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No. 84132-2

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE TERMINATION OF

D.R. and A.R.,

Minor Children.

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AMICI CURIAE BRIEF OF NATIONAL CENTER FOR YOUTH LAW, FIRST STAR, THE NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, THE CHILDREN'S LAW CENTER OF LOS ANGELES, LAWYERS FOR CHILDREN, AND KIDSVOICE

IN SUPPORT OF PETITIONERS

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I. INTRODUCTION

Nearly 40 states, the American Bar Association, and numerous well-respected child advocacy groups, all recognize the necessity of separate legal representation for children in dependency and parental rights termination proceedings. Court rules and procedures can confuse an untrained party or child representative, so children rely on attorneys to identify legal issues and represent them in a manner that cannot be accomplished by non-lawyers. Washington has remained one of a minority of states for too long, allowing children and non-lawyer advocates to fend for themselves during high-stakes legal proceedings. This Court should join the national trend and recognize children's universal right to legal counsel in termination of parental rights ("TPR") proceedings.

II. IDENTITY AND INTEREST OF *AMICI*

The identity and interest of *Amici* are set forth in *Amici*'s Motion to File *Amici Curiae* Brief, filed herewith.

III. STATEMENT OF THE CASE

Amici adopt the Statement of the Case set forth in the Petitioners' Petition for Review and Children's Joint Opening Brief.

IV. ARGUMENT

A. The Majority of States Mandate Legal Counsel for Children in Termination Proceedings by Statutes and Case Law.

1. Statutory mandates for provision of an attorney.

"[T]he clear trend" in the United States "is toward universal attorney representation" for children in TPR proceedings.[1] Nearly 40 states provide a statutory right to counsel for children in dependency proceedings, and in most of these states, this includes representation at TPR proceedings.[2]

The commitment of this majority of states reaches further than providing a conditional statutory option for the appointment of counsel. The children in these states are entitled to legal counsel without question

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[1] Merril Sobie, *The Child Client: Representing Children in Child Protective Proceedings*, 22 Touro L. Rev. 745, 746 (2006).

[2] LaShanda Taylor, *American Bar Association Center on Children and the Law Bar – Youth Empowerment Project White Paper: A Lawyer for Every Child: Client-Directed Representation in Dependency Cases*, 47 Fam. Ct. Rev. 605, 610-11 (2009); First Star & Children's Advocacy Institute, *A Child's Right to Counsel: A National Report Card on Legal Representation for Abused & Neglected Children* (2d ed. 2009) (attached as Appendix 1). *See, e.g.*, Ala. Code §§ 12-15-102(10), 12-15-304(a); Ark. Code Ann. § 9-27-316(f)(1); Colo. Rev. Stat. Ann. §§ 19-1-103(59), 19-3-203(3); Conn. Gen. Stat. Ann. § 46b-129a(2); D.C. Code § 16-2304(b)(5); Iowa Code Ann. § 232.89(2); Kan. Stat. Ann. § 38-2205(a); Ky. Rev. Stat. Ann. § 620.100(1)(a); La. Child. Code Ann. art. 607; Md. Code Ann., Cts. & Jud. Proc. § 3-813(d)(1); Mass. Gen. Laws Ann. ch. 119, § 29; Mich. Comp. Laws Ann. § 722.630; Miss. Uniform Rules of Youth Court Practice, Rule 13(a); Mont. Code Ann. § 41-3-425(2)(b); Neb. Rev. Stat. § 43-272(3); N.J. Stat. Ann. §§ 9:6-8.21(d), 9:6-8.23; N.M. Stat. Ann. § 32A-4-10(C); N.Y. Fam. Ct. Act § 249(a); N.C. Gen. Stat. Ann. § 7B-601(a); Ohio Rev. Code Ann. § 2151.352; Okla. Stat. tit. 10A, § 1-4-306(A)(5); 42 Pa. Cons. Stat. Ann. § 6311, 23 Pa. Cons. Stat. Ann. § 2313(a); S.D. Codified Laws § 26-8A-18; Tenn. Code Ann. § 37-1-149, Tenn. Rules of Juvenile Procedure, Rule 2; Tex. Fam. Code Ann. § 107.012; Utah Code Ann. §§ 78A-6-317(2)&(4), 78A-6-902(2); Vt. Stat. Ann. tit. 33, § 5112; Va. Code Ann. § 16.1-266(A); W. Va. Code Ann. § 49-6-2(a); Wyo. Stat. Ann. § 14-3-211(a).

or qualification if the rights of their parents are subject to termination.[3] In some instances, the practice of providing counsel is decades long.[4] Many of these states provide counsel regardless of the age of the child client.[5] A majority of these states require that, once appointed, counsel represent the child throughout dependency and TPR proceedings, including during appeals.[6] Additionally, to ensure that each child receives adequate attention, some states limit case loads for attorneys representing children

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[3] *See* First Star & Children's Advocacy Institute, *supra* note 2.

[4] In 1962, the New York State Legislature authorized the New York Family Court to appoint attorneys to represent children in (among other actions) child protective proceedings, finding that "counsel [for children] is often indispensable to a practical realization of due process." Sobie, *supra* note 1, at 752 (quoting the Family Court Act, 1962 N.Y. Laws, ch. 686 (codified at N.Y. Fam. Ct. Act § 241)). "Over the course of the thirty year period since the initial legislation [in New York], the majority of states have enacted statutes requiring the legal representation of children." *Id.* at 754-55.

[5] *See, e.g.*, N.Y. Fam. Ct. Act § 249; Okla. Stat. tit. 10A, § 1-4-306(A)(2); D.C. Code § 16-2304(b)(5).

[6] First Star & Children's Advocacy Institute, *supra* note 2. *See, e.g.*, Colo. Rev. Stat. Ann. § 19-3-203(3); 2010 Conn. Practice Book § 32a-1(b) (available at www.jud.ct.gov/pb.htm); DC Family Court Administrative Order 04-05 (available at www.dccourts.gov/dccourts/superior/admin_orders/admin_orders.jsp); Iowa Rule of Appellate Procedure 6.109(4) (available at www.legis.stat.ia.us/aspx/CourtRules/PubDateListing.aspx); Kan. Stat. Ann. § 38-2205(d); La. Child. Code Ann. art. 1042(C); Md. Code Ann., Cts. & Jud. Proc. § 3-813(a); Mass. CFLP, Standards Governing the Representation of Children 1.3; Mich. Comp. Laws Ann. § 712A.17d(1)(b); Miss. Code Ann. § 43-21-201(5); Mont. Code Ann. § 41-3-425; Neb. Rev. Stat. § 43-272(1); N.M. Stat. Ann. § 32A-1-7.1(B); N.Y. Fam. Ct. Act § 1120(b); N.C. Gen. Stat. Ann. §§ 7B-601, 1002(1); Okla. Stat. tit. 10A, § 1-4-306(A)(5); 42 Pa. Cons. Stat. Ann. § 6311(b); Pa. Rules of Juvenile Court Procedure No. 1150(B); S.D. Codified Laws § 26-8A-18; Tenn. Rule of Juvenile Procedure 36(b) (available at www.tsc.state.tn.us/opinions/tsc/rules/tnrulesofcourt/jurproindex.htm); Utah Code Ann. §§ 78A-6-317, 78A-6-902(5); Vt. Sup. Ct. Admin. Orders, Rules Governing the Assignment of Counsel and Payment Thereof in Family and Probate Cases, § 3(b) (available at www.michie.com/vermont/lpext.dll?f=templates&fn=main-h.htm&2.0); VA Standards for GAL Representation of Children, Standard J Comments; Wyo. Rules and Regs. For GAL Program, Ch. 2, § 3(b)(xiv). *See also* Cal. Rules of Court, Rule 5.661(b)–(c) (mandating counsel on appeal only if child is the party appealing). Additionally, several states require that an attorney, once appointed, serve throughout the entire appeals process. *See* Ariz. Rev. Stat. Ann. § 8-235(D), Ariz. R. Juv. P., Rule 103(D); Del. Code Ann. tit. 29, § 9007A(c)(6); Me. Rev. Stat. Ann. tit. 22, § 4006; Or. Uniform Trial Court R. 11.020 (available at courts.oregon.gov/OJD/programs/utcr/utcrrules.page).

in TPR proceedings.[7]

2. State case law expands on statutory authority.

In addition to the statutory mandates and rule-based rights to legal representation, case law in several states has recognized a child's constitutional right to legal counsel in dependency and TPR proceedings. Courts have recognized generally that children have a fundamental right to safety and family integrity separate and apart from their parents' rights.[8] Several courts have held that due process requires that a child have an attorney to ensure those fundamental rights are protected in dependency and TPR proceedings. One federal court held that an "Alabama child custody procedure violates the due process clause of the Constitution because that procedure does not provide for the appointment of independent counsel to represent a child in a neglect proceeding." *Roe v. Conn*, 417 F. Supp. 769, 780 (M.D. Ala. 1976).

Another federal court acknowledged this due process-based right,

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[7] First Star & Children's Advocacy Institute, *supra* note 2, at 13, 33 (Arkansas), 73 (Massachusetts), 95 (New York), 135 (Wyoming). *See also* National Association of Counsel for Children, *NACC Recommendations for Representation of Children in Abuse and Neglect Cases*, III.A.2. cmt.A (2001) (recommending full-time attorneys represent no more than 100 clients at a time) (attached as Appendix 2).

[8] *See, e.g.*, *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977) ("This right to the preservation of family integrity encompasses the reciprocal rights of both parent and children. It is the interest of the parent in the 'companionship, care, custody and management of his or her children,' *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972), and of the children in not being dislocated from the 'emotional attachments that derive from the intimacy of daily association,' with the parent, [*Smith v.*] *Organization of Foster Families*, 431 U.S. [816], 844 [(1977)]."); *Wooley v. City of Baton Rouge*, 211 F.3d 913, 923 (5th Cir. 2000) ("a child's right to family integrity is concomitant to that of a parent"); *Franz v. United States*, 707 F.2d 582, 595 (D.C. Cir. 1983).

declaring that "[e]ven if there were not a statutory right to counsel for children in deprivation cases and TPR proceedings . . . such a right is guaranteed under the Due Process Clause of the Georgia Constitution." *Kenny A. v. Purdue*, 356 F. Supp. 2d 1353, 1359 (N.D. Ga. 2005). The court clarified that:

> ...children have fundamental liberty interests at stake in deprivation and TPR proceedings. These include a child's interest in his or her own safety, health, and well-being, as well as an interest in maintaining the integrity of the family unit and in having a relationship with his or her biological parents.

Id. at 1360.

State courts also have found a state and/or federal constitutional right to counsel for children in child protective proceedings. *In re Jamie T.T.*, 599 N.Y.S.2d 892, 894 (N.Y. App. Div. 1993) (holding that "[in addition to a statutory right,] [w]e are also of the view . . . that the Due Process Clauses of the Federal and State Constitutions mandate that there be *some form* of legal representation of [the child's] interests in the proceedings on the petition," because the child's "liberty interest was clearly at stake") (citations omitted));[9] *In re H.R.C.*, 781 N.W.2d 105, 115 (Mich. Ct. App. 2009) ("It is true that children have a right to appointed counsel in child protective proceedings, and that a child's attorney

[9] New York courts have reiterated this principle on a number of occasions. *See, e.g., In re Tiajianna M. et. al.*, 867 N.Y.S.2d 287, 288 (N.Y. App. Div. 2008) ("the child has a constitutional and statutory right to legal representation of her interests in the proceedings on a neglect petition").

appointed under the juvenile code 'has the same duties that any other client's attorney would fulfill when necessary.' In addition, although child protective proceedings are not criminal in nature, where the right to effective counsel arises from the Sixth Amendment, the Due Process Clause indirectly guarantees effective assistance of counsel in the context of child protective proceedings." (citations omitted)); *N.J. Div. of Youth & Fam. Serv. v. Wandell*, 382 A.2d 711, 713-14 (N.J. Cumberland County Ct. 1978) ("Surely if due process required that a mature adult subjected to these proceedings requires assistance of able counsel, no less should be required to protect the interests of a minor incapable of speaking for himself.").

Thirty years ago, in *In re T.M.H.*, the Oklahoma Supreme Court expanded a statutory right to counsel in specified instances to a universal, constitutional right to counsel for children in all TPR proceedings. 613 P.2d 468, 469-71 (Okla. 1980); *see also In re K.D.K.*, 940 P.2d 216, 217 (Okla. 1997) (describing *T.M.H.* as a case where "this Court held that a child has a constitutional right to counsel in a proceeding initiated by the state for the termination of parental rights").[10] Washington should join Oklahoma's decades long recognition that "[t]he matter of independent representation by counsel, so that a child may have his own attorney when

[10] *See also In re S.A.W.*, 856 P.2d 286, 288-89 (Okla. 1993).

his welfare is at stake, is the most significant and practical reform that can be made in the area of children and the law." 613 P.2d at 470.

B. Washington's Failure to Guarantee Counsel to Children Is a Minority Position and Against the Clear National Trend.

Washington is out of step with the majority of jurisdictions and the steady national trend toward providing a universal right to representation to children in TPR proceedings. Under Washington law, a court may appoint an attorney to a child in a TPR hearing only if: (1) the child requests counsel and is twelve or more years of age; (2) the non-attorney guardian ad litem ("GAL") determines that the child needs to be independently represented by counsel; or (3) the court determines that the child needs to be independently represented by counsel. RCW 13.34.100(6)(f).[11] Additionally, there is no express requirement for legal representation on appeal. *Id.*[12]

Washington law focuses mainly on the appointment of a non-attorney GAL to represent the child's "best interests." RCW 13.34.030(9). Washington provides a GAL at the discretion of the court if no attorney is provided. A Washington court shall appoint a GAL "unless [it] for good cause finds the appointment unnecessary," and this requirement is "deemed satisfied if the child is represented by independent counsel in the

[11] *See also* Wash. Juv. Ct. R. 9.2(c)(1).
[12] First Star & Children's Advocacy Institute, *supra* note 2, at 126.

proceedings." RCW 13.34.100(1). In other words, Washington law does not guarantee that children subject to TPR proceedings are provided with a legal professional who can advocate for their needs and interests.[13]

This Court is faced with a similar issue presented to Oklahoma's highest court thirty years ago when its legislature provided a very limited right to counsel.[14] The Washington statute, moreover, ignores the practicalities of TPR proceedings and provides no check to ensure the appointment of counsel is even considered.[15] As the Oklahoma Supreme Court held thirty years ago, conditional statutes deny children's fundamental rights and fail to protect their interests.

C. Only *Legal* Counsel Provides the Unique Expertise, Confidentiality, and Privilege Essential to the Effective Representation of Children.

Attorneys play a critical role in TPR proceedings—a role that cannot be fulfilled by a court-appointed special advocate ("CASA") or non-attorney GAL. Outcomes in the legal process "are directly tied" to the quality of legal representation, which cannot be provided by a CASA

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[13] Washington's Juvenile Court Rules mandate that, in dependency or TPR proceedings, "[u]pon request of a party or on the court's own initiative, the court shall appoint a lawyer for a juvenile who has no [GAL] and who is financially unable to obtain a lawyer." Wash. Juv. Ct. R. 9.2(c)(1). This requirement is still inadequate because it still permits a court to refrain from appointing an attorney if the child is represented by a non-attorney GAL or if neither the court nor a party raise the issue of attorney appointment.

[14] *In re T.M.H.*, 613 P.2d at 469-71 (expanding a statutory right to counsel in specified instances to a universal, constitutional right to counsel for children in all TPR proceedings).

[15] *See* RCW 13.34.100(6)(e) (providing a mechanism for consideration of appointment of counsel only after a child turns 12).

or non-attorney GAL.[16] Attorneys possess the legal skill to conduct adversarial proceedings for the benefit of their clients, and their relationship with the child client benefits from the confidentiality of attorney-client privilege.

1. Attorneys play a critical role in the adversarial process by advocating effectively for a child's rights.

Only an attorney fully understands how the law and legal process can protect a child's interests.[17] The American Bar Association ("ABA") Model Code provides specifically for the zealous advocacy of child clients.[18] Attorneys' unique training and education enable them to perform several functions that cannot be performed (or as effectively performed) by a CASA or non-attorney GAL. Among these functions are:

- Participation in Legal Proceedings: The attorney examines and cross-examines witnesses and participates in depositions, settlement negotiations, discovery, pretrial conferences, jury selection, and hearings.[19] The attorney knows when and how to appeal adverse decisions, and how to preserve issues for appeal.[20]

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[16] National Association of Counsel for Children, *supra* note 7, at II.A.

[17] New York's family law statute acknowledges the special role that attorneys play in protecting the due process rights of child clients and ensuring proper fact development and case disposition: "[C]ounsel is often indispensable to a practical realization of due process of law and may be helpful in making reasoned determinations of fact and proper orders of disposition." N.Y. Fam. Ct. Act § 241.

[18] ABA Model Code of Prof'l Resp'y, EC 7-1 (available at www.abanet.org/cpr/mrpc/mcpr.pdf).

[19] American Bar Association, *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, at pp. 3, 17 (adopted Feb. 5, 1996) (attached as Appendix 3).

[20] *Id.* at pp. 21-22.

- Develop Theory and Strategy: The attorney must develop a workable legal approach and theory to help the child achieve his or her goals in the proceedings.[21]

- Obtain, Understand and File Pleadings: The child's attorney obtains copies of all pleadings and relevant notices, interprets them with legal acumen, and files petitions, motions, responses or objections as necessary to represent the child. The attorney requests legal relief and services for the child.[22]

- Counsel the Child: The attorney counsels the child regarding the subject of litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the process.[23]

Some of these functions can be provided only by attorneys, and all can be provided most effectively by attorneys.

Courts in other jurisdictions have recognized that attorneys are uniquely capable of protecting children's rights in dependency and TPR hearings. The court in *Kenny A.* analyzed whether there is significant risk of erroneous decisions in TPR hearings without legal representation. It noted that: (1) juvenile court standards in TPR proceedings allow wide latitude for judicial discretion and subjective determinations; (2) this magnifies the risk of erroneous fact finding; and (3) judges and CASAs do not adequately mitigate the risk of such errors. 356 F. Supp. 2d at 1361. The court concluded that "only the appointment of counsel can effectively

[21] *Id.* at p. 4; *see, e.g., In re Jamie T.T.*, 599 N.Y.S.2d at 895 (explaining that effective counsel for the child was needed to develop child's trial strategy where evidence of sexual abuse hinged on he-said-she-said testimony from the child and adoptive father).
[22] American Bar Association, *supra* note 19, at pp. 14-15.
[23] *Id.* at p. 4.

mitigate the risk of significant errors in deprivation and TPR proceedings." *Id.*[24]

A non-attorney GAL or CASA "is a far different creature than an attorney."[25] A GAL's purpose is to make decisions for a legally incompetent client such as a child.[26] Similarly, CASAs typically are part-time, non-lawyers acting as GALs.[27] In practice, the GAL usually retains an attorney and then, acting as a surrogate client, instructs the attorney or consents to appropriate legal measures.[28] CASAs and non-attorney GALs fight admirably for what they think is best for the children they serve, but they lack the legal training that attorneys use to advocate for the positions of their clients effectively in legal proceedings. Accordingly, a CASA or non-attorney GAL is not an adequate substitute for legal representation.

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[24] A variety of other state court decisions have highlighted the unique skills that attorneys provide in their representation of child clients. *See In re Jamie T.T.*, 599 N.Y.S.2d at 895 (listing trial activities effective counsel would have undertaken to protect child's interests: (1) fully developing evidence, (2) presenting expert witnesses, (3) cross-examining witnesses, (4) bolstering child's testimony and out-of-court statements with records and other witnesses); *In re Fish*, 569 P.2d 924, 928 (Mont. 1977) (developing facts and producing evidence relevant to child's best interests); *In re S.A.W.*, 856 P.2d at 289-90 (presenting testimony and cross-examination in a manner that represents the child's goals and interests); *In re K.D.K.*, 940 P.2d at 218 (same); *In re T.M.H.*, 613 P.2d at 470 (same); *Kenny A.*, 356 F. Supp. 2d at 1361 ("CASAs are also volunteers who do not provide legal representation to a child."). *See also In re Myricks*, 85 Wn.2d 252, 254, 533 P.2d 841 (1975) (in the context of a parent's right to counsel in dependency proceedings, listing the complexities of trial practice that a non-lawyer would struggle to navigate); *In re J.M.*, 130 Wn. App. 912, 922-25, 125 P.3d 245 (2005) (in the context of a parent's right to counsel/ineffective assistance of counsel case, listing evidentiary issues that can arise in a TPR hearing that a non-attorney would not be competent to address).

[25] Sobie, *supra* note 1, at 753.

[26] *See* Black's Law Dictionary 725 (8th ed. 2004).

[27] Sobie, *supra* note 1, at 753.

[28] *Id.* at 753 n.21.

2. *Attorneys provide their child clients with confidentiality and attorney-client privilege.*

Children taking part in termination proceedings are particularly vulnerable. As a result of their personal hardships they may lack trust in others. Accordingly, children in termination proceedings require the protection of confidentiality to disclose freely any vital information about their life experiences and goals in order to communicate effectively with their representative.[29] Attorneys are required and trained to maintain the confidentiality of communications with their clients, and the confidentiality arising from the attorney-client privilege is the cornerstone of legal representation.[30] They exceed the baseline non-attorney GAL/CASA-child relationship by providing children the confidential communication that encourages them to speak freely and frankly.[31] The privilege is suited uniquely to provide an avenue to investigate and pursue the child's interests because the most sensitive information may never come to light without confidentiality protections.

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[29] National Association of Counsel for Children, *supra* note 7, at III.A.5.

[30] *See* Model Code of Prof'l Resp'y, *supra* note 18, at DR 4-101; ABA Model Rules of Prof'l Conduct, ER 1.6(a) (available at www.abanet.org/cpr/mrpc/mrpc_toc.html).

[31] In 2010, the Washington Legislature amended RCW 13.34.100(6) to require the state agency, GAL, and court in termination and dependency proceedings to periodically inform children age 12 and older that they may request attorney representation (although the court's responsibility to appoint such representation is still discretionary). As part of the legislation's findings, the Legislature noted that "[a]ttorneys … have different skills and obligations than guardians ad litem and court-appointed special advocates, <u>especially in forming a confidential and privileged relationship with a child</u>, …" 2010 Wash. Legis. Serv. Ch. 180 § 1(2) (emphasis added).

3. *Attorneys' training and expertise provide beneficial results for child clients.*

Legal representation can lead to greater placement permanency, which has significant positive results for the child. In one recent study, children in a legal representation program experienced exit to permanent homes at "a significantly higher rate" than children who were not afforded counsel.[32] Children also moved from case plan approval to permanency at approximately twice the rate of comparison children.[33]

A competent attorney representing a child can have an immense impact on the child's life. One law review article describes the experience of legal counsel representing twelve-year-old Sam and his ten-year-old brother Patrick.[34] The brothers lived in foster care because their mother had a drug habit. The children wanted to live with their Aunt Tanya, but caseworkers did not believe that would be a sufficient option. Judging his clients to be "[a]rticulate, sharp, and street smart beyond their years," the attorney advocated the brothers' plan to live with their aunt:[35]

[P]resented with a clear directive from my clients . . . I used all the

---

[32] Andrew E. Zinn & Jack Slowriver, *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County* 1 (2008), *available at* http://www.chapinhall.org/sites/default/files/old_reports/428.pdf (attached as Appendix 4). Providing legal representation is a financial investment for the state, but "attorneys for children have been shown to provide a benefit not only to the child but to the government as well." Taylor, *supra* note 2, at 616. Increased permanency results in significant reduction in costs associated with court hearings and child protection agency monitoring. *Id.*

[33] Zinn, *supra* note 32, at 20.

[34] Erik Pitchal, *Children's Constitutional Right to Counsel in Dependency Cases*, 15 Temp. Pol. & Civ. Rts. L. Rev. 663, 663-65 (2006).

[35] *Id.* at 663.

> tools in my attorney arsenal to do so. I served discovery demands and interrogatories on the agency and showed up at the hearing with two banker's boxes of documents and lengthy notes for cross-examination of the caseworker. The judge was shocked, the agency attorney was not interested in a fight, and we settled the case. It took a few months of bureaucratic maneuvering to implement the agreement, but Sam and Patrick were soon on their way to South Carolina with their aunt.[36]

This example is not unique. Working within a complex legal system, the attorney was able to utilize his legal skill and training to achieve the result his clients desired. He accomplished this even though the state-appointed caseworker advocated a different course of action. This example highlights the general experience of *Amici*. Separate legal representation for children can actually prevent error by serving as a check on the opinions of state caseworkers. Furthermore, due to the unique relationship resulting from attorney-client confidentiality, attorneys for children in these proceedings gain access to the special insights of the children, who often understand the overall family situation better than any other party.

4. Concerns over client-directed versus best-interests representation of children do not justify a conclusion that children do not have a due process right to attorney representation.

The State argues against recognition of children's constitutional due process rights to legal representation because they claim that

[36] *Id.* at 665.

confusion over whether an attorney is representing a child's stated interests or best interests may lead to erroneous results. Brief of Respondent Department of Social and Health Services ("DSHS Brief") at pp. 14, 20-21, 28-29, 36-37. This red-herring argument has been adequately addressed through court rules, legislation, and bar guidelines in other states.[37] The issue in this case is not whether there may be confusion if the attorney represents the child's stated wishes or best interests, but whether children have a constitutional right to an attorney in TPR proceedings, regardless of the attorney's role.

This Court may save for the State's policymakers the questions of how such representation should be structured, but denial of rights to counsel based on any purported "confusion" as to the attorney's role is unjustified. *Amici*'s experience in the majority of states that provide legal representation for children in dependency and TPR proceedings demonstrates that these states have resolved the dilemma through a variety

[37] *Compare* N.Y. Ct. Rules § 7.2(d)(2) ("If the child is capable of knowing, voluntary and considered judgment, the attorney for the child should be directed by the wishes of the child, even if the attorney for the child believes that what the child wants is not in the child's best interests.") *with* 42 Pa. Cons. Stat. Ann. § 6311(b) ("The [attorney] guardian ad litem shall be charged with representation of the legal interests and the best interests of the child at every stage of the proceedings and shall do all of the following: ... (7) Make specific recommendations to the court relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety. ... (9) Advise the court of the child's wishes to the extent that they can be ascertained and present to the court whatever evidence exists to support the child's wishes. When appropriate because of the age or mental and emotional condition of the child, determine to the fullest extent possible the wishes of the child and communicate this information to the court. A difference between the child's wishes under this paragraph and the recommendations under paragraph (7) shall not be considered a conflict of interest for the [attorney] guardian ad litem.").

of client-directed, best-interests, and hybrid representation models. No one has been paralyzed into ineffectiveness by the ongoing debate over advocacy models.

5. *Although TPR proceedings are ultimately focused on the child's best interests, an independent attorney or attorney-GAL for the child is needed to reach this goal.*

The State argues that because all parties in a TPR proceeding—the parents, the state agency, and judge—are framing their arguments or making decisions based on the best interests of the child, an attorney for the child is unnecessary. DSHS Brief at pp. 13, 15, 27, 35-36. Other states have rejected this argument:

> In a termination proceeding, if a child is not represented by independent counsel, each attorney presents his arguments from the viewpoint of his client, with the child caught in the middle. Beneath each side's argument in terms of best interests of the child, lies the desire to prevail for a client, who is not the child. When the court appoints an attorney for the child, testimony is presented and cross-examination done by an advocate who is only interested in the welfare of the child.

In re T.M.H., 613 P.2d at 470 (footnote omitted). Indeed, the court found "that in <u>all</u> termination proceedings there are potential conflicts between the interests of the children and those of both the state and the parents . . . ." *Id.* (emphasis added); *see also Roe*, 417 F. Supp. at 780 (holding that the child's interests could not be represented adequately by parents' counsel).

The State also argues that judges can divine in individual cases

when neither the state agency nor the parents will represent the child's interests and appointment of counsel is necessary in that individual case. DSHS Brief at 21-22. Courts in other states also have rejected this argument, opting instead for appointment in all cases. The court in *T.M.H.* held that conditioning the right to counsel on an actual, identified conflict or any other criteria was insufficient because "[c]ourts may fail to perceive [that] children will be affected by the outcome of the litigation, or that potential conflicts between the interests of the children and the interests of other parties require that the child have separate counsel." 613 P.2d at 470; *see also id.* ("Too often the judge assumes the child's interests are adequately protected by [the state agency party]. This position is undermined when, as here, [the state agency party] is challenged and as such it becomes an interested party, the source of the inquiry." (footnote omitted)); *Kenny A.*, 356 F. Supp. 2d at 1361.

Amici's experience verifies the observations of the court in *T.M.H.* All of the other parties in a dependency or TPR proceeding have a loyalty to some person or institution other than the child—however much these parties may portray themselves as advocating for the child's best interest. State agencies have interests in protecting their budget and competence of

their employees[38] and often must follow state regulations that may or may not be consistent with the child's best interests. Parents have an interest in avoiding blame for abuse/neglect and getting the state to stop meddling in their lives.[39] Furthermore, if two parents are involved in the proceeding, they may have conflicting views on what is in the child's best interests. Only through attorney representation of the child through either independent counsel or an attorney GAL will the courts receive a complete picture of issues impacting the child's best interests.

V. CONCLUSION

Washington should join the majority of jurisdictions and the American Bar Association in recognizing children's universal right to legal counsel in TPR proceedings. Courts elsewhere recognize this constitutional due process right because children have a clear liberty

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[38] *Kenny A.*, 356 F. Supp. 2d at 1359 n.6 ("Even after the Division of Family and Children Services (DFCS) has assumed custody of the child, there continues to be a conflict of interests between the child and DFCS, which precludes the attorneys who represent DFCS from also representing the child. This is true because the institutional concerns of DFCS may conflict with the needs of the deprived child. For example, there is evidence that a shortage of family foster homes in Fulton and DeKalb Counties has lead DFCS to place children in inappropriate and overcrowded homes, to shuffle children from one placement to another, and to overuse institutional placements. Because such conflicts between the broad programmatic needs of DFCS and the specific needs of the individual child may arise in every case, children are entitled to representation by separate counsel throughout the course of the deprivation proceedings.").

[39] *In re Orlando F.*, 40 N.Y.2d 103, 112 (N.Y. 1976) ("The usual situation in a permanent neglect proceeding pits the natural parent, with his or her own special interest at stake, against an agency who seeks termination of parental rights so that the child might ultimately be adopted. These parties may well believe that the 'best interests' of the child will be served by a 'legal victory' on their part. One court recently observed: 'Without such representation, the natural parent vigorously focuses on parental rights and claims. The approach centers on whether 'this child belongs to me', without an equal inquiry, on behalf of the unrepresented infant on whether 'this parent belongs to me'." (citation omitted)).

interest at stake in these life-changing legal proceedings. They also recognize that providing legal representation in the form of an attorney is the only way to effectively guard that interest. CASAs and non-attorney GALs provide a valuable service, but they cannot replace the role of the attorney in advocating a child's legal rights. By recognizing this constitutional right to counsel, Washington would finally provide this essential legal right to its most vulnerable citizens.

DATED this 23rd day of December, 2010.

Respectfully submitted,

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APPENDICES

1. First Star & Children's Advocacy Institute, *A Child's Right to Counsel: A National Report Card on Legal Representation for Abused & Neglected Children* (2d ed. 2009).

2. National Association of Counsel for Children, *NACC Recommendations for Representation of Children in Abuse and Neglect Cases* (2001).

3. American Bar Association, *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (adopted Feb. 5, 1996).

4. Andrew E. Zinn & Jack Slowriver, *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County* (2008).

DECLARATION OF SERVICE

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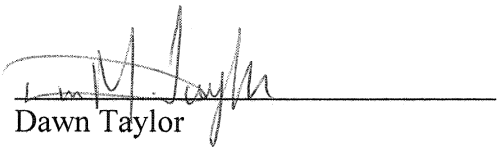

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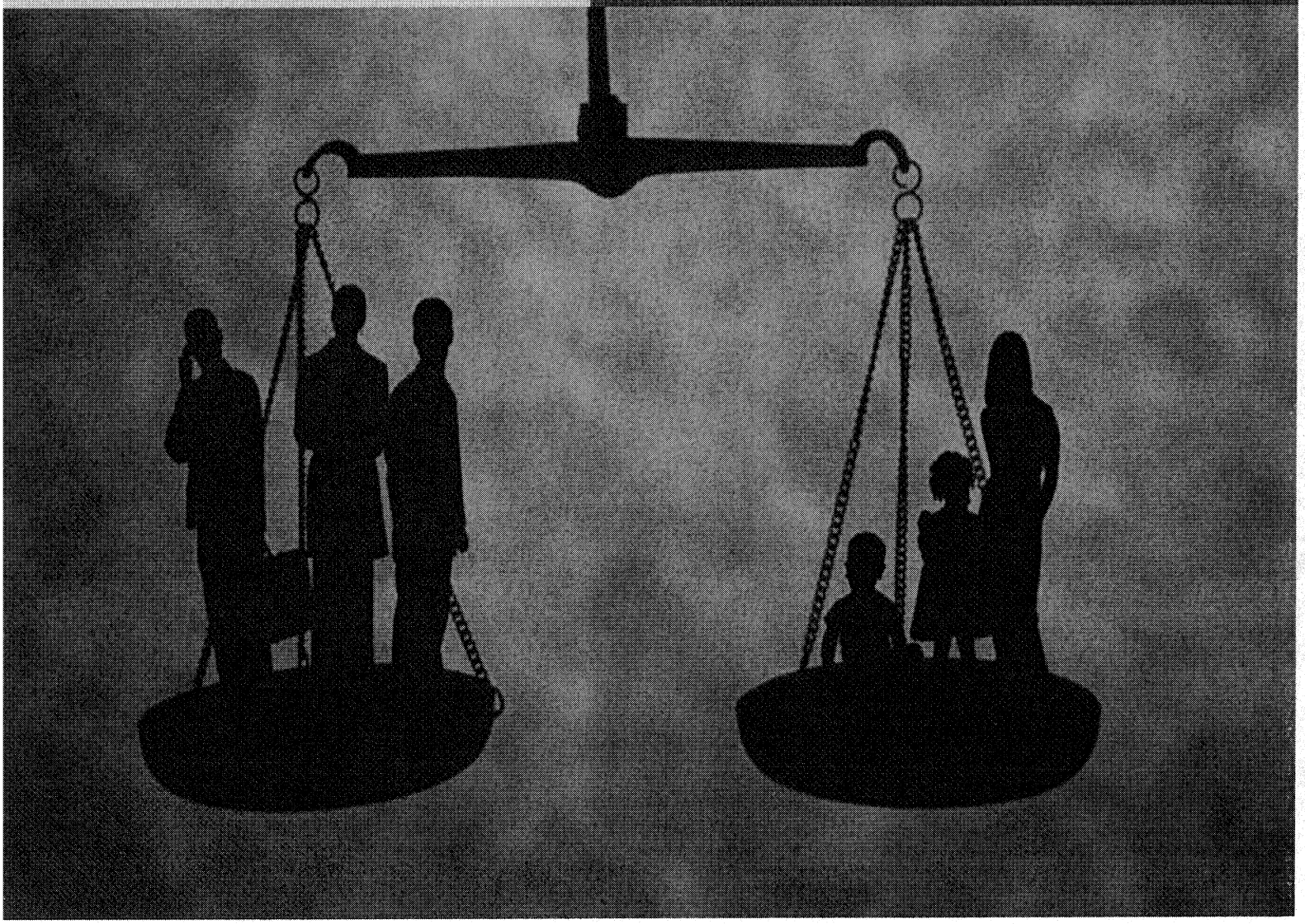
APPENDIX 1

Second Edition

A CHILD'S RIGHT TO COUNSEL

A NATIONAL REPORT CARD ON LEGAL REPRESENTATION FOR ABUSED & NEGLECTED CHILDREN



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About the Authors

First Star is a national non-profit organization working to improve the lives of America's abused and neglected children by strengthening their rights, illuminating systemic failures, and igniting reform to correct those failures. We pursue our mission through research, public engagement, policy advocacy, and litigation. First Star works to help achieve a future in which America's abused and neglected children have won their right to be heard and protected within the systems legally entrusted with their care, and in which those systems are fully resourced, transparent and accountable to the public.

First Star's Co-Founder and President, Peter Samuelson, is a motion picture executive who founded the Starlight Children's Foundation in 1982 and the Starbright Foundation in 1990. Sherry A. Quirk, Esq., Co- Founder and Vice Chair of First Star, a partner of Schiff Hardin, LLP, is past president and founder of One Voice and the National Coalition of Abuse Awareness. Amy Harfeld, Executive Director of First Star, has over 15 years of experience in child advocacy as a Teach For America corps member, human rights worker, and litigator.

First Star is proud to be a pro-bono client of Schiff Hardin, LLP.

The **Children's Advocacy Institute** (CAI) was founded in 1989 as part of the Center for Public Interest Law at the University of San Diego (USD) School of Law. CAI's mission is to improve the health, safety, development, and well-being of children. CAI advocates in the legislature to make the law, in the courts to interpret the law, before administrative agencies to implement the law, and before the public to provide public education to Californians on the status of children.

CAI strives to educate policymakers about the needs of children—about their needs for economic security, adequate nutrition, health care, education, quality child care, and protection from abuse, neglect, and injury. CAI's goal is to ensure that children's interests are represented effectively whenever and wherever government makes policy and budget decisions.

Robert C. Fellmeth, J.D., CAI's Executive Director, is the Price Professor of Public Interest Law at the USD School of Law and founder of both CAI and the Center for Public Interest Law. Professor Fellmeth has over 30 years of experience as a public interest law litigator, teacher, and scholar.

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Second Edition: A Child's Right to Counsel
A National Report Card on Legal Representation for Abused & Neglected Children

FOREWORD

According to the Child Welfare Information Gateway,[1] over 300,000 American children entered foster care in the last fully reported year of 2006. Of the 289,000 children who exited from the system that year, only about half were reunified with their parents. The parents of 79,000 children were found to be "unfit" by clear and convincing evidence and had their parental rights terminated. Only 51,000 children were adopted. The remainder of these children stay in the foster care system, now numbering over 500,000 nationwide—most living in state-provided care or with relatives.

The fate of children who may enter and leave the child welfare system—especially those who stay—is determined by dependency courts in all fifty states. Shortly after a child is removed from his/her home, the dependency court holds a "jurisdictional" hearing and the state commonly assumes the legal role of parent. Dependency courts are unusual, and are often closed off from public view and scrutiny—allegedly to protect the children involved. Many child advocates argue that this concealment is more about protecting agencies from democratic accountability, and in fact hides systemic flaws from public scrutiny. But we need to be clear about who the parents of all of these children are—the court functions formally and legally as the parent. This is not a typical court performing a passive role as arbiter between contending litigants over money or a criminal offense. This entity has the affirmative duty to determine the fate and then manage the custody and care of another human being. Because we live in a civil democracy, it makes us all their parents—jointly and severally. How we treat these children tells us a lot about our actual "family values."

Who are these children? The median age is ten.[2] Many children that age and even younger have sufficient maturity to warrant our attention and assistance regarding their thoughts and preferences. They come in all racial groupings, with whites the largest group, but with statistical over-representation of minorities. They have been emotionally, physically, and/or sexually abused or neglected. Often, they have been forgotten. But as many attorneys know, you will not find clients more thoughtful or generous than these. They are often extremely concerned about everyone else around them—their parents, their siblings, their friends, even their attorney—much more than about themselves.

So why this report? Because we do not do well by these kids. Abused and neglected children often languish in foster care indefinitely, lose touch with their families and siblings, and may never find a permanent home. Those that are never adopted often end up abandoned by the state at 18 and end up under-educated, unemployed, impoverished, and homeless.[3]

In the court drama that determines the futures of these children, the other parties have counsel. The Supreme Court has held that if counsel can make a difference in outcome, parents get counsel—publicly financed if necessary. After all, terminating parental rights is a major interference in the fundamental right to raise one's children and commands a high level of due process. Hence, virtually every parent gets counsel to whom the full panoply of the American Bar Association's Rules of Professional Conduct applies. The state gets counsel to support the agency's position regarding the child's removal and subsequent placements. Meanwhile, the child—whose rights to his or her parents and family unit and home and future are all being determined—has no recognized constitutional right to counsel in these proceedings. Abused and neglected children typically begin their journey with the child welfare system by leaving everything familiar to them. They leave their homes, their families, their neighborhoods, and their schools to find themselves in a system

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[1] Statistics from Child Welfare Information Gateway, *Foster Care Statistics* (Feb. 2009).
[2] *Id.*
[3] The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) gives states the option of extending foster care until age 21. First Star and the Children's Advocacy Institute commend states that have already implemented this option.

of changing faces, social workers, and courts who commonly serve as the parent of tens of thousands of children like them at a time. These children have rather a remarkable interest in these proceedings, which not only determine whether they will see their parents and siblings again, but where they will live, with whom, and under what conditions. Even in the criminal justice system, no court has the kind of detailed and continuing power that dependency courts have over abused and neglected children in state custody.

Maltreated children have substantial additional reasons to have counsel beyond the rationale applicable to their parents or the government. If there is one party in these proceedings warranting highest consideration for counsel, it is the child. He or she is not a reward or an object or chattel, but a person who the state may exert control over in the most profound way. The point of view of the social worker may or may not represent what the child wants. The views of the parents may or may not frame the entire issue, and will certainly not pertain to the child's fate if their rights are terminated.

One court has opined that these children have a constitutional right to counsel in juvenile dependency court, as they have long been afforded in delinquency proceedings.[4] Regrettably, that holding is honored in the breach for much of the nation. The purpose of this report is to outline the status of these children in terms of this seminal legal right, and in relation to a basic model of such representation. This model is straightforward. Currently, the American Bar Association is working toward a widely supported Model Act on dependency court child representation. The U.S. Department of Health and Human Services has recently awarded a major federal grant to study child representation, which will hopefully provide additional data about practices, costs and benefits. This data should pave the way for future national and state reform.

The survey we present here measures how each state performs in providing effective legal representation to maltreated children within the framework of its state law. Our survey reflects the "law on the books" but does not purport to measure policy and practices, which may allow for more responsible representation, or may avoid what applicable law requires. By looking at the stated law and adopted statewide rules, we choose a variable that is measurable between states, and one of particular import. While policies may be changed on a whim, practices encoded in statute and regulation are predictable, enforceable, and long-lived. We therefore urge the many jurisdictions that have commendable practices to encourage the codification of these in their state statutes.

While this report focuses on dependency proceedings, our hope is that reform will not stop there, but will instead extend to all legal proceedings in which an abused or neglected child's future is being determined. Children in other court proceedings such as custody, immigration, and education cases where allegations of abuse and neglect must be weighed in the court's decision also need effective counsel to protect their rights and make sure their voice is heard.

The grading criteria have been refined in consultation with national experts. They are presented in detail and as applied to each state for the reader to consider in evaluating the grades earned. Our hope is for states to closely examine their right to counsel laws to determine whether children's voices are being heard in these critical court proceedings, and how the process may be improved to facilitate fully informed and fair decisions. The stakes are high.

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[4] *In re Kenny A.* (N.D. Ga. 2005) 356 F. Supp. 2d 1353.

EXECUTIVE SUMMARY

Introduction

Abused and neglected children are among the most vulnerable citizens in our country. Indeed, these children have been betrayed and mistreated by the very people entrusted to care for and nurture them—their own parents. Many of these children suffer in silence until their plight is discovered and they are brought under the jurisdiction of a court.

When an abused or neglected child's case enters the courts, he or she enters a legal system that is confusing, intimidating, and overwhelming, even to many adults. The legal rights and processes that will determine his or her future are complex. It is unreasonable to expect any child to have the skills or knowledge to advocate on their own behalf in these circumstances. Even the most intelligent, informed, and assertive teenager capable of advocating for him or herself cannot subpoena or cross-examine witnesses, conduct discovery, or file motions or appeals without legal assistance.

The stakes in these cases are high for those involved, but especially for the child. He or she may be suddenly removed from everything that is familiar including home, family, school, friends, and community. He or she may be separated from siblings—in some cases, permanently. And yet, in many states across the U.S., this child goes through these momentous legal proceedings without an attorney appointed to represent his or her position and personal objectives to the judge.

It is the position of First Star and the Children's Advocacy Institute (CAI) that abused and neglected children have basic rights that must be respected. They know best what has occurred in their home, they have opinions about what should happen to them—they have a voice to be heard. Accordingly, we believe that all maltreated children have the right to competent, well-trained, client-directed attorneys with reasonable caseloads representing them throughout the court proceedings that will significantly impact their lives and futures.

History and Context of the Report Card

In April 2007, First Star published the First Edition of *A Child's Right to Counsel—A National Report Card on Legal Representation for Children*, reviewing and analyzing the laws of all 50 states and the District of Columbia with regard to their provision of attorneys to abused and neglected children in dependency cases. The report was received with critical acclaim in the media, and quickly became a standard reference tool used by legislators and advocates nationwide. Much has changed since the Report Card's First Edition was published. Many states have reviewed their laws and proposed or passed new laws that ensure better legal protections for abused and neglected children. Other states have brought court cases that highlight the importance of right to counsel for maltreated children and the harm caused to children and families when children are not well represented. Federal legislation to enshrine a nationally mandated right to counsel in these cases has been proposed and widely endorsed. The American Bar Association will consider a Model Act establishing a new national standard for attorneys representing children in abuse and neglect cases.

The tide is turning in the movement for a child's right to counsel. Traditionally, children were viewed more or less as chattel and it was assumed that the legal interests of an abused and neglected child would be represented either by the parent or by the state. Thankfully, many jurisdictions understand that too often, this is not the case and have begun to move towards recognizing that children's voices and opinions are necessary and valuable in the court proceedings that determine their best interests and ultimate futures.

It has been over forty years since *In re Gault*[5] affirmed a child's constitutional right to counsel in criminal cases, recognizing that the risk of being placed into state custody (jail) jeopardizes a fundamental right that requires the assistance of client-directed counsel. Dependency proceedings also involve the very real prospect of the child being placed into state custody (foster care). Child advocates around the country agree that the rights recognized in *Gault* can and should extend beyond juvenile delinquency cases to include juvenile dependency proceedings.

Research on the benefits of providing counsel to children in these proceedings is scarce. The most widely referenced recent study was published in 2008 by the Chapin Hall Center for Children[6] based on a study in Palm Beach County, Florida. In this report, it was shown that children with effective counsel in dependency cases were moved to permanency at about twice the rate of unrepresented children.[7] Certainly this indicates that attorney representation benefited these children, and saved the state money by abbreviating the court case and the foster care stay.

Available data indicates that providing client-directed counsel to maltreated children is not only a legal and moral imperative, but that it is also economically prudent. If good legal representation results in resolving cases with children attaining permanency more quickly, the net result will be to reduce the amount of money that states spend on court costs and on foster care.

The U.S Department of Health and Human Services' Administration on Children, Youth, and Families recently awarded a five-year, five million dollar grant to the University of Michigan Law School's Child Advocacy Clinic to establish a National Quality Improvement Center (QIC) to generate and disseminate knowledge on the representation of children and youth in the child welfare system.[8] The QIC will work to improve the quality and quantity of competent representation for children and youth in child welfare cases so that States and Tribes achieve the best safety, permanency and well-being outcomes for these children and youth. The research conducted by this Center and the information disseminated through it will greatly add to the available data in this field.

Summary of Report Card Criteria

The grading criteria and methodology have changed significantly between the first edition of the Report Card in 2007 and this one. Many of the changes are the result of constructive feedback following the First Edition of the Report Card. Others were made in order to better reflect the unique statutory language and the vast distinctions in law across the country. An "extra credit" section was added to recognize the importance of caseload limits and to place states on alert that this will be graded in our next report. Our criteria are as follows:

1. Does state law mandate that attorneys be appointed for children in dependency proceedings? (Maximum Points: 40)
2. When an attorney is appointed for a child in a dependency proceedings, does state law define the duration of the appointment? (Maximum Points: 10)
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner? (Maximum Points: 20)

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[5] *In re Gault* (1967) 387 U.S. 1, 36–37 [87 S.Ct. 1428, 18 L.Ed.2d 527].
[6] A.E. Zinn & J. Slowriver, Expediting Permanency: Legal Representation for Foster Children in Palm Beach County (2008), available at http://www.chapinhall.org/article_abstract.aspx?ar=1467.
[7] *Id.* at 14.
[8] See http://www.acf.hhs.gov/grants/open/HHS-2009-ACF-ACYF-CO-0077.html.

4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements? (Maximum Points: 10)
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party? (Maximum Points: 10)
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) regarding immunity from liability and confidentiality apply to attorneys representing children in dependency proceedings? (Maximum Points: 10)

Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings? (Maximum Extra Credit Points: 5)

Summary of Report Card Findings

The Second Edition of *A Child's Right to Counsel* demonstrates that many states have made laudable progress in their laws pertaining to the right to counsel for abused and neglected children in the last few years. Some states have excellent new laws on the books, and First Star and CAI commend the hard work of all the policymakers and advocates who led these reform efforts. Some states made great strides in moving new laws forward in this arena, but were faced with overburdened legislatures and a dismal financial climate that temporarily thwarted their efforts. We encourage them to continue their fight and hope that this report assists them in their advocacy.

We found that some states had excellent practices in providing counsel, but their practices were not codified in state law. First Star and CAI firmly believe that the only way to ensure consistent, enforceable, and accountable legal representation for abused and neglected children is to enact state law to that effect. We encourage states to incorporate their good work and established practice into law.

Unfortunately, we also found several examples of the opposite—states with strong right to counsel laws that are not followed in practice. We urge stakeholders in those states to use all advocacy and legal remedies available to enforce the law and ensure that abused and neglected children receive the representation to which they are legally entitled.

Statistical Highlights of the Second Edition

- 11 States earned an A or A+
- 11 States earned a B
- 14 States earned a C
- 8 States earned a D
- 7 States earned an F

- ✓ 63% of states mandate the appointment of an attorney for the child
- ✓ 51% of states mandate that the child's attorney, when appointed, serve in a client-directed capacity for the child
- ✓ 33% of states adopted new legislation in this arena since the First Edition of *A Child's Right to Counsel* in 2007

The following 17 states (representing 33% of the jurisdictions studied) improved their state laws governing a child's right to counsel in dependency proceedings since the First Edition of *A Child's Right to Counsel.*	
Alabama	Ohio
Arkansas	Oklahoma
California	Oregon
Connecticut	Pennsylvania
Iowa	Rhode Island
Louisiana	South Carolina
Massachusetts	Vermont
New Hampshire	Wyoming
New York	

First Star and the Children's Advocacy Institute applaud the two states that scored 100 or above, meriting a grade of A+: Massachusetts and Connecticut. May their laws in this arena serve as a beacon to their neighbors and states around the country looking for examples to follow.

Over 40% of the 51 jurisdictions surveyed earned a grade of A or B. We are proud to be able to award such high grades to states who recognize the importance of this issue and have taken the necessary steps to provide their maltreated children with effective legal representation.

Approximately 30% of the 51 jurisdictions surveyed scored a D or an F. These states have a long way to go toward enacting laws that ensure children of the right to appropriate legal representation in dependency proceedings.

Conclusion

First Star and the Children's Advocacy Institute urge that federal and state law require all abused and neglected children to receive quality client-directed representation in dependency proceedings and eventually in all court proceedings in which they have important legal interests at stake. Tremendous progress has been made in the last few years in the fight to achieve this vision. It is our aim to build on that momentum and show all states and the federal government that it is possible and advantageous for all to adopt laws that protect abused and neglected children, give them a voice, and give them a greater chance to emerge from a very traumatic experience whole and strong.

We hope this report will serve as a useful tool in increasing public awareness of this issue and give advocates and policymakers information that can be used to advance state and federal legislative reform. It should serve as a rallying cry for advocates and lawmakers in poorly performing states, and as a source of pride for states that have enacted strong laws in this arena.

The suffering of abused and neglected children does not vary depending on what state they call home. Their ability to have their voice rightfully heard and considered as their futures are determined should also not depend on something so arbitrary as the two letter abbreviation at the end of their address.

A CHILD'S RIGHT TO COUNSEL: ISSUES ON THE LANDSCAPE

Since the release of our First Edition of *A Child's Right to Counsel*, the topic of right to counsel for children has been a hot topic for state and national advocacy groups, legislators, attorneys, and policy groups. It has been addressed repeatedly in the media, with the publication of hundreds of newspaper articles discussing the first Report Card, and various radio interviews and related public discussions taking place. Since that time, this issue has gained increasing attention and momentum, and advocacy groups from Washington, D.C. to California have been leading the fight for a child's right to counsel on many different fronts. The following is a brief summary of some of the exciting work being done to ensure that every abused and neglected child in America has the right to a client-directed attorney.

CAPTA

Until 1974, when Congress passed the Child Abuse Prevention and Treatment Act[9] (CAPTA), children in dependency proceedings did not have any rights to legal representation. This was the first time that the issue was addressed in federal legislation. As a reaction to widespread attention to child abuse issues, CAPTA in its original form required states to provide representation in the form of a Guardian ad Litem (GAL) for all abused and neglected children who were subject to court proceedings. Unfortunately, there were no guidelines set out as to the qualifications, training, or responsibilities of the GAL. In 1996, Congress reauthorized CAPTA and amended its language to state that a lawyer *may* be appointed as a GAL and that the GAL's role is to obtain a clear understanding of the child's situation and needs and advocate for the best interests of the child. After the 1996 amendment, many courts were appointing individuals as GALs or attorneys for the child without ensuring that the individuals had undergone adequate training.[10] In 2003, Congress addressed this problem by amending CAPTA to its current form. According to the Administration for Children and Families, the purpose of the 2003 amendments was "to ensure higher quality representation and to bar appointment of untrained or poorly trained court-appointed representatives for children."[11] The representative currently required by CAPTA does not necessarily need to be an attorney, and is not required to advocate for the wishes of the child involved. Specifically, the current relevant CAPTA provision requires:

> *that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings—*
>
> *(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and*
> *(II) to make recommendations to the court concerning the best interests of the child....*[12]

CAPTA is currently pending reauthorization in Congress. First Star and the Children's Advocacy Institute have worked with advocacy groups around the country to submit a proposed amendment to CAPTA, endorsed by the National Child Abuse Coalition, that would require that the child's representative be an attorney who advocates for the child in a client-directed manner.

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[9] Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247 (42 U.S.C. 5101 et seq; 42 U.S.C. 5116 et seq.).
[10] See LaShanda Taylor, *A Lawyer for Every Child: Client Directed Representation in Dependency Cases*, Fam. Ct. Rev., Vol. 47 No. 4, 605, 610 (Oct. 2009).
[11] *Id.*
[12] 42 U.S.C. § 5106a(b)(2)(A)(xiii).

ABA Model Act

Following publication of the First Edition of the Report Card, First Star was asked repeatedly by states what a good Right to Counsel statute should look like. As a result, First Star, in consultation with its Policy Advisory Council, drafted a Model Law for the Representation of Children in Dependency Court. In 2008, the American Bar Association's Section of Litigation's Children's Rights Litigation Committee approached First Star to ask if it could use the Model Law as the basis to establish a new national standard of practice in this arena. The resulting ABA Model Act Governing the Representation of Children in Dependency Proceedings has been drafted and honed by advocates nationwide and is being reviewed for possible ABA adoption. It is included in its entirety in Appendix A to this Report Card.

If the Proposed ABA Model Act were judged based on the grading criteria contained in this Report Card, it would earn score of 100 (98 points for Criteria #1–6 and 2 extra credit points), as set forth in Appendix B.[13] A jurisdiction that adopts and implements the language and requirements of the Proposed ABA Model Act would do a nearly perfect job of requiring quality legal representation for abused and neglected children.

Defining Litigation

Prior to 1967 children in delinquency court proceedings had no right to representation. In *In re Gault*, the U.S. Supreme Court held that children have the due process right to an attorney in delinquency proceedings.[14] While *Gault* was a landmark case, children in dependency proceedings were still without a legal right to counsel. Fortunately, after CAPTA was enacted and as attention and awareness about a child's right to counsel spread, some courts found that children in dependency proceedings have a similar due process right to legal counsel. In June 2002, the national child advocacy group Children's Rights filed *In re Kenny A.,* a class action in Georgia alleging, *inter alia*, that children in Georgia's foster care system were denied adequate legal representation in the Juvenile Courts due to the high caseloads of the attorneys assigned to represent them. In February 2005, in a landmark ruling, the U.S. District Court for the Northern District of Georgia found that abused and neglected children not only have a constitutional right to an attorney, but also to adequate legal representation, at every major stage of their life in state custody.[15] Specifically, the court found that "children have fundamental liberty interests at stake in deprivation and [termination of parental rights] proceedings."[16] Furthermore, "a child's liberty interests continue to be at stake even after the child is placed in state custody," at which point "a 'special relationship' is created that gives rise to rights to reasonably safe living conditions and services necessary to ensure protection from physical, psychological, and emotional harm."[17] In light of this ruling, two Georgia counties (Fulton and DeKalb) entered into settlement agreements that guaranteed every child the right to effective legal representation throughout their involvement with the child welfare system. Since then, DeKalb County's Child Advocate Attorneys each carry caseloads of no more than 90 children per attorney. First Star and CAI believe that this Georgia ruling should be held out as an example to be emulated in recognizing a child's right to counsel in dependency proceedings as a constitutional right.

Building on this key ruling, in July 2009, the Children's Advocacy Institute filed a federal class action in California alleging that the constitutional and statutory rights of Sacramento County's foster children are being violated by the excessively high caseloads of both their attorneys and the judges who are acting *in loco parentis*. The California case is just in its infancy but shows promise to build the national campaign for a judicially supported right to counsel for every child under dependency court jurisdiction.

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[13] The Proposed ABA Model Act would be enhanced by explicitly mandating that the required child welfare training for attorneys be multidisciplinary in nature and specifically setting a maximum caseload number or range.
[14] *In re Gault* (1967) 387 U.S. 1, 36–37 [87 S.Ct. 1428, 18 L.Ed.2d 527].
[15] *In re Kenny A.*, (N.D. Ga. 2005) 356 F. Supp. 2d 1353.
[16] *Id.*
[17] *Id.*

In addition to these federal cases, state courts are considering a child's right to counsel. The Colorado Supreme Court is currently considering the case of *People v. Gabriesheski*[18] which holds that a GAL for a child in all dependency and neglect cases holds a normal client-lawyer relationship as far as reasonably possible and, thus, is precluded from divulging the child's communications in the absence of a waiver. The Supreme Court's decision in this matter is being closely watched by Colorado advocates because it could further a child's right to be heard and represented thoughtfully in dependency proceedings.

In September 2009, a Washington State Court of Appeals considered the case of *In re D.R. and A.R.*[19] This case presented the question of whether children are entitled to legal representation during termination of parental rights proceedings. A.R. and D.R. were in foster or kinship care for nearly four years and during that time were never given the opportunity to present their wishes to the court. Lawyers and advocates from across the country asked the appellate court to retain jurisdiction over the question of whether it was a violation of the children's constitutional rights to deny them counsel in dependency proceedings. The court implicitly admitted error and remanded the case in order to ensure that these children receive proper representation, but declined to consider the larger constitutional issue of right to counsel for other similarly situated children in the state. It is only a matter of time before advocates in the state have another opportunity to bring this issue to the court's attention.

NACC Certification

The National Association of Council for Children (NACC) offers the only accredited certification for attorneys representing abused and neglected children. NACC has established certification in jurisdictions across the country, and qualifies attorneys as Child Welfare Law Specialists (CWLSs). As of September 2009, NACC Certification was available in 13 jurisdictions: California, Connecticut, District of Columbia, Georgia, Iowa, Michigan, New Hampshire, New Mexico, New York, North Carolina, Tennessee, Texas, and Utah.

NACC is currently implementing its plan to open the Certification program in all fifty-one jurisdictions. The goal of the plan is to open the Certification Program in eight to ten states each year. As of July 2009, there were 234 Child Welfare Law Specialists in the United States.

Research and Data on Right to Counsel

In 2008, the Chapin Hall Center for Children published a report entitled *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*.[20] This report suggests that there is an increased initial cost in providing attorneys for children in dependency hearings. The report also demonstrated, however, that children with this level of representation achieve permanency more quickly. Expedited permanency means reduced court costs, less money spent on foster care, and fewer services needed for the child and family. This long-term savings indicates that providing abused and neglected children with effective legal representation is not only the right thing to do, but also might be economically advantageous for states.

Additionally, the U.S Department of Health and Human Services' Administration on Children, Youth, and Families recently awarded a five-year, five million dollar grant to the University of Michigan Law School Child Advocacy Clinic to establish a National Quality Improvement Center (QIC) to generate and disseminate knowledge on the representation of children and youth in the child welfare system.[21] The QIC will work to improve the quality and quantity of competent representation for children and youth in child welfare cases so that States and Tribes achieve the best safety, permanency and well-being outcomes for these

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[18] 205 P.3d 441 (2008).

[19] *In re D.R. and A.R.*, No. 27394-III (Wash. Ct. App. filed Sept. 2, 2009).

[20] A.E. Zinn & J. Slowriver, Expediting Permanency: Legal Representation for Foster Children in Palm Beach County (2008), available at http://www.chapinhall.org/article_abstract.aspx?ar=1467.

[21] See http://www.acf.hhs.gov/grants/open/HHS-2009-ACF-ACYF-CO-0077.html.

children and youth. The research conducted by this Center and the information disseminated through it will greatly add to the available data in this field.

Caseload Standards

Strong statutes ensuring client-directed representation for maltreated children are the foundation of effective advocacy for abused and neglected children. Well-trained and dedicated attorneys carry out this advocacy. However, even the best statutes are rendered meaningless—and the most committed attorneys cannot serve their given purpose—without caseload standards. An attorney representing 450 children (not an unusual number in many jurisdictions around the country) simply cannot provide appropriate advocacy on behalf of his/her clients.

As this Report Card acknowledges, several jurisdictions have recognized the importance of this issue and have implemented caseload limits that ensure that children receive the attention and quality legal representation that they so deserve. Special acknowledgement goes to Arkansas, Massachusetts, New York, and Wyoming for their statewide caseload standards.

The NACC recommends that a full-time attorney represent no more than 100 individual clients at a time, assuming a caseload that includes clients at various stages of cases, and recognizing that some clients may be part of the same sibling group.[22] This is the same cap recommended by the U.S. Department of Health and Human Services' (HHS) Children's Bureau[23] and the American Bar Association.[24] One hundred cases averages to 20 hours per case in a 2000-hour year. First Star and the Children's Advocacy Institute endorse this caseload ceiling standard.

Attorney Compensation

Attorneys who represent abused and neglected children do not embark upon this demanding and draining work with any promise of great financial gain. Compensation does, however have a significant impact on the number and quality of attorneys who enter and remain in the field. Rates of pay for children's attorneys are often under $55 per hour.[25] Many states distinguish between in-court and out-of-court work, paying attorneys around $50 for in court and $30 for out of court work. Some counties in Wyoming pay their children's attorneys as low as $15 per hour. These rates are far less than attorneys engaged in other fields of law—many of whom charge from $200 to $1,000 per hour. Many attorneys simply cannot take on this important work due to the burden of massive educational debt and family responsibilities. Others dedicate several years of service to the practice and become excellent practitioners but are then compelled to move on to other better paying legal work.

First Star and the Children's Advocacy Institute strongly support federal and state efforts toward loan forgiveness for children's attorneys. A substantial step forward towards this was taken when Congress passed the College Cost Reduction Act.[26] The more bright and dedicated attorneys practicing in this field, and the longer they are able to stay, the better the outcomes for children.

The NACC adopted the following U.S. Department of Health and Human Services position on this point: "Primary causes of inadequate legal representation of the parties in child welfare cases are low

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[22] See National Association of Counsel for Children, NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001), available at http://www.naccchildlaw.org/resource/resmgr/docs/nacc_standards_and_recommend.pdf

[23] U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth, and Families, Children's Bureau.

[24] ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, Approved by the ABA House of Delegates, Feb. 5. 1996, available at http://www.abanet.org/child/repstandwhole.pdf.

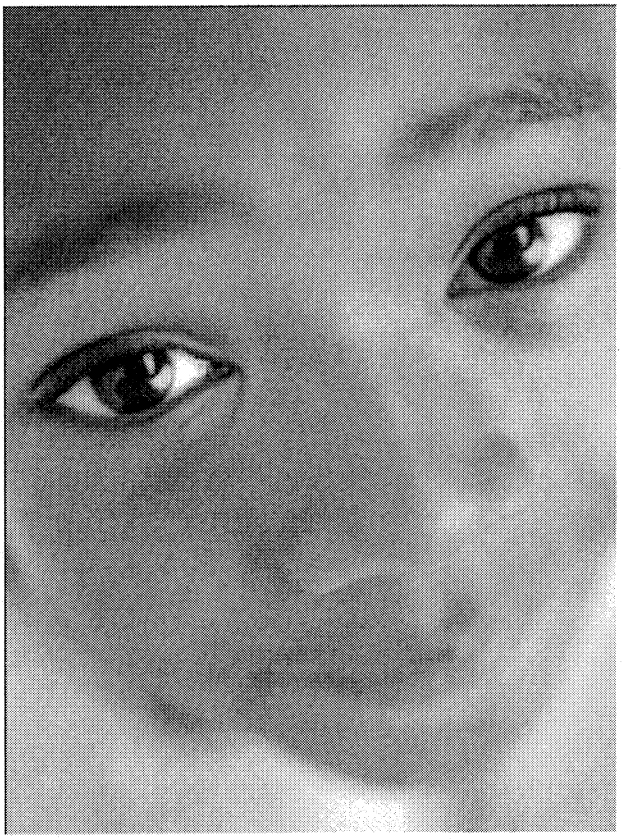
[25] National Association for Counsel on Children, Child Representation Hourly Compensation Rates as of June 1, 2006.

