Representing Children in Families Ten Years After Fordham

In early 2006, nearly 100 lawyers, youth advocates, professors, judges and mental health professionals met to discuss the representation of children at a conference titled Representing Children in Families: Children’s Advocacy and Justice Ten Years After Fordham. The conference – held at the University of Nevada, Las Vegas, William S. Boyd School of Law – was convened in part to establish principles and guidelines to enhance the participation and voices of children and youth in court proceedings and policies that affect them.

The UNLV Children’s Conference sought to build on original recommendations resulting from a 1995 conference at Fordham Law School: Ethical Issues in the Legal Representation of Children (see 64 FORDHAM L. REV. 1281-2131 (1996)). Among other recommendations, the 1995 Fordham conference reached a strong consensus that children need their own counsel serving in a traditional attorney-client role, not as guardians ad litem who substitute their own opinion of the child’s best interests.

Building on the Fordham recommendations, the 2006 UNLV Children’s Conference sought to address additional questions about lawyers’ roles in defining and promoting justice for children and accounting for the important role of family in children’s lives.

The UNLV Children’s Conference examined and released recommendations on issues such as:

- The role of the child, family and community in defining and enhancing the child’s voice
- Competencies for children’s attorneys and children’s justice systems
- The role of children’s attorneys in advocating for reform
- The attorney-child client relationship and
- Changes in the law

Each recommendation includes a statement of principle and recommendations for practice guidelines. Each also has important implications or potential areas of activity for state court improvement projects because quality legal representation of children is essential for high functioning court systems. Several are highlighted below.

Role of the Child, Family and Community

The recommendations under this area of focus address:

- Engaging family and community
- Keeping the child at the center of the proceedings
- Promoting the child’s participation in legal proceedings
- Determining the scope of representation and
- Engaging in multidisciplinary practice

For example, attorneys should, with the child client’s consent, be or become familiar with the child’s family, community and culture, and take precautions not to impose their own standards and cultural values. This includes being aware of their own biases, approaching each client with an open mind and avoiding making assumptions based on race, ethnicity, culture, language, nationality, gender, actual or perceived sexual orientation, or gender identity. Keeping the child at the center of the proceedings includes advocating for services and placements that respect the child’s identity and are strength-based and individualized.

Recommendations regarding the scope of representation state that attorneys should explain all representation options, confidentiality and the attorney-client privilege in developmentally and culturally appropriate ways, in writing when appropriate. They should identify all the client’s legal needs throughout the duration of the case and should, when appropriate and with the client’s consent, represent the client on ancillary legal matters such as immigration, education and health.

Advocating for Reform

Children’s attorneys can seek legal and procedural reforms to improve the quality of representation when representing individual children or working in other advocacy or policy arenas. Attorneys should promote policies and practices that ensure children are present at proceedings relating to them, promote the participation of youth in the child welfare processes on individual and systemic levels; and promote effective programs while challenging those that are ineffective or harmful.

The recommendations also state that attorneys should work to eliminate bias, promote diversity, and engage in various methods of advocacy, including community organizing, coalition building, research, and media campaigns when appropriate.

Changes in the Law

Conference participants believed that because children’s attorneys are in a unique position to understand how legal systems affect children and their families, they can advocate across a wide range of systems, including legislatures, agencies and courts for new laws, rules and written policies. These may include appointment of counsel for parents or changes in privilege or confidentiality provisions.

Recommendations for Further Study

As with the Fordham conference, the UNLV Children’s Conference identified recommendations for further study. Among these are:

- whether children should have a right to counsel and/or a right to be heard in proceedings other than the proceedings identified by the conference
- whether parents should control medical decision-making except when the minor is a mature minor
- whether CAPTA should be amended to provide for appointment only of lawyers for children in abuse and neglect proceedings
- whether and to what extent there should be a parent-child privilege
- whether non-lawyers professionals working with lawyers should be mandatory reporters and
- the pros and cons of opening juvenile court proceedings to the public.

The full text of the UNLV Children’s Conference recommendations can be found at http://rcif.law.unlv.edu/.
Examined the extent to which child welfare agencies involve nonresident fathers in casework and permanency planning.

Described the various methods used to identify and locate nonresident fathers and establish paternity.

Identified challenges to involvement of fathers and identified practices and initiatives that may increase father involvement.

Available online at http://aspe.hhs.gov/hsp/06/CW-involve-dads/.

On the Web

Mythbusting: Breaking Down Confidentiality and Decision-Making Barriers to Meet the Education Needs of Children in Foster Care. Ever struggle to gain access to education records? Ever unsure what education information can be shared, and with whom, when a child is in foster care? Ever tried to determine who in a child’s life was responsible for making education decisions? This February 2006 guide by Kathleen McNaught of the ABA Center on Children and the Law (through support from Casey Family Programs) answers these and other common questions by individuals involved with the child welfare system, including judges, children’s attorneys, parents, foster parents, youth, caseworkers, and court appointed special advocates (CASAs). The guide:

1) provides context and explains why there is a need to address the education needs of children in foster care
2) debunks myths about confidentiality and decision-making
3) explains the federal laws that affect confidentiality of education records and decision making and
4) suggests strategies to overcome confidentiality and decision-making hurdles when addressing the needs of children in foster care.

Use the guide online and benefit from the interactive functions, including links between sections and to additional outside resources, or print a copy to use offline: www.abanet.org/child/rclji/education/mythbusting2.pdf.

Save the Dates!

The ABA’s 12th National Conference on Children and the Law

Promoting Children’s Interests:
Preparation, Practice & Policy

April 13-15, 2007

Harvard Law School
Cambridge, MA

The ABA Center on Children and the Law is pleased to announce its partnership with Harvard Law School’s Child Advocacy Program to convene the 12th National Conference on Children and the Law.

Those encouraged to attend include anyone interested in a broad range of perspectives on how best to promote the interests of children and youth – including child welfare practitioners, policy-makers, legal academics, child law programs and clinics, law students, social scientists and health professionals.

The conference will include pre-conference sessions, dozens of workshops, and plenaries with preeminent experts in the child welfare field. For more information, visit www.law.harvard.edu/academics/cap/conference/index.php. To be added to the conference mailing list write to ctrchldlaw@abanet.org.

Discussion Forums Related to Hurricanes Katrina and Rita.

The National Council of Juvenile and Family Court Judges is hosting discussion forums for judges and other professionals working with abused and neglected children and their families in jurisdictions affected by Hurricanes Katrina and Rita. The “After the Storms” forums for jurisdictions directly affected by the storms and those working with evacuees can be accessed at http://www.ncjfcj.org/forums.

The discussion forums are being conducted in partnership with the American Bar Association Center on Children and the Law (www.abanet.org/child) and National Center for State Courts (http://www.ncsconline.org/), with support from the US Department of Health and Human Services. The forums are designed to enable participants to pose questions, exchange information, and inform others of challenges and successes.