CONTENTS

Acknowledgments ........................................................... xvii

Preface ................................................................. xix

Chapter One: General Overview of Child Protection Laws
in the United States ..................................................... 01
Martin Guggenheim
1.01 The Statutory Framework ........................................ 01
1.02 Common Problems in the Operation of Child Protection Laws ...... 02
1.03 The Impact of Congressional Legislation on Child
Protection Laws ................................................... 03
1.04 The Nature and Status of Parental Rights Under the Constitution ... 06
1.05 The Limited Role of Federal Judicial Oversight in
Child Welfare Matters ........................................... 14
1.06 The Role of Counsel Representing Parents ...................... 16

Chapter Two: Changing the Narrative in Child Welfare Cases ...... 19
Matthew Fraidin

Chapter Three: First Steps in Representing a Parent
Accused of Abuse or Neglect ........................................ 25
Matthew Fraidin
3.01 Building a Relationship with the Client ....................... 25
3.02 Gathering Information About the Case and Client ............ 26
3.03 The Client Interview ........................................... 27
  3.03(a) The First Meeting ....................................... 27
  3.03(b) Building Rapport ......................................... 28
  3.03(c) Explaining the Initial Hearing ......................... 29
  3.03(d) Eliciting Information About the Case ................. 29
3.04 Advising a Parent Who Is Under Investigation
but Is Not Yet the Subject of a Court Proceeding ............... 30
3.05 Advising a Parent Who Is Currently the Subject of a Court Proceeding Whether to Exercise the Privilege Against Self-Incrimination ........................ 32

Chapter Four: Challenging the Removal of Children ............... 33
Lauren Shapiro

4.01 Introduction ............................................. 33
4.02 Grounds for Emergency Removal of Children from Their Parents’ Care ........................................ 34
   4.02(a) Constitutional Issues Involving Emergency Removals ........ 34
   4.02(b) Right to Judicial Review and a Removal Hearing ........ 36
   4.02(c) Time Frames for Removal Hearings ..................... 37
4.03 Factors Courts Must Consider in Deciding Whether to Place Children in Foster Care or Return Them to Their Families ........................................ 38
   4.03(a) Whether the Children Face an Imminent Risk of a Certain Degree of Harm if They Remain in the Home ........... 39
   4.03(b) Whether the State Made Reasonable Efforts to Prevent Foster Care Placement .............................. 40
   4.03(c) Whether There Are Court Orders That Could Eliminate the Risk of Harm to Children Remaining at Home .......... 41
   4.03(d) Whether the Harm of Removing the Children from Their Homes Outweighs Any Possible Risk ............ 42
   4.03(e) Where the Child Will Be Placed ......................... 43
4.04 Strategic Considerations for Deciding Whether and When to Request a Hearing to Challenge Removal and Seek Return of the Children ........................................ 44
4.05 The Importance of Having a Theory for the Hearing ............. 46
4.06 Litigating the Hearing ...................................... 48
4.07 Conclusion .............................................. 49

Chapter Five: Special Considerations Representing Clients Involved with the Criminal Justice System ............. 51
Joanna Woolman

5.01 Introduction ............................................. 51
5.02 The Child Protection System and Incarcerated Parents ................... 53
5.03 Advising Parents Facing Concurrent Criminal Charges .............. 54
CONTENTS

5.04 Rights of Incarcerated Parents ................................................. 56
  5.04(a) Right to Participate ..................................................... 56
  5.04(b) Right to Visit .......................................................... 57
  5.04(c) Right to Services ....................................................... 58
5.05 Helping Incarcerated Parents Navigate Multiple Systems .............. 60
  5.05(a) Arrest Phase ............................................................. 60
  5.05(b) Sentencing Phase ....................................................... 60
  5.05(c) Incarceration Phase .................................................... 61
  5.05(d) The Dependency Court Proceeding ............................... 61
  5.05(e) Concurrent Planning Phase ....................................... 63
  5.05(f) The Permanency Phase—The Termination Trial ................ 63
5.06 Conclusion ........................................................................... 64

Chapter Six: Achieving the Client’s Objectives to Shorten Foster Care Stays and Reunify the Family: Advocating for Supportive Placements, Appropriate Services, Parenting and Visiting Time, and Leveraging Opportunities for Advocacy at Conferences and Meetings Outside the Court Process .......... 65

