

CJournal of the Legal Profession
2007

Student Commentaries

***357 LAWYERS WERE CHILDREN ONCE: [\[FN1\]](#) AN ETHICAL APPROACH TO STRENGTHENING CHILD ABUSE AND NEGLECT LEGISLATION**

Emily Richardson

Copyright © 2007 Journal of the Legal Profession; Emily Richardson

In its Preamble, the Model Rules of Professional Conduct (“Model Rules”) emphasize that, as both public citizens and members of a “learned profession,” [\[FN2\]](#) lawyers are entrusted with an ethical responsibility to devote their training and civic influence to ensuring “equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.” [\[FN3\]](#) Beyond the more obvious concern of providing indigent adults with legal representation on a pro bono basis, studies and case law across the country reveal an equally urgent public need that remains tragically unaddressed: consistent, zealous representation of minor children by qualified attorneys in abuse and neglect proceedings. The quiet crisis of violence and mistreatment, cycling through shielded home environments into which policymakers are reluctant to intrude, is exacerbated by the legal profession's failure to provide effective services to the majority of America's four million children reported abused and neglected each year. [\[FN4\]](#) Attorneys representing children are often underpaid, overworked, minimally supervised, and poorly trained to address the variety of developmental, psychological and other service-related needs exhibited by victims of abuse and neglect. [\[FN5\]](#)

There is reason for optimism, however, as our legal system transforms its current view of children as property of their parents to rights-based citizens increasingly empowered to assert their own unique expectations and needs. [\[FN6\]](#) Pivotal Supreme Court cases, namely *Prince v. Massachusetts* [\[FN7\]](#) and *In Re Gault*, [\[FN8\]](#) have established a foundational basis for children ***358** as citizens within the meaning of the Fourteenth Amendment, with rights and interests legally entitled to consideration in matters concerning their wellbeing. [\[FN9\]](#) More specifically, the Child Abuse Prevention and Treatment Act [\[FN10\]](#) (“CAPTA”), which provides federal funding to states that improve the availability of legal services to abuse and neglect victims, requires states to mandate the appointment of guardians ad litem (GALs) in every case resulting in a judicial proceeding. [\[FN11\]](#) Although CAPTA guidelines have been adopted in whole or in part by each state since their federal ratification in 1974, [\[FN12\]](#) lackluster enforcement of GAL appointment mandates [\[FN13\]](#) and inadequate GAL training in the complex area of juvenile law continue to expose numerous victims to the threat of ongoing harm. [\[FN14\]](#)

State bar associations and ethics committees should, instead of attempting to reinvent the wheel with costly legislative mandates, consider how modeling professional codes more rigorously after CAPTA's treatment objectives can increase the effectiveness of state legislation already in place. Furthermore, because the Model Rules and their state counterparts do not enforce pro bono responsibilities through disciplinary processes, depending instead on attorneys' sense of social responsibility, [\[FN15\]](#) emphasizing the legal profession's ethical responsibility to protect the rights of abused and neglected children has the additional important potential to increase the overall sense of commitment to public service among bar members.

Part I of this Comment provides a brief synopsis of the nature and severity of child abuse and neglect in America

today. Part II details the nature of the pertinent CAPTA GAL mandates and their uneven, disorganized implementation among the majority of states. Part III asserts that state bar associations, through interpretation of professional ethics rules in light of competency and pro bono ideals modeled on CAPTA's explicit vindication of children as rights-holders, can improve the consistency and effectiveness of statutory objectives via an ethical avenue. Specifically, increased*359 pressure among state bar associations and ethics committees to, firstly, increase lawyer participation in the GAL process on a pro bono basis under Model Rule 6.1 and, secondly, read into state adaptations of Model Rules 1.1, 1.4, 1.6, and 1.14 client-empowering "best interest" standards on behalf of minors, would provide child victims with increased options among competent advocates.

