

REPRESENTATION FOR CHILDREN AND PARENTS IN DEPENDENCY PROCEEDINGS

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Introduction

At the Commission's first meeting, both foster youth and judges raised the issue of inadequate legal representation. While children's interests are always at stake in dependency proceedings, the children themselves may not always actively participate. There is no guarantee that a person representing a child will ever meet with the child, entertain the child's perspective, and/or give voice to the child's concerns in court. Testimony from children in long-term foster care suggests that "[foster children] rarely know their attorney, almost never are advised of their rights to attend and participate in their own hearings, and are generally unaware of their rights in out-of-home placement."¹

Similarly, parents are often deprived of their opportunity to effectively participate in and assist their representation in these proceedings. Parents involved with the child welfare court system have described feeling marginalized, criminalized, and left to their own devices to make sense of the complex legal process.²

This paper examines the topic of legal representation in child welfare court. It will look at some of the issues faced by those representing children and parents in these complicated systems and court cases.³ The paper will also describe some existing programs and models of practice for both child and parent attorneys.

CHILD REPRESENTATION

The level to which children are involved in their court cases and with their legal representation in court varies from state to state, from case to case, and often, from proceeding to proceeding. Some of the reasons underlying the inconsistency are: (1) there are no legally binding uniform standards for the representation of children; (2) legal scholars and attorneys for children have been and continue to be engaged in an ongoing philosophical and theoretical debate about the issue of child representation; and (3) attorneys for children generally do not receive sufficient training or compensation to provide adequate representation. Each of these issues is discussed below.

Child Advocate Roles

No Consensus on the Role of the Child Advocate

There is no established binding legal precedent or authority defining the role attorneys should play in representing children. Federal law provides minimal guidance which has

led to the development of differing statutes across states, creating much confusion within the field.

In 1967, the Supreme Court, in a landmark decision, guaranteed children the constitutional right to counsel in delinquency proceedings.⁴ Although this decision was made in the context of juvenile delinquency, it nevertheless opened the door for discussion regarding children's right to counsel in any proceedings of which they, or their interests, are a part, including dependency proceedings. The Court, however, has not made any subsequent rulings on the subject. Thus, a child's independent constitutional right to counsel continues to apply only in the context of juvenile delinquency.

In 1974, Congress addressed the issue of child representation in dependency proceedings by passing the Child Abuse and Neglect Prevention and Treatment Act (CAPTA). CAPTA conditioned States' eligibility for grants on meeting certain requirements,⁵ one of which mandated the appointment of a guardian ad litem (GAL) (literally, a guardian "for the suit"⁶) to any child who is the subject of abuse or neglect proceedings.⁷ In 1996, Congress provided a little more direction by amending the statute to specify that a GAL may "be an attorney or a court appointed special advocate (or both)" and that the purpose of such appointment shall be "(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."⁸ This year, Congress added that the GAL must receive training "appropriate to the role."⁹

With such minimal direction from federal statutes and caselaw, states have been left to interpret the law and construct models of practice on their own. All 50 states and the District of Columbia have developed their own statutory provisions on the subject but each state varies in its requirements.¹⁰

The differences in state statutes reflect an ongoing theoretical and philosophical debate about how, once appointed, an attorney should approach the representation of the child-client. There are two primary approaches to child representation; the "best interests" model and the traditional attorney-client model:

- Under the traditional attorney-client model, the attorney tries to represent the child as she or he would represent an adult client, allowing the child to determine the direction of the representation and advocating for the child-client's wishes.
- Under a best interests approach, the attorney must determine and advocate for the child's best interests. The child's wishes are often just one of the factors that the attorney takes into consideration when determining what is best for the child.¹¹

Nearly all states require appointment of a best interests representative in some capacity. A 1998 survey of court improvement specialists by the National Council of Juvenile and Family Court Judges (NCJFCJ) (hereinafter NCJFCJ Survey or NCJFCJ Project) found that:

