

1996

## Report of the Working Group on Interviewing and Counseling

Gregg Herman

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the [Law Commons](#)

---

### Recommended Citation

Gregg Herman, *Report of the Working Group on Interviewing and Counseling*, 64 Fordham L. Rev. 1351 (1996).

Available at: <https://ir.lawnet.fordham.edu/flr/vol64/iss4/7>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

---

## Report of the Working Group on Interviewing and Counseling

### Cover Page Footnote

Group Leader: Russell Pearce. Reporter and author: Gregg Herman. Participants: Emily Buss, Janet Chaplan, Laura Cohen, Katherine Hunt Federle, Kathi Grasso, Gail Lerner, Dr. Michael Lindsey, and Linda Mauro.

# REPORT OF THE WORKING GROUP ON INTERVIEWING AND COUNSELING

## INTRODUCTION

This is the Report of the Working Group on Interviewing and Counseling<sup>1</sup> of the Fordham Conference on Ethical Issues in the Legal Representation of Children, assigned to discuss issues of interviewing and counseling of children in the legal representation of children. This Working Group prepared an initial report, which the plenary session considered on the last day of the Conference. This final report is intended to expand on that initial report, by summarizing the discussion of the Group.

The discussion revealed the necessity for distinction between two different advocacy roles. Considerations of how a lawyer interviews and counsels a child depend to some degree on whether the lawyer serves as an "attorney" or as "guardian *ad litem*" for the child. First, this Report refers to the role of lawyers serving as advocate counsel for the child as the "attorney" model. In these instances, the lawyer represents the client's wishes. This Report refers to the second role as the "guardian *ad litem*" or "GAL" model.<sup>2</sup> Under this model, the lawyer advocates for the best interest of the child. Because the child's wishes do not determine the goals of the representation (but instead the best interest of the child does), either the lawyer or someone else must perform an investigation into the best interest of the child.

In addition to contending with these two distinct legal roles for attorneys representing children, in discussing issues related to interviewing and counseling, the Working Group also encountered a clear philosophical distinction. The vast majority of the Working Group favored an "empowerment" or attorney model of representation in which the attorney advocates the position or interest of the client after full consultation with the client and independent case investigation. In so doing, the attorney assesses whether the client possesses the capacity to make a "considered judgment" about her case. If the child demonstrates decision-making capacity, the attorney affords the child's wishes great weight, and treats that child client in a manner similar to an adult client. If the client cannot arrive at a "considered judgment" due to her very young age, inability to communicate, or developmental or mental disability, the attorney then attempts to determine the client's interest and represent the child's "best interest" or

---

1. Group Leader: Russell Pearce. Reporter and author: Gregg Herman. Participants: Emily Buss, Janet Chaplan, Laura Cohen, Katherine Hunt Federle, Kathi Grasso, Gail Lerner, Dr. Michael Lindsey, and Linda Mauro.

2. In some jurisdictions, these titles may not exactly apply; but rather than argue definitions, this Report relies on these terms to distinguish between the two legal approaches.

the "least intrusive intervention justified by the juvenile's circumstances."<sup>3</sup> In all cases, the attorney will represent the interests of the child clients in the same manner as she would represent adult clients—competently and zealously.

One Working Group member, an attorney, favored a more "parental" role, under which the child's lack of maturity and experience would be considered and more care would be given to the goal of promoting the child's best interests even where the child's wishes diverge from that goal.

## I. RECOMMENDATIONS ON CHANGES IN MODEL RULES OR LAW

### *Model Rule 1.14*

- A. Rule 1.14 should be amended to delete the word "minority" and the commentary should be revised accordingly.**

### *Proposed Model Rules*

- B. The Model Rules should be amended to include a separate rule governing the lawyer's representation of the child.**
- C. In the development of such a rule, reference should be made to the IJA-ABA standards.**
- D. In considering the IJA-ABA standards, the term "considered judgment" should be reevaluated.**
- E. In the creation of such a rule, the attorney's role should be defined as that of a zealous advocate who owes the same duties to the child as to any client, including face-to-face contact with the client, interviewing, counseling, and so forth.**