I. Voiceless Victims and the National Abuse Crisis

Statistics reveal a nation engulfed by egregious cases of child abuse and neglect. [FN16] In 2004, approximately three million referrals involving approximately 5.5 million individual child victims were made to social service agencies. [FN17] More than one-quarter of investigations were determined over the course of judicial proceedings to be victims of abuse and neglect. [FN18] This number may be conservative because professionals, parents, and children themselves are often reluctant to report incidents. [FN19] While data thus remain limited as to the numbers of unreported abuse and neglect cases, statistics indicate child sexual abuse may be underreported by as much as eighty percent. [FN20]

Beyond raw numbers, the fact that "[m]ore than 60 percent of child victims were neglected by their parents or other caregivers" demonstrates the insidious and tragic nature of children's vulnerability. [FN21] In spite of increased recognition of minors' rights, the Supreme Court has not, since Meyer, [FN22] questioned the validity of parents' substantive due process right to direct their children's care, custody and control. Because parents have a constitutionally protected interest in their children's upbringing, minors are especially vulnerable to abuse and neglect at the hands of the adults with whom they live and upon whom they depend for physical and emotional*360 sustenance. [FN23] While the law rightfully acknowledges parental rights and autonomy, the legal profession should be especially vigilant against child exploitation in a system that denies minors rights granted to adults. [FN24]

In addition to numerical figures, studies illuminate the epidemic's age and race based dimension. [FN25] The youngest children, under the age of three, consistently exhibit the highest rates of suffering. [FN26] More than half of child abuse victims are under the age of twelve. [FN27]

Ethnic minorities also exhibit higher reported rates of abuse and neglect, with a ratio of 19.9 for every 1,000 African-American children versus 10.7 for every 1,000 white children. [FN28] While this Comment does not attempt to explain the discrepancy's causes—certainly multifaceted—a major practical effect is that African-Americans and other minority children, already generally living at lower socioeconomic levels than whites, are faced with even greater obstacles in terms of obtaining experienced legal advocates. [FN29]

One of the most disturbing forms of abuse is known as Battered Child's Syndrome. It consists of a "set of symptoms" [FN30] in children including soft-tissue injuries, poor hygiene and malnutrition, and fractures of varying ages. [FN31] Dr. C. Henry Kempe's 1962 article, the first to document the syndrome, dramatically increased the public's awareness of the severity of the child abuse crisis, ultimately leading to the promulgation of CAPTA in 1974. [FN32]

Despite widespread reception to the research of Kempe and others, attorneys and social workers today continue to have difficulty identifying victims with no physical abuse or neglect symptoms. Children who are emotionally abused or neglected, for example, may exhibit signs that remain unnoticed by teachers and other authority figures in positions to observe and report harm. [FN33] Further psychological damage arises from a lack *361 of "stimulation, affection, and encouragement," [FN34] as well as deprivation of physical exercise and playing. [FN35] Studies reveal long-term effects of such mistreatment stunt children's mental and physical growth, and often result in lifelong emotional dis-

orders. [\[FN36\]](#) Child abuse and neglect is an ongoing, nationwide crisis that demands resolution through legislation and increased attorney activism.

II. CAPTA and the Problem of Implementation

While states' incorporations of CAPTA guidelines continue to demand significant organizational and substantive improvement [\[FN37\]](#)-and studies of CAPTA itself reveal the need for promulgating more demanding GAL training standards [\[FN38\]](#)-members of the legal community are well positioned to help protect children's rights through aspiring to and enforcing more rigorous, specific interpretations of vital ethical duties to minor clients. Pro bono work will improve the effectiveness of legislation by increasing competent attorney involvement in abuse and neglect cases. By approaching the issue of child abuse and neglect from an ethical angle, attorneys are in a special position [\[FN39\]](#) to increase the effectiveness of legislation already in place by offering free legal services on a pro bono basis, [\[FN40\]](#) and increasing awareness among members of the bar and public of the dire need for more complete social and legal training on the part of court-appointed GALs.

A major CAPTA criticism arising in recent years involves its policy regarding GAL appointments. [\[FN41\]](#) Initially, CAPTA required the appointment of an attorney to represent children in abuse and neglect proceedings, but revisions have clarified that a guardian ad litem does not have to be a professional lawyer. [\[FN42\]](#) States' uneven implementation of the flawed, albeit potentially useful, federal guidelines have contributed to insufficient protection of vulnerable child victims. [\[FN43\]](#) For example, Minnesota requires only that GALs "have an interest in children; communication skills sufficient to conduct interviews, prepare reports, and make oral presentations; and knowledge and appreciation of the ethnic, cultural, and socio-economic backgrounds of the served population." [\[FN44\]](#) In an area of law demanding multi-faceted expertise in a range of legal, psychological, and sociological subjects, the bare-bones qualifications of states like Minnesota typify systematic inadequacies that demand greater attention from bar associations and ethics committees. [\[FN45\]](#) Educational background is not a qualifying element. [\[FN46\]](#) The picture is not entirely bleak; New York, for instance, has taken the unusual step of going farther than CAPTA's mandates, requiring children be represented by actual members of the bar in child protection and termination of parental rights proceedings. [\[FN47\]](#) Beyond legal qualifications, however, crucial training in the fields of social services and child psychology remains vastly unaddressed in GAL programs: Minnesota, for example, requires a mere forty-hour program. [\[FN48\]](#) Minnesota, nonetheless, calls for greater qualifications than many states: only twenty-two other jurisdictions require child representatives to complete training of any sort before making recommendations in court. [\[FN49\]](#)