Center for Family Representation

6.01 Advancing the Client’s Goals Beyond Defending the Petition .......... 65
6.02 Using Administrative Regulations and Policies to Help the Client, Paying Careful Attention to All That Is Being Done by the Child Welfare Agency ........................................ 67
6.03 Exploring and Securing a Placement Option That Is Supportive of the Parent’s Relationship with the Children and Keeps the Children Well Connected to People and Services in Their Community of Origin .................................................. 70
6.04 Advocacy on Behalf of the Parent at Conferences and Other Agency Meetings That Take Place Outside of Court: Preparing the Parent .............................................................. 72
6.05 Participating in and Attending Agency Meetings with the Parent ... 74
6.06 Negotiating the Terms of Service Plans Including Services for the Child ........................................................................... 75
6.07 Advocating for Parenting Time and Visitation: Exploring Visit Hosts ............................................................................ 78
6.08 Motion Practice and Litigation Directed Toward Improving Placement Options, Services, and Parenting and Visiting Time .................. 81
### CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.08(a)</td>
<td>Type of Application</td>
<td>81</td>
</tr>
<tr>
<td>6.08(b)</td>
<td>Deciding to File</td>
<td>82</td>
</tr>
<tr>
<td>6.08(c)</td>
<td>Best Practices for Written Applications</td>
<td>83</td>
</tr>
<tr>
<td>6.08(d)</td>
<td>Litigating a Motion</td>
<td>84</td>
</tr>
<tr>
<td>6.08(e)</td>
<td>Other Benefits of Motion Practice</td>
<td>84</td>
</tr>
<tr>
<td>6.09</td>
<td>Working Toward Systemic Change in Practice: Building Relationships</td>
<td>85</td>
</tr>
<tr>
<td></td>
<td>with Social Services Department and Foster Care Staff</td>
<td></td>
</tr>
<tr>
<td>6.10</td>
<td>Conclusion</td>
<td>88</td>
</tr>
<tr>
<td>Appendix A</td>
<td>A Bridge Back Home: Visit Hosts</td>
<td>89</td>
</tr>
<tr>
<td></td>
<td>New York City Administration for Children’s Services Division</td>
<td></td>
</tr>
<tr>
<td>Appendix B</td>
<td>New York City Administration for</td>
<td>98</td>
</tr>
<tr>
<td></td>
<td>Children’s Services Best Practice Guidelines for Family Visiting</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Arrangements for Children in Foster Care</td>
<td></td>
</tr>
<tr>
<td>Appendix C</td>
<td>Protocol for Communication</td>
<td>114</td>
</tr>
<tr>
<td></td>
<td>Between New York City Administration of Children’s Services</td>
<td></td>
</tr>
<tr>
<td></td>
<td>and Provider Agency Caseworker and Attorneys Representing</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Children and Parents (2012)</td>
<td></td>
</tr>
<tr>
<td>Chapter Seven: Discovery and Pretrial Proceedings</td>
<td>119</td>
<td></td>
</tr>
<tr>
<td>Kenneth Krekorian</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.01</td>
<td>Pretrial Proceedings</td>
<td>119</td>
</tr>
<tr>
<td>7.02</td>
<td>Discovery: An Overview</td>
<td>119</td>
</tr>
<tr>
<td>7.03</td>
<td>Meeting with the Agency Attorney</td>
<td>120</td>
</tr>
<tr>
<td>7.04</td>
<td>Formal Discovery Efforts</td>
<td>120</td>
</tr>
<tr>
<td>7.05</td>
<td>What Is Discoverable</td>
<td>122</td>
</tr>
<tr>
<td>7.06</td>
<td>Ethical Duty to Conduct Discovery</td>
<td>124</td>
</tr>
<tr>
<td>7.07</td>
<td>Traditional Forms of Discovery</td>
<td>125</td>
</tr>
<tr>
<td></td>
<td>7.07(a) Depositions</td>
<td>125</td>
</tr>
<tr>
<td></td>
<td>7.07(b) Interrogatories</td>
<td>125</td>
</tr>
<tr>
<td></td>
<td>7.07(c) Requests for Admissions</td>
<td>126</td>
</tr>
<tr>
<td></td>
<td>7.07(d) Request for Production of Documents</td>
<td>126</td>
</tr>
<tr>
<td></td>
<td>7.07(e) Investigations</td>
<td>128</td>
</tr>
<tr>
<td></td>
<td>7.07(f) Discovery by the Petitioner</td>
<td>128</td>
</tr>
</tbody>
</table>
# CONTENTS