[26] Pub. L. No. 110-84, 121 Stat. 784 (2007) (to be codified in scattered sections of 20 U.S.C.).

compensation and excessive caseloads. Reasonable compensation of attorneys for this important work is essential. Rather than a flat per case fee, compensate lawyers for time spent. This will help to increase their level of involvement in the case and should help improve the image of attorneys who are engaged in this type of work....The need for improved compensation is not for the purpose of benefiting the attorney, but rather to ensure that the child receives the intense and expert legal services required."[27] First Star and CAI endorse this position as well.

ABA National Summit on Right to Counsel: "Raising our Hands"

The American Bar Association Section of Litigation Children's Rights Litigation Committee is sponsoring a national summit at Northwestern University in fall 2009 called, "Raising our Hands: Creating a National Strategy for Children's Right to Education and Counsel" This summit will allow policy makers, practitioners, academics, and advocates from around the country to collaborate and develop an aggressive national strategy to promote the right to counsel for children through legislation, litigation, and public engagement.



[27] *See* National Association of Counsel for Children, *NACC Recommendations for Representation of Children in Abuse and Neglect Cases* (2001), available at http://www.naccchildlaw.org/resource/resmgr/docs/nacc_standards_and_recommend.pdf , citing to *Adoption 2002: The President's Initiative on Adoption and Foster Care. Guidelines for Public Policy and State Legislation GoverningPermanence for Children,* U.S. Dept. of HHS ACF ACYF Children's Bureau (1999) at VII-4.

DEFINITIONS

In a report that compares the laws of 50 different states and the District of Columbia, it is important to lay a linguistic foundation. In the process of compiling this report, we have become aware of the wide discrepancies in the language that states use in their statutes, and even in how certain terms are used discordantly in different states.

Jurisdictions use different terms to mean "client-directed" or to define the legal proceedings governing the adjudication of child abuse and neglect cases. For the purposes of this Report Card, we are using the following definitions for these and other relevant terms:

- Best Interest of the Child – across the board, it is the role of the judge to make a final decision based on what is in the best interest of the child. In order to do this, he or she must consider the positions and arguments of the state social services attorney who brought the case, the parent alleged to have abused or neglected the child and who is represented by an attorney, and as we are advocating for here, the child victim, whose position should be presented through an attorney and considered by the judge in making this best interest determination.

- Best Interest Attorney – an attorney who owes a duty of loyalty to their child client, but is bound to make recommendations to the court based on his or her determination of what is in the child's best interest, even when that is not the child's expressed position. This model of representation does not comport with the rules established by the American Bar Association's Rules of Professional Conduct for other clients.

- Client-Directed Attorney – an attorney whose duty of loyalty is to the child and who must advocate for their client's expressed preferences and positions. When the child client's expressed wishes cannot be conveyed to the attorney the lawyer may take reasonably necessary protective action, and will sometimes seek the appointment of a best interest advocate to make an independent recommendation to the court with respect to the best interest of the child.

- Dependency Action - the legal proceedings governing the adjudication of child abuse and neglect cases. These cases may involve trials to determine whether the child was abused or neglected, removals of the child from their home into foster care, extensions of foster placement, terminations of parental rights, and other related proceedings until the child has achieved permanency or aged out of care.

- Guardian ad Litem – an individual appointed by the court to represent a child in court proceedings. The GAL may or may not be an attorney.

- Multidisciplinary Training – training which includes both information regarding the juvenile court system and laws and also ancillary disciplines such as child development, child psychology, education issues, etc.

GRADING METHODOLOGY

First Star received voluminous feedback following the release of the First Edition of *A Child's Right to Counsel* in April, 2007. Based on that feedback, we continued to monitor the changes to laws governing a child's right to counsel in dependency proceedings. In 2008, First Star and the Children's Advocacy Institute partnered on this project and embarked on an extensive repeated review and analysis of child representation laws in all 50 states and the District of Columbia.

We started with an analysis of the data that was gathered by First Star for the First Edition of this Report Card. First Star and the Children's Advocacy Institute then searched a commercial legal database along with state legislative websites for updated information regarding the relevant statutes and rules on which the states' grades would be based. Where statutes and rules were vague or confusing, caselaw, local administrative documents, and court orders were also consulted for clarification. After compiling a thorough analysis of the relevant statutes and rules, and applying the grading criteria, draft gradesheets were sent directly to several officials and practitioners in every state. To the best of our knowledge, the laws that were analyzed are current as of September 15, 2009.

The grading criteria for the Second Edition of *A Child's Right to Counsel* vary considerably from the grading criteria of the First Edition. Because of these revisions, comparisons between a State's grades on the First and Second Editions of the Report Card only tell part of the story and should be carefully analyzed by the reader. Variations in grades may be due to changes in state law or they may be due to the changes in the grading criteria. Just as we hope that states are continually striving to improve their laws pertaining to a child's right to counsel, First Star and the Children's Advocacy Institute are continually striving to produce the most relevant and useful grading tool and analysis.

Does state law mandate that attorneys be appointed for children in dependency proceedings?

We believe this is the most important aspect of a child's right to counsel in dependency proceedings. These proceedings are legal proceedings and, as in all legal proceedings, an attorney is the appropriate representative to best utilize the tools that will guide the decisions made by the judge. To assure zealous advocacy – a key component of an attorney's role - this attorney must be independent and not represent the interests of any other party (such as the State or a parent) simultaneously. Points were deducted based on deviation from a mandate that all children receive an independent attorney to represent their interests. Five points are deducted if a state has the stringent standard requiring that a child would not benefit from the appointment of an attorney. Ten points are deducted if there is any other restriction on the appointment of an independent attorney that we deemed "minor". An example of a minor restriction is legal counsel not being required for any child under age 7.[28] Twenty points are deducted from the maximum amount that can be awarded if there is a "major" restriction to the mandatory appointment of an independent attorney for children. An example of a major restriction is counsel not being required for children under an age higher than 7. Finally, a state loses 25 points in this category if the appointment of an independent attorney to represent the interests of the child happens only on a discretionary basis. While this discretion may be used

[28] First Star and the Children's Advocacy Institute chose age seven as a demarcation point between a major and minor restriction based on the position of some advocates that a particular age is an appropriate separation between the need for a client-directed attorney and a best interests attorney (*see, for example,* Donald Duquette's article, *Special Issue on Legal Representation of Children: Responses to the Conference: Two Distinct Roles/Bright Line Test* (Spring, 2006) 6 Nev. L.J. 1240). Furthermore, the research of John Anzelc, Melissa Cohen & Sarah Taylor, an interdisciplinary student group from the University of Michigan Law School who participated in the semester-long Lance J. Johnson Children in the Law Workshop and studied the capacity of children to participate in decisions affecting their welfare and provided to the American Bar Association Children's Rights Litigation Committee in a Memo dated April 24th, 2009, and titled, *Comment on the Committee's Model Act Governing Representation of Children in Abuse and Neglect Proceedings* indicates a child begins to have greater decision-making ability due to their increased problem-solving abilities and their greater understanding of the importance of a broader social sphere at approximately age seven.

generously in a given jurisdiction, it is not legally enforceable and thus, does not warrant a large point total in this Report Card. No points are awarded to states that do not provide independent attorneys to represent children in dependency proceedings.

When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

The appointment of an attorney to advocate for a child loses importance if that attorney is only present at some of the hearings – it is imperative for the attorney to be an advocate for the child at each and every hearing before the dependency court and to advocate for the child before a higher court when an appeal of the lower court's decision is appropriate. This criterion only grades the duration of the attorney's appointment. If state law provides for the appointment of lay guardians ad litem and the appointment of attorneys, only the duration of the attorney's appointment was considered. States receive 10 points when the appointment of attorneys last throughout the entire juvenile court process and through any appeals that may be taken. A state loses 2 points in this category if state law only expressly guarantees counsel for a child on appeal when the child is the appellant. Because the appellate portion of a case is just as crucial to the life of a dependent child as the decisions made by the lower court, a state loses half of the possible points in this category if appointment of attorneys only lasts through the juvenile court process and does not extend to representation on appeal. No points are awarded to states that do not address continuity of counsel in their laws.

When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?

This criterion is the second most important aspect of a child's representation and, thus, states could receive a total of 20 points for requiring counsel to advocate in a client-directed manner. When a child is represented by counsel, if that counsel does not represent the child in a client-directed manner, the child's voice is silenced. The child's voice (as opposed to any advocate's assessment of what may be in the child's best interest) is crucial to the dependency proceedings – this is, after all, the child's life that is being decided. Once the child's voice is adequately considered along with the voices of the State and the parents, the judge can make sound decisions as to how the case must proceed to comport with the law and to protect the child's best interests. This criterion only grades how a child's attorney, when appointed, must advocate on the child's behalf. If the child is appointed a lay guardian ad litem in addition to an attorney, the role of the lay guardian ad litem is not considered in the grading of this criterion. 5 points are deducted if there is any "minor" exception to the requirement that a child's attorney advocate in a client-directed manner. 8 points are deducted if there as an exception to the requirement that a child's attorney advocate in a client-directed manner that we deemed major. If a child's attorney is not even required to advocate for that child's wishes, the state loses more than half of the possible points awarded in this category. If state law requires the child's attorney to at least articulate (but not advocate for) a child's wishes, 14 points are deducted. If state law only requires client-directed attorneys to some children on a discretionary basis, 16 points are deducted. If the law is vague regarding when or whether client-directed representation is required of the attorneys representing children, 17 points are deducted. Finally, no points are awarded to states that allow attorneys to substitute their own judgment and do not require attorneys representing children to advocate in a client-directed manner.

To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?

An advocate is only as good as the training that advocate has received. States could receive a total of ten points for requiring specialized multidisciplinary training for attorneys representing children. If an advocate is not trained to work in the complex world of dependency law, it is unreasonable to believe that

children are receiving highest quality representation. While many jurisdictions offer training and may even expect those representing children in dependency proceedings to be trained, this criterion only grades the extent to which these requirements are found in state law. We acknowledge that many states' Court Improvement Programs have done outstanding work in the area of training for children's attorneys but this work must be adopted into law to be enforceable and uniform throughout the state. Furthermore, a key part of these training programs must be multidisciplinary including training in the various disciplines that touch the life of a child in dependency court. States requiring specialized training, including expressed multidisciplinary elements for children's attorneys receive 10 points. If multidisciplinary aspects of the training are only impliedly required, the state loses 1 point. If there are neither expressed nor implied multidisciplinary elements of the training required for children's attorneys in dependency proceedings, states lose 2 points. States that only require specialized training for guardians ad litem (who may or may not be attorneys) but not for other attorneys appointed to represent children in dependency proceedings lose 4 points. States encouraging but not requiring specialized training for children's attorneys lose 7 points. No points are awarded to states that do not require specialized education and/or training for attorneys representing children.

Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?

As the individual who is the subject to dependency proceedings, a child should always be considered a party to the proceedings. It is our position that when a child is considered a party to the proceedings, all the rights of parties are assumed to be held by the child. If state law expressly gives a child the legal status of a party and there is no language in state law limiting a child's rights, states receive 10 points for this criterion. However, if a child is expressly given the legal status of a party but any specific right is withheld (such as the right to be present at proceedings), a state loses 5 points. On the other hand, if a child is not expressly given the legal status of a party but is provided with one or more of the rights of a party, a state loses 5 points. While this grading system may "reward" some states that only provide one of many rights, it was adopted as the best method to account for all of the nuanced differences across the 50 states and the District of Columbia. No points are awarded to states that do not give legal party status or any of the rights of a party to a child in dependency proceedings.

Do the Rules of Professional Conduct (or the state's equivalent thereto) regarding immunity from liability and confidentiality apply to attorneys representing children in dependency proceedings?

A child should be represented by an attorney who treats that child as they would any other client. A child's relationship with their attorney is hindered when the child cannot trust the attorney to keep confidences. Furthermore, there is no reason that an attorney representing children should have any greater liability from immunity than that same attorney representing adult clients. States applying their Rules of Professional Conduct to children's counsel receive 10 points. If the state provides a minor exception, such as immunity for ordinary negligence, to this requirement, the state loses 4 points. If the state provides a major exception, such as blanket immunity, to this requirement, the state loses 6 points. No points are awarded to states that do not apply the Rules of Professional Conduct to children's attorneys.

Does state law address caseload standards for children's counsel in dependency proceedings?

We have included an "extra credit" grading criterion. A state can earn up to 5 extra credit points for mandating specific caseload standards for children's counsel in dependency proceedings. Without caseload standards, a child's attorney is, in essence, a muted participant in the proceedings. We believe that in order to adequately represent their clients, all attorneys must have reasonable caseloads. If a state has some statute and/or state court rule acknowledging the need for children's counsel to maintain reasonable caseload standards, but does not set specific caseload requirements, a state can receive up to 3 extra credit points.

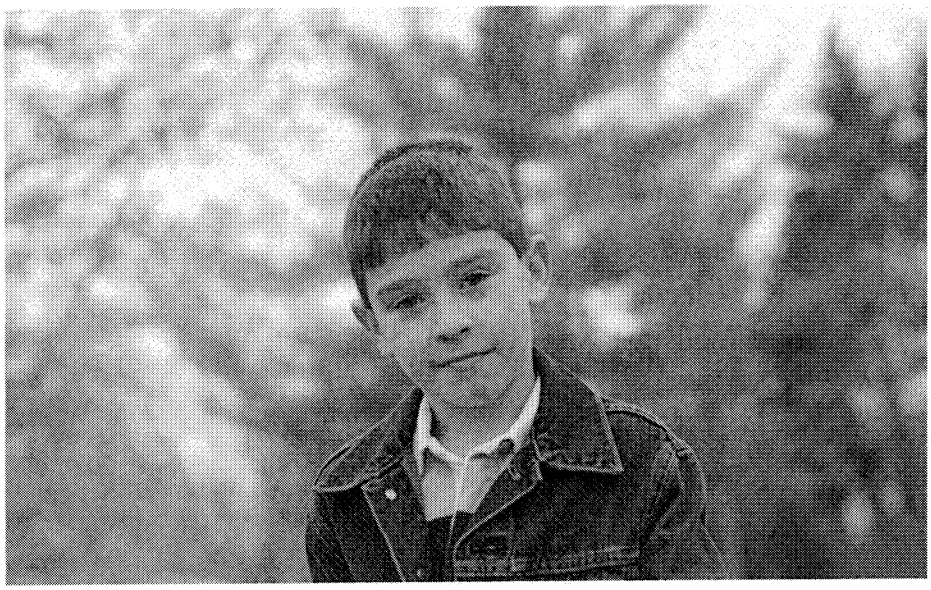
While we included an acknowledgement of this need only as "extra credit" for the 2nd Edition of the Report Card, we will be including caseload standards as one of the actual grading criteria in future reports.

We based our rating system on a 100-point scale. In computing the overall grade for each state, the state's grades for each individual section were combined into a total grade. Grades A through F were then awarded to each state according to the following standard academic grading system:

Grading Scale

100+	A+
90 – 99	A
80 – 89	B
70 – 79	C
60 – 69	D
59 and below	F

It is important to note that each grade is based solely on the language of the law, state court rule, caselaw, administrative order, etc. The grades are based on laws that are enforceable in each state, regardless of their form, as long as they have been duly adopted pursuant to a legally recognized procedure that includes an opportunity for public comment. *Grades do not imply any correlation between a state's law and the enforcement of such law.* We believe that when a state has good law, it is up to the state itself and advocates within the state to enforce that law. Our assumption is that good law is the cornerstone of any state's commitment to the rights of its children.



2nd Edition: *A Child's Right to Counsel*
Grading Methodology Point Distribution

Criteria	Details	Points
1. Does state law mandate that attorneys be appointed for children in dependency proceedings? *Maximum Points: 40*	▪ Independent counsel is required for all children ▪ Independent counsel is required for all children unless the court finds that the child would not benefit from the appointment of counsel ▪ Independent counsel is required for all children with minor restrictions (*e.g.*, counsel is not required for children under age 7) ▪ Independent counsel is required for all children with major restrictions (*e.g.*, counsel is not required for children under an age higher than 7) ▪ Independent counsel is provided on a discretionary basis only ▪ No state law or court rule provides for the appointment of counsel	40 35 30 20 15 0
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment? *Maximum Points: 10*	▪ Appointment lasts through entire juvenile court proceedings and on appeal ▪ Appointment of counsel on appeal expressly guaranteed only when child is the appellant ▪ Appointment lasts through entire juvenile court proceedings but not on appeal ▪ No state law defines the duration of appointment for children's counsel	10 8 5 0
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner? *Maximum Points: 20*	▪ Client-directed counsel is required ▪ Client-directed counsel is required with minor exceptions ▪ Client-directed counsel is required with major exceptions ▪ Counsel is required to articulate, but not advocate for, the child's wishes ▪ Client-directed counsel is provided only on a discretionary basis ▪ Law is vague regarding client-directed representation ▪ Counsel is required to advocate only for the best interests of the child	20 15 12 6 4 3 0
4. To what extent does state law require specialized education and/or training requirements for child's counsel? Is such education and/or training required to include multidisciplinary elements? *Maximum Points: 10*	▪ Specialized education and/or training is required for child's counsel; multidisciplinary elements are expressly required ▪ Specialized education and/or training is required for child's counsel; multidisciplinary elements are impliedly required ▪ Specialized education and/or training is required for child's counsel; multidisciplinary elements are neither expressly nor impliedly required ▪ Specialized education and/or training is required for GALs (who may be attorneys) ▪ Specialized education and/or training is encouraged, but not required, for child's counsel ▪ No specialized education and/or training is required	10 9 8 6 3 0
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party? *Maximum Points: 10*	▪ Child is expressly given the legal status of party with all rights appurtenant thereto ▪ Child is expressly given the legal status of party, but specific rights are withheld <u>OR</u> child is not expressly given the legal status of party, but one or more of the following specific rights are expressly granted: the right to notice, the right to attend hearings, the right to participate in hearings, and/or the right to appeal ▪ Child is not given the legal status of party or any of the rights specified above	10 5 0
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings? *Maximum Points: 10*	▪ The Rules of Professional Conduct apply to children's counsel ▪ The Rules of Professional Conduct apply to children's counsel with minor exceptions (*e.g.*, children's counsel are immune for ordinary negligence) ▪ The Rules of Professional Conduct apply to children's counsel with major exceptions (*e.g.*, children's counsel have blanket immunity) ▪ The Rules of Professional Conduct do not apply to children's counsel	10 6 4 0
Extra Credit: Caseload Standards		
Does state law address caseload standards for children's counsel in dependency proceedings? *Maximum Extra Credit Points: 5*	▪ State statute and/or state court rule requires children's counsel to comply with specific reasonable caseload standards ▪ State statute and/or state court rule acknowledges the need for children's counsel to maintain reasonable caseload standards, but does not set specific caseload requirements	up to 5 up to 3

GRADES AT A GLANCE

State	Score	Grade
Alabama	73	C
Alaska	71	C
Arizona	63	D
Arkansas	77	C
California	82	B
Colorado	73	C
Connecticut	103	A+
Delaware	51	F
District of Columbia	78	C
Florida	58	F
Georgia	68	D
Hawaii	55	F
Idaho	45	F
Illinois	63	D
Indiana	43	F
Iowa	90	A
Kansas	86	B
Kentucky	68	D
Louisiana	95	A
Maine	52	F
Maryland	93	A
Massachusetts	104	A+
Michigan	76	C
Minnesota	70	C
Mississippi	96	A

State	Score	Grade
Missouri	61	D
Montana	79	C
Nebraska	76	C
Nevada	71	C
New Hampshire	66	D
New Jersey	88	B
New Mexico	92	A
New York	98	A
North Carolina	82	B
North Dakota	55	F
Ohio	86	B
Oklahoma	93	A
Oregon	83	B
Pennsylvania	82	B
Rhode Island	84	B
South Carolina	76	C
South Dakota	65	D
Tennessee	87	B
Texas	85	B
Utah	77	C
Vermont	90	A
Virginia	77	C
Washington	61	D
West Virginia	93	A
Wisconsin	76	C
Wyoming	83	B

POINT DISTRIBUTION

State	Criterion 1	Criterion 2	Criterion 3	Criterion 4	Criterion 5	Criterion 6	Extra Credit	Final Score
Alabama	40	5	0	8	10	10	0	73
Alaska	15	10	20	6	10	10	0	71
Arizona	15	10	20	3	5	10	0	63
Arkansas	40	5	6	10	5	6	5	77
California	35	8	6	10	10	10	3	82
Colorado	40	10	0	8	5	10	0	73
Connecticut	40	10	20	10	10	10	3	103
Delaware	15	10	6	9	5	6	0	51
District of Columbia	40	10	6	9	5	5	3	78
Florida	15	0	20	3	10	10	0	58
Georgia	20	10	12	6	10	10	0	68
Hawaii	15	0	20	0	10	10	0	55
Idaho	15	5	4	6	5	10	0	45
Illinois	15	5	20	3	10	10	0	63
Indiana	15	5	3	0	10	10	0	43
Iowa	40	10	20	0	10	10	0	90
Kansas	40	10	6	10	10	10	0	86
Kentucky	40	5	3	0	10	10	0	68
Louisiana	40	10	20	10	5	10	0	95
Maine	15	10	6	6	5	10	0	52
Maryland	40	10	20	3	10	10	0	93
Massachusetts	40	10	20	9	10	10	5	104
Michigan	40	10	6	0	10	10	0	76
Minnesota	20	10	20	0	10	10	0	70
Mississippi	40	10	20	6	10	10	0	96
Missouri	15	10	6	10	10	10	0	61
Montana	40	10	3	6	10	10	0	79
Nebraska	40	10	3	3	10	10	0	76
Nevada	15	10	20	6	10	10	0	71
New Hampshire	15	5	20	6	10	10	0	66
New Jersey	40	5	20	8	5	10	0	88

States	Criteria 1	Criteria 2	Criteria 3	Criteria 4	Criteria 5	Criteria 6	Extra Credit	Final Score
New Mexico	40	10	12	10	10	10	0	92
New York	40	10	20	8	5	10	5	98
North Carolina	40	10	6	6	10	10	0	82
North Dakota	15	5	20	0	5	10	0	55
Ohio	40	5	20	6	5	10	0	86
Oklahoma	40	10	20	3	10	10	0	93
Oregon	20	10	20	10	10	10	3	83
Pennsylvania	40	10	12	0	10	10	0	82
Rhode Island	40	10	6	8	10	10	0	84
South Carolina	40	10	6	0	10	10	0	76
South Dakota	40	10	0	0	5	10	0	65
Tennessee	40	10	20	8	5	4	0	87
Texas	40	5	20	9	5	6	0	85
Utah	40	10	6	9	5	6	1	77
Vermont	40	10	20	0	10	10	0	90
Virginia	40	10	6	10	5	6	0	77
Washington	15	5	20	6	5	10	0	61
West Virginia	40	5	20	8	10	10	0	93
Wisconsin	30	5	20	6	5	10	0	76
Wyoming	40	10	6	8	10	4	5	83

GRADE DISTRIBUTION

Grade	States
A	Connecticut (A+), Iowa, Louisiana, Maryland, Massachusetts (A+), Mississippi, New Mexico, New York, Oklahoma, Vermont, West Virginia
B	California, Kansas, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Wyoming
C	Alabama, Alaska, Arkansas, Colorado, District of Columbia, Michigan, Minnesota, Montana, Nebraska, Nevada, South Carolina, Utah, Virginia, Wisconsin
D	Arizona, Georgia, Illinois, Kentucky, Missouri, New Hampshire, South Dakota, Washington
F	Delaware, Florida, Hawaii, Idaho, Indiana, Maine, North Dakota

Alabama

Score: 73 **Grade: C**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "In all dependency and termination of parental rights proceedings, the juvenile court shall appoint a guardian ad litem for a child" (ALA §12-15-304(a)). "Guardian ad litem. A licensed attorney appointed by a juvenile court to protect the best interests of an individual without being bound by the expressed wishes of that individual" (ALA §12-15-102(10)).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 5 out of 10** The duties of the guardian ad litem include "attend[ing] all juvenile court hearings scheduled by the juvenile court" (ALA § 12-15-304(b)(4)). Basis for deduction: Alabama law requires the attorney GAL to attend and participate in all juvenile court proceedings, but does not expressly assure the attorney GAL's participation on appeal.
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 0 out of 20** The guardian ad litem is appointed "to protect the best interests of an individual without being bound by the expressed wishes of that individual" (ALA §12-15-102(10)). Basis for deduction: Alabama law does not provide client-directed counsel to children.
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 8 out of 10** "Before being appointed by the juvenile court, every guardian ad litem appointed in juvenile dependency or termination of parental rights cases shall receive training appropriate to their role" (ALA §12-15-304(c)). Basis for deduction: Although requiring attorney GALs to receive training appropriate to their role, Alabama law does not expressly require that this training be multidisciplinary in scope.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** The child is a party to the proceedings (ALA § 12-15-304(a), ALA § 12-15-308(c)). The child has a right, as a party, to written notice of the hearings and hearings on the merits of the petition (Rule 13(C), Ala.R.Juv.P.). The child has a right, as a party, to appeal a case (Ala.Code 1975, § 12-15-601). If the juvenile court finds that it is in the best interests of the child under the jurisdiction of the juvenile court, the child may be temporarily excluded from the hearings, except while allegations of delinquency or in need of supervision are being heard (Ala.Code § 12-15-129).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Ala. Rules of Prof. Conduct Rule 1.14).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Alabama law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTES:

★ Although Alabama law does not specifically address caseloads for attorney GALs in dependency proceedings, Alabama statutes do recognize the relationship between reasonably sized caseloads and the protection of individual rights in dependency proceedings. ALA § 12-15-106 deals specifically with the caseloads of hearing officers and authorizes the appointment of one or more referee positions based on the juvenile and child support caseload in a specific circuit. We commend Alabama for its recognition of the importance of caseload standards and urge Alabama to extend caseload standards to attorneys representing children in dependency proceedings.

★ Alabama passed a 2008 amendment (Acts 2008, No. 08-277) which revised and reorganized major portions of the Alabama Juvenile Justice Act to, among other things, clarify and make more stringent the requirement that every child in dependency proceedings be provided an attorney. Additionally, the 2008 amendment codified into law training standards for attorney GALs (standards had previously been adopted by the Court Improvement Program). Due to Alabama's efforts in this regard, its grade has improved accordingly.

Alaska

Score: 71 **Grade: C**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 out of 40

"Whenever in the course of proceedings instituted under this chapter it appears to the court that the welfare of a child will be promoted by the appointment of an attorney to represent the child, the court may make the appointment" (AS §47.10.050(a)). The court shall appoint counsel "for a child when the court determines that the interests of justice require the appointment of an attorney to represent the child's expressed interests" (AK CINA Rule 12(b)(3)).

Basis for deduction: Alaska law provides that appointment of an attorney for a child in dependency proceedings is discretionary, not mandatory.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

"A child or the child's...attorney, acting on the child's behalf,...may appeal a judgment or order, or the stay, modification, setting aside, revocation, or enlargement of a judgment or order issued by the court under this chapter" (AS § 47.10.080(I)).

"The court shall inform the parties at the first hearing at which they are present of their respective rights to be represented by counsel at all stages of the proceedings" (AK CINA Rule 12(a)).

3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?

Points: 20 out of 20

Alaska law differentiates between the appointment of an attorney to represent the preferences and expressed interests of the child and the appointment of a GAL to represent the child's best interests. The court shall appoint counsel pursuant to Administrative Rule 12 "for a child when the court determines that the interests of justice require the appointment of an attorney to represent the child's expressed interests" (AK CINA Rule 12(b)(3)).

4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?

Points: 6 out of 10

"A GAL should possess knowledge, skill, experience, training, or education that allows the GAL to conduct an independent, thorough, and impartial investigation, and to advocate effectively for the best interests of the child" (AK CINA Rule 11(c)(1)).

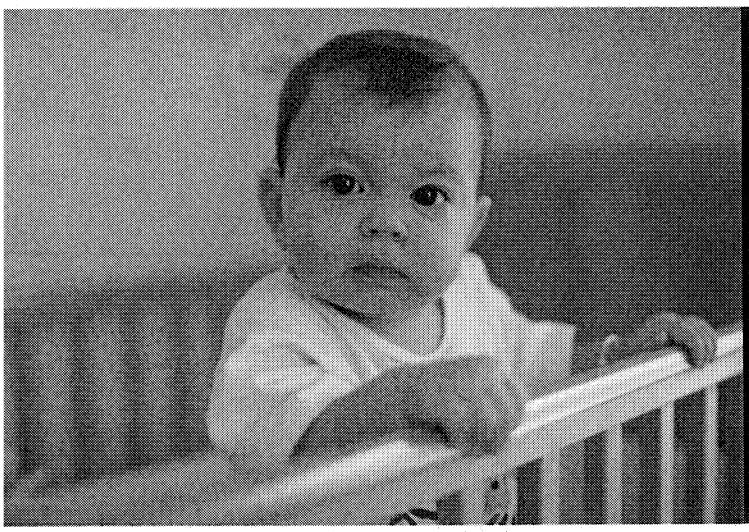
"Within seven days of the court's appointment, the designated GAL must file an entry of appearance indicating whether or not the GAL is an attorney and certifying that the GAL has completed guardian ad litem training through OPA [the Office of Public

	Advocacy]" (AK CINA Rule 11(a)(3)). Basis for deduction: While Alaska law requires GALs to have specialized education and/or training, it neither encourages nor requires attorneys appointed to represent children in dependency proceedings to have specialized education and/or training.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** "'Party' means the child,..." (AK CINA Rule 2(l)) who appears to have all rights appurtenant thereto. Although there are circumstances when a child may be excluded from a hearing, those circumstances are limited to when a child "is not of suitable age to understand or participate in the hearing" (AK CINA Rule 3(b)), when "attendance would be detrimental to the child" (AK CINA Rule 3(b)), or when "the effect of ... testimony would psychologically harm the child" (AK CINA Rule 3(d)).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Alaska R. Prof. Conduct 1.14).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Alaska law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTES:

★ In Alaska, GALs are trained via an extensive specialized training program provided by the Office of Public Advocacy to inform children during their first meeting that they may have the right to appointment of counsel and that the appointment of counsel can occur at any time during the proceedings. GALs are also trained to request the appointment of an attorney if a child expresses an interest different than the GAL's position on a substantive issue such as placement. We encourage Alaska to also adopt laws requiring specialized training for the attorney representing children in dependency court.

★ In Alaska, GALs do not routinely request attorney appointments for children under the age of nine. We encourage Alaska advocates to study the child development literature which shows that children begin to be able to participate in decision-making processes earlier.



Arizona

Score: 63 **Grade: D**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 out of 40

"In all juvenile court proceedings in which the dependency petition includes an allegation that the juvenile is abused or neglected, the court shall appoint a guardian ad litem to protect the juvenile's best interests. This guardian may be an attorney or a court appointed special advocate" (A.R.S. § 8-221(I)).

Basis for deduction: Under Arizona law, the appointment of an attorney to represent a child in dependency proceedings is discretionary, not mandatory. Although the court is required to appoint a GAL, the GAL does not have to be an attorney.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

"The judge of the juvenile court shall appoint an attorney for an indigent party appealing a final order of the juvenile court" (A.R.S. § 8-235(D)). "When required by law, the presiding judge of the juvenile court shall appoint an attorney for a party to an appeal from a final order of the juvenile court. Unless the presiding judge of the juvenile court finds on motion or on its own initiative that a party who had appointed counsel before the juvenile court is currently able to employ counsel, that party may continue with appointed counsel on appeal without further authorization, subject to substitution of new appointed counsel in the discretion of the presiding judge of the juvenile court" (Ariz. R. Juv. P., Rule 103).

3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?

Points: 20 out of 20

When an attorney is appointed, the first obligation is to represent the child's wishes (Arizona Ethics Opinion # 86-13). An attorney "shall, as far as reasonably possible, maintain a normal client-lawyer relationship" with a client whose capacity to make adequately considered decisions in connection with the representation is diminished due to minority (Az Ethics Rule 1.14(a)).

4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?

Points: 3 out of 10

The Arizona Supreme Court, Administrative Office of the Courts has published Statewide Standards and Training Guidelines for Attorneys in Dependency Cases which states "attorneys must be familiar with the substantive dependency law. Attorneys have an obligation to stay abreast of changes and developments in relevant Federal and State laws, state regulations, and relevant court decisions. They should also receive training on child development, substance abuse, behavioral health and

	other common issues including affects of child abuse and neglect." (Arizona Statewide Standards and Training Guidelines for Attorneys in Dependency Cases, adopted December, 2000.) Basis for deduction: "The presiding juvenile court judge in each county may modify [the above] standards for good cause" (Arizona Statewide Standards and Training Guidelines for Attorneys in Dependency Cases, adopted December, 2000). Thus, specialized education and/or training is encouraged, but not required, for the child's counsel as the standards are not mandatory unless incorporated into county contracts or required by specific court.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** "Reference to a party to the action means a child..." (Ariz. R. Juv. P. Rule 37(A)). "Any aggrieved party in any juvenile court proceeding under this title may appeal from a final order of the juvenile court to the court of appeals..." (A.R.S. § 8-235(A)). Basis for deduction: Although it recognizes a child to be a party, Arizona law does not guarantee children the right to be present at or participate in dependency hearings ("[a] child, through the child's guardian ad litem or attorney, has the right to be informed of, to be present at and to be heard in any proceeding involving dependency or termination of parental rights" (A.R.S. § 8-522(A), emphasis added).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability or and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client['']s capacity to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Ariz. Rules of Prof'l Conduct 1.14(a)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Arizona law does not address caseload standards for attorneys representing children in dependency proceedings.

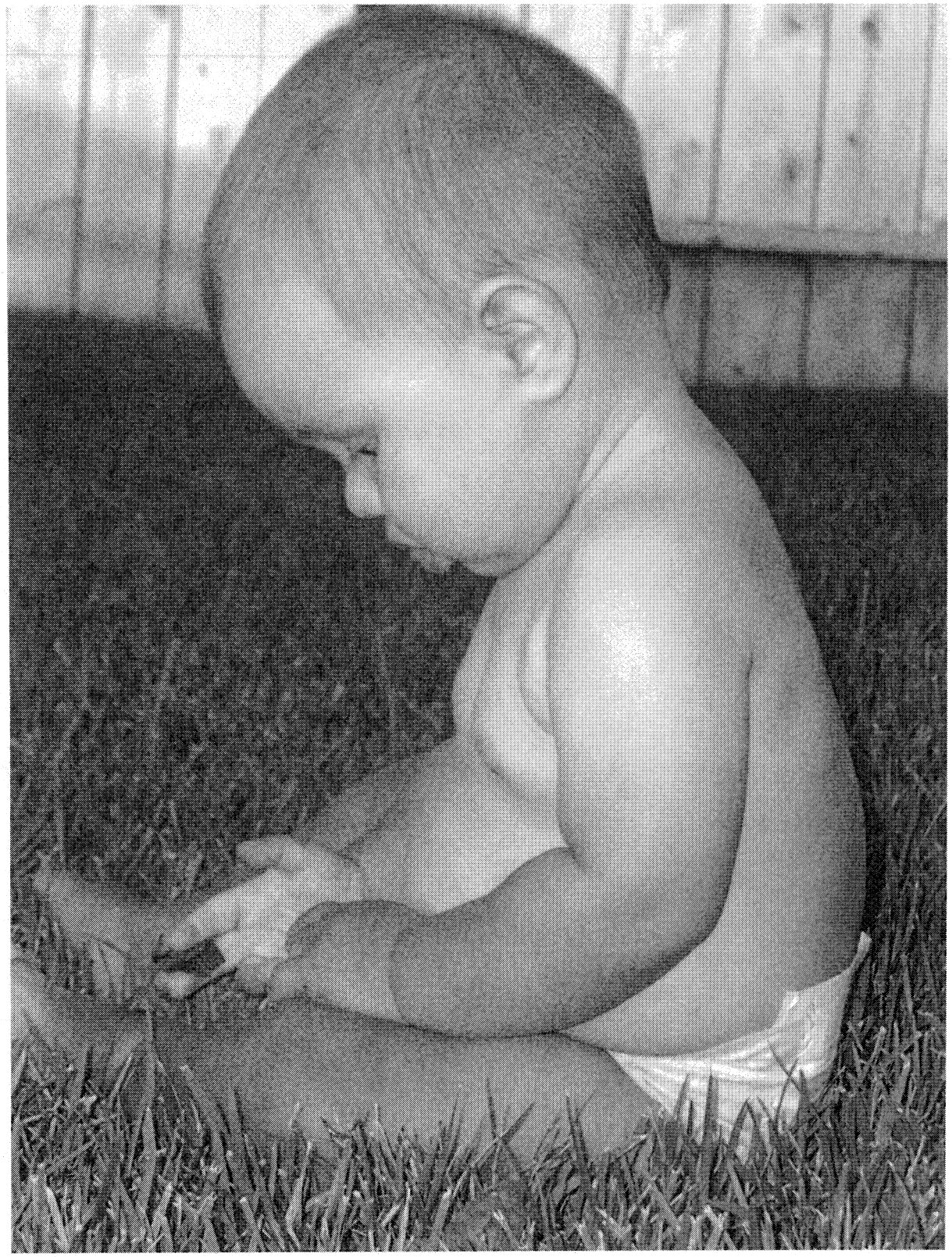
SIDEBAR NOTES:

★ Under Arizona law, the appointment of an attorney for children in dependency proceedings is discretionary, and as such Arizona merits only 15 points for Criteria # 1. However, in First Star's 2007 Report Card, Arizona was inadvertently awarded 40 points for Criteria #1, which is only appropriate where the appointment of an attorney for children in dependency proceedings is mandatory. First Star and CAI regret the error in the 2007 Report Card.

★ In Arizona, it is typical for a child to always have an attorney appointed. For example, in Maricopa County (where Phoenix is located), the initial appointment is always a GAL but the GAL is an attorney. We encourage Arizona to adopt laws which comport to their practice of regularly appointing attorneys to represent children in dependency proceedings.

★ A modification to the Rules of Procedures for the Juvenile Court Rule 41 is currently pending Court consideration. This rule would not only encourage a child's presence at court hearings, but mandate it, unless good cause is shown. If the Rule is accepted as currently drafted, the new version of Rule 41 will read, "at every substantive dependency hearing, such as the Preliminary Protective Hearing, the Report and Review Hearing and the Permanency Hearings, the child who is the subject of a dependency proceeding shall be present. Upon motion of the child, the court may enter a written order excusing a child from each hearing, for good cause shown. The Court shall determine whether counsel for the child had meaningful contact with the client prior to each substantive hearing. Additionally, on July 13, 2009, Arizona Governor Jan Brewer signed SB1209, which goes into effect on September 30, 2009 and establishes bill of rights for children in foster care. These rights include attending the child's court hearing and speaking to the judge. Based on this change and the modification to the Rules of Procedure for the Juvenile Court Rule 41 currently being considered, Arizona would receive five additional points for Criterion # 5; however we encourage Arizona to additionally amend ARS § 8-522(A), which gives a child the right to be present at a hearing only through his/her guardian ad litem, and ARS § 8-847, which indicates that only a child 12 or older shall receive notice of the review hearings and the right to participate in the hearings.

★ Arizona Ethics Opinions address the ethical problems that result when prosecutors and public defenders have caseloads too high to enable them to provide adequate representation. The same is true with regard to attorneys representing children in dependency proceedings, and First Star and CAI encourage Arizona to adopt maximum caseload standards for attorneys engaged in this specific practice. While Arizona state statutes and court rules do not mandate training for child's counsel, the Court has worked tirelessly to ensure attorneys who represent all parties in dependency cases participate in various training opportunities throughout the year. In fact in 2000, the Statewide Court Improvement Advisory Workgroup, a multidisciplinary workgroup, developed attorney standards and attorney training curriculum based on these standards. At its December 2000 meeting, the Arizona Judicial Council (AJC), which was created to assist the Supreme Court and the Chief Justice in the development and implementation of policies and procedures for the administration of all courts, uniformity in court operations and the coordination of court services that improve the administration of justice in the state of Arizona, moved and passed to accept the attorney standards and authorized the development of an attorney training curriculum based on these standards. This training is offered regionally to each county throughout the state each year.

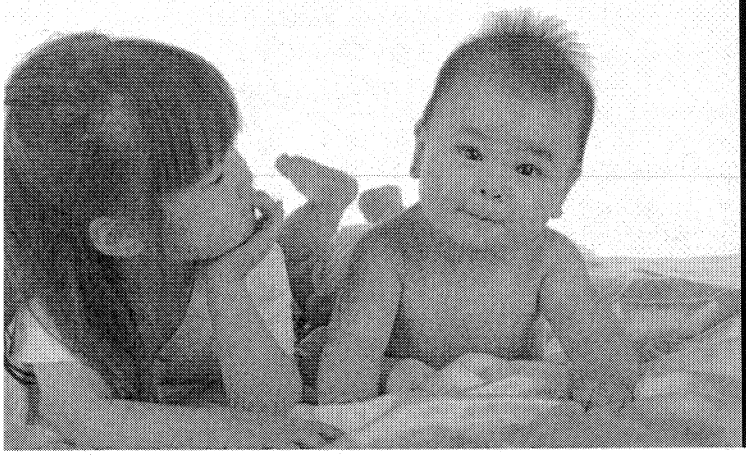


Arkansas

Score: 77 **Grade: C**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "The court shall appoint an attorney ad litem...to represent the...juvenile when a dependency-neglect petition is filed or when an emergency ex parte order is entered in a dependency-neglect case, whichever occurs earlier" (A.C.A. § 9-27-316(f)(1)).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 5 out of 10** The attorney ad litem's participation is authorized to "represent the juvenile at all appearances before the court" (A.C.A. § 9-27-316(c)). Basis for deduction: Arkansas law authorizes a child's attorney to participate in all appearances before the juvenile division of the circuit court, but does not expressly state that this representation will continue on appeal.
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 6 out of 20** "An attorney ad litem shall represent the best interest of the juvenile" (A.C.A. § 9-27-316(f)(5)(A)). If the juvenile's wishes differ from the attorney's determination of the juvenile's best interest, the attorney ad litem shall communicate the juvenile's wishes to the court in addition to presenting his or her determination of the juvenile's best interest" (A.C.A. § 9-27-316(f)(5)(B)). Basis for deduction: Arkansas law requires the attorney ad litem to articulate, but not advocate for, the child's expressed wishes.
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 10 out of 10** "The court shall appoint an attorney ad litem who shall meet standards and qualifications established by the Supreme Court to represent the best interest of the juvenile" (ARK §9-27-316(f)(1)). "An attorney ad litem shall participate in 10 hours of initial legal education prior to appointment and shall participate in 4 hours of CLE each year thereafter" (AR Sup. Ct. Adm. Order No. 15 § 2(l) (2008)).

	"Prior to appointment, an attorney shall have initial education to include approved legal education of not less than 10 hours in the two years prior to the date an attorney qualifies as a court-appointed attorney for children or indigent parents in dependency-neglect cases. Initial training must include: child development; dynamics of abuse and neglect; attorney roles & responsibilities, including ethical considerations; relevant state law, federal law, case law, and rules; family dynamics, which may include but is not limited to, the following topics: substance abuse, domestic violence and mental health issues; and Division of Children and Family Services (DCFS) policies and procedures. Additional initial legal education may include, but is not limited to: grief and attachment; custody and visitation; resources and services; and trial and appellate advocacy" (AR Sup. Ct. Adm. Order No. 15 § 1 (2008)).
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** Basis for deduction: While Arkansas law does not expressly provide children with party status, it does expressly provide them with some specific rights through their attorney ad litem, such as the right to be present at hearings, unless excused for good cause (the court may "[p]roceed to hear the case only if the juvenile is present or excused for good cause by the court" (A.C.A. § 9-27-325(c)(1)(A))).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 6 out of 10** "When a client's ability to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Ark. R. of. Prof. Conduct 1.14(a)). Basis for deduction: Arkansas law provides that "[a]n attorney ad litem, functioning as an arm of the court, is afforded immunity against ordinary negligence for actions taken in furtherance of his or her appointment" (AR Sup. Ct. Adm. Order No. 15 § 2(k) (2008)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 5 extra credit points** "A full-time attorney shall not have more than 75 dependency-neglect cases, and a part-time attorney shall not have more than 25 dependency-neglect cases. Any deviations from this standard must be approved by the Administrative Office of the Courts which shall consider the following, including but not limited to: the number of counties and geographic area in a judicial district, the experience and expertise of the attorney ad litem, area resources, the availability of CASA volunteers, the attorney's legal practice commitments and the proportion of the attorney's practice dedicated to representing children in dependency-neglect cases, the availability of qualified attorneys in the geographic area, and the availability of funding. An attorney who is within 5 cases of reaching the maximum caseload shall notify the Administrative Office of the Courts and the Juvenile Division Judge" (AR Sup. Ct. Adm. Order No. 15 § 2 (n)).



California

Score: 82 **Grade: B**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 35 out of 40

"If a child is not represented by counsel, the court shall appoint counsel for the child unless the court finds that the child would not benefit from the appointment of counsel" (Cal. Wel. & Inst. Code §317(c)).

Basis for deduction: Under California law, a court does not have to appoint an attorney for a child if the court finds that the child understands the nature of the proceedings; the child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and under the circumstances of the case, the child would not gain any benefit by being represented by counsel. If the court finds that the child would not benefit from representation by counsel, the court must make a finding on the record as to each of these criteria and state the reasons for each finding. Also, if the court finds that the child would not benefit from representation by counsel, the court must appoint a Court Appointed Special Advocate volunteer for the child, to serve as the CAPTA guardian ad litem (Cal. Rules of Ct., Rule 5.660(b)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 8 out of 10

"A notice of appeal on behalf of the child must be filed by the child's trial counsel, guardian ad litem, or the child if the child is seeking appellate relief from the trial court's judgment or order....In any juvenile dependency proceeding in which a party other than the child files a notice of appeal, if the child's trial counsel or guardian ad litem concludes that, for purposes of the appeal, the child's best interests cannot be protected without the appointment of separate counsel on appeal, the child's trial counsel or guardian ad litem must file a recommendation in the Court of Appeal requesting appointment of separate counsel" (Cal. Rules of Ct., Rule 5.661(b)–(c)).

Basis for deduction: Under California law, an attorney is automatically appointed when the child is the appellant; when a party other than the child is the appellant, the appointment of counsel is discretionary.

3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?

Points: 6 out of 20

"The counsel for the child shall be charged in general with the representation of the child's interests....In any case in which the child is four years of age or older, counsel shall interview the child to determine the child's wishes and to assess the child's well-being, and shall advise the court of the child's wishes. Counsel for the child shall not advocate for the return of the child if, to the best of his or her knowledge, that return

	conflicts with the protection and safety of the child" (Cal. Wel. & Inst. Code §317(e)). "A primary responsibility of any counsel appointed to represent a child...shall be to advocate for the protection, safety, and physical and emotional well-being of the child" (Cal. Wel. & Inst. Code § 317(c)). Basis for deduction: California law authorizes the child's attorney to articulate, but not advocate for, the child's expressed wishes.
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 10 out of 10** "The Judicial Council shall...adopt rules of court regarding the appointment of competent counsel in dependency proceedings" (Cal. Wel. & Inst. Code § 317.6). "'Competent counsel' means an attorney who is a member in good standing of the State Bar of California, who has participated in training in the law of juvenile dependency, and who demonstrates adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes, rules of court, and cases relevant to such proceedings....Only those attorneys who have completed a minimum of eight hours of training or education in the area of juvenile dependency, or who have sufficient recent experience in dependency proceedings in which the attorney has demonstrated competency, may be appointed to represent parties. In addition to a summary of dependency law and related statutes and cases, training and education for attorneys must include information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and reasonable efforts. Within every three years attorneys must complete at least eight hours of continuing education related to dependency proceedings" (Cal. Rules of Ct., Rule 5.660(d)(1)–(3)).
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** "Each minor who is the subject of a dependency proceeding is a party to that proceeding" (Cal. Wel. & Inst. Code § 317.5(b)), and has the rights appurtenant thereto.
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "Attorneys or their agents are expected to meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally, to contact social workers and other professionals associated with the client's case, to work with other counsel and the court to resolve disputed aspects of a case without contested hearing, and to adhere to the mandated timelines. The attorney for the child must have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship" (Cal. Rules of Ct., Rule 5.660(d)(4)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 3 extra credit points** "The appointed counsel shall have a caseload and training that ensures adequate representation of the child. The Judicial Council shall promulgate rules of court that establish caseload standards..." (Cal. Wel. & Inst. Code § 317 (c)). "The attorney for a child must have a caseload that allows the attorney to perform the duties required by section 317(e) and this rule, and to otherwise adequately counsel and represent the

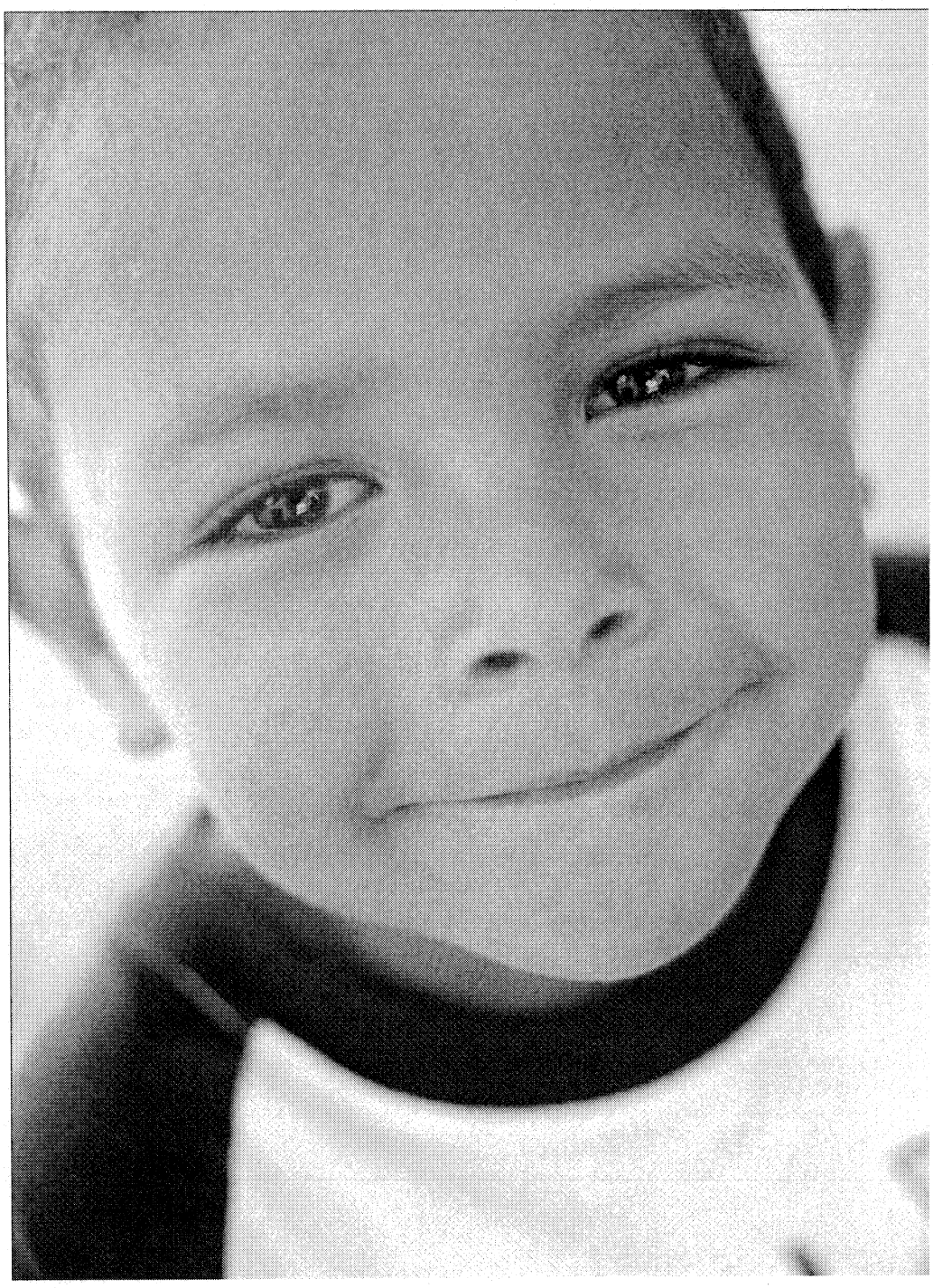
child. To enhance the quality of representation afforded to children, attorneys appointed under this rule must not maintain a maximum full-time caseload that is greater than that which allows them to meet the requirements stated in (3), (4), and (5)" (Cal. Rules of Ct., Rule 5.660(d)(6).

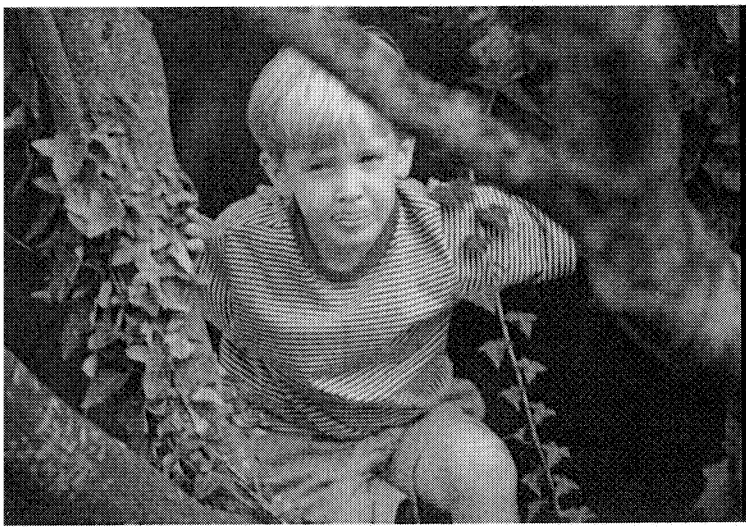
Although California law provides generally that caseloads must allow an attorney to perform the duties specified and to otherwise adequately counsel and represent their child clients, no specific caseload standards have been adopted into statute or court rule to date. Although in October 2007 the Judicial Council adopted the following caseload standard: "Maximum number of clients per FTE dependency attorney: 188-200," that standard has not yet been amended into a rule of court.

SIDEBAR NOTES:

★ Some advocates in California note that California's statutory structure causes a difficult competition between the lawyer's duty of loyalty and zealous advocacy for the client and the requirement that California attorneys not advocate for the return of a child if, to the best of the attorney's knowledge, return would conflict with the protection and safety of the child. Advocates who favor the "attorney -- client directed" model are concerned that "protection of the child" may be too vague and allow attorneys to substitute their own view of "best interests" in lieu of a child's considered preferences. Those advocates contend that although a court may well -- after considering all of the evidence -- decide contrary to those preferences, a mature child's views are entitled to be heard as part of the process determining his or her future parents and care.

★ AB 3051 (Jones) (Chapter 166, Statutes of 2008) provides children subject to dependency hearings a greater opportunity to attend and participate in their hearings by requiring the court to allow a child present at his/her juvenile court hearing who so desires to address the court and participate in the hearing; requiring the court in a juvenile court hearing, where the child who is the subject of the hearing is 10 years of age or older and is not present at the hearing, to determine whether the minor not only was properly notified, but also was given an opportunity to attend; requiring the court, if the child was not properly notified or, if he/she wished to be present and was not given an opportunity to be present, to continue the hearing to allow the child to be present, unless the court finds that it is in the best interest of the child not to continue the hearing; requiring the court to continue the hearing only for that period of time necessary to provide notice and secure the presence of the child; and permitting the court to issue any and all orders reasonably necessary to ensure that the child has an opportunity to be present.





Colorado

Score: 73 **Grade: C**

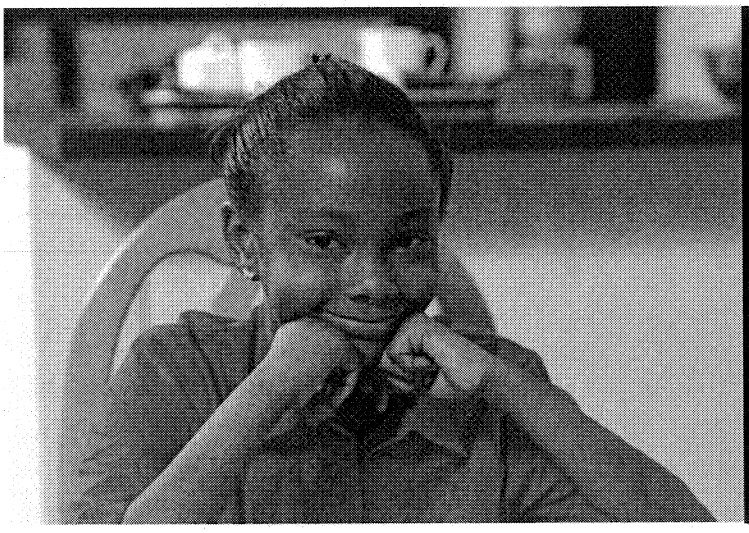
1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "Upon the filing of a petition under section 19-3-502 that alleges abuse or neglect of a minor child, the court shall appoint a guardian ad litem" (C.R.S. §19-3-203(3)). A guardian ad litem, "if appointed to represent a person in a dependency and neglect proceeding..., shall be an attorney-at-law licensed to practice in Colorado" (C.R.S. §19-1-103(59)).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** The guardian ad litem "shall...appeal matters to the court of appeals or the supreme court, and participate further in the proceedings to the degree necessary to adequately represent the child" (C.R.S. § 19-3-203(3)).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 0 out of 20** "The guardian ad litem shall be charged in general with the representation of the child's interests" (C.R.S. §19-3-203(3)). Basis for deduction: Colorado law does not require the child's attorney to advocate for the expressed wishes of the child in a client-directed manner.
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 8 out of 10** "Attorneys appointed as GALs, attorney child and family investigators or Child's Representatives shall possess the knowledge, expertise and training necessary to perform the court appointment (Colorado Chief Justice Directive 04-06(V)(A)(1)). "In addition, GALs, attorney child and family investigators and Child's Representatives shall obtain 10 hours of the required continuing legal education courses or any other modified training requirements established by subsequent Chief Justice Directive practice standards, rule or statute, which are relevant to the appointment and that enhance the attorney's knowledge of the issues in best interest representation. These requirements should be met prior to attorney's first appointment and per legal education reporting period. The attorney shall provide the OCR with proof of compliance with this requirement with his/her application to provide attorney services or contract renewal for the OCR" (Colorado Chief Justice Directive 04-06(V)(A)(2)).

	Basis for deduction: Although requiring attorney GALs to have the knowledge, expertise, and training necessary to perform the court appointment, Colorado law does not expressly require that this training be multidisciplinary in scope.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** Colorado law provides children with some rights, such as the right to have their caretakers "provide prior notice to the child of all hearings and reviews held regarding the child" (C.R.S. § 19-3-502(7)). Basis for deduction: Colorado law provides party status to the child's GAL, but not expressly to the child ("[t]he guardian ad litem for the child shall have the right to participate in all proceedings as a party" (C.R.S. § 19-1-111(3)).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Colo. RPC 1.14(a)). "All attorneys appointed as a GAL...shall be subject to all of the rules and standards of the legal profession, including the additional responsibilities set forth by Colorado Rule of Professional Conduct 1.14" (Colorado Chief Justice Directive 04-06).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** No Colorado law regarding caseload standards for attorneys representing children in dependency proceedings was identified.

SIDEBAR NOTES:

★ Colorado's Office of the Child's Representative, the state agency charged with improving the representation for Colorado's children, requires all of its contracted attorneys to attend 10 hours of specified training each year. This training is typically multidisciplinary in nature. We commend Colorado for these efforts and urge Colorado to adopt these standards into law.

★ The Colorado Supreme Court is currently considering the case of *People v. Gabriesheski* (2008) 205 P.3d 441 which holds that a guardian ad litem for a child in all dependency and neglect cases should maintain a normal client-lawyer relationship as far as reasonably possible and, thus, the guardian ad litem is precluded from divulging the child's communications in the absence of a waiver. The Supreme Court's decision in this matter could affect Colorado's grade for Criteria #6 and is being closely watched by Colorado advocates.



Connecticut

Score: 103 **Grade: A+**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

"A child shall be represented by counsel...who shall be appointed by the court to represent the child and to act as guardian ad litem for the child" (Conn. Gen. Stat. § 46b-129a(2)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

"The child or youth...shall be represented by counsel in each and every phase of any and all proceedings in child protection matters, including appeals." (2009 Connecticut Practice Book § 32a-1(b).) "In family and juvenile matters and other matters involving minor children, counsel for the minor child and/or counsel for the guardian ad litem shall, within ten days of the filing of the appellee's brief, file either: (1) a brief, (2) a statement adopting the brief of either the appellant or an appellee, or (3) a detailed statement that the factual or legal issues on appeal do not implicate the child's interests (2009 Connecticut Practice Book § 67-13).

3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?

Points: 20 out of 20

"The primary role of any counsel for the child including the counsel who also serves as guardian ad litem, shall be to advocate for the child in accordance with the Rules of Professional Conduct. When a conflict arises between the child's wishes or position and that which counsel for the child believes is in the best interest of the child, the court shall appoint another person as guardian ad litem for the child. The guardian ad litem shall speak on behalf of the best interest of the child and is not required to be an attorney-at-law" (Conn. Gen. Stat. §46b-129(a)(2)).

4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?

Points: 10 out of 10

"The Chief Child Protection Attorney...shall...[e]stablish training...standards for the representation of children....The training standards for attorneys required by this subdivision shall be designed to ensure proficiency in the procedural and substantive law related to such matters and to establish a minimum level of proficiency in relevant subject areas, including, but not limited to, family violence, child development, behavioral health, educational disabilities and cultural competence" (Conn. Gen. Stat. § 46b-123d(a)(3)). All new contract attorneys are required to participate in three days of pre-service training, presented by the Center for Children's Advocacy and various state experts in the child welfare field and any contract attorney renewing an annual contract with the Chief Child Protection Agency must attend a minimum of two in-service trainings and two bi-monthly trainings offered through the Center for Children's Advocacy each year (The Second Annual Report of the Chief Child Protection Attorney, Commission on Child Protection (January 2009) at 23).

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** Connecticut law recognizes children as parties to dependency proceedings (see, *e.g.*, 2009 Conn. Practice Book § 32a-1 *et seq.*). Connecticut law also provides children with several explicit rights, such as the right to notice ("[t]he court shall provide notice to the child or youth, and the parent or guardian of such child or youth of the time and place of the court hearing on any such motion not less than fourteen days prior to such hearing" (Conn. Gen. Stat. § 46b-129(k)(1))).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "The primary role of any counsel for the child including the counsel who also serves as guardian ad litem, shall be to advocate for the child in accordance with the Rules of Professional Conduct" (Conn. Gen. Stat. § 46b-129a(2)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 3 extra credit points** "The Chief Child Protection Attorney...shall...[e]stablish...caseload standards for the representation of children" (Conn. Gen. Stat. § 46b-123d(a)(3)). According to the Commission on Child Protection (COCP), "[n]ew attorneys, unless they had prior experience practicing in juvenile matters, are only permitted 25 cases during their first year....Since taking over in July of 2006 the COCP has reduced the number of attorneys who have been appointed clients in excess of 150 from 53 attorneys to only 8 attorneys. The number of attorneys with client assignments in excess of 100 has been reduced from 73 to 31 attorneys" (The Second Annual Report of the Chief Child Protection Attorney, Commission on Child Protection (January 2009) at 26).

SIDEBAR NOTES:

★ Connecticut has legislatively delegated to the Commission on Child Protection the responsibility for providing a system of quality legal representation. Through that system the Standards of Practice and the contract for providing legal representation requires that attorneys remain on the case through disposition, as long as the child is committed and through adoption and appeal unless a separate appellate attorney is appointed. Additionally, if an 18-year-old client in DCF care wishes continued representation, the Commission will continue to compensate the attorney for work performed on behalf of that client. The Commission has also provided separate appellate contracts so that children can be represented by an attorney with expertise in appellate work in the event an appeal is taken by another party or the child wishes to appeal and the trial attorney chooses not to handle the appeal. The trial attorney stays the child's attorney for all other purposes providing continuity of representation.

