Program Spotlight:

Protecting Our Future: How One Law Firm and Non-Profit are Partnering To Benefit Children by Carolyn E. Frazier and Alice A. Kelly

The area of juvenile law offers valuable opportunities for a wide variety of pro bono activities. The innovative partnering model developed by DLA Piper Rudnick Gray Cary US LLP’s (“DLA Piper”) Chicago office and Northwestern University School of Law’s Bluhm Legal Clinic (“Bluhm Clinic”) highlights how one law firm and one non-profit organization are working together to provide high-quality representation to indigent children and to address pressing public policy questions affecting children. By examining the DLA Piper/Bluhm Clinic model, the authors hope to leave the reader—whether in a law firm, a non-profit organization, or elsewhere—with an idea of how to design and create similar partnerships directed towards increasing the pro bono representation of children.

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Special Immigrant Juvenile Status for Children in Legal Guardianships by Zabrina Aleguire & Gregory Chen

Nationwide, scores of undocumented children who have suffered abuse, neglect, or abandonment are eligible for immigration benefits but are being overlooked by the systems that serve them. In 1990, Congress enacted a program to help undocumented children who have been abused, neglected or abandoned to petition for lawful permanent resident status provided they are under state court protection.¹ This benefit, Special Immigrant Juvenile Status (SIJS), has helped thousands of children obtain their permanent residency or “Greencard.” A Greencard enables someone to live and work legally and permanently in the U.S., to travel abroad and return to the U.S., and to become a U.S. citizen. An undocumented child who misses the opportunity to obtain a Greencard may never be able to legalize their immigration status and participate in these aspects of American civic life.

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From the Chairs: Does it Take a Natural Disaster?

After Katrina, Rita and Wilma, it seemed like the email listserves and bar association announcements were flooded both with people looking for the opportunity to serve victims and with stories about great accomplishments for Hurricane victim families that were made by lawyers and other volunteers. Cases on behalf of children were no exception to this waive of interest in volunteerism. There were efforts made on behalf of foster children who could not connect to their families in the chaos following Katrina, as well as with delinquent youth who had been left in facilities that were devastated by the storm. As a nation, many of us were criticizing our elected leadership but praising our fellow citizens for their outreach to those most immediately in need. As the waters have subsided, however, the volunteer effort seems to be subsiding with it, settling back into an acceptance that the systems will do what they can and we will deal with the failings of the system as time permits. Because children’s lawyers and pro bono volunteers have seen how bad the treatment of these children can be, we know that it is not time to relieve the pressure and take away the magnifying glass through which Americans have been able to view its poorest citizens, at least in this one corner of the country.

Now, a few months after the most immediate needs have subsided and life is getting back to normal for those of us who do not live in affected states, the children’s law community is left with a lagging concern: Why can’t we meet the emergency needs of children all the time? Does it take a natural disaster to “uncover” the fact that many children of the United States are still at risk and in great need of the considerable resources of our private bar and public resources? How can we bring the needs of children to the forefront of the American consciousness all 365 days a year instead of just when the names and faces of affected children are scrolling through CNN?

A few months ago I had a reminder about how important it is to keep these issues on the radar screen of decision-makers by a 15-year-old client of mine who was concerned that no-one was paying attention to how long he had been languishing in his residential placement center. After I explained all the legal steps I was taking to get a reconsideration of his sentence, I asked him what else I could do. He said, “You can get in his face. The judge – you can get all up in his face like the prosecutors do.”

As a community of children’s advocates, it is incumbent upon us to be “in the face” of decision makers and the public about children’s issues or they will get overlooked and ignored until the next disaster. Sometimes we are working so hard just to fight our fights, we can’t possibly find time for the added responsibility of raising awareness of this important work while we do it. If this hurricane season taught us anything, it should be that people care about the plight of those they might never consider when it is put squarely be-

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fore them. The Children’s Rights Litigation Committee strives to connect the struggles facing children with the private bar resources that can help address them. If you want to know of a way that you can become a part of this effort, contact our committee director, Cathy Krebs, at the (202) 547 3060 or catherinekrebs@prodigy.net. We welcome your involvement.

Angela Vigil is the North American Director of Pro Bono and Public Service for Baker & McKenzie LLP. Her full-time pro bono practice includes representation of children in juvenile justice, appeals, family law, education law and various civil matters.

Ann Barker is Project Director for Youth OPEN, a project that seeks to ensure permanency for east Tennessee teenagers who are leaving foster care.

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born. Central to the establishment of this partnership was the firm’s decision to hire a full-time fellow who would split her time between the Bluhm Clinic and DLA Piper, and who would be devoted to working with DLA Piper attorneys on the Project, and coordinating their efforts with Bluhm Clinic personnel.

