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Special Issue on Legal Representation of Children

Proceedings of the UNLV Conference on Representing Children in Families: Children's Advocacy and Justice Ten Years After Fordham

**\*592 RECOMMENDATIONS OF THE UNLV CONFERENCE ON REPRESENTING CHILDREN IN FAMILIES:  
CHILD ADVOCACY AND JUSTICE TEN YEARS AFTER FORDHAM**

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Introduction

During the nearly half century that legal norms have mandated appointment of counsel or other representation for children in legal proceedings, the children's attorneys' community has come to the conclusion that ethical legal representation of children is synonymous with allowing the child to direct representation. In the meantime, global norms have also recognized that children should participate and have a voice in legal proceedings that affect their legal interests. As children have come to the fore in this way, their attorneys have begun to view them as individuals who have much to say and whose wishes and needs are deeply connected to their families, communities and the social and material conditions that affect them all.

Embracing these norms and insights, children's attorneys have become more mindful of the importance of discerning and presenting children's voice and the limitations of viewing children in single dimensions. It is not surprising then that children's attorneys have increasingly come to include professionals from other disciplines to assist in identifying and achieving justice for children. Children's attorneys also recognize that children's voice and the solution to many of their legal problems are grounded in family and community. But these attorneys struggle with whether and how to relate to families in light of legal barriers between children and parents involved in court proceedings and related ethical barriers between attorneys and non-clients. Attorneys further strive to bridge the gaps in basic racial, cultural and social cornerstones between them and their clients.

Moreover, children's attorneys can find themselves, and the legal and related social systems that serve or govern children, inattentive to the complexity and individuality of the children and families that come before them. The result is that these often well-meaning professionals and systems sometimes substitute their own interests or ideas about what children need for the wisdom of the children and their families, and provide solutions that are neither welcome nor responsive to the need. In these instances, professionals and systems fail to appreciate the strengths and expertise of children and families regarding what they want, what they need, and how they define the problem. Moreover, these failures fall disproportionately and most punitively on African American and Latino children and families. Children's attorneys can and often do confront these inequities and challenge these systems to provide and reconceive justice for children.

These Recommendations of the UNLV Conference on Representing Children in Families ("UNLV Recommendations") embrace and address the complexities and contradictions of seeking justice for children in legal and policy settings. Affirming and building upon the Recommendations of the Fordham Children's Conference ("Fordham

Recommendations”), [FN1] the UNLV Recommendations aim to chart a course for children's attorneys to discern and amplify children's voices in all of their complexity and to \*593 confront the contradictions of client-directed, multi-disciplinary, holistic, and contextual representation: to cabin themselves to their role as legal experts and to consult children, their families and others with relevant knowledge and expertise regarding the social and material interests of their child clients; and, with the client's permission, not to confine legal assessment or services to the particular legal issue for which the attorney was retained or appointed. The working group reports that formed the basis for many of the recommendations provide additional context and discussion for these principles. [FN2]

#### I. Recommendations Regarding the Role of the Child, Family and Community in Defining and Enhancing the Child's Voice

Representing children is rewarding and challenging because children are becoming themselves and because they are themselves: strong and resilient, yet vulnerable due to their immaturity. Effective representation of children requires a attorneys to simultaneously see each client through multiple lenses. While the individual child is the client and the person, therefore, to whom the attorney owes the duties of loyalty, competence and confidentiality, the individual child is also a member of a family and community, a son or daughter, a sibling, a student. Yet the attorney-client relationship is individualistic so accounting for these deep connections and the lessons they bring to bear is both demanding and crucial to the pursuit of justice for children. Those who represent children thus need special skills and strategies that account for children's unique developmental states and their identification with and situation in families and communities. Distorting or ignoring either aspect of children's lives results in compromised representation.

The recommendations in this section are intended to assist attorneys to maximize the child's participation in proceedings involving the child's interests through deeply grounded representation. For children's attorneys in both large and small offices, competent and respectful representation of children requires an approach to practice that engages families, their communities, and professionals from other disciplines, all of whom assist the attorney to understand the child and the child's needs pertinent to representation and help the attorney see the child in, and as part of, his or her family and community. At the same time, children's attorneys must be mindful of overreaching by acting without the client's consent and by overly involving him or herself and other outsiders into the child's life. The recommendations in this section call on children's attorneys to recognize and embrace these contradictions that arise out of viewing the child in all his or her individuality but not as an isolated individual.

##### A. The Child's Attorney's Approach: Engaging Family and Community

###### 1. Statement of Principle:

Effective representation requires attorneys to be self-aware and respectful of the full context in which the client lives. Contextualized representation is particularly important because there are often vast socioeconomic or racial gaps between the attorneys and the clients they serve. As a result of these disparities, attorneys may not appreciate all of the particular legal and social dimensions of the presenting problem that is the initial or primary subject of the representation; the importance of the child's \*594 family, race, ethnicity, language, culture, gender, sexuality, schooling, and home; and the child's developmental status, physical and mental health, and other client-related matters outside the discipline of law.

Moreover, the children's attorney's role, ethical obligations, and case load may limit his or her opportunity to see or be engaged with other non-professional adults important to the child. This isolation can inhibit the attorney's ability to appreciate the child client as a multidimensional being with multiple connections to other adults. As a result attorneys may unwittingly substitute their values and experiences for those of the child. Effective representation therefore requires attorneys to utilize strategies to avoid overstepping their professional role and training.

## 2. Recommendations for Practice Guidelines:

The following recommendations are a nonexclusive list of guidelines children's attorneys should follow to ensure the attorney does not over-reach but most fully understands and respects the child, the child's family and community.

- a. **Familiarity with Client's World:** Children's attorneys should, with the client's consent, be or become familiar with the child's family, community and culture, and take precautions to not impose the lawyer's own standards and cultural values.
- b. **Open Mind:** Children's attorneys should approach each client with an open mind, and avoid making assumptions based on the client's race, ethnicity, culture, language, nationality, gender, actual or perceived sexual orientation, or gender identity.
- c. **Awareness of Own Biases:** Children's attorneys should be aware of their biases arising out of their own identities and experiences, and their lack of deep understanding of their clients' identities and experiences.
- d. **Ongoing Reflection:** Children's attorneys should habitually reflect upon and assess the extent to which their personal opinions, values, and biases may affect the representation of their child clients.
- e. **Professional Distance:** Children's attorneys should maintain professional boundaries and guard against over-identifying with clients, taking care not to presume that shared cultural backgrounds between attorney and client mean that their perceptions and experiences are the same or to otherwise disregard the child's individuality and independence from the attorney.
- f. **Engagement of Family and Community Members:** With the child's consent, the attorney should seek to identify and engage those with whom the child is connected and who can support the child's ability to participate in the legal proceedings.
  - i. When possible, and with the client's consent, children's attorneys should engage the entire family, and help the family understand what to expect, and how they can participate in the proceedings;
  - ii. Children's attorneys should recognize the importance for most clients to maintain connections to their families and communities, and should work with clients to positively resolve, where possible, family or community conflict with or rejection of the child.
- g. **Recognition of the Child's Community:** With the client's consent, the attorney should meet with the child in his or her environment, and talk to people in the client's school, place of worship, and neighborhood in order to gain a better understanding of the child's world.
- h. **Examination of Whether Court-Imposed Conditions are Consistent with Reality, Safety, and Community Norms:** The attorney should assess court-imposed conditions on the child and determine whether the conditions can be fairly imposed consistent with the child's life, taking into account race, ethnicity, culture, gender, sexual orientation and identity, and the norms and social networks of the child's community.
  - i. **Utilization of Community Resources:** Children's attorneys should explore and utilize, when appropriate, community resources that would more effectively, accessibly, and holistically serve the needs of the child and family.

## B. Keeping the Child at the Center of the Proceedings

### 1. Statement of Principle:

Even when legal proceedings specifically regard children, the child's age, legal status, and social attributes can mask the child's individuality, leading to decisions and \*595 processes that marginalize the child's identities, needs and interests. These risks are particularly prevalent when the legal and administrative actors carry high caseloads. These challenges command children's attorneys to always engage in advocacy that keeps their individual client's needs and interests at the center of such proceedings and resists boilerplate and stereotypical responses to child and family problems.

## 2. Recommendations for Practice Guidelines:

The following recommendations are a non-exclusive list of guidelines for children's attorneys to keep the child at the center of the proceedings.