Beyond inadequate training, low pay combines with overwhelming workloads and emotional stress to ensure that the majority of child abuse and neglect victims are denied competent and consistent legal representation. [\[FN50\]](#) In Florida, for example, social service conditions attest to the dire need for improved child advocacy. [\[FN51\]](#) Of the 30,065 minors found to suffer from "substantiated maltreatment" in 1998, actual proceedings were undertaken for only 14,980 children, [\[FN52\]](#) oftentimes resulting in placement with individuals who have previously been accused of abuse or neglect. [\[FN53\]](#) Members of the bar have largely proved themselves unwilling to devote the extra time to serve these children in a pro bono capacity, [\[FN54\]](#) leaving the responsibility to non-attorneys who are often poorly trained to understand the nature of their clients' needs and true best interests. [\[FN55\]](#) Child abuse and neglect often involve complex cycles of psychological trauma within families-cycles frequently aggravated by substance abuse, unemployment, and racial tensions. [\[FN56\]](#) It is crucial for representatives to understand the cycle of violence and neglect, behavioral symptoms exhibited by alleged victims [*363](#) and abusers, and the availability of integrated treatment plans drawing on psychological, medical, and work-related solutions. [\[FN57\]](#) Equally important is the need for dramatically increased attorney participation in the GAL process, particularly for child clients-a majority of whom are endowed with no financial resources of their own-suffering at the hands of parents or guardians. [\[FN58\]](#)

The tremendous legal powers that GALs wield-arguably more than even the judges presiding over their cases-heighten the dangerous repercussions of the minimal GAL training mandated by CAPTA and the majority of its state models. [\[FN59\]](#) First, GALs have complete access to the minor and information related to his or her claims.

[FN60] Second, the GAL's responsibility is to investigate abuse and neglect claims as well as to decide whom to interview, what evidence to present and stress to judges, treatment plans for children and family members, and, most significantly, what recommendations to make respecting temporary or permanent placements outside the home. [FN61] Unlike the traditional attorney-client model upon which the Model Rules are based, [FN62] GALs have legal authority to decide what course of action is in their clients' best interests. [FN63] Premised on the notion that minors lack the capacity to make decisions in their own best interests, current GAL models fail, at least facially, to take into account children's varying ages, maturity levels, and unique home environments. [FN64] The broad powers GALs possess reveal the need for sufficient guidance for representatives in determining the proper courses of action in litigation that may potentially affect a child's entire future. [FN65] GALs are not obligated to consider client objections or communications or even consult with minors before taking action. [FN66]

III. Vindicating the Voiceless

In an effort to provide greater legal protection to escalating numbers of abuse and neglect victims, CAPTA has profoundly affected states' regulation of child abuse and neglect in the family law context. [FN67] In spite of its *364 numerous flaws, CAPTA's vitally important influence on state child abuse and neglect statutes has, in the past thirty years, played a crucial role in promoting the legislative objectives of consistent and meaningful representation of child victims. [FN68] That said, attorneys can and should, without waiting for the trickle-down effect of GAL reforms that could take years, ask themselves what their state bar associations and ethics committees can presently do to utilize CAPTA's merits through the medium of professional ethics. Beyond the goodwill of attorneys, increased pressure among state bar associations and ethics committees could dramatically impact the lives of this client base that represents the most vulnerable members of society. The pressure should aim to first, increase lawyer participation in the GAL process on a pro bono basis, [FN69] and, second, read into state adaptations of Model Rules 1.1, [FN70] 1.4, [FN71] 1.6, [FN72] and 1.14 [FN73] client-empowering "best interest" standards on behalf of minors.

