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Cover Page Footnote

Before attending law school the author obtained a Masters in Social Work and worked as a social worker for the Juvenile Rights Division of The Legal Aid Society of New York. The author would like to thank Professors Bruce Green and Ann Moynihan of Fordham University School of Law as well as numerous social work professors from the Fordham University School of Law as well as numerous social work professors from the Fordham School of Social Work for their insights and comments.

CONFLICTS BETWEEN ATTORNEYS AND SOCIAL WORKERS REPRESENTING CHILDREN IN DELINQUENCY PROCEEDINGS

Lisa A. Stanger*

INTRODUCTION

Andrew is a twelve-year-old boy accused of petit larceny,¹ his first juvenile delinquency² offense. Barbara, the attorney from the legal services agency³ assigned to represent Andrew at trial, believes there is a strong possibility that Andrew will lose at trial. If Andrew loses at trial, he will be adjudicated a delinquent⁴ and a dispositional hearing⁵

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1. Petit larceny is defined as: theft of things or goods whose value is less than a statutory set amount. Black's Law Dictionary 882 (6th ed. 1990).

2. All states have laws that define juvenile delinquency. Although the wording of the statutes vary from state to state, generally a child is considered a delinquent if she acts in a way that violates laws or ordinances. Louis B. Wies, *A Guide to Juvenile Court* 3 (1977); *see, e.g.*, Ala. Code § 12-15-1(8) (1993) (defining juvenile delin-quency); Cal. Welf. & Inst. Code § 602 (West 1984) (same); Ky. Rev. Stat. Ann. § 600.020(37) (Michie/Bobbs-Merrill 1990 & Supp. 1994) (same); Mass. Gen. Laws Ann. ch. 119, § 52 (1993) (same); N.Y. Fam. Ct. Act § 301.2(1) (McKinney 1983) (same); Tex. Fam. Code Ann. § 51.03(a) (West 1994) (same). For the maximum age for juvenile court jurisdiction, see Samuel M. Davis, *Rights of Juveniles*, § 6.3 (1995). *See* Paul Piersma et al., *Law and Tactics in Juvenile Cases* 281-82 (3d ed. 1977); *infra* note 42.

3. Usually the court will appoint an attorney to represent the child and only in rare cases will a child's family retain a private attorney. *See* Barry C. Feld, *Criminal Law: The Right to Counsel in Juvenile Court: An Empirical Study of when Lawyers Appear and the Difference They Make*, 79 J. Crim. L. & Criminology 1185, 1210 (1989); Gloria Sunderman, *Taxpayer Bill Higher for Public Defenders Court-Appointed Attorneys*, Omaha World Herald, Sept. 13, 1996, at 1; *see, e.g.*, D.C. Code Ann. § 16-2304(a) (1989) (providing for counsel in juvenile delinquency trials); Ga. Code Ann. § 15-11-30(b) (Michie 1994) (same); N.D. Cent. Code § 27-20-26(1) (1991 & Supp. 1995) (same); 42 Pa. Cons. Stat. Ann. § 6337 (1982) (same); Tex. Fam. Code Ann. § 51.10(a)-(b) (West 1996) (same); Va. Code Ann. §§ 16.1-266, 16.1-268 (Michie 1996) (same).

4. *See supra* note 2 (defining juvenile delinquency). A child will be adjudicated a delinquent if the court finds that the allegations in the petition (the paper charging the delinquency offense) are supported by the evidence beyond a reasonable doubt. If the court does not so find, the petition is dismissed. *See generally* Institute of Judicial Administration, American Bar Association, *Juvenile Justice Standards, Standards Relating to Adjudication* (1980) [hereinafter IJA-Adjudication] (discussing process of adjudication); *infra* notes 19 & 24 and accompanying text (defining petition and adju-dicatory hearing).

5. The dispositional hearing is similar to sentencing in an adult criminal trial. After the child has been adjudicated a delinquent, a dispositional hearing is held to decide whether the case should be dismissed, the child should be placed on probation, or the child should be placed in an out-of-home placement. Randy Hertz et al., *Trial*

will be held, possibly resulting in Andrew being placed out-of-home.⁶ Andrew, however, wants to remain at home.

After some investigation into the case, Barbara realizes that it will be difficult at the dispositional hearing to convince the judge that Andrew should remain at home rather than be placed in a more restrictive setting. Andrew's mother does not want him at home because she feels she "cannot handle him." Andrew's mother claims that Andrew stays out past his curfew with the same children with whom he was arrested, does not attend school regularly, and fights constantly with his siblings and her. Additionally, Andrew's mother claims that he smokes marihuana.

Because of the potential difficulty in achieving Andrew's goal of remaining at home, Barbara feels that she needs the assistance of a social worker to help achieve Andrew's goals. Barbara refers the case to Carol, a social worker employed by the legal agency with which Barbara is associated. Barbara asks Carol to convince the mother to allow Andrew to remain at home after the trial. In addition, Barbara asks Carol to find a program in the community that will counsel Andrew and provide him with "productive" after-school activities. Because the trial is months away and the dispositional hearing will probably occur at least a month after trial, Andrew still has time to develop a positive track record with a community-based program and thus encourage the judge to allow him to remain at home. Finally, Barbara informs Carol that should Andrew cooperate with the program, Carol will be expected to testify⁷ at the dispositional hearing about whether Andrew should remain in the community or be placed in a more restrictive setting.

Carol, however, is reluctant to take the steps suggested by Barbara because she believes that it is not appropriate for Andrew to remain at home. This opinion is based on the fact that: (1) Andrew's mother resists his staying at home; (2) if Andrew remains in the community, it is likely that he will continue to associate with the children with whom he was arrested; and (3) Carol believes that the structure and discipline provided by an out-of-home placement may have the necessary positive effect on Andrew's behavior. Carol, acting according to what she in her professional opinion believes to be in Andrew's "best interests," tells Andrew's mother that she agrees with her that Andrew should not remain in the home. Additionally, Carol contacts

Manual for Defense Attorneys in Juvenile Court §§ 2.01(g), 38 (1991); *see infra* notes 31-34 and accompanying text (discussing the dispositional hearing).

6. *See infra* notes 31-34 and accompanying text (discussing out-of-home placements and dispositional alternatives).

7. A social worker's assistance in such a situation may not always include testimony. *See infra* part III.B (describing the different ways in which a social worker may assist an attorney).

various out-of-home placements that may be appropriate for Andrew, so that she can present them to the court for consideration.

As discussed previously, Carol is employed by the legal services agency assigned to represent Andrew. The obligation of the legal services agency is to zealously advocate Andrew's wishes—to find the least restrictive placement. Carol, by not advocating Andrew's wishes, has undermined the zealous advocacy to which he is entitled.⁸

What should a social worker do when she is asked to present to the court recommendations for the client, and when such recommendations may conflict with what the social worker thinks is best for the child?

The above hypothetical demonstrates the potential ethical conflicts that may arise when social workers who are employed by legal agencies assist lawyers in representing children in delinquency proceedings. Lawyers' and social workers' ethos and roles often differ and conflict in such settings. The attorney representing a child client in a delinquency proceeding must zealously advocate the child's interests.⁹ Social workers, though not bound by the same types of formal rules of

8. See *infra* part II (describing the attorney's ethical mandate to represent zealously the child clients wishes).

9. An attorney owes his client the duty to advocate the client's cause. *Strickland v. Washington*, 466 U.S. 668, 688 (1984). The ethical rules mandating the attorney's zealous advocacy include ABA Model Code of Professional Responsibility EC 7-1 (1981) [hereinafter Model Code] (duty to represent client zealously) and Model Rules of Professional Conduct Rule 1.3 cmt. (1994) (lawyer should act "with commitment and dedication to the interests of the client and with zeal in advocacy on the client's behalf") [hereinafter Model Rules]. The ethical rules directing an attorney to act according to her client's goals include Model Code EC 7-7, which gives decision making power to the client and Model Rule 1.2(a) in which an attorney is bound to abide by the client's decisions. These constitutional and ethical rules apply to juvenile representation as well. See *In re Gault*, 387 U.S. 1, 36 (1967) (discussing an attorney's role in a delinquency proceeding); IJA-Adjudication, *supra* note 4; Institute of Judicial Administration, American Bar Association, *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, at 79-80 (1980) (child client determines interests) [hereinafter IJA-Counsel for Private Parties]; Nat'l Advisory Comm. on Criminal Justice Standards and Goals, *Juvenile Justice and Delinquency Prevention, standards 16.3, 16.5* (1976) [hereinafter Nat'l Advisory Comm.].

The role of an attorney in a delinquency proceeding differs from that in abuse/neglect, custody, or termination of parental rights proceedings; in the latter three the attorney may have the role of a traditional advocate or guardian *ad litem*. Some commentators argue that in abuse/neglect, custody, or termination of parental rights proceedings, the attorney should advocate for the child's "best interests" if the child is under a certain age. See generally Samuel M. Davis, *The Role of the Attorney in Child Advocacy*, 32 U. Louisville J. Fam. L. 817, 825-829 (1994) (discussing the different roles assumed by attorneys for children, ranging from supporter of "best interests," to zealous advocate, to investigator); Martin Guggenheim, *The Right To Be Represented but Not Heard: Reflections on Legal Representation for Children*, 59 N.Y.U. L. Rev. 76 (1984) [hereinafter Guggenheim, *The Right To Be Represented*] (same); Angela D. Lurie, *Representing the Child-Client: Kids Are People Too*, 11 N.Y.L. Sch. J. Hum. Rts. 205, 207-211 (1993) (same); *infra* part II.B (discussing an attorney's role in representing children in delinquency proceedings).

ethics as lawyers,¹⁰ often employ a “best interests” model, which requires social workers to act according to what, in their judgment, is best for the child, the family, and the community.¹¹

As demonstrated by Carol’s dilemma, the “best interests” model can conflict with the attorney’s role as a zealous advocate, as well as with the goals of the legal agency that employs the social worker. The National Association of Social Workers Code of Ethics (“NASW Code”) does not prescribe what role a social worker should assume in such a situation.¹² Additionally, the NASW Code does not address whether in a host agency, such as a legal agency, a social worker is required to adhere to the ethical mandates governing the host agency, such as the lawyer’s Model Code and Model Rules.

Notwithstanding these potential conflicts, social workers occupy a critical role in delinquency proceedings.¹³ Thus, legal agencies must provide a structure that fosters cooperation between attorneys and social workers in the representation of children in delinquency proceedings.

This Note explores the conflicts that can arise when attorneys and social workers act together in the representation of children in delinquency proceedings. Part I explains the delinquency proceeding process and discusses the necessity of involving social workers in juvenile courts. Part II examines the attorney’s ethical responsibility to advocate zealously a child client’s wishes. Part III discusses social workers’ education and training as well as the tasks an attorney may need a social worker to perform in a delinquency proceeding. It also analyzes a social worker’s obligations in assisting attorneys representing children in delinquency proceedings. It also describes two models that a social worker employed in a legal setting might utilize—the “pure advocate” model and the “best interests” model. Part IV considers the ethical conflicts that can arise when members of the two professions work together in representing children.

Part V argues that a social worker, in such a setting, must adopt the “pure advocate” model. It proposes a framework in which social workers and attorneys can successfully work together in representing children in delinquency proceedings. This Note concludes that because the adversarial system used in juvenile adjudication procedures demands zealous advocacy, social workers must acknowledge this reality and accept a more restricted role of social work services in delinquency proceedings.

10. See *infra* parts III.A, III.C (discussing the Code of Ethics governing social workers’ behavior).

11. See *infra* part III.C.1 (discussing the “best interests” model).

12. See *infra* parts III.A, III.C (discussing the National Association of Social Workers Code of Ethics as well as the different possible roles a social worker may assume).

13. See *infra* part I.B (discussing the necessity of utilizing social workers in delinquency proceedings).

I. JUVENILE DELINQUENCY PROCEEDINGS

In the Introduction, this Note illustrated a hypothetical delinquency case. This part describes the juvenile delinquency process that Andrew, the child in the hypothetical, would face. It then discusses the integral role that social workers serve in assisting attorneys to represent juveniles in delinquency proceedings.

A. *The Juvenile Court Process from Arrest to Disposition*

Juvenile delinquency proceedings differ in form and substance from adult criminal trials. In contrast to adult proceedings, delinquency proceedings are viewed "as rehabilitative, rather than punitive, in nature."¹⁴ To emphasize that the criminal justice system does not treat a delinquency offense as a crime, the majority of juvenile courts utilize terms that are unique to delinquency cases.¹⁵

Other aspects of delinquency proceedings, however, closely resemble the criminal procedures that apply to adult criminal defendants.¹⁶ For example, the standards for arresting a child generally parallel the standards for arresting an adult.¹⁷ After arrest, the police usually transport the child to a police station.¹⁸ The child is arraigned shortly thereafter, with the court advising the child of the charges in the peti-

14. *State v. Jones*, 418 S.W.2d 769, 770 (Tenn. 1966) (stating that purpose behind juvenile statutes is for state to reform and educate juveniles, not try them for criminal offenses); Guggenheim, *The Right To Be Represented*, *supra* note 9, at 87; *see also* Piersma et al., *supra* note 2, at 345 (stating that the purpose of juvenile court is to provide assistance, rather than punishment for the child).