- a. Client Participation: Children's attorneys should encourage participation of the client, and the family when appropriate, in defining the problem and identifying solutions.
- b. Respectful Services: Children's attorneys should advocate for placements and services that are respectful of the client's race, religion, ethnicity, language, nationality, culture, gender, sexual orientation and gender identity.
- c. Strengths-Based Services: Children's attorneys should advocate for strengths-based and individualized services and resources; and reach beyond boilerplate responses and standard resources of the social service agencies to identify culturally-sensitive, appropriate, and easily accessible community-based resources, material assistance and other services the child and family may need.
- d. Individualized Assessment and Treatment: Children's attorneys should oppose and challenge stereotypical treatment of child clients, including the following:
  - i. Programs and services that reinforce stereotypes based on race, language, gender, or sexual orientation;
  - ii. Court and agency assumptions that a child is sexually active based solely on his or her gender, sexual orientation or race;
  - iii. Excessive or punitive juvenile court intervention based upon consensual sexual conduct;
  - iv. Delinquency charging, adjudication and dispositions of girls of color, based on conduct that is perceived as aggressive or as falling outside of conventional gender norms;
  - v. Child welfare client service plans that are generic, do not build upon the family's strengths, are not tailored to the unique needs of the child and family, and do not contain clear and measurable goals.
- e. Children's Right to Self-Expression: Children's attorneys should advocate for clients' right to express their identity, principles and opinions.
- f. Destructive Delays: Children's attorneys should object to destructive delays in court and administrative proceedings and the provision of benefits, make a record of the harm to the child and family caused by delays, and take further affirmative action as needed to hold parties accountable for their delays.
- g. Feedback on Quality of Representation: Children's attorneys should habitually solicit feedback from their clients and the clients' families regarding the quality of their representation.

### C. Promoting the Child's Participation in Legal Proceedings

#### 1. Statement of Principle:

An effective working relationship is necessary to engage the child. Such a relationship can be established only if attorneys listen carefully to their clients and explain matters to them in a developmentally appropriate manner, without legal jargon, before, during and after legal proceedings or events. Effective working relationships in which the child directs the legal representation requires attorneys to inform the child regarding the status of the case, consult with the child about goals, and afford the client the opportunity to ask and receive answers to questions.

#### 2. Recommendations for Practice Guidelines:

The following recommendations are a non-exclusive list of guidelines for children's attorneys to promote the child's participation in legal proceedings.

a. Participation of the Child: Children's attorneys should ensure that their child clients are informed, supported and empowered to be engaged participants in the legal proceedings. Attorneys should ensure that efforts are made to include children in their own proceedings unless the \*596 child chooses not to participate or the court finds that the child's presence in court would be detrimental the child.

#### b. Communication with the Child Client:

i. When interviewing a client, particularly for the first time, children's attorneys should, when developmentally appropriate, reserve at least one hour to get to know the client (e.g., the client's genealogy, where the client lives, positive stories about the client). Ideally the interview should take place before the attorney appears in court;

ii. Children's attorneys should communicate and consult with the client in the course of regular face-to-face contact whenever possible and use other forms of communication, such as telephone calls and writing, as necessary and appropriate;

iii. Children's attorneys should utilize verbal and nonverbal methods to communicate that it is safe for the client to discuss sensitive or private matters, and should use language that does not contain implicit assumptions regarding the client's experiences, beliefs or identity;

iv. Children's attorneys should develop the ability to respond appropriately and supportively to client disclosures of past sexual abuse and other trauma.

#### c. Honor the Child's Context:

i. Children's attorneys should be continually aware of the child client's identity, functional level, any disabilities, the history and nature of any trauma, and the level of maturity of the child's thinking;

ii. Because children do not exist in isolation from families, when counseling child clients, lawyers should recognize the role and meaning of family in the lives of their clients, and in understanding the client's wishes, perspectives and decision-making process;

iii. Children's attorneys should listen to the child about the role of race, ethnicity, culture, language, religion, nationality and class in the child's world and learn what is important to the client as it relates to the client's race, ethnicity, culture, language, religion, nationality, and class;

iv. Children's attorneys should respect their clients' gender identity, by, for example, using the name and pronoun the client prefers;

v. Children's attorneys should be aware of their own discomfort discussing sensitive, personal matters, such as sexual conduct, and develop the ability to discuss these issues in a candid and respectful manner;

vi. To enhance the attorney's ability to develop a relationship with the individual client, children's attorneys should draw upon the teachings of, or experts within, other disciplines such as social work, education, history, health, and mental health to further the attorney's understanding of items i-v.

#### D. Determining the Scope of Representation

##### 1. Statement of Principle:

Decisions regarding the scope of representation are client directed, but generally children's attorneys should provide representation through all aspects of the matter for which the attorney was retained or appointed. When attorneys represent children in context, they learn that the child's legal (as well as social) interests are complex and interconnected. Thus decisions regarding one legal issue may have negative consequences in areas beyond the particular matter at hand. In this way, the scope of representation is porous and requires the attorney's and client's attentiveness and diligence in exploring options.

It is the attorney's duty to ensure that the client understands the scope of representation, including but not limited to: what the attorney will do (and what the attorney will not do), the roles and responsibilities of the attorney and client, the attorney-client privilege, and the term and duration of the representation. This obligation is ongoing because the joint understanding of the scope of representation may change over the course of the representation. When competent to do so and with the consent of the client (and when appropriate, the consent of the parent), lawyers should also endeavor to provide legal representation in ancillary matters, either within or beyond Juvenile Court, both during and after the original representation.

##### \*597 2. Recommendations for Practice Guidelines:

The following recommendations are a non-exclusive list of guidelines for children's attorneys regarding the scope of representation.

- a. **Clarity Regarding Scope of Representation:** Children's attorneys should explain options regarding the scope of representation, confidentiality, the operation of the attorney-client privilege, and clarify the scope of representation to the client in developmentally and culturally appropriate ways, using writing where appropriate.
- b. **Identification of the Child's Legal Needs:** Children's attorneys should identify all the legal needs of the client through all stages of the case, including post-disposition, and ensure that the child receives appropriate, quality representation if the client so directs.
  - i. In juvenile justice and child welfare proceedings, children's attorneys should understand the interconnections to other related substantive areas, such as health, housing, public benefits, education, domestic violence, immigration, and transnational issues;
  - ii. Children's attorneys should understand the cross-over issues and collateral consequences when children are or may be involved in more than one legal system, such as pleas that may subject the child to sex offender registration or other legal decisions that may affect the child's immigration status.

c. Duration of Representation:

i. In juvenile justice and child welfare proceedings, the representation should not end before the jurisdiction of the court ends unless the client terminates representation;

ii. Unless the child objects, in juvenile justice matters representation should extend to pre-adjudication collateral issues, such as challenging a child's inclusion in gang and other data bases or inappropriate educational or mental health labels;

iii. Unless the client objects, post-dispositional representation should include:

(A) Addressing the conditions and duration of confinement, including the consequences of confinement and available alternatives to confinement;

(B) Challenging ineffective programs and services;

(C) Proposing alternative, effective programs and services;

(D) Addressing educational issues such as enrollment in school, enrollment in the right school, and the right to finish school;

(E) Identifying and challenging legal barriers to re-entry;

(F) Participating in development of an appropriate discharge plan and monitoring implementation; and

(G) Addressing collateral consequences of the primary legal matter on issues regarding expungement, immigration, housing, education, and employment discrimination among others.

iv. During the course of the representation, counsel should provide appropriate advice, advocacy and other assistance to clients with respect to their transition out of court jurisdiction.

d. Representation in Collateral or Ancillary Matters:

i. Appointed children's attorneys should, with the client's consent, and when appropriate, the consent of the parent, petition the court for appointment and compensation on critical matters ancillary to the representation for which the attorney was appointed;

ii. Children's attorneys should, with the client's consent, engage in age- and developmentally-appropriate representation that includes consideration of the needs of the child that extend beyond the present legal proceedings, such as immigration, education, mental health, health, and other aspects of child well-being, and should ensure that any identified needs are appropriately met. In addition:

(A) Children's attorneys should monitor the client's placement to ensure that the client is not subjected to harassment or discrimination based on age, size, race, ethnicity, culture, language, nationality, religion, gender, sexual orientation or gender identity;

(B) Children's attorneys should ensure that they are knowledgeable about their clients' educational status and

needs, and that educational decision-makers, including judges and principals, consider and account for those needs to promote positive outcomes;

iii. If a child's attorney is not able to provide representation in an ancillary matter, he should assist the child in obtaining representation in that matter. [\[FN3\]](#) If the child is able to obtain \*598 representation in the other matter, counsel in the original matter should consult with that counsel, as appropriate and as the client directs. If the child is unable to obtain counsel in the ancillary matter, the attorney should educate, help empower and mentor the child, and the family when appropriate, to address the ancillary legal matter;

iv. Until the child is released from juvenile court jurisdiction, the child's attorney should provide continuity of representation either within her own office or with other collaborative legal partners regarding entitlements and legal issues relating to medical services, housing, employment, immigration and education.

