

1998

## Ethical Issues in the Legal Representation of Children in Illinois: Roles, Rules and Reforms

Diane Geraghty

*Loyola University Chicago, School of Law*, [dgeragh@luc.edu](mailto:dgeragh@luc.edu)

Follow this and additional works at: <http://lawcommons.luc.edu/lucj>

 Part of the [Juvenile Law Commons](#)

---

### Recommended Citation

Diane Geraghty, *Ethical Issues in the Legal Representation of Children in Illinois: Roles, Rules and Reforms*, 29 Loy. U. Chi. L. J. 289 (1998).

Available at: <http://lawcommons.luc.edu/lucj/vol29/iss2/3>

This Prefatory Matter is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola University Chicago Law Journal by an authorized administrator of LAW eCommons. For more information, please contact [law-library@luc.edu](mailto:law-library@luc.edu).

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

## Foreword

### Ethical Issues in the Legal Representation of Children in Illinois: Roles, Rules and Reforms

*Diane Geraghty\**

#### I. INTRODUCTION

Each year Illinois attorneys represent thousands of child clients in legal proceedings.<sup>1</sup> This representation is a marked change from thirty years ago when it was assumed that parents, other adults, or the State could adequately safeguard children's legal interests.<sup>2</sup> The Supreme Court's decision in *In re Gault*<sup>3</sup> challenged this longstanding assumption, holding that in delinquency cases, a child respondent "requires the guiding hand of counsel at every step in the proceedings against him."<sup>4</sup> In the three decades since *Gault*, the volume and complexity of issues in child-related proceedings has increased the need for skilled legal advocacy for children.<sup>5</sup> Illinois statutes reflect

---

\* Professor of Law and Director, Child and Family Law Programs, Loyola University Chicago School of Law.

1. Children's legal interests arise in a wide range of cases, including tort litigation, criminal prosecutions, contract disputes, mental health commitments, immigration matters and constitutional litigation. The most common cases in which children's interest are at issue include child protection, delinquency, and status offense proceedings, ordinance violations, education cases, and adoption, paternity, dissolution, and probate matters. See generally Martha Matthews, *Ten Thousand Tiny Clients: The Ethical Duty of Representation in Children's Class-Action Cases*, 64 FORDHAM L. REV. 1435, 1436 (1996) (discussing reform litigation involving children).

2. See Robert E. Shepherd, Jr. & Sharon S. England, "I Know the Child Is My Client, But Who Am I?", 64 FORDHAM L. REV. 1917, 1919 (1996).

3. 387 U.S. 1 (1967).

4. *Id.* at 36 (quoting *Powell v. Alabama*, 287 U.S. 45, 69 (1932)).

5. See Tara Lea Muhlhauser & Douglas D. Knowlton, *Viewpoint: The "Best Interest Team": Exploring the Concept of a Guardian Ad Litem Team*, 71 N.D. L. REV. 1021, 1023 (1995); Marvin R. Ventrell, *Rights & Duties: An Overview of the Attorney-Child Client Relationship*, 26 LOY. U. CHI. L.J. 259, 266-67 (1995).

this need by either requiring or permitting the appointment of independent counsel for children in a variety of judicial and administrative settings. For example, children who are the subjects of proceedings under the Juvenile Court Act<sup>6</sup> and the Mental Health Code<sup>7</sup> *must* be represented by an attorney. In contrast, a court *may* appoint an attorney for a child in other types of cases, such as paternity actions,<sup>8</sup> and support, custody and visitation matters.<sup>9</sup>

Despite statutory recognition of the importance of legal representation for children, Illinois attorneys often represent child clients without clear guidance as to the nature and scope of their professional duties. State statutes generally fail to define the role of a child's legal representative, common law guidance is sparse, and existing rules of professional conduct are largely silent on the relationship between an attorney and a child client. The purpose of this Foreword is to describe the often uncharted ethical waters in which Illinois attorneys for children must operate, identify national and local initiatives aimed at responding to this situation, and introduce the important contributions that Professor Martin Guggenheim and Professor William Kell make to this discussion in the articles that appear in this volume.