Model Rule 1.14 addresses the role of counsel in representing an individual whose "ability to make adequately considered decisions . . . is impaired, whether because of minority, mental disability or for some other reason."<sup>4</sup> The majority of the Group supported amending Model Rule 1.14 because the Rule, as currently worded, creates a presumption that minors are incapable of making decisions about their cases. This presumption runs contrary to an "empowerment" model of representation and the IJA-ABA standards. Moreover, by deleting the word "minority" from Model Rule 1.14 and revising the commentary accordingly, the Working Group sought to emphasize that the lawyer's duties to the child client do not differ from those owed to other clients. Rather, the Working Group members believe that, in most instances, the communicative child client is capable of assisting

---

3. The attorney model of representation is based in part on Standard 3.1 of the Standards Relating to Counsel for Private Parties of the Institute of Judicial Administration/American Bar Association (IJA-ABA). IJA-ABA Joint Commission on Juvenile Justice Standards, Standards Relating to Counsel for Private Parties § 3.1 (1980). The Working Group considered recommending that, "in considering the IJA-ABA standards, the term 'considered judgment' be reevaluated." See *infra* part I.D.

4. Model Rules of Professional Conduct Rule 1.14(a) (1983).

and directing the lawyer. Thus, to treat age as a disability encourages differential and, therefore, inappropriate treatment of the child client.

Nevertheless, the legal community needs a separate ethical rule governing the behavior of the lawyer for the child. This proposal again takes as its starting point the assumption that the lawyer for the child serves as a zealous advocate who owes the same duties to the child as to adult clients. Ascertaining when the child client is capable of assisting and directing the lawyer, however, presents no simple task. Therefore, the Working Group felt that the promulgation of such an amended Rule should take into account the insightful standards generated by the IJA-ABA in this area. The Working Group, however, also felt that the standards' reliance upon the term "considered judgment" should be reevaluated in light of the commitment to a closer nexus between the client's ability to communicate and the child's need for empowerment.

*Federal/State Laws or Court Rules*

**F. Amend all federal and state laws requiring the appointment of a GAL to instead mandate the appointment of a lawyer for the child.**

The majority strongly disfavored the parental role assumed by the GAL. By contrast, the majority believed that children should be entitled to the same zealous, independent, and competent representation that the legal system affords adults in legal proceedings. Children too have the right to actively participate and have their voices heard in decision-making processes that affect their welfare. The appointment of an attorney as opposed to a GAL will ensure access to full participation in decision making.

The minority (comprised of one attorney Group member) dissented. This Group member argued that the GAL model works well in jurisdictions that employ such a model. This individual maintained that children are not adults, and should thus not be treated as adults. This perspective reflects the approach of our entire legal system, which treats children in a vastly different manner than adults. For example, the law imposes mandatory attendance laws on children, but not mandatory work laws for adults. Even treatment of children who commit crimes varies tremendously from the treatment afforded adults who commit the same crimes. Moreover, the minority argued that the legal system treats children differently for two main reasons: children do not possess the maturity or experience necessary to make critically important decisions; and children need to be protected, not only from the legal system, but also from their own inability to make mature decisions.

**G. Federal and state law should require the appointment of a lawyer for a child in all proceedings involving delinquency,**

**foster care placement, dependency, custody, and status offenses.**

In order to ensure that children actively participate and have their positions presented in decision making that affects their interests, the majority favored the mandatory appointment of counsel for children in almost all legal proceedings affecting their interests. The recommendations initially included appointment of an attorney in all legal proceedings where a child's *property* rights might be affected. The majority, however, ultimately decided to delete such a provision.

One attorney Group member favored appointment of a lawyer for a child in all of the above instances except for custody cases.<sup>5</sup> The minority view argued that in a custody case, the GAL model protects the interests of children more effectively than the attorney model. This Group member argued that children's lack of mature judgment in knowing what is best for themselves explains this difference. In the custody context, financial considerations must also be taken into account. When children participate in custody cases, one of the parents typically pays the lawyer representing the child. Obvious and severe conflict of interest issues arise. While a lawyer may think that she is advocating for the child, the lawyer would never advocate *against* the parent who is writing the check. This type of checkbook lawyering tends not only to encourage litigation over children (which harms children) but also does so at the expense of the less financially able spouse—usually the woman. The thought of both parents hiring a lawyer for the child presents further difficulties.