## E. Engaging in Multidisciplinary Practice

### 1. Statement of Principle:

Children's attorneys often draw on expertise outside of their legal training to provide contextualized representation to children, to better understand their client's developmental, social and psychological situation, and to help inform their interviewing and counseling of the client. Thus, attorneys represent children in a multidisciplinary fashion that takes into account children's place in their families and communities as well as the full range of systems in which the children are enmeshed. Even when children's attorneys do not have professionals from other disciplines in their offices or on their staff, regular consultation and interaction with professionals from other disciplines is common in legal matters regarding children. These multidisciplinary connections are useful in both the representation of individual clients and systemic reform efforts.

### 2. Recommendations for Practice Guidelines:

The following is a non-exclusive list of guidelines children's attorneys should follow to engage in effective and ethical multidisciplinary representation of children.

#### a. Definition of Multidisciplinary Practice:

i. Practice informed by knowledge of the existence, domains, methods, and practices of other disciplines in addition to law;

ii. Knowledge of when and how to access the services of professionals from other disciplines;

iii. Ability to collaborate with and evaluate the opinions of professionals from other disciplines.

b. Preference for Multi-Disciplinary Teams: Children's attorneys should practice in multi-disciplinary teams. Such teams can aid the attorney to learn how to build relationships and trust, assess body language, communicate effectively across race, ethnicity, culture, language and nationality, and better understand the client's community.

#### c. Multi-Disciplinary Teams Practice Guidelines:

i. The multi-disciplinary team should operate to provide children with the benefits of the team approach while minimizing the potentially negative impact of having the client participate in repeated interviewing, evaluations or assessments.

ii. The multi-disciplinary team can be composed of staff employed or consultants retained by the attorney or firm representing the child or can be assembled on a case-by-case basis.

iii. In forming a team, attorneys should be sure to explain to other prospective team members the attorney's professional obligations to the client. The attorney should also solicit from the prospective team members their understanding of their own professional obligations.

iv. Attorneys should ensure that all team members understand the way in which decisions will be made within the representation. [\[FN4\]](#)

v. Attorneys should be cognizant of the confidentiality implications of multi-disciplinary teams and should take steps to protect the confidentiality of client communications and other information.

**\*599** d. Interpreters: Children's attorneys should engage competent interpreters to facilitate communication.

e. Networks: Children's attorneys should also use networks of resources and expertise to help gain knowledge about transnational families and cultural competence when needed to represent their clients effectively.

f. Expertise Regarding Bias and Discrimination: Children's attorneys should utilize empirical research, expert testimony and accepted professional standards to support nondiscriminatory treatment and services for their clients.

g. Compensation for Experts: Where necessary, lawyers should seek judicial approval to retain and compensate other professionals who provide necessary services.

## F. Other Conditions for Effective Representation

### 1. Statement of Principle:

Effective representation of the child in context requires knowledge and assessment of the client and his or her family, community, and other systems engaging the child. This level of representation requires adequate training and resources. In many legal contexts, representation of parents may be essential for achieving outcomes beneficial to and reflective of the whole child. The following recommendations for practice guidelines apply to parents' attorneys as well.

### 2. Recommendations for Practice Guidelines:

The following recommendations are a nonexclusive list of other conditions for effective legal representation for children and parents.

a. Training and Resources: Children's attorneys, and parent's attorneys as well, should always:

i. Be adequately trained;

ii. Be adequately compensated;

iii. Have strict caseload limits, and for attorneys representing children, caseloads limits should be based on the number of clients, rather than the number of cases;

- iv. Be provided with adequate resources to ensure that their representation is effective;
- v. Have access to information;
- vi. Spend considerable time out of court working on their cases; and
- vii. Have access to experts in other professions.

b. Community Based Practice: Children's and parent's attorneys should be accessible to their clients, preferably in offices that are community-based and near community resources, and preferably in neighborhood legal services offices.

c. Juvenile Defender and Civil Legal Services Providers: Juvenile defender and civil legal service providers should create specialized divisions for representing children in child welfare and juvenile justice matters. These divisions should construct and strengthen an emphasis on trial skills training in order to prepare and maintain a culture of aggressive advocacy, and expertise in child and adolescent development.

#### G. Recommendations for Further Study

1. Whether appointed counsel should be encouraged or required to have legal experience in the representation of both parents and children (although not in the same case).
2. Establishment of recommended caseload standards and limits for attorneys in legal matters involving children.
3. How pro bono practitioners should implement the UNLV Recommendations.
4. Existing legal or administrative barriers that prevent lawyers from extending their representation to matters related to, but outside, the original juvenile justice or child welfare proceeding.

#### II. Recommendations Regarding Competencies for Children's Attorneys and Children's Justice Systems

Children's legal representation is a specialized field because it involves clients with a wide range of developmental abilities that in most cases will change over time and because there are special procedural rules, courts, and substantive laws that apply to \*600 many child-related matters. In addition, children receiving legal representation are most frequently involved in disputes involving public agencies and courts, such as those addressing criminal justice, child welfare and domestic violence, and are more likely to be poor and of color. Attorneys who represent children must, therefore, possess a wide range of social and legal competencies, in addition to general competencies needed for ethical representation of any client. Similarly, parents' attorneys and juvenile and family court judges must possess a range of social and legal competencies in addition to the law governing the particular cause of action at issue. The recommendations in this part apply to children's attorneys and extend to other legal professionals, legal education and to the children's justice system.

##### A. Professional Competencies

###### 1. Statement of Principle:

Children's attorneys must be competent regarding their own professional norms and obligations and their own personal limitations. Legal representation of children is in most instances multidisciplinary because of the special knowledge and skills lawyers need to understand and relate to their child clients and because professionals from other disciplines are often participants in these matters or are called upon for their expertise. Children's attorneys thus

require knowledge about these other professions as well.

## 2. Recommended Competencies:

The following is a nonexclusive list of competencies children's attorneys, and in many cases all legal professionals and decision-makers regarding children, should have.

### a. Knowledge About Other Professions:

i. Children's attorneys should be able to recognize issues that require the services of other professionals and know how to access those services.

ii. Children's attorneys should have sufficient knowledge of other disciplines to formulate requests for evaluations and services from other professionals and to evaluate and use professional opinions.

iii. Children's attorneys should be familiar with fundamental principles governing practice in other disciplines, such as the necessity that practices be evidence-based and peer-reviewed.

iv. Children's attorneys should be aware of trends and norms in other disciplines that recur frequently in their practice, such as current treatments, evaluation methods, and outcome measures.

b. Best Practices: Children's attorneys should be knowledgeable about best practices and existing standards in the various areas in which the lawyer is practicing, such as those promulgated by the National Juvenile Defender Center; National Legal Aid and Defender Association; and the American Bar Association.

c. Legal Ethics: Children's attorneys should be knowledgeable about the ethics rules for legal representation.

d. Recognition of Personal Conflicts: Children's attorneys should know how to ethically resolve conflicts between their clients' wishes and the attorney's personal views and to recognize when these personal views may make it necessary for them to withdraw from representation.

e. Awareness of Affects of Bias in Other Professions and Systems: Children's attorneys should be aware of how bias in other professions and systems based on race, ethnicity, class, gender, sexual orientation, disability, or other attributes of the client or the client's family or community can lead to inappropriate assessment and treatment of the child.

f. Expertise Regarding Transnational Issues: Because children are increasingly likely to live in transnational families and may have family members with different national citizenships, who live in other countries, and who speak different languages, children's attorneys should have knowledge of international law, comparative law practices, and the impact of clients being part of transnational families. At a minimum, children's lawyers should know how to identify and should utilize appropriate interpretation and translation services.

## \*601 B. Substantive Law Competencies

### 1. Statement of Principle:

Representing children often involves specialized areas of the law such as child welfare, juvenile justice and education. Attorneys should, of course, be competent in those areas of practice, but must also have knowledge about the child's interests and rights in other areas of the law that might be affected by the attorney's efforts. These areas relate to the treatment of children in custody and to the various national statuses of children, such as Native American,

immigrant or children of immigrants. Moreover, in all areas of the law, international law and norms are increasingly relevant, if not legally binding, in understanding transnational aspects of children's lives and can illuminate other approaches and models regarding children and families.

## 2. Recommended Competencies:

The following is a nonexclusive list of substantive law competencies children's attorneys, and in many cases all legal professionals and decision-makers regarding children, should have.