15. Hertz et al., *supra* note 5, § 2.02; *see, e.g.*, IJA-Adjudication, *supra* note 4, §§ 1.1, 2.4-2.6 (discussing terminology used in delinquency proceedings). For example, the paper charging an offense is termed a "petition" rather than an indictment. This document does not actually charge the youth with committing a "crime," but "alleges" that the child committed an act or set of acts which if committed by an adult would constitute a crime. Hertz et al., *supra* note 5, § 2.02. Additionally, the accused is called a "respondent" rather than a "defendant"; "guilty pleas" are termed "admissions"; "sentencing" is termed "disposition"; and the term of incarceration to which the child is sentenced is either "placement" or "commitment." *Id.*

16. Davis, *supra* note 2, §§ 1.3, 5.1.

17. Hertz et al., *supra* note 5, § 3.03. For juveniles, the arrest is usually termed "taking the child into custody." *Id.* The arrest is either pursuant to an arrest warrant issued by a judge or magistrate based on an affidavit establishing reasonable cause, or, if without a warrant, based on the officer's determination that she has reasonable cause. *Id.*; *see* Institute of Judicial Administration, American Bar Association, *Juvenile Justice Standards, Interim Status* §§ 2.2-2.3 (1980) [hereinafter IJA-Interim Status]; Davis, *supra* note 2, § 3.4; Piersma et al., *supra* note 2, at 61-63.

18. Hertz et al., *supra* note 5, § 3.04; *see* M.A. Bortner, *Inside a Juvenile Court*, 39-44 (1982); Davis, *supra* note 2, § 3.1; Piersma et al., *supra* note 2, at 66-67.

tion.¹⁹ At the arraignment, the child enters a plea of "guilty" or "not guilty."²⁰

The constitutional right to counsel attaches in juvenile court, either after the child is taken into custody,²¹ or after the filing of the petition.²² At this stage, the court generally appoints an attorney to represent the child.²³

The trial, sometimes referred to as an adjudicatory hearing, is usually held a few months after arraignment.²⁴ If the court makes a finding of juvenile delinquency at trial, it then schedules a dispositional hearing.²⁵

19. A petition is similar to the prosecutor's issuance of a complaint or a grand jury's indictment in an adult criminal case. Feld, *supra* note 3, at 1210; see A National Bench Book for Juvenile Court Rule 3.00-3.02 (The Honorable Lindsay G. Arthur ed. 1979); Bortner, *supra* note 18, at 40; Wies, *supra* note 2, at 5.

20. In jurisdictions following juvenile court vocabulary, entering a plea of guilty or not guilty is termed an "admission" or a "denial," respectively. Hertz et al., *supra* note 5, §4.13; IJA-Adjudication, *supra* note 4, §§ 2.4-2.6. Counsel rarely advises the child to plead guilty at arraignment. Generally, guilty pleas are advised only when counsel has represented the child prior to arraignment and has investigated the case and conferred at length with the child. Hertz et al., *supra* note 5, § 4.13.

21. See Institute of Judicial Administration, American Bar Association, Juvenile Justice Standards, Standards relating to Pretrial Court Proceedings § 5.1 (1980); Feld, *supra* note 3, at 1210; see also Davis, *supra* note 2, §§ 3.11(b)-3.12, 5.2; Piersma et al., *supra* note 2, at 45.

22. Feld, *supra* note 3, at 1210.

23. *Id.*

24. See Davis, *supra* note 2, § 5.1. The trial is conducted with the child present, Hertz et al., *supra* note 5, § 27.01, and is usually presided over and decided by a judge. *Id.* § 27.04. Some states, however, allow for a jury trial. *Id.*; see, e.g., Mass. Gen. Laws Ann. ch. 119, § 55A (1993) (allowing for a jury trial); Mich. Comp. Laws Ann. § 712A.17 (West 1993) (same); Wis. Stat. Ann. § 48.31(2) (West 1987) (same). *But see* McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971) (deciding that jury trials are not fundamental to the juvenile court system); Ala. Code § 12-15-65(a) (1986) (not providing for a jury trial in juvenile cases); La. Children's Code Ann. arts. 664, 882 (West 1995) (same); N.J. Stat. Ann. § 2A:4A-40 (West 1987) (same); Ohio Rev. Code Ann. § 2151.35(A) (1994) (same). See generally Korine L. Larsen, Comment, *With Liberty and Juvenile Justice for All: Extending the Right to a Jury Trial to the Juvenile Courts*, 20 Wm. Mitchell L. Rev. 835, 848-73 (1994) (discussing the right to a jury trial in juvenile court).

Most states conduct the trial in accordance with the same rules of evidence used in adult criminal trials. Hertz et al., *supra* note 5, § 30.01; see, e.g., Haw. Rev. Stat. § 571-41(c) (1993) (discussing the rules of evidence used in a juvenile delinquency trial); Ill. Comp. Stat. Ann. ch. 705, § 405/5-18 (West 1992) (same); Iowa Code Ann. § 232.96(3) (West 1994) (same).

A "finding" of delinquency is made after showing, with proof beyond a reasonable doubt, that the child committed the crimes alleged in the petition. Hertz et al., *supra* note 5, § 35.03; see *In re Winship*, 397 U.S. 358, 366 (1970) (holding that juvenile adjudications require proof beyond a reasonable doubt); IJA-Adjudication, *supra* note 4, § 4.2; Davis, *supra* note 2, § 5.1; see, e.g., Cal. Welf. & Inst. Code § 701 (West 1984) (requiring proof beyond a reasonable doubt); Md. Code Ann., Cts. & Jud. Proc. § 3-819(b) (1995) (same); Tenn. Code Ann. § 37-1-129(2)(b) (1991) (same).

25. Hertz et al., *supra* note 5, § 37.01. At this time the court also orders the probation department to investigate the child's background and prepare a report concern-

The dispositional hearing allows the court to determine whether the child can be rehabilitated adequately in the community, or whether an out-of-home placement is warranted.²⁶ The dispositional hearing in juvenile delinquency proceedings replaces sentencing in adult criminal cases,²⁷ but differs substantially from its adult counterpart.²⁸ Whereas adult sentencing seeks to identify the most appropriate punishment for the crime committed, the goal of the juvenile dispositional hearing is to determine the alternatives most likely to result in the child's rehabilitation.²⁹ Thus, the disposition focuses on the needs of the child.³⁰

Most jurisdictions do not impose upon judges specific sentencing requirements following an adjudication of delinquency.³¹ The juvenile court judge's³² sentencing discretion is broad and ranges from dismissal of the matter to incarceration.³³ A judge usually will not base a

ing the department's recommendation for disposition. *Id.* § 38.04; see Piersma et al., *supra* note 2, at 353.

26. N.Y. Fam. Ct. Act § 301.2(7) (McKinney 1995); 42 Pa. Cons. Stat. Ann. § 6352(a) (1996); Tenn. Code Ann. §§ 37-1-130, 37-1-131, 37-1-101 (1991); see Piersma et al., *supra* note 2, at 367; *infra* note 33 (listing dispositional alternatives).

27. Jack E. Bynum & William E. Thompson, *Juvenile Delinquency: A Sociological Approach* 370-72 (3d ed. 1996); Gregory D. Smith & Sherry L.H. Thomas, *Ethical Considerations in Juvenile Court*, 2 Ky. Children's Rts. J., 24, 25 (1992); see, e.g., N.Y. Fam. Ct. Act § 350.3, Notes of Decision Index (McKinney 1995) (stating that dispositional hearing in juvenile cases replaces sentencing in adult criminal cases).

28. Hertz et al., *supra* note 5, § 38.01; see also John N. Kane Jr., Note, *Dispositional Authority and Decision Making in New York's Juvenile Justice System: Discretion at Risk*, 45 Syracuse L. Rev. 925, 941-45 (1994) (discussing the dispositional process in New York State).

29. Hertz et al., *supra* note 5, § 38.01-02.

30. *Id.*; see Kane, *supra* note 28, at 949-50; *supra* note 14 and accompanying text.

31. Hertz et al., *supra* note 5, § 38.03(b); Kane, *supra* note 28, at 958; Institute of Judicial Administration, American Bar Association, *Juvenile Justice Standards, Dispositions*, § 1.2F (1980) [hereinafter IJA-Dispositions]; Institute of Judicial Administration, American Bar Association, *Juvenile Justice Standards, Dispositional Procedures*, § 1.1 (1980); National Juvenile Law Center, *Legislative Resource Manual for Implementation of the Juvenile Justice and Delinquency Prevention Act*, 20-21 (1979) [hereinafter *Legislative Manual*].

32. Bortner, *supra* note 18, at 23-24 (describing juvenile court judges); *The Juvenile Justice System*, 133-59 (Malcom W. Klein ed., 1976) (same).

33. See Bortner, *supra* note 18, at 58-62; Davis, *supra* note 2, § 6.03; Hertz et al., *supra* note 5, § 38.03(c); IJA-Dispositions, *supra* note 31, § 2.1 (describing least restrictive dispositional alternatives), §§ 3.1-3.3 (describing dispositional alternatives); see also, Ill. Rev. Stat. ch. 37 para. 805-23 (1990) (same); N.M. Stat. Ann. § 32A-2-20 (Michie 1996) (same); N.Y. Fam. Ct. Act § 756 (McKinney 1983) (same). The least restrictive dispositional alternatives are: dismissal of the case; adjournment in contemplation of dismissal, also called diversion or probation without verdict, upon which sentencing is delayed for a specified period of time, often six months to one year, after which the case is dismissed if the child has complied with any court-ordered conditions and has not been rearrested; restitution (paying compensation to the victim); and a suspended judgment (also known as conditional discharge) which involves a period of suspended judgment during which time the child is expected to follow any conditions of the judgment. Hertz et al., *supra* note 5, § 38.03(c). Suspended judgment differs from probation in that the child is not under the supervision

placement sentence solely on the fact that the child violated the law, but instead will order placement only if there is a showing that the child both committed the crime *and* requires treatment in a secure facility.³⁴

Though the child's attorney should zealously advocate the child's wishes,³⁵ there is a paternalistic factor to juvenile court proceedings.³⁶ The purpose of the dispositional hearing is rehabilitation,³⁷ therefore, the court is particularly concerned with the causes that led to the delinquency as well as the effects of proposed dispositions. Because rehabilitation is the central objective in these proceedings, the expertise of social workers is necessary in juvenile proceedings to ensure an appropriate disposition of the child.

of a probation officer, and from adjournment in contemplation of dismissal because the final order adjudicating the child a delinquent still remains intact at the completion of the suspended judgment period. *Id.* The most common disposition is probation. The typical probation period lasts for one or two years. *Id.* Typical probation orders usually include a requirement of monthly meetings with a probation officer, and a requirement that the child remain crime-free, attend school regularly, and refrain from drug and alcohol use. *Id.*

More restrictive dispositions that require out-of-home placement include removal of the child from home for placement in a community-based group home and indeterminate placement in a private residential facility which places the child out of home in a private, rather than state-run facility. *Id.* Private facilities usually have better resources than their state counterparts and are less restrictive. *Id.*

The most restrictive dispositional orders are: indeterminate placement in a state-run non-secure or minimum security juvenile facility, indeterminate placement in a state-run secure or maximum security juvenile facility, and determinate placement in a state-run juvenile facility which may be ordered for serious felonies or repeat offenders, and usually results in maximum security confinement for at least a portion of the sentence. *Id.* Indeterminate placements usually leave the time of release to the discretion of administrators. *Id.*

34. Hertz et al., *supra* note 5, § 38.03(a); see IJA-Dispositions, *supra* note 31, §§ 2.1-2.2 (discussing the presumption of least restrictive alternative); Legislative Manual, *supra* note 31, at 19 (stating that care and treatment of juveniles must be provided in the least restrictive setting possible); see also Flynn McRoberts & Andrew Gottesman, *State May Get Tougher on Young*, Chi. Trib., Oct. 18, 1994, at 1 (predicting harsher treatment for juveniles in the future).

35. See *supra* note 9; *infra* part II.B.

36. See *Schall v. Martin*, 467 U.S. 253, 265 (1984) ("[Children] are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae*" (citations omitted)); Joseph Goldstein et al., Before the Best Interests of the Child 122 (1979) ("[c]hildren are by definition persons in need of adult caretakers who determine what is best for them"); *supra* note 14 and accompanying text; Martin Guggenheim, *A Paradigm for Determining the Role of Counsel for Children*, 64 Fordham L. Rev 1399, 1407 (1996) [hereinafter Guggenheim, *Determining the Role of Counsel for Children*] (discussing how the law treats children differently).