The Project consists of two prongs—a direct representation prong and a policy initiative. To get the direct representation aspect of the Project successfully off the ground, DLA Piper and the Bluhm Clinic sought guidance and input from the various stakeholders at the Cook County Juvenile Court, including representatives from the Public Defender and State’s Attorney’s offices, as well as the Presiding Judges of the Court. In order to choose a focus for the policy aspect of the Project, the DLA Piper fellow and the firm’s initial project manager polled juvenile justice experts from throughout the state on what issues they felt needed particular attention in Cook County.

**Prong One: Direct Representation of Children in Juvenile Court**

To date, DLA Piper has represented more than 40 juvenile clients in over 50 cases. The firm has represented children in all stages of juvenile delinquency proceedings, from screening to expungement, on charges ranging from simple battery to first-degree murder. Attorneys representing children through the Project have had concrete opportunities to sharpen their research, investigation, interviewing and courtroom skills. These cases have also allowed DLA Piper attorneys to join and contribute to the national dialogue around cutting-edge legal issues in the juvenile justice arena such as DNA sampling of minors, mandatory sex offender registration for juveniles, and the applicability of juvenile brain research to the question of a young person’s criminal culpability.

A key component of the collaboration between DLA Piper and the Bluhm Clinic is training. Since the program began in July 2004, the DLA Piper fellow has trained over 60 attorneys on how to represent children in juvenile court. As more attorneys have taken cases and as particular issues and questions have arisen during the course of representation, the fellow and the firm’s direct representation project manager have started designing and delivering advanced trainings on different legal topics. The firm also hosts speakers on different aspects of representation, such as how to investigate a juvenile case and how to advocate for alternatives to detention. In some instances, in order to teach firm attorneys how to represent children in more complex cases, Bluhm Clinic attorneys have co-counseled with firm attorneys. The co-counseling model has proved a valuable learning experience for firm attorneys and law students alike. It has also helped the firm attain its goal of developing a cadre of attorneys with expertise in an area not usually associated with large commercial law firms.

Another key component of the DLA Piper/Bluhm Clinic collaboration is the firm’s adoption of the Bluhm Clinic’s holistic model of representing children. Recognizing that many children who become involved with the juvenile court are also struggling with social and/or mental health issues at home, at school, and in their commu-
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...continities, the Project assigns a Master’s-level social work student—supervised by the Bluhm Clinic’s social worker—to many of its cases. Having a social work student on the team strengthens DLA Piper’s ability to advocate for its clients both in and outside of the courtroom, as it provides clients access to help with everything from attending (or re-entering) school to getting counseling to obtaining drug treatment.

As the Project enters its second year, the DLA Piper fellow and the firm’s direct representation project manager are working together to develop new opportunities for representation that will draw more attorneys into the Project and will allow attorneys to develop new and different legal skills. Possibilities include participation in Cook County’s Juvenile Mediation Program and representation of juveniles at the appellate level. The firm also intends to expand its involvement in the expungement arena and hopes to offer trainings and information on the expungement process to outside attorneys and groups. To this end, the firm has already created a manual to help attorneys understand how the expungement process works under Illinois’ new—and often misunderstood—expungement statute.

**Prong Two: Policy Initiative**

As a complement to the direct representation prong of the Project, DLA Piper has launched a public policy initiative looking at a specific aspect of how two large institutions—the Chicago Public Schools (“CPS”) system and the Cook County Juvenile Court—interact to serve children. In this policy study, currently entitled “From the Juvenile Justice System Back To The Classroom,” attorneys are researching how CPS students who are involved with the Juvenile Court can be transitioned back to school in the most effective and expeditious manner. This policy study seeks to provide answers to the following questions: 1) What are the legal and/or regulatory requirements in Chicago for a student to return to the classroom after being involved with the Juvenile Court? 2) What procedures are currently followed in this regard? 3) Are there better ways to accomplish this important objective? The policy team is utilizing a collaborative, solutions-based approach in its efforts to answer these questions and develop constructive recommendations to enhance the process and improve the child’s chance for success on his or her return to school.

To date, the lawyers in the policy initiative have examined the current transition process to assess the resources currently available to students, as well as their parents and guardians, to assist the children in their return to school after their release from detention. Apart from their research of the underlying laws, regulations, and policies, these lawyers are now in the process of conducting interviews of teachers, school administrators, probation officers, and representatives from all the other constituencies in the process, including judges, prosecutors, public defenders and community organizations.

The work in the policy initiative has been greatly informed by the law firm’s experience in the direct representation prong of the Project. Additionally, DLA Piper’s partnership with the Bluhm Clinic, as well as its association with the MacArthur Foundation and the Loyola University School of Law Civitas ChildLaw Center, have significantly enhanced the firm’s efforts in this important endeavor. Already DLA Piper lawyers have identified legislative changes in the expungement area that the firm intends to propose as part of this initiative. The work of the lawyers participating in the policy initiative will culminate in a report of the firm’s findings and recommendations that will be made available to all the constituencies in the juvenile justice community.