- In 30 states, an “attorney-guardian-ad-litem” is typically appointed who serves a dual function of representing both the best interests and the wishes of the child;
- In the ten other states that appoint counsel for children, a guardian ad litem is appointed in addition to the attorney so that the attorneys perform the single role of representing the child (i.e., the child’s wishes);
- In the remaining ten states, an attorney is usually *not* appointed for the child but in nine of those states a non-attorney guardian ad litem is appointed.¹²

Notwithstanding the states’ reliance on the best interests approach, the great weight of legal academic and professional opinion falls on the side of requiring attorneys to follow the traditional attorney-client model when representing child-clients.¹³ Over the past two decades, legal scholars and professionals, in an attempt to provide some uniformity, have developed several sets of guidelines or standards. In February 1996, the American Bar Association (ABA) adopted its Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Proceedings.¹⁴ About the same time, Fordham University held its influential Conference on Ethical Issues in the Legal Representation of Children which resulted in a set of Recommendations similar to the ABA Standards.¹⁵ The National Association of Counsel for Children (NACC) has also adopted the ABA Standards, with some revisions.¹⁶ In 1999, the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF) issued Guidelines in an effort to clarify what is good practice in child welfare legal representation.¹⁷ Although the ABA/NACC standards, the Fordham Recommendations, and the ACF Guidelines represent an effort to provide guidance for those representing children in dependency court proceedings, they do not hold any legal authority.

The states’ use of different statutory language and mandated roles for child representation has led to much confusion and discussion within the field. The NCJFCJ Report stated that, of the court improvement specialists surveyed, over half reported that although attorneys for children are statutorily mandated, the duties and responsibilities of the attorneys are not specified by either rule or statute.¹⁸ Even those statutes or rules that do address the duties and responsibilities are not as clear as they should be.¹⁹ A few states have tried to remedy the lack of specificity by passing legislation outlining specific duties the GAL/attorney must perform. Michigan’s statute, for example, requires a lawyer-guardian ad litem to, among other things:

- Conduct an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others as necessary and reviewing relevant reports and other information.
- Meet with and observe the child before each proceeding or hearing to assess the child’s needs and wishes with regard to the representation and the issues in the case.
- Explain to the child, taking into account the child’s ability to understand the proceedings, the lawyer-guardian ad litem’s role.²⁰

Similarly, Pennsylvania's statute outlines nine responsibilities of the guardian ad litem, including:

- Meeting with the child, as soon as possible following appointment;
- Participating in all proceedings, including hearings before masters and administrative hearings and reviews to the degree necessary to adequately represent the child;
- Making 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;
- Explaining the proceedings to the child, to the extent appropriate given the child's age, mental condition and emotional condition.²¹

In short, federal statutes and Supreme Court rulings have given little to no specific guidance on this issue. Federal leadership in this area is made even more difficult because family law is traditionally, and as a matter of law, a subject of state law, not federal.²² Without federal guidance, the legal profession and the individual states have come up with their own standards and guidelines for the practice of child representation. While some state statutes provide clearer directions than others, the dissonance between state legislation, legal theory, and individual practice contributes to an overall sense of role confusion within the field.

Training for Child Advocates

Compounding, or perhaps because of, the lack of uniform standards, most states do not provide sufficient training to those representing children in dependency proceedings.²³ The NCJFCJ Survey found that confusion about attorneys' roles in dependency proceedings seemed to be closely associated with inadequate training.²⁴ In fact, the NCJFCJ determined from its research that "the number one barrier to effective representation is inadequate training.... Implicit in the identification of inadequate training as a major barrier to effective practice, is the recognition that roles, duties, and expectations of representatives are not clearly defined – this is especially true for children's representatives."²⁵

Compensation for Child Advocates

The NCJFCJ also discovered that "almost [three quarters] of the [court improvement] specialists believed that attorneys for children are under-compensated.... [S]pecialists recognize that under-compensation often results in less qualified and committed individuals and higher turnover."²⁶ HHS in the commentary to its ACF Guidelines names low compensation as one of the primary causes of inadequate legal representation in child welfare cases as well.²⁷ The professional literature on dependency representation has also cited inadequate payment as a barrier to effective representation.²⁸