- a. Legal Expertise: Children's attorneys should be knowledgeable enough about legal doctrine to recognize the limits of their own professional expertise.
- b. Intersections Between Juvenile Justice and Child Welfare Matters: Children's attorneys should understand the relationships and commonalities of juvenile justice and child welfare legal representation:
- c. Additional Doctrinal Areas: Children's attorneys, in addition to their primary doctrinal area(s) of representation, should be knowledgeable about:
  - i. The range of remedies for individual and systemic civil rights violations;
  - ii. The content and application of the Indian Child Welfare Act ("ICWA"), [25 U.S.C. §§ 1901-1963](#);
  - iii. Immigration Issues, including the ability to identify children who may fall under the jurisdiction of immigration and the laws listed in part iv. below;
  - iv. International Law and Norms, including:
    - (A) The International Covenant on Civil and Political Rights (1992);
    - (B) The Convention against Torture, Inhuman and Degrading Treatment and Punishment (1994);
    - (C) The two U. S. ratified optional protocols to the Convention on the Rights of the Child: the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol on Child Soldiers, both ratified in 2002;
    - (D) Convention on the Elimination of all forms of Racial Discrimination (1994);
    - (E) Geneva Conventions relative to the Treatment of Prisoners of War (1949) and subsequent protocols;
    - (F) Vienna Convention on the Law of Treaties (1969);
    - (G) Hague Convention on the Civil Aspects of International Child Abduction (1988);
    - (H) International Labour Organization Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Worst Forms of Child Labor Convention), ILO 182, ratified by the U.S. in 1999;
    - (I) Customary law; and

(J) The growing body of case law involving children, youth and families from regional human rights courts, such as the European Court of Human Rights and the Inter American Court of Human Rights.

### C. Scientific Competencies

#### 1. Statement of Principle:

To develop meaningful attorney-client relationships with children and protect their legal rights and interests, children's attorneys need special knowledge regarding the social, psychological and biological development of children, as well as other social, psychological and medical expertise regarding mental, physical and social health and well-being of children.

#### \*602 2. Recommended Competencies:

The following is a nonexclusive list of scientific competencies children's attorneys, and in many cases all legal professionals and decision-makers regarding children, should have.

- a. Cognitive Development.
- b. Brain Development.
- c. Child and Adolescent Development, including sexual identity development, and the range of developmentally typical sexual behaviors.
- d. Family Systems Theory.
- e. Developmentally Appropriate and Effective Child Interviewing Skills.

### D. Cultural Competencies

#### 1. Statement of Principle:

To develop meaningful attorney-client relationships with children, protect their legal rights and interests, and understand the consequences of various decisions, children's attorneys need to be knowledgeable about their clients' worlds and be reflective about their own worlds. This approach helps attorneys to work effectively cross-culturally, value diversity, manage difference, and adapt to diversity and the cultural contexts of the communities they serve.

#### 2. Recommended Competencies:

The following is a nonexclusive list of cultural competencies children's attorneys, and in many cases all legal professionals and decision-makers regarding children, should have.

- a. Cross Cultural Knowledge: Attorneys should have sufficient understanding of their clients' cultures to understand their legal needs, assess the affects of various courses of action on their clients' lives, competently interview and counsel their clients, and understand the objectives of representation. These competencies include the ability to communicate with clients in a developmentally appropriate manner about sexual orientation, gender identity and sexual behavior.
- b. Sensitivity Regarding Bias: Attorneys whould be aware of bias surrounding race, ethnicity, class, sexual orientation, and gender Identity;

c. Community Based Programs: Attorneys should be familiar with community-based programs and resources, and be able to assess whether such programs provide inclusive and nondiscriminatory services with respect to race, gender, language, nationality, sexual orientation and gender identity;

d. Leadership Skills: Attorneys should have skills to help foster systemic change and community empowerment.

e. Multilingual Skills or Resources: Children's attorneys should be able to effectively communicate with and understand their clients' needs.

#### E. Children's Justice System Competencies

##### 1. Statement of Principle:

In addition to children's attorneys, other attorneys and judges involved in children's justice systems need special competencies in the areas of child development, other relevant social and physical scientific theory, resources in the children's communities, cross cultural expertise, and alternative dispute resolution mechanisms. Although alternative dispute resolution mechanisms have great potential for recognition of the importance of families in children's lives, the legal system has been slow to embrace the value of these processes for addressing concerns related to children and families outside of domestic custody matters. In any event, unless these alternative processes are based on sound principles, participants may not benefit from them.

##### 2. Recommendations for Judicial Competencies:

The following is a nonexclusive list of competencies judges who adjudicate matters regarding children, including domestic violence cases, should have.

**\*603** a. Children's Participation: Judges should be knowledgeable about how to appropriately engage children as participants in juvenile court proceedings.

b. Child Development and Family Systems Theory: Judges should be knowledgeable about adolescent development and family systems theory.

c. Judicial Delays: Judges should be knowledgeable about the harms to children and families caused by court processing delays and judicial decision-making delays.

d. Multidisciplinary Representation: Judges should be knowledgeable about the necessity and benefits of multidisciplinary representation.

##### 3. Recommendations Regarding Alternative Dispute Resolution

a. The children's justice system should utilize sound and appropriate alternative dispute resolution mechanisms in disputes regarding children. .

b. To achieve the potential benefits of alternative dispute mechanisms, any alternative process should reflect the following principles:

i. Respect for the dignity and rights of all individuals and families;

ii. Treatment of all children as members of families;

iii. Appreciation of individual, family and cultural differences;

- iv. Identification and utilization of strengths to empower children and families.
- v. Emphasis on meaningful participation of the child, family, and other individuals important to the child;
- vi. Voluntary alternative dispute resolution processes;
- vii. Extension of privilege and confidentiality to statements made in alternative dispute resolution processes.

#### 4. Recommendations regarding Law Offices Involved in Child Advocacy:

The following is a nonexclusive list of recommendations for law offices involved in child advocacy.

- a. Preferred Providers: Institutional providers, such as juvenile defender or civil legal services offices are the preferred sources for provision of legal representation to children and families, where funding is available.
- b. Support for Systemic Reform Activities: Juvenile defender and civil legal services offices should create a culture and have sufficient resources, expertise and support for their attorneys to engage in challenges to existing practices that stigmatize or contribute to the hostile environment that confront our clients.
- c. Accountability: Juvenile defender and civil legal services offices should develop systems to be held accountable for the services they provide by:
  - i. Engaging in strategic planning to develop measurable goals and outcomes;
  - ii. Providing for periodic internal and external evaluation of goals and outcomes;
  - iii. Creating effective data systems to document services and outcomes;
  - iv. Ensuring services are designed to meet the unique needs of clients relative to race, gender, language, nationality, ethnicity, and disability;
  - v. Soliciting regular client feedback and modifying practice;
  - vi. Ensuring knowledge of the newest developments in the field.

#### F. Education and Training for Children's Attorneys and Other Law Trained Members of the Children's Justice System.

##### 1. Statement of Principle:

Achievement of many of the competencies listed in the UNLV Recommendations will require specialized and ongoing education and training. As the primary training ground for attorneys in this country, law schools have a role to play in providing educational opportunities for future children's attorneys and other legal professionals involved in children's matters, such as judges, prosecutors and parents' attorneys. It would be beneficial then if law students had the option to study in areas that will help them achieve competency in children's legal matters. In addition, law schools can help promote the goals of enriching the understanding of the complex roles of race, ethnicity, language, nationality, culture, gender and class involved in representing children and \*604 diversifying children's justice systems by increasing emphasis on the diversity of law faculty and law student populations. To the extent that the areas of competence in the UNLV Recommendations are not part of the core curriculum of law schools or are not tested by bar

examiners, attorneys need to make special efforts to receive this training beginning in law school and continuing after graduation. Law schools, bar associations, other professional organizations and institutional legal services providers all have roles in facilitating the competencies listed in these recommendations.

## 2. Recommendations for Law School Curricular Offerings:

Following is a nonexclusive list of curricular offerings that would aid in the preparation of attorneys who will be involved in the children's justice systems.

### a. Interdisciplinary and Collaborative Opportunities:

i. Law school curricula should include interdisciplinary education and courses or programs that promote collaborative approaches;

ii. Law schools should collaborate with other professional schools to develop curricula which address holistic and interdisciplinary approaches to representing children.

b. Children's Law: Law school curricula should include courses in children's law.