*Statutory/Court Rule Mandate*

**H. Mandate the appropriation of necessary funds to ensure adequate compensation and reasonable caseloads in light of the lawyer's professional ethical obligations.**

All recommendations regarding the ethical representation of children must take into account the funding of staff and other resources necessary to ensure quality and ethical lawyering. In many jurisdictions, due to large caseloads, the attorney simply does not have the time to interview the child clients or prepare cases properly. Further, absent adequate compensation, attorneys representing children will tend to be inexperienced lawyers, many of whom—because of the circumstances in which they work—provide less than adequate representation, and within a short period of time seek other higher paying employment.

The lack of adequate compensation is very shortsighted. Experienced, trained lawyers can perform their functions not only faster but also more competently, and at the same time save the court time and

---

5. According to this view, the child is not a party to custody and visitation proceedings.

resources by resolving cases more efficiently and effectively. More importantly, children who are afforded access to competent counsel are more likely to experience the benefits of reunification with their families with the support of family preservation services or placement in more permanent or adoptive homes. For those children adjudicated delinquent, a lower recidivism rate may also be predicted. Although impossible to quantify, and not politically popular, everyone involved in the juvenile justice system recognizes the value of investing some dollars now to save a great many dollars later. Financial savings, however, cannot compare with the unquantifiable social savings of better adjusted and protected children.

**I. Upon the arrest or removal of the child to state custody prior to the initiation of legal proceedings including, but not limited to, delinquency and dependency, the child shall have immediate access to an independent lawyer.**

The courts must appoint an attorney for a child in a delinquency or removal case at the earliest possible moment. Otherwise, actions taken in the absence of counsel may harm the client and her legal interests, sometimes irremediably. As a practical matter, attorneys are not available twenty-four hours a day, and social work, child welfare, and juvenile justice agencies must be able to take emergency actions. The Group debated whether the proposal should require the appointment of a lawyer prior to removal, but decided that this policy was impractical. By the time legal proceedings are initiated, there will be sufficient time for an attorney to become involved.

**J. Enact statutory/court rules to require the judiciary to provide the attorney for the child with the opportunity to adequately interview and counsel the child in a setting conducive to the establishment of an attorney-client relationship.**

This recommendation evolved out of a concern that, especially in jurisdictions in which the judiciary presides over a large juvenile dependency and delinquency docket, judges, referees, or masters pressure attorneys to interview their clients and resolve cases rapidly. The judiciary is obligated to ensure that attorneys are able to represent their clients ethically, including having sufficient time in which to interview and counsel their clients. Similarly, courthouses can be very intimidating settings for children, and space for interviewing clients is frequently at a premium. These factors make the lawyer's job more difficult. Without the opportunity to meet with a child in a private place and sufficient time to discuss the nature of the representation, the lawyer abdicates her responsibility as an advocate for the child. Finally, meeting new people can be as intimidating for children as courthouse experiences. Lawyers establish trusting relationships with child clients only with great difficulty, especially when the child has experienced abuse or removal from the home.

**K. Attorneys for children should not be mandated by statute or rule or otherwise required to report suspected abuse or neglect of their clients.**

The majority strongly believed that the trust implicit in an attorney-client relationship in which the child has confidence that her secrets are kept confidential should not be compromised. Several attorney participants voiced concern that clients would be reluctant to share information with them if the child perceived the attorney as being a reporter for the governmental agency intervening in their lives.

A few participants opted for an alternative recommendation, which provided that an attorney for the child would be permitted to report abuse and neglect if the attorney perceived their child client as being in significant risk of harm. Other Group members expressed a minority opinion that lawyers, similar to other professionals, should also be mandatory reporters. In short, this controversial proposal pits the protective feelings lawyers have for child clients against their ethical obligation to maintain a confidential relationship.

## II. RECOMMENDATIONS ON PRACTICE GUIDELINES

*Note: The recommendations are the same for a GAL and for an attorney unless specifically noted.*

### A. Contact with clients

**1. Every child should be seen by the lawyer, except in the rare circumstance where it is a physical impossibility.**

When the child is communicative, the information supplied by the child is essential to competent representation. Even when a child client is nonverbal, seeing the child can provide valuable information regarding the child's well-being and interaction with parents, family members, foster parents, and other caregivers. Additionally, seeing the child humanizes the representation.