**Benefits and Challenges of the DLA Piper/Bluhm Clinic Collaboration**

The DLA Piper/Bluhm Clinic partnership offers several significant benefits to both the firm and the clinic. Importantly, the support the Bluhm Clinic provides to firm attorneys working on juvenile cases encourages *pro bono* work by attorneys who might otherwise feel uncomfortable practicing outside their area of expertise. In short, attorneys in the Project do not feel that they are “operating without a net.” This has increased the number of attorneys willing to take on *pro bono* work, which in turn has strengthened the *pro bono* culture at the firm and has helped the firm meet its various *pro bono* commitments. At the same time, the firm’s access to Bluhm Clinic attorneys with expertise in various areas of juvenile law has also allowed attorneys with experience representing children to take on more challenging, higher-visibility cases.

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From the Bluhm Clinic’s perspective, the partnership with DLA Piper enhances the profile of the daily work being done by the clinic. As well, the firm’s involvement in the juvenile justice arena helps educate a broader audience—outside of the “usual suspects”—about important legal issues affecting children. This exposure furthers the Bluhm Clinic’s goal of educating the public about juvenile justice issues that normally fail to receive much attention. Co-counseling cases with DLA Piper also allows the Bluhm Clinic access to resources that are greater than it may be able to otherwise obtain.

The innovative nature of the Project has benefited both the clinic and the firm, as it has drawn the attention of the media as well as groups within the legal community. Most recently, DLA Piper was honored with the 2005 Illinois State Bar Association’s MacAndrews Pro Bono Award, in large part because of the Project. Finally, the link the partnership has forged between Northwestern law students and DLA Piper attorneys has provided the firm with a unique recruiting opportunity, and law students with the valuable opportunity to work on cases alongside private attorneys.

The Project has faced challenges in its first year as well. Law firms and legal clinics have different organizational cultures, and the successful merging of each organization’s internal practices into a uniform set of Project policies and procedures that meets the needs of both organizations has unsurprisingly been a process of trial and error. Simply administrating a project of this size can also pose challenges. Key in this respect is a clear division of labor between the firm’s project managers and the fellow, as well as close communication about day-to-day activities as well as long-term Project goals. Finally, attorneys who are new to juvenile justice work have at times found the work to be frustrating. Private attorneys are used to clients who return phone calls, show up for their appointments, and listen to their attorney’s advice. Working with juvenile clients, who may often not do any of these things, can be stressful for Project attorneys. Attorney expectations must be managed in order to prevent such frustrations from affecting how the Project is perceived at the firm, as well as to ensure that attorneys have a positive experience and stay engaged in the Project.

Tips for Starting a Similar Program

The most critical ingredient in the success of the Project has been DLA Piper’s support of the Project at the highest levels of firm management, and management’s clear communication of this support to all attorneys. To expect success, a firm’s support cannot be just in the form of words; rather, it must also be in the form of billable hours. DLA Piper offers participating attorneys full billable credit for every hour spent on Project matters. Support must also exist at the practice group level, as practice group leaders often have the most immediate control over whether their associates feel they are able to take on pro bono matters. Offering a range of opportunities for involvement that helps attorneys build a variety of skills can help ensure that the Project enjoys office-wide support and participation.

Allocating sufficient human resources to such a project is also essential to success. As mentioned above, a key component of the DLA Piper/Bluhm Clinic collaboration is the appointment of a clinical fellow who can provide training and support to attorneys as they explore a new area of law. Also critical is the appointment of a project manager (or managers) and a project director within the firm. For example, Lawrence Wojcik, a senior partner, oversees the Project as a whole, while partner Sonya Naar and senior associate Alice Kelly manage the policy and direct representation prongs of the Project, respectively. The firm’s project managers must have a substantial amount of their billable hour requirement devoted to the project. It is also helpful to have individuals in a leadership capacity who are “home grown,” i.e., who know the firm, its people and its culture, and can help market the project internally and recruit attorneys to take cases. Although the Project does not officially have an administrative assistant, this would be a great resource that would free up the fellow and project managers’ time and allow them to focus more of their energies on program issues. Other key support staff include the library and docketing departments, whose staff should be trained to assist project

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attorneys with their research and filing needs. In the Project, support staff has helped to develop an “E-room,” or internal website, where Project documents such as sample motions and policy memos can be easily stored and accessed.

Above all, approaching such a project with as detailed a blueprint as possible, while remaining flexible about changing the project based on observations and feedback from all involved will help ensure a workable and successful project. For more information about the Project, contact Carolyn Frazier, DLA Piper Fellow (cfrazier@law.northwestern.edu); Lawrence Wojcik, DLA Piper Project Director (lawrence.wojcik@dlapiper.com); Sonya Naar, DLA Piper Policy Project Manager (sonya.naar@dlapiper.com); Alice Kelly, DLA Piper Direct Representation Project Manager (alice.kelly@dlapiper.com); Rich Klawiter, DLA Piper Partner and Chicago Office Pro Bono Coordinator (richard.klawiter@dlapiper.com); and Lisa Dewey, DLA Piper’s Pro Bono Partner (elizabeth.dewey@dlapiper.com).