7.08 Pretrial Motions .............................................. 128
7.08(a) Demurrers or Motions to Dismiss for Failure to
State a Cause of Action ........................................ 128
7.08(b) Motions to Affect the Pleading or Motions for Summary
Judgment .......................................................... 130
7.08(c) Motions in Limine ........................................ 131
7.09 Conclusion ...................................................... 132

Chapter Eight: Negotiating for Services for the Family
in Court; Admissions to the Petition ............................... 133

Kara Finck

8.01 Identifying When Services Are Not Provided
or Needed by Using Out-of-Court Measures .................... 134
8.02 The Service Plan Review in a Child Welfare Case ............... 135
8.02(a) Creating the Service Plan: The Service Plan
Review Meeting and Its Role in the Case ........................ 136
8.02(b) Collaborating with Social Workers on Service Plans ...... 138
8.02(c) Establishing Trust with the Client Around Services ........ 139
8.02(d) Advising Clients on Keeping a Record of Their Services
and Attempts to Get Services in Place for Themselves or
Their Children .................................................. 140
8.03 Seeking Court Orders for Services ................................ 141
8.03(a) Determining If Counsel Needs a Court Order
 to Get the Services ........................................... 141
8.03(b) Obtaining the Immediate Provision of Services
 by Seeking a Court Order .................................... 142
8.04 Holding the Agency Accountable for Implementing
the Service Plan ................................................... 144
8.04(a) Enforcing Court Orders Through Contempt Proceedings 145
8.05 Obtaining Services for the Family Without Admitting to the Petition .. 146
8.06 Obtaining Services for the Family by Admitting to the Petition .... 147
8.06(a) Determining Whether to Admit to the Entire Petition or a
Particular Charge ................................................. 147
8.06(b) No-Contest Pleas in Family Court .......................... 148
8.07 Procedure for Entering an Admission .......................... 149
8.07(a) Requirements for Admission ................................ 149
8.07(b) Counseling Clients on the Consequences of Entering an
Admission ........................................................ 150
CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.07(c)</td>
<td>Determining Which Section of the Petition to Admit</td>
<td>151</td>
</tr>
<tr>
<td>8.07(d)</td>
<td>Counseling the Client on the Admission and Subsequent Disposition</td>
<td>152</td>
</tr>
<tr>
<td>8.08</td>
<td>Conclusion</td>
<td>152</td>
</tr>
</tbody>
</table>

Chapter Nine: The Adjudicatory Hearing ................................................................... 153