In certain rare circumstances, physical impossibility may preclude an attorney from seeing the child client (e.g., removal cases or international custody cases where the child lives overseas). This impediment does not preclude the attorney from making telephone contact with a verbal child or contacting an attorney or other appropriate person in the child's area and exploring whether that individual can see or speak with the child.

**2. The lawyer should not represent communicative children on any substantive matter before speaking with the client.**

Not only does the lawyer need to speak with a communicative child, but the majority also believes that communication should occur before any substantive representation.

The minority would create an exception for instances when such communication is not possible, as for example in an abduction case where the child cannot be located.

**3. A court should not go forward on any substantive matter without the child's lawyer present.**

A court would never proceed on a substantive matter without counsel for the parents being present. The child is entitled to the same protection.

**4. For all children, the lawyer should see the client as soon as possible, unless there is an emergency hearing and it is impractical to see the child first. In such event, however, the child should be seen at least before the next hearing. Where there is no emergency hearing, the child should be seen before the first hearing.**

The lawyer should not put the child on the "back burner." Seeing the child must be given the highest priority. If an emergency exists, it may be impossible to see the child before the first hearing. Absent an emergency, however, the child should be seen by counsel before any court hearings have occurred.

**B. Context of Contact**

**1. The contact should occur where/when comfortable for the child (not to accommodate the lawyer's convenience).**

As stated above, interviewing a child who has been abused or removed from the home is already difficult. Where the accommodations are inappropriate for interviewing a child, the task becomes near impossible. The Group did not feel it appropriate to designate a specific place where the interview should take place. In many instances, the lawyer should go to the child's home or placement because the child may feel more comfortable there, as opposed to the lawyer's office. Situations occur, however, where a child may be more communicative if a parent or caregiver is not in the vicinity of the interview. Rather than suggesting a blanket rule, the Working Group recommends that the decision be made on a case-by-case basis with the child's comfort being the paramount factor.

**2. The lawyer should take into account the role of environment and timing in helping the child understand the lawyer's role and court process.**

Children have a difficult time understanding the role of a lawyer and the court process. The environment in which the child has grown up and the fact that the lawyer comes into the child's life at a very sensitive, emotional time account, in part, for this difficulty. Lawyers need to be sensitive to these factors in selecting what words to use and demeanor to present when talking to a child and to ensure that there

is enough time for a proper interview without unnecessary interruptions.

**3. Children should come to court unless they ask not to attend.**

The presumption is in favor of bringing the child to court so they can witness the proceedings, more actively participate in their case, and see the attorney working on their behalf.

One attorney member strongly opposed bringing a child to court in cases in which a GAL was appointed. According to this minority view, seeing one's parents fighting bitterly can scar children emotionally; in addition, having to confront one's parents and state a preference is especially harmful to children.

**C. Frequency of contact**

**1. There should be contact between the lawyer and the child at least prior to any substantive court hearings and other proceedings/events at which important decisions are being made regarding the child which are relevant to the lawyer's representation of the child.**

This rule is similar to the requirement that an attorney act with due diligence in representing an adult. Part of the due diligence requirement involves maintaining regular contact with the client and keeping her informed of important events. In addition to seeing the client prior to court proceedings, the attorney should see the child when apprised of emergencies or significant events affecting the child, including changes in placement, school suspensions, and inpatient hospitalizations.

**2. The contact between the lawyer and the child should be frequent enough to maintain and develop the relationship between client and lawyer.**

Similar to the requirement in C(1), due diligence requires regular contact between the attorney and the client. The child client should be treated the same in this regard as an adult client.

**D. Substance of contact**

**1. Communicating with the client**

**a. In most instances, the lawyer should meet one-on-one with the client.**

The lawyer should exercise judgment as to whether the presence of someone else (e.g., a social worker, family member, psychologist, interpreter) at the interview would augment the child's comfort level when speaking with the lawyer. Such a determination may be particularly important if the child is suffering from an emotional trauma. An attorney not trained in psychology or appropriate interviewing techniques could unintentionally cause the client further emotional harm.

- b. The lawyer should ensure that no person will be present who could jeopardize the attorney/client privilege when discussing potentially confidential matters.**

This issue presents especially difficult challenges and concerns, and the Working Group discussed this issue at length. On the one hand, having a third party present when talking to a child may facilitate the interviewing and counseling process. For example, many children may open up more if a parent, sibling, or individual familiar with the child is present. For other children, an interpreter may be necessary. For still others, the presence of a social worker or therapist during the interview may be appropriate.