Carolyn Frazier is the DLA Piper Fellow for the firm’s Signature Project in Juvenile Justice and a staff attorney at Northwestern University School of Law’s Bluhm Legal Clinic. Ms. Frazier assists attorneys at DLA Piper in representing children in delinquency and expunge-ment proceedings.

Alice Kelly is an associate at DLA Piper and the direct representation project manager for the firm’s Signature Project in Juvenile Justice. Ms. Kelly devotes half of her billable hours to administrating the Project and supporting attorneys in their representation of children through the Project.

For assistance in starting a firm wide pro bono project visit http://www.abanet.org/litigation/committee/childrens_l/probono.html
Or call Catherine Krebs at 202 547 3060

National Teen Dating Violence Prevention Initiative

The Children’s Rights Litigation Committee is one of many co-sponsors of the National Teen Dating Violence Prevention Initiative, a national, teen-driven, high school-based, community program to eliminate violent teenage dating behaviors. The Initiative held a Teen Dating Violence Prevention Summit in Washington, DC in November 2004. During the summit, teenage attendees designed a Teen Dating Violence Prevention Toolkit which will be used during the National Teen Dating Violence Awareness and Prevention Week, February 6-10, 2006. The Week is recognized and supported by members of the U.S. Congress as a week of nation and community-wide awareness and educational activities designed to reduce the high incident of violent teenage dating behaviors currently occurring throughout the country (one in three-to-five teenage girls is a victim of teen dating violence).

Thanks to a Department of Justice grant, each state will receive 10 complimentary Teen Dating Violence Prevention Toolkits which can be used by high schools to hold classroom discussions and develop activities to educate and involve students in prevention. Toolkits include a DVD, a Teacher’s Guide, a “Prevention Recommendations” Book, 200 Emergency Wallet Cards, 2 Posters, and Toolkit Instructions.

For more information about the Initiative or to ensure that your state will be participating, contact Moreen Murphy at the American Bar Association Steering Committee on the Unmet Legal Needs of Children, and Director of the Initiative at 202·662·1675.
LAPP Offers a Valuable Resource to Legal Aid Programs  Adapted from an article by Neil McBride first printed in *Spreading Justice*, Fall 2005, Vol. 3 No.1

If you are the director of a legal aid organization, or supervise the work of legal aid attorneys, what are some valid tests you might use to evaluate the creativity and effectiveness of the attorneys who work with you? Of course you’ll want to see what kind of benefits they are producing for their clients and the communities in which they live, but the evaluation should not stop there.

Here are some criteria to think about:

- Do they leverage resources by looking for ways to use our limited time to produce benefits for large numbers of low-income people?

- Do they look for ways to provide benefits to clients that legal aid itself cannot offer, such as representation for inmates or immigrants, or help on attorney’s fees or class actions?

- Do they look for ways to bring significant new advocacy resources into the organization?

- Do they look for ways to gain new experience by co-counseling with experienced attorneys?

- Do they try to involve private attorneys in their work, so as to expand the pool of people who understand and support legal aid in the local, regional or national bar?

If any of these criteria are important to you as a supervisor, you need to know more about the Litigation Assistance Partnership Project (“LAPP”) and you need to be strongly encouraging, even insisting, that attorneys in your organization make deliberate efforts to identify appropriate cases that might be placed with private attorneys through LAPP.

LAPP’s core function is to identify and place significant *pro bono* litigation with private law firms nationwide. These are major, complex and often time-consuming cases that require resources unavailable to public interest programs. LAPP works with programs and issues that involve subject areas not handled by other national public interest programs and clearinghouses. LAPP also serves rural programs without local *pro bono* resources for major litigation and finds out-of-state attorneys when necessary because of local limitations. LAPP is meant to complement, not replace, other *pro bono* resources.

Historically, it has been an embarrassing truth that LAPP has always had more attorneys and law firms ready to handle cases significant cases for legal aid providers then it has had referrals from legal aid. If you do not know why your staff is not identifying cases that might be appropriate for LAPP referral, there are several steps you can take to improve their awareness:

1. Show them a current LAPP docket that describes the kinds of matters that have been placed. (For LAPP’s Docket, see www.abanet.org/litigation/lapp/)

2. Give them the form that LAPP provides for making referrals. (LAPP’s case referral form can be accessed through LAPP’s website: www.abanet.org/litigation/lapp/.)

3. Encourage them to talk directly with other attorneys who have successfully placed cases.

4. Call LAPP yourself and talk with the staff about the kind of resources that might be available in your area and on the cases that are important to you.