★ Legislation seeking to amend C.G.S. § 46b-129a to provide children 7 and older with attorneys, as opposed to attorney/GAL's was proposed this year and will be proposed again in the 2010 session and now has the support of a key legislator who initially opposed the bill.

★ While C.G.S. § 46b-129a requires that the attorney act primarily as a client-directed advocate, some child advocates in Connecticut believe that the hybrid role of attorney/GAL and the provision requiring a separate GAL be requested if the attorney's opinion of the child's best interest conflicts with the child's position, is inconsistent with the Rules of Professional Conduct and diminishes the adequacy of the legal representation provided to children. The Commission has and will continue to propose legislation to provide children with traditional attorneys governed by the Rules of Professional Conduct requiring loyalty and confidentiality and that a GAL only be requested in circumstances where substantial harm is at risk.

Delaware

Score: 51 **Grade: F**

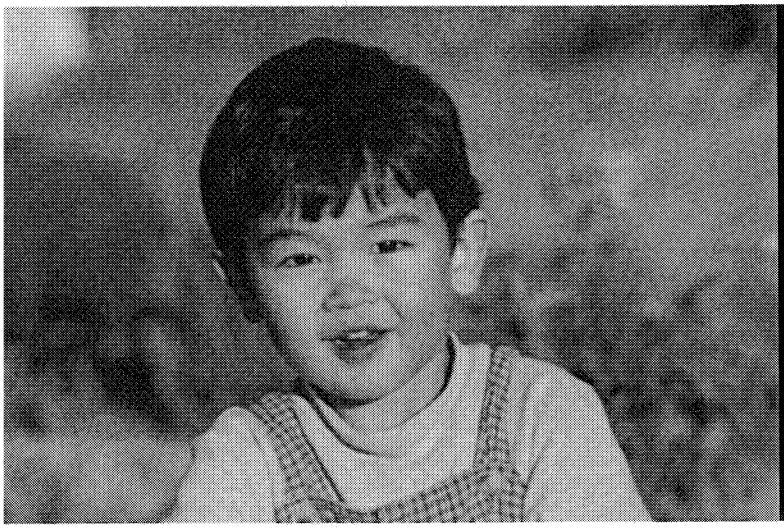
1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 15 out of 40** "In the event that the Family Court Judge determines…that an attorney guardian ad litem should be appointed, the Family Court Judge shall sign an order appointing an attorney guardian ad litem" (29 Del. C. § 9007A(b)(1)). When a petition is filed to place a child in State custody, "the Court shall appoint an attorney authorized to practice law in this State or a Court-Appointed Special Advocate to represent the best interests of the child." (13 Del. C. § 2504(f).) Basis for deduction: Under Delaware law, the appointment of an attorney guardian ad litem for a child in a dependency proceeding is discretionary.
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** "[T]he attorney guardian ad litem shall...[p]articipate in all depositions, negotiations, discovery, pretrial conferences, hearings and appeals" (29 Del. C. § 9007A(c)(6)). "The appointment shall last until the attorney guardian ad litem is released from responsibility by order of the Court, or until the attorney guardian ad litem's commitment to the Court ends" (29 Del. C. § 9007A(b)(2)).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 6 out of 20** Basis for deduction: Although attorney GALs are required to "ascertain the wishes of the child and make the child's wishes known to the Court" (29 Del. C. § 9007A(c)(14)), "the scope of the representation of the child is the child's best interests" (29 Del. C. § 9007A(c)). Thus, attorney GALs are required to articulate, but not advocate for, a child's expressed wishes.
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 9 out of 10** "[T]he attorney guardian ad litem shall...[b]e trained by the Office of the Child Advocate or a course approved by the Office prior to representing any child before the Court. The attorney guardian ad litem shall be required to participate in ongoing training regarding child welfare" (29 Del. C. § 9007A(c)(2)). Basis for deduction: Although multidisciplinary elements are impliedly required as part of the specialized education and/or training, they are not expressly required.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant	**Points: 5 out of 10** "The attorney guardian ad litem shall be a party to any child welfare proceeding in

thereto? If not, does state law expressly give the child some of the rights of a party?	which the child is the subject, and shall possess all the procedural and substantive rights of a party" (29 Del. AC. § 9007A(b)(3)). Basis for deduction: Although Delaware law expressly grants party status to the attorney guardian ad litem, it does not expressly grant party status to the child. However, the child does have some rights through his/her attorney GAL, such as the right to appeal (29 Del. AC. § 9007A(b)(3); 13 Del. C. § 732(3)).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 6 out of 10** "The attorney guardian ad litem shall have the duty of confidentiality to the child unless disclosure is necessary to protect the child's best interests" (29 Del. C. § 9007A). "No attorney...employed or contracted by or volunteering for the Office of Child Advocate shall be subject to suit directly, derivatively or by way of contribution or indemnification for any civil damages under the laws of Delaware resulting from any act or omission performed during or in connection with the discharge of his or her duties with the Office within the scope of his or her employment or appointment, unless the act or omission was done with gross or wanton negligence, or maliciously, or in bad faith" (29 Del. C. § 9008A). "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (DL R. of Prof. Conduct 1.14). Basis for deduction: Although Delaware law generally requires attorneys representing minors to, as far as reasonably possible, maintain a normal client-lawyer relationship with the client, Delaware law specifically exempts attorney guardians ad litem from the duty of confidentiality to a child client under specified circumstances, and generally immunizes attorneys from acts or omissions within the scope of their appointment.
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** While there is no Delaware law regarding caseload standards for attorneys representing children in dependency proceedings, Delaware attorneys do actually carry very low caseloads. Please see the sidebar note below.

SIDEBAR NOTES:

- ★ In Delaware, the child's expressed wishes are an integral part of the best interest determination in practice. Additionally, when a child's guardian ad litem's assessment of the child's best wishes conflict with the child's stated wishes, the attorney is required to make the child's wishes known to the Court. If, after receiving this information, the Court concludes that a conflict exists, the practice of the Courts is to appoint an attorney to advocate for the child's expressed wishes. While we commend this practice, we encourage Delaware to adopt this practice into law.

- ★ Delaware's Office of the Child Advocate's caseload standard of 35 children per attorney enables the volunteers and paid attorneys to become involved in every aspect of the child's life. This report reflects state laws and not practices; therefore Delaware has not received any extra credit points despite their extraordinary efforts. We encourage Delaware to develop statutory caseload standards which reflect their outstanding work and which will protect the caseload standards in place should Delaware see an increase in the filing of child abuse and neglect petitions.



District of Columbia

Score: 78 **Grade: C**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

"The Superior Court shall in every case involving a neglected child which results in a judicial proceeding, including the termination of the parent and child relationship..., appoint a guardian ad litem who is an attorney to represent the child in the proceedings" (DC Code §16-2304(b)(5)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

"Appointed counsel shall represent the person throughout the proceedings unless the appointment is terminated by order of the Court before the proceedings are concluded. In cases in which an appeal is available as of right, appointed trial counsel shall advise the person of his or her right to appeal and to counsel on appeal. If requested to do so by the person, counsel shall file a timely notice of appeal and shall continue to represent the person until relieved by the Court of Appeals" (DC Fam. Ct. Admin. Order 04-05). "Trial counsel must protect his or her client's interests by responding in a thorough and timely manner to any post trial motions, notice of appeal, and order for transcript filed by any adverse party. This obligation remains in effect until appellate counsel has been appointed for her or her client" (Atty Practice Standards § A-6, adopted by Admin. Order 03-07).

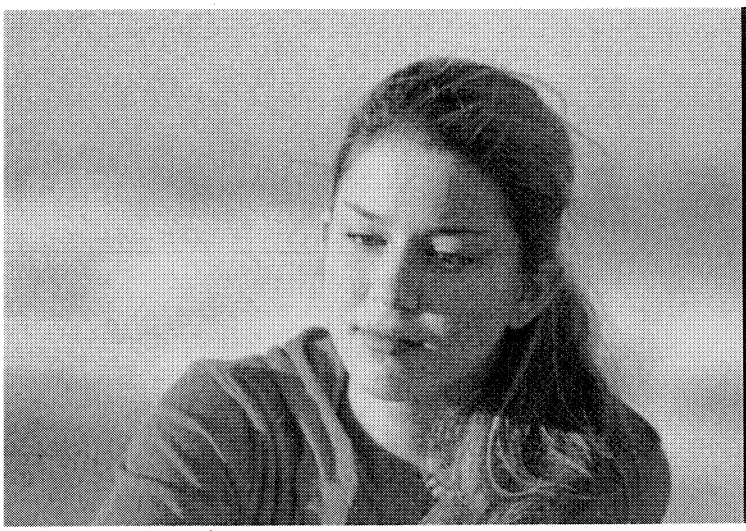
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?

Points: 6 out of 20

"The guardian ad litem shall in general be charged with the representation of the child's best interest" (DC Code §16-2304(b)(5)). "If there is a conflict between the guardian ad litem and the child regarding the child's best interests, and the conflict cannot be reconciled, the Court may appoint an attorney to advocate for the child" (DC Fam. Ct. Admin. Order 04-05). "If the guardian ad litem's assessment of the child's best interests conflict with the views of the child, the guardian ad litem shall notify the court and an attorney may be appointed to serve as the child's counsel" (Atty Practice Standards § A-6, adopted by Admin. Order 03-07).

Basis for deduction: Counsel is required to articulate, but not advocate for, the child's wishes.

4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 9 out of 10** "Counsel shall only accept an appointment or otherwise appear in child abuse and neglect proceedings if they are knowledgeable of substantive and procedural child abuse and neglect laws and have participated in the required training programs....Prior to an initial appointment, all counsel must receive certification of training that includes classroom instruction as well as courtroom observation.... Each year, all counsel on the [Counsel for Child Abuse and Neglect] eligibility list must attend 16 hours of continuing formal CCAN training on abuse and neglect-related topics to continue to represent parties in child abuse and neglect proceedings" (Superior Court of the District of Columbia Child Abuse and Neglect Attorney Practice Standards, Adopted by Administrative Order 03-07 (Feb. 28, 2003) at A-1). Basis for deduction: Although multidisciplinary elements are impliedly required as part of the specialized education and/or training, they are not expressly required.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** "Parties to a proceeding for the termination of the parent and child relationship shall be the child, the parent of the named child, and the agency having the legal custody of the child" (D.C. Code § 16-2356). Basis for deduction: While District of Columbia law expressly states that children are parties to proceedings for the termination of the parent and child relationship, it omits children from the list of individuals upon whom the summons and petition must be served in neglect proceedings (D.C. Code § 16-2357).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 5 out of 10** Basis for Deduction: The attorneys appointed to represent children in the District of Columbia are appointed as GALs and not as lawyers. Thus, the Rules of Professional Conduct do not apply to their role as advocate for a child in a dependency proceeding.
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 3 extra credit points** "Counsel should maintain a manageable caseload to adequately represent clients and avoid numerous scheduling conflicts" (Superior Court of the District of Columbia Child Abuse and Neglect Attorney Practice Standards, Adopted by Administrative Order 03-07 (Feb. 28, 2003) at A-4 and D-1).



Florida

Score: 58 **Grade: F**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 out of 40

"A guardian ad litem shall be appointed by the court at the earliest possible time to represent the child in any child abuse, abandonment, or neglect judicial proceeding…." (Fla. Stat. § 39.822(1)). "'Guardian ad litem'...includes the following: a certified guardian ad litem program, a duly certified volunteer, a staff attorney, contract attorney, or certified pro bono attorney working on behalf of a guardian ad litem or the program; staff members of a program office; a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided for by law" (Fla. Stat. § 39.820(1)). "At any stage of the proceedings, any party may request or the court may consider whether an attorney ad litem is necessary to represent any child alleged to be dependent" (Fla. R. Juv. P., Rule 8.217(a)).

Basis for deduction: Florida law provides that appointment of an attorney for a child in dependency proceedings is discretionary, not mandatory.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 0 out of 10

Basis for Deduction: Florida law does not expressly require that appointed counsel stay on throughout the appellate process. Furthermore, when appointed, the attorney ad litem is authorized to "represent the child in any proceeding as allowed by law" (Fla. R. Juv. P. Rule 8.217(b)) but not, necessarily, for all proceedings; further, there is no definition in Florida law of the phrase "as allowed by law".

3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?

Points: 20 out of 20

If an attorney ad litem is appointed for a child, such appointment is for the representation of the child's legal interests, as opposed to the child's best interests (Fla. Stat. § 39.4085). " The Legislature...establishes the following goals for children in shelter or foster care...(20) [t]o have a guardian ad litem appointed to represent, within reason, their best interests and, where appropriate, an attorney ad litem appointed to represent their legal interests...." (Fla. Stat. § 39.4085).

4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?

Points: 3 out of 10

Attorneys ad litem appointed pursuant to the Keeping Children Safe Act, specifically pertaining to sexual abuse, "shall have special training in the dynamics of child sexual abuse" (Fla. Stat. § 39.0139(4)(a)).

Basis for deduction: Although Florida law requires the Statewide Guardian Ad Litem

	office to develop a guardian ad litem training program, and to establish a multidisciplinary curriculum committee to develop the training program (Fla. Stat. § 39.8296 Rule (b)(4)), it does not require attorneys ad litem to undergo the training prior to appointment. Only attorneys ad litem appointed to cases involving alleged sexual abuse are expressly required to have specific training (see above).
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** "[T]he terms "party" and "parties" shall include...the child..." (Fla. R. Juv. P. 8.210(a)). Although Florida law authorizes the court to exclude a child from a hearing, it is only upon finding "that the child's mental or physical condition or age is such that a court appearance is not in the best interest of the child" (Fla. R. Juv. P., Rule 8.255(b)).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Fla. Bar Reg. R. 4-1.14).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Florida law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTES:

★ The Florida Bar Foundation provides funding for many legal service providers to represent children. This is partially funded through a license plate issued by the state of Florida. This funding has now expanded to 20 programs representing children as part of the Children's Legal Services program.

★ First Star and CAI are concerned that, although Florida law requires that a child have a guardian ad litem in every case, the most recent annual report of the Statewide Office of the GAL indicates that 5,100 children did not receive a GAL in 2008. Particularly troubling is the fact that those who did receive a GAL did not necessarily have one from initial detention to permanency. This report only studied whether there was a GAL assigned at some time during the case.

★ This report is generous with Florida's grade for Criteria #3. The quoted statutory language speaks to Florida's "goals" and we urge Florida advocates to urge adoption of amendments which make Florida Statute § 39.4085's goals mandatory.

★ There is some interesting advocacy currently taking place in Florida. The Florida Bar Association Standing Committee on the Legal needs of Children has developed a draft bill that would amend existing state statute and address legal representation of children involved in dependency proceedings. While First Star and CAI are pleased that this draft bill will ensure that those children who are represented receive quality and zealous advocacy by requiring qualification standards, providing for multi-disciplinary training, ensuring the child has the same advocate throughout the proceedings, and requiring attorneys to maintain a normal client-lawyer relationship in which they abide by a client's informed decisions, we encourage amendments to this draft bill which more clearly demonstrate a child's need for the right to counsel and which guarantee the right to counsel for every child in dependency proceedings.

Georgia

Score: 68 **Grade: D**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 20 out of 40

"Except as otherwise provided..., a party is entitled to representation by legal counsel at all stages of any proceedings alleging...deprivation and if, as an indigent person, a party is unable to employ counsel, he or she is entitled to have the court provide counsel for him or her....Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. If the interests of two or more parties conflict, separate counsel shall be provided for each of them" (O.C.G.A. § 15-11-6(b)). "[T]he court shall appoint an attorney to represent the child as the child's counsel and may appoint a separate guardian ad litem or a guardian ad litem who may be the same person as the child's counsel" (O.C.G.A. § 15-11-98(a)).

Basis for deduction: Although Georgia's statutes entitle a child to legal representation at all stages of the proceedings, separate counsel is only specifically required for proceedings terminating parental rights. Georgia caselaw has established that in all other proceedings, when children are placed in the custody of the Department of Human Resources and the Department is represented by counsel, "this also constitute[s] representation by counsel on behalf of the children". (*Williams v. Department of Human Resources*, (1979) 150 Ga. App. 610, 611.) Thus, independent counsel is required for children with major restrictions.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

"Except as otherwise provided..., a party is entitled to representation by legal counsel at all stages of any proceedings" (O.C.G.A. § 15-11-6(b)).

"In any proceeding for terminating parental rights or any rehearing or appeal thereon, the court shall appoint an attorney to represent the child as the child's counsel" (O.C.G.A. § 15-11-98(a)).

3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?

Points: 12 out of 20

"In any proceeding for terminating parental rights or any rehearing or appeal thereon, the court shall appoint an attorney to represent the child as the child's counsel" (O.C.G.A. § 15-11-98(a)).

Basis for deduction: Client-directed counsel is required with major exceptions because client-directed counsel is only required at termination of parental rights proceedings.

4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 6 out of 10** "In deprivation cases, a person appointed as a child's guardian ad litem must have received before the appointment training appropriate to the role that is administered or approved by the Office of the Child Advocate and may be an attorney or court appointed special advocate, or both" (O.C.G.A. § 15-11-9(b)). Basis for deduction: Although Georgia law requires training for attorney GALs appointed in deprivation cases, it does not expressly require training for attorneys appointed pursuant to O.C.G.A. § 15-11-98(a).
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** " The court ... shall appoint a guardian ad litem for a child who is a party to the proceeding" (O.C.G.A. § 15-11-9(b)).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of age, mental or medical disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Ga. R. & Regs. St. Bar Rule 1.14(a)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Georgia law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTES:

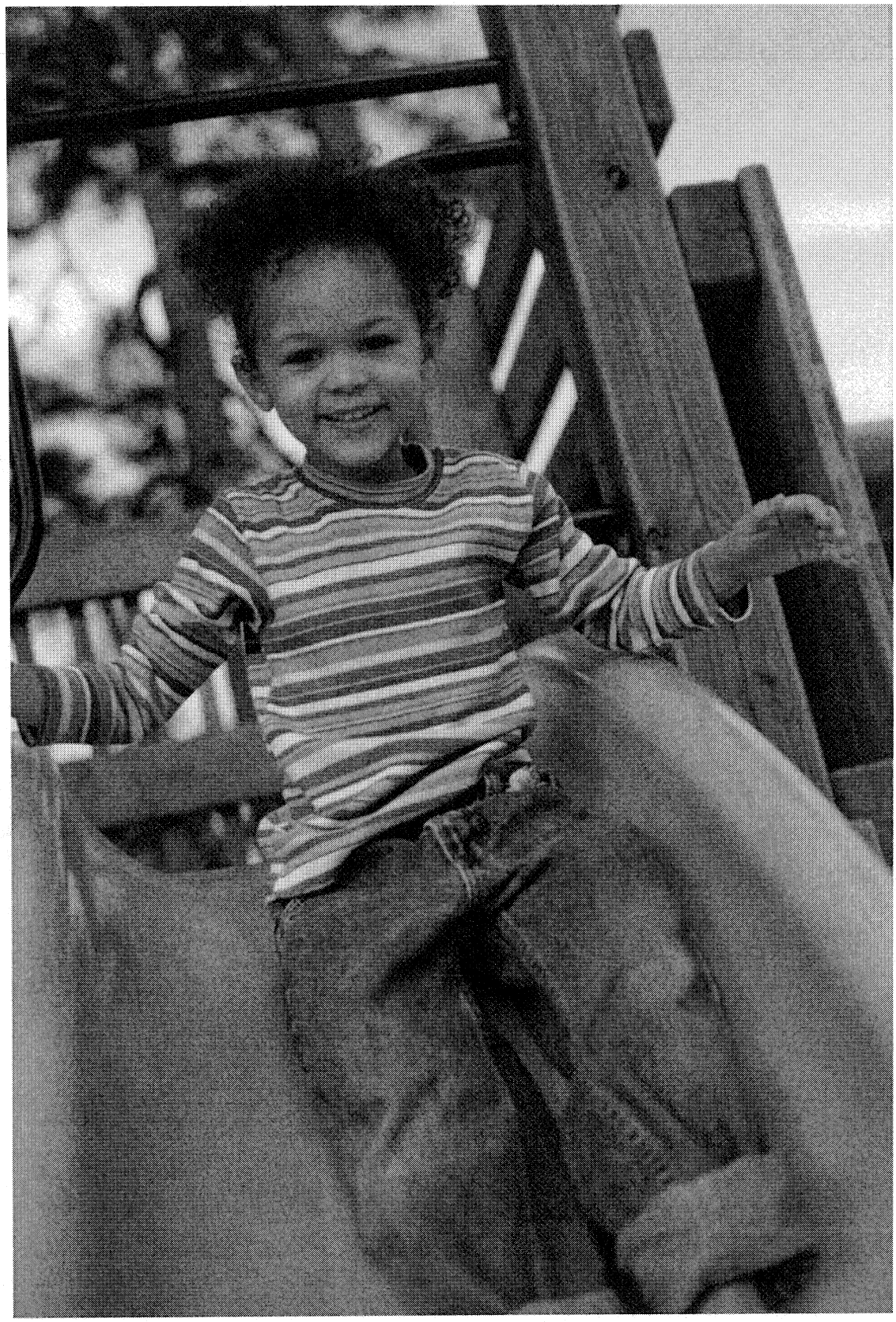
★ The practice for appointing attorneys varies greatly across Georgia. In some counties, all children are appointed attorneys with the full ethical duties accompanying the attorney-client relationship. However, this is the exception, rather than the rule. Other counties use attorney guardians ad litem or lay guardians ad litem to represent children. Some counties do not appoint any representative for the child at all in some cases before the court.

★ Georgia is currently considering a proposed bill, SB 292, which, in its current form, would completely rewrite Georgia's code. The bill currently proposed would clarify that a child has a right to separate and independent counsel and that the child is a party to dependency proceedings. We encourage Georgia advocates to continue pushing for adoption of this bill.

★ While Georgia statute O.C.G.A. § 15-11-9(b) implies that a child is a party and the Georgia appellate case of *McBurrough v. Department of Human Resources* ((1979) 257 S.E.2d 35) acknowledges that children are parties at least entitled to counsel and notice, in practice Georgia's juvenile courts have not uniformly recognized the child's status as a party. We encourage advocates in Georgia to push their juvenile courts to uphold the law of Georgia.

★ Under Georgia law, the appointment of an independent attorney for children in dependency proceedings is required for children with major restrictions, and as such Georgia merits only 20 points for Criteria # 1. However, in the First Edition of this Report Card, Georgia was inadvertently awarded 40 points for Criterion #1, which is only appropriate where the appointment of an attorney for children in dependency proceedings is mandatory. Additionally, when an attorney is appointed for a child in dependency proceedings, state law only requires the attorney to advocate for the expressed wishes of the child in a client-directed manner with major exceptions, and as such Georgia merits only 12 points for Criterion #3. However, in the First Edition, Georgia was inadvertently awarded 20 points for Criterion #3, which is only appropriate where client-directed counsel is always required for a child. First Star and CAI regret these errors in the 2007 Report Card, and wish to emphasize that changes to Georgia's score are attributable more to this than to changes in law.

★ While Georgia has no statewide caseload standards for dependency attorneys, the Atlanta counties of Fulton and DeKalb are currently operating under a Settlement Agreement that does prescribe maximum caseloads for dependency attorneys. In 2002 advocates from these counties worked with the national advocacy group, Children's Rights, to file *In re Kenny A.*, a class action alleging, *inter alia*, that children in Georgia's foster care system are denied adequate legal representation due to the high caseloads of the attorneys assigned to represent them. In February 2005 the U.S. District Court for the Northern District of Georgia found that abused and neglected children have a constitutional right to adequate legal representation at every major stage of their life in state custody. (*In re Kenny A.* (N.D. Ga. 2005) 356 F. Supp. 2d 1353.) This is a landmark ruling that has led to more quality representation for children in Fulton and DeKalb counties. We commend the work of all the advocates who continue to work on the *Kenny A.* case and encourage Georgia to use the Settlement Agreements as a template for statewide caseload standards.



Hawaii

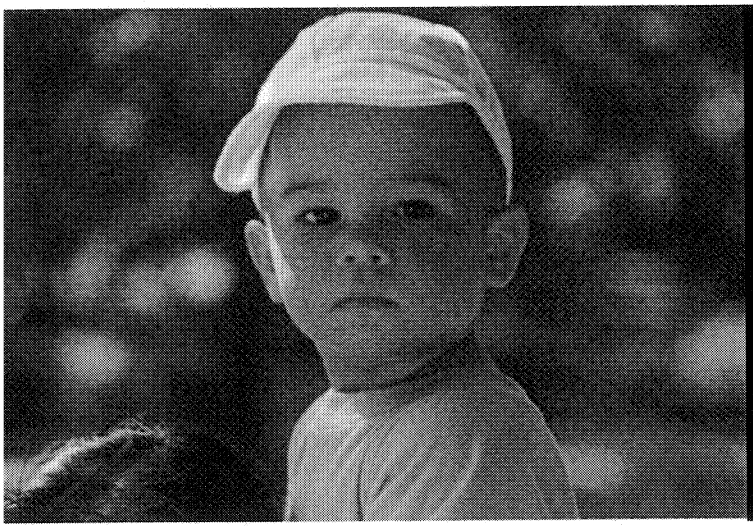
Score: 55 **Grade: F**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 15 out of 40** "The court shall appoint a guardian ad litem for the child to serve throughout the pendency of the child protective proceedings....The court may appoint additional counsel for the child..." (HRS § 587-34(a)). Basis for deduction: Although appointment of a GAL is mandatory in Hawaii, there is no requirement that the GAL be an attorney (GAL "means a person appointed by the court...whose role is to protect and promote the needs and interests of the child..." (HRS § 587-2). Appointment of an attorney for children in dependency proceedings is discretionary.
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 0 out of 10** Basis for deduction: Hawaii law does not expressly require that appointed counsel stay on throughout the appellate process. Additionally, appointment of counsel for a child might not include all proceedings before the juvenile court (counsel will serve as the child's legal advocate "concerning such issues and during such proceedings as the court deems to be in the best interests of the child" (HRS § 587-34(c))).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** When the child and the child's GAL are not in agreement, the court may appoint special counsel for the child, whose role is "to serve as the child's legal advocate" (HRS § 587-34(c)).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 0 out of 10** Basis for deduction: Hawaii law does not specify any training requirements for attorneys representing children in dependency proceedings.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** "'Party' means...the child..." (HRS § 587-2).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (HI R. of Prof. Conduct 1.14(a)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Hawaii law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTES:

★ While training is not a requirement found in Hawaii statute or court rule, Hawaii does require newly contracted attorneys and guardians ad litem to participate in Volunteer Guardians Ad litem Training or similar training approved by the Judiciary within 90 days of contract execution. Additionally, attorneys and guardians ad litem must complete 20 hours of annual training in areas such as dynamics of child abuse and neglect, child development, cultural competence, child sex abuse, sex offender treatment, family dynamics, domestic violence, and/or related topics. We commend Hawaii for this work and encourage Hawaii to adopt this great work into law.



Idaho

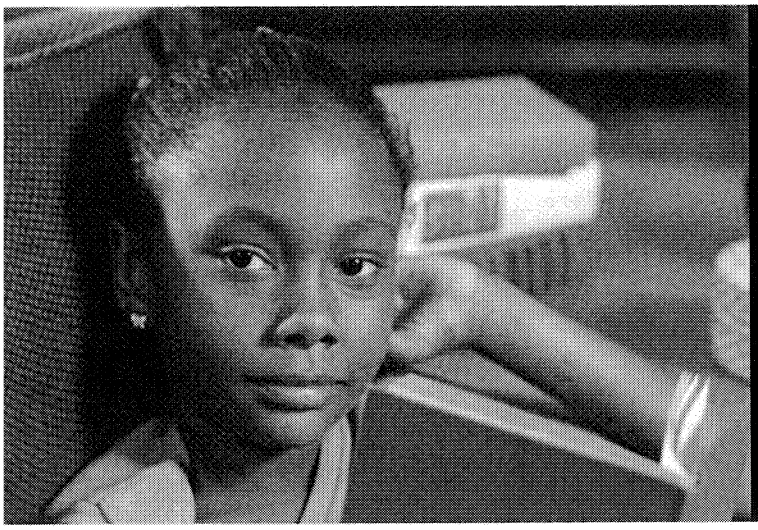
Score: 45 **Grade: F**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 15 out of 40** "In any proceeding under this chapter the court shall appoint a guardian ad litem for the child or children to serve at each stage of the proceeding and in appropriate cases shall appoint counsel to represent the guardian, and in appropriate cases, may appoint separate counsel for the child" (Idaho Code §16-1614(1)). Basis for deduction: Under Idaho law, the appointment of an attorney to represent a child in dependency proceedings is discretionary.
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 5 out of 10** Basis for deduction: Idaho law does not specify whether counsel appointed for children in dependency proceedings continue that representation on appeal.
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 4 out of 20** "For a child under the age of twelve (12) years the attorney will have the powers and duties of a guardian ad litem. For a child twelve (12) years of age or older, the court may order that the counsel act with or without the powers and duties of a guardian ad litem" (Idaho Code § 16-1614(2)). Basis for deduction: Under Idaho law, the appointment of client-directed counsel for children in dependency proceedings is discretionary.
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 6 out of 10** Basis for deduction: Although Rule 35 of the Idaho Juvenile Rules requires that GALs (who may be attorneys) "complete at least 30 hours of required pre-service training and 12 hours of required in-service training per year," Idaho law does not require specialized education and/or training for separate counsel appointed to represent children in dependency proceedings.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** Basis for deduction: Idaho law gives party rights to the guardian ad litem, but not to the child (Idaho Code §16-1634(1)). However, the GAL's party status assures that the child will receive some rights, such as notice.
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** Special counsel appointed to represent a child is bound by the duty to, "as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (ID R. of Prof. Conduct 1.14(a))
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Idaho law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTES:

★ The Idaho Supreme Court Child Protection Committee is currently researching and discussing ways to improve legal advocacy for children in child protection cases in Idaho. For a predominately rural state, such as Idaho, there are many challenges to implementing a system that provides an attorney for every child in dependency proceedings. These challenges include funding for counsel for children and, in small rural counties, too few attorneys to provide separate counsel for each child in a case. First Star and the Children's Advocacy Institute commend Idaho for these efforts and encourage collaboration between Idaho and other predominately rural states who have scored well on this Report Card.



Illinois

Score: 63 **Grade: D**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 out of 40

The minor has "the right to be represented by counsel. At the request of any party financially unable to employ counsel,...the court shall appoint the Public Defender or such other counsel as the case may require" (705 ILCS 405/1-5). However, Illinois law also provides that "if a guardian ad litem has been appointed for the minor...and the guardian ad litem is a licensed attorney..., or in the event that a court appointed special advocate has been appointed as guardian ad litem and counsel has been appointed to represent the court appointed special advocate, the court may not require the appointment of counsel to represent the minor unless the court finds that the minor's interests are in conflict with what the guardian ad litem determines to be in the best interest of the minor" (705 ILCS 405/1-5).

Basis for deduction: Under Illinois law, the appointment of an attorney to represent a child in dependency proceedings is discretionary.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 5 out of 10

"Counsel appointed for the minor...shall appear at all stages of the trial court proceeding, and such appointment shall continue through the permanency hearings and termination of parental rights proceedings subject to withdrawal or substitution pursuant to Supreme Court Rules or the Code of Civil Procedure" (705 ILCS 405/1-5).

Basis for deduction: Illinois law guarantees counsel for children during the trial court proceeding but not at the appellate stage of dependency proceedings.

3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?

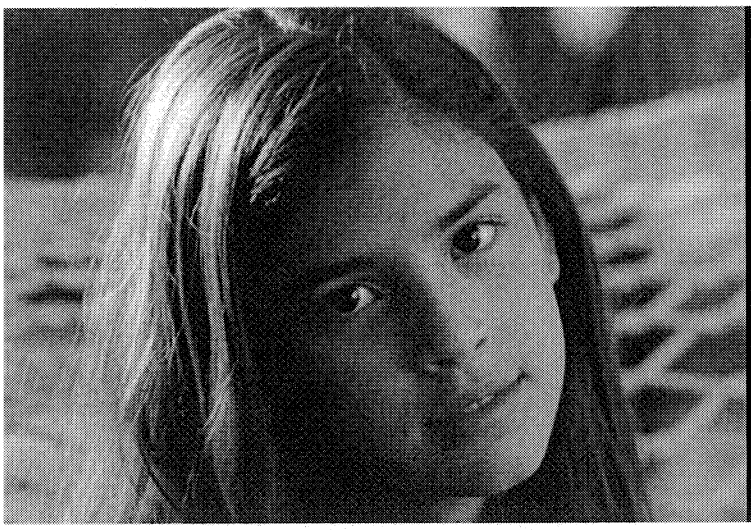
Points: 20 out of 20

If counsel is appointed for the child, the role of such counsel is to represent the minor's interests, as opposed to what the GAL determines to be in the best interest of the minor: "if a guardian ad litem has been appointed for the minor...and the guardian ad litem is a licensed attorney..., or in the event that a court appointed special advocate has been appointed as guardian ad litem and counsel has been appointed to represent the court appointed special advocate, the court may not require the appointment of counsel to represent the minor unless the court finds that the minor's interests are in conflict with what the guardian ad litem determines to be in the best interest of the minor" (705 ILCS 405/1-5).

4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 3 out of 10** Basis for deduction: Although Illinois does set forth multidisciplinary training requirements applicable to some GALs, who may or may not be attorneys, it is not mandated for all GALs, nor are training requirements specifically required for attorneys appointed to represent the minor's interest in dependency proceedings ("[i]n counties with a population of 100,000 or more but less than 3,000,000, each guardian ad litem must successfully complete a training program approved by the Department of Children and Family Services" (705 ILCS 405/2-17(9))).
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** Minors "have the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records and...to be represented by counsel" (705 ILCS 405/1-5). Additionally, the rights of children are listed in Illinois statute 705 ILCS 405/1-5 which is titled "Rights of parties to proceedings" so children are considered parties in Illinois.
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "The privileged character of communication between any professional person and patient or client, except privilege between attorney and client, shall not apply to proceedings subject to this Article" (705 ILCS 405/2-18(4e)). "When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship" (IL R. of Prof. Conduct 1.14(a)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Illinois law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTE:

★ While children in Illinois are provided with an attorney when the child's wishes conflict with the guardian ad litem's determination of the child's best interests, advocates in Illinois are concerned that often the attorney role gets short shrift as compared to the voice of the guardian ad litem. First Star and the Children's Advocacy Institute encourage Illinois to clarify that a child's voice must always be heard in dependency proceedings.



Indiana

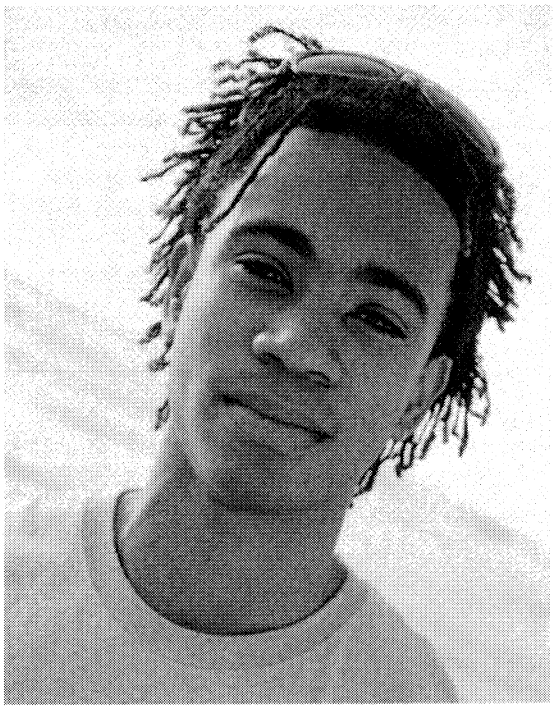
Score: 43 **Grade: F**

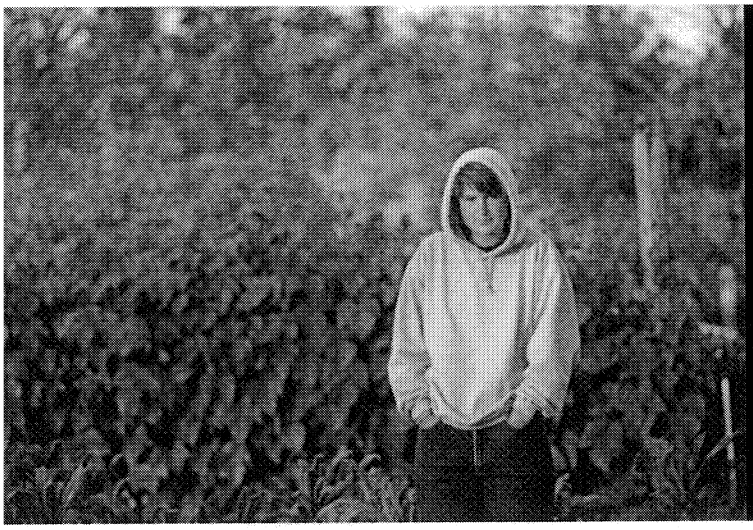
1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 15 out of 40** "The court may appoint counsel to represent any child" in dependency proceedings (Burns Ind. Code Ann. § 31-32-4-2). Basis for deduction: Under Indiana law, the appointment of an attorney for a child in dependency proceedings is discretionary.
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 5 out of 10** Basis for deduction: Indiana law does not guarantee counsel for children at the appellate stage of dependency proceedings.
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 3 out of 20** Basis for deduction: Indiana law is vague with regard to whether an attorney appointed for a child in dependency proceedings is required to advocate for the expressed wishes of the child in a client directed manner ("the attorney representing the child may also be appointed the child's guardian ad litem or court appointed special advocate" (Burns Ind. Code Ann. § 31-32-3-3)).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 0 out of 10** Basis for deduction: No specialized training requirements for attorneys representing children in dependency proceedings could be identified. In fact, attorneys are explicitly excluded from the statutory GAL training requirement ("[a] guardian ad litem who is not an attorney must complete the same court approved training program that is required for a court appointed special advocate" (Burns Ind. Code Ann. § 31-9-2-50)).
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** Children "are parties to the proceedings described in the juvenile law and have all rights of parties under the Indiana Rules of Trial Procedure" (Burns Ind. Code §31-34-9-7).

6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (IN R. of Prof. Conduct 1.14(a)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Indiana law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTE:

★ Indiana code provides, except in cases of gross misconduct, "immune[ity] from any civil liability that may occur as a result of that person's performance during the time that the person is acting within the duties of the [GAL]" (Burns Ind. Code § 31-32-3-10). This civil immunity provision applies only to individuals acting as a guardian ad litem or CASA whether or not they are attorneys. If an individual is appointed as an attorney for a child and not as a guardian ad litem, they are covered by the Rules of Professional Conduct and do not receive civil immunity.





Iowa

Score: 90 **Grade: A**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "Upon the filing of a petition, the court shall appoint counsel...for the child" (Iowa Code § 232.89(2)).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** "The attorneys and guardians ad litem of record in the district court shall be deemed the attorneys and guardians ad litem in the appellate court unless others are retained or appointed and notice is given to the parties and the clerk of the supreme court." (Iowa Rule of Appellate Procedure Rule 6.109(4).)
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** "The same person may serve both as the child's counsel and as guardian ad litem. However, the court may appoint a separate guardian ad litem, if the same person cannot properly represent the legal interests of the child as legal counsel and also represent the best interest of the child as guardian ad litem" (Iowa Code § 232.89(4). Thus, it appears that under Iowa law the primary role of the child's counsel is to represent the legal interests of the child.
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 0 out of 10** Basis for deduction: Iowa law does not mandate training requirements for attorneys representing children in dependency proceedings.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** Under Iowa law, the petition recognizes the child as a party to the proceedings (Iowa Code § 232.89(2)). "Notice shall...be served upon the child and upon the child's guardian ad litem, if any" (Iowa Code § 232.37(2)).

	"If a child is of an age appropriate to attend the hearing but the child does not attend, the court shall determine if the child was informed of the child's right to attend the hearing" (Iowa Code § 232.91(3)). "Any person who is entitled ...to receive notice of a hearing concerning a child shall be given the opportunity to be heard in any other review or hearing involving the child" (Iowa Code § 232.91(3)). "An interested party aggrieved by an order or decree of the juvenile court may appeal from the court for review of questions of law or fact" (Iowa Code § 232.133(1)).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (IA R .of Prof. Conduct 1.14(a)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Iowa law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTE:

★ The Attorney Training Subcommittee of the Training Grant Committee of Iowa's Judicial Branch's Children's Advisory Committee is working with the State Public Defender to require training as a prerequisite to practicing as a GAL in Iowa. First Star and the Children's Advocacy Institute commend these efforts and encourage Iowa to adopt these prerequisites into law.

Kansas

Score: 86 **Grade: B**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "Upon the filing of a petition, the court shall appoint an attorney to serve as guardian ad litem for a child who is the subject of proceedings under this code" (K.S.A. § 38-2205(a)).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** "A guardian ad litem appointed to represent the best interests of a child or a second attorney appointed for a child as provided in subsection (a), ... shall continue to represent the client at all subsequent hearings in proceedings under this code, including any appellate proceedings, unless relieved by the court upon a showing of good cause or upon transfer of venue" (K.S.A. §38-2205(d)).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 6 out of 10** Basis for deduction: The attorney GAL is required to articulate, but not advocate for, the child's position when it differs from the determination of the attorney GAL with regard to the child's best interests. "The guardian ad litem shall ... represent the best interests of the child. When the child's position is not consistent with the determination of the guardian ad litem as to the child's best interests, the guardian ad litem shall inform the court of the disagreement. The guardian ad litem or the child may request the court to appoint a second attorney to serve as attorney for the child, and the court, on good cause shown, may appoint such second attorney" (K.S.A. §38-2205(a)).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 10 out of 10** "A guardian ad litem should...participate in prerequisite education prior to appointment ... areas of education should include... dynamics of abuse and neglect; roles and responsibilities; cultural awareness; communication and communication with children skills and information gathering and investigatory techniques; advocacy skills; child development; mental health issues; permanence and the law; community resources; professional responsibility; special education law; substance abuse issues; school law; and the code for the care of children....Upon the request of the appointing judge or designee, the guardian ad litem shall be required to provide evidence of compliance with this order" (KS Sup. Ct. Admin. Order 100).

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** "'Party' means ... the child" (K.S.A. § 38-2202(u)). "The summons and a copy of the petition shall be served on: (1) The child alleged to be a child in need of care by serving the guardian ad litem appointed for the child" (K.S.A. § 38-2236(a)(1). "The court may not exclude the guardian ad litem, parties and interested parties" (K.S.A. § 38-2247(a)(1).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (KS R. of Prof. Conduct 1.14).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Kansas law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTE:

★ Kansas law requires the guardian ad litem to inform the court when the child disagrees with the guardian ad litem's assessment of the child's best interests and gives the court the discretionary authority to appoint a second attorney. The appointment of a second attorney is no longer unusual in Kansas. While First Star and the Children's Advocacy Institute commend Kansas for their practice of regularly appointing client-directed counsel, we encourage Kansas to adopt into law the requirement that a child's expressed wishes always be advocated to the court.

Kentucky

Score: 68 **Grade: D**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "If the court determines, as a result of a temporary removal hearing, that further proceedings are required, . . .[t]he court shall appoint counsel for the child" (KRS § 620.100).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 5 out of 10** Basis for deduction: Although children have the right to appeal ("any interested party …including the…child…may appeal…as a matter of right" (KRS § 620.155)), Kentucky law does not expressly require counsel for children on appeal in dependency proceedings.
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 3 out of 20** Basis for deduction: Kentucky law is vague as to the role of counsel appointed to represent children in dependency proceedings. It would appear that because Kentucky law authorizes the court to "appoint a court-appointed special advocate volunteer to represent the best interests of the child" (KRS § 620.100(1)(d)), the role of the counsel might be to represent the expressed wishes of the child; however, Kentucky law does not expressly state that this is the case.
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 0 out of 10** Basis for deduction: Kentucky law does not mandate training requirements for attorneys representing children in dependency proceedings.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** Children in Kentucky appear to have the status of party ("[a]ny interested party ... including the ... child ... may appeal from the juvenile court to the Circuit Court as a matter of right" (KRS § 620.155)) with all rights appurtenant thereto ("[i]f the court determines that further proceedings are required, the court also shall advise the child ... that they have ... a right to a full adjudicatory hearing at which they may confront and cross-examine all adverse witnesses, present evidence on their own behalf and to an appeal" (KRS § 620.100(2)).

6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of [minority] age, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (KY R. of Prof. Conduct 1.14).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Kentucky law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTES:

- ★ The Administrative Office of the Courts has been responsible for preparing attorneys to provide legal representation to abused and neglected children across Kentucky since 1999. As part of this responsibility, the Administrative Office of the Courts has created a Guardian Ad Litem Program. The goal of this program is to produce highly qualified guardians ad litem by coordinating training sessions, providing educational materials and serving as an overall resource. The current training curriculum gives attorneys an overview of Kentucky statutory and case law as well as the federal law that requires reasonable efforts to keep families together and provide children with safe and permanent homes.

- ★ In 2007, the Administrative Office of the courts published recommendations for Guardians Ad Litem. These recommendations included the standard that "a GAL should advocate the child's best interests but advise the court when the child disagrees with the attorney's assessment of the case."

- ★ In 1982, the Kentucky General Assembly created a Citizen Foster Care Review Board (CFCRB). Nearly 775 volunteers, from across the state and from a variety of educational and professional backgrounds, serve as members of the Board. The goal of the board is to decrease the time young people spend in foster care. Volunteer reviewers help ensure that necessary services are provided to children in alternative placement and make every effort to locate permanent homes for these children. All CFCRB members are required to engage in multi-disciplinary training and are required to engage in six hours of continuing education training each year. These advocates have a deep compassion for children and actively work to decrease the time that children spend in foster care.

Louisiana

Score: 95 **Grade: A**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "In every proceeding under this Title, the court shall appoint qualified, independent counsel for the child, including a referral to the district public defender...Neither the child nor anyone purporting to act on his behalf may be permitted to waive this right" (La Ch.C. Art. 607).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** "Each child has a right to independent counsel at every stage of Child in Need of Care proceedings....An attorney serving as counsel for a child in a Child in Need of Care proceeding should continue representation of the child through any subsequent Certification for Adoption proceedings, including any relevant writs or appeals" (La Sup. Ct. Rule XXXIII). "Any attorney appointed to represent the child in the termination action shall continue to represent the child in all subsequent review hearings until the child is permanently placed" (LA Ch. C. Art. 1042).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** "Counsel for a child should...[d]etermine the client's desires and preferences in a developmentally appropriate and culturally sensitive manner; [and]...[a]dvocate for the desires and expressed preferences of the child and follow the child's direction throughout the case in a developmentally appropriate manner" (La Sup. Ct. Rule XXXIII).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 10 out of 10** Prior to appointment as counsel for children in child abuse and neglect proceedings, an attorney shall have the following qualifications:...the attorney shall have completed within the last two years a minimum of eight hours of training or education relevant to child abuse and neglect cases, and/or shall have sufficient knowledge to satisfy the court of the attorney's qualifications....[T]he attorney shall complete a minimum of six hours of approved continuing legal education each calendar year...[which] shall include relevant law and jurisprudence, child development, child abuse and neglect, and the roles, responsibilities and duties of independent counsel for children, including the Standards for Representation of Children" (La Sup. Ct. Rule XXXIII). Further, '[c]ounsel providing representation in child protection proceedings should have

	specialized knowledge and skills essential for effective representation, and should participate in multidisciplinary interaction together with other professionals involved with the child, including interdisciplinary communication, investigation, discovery, meetings, conferences, proceedings, and administrative hearings. Resources to support the provision of legal representation of children should be used efficiently and equitably to assure qualified representation throughout the state" (LA Ch. C. Art. 551).
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** Louisiana law expressly gives children several rights, such as the right to "introduce evidence, call witnesses, be heard on their own behalf, and cross-examine witnesses called by the state" (La Ch.C. Art. 662) and the right to discovery (see La. Ch. C. Art. 652). Basis for deduction: Although Louisiana law gives children many of the same rights as their parents (see, *e.g.*, La. Ch. C. Art. 604, 608), it does not expressly give children party status in dependency proceedings.
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "An attorney serving as independent counsel for a child owes the same duties of loyalty, confidentiality, advocacy and competent representation to the child as are owed to any client" (La Sup. Ct. Rule XXXIII).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Louisiana law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTES:

★ Louisiana is working on implementing recommendations of the Task Force on Legal Representation in Child Protection Proceedings, including a general caseload standard at 100 cases for a full time attorney. Although the state is facing severe financial hardship, several jurisdictions have recently made significant voluntary changes in their systems to adopt best practices. When fully implemented, Louisiana will have an efficient and effective statewide system of qualified child (and parent) representation in child protection cases. The legislation and infrastructure are in place, and the only present barrier to continuing implementation of the model is access to sufficient funding during the state's current fiscal crisis.

★ The Task Force on Legal Representation, the Louisiana Court Improvement Program, and the Louisiana Children's Justice Act Task Force have collaborated with the National Resource Center on Family Centered Practice to produce a video ("Telling Their Stories") featuring former and present foster children, to educate and inform legislators, state administrators and community stakeholders about the urgent need to ensure quality legal representation in these critical proceedings.

Maine

Score: 52 **Grade: F**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 15 out of 40** "The court, in every child protection proceeding except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders, shall appoint a guardian ad litem for the child" (22 M.R.S. § 4005(1)(A)). "Guardians appointed in child protection proceedings ... shall be either a court-appointed special advocate or an attorney" (Me R. for Guardians Ad Litem II(1)(B)). If the GAL is an attorney, "she or he acts in his or her capacity as a Guardian, rather than as an attorney" (Me. R. Guardians Ad Litem II(3)(A)). "The guardian ad litem or the child may request the court to appoint legal counsel for the child" (22 M.R.S. § 4005(1)(F)). Basis for deduction: Under Maine law, the appointment of an attorney to serve as the child's GAL, as well as the appointment of separate legal counsel, is discretionary.
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** "Any attorney appointed to represent a party in a District Court proceeding under this chapter shall continue to represent that client in any appeal unless otherwise ordered by the court" (22 M.R.S. § 4006).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 6 out of 20** Basis for deduction: Maine law expressly requires the child's GAL, who may be an attorney, to "make the wishes of the child known to the court if the child has expressed his wishes, regardless of the recommendation of the guardian ad litem" (22 M.R.S. § 4005(1)(E)). However, Maine law does not expressly specify the role of legal counsel appointed to represent children in dependency proceedings pursuant to 22 M.R.S. § 4005(1)(F).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 6 out of 10** Basis for deduction: Although Maine law requires multidisciplinary training for GALs (who may be attorneys) ("[a]ttendance at a Guardian training with a curriculum of at least 16 hours that has been approved by the Chief Judge satisfies this [core training] requirement (Maine Rules for GALs, Rule C(ii)), it does not expressly require training for separate legal counsel who may be appointed to represent children in dependency proceedings.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** Basis for deduction: Although the child is given some rights through his/her GAL (such as service of the petition and notice of hearing pursuant to 22 MRS § 4033(1)(A)), Maine law does not expressly give children party status in dependency proceedings.
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's ability to make adequately considered decisions in connection with the representation is impaired because of mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Me. Bar R. 3.6(j)(1)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Maine law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTES:

★ During 2009 the Maine legislature considered LD 1188 (SP 436), "An Act to Clarify Child Protection Proceedings." The measure, which was not enacted, would have—among other things—required the Department of Health and Human Services to provide sworn testimony or affidavit as to efforts to notify the parents or custodian of a child or facts justifying exception to notice in a preliminary protection proceeding; required the District Courts to keep publicly accessible records relating to preliminary protection hearings including notice given, exceptions to notice taken and other information; required parties under most circumstances to resolve disputes within the adjudicatory structure of the department after disposition in a protection proceeding has been ordered; and clarified what constitutes reasonable efforts in the department's requirement to rehabilitate or reunify a family.

★ Maine advocates note that the appointment of counsel or GAL during family court matters is a high priority and that more advocacy is needed for federal financial support of the GAL program.

Maryland

Score: 93 **Grade: A**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "A child who is the subject of a CINA petition shall be represented by counsel" (Md. Courts and Judicial Proceedings Code Ann. § 3-813(d)(1)).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** "[A] party is entitled to the assistance of counsel at every stage of any proceeding under this subtitle" (Md. Courts and Judicial Proceedings Code Ann. § 3-813(a)).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** "The attorney should determine whether the child has considered judgment as defined....If the child has considered judgment, the attorney should so state in open court and should advocate a position consistent with the child's wishes in the matter. If the attorney determines that the child lacks considered judgment, the attorney should so inform the court. The attorney should then advocate a position consistent with the best interests of the child" (MD Guidelines for Attys Rep CINA, A).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 3 out of 10** "Lawyers who seek to represent children in these proceedings are encouraged to seek training and education in such subjects as: a. the role of child's counsel; b. assessing considered judgment; c. basic interviewing techniques; d. child development: cognitive, emotional, and mental stages; e. federal and state statutes, regulations, rules, and case law; f. overview of the court process and key personnel in child-related litigation; g. applicable guidelines and standards of representation; h. family dynamics and dysfunction, including substance abuse and mental illness; i. related issues, such as domestic violence, special education, mental health, developmental disability systems, and adult guardianships; j. social service agencies, child welfare programs, and medical, educational, and mental health resources for the child and family; and k. written materials, including related motions, court orders, pleadings, and training manuals" (MD Guidelines for Attys Rep CINA, F2). Basis for deduction: Maryland law encourages, but does not require, attorneys for children to obtain multidisciplinary training.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** Maryland law expressly gives children party status in dependency proceedings ("'[p]arty means...[a] child who is the subject of a petition" (Md. Courts and Judicial Proceedings Code Ann. § 3-813(u)(1)(I))).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (MD R. of Prof. Conduct 1.14).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Maryland law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTE:

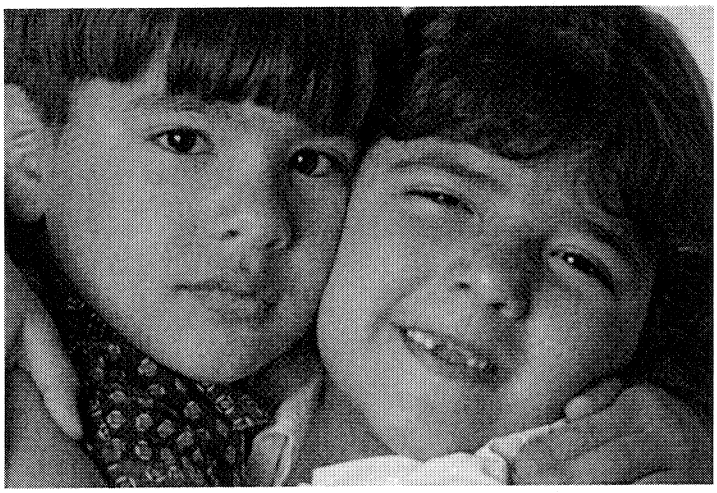
★ The Maryland Legal Services Program, run by the State of Maryland and the Maryland Department of Health and Human Resources, requires that all CINA/TPR Attorney Contractors acquire sixteen hours of CINA/TPR-related training credits each year. MLSP also encourages all Contractors to pursue additional training credits above this minimum requirement, and grants numerous requests for additional training over the course of each contract year. The CINA Contractors are also required to maintain a maximum caseload of 150. First Star and CAI encourage Maryland to adopt these training and caseload standards into state law.

Massachusetts

Score: 104 **Grade: A+**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** The "child shall have and be informed of the right to counsel at all hearings and ... the court shall appoint counsel for that ... child if the ... child is not able to retain counsel" (ALM GL ch. 119, § 29).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** Massachusetts law provides attorneys for children on appeal. "If a final judgment is adverse to the client, counsel shall explain the client s right to appeal the decision, the appellate process, including the time limits in which a notice of appeal must be filed, and any alternative post-judgment strategy that may be appropriate. Counsel shall also explain the process and availability of post-trial reviews, if applicable. If a final judgment is not adverse to the client, counsel shall ensure that opponents adhere to time limits and discharge other appellate responsibilities until appellate counsel files an appearance" (MA CFLP, Stds. Gov. Rep. of Children 1.3).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** "If counsel reasonably determines that the child is able to make an adequately considered decision with respect to a matter in connection with the representation, counsel must represent the child's expressed preferences regarding that matter, even if the attorney believes the child's position to be unwise or not in the child's best interest" (MA CFLP, Stds. Gov. Rep. of Children 1.3).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 9 out of 10** "Accepted trial panel applicants must complete a five-day trial panel certification-training course. Thereafter, attorneys must work with a mentor assigned by the CAFL program. Once certified for the trial panel, attorneys must maintain certification through the annual completion of 8 hours approved continuing legal education on a fiscal year basis" (Committee for Public Counsel Services (CPCS) Training Requirements). Basis for deduction: Although multidisciplinary elements are impliedly required as part of the specialized education and/or training, they are not expressly required.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** "Party–any person, including a juvenile, in a civil matter in which the person has a right to counsel" (MA Sup. Jud. Ct. Rule 3:10(1)(I)).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "Counsel for a child owes the same duties of undivided loyalty, confidentiality, zealous advocacy and competent representation to the child as is due an adult client, consistent with the Massachusetts Rules of Professional Conduct" (MA CFLP, Stds. Gov. Rep. of Children 1.1).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 5 extra credit points** "Counsel shall decline the assignment if ... counsel is unable to afford the client prompt, diligent representation....Commentary: Counsel cannot provide prompt, diligent representation of a client if (a) counsel is unable to begin working on the case promptly or (b) counsel is unable to appear in court on an assigned date and cannot arrange a continuance that is consistent with the client s interests. It is counsel's responsibility to be aware of the caseload limits of the Committee for Public Counsel Services (CPCS) found in the CPCS Manual for Assigned Counsel (2003). Counsel should not accept any assignment which will cause him or her to exceed these limits" (MA CFLP, Stds. Gov. Rep. of Children 1.2(b)). "The Committee has established the following maximum caseload limits for open Children and Family Law cases that an attorney may carry at one time. Open cases include cases that are both pre-judgment and post-judgment: • Child Welfare Cases - 75" (Committee for Public Counsel Services (CPCS) Manual for Assigned Counsel (2003) at Ch. 5, No. 22).



Michigan

Score: 76 **Grade: C**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "In each case filed under this act in which judicial proceedings are necessary, the court shall appoint a lawyer-guardian ad litem to represent the child" (MCL § 722.630).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** "The lawyer-guardian ad litem's powers and duties include at least all of the following:...To ... be entitled to full and active participation in all aspects of the litigation" (MCL § 712A.17d(1)(b)).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 6 out of 20** "The lawyer-guardian ad litem's powers and duties include at least all of the following:...To make a determination regarding the child's best interests and advocate for those best interests according to the lawyer-guardian ad litem's understanding of those best interests, regardless of whether the lawyer-guardian ad litem's determination reflects the child's wishes. The child's wishes are relevant to the lawyer-guardian ad litem's determination of the child's best interests, and the lawyer-guardian ad litem shall weigh the child's wishes according to the child's competence and maturity" (MCL § 712A.17d(1)(i)). "If, after discussion between the child and his or her lawyer-guardian ad litem, the lawyer-guardian ad litem determines that the child's interests as identified by the child are inconsistent with the lawyer-guardian ad litem's determination of the child's best interests, the lawyer-guardian ad litem shall communicate the child's position to the court. If the court considers the appointment appropriate considering the child's age and maturity and the nature of the inconsistency between the child's and the lawyer-guardian ad litem's identification of the child's interests, the court may appoint an attorney for the child. An attorney appointed under this subsection serves in addition to the child's lawyer-guardian ad litem"(MCL § 712A.17d(2)). Basis for deduction: Under Michigan law, the lawyer-GAL represents the child's best interests. On a discretionary basis, the court may appoint an additional attorney to represent the child's interests.
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 0 out of 10** Michigan law contains no statewide mandatory training or education requirements for attorneys representing children in dependency proceedings.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** Michigan law appears to give children the right of notice, the right to attend and participate in hearings, and the right of appeal (see, e.g., MCL § 712A.19b; MI Ct. Rule 3.921; MI Ct. Rule 3.976(C)).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority or mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (MI R. of Prof. Conduct 1.14(a)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Michigan law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTES:

- ★ In 2008, the Michigan legislature enacted SB 669 (Act 200, Public Act of 2008), which—among other things —requires courts to "obtain the child's views regarding the permanency plan in a manner that is appropriate to the child's age".
- ★ In practice, many Michigan attorneys are following the child's wishes, based on the child's level of maturity.
- ★ An ABA study several years ago confirmed that courts do appoint a second attorney where there is a conflict.
- ★ In Michigan, training is handled by counties. Most, but not all, counties require training. Training is available through the state Court Administrator's Office.

Minnesota

Score: 70 **Grade: C**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 20 out of 40** "The child...has the right to effective assistance of counsel in connection with a proceeding in juvenile court.....if the child, parent, guardian, or custodian desires counsel but is unable to employ it, the court shall appoint counsel to represent the child who is ten years of age or older" (Minn. Stat. § 260C.163(3)(b)). Basis for deduction: Minnesota law requires the appointment of counsel only for children ten years of age or older.
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** "Every party and participant has the right to be represented by counsel in every juvenile protection matter, including through appeal, if any" (MN Juv. Prot. Proc. R. 25.01).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** Under Minnesota law, when an attorney is appointed to represent a child, it appears that the role of the attorney is to represent the child's expressed wishes, as opposed to the appointment of a guardian ad litem, who protects the child's best interests. "Counsel for the child shall not also act as the child's guardian ad litem" (Minn. Stat. § 260C.163(3)(d)).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 0 out of 10** Basis for deduction: Minnesota law contains no statewide mandatory training or education requirements for attorneys representing children in dependency proceedings.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** "A child who is the subject of the juvenile protection matter shall have the right to intervene as a party" (Minn. R. Juv. Prot. P. 23.01(Subd. 1)).

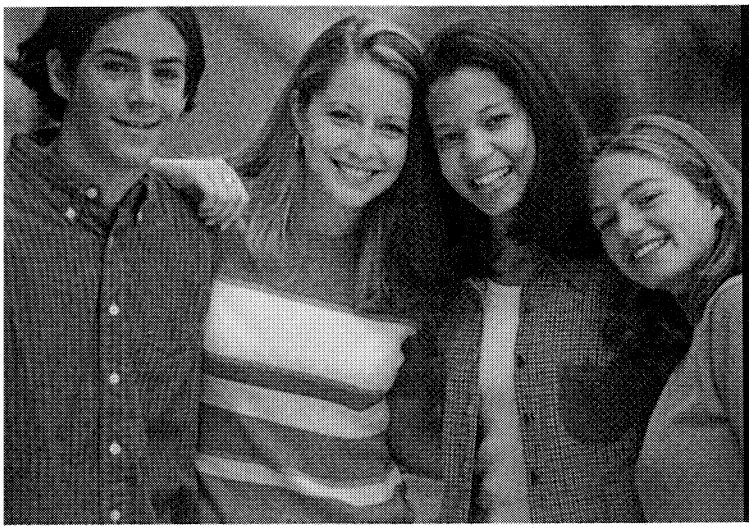
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (MN R. of Prof. Conduct 1.14).

Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Minnesota law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTES:

- ★ State officials who objected to the nature of this report opined that scarce resources should be spent on seeking federal legislation and funding for all children. These officials believe that federal and Minnesota child protection laws properly require the appointment of a Guardian ad Litem to advocate for each child's best interests, not the child's expressed preference. These officials suggested that funding for legal representation for parents is a more pressing matter.

- ★ The Children's Justice Initiative annually provides training to all child protection system stakeholders, specifically attorneys.