By drawing upon CAPTA's call for increased legal advocacy on the behalf of children, state ethics committees could explicitly infuse Model Rule 6.1 with specific mandates to serve minor clients. Before making blanket recommendations to judges in matters concerning a client's welfare, attorneys should implement reforms by applying CAPTA's child-serving goals to their state bars' applications of Model Rule 6.1. CAPTA offers grant money to states specifically for improving "the intake, assessment, screening, and investigation of reports of abuse and neglect," [FN74] and "creating and improving the use of multidisciplinary teams and inter-*365 agency protocols to enhance investigations." [FN75] Model Rule 6.1 focuses primarily on indigent clients and civil liberties causes. [FN76]

While scholars have already argued the Model Rules should be revised to provide greater directional clarity to attorneys representing children, [FN77] CAPTA's GAL requirements painfully illustrate the legal community's need to acknowledge child clients' unique levels of maturity and communicative ability. [FN78] The merits of such reform in the pro bono arena are at least threefold in nature. First, an ethics-based approach offers a more immediate solution to the inadequate levels of available child representation among bar members. [FN79] Second, by taking a more assertive, ethics-based approach to this severe social issue, attorneys can establish greater bar activism in the public interest field and apply stronger professional and public pressure on attorneys to donate time as GALs in the process. Although states may be long in improving training standards for GALs, and even if CAPTA itself never requires bar certification in the GAL context, increased numbers of attorney volunteers would contribute to the overall effectiveness of GAL advocacy in the child court context. Lastly, by infusing the Model Rules with more concrete guidelines in the pro bono arena, attorneys would spotlight the focus on public interest activity in general—a progressive and meaningful step in a world of big firm cultures and conspicuous consumption lifestyles. [FN80]

In addition to interpreting Model Rule 6.1 in light of CAPTA's urgent calls for increased representation in the area of child abuse and neglect, attorneys should read into state adaptations of Model Rules 1.1, 1.4, 1.6, and 1.14 more stringent, client-empowering "best interest" standards on behalf of minors. With respect to Model Rule 1.1, CAPTA's relevant sections seek to improve the "skills, qualifications, and availability of individuals providing services to children and families including improvements in the recruitment and retention of caseworkers." [FN81] Comments to

Model Rule 1.1 state that attorneys can acquire competence through “reasonable preparation,” [\[FN82\]](#) and, further, that competent representation is determined “in part by what is at stake.” [\[FN83\]](#) By reading “reasonable preparation” *366 [\[FN84\]](#) mandates in conjunction with the axiomatic concept that a child’s future welfare is among the most important matters “at stake” [\[FN85\]](#) in litigation, attorneys can effectively interpret CAPTA’s demand for improved qualifications for child representatives as an ethical requirement for significant improvements in GAL training.

Although training may discourage participation to a certain extent, increased focus among bar associations and ethics committees on pro bono representation in abuse and neglect cases would reinforce extensive attorney involvement in child representation through “peer and public opinion.” [\[FN86\]](#) As more attorneys supplant non-attorneys in the GAL context, and those attorneys, in turn, read into the meaning of Model Rule 1.1 CAPTA’s explicit calls for improved research in the juvenile abuse and neglect field, surely the overall level of child advocacy in America will qualitatively improve.

In addition to Model Rule 1.1, bar associations should read Model Rule 1.4 in light of CAPTA’s objective to improve “case management, including ongoing case monitoring, and delivery of services and treatment provided to children and their families.” [\[FN87\]](#) CAPTA’s language could infuse the ethical mandate for “adequacy of communication” [\[FN88\]](#) with specific requirements to improve discourse between victims, their families, and counseling organizations. By specifying communicative objectives in the context of minor clients, attorneys could promote more meaningful exchanges between children, parents, and social service agencies. In the complex area of child abuse and neglect—an area involving numerous psychological issues on the parts of both client and abuser—informed client decisions cannot truly be made without improved inter-agency dialogue. Bar associations could effectively improve inter-agency coordination and better educate themselves and their clients by applying CAPTA mandates more rigorously and specifically to Model Rule 1.4 interpretation.

Beyond Model Rule 1.4, state bar associations should interpret Model Rule 1.6 in the child advocacy context in light of CAPTA’s requirement to balance “strategies to promote collaboration with the families” [\[FN89\]](#) with “training regarding the legal duties of such individuals.” [\[FN90\]](#) Model Rule 1.6 is especially crucial in the context of child abuse and neglect, as victims may be reluctant to fully disclose the nature or extent of harm inflicted *367 upon them if they believe that attorneys will not maintain confidentiality. [\[FN91\]](#) Attorneys should balance CAPTA’s collaborative mandates and more stringent ethical confidentiality duties by interpreting Model Rule 1.6 as a tool to facilitate greater disclosure and trust on the part of child clients. By assuring child clients that their statements will remain confidential, attorneys contribute to deeper levels of trust and openness. Increased openness will ensure more effective protection of children’s rights with respect to sensitive and psychologically overwhelming subject matter that youths are often reluctant to disclose. Moreover, because a major obstacle to effective child representation involves inconsistency in stable attorney-based services [\[FN92\]](#)—an inconsistency that stunts development in a time of strong attorney-client ties—a more stringent reading of Model Rule 1.6 would promote consistency in representation by increasing attorney awareness of the special duties of privacy owed to child clients (as opposed to mere child appointments).