*Darice Good-Dworak and Diana Rugh Johnson*

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.01</td>
<td>Introduction and Overview: The Nature of the Adjudicatory Hearing</td>
<td>153</td>
</tr>
<tr>
<td>9.02</td>
<td>Influencing and Changing the Culture of a Non-Adversarial System</td>
<td>153</td>
</tr>
<tr>
<td>9.03</td>
<td>Developing the Theory of the Case</td>
<td>154</td>
</tr>
<tr>
<td>9.04</td>
<td>Pretrial Conferences</td>
<td>156</td>
</tr>
<tr>
<td>9.05</td>
<td>Witness Preparation and Examination</td>
<td>156</td>
</tr>
<tr>
<td>9.06</td>
<td>Preparing the Exhibit List</td>
<td>157</td>
</tr>
<tr>
<td>9.07</td>
<td>Critical Features of the Adjudicatory Hearing</td>
<td>158</td>
</tr>
<tr>
<td>9.07(a)</td>
<td>Burden of Proof</td>
<td>158</td>
</tr>
<tr>
<td>9.07(b)</td>
<td>Bench or Jury Trial</td>
<td>158</td>
</tr>
<tr>
<td>9.08</td>
<td>Special Note About Corresponding Criminal Charges</td>
<td>159</td>
</tr>
<tr>
<td>9.09</td>
<td>Once the Trial Begins</td>
<td>159</td>
</tr>
<tr>
<td>9.09(a)</td>
<td>Courtroom Behavior</td>
<td>159</td>
</tr>
<tr>
<td>9.09(b)</td>
<td>Opening Statements</td>
<td>160</td>
</tr>
<tr>
<td>9.09(c)</td>
<td>Presenting Document Evidence</td>
<td>161</td>
</tr>
<tr>
<td>9.09(d)</td>
<td>Direct Examination</td>
<td>161</td>
</tr>
<tr>
<td>9.09(e)</td>
<td>Cross-Examination</td>
<td>162</td>
</tr>
<tr>
<td>9.09(f)</td>
<td>Expert Witnesses</td>
<td>162</td>
</tr>
<tr>
<td>9.09(g)</td>
<td>Closing Argument</td>
<td>167</td>
</tr>
<tr>
<td>9.10</td>
<td>Medical Child Abuse</td>
<td>167</td>
</tr>
<tr>
<td>9.10(a)</td>
<td>Failure to Ensure That Children Are Properly Treated for Medical Conditions</td>
<td>167</td>
</tr>
<tr>
<td>9.10(b)</td>
<td>Factitious Disorder by Proxy (or Munchausen Syndrome by Proxy)</td>
<td>170</td>
</tr>
<tr>
<td>9.11</td>
<td>Defenses to Physical Injury to Child</td>
<td>175</td>
</tr>
<tr>
<td>9.11(a)</td>
<td>Physical Abuse</td>
<td>175</td>
</tr>
<tr>
<td>9.11(b)</td>
<td>Corporal Punishment</td>
<td>175</td>
</tr>
<tr>
<td>9.12</td>
<td>Injuries That Can Be Accidental or Intentional</td>
<td>177</td>
</tr>
<tr>
<td>9.12(a)</td>
<td>Burns</td>
<td>177</td>
</tr>
<tr>
<td>9.12(b)</td>
<td>Bruises</td>
<td>178</td>
</tr>
<tr>
<td>9.12(c)</td>
<td>Fractures</td>
<td>179</td>
</tr>
<tr>
<td>9.12(d)</td>
<td>Head Trauma</td>
<td>181</td>
</tr>
</tbody>
</table>
9.13 The Charge of Exposing a Child to Domestic Violence .............. 185
9.14 Defenses to Substance Abuse ........................................ 186
9.15 Defenses to Neglect Predicated upon the Mental Illness of Parent .. 189
9.16 Defenses to Allegations of Sexual Abuse .......................... 190
9.17 Requesting Findings of Fact, Conclusions of Law, and Disposition in the Adjudication Order ......................................... 202
9.18 Representing Non-Adjudicated Parents .............................. 204
   9.18(a) Constitutional Framework Governing the Rights of Non-Offending Parents ........................................ 204
   9.18(b) Statutory Framework Involving the Rights of Non-Offending Parents ........................................ 205
   9.18(c) Strategies for Services: Visitation and Custody ............... 206

Chapter Ten: Representing Parents at Disposition and Permanency Hearings ........................................ 209
Richard Cozzola and Lee Shevell
10.01 Introduction ....................................................... 209
   10.01(a) Theory of the Case ......................................... 210
   10.01(b) Outline for the Chapter .................................... 210
10.02 The Legal Elements and Issues at Disposition and Permanency Planning Hearings ........................................ 211
   10.02(a) Disposition Hearings ....................................... 211
   10.02(b) Permanency Hearings ....................................... 212
10.03 Communicating with the Client about Disposition and Permanency Hearings ........................................ 213
   10.03(a) Understanding the Client’s Point of View .................. 213
   10.03(b) Talk with the Client Early and Often Enough to Make a Difference ........................................ 213
   10.03(c) Ask What the Client Wants and Listen to What the Client Says ........................................ 215
   10.03(d) Explain in Simple Terms How What the Client Does Will Affect the Next Court Date .................. 216
   10.03(e) Work with the Client to Come Up with a Plan for Achieving the Client’s Goals ............................. 216
   10.03(f) Review a Genogram of the Client. Find Out if There Is Someone on the Client’s Genogram to Talk to Now or Later .................. 216
   10.03(g) Set Expectations for Communication ....................... 217
   10.03(h) Be a Reality Check ........................................ 217
   10.03(i) Follow up as Agreed ....................................... 217
10.04 Working with Caseworkers, Service Providers, and Third Parties . . . . 218
  10.04(a) Know the Law ......................................... 218
  10.04(b) Develop a Working Relationship with Caseworkers
           and Service Providers ................................ 218
10.05 Advocacy at Family Team Meetings ........................................ 223
  10.05(a) Plan for the Meeting with the Parent .......................... 223
  10.05(b) Conducting the Family Team Meeting .......................... 224
  10.05(c) Closing the Meeting ......................................... 227
10.06 Preparation for Disposition and Permanency Hearings ................. 227
  10.06(a) Considering Reasonable Efforts by the Agency and
           Utilizing Motions Concerning Reasonable Efforts .... 227
  10.06(b) Preparing the Client for the Initial Disposition Hearing .... 228
  10.06(c) Theory of the Case ......................................... 229
  10.06(d) Securing the Necessary Documents .......................... 232
  10.06(e) Consider Who Will Make the Best Witnesses .................. 232
10.07 Conducting the Court Hearing ........................................... 233
  10.07(a) Substantive Issues to Consider ............................... 234
  10.07(b) Role of Child Protective Services and
           Reasonable Efforts ....................................... 235
10.08 After the Hearing .................................................. 237