## II. ILLINOIS STATUTES, RULES, AND CASE LAW

One of the clearest examples of the challenges faced by attorneys who represent child clients in Illinois occurs in child protection

---

6. See 705 ILL. COMP. STAT. ANN. 405/1-1 to 405/7-1 (West 1992 & West Supp. 1997) (amended). The Juvenile Court Act provides that "[n]o hearing on any petition or motion filed under this Act may be commenced unless the minor who is the subject of the proceeding is represented by counsel." *Id.* at 405/1-5 (1) (West Supp. 1997), *amended* by Family Law—Interstate Compact on Adoption Act and Children Generally, P.A. No. 90-28, § 10-20, 1997 Ill. Legis. Serv. 1823-24 (West), and Family Law—Children—Definitions, P.A. No. 90-27, § 30, 1997 Ill. Legis. Serv. 1766 (West).

7. See 405 ILL. COMP. STAT. ANN. 5/1-100 to 85/9 (West 1997) (amended). The Mental Health Code states that "[u]pon receipt of the petition, . . . the court shall appoint counsel for the minor . . ." *Id.* at 5/3-509.

8. See 750 ILL. COMP. STAT. ANN. 45/18 (a) (West 1993) (permitting that "[i]n the best interests of the child, the court may appoint counsel to represent a child whose parentage is at issue"), *amended* by Family Law—Determination of Parentage—DNA Testing and Counsel, P.A. No. 90-23, § 5, 1997 Ill. Legis. Serv. 1719 (West).

9. The Illinois Marriage and Dissolution of Marriage Act provides that "[t]he court may appoint an attorney to represent the best interests of a minor or dependent child with respect to his support, custody, visitation, and property. The court may also appoint an attorney as the guardian-ad-litem for the child." 750 ILL. COMP. STAT. ANN. 5/506 (West 1993 & West Supp. 1997), *amended* by Family Law—Marriage and Dissolution—Property Interests of Minors, P.A. 90-309, § 5, 1997 Ill. Legis. Serv. 3188-89 (West). See also ILL. COMP. STAT. at 35/12(a) (1994) (stating that "[f]or the protection of the child's best interests, the court may appoint counsel for the child").

proceedings under the Juvenile Court Act (the "Act").<sup>10</sup> The Act contemplates three possible representatives for a child in an abuse or neglect case. First, all child respondents under the Act must be independently represented by counsel.<sup>11</sup> Second, a court is authorized, and in some instances required, to appoint a guardian *ad litem* for a child without regard to the child's age or capacity.<sup>12</sup> The guardian *ad litem* is not required to be an attorney; however, if the guardian *ad litem* is not an attorney, the court must appoint an attorney to represent the guardian *ad litem*.<sup>13</sup> Finally, the Act permits the appointment of a "court appointed special advocate" or "CASA," which is a community volunteer who normally is not legally trained.<sup>14</sup> While this statutory scheme allows three different individuals to serve in each of these roles, the most common practice in Illinois is to appoint one person to simultaneously act as a child's attorney and guardian *ad litem*. Although grounded in financial and functional considerations, this practice creates an ethical dilemma for attorneys required to perform both roles because there are inherent differences between the customary duties of attorneys and guardians *ad litem*. In a traditional attorney-client relationship, a lawyer is ethically obligated to permit a client to determine the objectives of representation.<sup>15</sup> This obligation continues even if an attorney is persuaded that a client's reasoning is flawed, or that a client's decisions concerning the

---

10. See 705 ILL. COMP. STAT. 405/1-1 to 405/7-1.

11. See *id.* at 405/1-5(1).

12. See *id.* at 405/2-17 (West 1992 & West Supp. 1997), amended by Family Law—Interstate Compact on Adoption Act and Children Generally, P.A. No. 90-28, § 10-20, 1997 Ill. Legis. Serv. 1836-37 (West), and Family Law—Children—Definitions, P.A. No. 90-27, § 30, 1997 Ill. Legis. Serv. 1770-71 (West). Appointment of a guardian *ad litem* is mandatory in all cases in which a child is alleged to be abused, neglected, or the victim of a sexual offense. See *id.* at 405/2-17(1)(a), (b). Appointment is also required under other circumstances, such as where a parent or legal guardian does not appear in court, or the petition seeks appointment of a guardian with power to consent to an adoption. See *id.* at 405/2-17(2)(a), (b). However, a court may appoint a guardian *ad litem* in any case in which such appointment is deemed to be in a child's interest. See *id.* at 405/2-17(3).