Compensation rates and plans vary by jurisdiction. Some jurisdictions provide hourly compensation while others provide a flat fee per case. Private attorneys that contract with the court in Philadelphia, for example, receive "\$300 per appointment for the first year of the proceedings and \$150 for disposition subsequent to first year – without regard

to the issues involved, time actually required in a case, number of years a case is open or number of siblings to be represented under the appointment.”²⁹ Attorneys in New York City receive an hourly rate of \$40 for all work done in court (i.e., trying the case), \$25 for all work done out of court (e.g., investigating the case, preparing motions, and meeting with the client), and caps the total amount at \$800 for each case.³⁰

Models of Child Advocate Programs

Court Appointed Special Advocate (CASA) Programs

CASA was formed in 1977 by a Seattle judge who recognized that attorneys did not have the time and resources to provide the in-depth investigation that the court needed to make a fully informed decision in dependency proceedings. The program used a social worker to supervise volunteers as lay GALs. Based on the success of this first program, the NCJFCJ endorsed the use of volunteers and encouraged the replication of the program.³¹ The NCJFCJ also helped to establish the National CASA program which was incorporated in 1984 to promote the growth and development of CASA programs nationwide.³² By 2002, the CASA network had grown to approximately 930 local and 45 statewide programs.³³

CASA programs recruit, train, and supervise volunteer GALs. The volunteers conduct investigations and make recommendations to the court. Because CASA programs are designed and administered on a local level, there are varying approaches to the program operation and to the definition of the volunteer’s role.³⁴ The volunteer models can be sorted into three different approaches to representation:

- Attorney-centered approaches, in which an attorney acts as the representative with volunteer assistance;
- Volunteer-centered approaches, in which the volunteer is an independent participant in the case and;
- Attorney-volunteer team approaches, in which attorneys and volunteers act as co-equal partners, each with a unique and clearly understood role.³⁵

The legal and social science literature suggests that the most effective approaches or models use the combination of an attorney and a volunteer.³⁶ In this model, both the legal and non-legal representation needs of the child are met. An attorney-volunteer team approach allows the volunteer to conduct the “legwork” of the investigation while the attorney focuses on meeting the child’s legal needs such as filing or opposing motions in court.

Rhode Island utilizes the team method of child representation. Rhode Island’s CASA program has approximately 140 volunteers, 10 staff attorneys, and 5 social workers to represent children in abuse and neglect proceedings. The program is notified by the Child Welfare Office when a petition is filed in Family Court. Every child is assigned to an attorney and the more complicated cases also are assigned a volunteer to help with the investigation. The CASA volunteer and the attorney come up with a best interest

determination as a team. The Rhode Island CASA Program represents up to 3,000 children at any given time.³⁷

Institutional/Staff Attorney Programs

Some jurisdictions use an institutional body charged with representing children in child welfare proceedings. These institutions, such as legal services offices or other non-profit organizations, are often funded either through the state, county, or municipality in which they are located, or through the court system. Other jurisdictions contract with law firms to provide attorneys to children.

Like CASA programs, institutional programs differ in their approaches and models. Some employ an attorney-only model; others use a team model similar to the CASA approach outlined above. All institutional programs provide an attorney to represent the child in dependency court but the time of appointment will vary from program to program and often from case to case. These programs frequently have very high caseloads resulting in poor quality representation³⁸ and high turnover due to burnout.³⁹

One institutional program that works well is the Support Center for Child Advocates in Philadelphia. The program is a bit unusual in that it utilizes volunteer attorneys to represent children in dependency proceedings. The Support Center trains and supervises the volunteer attorneys and offers itself as an ongoing resource throughout the life of the case. The volunteer attorneys are paired with staff social workers. The team then works together to conduct home visits and attend administrative and social service meetings. Both members of the team attend all court hearings. The Support Center is primarily funded through charitable donations and works directly with the court to obtain its cases. The court assigns the case to the Support Center at the first petition and the Support Center team represents the child until the case is closed.⁴⁰

Panel Attorney/Contract Attorney Programs

Some jurisdictions use a pool of volunteer and/or paid attorneys to represent children in dependency court. Unlike the volunteer attorneys for the Support Center described above, however, these attorneys generally receive no supervision and little help in the way of resources. If the attorneys are compensated, they are paid an hourly fee or a flat rate per case.