Mississippi

Score: 96 **Grade: A**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** In every case involving an abused or neglected child which results in a judicial proceeding, the court "shall appoint a guardian ad litem for the child" (Miss. Uniform Rules of Youth Court Practice, Rule 13(a)). In cases where the court appoints a layperson as guardian ad litem, the court shall also appoint an attorney to represent the child (Miss. Uniform Rules of Youth Court Practice, Rule 13(a)).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** "[T]he child shall be represented by counsel at all critical stages" (MS §43-21-201). "An attorney who has entered his appearance shall not be permitted to withdraw from the case until a timely appeal if any has been decided, except by leave of the court then exercising jurisdiction of the cause after notice of his intended withdrawal is served by him on the party he represents" (MS §43-21-201(5)).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** The role of the child's attorney is to "represent the child's preferences" (Miss. Uniform Rules of Youth Court Practice, Rule 13(f)).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 6 out of 10** Basis for deduction: Although Mississippi law requires training for GALs (who may or may not be attorneys) ("in order to be eligible for an appointment as a guardian ad litem, such attorney or lay person must have received child protection and juvenile justice training provided by or approved by the Mississippi Judicial College within the year immediately preceding such appointment" (Miss. Code Ann. § 43-21-121)), it does not expressly mandate multidisciplinary training for attorneys appointed to represent children in dependency proceedings.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant	**Points: 10 out of 10** Mississippi law recognizes the party status of children in dependency proceedings

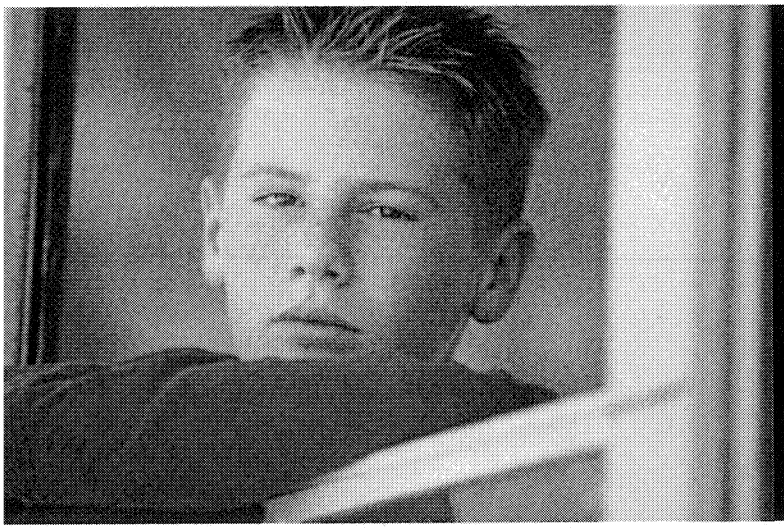
thereto? If not, does state law expressly give the child some of the rights of a party?	(Miss. Code Ann. § 43-21-201). "All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence: (a) to subpoena, confront and examine the person who prepared or furnished data for the report; and (b) to introduce evidence" (Miss. Code Ann. §43-21-203). "Reasonable oral or written notice of the time, place and purpose of the hearing shall be given to the child; to his or her parent, guardian or custodian; to his or her guardian ad litem, if any; and to his or her counsel" (Miss. Code Ann. §43-21-309). The youth court may exclude the attendance of a child from a hearing in neglect and abuse cases only "with consent of the child's counsel" (Miss. Code Ann. § 43-21-203).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** The child's attorney shall owe the same duties of undivided loyalty, confidentiality and competent representation to the child or minor as is due an adult client pursuant to the Mississippi Rules of Professional Conduct (MS §43-21-201(4)). "When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (MS R. of Prof. Conduct 1.14).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Mississippi law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTES:

- ★ Mississippi advocates noted that, while the state laws are positive, actual state practice is much less impressive. If the grade were to reflect practice it would score much lower. For example, although state law merits a perfect score for Criteria # 1, state practice merits only 15 points out of 40. The basis for this deduction is that many courts use a CASA as a GAL and may or may not appoint an attorney in addition.

- ★ Similar deductions might be made in the other categories as well if graded on implementation of Mississippi law. For example, no two youth courts are run the same, with some counties appointing private attorneys to juvenile cases while others have a GAL/attorney pair work on the case; many GALs never get a chance to meet their clients; and court decisions are inconsistent, and these decisions are not reviewed because juvenile cases are rarely appealed. First Star and the Children's Advocacy Institute call on Mississippi to comply with the laws it has duly adopted regarding legal representation for children in dependency proceedings.

- ★ In practice, GALs are always attorneys and if appointed in two or more cases, they must have training. While this is a great start, we suggest that all attorneys be required to have training and that this requirement be codified in state law.



Missouri

Score: 61 **Grade: D**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 out of 40

"In every case involving an abused or neglected child which results in a judicial proceeding, the judge shall appoint a guardian ad litem to appear for and represent" the child (§ 210.160 R.S.Mo.). "Only a lawyer licensed by the Supreme Court of Missouri and, when authorized by law, a court appointed special advocate volunteer sworn in as an officer of the court shall be appointed to act as a guardian ad litem for a child" (MO GAL Stds. of Prac. 1.0).

The court shall appoint counsel for a juvenile prior to the filing of a petition if a request is made therefore to the court and the court finds that the juvenile is subject to juvenile proceedings and that the juvenile making the request is indigent (Mo. Sup. Ct. R. 116.01(b)). When a petition has been filed, the court shall appoint counsel for the juvenile when necessary to assure a full and fair hearing. (Mo. Sup. Ct. R. 116.01(c)).

Basis for deduction: Although Missouri statutory law mandates the appointment of a GAL for a child in a dependency proceeding, that person may or may not be an attorney. Under court rule, the appointment of an attorney for a juvenile is not automatic (prior the filing of a petition, a request must be made and the juvenile must be indigent, and after the filing of a petition, the court must find that the appointment of counsel for a juvenile is necessary to assure a full and fair hearing).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

"Counsel shall serve for all stages of the proceedings, including appeal, unless relieved by the court for good cause shown. If no appeal is taken, services of counsel are terminated following the entry of an order of disposition" (Mo. Sup. Ct. R. 116.01(f)).

3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?

Points: 6 out of 20

Missouri law requires a GAL to advocate for the best interests of the child and to ascertain the child's wishes and inform the court when "the recommendations of the guardian ad litem are not in agreement with the wishes of the child" (MO GAL Stds. of Prac. 13.0).

Basis for deduction: Missouri law does not specify the role of a child's counsel. For an attorney serving as a child's GAL, Missouri law requires the GAL to articulate, but not advocate for, the wishes of the child when they are not in agreement with the GAL's recommendations" (MO GAL Stds. of Prac. 13.0).

4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 10 out of 10** For attorneys serving as GALs, Missouri law sets forth multidisciplinary training requirements, which include topics such as cultural and ethnic diversity and gender-specific issues, family and domestic violence issues, community resources and services, and child development issues, among other things (MO GAL Stds. of Prac. 16.0).
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** "'Party' means a juvenile who is the subject of a court proceeding" (MO Sup. Ct. R. 110.05(19)). "The juvenile officer shall give notice orally or, if possible, in writing of the date, time and place of the protective custody hearing. Notice shall be provided to all parties, including the parents, guardian or custodian, children's division or other legal custodian, and the guardian ad litem" (MO Sup. Ct. R. 111.14(a)). "The juvenile and the juvenile's custodian shall have the right to be present at all times during any hearing" (MO Sup. Ct. R. 117.01(a)).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (MO R. of Prof. Conduct 4-1.16(a)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Missouri law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTES:

- ★ Missouri's new Supreme Court Rules, going into effective January 1, 2010, will require the court to appoint counsel for all juvenile hearings if necessary to provide a full and fair hearing and will no longer require indigency as a basis for appointing counsel for abused or neglected children.
- ★ In 2008, the Missouri legislature amended Chapter 484 RSMo. to require that the Supreme Court's Guardian ad Litem Standards "shall be adopted statewide and each circuit shall develop a plan for implementation which takes into account the individual needs of their circuit as well as the negative impact that excessive caseload have upon effectiveness of counsel. These plans shall be approved by the Supreme Court en banc and fully implemented by July 1, 2011" (484.350 RSMo.). As a result, the Supreme Court has directed its Family Court Committee to review the current standards and submit recommendations for revisions as appropriate. This committee is also charged with developing a template for the circuits to use when developing their plan for implementation. This review process is currently underway.

Montana

Score: 79 **Grade: C**

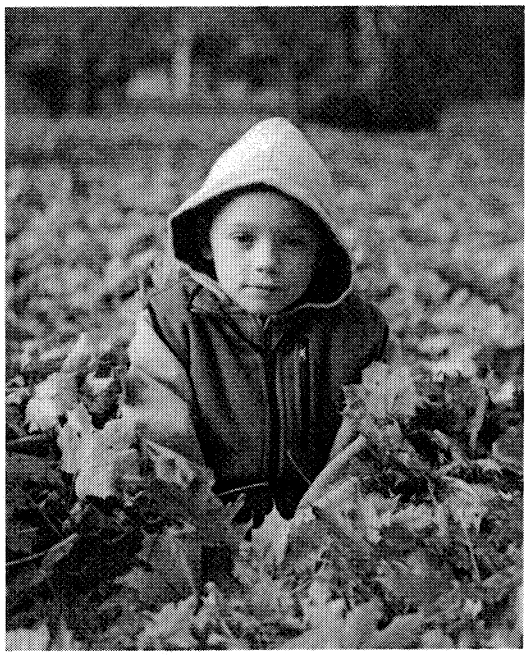
1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "[T]he court shall immediately appoint or have counsel assigned for...any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422" (Mont. Code Anno., § 41-3-425).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** "Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition" (Mont. Code Anno., §41-3-425).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 3 out of 20** Basis for deduction: Montana law is vague with regard to the role of counsel appointed for children in dependency proceedings.
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 6 out of 10** Montana law requires that a GAL, who may or may not be an attorney, "must have received appropriate training that is specifically related to serving as a child's court-appointed representative" (Mont. Code Anno., § 41-3-112). Basis for deduction: Montana law does not require training of attorneys appointed pursuant to § 41-3-425, but does require training for GALs.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** Montana law gives children party status in dependency proceedings (see, e.g., In re B.P. & A.P., 2001 MT 219, 306 M 430, 35 P3d 291 (2001)) and requires the child to receive notice of at least some hearings (see, e.g., Mont. Code Anno., § 41-3-115).

6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (MT R. of Prof. Cond. 1.14).

Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Montana law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTE:

★ Montana advocates note that the state's Constitution provides that "[t]he rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons" (Mont. Const., Art. II § 15 (2007).



Nebraska

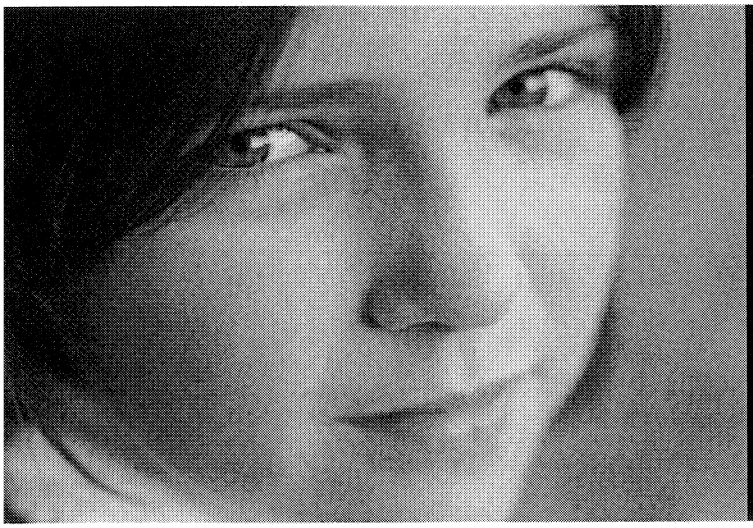
Score: 76 **Grade: C**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "The court shall appoint an attorney as guardian ad litem. A guardian ad litem shall act as his or her own counsel and as counsel for the juvenile, unless there are special reasons in a particular case why the guardian ad litem or the juvenile or both should have separate counsel" (R.R.S. Neb. § 43-272(3)).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** The attorney GAL provides representation for the child "for all proceedings" (R.R.S. Neb. § 43-272(1)).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 3 out of 20** Basis for deduction: Nebraska law is vague with regard to the role of counsel appointed for children in dependency proceedings.
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 3 out of 10** "[A]n attorney to be appointed by the courts as a guardian ad litem for a juvenile ... shall have completed six (6) hours of specialized training provided by the Administrative Office of the Court .... Thereafter, in order to maintain eligibility to be appointed and to serve as a guardian ad litem, an attorney shall complete three (3) hours of specialized training per year" (Neb. Ct. R. § 4-401). Basis for deduction: Although the provision quoted above appears to require attorneys to have specialized training, Nebraska law also provides that "if the judge determines that an attorney with the training required herein is unavailable within the county, he or she may appoint an attorney without such training" (Neb. Ct. R. § 4-401).
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law	**Points: 10 out of 10** "Parties means the juvenile" (R.R.S. Neb. § 43-245(12)). "Notice of the time, date, place, and purpose of any juvenile court hearing subsequent to the initial hearing, for

expressly give the child some of the rights of a party?	which a summons or notice has been served or waived, shall be given to all parties" (R.R.S. Neb. § 43-267(2)). At least in proceedings to terminate parental rights, all parties have the right to testify (R.R.S. Neb. § 43-279.01).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (NE R. of Prof. Conduct 1.14).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Nebraska law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTE:

★ While Nebraska gives judges the flexibility to appoint attorneys without specialized Guardian ad Litem training, advocates note that this exception is not used often and is included only so that children in rural areas do not lose the opportunity for counsel simply because there are no specially trained attorneys in the area. We encourage Nebraska to make changes in its laws to require training for all attorneys representing children.



Nevada

Score: 71 **Grade: C**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 15 out of 40** "The court may, if it finds it appropriate, appoint an attorney to represent the child" (Nev. Rev. Stat. Ann. § 432B.420). Basis for deduction: While Nevada law requires the appointment of a GAL, appointment of an attorney for a child is discretionary.
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** Representation by an attorney is provided for "all stages of any proceedings held pursuant to NRS 432B.410 to 432B.590, inclusive" (Nev. Rev. Stat. Ann. § 432B.420).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** "If the child is represented by an attorney, the attorney has the same authority and rights as an attorney representing a party to the proceedings" (Nev. Rev. Stat. Ann. § 432B.42(1)), representing children in a client-directed manner.
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 6 out of 10** Basis for deduction: Nevada law does not specify any training requirements for attorneys appointed to represent children pursuant to Nev. Rev. Stat. Ann. § 432B.420; however, some training is required for some special advocates appointed to serve as a child's GAL.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** If the child is represented by an attorney, Nevada law affords children the rights of a party to the proceedings ("[i]f the child is represented by an attorney, the attorney has the same authority and rights as an attorney representing a party to the proceedings" (Nev. Rev. Stat. Ann. §§ 432B.420(1), 128.100(1)).

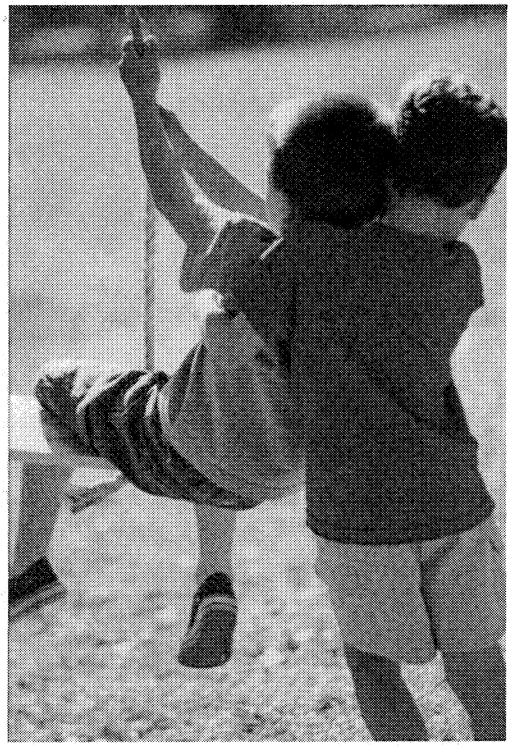
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (NV R. of Prof. Conduct 1.14).

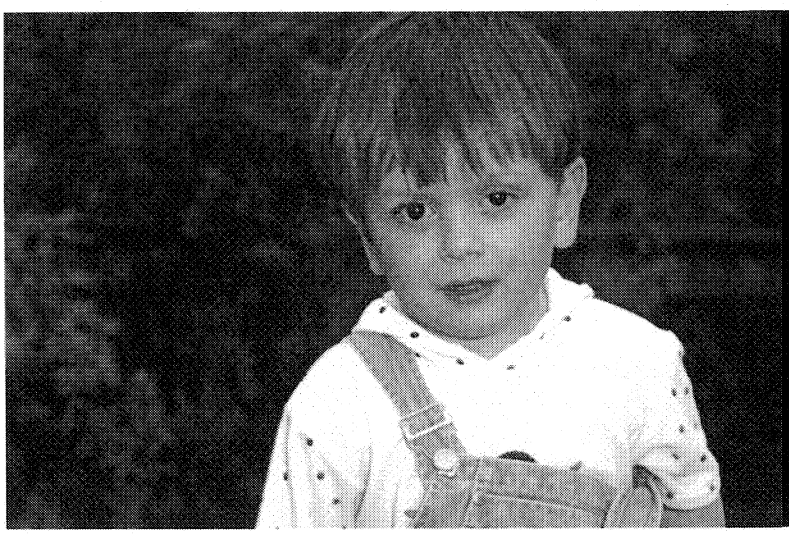
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Nevada law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTES:

★ In Nevada's largest county, Clark County, the Children's Attorneys Project, founded in 1999, represents about one-half of all children in the child welfare system; that number continues to grow each year. Advocates note that there is a commitment among key stakeholders to secure the funding to ensure representation of every child.

★ Education and training are priorities for children's attorneys in Nevada. At the Children's Attorneys Project, all of the attorneys participate in training offered by the National Association of Counsel for Children. Before any pro bono attorney may accept a children's case for representation, he/she is required to attend a training offered by the Project which includes a child welfare judge or hearing master and attorneys. Before pro bono attorneys accept their first cases, they are required to meet with an experienced children's attorney to review first steps. Every other month, the Project offers a "drop in" session and free lunch for any attorney with a children's case who wishes to talk about their case. Training is often tailored to special issues (*i.e.*, representing young children, representing children with mental health issues, etc.), and some trainings include experienced child psychologists.





New Hampshire

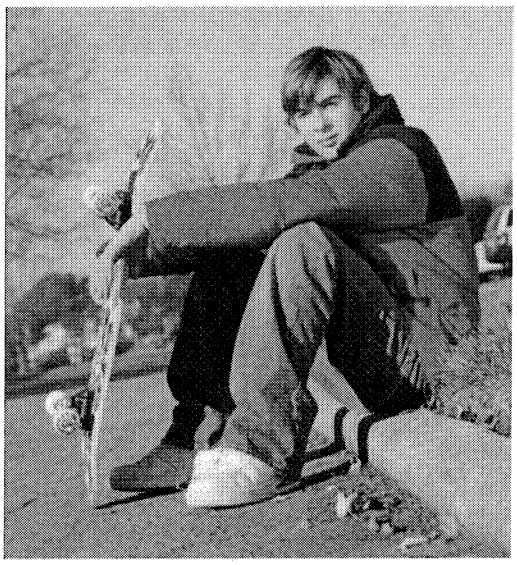
Score: 66 **Grade: D**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 15 out of 40** "In cases involving a neglected or abused child under this chapter, where the child's expressed interests conflict with the recommendation for dispositional orders of the guardian ad litem, the court may appoint an attorney to represent the interests of the child" (RSA 169-C:10). Basis for deduction: under New Hampshire law, appointment of an attorney to represent a child is discretionary.
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 5 out of 10** Basis for deduction: New Hampshire law does not expressly guarantee that children will be represented by an attorney during appeals.
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** "In cases involving a neglected or abused child under this chapter, where the child's expressed interests conflict with the recommendation for dispositional orders of the guardian ad litem, the court may appoint an attorney to represent the interests of the child" (RSA 169-C:10). "When an attorney is appointed as counsel for a child, representation may include counsel and investigative, expert and other services, including process to compel the attendance of witnesses, as may be necessary to protect the rights of the child" (RSA 169-C:10).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 6 out of 10** Basis for deduction: New Hampshire law does not require specific training for attorneys appointed pursuant to RSA 169-C:10. However, New Hampshire's Guardian ad Litem Board has established training requirements that are mandatory for GALs ("[g]eneral guardian ad litem training shall consist of a single course of study of at least 16 hours of training" (see Administrative Rules, Chapter GAL 303.02)).

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** "'[P]arty having an interest' means the child" RSA 169-C:3(XXI-a). The child is entitled to notice (through his/her custodian) (RSA 169-C:3(XX)).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (NH R. of Prof. Conduct 1.14a).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** New Hampshire law does not provide caseload standards for attorneys appointed pursuant to RSA 169-C:10.

SIDEBAR NOTE:

★ New Hampshire's Court Appointed Special Advocates program ensures that most children involved in dependency proceedings have an advocate by their side. While these efforts are commendable, First Star and CAI strongly encourage New Hampshire to take steps to ensuring that every child is also represented by client-directed legal counsel.



New Jersey

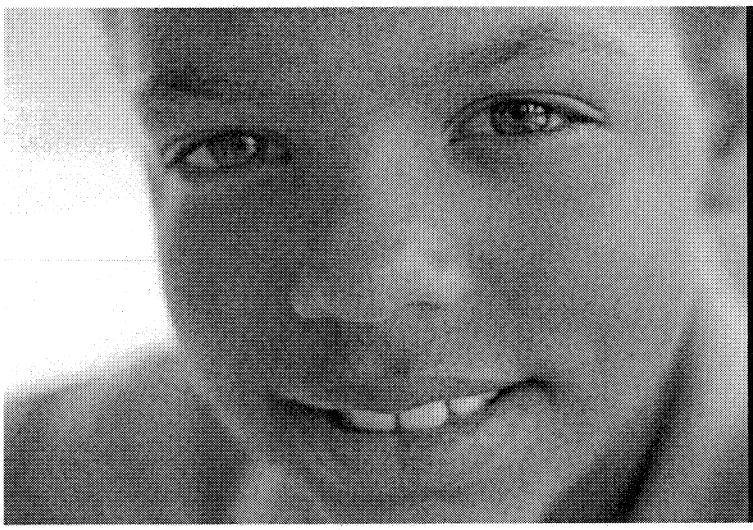
Score: 88 **Grade: B**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** Any minor who is the subject of a child abuse or neglect proceeding "must be represented by a law guardian" which means an attorney regularly employed to represent minors in abuse/neglect cases NJ §§ 9:6-8.23, 9:6-8.21.
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 5 out of 10** New Jersey law provides that "any minor who is the subject of a child abuse or neglect proceeding . . . must be represented by a law guardian." N.J.S. A. 9:6-8.23. Basis for deduction: New Jersey law does not expressly ensure counsel on appeal for children in dependency proceedings.
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** Any minor "must be represented by a law guardian to help protect his interests and to help him express his wishes to the court" (NJ § 9:6-8.23).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 8 out of 10** "In selecting attorneys to serve as law guardians...the Office of the Public Defender shall take into consideration the nature, complexity and other characteristics of the cases, the services to be performed, the status of the matters, the attorney's pertinent trial and other legal experience and other relevant factors....The Office of the Public Defender shall ensure that an attorney selected ...has received training in representing clients in child abuse and neglect and termination of parental rights actions from the Office of the Public Defender or will receive such equivalent training, as soon as practicable, from other sources" (N.J. Stat. § 30:4C-15.4(c)). Basis for deduction: New Jersey law does not expressly require the training to include multidisciplinary elements.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** New Jersey law provides children with the right to counsel, notice of placement review hearings, and right to contribute at proceedings. NJ §§ 9:6-8.23, 9:6-8.21; N.J. Div. of Youth and Fam. Servs vs. E.P., 196 N.J.88 (2008). Basis for deduction: New Jersey law does not expressly give children the status of party.
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (NJ R. of Prof. Conduct 1.14a).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** New Jersey law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTES:

- ★ Although New Jersey law does not expressly ensure counsel for children on appeal, the Office of Law Guardian's Appellate Unit provides appellate representation and continues to represent children up until their final post-termination hearing. First Star and CAI commend New Jersey for providing counsel for children on appeal, and encourage the State to codify that requirement in law.
- ★ New Jersey has many multidisciplinary training programs in place for attorneys.



New Mexico

Score: 92 **Grade: A**

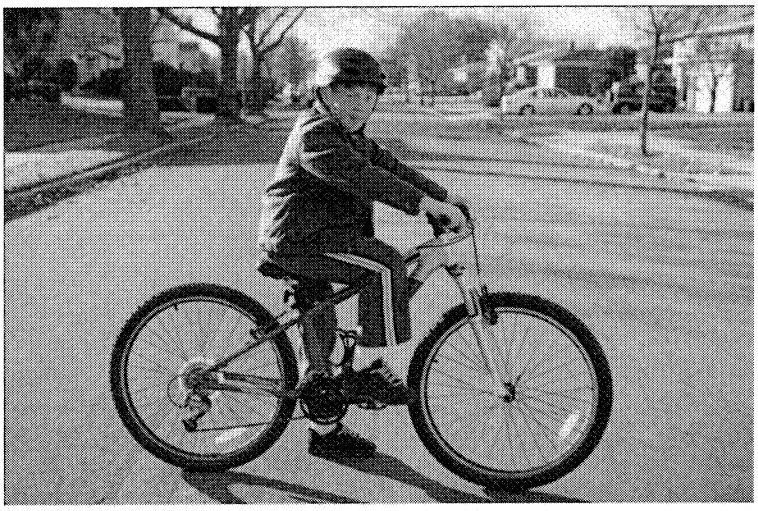
1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "At the inception of an abuse and neglect proceeding, the court shall appoint a guardian ad litem for a child under fourteen years of age. If the child is fourteen years of age or older, the court shall appoint an attorney for the child....Only an attorney with appropriate experience shall be appointed as guardian ad litem of or attorney for the child" (N.M. Stat. Ann. § 32A-4-10(C)).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** "Unless excused by a court, an attorney appointed to represent a child shall represent the child in any subsequent appeals" (N.M. Stat. Ann. § 32A-1-7.1(B)).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 12 out of 20** Only children fourteen years of age or older receive client-directed representation, with the attorney required to zealously represent the child (N.M. Stat. Ann. § 32A-4-10(F)). Basis for deduction: For children under fourteen years of age, the GAL's role is to zealously represent the child's best interest (N.M. Stat. Ann. § 32A-4-10(F)).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 10 out of 10** Attorneys and attorney GALs "shall receive periodic training ... to develop ... knowledge about children, the physical and psychological formation of children and the impact of ethnicity on a child's needs" (N.M. Stat. Ann. § 32A-18-1).
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** "[T]he child alleged to be neglected or abused or in need of court ordered services" is a party to "proceedings on petitions alleging neglect or abuse or a family in need of court ordered services" (N.M. Children's Ct. Rule 10-121(B)(3)). The child is entitled to notice and service of pleadings (through his/her attorney or GAL) (N.M. Children's Ct. Rule 10-104). "Any party may appeal from a judgment of the court to the court of appeals in the manner provided by law" (N.M. Stat. Ann. § 32A-1-17).

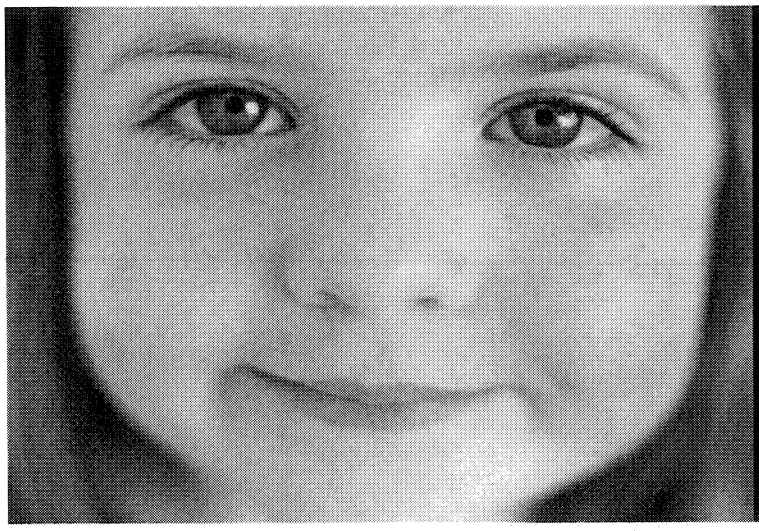
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "The attorney shall provide the same manner of legal representation and be bound by the same duties to the child as is due an adult client, in accordance with the rules of professional conduct" (N.M. Stat. Ann. § 32A-1-7.1(A)).

Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** New Mexico law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTE:

★ The New Mexico Children's Law Institute hosts one of the largest annual conferences for children's attorneys in the nation and has a high rate of attorneys who are certified by the National Association for Children's Counsel.





New York

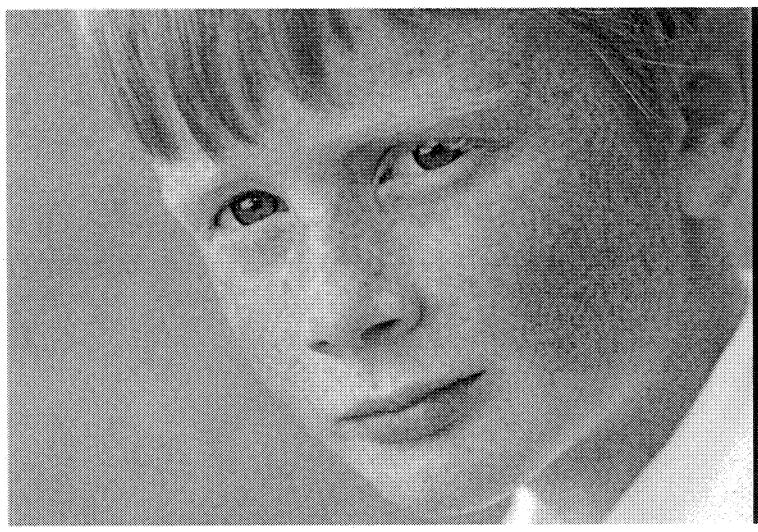
Score: 98 **Grade: A**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** McKinney's Family Court Act § 249(a) provides that "[i]n a proceeding under article three, seven, ten or ten-A of this act or where a revocation of an adoption consent is opposed . . . or in any proceeding under § 358, § 358-c, § 384 or § 384-b of the social services law or when a minor is sought to be placed in protective custody . . . the family court shall appoint a law guardian to represent a minor who is the subject of the proceeding or who is sought to be placed in protective custody, if independent legal representation is not available to such minor."
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** McKinney's Family Court Act § 1120(b) states that "[w]henever a law guardian has been appointed by the family court pursuant to § 249 of this act . . . the appointment shall continue without further court order or appointment where (i) the law guardian on behalf of the child files a notice of appeal, or (ii) where a party to the original proceeding files a notice of appeal. The law guardian may be relieved of his representation upon application to the court to which the appeal is taken for termination of the appointment. Upon approval of such application the court shall appoint another law guardian.
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** N.Y.Ct.Rules, § 7.2 states that (d)"[i]n other types of proceedings, where the child is the subject, the attorney for the child must zealously advocate the child's position." Further, the rule provides that "[i]f the child is capable of knowing, voluntary and considered judgment, the attorney for the child should be directed by the wishes of the child, even if the attorney for the child believes that what the child wants is not in the child's best interests."
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 8 out of 10** "[A]ll attorneys for children, including new and veteran attorneys, [must] receive initial and ongoing training" as provided by Family Court Act § 249-b. Basis for deduction: Although § 249-b requires specialized training for children's attorneys, it is only in the field of domestic violence and is not multidisciplinary in scope.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** Basis for deduction: While McKinney's Family Court Act § 1016 states that "[a]ll notices and reports required by law shall be provided to such law guardian", New York law does not expressly give children party status.
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** N.Y.Ct.Rules, § 7.2(b) declares that "[t]he attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation."
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 5 extra credit points** "Subject to adjustment based on the factors in subdivision (b), the number of children represented at any given time by an attorney appointed pursuant to section 249 of the Family Court Act shall not exceed 150" (22 NYCRR §127.5).

SIDEBAR NOTE:

★ In 2009 the New York Legislature amended the Family Court Act to, among other things, require attorneys for children to receive training or education in domestic violence prevention (A. 9017, Ch. 476, Statutes of 2009).



North Carolina

Score: 82 **Grade: B**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

N.C.G.S.A. § 7B-601 mandates that "when in a petition a juvenile is alleged to be abused or neglected, the court shall appoint a guardian ad litem to represent the juvenile." Furthermore, "[i]n every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the juvenile's legal rights throughout the proceeding."

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

The child's attorney has "standing to represent the juvenile in all actions . . ." and the attorney's "appointment shall terminate when the permanent plan has been achieved for the juvenile and approved by the court." N.C.G.S.A. § 7B-601. "Appeal from an order permitted under G.S. 7B-1001 may be taken by a juvenile acting through the juvenile's guardian ad litem previously appointed under G.S. 7B-601." N.C.G.S.A. § 7B-1002(1).

3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?

Points: 6 out of 20

Per Ch. 8 of the North Carolina Court System's GAL Attorney Manual, "[t]he phrase ad Litem means "for the lawsuit." The word guardian refers to an officer or agent of the court who is appointed to protect the interests of minors. The phrase Guardian ad Litem as a whole therefore refers to one who protects and represents the child for the purpose of the court action, which, in this case, includes all matters surrounding a petition for abuse, neglect, or dependency." "The attorney advocate and the GAL volunteer factor any wishes expressed by the child into a determination of best interest. The GAL makes recommendations to the court based on best interest but also conveys any wishes expressed by the child to the court."

Basis for deduction: The attorney-GAL is required to articulate but not advocate for the expressed wishes of the child.

4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?

Points: 6 out of 10

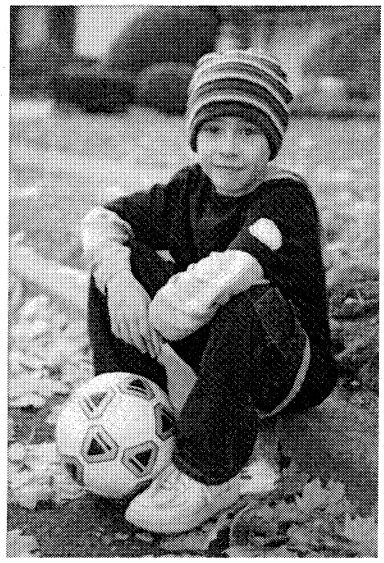
"A volunteer must complete 30 hours of required training" which is "taught by certified and experienced GAL trainers and staff". Further, "[v]olunteers also receive continuing education on advocacy issues" (N.C. GAL Program Ch. 8.4 C2(4)(b)).

Basis for deduction: Training is only required for attorneys who are also serving as GAL.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** "The juvenile is a party in all actions under this Subchapter" (N.C.G.S.A. § 7B-601).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "The following acts or omissions by a member of the North Carolina State Bar or any attorney admitted for limited practice...shall constitute misconduct and shall be grounds for discipline whether the act or omission occurred in the course of an attorney-client relationship or otherwise:...[t]he violation of the Rules of Professional Conduct adopted and promulgated by the Council in effect at the time of the act" (N.C. Gen. Stat. § 84-28(b)(2)). "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (N.C. Prof. Cond. Rule 1.14(a)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** North Carolina law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTE:

★ GAL attorneys are required by contract to complete training within six months of signing their contract for the first time. All GAL attorneys are invited and encouraged to attend all trainings offered by the GAL Program and Court Improvement Project, both under the Administrative Office of the Courts.

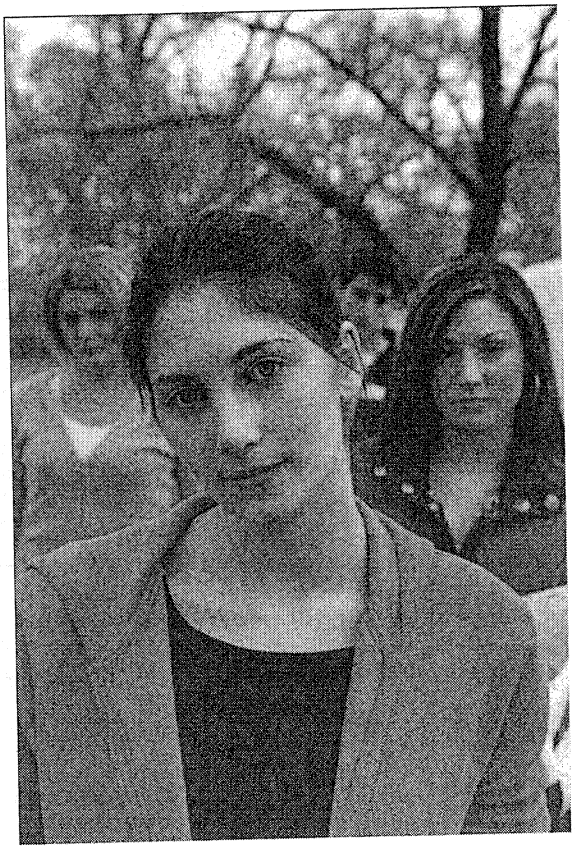


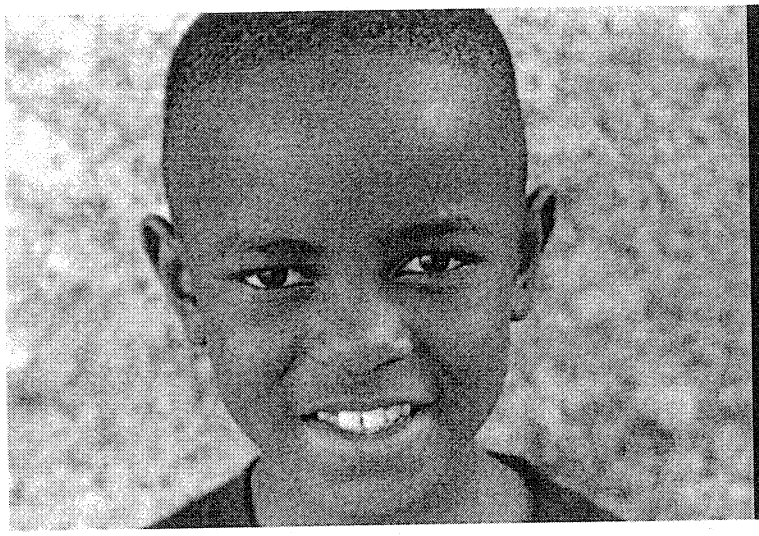
North Dakota

Score: 55 **Grade: F**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 15 out of 40** "If, at any time in the proceeding, the court determines that the interest of the child are, or may be, inadequately represented, it may appoint an attorney to represent the child" (N.D. Cent. Code, § 27-20-48.4(4)). Basis for deduction: North Dakota law provides that the appointment of counsel for a child is discretionary.
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 5 out of 10** Basis for deduction: When an attorney is provided for a child, the appointment appears to last through the juvenile court process (see N.D. Cent. Code, § 27-20-26(1)); however, North Dakota law does not assure counsel for children on appeal.
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** The role of counsel appointed to represent children is to "represent the child's wishes," while a guardian ad litem "represents the child's best interests" (N.D. Department of Human Services, Wraparound Case Management Policy Manual, § 641-40-10).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 0 out of 10** Basis for deduction: North Dakota law does not set forth specialized education and/or training requirements for children's counsel.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** "The court shall direct the issuance of a summons [of a deprivation proceeding] to the parents, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons must also be directed to the child if the child is fourteen or more years of age or is alleged to be a delinquent or unruly child" (N.D. Cent. Code, § 27-20-22).

	Basis for deduction: Although N.D. Cent. Code § 27-20-26(3) defines "party" to include the child, it is only for the limited purposes set forth in §§ 27-20-26 and 27-20-49.
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is limited, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (N.D.R. Prof. Conduct Rule 1.14a).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** North Dakota law does not address caseload standards for attorneys representing children in dependency proceedings.



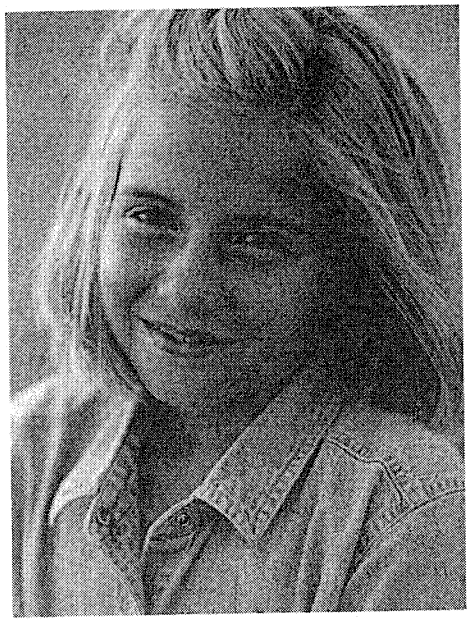


Ohio

Score: 86 **Grade: B**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "A child [in a dependency proceeding] is entitled to representation by legal counsel at all stages of the proceedings" (Ohio Rev. Code Ann. § 2151.352).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 5 out of 10** A child is entitled to legal representation "at all stages of the proceedings under ... [C]hapter [2151] or Chapter 2152 of the Revised Code (Ohio Rev. Code Ann. § 2151.352). Basis for deduction: Although the appointment of counsel for children extends through the entire juvenile court process, Ohio law does not assure children continued representation on appeal.
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** "When the complaint alleges that a child is an abused child, the court must appoint an attorney to represent the interests of the child" (Ohio Juv. R. 4(A)).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 6 out of 10** "In order to serve as a guardian ad litem, an applicant shall have, at a minimum, the following training: (1) Successful completion of a pre-service training course to qualify for appointment and thereafter, successful completion of continuing education training in each succeeding calendar year to qualify for continued appointment" (Ohio Sup. R. 48). Basis for deduction: Training is only required for guardians ad litem, who may or may not be attorneys (Ohio Sup. R. 48).
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law	**Points: 5 out of 10** "'Party' means a child who is the subject of a juvenile court proceeding" (Ohio R. Juv. P. 2). Ohio Juv. R. 4 and Ohio Rev. Code Ann. § 2151.352 similarly imply party status

expressly give the child some of the rights of a party?	in relation to children in juvenile proceedings. "The court shall give all parties to the action and the child's guardian ad litem notice of the adjudicatory and dispositional hearings in accordance with the Juvenile Rules" (Ohio Rev. Code Ann. § 2151.35). "The court shall give notice of the review hearings held pursuant to this section to every interested party, including, but not limited to, the appropriate agency employees who are responsible for the child's care and planning, the child's parents, any person who had guardianship or legal custody of the child prior to the custody order, the child's guardian ad litem, and the child" (Ohio Rev. Code Ann. § 2151.417(F)). Basis for deduction: The child is not guaranteed to be present at all proceedings and "shall not be summoned unless the court so directs" (Ohio R. Juv. P. 15).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a court appoints an attorney to serve as both the guardian ad litem and attorney for a child, the attorney shall advocate for the child's best interest and the child's wishes in accord with the Rules of Professional Conduct. Attorneys who are to serve as both guardian ad litem and attorney should be aware of Rule 3.7 of the Rules of Professional Conduct and act accordingly" (Ohio Sup. Ct. R. 48).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Ohio law does not address caseload standards for attorneys representing children in dependency proceedings.



Oklahoma

Score: 93 **Grade: A**

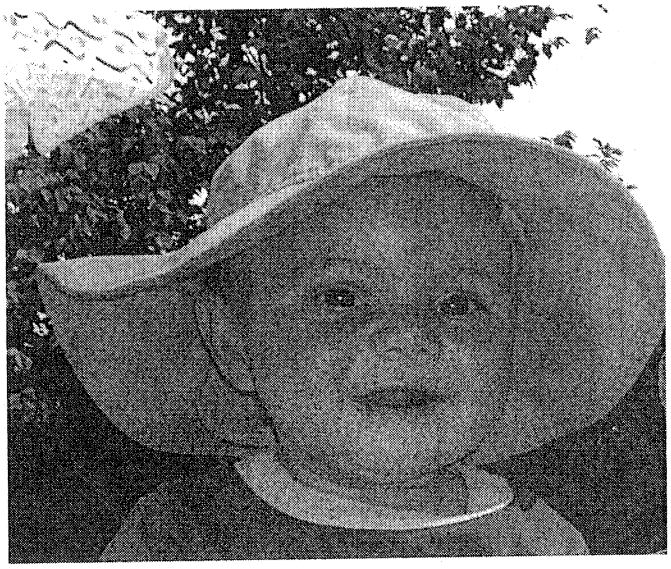
1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "The court shall ensure that the child is represented by independent counsel throughout the pendency of the deprived action" (10A OK St. § 1-4-306(A)(5)).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** "The court shall ensure that the child is represented by independent counsel throughout the pendency of the deprived action" (10A OK St. § 1-4-306(A)(5)).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** A child's attorney "shall represent the child and any expressed interests of the child" (10 Ok St Ann. 7003-3.7(A)(2)(C)).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 3 out of 20** It is the intent of the legislature that "[m]ultidisciplinary and discipline-specific training on child abuse and neglect and domestic violence be made available to professionals in Oklahoma with responsibilities affecting children, youth, and families, including but not limited to: ...lawyers, public defenders,..." (63 Okl. St. § 1-227(b)(2)). Basis for deduction: Oklahoma law encourages but does not require children's counsel to obtain specialized education and/or training.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** The child is "a party to the proceeding" (10A Ok. St. § 1-4-601(E)(2)).

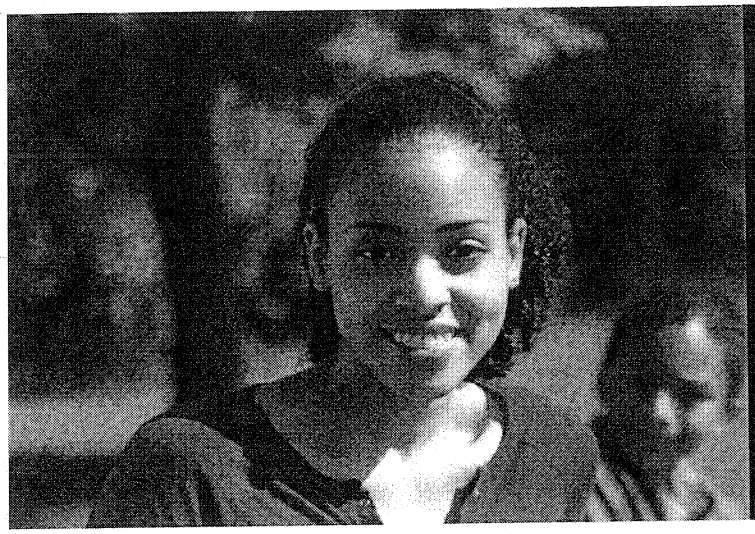
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (5 Okl. St. Chap. 1, Appx. 3-A, Rule 1.14(a)).

Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Oklahoma law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTE:

★ On May 21, 2009, the Oklahoma Legislature passed a new Children's Code, which took effect immediately upon enactment. Among other things, the new Code expressly provides that children are parties to dependency court proceedings and requires the court to ensure that the child is represented by independent counsel throughout the pendency of the action.



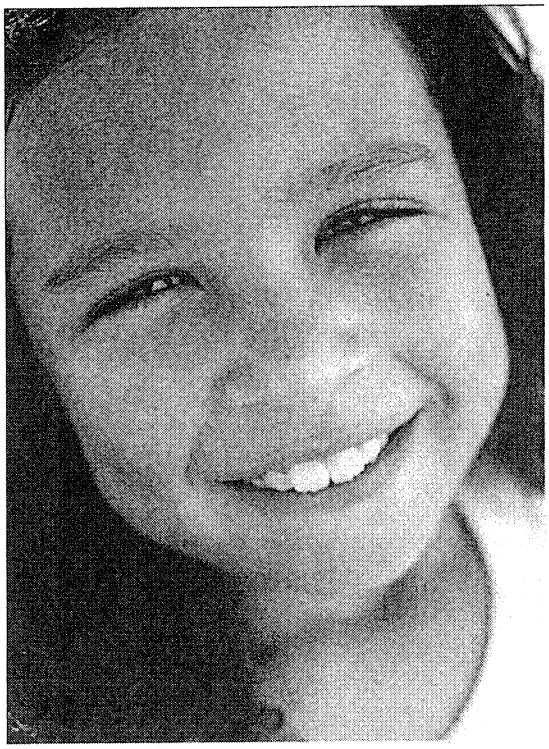


Oregon

Score: 83 **Grade: B**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 20 out of 40** "Whenever requested to do so, the court shall appoint counsel to represent the child or ward" (O.R.S. 419B.195). Basis for deduction: Under Oregon law, attorneys are not automatically provided for children in dependency proceedings (the court must be requested to do so).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** "Unless otherwise specified by written court order, an order for appointment of counsel shall expire when the time for taking an appeal has expired" (Uniform Trial Court R. 11.020).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** "When representing...children capable of considered judgment, a lawyer is bound by and should advocate for the client's definition of his or her interests, and may not substitute counsel's judgment for the client's, nor ignore the client's wishes because they are not to be perceived to be in the best interests of the child" (Specific Standards for Representation in Juvenile Dependency Cases 3.4).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 10 out of 10** In addition to having knowledge of juvenile law case law, standards, and procedures, Oregon requires children's counsel to review and be familiar with a wide range of materials, including information relating to special education, disabilities, immigration, etc. (Public Defense Services Commission, *Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense*, Standard IV(7)).
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** "Parties to proceedings in the juvenile court under O.R.S. 419B.100 and 419B.500 are...[t]he child or the ward." Further, "[t]he rights of the parties include, but are not limited to: (a) The right to notice of the proceeding and copies of the petitions, answers, motions and other papers; (b) The right to appear with counsel and, except

	for interveners under subsection (1)(b) of this section, to have counsel appointed as otherwise provided by law; (c) The right to call witnesses, cross-examine witnesses and participate in hearings; (d) The right of appeal..." (O.R.S § 419B.875(1)(a), (2)(a)-(d)).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (ORPC 1.14).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 3 extra credit points** "Attorneys appointed to represent financially eligible persons at state expense must provide competent and adequate representation to each client. Neither defender organizations nor assigned counsel shall accept workloads that, by reason of their size or complexity, interfere with providing competent and adequate representation or lead to the breach of professional obligations" (Public Defense Services Commission, Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense, Standard II).



Pennsylvania

Score: 82 **Grade: B**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

"When a proceeding...has been initiated alleging that the child is a dependent child...the court shall appoint a guardian ad litem to represent the legal interests and the best interests of the child. The guardian ad litem must be an attorney at law" (42 Pa. Consol. Stat. § 6311). When a child is taken into custody, the court shall appoint a GAL or legal counsel "immediately after a child is taken into protective custody and prior to any proceeding," and where the child is not taken into custody, "the court shall appoint a guardian ad litem or legal counsel for the child when a dependency petition is filed" (Pa.R.J.C.P. No. 1151).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

"The guardian ad litem shall be charged with representation of the legal interests and the best interests of the child at every stage of the proceedings" (42 Pa. Consol. Stat. § 6311). "Once an appearance is entered or the court assigns counsel for the child, counsel shall represent the child until the closing of the dependency case, including any proceedings upon direct appeal and permanency review" (Pa.R.J.C.P. No. 1150).

3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?

Points: 12 out of 20

Under Pennsylvania law, when a child "is a dependent child under paragraph (1), (2), (3), (4) or (10) of the definition of 'dependent child' in section 6302", the court shall appoint a GAL who shall articulate the child's expressed wishes "to the extent that they can be ascertained and present to the court whatever evidence exists to support the child's wishes" (42 Pa. Consol. Stat. § 6311(a), (b)(9)). When § 6311 is not applicable, "a party is entitled to representation by legal counsel" who represents the child in the traditional attorney-client role (42 Pa. Consol. Stat. § 6337).

Basis for deduction: Under Pennsylvania law, client-directed counsel is required for children with major exceptions; children coming under certain definitions of "dependent child" are provided with a GAL who will articulate but not advocate for the child's expressed wishes. A child will receive a GAL instead of client-directed counsel when the child "is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals"; "has been placed for care or adoption in violation of law"; "has been abandoned by his parents, guardian, or other custodian"; is without a parent, guardian, or legal custodian"; or is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa.C.S. § 2511...within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety or welfare of the child" (42 Pa. Consol. Stat. § 6337).

4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 0 out of 10** Basis for deduction: Pennsylvania law does not require specialized education and/or training for child's counsel.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** A "party is a person who is legally entitled to participate in the proceedings" (Pa.R.J.C.P. No. 1120). "The summons shall...be directed to the child if he is 14 or more years of age" (42 Pa. Consol. Stat. §6335). "In any permanency hearing held with respect to the child, the court shall consult with the child regarding the child's permanency plan in a manner appropriate to the child's age and maturity (42 Pa. Consol. Stat. § 6351).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client (Pa. RPC 1.14(a)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Pennsylvania law does not address caseload standards for attorneys representing children in dependency proceedings.

Rhode Island

Score: 84 **Grade: B**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

Within seven days of the Department of Children Youth and Families' filing of a petition, the court must assure that an attorney (either a guardian ad litem or an attorney with the court appointed special advocate program) "has been appointed to represent the child" (R.I. Gen. Laws § 40-11-7.1(b)(3); RI R. Juv. P. Rules 15(c)(3), 18(c)(3)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

Once an attorney has appeared in a matter, his/her continued representation may not be terminated without court permission. An attorney's "representation of the children is continuing" during the time that the "children are subject to the ongoing jurisdiction of the Family Court" (*Sam and Tony M., et al. v. Carcieri, et al.* (2009) 610 F. Supp. 2d 171).

3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?

Points: 6 out of 20

"A lawyer Guardian ad litem is not the lawyer for the child and, therefore advocates the best interests of the child rather than merely representing the child's preferences." The GAL "will assure the child that the child's opinions and feelings will be made known to the Court even when not consistent with the recommendations of the [GAL]" (R.I. Fam. Ct. Admin. Order 2006-02). Attorney GALs and attorneys from the CASA office are both charged with ensuring "that the best interests of the child are served" (R.I. Fam. Ct. Admin. Order 1979-13(1), (2)).

Basis for deduction: Lawyer GALs and attorneys from the CASA office are required to articulate, but not advocate for, the child's express wishes.

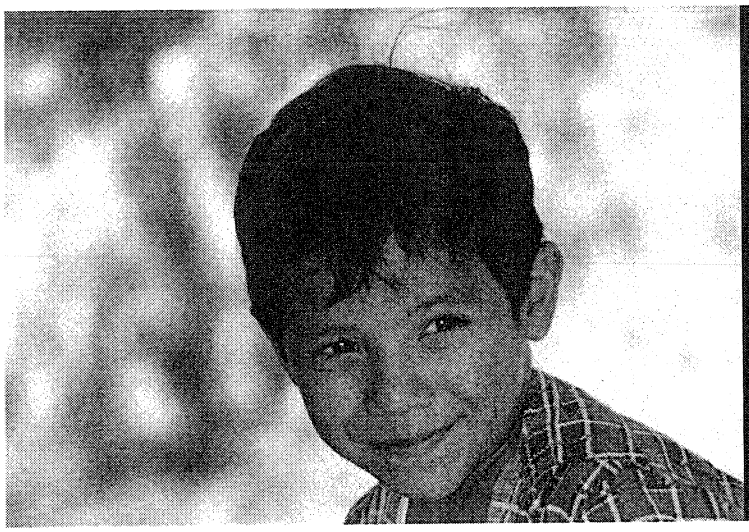
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?

Points: 8 out of 10

"No person shall be appointed as Guardian ad litem without first completing the Family Court specialized training program. Thereafter, to continue to be appointed as a guardian ad litem, a person shall complete specialized training annually" (R.I. Fam. Ct. Admin. Order 2006-02).

Basis for deduction: Although specialized education and/or training is required for attorneys serving as GALs, Rhode Island law does not expressly or impliedly require that training to include multidisciplinary elements.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** Under Rhode Island law, children are considered parties to the legal proceedings (see, *e.g.*, R.I. Gen. Laws § 40-11-12.2(a): the permanency plan "shall clearly set forth the goals and obligations of the department, parent(s), child and *all other parties*" (emphasis added)).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client lawyer relationship with the client" (RI Sup. Ct. Art. V, Rule 1.14(a)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Rhode Island law does not address caseload standards for attorneys representing children in dependency proceedings.



South Carolina

Score: 76 **Grade: C**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** In dependency proceedings "[c]hildren must be appointed legal counsel and a guardian ad litem by the family court" (S.C. Code Ann. § 63-7-1620).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** South Carolina law ensures counsel for children "[i]n all child abuse and neglect proceedings" (S.C. Code Ann. § 63-7-1620), which includes appeals.
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 6 out of 20** When "the child's position…is in conflict with the guardian ad litem's view of the best interests of the child", the GAL is authorized to "request for counsel to be appointed for a child to advocate the child's position," but such appointment by the court is discretionary (S.C. Ethics Advisory Op. 08-04 (July 2008)). Basis for deduction: Attorney GALs represent the child's best interests. The attorney GAL is authorized to articulate but not advocate for the child's wishes.
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 0 out of 10** Basis for deduction: South Carolina law does not require specialized education and/or training for children's legal counsel in dependency proceedings.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** "'Party in interest' includes the child, the child's attorney and guardian ad litem, the natural parent, an individual with physical or legal custody of the child, the foster parent, and the local foster care review board" (S.C. Code Ann. § 63-7-20(15)).

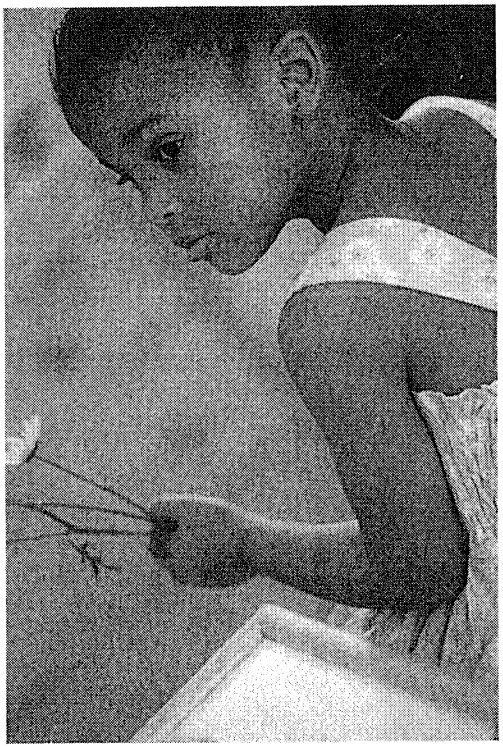
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client (Rule 407, Rule 1.14, SCACR).

Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** South Carolina law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTES:

★ The General Assembly determined that the Children's Code, as previously contained in one chapter of Title 20, had become cumbersome and difficult to use. In 2008, pursuant to Act 361, it transferred the Children's Code to its own new title (Title 63). The General Assembly determined that the new Children's Code in Title 63 will be a more accessible, practical resource for those working in the area of children's law.

★ State advocates note that although S.C. Code Ann. § 63-7-1620 states that a child is entitled to a GAL and legal counsel, in practice the appointment of legal counsel is rare unless recommended by the child welfare agency or the GAL where there is conflict between the best interest recommendation and the child's wishes—and even in those cases appointment of legal counsel is at the discretion of the court.



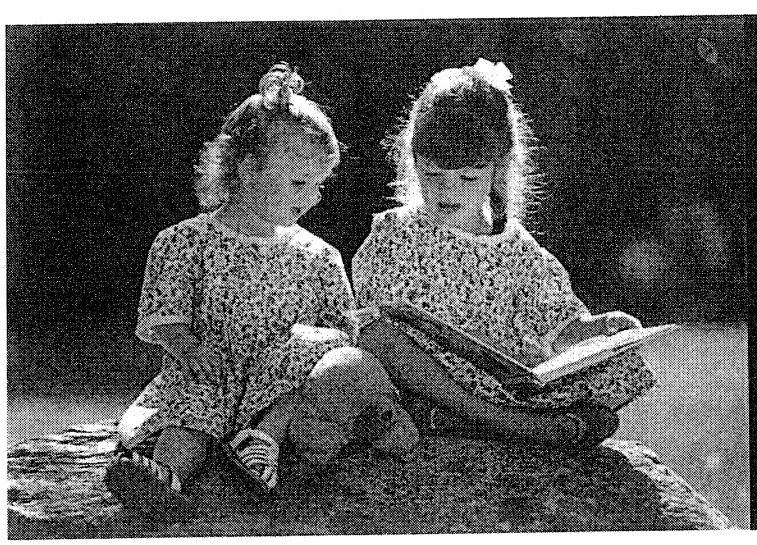
South Dakota

Score: 65 **Grade: D**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "[T]he court shall appoint an attorney for any child alleged to be abused or neglected" (S.D. Codified Laws § 26-8A-18).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** The attorney appointed by the court shall represent the child "in any judicial proceeding" (S.D. Codified Laws § 26-8A-18).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 0 out of 20** "The attorney for the child shall represent the child's best interests" (S.D. Codified Laws § 26-8A-18). Basis for deduction: Under South Dakota law, the child's attorney must represent the child's best interests, not the child's expressed wishes.
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 0 out of 10** Basis for deduction: South Dakota law does not require specialized education and/or training for attorneys representing children in dependency proceedings.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** South Dakota law expressly provides children with some rights (the court should advise the child of his/her "right to be represented by an attorney" and the right "to file, at the conclusion of the proceedings, a motion for a new hearing and, if the motion is denied, the right to appeal" (S.D. Codified Laws § 26-7A-30)). Basis for deduction: South Dakota law does not expressly give children party status in dependency proceedings.

6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (S.D. Codified Laws § 16-18-appx-1.14).

Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** South Dakota law does not address caseload standards for attorneys representing children in dependency proceedings.



Tennessee

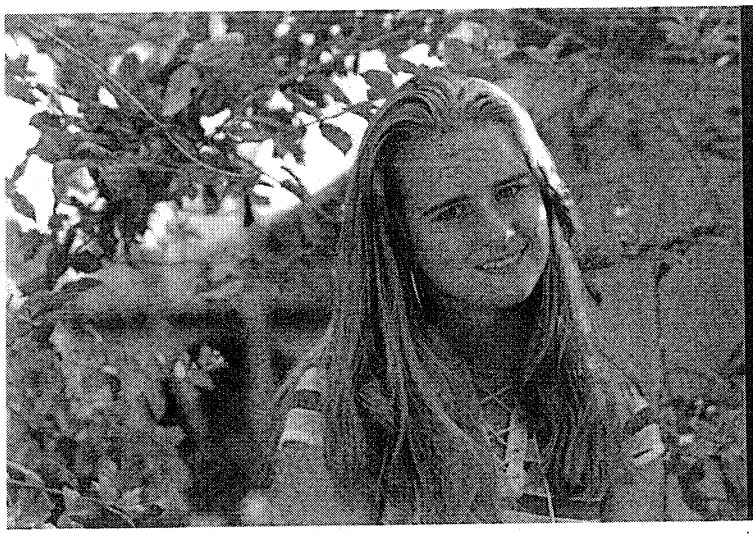
Score: 87 **Grade: B**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "The court at any stage of a [juvenile] proceeding, on application of a party or on its own motion, shall appoint a guardian ad litem for a child who is a party to the proceeding" (T.C.A. § 37-1-149). A guardian ad litem is "a lawyer appointed by the court" (Tenn. R. of Juv. P., R 2).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** "The obligation of the guardian ad litem to the child is a continuing one and does not cease until the guardian ad litem is formally relieved by court order" (Tenn. Sup. Ct R. 40). The "[r]ight to an attorney at all stages of the proceedings shall include the right to an attorney in an appeal" (Tenn. R. Juv. P. 36(b)).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** "In a dependency, neglect or abuse case the guardian ad litem must...ensure that the child's concerns and preferences are effectively advocated" (Tenn. R. of Juv. P., R 2). "If, after fully investigating and advising the child, the guardian ad litem is still in a position in which the child is urging the guardian ad litem to take a position that the guardian ad litem believes is contrary to the child's best interest, the guardian ad litem shall pursue one of the following options: Request that the court appoint another lawyer to serve as guardian ad litem, and then advocate for the child's position while the other lawyer advocates for the child's best interest; Request that the court appoint another lawyer to represent the child in advocating the child's position, and then advocate the position that the guardian ad litem believes serves the best interests of the child" (Tenn. Sup. Ct R. 40(e)).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 8 out of 10** Tennessee law requires that "[a]ny guardian ad litem appointed by the court shall receive training appropriate to that role prior to such appointment" (T.C.A. § 37-1-149). Basis for deduction: Although Tennessee law requires that attorney GALs receive training prior to appointment, it does not expressly require such training to be multidisciplinary in nature.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** Under Tennessee law, children in dependency proceedings do have some express rights ("The summons shall also be directed to the child if the child is fourteen (14) years of age or more" (T.C.A. § 37-1-121(a)); a child has a "[r]ight to an attorney at all stages of the proceedings [which] shall include the right to an attorney in an appeal" (T.C.A. § 37-1-121). Basis for deduction: Tennessee law does not expressly give party status to children in dependency proceedings.
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 4 out of 10** "When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Tenn. Sup. Ct. R. 8, Rule 1.14(a)). However, "[a]ny guardian ad litem...appointed by the court shall be presumed to be acting in good faith and in so doing shall be immune from any liability" while under appointment (T.C.A. § 37-1-149(b)(3)). Basis for deduction: Tennessee law provides broad immunity for GALs representing children in dependency proceedings.
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Tennessee law does not address caseload standards for attorneys representing children in dependency proceedings.

