

Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases

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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 1: 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.