5. Review the last priority setting information you have developed and think about significant local issues that your attorneys have not yet addressed. For example:

   - Is it possible that your state does not give its children the full range of services to which they are entitled under the EPSDT provisions of Medicaid?

   - Are children in your jurisdiction provided with lawyers who have manageable caseloads?

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LAPP Offers a Valuable Resource to Legal Aid Programs (continued from page 7)

Any attorney in your program could probably come up with a list of potential client problems that would be more urgent in your community. But if your answer to any of these questions is “yes,” then the next question is: Why haven’t you done anything about this problem? If “lack of resources” is part of the answer, then you should be talking with LAPP.

LAPP has a staff and a group of advisors from private firms and legal aid organizations who would welcome an opportunity to help you answer these questions and expand the resources you can offer to your low-income communities.

Can LAPP find an attorney to respond to every request? Of course not. But it would like to try. Even if it can’t then your request has defined an issue and you will be better positioned to look for other alternatives.

Neil McBride is General Counsel to the Legal Aid Society of Middle Tennessee and the Cumberlands. He formerly co-chair of the Section on Litigation’s LAPP Subcommittee. His legal aid firm has received significant benefits from large private firms with whom LAPP placed significant cases.


Committee Sets Sights On Website

Along with the websites of the ABA and Section of Litigation, the committee’s website will undergo substantial redesign in the first quarter of 2006. Between now and then, the committee will implement new features, including an e-mail discussion list. Other enhancements will occur as resources and input from committee members allow.

Tom Young, the committee’s web editor, has issued a call for volunteers from all areas of juvenile advocacy to assist in the development of content that will make the committee’s website the star of ABA committee websites and – most importantly – an integral tool in effective juvenile advocacy.

Web content differs from the content of traditional print material in that it is more succinct; it is not intended to replace print media but to educate viewers as to trends and developments and resources available in other media. In this regard, web content is ideally suited for contribution by volunteers because it is readily identifiable by those working directly on the issues of the day and its development takes much less time. Your contribution may be as small as forwarding a noteworthy case in your jurisdiction to Tom, or you may do more by writing up a few paragraphs on the case. Because juvenile advocacy covers a broad array of immigration, education, delinquency, and abuse and neglect issues, it is not possible for one or two individuals to

Children’s cases within the current LAPP docket:

Case No. 04-007: Doe v. Children of the World (Super. Ct. Essex County): This case challenges the policy of Children of the World, a private adoption agency in New Jersey, of denying adoptions to persons who are HIV+. Lowenstein Sandler (Jeffrey Wild, Jenny Kramer and Samantha Friedman) is representing the plaintiffs, in conjunction with Erika Wood of the Legal Action Center in New Jersey. See Fall, 2005 Children’s Rights Litigation Committee Newsletter for information about the landmark settlement reached in this case.

Case No. 04-008: Salazar v. Edwards (Cir. Ct. Cook County): This case challenges plans by the Chicago Public Schools to shut down up to 35 existing schools, most of which are in gentrifying neighborhoods with large existing low-income, African American populations. In large part these neighborhoods are also the site of public housing projects that are slated for demolition and/or redevelopment. The case seeks to protect the rights of children who are currently homeless, and those who may become homeless when their families are forced to move from public housing slated for demolition. These ‘highly mobile’ children face serious learning deficits when their schools are changed. Garth Gersten is leading a team from Womble Carlyle Sandridge & Rice, along with Rene Heyback from the Chicago Coalition for the Homeless.
Training for the Child’s Legal Representative in Private Custody Matters

The ABA Child Custody Pro Bono and Adoption Project is pleased to announce the availability of a nine topic interdisciplinary training program. This training will benefit any attorneys representing children in divorce, adoption, guardianship, unmarried parents’ cases and civil orders of protection. Each topic is taught by an expert in the field and there are more than 500 pages of accompanying materials for review.

The topics include:

- Case Development with Stacey Platt, JD, Loyola Law School Professor;
- Cultural Competence with Suzette Speight, PhD, Loyola University Professor of Education;
- Ethical Issues with Gregg Herman, JD, Milwaukee, Wisconsin;
- Child Development with Kathryn Shands, MD, Child and Adolescent Psychologist, Atlanta, Georgia;
- Interviewing-Hearing the Voice of the Child with Risa Garon, LCSW, Director, The Children of Separation and Divorce Center and Keith Schiszik, JD, Maryland;
- Mental Health Experts, Tests & Services with Robin Deutsch, PhD, Co-Director, Children and the Law Program; Boston, Massachusetts;
- Domestic Violence, Leigh Goodmark, JD; Child Abuse with Ann Haralambie, JD, Tucson, Arizona; and
- Alternative Dispute Resolution with Kelly Browe Olson, JD, LLM, University of Arkansas, Alternative Dispute Resolution Clinic Director

This series, when supplemented with relevant local laws and rules, can be the basis for training attorneys to represent children in compliance with the ABA Standards on Representing Children in Custody Matters. The tapes can be used for self-study or as the basis for group training with a local professional who is experienced in the representation of children. The series runs over 6 hours and CLE credit has been requested.