37. See *supra* notes 29-30 and accompanying text.

B. *The Necessity of Involving Social Workers in Delinquency Proceedings*

Criminal justice experts have long recognized that many criminal defendants face a complex set of problems that transcend legal issues.³⁸ This view applies similarly to a large number of juvenile delinquents. Social workers and lawyers consequently understand that the problems that face many child clients involved in delinquency proceedings require both legal and social service interventions.³⁹

In 1967, the President's Crime Commission stated: "Defense counsel needs ready access to a number of auxiliary services resembling those available to a modern and well-equipped probation office Social investigation, diagnosis, and planning call for the efforts of persons from many disciplines, of which the law is but one."⁴⁰ The provision of multi-disciplinary services in the criminal and juvenile justice system can assist a process that is otherwise often a "fragmented, divided, splintered and decentralized group of organizations and agencies."⁴¹

Moreover, the inherent shortcomings of the juvenile justice system make it even more difficult to address the complex and prevalent problems that plague the juvenile delinquency population. The upperage of juvenile court jurisdiction in delinquency matters is defined by state statute.⁴² Juveniles between the ages of ten and eighteen constitute approximately fourteen percent of the U.S. population.⁴³ This group, however, according to the Federal Bureau of Investigation Violent Crime Index, commits twenty-nine percent of all Index offenses, eighteen percent of all violent crimes, and thirty-three percent of all

38. Joseph J. Senna, *Social Workers in Public Defender Programs*, 24 Soc. Work 271, 272 (1975).

39. *Id.* at 271.

40. The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* 151 (1967); see 42 U.S.C. § 5667(a)-(b); *Reno: Courts Must Help Fight Against Juvenile Crime*, Orlando Sentinel, Mar. 25, 1996, at A10 (stating that Attorney General Janet Reno had urged the development of a pilot program where courts could work with community service programs).

41. Senna, *supra* note 38, at 271 (citations omitted); see Bortner, *supra* note 18, at 2; Legislative Manual, *supra* note 31, at 13-14.

42. Office of Juvenile Justice and Delinquency Prevention, *Juvenile Offenders and Victims: A National Report* 73 (Howard N Snyder & Melissa Sickmund eds., 1995) [hereinafter OJJDP]. The upperage is the maximum age for which juvenile court has jurisdiction. In most states the upperage is 17, exceptions are as follows: Connecticut, New York, and North Carolina, where the upperage is 15; and Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, South Carolina, and Texas, where the upperage is 16. *Id.*; see, e.g., Mass. Ann. Laws ch. 119, § 52 (Law. Co-op 1994); Tex. Fam. Code Ann. § 51.02 (2)(A) (West 1996); Colo. Rev. Stat. §§ 19-1-103(18) (1996).

43. See Dep't of Com., *Statistical Abstract of the United States* 16 (1995); Andrew Martin, '95 *Could Be the Deadliest Yet for Kids*, Chi. Trib., May 6, 1995, at 1 (stating that in the next decade the number of teenagers ages 14-17 will increase by 23%).

property crimes.⁴⁴ Numerous explanations are offered for the disproportionate level of crime among young people, "including the prevalence of gangs and drug use⁴⁵ and the coarsening of American society."⁴⁶

According to the Office of Juvenile Justice and Delinquency Prevention ("OJJDP"), in 1992, twenty-two percent of all juveniles in the United States live in poverty.⁴⁷ Half of all children will spend a portion of their childhood in a single parent home; these children are more likely to live in poverty than those in two-parent families.⁴⁸ A growing proportion of children are born to unwed mothers, and five percent of all babies born in 1991 were born to juvenile mothers.⁴⁹ Also in 1991, 3.4 million persons ages sixteen to twenty-four were high school dropouts, and child protective agencies received 1.9 million reports of child maltreatment.⁵⁰

The OJJDP concluded that childhood abuse and neglect increases a child's chance of future delinquent and adult criminal behavior.⁵¹ Additionally, more than four in ten high school seniors reported illicit drug use; drug use seems to prolong involvement in delinquency once

44. See Bureau of Justice Stat., U.S. Dep't of Justice, Sourcebook of Criminal Justice Statistics 387 (1994) [hereinafter Sourcebook]; see also *Breaking the Cradle-to-Crime Cycle*, Chi. Trib., July 5, 1996, at 14 (stating that there has been an increase in the amount of murders committed by teenagers); Angela Lau, *Arrests of Juveniles for Violent Crime Up*, San Diego Union-Trib., Mar. 9, 1996, at B1 (stating that there has been an increase in the amount of violent crimes committed by teenagers); Martin, *supra* note 43, at 1 (stating that there has been an increase in the amount of murders committed by teenagers); Ralph A. Rossum, *Holding Juveniles Accountable: Reforming America's "Juvenile Injustice System"*, 22 Pepp. L. Rev. 907, 907 (1995) (citing statistics concerning how "[s]erious juvenile crime is skyrocketing"); George Bundy Smith & Gloria M. Dabiri, *The Judicial Role in the Treatment of Juvenile Delinquents*, 3 J. L. & Pol'y 347, 360-61 (1995) (noting the increase in crimes committed by juveniles); Sunderman, *supra* note 3, at 1 (stating that there has been an increase in the amount of crimes committed by teenagers).

45. See David Holmstrom, *Small Towns Fight Big-City Crime*, Christian Sci. Monitor, Feb. 9, 1995, at 4 (stating that a spot check of more than two dozen small towns showed a prevalence of teen drug dealing and gang involvement); Sourcebook, *supra* note 44, at 478 (reporting drug and alcohol use among highschools seniors).

46. Rossum, *supra* note 44, at 908; see *Juveniles Need Advocates, Not Adversaries*, Wash. Post, May 17, 1992, at C8.

47. OJJDP, *supra* note 42, at 7.

48. *Id.* at 10.

49. *Id.* at 10-12.

50. *Id.* at 14, 37; see *Juveniles Need Advocates, Not Adversaries*, *supra* note 46, at C8 (stating that in the author's experience with delinquency cases about half involve homes where there is abuse and neglect); Martin, *supra* note 43, at 1 (stating that in 1995 Chicago had an increase in the number of child abuse deaths). See generally Don Drennon-Gala, *Delinquency and High School Dropouts* (1995) (discussing the correlation between dropping out of high school and delinquent behavior); David N. Sandburg, *The Child Abuse-Delinquency Connection* (1989) (discussing the correlation between child abuse and delinquency).

51. OJJDP, *supra* note 42, at 42.

the behavior has begun and extensive drug use is reported by juveniles in delinquency institutions.⁵²

Because of these extensive problems, social services serve a necessary function in rehabilitating a child involved in the juvenile justice system.⁵³ Lawyers rarely have training and education in areas where "children often have long histories of maladaptive or impaired social functioning caused by psychological, neurological and family problems,"⁵⁴ accordingly they often require the assistance of social workers⁵⁵ in representing clients whose "fundamental legal issues are often framed in the language of the social sciences."⁵⁶ Social workers, because of their training and education in areas such as human behavior and social welfare,⁵⁷ are better trained than attorneys to provide services such as crisis intervention, evaluating and determining the child client's needs, referring clients to appropriate agencies, and providing direct casework services.⁵⁸

In order to address the varied problems confronted by juvenile defendants, lawyers and social workers must become involved at the early stages of the delinquency proceedings.⁵⁹ The courts, the social worker, and the lawyer can best serve the child client and prevent further criminal behavior if they identify the child's needs shortly after the child is arrested. Early intervention is critical because the probability of adult arrest increases with the number of juvenile arrests, and serious juvenile offenders are likely to have more serious adult criminal careers.⁶⁰

52. *Id.* at 59, 64; Sourcebook, *supra* note 44, at 419 (citing drug use among male juvenile arrestees). See generally Abbe Smith, *They Dream of Growing Older: On Kids and Crime*, 36 B.C. L. Rev. 953 (1995) (discussing the need for rehabilitation rather than punishment in the juvenile justice system); Lois A. Weithorn, *Mental Hospitalization of Troublesome Youth: An Analysis of Skyrocketing Admission Rates*, 40 Stan. L. Rev. 773 (1988) (discussing the reasons behind increased institutionalization of youths and how the juvenile justice system does not address the needs of these youths).

53. Cf. *Breaking the Cradle-to-Crime Cycle*, *supra* note 44, at 14 (stating that "early intervention significantly decreased the chances that [children at risk] would wind up in the juvenile justice system").

54. Lenore Gittis, *The Juvenile Rights Division—A Retrospective on Its Age of Majority*, The Legal Aid Society-Juvenile Rights Division, May 17, 1983, 5; see *infra* notes 63-68 and accompanying text.

55. See Frank P. Cervone, *Counsel for the Child*, 21 Litig. 8, 9-10 (1995).

56. Gittis, *supra* note 54, at 6.

57. See *infra*, notes 117-19 and accompanying text.

58. See James L. Scherrer, *How Social Workers Help Lawyers*, 21 Soc. Work 279, 280-81 (1976); Senna, *supra* note 38, at 273-75.

59. Office of Juvenile Justice and Delinquency Prevention, *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders 57* (James C. Howell ed., 1995) ("[r]educing youth violence and crime requires a multi-faceted, coordinated approach in which early intervention is a critical first step").

60. OJJDP, *supra* note 42 at 50; see Jim Clark, *Juvenile Justice: Get Smarter—Not Just Tougher*, Orlando Sentinel, Jan. 20, 1994, at A11 (stating that juvenile delinquents "[graduate] into the adult criminal justice system with ease").

"For the average juvenile delinquent, secure confinement is not the appropriate placement,"⁶¹ and thus a judge often decides that it is "appropriate to supervise the child while he remains in the community."⁶² Unfortunately, however, the attorney often has only a few options to present the judge regarding community supervision and services. This forces the judge to opt for a more restrictive placement.⁶³ It is in this context that a social worker can make a difference between incarceration and rehabilitation.⁶⁴

Social workers, unlike most attorneys, have an extensive knowledge of community services and programs.⁶⁵ Even knowledgeable attorneys will find the tasks of locating services, making home visits, and interviewing the client and family members extremely time consuming without the help of a social worker.⁶⁶ With very troubled and dysfunctional clients,⁶⁷ the social worker's assistance in preparing for the dispositional hearing is even more important.⁶⁸ The social worker can help the attorney by eliciting information from a client who might not be forthcoming, as well as interpreting what the child is trying to express.⁶⁹

An attorney may have difficulty counseling a child with regard to complicated legal matters without the assistance and advice of a social worker.⁷⁰ A social worker's expertise is vital to an attorney who, in fulfilling her obligations to counsel the client, must explain complex and often painful legal options to the child.⁷¹ This is more often the

61. Kane, *supra* note 28, at 958; see Legislative Manual, *supra* note 31, at 19 (stating that inappropriate dispositions do not amount to actual care or treatment of the juvenile).

62. Kane, *supra* note 28, at 958; see Legislative Manual, *supra* note 31, at 19 (stating that treatment cannot be provided to the child if the treatment alternatives presented to the court bear no relation to the problem or are overly intrusive).

63. See Kane, *supra* note 28, at 958-59 (discussing successful community programs that offer alternatives to placement); Smith, *supra* note 44, at 366-74 (discussing the importance of early intervention for juvenile delinquents and the necessary features of community-based programs).

64. Hertz et al., *supra* note 5, § 38.10.

65. See *id.*

66. *Id.* Hertz suggests that attorneys who work in public defender's offices with social workers on staff should request their assistance and discuss dispositional alternatives shortly after the initial meeting with the client. *Id.* Hertz notes that if the attorney is "not so fortunate as to have recourse to a staff social worker [he] should consider retaining one for the particular case." *Id.* § 38.10; see Leonard P. Edwards, *A Comprehensive Approach to the Representation of Children*, 27 Fam. L. Q. 417, 419 (1993).

67. See *supra* notes 47-50 and accompanying text.

68. See Jean Koh Peters, *Concrete Strategies for Managing Ethically-Based Conflicts Between Children's Lawyers and Consulting Social Workers Who Serve the Same Client*, Ky. Children's Rts. J. 15, 17-18 (1991).

69. *Id.* at 17.

70. *Id.*; see Senna, *supra* note 38, at 273.

71. Peters, *supra* note 68, at 17.

consequence of the attorney's lack of training and education in this area rather than the child's limitations.⁷²

Furthermore, integrated legal and social services provide an attorney representing a child in a delinquency proceeding with greater information about the child client than is usually available.⁷³ Enhanced understanding of the alleged delinquent, through understanding their social history, enables the attorney to serve as "short-term counselor advocate" and to perform tasks such as providing interim support and giving pragmatic advice on both legal and social issues.⁷⁴ The extent to which an attorney can fulfill such roles with confidence depends on factors such as skills, techniques, and the attorney's view of her program's goals.⁷⁵ One study demonstrated that experienced attorneys utilized and worked with social workers to a greater degree than those with less experience.⁷⁶

When the lawyer and social worker function together effectively, the child client is more likely to receive appropriate social services that allow the court to choose less restrictive alternatives at disposition.⁷⁷ In addition, a multi-disciplinary approach to delinquency proceedings results in the early intervention that is necessary to prevent criminal behavior from carrying over into adulthood.⁷⁸ Thus, attorneys and social workers should operate as a team to provide both legal and social service assistance to alleged delinquents.