SIDEBAR NOTE:

★ Although Tennessee law does not expressly mandate that the training required for GALs be multidisciplinary in nature, the state's Court Improvement Program has offered an advanced level multidisciplinary training for attorneys since 2006, incorporating such professionals/layman as licensed clinical social workers, a developmental pediatrician, guidance counselor and former foster youth.

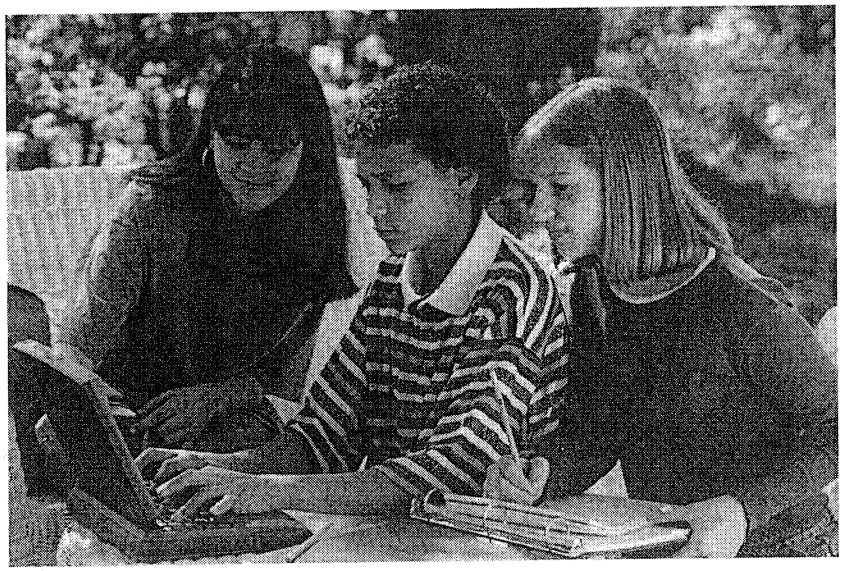


Texas

Score: 85 **Grade: B**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "In a suit filed by a governmental entity requesting termination of the parent-child relationship or to be named conservator of a child, the court shall appoint an attorney ad litem to represent the interests of the child immediately after the filing, but before the full adversary hearing, to ensure adequate representation of the child" (Tex. Fam. Code § 107.012).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 5 out of 10** The attorney ad litem is entitled to "attend all legal proceedings in the suit" (Tex. Fam. Code § 107.003(3)(g)). "[A]n order appointing the Department of Protective and Regulatory Services as the child's managing conservator may provide for the continuation of the appointment of the...attorney ad litem for the child for any period set by the court" (Tex. Fam. Code § 107.016). Basis for deduction: Texas law provides the court with authority to provide for the continuation of appointment of the child's attorney ad litem for any period (Tex. Fam. Code § 107.016), but does not expressly ensure that the attorney ad litem will represent the child on appeal.
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** "[T]he attorney ad litem appointed for a child shall, in a developmentally appropriate manner...advise the child [and] represent the child's expressed objectives of representation" (Tex. Fam. Code § 107.004).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 9 out of 10** "An attorney ad litem appointed to represent a child...must be trained in child advocacy or have experience determined by the court to be equivalent to that training" (Tex. Fam. Code § 107.003(2)). Basis for deduction: Under Texas law, multidisciplinary elements are impliedly required as part of the specialized education and/or training, but are not expressly required.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** Although Texas law expressly gives children certain rights in dependency proceedings , such as the right to "attend each permanency hearing unless the court specifically excuses the child's attendance" (Tex. Fam. Code § 263.302), Basis for deduction: Texas law does not expressly give party status to children in these proceedings.
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 6 out of 10** An attorney ad litem shall comply with the Texas Disciplinary Rules of Professional Conduct (Tex. Fam. Code § 107.003). An attorney ad litem owes to his/her client "the duties of undivided loyalty, confidentiality, and competent representation" (Tex. Fam. Code § 107.001(2)). Basis for deduction: Texas law provides limited immunity for some actions taken by attorneys ad litem (an attorney ad litem "is not liable for civil damages arising from an action taken, a recommendation made, or an opinion given in the capacity of guardian ad litem, attorney ad litem, or amicus attorney" unless the action was taken, the recommendation was made, or the opinion was given "with conscious indifference or reckless disregard to the safety of another...in bad faith or with malice...or...is grossly negligent or wilfully wrongful") (Tex. Fam. Code § 107.009).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Texas law does not address caseload standards for attorneys representing children in dependency proceedings.



SIDEBAR NOTES:

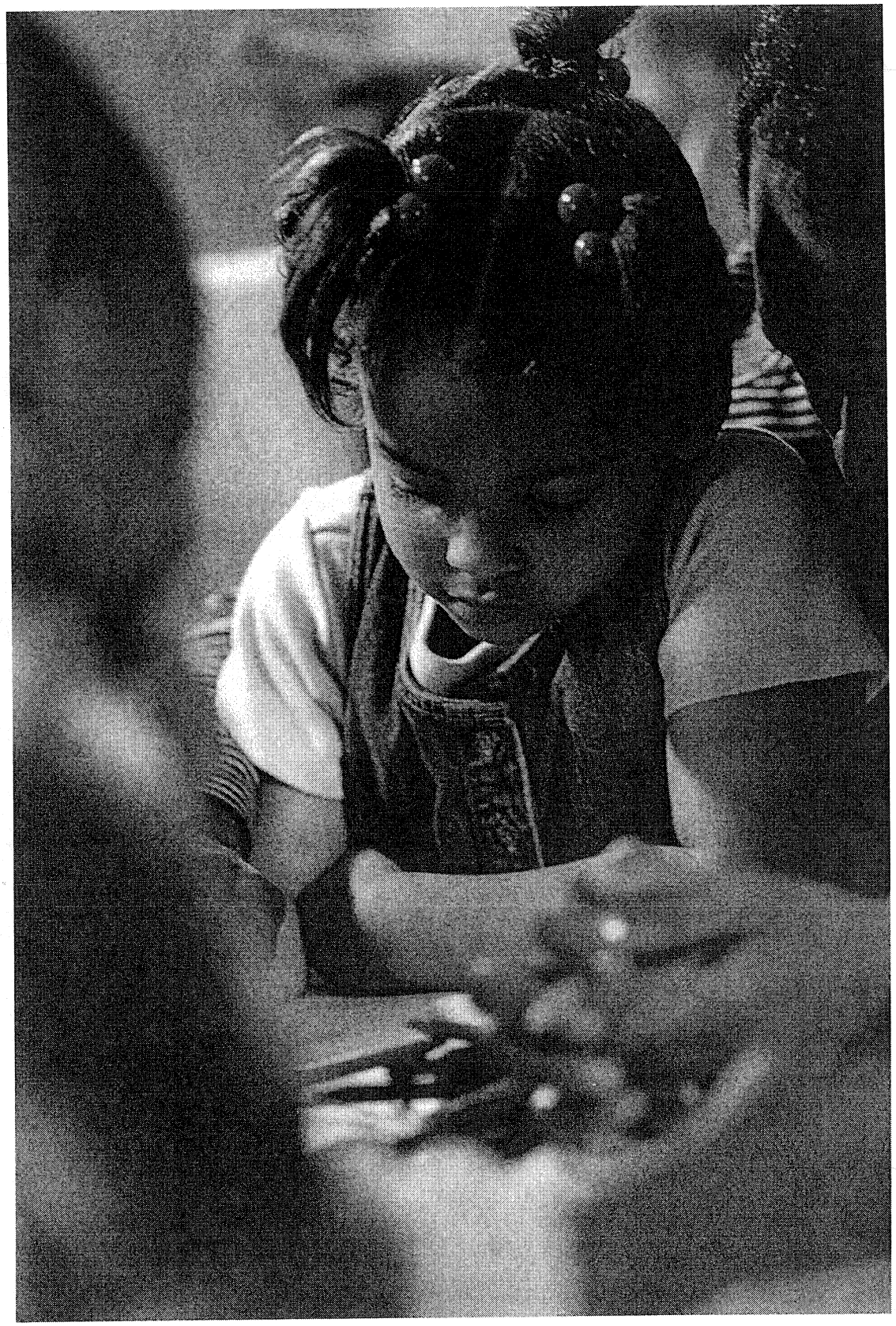
★ A three-year grant awarded in 2009 by the Texas Supreme Court will fund two public law offices in Travis County that will focus solely on families involved in Child Protective Services court cases. The Office of Parental Representation works with parents to protect their rights and help them obtain services they need, and the Office of Child Representation (OCR) provides legal representation and case management for children who are involved in Child Protective Services cases. OCR works as a team to effectively represent clients' legal interests and serves as a resource for the community on topics related to child welfare law. This model will help ensure that attorneys representing children are familiar with the child welfare system and understand the unique issues that their clients face. If successful, the OCR model might be replicated in other areas of Texas.

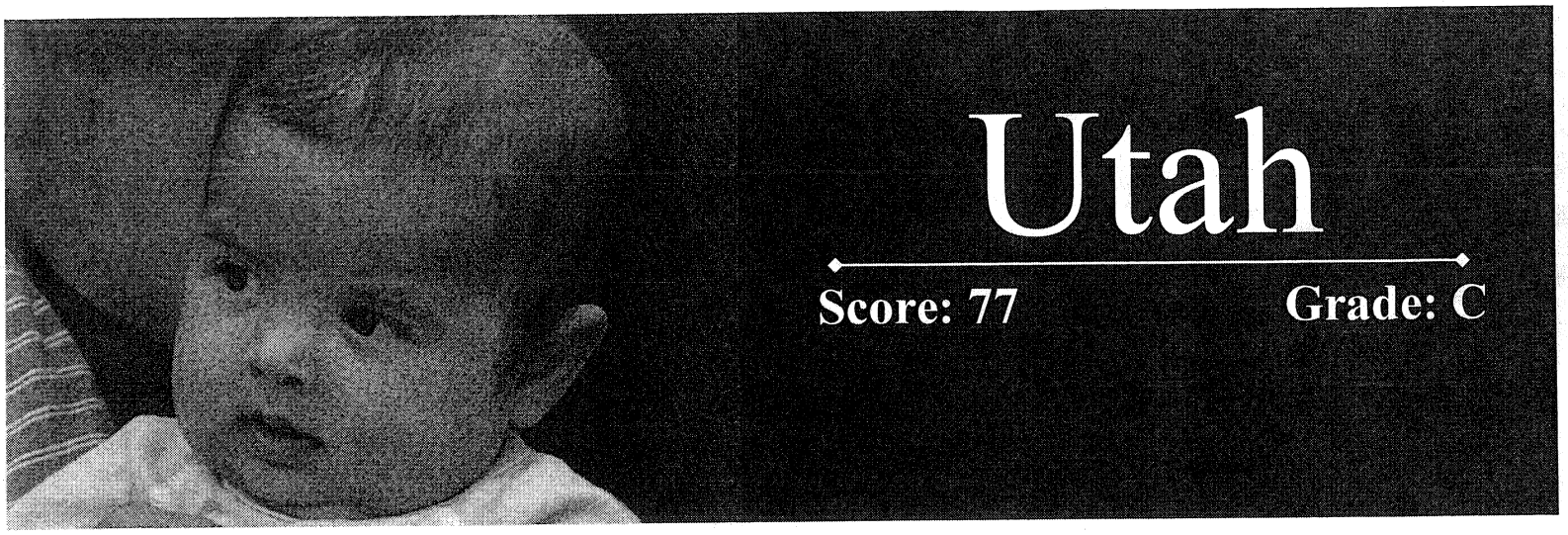
★ The Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families is embarking upon a year-long study of legal representation of children and parents in Texas child protection cases. At the conclusion of the study, the Commission will have recommendations for improving the quality of legal representation; these recommendations will likely include statutory changes to the Texas Family Code.

★ The final order templates used by the Texas Department of Family and Protective Services include an optional provision continuing the appointment of the attorney ad litem in the event of an appeal. The person preparing the final order must consider this option during the drafting process; whether the provision is included depends on the preference of the court with jurisdiction over the matter.

★ Although Texas law does not expressly require multidisciplinary elements as part of specialized education and/or training, in practice multidisciplinary elements are routinely included in child advocacy training. This area of law requires understanding of many multidisciplinary issues, including domestic violence, substance abuse, homelessness, and child development. The State Bar of Texas Child Abuse and Neglect Committee sponsors a child abuse and neglect track at the annual Advanced Family Law conference; this track usually includes multidisciplinary topics. Additionally, the Permanent Judicial Commission for Children, Youth and Families is funding 14 one-day attorney trainings across Texas in 2009; the training materials, particularly the attorney manual, include many multidisciplinary topics.

★ The Texas Board of Legal Specialization recently approved the Child Welfare Law Attorney Certification program for attorneys in this area of practice.





Utah

Score: 77 **Grade: C**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "In every abuse, neglect, or dependency proceeding under this chapter, the court shall order that the child be represented by a guardian ad litem" (Utah Code Ann. § 78A-6-317). "An attorney guardian ad litem shall represent the best interest of each child who may become the subject of a petition alleging abuse, neglect, or dependency" (Utah Code Ann. § 78A-6-902(2)).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** An attorney representing a child must do so at "the shelter hearing and at all subsequent court and administrative proceedings, including any proceeding for termination of parental rights" (Utah Code Ann. § 78A-6-317). The attorney "shall...participate in all appeals unless excused by the court," and "shall continue to represent the best interest of the minor until released from that duty by the court" (Utah Code Ann. § 78A-6-902(5)).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 6 out of 20** The "[a]ttorney guardian ad litem shall represent the best interest of each child. If the minor's wishes differ from the guardian ad litem's determination of the child's best wishes, the guardian ad litem must present the child's wishes to the court. It is not considered a conflict of interest" (Utah Code Ann. § 78A-6-902(8)). Basis for deduction: Utah law requires a child's attorney guardian ad litem to articulate but not advocate for the child's expressed wishes.
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 9 out of 10** Each attorney guardian ad litem shall be trained in "applicable statutory, regulatory, and case law" and "nationally recognized standards for an attorney guardian ad litem" (Utah Code Ann. § 78A-6-902(3)(b)). Basis for deduction: Under Utah law, multidisciplinary elements are impliedly required as part of the specialized education and/or training, but are not expressly required.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** Utah law provides children with some rights in dependency proceedings (such as the right "to notice of, and to be present at, each hearing and proceeding" and the "right to be heard at each hearing and proceeding" (Utah Code Ann. § 78A-6-317(1)). Basis for deduction: Utah law does not expressly provide party status to children in dependency proceedings.

6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 6 out of 10** All Utah attorneys are bound by the Rules of Professional Conduct (Utah R. of Prof. Cond., Preamble). However, "[a]n attorney guardian ad litem...when serving in the scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental Immunity Act of Utah" (Utah Code Ann. § 78A-6-902(7)). Basis for deduction: Although attorneys ad litem are bound by the Rules of Professional Conduct, Utah law immunizes them from being personally liable for acts or omissions occurring during the performance of their duties unless specified conditions are present (e.g., they acted or failed to act through fraud or willful misconduct) (Utah Code Ann. § 63G-7-202(3)(c)).

Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 1 extra credit point** Utah law requires that the Guardian ad Litem Oversight Committee shall, among other things, "monitor the Office's caseload and recommend to the Judicial Council adequate staffing of guardians ad litem and staff" (Judicial Administration Rule 4-906).

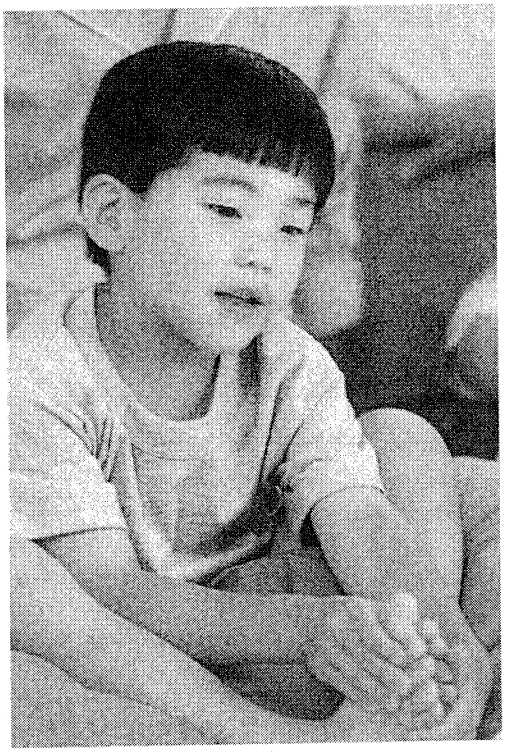
Vermont

Score: 90 **Grade: A**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** Under Vermont law, "a court shall appoint an attorney for a child who is a party to a proceeding brought under the juvenile judicial proceedings" (33 Vt. Stat. Ann. § 5112).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** "[T]he appearance of an attorney shall be deemed to be withdrawn upon the entry of final judgment and the expiration of the time for appeal therefrom. Prior to the expiration of the time for appeal from a final judgment in such an action, an attorney who has entered an appearance may withdraw only with leave of court" (Vt. Fam. Proc. Rule 15). "When counsel is assigned by the court, the responsibility for the representation shall continue in all subsequent proceedings until the attorney is relieved by the trial court making the appointment or by the Supreme Court on appeal" (Vt. A.O. 32 § 3(b)).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** "It is the duty of assigned counsel to represent the interests of clients to the full measure of their professional responsibility" (Vt. A.O. 32 § 2).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 0 out of 10** Basis for deduction: Vermont law does not require specialized education and/or training for attorneys representing children in dependency proceedings.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** Under Vermont law, a "[p]arty includes...[t]he child with respect to whom the proceedings are brought" (33 Vt. Stat. Ann. § 5102).

6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "It is the duty of assigned counsel to represent the interests of clients to the full measure of their professional responsibility" (Vt. A.O. 32 § 2).

Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Vermont law does not address caseload standards for attorneys representing children in dependency proceedings.



SIDEBAR NOTE:

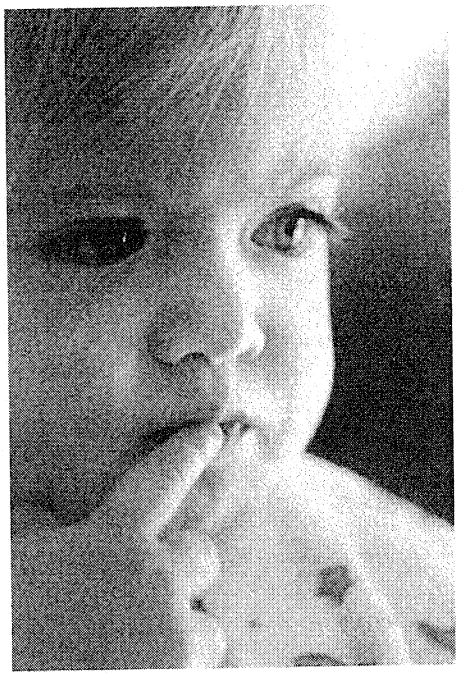
★ Although not incorporated into statute or court rule, some specialized education and/or training is required for children's counsel by the Office of the Defender General, which is responsible for providing representation to children who are the subject of Family Court Proceedings, and is required for GALs by the Office of the Court Administrator.

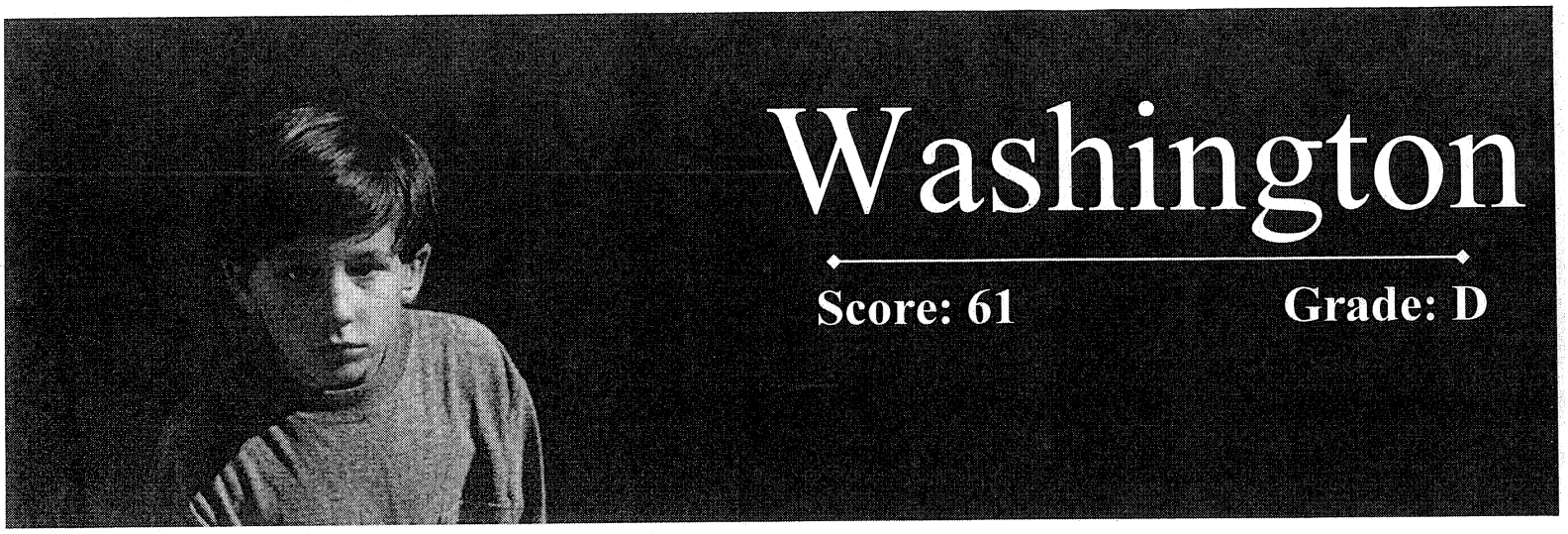
Virginia

Score: 77 **Grade: C**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition seeking termination of residual parental rights...the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child" (Va. Code Ann. § 16.1-266).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** The attorney guardian ad litem must "ensure that the child has representation in any appeal related to the case" and if the attorney "feels he or she lacks the necessary experience or expertise to handle an appeal, the guardian ad litem should notify the court and seek to be replaced" (VA Standards for GAL Representation of Children, Standard J Comments).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 6 out of 20** Under Virginia law, the attorney guardian ad litem "shall vigorously represent the child fully protecting the child's interest and welfare" and "shall advise the court of the wishes of the child in any case where the wishes of the child conflict with the opinion of the guardian ad litem as to what is in the child's interest and welfare" (Va. Sup. Ct R. 8:6). Basis for deduction: Virginia law requires the attorney guardian ad litem to articulate but not advocate for the expressed wishes of the child.
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 10 out of 10** Pursuant to Va. Code Ann. § 16.1-266, the Virginia Judicial Council has promulgated standards that require that attorney guardians ad litem to complete seven hours of continuing legal education in the areas of "Juvenile and Domestic Relations District Court Law; roles, responsibilities and duties of guardian ad litem representation; laws governing child abuse and neglect, foster care case review, termination of parental rights and entrustments; role of social services agencies in handling abuse and neglect cases; developmental needs of children; characteristics of abusive and neglectful families and of children who are victims; physical and medical aspects of child abuse and neglect; communication with children; children as witnesses; use of closed circuit television; [and] cultural awareness" (Virginia Judicial Council, Standards to Govern the Appointment of Guardians Ad Litem).

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** Under Virginia law, children have some rights in dependency proceedings, such as the right to notice of specified hearings "if he or she is twelve years of age or older" (Va. Code Ann. § 16.1-252) and the right to participate on appeal, "regardless of who files the appeal" (Va. Standards for GAL Representation of Children, Standard J). Basis for deduction: Virginia law does not expressly provide party status to children in dependency proceedings.
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 6 out of 10** Basis for deduction: "Attorneys who serve as GALs are subject to the Rules of Professional Conduct promulgated by the Virginia State Bar as they would be in any other case, except when the special duties of a GAL conflict with such rules. For example, an attorney would follow the general conflict rule (1.7) to determine if there would be a possible conflict of interest if the attorney served as GAL. But unlike the Rules for Professional Conduct as they apply to confidentiality, there may be times when attorneys serving as a GAL must, in furtherance of their role as GAL, disclose information provided by the child to the court" (Virginia Judicial Council, Standards to Govern the Performance of Guardians Ad Litem for Children).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Virginia law does not address caseload standards for attorneys representing children in dependency proceedings.





Washington

Score: 61 **Grade: D**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 15 out of 40** "The court shall appoint a guardian ad litem for a child who is the subject of an action under this chapter, unless a court for good cause finds the appointment unnecessary. The requirement of a guardian ad litem may be deemed satisfied if the child is represented by independent counsel in the proceedings" (Wash. Rev. Code Ann.§ 13.34.100(1)). "'Guardian ad litem' means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter" (Wash. Rev. Code Ann. § 13.34.030). "The term guardian ad litem shall not include an attorney appointed to represent a party" (Wash. Super. Ct. GALR, Rule 1(b)(2)). "If the child requests legal counsel and is age twelve or older, or if the guardian ad litem or the court determines that the child needs to be independently represented by counsel, the court may appoint an attorney to represent the child's position" (Wash. Rev. Code Ann.§ 13.34.100(6)). "Upon request of a party or on the court's own initiative, the court shall appoint a lawyer for a juvenile who has no guardian ad litem and who is financially unable to obtain a lawyer without causing substantial hardship to himself or herself or the juvenile's family....If the court has appointed a guardian ad litem for the juvenile, the court may, but need not, appoint a lawyer for the juvenile" (Wash. JUCR 9.2(c)(1)). Basis for deduction: Under Washington law, the appointment of an attorney for a child in dependency proceedings is discretionary in some circumstances (e.g., if the child has a GAL) and conditional in others (e.g., the child has no GAL and a party has requested appointment of counsel or the court decides to appoint counsel).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 5 out of 10** Basis for deduction: In those cases in which an attorney has been appointed for a child in dependency court proceedings, Washington law does not expressly ensure attorney representation for children on appeal.
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** When an attorney is appointed for a child in dependency proceedings, the role of the attorney is "to represent the child's position" (Wash. Rev. Code Ann.§ 13.34.100(6)).

4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 6 out of 10** Any individual serving as a guardian ad litem must "comply with training requirements established under § 2.56.030 prior to appointment" (Wash. Rev. Code Ann. § 13.34.102). Basis for deduction: Although Washington law requires specialized training for GALs, it does not expressly require specialized education and/or training for attorneys appointed as legal counsel for children in dependency proceedings.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** Washington law expressly provides some children in dependency proceedings with at least one right (the right to service of summons "if the child is twelve or more years of age" (Wash. Rev. Code Ann. § 13.34.070)). Basis for deduction: Washington law does not expressly provide party status to children in dependency proceedings.
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Wash. RPC 1.14(a)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Washington law does not address caseload standards for attorneys representing children in dependency proceedings.

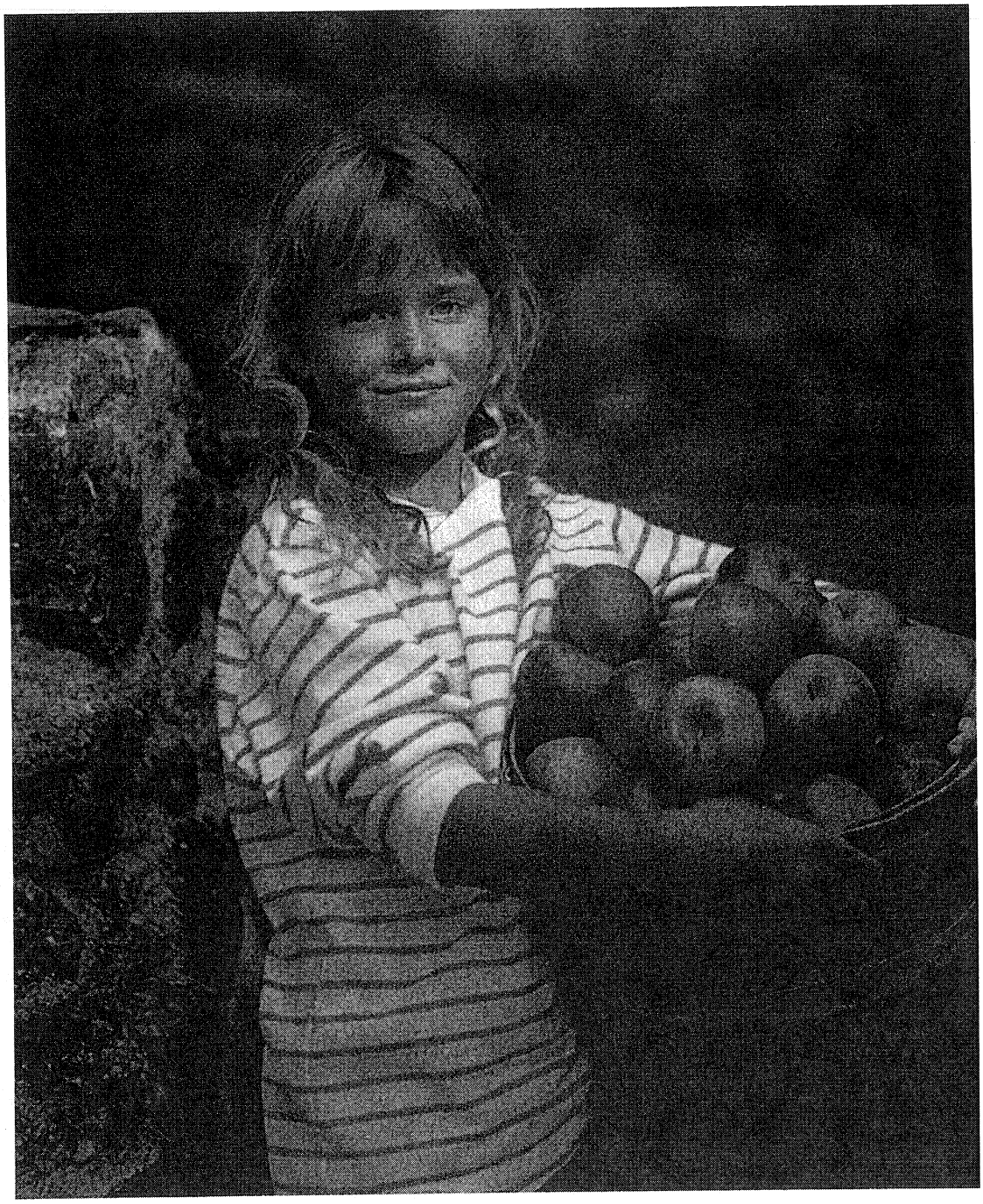
SIDEBAR NOTES:

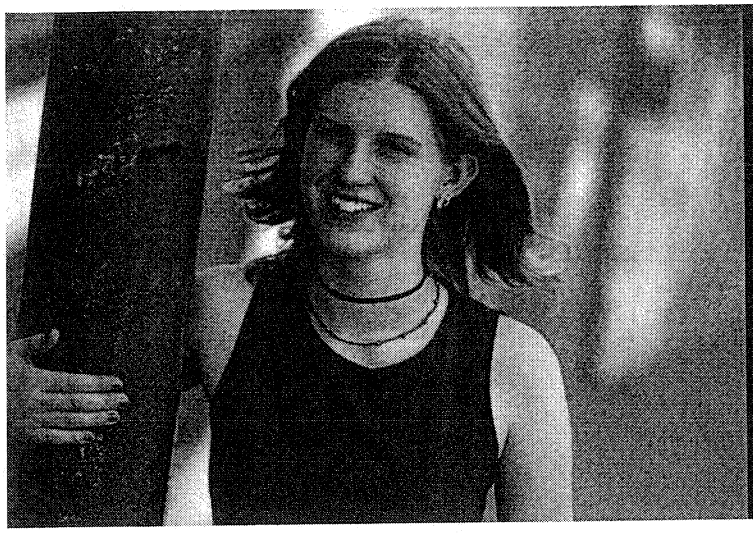
★ A bill introduced in the Washington Legislature in January 2009 would have recognized that few children in the state are given attorneys during dependency proceedings and their health, safety, and welfare are put at risk. H.B. 1183, and its companion bill S.B. 5609, would have required the court, whether or not requested by the child, to consider appointing an attorney at the first regularly scheduled hearing after (1) the child's 12th birthday; (2) the date the dependency petition is filed for a child age 12 or older; or (3) the date the bill takes effect, for unrepresented children who are already age 12 or older. If the court does not appoint an attorney, it must state its reasons on the record, tell the parties and the child, if present, of their right to request an attorney for the child in the future, and direct the caseworker or a party to notify any absent party of that right. In addition, the measure would have required the court to consider whether to appoint an attorney for the child at all subsequent hearings until an attorney is appointed or until the dependency is dismissed. Although these measures did not pass out of committee during 2009, Washington advocates will introduce a new right to counsel bill in the next session.

★ Similarly, a bill was introduced in the 2008 Washington legislative session addressing legal representation for children in dependency proceedings who are age twelve or older. H.B. 3048, and its companion bill S.B. 6896, would have established a Dependent Youth Representation Pilot Program to ensure that in the selected counties all children ages twelve and over who are in dependency proceedings have legal representation, and would have requested that University of Washington School of Law, Children and Youth Advocacy Clinic administer the Pilot Program, measure its effectiveness and issue preliminary and final reports to the legislature.

★ Although attorneys appointed for children pursuant to Wash. Rev. Code Ann.§ 13.34.100(6) are required "to represent the child's position," it is unclear whether that same role applies to attorneys appointed for children pursuant to Wash. JUCR 9.2(c)(1), which does not expressly state whether the attorney is to advocate for the child in a client-directed manner or advocate for the child's best interests.

★ Although the appointment of legal counsel for children is discretionary and/or conditional under Washington state law, it is common practice in King County (where Seattle is located) for children age 12 and older to be automatically appointed an attorney in dependency and termination proceedings. Also, in Benton-Franklin County, the general practice is to appoint attorneys for children age 9 and older, and appoint CASAs for children age 8 and younger.





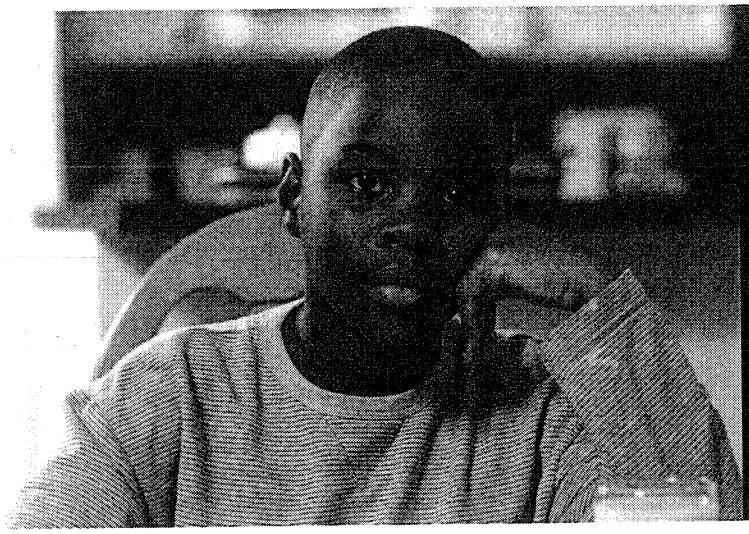
West Virginia

Score: 93 **Grade: A**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "In any proceeding under the provisions of this article, the child...shall have the right to be represented by counsel at every stage of the proceedings and shall be informed by the court of their right to be so represented and that if they cannot pay for the services of counsel, that counsel will be appointed. Counsel of the child shall be appointed in the initial order" (W. Va. Code Ann. § 49-6-2(a)).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 5 out of 10** Basis for deduction: West Virginia law expressly requires the appointment of counsel for children during all proceedings under article 6 of Chapter 49 of the West Virginia Code (W. Va. Code Ann. § 49-6-2(a)), but does not expressly require appointed counsel to represent children on appeal.
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** "Any attorney appointed pursuant to this section shall perform all duties required as an attorney licensed to practice law in the State of West Virginia" (W. Va. Code Ann. § 49-6-2(a)).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 8 out of 10** "Any attorney appointed pursuant to this section shall...receive a minimum of three hours of continuing legal education training on representation of children, child abuse and neglect" (W. Va. Code Ann. § 49-6-2(a)). Basis for deduction: Although requiring attorneys to receive training on the representation of children, child abuse and neglect, West Virginia law does not expressly require that this training be multidisciplinary in scope.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** "'Parties' mean the petitioner, the respondent or respondents, and the child or children" (W. Va. Child Abuse and Neglect Proc. Rule 3).

6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "Any attorney appointed pursuant to this section shall perform all duties required as an attorney licensed to practice law in the State of West Virginia" (W. VA. Code Ann. § 49-6-2(a)). "When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (W. Va. Prof. Cond., Rule 1.14(a)).

Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** West Virginia law does not address caseload standards for attorneys representing children in dependency proceedings.

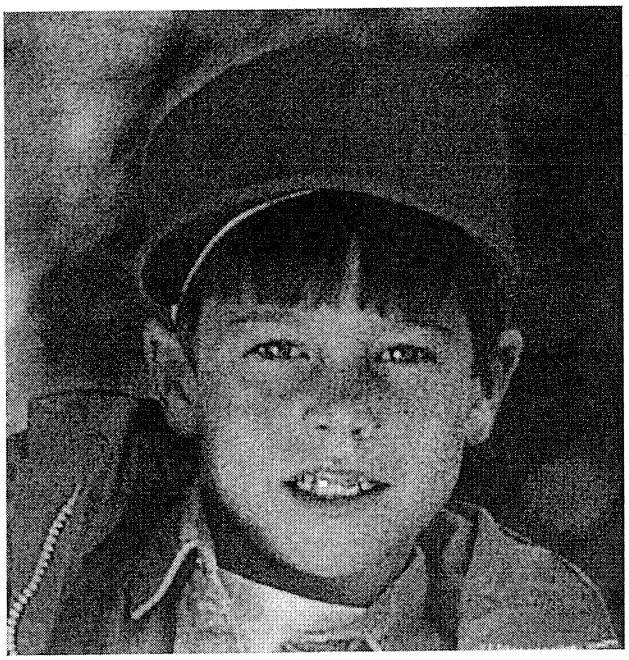


Wisconsin

Score: 76 **Grade: C**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 30 out of 40** "If the [dependency] petition is contested, the court may not place the child outside his or her home unless the child is represented by counsel at the fact-finding hearing and subsequent proceedings. If the petition is not contested, the court may not place the child outside his or her home unless the child is represented by counsel at the hearing at which the placement is made. For a child under 12 years of age, the judge may appoint a guardian ad litem instead of counsel" (Wis. Stat. § 48.23(1m)(b)(2)). Basis for deduction: For children 12 years of age or older, Wisconsin law mandates the appointment of attorneys for children in dependency proceedings; however, for children under 12 years of age, such appointment is discretionary.
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 5 out of 10** Under Wisconsin law, attorneys appointed for children in contested dependency proceedings provide such representation at the "fact-finding hearing and subsequent proceedings" (Wis. Stat. § 48.23(1m)(b)(2)). Basis for deduction: Wisconsin law does not expressly ensure attorney representation on appeal.
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** "'[C]ounsel' means an attorney acting as adversary counsel who shall advance and protect the legal rights of the party represented, and who may not act as guardian ad litem or court-appointed special advocate for any party in the same proceeding" (Wisc. Stat. 48.23(1g)).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 6 out of 10** Basis for deduction: Although Wisconsin law requires lawyers serving as GALs to have specialized education and training (Wis. Sup. Ct. R. Rule 35.01), it does not require specialized education and/or training for attorneys serving as legal counsel for children in dependency proceedings.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 5 out of 10** Wisconsin law expressly provides some children in dependency proceedings with at some rights ("a copy of the petition...shall be given to the child if the child is 12 years of age or over" (Wisc. Stat. § 48.255) and children are generally entitled to attend hearings unless the court finds it to be in the best interest of the child to temporarily exclude the child from a hearing, and the child's counsel or GAL consents thereto (Wisc. Stat. § 48.299(3)). Basis for deduction: Although Wisconsin law affords children some of the rights generally accorded a party, it does not expressly provide party status to children in dependency proceedings.
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Wis. SCR 20:1.14(a)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 0 extra credit points** Wisconsin law does not address caseload standards for attorneys representing children in dependency proceedings.



Wyoming

Score: 83 **Grade: B**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

"The court shall appoint counsel to represent any child in a court proceeding in which the child is alleged to be abused or neglected. Any attorney representing a child under this section shall also serve as the child's guardian ad litem unless a guardian ad litem has been appointed by the court"(Wyo. Stat. Ann. § 14-3-211(a))."The court shall appoint counsel to represent any child in a court proceeding in which the child is alleged to be abused or neglected. Any attorney representing a child under this section shall also serve as the child's guardian ad litem unless a guardian ad litem has been appointed by the court"(Wyo. Stat. Ann. § 14-3-211(a)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

A child "is entitled to be represented in all proceedings in Juvenile Court by counsel retained by him, his parent, or by counsel appointed pursuant to this Rule" (Wyo. Juv. Proc Rule 5). "[T]he obligation of the attorney guardian ad litem to the child is a continuing one and does not cease until the attorney guardian ad litem is formally relieved by court order or the court terminates jurisdiction over the child. This continuing obligation includes any appeals that may result from the case in which the GAL has been appointed" (Wyo. Rules and Regulations for Guardian Ad Litem Program, Ch. 2, § 3(b)(xiv)).

3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?

Points: 6 out of 20

"The attorney or guardian ad litem shall be charged with representation of the child's best interest" (Wyo. Stat. Ann. § 14-3-211(a)).

"The attorney guardian ad litem is required to consider the child's wishes and preferences when determining the child's best interests, but he or she is not bound by them as in the traditional attorney-client relationship. If the attorney guardian ad litem determines that the child's expressed preference is not in the best interests of the child, both the child's wishes and the basis of the attorney guardian ad litem's disagreement must be presented to the court" (Wyo. Rules and Regulations for Guardian Ad Litem Program, Ch. 2, § 2(a)).

Basis for deduction: Wyoming law requires the attorney guardian ad litem to articulate but not advocate for the child's expressed preferences and wishes.

4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 8 out of 10** "A lawyer shall not be qualified for an initial contract, employment, appointment or assignment...[as a guardian ad litem] unless the attorney has received within the two (2) years prior...ten (10) or more live hours of child related training...or the attorney otherwise provides evidence acceptable to the Administrator that he or she has recent training, experience, or both, which is reasonably equivalent." Further, to remain eligible for appointment, attorneys must "obtain five (5) live hours of continuing legal education per...year. These five (5) live hours shall be child related training and relevant to an appointment in Juvenile Court proceedings" (Wyo. Rules and Regulations for the Guardians Ad Litem Program, Ch. 2, § 4(b)(i), (ii)). Basis for deduction: Wyoming law does not expressly require that the training for attorney GALs be multidisciplinary in scope.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** "'Parties' include the child, his parents, guardian or custodian, the state of Wyoming and any other person made a party by an order to appear, or named by the juvenile court" (Wyo. Stat. Ann. § 14-3-402(a)(xiv)).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 4 out of 10** All attorneys in Wyoming are bound by the Rules of Professional Conduct, but attorney guardians ad litem acting "in good faith" are "immune from any civil or criminal liability that might otherwise result" (Wyo. Stat. Ann. § 14-3-209). Basis for deduction: Wyoming law provides broad immunity for attorney GALs representing children in dependency proceedings.
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 5 extra credit points** Wyoming law provides that an attorney "who contracts with, or is employed by, the Office to perform attorney guardian ad litem services on a part-time basis shall not carry more than forty (40) juvenile court cases, including juvenile delinquencies, and an attorney who contracts with, or is employed by, the Office on a full-time basis shall not carry more than eighty (80) juvenile court cases, including juvenile delinquencies" (Wyo. Rules and Regulations for the Guardians Ad Litem Program, Ch. 2, § 6(b)).

SIDEBAR NOTE:

★ Although Wyoming law does not expressly require that attorney GAL training be multidisciplinary in scope, the annual conference of the Office of the Public Defender's GAL Program is multidisciplinary in nature, covering topics such as educational disabilities, developmental disabilities; mental health; substance abuse; and domestic violence.

Call to Action

We have provided a thorough analysis of each state's laws regarding the representation of maltreated children in dependency courts. A great deal of progress has been made in the last few years, but there is still room for improvement across the board. A major goal of this report is to present the Model Act as well as examples from other states as tools for advocates to use as they engage in continued advocacy. The following are examples of what needs to be done to improve representation for children.

Federal Action

- **Amendment of CAPTA.** Take an opportunity to encourage your legislators to amend CAPTA to require that an independent, competent, and zealous attorney, trained in the multi-disciplinary aspects of dependency practice, and with a reasonable caseload be appointed to represent the interests of all children in all stages of child abuse and neglect proceedings in a client-directed manner, and that all children be treated as parties to these proceedings with all the rights appurtenant thereto.

- **Student Loan Forgiveness.** Encourage your legislative leaders to fully support student loan forgiveness for attorneys representing children in child abuse and neglect proceedings. There is a dire lack of trained attorneys willing to work in this area of law and student loan forgiveness is one step that we can take to mitigate this problem.

Adoption of ABA Model Law

- Encourage your ABA delegate to support passage of the ABA Model Act Governing the Representation of Children in Dependency Proceedings when it is voted on.

State Action

- **Amendment of State Statutes.** Take an opportunity to encourage your state legislative leaders to adopt state legislation to require that an independent, competent, and zealous attorney, trained in the multi-disciplinary aspects of dependency practice, and with a reasonable caseload be appointed to represent the interests of all children in all stages of child abuse and neglect proceedings in a client-directed manner, and that all children be treated as parties to these proceedings with all the rights appurtenant thereto. Work with your State's Court Improvement Project. Many of these projects are doing great work – particularly in the area of multi-disciplinary training. Take this good work and help to turn it into mandated state law.

- **Collaboration with Other States.** This report highlights that while each state approaches the issue of counsel for children differently, many states are doing phenomenal work. Collaborate with similarly-situated states that have received positive scores. Talk with fellow advocates to see what practices can be adopted and utilized in your home jurisdiction.

- **Right to Counsel for Abused and Neglected Children— Beyond Dependency.** Maltreated children are involved in a variety of court proceedings that impact their lives and futures. Some of these children may be involved in custody, immigration, and education cases in which their views and desires are not represented by any of the parties. Like in dependency cases, these children are extremely vulnerable and deserve to have their voices heard and their rights protected when their perspectives are not aligned with the parties charged with protecting them. Only through competent and properly trained legal representation can these voices be heard and considered by the judge.

Appendix A: Proposed ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings

This Act has *not* been approved by the ABA House of Delegates, nor by the Section of Litigation and should not be construed as ABA Policy.

ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings [1]

SECTION 1. DEFINITIONS. In this [act]:

(a) "Abuse or neglect proceeding" means a court proceeding under [cite state statute] for protection of a child from abuse or neglect or a court proceeding under [cite state statute] in which termination of parental rights is at issue.[i] These proceedings include:

(1) abuse;

(2) neglect;

(3) dependency;

(4) child placed voluntarily into state care;

(5) termination of parental rights;

(6) permanency hearings; and

(7) post termination of parental rights through adoption or other permanency proceeding.

(b) A child is:

(1) an individual who is under the age of 18; or

(2) an individual under the age of 21 who remains under the jurisdiction of the juvenile court.

(c) "Child's lawyer" (or "lawyer for children") means a lawyer who provides legal services for a child and who owes all of the same duties that are due an adult client, including loyalty, confidentiality, diligence, client direction, communication, duty to advise, and competent representation.[ii]

(d) "Best interest advocate" means an individual, not functioning or intended to function as a lawyer, appointed by the court to assist the court in determining the best interests of the child.

(e) "Developmental level" means the ability to understand others and communicate, taking into account such factors as age, mental capacity, level of education, cultural background, and degree of language acquisition.[iii]

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[1] This Model Act was drafted under the auspices of the ABA Section of Litigation Children's Rights Litigation Committee with the assistance of the Bar-Youth Empowerment Program of the ABA Center on Children and the Law and First Star. The Act incorporates some language from provisions of the NCCUSL Representation of Children in Abuse, Neglect and Custody Proceedings Act. This Act has *not* been approved by the ABA House of Delegates, nor by the Section of Litigation and should not be construed as ABA Policy.

Legislative Note: States should implement a mechanism to bring children into court when they have been voluntarily placed into state care, if such procedures do not already exist. Court action should be triggered after a specific number of days in voluntary care (not fewer than 30 days, but not more than 90 days).

The best interests advocate includes but is not limited to well-trained lay volunteer advocates, such as a Court Appointed Special Advocate ("CASA"), guardians *ad litem* or a professional who holds a relevant professional license and whose training relates to the determination of a child's best interests.

SECTION 2. APPLICABILITY AND RELATIONSHIP TO OTHER LAW.

(a) This [act] applies to an abuse and neglect proceeding pending or commenced on or after [the effective date of this act].

(b) The child in these proceedings is a party.

SECTION 3. APPOINTMENT IN ABUSE OR NEGLECT PROCEEDING.

(a) The court shall appoint a lawyer for each child who is the subject of a petition in an abuse and neglect proceeding. The appointment of a lawyer for the child must be made as soon as practicable to ensure effective representation of the child and, in any event, before the first court hearing.

(b) In addition to the appointment of a lawyer, the court may appoint a best interest advocate to assist the court in determining the child's best interests.

(c) The court may appoint one lawyer to represent siblings if there is no conflict of interest as defined under the applicable rules of professional conduct.[iv]

(d) The applicable rules of professional conduct and any law governing the obligations of lawyers to their clients shall apply to such appointed lawyers.

(e) The appointed lawyer shall represent the child for all stages of the proceedings.[v]

(f) The child, and only the child, after consultation with a lawyer and with informed consent, may waive representation. Neither the best interest advocate, nor a representative of the child, may waive representation for the child.[vi]

Commentary:

This act recognizes the right of every child to have quality legal representation and a voice in any abuse, neglect, dependency, or termination of parental rights proceedings, regardless of developmental level. Nothing in this Act precludes a child from retaining a lawyer. States also should provide a lawyer to a child who has been placed into state custody through a voluntary placement arrangement. The fact that the child is in the state's custody, even through the

69 parent's voluntary decision, should not diminish the child's entitlement to a lawyer.

70 A best interest advocate does not replace the appointment of a lawyer for the child. A best
71 interest advocate serves to provide guidance to the court with respect to the child's best interest
72 and does not establish a lawyer-client relationship with the child. Nothing in this Act restricts a
73 court's ability to appoint a best interest advocate in any proceeding. Because this act deals
74 specifically with lawyers for children, it will not further address the role of the best interest
75 advocate.

76 A child is entitled to conflict-free counsel and the applicable rules of professional conduct must
77 be applied in the same manner as they would be applied for lawyers for adults. A lawyer
78 representing siblings should maintain the same lawyer-client relationship with respect to each
79 child.

80

81 **SECTION 4. QUALIFICATIONS OF THE CHILD'S LAWYER.**

82 **(a) The court shall appoint as the child's lawyer an individual who is qualified**
83 **through training and experience, according to standards established by [insert reference to**
84 **source of standards].**

85 **(b) Lawyers for children shall receive initial training and annual continuing legal**
86 **education that is specific to child welfare law. Lawyers for children shall also be familiar**
87 **with all relevant federal, state, and local applicable laws.**

88 **(c) Lawyers for children shall not be appointed to new cases when their present**
89 **caseload exceeds more than a reasonable number given the jurisdiction, the percent of the**
90 **lawyer's practice spent on abuse and neglect cases, the complexity of the case, and other**
91 **relevant factors.**

92

93 *Legislative Note: States that adopt training standards and standards of practice for*
94 *children's lawyers should include the bracketed portion of this section and insert a reference to*
95 *the state laws, court rules, or administrative guidelines containing those standards.*[vii]
96 *Jurisdictions are urged to specify the case limit at the time of passage of this Act.*

97

98 *Commentary:*

99

100 States should establish training requirements for lawyers for children that focus on the
101 applicable, controlling law, the development of a meaningful lawyer-client relationship with the
102 child, assessing the capacity of the child and interdisciplinary issues that arise in child welfare
103 cases.

104

105 The lawyer needs to spend enough time on each abuse and neglect case to establish a lawyer-
106 client relationship and zealously advocate for the client. A lawyer's caseload must allow
107 realistic performance of functions assigned to the lawyer under the [Act]. The amount of time
108 and the number of children a lawyer can effectively represent will differ based on a number of

109 factors, including type of case, the jurisdiction, whether the lawyer is affiliated with a children's
110 law office, whether the lawyer is assisted by investigators or other child welfare professionals,
111 and the percent of the lawyer's practice spent on abuse and neglect cases. States are encouraged
112 to conduct caseload analyses to determine guidelines for lawyers representing children in abuse
113 and neglect cases.
114

115 SECTION 5. ORDER OF APPOINTMENT.

116 **(a) Subject to subsection (b), an order of appointment of a child's lawyer shall be in**
117 **writing and on the record, identify the lawyer who will act in that capacity, and clearly set**
118 **forth the terms of the appointment, including the reasons for the appointment, rights of**
119 **access as provided under Section 8, and applicable terms of compensation as provided**
120 **under Section 12.**

121 **(b) In an order of appointment issued under subsection (a), the court may identify a**
122 **private organization, law school clinical program or governmental program through which**
123 **a child's lawyer will be provided. The organization or program shall designate the lawyer**
124 **who will act in that capacity and notify the parties and the court of the name of the**
125 **assigned lawyer as soon as practicable.**[viii] **Additionally, the organization or program shall**
126 **notify the parties and the court of any changes in the individual assignment.**
127

128 SECTION 6. DURATION OF APPOINTMENT.

129 **Unless otherwise provided by a court order, in an abuse and neglect proceeding, an**
130 **appointment of a child's lawyer continues in effect until the lawyer is discharged by court**
131 **order or the case is dismissed.**[ix] **The appointment includes all stages thereof, from removal**
132 **from the home or initial appointment through all available appellate proceedings. The**
133 **lawyer may, with the permission of the court, arrange for supplemental or separate counsel**
134 **to handle proceedings at an appellate stage.**[x]

135 As long as the child remains in state custody, even if the state custody is long-term or permanent,
136 the child should retain the right to counsel so that his or her lawyer can deal with the issues that
137 may arise while the child is in custody but the case is not before the court.

138 SECTION 7. DUTIES OF CHILD'S LAWYER AND SCOPE OF
139 REPRESENTATION.

140 **(a) A child's lawyer shall participate in any proceeding concerning the child with**
141 **the same rights and obligations as any other lawyer for a party to the proceeding.**

142 **(b) The duties of a child's lawyer include, but are not limited to:**

143 **(1) taking all steps reasonably necessary to represent the client in the**
144 **proceeding, including but not limited to: interviewing and counseling the client, preparing**
145 **a case theory and strategy, preparing for and participating in negotiations and hearings,**
146 **drafting and submitting motions, memoranda and orders, and such other steps as**
147 **established by the applicable standards of care for lawyers acting on behalf of children in**

148 **this jurisdiction;**

149 **(2) reviewing and accepting or declining, after consultation with the client,**
150 **any proposed stipulation for an order affecting the child and explaining to the court the**
151 **basis for any opposition;**

152 **(3) taking action the lawyer considers appropriate to expedite the proceeding**
153 **and the resolution of contested issues;**

154 **(4) where appropriate, after consultation with the client, discussing the**
155 **possibility of settlement or the use of alternative forms of dispute resolution and**
156 **participating in such processes to the extent permitted under the law of this state;**[xi]

157 **(5) meeting with the child prior to each hearing and for at least one in-person**
158 **meeting every quarter;**

159 **(6) consulting with any best interest advocate for the child;**

160 **(7) consulting prior to each hearing with any person providing medical,**
161 **mental health, social, educational, or other services to the child;**

162 **(8) visiting the home, residence, or any prospective residence of the child,**
163 **including each time the placement is changed;**

164 **(9) seeking court orders or taking any other necessary steps in accordance**
165 **with the child's direction to ensure that the child's health, mental health, educational,**
166 **developmental, cultural and placement needs are met;**

167 **(10) representing the child in all proceedings affecting the issues before the**
168 **court, including hearings on appeal or referring the child's case to the appropriate**
169 **appellate counsel as provided for by/ mandated by [inset local rule/law etc]; and**

170 **(11) where appropriate, endeavoring to represent the child in ancillary legal**
171 **matters, either through appointment from the court or through the retention of alternate**
172 **legal counsel.**
173
174 *Commentary*:
175 The national standards mentioned in (b)(1) include the *ABA Standards of Practice for Lawyers*
176 *who Represent Children in Abuse and Neglect Cases.*
177
178 In order to comply with the duties outlined in this section, lawyers must have caseloads that
179 allow realistic performance of these functions.
180
181 Under (b)(9) every effort should be made to have the same lawyer in trial and appellate
182 proceedings.
183
184 The ancillary matters referred to in (b)(10) include special education, school discipline hearings,
185 mental health treatment, delinquency or criminal issues, status offender matters, guardianship,
186 adoption, paternity, probate, immigration matters, medical care coverage, SSI eligibility, youth

187 transitioning out of care issues, postsecondary education opportunity qualification, and tort
188 actions for injury, as appropriate.[xii] The lawyer should make every effort to ensure that the child
189 is represented by legal counsel in all ancillary legal proceedings, either personally, when the
190 lawyer is competent to do so, or through referral or collaboration. There is value in having one
191 lawyer represent the child across multiple proceedings. The lawyer is better able to understand
192 and fully appreciate the various issues as they arise and how those issues may affect other
193 proceedings.
194
195 **(c) When the child is capable of directing the representation by expressing his or her**
196 **objectives, the lawyer shall maintain a normal client-lawyer relationship with the child in**
197 **accordance with the rules of professional conduct.**

198 *Commentary:*

199 The client-lawyer relationship for the child's lawyer is fundamentally indistinguishable from the
200 lawyer-client relationship in any other situation and includes duties of client direction[xiii],
201 confidentiality[xiv], diligence[xv], competence[xvi], loyalty[xvii], communication[xviii], and the duty to
202 advise.[xix] Client direction requires the lawyer to abide by the client's decision about the
203 objectives of the representation. In order for the child to have an independent voice in abuse, and
204 neglect proceedings, the lawyer shall advocate for the child's counseled and expressed wishes.[xx]
205 Moreover, providing the child with an independent and client-directed lawyer ensures that the
206 child's legal rights and interests are adequately protected.

207 **(1) The lawyer for the child shall explain the proceedings to the extent necessary to**
208 **permit the client to make informed decisions regarding the representation and abide by the**
209 **child's decisions concerning the child's objectives. This includes advising the child as to**
210 **options and eliciting the child's wishes in a developmentally appropriate manner.**

211 *Commentary:*

212 The lawyer needs to explain his or her role to the client and, if applicable, explain in what
213 strictly limited circumstances the lawyer cannot advocate for the client's expressed wishes and in
214 what circumstances the lawyer may be required to reveal confidential information. This
215 explanation should happen during the first meeting so the client understands the terms of the
216 relationship.

217 In addition to explaining the lawyer's role, the lawyer should explain the process to the child in a
218 developmentally appropriate manner as required by Rule 1.4 of the ABA Model Rules of
219 Professional Conduct or its equivalent.[xxi] This explanation can and will change based on age,
220 cognitive ability, and emotional maturity. The lawyer needs to take the time to explain
221 thoroughly and in a way that allows and encourages the child to ask questions and that ensures
222 the child's understanding. The lawyer should also facilitate the child's participation in the
223 proceeding (See Section 9).

224 In order to determine the objectives of the representation of the child, the lawyer should develop

225 a relationship with the client. The lawyer should develop a thorough knowledge of the child's
226 circumstances and needs. The lawyer should visit the child in the child's home, school, or other
227 appropriate place where the child is comfortable. The lawyer should observe the child's
228 interactions with parents, foster parents, and other caregivers. The lawyer should maintain
229 regular and ongoing contact with the child throughout the case.

230 The child's lawyer helps to make the child's wishes and voice heard but is not merely the child's
231 mouth piece. As with any lawyer, a child's lawyer is both an advocate and a counselor for the
232 client. The lawyer should, without unduly influencing the child, advise the child by providing
233 options and information to assist the child in making decisions. The lawyer should explain the
234 practical effects of taking various positions, the likelihood that a court will accept particular
235 arguments, and the impact of such decisions on the child, other family members, and future legal
236 proceedings.[xxii] The lawyer should investigate the relevant facts, interview persons with
237 significant knowledge of the child's history, review relevant records, and work with others in the
238 case.

239 **(2) When the child's capacity to make adequately considered decisions in connection**
240 **with a representation is diminished, the lawyer shall, as far as reasonably possible,**
241 **maintain a normal client-lawyer relationship with the client. When the lawyer reasonably**
242 **believes that the client:**

243 **a. Has diminished capacity,**

244 **b. Is at risk of substantial physical, financial or other harm unless action is**
245 **taken, and**

246 **c. Cannot adequately act in the client's own interest,**

247 **the lawyer may take reasonably necessary protective action, including consulting with**
248 **individuals or entities that have the ability to take action to protect the client and, in**
249 **appropriate cases, seeking the appointment of a best interest advocate or investigator to**
250 **make an independent recommendation to the court with respect to the best interests of the**
251 **child. Information relating to the representation of a child with diminished capacity is**
252 **protected by Rule 1.6 and Rule 1.14 of the ABA Model Rules of Professional Conduct.**
253 **When taking protective action, the lawyer is impliedly authorized under Model Rule 1.6(a)**
254 **to reveal information about the child, but only to the extent reasonably necessary to protect**
255 **the child's interests.**[xxiii]

256 *Commentary:*

257 If a child is able to direct counsel, but the lawyer determines that the child has diminished
258 capacity, is at risk of substantial harm and cannot act in the client's own interest in connection
259 with the representation, lawyers shall, after unsuccessful use of the lawyer's counseling role,
260 look to Rule 1.14 of the ABA Model Rules of Professional Conduct ("M.R." or "ABA Model
261 Rules") for guidance.[xxiv] Substantial harm includes both physical and sexual harm.

262 After due consideration, it is the responsibility of the lawyer to determine whether the child

263 suffers from diminished capacity. This decision shall be made after sufficient contact and
264 regular communication with the client. Determination about capacity should be grounded in
265 insights from child development science and should focus on the child's decision-making
266 process rather than the child's choices themselves. Just because the lawyer does not agree with
267 the child's stated objectives does not mean the child does not have the capacity to direct the
268 representation. Lawyers should be careful not to construe proof of a disability from a client's
269 insistence upon a view of the client's welfare that the lawyer considers unwise or at variance
270 with lawyer's view.[xxv] When determining the child's capacity the lawyer should elicit the
271 child's expressed wishes in a developmentally appropriate manner. The lawyer should not
272 expect the child to convey information in the same way an adult client would. A child's age is
273 not determinative of diminished capacity. For example, even very young children are regarded
274 as having opinions that are entitled to weight in legal proceedings concerning their custody.[xxvi]

275 Criteria for determining diminished capacity include the child's developmental stage, cognitive
276 ability, emotional and mental development, ability to communicate, ability to understand
277 consequences, consistency of the child's decisions, strength of wishes and the opinions of others,
278 including social workers, therapists, teachers, family members or a hired expert.[xxvii] To assist in
279 the assessment, the lawyer should ask questions in developmentally appropriate language to
280 determine whether the child understands the nature and purpose of the proceeding and the risks
281 and benefits of a desired position.[xxviii] A child may have the ability to make certain decisions,
282 but not others. A child with diminished capacity often has the ability to understand, deliberate
283 upon, and reach conclusions about matters affecting the child's own well-being such as sibling
284 visits, kinship visits and school choice and should continue to direct counsel in those areas in
285 which he or she does have capacity. When the child suffers from diminished capacity, the
286 lawyer should continue to assess the child's capacity as it may change over time.

287 When diminished capacity is an issue, the child is at risk of substantial harm, the child cannot
288 adequately act in his or her own interest, and the use of the lawyer's counseling role is
289 unsuccessful, the lawyer may take protective action. Protective action includes consultation with
290 family members, or professionals who work with the child. Lawyers may also utilize a period of
291 reconsideration to allow for an improvement or clarification of circumstances or to allow for an
292 improvement in the child's capacity.[xxix] This rule reminds lawyers, among other things, that
293 they should ultimately be guided by the wishes and values of the child to the extent they can be
294 determined.[xxx]

295 "Information relating to the representation is protected by M.R. 1.6. Therefore, unless
296 authorized to do so, the lawyer may not disclose such information. When taking protective
297 action pursuant to this section, the lawyer is impliedly authorized to make the necessary
298 disclosures, even when the client directs the lawyer to the contrary."[xxxi] however the lawyer must
299 make every effort to avoid disclosures. Where disclosures are unavoidable, the lawyer must
300 limit the disclosures as much as possible. M.R. 1.6 and 1.14 limit what the lawyer may disclose
301 in consulting with other individuals or entities or in seeking the appointment of a best interest
302 advocate. Prior to any consultation, the lawyer should consider the impact on the client's
303 position, and whether the individual is a party who might use the information to further his or her
304 own interests. "At the very least, the lawyer should determine whether it is likely that the person

305 or entity consulted with will act adversely to the client's interests before discussing matters
306 related to the client."[xxxii] If any disclosure by the lawyer will have a negative impact on the
307 client's case or the lawyer-client relationship, the lawyer must consider whether representation
308 can continue and whether the lawyer-client relationship can be re-established. "The lawyer's
309 position in such cases is an unavoidably difficult one."[xxxiii]

310 A request made of the judge to appoint a best interest advocate to make an independent
311 recommendation to the court with respect to the best interests of the child should be reserved for
312 extreme cases where the child is at risk of substantial physical harm, cannot act in his or her own
313 interest and all protective action remedies have been exhausted. Requesting the judge to appoint
314 a best interest advocate may undermine the relationship the lawyer has established with the
315 child. It also potentially compromises confidential information the child may have revealed to
316 the lawyer. The lawyer cannot ever become the best interest advocate, in part due to confidential
317 information that the lawyer receives in the course of representation. Nothing in this section
318 restricts a court from independently appointing a best interest advocate when it deems the
319 appointment appropriate.