The Child Custody and Adoption Project will provide technical assistance to support programs in the use of the training. In addition, the Project’s 2006 Child Custody Advocate Minigrants will be focused on implementing training for children’s attorneys and the ABA Standards on Representing the Child in Custody Matters. Programs or individual attorneys can request a free set of the training tapes and materials by contacting Barbara Chasnoff at chasnofb@staff.abanet.org.

Committee Sets Sights On Website (continued from page 8)

create and contribute the substantive content needed to serve all committee members. We need everyone’s help.

Please help the committee improve the content and functionality of its website by volunteering to serve as a liaison for your jurisdiction or area of practice or by volunteering to submit content for the website at least once a year. For more information about how you can help, email Tom at thomaswade@cfl.rr.com.

SEARCHING ARCHIVED NEWSLETTERS

Have you ever found yourself needing a newsletter long since discarded? If so, you will be pleased to know that the ability to search for prior newsletters exists, albeit in a rudimentary form, via the ABA website.

Until the ABA and Section of Litigation parent sites accommodate html format, archived committee newsletters are available only in pdf format, which is more difficult to search. Still, pdf files are somewhat searchable. To search, simply enter search criteria into the search field on the ABA home page, set the search domain on “web site,” and click “go.” For example, to find Hillary Harrison Gulden’s article on Roper v. Simmons in the Fall 2005 edition, one simply types “roper simmons children’s rights.” The search is not precise and may return multiple documents, but it works. In the example given, Hillary’s article appears second among 10 hits. Note that you can only access on-line newsletters if you are a member of the Section of Litigation.
Special Immigrant Juvenile Status (continued from page 1)

The most common method for applying for SIJS and a Greencard is for a child to enter the state child welfare system, be placed in a foster or group home, and complete the immigration process with the help of an attorney or other advocate. Another group of children eligible for SIJS are those living under the care of a court-appointed legal guardian. Across the country, over 1.5 million abused, neglected, and abandoned children live in “kinship care” arrangements outside of the child welfare system, many of which become formalized as legal guardianships.2

Whether due to lack of awareness or inadequate resources, few children in legal guardianships have obtained their legal resident status through SIJS.3 Only in a few states, such as California and New York, have children with the assistance of advocates begun to apply for and obtain SIJS in guardianships. For this reason, social workers, attorneys, and other child advocates working with undocumented children in legal guardianships should regularly screen every undocumented child client for SIJS eligibility. This article sets forth the legal framework and criteria for evaluating children for this benefit. No undocumented child in a legal guardianship who is eligible for this benefit should fail to apply.

Legal Guardianship: an Alternative to the Child Welfare System

Before the child welfare system was introduced, guardians were appointed for abandoned and abused children through local civil or probate court systems. While state “dependency” court systems that formed in the 1960s and 1970s channeled much of the abused, neglected and abandoned children into the child welfare system, legal guardianships remained an important legal option for child victims of abuse, neglect, or abandonment who needed a safe and stable living environment.4

Recent statistics show, for example, that most children in California probate court guardianships were abused, abandoned, or neglected rather than orphaned by the death of a parent.5 In Shasta County, California most “probate guardianship cases involved prenatal drug abuse, child abuse, and neglect, as did all the cases filed in that county’s dependency court.”6 Furthermore, many immigrant children who were abused, neglected, or abandoned ended up in legal guardianships rather than foster care due to fear of or lack of awareness about government institutions or greater reliance upon family support systems within immigrant communities.7

Undocumented children in guardianships, like those in foster care, are vulnerable and desperately need support to stabilize their home environment and achieve legal immigration status through SIJS.

How to Identify a Legal Guardianship Case for SIJS

The first step social workers, caseworkers, and attorneys should take is to screen child clients carefully for SIJS eligibility by considering three questions:

- Can the child be considered “dependent” on a juvenile court?8
- Is reunification with the child’s parents likely?
- Is it in the “best interests” of the child to remain in the U.S. in the care of the legal guardian?9

Before the child can apply for SIJS, the state court exercising jurisdiction over the guardianship must evaluate each of these questions and enter findings that would certify the child’s SIJS eligibility. The state court may make the necessary findings upon granting the guardianship or any time after so long as the court retains jurisdiction over the care and custody of the child. Once the court issues the order, the child sends the order with an application for SIJS and lawful permanent resident status to the federal United States Citizenship and Immigration Services (USCIS, formerly Immigration and Naturalization Service).

While the state court’s assistance is necessary to make the findings, it does not have the power to confer

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any immigration benefit. The USCIS has the authority to review the SIJS and lawful permanent resident applications and make a decision.10 Filing an application with USCIS may involve serious risk.11 Accordingly, the child should consult with an immigration attorney before submitting an application. In most cases, the responsibility will fall to the child’s caregiver or a case-worker to seek the assistance of legal counsel. Free nonprofit legal services or pro bono lawyer referrals are frequently available. (See “Resources”).