Finally, bar associations should interpret Model Rule 1.14 in the specific context of “supporting and enhancing collaboration among public health agencies, the child protection system, and private community-based programs to provide child abuse and neglect prevention and treatment services (including linkages with education systems) and to address the health needs of children identified as abused or neglected.” [\[FN93\]](#) Greater interagency cooperation ensures that children’s varied needs are adequately addressed in legal proceedings. Commentary to Model Rule 1.14 explicitly emphasizes “children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.” [\[FN94\]](#) By reading CAPTA’s prioritization of service-related coordination in light of Model Rule 1.14’s vindication of children’s capacity and right to assert their views during representation, attorneys can elevate this ethical rule’s overall degree of clarity and concreteness. By working more closely with community programs, attorneys, guardians, and children improve their respective abilities to make considered decisions about the child’s best interests.

IV. Conclusion: The Ethical Avenue

Scholars have rightly stressed that, because children represent a significant portion of the population, “[t]he importance of the development of *368 children's law is more than academic.” [\[FN95\]](#) Altering the way we serve children as GALs can serve as “a mechanism for significant individual and collective empowerment if we broaden our conception of the autonomous, capable client.” [\[FN96\]](#)

Common sense and experience informs all competent attorneys that individual children's ages, intellectual capacities, and emotional levels [\[FN97\]](#) of maturity should be considered in according particular weight to any expressed or implied needs or expectations on the minor's part. [\[FN98\]](#) Interpreting the Model Rules in light of CAPTA's meritorious aspects—those sections that call, at least ideally, for increased service of minor clients, adequate levels of GAL training, and meaningful consideration of a client's best interests (implicitly impossible without attempting to discern every child's unique character, motivations, and circumstances) [\[FN99\]](#)—will lead to significant improvements in the availability and overall quality of legal advocacy in the abuse and neglect context. If members of the bar take the initiative to improve the quality of children's advocacy from an ethical standpoint, they can establish a progressive, activist tone in the legal arena that utilizes the merits of current legislation as it improves upon its shortcomings. Furthermore, an ethics-based approach, which calls for attorneys to contribute more of their own time and resources toward child advocacy programs, relies on altruistic and professional standards, [\[FN100\]](#) not scarce public funds. Although increased bar association pressure for attorney involvement in pro bono child abuse and neglect cases cannot ensure that every lawyer will devote more time and energy to minor clients, it is a vital way in which the legal profession can improve the plight of child victims in America today. While this Comment does not specifically address the ongoing debate of the respective strengths and weaknesses of client autonomy versus lawyer autonomy models for children's representation, [\[FN101\]](#) it does assert that America's youth urgently need bar members to *369 consider, beyond vague pro bono intentions, the concrete ways in which more specific interpretations of the mandates of Model Rules 6.1, 1.1, 1.4, 1.6, and 1.14 can increase CAPTA's effectiveness and facilitate more rapid legislative reform.

We all were children once. Imagine the power of adults to shatter our sense of happiness and security through physical violence, psychological invective, or simple neglect. Beyond legislative mandates, attorneys should self-regulate as members of professional bar associations, [\[FN102\]](#) applying our ample educational and monetary resources toward advocating on behalf of these young victims.

[\[FN1\]](#). CHARLES LAMB, Epigraph to HARPER LEE, *TO KILL A MOCKINGBIRD* (Harper & Row, Publishers 1960). Atticus Finch, an attorney in Lee's novel about racial injustice in a small Southern town, agrees to defend Tom Robinson, a black man falsely accused of raping a white woman. The story is told through the perspective of Atticus' daughter Scout, which underscores the vulnerability of children to adults' prejudices and actions.

[\[FN2\]](#). MODEL RULES OF PROF'L CONDUCT pmb. 6 (2004).