13. See *id.* at 405/2-17(4).

14. See *id.* at 405/2-17.1 (West Supp. 1997), amended by Family Law—Interstate Compact on Adoption Act and Children Generally, P.A. No. 90-28, § 10-20, 1997 Ill. Legis. Serv. 1837-38 (West). A CASA's responsibilities typically include monitoring the implementation of court orders relating to service, helping an individual child adjust to the litigation process and, where appropriate, testifying in court on matters relating to a child's well-being. In all counties except Cook County, a CASA may also be appointed as the child's guardian *ad litem*. See *id.* at 405/2-17.1.

15. See Illinois Rules of Professional Conduct Rule 1.2(a) (requiring that "[a] lawyer shall abide by a client's decisions concerning the objectives of representation, . . . and shall consult with the client as to the means by which they are to be pursued").

objectives of representation will not produce the desired results. Similarly, where a client's ability to make reasoned decisions is impaired, an attorney is duty-bound to maintain a normal attorney-client relationship to the greatest extent possible under the circumstances.<sup>16</sup> In contrast to the professional standards governing attorney behavior and practice, the traditional duty of a non-attorney guardian *ad litem* is to act in an individual's best interests.<sup>17</sup> This duty is consistent with the fact that a guardian *ad litem* typically is appointed in circumstances where an individual lacks the capacity to engage in reasoned decision-making on matters affecting the individual's well-being.<sup>18</sup>

Given the inherently different roles traditionally played by attorneys and guardians *ad litem*, what are the ethical duties of an Illinois attorney appointed to act both as attorney and guardian *ad litem* for a child client? Although this question theoretically arises in all cases of dual representation, it has no practical significance in many cases. Oftentimes, there exists no actual conflict between the client's wishes and the guardian *ad litem*'s judgment as to the client's best interests. If, for example, a sixteen year old child client is strongly attached to his grandmother and wishes to remain living in her home despite its dilapidated condition and exposed wiring, the attorney/guardian *ad litem*, in most cases, may reasonably conclude that there is no incompatibility between the client's wishes and his best interests, and will advocate for the child's placement with his grandmother. There are, however, cases in which a child's objectives are at odds with an attorney/guardian *ad litem*'s assessment of a client's best interests. Assume, for example, that an articulate and truthful twelve year old

---

16. See *id.* Rule 1.14 expressly includes minors among clients who may be under a disability "whether because of minority, mental disability, or some other reason . . . ." *Id.* Thus, the Rule appears to provide that a child's attorney is bound by the traditional obligations of an attorney-child relationship except to the extent that the child's capacity (for example, in the case of an infant), precludes maintenance of the normal requirements of the relationship.

17. See Deborah L. Rhode, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHODS 423 (1994).

18. See Illinois Rules of Professional Conduct Rule 1.14. Rule 1.14 limits an attorney's authority to seek appointment of a guardian for a client who is under a disability. An Illinois lawyer "may seek the appointment of a guardian or take other protective action with respect to a client, only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest." *Id.* In the case of a child client who is alleged to be neglected or abused, appointment of a guardian *ad litem* is required by statute. See 705 ILL. COMP. STAT. ANN. 405/1-5(1) (West Supp. 1997), amended by Family Law—Interstate Compact on Adoption Act and Children Generally, P.A. No. 90-28, § 10-20, 1997 Ill. Legis. Serv. 1823-24 (West), and Family Law—Children—Definitions, P.A. No. 90-27, § 30, 1997 Ill. Legis. Serv. 1766 (West).

reveals to his attorney that his grandmother drinks heavily and, on a recent occasion, punished him by locking him in a darkened closet for a day. The child insists that he wishes to remain living with his grandmother, but his attorney/guardian *ad litem* concludes that the risks associated with leaving him in the home are too great. If the attorney and child share a traditional attorney-client relationship, then the attorney is ethically bound to advocate vigorously for the child's position,<sup>19</sup> and must maintain her client's confidences about his grandmother's alcohol use and disciplinary techniques.<sup>20</sup> If, on the other hand, the attorney's conduct is controlled by her appointment as guardian *ad litem*, she must argue for the removal of the child from the home, despite her client's contrary wishes. In addition, because a guardian *ad litem* is not required to maintain a client's confidences, she may disclose the fact of the grandmother's behavior if such a disclosure would be consistent with the child's best interests.<sup>21</sup>