Massachusetts uses a contract model. Private attorneys contract with the state court system to provide counsel to children in abuse and neglect cases. The court maintains a list of private attorneys who have completed a required training, mentoring, and certification process.⁴¹ Once certified, the attorneys must attend 8 hours of continuing legal education a year but receive no other supervision or ongoing training. The court outlines the duties of the court-appointed attorneys in written performance standards⁴² and compensates them at a rate of \$39.00 per hour for work done in or out of court once assigned to a case.⁴³

PARENT REPRESENTATION

Parents involved in the dependency courts, like their children, do not have a constitutional right to representation. In 1981, the Supreme Court held that due process does not always require the appointment of counsel to indigent parents in termination of parental rights proceedings.⁴⁴ Because the Court's holding was premised on the fact that parents do not face the loss of their physical liberty in termination proceedings, its reasoning can easily be extended to all proceedings leading up to the actual termination proceedings.⁴⁵

Many states, however, recognize the need for parents to have representation in dependency hearings, or at the very least, in termination of parental rights hearings. In an analysis of state statutes the NCJFCJ Project found that:

- 39 states provide that counsel be appointed for indigent parents;
- Considerably fewer statutes (6) include provisions that counsel be appointed for parents in *all* dependency proceedings;
- 3 states provide only for the appointment of counsel for parents in termination of parental rights (TPR) proceedings and;
- 3 states do not provide explicitly for the appointment of counsel for parents in statute.⁴⁶

As with the appointment of child representation, however, the practice of appointing attorneys for parents differed from the statutory mandates. Interviews with court specialists revealed that:

- 39 states generally appoint counsel for parents at some point during a child abuse and neglect case in their state.
- 11 states reported that counsel for parents is generally not appointed.⁴⁷

Thus, like representation of children, the duration, scope, and quality of representation appointed to parents varies from state to state, case to case, and sometimes from proceeding to proceeding.

Regardless of whether and at what point counsel is appointed, much of the time the representation is inadequate for various reasons. The most commonly stated reasons are: (1) parents' attorneys are not appointed in time to adequately prepare; (2) parents' attorneys are not given the time, resources, and compensation to adequately represent their clients; and (3) parents' attorneys often face a tension between zealously representing their clients and "core concepts of morality [that] dictate care and concern for the abused child."⁴⁸ These issues are discussed below.

Inadequate Preparation

Many jurisdictions do not appoint counsel for parents until the first court hearing. At this point, however, much has already taken place between the child welfare agency and the parent. Investigations of abuse and neglect reports are routinely done without the assistance of lawyers. Parents feel that they must cooperate or face losing their

children.⁴⁹ If the child welfare agency threatens to or actually does remove the child, parents must wait for the first hearing to challenge the removal or proposed removal and exercise the right to have counsel assigned.⁵⁰

Because attorneys are not appointed until the first hearing, they have no contact with their clients before this time. At the first hearing, therefore, attorneys often have to request that the court continue the case so that they can prepare. This practice leaves parents waiting without their children and children staying in foster care until the next hearing which, depending on the court's caseload, could take up to several months. The alternative is for the attorney and parent to have a quickly-whispered discussion at the first hearing, often in the courtroom, and carry on with the hearing then and there without any more preparation.⁵¹ One parent's poignant statement captures this experience well:

When I arrived at court that morning, I was told this is my lawyer. My lawyer sat down with me five minutes, asked me a couple of things, and told me to admit to my drug addiction. I didn't know anything about a fact-finding hearing. I wasn't told what my rights were. I wasn't told the procedure of court. I didn't have any idea what was happening, and I was very much afraid, because the most important thing in my life had just been lost.⁵²