[\[FN3\]](#). *Id.*

[\[FN4\]](#). Marvin Ventrell, The [Practice of Law for Children](#), 66 MONT. L. REV. 1, 2-3 (2005).

[\[FN5\]](#). Hollis R. Peterson, In [Search of the Best Interests of the Child: The Efficacy of the Court Appointed Special Advocate Model of Guardian Ad Litem Representation](#), 13 GEO. MASON L. REV. 1083, 1097-98 (2006).

[\[FN6\]](#). Ventrell, *supra* note 4, at 3.

[\[FN7\]](#). [Prince v. Massachusetts](#), 321 U.S. 158 (1944) (holding that the state has the authority to protect children against the dangers of preaching on a public road).

[\[FN8\]](#). [In re Gault](#), 387 U.S. 1 (1967) (holding that children are persons within the meaning of the Fourteenth

Amendment and thus have a constitutionally protected liberty interest during the adjudicatory stage of delinquency hearings potentially resulting in secure detentions).

[FN9]. *Id.*

[FN10]. [42 U.S.C. §§ 5101-5119c \(2003\)](#).

[FN11]. Michael J. Dale, [Providing Counsel to Children in Dependency Proceedings in Florida](#), 25 NOVA L. REV. 769, 778 (2001).

[FN12]. Marjorie R. Freiman, Note, [Unequal and Inadequate Protection Under the Law: State Child Abuse Statutes](#), 50 GEO. WASH. L. REV. 243, 251 (1982).

[FN13]. Dale, *supra* note 11, at 779-80 (“There appears to be no instance yet where a state lost funding as a result of a Department of Health and Human Resources finding of non-compliance with CAPTA.”).

[FN14]. Annette M. Gonzalez & Linda M. Rio Reichmann, [Representing Children in Civil Cases Involving Domestic Violence](#), 39 FAM. L.Q. 197, 202 (2005).

[FN15]. MODEL RULES OF PROF'L CONDUCT R. 6.1 cmt. 12 (2004) (“The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.”).

[FN16]. See generally CHILD WELFARE INFO. GATEWAY, U.S. DEPT. OF HEALTH & HUMAN SERVS., CHILD ABUSE AND NEGLECT (2006), available at http://www.childwelfare.gov/pubs/can_info_packet.pdf.

[FN17]. CHILD WELFARE INFO. GATEWAY, U.S. DEPT. HEALTH & HUMAN SERVS., CHILD MALTREATMENT 2004: SUMMARY OF KEY FINDINGS 2 (2006), available at http://www.childwelfare.gov/pubs/can_info_packet.pdf.

[FN18]. CHILDREN'S BUREAU, U.S. DEP't OF HEALTH & HUMAN SERVS., CHILD MALTREATMENT 2004, at tbl.2-4 (2006), available at <http://www.acf.hhs.gov/programs/cb/pubs/cm04/cm04.pdf>.

[FN19]. Freiman, *supra* note 12, at 249.

[FN20]. William Winslade et al., [Castrating Pedophiles Convicted of Sex Offenses Against Children: New Treatment or Old Punishment?](#), 51 SMU L. REV. 349, 363 (1998).

[FN21]. CHILDREN'S BUREAU, U.S. DEP't OF HEALTH & HUMAN SERVS., CHILD MALTREATMENT 2004, at xiv (2006), available at <http://www.acf.hhs.gov/programs/cb/pubs/cm04/cm04.pdf>.

[FN22]. [Meyer v. Nebraska](#), 262 U.S. 390 (1923) (holding that arbitrary compulsory education laws, unreasonably related to legitimate government ends, cannot interfere with parents' substantive due process rights to direct their children's upbringing). See also, [Pierce v. Society of Sisters](#), 268 U.S. 510 (1925) (affirming that parents have a constitutionally protected liberty interest in directing their children's education).

[FN23]. Elizabeth Bartholet, The [Challenge of Children's Rights Advocacy: Problems and Progress in the Area of Child Abuse and Neglect](#), 3 WHITTIER J. CHILD & FAM. ADVOC. 215 (2004) (arguing because the federal Constitution is not currently interpreted to provide abuse and neglect victims with a liberty interest in meaningful legal representation, federal law should require that more aggressive counseling and legal services be made available to

children).

[\[FN24\]](#). Id.

[\[FN25\]](#). U.S. Dep't of Health and Human Services, *supra* note 18, at Ch. 3.

[\[FN26\]](#). Id.

[\[FN27\]](#). Id.

[\[FN28\]](#). Id.

