

REPORT OF THE WORKING GROUP ON REPRESENTING THE WHOLE CHILD*

I. EFFECTIVE REPRESENTATION: SCOPE OF REPRESENTATION

1. When counsel is appointed or retained in delinquency or dependency proceedings, the representation should not end before the jurisdiction of the court ends. During the course of the representation, counsel should provide appropriate advice, advocacy, and other assistance to clients with respect to their transition out of jurisdiction.
2. Decisions regarding the scope of representation should be client directed.¹
3. Options regarding scope of representation and the operation of the attorney-client privilege should be explained in developmentally and culturally appropriate ways.
4. Lawyers should ensure that clients understand the scope of representation, including but not limited to: the roles and responsibilities of the attorney and client, the attorney-client privilege, and the duration of the representation. Counsel should make an effort to ensure that clients do not expect the lawyer to engage in advocacy beyond those the lawyer actually intends to undertake. This obligation of clarity is ongoing, and lawyer and client should revisit the scope of the representation as appropriate or necessary.

Youth are often simultaneously involved in child welfare (“CW”) and juvenile justice (“JJ”) proceedings. In addition, lawyers representing youth in CW or JJ proceedings frequently become aware of other legal issues affecting the youth. Youth involved in the transition from a court’s jurisdiction often have a great need for such representation.

A lawyer representing a youth in either a JJ or CW proceeding, should understand the inter-relationships between that representation and other related substantive areas (e.g., health, housing, public benefits, education, domestic violence, and immigration).

When competent to do so and with the consent of the client, lawyers should endeavor to provide legal representation in ancillary matters, either within or beyond Juvenile Court, both during and after the original representation. Appointed lawyers should petition the court for appointment and compensation on these matters.

1. If a lawyer is not able to provide representation in an ancillary matter, (s)he should assist the youth in obtaining representation in that matter.² If the youth is able to obtain representation in the other matter, counsel in the original matter should consult with that counsel, as appropriate and/or directed by the client. If

* This Working Group consisted of the following members: Marsha Levick (Primary Report Preparer and Group Moderator), Paul Holland (Group Reporter), Marty Beyer, Carol Casey, Catherine Crawford, Howard Davidson, Amanda George Donnelly, Robert Harris, Pamela Mohr, Jennifer Rodriguea, Catherine J. Ross, Lyn Slater, and Ruth Stone.

¹ This recommendation assumes the client is capable of directing the representation.

² When possible, a law office representing children may wish to include staff that is competent in such frequently recurring related issues.

the youth is unable to obtain counsel in the ancillary matter, the original attorney should educate and attempt to empower and mentor youth (and their families when appropriate) with respect to addressing the ancillary legal matter.

2. With the client's consent and throughout the course of representation, a lawyer should endeavor to work with the family and other professionals to empower youth and their families to address other collateral issues affecting the youth or his family that may or may not require legal representation.

II. EFFECTIVE REPRESENTATION: CHILD IN CONTEXT

Attorneys representing children in dependency and delinquency cases must be knowledgeable about child and adolescent development and establish effective working relationships that empower clients.

An effective working relationship can be established only if attorneys listen carefully to their clients and explain matters to them in a developmentally appropriate manner. This consultation should take place in the course of regular face-to-face contact whenever possible, with other forms of communication (e.g., phone calls, writing, etc.) as necessary and appropriate. Attorneys should inform the client as to the status of the case and give clients the opportunity to have their questions answered and to direct the representation.

Effective representation requires that the attorney appreciate the full context in which the client lives. This context includes the child's family, culture, gender, schooling and home. Attorneys must appreciate the strengths of the child and family.³

Attorneys must be continually aware of their child client's functional level, disabilities, history and nature of trauma, and level of maturity of thinking.

Attorneys must help their child clients become effective self-advocates and problem-solvers in identifying, applying for, and securing needed services and benefits, and to better understand and take active roles if they wish in court proceedings, placement decisions, and other administrative actions affecting them.

Attorneys should encourage feedback from their clients and the clients' families on the quality of their representation.

Attorneys should habitually reflect upon and assess the extent to which their personal opinions, values, and biases may affect the representation of their child clients.

In order to accomplish all the above, attorneys must have reasonable caseloads and the ability to retain experts without notice to adverse parties. Further, counsel must be adequately and promptly compensated for their work on behalf of their child clients. Programs that make available loan forgiveness for attorneys dedicated to child representation are invaluable for attracting and sustaining qualified and dedicated counsel to the field.

³ The strengths of the child and family can be identified by learning what the child loves to do, how the child sees his/her "family" supporting them, what are the most important relationships in the child's life; what other protective factors exist within their family and community.

III. EFFECTIVE REPRESENTATION: MULTIDISCIPLINARY PRACTICE

Lawyers representing children need to understand the child in context, which includes an appreciation of all of the legal and social issues related to the presenting problem that is the initial or primary subject of the representation.

Representation of children should be conducted in a multidisciplinary fashion that takes into account children's place in their families⁴ and communities as well as the full range of systems in which the children are enmeshed. The imperative to work in a multi-disciplinary fashion applies to both the representation of individual clients and to efforts at system reform.

