. REV. STAT. ANN. tit. 22, § 4005(E) (West 1999) (guardian ad litem shall make wishes of child known to court); NEV. REV. STAT. ANN. § 432B.500(3)(g) (Michie 1999) (guardian ad litem shall inform court of desires of child but exercise independent judgment regarding best interests); S.C. CODE ANN. § 20-7-122(5) (Law. Co-op 1999) (guardian ad litem to include wishes of child in written report to court).
- 70 IND. CODE ANN. § 31-6-4-10(g) (Michie 1999) (child a party and has all rights of parties under Indiana Rules of Trial Procedure).
- 71 *Id.*
- 72 See, e.g., *In re Hirenia C.*, 22 Cal. Rptr. 2d 443, 450 (Cal. Ct. App. 1993) (child has standing to file petition seeking visitation in dependency proceedings); *In re G.K.J.*, 370 S.E.2d 490 (Ga. Ct. App. 1988) (child has standing to appeal from order terminating father's parental rights).
- 73 See, e.g., MINN. R. JUV. PROC. R. 39.01 (1999) (child 12 or older may personally participate); UTAH CODE ANN. § 78-3a-314(1) (1999) (minor entitled to notice and to be present at each hearing); *In re Ty L.*, 581 N.W. 2d 595 (Wis. Ct. App. 1998) (unpublished opinion) (child has due process right to participate in dispositional hearing on child protection petition).
- 74 See, e.g., ILL. COMP. STAT. ANN. ch. 705, § 405/1-5 (West 1999) (minor who is subject of the proceeding has right to be present, to be heard, to present evidence, to cross-examine, to examine pertinent court files and records, and to be represented by counsel).
- 75 See Federle, *supra* note 1.

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