II. THE ATTORNEY'S ETHICAL MANDATE

This Note has described juvenile delinquency proceedings and the integral role of social workers in those proceedings. This part discusses an attorney's constitutional and ethical obligations in general, and then discusses specific obligations that apply when representing children in delinquency proceedings.

A. Attorney's Obligations in Representing Clients

An attorney's responsibilities in representing her clients in criminal proceedings originate with the Sixth Amendment to the United States

72. *Id.*

73. See Scherrer, *supra* note 58, at 280; Senna, *supra* note 38, at 275.

74. See Scherrer, *supra* note 58, at 280; Senna, *supra* note 38, at 275.

75. See Scherrer, *supra* note 58, at 280; Senna, *supra* note 38, at 275.

76. Senna, *supra* note 38, at 275.

77. *Id.* at 272. Social workers can be utilized by the attorney to set up and recommend dispositional plans to court. *Id.* at 273. Social workers have knowledge of community resources and can meet with teachers, family members, and others to ascertain enough information to better "sell" the plan to the court. *Id.* at 273; see *supra* notes 53-54, 61-62 and accompanying text.

78. See, OJJDP *supra* note 42, at 42; Smith, *supra* note 52, at 1016-17; *Breaking the Cradle-to-Crime Cycle*, *supra* note 44, at 14 (discussing the success of early intervention programs).

Constitution, which guarantees the right to counsel.⁷⁹ A lawyer's duties in representing her clients are further defined by the Model Code of Professional Responsibility and the Model Rules of Professional Conduct.⁸⁰

First, the Model Code's Ethical Consideration 7-1 states that an attorney has a duty, both to her client and to the legal system, to represent her client zealously.⁸¹ Model Rule 1.3 Comment (1) states that an attorney is bound to act "with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf."⁸²

Ethics rules also obligate an attorney to act in accordance with her client's goals, even where the attorney does not agree with those goals.⁸³ The Model Code's Ethical Consideration 7-7 notes that the decision making authority belongs exclusively to the client, except in areas that do not affect the client's defense or substantially prejudice the client's rights.⁸⁴ A client's decisions, if within the law, are binding on the lawyer.⁸⁵ Similarly, Model Rule 1.2(a) requires that a lawyer abide by her client's decisions "concerning the objectives of representation."⁸⁶ Thus, the attorney is bound to zealously further the client's, and not her own, decisions and objectives.

79. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . and to have the Assistance of Counsel for his defence." U.S. Const. amend. VI. The Sixth Amendment's right to counsel relies on the "presumption that counsel will fulfill the role in the adversary process." *Strickland v. Washington*, 466 U.S. 668, 688 (1984); see *Argersinger v. Hamlin*, 407 U.S. 25, 40 (1972) (holding that defendant has right to counsel in state cases where he could receive sentence of imprisonment); *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) (holding that indigent defendants have a right to counsel in state prosecutions).

80. Every state except California has adopted either the Model Rules of Professional Conduct or the Model Code of Professional Responsibility. See Thomas D. Morgan & Ronald D. Rotunda, 1995 Selected Standards on Professional Responsibility 133-38 (1995). California developed its own code, the California Rules of Professional Conduct. *Id.* at 276-306. The American Bar Association ("ABA") originally adopted the Model Code in 1969, and amendments were made to it every year between 1974 and 1980. Charles W. Wolfram, *Modern Legal Ethics* 56-57 (1986). In 1977, due to the controversy concerning some of the amendments to the Model Code, and alleged deficiencies in the Model Code's provisions, the ABA appointed a committee to redraft the Code. See *id.* at 60-61. The result of that committee was the first draft of what is now the Model Rules of Professional Conduct. *Id.* at 61. The ABA adopted the Model Rules in 1983 to replace the Model Code, though many states continue to follow the Model Code rather than the Model Rules. See *id.* at 62-63.

81. Model Rules, *supra* note 9, EC 7-1.

82. *Id.* Rule 1.3 cmt.

83. Model Code, *supra* note 9, EC 7-7, 7-8; see *infra* notes 105-07 and accompanying text.

84. Model Code, *supra* note 9, EC 7-7; see *infra* notes 105-07 and accompanying text.

85. Model Code, *supra* note 9, EC 7-7.

86. Model Rules, *supra* note 9, Rule 1.2(a).

B. *Attorney's Ethical Obligations in Representing Children in Delinquency Proceedings*

An attorney's obligations to a child in a delinquency proceeding are consistent with an attorney's duties in representing an adult criminal defendant—the attorney is bound to zealously advocate the child client's goals and the child client determines the goals of the representation.⁸⁷

1. The Attorney is Bound to Advocate Zealously the Child Client's Goals

The attorney's basic role in the juvenile delinquency process is to zealously advocate on behalf of the child client and to protect the child's due process rights and liberty interests.

The Supreme Court established this role in 1967 in *In re Gault*.⁸⁸ One of *Gault's* most important results was to "secure a child's right to a real lawyer."⁸⁹ The *Gault* Court recognized that the potential to deprive a person of liberty triggers many constitutional protections, including the right to counsel, regardless of the person's age.⁹⁰

2. The Child Client Determines the Goals of the Representation

The *Gault* ruling requires a lawyer representing a child in a delinquency proceeding to advocate the child's wishes, rather than simply provide the child with access to a "counselor to the court."⁹¹ According to Professor Guggenheim, this requirement results in a child client

87. See David A. Harris, *The Criminal Defense Lawyer in the Juvenile Justice System*, 26 U. Tol. L. Rev. 751, 754 (1995); see *infra* note 102.

88. 387 U.S. 1 (1967). Prior to *Gault*, delinquency proceedings were informal and deprived children of "procedural rights available to [their] elders." *Id.* at 17. *Gault* required several due process rights for children accused of delinquency, including the right to notice of charges, *id.* at 33-34, protection against self-incrimination, *id.* at 55, the right to confront and cross-examine witnesses, *id.* at 56-57, and the right to counsel, *id.* at 41. For a discussion of the *Gault* decision, see Guggenheim, *The Right To Be Represented*, *supra* note 9, at 86-93.

89. Patricia M. Wald, *The Kindness of Strangers*, 97 Yale L. J. 1477, 1485 (1988); see, e.g., Davis, *supra* note 9, at 817 (discussing the consequences of *Gault* including when the right to counsel applies). The *Gault* court recognized the similarities between an attorney's role when representing children and an attorney's role when representing adults and defined an attorney's role when representing children as to aid the child client to "cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether [the client] has a defense." *Gault*, 387 U.S. at 36 (footnote omitted).

90. *Gault*, 387 U.S. at 41. The *Gault* court stated:

We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel; that counsel will be appointed to represent the child.

Id.; see Gittis, *supra* note 54, at 4 (discussing the importance of the *Gault* decision).

91. Wald, *supra* note 89, at 1485.

directing her attorney's legal representation in the delinquency proceeding, rather than the attorney deciding what is in the child's "best interests."⁹² The child's attorney is therefore bound to represent zealously the child's interests. This usually means securing or seeking to secure the least restrictive dispositional alternative.⁹³

Because the judge's alternatives at the dispositional hearing range from dismissal⁹⁴ to restrictive out-of-home placement,⁹⁵ the counsel's active participation is vital at the dispositional hearing.⁹⁶ It is often at this stage that the lawyer renders her most valuable services.⁹⁷ Attorneys can advocate a dispositional arrangement that avoids "the necessity for commitment or removal from the home"⁹⁸ by securing the social, educational, and psychological services in the community that the court would deem necessary in order to consider less restrictive alternatives.⁹⁹

The statutes and rules mandating the right to counsel in juvenile delinquency proceedings define this right as "requir[ing] appointment of *counsel*, not a guardian *ad litem* or 'next friend' to represent the child."¹⁰⁰ This issue recently was discussed in a conference at Fordham Law School.¹⁰¹ The recommendations of the conference advised

92. Guggenheim, *The Right To Be Represented*, *supra* note 9, at 82-92. Prior to *Gault*, courts conducted delinquency proceedings informally and adhered only tenuously to criminal procedure, thereby depriving the child of procedural rights available to adults. Hertz et al., *supra* note 5, § 2.03. In pre-*Gault* delinquency proceedings, defense attorneys were either absent or were expected to act according to the child's "best interests," even if this action meant assisting in convicting or obtaining placement of the child. *Id.*

93. Nat'l Advisory Comm., *supra* note 9, standard 14.4.

94. Dismissal is rare where the child has been convicted of a serious offense. Hertz et al., *supra* note 5, § 38.03(c).

95. *See supra* note 33.

96. IJA-Counsel for Private Parties, *supra* note 9, at 169; *see* Dan Macallair, *Disposition Case Advocacy in San Francisco's Juvenile Justice System*, 40 *Crime & Delinquency* 84 (1994) (discussing the success of case advocates in reducing the number of juveniles committed to state institutions).

97. IJA-Counsel for Private Parties, *supra* note 9, at 169; *cf. supra* notes 62-63 and accompanying text (discussing negative effect on juveniles when effective counsel is not present).

98. IJA-Counsel for Private Parties, *supra* note 9, at 172.

99. *Id.* The dispositional decision constitutes a critical step in delinquency proceedings because of the consequences associated with indefinite commitment or placement to a child. The removal from a parent or parent-like figure disrupts the lives of both the child and the family. *Id.* at 170. Additionally, children's perceptions of themselves may be significantly altered by commitment. *Id.* Nonetheless, to convince the court that the child's best interests can be served by the child remaining in the community, the attorney must present a realistic and convincing plan for the court that utilizes community services. *Id.* at 172-73.

100. Jinanne S.J. Elder, *The Role of Counsel for Children: A Proposal for Addressing a Troubling Question*, *The Boston B.J.*, Jan./Feb. 1991, at 6 (second emphasis added). A guardian *ad litem* traditionally determines the child's "best interests," rather than acting as a zealous advocate. *See supra* note 9.

101. *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 *Fordham L. Rev.* 1301, 1301 (1996).

that when a lawyer represents a child who is not impaired, the lawyer should allow the child to set the goals of the representation, modeling such representation on the relationship attorneys have with an adult client.¹⁰² Further, the Juvenile Law Center¹⁰³ also echoed such an approach, stating: "We are, first, lawyers charged with representing clients. Therefore, even though our client may be young, when he or she is capable of exercising minimal judgment we will represent the client's position to the court."¹⁰⁴

The duty of independent and zealous representation outweighs the lawyer's personal assessment of a child client's situation.¹⁰⁵ These obligations mandate that the child's attorney is bound to represent zealously the child's interests, and that the child determines those interests unless "unable rationally" to do so, at which point the lawyer should request appointment of a guardian *ad litem*.¹⁰⁶ In sum, all of these models support the right of a child client to determine the objective of legal representation so long as the child is capable of considered judgment.

Under these rules, Barbara, the hypothetical legal agency lawyer, is bound to argue at the dispositional hearing that Andrew should re-

102. See Elder, *supra* note 100, at 7 (discussing role of counsel); Guggenheim, *The Right To Be Represented*, *supra* note 9, at 87 (arguing that a child client is entitled to zealous advocacy in delinquency proceedings); Guggenheim, *Determining the Role of Counsel for Children*, *supra* note 36, at 1423-24 (arguing that a child client should determine her interests); IJA-Standards Relating to Counsel for Private Parties, *supra* note 9, at 79-80 (arguing that a child client should determine the goals of the representation); Linda L. Long, *When the Client Is a Child: Dilemmas in the Lawyer's Role*, 21 J. Fam. L. 607, 613, 621 (1982) (stating that in delinquency proceedings, counsel's role is defined as the traditional adversarial representative, according the client the decision-making authority); *Report of the Working Group on the Allocation of Decision Making*, 64 Fordham L. Rev. 1325, 1328 (1996) (arguing that a child client in a delinquency case should determine his interests); *Report of the Working Group on Interviewing and Counseling*, 64 Fordham L. Rev. 1351, 1352 (1996) (discussing proposed model rules governing the representation of children and recommending that such rules conform with the IJA-ABA standards, entitling the child to zealous advocacy).

103. The Juvenile Law Center is a legal services agency for children.

104. Juvenile Law Center Model of Representation in Dependent Court, Advocate's Meeting, (Dec. 17, 1992) (on file with the *Fordham Law Review*).