### c. Cross Cultural Knowledge:

i. Law school courses should devote significant attention to the roles race, ethnicity, language, nationality, culture, gender, sexual orientation and class play in the lawyer's relationship with and advocacy for the client;

ii. Law school courses related to children's issues, criminal law, family law, and professional roles and responsibility should address race, ethnicity, language, nationality, culture, gender, sexual orientation and class;

iii. Law school clinical courses should include training regarding race, ethnicity, language, nationality, culture, gender, sexual orientation, and class. .

d. International Law: Law schools should provide courses regarding international, comparative, and transnational law, norms and practices that affect children and families in the areas identified in the UNLV Recommendations.

e. Holistic Representation: Law schools should provide training that emphasizes holistic representation of children as a means of minimizing the harm fragmented representation inflicts on child clients.

f. Children's Law Clinics: Law schools offering Juvenile Justice, Child Welfare, Family Advocacy, Education, Immigration, or other clinics addressing children's legal issues should include representation in ignored or underserved legal areas such as post-dispositional representation, pre-adjudicative issues such as removing children's names from gang registries, and immigration issues.

## 3. Recommendations for Bar Associations, Legal Organizations and Law Offices:

The following is a nonexclusive list of training recommendations for bar associations, professional organizations and law offices.

a. Juvenile Defender and Civil Legal Services Offices: these specialized offices should provide or otherwise promote opportunities for education and training to their own staff and to legislators, policy makers, prosecutors, judges, and the private bar in the competencies listed in the UNLV Recommendations. When

these educational opportunities are provided outside of traditional continuing legal education (“CLE”) formats, the offices should seek CLE certification for attendance at such programs. Public Defender offices should avoid using juvenile justice proceedings primarily as a training ground for adult felony trial work.

b. Requirement of Formal Training: The rules of professional responsibility and judicial ethics should require that any lawyer or judge involved in child welfare, juvenile justice or domestic relations cases participate in formal training on child and adolescent development and family systems theory before taking any such cases.

c. Implementing the UNLV and Fordham Recommendations: Bar associations and other legal organizations should help implement the UNLV and Fordham Recommendations by utilizing them in the training and assessment of children's attorneys.

**\*605** d. Provision of Continuing Legal Education: Bar associations should mandate attorneys involved in children's justice and advocacy to receive CLE regarding the identification and elimination of bias in the legal profession. Bar associations and other legal organizations should provide CLE so attorneys can stay current regarding developments in related subject areas and the operations of other systems affecting children and families.

e. Cross-Disciplinary Training: Bar associations and other legal organizations should promote collaborative approaches to learning and provide cross-disciplinary education specifically.

#### G. Recommendations for Further Study

1. Examination of how the lack of basic common cultural and social cornerstones affects the quality of representation for poor children and children of color, and how to close the gaps between the professional class and the clients they serve. Minimally, the study should include:

a. Consideration of creating a Rule of Professional Responsibility that requires child advocates to personally observe relevant locations and other significant matters central to the child and family; meet their clients in the client's environment; and talk to people in the child's school, religious community and neighborhood;

b. Proposals for methods that maximize attorneys' ability to know and understand the lives of their clients in order to improve advocacy and protect their clients' interests;

c. Appropriate race, ethnicity, and culture training curricula for child advocates, decision-makers and stakeholders.

d. The relationship, and need to distinguish, between race and class in the representation of children and among families, including:

i. Analysis of how advocates and decision-makers often miss class issues;

ii. Analysis of key system decision-making points to ensure that neither race nor ethnicity nor class result in worse outcomes for poor children and children of color, their families and communities.

e. Collection and reporting of data that track disparities in the treatment of children and families on the basis of race, income, ethnicity, gender, gender identity, and sexual orientation; and qualitative review of both courtroom conduct and the decision-making in cases.

f. Current successful child advocacy practices incorporating race, ethnicity and culture, including:

i. Identification of policies and practices that demonstrate successful life outcomes for poor children and children

of color, their families and communities;

ii. Identification of the most effective manner of disseminating and garnering support for implementing such policies and practices.

2. Examine legal systems and practices from other legal traditions in order to use the entire world as an instructive laboratory. The comparative questions to investigate may include:

- a. Traditions of non-adversarial decision-making
- b. Decision-making in fora other than formal court process
- c. Structures and staffing of courts
- d. Meaning of “best interest of the child”
- e. Role of the child's advocate.

3. Positive alternatives to the current adversarial structure for disputes regarding children, their deeds, and their needs, Minimally, the study should include:

a. Analysis of the benefits of using a collaborative, multidisciplinary court structure to serve children, families, and communities with diverse experiences and perspectives.

b. Analysis of the efficacy of non-adversarial models, such as restorative justice, to replace the current legal systems serving children families and communities with diverse experiences and perspectives, and their impact on public safety.

### III. Recommendations Regarding the Role of Children's Attorneys in Advocating for Reform

Children's attorneys play an important role in seeking legal and procedural reforms to improve the quality and provision of justice for children. Attorneys play this role when representing individual children and in policy making fora. In each of these contexts, children's attorneys can advocate for child-centered, respectful and non-stereotypical approaches to children and families. Attorneys should, in policy matters and in \*606 individual cases when their clients consent, work collaboratively with others who share similar concerns for children and their families. The recommendations in this part urge children's attorneys to take, or continue to take, the lead in promoting child-centered justice and to venture beyond the more conventional direct representation of children to do so.

#### A. Promoting Child-Centered Fora

##### 1. Statement of Principle:

Attorneys should engage in systemic change to create child-centered and child-friendly court processes and organizations.

##### 2. Recommendations for Advocacy:

The following is a nonexclusive list of recommendations of areas for advocacy.

a. **Protect the Child's Right to be Present in Legal Proceedings:** Children's attorneys should promote policies and practices that advance the objective of ensuring that children are present in all proceedings relating to them, including child welfare proceedings.

b. **Promote Youth Participation and Organizations:** Children's attorneys should promote the development of organizations that support the engagement of youth in the juvenile justice and child welfare processes both in individual cases as well as on a systemic level. Attorneys should advocate that youth, including youth representing diverse experiences and perspectives, participate in developing policies and practices affecting children and their families.

c. **Promote Effective Programs and Challenge Those That Are Ineffective or Harmful:** Children's attorneys should promote the use of best practice models, including evidence-based programs. Children's attorneys should also hold service providers accountable for their care and treatment of children by challenging ineffective or harmful programs, policies or practices that do not meet the individualized needs of clients.

## B. Promoting Family and Community Connections

### 1. Statement of Principle:

Children need to maintain connections to their families and communities and benefit from attempts to respect and strengthen families. Thus children's attorneys often serve their clients by advocating for their clients' families. Children's attorneys also serve children by engaging the communities to which their child clients are connected. This engagement enables attorneys to learn about the effectiveness and deficiencies of existing legal systems affecting the child's family and community, to exchange information with the community about existing and potential alternatives for problem-solving, and to collaborate with the community to generate ideas for improving conditions and resources for families and children.

### 2. Recommendations for Advocacy:

The following is a nonexclusive list of recommendations for family and community advocacy.

a. **Contest Policies That Undermine or Harm Families:** Children's attorneys should challenge policies, procedures that unnecessarily sever family ties, stigmatize parents based on race, culture, sexual orientation, language, nationality and poverty, and unduly interfere with family autonomy.

b. **Child and Family Empowerment:** Attorneys should help promote empowerment of their child clients and their families by:

- i. Improving attorneys' own listening and interviewing skills;
- ii. Incorporating habits of cross cultural lawyering into their practice;
- iii. Educating parents of children with disabilities to advocate in the educational and mental health systems;
- iv. Enhancing children's and parents' voices in the media.

c. **Community Liaison:** Juvenile defender and civil legal services providers should create a position or role within their offices for children's attorneys who act as community or stakeholder \*607 liaisons. This role would be devoted to developing partnerships within the community and would include community education and systemic advocacy. Such attorneys would be responsible for outreach into the community, attendance at meetings with stakeholders and par-

ticipation in community activities in which the interests of their client base may be affected. This liaison role should be informed by research, client voices, positive outcomes and cultural competence. The goals of this liaison role would include, but not be limited to:

- i. Achieving better dispositional outcomes for clients;
  - ii. Educating the community about who the clients are;
  - iii. Defusing the hostile environment for children;
  - iv. Achieving a better understanding of clients' lives;
  - v. Enhancing and improving resources made available to the clients;
  - vi. Creating a foundation for dialogue between attorneys and community members with an interest in or influence over children's well-being.
- d. Community Education: Children's attorneys should participate in community education to both provide and obtain information regarding the rights of community members, avenues of advocacy and cultural norms.
- e. Client and Family Input: Children's attorneys should seek input from current and former clients and their families with respect to ways to improve attorneys' professional practice.