In most states, “probate” courts have jurisdiction over legal guardianships, while in other states “juvenile” or “family” courts adjudicate guardianships.12 This variance in state courts accounts for the broad definition of “juvenile court” used by federal regulations for SIJS purposes. This means any state court with authority over “the custody and care of juveniles” may make the required SIJS findings.13

Children appointed legal guardians qualify as “dependents” of the state court.

To qualify for SIJS, a child must “have been declared dependent on a juvenile court.”14 The definition of “dependent” varies from state to state. For federal SIJS purposes, children in legal guardianships have been found to qualify as dependents of the state court:

The acceptance of jurisdiction over the custody of a child by a juvenile court, when the child’s parents have effectively relinquished control of the child, makes the child dependent on the juvenile court, whether the child is placed by the court in foster care or, as here, in a guardianship situation.15

The federal definition of “dependent” in the SIJS context includes situations beyond those involving children in foster care dependency. So long as the child’s custody and care remains under the court’s supervision, the child qualifies as a “dependent” for SIJS purposes.16 For this reason, the guardianship jurisdiction should not end before the applicant is granted lawful permanent resident status.

Advocates should check the jurisdictional statutes concerning legal guardianships to evaluate whether the state court still exercises authority over the child’s custody or care. Signs of the court’s continuing authority include the power to modify the guardian’s powers regarding custody or visitation. State courts commonly retain the authority to end the guardianship if it is no longer in the child’s best interest. In some states, the court must be notified of any changes in residence.17 In some states, such as California and Florida, guardians must submit an annual status report to the probate court.18

Children in legal guardianships must be found “eligible for long-term foster care”

To qualify for SIJS, a child must be “deemed eligible for long-term foster care due to abuse, neglect, or abandonment.”19 Federal regulations clarify that a child is “eligible for long-term foster care” when “family reunification is no longer a viable option.”20 In many cases, when a court appoints a guardian, reunification with the child’s parents is not feasible because they are deceased, their identity is unknown to the child, or they are unable to care for and supervise the child. When the child remains in contact with the parents, advocates working with children in guardianships should evaluate the likelihood that the child will reunify with his or her parents before applying for SIJS.

The SIJS regulations state that a child who “has been adopted or placed in a guardianship situation” is “eligible for long-term foster care.”21 In In re Menjivar, the federal immigration Administrative Appeals Unit found that an El Salvadoran boy in a legal guardianship situation met the requirement of eligibility for long-term foster care.22

Not all immigrant children in legal guardianships are eligible for SIJS status because there must be an underlying factual basis of “abuse, neglect, or abandonment.”23 For SIJS purposes, federal law does not require that findings of abuse, neglect or abandonment have been sustained against the child’s parents (as in a foster care dependency case). Rather the SIJS statute just requires the state court to find that the guardianship was granted due to abuse, abandonment or neglect.

It is in the juvenile’s best interest not to be returned to the country of origin

The last finding for SIJS is that it is not in the juvenile’s “best interest” to be returned to his or her country

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of origin. Generally, when a state court reviews a guardianship case, it assesses whether the guardianship is in the “best interest” of the child. A best interest determination requires an examination of all the circumstances affecting the child’s well-being. Among other factors, the state court will consider the background of the proposed guardian, the condition of the guardian’s home, whether the guardian can provide adequate care and supervision, and where the child will attend school. If the child has a parent living outside the U.S. who wants custody, the court must decide whether the child’s best interest is served by placement with the proposed guardian or with the parent. A state court is unlikely to favor parental custody if the child was abused by the parents or has not had contact with the parents or lived in their home country for years. To qualify for SIJS the court must find that it would be better for the child to remain with the guardian than to be returned to the country of origin.

Conclusion

While undocumented immigrant children who have been abused, neglected or abandoned continue to be cared for in legal guardianships, they are underrepresented among children obtaining SIJS and lawful permanent resident status. Frequently children in guardianships suffer the same hardships and abuses as children in foster care. By helping these children obtain legal permanent residency through SIJS, advocates and service providers will enable them to gain greater stability and independence.

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3 In California and New York, abused, neglected and abandoned children have applied for and obtained SIJS and lawful permanent resident status. See the “Resources” box for more resources.


6 Ibid.

7 See generally DHHS Report to Congress, 2000, 10; See also Rankin, 2002, 159.

8 Federal regulations define “juvenile court” as a state court having “jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. § 204.11.


10 In those cases in which the child has a case pending before an immigration judge, the judge will adjudicate the permanent resident application.
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11 For example, those with a history of drug dealing may be barred from obtaining permanent resident status.