320 **d) When the child is incapable of directing the representation by expressing his or her**
321 **objectives, the lawyer shall seek the appointment of a best interest advocate. If the child is**
322 **incapable of directing the representation and a best interest advocate is not appointed the**
323 **lawyer may formulate and advocate for a position that is in the best interest of the child,**
324 **but only after consultation with individuals or entities that can provide the lawyer with the**
325 **information and assistance necessary to determine the best interest of the child.**

326 Commentary: This section seeks to address the cases involving the very young or severely
327 incapacitated child, the child who has no capacity to direct the representation. In compliance
328 with the conception of the lawyer-client relationship embodied in the ABA Model Rules, the
329 proper approach when the child cannot direct the representation is to seek a best interest
330 advocate who is trained to bring the multidisciplinary perspectives necessary to determine the
331 child's best interests. However, the question must be answered as to what happens if the court is
332 unable or unwilling to appoint a best interest advocate. When a best interest advocate is not
333 appointed, the lawyer may advocate for what is in the child's best interest. Rather than relying
334 on the lawyer's own personal views and values, the lawyer should develop the best interest
335 position that reflects the child's unique circumstances.
336
337 Recognizing that a lawyer's training does not provide the multidisciplinary perspectives
338 necessary to determine a child's best interest, the lawyer should seek input from experts from
339 other disciplines for guidance. Moreover, in determining the child's best interest the lawyer
340 should seek to protect the child's legal rights, maximize the child's capacities, respect the child's
341 family and social connections, recommend the least intrusive state intervention, recommend the
342 least detrimental alternative, address any disabilities the child and family may have, give due
343 weight to parents' preference in the absence of conflict or harm to the child, and honor the
344 child's culture. In order to do so, the lawyer needs to understand all available options and
345 develop a deep, rich understanding of the client in the context of his or her family, his or her
346 community, and his or her life to that point. Additionally, while the child is in state care, the

347 child's lawyer should ensure that the state agency is providing the services to which the child is
348 entitled under the law including, but not limited to, the least restrictive placement alternative, a
349 safe foster home, stability of placements, medical care, early intervention and educational needs,
350 state and federal benefits, visitation, effective case planning, and services to the child and
351 biological family addressing the underlying reason for removal.
352
353 Criteria for determining when a client is incapable of directing the representation include the
354 child's age (though age alone is not dispositive) and inability to communicate because the child
355 is preverbal or so young as to be unable to engage in a meaningful reasoning process about
356 issues that are relevant to the proceeding. A child's capacity to direct counsel is contextual and
357 incremental and is not simply a function of his or her chronological age. Because of the evolving
358 nature of children's competencies, a child who is unable to express his or her objectives for one
359 hearing or proceeding may be able to communicate sufficiently to direct the lawyer at a later
360 hearing or proceeding. The lawyer must maintain regular contact with an incapacitated child in
361 order to continue to assess the child's capacity.

362 Some children are able to articulate thoughts and feelings, but suffer from diminished capacity.
363 Rule (c)(2) provides guidance for lawyers in that situation; (d) refers only to children who are
364 incapable of directing representation.

365
366
367 **SECTION 8. ACCESS TO CHILD AND INFORMATION RELATING TO THE**
368 **CHILD.**

369 **(a) Subject to subsections (b) and (c), when the court appoints the child's lawyer, it**
370 **shall issue an order, with notice to all parties, authorizing the lawyer appointed to have**
371 **access to:**

372 **(1) the child; and**

373 **(2) confidential information regarding the child, including the child's**
374 **educational, medical, and mental health records, responsible social services agency files,**
375 **court records including court files involving allegations of abuse or neglect of the child, any**
376 **delinquency records involving the child, and other information relevant to the issues in the**
377 **proceeding, and reports that form the basis of any recommendation made to the court.**

378 **(b) A child's record that is privileged or confidential under law other than this [act]**
379 **may be released to a lawyer appointed under this [act] only in accordance with that law,**
380 **including any requirements in that law for notice and opportunity to object to release of**
381 **records. Nothing in this act shall diminish or otherwise change the attorney-client privilege**
382 **of the child, nor shall the child have any lesser rights than any other party in regard to this**
383 **or any other evidentiary privilege. Information that is privileged under the lawyer-client**
384 **relationship may not be disclosed except as otherwise permitted by law of this state other**
385 **than this [act].**

386 **(c) An order issued pursuant to subsection (a) shall require that a child's lawyer**

387 **maintain the confidentiality of information released pursuant to Model Rule 1.6. The court**
388 **may impose any other condition or limitation on an order of access which is required by**
389 **law, rules of professional conduct, the child's needs, or the circumstances of the**
390 **proceeding.**

391 **(d) The custodian of any record regarding the child shall provide access to the**
392 **record to an individual authorized access by order issued pursuant to subsection (a).**

393 **(e) Subject to subsection (b), an order issued pursuant to subsection (a) takes effect**
394 **upon issuance.**[xxxiv]

395 SECTION 9. PARTICIPATION IN PROCEEDINGS.

396 **(a) Each child who is the subject of an abuse or neglect proceeding has the right to**
397 **attend and fully participate in all hearings related to his or her case.**

398 **(b) Each child shall receive notice from the child welfare agency worker and the**
399 **child's lawyer of his or her right to attend the court hearings.**

400 **(c) If the child is not present at the hearing, the court shall determine whether the**
401 **child was properly notified of his or her right to attend the hearing, whether the child**
402 **wished to attend the hearing, whether the child had the means (transportation) to attend,**
403 **and the reasons for the non-appearance.**

404 **(d) If the child wished to attend and was not transported to court the matter shall**
405 **be continued.**

406 **(e) The child's presence shall only be excused after counsel for the child has**
407 **consulted with the child and, with informed consent, has waived the child's right to attend.**

408 **(f) A child's lawyer appointed under this [act] is entitled to:**

409 **(1) receive a copy of each pleading or other record filed with the court in the**
410 **proceeding;**

411 **(2) receive notice of and attend each hearing in the proceeding [and**
412 **participate and receive copies of all records in any appeal that may be filed in the**
413 **proceeding];**

414 **(3) receive notice of and participate in any case staffing or case management**
415 **conference regarding the child in an abuse or neglect proceeding; and**

416 **(4) receive notice of any intent to change the child's placement. In the case of**
417 **an emergency change, the lawyer shall receive notice as soon as possible but no later than**
418 **48 hours following the change of placement.**

419 **(g) A child's lawyer appointed under this [act] may not engage in ex parte contact**
420 **with the court except as authorized by the applicable rules of professional conduct, court**
421 **order, or other law.**

422 **(h) A best interest advocate may not take any action that may be taken only by a**
423 **lawyer licensed in this state, including making opening and closing statements, examining**

witnesses in court, and engaging in discovery other than as a witness. A best interest advocate may not engage in ex parte contact with the court.

(i) A party may call any best interest advocate for the child as a witness for the purpose of cross-examination regarding the advocate's report even if the advocate is not listed as a witness by a party.

[(j) In a jury trial, disclosure to the jury of the contents of a best interest advocate's report is subject to this state's rules of evidence.][xxxv]

Commentary:

Courts need to provide the child with notification of each hearing. The Court should enforce the child's right to attend and fully participate in all hearings related to his or her abuse and neglect proceeding.[xxxvi] Having the child in court emphasizes for the judge and all parties that this hearing is about the child. Factors to consider regarding the child's presence at court and participation in the proceedings include: whether the child wants to attend, the child's age, the child's developmental ability, the child's emotional maturity, the purpose of the hearing and whether the child would be severely traumatized by such attendance. In accepting a decision not to attend, the lawyer should consult with therapists, caretakers, or other persons who have specific knowledge of the child.

Lawyers should consider the following options in determining how to provide the most meaningful experience for the child to participate: allowing the child to be present throughout the entire hearing, presenting the child's testimony in chambers adhering to all applicable rules of evidence, arranging for the child to visit the courtroom in advance, video or teleconferencing the child into the hearing, allowing the child to be present only when the child's input is required, excluding the child during harmful testimony, and presenting the child's statements in court adhering to all applicable rules of evidence.

Courts should reasonably accommodate the child to ensure the hearing is a meaningful experience for the child. The court should consider: scheduling hearing dates and times when the child is available and least likely to disrupt the child's routine, setting specific hearing times to prevent the child from having to wait, making courtroom waiting areas child friendly, and ensuring the child will be transported to and from each hearing.

The lawyer for the child plays an important role in the child's court participation. The lawyer shall ensure that the child is properly prepared for the hearing. The lawyer should meet the child in advance to let the child know what to expect at the hearing, who will be present, what their roles are, what will be discussed, and what decisions will be made. If the child would like to speak to the judge, the lawyer should counsel with the child on what to say and how to say it. After the hearing, the lawyer should explain the judge's ruling and allow the child to ask questions about the proceeding.

466
467 **SECTION 10. LAWYER WORK PRODUCT AND TESTIMONY.**

468 **Except as authorized by [insert reference to this state's rules of professional**
469 **conduct] or court rule, a child's lawyer may not:**

470 **(a) be compelled to produce the lawyer's work product developed during the**
471 **appointment;**

472 **(b) be required to disclose the source of information obtained as a result of**
473 **the appointment;**

474 **(c) introduce into evidence a report prepared by the lawyer; or**

475 **(d) provide any testimony that is subject to the attorney-client privilege.**

476

477 *Commentary*: Nothing in this act shall diminish or otherwise change the lawyer-work product or
478 attorney-client privilege protection for the child, nor shall the child have any lesser rights than
479 any other party with respect to these protections.

480 If a state requires lawyers to report abuse or neglect under a mandated reporting statute, the state
481 should list that statute under this section.
482

483 **SECTION 11. CHILD'S RIGHT OF ACTION.**

484 **(a) The child's lawyer may be liable for malpractice to the same extent as a lawyer**
485 **for any other client.**

486 **(b) A best interest advocate appointed pursuant to this [act] is not liable for money**
487 **damages because of inaction or action taken in the capacity of best interest advocate unless**
488 **the inaction or action taken constitutes willful misconduct or gross negligence.**[xxxvii]

489 **SECTION 12. FEES AND EXPENSES IN ABUSE OR NEGLECT**
490 **PROCEEDINGS.**

491 **(a) In an abuse or neglect proceeding, a child's lawyer appointed pursuant to this**
492 **[act] is entitled to reasonable and timely fees and expenses in an amount set by [court or**
493 **state agency to be paid from (authorized public funds)].**[xxxviii]

494 **(b) To receive payment under this section, the payee shall complete and submit a**
495 **written claim for payment, whether interim or final, justifying the fees and expenses**
496 **charged.**

497 **(c) If the court, after a hearing, determines that a party whose conduct gave rise to**
498 **a finding of abuse or neglect is able to defray all or part of the fees and expenses set**
499 **pursuant to subsection (a), the court shall enter a judgment in favor of [the state, state**
500 **agency, or political subdivision] against the party in an amount the court determines is**
501 **reasonable.**[xxxix]
502

This Act has *not* been approved by the ABA House of Delegates, nor by the Section of Litigation and should not be construed as ABA Policy.

503 **SECTION 13. EFFECTIVE DATE. This [act] takes effect on _____.**

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[i] NCCUSL, 2006 *Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings*, Sec. 2(2) [Hereinafter NCCUSL Act]

[ii] *Id.*, Sec. 2(6); American Bar Association, *Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases*, Part I, Sec A-1, 29 Fam. L. Q. 375 (1995). The standards were formally adopted by the ABA House of Delegates in 1996. [Hereinafter ABA Standards].

[iii] ABA Standards, Part I, Sec A-3.

[iv] NCCUSL Act, Sec. 4(c); *see also* ABA Standards, Part I, Sec B-1

[v] ABA Standards, Sec D-13; F-1-5; *see generally* La. Sup. Ct. R. XXXIII, Standard 1; *see generally* Ariz. R. Proc. Juv. Ct. R. 39(b).

[vi] *See* La. Child. Code Ann. Art. 1016(A).

[vii] ABA Standards, Part II, Sec L-1-2.

[viii] NCCUSL Act, Sec. 9

[ix] *Id.*, Sec. 10(a)

[x] ABA Standards, Part I, Sec D-13; F-1-5; *see generally* La. Sup. Ct. R. XXXIII, Standard 1.; *see generally* Ariz. R. Proc. Juv. Ct. R. 39(b).

[xi] NCCUSL Act, Sec. 11 Alternative A..

[xii] ABA Standards, Part I, Sec C-1-6; *see generally* La. Sup. Ct. R. XXXIII, Standards 1-7.

[xiii] ABA Model Rules of Professional Responsibility (hereinafter M.R.) 1.2

[xiv] M.R. 1.6

[xv] M.R. 1.3

[xvi] M.R. 1.1

[xvii] M.R. 1.7

[xviii] M.R. 1.4

[xix] M.R. 2.1

[xx] ABA Standards, commentary A-1

[xxi] M.R. 1.4

[xxii] M.R. 2.1

[xxiii] M.R. 1.14(c)

[xxiv] *See* ABA *Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases (NACC Revised Version)*, B-4(4)

[xxv] Restatement (Third) of the Law Governing Lawyers Sec. 24 c. c (2000).

[xxvi] M.R. 1.14 cmt. 1

[xxvii] M.R. 1.14, cmt. 1

[xxviii] Anne Graffam Walker, Ph.D. *Handbook on Questioning Children: A Linguistic Perspective* 2nd Edition ABA Center on Children and the Law Copyright 1999 by ABA.

[xxix] M.R. 1.14 cmt. 5

[xxx] M.R. 1.14 cmt. 5

[xxxi] M.R. 1.14, cmt. 8

[xxxii] M.R. 1.14, cmt. 8

[xxxiii] M.R. 1.14, cmt 8

[xxxiv] NCCUSL Act, Sec. 15

[xxxv] NCCUSL Act, Sec. 16

[xxxvi] American Bar Association Youth Transitioning from Foster Care August 2007; American Bar Association Foster Care Reform Act August 2005

[xxxvii] NCCUSL Act, Sec. 18; *see also* NACC, *Recommendations for Representation of Children in Abuse and Neglect Cases*, Sec. 3A(8).

[xxxviii] N.C. Gen. Stat. Ann. § 7B-603.

[xxxix] NCCUSL Act, Sec. 19.

Proposed ABA Model Act

Score: 100 **Grade: A+**

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	**Points: 40 out of 40** "The court shall appoint a lawyer for each child who is the subject of a petition in an abuse, neglect, dependency, termination of parental rights, or post termination of parental rights proceeding. The appointment of the child's lawyer must be made as soon as practicable to ensure effective representation of the child and, in any event, before the first court hearing" (ABA Proposed Model Act, § 3(a)).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	**Points: 10 out of 10** "The appointment includes all stages thereof, from removal from the home or initial appointment through all applicable appellate proceedings" (ABA Proposed Model Act, § 6).
3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?	**Points: 20 out of 20** "When the child is capable of directing the representation by expressing his or her objectives, the lawyer shall maintain a normal client-lawyer relationship with the child" (ABA Proposed Model Act, § 7(c)).
4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Is such education and/or training required to include multidisciplinary elements?	**Points: 8 out of 10** "The court shall appoint as a child's lawyer only an individual who is qualified through training or experience, according to standards established by [insert reference to source of standards]" (ABA Proposed Model Act, § 4(a)). Basis for deduction: The ABA Proposed Model Act does not specifically require multidisciplinary training.
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?	**Points: 10 out of 10** "Children in these proceedings are parties" (ABA Proposed Model Act, § 2(b)). "Each child who is the subject of an abuse or neglect proceeding has the right to attend and fully participate in all hearings related to their case" (ABA Proposed Model Act, § 9).
6. Do the Rules of Professional Conduct (or the state's equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?	**Points: 10 out of 10** ""Child's lawyer" (or "Children's lawyer") means a lawyer who provides legal services for a child and who owes all of the same duties that are due an adult client, including undivided loyalty, confidentiality, diligence, conflict of interest, communication, duty to advise, and competent representation" (ABA Proposed Model Act, § 1(a)). "All rules of professional conduct and any law establishing the obligations of lawyers to their clients shall apply to such appointed lawyers" (ABA Proposed Model Act, § 3(d)). "There shall not be malpractice liability immunity for the child's lawyer" (ABA Proposed Model Act, § 11(a)).
Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?	**Points: 2 extra credit points** "Children's lawyers shall not be appointed to new cases when their caseload exceeds more than a reasonable number given the jurisdiction, the percent of the lawyer's practice spent on abuse and neglect cases, the case complexity, and other relevant factors" (ABA Proposed Model Act, § 4(c)).

Appendix B: State Contacts

First Star and the Children's Advocacy sent the following individuals draft versions of the gradesheets for their respective states and asked for comments, feedback, and corrections. We appreciate the cooperation and assistance of all of these individuals, and have underlined the names of individuals who provided substantive feedback or comments that were incorporated into this report or who provided other relevant information. First Star and the Children's Advocacy Institute are tremendously grateful to all of these individuals for their insights, explanations, and assistance, all of which helped contribute to the accuracy of the information contained in this Report.

State	Persons Provided Draft Gradesheets
Alabama	David Williams, Alabama Administrative Office of the Courts Bob Maddox, Esq., Alabama Administrative Office of the Courts Sue Ash, Alabama Department of Human Resources Linda Tilly, Voices for Alabama's Children
Alaska	Susanne DiPietro, Judicial Education Coordinator, Alaska Court System Joanne Gibbens, Department of Health & Social Services Amanda Metivier, Facing Foster Care in Alaska Christy Lawton, Child Welfare Administrator, Office of Children Services Barb Malchick
Arizona	Paul Bennett, UA Child Advocacy Clinic Caroline Lautt-Owens, Dependent Children's Services Robert Shelley, Court Improvement Project Coordinator, Admin. Office of the Courts Linda Johnson, Admin. for Children, Youth and Families Dana Wolfe Naimark, Arizona Children's Action Alliance
Arkansas	Michael Mullane, Director and Professor of Law, Legal Clinic, Robert A. Leflar Law Center Connie Hickman Tanner, Director of Juvenile Courts, Admin. Office of the Courts Debbie Roark, Child Protective Services Manager, Div. of Children & Family Services Max Snowden, Comm. On Child Abuse, Rape & Domestic Violence, University of Arkansas for Medical Sciences Rich Huddleston, Arkansas Advocates for Children & Families
California	Bill Patton, Associate Dean of the Clinical Program and Professor of Law, Whittier Law School Deborah Forman, Whittier Center for Children's Rights Jacquelyn Gentry, Director, Whittier Center for Children's Rights Leslie Heimov, Executive Director, Children's Law Center of Los Angeles Christopher Wu, Supervising Attorney, Judicial Council of California Greg Rose, Office of Child Abuse Prevention Joyce Dowell, Chief, Child Welfare Policy and Program Development Bureau Diane Brown, Manager, Child Policy Development and Support
Colorado	Theresa Spahn, Executive Director, Office of the Child's Representative Sarah Ehrlich, Staff Attorney and Legislative Liaison, Office of the Child's Representative Sheri Danz, Office of the Child's Representative Daniel P. Gallagher, Policy Analyst & Court Improvement Project Coordinator, State Court Administrator's Office Marvin Ventrell, Executive Director, Juvenile Law Society Shirley Mondragon, Administrator, Children Services, Dept of Human Services Chris Watney, Interim Director, Colorado Children's Campaign
Connecticut	Honorable Charles Gill, Superior Court, State of Connecticut Carolyn Signorelli, Chief Child Protection Attorney, Commission on Child Protection Karl Kemper, Dept of Children and Families Faith Vos Winkel, Assistant Child Advocate, Office of Child Advocate Jamey Bell, Executive Director, Connecticut Voices for Children
Delaware	Tania M. Culley, Office of the Child Advocate Guy Sapp, Court Administrator, Office of Children Services Linda Shannon, Office of Children Services Andrea Mills, Director of Special Court Services, Family Court of the State of Delaware Trish Hearn, Court Improvement Program Coordinator, Family Court of Delaware
District of Columbia	Professor Wallace Mlyniec, Georgetown Univ. Law Center Diane Weinroth, Children's Law Center Fillmore Lucas, Jr., Deputy Director of the Family Division, Clerk's Office; Superior Court of DC Wilma Brier, Branch Chief, CCAN, Family Courts of the D.C. Superior Court Virginia Monteiro, Children and Family Services Admin.
Florida	Gerry Glynn, Dwayne O. Andreas School of Law Sandra (Sandy) Neidert, Senior Court Operations Consultant, Office of Court Improvement John Harper, Dept. of Children and Families Louis M. Reidenberg Linda Alexionok, Executive Director, Children's Campaign

Georgia	Kirsten Widner, Court of Georgia Committee on Justice for Children Dorothy V. Murphy, Child Advocate Attorney, DeKalb County Child Advocacy Center Michelle R. Barclay, Admin. Office of the Courts Melissa D. Carter, Deputy Director, Office of the Child Advocate Trenny Stovall, Child Advocacy Center Director, DeKalb County Child Advocacy Center Mindy Binderman, Policy Director, Voices for Georgia's Children
Hawaii	Sandie Kato, Program Specialist, First Judicial Circuit Faye Kimura, Program Coordinator Rondney Hee, Court Administrator, Court Mgt. Services Branch Gibby Fukutomi, Dept of Human Services Cynthia Goss, Dept of Human Services Colin Fukunaga, Assistant Program Administrator, Department of Human Services Elisabeth Chun, Executive Director, Good Beginnings Alliance
Idaho	Debra Alsaker-Burke, Director, Court Improvement Project Hon. Bryan Murray, Idaho Supreme Court
Illinois	Sacha Coupet, Loyola Chicago School of Law Bernadine Dohm, Northwestern Children and Jane Rutherford, DePaul College of Law Richard Cozzola, Supervising Attorney of Children's Law Project, Legal Assistance Foundation Arlene Grant-Brown, Dept of Children and Family Services Gailyn Thomas, Division of Child Protection Gaylord Gieseke, Interim President, Voices for Illinois Children
Indiana	Mary Wolf , Clinical Professor of Law and Director of Clinical Programs, I.U. School of Law Angela Reid-Brown, CIP Grant Administrator, Indiana Judicial Center Leslie Dunn, Dir of GAL CASA, State Court Administration Joel Schumm, Professor, Indiana University School of Law - Indianapolis Lilia Judson, State Court Administration Anne Jordan, State Court Administration John Wood, Deputy General Counsel, Dept of Child Services James "Jim" Payne, Director, Dept of Child Services Angel Owens, Dept of Child Services
Iowa	Michael Sorci, Executive Director, Youth Law Center Gail Barber, Project Director, Iowa Court Improvement Project Rosemary Norlin, Dept of Human Services Charles Bruner, Child & Family Policy Center
Kansas	Linda Elrod, Washburn Children Dawn Spencer, Court Improvement Specialist, Kansas Supreme Court Frayna Scrinopskie, Court Improvement Specialist, Kansas Supreme Court Mark Gleeson, Family and Children Program Coordinator, Kansas Supreme Court Roberta Sue McKenna, Dept of Social & Rehabilitation Services Brian Dempsey, Deputy Director of Children and Family Services, Dept of Social & Rehabilitation Services Gary Brunk, President & CEO, Kansas Action for Children
Kentucky	Joshua Crabtree, Managing Attorney, Children's Law Center, Inc. Kim Tandy, Executive Director, Children's Law Center, Inc. Patrick Yewell, Admin. Office of the Courts J.R. Hopson, KY Administrative Office of the Courts Mike Grimes, Department for Community-Based Services/Division for Protection and Permanency Terry Brooks, Executive Director, Kentucky Youth Advocates
Louisiana	Hon. Nancy Amato Konrad, Judicial Court Administrator Cheryl Buchert, Associate Professor, Loyola University New Orleans Hon. Ann Murry Keller, Judicial Court Administrator Hon. Andrea Price Janzen, Judicial Court Administrator Jan Byland, Louisiana Dept of Social Services Mark Harris, Program Coordinator, Office of Judicial Admin. Karen Hallstrom, Office of Judicial Admin. David Katner, Director, Tulane Law School's Juvenile Law Anthony J. Gagliano, Deputy Judicial Administrator, Louisiana Supreme Court Cindy Phillips, Dept of Social Services Patrice Waldrop Candice LeBlanc, Deputy General Counsel, Dept of Social Services Judy Watts, Agenda for Children
Maine	Dean Crocker, Maine Children's Alliance Tracy Adamson, Family Division Manager, Maine Administrative Office of the Courts Wendy Rau , Family Division Director, Admin. Office of the Courts Hon. Vendean Vafiades, Deputy Chief Judge, District Court James Beougher, Director, Dept of Health & Human Services Virginia Marriner, Dept of Health & Human Services Dulcey Laberge, Division of Public Service Management Vickie J Fisher, CAAN Coordinator Elinor Goldberg,Maine Children's Alliance

Maryland	Delores Edwards, Department of Human Resources Melanie Klein, Metropolitan Maryland Office Tracy Watkins-Tribbitt, Director, Foster Care Court Improvement Project Althea Stewart Jones, Admin. Office of the Courts Rhonda Lipkin, Child Welfare Advocacy Fellow, Public Justice Center Jessica Lynne Cook Rae, Legal Aid Bureau, Inc. Rosaline McDaniel, Dept of Human Resources Stephen Berry, Dept of Human Resources Daniel L. Hatcher, Assistant Professor of Law, University Baltimore School of Law Matthew Joseph, Executive Director, Voices for Maryland's Children
Massachusetts	Jessica Budnitz, Child Advocacy Program at Harvard Law School Andy Cohen, Committee for Public Counsel Services Clare Dalton, NEU Domestic Violence Center Brigid Kennedy-Pfister, Staff Attorney, The Children's Law Center Ronald Corbett, Court Administrator, Mass. Supreme Judicial Court Jacqueline Schelfhaudt, Assistant Court Administator, Juvenile Court Department Administratvie Office Liz Skinner-Reilly, Dept of Children and Families Michael Dsida, Deputy Chief Counsel, Committee for Public Counsel Services Krista Lohr, Committee for Public Counsel Services Virginia Peel, General Counsel, Dept of Children and Families Jetta Bernier, Massachusetts Citizens for Children
Michigan	Don Duquette, Child Advocacy Law Clinic, University of Michigan Law School Kathryne O'Grady, Director of Child Welfare Services, State Court Admin. Office Kelly Howard, Court Improvement Program Coordinator,Child Welfare Services Division Jenifer Pettibone, Management Analyst, Michigan State Court Administrator's Office Dan Wright, Director, State Court Administrative Office Jack Kresnak, Voices for Michigan's Children
Minnesota	Mark Fiddler, Esq., Fiddler Law Office Judith Nord, Staff Attorney/ CIP Manager, Minnesota Supreme Court Ruth Clinard, Dept of Human Services Susan Krinkie, Social Service Consultant, Dept of Human Services Erin Sullivan-Sutton, Dept of Human Services
Mississippi	Dana Gearhart, Mississippi Department of Human Services William Charlton, Mississippi Judicial College Dennis Perkins, Youth Court Program Director Jamie McBride, Director, Court Improvement Program Lori Woodruff, Director, Dept of Human Services Alicia Cole, Dept of Human Services
Missouri	Linda Hope, Juvenile and Adult Court Programs Norma Rahm, Office of the State Courts Admin. Mary Beck, Professor, University of Missouri School of Law Gary Waint, Office of the State Courts Admin. Kathryn Sapp, Dept of Social Services Melody Yancey, Acting Assistant Deputy Director, Dept of Social Services F. Scott Gee, Executive Director, Citizens for Missouri's Children
Montana	Sherri Rafter, Montana Supreme Court Sherry Meador, Montana Supreme Court Janice Basso, Dept of Public Health & Human Services
Nebraska	Victoria Weisz, Ctr. on Children, Families and the Law Bob German , Legal Aid of Nebraska Patrick Carraher, Nebraska Legal Services Kathy Bigsby Moore, Voices for Children in Nebraska Suzanne Schied, Dept. of Health and Human Services, Children & Family Services
Nevada	Barbara Buckley, Legal Aid Center of Southern Nevada Sheryl Overstreet, Coordinator, Court Improvement Project Annette Ruth Appell, William S. Boyd Professor of Law; William S. Boyd School of Law David Nason, Division of Child and Family Services Barbara Legier, Division of Child and Family Services Betsey Crumine, Executive Director, Clark County Legal Amber Vestbie, Dept. of Children and Family Services Gard Jameson, Children's Advocacy Alliance Erica Turner, Court Improvement Program
New Hampshire	Jack Lightfoot, Child and Family Services Sue Carmen, CASA of New Hampshire Ann Larney, CASA of New Hampshire David Sandberg, CASA of New Hampshire Kristy Lamont, Permanency Planning Coordinator Byry Kennedy, Chief Legal Counsel, Child and Family Services Kristen Neil, Dept of Health and Human Services Ellen Fineberg, Children's Alliance of New Hampshire

New Jersey	Sonia Marytinez, Admin. Office of the Courts Lorraine Augostini, NJ Office of Public Defender, Office of Law Guardian Lisa Von Pier, Chief Juvenile Justice, Family Division, Administrative Office if the Courts Sandra Simkins, Clinical Associate Professor, Rutgers Law--Camden Mary Helen Cervantes, Director of Communications, Dept of Children & Family Services Michele Safrin, Dept of Children & Family Services Kate Bernyk, New Jersey Dept. of Children and Family Services Delphinia McKinnis, Dept of Human Services Yvonne Smith Segars, Public Defender, Office of the Public Defender Cecilia Zalkind, Executive Director, Association for Children of New Jersey
New Mexico	Mary Ellen Bearzi, Youth and Families Dept Judy Flynn-O'Brian, Center Director, Corinne Wolfe Children's Law Center, Institute of Public Law Angela Peinado, Project Manager, Supreme Court of New Mexico Robert Klein, Management Analyst Eric Griego, Voices for Children
New York	Sarah Ramsey, Syracuse University College of Law Tamara Steckler, Legal Aid Society, Juvenile Rights Practice Michele Campbell, Permanent Judicial Commission Thomas Hess, Office of Children and Family Services Judy Richards, Office of Children and Family Services Jennifer March-Joly, Citizen's Committee for Children of New York Betsy Stevens, Office of Children & Family Services
North Carolina	Deana Fleming, Administrative Office of the Courts Lana Dial, Manager, Court Improvement Project Lewis Pitts, Senior Managing Attorney, Advocates for Children's Services Jack Rogers, Dept of Health and Human Services Barbara Bradley, Action for Children
North Dakota	Louis Hentzen, North Dakota Supreme Court Tara Mulhauser, North Dakota Department of Human Services Marlys Baker, North Dakota Department of Human Services Dr. Polly Fassinger, Kids Count
Ohio	Doug Stephens, Judicial and Court Services Kristin Gilbert, Ohio Department of Job and Family Services Leslie McGee, Ohio Department of Job and Family Services Amy Nicholls Swanson, Voices for Ohio's Children Denise St. Clair, National Center for Adoption Law & Policy, Capital University Law School
Oklahoma	Sue Tate, Administrative Office of the Courts Anne Roberts, Oklahoma Institute for Child Advocacy Felice Hamilton, Administrative Office of Oklahoma's Supreme Court
Oregon	Rebecca Orf, Juvenile Court Improvement Program Una Swanson, Oregon Department of Human Services Stacey Ayers, Oregon Department of Human Services Robin Christian, Oregon First for Children Mark McKechnie, Juvenile Rights Project
Pennsylvania	Debbie Schilling Wolfe, Field Center for Children's Policy Sandy Moore, Administrative Office of Pennsylvania Courts Cathy Utz, Department of Public Welfare Joan Benson, Pennsylvania Partnerships for Children Robert Schwartz, Juvenile Law Center Todd Lloyd, Pennsylvania Partnerships for Children Scott Hollander, Kids Voice
Rhode Island	Andrew Johnson, CASA/GAL Director, State of Rhode Island David Tassoni, Rhode Island Family Court Dorothy Hultine, Rhode Island Department of Children, Youth and Families Hon. Jeremiah S. Jeremiah, Rhode Island Family Court Joanne Lehrer, Rhode Island Department of Children, Youth and Families Elizabeth Burke Bryant, Rhode Island Kids Count
South Carolina	Rose Mary McGregor, Children's Law Office Carolyn Morris, Children's Law Center Cody Lidge, Family Court Representative Louise Cooper, Guardian ad Litem Program Beth Williams, Department of Social Services John D. Elliott, Attorney at Law
South Dakota	Jill Gusso, Court Support Services, State Capitol Hon. Max A. Gors Sara Kelly, South Dakota Unified Judicial System Carole Cochran, South Dakota Kids Count Project
Tennessee	Leslie Barrett Kinkead, Court Improvement Program Carla Aaron, Department of Children's Services Linda O'Neal, Tennessee Commission on Children and Youth 'Nyasha Justice, Court Improvement Program, Tennessee Supreme Court

Texas	Jessica Dixon, SMU Dedman School of Law John Sampson, Children's Rights Clinic Carl Reynolds, Texas Judicial Council Liz Kromrei,, Department of Family and Protective Services Robert Sanborn, Children at Risk Kathleen Turton, W.W. Caruth, Jr. Child Advocacy Clinic Audrey Carmical, Department of Family and Protective Services Tiffany Roper, Supreme Court Permanent Judicial Commission for Children, Youth and Families Tina Amberboy, Supreme Court Permanent Judicial Commission for Children, Youth and Families
Utah	Ray Wahl, Utah Administrative Office of the Courts Katie Gregory, Utah Administrative Office of the Courts Hon. Kay Lindsay, Utah Administrative Office of the Courts Rick Smith, Office of Guardian ad Litem and CASA Karen Crompton, Voices for Utah Children
Vermont	Robert Sheil, Office of the Juvenile Defender Shari Young, Office of the Court Administrator Carlen Finn, Voices for Vermont's Children
Virginia	Robert Emery, Virginia Center for Children Prof. Robert E. Shepherd, T.C. Williams School of Law Lelia Baum Hopper, Court Improvement Project John Morgan, Voices for Virginia's Children
Washington	Rick Coplen, Administrative Office of the Courts Gloria Hemmen, Administrative Office of the Courts Mike Curtis, Center for Children and Youth Justice Barbara McPherson, Commission on Children in Foster Care Collette McCully, Department of Social and Health Services Paola Maranan, Washington Children's Alliance Erin Shea McCann, Columbia Legal Services
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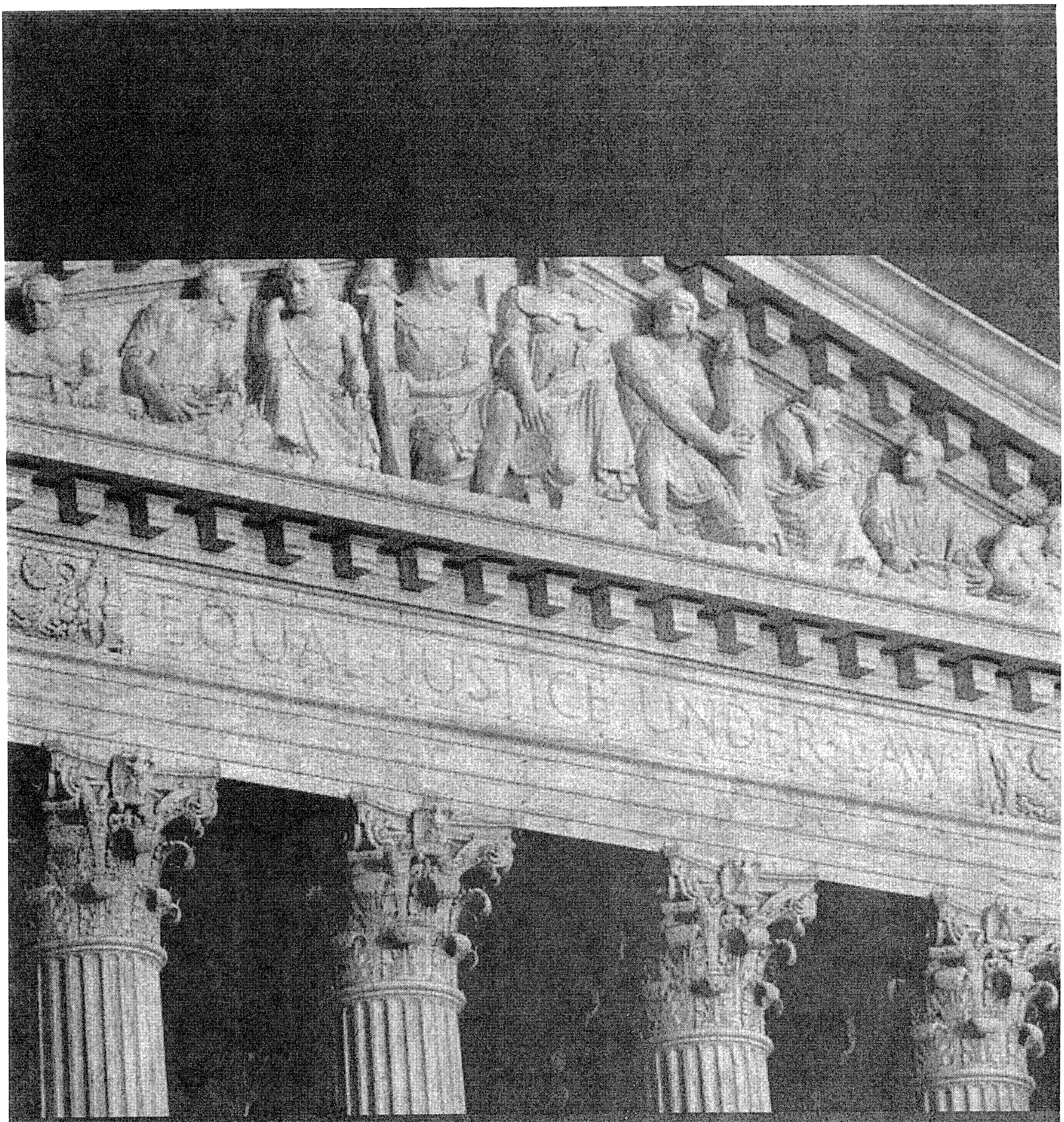

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APPENDIX 2

NACC Recommendations for Representation of Children in Abuse and Neglect Cases

NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

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NACC Recommendations for Representation of Children in Abuse and Neglect Cases was produced as part of the NACC's objective to establish the practice of law for children as a legitamate profession and legal specialty. As part of that objective, the NACC periodically produces standards of practice or guidelines for the representation of children.

The document was drafted by the NACC Program Committee and the prinipal authors listed below.

The document was adopted by a unanimous vote of the NACC Board of Directors on April 28, 2001.

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EXECUTIVE SUMMARY

The lack of standards of practice or guidelines for attorneys representing children in child protection proceedings has frequently been cited as a major cause of substandard and ineffective legal representation of children. Unlike more traditional areas of practice where the model of representation and the lawyer code of conduct are essentially uniform from state to state, the practice of law for children has no commonly accepted uniform model or code, and many states provide inadequate guidance for attorneys doing this work. This is the case in part because the practice of law for children is a unique and relatively recent development, and because the evolution has occurred on a state by state basis. Additionally, there has been significant disagreement as to whether representation for children should take a traditional client directed ("expressed wishes"), or an advocate directed ("best interests") form, making it difficult to adopt a model.

Important progress was made toward the creation of a uniform model of representation with the creation of the *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* in 1996. Still, jurisdictions struggle to adopt clear and comprehensive guidelines for children's attorneys, frequently because of the long-standing debate over the form of representation.

The *NACC Recommendations for Representation of Children in Abuse and Neglect Cases* is a document designed to assist jurisdictions in the selection and implementation of a model of child representation. Rather than urging jurisdictions to choose a particular model, this document sets out a checklist of children's needs that should be met by whatever representation scheme is chosen. It is the NACC's hope that this approach will allow jurisdictions to focus on what matters, serving the child client, and avoid becoming mired in the debate over best interests and expressed wishes.

The NACC believes that children's legal service needs can be met by both client directed ("expressed wishes") and advocate directed ("best interest") models of representation. In an effort to help jurisdictions understand various models, this document includes a section describing the various models of representation.

Whatever form of representation jurisdictions choose, the NACC believes that every child subject to a child protection proceeding must be provided an independent, competent, and zealous attorney, trained in the law of child protection and the art of trial advocacy, with adequate time and resources to handle the case.

NACC RECOMMENDATIONS FOR REPRESENTATION OF CHILDREN IN ABUSE AND NEGLECT CASES

I. Introduction

This document is designed to assist children's attorneys, courts, and policy makers working to improve the legal representation of children. The focus is on the representation of children in abuse and neglect proceedings. The document also has application in private custody and adoption matters.

Rather than prescribing one specific model of representation, this document provides a policy framework for the legal representation of children, followed by a checklist of children's needs that representation should meet, whatever form of representation states choose. The document describes various models of representation in an effort to help the reader appreciate the strengths and weaknesses of each.

The NACC is aware of the debate in the child advocacy community over the two primary models of representing children - the attorney guardian *ad litem* (advocate directed "best interests" model) and the traditional attorney (client directed "expressed wishes" model). While this debate can be useful, the NACC suggests that rather than spending time and resources debating the merits of the various models, states should focus on ensuring that the model of representation used meets the children's needs checklist.

II. Children's Legal Representation Policy

A. Overview

The NACC believes that each child must be valued as a unique human being, regardless of race, ethnicity, religion, age, social class, physical or mental disability, gender, or sexual orientation. Each child is vested with certain fundamental rights, including a right to physical and emotional health and safety. In order to achieve the physical and emotional well being of children, we must promote legal rights and remedies for children. This includes empowering children by ensuring that courts hear and consider their views in proceedings that affect their lives.

Children's attorneys play a critical role in empowering children and ensuring that children's views are heard in legal proceedings. Outcomes in our adversarial process are directly tied to the quality of legal representation. Additionally, the presence of children's attorneys is critical to ensuring the timeliness of proceedings.

The NACC believes that attorneys representing children should have a combination of knowledge, training, experience, and ability which allows them to effectively discharge their duties to their clients. The NACC supports federal, state, and local programs to enhance the competence of these attorneys.

B. Child Welfare Cases

The NACC believes that in order for justice to be done in child abuse and neglect related court proceedings, all parties, including children, must be represented by independent *legal* counsel[1]. The children who are the subjects of these proceedings are usually the most profoundly affected by the decisions made, and these children are usually the least able to voice their views effectively on their own. In many jurisdictions, however, courts do not appoint independent attorneys for all children in abuse and

[1] The U.S. Department of Health and Human Services supports this principle. *Adoption 2002: The President's Initiative on Adoption and Foster Care. Guidelines for Public Policy and State Legislation Governing Permanence for Children*, U.S. Dept. of HHS ACF ACYF Children's Bureau, 1999.

neglect related proceedings. NACC believes that federal, state, and local law must mandate that independent attorneys be appointed to represent the interests of children in all such proceedings.

C. Private Custody and Adoption Cases

The NACC believes that while legal representation is not required for every child who is the subject of a child custody determination, the judge *should* appoint an attorney to represent the child in certain cases: when there are certain substantive allegations that make child representation necessary -- i.e., when there is an allegation of child neglect or abuse (physical, sexual, or emotional) by a parent or household member, when there is a culture of violence between the parents, when there is an allegation of substance abuse by a parent, when there are allegations of non-paternity, or when there is an allegation of or fear about child snatching -- as well as when there are certain procedural situations which make child representation necessary -- e.g., when a child will be a witness or when the case develops an extremely adversarial nature. In addition, the judge *should consider* appointing an attorney to represent the child in certain other cases: when there is an allegation of mental illness on the part of a parent, when a custodial parent is relocating geographically, when child representation can reduce undue harm to the child from the litigation itself, when the child has exceptional physical or mental health needs, when the child expresses a strong desire to make his or her opinions known to the judge, when there is a *pro se* parent, when there is a third-party custody action against a parent (e.g., by a grandparent), or when the failure to appoint a representative for the child would otherwise impede the judge's capacity to decide the case properly. (Attorneys can be instrumental in ensuring that judges have the necessary data upon which to make an informed decision.)

III. Needs Checklist for Children Involved in Abuse and Neglect Cases

The NACC encourages jurisdictions to adopt a system of legal representation of children which satisfies the following checklist. The representation scheme should ensure that each of the following children's rights or needs are satisfied through a combination of systemic safeguards, advocacy duties, and basic advocacy issues.

A. Systemic Safeguards

- ❑ 1. Children need competent, independent, and zealous attorneys. The system of representation must require the appointment of competent, independent, zealous attorneys for every child at every stage of the proceedings. The same attorney should represent the child for as long as the child is subject to the court's jurisdiction.

Comment A: Competence is the foundation of all legal representation. The fundamental requirements of competency as defined in each jurisdiction, combined with the ability to function without constraint or obligation to any party other than the child client is of paramount importance. (See, ABA Model Rules of Professional Conduct (Model Rules): Preamble; 1.14(a); ABA Model Code of Professional Responsibility (Model Code): EC 7-1; EC 7-12; ABA Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases (ABA Standards): Preface; A-1.)

Comment B: Competent representation includes knowledge, skill, thoroughness, and preparation. This includes knowledge of placements and services available for the child, and services available to the child's family. (See, Model Rule: 1.1; Model Code DR 6-101(A)(1)(2); ABA Standards B-1; C.) Jurisdictions should provide special initial and periodic training to all attorneys in child welfare proceedings covering substantive law (federal, state, statutory, regulatory, and case law), procedure, trial advocacy, child welfare and child development.

Comment C: Continuity of representation is important to the child. The same lawyer should represent the child for as long as the child is under the jurisdiction of the court. Temporary substitution of counsel, although often unavoidable, should be discouraged. Any substitute counsel must be familiar with the child and the child's case.

- 2. Children need attorneys with adequate time and resources. The system of representation must include reasonable caseload limits and at the same time provide adequate compensation for attorneys representing children.

Comment A: The NACC recommends that a full time attorney represent no more than 100 individual clients at a time, assuming a caseload that includes clients at various stages of cases, and recognizing that some clients may be part of the same sibling group. This is the same cap recommended by the U.S. Dept. of HHS Children's Bureau and the American Bar Association[2]. One hundred cases averages to 20 hours per case in a 2000-hour year.

Comment B: For the sake of the child client and the interests of the system, attorneys must be provided appropriate and reasonable compensation. The NACC adopts the following position of the Dept. of HHS on this point: "Primary causes of inadequate legal representation of the parties in child welfare cases are low compensation and excessive caseloads. Reasonable compensation of attorneys for this important work is essential. Rather than a flat per case fee, compensate lawyers for time spent. This will help to increase their level of involvement in the case and should help improve the image of attorneys who are engaged in this type of work. When attorneys are paid a set fee for complicated and demanding cases, they cope either by providing less service than the child-client requires or by providing representation on a pro bono or minimum wage basis. Neither of these responses is appropriate. Rates should also reflect the level of seniority and level of experience of the attorneys. In some offices, lawyers handling child welfare cases receive lower pay than other attorneys. This is inappropriate. Compensation of attorneys handling children's cases should be on a par with other lawyers in the office handling legal matters of similar demand and complexity. The need for improved compensation is not for the purpose of benefiting the attorney, but rather to ensure that the child receives the intense and expert legal services required."[3]

- 3. Children need attorneys who understand their role and duties. The system of representation of children must be well defined by statute, bar standards, administrative guidelines, supreme court directive or other documents such that every attorney appointed for a child can understand his/her precise role and duties, and such that an attorney can be held accountable for performance of those duties.

Comment: It is helpful here to distinguish between role and duties. Role refers to whether, for example, the attorney is client directed (traditional attorney model or child's attorney models) while duties refer to those actions to be taken by the attorney (investigation, calling witnesses, etc.). Although duties are in part dependent on role, most commentators agree that certain fundamental duties should apply regardless of role. See ABA and ABA / NACC Revised Standards § C Actions to be Taken.

- 4. Children need an opportunity to present their positions to the court through counsel. The system of representation must provide the child with an opportunity for his/her needs and wishes to be expressed to the court.

Comment: Children have an independent perspective and may have information and positions to present to the court on a wide range of issues including but extending beyond the issue of placement. Other parties and the court may otherwise be unaware of the child's perspective or of how certain decisions subjectively affect the child.

- 5. Children need confidential communication with their attorneys. The attorney has a duty to explain the extent of confidentiality in developmentally appropriate language.

Comment A: Every child should have the right to communicate confidentially with the representative. (See, Model Rules: 1.6, 3.7; Model Code: DR 4-101; 5-102; ABA Standards: A-1; Comment B-2(2).)

Comment B: But see Alaska Ethics Op. 854. Some jurisdictions include attorneys as mandatory reporters, and pure confidentiality may be precluded with a GAL - advocate directed representation system.

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[2] ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, §§L-1, L-2; The U.S. Department of Health and Human Services supports this principle. *Adoption 2002: The President's Initiative on Adoption and Foster Care. Guidelines for Public Policy and State Legislation Governing Permanence for Children*, U.S. Dept. of HHS ACF ACYF Children's Bureau, 1999, page VII-5.

[3] *Adoption 2002: The President's Initiative on Adoption and Foster Care. Guidelines for Public Policy and State Legislation Governing Permanence for Children*, U.S. Dept. of HHS ACF ACYF Children's Bureau, 1999, page VII-4.

- 6. Children need to be involved as litigants in the entire litigation process, including any post disposition, termination of parental rights, and adoption proceedings. The system of representation must recognize the child as a party to the litigation and must include the child in all phases of the litigation, including the opportunity to participate in arguments and jury selection where applicable, offer exhibits, call witnesses, examine and cross examine witnesses and engage in motions and discovery processes. The child must also be given notice of all proceedings and copies of all pleadings.

Comment: The child should be physically present early in the proceedings, so as to allow all parties and their representatives the opportunity to become acquainted with the child as an individual. Although the child's presence may not be required at every court hearing, it should not be waived by the representative, unless the child has already been introduced to the court and his/her presence is not required by law, custom, or practice in that jurisdiction. Every child should be notified through counsel of every court hearing, every agency meeting, and every case conference or negotiation among the various professionals involved in the case and the child's attorney should be notified concerning any change in the child's welfare, placement, education, or status. Every child should be considered a party to the litigation, and should therefore, be entitled to any and all benefits under the law granted to any other party. Every child should have access to sufficient information to allow his/her representative to provide competent representation including the child's representative having access to social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school and other records relevant to the case, and opportunity for interviewing child welfare caseworkers, foster parents and other caretakers, school personnel, health professionals, law enforcement, and other persons with relevant information. This access may require the representative to file motions for discovery, subpoenas, subpoenas duces tecum, depositions and interrogatories, according to the discovery mechanisms available in the jurisdiction. Every child should have the opportunity to present his/her witnesses in the court proceedings. This requires the representative to investigate facts, identify and communicate with witnesses, and issue subpoenas to ensure that witnesses appear in court.

- 7. Children need judicial review of adverse decisions. The system of representation must provide an opportunity to appeal an adverse ruling.

Comment: Children need to have access to the court after the adjudication occurs. This may require the representative to forego informal resolution of issues at the review stage of the litigation. See State ex rel. Jeanette H., 529 S.E. 2d 865 (2000).

- 8. Children need to be able to hold their attorneys accountable. The system of representation must provide recourse for ineffective assistance of counsel.

Comment: Every child should be able to hold the representative accountable for providing less than competent representation.

- 9. Children need an attorney with a fair opportunity to be effective in the court system. The system of representation must include a court system that devotes adequate time and resources to cases.

Comment: Courts cannot be "rubber stamp" agencies for social service agencies and must be equipped to handle caseloads responsibly. See, *Resource Guidelines, Improving Court Practice in Child Abuse and Neglect Cases*, National Council of Juvenile and Family Court Judges, © 1995 NCJFCJ, Reno, NV

B. Advocacy Duties

- 1. Children need attorneys who fully understand their cases. The attorney must perform a full and independent case investigation.

Comment: The child's attorney has a duty of full investigation of the case. (See, Model Rule: 4.2; Model Code: DR 7-104 (A) (1); ABA Standards: C-2(4); C-6.)

- 2. Children need meaningful communication with their attorneys. The attorney must observe the child, and dependent upon the child's age and capabilities, interview the child. The attorney must engage in regular and meaningful communication with the child. Children need to participate in

making decisions that affect their cases. The attorney has a duty to involve the child client in the process, whether under a client directed model or advocate directed model. The attorney has a duty to explain his/her role to the child in developmentally appropriate language.

Comment A: Under a client directed model, the scope of representation by the child's attorney includes the duty to abide by the client's decision concerning the objectives of the representation. (See, Model Rule: 1.2(a); Model Code: DR 7-101(A)(1); EC 7-7; EC 7-8; ABA Standards: B-4.)

Comment B: This is a universal need, and it applies whether or not the child is pre-verbal. Visual encounters with children who are represented, even with pre-verbal children, are crucial to the representation. Otherwise, the representative is limited by relying upon the mental impressions of third parties. The child's attorney has a duty of effective, thorough, and developmentally appropriate communication with the client, including the duty to meet with the client. (See, Model Rules: 1.4 (a), (b); Model Code: EC 7-8; 9-2; ABA Standards: C-1; A-3; B-1(5); D-2; E-2; F-4.)

Comment C: Children need education about the law and all options available under the legal system. This need is restricted to developmentally appropriate clients, capable of communication.

Comment D: The child client must be informed about the responsibilities and obligations of the representative, as well as the ability and requirements of the representative to accomplish these things.

- 3. Children need loyal attorneys. The child's attorney is prohibited from representation that would constitute a conflict of interest.

Comment: Attorneys must be aware of the potential for conflict while representing a sibling group. Additionally, the child's attorney must be sensitive to the age and maturity of the client where waiver is an issue. (See, Model Rules: 1.7; Model Code: DR 5-101 (A); 5-105(A), (C); 5-107 (B); ABA Standards: B-2(2).)

- 4. Children need the full benefit of legal counsel. The attorney must provide competent, independent and zealous representation for each client. The attorney must have adequate time and resources to devote to the child's case, and to understanding his/her role and duties, insuring confidentiality, and full active participation in all stages of the child's case.

C. Advocacy Issues

- 1. Children need permanence. The attorney must advocate for timely resolution and permanent resolution (absent compelling reasons to the contrary) of the case.

Comment: The child's attorney has a duty of diligent and prompt representation, and a duty to expedite litigation, especially where placement of a young child is at issue. (See, Model Rule: 1.3; 3.2; Model Code: DR 6-101(A)(3); EC 6-4; ABA Standards: B-1(4); C-6.)

- 2. Children need their immediate and basic needs met. The attorney must advocate for food, shelter, clothing, and safety, including a safe temporary placement where necessary and for educational, medical, mental health, and dental needs.

Comment: The child's most immediate physical needs must be addressed and should be the highest priority for the child's representative. After the immediate needs of sustaining life have been addressed, the child's education, mental health, medical, and dental needs must be addressed. Children's attorneys should act as a kind of "watchdog" for the children's needs, insuring that services are provided.

- 3. Children need family relationships. The attorney must advocate for continuation of appropriate familial relationships and family preservation services where appropriate.

Comment: Without jeopardizing the child's physical or emotional safety, arrangements to maintain familial relationships (including siblings) which are not deemed to be harmful to the child should be established as soon as practicable. Family services may include visitation and services for family members: parenting education, medical and mental health care, drug

and alcohol treatment, housing, etc. Such family services may also be appropriate to continue other meaningful relationships and ongoing activities where feasible.

- 4. Children need to be protected from unnecessary harm that can result from legal proceedings. The attorney must advocate for the utilization of court processes that minimize harm to the child, and make certain that the child is properly prepared and emotionally supported where the child is a witness.

IV. Representation Models

The following representation models are presented to assist states in evaluating and formulating models of representation. States should consider the requirements of the federal Child Abuse Prevention and Treatment Act (CAPTA) regarding the appointment of representation for the child. The U.S. Department of Health and Human Services, Children's Bureau has indicated that although CAPTA requires a GAL best interests representative, that role may be filled by either an attorney GAL or more traditional client directed attorney.[4]

A. Advocate Directed Representation

1. The Attorney Guardian *ad Litem* Hybrid[5] Model.

This model provides an attorney to represent the child and instructs the attorney to represent the child's "best interests." The attorney GAL advocates for a result which he/she believes (not necessarily what the child believes) is in the child's "best interests." Rather than taking direction from the client, as is the case in traditional attorney representation of adults, the attorney GAL is charged with forming the client's position by using his/her own judgment. Under this model, the attorney GAL's judgment as to the child's "best interests" takes precedence over the client's wishes.

Pros: This model is favored by many as the traditional model of representing children, particularly young children who cannot meaningfully participate in their litigation. It is also thought to protect older children from the harm of their own bad choices.

Cons: Critics charge that this is an "old fashioned," paternalistic model of representation that treats children as chattel rather than empowering them in the system. Critics charge that advocate directed representation is wrong by definition because: 1) attorneys are not ethically allowed to disregard their clients directives; 2) attorneys are not qualified to make "best interests" determinations; and 3) the legal system requires that attorneys be zealous advocates for a client's position, not agents of the court. Critics also charge that the system results in "relaxed advocacy" where attorneys appointed as GAL feel, and are treated, as relieved of their traditional lawyering responsibilities. Critics argue that this model has contributed to sub standard representation of children across the country.

Jurisdictions Using a Form of This Model: Approximately 60% of the U/S jurisdictions use a form of this model.[6]

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[4] *Adoption 2002: The President's Initiative on Adoption and Foster Care. Guidelines for Public Policy and State Legislation Governing Permanence for Children*, U.S. Dept. of HHS ACF ACYF Children's Bureau, 1999, p. VII-21.

[5] Ann M. Haralambie identifies and discusses the "hybrid' role in *The Child's Attorney, A Guide to Representing Children in Custody, Adoption and Protection Cases,* ABA 1993 at p. 37.

Source: The Colorado version is comprised of the following sources: Colorado Revised Statutes §§ 19-1-103, 19-1-111, 19-3-203; The Colorado Rules of Professional Conduct at CRS, Volume 12 - pages 711-831; Supreme Court of Colorado Chief Justice Directive 97-02; Colorado GAL Standards of Practice.

2. **The Lay Guardian *ad Litem* Model**

This advocate directed model provides for a non-attorney to "represent" the child's "best interests." This person, usually a non-professional volunteer, advocates for what he/she believes (not necessarily what the child believes) is in the child's "best interests." The lay GAL "stands" in the proceeding for the presumptively incompetent child. The focus is the protection of the child by an adult who attempts to know and then articulate the child's best interests.

The NACC discourages the use of this as an exclusive model. Children, even more than adults, require trained legal representation and this model, by definition, is not legal representation. While the NACC recognizes the value of non-legal advocacy for children, whether in the form of lay GAL or CASA, we stress that it cannot be a substitute for trained professional attorneys for children. On this point, the NACC and National CASA have agreed. Non-legal advocates play an important role in the process, and jurisdictions should consider implementing such programs *in addition* to appointing attorneys.

Due to the substantial shortcomings of this model, states which use this model of representation frequently appoint an attorney to represent the child or the lay GAL.

Pros: The model has value when used in conjunction with legal counsel.

Cons: Assuming this is the only "representation" provided, the child has no legal counsel. Lay GALs are unable to provide "legal" counsel and cannot, for example, present evidence, examine witnesses, appeal adverse decisions, or advise the client of the ramifications of legal matters. Lay GALs attempting to serve in the role of legal counsel are engaging in the unauthorized practice of law. Additionally, lay representatives are less accountable than professionals for their actions because their conduct is not governed by ethical and legal standards.

Jurisdictions Using a Form of this Model Include: Florida, Hawaii, Maine

Sources: Florida uses a lay volunteer Guardian *ad litem* model. Florida's Guardian *Ad Litem* Program includes an attorney who advises volunteers on the protection of children's rights and represents the program in contested court proceedings. Fla. Stat. § 39.820 (2000).

In Hawaii, children in dependency cases are generally represented by volunteer lay guardians *ad litem* and CASAs called Volunteer Guardians *Ad Litem* (VGAL). Children *may also* be represented by an Attorney Guardian *Ad Litem*. H.R.S § 587-40.

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[6] *Child Abuse and Neglect Cases: Representation as a Critical Component of Effective Practice.* NCJFCJ Permanency Planning for Children Project, Technical Assistance Bulletin, 1999, page 45.

Maine law calls for a GAL who is usually an attorney but is not required to be by statute. The GAL is considered a party and has the right to call and cross examine witnesses and has access to discovery. Should the GAL be an attorney, he/she essentially functions in the hybrid role of Attorney GAL defined in IV. A. 1. above. It is not clear how such duties can be performed competently or without violating the law against unauthorized practice of law if the appointment is of a lay person. Maine Supreme Judicial Court Rules for Guardians *Ad Litem*; 22 M.R.S. § 4005; 4 M.R.S. §1501.

3. **The "Two Distinct Lawyer Roles" Model.**

A single lawyer model, either advocate directed (best interests) or client directed, may not meet the needs of all children, given their developing and varied capacities from infants to mature and articulate teens. This model would require appointment of a best interest lawyer-guardian *ad litem* or a traditional attorney under certain circumstances as set out in law.

In 1998, Michigan passed a version of this model that creates two separate and distinct roles for the lawyer representing children: attorney and lawyer-guardian *ad litem*. Michigan requires the appointment of a lawyer-GAL in every case and the lawyer-GAL is to represent the best interests of the child. The statute permits the court to appoint an attorney where the mature child and lawyer-GAL are in conflict about identification of the child's interests. The model prescribes aggressive duties for the lawyer-GAL and provides for attorney-client privilege. It requires the lawyer-GAL to tell the court the wishes and preferences of the child even if the lawyer-GAL advocates for a different view and requires the lawyer-GAL to weigh the child's wishes in making the best interests determination according to the age and maturity of the client. When a lawyer is appointed as "attorney," however, the attorney owes the same duties of undivided loyalty, confidentiality and zealous representation of the child's express wishes as the attorney would to an adult client. Some proponents of the Two Distinct Lawyer Role model urge that the law *require* appointment of an attorney instead of a lawyer-GAL at a certain age (unless the child is mentally handicapped), rather than leave attorney appointment to the discretion of the court.

Pros: Proponents argue that the pure forms of either advocate directed ("best interests") or client directed ("expressed wishes") models are deficient when applied to all children, so that a model which provides clear lawyer duties depending on the age and maturity of the child better serves the child client. This model is also well defined by statute and lessens the tendency toward "relaxed advocacy." This model also reduces the risk inherent in the ABA and NACC models that a lawyer appointed as "attorney" would find an exception to (or water down) the duty of aggressive and client-directed advocacy.

Cons: Critics argue that, at its foundation, this is just an attorney directed model with most of the shortcomings of model A. 1. above. The appointment of an attorney GAL is the rule, not the exception, and an attorney is appointed only in rare circumstances. Also, under rare circumstances the child could be represented by both an attorney and a lawyer-guardian *ad litem* which adds to the cost. The test for appointing one or the other lawyer roles remains unsettled.

Jurisdictions Using the Model: Michigan

Source: MCL 712A.13a(1)(b) (for definition of "attorney") and MCL 712A.17d (for duties of lawyer-guardian *ad litem*)

B. Client Directed Representation.

1. Traditional Attorney.

A traditional attorney functions as a client directed advocate. He/she advocates for the expressed wishes of the client and is bound by the client's directives concerning the objectives of representation. The model does not prohibit the attorney from acting in his/her capacity as counselor for the client, and state ethics codes include the counseling function. Attorneys are not required, without first counseling their client as to more appropriate options, to blindly follow directives that are clearly harmful to the client. Further, the model does not require attorneys to advocate positions not supported by facts and the law.

Pros: The model is thought to give voice and autonomy to the client and to empower the child within the system. It allows attorneys to function in a familiar setting. Proponents believe it produces good outcomes for children because it encourages independent, zealous advocacy, and the attorney is not confused by the role or duties.

Cons: Critics charge that the model does not work for young children who cannot meaningfully direct their litigation or for older children who may misdirect their litigation.