[\[FN29\]](#). Id.

[\[FN30\]](#). Hilary Baldwin, [Termination of Parental Rights: Statistical Study and Proposed Solutions](#), 28 J. LEGIS. 239, 243 (2002).

[\[FN31\]](#). Genie Lyons, [Shaken Baby Syndrome: A Questionable Scientific Syndrome and a Dangerous Legal Concept](#), 2003 UTAH L. REV. 1109, 1119 (2003).

[\[FN32\]](#). Kurt Mundorff, [Opening Remarks: Advocating for Change](#), 3 CARDOZO PUB. L. POL'Y & ETHICS J. 353, 353 (2005).

[\[FN33\]](#). Freiman, *supra* note 12, at 246.

[\[FN34\]](#). Id.

[\[FN35\]](#). Id.

[\[FN36\]](#). Id.

[\[FN37\]](#). Id.

[\[FN38\]](#). Mary Grams, [Guardians ad Litem and the Cycle of Domestic Violence: How the Recommendations Turn](#), 22 LAW & INEQ. 105, 111 (2004).

[\[FN39\]](#). MODEL RULES OF PROF'L CONDUCT pmb1. 12 (2004) ("The legal profession's relative autonomy carries with it special responsibilities of self-government.").

[\[FN40\]](#). MODEL RULES OF PROF'L CONDUCT R. 6.1 (2004).

[\[FN41\]](#). Rebecca Hinton, [Giving Children a Right to be Heard: Suggested Reforms to Provide Louisiana Children a Voice in Child Custody Disputes](#), 65 LA. L. REV. 1539, 1542 (2005).

[\[FN42\]](#). Id.

[\[FN43\]](#). Id.

[\[FN44\]](#). Grams, *supra* note 38, at 111.

[\[FN45\]](#). *Id.* at 112.

[\[FN46\]](#). *Id.* at 111-12.

[\[FN47\]](#). Martin Guggenheim, Ethical Considerations in Child Welfare Cases: The Law Guardian's Perspective, in *CHILD ABUSE NEGLECT & THE FOSTER CARE SYSTEM: EFFECTIVE SOCIAL WORK & THE LEGAL SYSTEM; THE ATTORNEY'S ROLE & RESPONSIBILITIES* 2003, 455 (2003).

[\[FN48\]](#). Grams, *supra* note 38, at 112.

[\[FN49\]](#). Gonzalez & Reichmann, *supra* note 14, at 202.

[\[FN50\]](#). Dale, *supra* note 11, at 776.

[\[FN51\]](#). *Id.* at 774-78.

[\[FN52\]](#). *Id.* at 774.

[\[FN53\]](#). *Id.*

[\[FN54\]](#). Gonzalez & Reichmann, *supra* note 14, at 202.

[\[FN55\]](#). *Id.*

[\[FN56\]](#). Grams, *supra* note 38, at 118.

[\[FN57\]](#). *Id.*

[\[FN58\]](#). *Id.*

[\[FN59\]](#). *Id.* at 115.

[\[FN60\]](#). *Id.* at 114.

[\[FN61\]](#). Grams, *supra* note 38, at 114.

[\[FN62\]](#). E.g., MODEL RULES OF PROF'L CONDUCT R. 1.2 (2002) ("[A] lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.").

[\[FN63\]](#). Grams, *supra* note 38, at 114-15.

[\[FN64\]](#). Jonathan O. Hafen, [Children's Rights and Legal Representation- The Proper Roles of Children, Parents, and Attorneys](#), 7 *NOTRE DAME J.L. ETHICS & PUB. POL'Y* 423, 426 (1993).

[\[FN65\]](#). *Id.*

[FN66]. *Id.*

[FN67]. Dale, *supra* note 11, at 778.

[FN68]. *Id.*

[FN69]. MODEL RULES OF PROF'L CONDUCT R. 6.1 (2002) ("A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.").

[FN70]. MODEL RULES OF PROF'L CONDUCT R. 1.1 (2002) ("A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.").

[FN71]. MODEL RULES OF PROF'L CONDUCT R. 1.4(b) (2002) ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.").

[FN72]. MODEL RULES OF PROF'L CONDUCT R. 1.6(a) (2002) ("A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, [or] the disclosure is impliedly authorized in order to carry out the representation ."). See also MODEL RULES OF PROF'L CONDUCT R. 1.6 cmt. 2 (2002) ("A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation This contributes to the trust that is the hallmark of the client-lawyer relationship.").