Faced with the dilemma that dual appointment creates, an Illinois attorney might reasonably be expected to turn to statutory or case law to resolve questions concerning the lawyer's proper role and corresponding duties. Unfortunately, in its present state, Illinois law provides minimal, and arguably conflicting, guidance on the attorney's proper role in child protection proceedings. For example, although the Juvenile Court Act requires appointment of counsel for all children in neglect and abuse proceedings, the statute is silent on the nature and scope of an attorney's duties with respect to the child client.<sup>22</sup> A strong argument can be made that the Act's language, history and context support a conclusion that the Act envisions the creation of a traditional attorney-client relationship.<sup>23</sup> Some Illinois courts,

---

19. See Emily Buss, "You're My What?" *The Problem of Children's Misperceptions of Their Lawyers' Roles*, 64 FORDHAM L. REV. 1699, 1701 (1996) (defining a "traditional attorney's" role as "representing what the child client wants").

20. See Kevin M. Ryan, *Reforming Model Rule 1.6: A Brief Essay from the Crossroads of Ethics and Conscience*, 64 FORDHAM L. REV. 2065, 2066 (1996).

21. See Roy T. Stuckey, *Guardians Ad Litem as Surrogate Parents: Implications for Role Definition and Confidentiality*, 64 FORDHAM L. REV. 1785, 1792 (1996) (suggesting that in most jurisdictions a guardian *ad litem* could be compelled to disclose a ward's confidences even if the guardian believed that such a disclosure is contrary to the child's best interests).

22. See 705 ILL. COMP. STAT. ANN. 405/1-5(1).

23. Section 405/1-5(1) sets forth the rights of all parties (adults and minors) under the Act. See *id.* One of those rights is the right to counsel. See *id.* The only distinction the Act draws between an adult party's right and that of a child is that a child must be represented by an attorney, whereas an adult is entitled to representation. See *id.* Further, the Act does not distinguish between a delinquent minor's right to counsel, constitutionally mandated by *In re Gault*, and other child parties' right to counsel (*i.e.* children who are abused, neglected, dependent, addicted or in need of authoritative

however, appear to take a contrary view. For example, in *In re K.M.B.*,<sup>24</sup> the appellate court rejected a thirteen year old delinquent's argument that her constitutional right to counsel was violated when, after informing the court that her client wished to return home, her court-appointed attorney/guardian *ad litem* expressed agreement with the State's position that her client should be placed outside the home.<sup>25</sup> In language that creates a perplexing ethical challenge for children's attorneys in Illinois, the court held that a court-appointed juvenile counsel is obligated simultaneously to protect a child client's "legal rights" and "best interests."<sup>26</sup> Despite the questionable reasoning of the court's opinion in *K.M.B.*, subsequent opinions cite the case as precedent, holding that there is no inherent conflict between the roles of an attorney and a guardian *ad litem* for a minor.<sup>27</sup> In one such case, *In re R.D.*, the appellate court opined that a child's attorney and guardian *ad litem* "have essentially the same obligations to the minor and to society."<sup>28</sup>

A more recent opinion, however, calls into question the meaning of these earlier cases. In *In re A.W.*,<sup>29</sup> a conflict arose between a thirteen year old client and her attorney/guardian *ad litem* over the issue of accelerated unsupervised visits.<sup>30</sup> Although the child expressed a clear

---

intervention). *See id.* These facts, in combination, suggest that all parties to a Juvenile Court proceeding have a right to competent counsel, including the right to zealous advocacy of a party's position as to the objectives of representation. *See id.*

24. 462 N.E.2d 1271 (Ill. App. Ct. 4th Dist. 1984).

25. *See id.* at 1272.

26. *Id.* at 1272-73. Under the Juvenile Court Act, a minor has both procedural and substantive "legal rights." Among a child's procedural rights is the right to be represented by counsel. *See* 705 ILL. COMP. STAT. ANN. 405/1-5(1) (West 1992 & West Supp 1997), *amended by* Family Law—Termination of Parental Rights—Adoption, P.A. No. 90-443, § 10, 1997 Ill. Legis. Serv. 4614-15 (West), *and* Family Law—Interstate Compact on Adoption Act and Children Generally, P.A. No. 90-28, § 10-20, 1997 Ill. Legis. Serv. 1820-21 (West), *and* Family Law—Children—Definitions, P.A. No. 90-27, § 30, 1997 Ill. Legis. Serv. 1764-66 (West). Exercise of this right is incompatible with a requirement that an attorney also protect a client's best interests because an attorney *qua* attorney is not ethically permitted to substitute his or her judgment as to a client's best interests for the expressed wishes of a client. Arguably, a minor who is subject to proceedings under the Act also has a substantive right to remain in his or her own home if the minor's safety and well-being can be safeguarded. *See id.*