Inadequate Compensation

The perception within the legal community is that the pay for parent's attorneys is at a level too low to allow for effective representation.⁵³ Of the court improvement specialists interviewed for the NCJFCJ Project, almost three-fourths believed that attorneys for parents were not adequately compensated.⁵⁴

Most attorneys for parents receive either a low hourly rate or a small flat fee per case. Because they are minimally compensated for their time, attorneys are discouraged from carrying out essential preparations, such as meeting, interviewing and counseling clients; conveying basic information about the court system and proceedings to their clients; spending time reviewing their client's case files; conducting necessary research; preparing witnesses to testify; filing motions; and otherwise preparing for their case.⁵⁵ In some jurisdictions, the low compensation discourages attorneys from representing parents at all. In New York City, for example, the low rate has led to an "exodus of attorneys from the assigned counsel panels."⁵⁶ The mass departure resulted in fewer lawyers to handle the increasing caseload and the inability of the courts to handle the increase in pending matters. The lack of attorneys left families disrupted and children in foster care for a longer amount of time than if the parents had been represented.⁵⁷

Scope of Advocacy

Attorneys for parents do not have the same philosophical and theoretical dilemma as those representing children. Because they represent adult clients, parents' attorneys must utilize the traditional attorney-client paradigm. Once attorneys have committed to representing a parent, however, they nevertheless face difficult judgments about the scope of their advocacy and the extent to which they are willing to pursue objectives that

may not be consistent with the governing standard of the best interests of the child.⁵⁸ “The extent of the resulting conflict...runs the gamut from an enthusiastic embrace of the attorney’s role as adversary to vigorous condemnation of that role and the system it reflects.”⁵⁹

Models of Parent Advocate Programs

Panel Attorney/Contract Attorney Programs

Many jurisdictions employ a contract or attorney pool model. These models suffer from the same problems as the similar models for children described above. Furthermore, because of the stigma attached to representing those accused of abusing or neglecting their children and the poor compensation, fewer and fewer attorneys are willing to take on these jobs.

New York City is an example of a jurisdiction that has historically used a panel of contract attorneys. Because of the low rate of compensation, however, the panel grew smaller over time. The attorneys that remained on the panel were not able to handle the increased caseload. According to Family Court officials in New York City in 2001, up to 50 indigent parents were sent home each week, their cases continued, because assigned private counsel could not be found to represent them.⁶⁰ Many of these parents were unable to talk to or even locate their children during the several-month wait for the next court date.⁶¹ The failure of this model has led to more and more jurisdictions, including New York City, calling for institutional providers as described below.

Institutional Programs

The exemplary institutional model provides attorneys to represent parents continuously from the point where the parents enter the dependency court system until either the child returns home or the parent’s rights to his or her child are terminated.⁶² Rather than contracting with the court on an individual basis with little to no oversight, attorneys are organized and supervised by the institutional provider.

An example of such a model is the Juvenile Court Project in Pittsburgh. The program started out as a contract model but then changed to an institutional model with funding from the Allegheny Bar Association. The Project takes parent-clients at any point during their dependency court process. It also uses a community outreach program to provide information and intake at places such as domestic violence shelters, child welfare offices, and jails. They are currently expanding their staff to provide more interdisciplinary support. They have brought a drug and alcohol specialist onto staff and would like to hire a mental health specialist.⁶³ The expansion of the program makes the Juvenile Court Project begin to look more like an interdisciplinary model, described below.