105. Long, *supra* note 102, at 621.

106. Nat'l Advisory Comm., *supra* note 9, standard 16.3; Long, *supra* note 102, at 613. These models are also consistent with the Model Code's Ethical Considerations 7-7 and 7-8, which advise that the lawyer must respect the exclusive authority of the client to make decisions once the lawyer has fully informed the client of all relevant considerations including non-legal effects. Model Code, *supra* note 9, EC 7-7, 7-8. Additionally, Informal Opinion 1160 provides that in spite of Ethical Considerations 7-11 and 7-12, the lawyer for a juvenile in a delinquency proceeding is required to defend the child client, instead of waiving procedural protections and procuring social services which the lawyer may think is best for the child. ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1160 (1971). The importance of traditional legal representation, where the attorney zealously advocates the child's wishes, is demonstrated in numerous statutory definitions of the role of counsel for a child. Hertz et al., *supra* note 5, § 2.03.

main at home, as Andrew desires. Because Barbara knows that the judge may feel that Andrew needs supervision and rehabilitation, she will recommend a dispositional plan that includes a community program, which the judge may consider as an acceptable alternative to a more restrictive setting. Even if Barbara feels Andrew would be better off in an out-of-home placement, she must comply with her client's wishes and advocate that he remain at home. If Barbara believes, however, that Andrew is being unrealistic—for example if he refuses to cooperate with community services and continues to be absent from school—Barbara must then advise Andrew that although she will zealously advocate his wishes, the judge will probably order an out-of-home placement.¹⁰⁷

III. SOCIAL WORKERS IN JUVENILE DELINQUENCY PROCEEDINGS

Thus far, this Note has discussed the attorney's mandated role in representing a child client—to advocate zealously the child client's wishes. This Note demonstrates that social workers are integral in helping the attorney achieve the child client's goals. This Note further demonstrates that the attorney's role in representing a child client differs from the role of a social worker. This part first discusses social workers' training and education, and then examines the different tasks a social worker may perform in a juvenile delinquency proceeding. Finally, this part describes the two models a social worker may follow—the “best interests” model and the “pure advocate” model.

A. *The Social Worker's Training and Professional Organizations*

The National Association of Social Workers (“NASW”),¹⁰⁸ defines a social worker as a person with either a Bachelor's, Master's, or Doctorate in social work from a school accredited by the Council on Social Work Education.¹⁰⁹ Baccalaureate programs prepare students for practice in the social work profession and may also prepare students for graduate study in social work.¹¹⁰ Generally, an undergraduate degree in social work includes two years of liberal arts study followed by two years of study in the social work major.¹¹¹ In addition, social

107. The attorney should explain to the child the possible dispositional alternatives as well as likely outcomes and realistic goals. It is important that counseling of this kind is done in a manner that minimizes the risk of taking the decision making authority out of the client's hands. Hertz et al., *supra* note 5, § 38.05(a); Nat'l Advisory Comm., *supra* note 9, standard 16.2.

108. The National Association of Social Workers (“NASW”) founded in 1955 has 160,000 members and 55 chapters throughout the United States. NASW, *Advancing a Profession and a Nation* (pamphlet).

109. NASW, *Social Workers Help People Just Like You* (pamphlet).

110. Michael Frumkin & Gary A. Lloyd, *Social Work Education*, in 2 *Encyclopedia of Social Work* 2238, 2241 (19th ed. 1995).

111. *Id.*

work students must complete a field practice of at least 400 hours in a social work agency.¹¹²

Masters degree programs last two years with the first year providing foundation curriculum in social work and the second year involving advance courses.¹¹³ In addition, both years require field practice hours.¹¹⁴ The Council on Social Work Education is responsible for the accreditation of programs through the Commission on Accreditation.¹¹⁵ For the last two decades, the area of mental health practice has attracted the majority of social workers, employing thirty-three percent of the NASW membership.¹¹⁶ Social workers also practice with children, in medical clinics and in family practice.¹¹⁷

Social work education and training includes study in human behavior and the social environment, social welfare policy and services, and social work practice.¹¹⁸ Additionally, concentrations are organized according to fields of practice such as services to families, problem areas such as delinquency, or population groups such as children.¹¹⁹

All states have some form of licensing, regulation, or statutory credential requirement for social workers.¹²⁰ In addition, the NASW provides procedures for the adjudication of complaints of alleged violations of the NASW Code of Ethics.¹²¹ The purpose of these adjudi-

112. *Id.*

113. *Id.*

114. *Id.* at 2242.

115. *Id.* For a discussion of the standards utilized to accredit social work programs, see *id.* at 2242-44.

116. June G. Hopps & Pauline M. Collins, *Social Work Profession Overview*, in 3 *Encyclopedia of Social Work* 2266, 2275 (19th ed. 1995).

117. *Id.*; see Margaret Gibelman, *What Social Workers Do* xxiii (1995).

118. Frumkin & Lloyd, *supra* note 110 at 2239. Social work practice consists of the professional application of social work values, principles, and techniques to one or more of the following ends: helping people obtain tangible services; counseling and psychotherapy with individuals, families, and groups; helping communities or groups provide or improve social and health services; and participating in legislative processes. The practice of social work requires knowledge of human development and behavior; of social, economic, and cultural institutions; and of the interaction of all these factors. Gibelman, *supra* note 117, at xvii (citations omitted).

119. See Frumkin & Lloyd, *supra* note 110, at 2240. See generally Dean H. Hepworth & Jo Ann Larsen, *Direct Social Work Practice* 25 (1982) (discussing human behavior, social work policy, and social work methods).

120. Marilyn A. Biggerstaff, *Licensing, Regulation, and Certification*, in 2 *Encyclopedia of Social Work* 1616, 1616 (19th ed. 1995). For a discussion of the process of licensing, regulation, and certification, see *id.* at 1617-23 and Gibelman, *supra* note 117, at xxv.

121. The National Association of Social Workers Code of Ethics ("NASW Code") is intended for individuals and organizations that choose to adopt it or use it as a frame of reference. Violation of standards of the Code does not automatically imply legal liability or violation of the law. Alleged violations are governed by a peer review process and are generally separate and insulated from legal or administrative proceedings. See NASW Code of Ethics, *Purpose of the NASW Code of Ethics*. The revised NASW Code to which this Note is citing was adopted by the NASW Delegate Assembly in August 1996 and becomes effective in January 1997.

cation procedures is to protect the public as well as to protect social workers by improving personnel practices of employing agencies.¹²²

B. *The Social Worker's Tasks*

The child client's court-appointed attorney is often an employee of the legal agency and may refer the case to a social worker employed by that same agency for assistance in representing the child.¹²³ Legal agencies assign cases to lawyers at the pre-arraignment phase and lawyers may choose to refer the case for social worker assistance at different stages of the delinquency proceeding.¹²⁴ The attorney often solicits social work aid for assistance in constructing an appropriate dispositional recommendation.¹²⁵ If the attorney expects that the court will not order out-of-home placement, the social worker can assist with dispositional planning by locating community-based services for the child and his family that can be presented to the court for consideration.¹²⁶ Where out-of-home placement may be ordered by the judge, the social worker may assist the attorney by identifying the most appropriate and least restrictive setting that will meet the client's needs.¹²⁷

Social workers also assist by visiting the child's home and conducting interviews with the child and his family.¹²⁸ Social workers also can initiate contacts with collateral agencies¹²⁹ and outside individuals

122. For a discussion of the adjudication procedures see NASW, *Procedures for the Adjudication of Grievances* (3d ed. 1991).

123. See Legal Aid Society, Juvenile Rights Division, Attorney's Manual; Legal Aid Society, Juvenile Services Unit, Social Worker's Manual; interviews with lawyers from the Juvenile Rights Division of the New York Legal Aid Society, in New York, N.Y. (Dec. 29, 1995).

124. See Hertz et al., *supra* note 5, § 38.10. Due to efficiency, inadequate funding, and staff constraints, however, not all cases can be referred to a social worker. Cases not likely to be referred include: (1) cases involving multi-offenders who have committed a serious felony where the judge will almost certainly place the child in a restrictive setting; as well as (2) mild cases such as turnstile jumping where the case is likely to be dismissed after a stern lecture from the judge. *Clout and Credibility: A Powerful Combination for Lawyers and Social Workers*, 7 *Prac. Dig.*, Fall 1984, at 13, 14 [hereinafter *Clout and Credibility*].

125. Hertz et al., *supra* note 5, § 38.10; see Senna, *supra* note 38, at 275; *supra* notes 26-30 and accompanying text.

126. *Clout and Credibility*, *supra* note 124, at 13-14; Gibelman, *supra* note 117, at 288; Senna, *supra* note 38, at 273; Legal Aid Society, Juvenile Rights Division, Budget Proposal 17 (Summer 1995) [hereinafter Budget Proposal]; see *supra* notes 26-30, 94-96 and accompanying text.

127. See Gibelman, *supra* note 117, at 287-88; *supra* notes 61-62 and accompanying text.

128. Budget Proposal, *supra* note 126; see *Clout and Credibility*, *supra* note 124, at 14; Gibelman, *supra* note 117, at 288; Scherrer, *supra* note 58, at 282-83.

129. See Gibelman, *supra* note 117, at 288. Collateral agencies may include counseling centers, after-school programs, drug and alcohol treatment programs, and schools.

involved in the case,¹³⁰ refer clients and their families for social services, and review case records and reports prepared by these agencies¹³¹ and individuals.¹³² Finally, the attorney may ask the social worker to testify at the dispositional hearing.¹³³

C. *Accepted Models of Social Worker Behavior*

Though the attorney's Model Code and Model Rules mandate that the duty of zealous advocacy never be compromised, a social worker's code does not provide similar restraints. The NASW Code does not offer guidelines concerning a social worker's behavior in providing client services in a legal setting.¹³⁴ Nor does the NASW Code prescribe a clear philosophy, purpose, or principle applicable to the social worker's duties to her client. What does a social worker do if she is asked to present to the court an evaluation of or recommendation for the client with the goal of avoiding placement, when that outcome may conflict with what the social worker thinks is best for the child? Does she overrule her client's decisions when in her professional expertise her client's decision is not in the client's best interests, or does the social worker advocate for the client's desires as the legal agency dictates?

The NASW Code states that a social worker's "primary responsibility is to promote the well-being of clients."¹³⁵ It continues, however, that a "social worker's responsibility to the larger society or specific legal obligations may on occasions supersede the loyalty owed clients, and clients should be so advised."¹³⁶ The NASW Code also provides that [s]ocial workers respect and promote the right of clients to self-determination and assist clients in their efforts to identify and clarify their goals. Social workers may limit clients' right to self-determination when, in the social worker's professional judgment, clients' actions or potential actions pose serious,¹³⁷

Social workers' roles are inherently different from those of lawyers. Social workers do not always *represent* a client—they may counsel a client, work with a family, or be utilized for an evaluation. Because the NASW Code does not specifically address a social worker's role in

130. *Id.* For example, teachers, relatives, and other programs that may be involved with the child client and her family.

131. See *Breaking the Cradle-to-Crime Cycle*, *supra* note 44, at 14 (discussing some of the records and reports generated in a juvenile case). As discussed previously, social workers because of their education and training may have a better understanding than lawyers of these reports. See *supra* part III.A.

132. Budget Proposal, *supra* note 126.

133. This information is based on interviews with attorneys and social workers from the Juvenile Rights Division of the New York Legal Aid Society, in New York, N.Y. (Dec. 29, 1995).

134. NASW Code, *supra* note 121.

135. *Id.* at 1-1.01.

136. *Id.*

137. *Id.*

the legal context, ambiguity results for social worker's employed by legal agencies.¹³⁸ Should a social worker advocate the client's interests even if they conflict with what, in the social worker's professional judgment, is best for the child?

As seen in the hypothetical, if the social worker does not advocate the client's desire, a legal agency can not utilize the social worker since the agency's mandated goal is to zealously advocate the client's wishes.¹³⁹ The NASW Code is unclear about whether social work follows a distinct frame of reference in a legal setting (that is inconsistent with and supersedes the goals and ethics of a legal services provider), or whether the principles and requirements of the adversarial system used in juvenile adjudication procedures dictate and limit the social worker's professional role.¹⁴⁰

If the social worker, as seen in the hypothetical,¹⁴¹ chooses to pursue a course of action following her view of what is in the client's "best interests," she acts inconsistently with the legal agency's ethical mandates. Absent guidance from the NASW, social workers may conclude that there is no choice but to accept the codes of ethics governing the legal agency.

The limited literature in this area suggests that a social worker's role in a legal setting can be described as running on a continuum from the "best interests"¹⁴² to the "pure advocate"¹⁴³ models.¹⁴⁴ As discussed below, these models present difficulties and conflicts that the NASW Code does not resolve.

1. The "Best Interests" Model

The basic principles of the "best interests" model are illustrated, in the following:

138. Donald T. Dickson, *Law in Social Work: Impact of Due Process*, 21 Soc. Work 274, 276 (1976).

139. See *supra* notes 1-8 and accompanying text.

140. Additionally, Reamer's suggested criteria for solving conflicts of duty and of value in social work practice also fails to find a resolution of the issue. Frederick G. Reamer, *Ethical Dilemmas in Social Service* 97-114 (1982).

141. See *supra* notes 1-8 and accompanying text.

142. See Beulah Roberts Compton, *Introduction to Social Welfare and Social Work* 119 (1980) (discussing the difference between advocacy in social work and advocacy in law); Jose B. Ashford et al., *Advocacy by Social Workers in the Public Defender's Office*, 32 Soc. Work 199 (1987) (discussing the issue of advocacy by social workers in nontraditional settings and discussing pure advocate position and best interests position).

