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## Recommendations of the Conference on Ethical Issues in the Legal Representation of Children in Illinois

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# RECOMMENDATIONS OF THE CONFERENCE ON ETHICAL ISSUES IN THE LEGAL REPRESENTATION OF CHILDREN IN ILLINOIS

## I. RECOMMENDATIONS REGARDING ADVOCACY FOR THE BEST INTERESTS OF A CHILD

When an attorney is called upon to represent the best interests of a child, the following principles shall apply:

- A. Decision making on behalf of a child must be made in a contextual, self-aware, deliberate and principled manner. The decision-making process is on-going throughout the course of the representation.
- B. A best interests determination is not a legal issue. It is a factual issue addressed in a legal setting. Therefore, the child's attorney must obtain substantive information from outside the legal arena. The attorney's own life history, philosophies and biases should not form the basis for the substantive best interests determination. Multi-disciplinary training, cultural awareness, and expert consultations should be used to form the best interests determination.
- C. The attorney should be aware of and responsive to the changing needs and interests of the child client. The attorney should generally obtain this information through ongoing contact with the child client, preferably in the child's environment.
- D. As circumstances change and new information becomes available the attorney should consider how that information impacts the child and thereby affects the best interest determination.
- E. In order to make meaningful best interests determinations, attorneys should carry reasonable caseloads and have access to expert assistance sufficient to allow a considered determination of best interests.
- F. The attorney should address the child's legal best interest needs in the matter over which the court has jurisdiction.
- G. It is the lawyer's responsibility to focus on the child in context

through a full, efficient and speedy factual investigation. The lawyer should work from a thickly detailed view of the child client as an unique individual. The investigation may include discussions with the child's parents, teachers and other significant persons in the child's life.

- H. The determination of best interests should include all legally available options, including good faith options for seeking modification of the law. These options must also include all options available in the community. The lawyer should understand these options concretely and understand as specifically as possible how an option will be experienced by the child.
- I. If and when the analysis becomes too complex, attorneys should consult experts for guidance.
- J. The best interests determination must always include the child's expressed wishes as one factor.
- K. The best interests determination should avoid all or nothing solutions but should include a range of options and contingencies for the child client.
- L. The best interests determinations should look at short-term best interests, including services in placement, as well as the long-term case plan.
- M. It is generally preferable for there to be continuity of representation to ensure maximum understanding of the child in context.
- N. Lawyers for children should receive specialized training in child development, cultural awareness, interviewing skills, and multi-disciplinary substantive information relevant to the child's legal proceeding (such as psychological, educational, or social work information).
- O. To implement these recommendations, more practical guidelines should be developed, including strategies for obtaining adequate resources.

## II. RECOMMENDATIONS REGARDING CONFIDENTIALITY

- A. When a lawyer is acting as an attorney for a child (in an attorney-only role), the lawyer shall comply with the Illinois Rules of Professional Conduct governing client confidentiality.

Lawyers should explain at the outset of their relationships with clients the extent to which their conversations are confidential and under which circumstances they are allowed to disclose confidential information.

- B. A new section should be added to Rule 1.6 of the Illinois Rules of Professional Conduct, which would read substantially as follows:

In addition to any disclosure required under Rule 1.6(6), a lawyer who represents a minor may reveal information necessary to prevent the client from engaging in conduct or pursuing a course of action which is likely to result in death or serious bodily harm to the client. The lawyer may reveal only the minimum information needed to prevent the harm and shall do so only to the people who reasonably need to know such information.

- C. In special education cases, the parent(s), the child, or both may be viewed as the client. Appropriate retainer agreements (specifying who is the client, for example) should be used to avoid problems connected with confidentiality in these cases.

### III. RECOMMENDATIONS REGARDING CONFLICTS OF INTERESTS

#### A. General Recommendations Regarding Conflicts in Legal Matters Involving Children

1. At the outset of the representation, an attorney should determine and communicate to all interested parties who the is the client the attorney represents.
2. An attorney should determine what role(s) he or she serves and what are the duties associated with that role.
3. An attorney should determine who will direct the objectives of the representation at the outset of the relationship.
4. An attorney should seek to resolve uncertainties concerning his or her role, the identity of the client(s), and the allocation of decision making authority. If appointed by a court, the attorney should ask the court to clarify his or her role and responsibility if they are unclear.
5. Throughout the course of representation, an attorney should be alert to possible conflicts of interest and when a possible conflict arises, the attorney should address the situation in a manner consistent with professional standards of conduct and applicable laws.