27. *See In re W.C.*, 657 N.E.2d 908 (Ill. 1995); *In re R.D.*, 499 N.E.2d 478 (Ill. App. Ct. 1st Dist. 1986). The issue of an attorney's role in *K.M.B.*, *R.D.* and *W.C.* arose in the context of a dispositional hearing in a delinquency proceeding. An unpublished 1991 opinion extended the reasoning in this line of cases to a neglect case. *See In re Katherine H.*, No. 1-89-0313, at 57, (Ill. App. Ct. 1st Dist. March 12, 1991) (on file with author).

28. *In re R.D.*, 499 N.E.2d at 482.

29. 618 N.E.2d 729 (Ill. App. Ct. 1st Dist. 1993).

30. *See id.* at 730-32.

desire to have such visits (a position endorsed by a family therapist), the child's lawyer opposed the visits because she believed that unsupervised contact with the family was not in the child's best interests.<sup>31</sup> Unhappy with the position taken by her court-appointed attorney/guardian *ad litem*, the child moved to substitute a private attorney to act as her counsel.<sup>32</sup> The trial court granted her motion for substitution, allowing the appointment of a new attorney for the child, but kept the original guardian *ad litem*.<sup>33</sup> On review, the appellate court held that a minor has a statutory right to be represented by private counsel of her own choosing in a Juvenile Court proceeding.<sup>34</sup> The court characterized a minor's right to representation as "almost coextensive to that afforded to adults."<sup>35</sup> However, with seeming approval, the *A.W.* court cited the language in *In re R.D.* that juvenile counsel and guardians *ad litem* "have essentially the same obligations to the minor and to society."<sup>36</sup>

The *A.W.* court's holding and its reliance on the language in *R.D.* offers insight into how these seemingly inconsistent positions can be harmonized.<sup>37</sup> The *A.W.* court appears to read the Juvenile Court Act as creating a traditional attorney-client relationship between a lawyer and a child client, but does so in the context of a proceeding in which the ultimate goal of all participants is to advance the child's best interests. If this analysis is correct, then under Illinois law, a child's attorney is ethically obligated to argue a child client's position, a child's guardian *ad litem* is required to make recommendations consistent with a child's best interests, and a trial court is charged with the ultimate responsibility of deciding what course of action best advances a child's well-being.<sup>38</sup> Whether or not this interpretation of

---

31. *See id.*

32. *See id.* at 731.

33. *See id.* at 730, 732.

34. *See id.* at 732-34.

35. *Id.* at 732. Presumably, a minor's right to substitute requires a hearing on the issues of capacity and coercion, inquiries that would not be made in the case of an adult party seeking to substitute counsel.

36. *Id.* at 733 (citing *In re R.D.*, 499 N.E.2d 478, 482 (Ill. App. Ct. 1st Dist. 1986)); *see also supra* text accompanying note 28.

37. The need to harmonize these two aspects of the court's opinion flows from the fact that the court's holding cannot logically be read as saying that an attorney and a guardian *ad litem* perform identical functions, namely to advise the court as to a child respondent's best interests. It does not stand to reason that the court recognized a minor's right to substituted counsel in an abuse case for the sole purpose of securing a second representative's opinion on the question of the child's best interests.

38. This interpretation of the court's opinion in *A.W.* reconciles the language of the Juvenile Court Act, the requirements of the Illinois Rules of Professional Conduct, and the traditional understanding of the roles of an attorney and a guardian *ad litem*. *See*

A.W. is consistent with the court's intent, at a minimum, the case and its antecedents underscore the pressing need to develop a clear and coherent set of standards to guide Illinois attorneys in their representation of child clients.

### III. REFORM EFFORTS

Illinois is not unique in its failure to clearly articulate the duties of legal representatives for children.<sup>39</sup> In recent years, one response to this failure has been an outpouring of discussion and scholarship aimed at clarifying the professional responsibilities of children's attorneys.<sup>40</sup> An important outgrowth of these efforts is the adoption of formal guidelines for use by lawyers who represent child clients. For example, in 1996, the American Bar Association adopted the Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases.<sup>41</sup> These Standards represent a fundamental agreement on the part of the organized bar as to the proper role and practice for lawyers and judges in child protection proceedings.<sup>42</sup> Similarly, in 1995, the American Academy of Matrimonial Lawyers promulgated the Standards for Representing Children in Custody and Visitation Proceedings.<sup>43</sup> In addition, the 1995 conference at Fordham Law School that brought together many of the leading academicians and practitioners in the field of children's legal advocacy evidences another milestone in the effort to clarify the professional responsibilities of children's attorneys.<sup>44</sup> A volume of the *Fordham*

---

*supra* text accompanying notes 10-21.