143. See Ashford, et al., *supra* note 142, at 200-04; Dickson, *supra* note 138, at 274 (discussing the increase use of social workers in due process proceedings and the conflicts it may present); Michael Sosin & Sharon Caulum, *Advocacy: A Conceptualization for Social Work Practice*, 28 Soc. Work 12-17 (1983) (discussing the role of advocacy in social work tradition). Though the term "pure advocate" is utilized, it is the legal agency, represented by the lawyer assigned to the client, who represents and advocates on behalf of the child. The social worker assumes a "pure advocate" role by assisting with the attorney's representation of the client.

144. Ashford et al., *supra* note 142, at 200.

Advocacy in social work differs from that found in law in that the social worker is often involved in protecting people from actions of their clients. Thus, the worker does not become an advocate for the client in situations in which doing so could result in hurt to others. The attorney stands for the client; the social worker stands between the client and other social systems and must be concerned with the totality of the situation.¹⁴⁵

The "best interests" school of thought assigns the social worker the duty to act as a "mediator between the interest of society and the interest of the individual." This implies that social workers are bound by a professional mandate, regardless of the practice context.¹⁴⁶ It further suggests that social workers, similar to other professionals¹⁴⁷ employed by legal agencies to assist in defense work, may not subordinate their professional obligations to legal ones.¹⁴⁸

The book *Controversial Issues in Social Work* illustrates two perspectives in the debate on this topic where one point of view emphasizes the client's freedom to choose and the other side observes that it is a "proper function of society and its agents to attempt to regulate social behavior in the collective interest" and that social workers are among those agents.¹⁴⁹ Therefore, a social worker following the "best interests" model believes it is her role to decide what is in the child client's "best interests" taking into account not just what the client wants, but what, in her professional opinion, is best for the child client, his family, and society.¹⁵⁰

The "best interests" model requires that social work services—such as developing rehabilitation plans and evaluative service—be provided by an impartial social worker guided principally by her professional knowledge base.¹⁵¹ Accordingly, the social worker reaches professional judgments based not on the client's wishes, but rather based on her assessment of the client's "best interests."

This view is generally grounded in the fact that in employing a "best interests" approach the social worker assesses, independently of the child's wishes and according to her professional judgment, the options

145. Compton, *supra* note 142, at 119.

146. *Id.*; Ashford et al., *supra* note 142, at 202; see *Controversial Issues in Social Work* 159-67 (Eileen Gambrell & Robert Pruger eds. 1992); Dickson, *supra* note 138, at 276-77; Neil Gilbert & Harry Specht, *Advocacy and Professional Ethics*, 21 *Soc. Work* 288, 292 (1976); NASW Code, *supra* note 121, 1.02.

147. These other professionals may include psychologists and psychiatrists. Ashford et al., *supra* note 142, at 202.

148. *Id.*; see Dickson, *supra* note 138, at 276.

149. *Controversial Issues in Social Work*, *supra* note 146, at 165.

150. See *id.* at 165-70; Ashford et al., *supra* note 142, at 202; Gilbert & Specht, *supra* note 146, at 292.

151. Ashford et al., *supra* note 142, at 202. But see Leroy G. Schultz, *The Adversary Process, the Juvenile Court and the Social Worker*, 36 *U. Mo. Kan. City. L. Rev.* 288, 295-96 (1968) (calling into question how social workers form their "professional" opinions).

that would result in the best outcome for the child. Supporters of the "best interests" approach note that this impartial decision making and assessment ensures that courts will deem social worker's reports and testimony credible, and that if the social worker takes the stand, her testimony will not be impeached.¹⁵²

Carol's actions in the hypothetical are consistent with a social worker acting according to the "best interests" model. Carol might believe that it is in Andrew's "best interests" to be placed in a more restrictive setting. Carol may feel conflicted in convincing a reluctant parent to keep a troubled child at home, and likewise may believe that Andrew's home is unsuitable for him because his mother does not want him there and cannot adequately supervise him. Carol may sense that Andrew needs more supervision and "help" than a community-based program can offer, and that she is only setting Andrew up for failure by advocating Barbara's suggested plan. Finally, Carol will probably not want to testify in court that a community-based program can work for Andrew or that his current home is a suitable environment. Thus, if Carol follows the "best interests" model, she will inform Barbara that she cannot assist her in convincing the court that Andrew should remain at home, and instead will recommend a more restrictive placement for him.

2. The "Pure Advocate" Model

The "pure advocate" model for social workers is premised on the belief that, in the adversarial system, a person is entitled to "have his conduct judged and regulated in accordance with the law; to seek any lawful objective through legally permissible means; and to present for adjudication any lawful claim, issue, or defense."¹⁵³ Under the "pure advocate" model, partisan representation is essential to realize this end.¹⁵⁴

Under this model, the social worker acts in accordance with the primary goal of the legal agency that employs her—the zealous representation of the client's interests. The "pure advocate" model requires the social worker to depart from the traditional social work orientation in order to better comport with the philosophies of legal agencies.¹⁵⁵ Although a social worker may always be acting in a manner to best assist the client, the "pure advocate" model dictates that the client decide which course of action to take.¹⁵⁶ If the social worker feels

152. Ashford et al., *supra* note 142, at 202.

153. Model Code, *supra* note 9, EC 7-1, 7-19, 7-20.

154. Model Code *supra* note 9, EC 7-19, 7-20; Ashford et al., *supra* note 142, at 201; Scherrer, *supra* note 58, at 279; Schultz, *supra* note 151, at 295-96.

155. Ashford et al., *supra* note 142, at 201; *see* Senna, *supra* note 38, at 273-75.

156. This means that the social worker cannot work with family and community resources if the client does not approve, nor can the social worker refer the client for placements that the client finds unacceptable. This is consistent with the NASW Code's directions that the social worker work toward client self determination.

that the course of action chosen by the client is not in the client's best interests, the social worker, similar to the attorney, must inform the client of her concerns.¹⁵⁷ The final decision, however, belongs to the client, despite the social worker's personal or professional opinions.¹⁵⁸

The "pure advocate" approach directs that social workers employed by legal agencies act within the bounds of the employer-employee relationship.¹⁵⁹ Because the attorney ethically must comply with the client's decision, the model requires that all support staff employed by the legal agency will also advance the client's chosen course of action.¹⁶⁰ The Code requires attorneys to exercise diligence and control over employees to prevent them from disclosing confidences or from acting in a manner inconsistent with the client's legal interests.¹⁶¹ Thus, the social worker in such a setting provides her services in a non-traditional fashion,¹⁶² using her professional judgment to aug-

NASW Code, *supra* note 121, 1-1.02; see *Controversial Issues in Social Work*, *supra* note 146, at 159-63; Senna, *supra* note 38, at 275.

157. Ashford et al., *supra* note 142, at 201; see Senna, *supra* note 38, at 275; see also *supra* notes 105-07 and accompanying text (discussing attorney's obligation to counsel the child client).

158. Ashford et al., *supra* note 142, at 201. An example of this can be seen when an attorney feels there is little chance of the client prevailing at trial and it is in the client's best interests to plead guilty and agree to a limited amount of time in a juvenile facility. The client might still insist on going to trial and risking a longer sentence. See *Controversial Issues in Social Work*, *supra* note 143, at 159-63; Senna, *supra* note 38, at 274; *supra* notes 105-07 and accompanying text.

159. Ashford et al., *supra* note 142, at 201. Such a relationship exists when the person for whom the services are being performed has the right to control and direct the one who is performing the services, concerning both the result to be accomplished by the work, as well as the means and details by which that result is accomplished. *Id.*; see *Juvenile Law Center*, *supra* note 104; Regina Schaefer, *Confidentiality Conference in New York City*, *Newsl. of N.O.F.S.W. (Nat'l Organization of Forensic Soc. Work, Milan, MI)*, Vol. II, No.4 at 1 (Summer 1991).

160. Ashford et al., *supra* note 142, at 201. The New York City Bar Association concluded that an attorney must educate and supervise non-lawyer employees regarding ethical constraints under which those in the office must work. N.Y. City B.A. Ethics Comm. Formal Op. 1995-11 (1995) (reprinted in N.Y. L.J., Jul. 12, 1995, at 7).

161. See *Model Rules*, *supra* note 9, Rule 5.3; *Model Code*, *supra* note 9, DR 4-101(D); Ashford et al., *supra* note 142, at 201.

162. After all, the role of the social worker is less prescribed than that of the attorney. See *supra* notes 134-40 and accompanying text. Social workers' roles can be amorphous in other settings as well. For instance, a social worker in a foster care agency will often advocate and work within the politics and goals of that agency. If the foster care agency believes in working together with the child's biological parents, then the social worker will be expected to as well. If the foster care agency tends to advocate working with the foster parents, then there will be pressure on the social worker to do so as well. In an agency which serves homebound elderly, agency goals may lean towards allowing the clients to remain at home with a home health-aide, or may advocate finding suitable nursing homes. In either instance, the social worker will be allowing for self-determination on the part of the client, but will be influenced by the goals and traditions of her host agency. Interview with a social worker from the Juvenile Rights Division of the New York Legal Aid Society, in New York, N.Y. (Dec. 29, 1995).

ment the attorney's ability to attain the client's goals, without regards to societal or other countervailing considerations.¹⁶³

The "pure advocate" model comports with directives governing social workers working in multi-disciplinary teams. The NASW Code states that as a member of the agency staff, the social worker must represent and reflect the values of that agency.¹⁶⁴ As a result, a social worker employed by a legal agency must not pursue interests conflicting with the defense of the client, such as the broader interests of society.¹⁶⁵

If following the "pure advocate" model, Carol would assist Barbara by finding community programs to propose as alternative to out-of-home placements that are acceptable to the court and to Andrew. Even though Carol might believe that Andrew requires a more restrictive setting, Carol, if following the "pure advocate" model, would allow Andrew to dictate the course of action to be pursued. In accordance with the "pure advocate" model, Carol would work toward achieving Andrew's goals, regardless of her own reservations.

IV. ETHICAL CONFLICTS BETWEEN THE TWO PROFESSIONS

This Note has described both the attorney's mandate in representing a child client and the roles a social worker may adopt when representing a child client. An attorney's duty to zealously advocate on behalf of a child client can conflict with a social worker's obligation to protect the child under the "best interests" model.¹⁶⁶ This conflict is illustrated by the following quote:

In light of the silence of the legal ethical code . . . , it might be argued that attorneys are bound only to pursue single-minded advantages on behalf of their clients. . . . Indeed, in many cases, although the consulting social worker engaged by the firm believes that the child's wishes are not in the child's best interests, the firm may be ethically bound to pursue the child's wishes exclusively.¹⁶⁷

163. If a defendant insists at the sentencing hearing that the attorney advocate for out-patient treatment, the social worker must write a report presenting an outpatient plan of treatment taking into account the client's condition and characteristics, regardless of what is in society's or the client's "best interests." Because the legal agency considers the social worker a professional employed by the legal agency defending the client, it would be unethical for the social worker to ignore the request of the client and write a plan suggesting inpatient treatment. Ashford et al., *supra* note 142, at 201; see Senna, *supra* note 38, at 275.

164. See NASW Code, *supra* note 121, at 2 (discussing the social worker's ethical responsibility towards colleagues including cooperating to promote professional interests, respecting confidences, and arbitrating and mediating differences with colleagues); Charles S. Levy, *Social Work Ethics* 173 (1976); Peters, *supra* note 68, at 15.

165. Ashford et al., *supra* note 142, at 201.

166. Peters, *supra* note 68, at 18. For purposes of this Note, the issue of ethical conflicts will be addressed with reference to "stark contrasts," notwithstanding that most attorneys and social workers function along a broad spectrum extending from the "best interests" model to the "pure advocate" model.

167. *Id.* at 15.

This part addresses the conflicts that arise when attorneys and social workers act together in the representation of children in delinquency proceedings. Specifically, this part outlines the basic conflicts and illustrates these conflicts through hypothetical and "real life" situations.

A. Conflicts

As already stated, the Model Code and the Model Rules, which govern the behavior of lawyers representing children in delinquency proceedings, emphasize that the client should "control the objectives and goals of legal representation."¹⁶⁸ This mandate requires an attorney to advocate a child's wishes even if the attorney does not personally believe that the child's chosen course of action is appropriate.

Though the NASW Code advises the social worker to make every effort to foster maximum self-determination on the part of clients, the social worker is permitted to "override" this approach if she feels that, in her professional judgment, the client's choice is not in his best interests.¹⁶⁹ Thus, when a social worker determines that the client's chosen course of action conflicts with the client's best interests, the social worker will endeavor to enhance the client's "best interests," opposing the client's goals where she deems them inappropriate for that client.