Jurisdictions Using a Form of This Model Include: Oregon uses a traditional attorney, but not in all cases. Additionally, a CASA appointment is required in Oregon. Likewise, in many cases a traditional attorney is used in Massachusetts, but in conjunction with a Guardian *ad Litem.*

Sources: Oregon Revised Statutes §§ 419A.170; 419A.012; 419B.195; Ethics provision 3.3. Mass. Gen. Laws ch. 119, § 29; Mass. Ethics Opinion 93-6. ABA Model Rules of Professional Conduct (Model Rules): Preamble; 1.14(a); ABA Model Code of Professional Responsibility (Model Code): EC 7-1; EC 7-12.

2. Child's Attorney (ABA Standards Model)

The following selected provisions from the *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* define the model. "The term 'child's attorney' means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client. The child's attorney should elicit the child's preferences in a developmentally appropriate manner, advise the child, and provide guidance. The child's attorney should represent the child's expressed preferences and follow the child's direction throughout the course of litigation. To the extent that a child cannot express a preference, the child's attorney shall make a good faith effort to determine the child's wishes and advocate accordingly or request appointment of a guardian *ad litem.* To the extent that a child does not or will not express a preference about particular issues, the child's attorney should determine and advocate the child's legal interests. If the child's attorney determines that the child's expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer's opinion of what would be in the child's interests), the

lawyer may request appointment of a separate guardian *ad litem* and continue to represent the child's expressed preference, unless the child's position is prohibited by law or without any factual foundation."

Pros: Proponents see the model as the most significant advance in child representation in many years. They see the model as an evolution from the GAL model of the 1970s. The model is a detailed roadmap for representation taking role and duty confusion out of the picture. The model also discourages relaxed advocacy.

Cons: Critics argue the model still does not work well for young children and that the directive to resort to representation of the child's "legal interests" in some cases is not a meaningful directive. Critics complain that focusing on the child's so-called "legal interests" is unsatisfactory because the legal interests of the child may be unclear or contradictory. For example, a child has a legal interest in being protected from abusive or neglectful parents. The ABA Standards are also criticized for including broad exceptions to the client-directed ideal and thus giving the lawyer unfettered and unreviewed discretion identifying the goals of the child - the same sort of unbridled discretion that critics complain about in the best interests substituted judgment model.

Jurisdictions Using a Form of This Model Include: At the time of the preparation of this document, no jurisdiction had adopted the ABA Standards as the exclusive system of representation. A number of jurisdictions have adopted many of the "duties" requirements of the standards (e.g., case investigation, motion practice) as opposed to the "role" requirements. As to "role" of counsel, Oregon uses a traditional attorney similar to this model.

Source: *ABA Standards of Practice for Lawyers Who Represent Children in Abuse & Neglect Cases*, © 1996 American Bar Association, Chicago, IL

3. **Child's Attorney (ABA / NACC Model)**

The *ABA Standards* were adopted by the ABA in 1996. The following year, the NACC adopted the standards with reservation as to Standard B-4. Standard B-4 is the critical client direction language of the standards and some members of the NACC board believed the *ABA Standards* gave too much autonomy to the child client and was unrealistic where young children were concerned. The *ABA Standards (NACC Revised Version)*, is the NACC's attempt to achieve a better balance of client autonomy and protection within standard B-4. This child's attorney model places the attorney in the role of traditional attorney and addresses the needs of the young child through the application of an objective best interests evaluation in limited situations. The model requires that the attorney assume the traditional role of zealous advocate and not GAL to avoid any propensity toward relaxed advocacy. At the same time, it recognizes that some children are not capable of directing their litigation. The model allows for a degree of advocate direction so long as it is the exception to the rule, and based on objective criteria.

The distinction between the *ABA Standards* and the *NACC Revised ABA Standards* is that where the ABA remained consistent with the client directed attorney throughout, the NACC carved out a significant exception where the client cannot meaningfully participate in the formulation of his or her position. In such cases, the NACC's version calls for a GAL type judgment using objective criteria. Additionally, the

NACC's version *requires* the attorney to request the appointment of a separate GAL, after unsuccessful attempts at counseling the child, when the child's wishes are considered to be seriously injurious to the child.

Pros: Proponents believe this is the best blending of the traditional attorney and attorney / GAL, providing the best of both options.

Cons: One critic has suggested that, by blending the attorney and GAL roles, this model dilutes both. The NACC model is also criticized for giving the lawyer unfettered and unreviewed discretion identifying the goals of the child - the same sort of unbridled discretion that critics complain about in the best interests advocate directed model.

Jurisdictions Using a Form of This Model Include: At the time of the preparation of this document, no jurisdiction had adopted the ABA NACC Revised Standards as the exclusive system of representation. A number of jurisdictions have adopted many of the "duties" requirements of the model (e.g., case investigation, motion practice) as opposed to the "role" requirements. As to "role" of counsel, Oregon uses a traditional attorney similar to this model.

Source: *ABA Standards of Practice for Lawyers Who Represent Children in Abuse & Neglect Cases*, (NACC Revised Version) NACC Children's Law Manual Series, 1999 Edition, p. 177.

V. Resources

ABA Standards of Practice for Lawyers Who Represent Children in Abuse & Neglect Cases, © 1996 American Bar Association, Chicago, IL. Available on line at http://www.abanet.org/child

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Ethical Issues in the Legal Representation of Children, Fordham Law Review, Vol. LXIV No. 4 March 1996.

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Handling Child Custody, Abuse and Adoption Cases, by Ann M. Haralambie, Second Edition © 1993 Shepard's McGraw-Hill, Colorado Springs, CO, now published by Clark, Boardman, Callaghan, Deerfield, IL

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A Judges Guide to Improving Legal Representation of Children, edited by Kathi Grasso, ABA Center on Children and the Law, © ABA May 1998.

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Legal Representation of Children in Dependency Court: Toward A Better Model - The ABA (NACC Revised) Standards of Practice, by Marvin Ventrell, NACC Children's Law Manual Series, 1999 Edition.

Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions, by Jean Koh Peters, © 1997, LEXIS Law Publishing, Charlottesville, VA

Representing the Child Client, by Dale, Soler, Shotton, Bell, Jameson, Shauffer, Warboys, © 2000, Mathew Bender and Company, Inc., New York, NY

Resource Guidelines, Improving Court Practice in Child Abuse and Neglect Cases, National Council of Juvenile and Family Court Judges, © 1995 NCJFCJ, Reno, NV

Rights and Duties: An Overview of the Attorney-Child Client Relationship, by Marvin Ventrell, Loyola University of Chicago Law Journal, Vol. 26 No. 2 Winter 1995

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APPENDIX 3

NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

AMERICAN BAR ASSOCIATION

STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES

(NACC Revised Version)

Printed with permission from the American Bar Association Center on Children and the Law.

The *Abuse & Neglect Standards* were drafted by the American Bar Association Representing Children Standards of Practice Committee.

Adopted, The American Bar Association February 5, 1996.

Adopted, with reservation as to Standard B-4, National Association of Counsel for Children, October 13th, 1996.

Amended, Section B-4 and B-5, National Association of Counsel for Children, April 21, 1999.

PREFACE

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

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

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

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

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

PART I—STANDARDS FOR THE CHILD'S ATTORNEY

A. DEFINITIONS

A-1. The Child's Attorney. The term "child's attorney" means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

Commentary —

These Standards explicitly recognize that the child is a separate individual with potentially discrete and independent views. To ensure that the child's independent voice is heard, the child's attorney must advocate the child's articulated position. Consequently, the child's attorney owes traditional duties to the child as client consistent with ER 1.14(a) of the Model Rules of Professional Conduct. In all but the exceptional case, such as with a preverbal child, the child's attorney will maintain this traditional relationship with the child/client. As with any client, the child's attorney may counsel against the pursuit of a particular position sought by the child. The child's attorney should recognize that the child may be more susceptible to intimidation and manipulation than some adult clients. Therefore, the child's attorney should ensure that the decision the child ultimately makes reflects his or her actual position.

A-2. Lawyer Appointed as Guardian Ad Litem. A lawyer appointed as "guardian ad litem" for a child is an officer of the court appointed to protect the child's interests without being bound by the child's expressed preferences.

Commentary —

In some jurisdictions the lawyer may be appointed as guardian ad litem. These Standards, however, express a clear preference for the appointment as the "child's attorney." These Standards address the lawyer's obligations to the child as client.

A lawyer appointed as guardian ad litem is almost inevitably expected to perform legal functions on behalf of the child. Where the local law permits, the lawyer is expected to act in the dual role of guardian ad litem and lawyer of record. The chief distinguishing factor between the roles is the manner and method to be followed in determining the legal position to be advocated. While a guardian ad litem should take the child's point of view into account, the child's preferences are not binding, irrespective of the child's age and the ability or willingness of the child to express preferences. Moreover, in many states, a guardian ad litem may be required by statute or custom to perform specific tasks, such as submitting a report or testifying as a fact or expert witness. These tasks are not part of functioning as a "lawyer."

These Standards do not apply to nonlawyers when such persons are appointed as guardians ad litem or as "court appointed special advocates" (CASA). The nonlawyer guardian ad litem cannot and should not be expected to perform any legal functions on behalf of a child.

A-3. Developmentally Appropriate. "Developmentally appropriate" means that the child's attorney should ensure the child's ability to provide client-based directions by structuring all communications to account for the individual child's age, level of education, cultural context, and degree of language acquisition.

Commentary —

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

B. GENERAL AUTHORITY AND DUTIES

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

(1) Obtain copies of all pleadings and relevant notices;

(2) Participate in depositions, negotiations, discovery, pretrial conferences, and hearings;

(3) Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;

(4) **Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;**

(5) **Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;**

(6) **Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and**

(7) **Identify appropriate family and professional resources for the child.**

Commentary —

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

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

While subsection (4) recognizes that delays are usually harmful, there may be some circumstances when delay may be beneficial. Section (7) contemplates that the child's attorney will identify counseling, educational and health services, substance abuse programs for the child and other family members, housing and other forms of material assistance for which the child may qualify under law. The lawyer can also identify family members, friends, neighbors, or teachers with whom the child feels it is important to maintain contact; mentoring programs, such as Big Brother/Big Sister; recreational opportunities that develop social skills and self-esteem; educational support programs; and volunteer opportunities which can enhance a child's self-esteem.

B-2. Conflict Situations.

(1) If a lawyer appointed as guardian ad litem determines that there is a conflict caused by performing both roles of guardian ad litem and child's attorney, the lawyer should continue to perform as the child's attorney and withdraw as guardian ad litem. The lawyer should request appointment of a guardian ad litem without revealing the basis for the request.

(2) If a lawyer is appointed as a "child's attorney" for siblings, there may also be a conflict which could require that the lawyer decline representation or withdraw from representing all of the children.

Commentary —

The primary conflict that arises between the two roles is when the child's expressed preferences differ from what the lawyer deems to be in the child's best interests. As a practical matter, when the lawyer has established a trusting relationship with the child, most conflicts can be avoided. While the lawyer should be careful not to apply undue pressure to a child, the lawyer's advice and guidance can often persuade the child to change an imprudent position or to identify alternative choices if the child's first choice is denied by the court.

The lawyer-client role involves a confidential relationship with privileged communications, while a guardian ad litem-client role may not be confidential. Compare Alaska

Bar Assoc. Ethics Op. #854 (1985) (lawyer-client privilege does not apply when the lawyer is appointed to be child's guardian ad litem) with Bentley v. Bentley, 448 N.Y.S.2d 559 (App. Div. 1982) (communication between minor children and guardian ad litem in divorce custody case is entitled to lawyer-client privilege). Because the child has a right to confidentiality and advocacy of his or her position, the child's attorney can never abandon this role. Once a lawyer has a lawyer-client relationship with a minor, he or she cannot and should not assume any other role for the child, especially as guardian ad litem. When the roles cannot be reconciled, another person must assume the guardian ad litem role. See Arizona State Bar Committee on Rules of Professional Conduct, Opinion No. 86-13 (1986).

B-3. Client Under Disability. The child's attorney should determine whether the child is "under a disability" pursuant to the Model Rules of Professional Conduct or the Model Code of Professional Responsibility with respect to each issue in which the child is called upon to direct the representation.

Commentary —

These Standards do not accept the idea that children of certain ages are "impaired," "disabled," "incompetent," or lack capacity to determine their position in litigation. Further, these Standards reject the concept that any disability must be globally determined. Rather, disability is contextual, incremental, and may be intermittent. The child's ability to contribute to a determination of his or her position is functional, depending upon the particular position and the circumstances prevailing at the time the position must be determined. Therefore, a child may be able to determine some positions in the case but not others. Similarly, a child may be able to direct the lawyer with respect to a particular issue at one time but not at another. This Standard relies on empirical knowledge about competencies with respect to both adults and children. See, e.g., ALLEN E. BUCHANAN & DAN W. BROCK, DECIDING FOR OTHERS: THE ETHICS OF SURROGATE DECISION MAKING 217 (1989).

NOTE ON Section B-4	**Two versions of Standard B-4 are presented below. The first version is the "ABA Version" which is the version drafted and adopted by the ABA. The second version is the "NACC Version" adopted by the NACC as a recommended replacement to the "ABA Version." The NACC had originally adopted the ABA Standards with reservation as to Standard B-4 because of "concerns about the availability to the court of information about the interests of the child." The NACC Board of Directors subsequently adopted the "NACC Version." The NACC version is not approved or adopted by the ABA.**

B-4. ABA Version

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

Commentary —

The lawyer has a duty to explain to the child in a developmentally appropriate way such information as will assist the child in having maximum input in determination of the particular

position at issue. The lawyer should inform the child of the relevant facts and applicable laws and the ramifications of taking various positions, which may include the impact of such decisions on other family members or on future legal proceedings. The lawyer may express an opinion concerning the likelihood of the court or other parties accepting particular positions. The lawyer may inform the child of an expert's recommendations germane to the issue.

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

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

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

While the child is entitled to determine the overall objectives to be pursued, the child's attorney, as any adult's lawyer, may make certain decisions with respect to the manner of achieving those objectives, particularly with respect to procedural matters. These Abuse and Neglect Standards do not require the lawyer to consult with the child on matters which would not require consultation with an adult client. Further, the Standards do not require the child's attorney to discuss with the child issues for which it is not feasible to obtain the child's direction because of the child's developmental limitations, as with an infant or preverbal child.

(1) **To the extent that a child cannot express a preference, the child's attorney shall make a good faith effort to determine the child's wishes and advocate accordingly or request appointment of a guardian ad litem.**

Commentary —

There are circumstances in which a child is unable to express a position, as in the case of a preverbal child, or may not be capable of understanding the legal or factual issues involved. Under such circumstances, the child's attorney should continue to represent the child's legal interests and request appointment of a guardian ad litem. This limitation distinguishes the scope of independent decision-making of the child's attorney and a person acting as guardian ad litem.

(2) **To the extent that a child does not or will not express a preference about particular issues, the child's attorney should determine and advocate the child's legal interests.**

Commentary —

The child's failure to express a position is distinguishable from a directive that the lawyer

not take a position with respect to certain issues. The child may have no opinion with respect to a particular issue, or may delegate the decision-making authority. For example, the child may not want to assume the responsibility of expressing a position because of loyalty conflicts or the desire not to hurt one of the other parties. The lawyer should clarify with the child whether the child wants the lawyer to take a position or remain silent with respect to that issue or wants the preference expressed only if the parent or other party is out of the courtroom. The lawyer is then bound by the child's directive. The position taken by the lawyer should not contradict or undermine other issues about which the child has expressed a preference.

(3) **If the child's attorney determines that the child's expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer's opinion of what would be in the child's interests), the lawyer may request appointment of a separate guardian ad litem and continue to represent the child's expressed preference, unless the child's position is prohibited by law or without any factual foundation. The child's attorney shall not reveal the basis of the request for appointment of a guardian ad litem which would compromise the child's position.**

Commentary —

One of the most difficult ethical issues for lawyers representing children occurs when the child is able to express a position and does so, but the lawyer believes that the position chosen is wholly inappropriate or could result in serious injury to the child. This is particularly likely to happen with respect to an abused child whose home is unsafe, but who desires to remain or return home. A child may desire to live in a dangerous situation because it is all he or she knows, because of a feeling of blame or of responsibility to take care of the parents, or because of threats. The child may choose to deal with a known situation rather than risk the unknown world of a foster home or other out-of-home placement.

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

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

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

The lawyer may never counsel a client or assist a client in conduct the lawyer knows is criminal or fraudulent. See ER 1.2(d), Model Rules of Professional Conduct, DR 7-102(A)(7), Model Code of Professional Responsibility. Further, existing ethical rules requires the lawyer to disclose confidential information to the extent necessary to prevent the client from committing a criminal act likely to result in death or substantial bodily harm, see ER 1.6(b), Model Rules of Professional Conduct, and permits the lawyer to reveal the intention of the client to commit a crime. See ER 1.6(c), Model Rules of Professional Conduct, DR 4-101(C)(3), Model Code of Professional Responsibility. While child abuse, including sexual abuse, are crimes, the child is

presumably the victim, rather than the perpetrator of those crimes. Therefore, disclosure of confidences is designed to protect the client, rather than to protect a third party from the client. Where the child is in grave danger of serious injury or death, the child's safety must be the paramount concern.

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

B-4. NACC Version.

Client Preferences. The child's attorney should elicit the child's preferences in a developmentally appropriate manner, advise the child, and provide guidance. The child's attorney should represent the child's expressed preferences and follow the child's direction throughout the course of litigation. except as specifically provided herein. Client directed representation does not include "robotic allegiance" to each directive of the client. Client directed representation involves the attorney's counseling function and requires good communication between attorney and client. The goal of the relationship is an outcome which serves the client, mutually arrived upon by attorney and client, following exploration of all available options.

Commentary —

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

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

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

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

While the child is entitled to determine the overall objectives to be pursued, the child's

attorney, as any adult's lawyer, may make certain decisions with respect to the manner of achieving those objectives, particularly with respect to procedural matters. These Abuse and Neglect Standards do not require the lawyer to consult with the child on matters which would not require consultation with an adult client. Further, the Standards do not require the child's attorney to discuss with the child issues for which it is not feasible to obtain the child's direction because of the child's developmental limitations, as with an infant or preverbal child.

(1) **While the default position for attorneys representing children under these standards is a client directed model, there will be occasions when the client directed model cannot serve the client and exceptions must be made. In such cases, the attorney may rely upon a substituted judgment process (similar to the role played by an attorney guardian ad litem), or call for the appointment of a guardian ad litem, depending upon the particular circumstances, as provided herein.** ~~To the extent that a child cannot express a preference, the child's attorney shall make a good faith effort to determine the child's wishes and advocate accordingly or request appointment of a guardian ad litem.~~

~~*Commentary —*~~

~~There are circumstances in which a child is unable to express a position, as in the case of a preverbal child, or may not be capable of understanding the legal or factual issues involved. Under such circumstances, the child's attorney should continue to represent the child's legal interests and request appointment of a guardian ad litem. This limitation distinguishes the scope of independent decision-making of the child's attorney and a person acting as guardian ad litem.~~

(2) **To the extent that a child** ~~**does not or will not express a preference about particular issues, the child's attorney should determine and advocate the child's legal interests.**~~ **cannot meaningfully participate in the formulation of the client's position (either because the child is preverbal, very young or for some other reason is incapable of judgment and meaningful communication), the attorney shall substitute his/her judgment for the child's and formulate and present a position which serves the child's interests. Such formulation must be accomplished through the use of objective criteria, rather than solely the life experience or instinct of the attorney. The criteria shall include but not be limited to:**

a. **Determine the child's circumstances through a full and efficient investigation;**
b. **Assess the child at the moment of the determination;**
c. **Examine each option in light of the two child welfare paradigms; psychological parent and family network; and**
d. **Utilize medical, mental health, educational, social work and other experts.**

Commentary —

The following resources are recommended reading regarding assessing children's best interests:

1. ***The Best Interests of the Child, The Least Detrimental Alternative*, the landmark trilogy of Beyond the Best Interests of the Child, Before the Best Interests of the Child, and In the Best Interests of the Child, by Goldstein, Solnit, Goldstein and Freud, Copyright © 1996 The Free Press, New York, NY.**
2. ***Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions*, by Jean K. Peters, Copyright © 1997, LEXIS Law Publishing, Charlottesville, VA.**
3. ***Advocating for the Child in Protection Proceedings: A Handbook for Lawyers and Court Appointed Special Advocates*, by Donald Duquette, Copyright © Jossey-Bass, Inc., San**

Francisco, CA.

4. ***The Child's Attorney*, by Ann M. Haralambie, Copyright © 1993 American Bar Association, ABA Section of Family Law, Chicago, IL (Call 303/864-5320).**

5. ***Handling Child Custody, Abuse and Adoption Cases*, by Ann M. Haralambie, Second Edition Copyright © 1993 Shepard's McGraw-Hill, Colorado Springs, CO, now published by Clark, Boardman, Callaghan, Deerfield, IL.**

6. **Department of Justice, National Institute of Justice, *Research Preview*, Jeremy Travis, February 1996.**

~~The child's failure to express a position is distinguishable from a directive that the lawyer not take a position with respect to certain issues. The child may have no opinion with respect to a particular issue, or may delegate the decision-making authority. For example, the child may not want to assume the responsibility of expressing a position because of loyalty conflicts or the desire not to hurt one of the other parties. The lawyer should clarify with the child whether the child wants the lawyer to take a position or remain silent with respect to that issue or wants the preference expressed only if the parent or other party is out of the courtroom. The lawyer is then bound by the child's directive. The position taken by the lawyer should not contradict or undermine other issues about which the child has expressed a preference.~~

(3) It is possible for the child client to develop from a child incapable of meaningful participation in the litigation as set forth in section B-4 (2), to a child capable of such participation during the course of the attorney client relationship. In such cases, the attorney shall move from the substituted judgment exception of B-4 (2) to the default position of client directed representation described in section B-4 "Client Preferences."

(4) If the child's attorney determines that the child's expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer's opinion of what would be in the child's interests), the lawyer ~~may~~ shall, after unsuccessful use of the attorney's counseling role, request appointment of a separate guardian ad litem and continue to represent the child's expressed preference, unless the child's position is prohibited by law or without any factual foundation. The child's attorney shall not reveal the basis of the request for appointment of a guardian ad litem which would compromise the child's position.

Commentary —

One of the most difficult ethical issues for lawyers representing children occurs when the child is able to express a position and does so, but the lawyer believes that the position chosen is wholly inappropriate or could result in serious injury to the child. This is particularly likely to happen with respect to an abused child whose home is unsafe, but who desires to remain or return home. A child may desire to live in a dangerous situation because it is all he or she knows, because of a feeling of blame or of responsibility to take care of the parents, or because of threats. The child may choose to deal with a known situation rather than risk the unknown world of a foster home or other out-of-home placement.

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

If the child cannot be persuaded, the lawyer has a duty to safeguard the child's interests by requesting appointment of a guardian ad litem, who will be charged with advocating the child's

best interests without being bound by the child's direction. As a practical matter, this may not adequately protect the child if the danger to the child was revealed only in a confidential disclosure to the lawyer, because the guardian ad litem may never learn of the disclosed danger.

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

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

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

NOTE ON Section B-5:	**Section B-5 below describes the determination of the child's "legal interests" as used in Section B-4 (2) (ABA Version) which reads: "to the extent that a child does not or will not express a preference about particular issues, the child's attorney should determine and advocate the child's legal interests." Under the NACC version of B-4, however, the ABA's Section B-4 (2) has been deleted. Because the NACC version of B-4 does not use the term "legal interests," B-5 is irrelevant and has been deleted.**

~~**B-5. Child's Interests. The determination of the child's legal interests should be based on objective criteria as set forth in the law that are related to the purposes of the proceedings. The criteria should address the child's specific needs and preferences, the goal of expeditious resolution of the case so the child can remain or return home or be placed in a safe, nurturing, and permanent environment, and the use of the least restrictive or detrimental alternatives available.**~~

~~*Commentary*~~

~~A lawyer who is required to determine the child's interests is functioning in a nontraditional role by determining the position to be advocated independently of the client. The lawyer should base the position, however, on objective criteria concerning the child's needs and interests, and not merely on the lawyer's personal values, philosophies, and experiences. The child's various needs and interests may be in conflict and must be weighed against each other. Even nonverbal children can communicate their needs and interests through their behaviors and developmental levels. See generally JAMES GARBARINO & FRANCES M. STOTT, WHAT~~

~~CHILDREN CAN TELL US: ELICITING, INTERPRETING, AND EVALUATING CRITICAL INFORMATION FROM CHILDREN (1992). The lawyer may seek the advice and consultation of experts and other knowledgeable people in both determining and weighing such needs and interests.~~

~~A child's legal interests may include basic physical and emotional needs, such as safety, shelter, food, and clothing. Such needs should be assessed in light of the child's vulnerability, dependence upon others, available external resources, and the degree of risk. A child needs family affiliation and stability of placement. The child's developmental level, including his or her sense of time, is relevant to an assessment of need. For example, a very young child may be less able to tolerate separation from a primary caretaker than an older child, and if separation is necessary, more frequent visitation than is ordinarily provided may be necessary.~~

~~In general, a child prefers to live with known people, to continue normal activities, and to avoid moving. To that end, the child's attorney should determine whether relatives, friends, neighbors, or other people known to the child are appropriate and available as placement resources. The lawyer must determine the child's feelings about the proposed caretaker, however, because familiarity does not automatically confer positive regard. Further, the lawyer may need to balance competing stability interests, such as living with a relative in another town versus living in a foster home in the same neighborhood. The individual child's needs will influence this balancing task.~~

~~In general, a child needs decisions about the custodial environment to be made quickly. Therefore, if the child must be removed from the home, it is generally in the child's best interests to have rehabilitative or reunification services offered to the family quickly. On the other hand, if it appears that reunification will be unlikely, it is generally in the child's best interests to move quickly toward an alternative permanent plan. Delay and indecision are rarely in a child's best interests.~~

~~In addition to the general needs and interests of children, individual children have particular needs, and the lawyer must determine the child client's individual needs. There are few rules which apply across the board to all children under all circumstances.~~

C. ACTIONS TO BE TAKEN

C-1. Meet With Child. Establishing and maintaining a relationship with a child is the foundation of representation. Therefore, irrespective of the child's age, the child's attorney should visit with the child prior to court hearings and when apprised of emergencies or significant events impacting on the child.

Commentary —

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

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

(1) Reviewing the child's social services, psychiatric, psychological, drug and alcohol, medical,

law enforcement, school, and other records relevant to the case;

Commentary —

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

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

Commentary —

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

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

Commentary —

The other parties' lawyers may have information not included in any of the available records. Further, they can provide information on their respective clients' perspectives. The CASA is typically charged with performing an independent factual investigation, getting to know the child, and speaking up to the court on the child's "best interests." Volunteer CASAs may have more time to perform their functions than the child's attorney and can often provide a great deal of information to assist the child's attorney. Where there appears to be role conflict or confusion over the involvement of both a child's attorney and CASA in the same case, there should be joint efforts to clarify and define mutual responsibilities. See, RESOURCE GUIDELINES, at 24.

(4) **Contacting and meeting with the parents/legal guardians/caretakers of the child, with permission of their lawyer;**

Commentary —

Such contact generally should include visiting the home, which will give the lawyer additional information about the child's custodial circumstances.

(5) **Obtaining necessary authorizations for the release of information;**

Commentary —

If the relevant statute or order appointing the lawyer for the child does not provide explicit authorization for the lawyer's obtaining necessary records, the lawyer should attempt to obtain authorizations for release of information from the agency and from the parents, with their lawyer's consent. Even if it is not required, an older child should be asked to sign authorizations for release of his or her own records, because such a request demonstrates the lawyer's respect for

the client's authority over information.

(6) **Interviewing individuals involved with the child, including school personnel, child welfare case workers, foster parents and other caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses;**

Commentary —

In some jurisdictions the child's attorney is permitted free access to agency case workers. In others, contact with the case worker must be arranged through the agency's lawyer.

(7) **Reviewing relevant photographs, video or audio tapes and other evidence; and**

Commentary —

It is essential that the lawyer review the evidence personally, rather than relying on other parties' or counsel's descriptions and characterizations of the evidence.

(8) **Attending treatment, placement, administrative hearings, other proceedings involving legal issues, and school case conferences or staffings concerning the child as needed.**

Commentary —

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

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

(1) **A mental or physical examination of a party or the child;**

(2) **A parenting, custody or visitation evaluation;**

(3) **An increase, decrease, or termination of contact or visitation;**

(4) **Restraining or enjoining a change of placement;**

(5) **Contempt for non-compliance with a court order;**

(6) **Termination of the parent-child relationship;**

(7) **Child support;**

(8) **A protective order concerning the child's privileged communications or tangible or intangible property;**

(9) **Request services for child or family; and**

(10) Dismissal of petitions or motions.

Commentary —

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

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

(1) Family preservation-related prevention or reunification services;

(2) Sibling and family visitation;

(3) Child support;

(4) Domestic violence prevention, intervention, and treatment;

(5) Medical and mental health care;

(6) Drug and alcohol treatment;

(7) Parenting education;

(8) Semi-independent and independent living services;

(9) Long-term foster care;

(10) Termination of parental rights action;

(11) Adoption services;

(12) Education;

(13) Recreational or social services; and

(14) Housing.

Commentary —

The lawyer should request appropriate services even if there is no hearing scheduled. Such requests may be made to the agency or treatment providers, or if such informal methods are unsuccessful, the lawyer should file a motion to bring the matter before the court. In some cases the child's attorney should file collateral actions, such as petitions for termination of parental rights, if such an action would advance the child's interest and is legally permitted and justified. Different resources are available in different localities.

C-5. Child With Special Needs. Consistent with the child's wishes, the child's attorney should assure that a child with special needs receives appropriate services to address the physical, mental, or developmental disabilities. These services may include, but should not be limited to:

(1) Special education and related services;

(2) Supplemental security income (SSI) to help support needed services;

(3) Therapeutic foster or group home care; and

(4) Residential/in-patient and out-patient psychiatric treatment.

Commentary —

There are many services available from extra-judicial, as well as judicial, sources for children with special needs. The child's attorney should be familiar with these other services and how to assure their availability for the client. See generally, THOMAS A. JACOBS, CHILDREN & THE LAW: RIGHTS & OBLIGATIONS (1995); LEGAL RIGHTS OF CHILDREN (2d ed. Donald T. Kramer, ed., 1994).

C-6. Negotiate Settlements. The child's attorney should participate in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child. The child's attorney should use suitable mediation resources.

Commentary —

Particularly in contentious cases, the child's attorney may effectively assist negotiations of the parties and their lawyers by focusing on the needs of the child. If a parent is legally represented, it is unethical for the child's attorney to negotiate with a parent directly without the consent of the parent's lawyer. Because the court is likely to resolve at least some parts of the dispute in question based on the best interests of the child, the child's attorney is in a pivotal position in negotiation.

Settlement frequently obtains at least short term relief for all parties involved and is often the best resolution of a case. The child's attorney, however, should not become merely a facilitator to the parties' reaching a negotiated settlement. As developmentally appropriate, the child's attorney should consult the child prior to any settlement becoming binding.

D. HEARINGS

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

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

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

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

Commentary —

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

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

Commentary —

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

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

The lawyer should ensure that the state/ custodian meets its obligation to transport the child to and from the hearing. Similarly, the lawyer should ensure the presence of someone to accompany the child any time the child is temporarily absent from the hearing.

D-6. Whether Child Should Testify. The child's attorney should decide whether to call the child as a witness. The decision should include consideration of the child's need or desire to testify, any repercussions of testifying, the necessity of the child's direct testimony, the availability of other evidence or hearsay exceptions which may substitute for direct testimony by the child, and the child's developmental ability to provide direct testimony and withstand possible cross-examination. Ultimately, the child's attorney is bound by the child's direction concerning testifying.

Commentary —

There are no blanket rules regarding a child's testimony. While testifying is undoubtedly traumatic for many children, it is therapeutic and empowering for others. Therefore, the decision about the child's testifying should be made individually, based on the circumstances of the individual child and the individual case. The child's therapist, if any, should be consulted both

with respect to the decision itself and assistance with preparation. In the absence of compelling reasons, a child who has a strong desire to testify should be called to do so. See ANN M. HARALAMBIE, THE CHILD'S LAWYER: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES ch. 4 (1993). If the child should not wish to testify or would be harmed by being forced to testify, the lawyer should seek a stipulation of the parties not to call the child as a witness or seek a protective order from the court. If the child is compelled to testify, the lawyer should seek to minimize the adverse consequences by seeking any appropriate accommodations permitted by local law, such as having the testimony taken informally, in chambers, without presence of the parents. See JOHN E.B. MYERS, 2 EVIDENCE IN CHILD ABUSE AND NEGLECT CASES ch. 8 (1992). The child should know whether the in-chambers testimony will be shared with others, such as parents who might be excluded from chambers, before agreeing to this forum. The lawyer should also prepare the child for the possibility that the judge may render a decision against the child's wishes which will not be the child's fault.

D-7. Child Witness. The child's attorney should prepare the child to testify. This should include familiarizing the child with the courtroom, court procedures, and what to expect during direct and cross-examination and ensuring that testifying will cause minimum harm to the child.

Commentary —

The lawyer's preparation of the child to testify should include attention to the child's developmental needs and abilities as well as to accommodations which should be made by the court and other lawyers. The lawyer should seek any necessary assistance from the court, including location of the testimony (in chambers, at a small table etc.), determination of who will be present, and restrictions on the manner and phrasing of questions posed to the child.

The accuracy of children's testimony is enhanced when they feel comfortable. See, generally, Karen Saywitz, Children in Court: Principles of Child Development for Judicial Application, in A JUDICIAL PRIMER ON CHILD SEXUAL ABUSE 15 (Josephine Bulkley & Claire Sandt, eds., 1994). Courts have permitted support persons to be present in the courtroom, sometimes even with the child sitting on the person's lap to testify. Because child abuse and neglect cases are often closed to the public, special permission may be necessary to enable such persons to be present during hearings. Further, where the rule sequestering witnesses has been invoked, the order of witnesses may need to be changed or an exemption granted where the support person also will be a witness. The child should be asked whether he or she would like someone to be present, and if so, whom the child prefers. Typical support persons include parents, relatives, therapists, Court Appointed Special Advocates (CASA), social workers, victim-witness advocates, and members of the clergy. For some, presence of the child's attorney provides sufficient support.

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

Commentary —

The phrasing of questions should take into consideration the law and research regarding children's testimony, memory, and suggestibility. See generally, Karen Saywitz, supra D -7; CHILD VICTIMS, CHILD WITNESSES: UNDERSTANDING AND IMPROVING TESTIMONY (Gail S. Goodman & Bette L. Bottoms, eds. 1993); ANN HARALAMBIE, 2 HANDLING CHILD CUSTODY, ABUSE, AND ADOPTION CASES §§ 24.09_24.22 (2nd ed. 1993); MYERS, supra D-6, at Vol. 1, ch 2; Ellen Matthews & Karen Saywitz, Child Victim Witness Manual, 12/1 C.J.E.R.J. 40 (1992).

The information a child gives in interviews and during testimony is often misleading because the adults have not understood how to ask children developmentally appropriate questions and how to interpret their answers properly. See WALKER, SUPRA, A-3 Commentary.

The child's attorney must become skilled at recognizing the child's developmental limitations. It may be appropriate to present expert testimony on the issue and even to have an expert present during a young child's testimony to point out any developmentally inappropriate phrasing.

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

Commentary —

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

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

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

D-11. Conclusion of Hearing. If appropriate, the child's attorney should make a closing argument, and provide proposed findings of fact and conclusions of law. The child's attorney should ensure that a written order is entered.

Commentary —

One of the values of having a trained child's attorney is such a lawyer can often present creative alternative solutions to the court. Further, the child's attorney is able to argue the child's interests from the child's perspective, keeping the case focused on the child's needs and the effect of various dispositions on the child.

D-12. Expanded Scope of Representation. The child's attorney may request authority from the court to pursue issues on behalf of the child, administratively or judicially, even if those issues do not specifically arise from the court appointment. For example:

(1) Child support;

(2) Delinquency or status offender matters;

(3) SSI and other public benefits;

(4) Custody;

(5) Guardianship;

(6) Paternity;

(7) Personal injury;

(8) **School/education issues, especially for a child with disabilities;**

(9) **Mental health proceedings;**

(10) **Termination of parental rights; and**

(11) **Adoption.**

Commentary —

The child's interests may be served through proceedings not connected with the case in which the child's attorney is participating. In such cases the lawyer may be able to secure assistance for the child by filing or participating in other actions. See, e.g., In re Appeal in Pima County Juvenile Action No. S-113432, 872 P.2d 1240 (Ariz. Ct. App. 1994). With an older child or a child with involved parents, the child's attorney may not need court authority to pursue other services. For instance, federal law allows the parent to control special education. A Unified Child and Family Court Model would allow for consistency of representation between related court proceedings, such as mental health or juvenile justice.

D-13. Obligations after Disposition. The child's attorney should seek to ensure continued representation of the child at all further hearings, including at administrative or judicial actions that result in changes to the child's placement or services, so long as the court maintains its jurisdiction.

Commentary —

Representing a child should reflect the passage of time and the changing needs of the child. The bulk of the child's attorney's work often comes after the initial hearing, including ongoing permanency planning issues, six month reviews, case plan reviews, issues of termination, and so forth. The average length of stay in foster care is over five years in some jurisdictions. Often a child's case workers, therapists, other service providers or even placements change while the case is still pending. Different judges may hear various phases of the case. The child's attorney may be the only source of continuity for the child. Such continuity not only provides the child with a stable point of contact, but also may represent the institutional memory of case facts and procedural history for the agency and court. The child's attorney should stay in touch with the child, third party caretakers, case workers, and service providers throughout the term of appointment to ensure that the child's needs are met and that the case moves quickly to an appropriate resolution.

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

E. POST-HEARING

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

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

Commentary —

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

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

Commentary —

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

F. APPEAL

F-1. Decision to Appeal. The child's attorney should consider and discuss with the child, as developmentally appropriate, the possibility of an appeal. If after such consultation, the child wishes to appeal the order, and the appeal has merit, the lawyer should take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the child during the pendency of the appeal.

Commentary —

The lawyer should explain to the child not only the legal possibility of an appeal, but also the ramifications of filing an appeal, including the potential for delaying implementation of services or placement options. The lawyer should also explain whether the trial court's orders will be stayed pending appeal and what the agency and trial court may do pending a final decision.

F-2. Withdrawal. If the child's attorney determines that an appeal would be frivolous or that he or she lacks the necessary experience or expertise to handle the appeal, the lawyer should notify the court and seek to be discharged or replaced.

F-3. Participation in Appeal. The child's attorney should participate in an appeal filed by another party unless discharged.

Commentary —

The child's attorney should take a position in any appeal filed by the parent, agency, or other party. In some jurisdictions, the lawyer's appointment does not include representation on appeal. If the child's interests are affected by the issues raised in the appeal, the lawyer should seek an appointment on appeal or seek appointment of appellate counsel to represent the child's position in the appeal.

F-4. Conclusion of Appeal. When the decision is received, the child's attorney should explain the outcome of the case to the child.

Commentary —

As with other court decisions, the lawyer should explain in terms the child can understand the nature and consequences of the appellate decision. In addition, the lawyer should explain whether there are further appellate remedies and what more, if anything, will be done in the trial court following the decision.

F-5. Cessation of Representation. The child's attorney should discuss the end of the legal representation and determine what contacts, if any, the child's attorney and the child will continue to have.

Commentary —

When the representation ends, the child's lawyer should explain in a developmentally appropriate manner why the representation is ending and how the child can obtain assistance in the future should it become necessary. It is important for there to be closure between the child and the lawyer.

PART II—ENHANCING THE JUDICIAL ROLE IN CHILD REPRESENTATION

PREFACE

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

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

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

G. THE COURT'S ROLE IN STRUCTURING CHILD REPRESENTATION

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

Commentary —

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

JUVENILE JUSTICE STANDARD § 2.1(d) states that plans for providing counsel for children "must be designed to guarantee the professional independence of counsel and the integrity of the lawyer-client relationship." The Commentary strongly asserts there is "no justification for . . . judicial preference" to compromise a lawyer's relationship with the child client and notes the "willingness of some judges to direct lawyers' performance and thereby compromise their independence."

G-2. Establishing Uniform Representation Rules. The administrative office for the state trial, family, or juvenile court system should cause to be published and disseminated to all relevant courts a set of uniform, written rules and procedures for court-appointed lawyers for minor children.

Commentary —

Although uniform rules of court to govern the processing of various types of child-related judicial proceedings have become common, it is still rare for those rules to address comprehensively the manner and scope of representation for children. Many lawyers representing children are unclear as to the court's expectations. Courts in different communities, or even judges within the same court, may have differing views regarding the manner of child representation. These Standards promote statewide uniformity by calling for written publication and distribution of state rules and procedures for the child's attorney.

G-3. Enhancing Lawyer Relationships with Other Court Connected Personnel. Courts that operate or utilize Court Appointed Special Advocate (CASA) and other nonlawyer guardians ad litem, and courts that administer nonjudicial foster care review bodies, should assure that these programs and the individuals performing those roles are trained to understand the role of the child's attorney. There needs to be effective coordination of their efforts with the activities of the child's attorney, and they need to involve the child's attorney in their work. The court should require that reports from agencies be prepared and presented to the parties in a timely fashion.

Commentary —

Many courts now regularly involve nonlawyer advocates for children in various capacities. Some courts also operate programs that, outside of the courtroom, review the status of children in foster care or other out-of-home placements. It is critical that these activities are appropriately linked to the work of the child's attorney, and that the court through training, policies, and protocols helps assure that those performing the nonlegal tasks (1) understand the importance and elements of the role of the child's attorney, and (2) work cooperatively with such lawyers.

The court should keep abreast of all the different representatives involved with the child, the attorney, social worker for government or private agency, CASA volunteer, guardian ad litem, school intermediator, counselors, etc.

H. THE COURT'S ROLE IN APPOINTING THE CHILD'S ATTORNEY

H-1. Timing of Appointments. The child's attorney should be appointed immediately after the earliest of:

(1) The involuntary removal of the child for placement due to allegations of neglect, abuse or abandonment;

(2) The filing of a petition alleging child abuse and neglect, for review of foster care placement, or for termination of parental rights; or

(3) Allegations of child maltreatment, based upon sufficient cause, are made by a party in the context of proceedings that were not originally initiated by a petition alleging child maltreatment.

Commentary —

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

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

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

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

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

Commentary —

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

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

Commentary —

Because many service providers do not understand or recognize the nature of the role of the lawyer for the child or that person's importance in the court proceeding, these Standards call for the routine use of a written court order that clarifies the lawyers right to contact with their child client and perusal of child-related records. Parents, other caretakers, or government social service agencies should not unreasonably interfere with a lawyer's ability to have face-to-face contact with the child client nor to obtain relevant information about the child's social services, education, mental health, etc. Such interference disrupts the lawyer's ability to control the representation and undermines his or her independence as the child's legal representative.

H-4. Lawyer Eligibility for and Method of Appointment. Where the court makes individual appointment of counsel, unless impractical, before making the appointment, the court should determine that the lawyer has been trained in representation of children and skilled in litigation (or is working under the supervision of an lawyer who is skilled in litigation). Whenever possible, the trial judge should ensure that the child's attorney has had sufficient training in child advocacy and is familiar with these Standards. The trial judge should also ensure that (unless there is specific reason to appoint a specific lawyer because of their special qualifications related to the case, or where a lawyer's current caseload would prevent them from adequately handling the case) individual lawyers are appointed from the ranks of eligible members of the bar under a fair, systematic, and sequential appointment plan.

Commentary —

The JUVENILE JUSTICE STANDARDS § 2.2(c) provides that where counsel is assigned by the court, this lawyer should be drawn from "an adequate pool of competent attorneys." In general, such competency can only be gained through relevant continuing legal education and practice-related experience. Those Standards also promote the use of a rational court appointment process drawing from the ranks of qualified lawyers. The Abuse and Neglect Standards reject the concept of ad hoc appointments of counsel that are made without regard to prior training or practice.

H-5. Permitting Child to Retain a Lawyer. The court should permit the child to be represented by a retained private lawyer if it determines that this lawyer is the child's independent choice, and such counsel should be substituted for the appointed lawyer. A person with a legitimate interest in the child's welfare may retain private counsel for the child and/or pay for such representation, and that person should be permitted to serve as the child's attorney, subject to approval of the court. Such approval should not be given if the child opposes the lawyer's representation or if the court determines that there will be a conflict of interest. The court should make it clear that the person paying for the retained lawyer does not have the right to direct the representation of the child or to receive privileged information about the case from the lawyer.

Commentary —

Although such representation is rare, there are situations where a child, or someone acting on a child's behalf, seeks out legal representation and wishes that this lawyer, rather than one appointed by the court under the normal appointment process, be recognized as the sole legal representative of the child. Sometimes, judges have refused to accept the formal appearances

filed by such retained lawyers. These Standards propose to permit, under carefully scrutinized conditions, the substitution of a court-appointed lawyer with the retained counsel for a child.

I. THE COURT'S ROLE IN LAWYER TRAINING

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

Commentary —

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

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

(1) Information about relevant federal and state laws and agency regulations;

(2) Information about relevant court decisions and court rules;

(3) Overview of the court process and key personnel in child-related litigation;

(4) Description of applicable guidelines and standards for representation;

(5) Focus on child development, needs, and abilities;

(6) Information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in his or her home;

(7) Information concerning family dynamics and dysfunction including substance abuse, and the use of kinship care;

(8) Information on accessible child welfare, family preservation, medical, educational, and mental health resources for child clients and their families, including placement, evaluation/diagnostic, and treatment services; the structure of agencies providing such services as well as provisions and constraints related to agency payment for services; and

(9) Provision of written material (e.g., representation manuals, checklists, sample forms), including listings of useful material available from other sources.

Commentary —

The ABUSE AND NEGLECT STANDARDS take the position that it is not enough that judges mandate the training of lawyers, or that judges participate in such training. Rather, they call upon the courts to play a key role in training by actually sponsoring (e.g., funding) training opportunities. The pivotal nature of the judiciary's role in educating lawyers means that courts may, on appropriate occasions, stop the hearing of cases on days when training is held so that both lawyers and judges may freely attend without docket conflicts. The required elements of training are based on a review of well-regarded lawyer training offered throughout the country, RESOURCE GUIDELINES, and many existing manuals that help guide lawyers in representing children.

I-3. Continuing Training for Lawyers. The court system should also assure that there are periodic opportunities for lawyers who have taken the "basic" training to receive continuing and "new developments" training.

Commentary —

Many courts and judicial organizations recognize that rapid changes occur because of new federal and state legislation, appellate court decisions, systemic reforms, and responses to professional literature. Continuing education opportunities are critical to maintain a high level of performance. These Standards call for courts to afford these "advanced" or "periodic" training to lawyers who represent children in abuse and neglect related cases.

I-4. Provision of Mentorship Opportunities. Courts should provide individual court-appointed lawyers who are new to child representation the opportunity to practice under the guidance of a senior lawyer mentor.

Commentary —

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

J. THE COURT'S ROLE IN LAWYER COMPENSATION

J-1. Assuring Adequate Compensation. A child's attorney should receive adequate and timely compensation throughout the term of appointment that reflects the complexity of the case and includes both in court and out-of-court preparation, participation in case reviews and postdispositional hearings, and involvement in appeals. To the extent that the court arranges for child representation through contract or agreement with a program in which lawyers represent children, the court should assure that the rate of payment for these legal services is commensurate with the fees paid to equivalently experienced individual court-appointed lawyers who have similar qualifications and responsibilities.

Commentary —

JUVENILE JUSTICE STANDARDS § 2.1(b) recognize that lawyers for children should be entitled to reasonable compensation for both time and services performed "according to prevailing professional standards," which takes into account the "skill required to perform...properly," and which considers the need for the lawyer to perform both counseling and resource identification/evaluation activities. The RESOURCE GUIDELINES, at 22, state that it is

"necessary to provide reasonable compensation" for improved lawyer representation of children and that where necessary judges should "urge state legislatures and local governing bodies to provide sufficient funding" for quality legal representation. Because some courts currently compensate lawyers only for time spent in court at the adjudicative or initial disposition stage of cases, these Standards clarify that compensation is to be provided for out-of-court preparation time, as well as for the lawyer's involvement in case reviews and appeals. "Out-of-court preparation" may include, for example, a lawyer's participation in social services or school case conferences relating to the client.

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

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

Commentary —

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

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

Commentary —

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

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

Commentary —

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

K. THE COURT'S ROLE IN RECORD ACCESS BY LAWYERS

K-1. Authorizing Lawyer Access. The court should enter an order in child abuse and neglect cases authorizing the child's attorney access to all privileged information regarding the child, without the necessity for a further release.

Commentary —

This Standard requires uniform judicial assistance to remove a common barrier to effective representation, i.e., administrative denial of access to significant records concerning the child. The language supports the universal issuance of broadly-worded court orders that grant a child's attorney full access to information (from individuals) or records (from agencies) concerning the child.

K-2. Providing Broad Scope Orders. The authorization order granting the child's attorney access to records should include social services, psychiatric, psychological treatment, drug and alcohol treatment, medical, evaluation, law enforcement, school, and other records relevant to the case.

Commentary —

This Standard further elaborates upon the universal application that the court's access order should be given, by listing examples of the most common agency records that should be covered by the court order.

L. THE COURT'S ROLE IN ASSURING REASONABLE LAWYER CASELOADS

L-1. Controlling Lawyer Caseloads. Trial court judges should control the size of court-appointed caseloads of individual lawyers representing children, the caseloads of government agency-funded lawyers for children, or court contracts/agreements with lawyers for such representation. Courts should take steps to assure that lawyers appointed to represent children, or lawyers otherwise providing such representation, do not have such a large open number of cases that they are unable to abide by Part I of these Standards.

Commentary —

THE ABUSE AND NEGLECT STANDARDS go further than JUVENILE JUSTICE STANDARD § 2.2(b) which recognize the "responsibility of every defender office to ensure that its personnel can offer prompt, full, and effective counseling and representation to each (child) client" and that it "should not accept more assignments than its staff can adequately discharge" by specifically calling upon the courts to to help keep lawyer caseloads from getting out of control. The Commentary to § 2.2.(b) indicates that: Caseloads must not be exceeded where to do so would "compel lawyers to forego the extensive fact investigation required in both contested and uncontested cases, or to be less than scrupulously careful in preparation for trial, or to forego legal research necessary to develop a theory of representation." We would add: "...or to monitor the implementation of court orders and agency case plans in order to help assure permanency for the child."

L-2. Taking Supportive Caseload Actions. If judges or court administrators become aware that individual lawyers are close to, or exceeding, the levels suggested in these Standards, they should take one or more of the following steps:

(1) Expand, with the aid of the bar and children's advocacy groups, the size of the list from which appointments are made;

(2) Alert relevant government or private agency administrators that their lawyers have an excessive caseload problem;

(3) Recruit law firms or special child advocacy law programs to engage in child representation;

(4) Review any court contracts/agreements for child representation and amend them accordingly, so that additional lawyers can be compensated for case representation time;

and

(5) **Alert state judicial, executive, and legislative branch leaders that excessive caseloads jeopardize the ability of lawyers to competently represent children pursuant to state-approved guidelines, and seek funds for increasing the number of lawyers available to represent children.**

APPENDIX

Previous American Bar Association Policies Related to Legal Representation of Abused and Neglected Children

GUARDIANS AD LITEM
FEBRUARY 1992

BE IT RESOLVED, that the American Bar Association urges:

(1) Every state and territory to meet the full intent of the Federal Child Abuse Prevention and Treatment Act, whereby every child in the United States who is the subject of a civil child protection related judicial proceedings will be represented at all stages of these proceedings by a fully-trained, monitored, and evaluated guardian ad litem in addition to appointed legal counsel.

(2) That state, territory and local bar associations and law schools become involved in setting standards of practice for such guardians ad litem, clarify the ethical responsibilities of these individuals and establish minimum ethical performance requirements for their work, and provide comprehensive multidisciplinary training for all who serve as such guardians ad litem.

(3) That in every state and territory, where judges are given discretion to appoint a guardian ad litem in private child custody and visitation related proceedings, the bench and bar jointly develop guidelines to aid judges in determining when such an appointment is necessary to protect the best interests of the child.

COURT-APPOINTED SPECIAL ADVOCATES
AUGUST 1989

BE IT RESOLVED, that the American Bar Association endorses the concept of utilizing carefully selected, well trained lay volunteers, Court Appointed Special Advocates, in addition to providing attorney representation, in dependency proceedings to assist the court in determining what is in the best interests of abused and neglected children.

BE IT FURTHER RESOLVED, that the American Bar Association encourages its members to support the development of CASA programs in their communities.

COUNSEL FOR CHILDREN ENHANCEMENT
FEBRUARY 1987

BE IT RESOLVED, that the American Bar Association requests State and local bar associations to determine the extent to which statutory law and court rules in their States guarantee the right to counsel for children in juvenile court proceedings; and

BE IT FURTHER RESOLVED, that State and local bar associations are urged to actively participate and support amendments to the statutory law and court rules in their State to bring them in to compliance with the Institute of Judicial Administration/American Bar Association Standards Relating to Counsel for Private Parties; and

BE IT FURTHER RESOLVED, that State and local bar associations are requested to ascertain the extent to which, irrespective of the language in their State statutory laws and court rules, counsel is in fact provided for children in juvenile court proceedings and the extent to which the quality of representation is consistent with the standards and policies of the American Bar Association; and

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

BAR ASSOCIATION AND ATTORNEY ACTION
FEBRUARY 1984

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

BAR AND ATTORNEY INVOLVEMENT IN CHILD PROTECTION CASES
AUGUST 1981

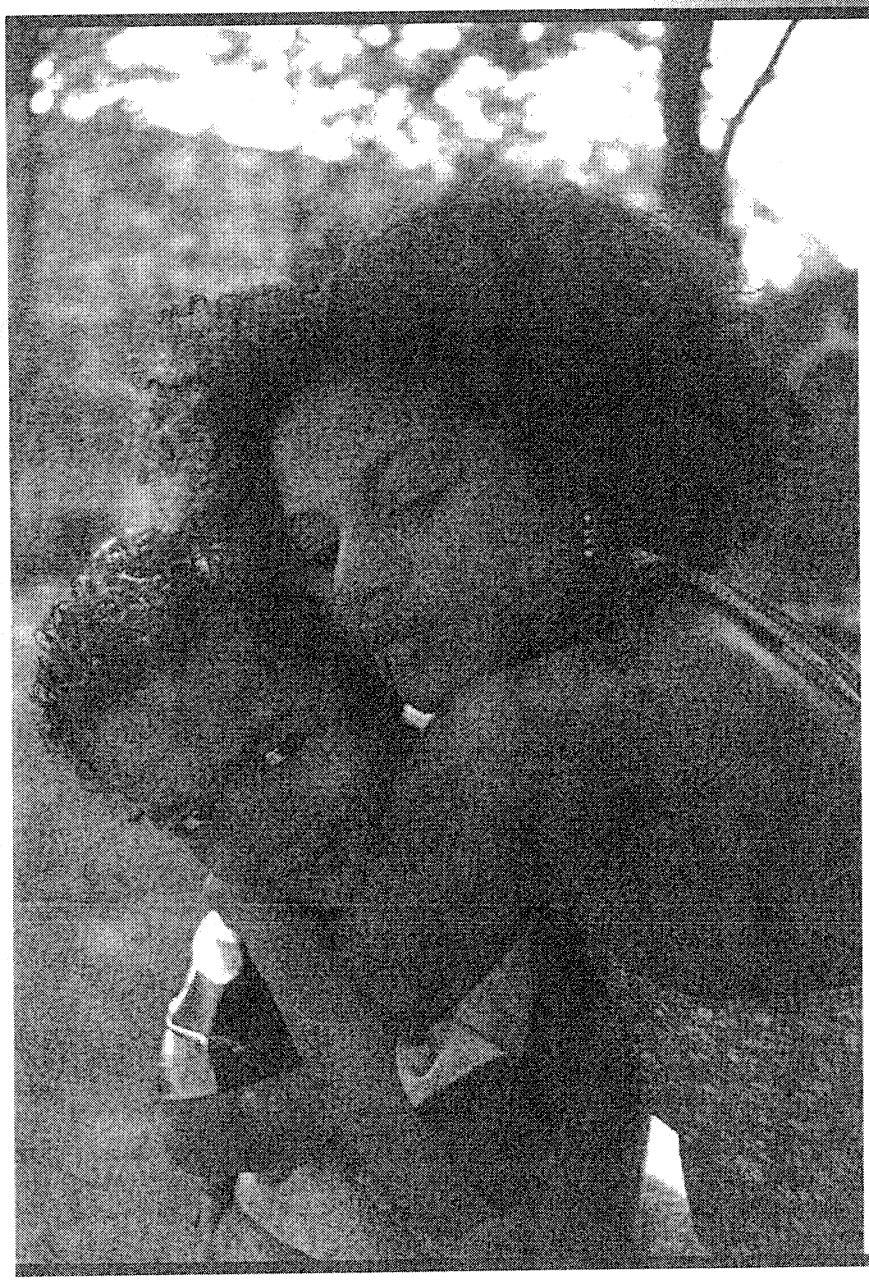
BE IT RESOLVED, that the American Bar Association encourages individual attorneys and state and local bar organizations to work more actively to improve the handling of cases involving abused and neglected children as well as children in foster care. Specifically, attorneys should form appropriate committees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

JUVENILE JUSTICE STANDARDS
FEBRUARY 1979

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

APPENDIX 4

CHAPIN HALL
CENTER FOR CHILDREN
AT THE UNIVERSITY OF CHICAGO



Expediting Permanency: Legal Representation for Foster Children in Palm Beach County

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Jack Slowriver

2008

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INTRODUCTION

The Children's Services Council of Palm Beach County contracted with the Legal Aid Society of Palm Beach County (henceforth, Legal Aid) in July 2001 to provide legal representation to children 3 years of age and younger entering shelter care in Palm Beach County. The primary purpose for establishing this grant was to help expedite children's exit to permanency (i.e., reunification or adoption). Since its inception in 2001, Legal Aid's Foster Children's Project (FCP) has expanded twice, revising its eligibility criteria to include children 12 years old and younger. In fiscal year (FY) 2007, FCP had an operating budget of $1.7 million and provided legal representation to a continuous caseload of approximately 350 children.

In April 2006, the Children's Services Council and Legal Aid contracted with Chapin Hall Center for Children at the University of Chicago to conduct a third-party evaluation of FCP. The primary purpose of this study was to examine the impact that FCP has had on the nature and timing of children's permanency outcomes. However, efforts were also made to identify and describe the program elements or practices that serve to define FCP, and to explore the broader impact that FCP has had on the child protective service system in Palm Beach County.

The current report is divided into four sections. The first section contains a summary of the study findings, a brief program description, and a discussion of the authors' expectations regarding the impact of FCP representation on children's permanency outcomes. The second section contains a description of the study sample and data sources. The third section, which details the study findings, is itself divided into four subsections. The first of these describes the activities that constitute the vanguard of FCP's efforts on behalf of the children it represents. The second describes the impact of FCP representation on the timing and disposition of children's permanency outcomes and legal milestones. The fiscal implications of these findings are then discussed in the next section, followed by a presentation of the findings concerning the juvenile court experiences of youth and parents. In the final section of the report, the cumulative implications of the study findings are discussed.

Findings in Brief

Impact on Permanency

- Children represented by FCP were found to have a significantly higher rate of exit to permanency than children not served by FCP. In the main, this difference appears to be a function of much higher rates of adoption and long-term custody among FCP children.
- The higher rates of adoption and long-term custody experienced by FCP children were not found to be offset by significantly lower rates of reunification.
- Taking into consideration the estimated costs of substitute care, ongoing adoption subsidies, and FCP representation, the net cost of FCP associated with each additional day of permanency was estimated to be as low as $32.

Descriptions of Program Operation

- Four different program activities constitute the core of FCP's advocacy: (1) the filing of legal motions, (2) the filing of termination of parental rights petitions and recruitment of adoptive homes, (3) attendance at staffings and case plan meetings, and (4) service advocacy.
- Although there appears to be broad agreement within the child welfare and legal communities that FCP reduces the time children spend in substitute care, perceptions about the appropriateness of FCP program activities seem to be sharply divided along professional lines.
  - Although attorneys and judges viewed the filing of motions, including those for termination of parental rights (TPR), as a natural part of the fact-finding process, social service providers tended to characterize them as distracting or time-consuming.
  - Social service providers tended to characterize FCP's efforts to file TPR petitions and recruit adoptive homes as precipitous. As summarized by one provider: "Social work is about believing that people can change. [But,] it doesn't seem like Foster Children's Project really believes that people can change."

Perceptions of Court Experiences

- In interviews, both FCP and non-FCP youth reported a mix of anxiety, anger, and frustration associated with their experiences in juvenile court, with many reporting feeling that they had little control over the disposition of their juvenile court cases. However, many youth also reported that having an adult advocate with them in court seemed to alleviate the mystery and anxiety associated with the court process.
- Parents of both FCP and non-FCP youth tended to characterize their experiences with the juvenile court negatively, viewing it primarily as an instrument to thwart their efforts at reunification.

FCP Program Description

FCP is currently staffed with ten attorneys, two permanency planners, and a number of other support personnel, with each attorney carrying a caseload of approximately thirty-five children. FCP serves in the capacity of an *attorney ad litem* for the children it represents, which means that FCP's activities are governed by the "expressed interests" of their minor clients (versus an assessment of their "best interests," as is the case with the more common *guardian ad litem).* Practically speaking, it also means that FCP assumes the role of a traditional legal advocate, for whom the provision of assertive legal representation is a matter of professional principle.

The operative tactics used by FCP, which are described more fully in the findings section, include the filing of legal motions for discovery and to compel action of another party,

efforts to define prescriptive case plans, the filing of TPR petitions, and efforts to identify pre-adoptive homes.

Expected Impact on Permanency Outcomes

In brief, programs intended to expedite juvenile court decision-making are probably more likely to increase the rate of adoption than the rate of reunification. Indeed, for reasons that will be described below, the rate of reunification may be expected to be lower where court improvement activities effect a significant increase in adoptions. It should be noted, however, that there has been little, if any, substantive research concerning the impact of juvenile court improvement efforts on children's permanency outcomes. Thus, our *a priori* expectations concerning the nature of the impact of FCP were, in general, speculative.

Prior Court Improvement Project Research

Although federally funded juvenile court improvement projects have been in operation for almost 15 years, the efforts to evaluate these are still in their infancy (U.S. Department of Health and Human Services, 2007). To date, only two studies have examined the impact of court improvement efforts on children's permanency, and neither of these has examined programs providing legal representation to children. In one study by Courtney and Blakey (2003), cases randomly assigned to an accelerated permanency review process appeared to experience faster adoptions than cases subject to the standard review schedule. The rate of reunification, however, remained unchanged. In a second study by Festinger and Pratt (2002), post-TPR cases randomly assigned to a program intended to ensure that each case was heard by a single judge (i.e., one-case-one-judge model) appeared to experience faster adoption finalizations. However, these cases also received a suite of additional case management services, which made it impossible to determine the specific effect of the judicial reform.

Anatomy of the Permanency Process

To a large extent, the timeliness of adoptions depends on how quickly the court can establish that the requisite conditions for TPR have been met. This process is, essentially, a finding of fact and, as a result, can likely be expedited by efforts to increase judicial review or bring additional information before the court. Reunification, on the other hand, is generally impossible without substantive changes in parents' behavior. Although some judicial activity (e.g., filing of a TPR petition) may help to motivate parents, in general, expedited reviews and related efforts do not seem likely to effect significant changes in parental behavior. Also, it is important to note that, because adoption and reunification are mutually exclusive, an increase in the rate of adoption could very well lead to a reduction in the rate of reunification.

SAMPLE AND DATA SOURCES

Program Eligibility

The population of interest for this evaluation is composed of those children who have been deemed eligible and referred to FCP by the juvenile court. In principle, to have been considered eligible for FCP representation, a child must have met all of the following conditions:

(1) Child was removed from the home under a protective order on or after July 1, 2001.

(2) Child was *not* placed with a relative caregiver prior to the disposition of the dependency petition.[1]

(3) Child or sibling was 12 years of age or younger at the time of removal.[2, 3]

According to FCP client rolls, 1,496 children met these criteria and were referred to FCP between July 1, 2001, and June 30, 2006 (Table 1).