Interdisciplinary Programs

Perhaps the most comprehensive and holistic of the models, interdisciplinary models replicate the attorney/social worker model of child representation. The interdisciplinary model provides attorneys with resources for themselves as well as resources for the

parents to assist them on collateral matters that may affect their dependency court cases. As one child welfare expert explained:

In the absence of a team of lawyers working together with a team of other professionals, including social workers, mental health professionals, homemakers, and counselors, among others, the task of successfully representing parents in these cases is exceedingly difficult and frequently doomed to failure.⁶⁴

There are very few interdisciplinary models of parent representation. One program is in the beginning stages in New York City. The Brooklyn-based Center for Family Representation is starting a pilot project with a Community Advocacy Team. The team will consist of an attorney and a social worker and will begin work with the parent-client before a petition is actually filed in court. The child welfare agency and various community groups, such as community mental health centers, will refer the cases to the Advocacy Team if they feel the parent is at risk of having a removal petition filed in court. The team will then work with and represent the parent throughout the life of the case.

Beyond this pilot program, CFR currently also provides technical assistance and training on “model representation” to the New York City panel attorneys as well as training on the nuts and bolts of child welfare practice to attorneys and judges.⁶⁵

Conclusion

Children and parents involved in dependency proceedings must deal with a complex legal system. While most states provide for some form of representation, there is no consensus as to how attorneys should provide the representation. Problems are further compounded by inadequate training, resources, and compensation for attorneys. The cumulative effect of these shortcomings is that many children and parents in the child welfare system never receive adequate, timely, and consistent legal representation.

¹ Jennifer Walter, *Representation of Children: Averting Revictimization of Children: State Funding Needed for Independent Counsel Representing Children in Juvenile Court*, 1. J. Center Children & Cts. 45, 54 (1999) (citing Leonard P. Edwards et al., *Significant Developments in Juvenile Dependency*, 1989 California Appellate Courts Inst. 2 (April 1989)).

² See, e.g. Ann Moynihan, Mary Ann Forgey, & Debra Harris, *Symposium: Fordham Interdisciplinary Conference Achieving Justice: Parents and the Child Welfare System: Foreword*, 70 Fordham L. Rev. 287, 303 (2001) (citing a panel of parents who participated in the Conference and had previously been involved in the child welfare system).

³ The scope of this paper is limited to the legal representation of children and the parents or guardians from whom they are removed. It does not address the issue of legal representation for foster parents or other caregivers.

⁴ *In re Gault*, 387 U.S. 1 (1967).

⁵ 42 U.S.C. §§ 5101-5107 (Westlaw 2003 through Pub. L. No. 108-66).

⁶ Black's Law Dictionary (7th ed. 1999).

⁷ 42 U.S.C. § 5106(a)(2)(A)(ix) (Westlaw 2003 through Pub. L. No. 108-66)

⁸ CAPTA Amendments of 1996, Sec. 107, 107(b)(2)(A)(ix)(I)-(II), Pub. L. No. 104-235, 110 Stat. 3063, 3073-74 (1996) (codified as amended at 42 U.S.C.A. 5106a(b)(2)(A)(ix)(I)-(II) (Westlaw 2003 through Pub. L. No. 108-66)).

⁹ CAPTA Amendments of 2003, Sec. 114, 114(b)(1)(A)(vii)(I)-(II), Pub. L. No. 108-36, 117 Stat. 800, 810 (2003).

¹⁰ See National Council of Juvenile and Family Court Judges, *Child Abuse and Neglect Cases: Representation as a Critical Component of Effective Practice*, March 1998, available online at <<http://www.pppncjfcj.org/html/TAchldab-crit-comp.html>> [hereinafter NCJFCJ Survey].

¹¹ Michael D. Drews and Pamela J. Halprin, *Student Note: Determining the Effective Representation of a Child in Our Legal System: Do Current Standards Accomplish the Goal?*, 40 Fam. Ct. Rev. 383, 383 (2000) (citing Ann M. Haralambie, *In Whose Best Interest?*, 34-JUN JTALATRIAL 42, 43 (1998)).

¹² Donald N. Duquette, *Legal Representation for Children in Protection Proceedings: Two Distinct Lawyer Roles are Required*, 34 Fam. L. Q. 441, 442, fn.3 (2001) (citation omitted). Indiana is the only state that does not mandate the appointment of a GAL. CSR, Inc., U.S. Dep't of Health and Human Services, *Final Report on the Validation and Effectiveness Study of Legal Representation Through Guardian Ad Litem, Appendix A, National Study of Guardian ad Litem Representation*, at 106 (1997).