14 8 U.S.C. § 1101 (a)(27)(J)(i). Attorneys drafting orders for a state court should include a finding that the child is a “dependent of the court” or is “dependent upon the court.” Note, however, that “there is no requirement that the State court decree contain the specific statement that the beneficiary is dependent upon the court.” In Re Menjivar, A70117167 A.A.U 1, 4 (INS Administrative Appeals Unit, Dec. 27, 1994).


16 E.g., New York law states, “...the family court or surrogate’s court shall retain continuing jurisdiction over the parties and the child and may, upon its own motion or the motion of any party, revoke, modify or extend its order....” N.Y. Soc. Serv. § 384-b (2003).

17 E.g., see AZ ST 14-5313 (2003).

18 Florida’s law requiring submission of an annual guardianship report explains, “[t]he court shall review the appropriateness and extent of a guardianship annually.” FL ST §744.372 (2003).


20 8 C.F.R. § 204.11(a)

21 8 C.F.R. § 204.11(a) (emphasis added).

22 Menjivar, 1994, 4.


24 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(d)(2)(iii). This determination may be made by any “court or agency recognized by the juvenile court and authorized by law to make such decisions.” 8 C.F.R. § 204.11(d)(2)(iii).

SIJS Resources

Legal Services for Children, San Francisco
415/863-3762

Public Counsel, Los Angeles
213/385-2977

The Door, New York
212/941-9090

ABA Immigration Law Project
202/662-1105

Immigration and Refugee Services of America
202/797-2105

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Announcements

♦ The Committee will offer a free teleconference for defenders who represent juvenile sex offenders. For the date and more details on the call visit our website at: www.abanet.org/litigation/committee/childrens_l/

♦ The Committee will present a program on partnerships between private law firms and non-profits to forge innovative pro bono programs at the Equal Justice Conference in Philadelphia, PA, March 30—April 1, 2006. For more information about the conference or to register, visit: http://www.abanet.org/legalservices/ejc/home.html

♦ CRLC will convene a breakfast meeting at The Section of Litigation Annual Conference in Los Angeles, April 19—22, 2006. For more information on the conference visit www.abanet.org/litigation

♦ 11th Annual Rocky Mountain Child Advocacy Training Institute will be offered May 22-26, 2006 in Denver, Colorado. Visit www.NACCchildlaw.org, for information.

♦ The National Association of Counsel for Children will hold the 29th National Children’s Law Conference in Louisville, KY, Oct 12-15, 2006. Abstracts will be accepted until March 1, 2006. Contact NACC at 888-828-NACC for forms

♦ The ABA Commission on Domestic Violence has produced a "Tool for Attorneys to Screen for Domestic Violence." The brochure provides information for lawyers on how to screen their clients for domestic violence, including a checklist for lawyers who represent victims that includes safety precautions the lawyer and his or her staff should take. It includes sample questions to ask a client, as well as suggestions about what to do if the client discloses that he or she is a victim - or if the lawyer suspects the client is a victim but is not disclosing. The brochure may be downloaded free from the Commission's Web site. http://www.abanet.org/domviol/home.html

♦ Five Nebraska foster children, on behalf of 6,000 others, have filed a federal class action lawsuit against the state’s Department of Health and Human Services and governor to correct what they allege are gross inadequacies in the foster care system. Represented by the Nebraska Appleseed Center for Law in the Public Interest; Children’s Rights, Inc.; and private attorneys, the plaintiffs claim that Nebraska’s foster care system fails to meet basic legal standards for safety and health care guaranteed by the right to substantive due process and by provisions of the federal Adoption Assistance and Medicaid acts. When the state removes a child from an abusive or neglectful home, the plaintiffs argue, it assumes an obligation to provide those children with a certain standard of care. But, the plaintiffs say, “Nebraska’s mismanaged, overburdened and under-funded foster care system . . . [does not provide the state’s 6,000 foster children with] the basic care, services, protection, and opportunities for a permanent home that are necessary for their physical, emotional, and psychological development and well-being.” They accuse Nebraska of forcing foster children to live in overcrowded homes, denying foster children access to adequate medical and mental health care, providing too few caseworkers, and failing to provide foster children with the opportunity to be adopted into permanent, loving families. The plaintiffs say they filed suit after years of audits and reports calling for state-wide foster care reform failed to correct flaws in the system. Douglas Gray, an attorney with Children’s Rights, says, “This case is about making the State heed its obligations to these 6,000 kids and stopping ongoing systemic harm to the state's most vulnerable children.” Carson P. v. Heineman, Complaint, No. -- (Neb. Sep. 19, 2005); Children’s Rights, Inc., Press Release: Class-Action Lawsuit Filed on Behalf of 6,000 Nebraska Foster Children Seeks Overhaul of State’s Troubled Child Welfare System, Sept. 19, 2005; also based on original reporting by Brennan Center staff. Reprinted from The Brennan Center's Legal Services E-lert 9/23/05.
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