### C. Eliminating Bias

#### 1. Statement of Principle:

Because of their knowledge and access, children's attorneys are in unique positions to advocate for policies, practices, and programs that promote the acceptance of all children regardless of whether they or their families meet or depart from dominant norms, and to actively challenge policies, practices, and programs that are discriminatory, stigmatizing, or harmful to child clients, their families, and their communities.

#### 2. Recommendations for Advocacy

The following is a nonexclusive list of recommendations for anti-bias advocacy.

- a. Promotion of Diversity in Justice Systems: Children's attorneys should advocate for racial, ethnic, class, gender, and sexual orientation diversity among judges, prosecutors, public defenders, and children's attorneys. Attorneys should engage courts and other appropriate agencies to employ the appropriate resources to address any gaps in knowledge about any of diverse experiences and perspectives.
- b. Consideration of Children's Diverse Experiences and Perspectives: Children's attorneys should encourage administrative and judicial systems to take into account children's diverse experiences and perspectives in assessing their risks and needs, and in placing and treating them appropriately, and to eliminate unnecessary detention or out of home placements. Children's attorneys should challenge any such bias particularly around race and gender norms in these proceedings.
- c. Promotion of Individualized, Non-Stereotypical Services:
  - i. Children's attorneys should advocate that services, including those that are gender-specific, do not perpetuate

assumptions and stereotypes based upon race, language, nationality, gender, sexual orientation, and gender identity and expression.

ii. Children's attorneys should challenge policies and practices that stigmatize, exclude or discriminate against parents, family members and/or foster or adoptive parents on the basis of race, nationality, gender, sexual orientation, and gender identity and expression.

d. Promotion of Child-Centered Approaches to Children's Sexuality:

i. Children's attorneys should promote public health solutions to address juvenile prostitution and other commercial sexual exploitation of youth, including prevention, education and harm reduction.

ii. Children's attorneys should challenge the disproportionate application of status offense jurisdiction to girls, especially girls of color. Children's attorneys should also oppose policies that permit the transfer of status offenders into the delinquency system for violation of probation conditions.

iii. Children's attorneys should challenge court and agency assumptions that any child is sexually active based solely on his or her gender, sexual orientation or race.

**\*608** iv. Children's attorneys should challenge policies and practices that unlawfully limit the access of children in the custody of state agencies to reproductive health services.

v. Children's attorneys should challenge policies and practices that purport to protect the safety of lesbian, gay, bisexual or transgender children solely by isolating them from other children.

vi. Children's attorneys should challenge policies and practices that criminalize or pathologize adolescent sexual behavior that is typical or common from a developmental perspective.

vii. Children's attorneys should challenge excessive or punitive juvenile court intervention based upon the consensual homo- or heterosexual conduct of children.

e. Promotion of Accountability of the Systems that Serve Children: Children's attorneys should advocate for mandated record keeping and public dissemination of disaggregated data regarding the children and families the agencies serve; the data should be disaggregated by race, gender, offense, geography, ethnicity, and income.

D. Expanding Methods of Advocacy

1. Statement of Principle:

In an effort to defuse the hostility toward children, children's attorneys can and do engage in a range of strategies beyond litigation, including policy advocacy, media relations, and community organizing. At the same time, children's attorneys must be mindful that advocacy not grounded in their clients' lives can detract from positive policies and outcomes for children.

2. Recommendations for Methods of Advocacy:

The following is a nonexclusive list of recommendations for non-litigation advocacy methods.

a. Community Organizing.

b. Broad-Based Coalition Building

c. Research: To help identify advocacy strategies and goals, attorneys should utilize creative, multi-disciplinary research and analysis, regarding communities, including, but not limited to, the following:

i. Analysis of the financial conditions under which children are living and the impact of these conditions on the child's life and decisions;

ii. Demographic analysis;

iii. Historical patterns of discrimination.

d. Policy Advocacy: Children's attorneys should advocate for policies beneficial to children, their families and communities in legislative, planning and administrative fora.

e. Media Campaigns:

i. Children's attorneys should take advantage of the full range of media sources including: writing op ed articles and letters to the editor, cultivating relationships with reporters and editors, and utilizing community newspapers and non-English language media. When possible, attorneys should use public relations experts to help shape and articulate their message. Attorneys might also work with child clients or young advocates to help educate the public;

ii. Children's attorneys should engage the media to expose deficiencies in the legal and social systems that affect children, and to help alter public perceptions detrimental to families who become the subject of state intervention;

iii. Wherever possible, not harmful, and only with express consent, children's lawyers should seek to facilitate children and families' abilities to tell their own stories;

iv. Children's attorneys who advocate using the media should cultivate an expertise in this area. Attorneys who are less experienced should defer to those who have established an expertise in dealing with the media. Attorneys should be cognizant of the considerable risks media involvement can pose for a client and should carefully assess the benefits and detriments of engaging the media.

E. Recommendation for Further Study

Examine the effectiveness of youth curricula, such as the Youth Advocacy Center model in New York, that help train youth to advocate for themselves by setting long term goals, engaging in \*609 research and plans to accomplish these goals, and making valuable connections with people and organizations that can help them accomplish these goals. .

IV. Recommendations Regarding the Attorney-Child Client Relationship

The recommendations in this part affirm and build upon the Fordham Recommendations regarding the role of counsel for the child, including the fundamental principle of client-directed representation for child clients. This part addresses additional prescriptions, methods, and strategies to achieve child-directed and child-centered representation while accounting for the significant role of families in children's lives. Many of the recommendations in Part I of these Recommendations regarding the scope of representation, role of the child's family and community, the approach of the attorney, and enhancing child participation are directly related to the nature and quality of the attorney-client relationship. These recommendations expressly reject the notion that there should be a bright line rule based on age or

any other generic factor demarking when a child's lawyer should treat the child as a traditional client or as an incapacitated client.

#### A. Role of the Attorney

##### 1. Statement of Principle:

Children's attorneys should take their direction from the client and should not substitute for the child's wishes the attorney's own judgment of what is best for children or for that child. Children's attorneys have the responsibility to create the conditions for and promote child-directed representation. Beside enhancing the child's ability to direct representation, such conditions can also help teach the child to advocate for him or herself when the attorney is not present.

When children have diminished capacity or are without capacity to direct representation, attorneys should conduct representation in principled ways. When the client lacks capacity to decide, the attorney may be required to interpose other viewpoints or even to substitute her judgment for that of the client. This important step involves gathering information from a wide range of sources as well as familiarizing oneself with the child's family, community and culture in order to arrive at or to advocate for a decision the child would make if she or her were capable.

##### 2. Recommendations for Practice Guidelines:

a. Assessing the Child's Capacity to Formulate a Position: The attorney should evaluate the child's capacity to communicate and formulate a position for each decision the client would make and should not extrapolate to other matters the inability to communicate as to one matter.

i. Only in the following limited circumstances, may the child's attorney determine the child's position on an issue, using the guidelines in parts IV.A.2.c and d below:

(A) The child lacks sufficient capacity to communicate;

(B) The child lacks the capacity to make adequately considered decisions in connection with the representation;

(C) In child welfare cases, the child's expressed preferences would be seriously injurious; or

(D) When the attorney is functioning in a jurisdiction that requires the attorney to exercise substituted judgment or act as a guardian ad litem.

ii. When assessing the child's capacity to make a decision, the following apply:

(A) Capacity to communicate does not include failure to communicate;

(B) Generally, the only children who cannot communicate are those who are pre-verbal or otherwise unable to communicate their objectives;

(C) When the child's preferences would be "seriously injurious" does not mean merely contrary to the lawyer's opinion of what would be in child's interests.

b. Helping the Child Formulate a Position: Children's attorneys should employ the following strategies to help the client formulate a position.