Chapter Eleven: The Indian Child Welfare Act ............................. 239

  David Meyers

11.01 Introduction ...................................................... 239
11.02 When Does ICWA Apply? ......................................... 240
11.03 Requirement to Provide Notice to the Tribe ........................ 241
11.04 Tribe’s Right to Intervene and to Transfer Jurisdiction ......... 242
11.05 Protections Involving the Child’s Removal from the Home ....... 243
  11.05(a) What is a Foster Care Placement? .......................... 244
  11.05(b) What Type of Evidence Can Meet the “Clear and
           Convincing” Threshold? .................................... 244
  11.05(c) What Is a Qualified Expert Witness? ........................ 244
  11.05(d) What Are “Active Efforts”? ................................ 245
11.06 Placement Preferences .............................................. 246
11.07 Termination of Parental Rights .................................... 247
11.08 Remedies ............................................................ 248
11.09 Adoptive Couple v. Baby Girl and Its Impact on
      Child Welfare Proceedings ...................................... 248
11.10 Conclusion .......................................................... 251
Chapter Twelve: Representing Parents with Disabilities  ............... 253
Joshua B. Kay

12.01 Introduction: Scope and Nature of the Problem ................. 253
12.01(a) Prevalence of Disability Among Parents and Frequency of Child Welfare Involvement .......... 253
12.01(b) The Role of Poverty in the Involvement of Parents with Disabilities in the Child Welfare System .......... 254
12.01(c) Common Biases and Assumptions about Parents with Disabilities .......... 255

12.02 The Need for Appropriate Family Services ...................... 256

12.03 Applicability and Operation of the ADA in Child Welfare Cases ...... 258
12.03(a) Raising an ADA Claim: Timing, Reasonable Efforts, and Reasonable Accommodations .......... 258
12.03(b) Raising an ADA Claim: Proving Disability .................. 260
12.03(c) Raising an ADA Claim: “Qualified Individual” and “Public Entity” ............. 261
12.03(d) Raising an ADA Claim: The Need for Specificity .......... 262
12.03(e) Raising an ADA Claim: Summary .......... 263

12.04 Key Elements of Advocacy: Client Counseling, Strategies, and Building Expertise .............. 264

12.05 The Problem of Expert Testimony ................................ 266

12.06 Guardians ad Litem for Parents .......... 267

Chapter Thirteen: Representing Out-of-State and Non-Citizen Parents .......... 269
Annick I. Lenoir-Peek

13.01 Introduction ............................................. 269

13.02 Structure of The Interstate Compact on the Placement of Children (ICPC) .......... 270
13.02(a) Regulations .......... 270

13.03 The Applicability of the ICPC to Child Welfare Proceedings .......... 270

13.04 The Home Study Process—Advocacy Suggestions .......... 272
13.04(a) Can It Count as an “Expedited Placement”? .......... 273
13.04(b) Submit the Home Study Paperwork .......... 274
13.04(c) Contact Receiving State Administrators .......... 274
13.04(d) Contact the Receiving State’s Home Study Caseworker .......... 274
13.04(e) Address Delays .......... 275
13.04(f) Advocate for Continued Contact Between the Placement and the Child .......... 275
CONTENTS