On the other hand, Group members voiced a concern that the presence of a third party may jeopardize the attorney-client privilege. The dominant opinion expressed was that care should be given to maintaining the privilege.

In the case of a GAL, since an attorney-client relationship does not exist, no privilege need be maintained. Nonetheless, the GAL should exercise discretion when a third party is present, and take into account the nature of the case, the child involved, and the child's desire to keep secrets confidential, notwithstanding any legal privilege.

- c. The lawyer should make use of other experts such as social workers and psychologists in assessing the child's best interest.**

Where the child's best interest is at issue, the lawyer needs to remember that legal training provides little guidance in determining the child's best interests. The lawyer should seek the guidance of experts in related fields for assistance in areas where the lawyer lacks expertise.

- d. The lawyer should use developmentally-appropriate language and receive such training as is necessary to know how to do so.**

A lawyer's language is not that of the child's, and speaking "legalese" will not necessarily enhance trust or rapport. Learning to communicate with a child, especially a traumatized child, may require special training.

- e. The lawyer should take time to establish rapport.**

Establishing rapport with a child cannot be done instantly. Lawyers should make certain that they allocate sufficient time to interview the child to overcome the child's innate suspicion and establish trust.

- f. The lawyer should use concrete examples, hypotheticals, and road mapping in discussing the case.**

Interview techniques will obviously differ from case to case. The lawyer should be prepared to use whatever techniques afford the greatest opportunity for communication with the child.

- g. The lawyer should employ appropriate listening techniques, provide nonjudgmental support/listening, and be culturally competent.**

Most lawyers are better talkers than listeners. They need to be aware that their training does not teach them to listen well. They should be careful not to be judgmental and should take into account the cultural aspects of the child's background.

- h. Questions should be noncoercive and culturally competent.**

Lawyers need to carefully consider the questions they ask the child. Children are easily led and the questions need to elicit information from the child without suggesting answers.

- i. The lawyer should explain her role, including an explanation that the judge, and not the lawyer, is the ultimate decision maker. The GAL should explain that the GAL will advocate what she thinks is best for the child, even if it conflicts with the child's wishes.**

The child needs to understand that the lawyer's role is not to make the ultimate decision. Where the lawyer is serving as a GAL, children need to understand that the child's wishes may not be what the GAL thinks is best for the child, or what the GAL ultimately recommends to the court.

- j. The lawyer should explain confidentiality.**

The client should know the lawyer's confidentiality obligations and their limits. GALs should explain that they have no obligation to keep secrets.

The majority of the Working Group strongly opposes reporting obligations or options beyond those which apply to adults. A child needs to feel confident that her secrets will be protected. As stated earlier, the Group strongly believes that lawyers should not be mandatory reporters.

- k. The lawyers should explain:**
  - 1. The process of the decision-making tribunal;**
  - 2. Issues before the court; and**
  - 3. Options available to the court, the child, and the lawyer.**
- l. The lawyer should provide ample time and opportunity for the child to raise questions and concerns. The lawyer should ask direct questions of the child unless inappropriate.**

- m. **The lawyer should discuss access to materials and people by:**
  - 1. **Discussing what documents the lawyer has already read and with whom the lawyer has talked;**
  - 2. **Discussing what materials the lawyer is intending to review and what people will be interviewed; and**
  - 3. **Discussing the necessity to receive permission to gain access to other confidential material.**
- n. **The lawyer should discuss options and potential consequences.**
- o. **If appropriate, the lawyer should explain that the child has the option of taking no position or deferring to another's judgment.<sup>6</sup>**
- p. **The lawyer should collaborate with the child, as developmentally appropriate, on identification and selection of strategies.**
- q. **The lawyer should prepare a child for cross-examination, if cross-examination is a possibility.**
- r. **The lawyer should summarize by:**
  - 1. **Reviewing the discussion and client viewpoints, and checking the lawyer's perception for accuracy;**
  - 2. **Giving the child information about how to contact the lawyer in the future;**
  - 3. **Anticipating when and where future contact will take place and what issues are likely to arise. Asking the child's preference regarding future contact;**
  - 4. **Reviewing confidentiality and asking the child what she wants to be kept secret and from whom; and**
  - 5. **Predicting the next steps in the process.**

These steps constitute essentially the same processes that a lawyer goes through with an adult client. The Group believes that lawyers for children should be bound by the same rules for diligent, competent representation as lawyers for adult clients.