A. *Definition*

Multidisciplinary practice:

1. Is informed by knowledge of the existence, domains, methods, and practices of other disciplines;
2. Includes the knowledge of when and how to access the services of professionals from other disciplines;
3. Includes the ability to collaborate with and evaluate the opinions of professionals from other disciplines.

B. *Recommendations for Practice*

The representation of children is best practiced through a multi-disciplinary team approach. The multi-disciplinary team should operate in a way that provides children with the benefits of the team approach while minimizing the potentially negative impact of having the client participate in repeated interviewing.

The multi-disciplinary team can be composed of staff employed or consultants retained by the attorney or firm representing the child or can be assembled on a case-by-case basis.

In forming a team, attorneys should be sure to explain to other prospective team members the attorney's professional obligations to the client. The attorney should also solicit from the prospective team members their understanding of their own professional obligations.

The attorney must ensure that all team members understand the way in which decisions will be made within the representation.⁵

When not authorized to do so unilaterally, lawyers should obtain the resources to retain and pay for the services of other professionals by seeking judicial approval to do so.

⁴ The Group recognizes that "family" is a broad concept that should be defined by reference to the individual circumstances, identifying the people who play important roles in caring for, supporting, and guiding the child.

⁵ Although attorneys are ethically obligated to make final decisions about many aspects of the representation in consultation with the client, this decision-making will benefit most from the multidisciplinary collaboration where the attorney seeks to learn as much as possible about the representation from each team member. The benefits of multidisciplinary representation extend to the selection of the goals of the representation, litigation or other forms of advocacy, and also client counseling.

C. *Recommendation for Education*

Lawyers need to be able to recognize presenting issues that require the services of other professionals and to access those services, but should also recognize the limits of their own professional expertise.

Lawyers should develop sufficient knowledge of other disciplines to formulate requests for evaluations and services from other professionals and to evaluate and use professional opinions.

Lawyers should be familiar with fundamental principles governing practice in other disciplines, such as the necessity that practices be evidence-based and peer-reviewed.

Lawyers should be aware of issues from other disciplines that recur frequently in their practice (e.g., current treatments, evaluation methods, outcomes).

Lawyers should be aware of the disparate impacts that practices in other professions and systems have on clients because of race, ethnicity, class, gender, sexual orientation, disability, or other attributes of the client or the client's family or community).

Judges should receive education on the necessity and benefits of multidisciplinary representation in which lawyers work with independent professionals.

Law schools, bar associations, and other legal organizations should promote collaborative approaches to learning and practice generally and cross-disciplinary education specifically.

Law schools, bar associations and other legal organizations should make available means by which attorneys can keep current as to developments in related subject areas and the operations of other systems affecting children and families.

Lawyers should seek input from current and former clients and their families with respect to ways to improve lawyers' professional education and practice.

IV. RECOMMENDATIONS FOR CHANGES IN LAW

Status as an alleged or adjudicated offender should not disqualify a youth from eligibility for services through the child welfare system. Many children charged with or adjudicated as delinquents continue to need services from the child welfare system, or will need such services upon their release from any delinquent placement where the conditions giving rise to their involvement in the child welfare system (e.g., lack of a parental home to return to) remain unresolved. Where the need for such services persists, allegations or adjudications of delinquency should not serve as barriers to the receipt of these services.

Parents and children should have a statutory right to counsel in CW proceedings. Children should have full party status in these proceedings. Not all jurisdictions in the United States afford parents and children involved in child welfare proceedings with a statutory right to court appointed counsel. Further, children must be afforded full party status to ensure their right to participate at all stages of proceedings involving their welfare.

A child has the right to attend and participate in hearings affecting them.

Children should have a right to appeal and to counsel on appeal.

The law should provide that representation in juvenile justice or child welfare proceedings extends at least until the conclusion of the court's jurisdiction.⁶

Dependency jurisdiction established before the age of eighteen should be subject to extension until at least age twenty-one, at the child's option. Wards of the court in the CW system should remain eligible for medical insurance until at least age twenty-one.

V. RECOMMENDATIONS FOR FURTHER STUDY

How should these recommendations apply to children who cannot direct the representation?

The Group recommends further study with respect to what it means to direct the representation.

The Group recommends further study of measures that can be used to accommodate the maximal and effective participation in the representation by clients with disabilities.

To what extent should children have a right to counsel and/or a right to be heard in proceedings other than JJ or CW?

Should states provide dependent youth with the option of a trial discharge from care? A "trial discharge" enables a youth to opt out of continued jurisdiction at the designated statutory age, but preserves the youth's right to return to jurisdiction within a specified time period if needed for the child's well-being.

Should state law define dependency jurisdiction as extending to any child who meets the statutory definition up through age nineteen or until the completion of high school?

What legal or administrative barriers exist that currently prevent lawyers from extending their representation to other related matters beyond the original JJ or CW proceeding?

Should such barriers be removed?

⁶ This is separate from the right to appeal; continuing representation should ordinarily be provided by trial counsel or by counsel who specializes in such continuing representation. Whichever model is used, counsel should be compensated for this work. Continuing representation includes issues related to probation compliance, conditions of confinement, or the provision of required services to a youth subject to court jurisdiction. It may often be appropriate or necessary that separate counsel be appointed for appellate matters.