- i. Establish or reaffirm the lawyer-client relationship;
  - \*610 ii. Directly and regularly address confidentiality;
  - iii. Start with the child's agenda;
  - iv. Meet with the client regularly, and, with the client's consent, the attorney should meet with the client in the client's environment;
  - v. Assess the child's capacity to decide but make sure this assessment does not serve as a proxy for formulating a position for the child;
  - vi. Empower the child to make certain, even if not all, decisions;
  - vii. Help the child to develop decision-making capacity:
    - (A) Model the decision-making process by thinking through consequences with the child;
    - (B) Help the child to understand the different pressures operating on him/her, including negative influences;
  - viii. Explore and determine the universe of options with the child:
    - (A) Solicit the child's suggestions;
    - (B) To help further define options, ascertain that the child knows about available services;
    - (C) After consultation with the client and if the child consents, consult with others with relevant information (such as the child's parents, schools, kin, service providers, foster parents, individual evaluators);
  - ix. Encourage the child to speak with others (including parents);
  - x. Bring the child to court and explain the court process;
  - xi. Bring the child to administrative and informal proceedings related to his/her case;
  - xii. Help the child to understand whether or not the child has the right to participate in the proceedings;
  - xiii. Help the child to understand that the client has the right to have his or her wishes advocated without attribution.
- c. Children with Diminished Capacity: When the child has diminished capacity, the child's attorney should promote client-directed representation by:
- i. Adopting a position requiring the least intrusive state intervention;
  - ii. Being guided by goals that are respectful of and reflect what the client would want and the decision the child would make if the child could formulate a position;

iii. Respecting the child's family and social connections;

iv. Being familiar with the child's family, community, and culture and take precautions to avoid imposing the attorney's personal standards and cultural values;

v. Giving special weight to the parent's preference in the absence of conflict regarding the particular matter at issue, parental incapacity, or harm to the child;

vi. Utilizing the following rights and values as further guidance:

(A) Limitation of state intervention in the child's life;

(B) The child's right to have his or her family respected;

(C) The child's liberty interest to be free from state custody; and

(D) The family's liberty interest in parental determination of what is in the child's interests.

d. Children Lacking Capacity: When the child lacks capacity to communicate a position, the child's attorney should effect client-directed representation by performing the following non-exhaustive list of duties, in addition to those listed above in Part IV.A.2.c above for the child with diminished capacity:

i. Obtain additional pertinent information through investigation and consultation;

ii. Involve parents in the process, but recognize that parents cannot direct the representation;

iii. Protect the child's legal interests.

e. Helping Children Advocate for Themselves: Children's attorneys should help their child clients become effective advocates and problem-solvers for themselves and to better understand and take active roles if they wish in court proceedings, placement decisions, and other administrative actions affecting them.

## B. Disclosure of Confidential Information and Mandatory Reporting

### 1. Statement of Principle:

Mandated reporting and other disclosures of confidential information erode the attorney-client relationship and may deprive the child of defenses. In juvenile justice \*611 matters, mandated reporting undermines effective assistance of counsel and the right against self-incrimination.

### 2. Recommendations for Practice Guidelines:

a. Disclosure of Confidential Information: Children's attorneys should protect the confidentiality of information relating to the child client and be particularly sensitive to the privacy of information regarding intimate matters concerning sex, sexual orientation and gender identity.

b. Informing the Child Regarding Mandatory Reporting Statutes: In states where children's attorneys are mandated reporters, the attorney should disclose that duty to the child.

c. When Mandatory Reporting is Permitted: Reporting under mandatory reporting statutes should be undertaken only when:

i. the child consents to reporting; or

ii. in child welfare proceedings when the attorney has been appointed to represent the child's "best interests," has disclosed what that means to the child, and the lawyer determines reporting is in the child's best interests.

#### C. Recommendations for Further Study.

1. Measures attorneys can use to maximize the effective participation in the representation by clients with disabilities.

2. The attorney's ethical obligation under mandatory child abuse and neglect reporting statutes when state professional responsibility rules permit disclosure of client confidences.

3. The questions the Fordham Recommendations raised regarding the role and duties of counsel for children in class actions and in other systemic reform advocacy. [\[FN5\]](#)

#### V. Recommendations Regarding Changes in the Law

By training and experience, children's attorneys are in a unique position to understand how legal systems help and harm children and their families. Children's attorneys can, and often do, advocate across a wide range of systems, including those involving legislatures, state agencies, and courts in order to effectuate meaningful changes in justice for children. Interdisciplinary collaboration can be beneficial to this advocacy. The recommendations in this part address areas in which children's attorneys and their allies might advocate for change and include reforms that will require the enactment of new laws, rules, and written policies by courts, administrative agencies, and legislative bodies.

#### A. Appointment of Counsel for Children

##### 1. Statement of Principle:

These recommendations reaffirm a core principle of the Fordham Recommendations that all children in child welfare proceedings should be represented by attorneys. These recommendations further prescribe that children involved in other types of legal matters in which their rights or interests are directly affected, should have attorneys appointed to represent them, if they so desire.

##### 2. Recommendations for Changes in the Law:

a. **Right to Client-Directed Representation in Child Welfare Proceedings:** Children should have a statutory right to counsel in child welfare proceedings. Means of achieving this goal include curbing judicial or legislative discretion to dictate or define the child's attorney's role and interpreting or modifying the Child Abuse Prevention and Treatment Act's ("CAPTA") mandate for appointment of best interests representatives for children [\[FN6\]](#) to include the appointment of a client-directed attorney.

b. **Other Proceedings in Which Children Should Have Counsel:** In addition to juvenile justice and child welfare matters, at a minimum, children should have a right to counsel in at least the \*612 following areas:

i. Status offense proceedings (i.e., truant, incorrigible or stubborn minors);

- ii. Any case where the child could be held accountable for violation of a court order;
  - iii. Pre-arraignment proceedings (e.g., diversion proceedings, or where children sign admissions that could be used against them for impeachment);
  - iv. Expulsion and long-term exclusion from school and denial of educational services for homeless or immigrant children.
- c. Appeals: Children should also have a right to appeal and to counsel on appeal.
- d. All Stages of Juvenile and Family Proceedings: Representation in juvenile justice and child welfare proceedings should extend at least until the conclusion of the court's jurisdiction over the child.
- e. Children in the Adult Criminal Justice System: Children transferred or certified into adult criminal justice system should be provided at the earliest possible moment after arrest with attorneys who have expertise in juvenile and adult representation.
- f. Quality of Legal Counsel: In all proceedings mentioned above, children should be provided with high quality legal counsel. Particularly when appointed counsel are not part of defender or civil legal services offices, the state or county should establish a system of quality assurance through an independent evaluation mechanism to ensure competent representation.

## B. Appointment of Counsel for Parents in Child Welfare Cases

### 1. Statement of Principle:

Too often in child welfare cases, parents are left either unrepresented or inadequately represented. This practice undermines due process and impairs the court's ability to achieve fair and appropriate outcomes for children. As representing children in child welfare, representing parents requires specialized legal and scientific knowledge and so whenever possible, representation for parents should be met by institutional providers, such as a defender or civil legal services offices.

### 2. Recommendation for Change in the Law:

In child protection cases, parents who are unable to retain counsel should have the right to high quality court-appointed counsel from the filing of the petition to the conclusion of the case.

## C. Attorney-Client Privilege and Confidentiality

### 1. Statement of Principle:

For an attorney and a child-client to communicate effectively, the child must feel free to disclose information to counsel. In addition, it is often helpful, and even necessary, for family members or other adults the child trusts to participate in discussions regarding the representation and related matters. If these communications are not privileged and confidential, the flow of information among attorneys and children and parents is hindered. Similarly, mandatory reporting requirements, when applied to children's attorneys, compromise the attorney-client relationship and counseling process to the detriment of children.

### 2. Recommendations for Changes in the Law:

- a. Creation of Parent-Child-Attorney Confidentiality and Privilege.
- b. Exclusion of Children's Attorneys from Mandatory Reporting Requirements.

#### D. Courts

##### 1. Statement of Principle:

Attentiveness to the needs of children and families on all levels of the judicial system is needed to promote speedy, fair, and holistic problem solving and dispute resolution processes involving children and families.

##### \*613 2. Recommendations for Changes in the Law:

- a. Holistic Representation of Children: Jurisdictions should permit lawyers to represent youth in more than one system. There should be no prohibitions on concurrent or dual representation, particularly for public defenders and legal services agencies.
- b. Elimination of Bias: Legislatures should adopt statutes, and courts should adopt rules of professional conduct that prohibit lawyers, court officers, and agencies serving children, from discriminating against children and families on the basis of race, language, nationality, ethnicity, class, gender, sexual orientation, and gender identity.
- c. Advisory Counsels: Courts should establish, or engage in partnerships with, youth advisory councils to advise the courts on the effectiveness of their policies and procedures. The councils should comprise alumni of foster care and juvenile delinquency systems. Other council should also include biological parents, foster and adoptive parents, children, and other family members affected by child welfare and juvenile justice systems.
- d. Elimination of Delays:
  - i. Trial and appellate courts should eliminate delays for the administrative convenience of courts, lawyers and agencies on the trial and appellate levels;
  - ii. Court rules or state statutes should mandate courts to institute case management and tracking systems to monitor timelines of juvenile dockets and track the movement of children through the child welfare and juvenile justice systems;
  - iii. Court rules or state statutes should mandate that appellate decisions in child welfare and juvenile justice matters be issued within an expedited time frame.
- e. Court-Ordered Evaluations: The law should require that all court-based or court-ordered evaluations be conducted by qualified professionals, and be responsive to specific legal questions.