Comparison Groups

The primary method used to examine the impact of FCP was to compare the outcomes experienced by children represented by FCP with those of children who, after referral to

Table 1. Samples and Comparison Groups

Group	Children			Cases[4]		
	Freq.	(% of Sample)	(% of Sub-Sample)	Freq.	(% of Sample)	(% of Sub-Sample)
On FCP list	1,496	–	–	905	–	–
In DCF data	1,333	(89.1)	–	808	(89.3)	–
FCP served	1,201	(80.3)	(90.1)	736	(91.1)	(81.3)
Comparison children	132	(0.8)	(9.9)	72	(8.9)	(8.0)
Court record reviewed	804	(60.3)	–	429	(53.1)	–
FCP served	711	(53.3)	(88.4)	373	(86.9)	(46.2)
Comparison children	93	(7.0)	(11.6)	56	(13.1)	(6.9)

1 At disposition the permanency plan goal is established by the court.

2 The pool of children eligible for FCP representation has expanded twice since FCP's inception. Between July 1, 2001, and March 31, 2002, eligibility was limited to children 3 years of age or younger. In April 2002, eligibility was extended to children 5 years old or younger, and in December 2003, eligibility was extended to children 12 years old or younger.

3 According to FCP program staff, *all* children in a sibling set were considered eligible as long as at least one sibling met the above criteria.

4 Cases, which are analogous to families, are defined in relation to a casehead (i.e., guardian and primary caregiver).

FCP, were determined to be ineligible for FCP representation because of a legal conflict. In brief, if a family member of a child has been represented by FCP or by any other program operated by FCP's parent organization, Palm Beach Legal Aid Society, the FCP is ethically prohibited from representing that child.[5] The logic of using this exclusion as a method of comparison is based on the presumption that the factors leading to this conflict are unrelated to those affecting the outcomes under consideration in this evaluation, including those concerning the timing of permanency. If this presumption holds, then the observed differences in outcomes between FCP children and children excluded because of a prior legal conflict (henceforth referred to as *comparison children*) will serve as valid estimates of program impacts. A comparison of the characteristics of FCP and comparison children (Table 2) suggests that these groups are approximately equivalent, with child age being the only characteristic for which a significant difference was observed.

Table 2. Sample Characteristics of FCP and Comparison Children

Characteristic	Total (N = 1,333) Freq. (%) / Mean (SD)		FCP (N = 1,201) Freq. (%) / Mean (SD)		Comparison (N = 132) Freq. (%) / Mean (SD)		Sig.
Age (in years)	4.12	(4.29)	4.20	(4.23)	5.89	(4.62)	***
Gender							
Female	622	(46.66)	562	(45.65)	60	(45.65)	
Male	711	(53.34)	639	(54.35)	72	(54.35)	
Race/ethnicity							
Afric. Amer./Black	524	(39.31)	462	(38.47)	62	(46.97)	
Haitian	80	(6.00)	77	(6.41)	3	(2.27)	
Hispanic-White	170	(12.75)	154	(12.82)	16	(12.12)	
Hispanic-non-White	26	(1.95)	25	(2.08)	1	(0.76)	
White	440	(33.01)	393	(32.72)	47	(35.61)	
Other	93	(6.98)	90	(7.49)	3	(2.27)	
1+ Siblings in care	999	(74.94)	891	(74.19)	108	(81.82)	
Prior care spell†	111	(8.33)	99	(8.24)	12	(9.09)	

*** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$. † Child was placed in substitute care one or more times before the current removal. SD, standard deviation.

[5] According to Chapter 4 (Rules of Professional Conduct), Rule 4-1.9 (Conflict of Interest: Former Client) of the Rules Regulating the Florida Bar, FCP is prohibited from representing a child if (a) an adverse party (e.g., parent) in the legal action is a prior client of the Palm Beach Legal Aid Society and (b) the interests of the child and the former client in the current action are materially adverse. Examples of situations that would lead to a conflict include prior representation of a parent for a divorce, domestic violence, or other action by another unit of Palm Beach Legal Aid. Prior representation of the child, however, would not typically lead to a conflict.

Data Sources

Data for this evaluation came from four primary sources: (1) the Florida Department of Children and Families' HomeSafeNet administrative database, (2) physical court files from the Palm Beach County Juvenile Court, (3) qualitative interviews of twenty-one informed participants, including judges, attorneys, and DCF and social service agency staff, and (4) qualitative interviews of twenty-one youth and seventeen parents.

DCF Administrative Data. Data extracts obtained from DCF and the lead private child welfare agency in Palm Beach County, Child and Family Connections, contained demographic and substitute care history information for children who had entered substitute care between July 1, 2001, and June 30, 2006. Specific data elements included children's race/ethnicity, age, date of removal, and date and destination of exit from care. DCF administrative data records of removal and substitute care placement were available for 1,333 (89.1%) of the 1,496 children referred to FCP (Table 1).[6] Of these, 1,201 (90.1%) were represented by FCP and 132 (9.9%) were excluded due to legal conflicts.

Juvenile Court Files. A review of written juvenile court records was conducted on a sub-sample of 804 children who had entered care for the first time on or before December 31, 2004 (711 [88.4%] FCP children and 93 [11.6%] comparison), which was based on a random sampling of children from each of the two groups.[7, 8] This review yielded data concerning the timing of the following legal events and changes in legal status:

- *Shelter hearing and determination of probable cause.* Initial determination that probable cause exists to keep a child in shelter status pending further investigation of the case.
- *Adjudication of dependency.* Court finds that a child is "dependent" pursuant to Chapter 39 of the Florida Statutes.
- *Disposition and case plan approval.* Primary permanency goal and conditions required for return of the child are established.
- *Termination of parental rights.* Order to terminate parental rights is issued, usually with the intent of transferring custody to DCF for subsequent adoption.

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6 The reasons for this discrepancy are unclear. It may be the case that differences in data entry practices, or data errors, prevented the successful matching of some cases across these systems. Another possibility is that differences across these systems concerning what constitutes a child protective case may lead to slightly different definitions of the population of children for which records are kept. Finally, some written DCF records may not have been entered into HomeSafeNet.

7 The roster of children referred to FCP (for whom DCF data were available) was randomly ordered. Clerical searches for corresponding court records were conducted based on child's name and date of birth (DOB). Of the 836 children for whom records were sought, we were able to locate records for 804 (96.2%).

8 Eligibility was limited to children who had entered care on or before December 31, 2004, in order to ensure that the majority had exited care at the time the record review was conducted.

– *Motion filings.* Written application for a court order, including those for discovery and to compel action on the part of service providers.

– *Status checks.* Hearings (typically) used to prompt an appraisal of the progress of a case or bring an issue to the attention of the court without filing a formal motion.

– *Termination of protective supervision.* Dependency order is terminated, resulting in the closing of the case.

Informed Participant Interviews. Semi-structured phone or in-person interviews were conducted with twenty-one individuals who had had substantial prior experience working with FCP, including three Palm Beach County juvenile court judges, five non-FCP attorneys,[9] seven child welfare or other social service provider staff,[10] and six FCP staff members. Interview subjects were asked to describe their understanding of the (1) intended and actual impact of FCP on permanency, child well being, and safety, (2) types of activities in which FCP is engaged and the specific impact of each, and (3) the broader impact of FCP, especially regarding the work performance of other involved parties and the general functioning of the juvenile court and child welfare system (see Appendix A for informed participant interview protocol).

Qualitative Interviews of Youth and Parents. Semi-structured qualitative interviews were conducted with twenty-one youth and seventeen parents or guardians.[11] Youth ranged in age from 10 to 17, and had all been in substitute care for at least 2 months at the time of the interview. Interview subjects were drawn from a convenience sample based on the availability of valid parent addresses (from whom permission to interview youth needed to be obtained).[12] Seven of the twenty-one youth and five of the seventeen parents or guardians had some experience with FCP.

The interview protocol for youth contained questions regarding youths' experiences in court, their understanding of the legal process, the extent to which they felt able to voice their own concerns, and their ability to maintain connections with siblings and parents (when appropriate). The parent interview protocol, which was shorter and more

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9 Attorneys representing parents, DCF, and the guardian *ad litem* (GAL).

10 Staff from Child Family Connections, Family Preservation, Children's Home Society, and nonlegal staff from the GAL office.

11 Children of five of the seventeen parents or guardians could not be interviewed. Three were on runaway status, two were housed in distant juvenile detention centers, and one was unable to be located.

12 Our original intent was to interview fifty youth and parents based on a random sample drawn from the DCF administrative data. However, address data were available in the DCF administrative data for only 154 (58.6%) of the 236 youth in care as of the sampling date (November 2006). Further, based on returned mailings and follow-up visits to alleged parent addresses, we ascertained that 64 (41.6%) of these addresses were incorrect or out of date. Exacerbating these difficulties was the fact that, while Chapin Hall was attempting to locate parents, an unknown proportion of children changed placements. Attempts to obtain new placement information for these children from the lead child welfare agency (Child and Family Connections) were not successful until the last weekend of interviewing. As a result, in addition to containing less than half the number of intended subjects, there can be no expectation that this interview pool is representative of FCP-eligible youth.

structured than the youth interview, contained questions concerning parents' experiences and perceptions of child protective services, their understanding of their dependency case plans, their ability and willingness to complete the conditions of their case plan, and their understanding of the Foster Children's Project (see Appendices B and C for youth and parent interview protocols).

FINDINGS

Findings from the evaluation are presented in four sections. The first, which draws primarily from the informed participant interviews, attempts to articulate the perceptions of the child welfare service and legal communities regarding FCP's operative goals and tactics. The second section describes the results from several different analyses of the impact of FCP representation, including those pertaining to the timing of permanency. The third section explores the fiscal implications of the impact findings. Finally, the findings from the qualitative interviews of youth and parents are described in the last section.

Operative Strategies

Informed participant interview subjects cited several activities as forming the vanguard of FCP's efforts on behalf of the children it represents, including (1) the filing of legal motions, (2) the filing of termination of parental rights petitions and recruitment of adoptive homes, (3) attendance at staffings and case plan meetings, and (4) service advocacy. The level of resources available to FCP and its ability to operate autonomously, free of the strictures of larger bureaucracies, were also often cited as defining attributes of FCP.

Filing of Legal Motions and Status Checks

The filing of legal motions to compel action on the part of another party, or for the purposes of discovery, was the most frequently cited tactic used by FCP. The majority of interview subjects recognized this as an attempt to move cases forward, and approximately a third noted some systemic problem that made such tactics necessary, including a lack of service resources, communication problems between opposing parties, and high social service provider staff turnover.

Opinions about the broader ramifications of filing motions seemed to fall along professional lines. While judges and attorneys viewed them as an appropriate method for "keep[ing] things on track," social service providers tended to characterize them as distracting or disruptive, with one provider characterizing the filing of motions as, "an extreme waste of resources because now we have to deal with that instead of spending our time focusing on the kids."

Using the court record review data, we compared the number of motions filed, the proportion granted, and the number of status checks for FCP and comparison children. After controlling for the amount of time a case had been open, we found that the number of motions filed in cases in which FCP was involved was 46.5 percent higher than in cases involving comparison children. The higher number of motions filed did not, however, lead to a greater proportion of motions being denied, which is what would have been expected were the additional motions without merit. Finally, the number of status

checks (after controlling for time in care) was found to be 49.6 percent higher for FCP children than for comparison children.[13]

Termination of Parental Rights and Adoptive Home Recruitment

Nearly half of the informed participant interview subjects cited the filing of termination of parental rights (TPR) petitions as a primary method used by FCP to initiate progress in children's legal cases. Interestingly, several subjects attributed FCP's perceived focus on TPR to a reduction in DCF legal staff in 2002-2003.

As with the case of the filing of motions, opinions were sharply divided along professional lines. Some subjects expressed the view that FCP used TPR filings appropriately and based decisions to proceed on a case-by-case basis, while others believed that TPR appeared to be FCP's default strategy, especially for younger children. The objections of the latter group of respondents concerning the use of TPR often appeared to flow from broader reservations about what these respondents saw as FCP's concerted pursuit of adoption. In the words of one social service provider:

> The dad's side of the family is seriously neglected. They just want to rush to get the kid adopted. If it's a little one and they're in a foster home, then you can pretty much guarantee that the child will be adopted.

FCP' efforts to identify adoptive homes also elicited sharp responses and appeared to cast into sharp relief divergent views about the merits of concurrent planning. On one hand, several respondents saw FCP's efforts to identify adoptive homes prior to TPR as helpful and appropriate. In the words of one attorney:

> People are focusing more on concurrent planning. There's kids in care for two and a half years but agencies won't start recruiting an adoptive home until the appeal of TPR is settled. There is more inquiry about relatives now, visitations, early referrals, and better definitions of material breach [of the conditions required for reunification].

Conversely, social service providers were more reticent about pre-TPR adoptive home recruitment:

> [FCP is] very aggressive in pursuing TPR and getting kids adopted. They try to identify families who are willing to take children, families interested in adoption. I feel they do this often way too early in the life of a case, before TPR is even on the table, they try to identify families.

Underscoring the role of professional orientation in opinions about moving quickly to adoption, one social service provider used parental substance abuse as an example:

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[13] Negative binomial regression models were used to test the significance of differences in the number of motions and status checks. A two-sample test of proportions was used to test differences in the percentage of motions granted.

> The person isn't going to get clean in 60 days. They don't have the ability to change that quickly. But that is what social work is about, believing that people can change. It doesn't seem like Foster Children's Project really believes that people can change. If I were a parent coming in with a nice young baby, I'd be scared. If they don't do the program 100 percent, they take the baby.

Regardless of the respondents' general views about the merits of moving to adoption earlier in the life of case, many acknowledged that, where they thought adoption appropriate, FCP could be instrumental in both the filing of TPR and the identification of adoptive homes. Reflecting some ambivalence about the personal ramifications of these efforts, one social service provider stated:

> They can be a wonderful resource. It's a workload issue. We just can't do things as fast as they can. Filing TPR and finding homes also. If they want a family to become licensed as foster family, then we have to check it out. Sometimes this creates more work and we get into conflict when we don't move fast enough for them.

As described in detail below, informed participants' perceptions of FCP as an effective advocate of more timely adoptions appears to be grounded in real differences in the rates of TPR and adoption, both of which were found to be higher for children represented by FCP than for comparison children.

Attendance at Staffings and Case Plan Meetings

A number of informed participants observed that the point of departure for FCP's attempts to expedite permanency was their efforts to influence the nature of case plans and, in particular, the conditions required for reunification. To this end, FCP permanency planners regularly attend staffings and case plan meetings.

There was broad agreement among informed participants that FCP advocates for case plans with shorter time frames and well-defined conditions for material breach. Further, a majority of respondents tied these efforts to one of several specific consequences for FCP children and their parents, including earlier formal assessment of case progress, creation of higher stakes for noncompliance, and the circumscription of grounds on which the termination of parental rights can be contested.

Service Advocacy

Most informed participants acknowledged that FCP was an aggressive advocate for services for the children it represented, with several respondents invoking the example of services intended to ensure placement stability. A number of respondents also described efforts on the part of FCP to advocate for services for parents. The intent of this advocacy, however, was perceived more narrowly, with several respondents emphasizing its probative nature:

> [FCP] ends up making a lot of referrals for services. [They] hire a lot of experts. [They] usually do this when [they] are going for TPR. [They] don't want to wait for a psychological evaluation of the parents so [they] hire experts. The system won't approve psychological evaluations right away. [FCP] can't file TPR until the opinion comes through. If [they] do it, it will take at least 2 months off the case time.[14]

Of note was the trepidation with which some respondents accepted FCP's assistance in accessing services for their clients. One attorney stated:

> FCP can assist me in getting services faster for my clients. In some instances, it requires more work on my part because once FCP has decided which way they want it to go, I have to work doubly hard to keep the steam roller (meaning TPR) from rolling them [parents] over.

Organizational Resources and Operational Autonomy

Many respondents attributed FCP's effectiveness to the level of resources at its disposal, including the expertise and dedication of its staff, and its ability to cultivate connections with community organizations and the judiciary. Several respondents took note of FCP's operational autonomy, which one respondent contrasted to the "bureaucratic and political" hierarchy under which DCF must operate. A juvenile court judge stated:

> [FCP] can find creative solutions [because] they are not given a handbook that says, for this problem you have to do this procedure. They can look more globally at an issue.

[14] The wording of this statement has been changed in order to conceal the identity of the respondent.

Program Impact

In the following section, findings regarding the impact of FCP with respect to the timing of permanency and legal milestones are described. In brief, children represented by FCP were found to exit to permanency faster than comparison children.[15] The balance of this effect appears to be attributable to much higher rates of adoption and long-term custody among FCP children. In turn, higher rates of adoption among FCP children appear to be a function of much higher rates of TPR, with no difference observed in the timing of adoption finalization.

Permanency

Analyses. Separate analyses were conducted based on the DCF and court record review samples. This was done for several reasons. First, although the sample based on the DCF administrative data is larger (N = 1,333), a broader array of data elements are available for the subjects in the court record review sample. Second, as described above, the selection criteria were slightly different for each sample, and as a result, there were some differences in the distribution of exit types across samples. For instance, according to the

Table 3. Exit Destinations by Sub-Sample and Data Source

Exit Type	DCF Admin. Data Sample (N = 1,333)		Court Record Sample (N = 804)			
	Exit per DCF data		Exit per DCF data		Exit per court record data	
	Freq.	(%)	Freq.	(%)	Freq.	(%)
Permanency	827	(62.0)	672	(83.6)	585	(72.8)
Reunification	458	(34.4)	412	(51.2)	277	(34.5)
Adoption	270	(20.3)	137	(17.0)	135	(16.8)
Long-term custody/ guardianship	99	(7.4)	123	(15.3)	201	(25.0)
Emancipation	2	(0.2)	19	(2.4)	22	(2.7)
Pre-adjudication					21	(2.6)
Unexplained/other	4	(0.3)	2	(0.2)	1	(1.6)
Censored†	500	(37.5)	111	(13.8)	132	(16.4)
Total	**1,333**	**(100.0)**	**804**	**(100.0)**	**804**	**(100.0)**

† Still in care at the time the data were obtained.

[15] The impact of FCP representation was based on a comparison of FCP children with children precluded from receiving FCP assistance because of a legal conflict (see "Sample and Data Sources" section above).

discharge codes in the DCF administrative data, approximately two-thirds (62.0%) of the 1,333 children in the DCF administrative data sample exited to permanency, with more than half of them exiting via reunification (Table 3). Among the 804 children in the juvenile court record review sample, however, 83.6 percent exited to permanency, according to the discharge codes in the DCF administrative data (Table 3).

The most important reason for conducting separate analyses, however, was that the DCF discharge codes differed, in many cases, from the exit type classifications derived from the court record review. For example, a larger percentage of children appear to have exited to reunification (51.2%), and a lower percentage to long-term custody or guardianship (15.3%) (Table 3), according to the DCF data, when compared with the percentages of children coded similarly in the juvenile court records (reunification, 34.5%; long-term custody or guardianship, 25.0%) (see Table 3).[16] Overall, exit types for 75.2 percent (605) of the juvenile court record review sample were coded similarly in the DCF data and juvenile court records.

Statistical Methodology. In the following analyses, we have employed a class of statistical models known as *hazard models*, which have been developed for the specific purpose of analyzing event rates over time. The parameter of interest in the models presented here is the *hazard ratio*, which describes the proportional increase or decrease in the rate of each permanency type associated with a unit shift in the variable of interest, net of the effects of all other included variables.[17] For nonnumeric variables such as race, the estimated effect describes the difference in the permanency rate in relation to a reference category, and for numeric variables such as age, the estimated effect describes the change in the permanency rate associated with a 1-unit increase in the variable of interest. Values greater than 1 denote an increase, and values less than 1 denote a decrease.[18]

Impact of FCP Representation

In general, children represented by FCP were found to have a significantly higher rate of exit to permanency than comparison children (i.e., children not served by FCP because of a legal conflict [see above]). Specifically, in the analyses based on DCF administrative data and court record reviews, respectively, FCP children exited to permanency at rates 1.38 and 1.59 times higher than comparison children (Table 4). Most of this difference, however, appears to be a function of much higher rates of adoption[19] and long-term

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[16] These differences are likely due to a combination of factors, including data entry errors and differences in how specific outcomes are defined. For instance, a transfer of custody to a noncustodial parent might be classified as a reunification by a child welfare agency, while the juvenile court might classify it as a transfer of long-term custody.

[17] In these models, the rate of exit is measured from the point in time a child is removed and placed in care (i.e., shelter).

[18] In addition to a variable indicating whether or not a child was represented by FCP, a number of other control variables were included in the models described below (see Table 5).

[19] Adoption or guardianship.

custody among FCP children, with FCP children experiencing these exits at rates between 1.73 and 3.53 times as great as comparison children (Table 4).

Interestingly, the higher rates of adoption and long-term custody experienced by FCP children were not found to be offset by significantly lower rates of reunification. This is of note because, were it the case that FCP was pursuing adoption or long-term custody *in lieu of* reunification, we would expect to see significantly lower rates of reunification among FCP children. In these analyses, however, no significant differences in reunification rates were found.

Table 4. Multivariate Hazard Models of Permanency: FCP Participation

Outcome	Admin. Data Sample		Court Record Review Sample	
	Hazard Ratio	Sig.	Hazard Ratio	Sig.
Permanency (any)	1.38	**	1.59	**
Adoption or guardianship	2.77	***	2.94	**
Long-term custody	3.53	**	1.73	*
Reunification	1.02		1.23	

*** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$.

The finding that FCP representation was not associated with an *increase* in the rate of reunification is not surprising. In brief, the realization of reunification requires a mitigation of the risk that originally led to a child's removal. Although FCP can ask the court to reevaluate whether this risk persists, and to order the provision of services, the extent to which FCP is able to work directly with parents is often circumscribed by prohibitions on contact with parents by their attorneys. Thus, in many cases, FCP's efforts may be limited to informing and expediting the legal decision-making process. However, as found elsewhere (Courtney & Blakey, 2003), these types of efforts may be less effective with regard to reunification than with adoption and related outcomes.

Impact of Other Predictors

Child Age. Although not affecting the timing of permanency generally, age does appear to predict the type of exit that children experience. For instance, with each additional year of age, the rate of exit to adoption or long-term custody for children in the court record review sample decreased by 22 percent (hazard ratio = 0.78 times) (Table 5). Conversely, with each additional year of age, the rate reunification increased by 12 percent (hazard ratio = 1.10) (Table 5).

Several informed participant interview subjects expressed a belief that FCP was particularly effective with older children, especially with respect to adoption and long-term custody. To test this hypothesis, separate estimates of the relationship between FCP representation and the rate of adoption or long-term custody were obtained for four

Table 5. Multivariate Hazard Models of Permanency: Other Predictors

	Permanency (Any)				Adoption/ Guardianship				Long-term Custody				Reunification			
	DCF Admin.		Ct. Rec. Review		DCF Admin.		Ct. Rec. Review		DCF Admin.		Ct. Rec. Review		DCF Admin.		Ct. Rec. Review	
	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.
Age	0.98		1.04		0.86***		0.78***		1.05		0.92		1.03*		1.12***	
Female (vs. male)	1.09		1.07		1.12		0.87		0.83		3.12**		1.12		0.86	
Race/ethnicity																
Afric. Amer./Black	0.92		0.80		0.53***		0.33***		2.47***		0.75		1.04		0.94	
Hispanic	0.98		0.56		1.00		1.90		1.30		0.34		0.91		0.34*	
Other																
Sibling status																
Siblings in care	1.01		1.56		0.74*		0.47*		0.33*		0.53*		1.25		2.78*	
Co-placement																
Placed w/some	0.73		0.43		0.51		0.83		1.35		0.53		0.73		0.43	
Placed w/all	1.21		1.36		1.37		1.19		1.04		1.52		1.17		1.52	
Care history																
Subsequent care spell	0.47***		0.29**		0.68		0.76		0.25*		0.22		0.51**		0.18**	
1+ Prior placements	0.78**		0.67*		0.85		0.67		0.61*		1.12		0.75**		0.54*	

***$p < 0.001$, **$p < 0.01$, * $p < 0.05$. H.R., hazard ratio.

(*Note:* Table continued on next page.)

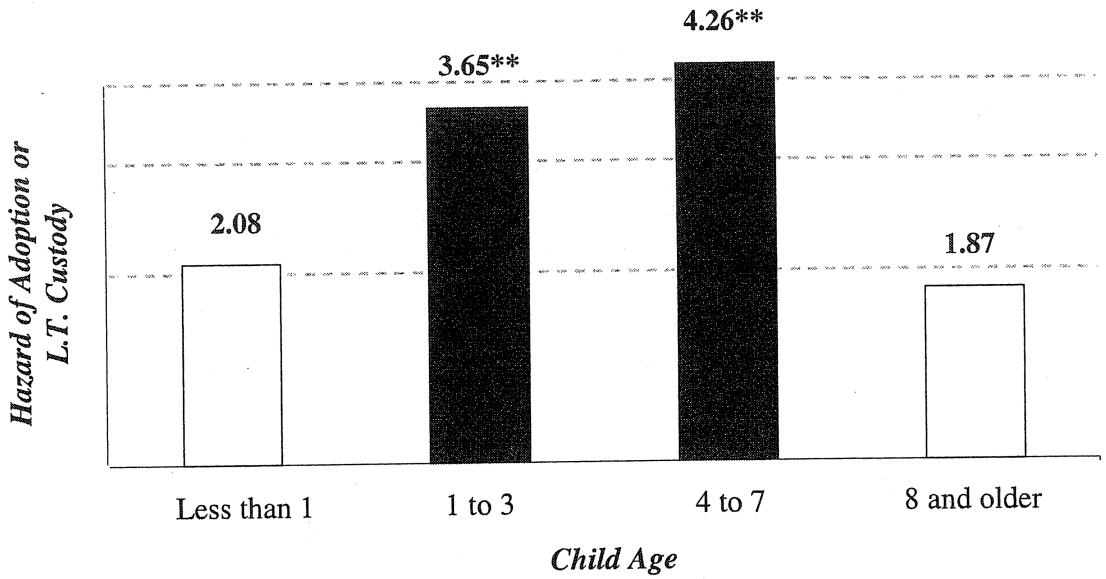
Table 5 (cont'd). Multivariate Hazard Models of Permanency: Other Predictors

	Permanence (Any)				Adoption/ Guardianship				Long-term Custody				Reunification			
	DCF Admin.		Ct. Rec. Review		DCF Admin.		Ct. Rec. Review		DCF Admin.		Ct. Rec. Review		DCF Admin.		Ct. Rec. Review	
	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.
Guardian *ad litem* appointment	–		0.88		–		0.80		–		1.17		–		1.04	
Entry cohort (vs. 2003)																
2001	0.68***		0.68		0.78		0.13***		1.43		0.16*		0.49***		0.82	
2002	1.07		1.13		0.67*		0.17***		2.04		0.20**		1.18		2.44*	
2004	0.70**		0.46**		0.65*		0.67		2.20*		0.45		0.58***		0.41*	
2005	0.58***		–		0.39***		–		1.52		–		0.62**		–	

***$p < 0.001$, **$p < 0.01$, * $p < 0.05$. H.R., hazard ratio.

different age groups.[20] Interestingly, the relative *difference* in the rate of adoption or long-term custody between FCP and comparison children was found to be higher for children between the ages of 4 and 7 (4.25), and for children between 1 and 3 years old (3.65), than it was for infants (2.08) (Figure 1).

Figure 1. Hazard of Adoption/Long-Term Custody by Age Group



Note: Shaded bars represent significant results. *** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$.

Child Race/Ethnicity. The rate of adoption or long-term custody was found to be between 47 and 67 percent lower for African American than white children (Table 5). Conversely, the rate of reunification was not found to be significantly different for African American children (Table 5). Results concerning children categorized as Hispanic or other were mixed, however.

Sibling Status. The findings regarding the presence of siblings in care and the effects of co-placement with siblings were mixed. Children with one or more siblings in care were found to have lower rates of adoption or long-term custody (0.33 to 0.74) than children who did not have siblings in care (Table 5). Contrary to expectations (e.g., Shlonsky et al., 2005), children with siblings exited to reunification at a higher rate than children without siblings, according to the analyses conducted on the court record review sample (Table 5); however, no significant association was found with the DCF data sample. As a result, the presence of siblings in care did not significantly affect the rate of overall

[20] The model was stratified by age group, and separate estimates of the effect of FCP were estimated for each stratum. Other predictors in the model were constrained to be equal across strata.

permanence. Finally, co-placement with some or all of a child's siblings was not found to significantly affect the rate of reunification, adoption, or long-term custody.

Substitute Care Experience. Children who had a substitute care spell prior to their current stay in care had significantly lower rates of reunification and overall permanence than children who were in their first care spell (Table 5). Similarly, children who had had one or more prior placements were found to have a lower rate of reunification (0.54 to 0.75), and as a result, a lower rate of exit to permanency (0.67 to 0.78).

Controls. In general, the timing of permanency was not found to differ significantly for cases appearing before different juvenile court judges, save for a higher rate of adoption associated with one judge in particular (results not shown).[21] Assignment of a guardian *ad litem* (as recorded in the juvenile court record) did not portend significant differences in the rate of likelihood of any outcomes considered here (Table 5). Finally, there appear to have been significant changes in the rate of permanency since July 2001, with the rates of exit significantly higher for children entering care in 2002 and 2003 than children entering in 2001 or in 2004 and 2005 (Table 5). In the main, this rise and fall in the rate of permanency appears to reflect a rise and fall in the rate of reunification (Table 5).

Timing of Legal Milestones

The transition to permanency requires the achievement of one or more intermediate legal milestones. For instance, after a child is adjudicated as dependent, the court must approve a case plan, and for those children moving toward adoption, parental rights must be terminated before finalization. The timing of these milestones is important, not only because they can inform our understanding of the differences in permanency rates described above, but also because they can signify important changes of status in their own right. For example, the duration between termination of parental rights and finalization, while contributing to the overall timing of adoption, is also important because it is during that period that a child is, effectively, a ward of the state.

Using the same methodological approach used to examine differences in the rates of permanency (described above), we estimated hazard models for several different transitions. In particular, using data obtained for the review of court records, we were able to examine the association between FCP representation and the time between (1) adjudication of the dependency petition and case plan approval, (2) case plan approval and permanency, (3) case plan approval and TPR, and (4) TPR and adoption finalization.

Initial Removal to Permanency. When the transition from initial removal to permanency is disaggregated into transitions between initial removal, adjudication, case plan approval, and permanency, it becomes clear that the higher rate of permanency observed for FCP children (described above) was a function of differences in timing *subsequent to* case plan approval. Specifically, although there were no statistically significant

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[21] Although earlier specifications of these models included presiding judge in a set of indicator variables, models *stratified* by presiding judge provided a much better fit to the data. This specification allowed us to account for the similarities (i.e., dependence) in hazards that likely exist for children appearing before the same judge, without explicitly estimating the difference in hazards.

differences in the timing between removal and adjudication, and adjudication and case plan approval, FCP children were found to have moved from case plan approval to permanency at approximately twice the rate (2.01) of comparison children (top panel of Figure 2).

Case Plan Approval to Competing Permanency Exits. Consistent with the findings described earlier, FCP children were found to transition between case plan approval and adoption and long-term custody at higher rates (adoption, 3.72; long-term custody, 2.73) than comparison children. However, when we consider the timing between case plan approval and permanency, versus the timing between removal and reunification (as was done in the analyses described earlier), we also find that FCP children transition to reunification at a higher rate (1.72) than comparison children (middle panel of Figure 2). The reason that this does not also serve to significantly shorten the time between removal and return home is probably the fact that, because reunifications tend to occur earlier in children's care spells, the period subsequent to case plan approval constitutes a significantly smaller share of the overall time in care for these children than it does for children who exit to adoption. Thus, although FCP representation is associated with a faster completion of this specific leg of the overall transition to reunification, it is not pronounced enough to effect a significant difference in the rate of reunification from the point in time a child enters care.

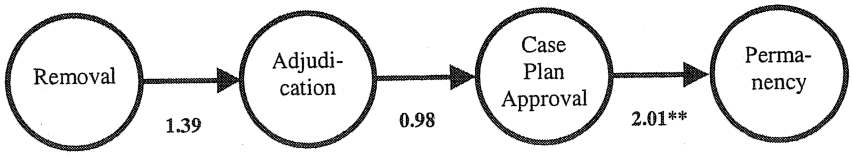
Case Plan Approval to TPR and Adoption. The observed difference in the rates of adoption for FCP and comparison children appears to be primarily a function of a significant difference in the timing between case plan approval and termination of parental rights. Specifically, FCP children were found to transition between case plan approval and TPR at almost 4 times (3.97) the rate of comparison children, but they were not found to move from TPR to adoption finalization at a rate significantly different than that observed for comparison children (bottom panel of Figure 2). The latter finding may represent the confluence of two distinct phenomena. In brief, according to several informed participant interview subjects, child welfare agencies in Palm Beach do not pursue "legal risk" adoptive placements, that is, placements in pre-adoptive homes prior to TPR. As a result, the time between TPR and finalization likely reflects the time required to locate adoptive placements. Thus, the fact that FCP yields faster transitions between case plan approval and TPR but does not affect the timing between TPR and finalization suggests that adoptive home recruitment may be an area in which FCP has only limited impact.

Re-entry into Care

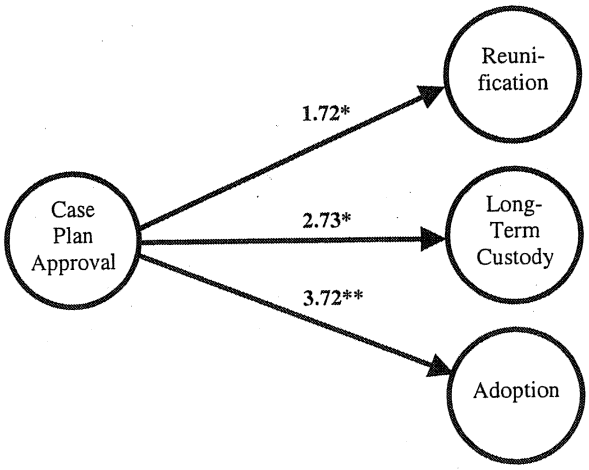
Several informed participant interview subjects expressed the view that FCP's efforts to move children toward adoption produced tenuous adoption matches that were more prone to disruption or dissolution. Unfortunately, the number ($n = 5$) of adoption dissolutions (i.e., post-finalization removals) and limitations in the DCF data precluded analysis of either type of event. Sufficient data were available, however, to allow for the estimation of hazard models of post-*reunification* reentry. No differences in rates of reentry between FCP and comparison children were found.

Figure 2. FCP Hazard Ratios for Transitions Between Legal Milestones and Permanency

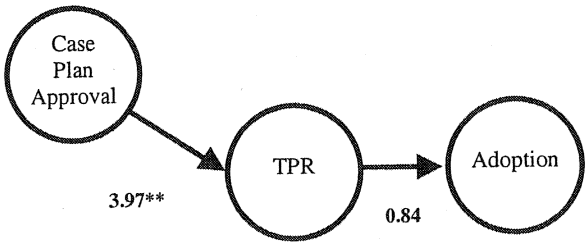
A. Physical Custody to (Any) Permanency



B. Case Plan Approval to Competing Permanency Exits



C. Case Plan Approval to TPR to Adoption



*** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$.

Fiscal Implications

Using the results from the statistical models discussed above, we can estimate how the observed differences in permanency rates between FCP and comparison children translate into differences in the level of several identifiable costs, including those associated with the provision of children's basic care and FCP representation.

At the outset, it is important to acknowledge that our estimates pertain only to a subset of costs and, as a result, do not allow us to draw conclusions about the overall fiscal impact of FCP. Indeed, data pertaining to the costs of several potentially important items, including the provision of nonplacement services, as well as any differences in the level of effort on the part of case managers and DCF legal staff associated with FCP involvement, were not available.

As described in detail following, the estimated program costs for FCP are not entirely offset by the estimated reduction in costs of substitute care and case management that accrue from the shorter care spells experienced by FCP children. Nevertheless, the *net* cost of FCP associated with each additional day of permanency was estimated to be as low as $32 per day.

Cost Elements

Children's Basic Care. The cost of providing for children's basic care was calculated by summing the estimated costs of (1) providing substitute care and (2) maintaining subsidy-eligible post-permanency placements (i.e., adoptions and long-term custody arrangements). In calculating the former (i.e., *pre-permanency care*), we included estimates of the (1) average substitute care board rate for children in this sample ($31.10 per day)[22] and (2) per-child monthly rate paid to case management agencies by the lead child welfare agency in Palm Beach, Child and Family Connections ($15 per day for children 12 and younger, $17 per day for children 13 and older). In calculating the cost of subsidy-eligible post-permanency placements (i.e., *post-permanency care*), no case management costs were included. Subsidy rates for adoption and long-term custody were assumed to equal, respectively, 80 and 70 percent of the state average foster home board rate ($9.20 per day for adoptions and $8.05 per day for custody arrangements).[23] Finally, an additional one-time subsidy of $1,000 was assumed for children exiting to adoption.

FCP Representation. The cost of FCP representation was calculated by dividing FCP's FY 2007 budget ($1.7 million) by aggregate staff attorney caseloads. Those caseloads were calculated by multiplying the number of FCP staff attorneys (10) by the FCP target caseload of 35 children per attorney and then multiplying this number by 365. The resulting figure ($13.31) represents an estimate of the daily per-child cost associated with FCP representation.

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[22] Daily per-child average based on a combination of DCF administrative placement data and board rate estimates provided by CFC.

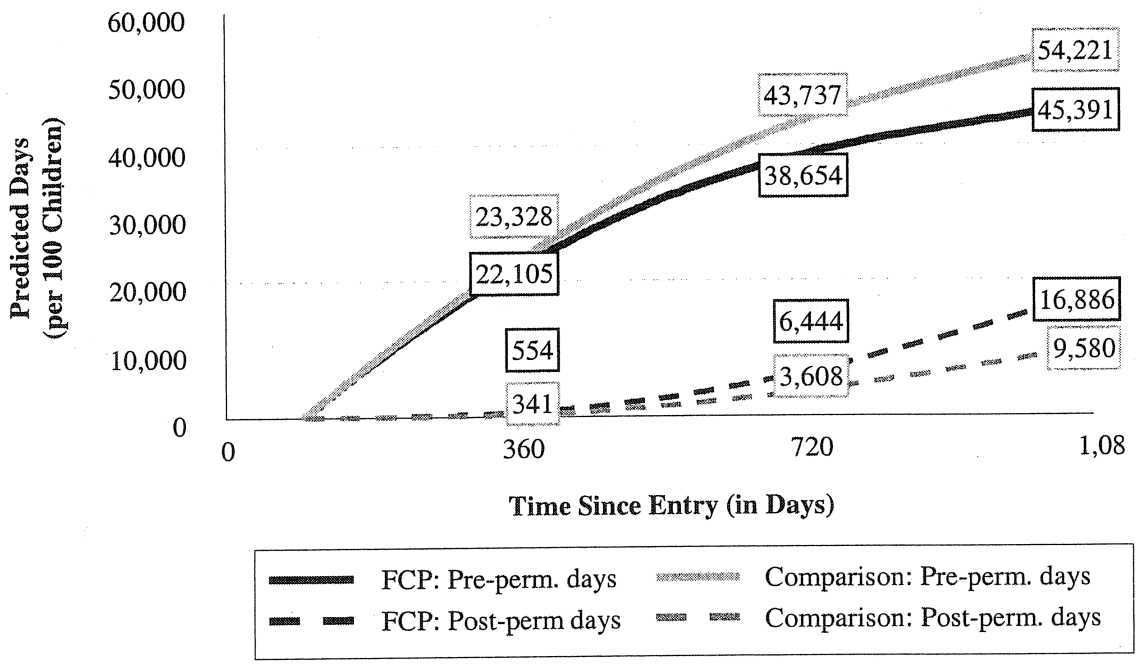
[23] Florida Administrative Codes 65C-16.013(7) and 65C-24.012(4).

Estimation of Aggregate Costs

Aggregate cost estimates for FCP and comparison children were calculated by multiplying the estimates of the daily costs of children's basic care and FCP representation (described above) by the accumulated number of substitute care and post-permanency days for FCP and comparison children.

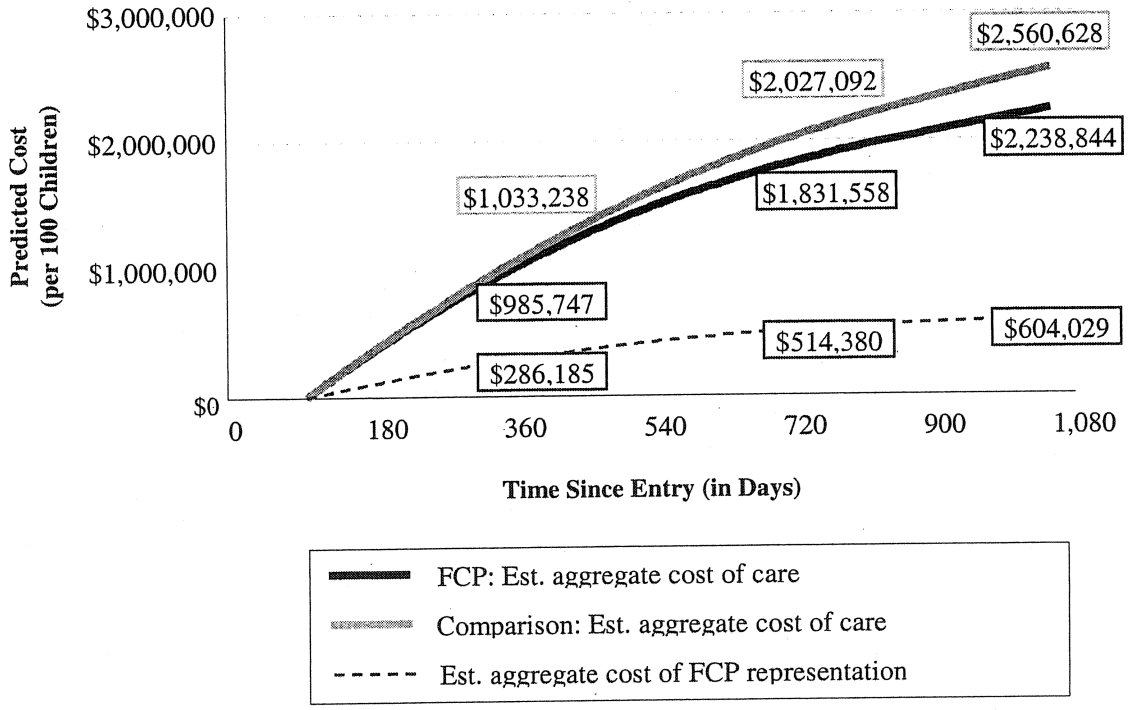
Number of Care and Post-Permanency Days. Using the model-based estimates of the proportion of children exiting to permanency, we calculated the accumulated number of pre-permanency days per 100 children. For example, among an average cohort of 100 FCP children, the estimated accumulated number of pre-permanency days within 3 years of entry equaled 45,391, whereas for an average cohort of 100 comparison children, estimated pre-permanency days equaled 54,221 (Figure 3). The fact that the total number of estimated pre-permanency days for comparison children exceeds that for FCP children reflects the finding that comparison children exited to permanency more slowly. Similarly, we calculated the accumulated number of post-permanency days, defined here as the accumulated number of subsidy-eligible post-permanency (e.g., adoption, long-term custody) placement days. Reflecting the finding that FCP children exited to adoption and long-term custody at a higher rate than comparison children, the estimated aggregate number of post-permanency days per 100 children was also larger for FCP (13,381) than for comparison children (7,125) (Figure 3).

Figure 3. Estimated Aggregate Pre- and Post-Permanency Days



Aggregate Cost of Children's Basic Care. The last step in calculating the aggregate cost of providing for children's basic care was to multiply the accumulated number of pre-permanency and post-permanency days by the estimated daily costs of each. As would be expected, the estimated cost of pre-permanency care is lower, and the cost of post-permanency is higher, for FCP children than for comparison children. For instance, 3 years after entry to care, the estimated cost of care ($2,059,390) for 100 FCP children was 83.7 percent of the estimated cost for 100 comparison children ($2,460,024), while the cost of post-permanency ($179,453) was 78.4 percent higher than that for comparison children ($100,605). Of course, for both FCP and comparison children, the estimated cost of substitute care far exceeded that of post-permanency and, as a result, the overall estimated cost of care (both pre- and post-permanency) was higher for comparison children than for FCP children (Figure 4).

Figure 4. Estimated Aggregate Cost of Pre- and Post-Permanency Care and FCP Representation



Cost of an Extra Day of Permanency. As a final exercise, we can obtain an estimate of the *net* cost of FCP associated with each additional day of permanency by dividing aggregate cost of FCP by the difference in the number of pre-permanency days for FCP and comparison children. For instance, by 3 years after entry to care, the total accumulated cost of FCP for 100 children is estimated to equal $604,029. Dividing this by the estimated difference in accumulated pre-permanency days (8,830 = 54,221 – 45,391), we obtain a *gross* "price" for each additional day of permanency of $68.41. If we take into consideration the lower accumulated cost of care associated with FCP

($321,814 = $2,560,628 – $2,238,844), the cost for each additional day of permanency decreases to about $32 per day ($31.96 = ($604,029 – $321,814)/8,830.

Qualitative Interviews of Youth and Parents

Semi-structured qualitative interviews were conducted with twenty-one youth and seventeen parents or guardians. Interview content focused on respondents' understanding and interpretation of court events and decisions. Copies of the youth and parent interview protocols can be found in Appendices B and C, respectively.

One of the original goals of these interviews was to develop an understanding of how the experiences and perceptions of FCP and comparison children may have differed. However, because of difficulties in obtaining current addresses for study subjects, including children, we do not believe that the final sample is representative of FCP and comparison cases. As a result, we also do not believe that a comparison of interview responses would lead to valid inferences about the relationship between FCP representation and the experiences and perceptions of children and parents.

Consequently, in the interview analyses no attempt was made to differentiate between FCP and comparison cases. Thus, all of the results presented should be understood as a reflection of the experiences and perceptions of both FCP and comparison children and parents.

Youth Interviews

The sample of youth interview respondents consisted of a mix of FCP (n = 7) and non-FCP (n = 14) clients (Table 2). Most youth were male (81.0%), and either African

Table 6. Youth Interview Subjects

Characteristic	(N = 21) Freq. (%)/Mean (SD)	
FCP	7	(33.3)
Age (in years)	14.7	(2.1)
Gender		
Female	4	(19.0)
Male	17	(81.0)
Race/ethnicity		
Afric. Amer./black	12	(57.1)
White	8	(38.1)
Other	1	(4.8)
Time in care (in months)	7.1	(5.2)
Care status		
Still in care	12	(57.1)
Exited	9	(42.9)
Reunified	4	(19.0)
Adopted/long-term custody	1	(4.8)
Emancipated	4	(19.0)

S.D., standard deviation.

American (57.1%) or white (38.1%). The average time youth had spent in care was 7.1 months, with about half (57%) still in care at the time of the interview. Of those who had left care, most had been emancipated (n = 4) or returned home (n = 4).

Emotions Elicited by Court Attendance. Youth who had recently attended a court hearing (n = 16) tended to recall feelings of anxiety during the time leading up to their hearing. For example, when asked about how he felt before his last appearance, one youth responded:

> Kind of nervous … 'cause I didn't know where I was going or what I was doing … just anxious to see what he [judge] was going to say. I was just hoping they was going to let me go home, that's all.

Several youth also described feelings of anger elicited by the occurrence of specific events during their last hearing. As a potent reminder of the exposure children face while witnessing court proceedings, one youth described how she felt during a hearing in which her father testified about her mother:

> I feel … I just felt bad. 'Cause, I don't know, just listening to those lies that my dad was saying. Knowing that my mamma do for me … and do right by me.

Frustrations about the perceived capriciousness of court decisions were also evident in the responses of a number of youth. For instance, when asked about how she felt about the "court process," one youth explained:

> Court process? A lot of pain. 'Cause one moment they say you going home and the next they say you're going somewhere else. And maybe the next you might never see your family again. It's a drag, a drag.

Sense of Exclusion and Lack of Control. Most youth reported that they felt that they had little control over the disposition of their juvenile court cases. Remarking about a recent court decision, a hint of fatalism was evident in the statement of one young man:

> I don't know. I just…. I don't know. I try not to think about it that much 'cause, like … what can I do? I just live day by day.

This is not to say, however, that youth were not interested in having a voice in the decisions about their juvenile court cases. Indeed, a number of youth expressed the belief that they had the right to do so. In the following exchange with an interviewer, one youth expressed this sentiment in no uncertain terms:

> *Youth:* I don't know but, if they trying to find out what's best for me, they should ask me what I think and then go on and do what they think.
>
> *Interviewer:* So … your opinion is that you should be deciding what is best for you?

Youth: No, my opinion is that they should ask me and then go on from there.

Court Attendance and Understanding of Legal and Permanency Status. Youth who had recently attended a court hearing were generally, but not always, able to provide fuller descriptions of their legal status and the decisions that had been made on their behalf. Indeed, as the following exchange illustrates, legal proceedings may often seem abstruse, even to youth who participate.

Interviewer: What did they talk about [in court]?

Youth: They used a lot of big words.

Interviewer: You didn't understand?

Youth: Yeah, I wasn't really paying attention to what they were saying 'cause … well I was, but I couldn't really understand what they was talking about. They were saying something about what's happening or something like that. About what's going on.

Someone to Help Understand. For many youth, having an adult advocate with them in court seemed to alleviate the mystery and anxiety associated with the court process. As one youth described, the simple act of explaining the purpose of a court hearing can be very helpful:

Youth: I told him that I don't like going to court and he was like, "It's nothing to be nervous about. You ain't going to jail or nothing like that. You're just going to get put in a foster home or whatever." And then he was like, "Just go in there. Just act normal, like act yourself." Stuff like that.

Interviewer: Did he help you relax a little bit?

Youth: Yeah, 'cause I was like, real tense when he told me I was going to court. But, he helped me with that.

When asked to identify the adults who had helped them the most in court, youth cited a variety of individuals, including their attorneys, guardians *ad litem,* or the juvenile judge. The majority of youth, however, identified their child welfare agency caseworker as the person who had "helped them the most." When asked why he had chosen his caseworker, one youth replied, "'Cause, she's like the main person stressing, like really, really stressing."

Also, it was striking how often youth expressed the belief that most of the adults associated with their child welfare and juvenile court cases were making a genuine attempt to try to ascertain what was in youth's best interest. One youth who had been in care for several years said:

> Who tried to help me? Everybody, even though their opinion is not the same as mine. I mean that's their opinion of what they think is best and I got my opinion of what I think is best but basically, I think they all trying to find out what's best ... for me, I mean.

Finally, for many youth, being able to talk about the experiences they had in court with their siblings helped youth to understand, and reconcile themselves to, their experiences in court. As one youth explained, the absence of siblings was acutely felt after court appearances:

> *Youth:* Well, at first … when we first got there we were in the same house, and I went to court with them. But then after that I moved … they moved me to another house after that and I ain't seen them.
>
> *Interviewer:* Was that hard, I mean difficult for you?
>
> *Youth:* Yeah. I got to talk to them on the phone sometimes, when they would call, but I ain't got to see them. I was by myself. You know, I wasn't … couldn't talk to no one after I talked to the judge.

Parent Interviews

Enormity of the Task at Hand. A theme to which many parents returned to repeatedly during their interview was the enormity of the task confronting them. Evidence to this effect was provided in the form of lists of disparate requirements for the return of their children that many parents provided. One typical response included requirements for drug testing, employment, and participation in a domestic violence program.

> I had to give fifteen consecutive negative drug tests. I had to complete parenting class. I had no money, my car was in the pound, my house was about to get foreclosed on. I had to get a job and work full-time, have verifiable income, enroll in the Safety Net program for domestic violence with me and my children. I was arrested for a DUI, so I had to be to court almost once a week for the first 5 months.

A number of parents also described perceived obstacles created by their caseworker, the juvenile court, and (most often) children's substitute caregivers. A particularly sore point for parents was when they perceived that caregivers were attempting to meter their contact with their children. One parent stated:

> I mean I was fighting everybody the whole way. I was fighting with DCF. I was fighting the foster mother who took care of my children. She told my caseworker that, "I'll do anything to help L---." Well, once my kids went to her house in -------, she wouldn't bring them to see me, even with supervised visits I had. I would call my caseworker and say, "I don't care if I have to meet my children at a DCF office." She would call and cancel the appointment she made with me because it was going to rain or something on her car broke. She made a million excuses.

Case Plans as "Trap Doors." There was also a common perception that the case plans adopted by the juvenile court were designed to thwart parents'efforts to be reunified with their children. Recounting a conversation she had with her child's father, one mother characterized this effort as rather overt:

> They make it almost impossible. I did everything they asked. I spoke to my daughter's father yesterday and he said to me, "Well, DCF told me you'll never be able to do any of this stuff anyway." And I said, "Well, why not?" And DCF, one of the caseworkers, told him, "Because nobody ever completes it. They always end up getting high or drunk." Well, it's because they make it almost impossible to complete.

Even where parents did not perceive deliberate attempts to undermine them, several complained that case plans were irrelevant or immutable. One parent who had successfully regained custody of her child said:

> But instead for them to agree that they do wrong they let you go, like, step by step. Follow their own rules, just to make themselves look better.

For some parents, these perceptions translated into a sense of resignation and bitterness. In the words of a mother of a youth who had been in care for several years:

> He's there until he's 18, whether or not I complete that b---- or not. In a way, it's beyond unreasonable. Because why should I keep working knowing I'll never be able to bring my son home? Why bother? I made the choice when they told me, and that should be the end of it. Why keep going through this s--- with my kid? I like seeing my kid, which is why they did terminate my rights.

Finally, a number of parents expressed disappointment in the level and effectiveness of the support they or their children had received while in care. One parent of two troubled adolescents put it this way:

> They've been in the system now for close to 4 years and neither kid is any better than they were before. There's no improvement in 4 years with either kid. Now there's got to be something wrong with the system. Psychiatrists, with the pills and the psychologists and all of this nonsense, no improvement with either kid at all.

CONCLUSION

Impact on Permanency

Representation by FCP appears to affect the timing of permanency in a fairly specific manner, with the lion's share of the impact occurring subsequent to case plan approval. In the case of adoption and long-term custody, this translates into faster overall transitions between initial removal and exit to permanency. In the case of reunification, however, the acceleration experienced subsequent to case plan approval does not serve to significantly shorten the time between removal and return home. Perhaps more important, however, is that FCP representation was *not* found to be associated with a commensurate reduction in the rate of reunification. This is of note because it suggests that FCP's success with regard to adoption is not dependent upon lower rates of reunification.

FCP Program Elements and Permanency

Several operational activities—including filing motions and status checks, making service referrals, initiating TPR proceedings, and careful attention to the content of case plans—were cited by informed participant interview subjects as defining elements of FCP. Although, given the available data, we cannot determine the particular relationship that each of these has with the increased rate of permanency observed among FCP children, one insight in particular can be inferred from the nature of the impact findings themselves.

In brief, that the effect associated with FCP representation appears to manifest after case plan approval suggests that it is FCP's attempts to influence the content of case plans that serve as the linchpin for all their other efforts. For instance, although legal motions and service referrals may help to establish whether or not parents have met the conditions required for reunification and ensure that reasonable efforts have been made, it is the case plan itself that effectively defines these return conditions and serves as the benchmark against which reasonable efforts are measured. Indeed, according to a number of informed participant interview subjects, it is the individualized nature of FCP-influenced case plans that affords leverage to these other activities.

Perhaps more than any other finding, it is our belief that the apparent impact of case plan design on the timing of permanency merits further inquiry. Exactly how FCP-influenced case plans differ from the case plans of other children, and how these differences affect permanency, were not discoverable from the data collected for this study. However, data obtained from a systematic review of case plans could be easily linked to the outcome data collected for the present study. This particular follow-on project could not only be readily implemented, but could also yield actionable information for child welfare agencies, county corporation counsels, and juvenile courts seeking to expedite permanency.

More broadly, another unanswered question is whether the successes of FCP are a function of the particular constellation of program activities identified here, or just a reflection of what any well-resourced child welfare legal agency could accomplish. Also

an open question is the extent to which FCP's status as an attorney *ad litem* affects its program performance. For instance, beyond the matter of resources and tactics, how instrumental are the autonomy and assertive advocacy that characterize attorneys *ad litem* in achieving the higher rates of permanency observed among FCP children? Although these questions cannot be answered based on the data obtained for this evaluation, they will be important to consider before trying to replicate the FCP experience elsewhere.

Cautionary Note

In the main, the findings from this evaluation suggest that FCP produces a net benefit for the children it represents. They are more likely to be adopted than other children, but no less likely to return home. The activities of FCP do, however, appear to impose a significant burden on social service providers and, in particular, ongoing caseworkers. Whether this burden is the result of additional time spent in court, or additional time complying with service-related court orders, is a matter of dispute. To the extent to which it is the former, however, it is a concern because it could potentially leave workers with less time to work with parents and children, which, in principle, could decrease the likelihood of reunification. Unfortunately, this sort of "systemic" effect is next to impossible to detect in a service environment such as Palm Beach County, in which there have been several concomitant shifts in policy and organizational leadership. Even in the absence of any hard evidence, however, it is probably worth considering whether there are ways that this burden could be lessened without adversely affecting permanency.

Limitations of the Current Study

Natural Experimental Condition. The validity of the impact findings of this evaluation rests on the integrity of the natural experimental condition that determined children's participation in FCP. In other words, the impact analyses rest on the assumption that FCP and comparison children are essentially equivalent, after controlling for all of the other variables included in the impact models. Although a comparison of the characteristics of FCP and comparison children suggests that these groups are approximately equivalent, it is important to keep in mind that, in the absence of a truly random or systematic assignment mechanism, there is no way to be sure that these groups are equivalent.

Qualitative Interview Sample. Difficulties in obtaining accurate contact information for parents and youth required us to resort to a nonprobabilistic sampling strategy that ultimately yielded approximately a third as many interviews as were originally planned. Although our original intent had been to use these interviews to explore the impact of FCP representation on the experiences of children and parents, the ambiguous nature of the sample, and its diminished size, led us to conclude that this type of comparison was not possible.

Extension of FCP Representation to Children Placed in Relative Foster Homes

To date, FCP has limited its purview to children placed with nonrelative substitute care providers. However, given that children placed with relative caregivers have been found to exit to permanency more slowly than children placed with nonrelatives (e.g., Barth,

Courtney, Berrick, & Albert, 1994; Courtney & Wong, 1996; Goerge, 1990; Goerge & Mackey-Bilaver, 2003; Harris & Courtney, 2003; Wulczyn, 2003), an argument could be made that these children are in greater need of FCP representation than other children. Also, the experiences of several states experimenting with subsidized guardianship programs (e.g., Illinois) seem to suggest that efforts directed at expediting adoptions among relative placements can yield significant results. Finally, given that children of color are generally more likely than white children to be placed with relatives, not extending FCP representation to children placed with relatives may create unintended inequities.

APPENDICES

Appendix A. Informed Participant Interview Protocol

1. Please state your job title and briefly describe your responsibilities.

2. Could you describe your understanding of the *intended* effect of the FCP (FCP services)?

   Specifically, (a) what types of outcomes (e.g., permanency, child well-being, and safety) do you think the FCP is supposed to help achieve and (b) how are FCP services/activities supposed to help achieve these goals?

   Examples/definitions of outcomes (if needed):

   Permanency:
   - Disposition and timing of exit from care
   - Pre-exit outcomes: Placement w/relatives, placement stability

   Child well-being:
   - Children's understanding of court process
   - Parental visitation; sibling visitation/co-placement; proximity to parent(s)

   Safety:
   - Needed assessments

   For instance, our understanding is that FCP services are thought to help children exit care more quickly, in part, because FCP involvement helps to leverage needed services that, in turn, help establish reasonable efforts.

   Other examples (if needed):

   FPC helps to improve the timeliness of court milestones (e.g., filings and rulings) and reduce the number of continuances, which helps to expedite permanency.
   FCP helps to ensure contact with family (e.g., placement with relatives/siblings, frequent visitation).

3. What are your thoughts about the *actual* impact of the FCP (FCP services)?
   If different than intended effect just described:
   How is the impact different (i.e., is effect greater/ leser, different, unintended)?

4. Besides the FCP services/activities just described, what other types of services/activities does FCP routinely provide/engage in?

5. Is FCP more effective in some types of cases than in others? If so, what types of cases are most influenced by FCP involvement?

6. [To FCP staff only] Are there specific aspects of FCP operations, either formal or informal, that contribute to (lack of) FCP success (in achieving intended outcomes)?

   Examples (if needed):

   Staffing (e.g., caseload distribution), support/resources (e.g., availability/quality of para-professionals and investigators)
   Philosophy, culture, work environment
   Representational approach (i.e., extent to which it is adversarial)

7. How do FCP services impact the work or performance of other parties?

   For instance, in what ways does FCP involvement affect the work or performance of:

   (a) Child welfare staff (e.g., DCF, CFC, subcontractors)
   (b) Other attorneys
   (c) CASA, mediators, etc.
   (d) Parents, adoptive parents, foster parents

8. Are you aware of other important initiatives, reforms, etc., besides the FCP, that may have also affected the disposition/timing of children's outcomes and experience?

Appendix B. Youth Qualitative Interview Protocol

I'm here to ask you questions about your experiences in court and what you think about things that are going on right now where a lot of adults are trying to figure out the safest place for you to live. I am interested in what this process is like for you. I know that it might be hard to remember things so I have these cards here to help. [There are four cards that prompt for participants, setting, actions, and conversation/affective state.] When something happens, there are people, actions, feelings, conversation and a place where it happens. Take this interview for example. Let's start with the people who are here. There's [list people present]. This card is a reminder to think about the people who were there when something happened [interviewer shows child people card]. Now let's talk about the action, or what is going on. What are you and I doing right now? [Pause to allow child to answer. If s/he does not, proceed without waiting too long.] We're sitting and talking. This card is a reminder to think about what happened or what people did. [Interviewer presents card.] Another important thing is the setting, or where we're at. Right now we're at [describe setting]. This card is a reminder to think about the place where something happened. [Again, interviewer shows appropriate card]. Then there are the feelings that people express. Other people's feelings can be hard to figure out but there are ways that let us know how they feel. The sound of their voice and their body language can say a lot about how they're feeling. For example, when someone smiles, it usually means they are feeling happy. This card is a reminder to share what you think about how people, including yourself, might have been feeling. [Interviewer shows final card.] Do you have any questions so far?

Okay, now I'm going to ask you about what has happened in court in the last couple of months.

1. Have you been to court? When?

Please tell me about the last time you went to court.

Interviewer allows child to speak freely. When child finishes, interviewer prompts for any of the elements that may be missing.

Participants – Who was there?

Actions – What did they do? What did you do? What did people talk about?

Conversation/Affective state – What did they say? What did you say? How did you feel in the courtroom?

2. Right now there are a lot of adults trying to figure out what is best for you. What are they trying to decide?

3. Who are some of the people that are trying to figure out what is best for you?

For every person mentioned, follow up with questions regarding that person's role. For example, if youth provides only a first name, ask what that person has said or done.

4. What has been decided so far? Follow up to gauge the extent to which the child understands what the stated decision means.

Example: Was there a decision about where you will live? What was it?

> Was there a decision about who you will live with? Prompt for impact on visitation and services.

If the child comes back with "they decided my mom has a drug problem" or something similar, follow up with questions that return focus to the child. What does that mean for you? What effect will it have on you?

5. What do you think will happen next? What are some of the things that could happen?

6. Do you think you will need to move again? If so, prompt for why child believes placement is unstable.

7. How many times have you moved so far (since you were removed from your home, i.e., your parent(s)' home)?

8. I want to talk now about where you're living now and whom you live with, okay? Where do you live right now?

9. Who lives with you?

Do you have brothers or sisters?

Are they living with you now?

If not, where are they?

How often do you see them?

10. How often do you see your mom? How about dad?

11. A forever home is someplace that you live for the rest of your childhood, a place where you will stay after all of the court process is over. Where would you like your forever home to be? Who would you live with?

12. Have you told anyone where you'd like your forever home to be?

If yes, then ask: Who have you told?

If no, ask: Why haven't you told anyone?

13. Do you have questions about stuff you don't understand?

14. Who do you talk to about your questions? Is there anybody else you might talk to about your questions?

15. Why do you have an attorney?

16. What does your attorney do? What is s/he supposed to do? What kinds of things can you ask her/him to do?

17. Who is going to decide where you live and who your forever family will be?

Appendix C. Parent Qualitative Interview Protocol

FCP cases	non-FCP cases
Your child is/was represented in court by an attorney from the Foster Children's Project. Do you happen to remember who this person was?	n.a.
Did you have any contact with this attorney, or other people from the FCP, *outside* of court (proceedings)?	n.a.
What is your understanding of the role of the FCP project? What type of things (??) How is what FCP does different from what DCF does?	n.a.
Could you describe, based on your case plan and what your social worker told you, what were the changes you need/needed to make before your child could come home? Prompts: Are/were these required changes or tasks clear, understandable? Are/were these required changes or tasks reasonable and achievable?	
What type of help did you receive from your social worker or other professionals, including those from FCP (to help you make the required changes)? Prompts: Examples include services, honest advice, etc.	
How much say did you have in deciding what type of changes or tasks were needed before your child could come home? In other words, how much say did you have in defining your case plan?	

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