13.05 Challenging Home Study Denials .............................................. 275
  13.05(a) Address the Issues Underlying the Denial ....................... 276
  13.05(b) Explore Administrative Remedies ................................. 276
  13.05(c) Request a Placement Hearing ....................................... 276
  13.05(d) Help the Caregiver File for Custody or Guardianship ........ 277
13.06 Final Thoughts About Interstate Placements ............................ 277
13.07 Representing Non-American Parents in Child Welfare-Related Proceedings ......................................................... 278
  13.08 When the Parent is Living in the United States .................... 278
    13.08(a) Establishing the Parent’s Immigration Status ............... 278
    13.08(b) Determining Rights and Entitlements of Parents ............ 279
    13.08(c) Placement with Undocumented Parents 
or Family Members .................................................. 280
    13.08(d) Language, Cultural and Legal Barriers to Overcome in Helping the Parent ...................................... 280
    13.08(e) Working with ICE Holds ...................................... 281
    13.08(f) Legal Advocacy for Non-Citizen Parents ..................... 282
13.09 Working with Parents and Relatives Living Outside of the United States ......................................................... 283
    13.09(a) Service on Parents Residing in Another Country .......... 283
    13.09(b) Establishing Contact with the Parent ......................... 285
    13.09(c) Assistance from the Consular Office .......................... 285
    13.09(d) Parent Participation .......................................... 286
    13.09(e) Applicable International Treaties .............................. 286
13.10 Conclusion ............................................................................ 287

Appendix to Chapter Thirteen: Interstate Compact on the Placement of Children ......................................................... 288

Chapter Fourteen: Termination of Parental Rights .......................... 293
  Sarah Katz
    14.01 Introduction: The Relationship between Neglect and Termination Cases .............................................. 293
    14.02 Whether and When to File a Termination Petition ................ 294
    14.03 The Client Interview .................................................... 296
    14.04 Pretrial Preparation ..................................................... 297
      14.04(a) Discovery .......................................................... 297
      14.04(b) Investigation ....................................................... 298
CONTENTS

14.05 Pretrial Motions .................................................. 300
  14.05(a) Filing a Written Answer to the Petition ................ 300
  14.05(b) Motion to Dismiss .......................................... 300
  14.05(c) Motion in Limine ........................................... 303

14.06 Settling the Case on Terms Favorable to the Parent ........... 303
  14.06(a) Guardianship ................................................ 303
  14.06(b) Post-Adoption Contact (Open Adoption) .................. 304
  14.06(c) Custody to the Other Parent .............................. 305
  14.06(d) Reunification .............................................. 305
  14.06(e) Voluntary Relinquishment .................................. 305

14.07 The Termination of Parental Rights Hearing .................... 306
  14.07(a) The Agency’s Burden of Proof ......................... 307
  14.07(b) Grounds for Termination .................................. 308
  14.07(c) The Impact of Termination on the Child ............... 311
  14.07(d) Admissibility of Records at the Hearing ............... 314
  14.07(e) Cross-Examining the Agency’s Witnesses ............... 316
  14.07(f) The Defense Case .......................................... 318
  14.07(g) Termination Will Cause More Harm Than Good for the Child ........................................................................................................ 322

14.08 The Dispositional Hearing ........................................ 322
  14.08(a) Asserting the Right to a Separate Dispositional Hearing ... 322
  14.08(b) Preparing for and Conducting the Hearing ............. 323

14.09 Special Issues for Termination of Parental Rights Hearings ... 324
  14.09(a) Parents with Physical or Mental Disabilities .......... 324
  14.09(b) Parents Who Are Incarcerated ............................ 324

14.10 Appeals .............................................................. 326

Chapter Fifteen: Representing Parents on Appeal .................... 327

Andrew Cohen

15.01 Introduction ...................................................... 327

15.02 Client Relations .................................................. 328
  15.02(a) Locating the Client ......................................... 328
  15.02(b) Communicating with the Appellate Client ............ 329