For the most part, the above rules apply with equal force to the GAL. The GAL should tell the child what position the GAL will take and why. A minority believed that where the child is under a certain age (approximately seven years of age, depending on the maturity and intelligence of the child), the GAL should not discuss her position with the child. The GAL should individually assess each case for intermediate age children, approximately ages seven to twelve. Usually, where the child is over twelve, the GAL should fully discuss the recommendation and the reasons for it.

---

6. The Group could not reach a consensus on the issue of whether the client should be able to defer the decision to the lawyer. This issue was set aside for further study.

## **2. The Noncommunicative Client**

### **a. The lawyer should always "lay eyes" on the client.**

The majority believes that this should be mandatory in all cases because it is necessary for the lawyer to obtain basic information needed in the representation.

A minority suggested adding the words: "where possible." For example, according to the minority view, some cases involve an infant client who lives in a different state or even in a different country. The child cannot impart information and, from an economical standpoint, a waste of precious resources occurs if a lawyer travels many miles to see a child who is too young to communicate. Also, the minority points out that courts appoint lawyers in abduction cases, where the lawyers are similarly unable to see the child. This minority view concluded that imposing the requirement that the attorney see the child client and making it mandatory may put the lawyer in an impossible position.

### **b. The lawyer should see the client in her living environment where possible.**

As stated earlier, the majority believed that this requirement should be mandatory in every case. The minority held the contrary view that seeing the client in the living environment, even when possible, is not always necessary. The minority believed that, when a child lives many miles away (overseas for example) and the living conditions are not at issue in the case, an ethical requirement that the lawyer travel to see the living premises makes little sense.

### **c. If the lawyer cannot see the child in the living environment, a qualified designee should see the child in the living environment.**

The majority agreed that in certain cases a trained, qualified social worker or legal assistant employed by the attorney could appropriately visit the child in his or her living environment. This practice would not preclude, however, the attorney from "laying eyes" on his client or at least occasionally doing so during the course of representation. Notably, a Working Group member recommended that the issue of lawyers and social workers functioning as teams merits further study.

One attorney member believed that the application of this rule should depend on the circumstances. The minority stated that custody disputes frequently involve two loving parents with no issue regarding the living environment. Securing a qualified designee frequently would entail hiring a social worker. The minority further concluded that, as limited resources hamper the resolution of these cases, whatever resources exist should not be squandered on unnecessary procedures imposed by a mandatory rule.

- d. **The lawyer should make extensive use of experts (e.g., social worker, psychologists) as well as other interested persons (e.g., family) in assessing the child's circumstances.**

As stated earlier, most lawyers are not trained in social work or psychology. Further, most law schools provide little, if any, training in child-related issues. Lawyers need to recognize the limits of their expertise and utilize persons specially trained to work with children.

- e. **Representation of a noncommunicative client should include information on the child's living environment.**

When the child client is noncommunicative, the attorney must necessarily understand the child's living environment in order to represent the child or the child's interests properly.

#### **E. Access to Materials and People with Information Regarding the Child**

1. **The lawyer should review all court documents as soon as possible. When possible, this should be done before meeting the child.**

The lawyer needs to be prepared for the meeting with the child. While the same applies to a meeting with an adult client, communicating with children (especially those involved in traumatic situations) can be difficult. While the attorney may not always be able to secure documents ahead of time, the attorney should make every effort to do so and to review them before the initial client meeting.

2. **The lawyer should review all relevant materials and speak with all necessary persons. Unless waiting would jeopardize the competence of the representation, the lawyer should discuss with the client the lawyer's review of materials or proposed contact with third parties before doing so.**

A full investigation of the circumstances involving the child will include a review of documents and speaking with knowledgeable persons about the case. To the extent possible, the lawyer should keep the child informed about the nature and extent of case investigation. Plans for case investigation should be discussed with the child in advance of the investigation so that the child may have input.

While the investigation is the same for a GAL, the GAL need not discuss its nature or extent with the child. Instead, the GAL should use his or her discretion, and take into account the age and maturity of the child.