These two different approaches to client responsibilities reflect the inherent differences in the training, education, and approaches between lawyers and social workers. Lawyers are traditionally trained in legal problem solving on behalf of their clients. By contrast, social workers, as members of a "healing profession," seek to understand fully the underlying causes of their client's problems and to design an intervention or treatment plan with these causes in mind.¹⁷⁰

Though lawyers can benefit from looking at the "bigger picture," and need to do so in order to both more fully appraise their client's situation and better counsel the client regarding her decisions, attorneys are still bound to advocate their client's wishes despite the attorney's own personal views.¹⁷¹ The basic task of the attorney is winning the case. The social worker, in contrast, is concerned primarily with evaluating how the child functions in his current environment and finding the most beneficial alternative for the child.¹⁷²

These traditional goals of the social worker often conflict with the attorney's legal representation objectives. For example, as seen in the hypothetical,¹⁷³ the attorney might ask the social worker to develop an evaluation or recommendation of the client to present to the court

168. *Id.* at 18 (citing EC 7-7); *see supra* part II.

169. Peters, *supra* note 68, at 17-18; *see* NASW Code, *supra* note 121, 1-1.02.

170. Peters, *supra* note 68, at 18.

171. *Id.*; *see supra* notes 105-07 and accompanying text.

172. Senna, *supra* note 38, at 274; *see supra* part III.C.1.

173. *Supra* notes 1-13 and accompanying text.

with the goal of avoiding placement which outcome may conflict with what the social worker thinks is best for the child.¹⁷⁴

From an attorney's standpoint social workers cannot provide services impartially in a delinquency proceeding because the social worker's assessment of the child is a personal opinion rather than a professionally based assessment.¹⁷⁵ Thus, according to the attorney, if the basic validity of the social worker's judgment can be questioned—because it is based on a personal opinion, then there is no problem with requiring the social worker to present her assessment in a manner supportive of the child's position no matter what the social worker's professional judgment might indicate.¹⁷⁶ The client's right to due process and the purpose of the adversary system will best be served if the "fiction of professional objectivity is eliminated."¹⁷⁷

Most social workers, however, did not choose to go to social work school merely to be advocates, or agents of attorneys. Most social workers chose the profession because of a tradition and lore which includes best-interests. Much of social work teachings looks to understand the underlying causes of the "problem" or "issue" that the client presents. Simple advocacy of the client's desires in a legal forum does not reflect this perspective.¹⁷⁸ This presents quite a quandary for the social worker who is employed by a legal agency and hired for legal advocacy at the client's behest.¹⁷⁹

B. *Illustration of Conflicts*

This section illustrates some of the potential conflicts between attorneys and social workers that can arise in delinquency proceedings in both hypothetical and real-life situations. It focuses first on conflicts that arise in the preparation of the case, and then on conflicts associated with social worker testimony.

1. Conflicts Involved in the Preparation of the Case

This Note has already begun to explore the conflicts that can arise when a social worker employed by a legal agency adheres to a "best interests" model. Barbara should understand Andrew's home situation and why he is not attending school, because this information might work against Andrew and convince the court to "sentence" Andrew to an out-of-home placement. Andrew's desire to remain at

174. *Id.*; see Dickson, *supra* note 138, at 276; Senna, *supra* note 38, at 274.

175. Ashford et al., *supra* note 142, at 203. Further, two social workers might disagree on what is in the child's "best interests." See *supra* notes 153-54 and accompanying text.

176. Ashford et al., *supra* note 142, at 203.

177. *Id.*; see *supra* notes 153-54 and accompanying text.

178. The theoretical perspectives for social work practice include ecological systems theory, psychoanalytic constructs, ego psychology, as well as empowerment. Hepworth & Larsen, *supra* note 119, at 10-13.

179. See Dickson, *supra* note 138, at 276.

home, however, dictates the dispositional plan that Barbara must advocate. Barbara's role is to obtain for Andrew the least restrictive setting possible.

Carol, the social worker, on the other hand, is concerned with what is best for Andrew, his family, and society. Carol, if following the "best interests" model, views her role as developing the best dispositional plan for Andrew in light of his situation, his problems, and what Carol believes to be in his "best interests." Carol does not feel compelled to convince Andrew's mother to allow him to stay at home if that environment is not "helping him" or his family. Moreover, Carol feels her role is to act as an objective evaluator. She must decide what is "best" for Andrew, his family, and society—and to inform the court accordingly.

When Carol refers Andrew to a community-based agency, she does not want to convey misleading information to the caseworkers employed by the agency. Carol feels that she must be honest in explaining to them Andrew's situation, and she may also conclude that this agency is not appropriate for Andrew and that he needs a more restrictive setting. Because Carol is a social worker, the community-based agency assumes that Carol is referring Andrew because of an impartially based assessment which concludes that Andrew is appropriate for their program. If Carol is misleading in her communications with the agency, she may undermine her ability to work with the agency in the future. In addition, Andrew may want to keep some information confidential that Carol thinks should be shared with the agency.

A similar situation can arise in the context of Carol's dealings with Andrew's family. If Andrew's mother views Carol as a "traditional" social worker whose role is to help her and Andrew, she will have certain expectations of Carol that are inconsistent with her role in the legal agency. For example, if problems in the home escalate and Andrew's mother calls Carol for assistance, Carol may agree with Andrew's mother that he ought to be placed out-of-home. If Carol "helps" Andrew's family by suggesting that the family seek additional assistance from a community-based agency, the recommendation may lead to a dispositional report by the agency recommending placement for Andrew. Such conduct by Carol would be in direct conflict with the attorney's goal of zealous advocacy.

The difficulties presented in some real life situations further exemplify the potential conflict in these settings. Consider the case of "Charles,"¹⁸⁰ a fifteen-year-old boy who was placed at home until his dispositional hearing. Sally, the agency social worker assigned to Charles' case, referred Charles and his mother Margaret to a neigh-

180. Interview with a social worker from the Juvenile Rights Division of the New York Legal Aid Society, in New York, N.Y. (Jan. 4, 1996).

borhood counseling center. Shortly thereafter, Charles' mother called Sally screaming and crying that Charles was breaking and throwing things and that she did not know what to do. The phone then went dead. A few minutes later Margaret called Sally from a pay phone stating that Charles had ripped the phone out of the wall and hit her, and she feared her arm was broken.¹⁸¹ Sally wanted to tell the mother to call the police, but could not because that would be detrimental to the interests of her client, Charles. Sally did not feel that she could counsel the mother that Charles move out of the home because Charles wanted her to advocate that he should remain at home. Sally did, however, suggest that the mother speak with the family counselor whom Charles and his mother had been seeing. Charles' attorney found this recommendation unacceptable because the counseling center which the family had been attending was run by the police department and thus Sally essentially advised the mother to go to the police. In this particular scenario, Margaret called Sally rather than the attorney because she felt that Sally, as a social worker, could help her. If Charles' lawyer had received the call, he would have stated that he represented Charles and thus could not help the mother. It is not surprising that Sally, as a social worker, would have difficulty responding similarly.

A similar situation concerned "Robert,"¹⁸² a fourteen-year-old boy who failed to appear in court on the day of his dispositional hearing, and for whom an arrest warrant was issued. Julia, the agency social worker assigned to Robert's case, received a call from Robert stating that he was in a psychiatric hospital, having been brought there by his mother following his attempted assault on his sister, and that the doctors were committing him. Robert did not want to remain in the hospital, but the psychiatrist with whom Julia spoke stated that he felt Robert was a danger to himself and others and needed to be involuntarily committed. Julia agreed with the doctor on this point and did not pursue the issue of whether there were truly grounds for the involuntary admission of Robert to the hospital.

Julia visited Robert at the hospital and met with a hospital social worker and the psychiatrist assigned to Robert's case. Julia could not inform them of Robert's pending delinquency case because there was a warrant for Robert's arrest and the prosecution did not know of his whereabouts. Further, Julia could not tell the hospital staff that Robert had a brother who had been treated in the same hospital because staff retrieval of the records would elicit personal information concerning Robert and his family that the attorney did not want dis-

181. Charles had just left the apartment so his mother was no longer in imminent danger.

182. Interview with a social worker from the Juvenile Rights Division of the New York Legal Aid Society, in New York, N.Y. (Jan. 4, 1996).

closed. Julia, however, felt that such information would be helpful for Robert's treatment.

2. *Conflicts Involved in Social Work Testimony*

Conflicts can also arise when the social worker disagrees with the attorney regarding a child client's case, but feels pressured to testify in a certain manner to aid in achieving the goals of the attorney and child.¹⁸³ These conflicts arise because whereas the social worker is primarily concerned with rehabilitation, the attorney is primarily concerned with the sentencing process.¹⁸⁴

The hypothetical delinquency case¹⁸⁵ illustrates the problems that arise when a social worker feels pressured into testifying in a manner in which she is not comfortable. Carol obviously cannot lie while testifying at Andrew's dispositional hearing. Of course, Carol's role might be limited to developing a dispositional plan acceptable to Andrew and the court which includes working with Andrew's school, his family, and a community-based program, thus not requiring her testimony. If Carol does testify, however, she can relate Andrew's progress in the program, improvements in his school attendance, and his mother's willingness to work with Andrew and any programs involving the family, assuming Andrew and his mother have made positive improvement.

Carol, if asked, cannot say she believes this dispositional alternative is in Andrew's "best interests" if she does not in fact believe that it is. Further, Carol cannot lie concerning Andrew's progress¹⁸⁶ and his mother's attitude regarding her ability to keep him in the home. It is important for Barbara to realize the limitations on Carol's testimony should she choose to have Carol testify. Carol can testify as a factual witness, conveying any relevant facts of Andrew's case to the court, but conflicts will arise if Carol provides any expert or opinion testimony that conflict with Andrew's stated wishes.

A real life delinquency case¹⁸⁷ illustrates another potential conflict inherent in social worker testimony. "Rick," a thirteen-year-old boy committed to a psychiatric facility, wanted to return home. While in the psychiatric facility, due to lack of supervision by staff members, Rick was repeatedly threatened and assaulted by another boy. Peter, the agency social worker assigned to Rick's case, visited Rick at the

183. Senna, *supra* note 38, at 274.

184. Some of the stereotypical contradictory professional attitudes in social work and the law are more fully discussed in Katherine van Wormer, *No Wonder Social Workers Feel Uncomfortable in Court*, 9 Child & Adolescent Soc. Work J. 117, 123 (1992).

185. See *supra* notes 1-8 and accompanying text.

186. For example, Carol may feel any progress was "coerced" by the threat of placement and is only temporary.

187. Interview with a social worker from the Juvenile Rights Division of the New York Legal Aid Society, in New York, N.Y. (Dec. 20, 1996).

facility and met with staff members. Peter was concerned with both Rick's safety as well as the facility's ability to treat Rick effectively. Peter, however, did believe that Rick needed psychiatric treatment and that he should not return home.

Larry, the agency lawyer, put Peter on the stand to testify concerning the violent incidents at the facility. Peter told Larry that he could not testify that Rick should return home. Thus, Larry restricted the testimony to the facts concerning the safety and suitability of this particular facility and avoided asking Peter to give an opinion regarding what he felt was the best disposition for Rick.

V. RESOLUTION

This Note has described the obligations of both the legal agency and the child's attorney to advocate zealously the child client's wishes.¹⁸⁸ It has also been observed that social workers are an integral part of juvenile court proceedings.¹⁸⁹ Though the role a social worker may adopt can run on a continuum from the "best interests" model to the "pure advocate" model, neither role is specifically mandated by the NASW Code.¹⁹⁰ If a social worker adopts the "best interest" model, the child client's right to zealous advocacy is undermined and the objectives of the legal agency are not furthered.¹⁹¹ This part seeks to provide a resolution to these conflicts.

This part argues that the "pure advocate" model is the only model appropriate for a social worker employed by a legal agency assigned to represent a child client. It also argues that the NASW Code does not prevent the social worker from assuming the "pure advocate" role. Finally, it provides a framework in which attorneys and social workers can work together in successful representation of a child client.

A. *The Necessity of the "Pure Advocate" Model*

The role of the legal agency which employs the social worker, similar to that of an attorney, is to zealously advocate the child client's wishes. The legal agency has no flexibility within this role, because the legal agency has been assigned by the court to represent the child and the child is constitutionally entitled to such representation.¹⁹² A social worker cannot act counter to the attorney's or legal agency's goals because that would undermine the zealous advocacy to which the child client is entitled.¹⁹³ If they do, the attorney cannot employ

188. See *supra* part II.

189. See *supra* part I.B.

190. See *supra* part III.

191. See *supra* introduction; part IV.

192. See *supra* part II.

193. See Juvenile Law Center, *supra* note 104, at 1; Dickson, *supra* note 138, at 276-77; *supra* notes 159-61 and accompanying text.

or benefit from the expertise of the social worker because an attorney has a duty to ensure that her employees act in a manner consistent with the client's legal interests.¹⁹⁴

The social worker, when employed in such a setting, is part of the child client's defense team. Delinquency proceedings, similar to other judicial proceedings, are an adversarial process. The social worker, similar to the attorney, has chosen to represent the child client's views to the court. Therefore, the social worker is not simply being governed by the attorney's code of ethics. The social worker has chosen employment which necessitates assumption of the "pure advocate" role because the social worker's job is to assist in the child client's defense.