¹³ Duquette, *supra* note 12, at 442.

¹⁴ American Bar Association, *Standards of Practice for Lawyers Representing a Child in Abuse and Neglect Standards* (1996), available online at <<http://www.abanet.org/child/repstandwhole.pdf>> [hereinafter ABA Standards].

¹⁵ The Conference was held at the Fordham University School of Law from December 1-3, 1995. The Conference participants built on previous works and the then-proposed ABA standards to develop their own set of Recommendations. See Bruce A. Green and Bernardine Dohrn, *Foreword: Children and the Ethical Practice of Law*, 64 Fordham L. Rev. 1281, 1293 (1996). [The articles, responses, recommendations, and reports generated by the Conference are reprinted in 64 Fordham L. Rev. 1281-2075 (1996)].

¹⁶ See David Katner et al., *National Association of Counsel for Children, NACC Recommendations for Representation of Children in Abuse and Neglect Cases*, 2001, available online at <<http://www.naccchildlaw.org/training/standards/html>>.

¹⁷ *Adoption 2002: The Presidents' Initiative on Adoption and Foster Care Guidelines for Public Policy and State Legislation Governing Permanence for Children VII-1* (1999), available online at <<http://www.acf.dhhs.gov/programs/cb/special/02final.htm>> [hereinafter ACF Guidelines].

¹⁸ NCJFCJ Survey, *supra* note 10, at 58.

¹⁹ *Id.*

²⁰ See M.C.L. 712A.17d(1).

²¹ See Pa.C.S.A. 42 §6311.

²² See *Egelhoff v. Egelhoff ex rel. Breiner*, 121 U.S. 1322 (2001) (holding that three is a presumption against federal preemption of state law in areas of traditional state regulation such as family law); *Boggs v. Boggs*, 117 U.S. 1754 (1997) (holding that the subject of domestic relations of husband and wife, parent and child, belongs to laws of states and not to laws of United States).

²³ See Leonared P. Edwards, Inger J. Sagutun, *Symposium: Domestic Violence, Child Abuse, and the Law: Who Speaks for the Child?*, 2 U. Chi. L. Sch. Roundtable 67 (1995) (citing CSR, Inc., US Dept. of Health & Human Services, *National Study of Guardian ad Litem Representation* 41 (1990)); See generally

NCJFCJ Survey, *supra* note 10 (court improvement specialists identified inadequate training as a barrier to effective practice).

²⁴ NCJFCJ Survey, *supra* note 10, at 62.

²⁵ *Id.* at 89.

²⁶ *Id.* at 65.

²⁷ ACF Guidelines, *supra* note 17, at VII-4.

²⁸ See Randi Mandelbaum, *Article: Revisiting the Question of Whether Young Children in Child Protection Proceedings Should Be Represented by Lawyers*, 32 Loy. U. Chi. L.J. 1, 24-25 (2000) (citations omitted).

²⁹ Juvenile Law Center et al., *A Report by Philadelphia's Public Interest Bar and Advocacy Community on Dependent Court Resources and the Need for Judges*, 5 (2001), available online at <<http://www.jlc.org/Resources/pdfs/reportfamilycourt.pdf>>.

³⁰ N.Y. County Law § 722-b. The legislature has approved an increase, to begin in January 2004, to \$75 per hour for work done both in and out of court. 2003 N.Y. Laws A859.

³¹ Michael S. Piraino, *Representation of Children: Lay Representation of Abused and Neglected Children: Variations on Court Appointed Special Advocate Programs and Their Relationship to Quality Advocacy*, 1 J. Center Children & Cts. 63, 64 (1999).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 65.

³⁶ See *id.*; See also Bridget Kearns, *Comment: A Warm Heart but a Cool Head: Why a Dual Guardian ad Litem System Best Protects Families Involved in Abused and Neglected Proceedings*, Wis. L. Rev. 699 (2002).