3. **The lawyer should obtain the child's consent before examining confidential information.**

The attorney model of representation requires the attorney to actively include the child client in decision making about her case. This

includes ensuring that the client gives her consent, when capable of making a "considered judgment" and prior to the attorney obtaining confidential client records.

When serving as a GAL, the sequence of reviewing documents, meeting with people, and meeting with the client is not important. Further, the GAL need not discuss her review of the materials or meeting with people, and need not obtain the child's consent to review confidential material.

**4. The lawyers should not give reports and evaluations more weight than they deserve.**

Although evaluations and reports provide important information, they should not substitute for the ethical responsibility of a lawyer to represent the wishes of the client or, in the case of the GAL, to form an independent assessment of the child's best interests.

**5. The lawyer should ask the following questions in assessing the usefulness and the accuracy of evaluations and reports:**

- a. What are the norms of the test(s) used to assess ethnic minorities?
- b. Were there any ethnically appropriate tests available that were not used?
- c. Does the lawyer have special clinical or graduate level training in assessing ethnic minority children?
- d. Has the lawyer taken any continuing education courses in this area?
- e. What are the lawyer's experiences (e.g., life, professional) with this cultural group?
- f. Were the test protocols modified in any way given the culture of the child?
- g. If so, were those modifications reflected in the report?
- h. Who provided the training on ways to modify testing procedures for clients from different cultures?
- i. What is the impact on the overall assessment picture of different cultural backgrounds on the client and the clinician?

**6. Lawyers should request independent evaluations where needed, appropriate, and approved by client.**

Approval by the child is not needed by a GAL.

RECOMMENDATIONS ON EDUCATION

A. Certification for Child Advocates

1. Whether state or national certification is deferred for later consideration.
2. Oversight body should be established.
3. Initial training requirements should include:

- a. Interviewing, counseling, and negotiation techniques;
  - b. Cultural competence (directed at client population);
  - c. Role of the lawyer/GAL (ethical issues);
  - d. Child development and psychology;
  - e. Impact of abuse and neglect system intervention on children;
  - f. Working as a professional team (where relevant);
  - g. Substantive law and procedure (as necessary for effective interviewing and counseling); and
  - h. Training involving simulations.
4. Mentoring programs of certification candidates by more experienced lawyers should be established.
  5. CLE requirements in the field should be developed.
- B. Ongoing Training for Family Court Judges (including b, c, d, e, and g above).
- C. Law Schools
1. Law school curricula should embody issues affecting the full range of clients, including children, in ethics training.
  2. Law schools should mandate interviewing, counseling, and recognition skills training.
  3. Law schools should broaden clinical course offerings and include child law clinics among them (or alternatively offer credit for externships and child advocacy organizations).

#### IV. RECOMMENDATIONS FOR FURTHER STUDY

- A. With regard to child attendance at court, when and how often should it occur? What is its impact on child development and family dynamics and vice-versa?
- B. What is the impact of the type of representation on the psychological and emotional well-being of the child? This question applies for each type of case (e.g., custody, neglect, abuse, delinquency). Is there a need for a longitudinal study?
- C. What is the impact of the type of representation on case outcomes for each type of case?
- D. What are the advantages and disadvantages of continuity of representation and specialization in terms of the child's perception and case outcomes?
- E. What strategies minimize the negative impact of lack of continuity on the representation of children?
- F. Should a GAL, who is also a lawyer, be governed by the Model Rules or Model Code?
- G. What is a reasonable caseload for each type of case?
- H. What are the boundaries of appropriate lawyer-client contact, including financial assistance and physical touching?

- I. What standards should be developed to address the screening, hiring, training, and supervision of staff coming into contact with child clients?
- J. Evaluate alternative approaches to the delivery of legal services to children.
- K. How does a lawyer effectively communicate his or her role to the child client?
- L. To what extent should the lawyer share her personal and moral views and biases with the child?
- M. Should the child have the option of permitting the lawyer to make decisions for the child?
- N. How should lawyers and social workers function together as a team? Is it appropriate for social workers to conduct some interviews? Under what circumstance? How does this affect the confidentiality issues? How often should the social worker and lawyer consult? What is the role of nonlawyer team members for children who cannot communicate?
- O. What role is there for interpreters? What effect does this have on confidentiality issues?