1. *The "Best Interest" Model Relies on a Subjective Opinion*

Proponents of the "pure advocate" model criticize the "impartial" determination of the client's "best interests" as merely a subjective opinion based on the personal values of the individual social worker.¹⁹⁵ "It is likely that the recommendations made by the social worker to the judge will differ according to the particular theory ascribed to, as well as according to the causal agent seen lurking behind the child's behavior and what data is consequently selected . . . and what [data] is ignored."¹⁹⁶ It is the court's responsibility to determine which side will prevail and to determine what disposition is best for the client—in the adversarial system, the other point of view of the child's "best interests" will be represented by the prosecutor, probation, family members, or community resources that may testify.¹⁹⁷ "[I]f social workers . . . cannot perform this way, the client's interests will not be represented and the hearing will become a sham."¹⁹⁸

The Juvenile Law Center stated that it is not appropriate for their center to assume the function of the court, child welfare officials, or the parent.¹⁹⁹ The court should refrain from asking social workers, employed by their agency, for personal opinions because doing so could undermine the attorney-client relationship.²⁰⁰ Additionally, the child's attorney must not assume the judiciary's role of determining the child's best interests.²⁰¹ The same principles apply to the attorney's staff. Thus, a social worker in a legal setting effectively chooses

194. See *supra* notes 159-61 and accompanying text.

195. Ashford et al., *supra* note 142, at 202; see *supra* notes 175-77 and accompanying text.

196. Schultz, *supra* note 151, at 295.

197. See Ashford et al., *supra* note 142, at 202.

198. Dickson, *supra* note 143, at 277.

199. Juvenile Law Center, *supra* note 104, at 1.

200. *Id.*

201. Report of the Working Group on the Allocation of Decision Making, *supra* note 102, at 1328.

a place of employment in which social work traditions must be subordinated to legal ethics.²⁰²

When acting as a "pure advocate" the social worker is not simply an agent of the attorney: she is an essential and complementary part of a multi-disciplinary team. Advocacy is an important part of social work tradition.²⁰³ It promotes client self-determination and empowerment and continues to be an integral part of social work teachings, ethics, and tradition.²⁰⁴ Accordingly, it is the appropriate model for the social worker to adopt in this context.

2. The NASW Code and the "Pure Advocate" Model

The NASW Code does not prevent social workers from assuming the role of "pure advocates."²⁰⁵ The NASW Code generally allows for client self-determination tempered only when, in the social worker's professional judgment, such deference may pose a risk to the client. In an adversarial proceeding, however, the social worker's role shifts and the purpose of her role is to augment the attorney's ability to achieve the client's goal.²⁰⁶ In this context, the purpose of both the social worker and the attorney is to allow self-determination. Consequently, it is unclear that the NASW Code would curtail the social worker from advocating the client's desires. In any event, the child's rights should trump such a guideline from the NASW Code.

The NASW Code states that it does not specify which values, principles, and standards are most important and ought to outweigh others in instances when they conflict. Reasonable differences of opinion can and do exist among social workers with respect to the way in which values, ethical principles, and ethical standards should be rank ordered when they conflict.²⁰⁷ When a social worker is employed by a legal agency representing clients capable of decision making, she chooses an employment that necessitates an allowance for client self-determination.

In the absence of clearer guidelines preventing the social worker from choosing one approach over another, it would appear that the social worker who chooses employment in a legal agency is obligated to follow the mandates of the agency. Hence, she must represent zealously the client's interests. This result is not inconsistent with the NASW Code.

202. Ashford et al., *supra* note 142, at 202; see Senna, *supra* note 38, at 274-75.

203. Gilbert & Specht, *supra* note 146, at 288; Sosin & Caulum, *supra* note 143, at 12.

204. See Beulah R. Compton & Burt Gallaway, *Social Work Processes* 187-92 (4th ed. 1989); Judith A.B. Lee, *The Empowerment Approach to Social Work Practice* (1994).

205. See *supra* part III.C.2.

206. See *supra* notes 63-72 and accompanying text.

207. NASW Code, *supra* note 121, at 6 *Purpose of the NASW Code*.

The importance of the social worker's adoption of the "pure advocate" model is evident when one recalls the nature of the delinquency proceeding.²⁰⁸ The adversarial system is designed to function in a manner that allows the judge to render a decision based on the information presented by both the child's attorney and by the prosecution.²⁰⁹ It would be unethical for the social worker to allow her ideological and professional reluctance to undermine the zealous advocacy that the adversarial system provides the child client.

Ideological and professional reluctance is not a strong enough reason to undermine a system that depends on zealous advocacy in order to provide an accurate disposition for the child. A social worker who has chosen employment in a legal services agency, which represents children, is precluded from adopting any model other than the "pure advocate" model.

B. *Framework for Social Workers and Attorneys Working Together in Delinquency Proceedings*

The preceding section has demonstrated the necessity of social workers adopting the "pure advocate" model when representing children in delinquency proceedings. This section provides a framework allowing attorneys and social workers to successfully work together to represent children in delinquency proceedings. The attorney should not avoid referring a case to a social worker because a potential conflict may arise. In fact, if the case is so extreme that there is such a potential for conflict, it is even more likely that social work services are critically needed to effect a beneficial outcome for the child client.²¹⁰ Further, if there is potential for the social worker's disagreement with the child's goals, the court will almost certainly also disagree with those goals. Thus, social workers, attorneys, and the legal agencies that employ them must work to avoid conflicts inherent in multi-disciplinary representation.

1. Social Workers' Responsibilities

Social workers who adopt the "pure advocate" model in representing children in delinquency proceedings are instrumental to the attorney; they are not simply an "extra." Attorneys, in advocating zealously for their clients "have to go out on a limb,"²¹¹ but will not

208. *Supra* part I.A; *see supra* part IV.B. (illustrating real life scenarios); *supra* part II (discussing the attorney's obligation to zealously advocate the client's wishes).

209. *See supra* note 79 (discussing the Sixth Amendment's right to counsel and Supreme Court interpretations of that right); *see also supra* notes 197-203 and accompanying text (discussing the adversarial system and that it is up to the judge to decide what is in the child's "best interests").

210. Interview with a lawyer from the Juvenile Rights Division of the New York Legal Aid Society, in New York, N.Y. (Dec. 29, 1995).

211. *Id.*

have any credibility with the court if they simply ask the judge not to place the child.

Attorneys must employ social worker assistance to present the court a viable alternative to placement.²¹² At the same time, the social worker must provide social work services in a non-traditional fashion, using her professional knowledge base and judgment to advance the attorney's efforts to secure the client's wishes, regardless of societal or other considerations.²¹³ Social workers can avoid many potential conflicts by being candid in their discussions with family members and other social service agencies, either of which may expect the social worker to be working under a "best interests" paradigm. Social workers must make it clear from the outset that because they work for the child's attorney they are precluded from impairing the child's interests in any way.

Thus, Carol, the hypothetical social worker, can depart from the "best interests" role and seek an end contrary to her training so long as she is candid with her colleagues and Andrew's family members. Carol can assume a "pure advocate" role when assisting Barbara's representation of Andrew. When referring Andrew to a community-based agency, Carol must be honest with the agency in informing them that, although she is a social worker, she is employed by a legal agency and thus her role is to assist Andrew in remaining in the community. The same candor would apply in dealing with Andrew's family. Carol must inform Andrew's mother from the beginning that Carol works for Andrew's lawyer and her role is to assist Andrew in achieving his desired end. Carol must also recognize that as the attorney's employee, she must observe attorney-client confidentiality.²¹⁴

212. *Id.*

213. Social workers in this setting "must be prepared to disregard loyalties to . . . social work theory, and ideologies that run counter to the client's goals." Dickson, *supra* note 138, at 276-77.

214. Model Code, *supra* note 9, Canon 4 (stating that lawyers shall preserve confidences and secrets of their clients); NASW Code, *supra* note 134, at 1.07(c) (allowing for sharing of confidential information only for compelling professional reasons). Additionally, in regards to candor on the part of the social worker, Model Rule 4.1 states that, "A lawyer is required to be truthful when dealing with others on the client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts." Model Rule, *supra* note 9, Rule 4.1 cmt. The social worker, as the attorney's agent, must be candid and truthful with collateral agencies, but is not required to disclose client confidences or legal information relevant to the case. Model Rules, *supra* note 9, Rule 5.3 (noting that lawyers are responsible for conduct of non-lawyer employees); Model Code, *supra* note 9, DR 4-101(D) (stating that lawyers shall utilize reasonable care to prevent employees from disclosing client confidences). See generally Gerard F. Glynn, *Multidisciplinary Representation of Children: Conflicts Over Disclosures of Client Communications*, 27 J. Marshall L. Rev. 617 (1994) (discussing conflicts which may arise concerning client communications when attorneys work with other professionals); Schaefer, *supra* note 159 (discussing how the NASW Code ambiguously allows for disclosing client confidences only "for compelling reasons" but as an agent of the lawyer the social worker should be bound by attorney-client confidentiality).

Finally, social workers should continue to work with the child after the dispositional hearing to help ensure that the dispositional plan is working for the child. This additional step may aid in curtailing social workers' fears that they are being utilized as hired guns to help the child "beat the rap,"²¹⁵ and that they may be setting the child up for failure.

2. Attorney's Responsibilities

Because the attorney will often be aware upon referring the case to a social worker that the social worker may oppose the child's plan, the attorney can immediately schedule meetings in order to counsel the client about the concerns. The role of an attorney includes counseling the client and assisting in determining the most beneficial outcome for the client.²¹⁶ The attorney, however, must make it clear that this counseling remains within the framework of the client's ability to choose the direction of the representation.²¹⁷

In addition, if a social worker is to provide testimony, the attorney should discuss with the social worker how to build the strongest case for their client. The attorney must take steps to protect against rigorous cross-examination through advance preparation.²¹⁸ Attorneys also need to accept limitations on when and how they can utilize a social worker for testimony. Social workers and attorneys will encounter little conflict in the area of factual testimony, but in matters concerning opinion or expert testimony the attorney cannot expect the social worker to recommend an alternative to the court that conflicts with her beliefs.²¹⁹

3. Legal Agencies' Responsibilities

The NASW Ad Hoc Committee on advocacy suggests that the professional agency that employs the social worker is responsible not only to protect the worker in the advocate role but to educate the worker for this role as well.²²⁰ To that end, education and training provided by legal agencies should include courses which teach advocacy where

215. Working with the child after disposition can be accomplished through follow up with collateral agencies to which the child was referred in order to ensure that the child is still attending any programs or counseling. This action ensures that the client's social service needs will continue to be met and that if there are any problems, these problems can be remedied either before they are reported to the client's probation officer (which might result in out-of-home placement of the child) or before these problems escalate.

216. Model Rules, *supra* note 9, Rule 1.4(b) ("The lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation").

217. See *supra* notes 105-07 and accompanying text.

218. Peters, *supra* note 68, at 23.

219. See *supra* part IV.B.2.

220. Ad Hoc Committee on Advocacy, *The Social Worker as Advocate: Champion of Social Victims*, 14 Soc. Work 16 (1969).

social workers can learn to present and argue cases. Social workers desiring to effectively aid children in delinquency proceedings need to understand how lawyers think and familiarize themselves with the role of the "pure advocate."²²¹

Legal agencies which employ social workers also need to address the relationship between social workers and attorneys, especially in their training programs. Members of the two professions need to clarify their roles and reaffirm the primacy of the client's wishes. The agency must make clear that social work service supports and is secondary to the legal representation of alleged delinquents. Social work services, thus, may be more or less important depending on the needs of a particular client; the legal services agency's primary goal and responsibility remains constant—ensuring zealous advocacy of the child's legal interests.

CONCLUSION

Due to the multitude of psycho-social issues that face today's juveniles, attorneys can benefit from social workers when representing children in delinquency proceedings. These children are entitled to the same zealous representation afforded adults in criminal trials. Additionally, children accused of delinquency are entitled to counsel representing their interests. These mandates dictate both the attorney's role and the goals of the legal agency. Conflicts can arise, however, because the attorney's duty of zealous advocacy can conflict with the social worker's traditions of protecting the child's "best interests." Conflicts are avoided and the child's interests are best served when social workers employ a "pure advocate" model and act in accordance with the goals of the legal agency. Many social workers, however, due to their education and training, may feel uncomfortable in the role of the "pure advocate."

The lawyer, however, owes a duty to the client, and the client is entitled to a zealous advocate. The Model Code and Model Rules prohibit that the legal representation compromise this duty in any way. Social workers, by contrast, are not bound in the same manner by their Code of Ethics and thus are not required to advocate the child's "best interests." Consequently, for social workers to effectively assist attorneys in delinquency proceedings, they must assume the role of "pure advocate."

221. See Dickson, *supra* note 138, at 276.