³⁷ Phone interview with Jan Harold, Deputy Director, Rhode Island CASA Program, Providence, RI (June 19, 2003).

³⁸ See Daniella Levine, *Responses to the Conference: To Assert Children's Legal Rights or Promote Children's Needs: How to Attain Both Goals*, 64 Fordham L. Rev. 2023, 2031 (1996).

³⁹ See Sandra Anderson Garcia and Robert Batey, *Parents, Children, and the Courts: Article: The Roles of Counsel for the Parent in Child Dependency Proceedings*, 22 Ga. L. Rev. 1079, 1080 (1988).

⁴⁰ Phone interview with Frank Cervone, Executive Director, Support Center for Child Advocates, Philadelphia, PA (June 20, 2003).

⁴¹ Committee for Public Counsel Services, *Certification for Client Representation in Civil Cases* (1999), available online at <<http://www.state.ma.us/cpcs/certreqs/civilreq.htm#CAFLTrialPanel>>.

⁴² CSR, Inc., *supra* note 11, at 134.

⁴³ Committee for Public Counsel Services, *Compensation Rates* (1999), available online at <<http://www.state.ma.us/cpcs/certreqs/rates.htm>>.

⁴⁴ *Lassiter v. Department of Soc. Servs.*, 452 U.S. 18 (1981).

⁴⁵ Martin Guggenheim, *Article: The Right to Be Represented but Not Heard: Reflections on Legal Representation for Children*, 59 N.Y.U.L. Rev. 76, 132 (1984).

⁴⁶ NCJFCJ Survey, *supra* note 10, at 21.

⁴⁷ *Id.* at 23.

⁴⁸ Garcia and Batey, *supra* note 39, at 1093-94.

⁴⁹ Emily Buss, *Symposium: Meeting the basic Needs of Children: Defining Public and Private Responsibilities: Article: Parents' Rights and Parents Wronged*, 57 Ohio St. L.J. 431, 433 (1996).

⁵⁰ See Moynihan, Forgey, & Harris, *supra* note 2, at 303.

⁵¹ *Id.*; See also, Kathleen A. Bailie, *Note: The Other "Neglected" Parties in Child Protective Proceedings: Parents in Poverty and the Role of the Lawyers who Represent Them*, 66 Fordham L. Rev. 2285, 2303 (1998).

⁵² Moynihan, Forgey, & Harris, *supra* note 2, at 330.

⁵³ See *id.* at 306-308.; See also, Bailie, *supra* note 44, at 2308-2310.

⁵⁴ NCJFCJ Survey, *supra* note 10, at 40.

⁵⁵ See Moynihan, Forgey, & Harris, *supra* note 2, at 308.

⁵⁶ *Id.* at 307 (citation and quotation omitted).

⁵⁷ *Id.*

⁵⁸ Bruce A. Boyer, *Article: Ethical Issues in the Representation of Parents in Child Welfare Cases*, 64 Fordham L. Rev. 1621, 1636 (1996).

⁵⁹ Garcia and Batey, *supra* note 39, at 1093-94.

⁶⁰ Moynihan, Forgey, & Harris, *supra* note 2, at 307 (citation omitted).

⁶¹ Phone interview with Sue Jacobs, Executive Director, Center for Family Representation, New York, NY (June 25, 2003).

⁶² See Moynihan, Forgey, & Harris, *supra* note 2, at 314.

⁶³ Phone interview with Sharon Biasca, Managing Attorney, Juvenile Court Project, Pittsburgh, PA (June 12, 2003).

⁶⁴ Bailie, *supra* note 51, at 2328 (citing *Testimony of Martin Guggenheim Before the Assembly Standing Committee on Children and Families Family Preservation: Preventive Services, Adoption and Foster Care* (Dec. 1, 1993) (on file with the Fordham Law Review)).

⁶⁵ Phone interview with Sue Jacobs, Executive Director, Center for Family Representation, New York, NY (June 25, 2003).