#### E. Juvenile Court Jurisdiction and Juvenile Sentencing

##### 1. Statement of Principle:

Ensuring children are able to participate, be heard in, and be helped by court proceedings affecting their lives requires courts and agencies serving children to serve children in a developmentally appropriate manner that maximizes children's opportunities to have their interests and well-being benefit from these proceedings. Juvenile court delinquency jurisdiction should be determined by the child's age, not his or her offense while juvenile jurisdiction over dependant and delinquent children should be available as a resource for children and youth as long as they have the

need and desire.

2. Recommendations for Changes in the Law:

a. Juvenile Court Delinquency Jurisdiction:

i. Jurisdiction for juvenile court delinquency should not be invoked for youth younger than twelve years old at the time of their offense;

ii. No child should be tried as an adult for any crime committed prior to his or her eighteenth birthday. Nevertheless, the following apply when existing law permits trial of a child as an adult:

(A) The decision of whether to try a child as an adult should be made only by judges, in a manner consistent with the ABA/IJA Juvenile Justice Standards; [\[FN7\]](#)

(B) No child should be sentenced to a term of life in prison, and without parole, for any crime committed prior to his or her eighteenth birthday;

(C) Children should never be incarcerated with adults.

iii. Status as an alleged or adjudicated offender should not disqualify a youth from eligibility for services through the child welfare system.

b. Criminal Accountability of Parents for Children's Actions: Laws should not include vicarious criminal or other sanctions that hold parents accountable for the behavior of their children and impose on parents the costs of prosecuting cases and placing children.

c. Juvenile Court Child Welfare Jurisdiction:

i. State and federal law should allow youth in foster care to remain in care at their own \*614 request until at least the age twenty-one and the juvenile court should continue to have jurisdiction over their cases;

ii. Children who have been in substitute care should be permitted to request reopening their child welfare cases;

iii. Children who have been in substitute care should have the right to return to substitute care any time before age twenty-one or later, should the law permit the court to retain jurisdiction until children are older than twenty-one. In the event of return to substitute care, the juvenile court case shall be reopened at a child's request and the child should again have a right to counsel;

iv. Children in substitute care should remain eligible for medical insurance until at least age twenty-one;

v. These rights should not be conditioned on a youth being in school or in treatment, although all reasonable efforts should be made to identify the right school and to finish school.

d. Right to Petition for Orders of Protection: State statutes should permit persons under the age of eighteen to petition for relief under existing state domestic violence order of protection laws.

F. Conforming to and Utilizing International Law and Norms

1. Statement of Principle:

The United States should ratify and implement major international conventions and treaties, and conform to international norms with respect to ensuring the protection of children's rights and interests. Article 12 of the United Nations Convention on the Rights of the Child ('CRC') is particularly pertinent to realizing the Fordham and UNLV Recommendations. That Article grants children the right to be participate and express their views, and potentially to be represented, in a vast number of proceedings beyond child protective proceedings. Article 12 further clearly contemplates representation of the child's subjective viewpoint and wishes and not of the child's best interests.

2. Recommendations for Changes in the Law:

- a. CRC: The United States should ratify and implement the CRC.
- b. CAPTA: The United States should amend CAPTA to conform to the following CRC provisions:

i. Article 12, section 1, provides:

State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

ii. Article 12, section 2, provides:

[F]or this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

- c. International Norms: The United States should immediately eliminate gross U.S. law and practice departures from current international law and norms, including:

- i. Children should not be incarcerated with adults;
- ii. Child offenders should not be sentenced to life without the possibility of parole;

G. Sexual and Reproductive Health

1. Statement of Principle:

Children are both agents in their own sexuality and sexual conduct and at times victims of coercion and manipulation or their own immaturity. Moreover, children in state custody or under court jurisdiction continue to have an interest in their own health, sexual and reproductive choices.

2. Recommendations for Changes in the Law:

- a. Equal Access to Reproductive Health Care: Legislatures should adopt statutes and state agencies should adopt policies that permit youth in the custody of state agencies to access reproductive\*615 health services to the same extent as youth not in custody.
- b. Decriminalize Youth Involvement in Sex Trafficking or Prostitution: Legislatures should decriminalize youth involvement in prostitution, trafficking or other commercial sexual exploitation.

c. Exclusion of Children from Sexual Offender Registry Laws: Legislatures should exclude persons under eighteen from sex offender registry laws and community notification.

#### H. Rules Regarding Attorneys

##### 1. Statement of Principle:

The organized bar and the judiciary are positioned to take leadership roles in addressing the concerns expressed in these UNLV Recommendations and the UNLV conference proceedings regarding unequal treatment for youth involved in court proceedings based on race, ethnicity, culture, language, nationality, class, sexual orientation, and gender. The bench and bar are also well suited to address the lack of resources for children's and parents' attorneys that leads to high caseloads that in turn interferes with professional obligations under the American Bar Association's professional standards.

##### 2. Recommendations for Changes in Professional Norms:

- a. ABA Rules of Professional Responsibility Should Address Bias: The rules of professional responsibility should be revised to include a model rule requiring attorneys to take into account the impact of the client's race, ethnicity, language and culture on the attorney-client relationship and representation.
- b. Adequate Compensation for Representation: Attorneys for children should receive:
  - i. Adequate compensation;
  - ii. Prompt compensation for litigation-related expenses, including the retention of consulting experts;
  - iii. College and law school loan forgiveness for attorneys representing children;
  - iv. Reasonable caseloads.

#### I. Resources

##### 1. Statement of Principle:

Public funding for the needs of poor children and families is inadequate and often funded services do not correspond to the needs of children and families involved in court proceedings.

##### 2. Recommendations for Changes in the Law:

- a. Pew Commission Funding Recommendations: Congress should implement federal financing recommendations of the Pew Commission on Children in Foster Care, resulting in more flexible funding for services to assist children and families, and reducing the number of children and families entering the dependency court system.
- b. Extension of Pew Recommendations: The broader Pew Commission Recommendations should be extended, as appropriate, to apply to children in other relevant systems.

#### J. Recommendations for Further Study

1. Whether children should have a right to counsel and/or a right to be heard in proceedings other than the proceedings listed above.

2. Whether in medical matters the parent should control decision-making, except when the minor is a mature minor.

3. Whether the language of CAPTA should be amended to provide for appointment only of lawyers for children in child abuse and neglect cases.

4. Whether, when and to what extent there should be a parent-child privilege.

5. Whether non-lawyer professionals working with lawyers should not be mandatory reporters.

6. The benefits and detriments of opening juvenile court proceedings to the public.

[FN1]. [Recommendations of the Conference on Ethical Issues in the Legal Representation of Children](#), 64 *Fordham L. Rev.* 1301 (1996), reprinted in [6 Nev. L.J. 1408 \(2006\)](#) [hereinafter Fordham Recommendations].

[FN2]. [Report of the Working Group on the Role of the Family](#), 6 Nev. L.J. 616 (2006); [Report of the Working Group on the Role of Age and Stage of Development](#), 6 Nev. L.J. 623 (2006); [Report of the Working Group on the Role of Race, Ethnicity, and Class](#), 6 Nev. L.J. 634 (2006); [Report of the Working Group on the Role of Sex and Sexuality](#), 6 Nev. L.J. 642 (2006); [Report of the Working Group on the Lessons of International Law, Norms, and Practice](#), 6 Nev. L.J. 656 (2006); [Report of the Working Group on Representing the Whole Child](#), 6 Nev. L.J. 665 (2006); [Report of the Working Group on Representing Children as Members of Communities](#), 6 Nev. L.J. 670 (2006); [Report of the Working Group on the Best Interests of the Child and the Role of the Attorney](#), 6 Nev. L.J. 682 (2006).

[FN3]. When possible, a law office representing children may wish to include staff who are competent in such frequently-recurring related issues.

[FN4]. Although attorneys are ethically obligated to make final decisions about many aspects of the representation in consultation with the client, this decision-making will benefit most from the multi-disciplinary collaboration where the attorney seeks to learn as much as possible about the representation from each team member.

[FN5]. Fordham Recommendations, supra note 1, at pt. II.C.3.

[FN6]. [42 U.S.C. § 5106a\(b\)\(2\)\(A\)\(xiii\)\(II\) \(2000\)](#).

[FN7]. Am. Bar Assoc. & Inst. of Judicial Admin., *Juvenile Justice Standards* (1979).

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