## B. Specific Recommendations

1. Attorneys should support efforts to ensure that courts have sufficient resources to avoid conflicts of interest, e.g. when representation of multiple clients cannot ethically be undertaken by the same attorney.
2. Judges should respond liberally to attorneys' requests to withdraw from representation when an attorney articulates the existence of a conflict that makes ongoing representation impossible.
3. Attorneys and judges should be provided training opportunities to acquaint them with the range of ethical issues, including conflicts issues, in child-related proceedings.

## IV. RECOMMENDATIONS REGARDING THE ROLE OF JUDGES

### A. Judicial Involvement in Cases Involving Children

Because of the unique cognitive, emotional, and developmental characteristics of children, as well as the serious consequences for the child and society of decisions in cases involving children, judges have a unique responsibility to ensure that the court has all facts necessary to make an informed decision. However, a judge must not become an advocate. (All recommendations which follow should be read consistent with this initial recommendation.)

### B. Appointing Advocates for Children in:

1. Delinquency Cases  
Beyond appointing attorneys (see Recommendations Regarding the Role of Counsel), judges may also appoint guardians *ad litem* for the minors in appropriate circumstances.
2. Child Custody Cases  
A judge should not appoint a representative for a child unless the judge concludes that one of the following factors applies:
  - a. The failure to make such an appointment would impede the judge's capacity to decide the case properly;
  - b. The failure to make such an appointment would risk harm to the child; or
  - c. The child's voice should become a more prominent part of the case.

### C. Structural and Legal Reform

A court's appointment of a lawyer for a child should be made within a system with the following characteristics:

1. The lawyers are selected in an impartial manner and are free of judicial influence in their representation.
2. The lawyers are compensated reasonably, i.e., commensurate with the fees paid to equivalently experienced individual court-appointed lawyers who have similar qualifications and responsibilities.
3. The lawyers are given access to services and to information needed for effective representation of the child, and are reimbursed for associated supporting costs.
4. Appointments provide for continuity of representation, i.e., the lawyer stays with a case for as long as it is within the court's jurisdiction.
5. Caseloads are appropriate for competent and effective representation of each client.
6. Appointments are based upon objective criteria that promote high quality representation.
7. The lawyers are familiar with standards of practice that promote high quality representation.
8. The system engages in ongoing evaluation of the effectiveness of its delivery of legal services.
9. The lawyer recruitment process includes an aggressive campaign to increase the racial, ethnic, gender, and cultural diversity of the lawyer pool.

### D. Other Responsibilities Relative to the Representation of Children

Judges have a responsibility to children that is not satisfied solely by appointing counsel for the child. Their additional responsibilities include the following:

1. Judges must recognize their own responsibility for the speedy resolution of cases involving children, and should demonstrate it by effective case management, the minimization of delays and encouraging appropriate judicial caseloads.
2. Judges should impress upon lawyers and all parties the priority that should be afforded each child's case.
3. Judges should advocate the creation of specialized child advocacy programs, law school clinical child advocacy programs, and specialized child advocacy units within legal

services and public defender agencies.

4. Judges should advocate the adoption and funding of systems for the appointment, training, and evaluation of lawyers for children.
5. Judges have a unique responsibility in cases involving children to monitor the competent and effective representation of the child.
6. Judges should engage in continuing education to enable them effectively to appoint and utilize counsel for children.
7. Juvenile and family court judges must be leaders in their communities, state capitals, and at the national level to improve the administration of justice for children and families.
8. Judges should also be encouraged to share their knowledge of children's issues to assist in the prevention of child abuse, neglect, delinquency and dependency.
9. Judicial circuits should adopt standards of training and/or experience for all attorneys appointed in cases involving children.

#### E. Judicial Training

In order to ensure the effective representation and best interests of children and families, judges must have training and knowledge about the unique legal and interdisciplinary issues which may arise in cases involving children. They must also have training and knowledge about the resources available to remedy these issues.

#### V. RECOMMENDATIONS REGARDING THE ROLE OF COUNSEL

- A. In all proceedings involving children, the attorney for the child should not function in more than one role.
- B. Basic standards of practice for attorneys representing children and for guardians *ad litem* should be articulated.
- C. Counsel in delinquency proceedings should assume the role of the traditional attorney when representing the client.
- D. (Questions relating to the role of counsel for children and, particularly, the manner by which the objectives of the representation are determined in domestic relations and child protective proceedings were referred to a committee consisting of two individuals representing children in child protective

proceedings, two judges, two individuals representing children in domestic relations proceedings, one ethicist, and three others, with the members selected to ensure geographic diversity.)