15.03 Preparing for the Appeal ........................................ 331
  15.03(a) File a Notice of Appearance in the Trial Court ...... 331
  15.03(b) Check the Notice of Appeal ............................. 331
  15.03(c) Check the Status of the File ........................... 332
  15.03(d) Contact the Trial Court Clerk Responsible for Appeals . 332
CONTENTS

15.03(e) Order and Review the Transcripts .............................. 333
15.03(f) Get Information from Trial Counsel ............................. 334
15.04 Developing the Theory of the Case ................................ 336
  15.04(a) Theory of the Case ..................................... 336
  15.04(b) Issue Analysis ........................................... 337
  15.04(c) Identifying Trial Errors—Methods .......................... 337
  15.04(d) Identifying Trial Errors—Interlocutory or Intermediate Appeals ............................................. 339
  15.04(e) Identifying Trial Errors—Common Errors in Final Judgments ............................................ 340
  15.04(f) Identifying Trial Errors—Due Process ........................ 346
  15.04(g) Harmless Error .............................................. 348
  15.04(h) Showing Prejudice ......................................... 350
  15.04(i) Structural Error ............................................. 352
  15.04(j) Issue Preservation by Trial Counsel ............................ 354
  15.04(k) Issue Preservation by Appellate Counsel—Post-Trial Motions .................................................. 355
  15.04(l) Raising Issues That Should Have Been Raised by Trial Counsel but Were Not .......................... 360
15.05 Writing a Persuasive Brief ......................................... 361
  15.05(a) Formal Requirements ....................................... 361
  15.05(b) Parts of the Brief .......................................... 364
  15.05(c) The Reply Brief ............................................. 380
15.06 Oral Argument ..................................................... 380
  15.06(a) Introduction ................................................ 380
  15.06(b) Preparation .................................................. 381
  15.06(c) The Argument ................................................. 384
15.07 After the Decision ................................................... 388

Chapter Sixteen: The Impact of Abuse and Neglect Findings
Beyond the Juvenile Courthouse: Understanding the Child Abuse Register System and Ways to Challenge Administrative Child Abuse Register Determinations ........................... 389

  Diane L. Redleaf

16.01 Introduction .......................................................... 389
16.02 The Origins and Operation of the Child Abuse Hotline and Register System ............................................. 392
## CONTENTS

16.03 The Impact of Child Abuse Registers: Background Checks and Disclosure and Use of Registered Findings, Considerations Regarding Employment, Education, Foster Parents, and Adoption .... 393

16.04 Challenging Indicated Findings and Clearing Records in State Central Registers .......................... 395

16.04(a) Timing of Filing Challenge ........................................ 395

16.04(b) Discovery ................................................................. 395

16.04(c) Admissibility of Evidence at the Administrative Hearing ....... 395

16.04(d) Standards of Evidence and Burden of Proof ................... 396

16.04(e) Expedited v. Non-Expedited Decision .............................. 397

16.04(f) Impartiality of Hearing Officer ........................................ 397

16.04(g) Challenges Brought Beyond the Statutory Time Frame .......... 397

16.05 Challenges During Pending Court Proceedings ...................... 397

16.06 Constitutional Challenges to Registries ............................... 499

16.07 Conclusion ................................................................. 401

### Chapter Seventeen: Reforming the System

**Joanne I. Moore**

17.01 The Importance of Systemic Reform Work ............................... 403

17.02 Work with Other Parents’ Attorneys if Possible ...................... 404

17.03 Be Knowledgeable, Do Homework, and Use Data .................... 405

17.04 Pursue Incremental Changes .............................................. 406

17.05 The Importance of Relationships, Reputation, and Tenacity ........ 406

17.06 Work with Parents’ Groups ............................................... 407

17.07 Assimilating a New Message into the System .......................... 409

17.08 Working with the Media .................................................... 412

17.09 Child Welfare and Court Systems Change Committees:

   Working with Judges and Other Stakeholders to Initiate Systemic Change .......................... 413

17.10 Improving the Child Welfare System Through Case Law: Appeals and Litigation .............. 417

17.11 Establishing New Law Through Court Rules and the Legislative Process ................... 419

17.12 Creation of a New Parents’ Representation System .................. 422

17.13 Conclusion ................................................................. 426

### Bios of Contributing Authors

................................................................. 427

### Index

................................................................. 435