[FN73]. MODEL RULES OF PROF'L CONDUCT R 1.14 (a) (2002) ("When a client's capacity to make adequately considered decisions in connection with a representation is diminished because of minority the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.").

[FN74]. [42 U.S.C. § 5106a\(a\)\(1\)](#) (2000).

[FN75]. *Id.* at [§ 5106a\(a\)\(2\)\(A\)](#).

[FN76]. MODEL RULES OF PROF'L CONDUCT R. 6.1 cmt. 1 (2004) ("Every lawyer has a responsibility to provide legal services to those unable to pay .").

[FN77]. Bruce C. Hafen, [The Learning Years: A Review of the Changing Legal World of Adolescence](#), 81 MICH. L. REV. 1045, 1046-47 (1983).

[FN78]. [42 U.S.C. § 5106a\(b\)\(2\)\(A\)\(xiii\)](#) (2003).

[FN79]. David R. Katner, [Coming to Praise, Not to Bury, the New ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases](#), 14 GEO. J. LEGAL ETHICS 103 (2000).

[FN80]. Richard Zitrin, [Five Who Got It Right](#), 13 WIDENER L. J. 209, 232 (2003).

[FN81]. [42 U.S.C. § 5106a\(a\)\(7\)](#) (2003).

[FN82]. MODEL RULES OF PROF'L CONDUCT R. 1.1 cmt. 4 (2004).

[FN83]. MODEL RULES OF PROF'L CONDUCT R. 1.1 cmt. 5 (2004).

[FN84]. MODEL RULES OF PROF'L CONDUCT R. 1.1 cmt. 4 (2004).

[FN85]. MODEL RULES OF PROF'L CONDUCT R. 1.1 cmt. 5 (2004).

[FN86]. MODEL RULES OF PROF'L CONDUCT scope 16 (2004) (“Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, [and] secondarily upon reinforcement by peer and public opinion .”).

[FN87]. [42 U.S.C. § 5106a\(a\)](#)(3) (2003).

[FN88]. MODEL RULES OF PROF'L CONDUCT R. 1.4 cmt. 5 (2004).

[FN89]. [42 U.S.C. § 5106a\(a\)](#)(6)(A) (2003).

[FN90]. [42 U.S.C. § 5106a\(a\)](#)(6)(B) (2003).

[FN91]. MODEL RULES OF PROF'L CONDUCT R. 1.6 cmt. 2 (2004).

[FN92]. Dale, *supra* note 11, at 776.

[FN93]. [42 U.S.C.A. § 5106a\(a\)](#)(14) (2003).

[FN94]. MODEL RULES OF PROF'L CONDUCT R. 1.14 cmt. 1 (2004).

[FN95]. Ventrell, *supra* note 4, at 2.

[FN96]. Katherine Hunt Federle, The [Ethics of Empowerment: Rethinking the Role of Lawyers in Interviewing and Counseling the Child Client](#), 64 *FORDHAM L. REV.* 1655, 1662 (1996) (addressing the specific issue of appropriate degrees of counseling and client autonomy in the context of minor clients). See also Hafen, *supra* note 77, at 1048-49 (arguing that limitations on rights of choice protect minors against their own immaturity and vulnerability to adult exploitation, but, further, that, at least with respect to adolescent minors, certain children have “arguable de facto choicemaking [sic] capacity”).

[FN97]. Federle, *supra* note 96, at 1662.

[FN98]. *Id.*

[FN99]. [42 U.S.C. §§ 5101-5119c](#) (2003).

[FN100]. MODEL RULES OF PROF'L CONDUCT scope 16 (2004) (“Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, [and] secondarily upon reinforcement by peer and public opinion .”).

[FN101]. Federle, *supra* note 96, at 1658-71. Federle's models represent the extremes of current debate over the appropriate role of attorneys in cases involving minor clients. *Id.* Client autonomy “is being able to say what one wants,

to make one's case, to have some control over or to influence an outcome Under this model, the attorney is the systemic promoter and facilitator of client autonomy.” Id. at 1659. Conversely, under the lawyer autonomy model, “the lawyer has broader obligations and may be held morally accountable to the same extent as a nonlawyer for the harms caused to others.” Id. at 1665.

[\[FN102\]](#). MODEL RULES OF PROF'L CONDUCT pmbl. 12-13 (2004) (“The legal profession's relative autonomy carries with it special responsibilities of self-government Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.”).

31 J. Legal Prof. 357

END OF DOCUMENT