39. See, e.g., Albert E. Hartmann, *Crafting an Advocate for a Child: In Support of Legislation Redefining the Role of the Guardian ad Litem in Michigan Child Abuse and Neglect Cases*, 31 U. MICH. J.L. REF. 237, 237-38 (1997) (observing that "[t]he role of the child's attorney in child protection proceedings in Michigan is unclear under the current statutory scheme").

40. See JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 713-54 (1997) (summarizing significant literature on the issue of representation of children in child protection cases).

41. See Linda Elrod et al., Representing Children Standards of Practice Committee, *Proposed Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, 29 FAM. L.Q. 375 (1995).

42. If Illinois were to adopt these Standards in some formalized way, an attorney who faced the challenges of dual representation described earlier would have clear direction on the question of what role to assume. This is because the ABA Standards adopt a position that a child's attorney "owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client." See Elrod et al., *supra* note 41.

43. See *Representing Children: Standards for Attorneys and Guardians Ad Litem in Custody or Visitation Proceedings*, 13 J. AM. ACAD. MATRIMONIAL L. 1 (1995).

44. Fordham University School of Law, *Conference on Ethical Issues in the Legal*

*Law Review* memorialized and expanded upon the work of the conference, serving as an essential reference for any attorney who represents child clients.<sup>45</sup>

In addition, some states are considering statutory changes that will provide clearer guidance to attorneys who represent child clients. Under a proposal pending in the Michigan legislature, for example, a child's representative in abuse or neglect cases would be mandated to serve in the traditional role of a guardian *ad litem*, thereby eliminating confusion about whether an attorney's duty to a child client requires maintenance of a normal attorney-client relationship.<sup>46</sup> Similarly, Minnesota law has been amended to eliminate the confusion caused by dual appointment by eliminating the possibility of appointing a child's attorney to serve simultaneously as a child's guardian *ad litem*.<sup>47</sup> Finally, California recently amended its child protection laws to include explicit guidelines for attorneys for children.<sup>48</sup>

In an effort to stimulate similar initiatives in Illinois, in 1997, Loyola University Chicago School of Law's ChildLaw Center hosted a statewide conference modeled on the highly successful Fordham Conference.<sup>49</sup> The Conference sought to begin a formal discussion of the standards of professional conduct for attorneys who represent children in Illinois. Attorneys, judges, academicians, ethicists and child welfare professionals from throughout Illinois participated in the Conference. Over the course of two and one-half days, these individuals discussed a range of topics relating to attorneys' ethical duties to child clients. At the conclusion of the Conference, attendees formally adopted a set of recommendations for consideration by bar associations and other Illinois groups committed to advancing the quality of justice for children in this State. In furtherance of this objective, this volume of the *Loyola University Chicago Law Journal* includes the Conference Recommendations.<sup>50</sup> Also included in this volume are articles by two individuals who attended the Loyola

---

*Representation of Children*, December 1-3, 1995.

45. See generally 64 *FORDHAM L. REV.* 1281 (1996). Two other important contributions to the dialogue concerning professional issues in the representation of child clients are ANN HARALAMBIE's book, *THE CHILD'S ATTORNEY: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES* (1993), and JEAN KOH PETERS, *REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS* (1997).

46. See *supra* note 39.

47. *MINN. STAT. ANN.* § 260.155(2) (West 1992 & West Supp. 1998).

48. See *CAL. WELF. & INST. CODE* § 317 (West 1984 & West Supp. 1997).

49. Loyola University Chicago School of Law, *Ethical Issues in the Legal Representation of Children in Illinois*, April 10-12, 1997.

50. See 29 *LOY. U. CHI. L.J.* 377 (1998).

Conference, Professor Martin Guggenheim<sup>51</sup> and Professor William Kell.<sup>52</sup> These articles represent significant new contributions to an increasing body of literature on the legal representation of child clients. In his article, Professor Guggenheim observes that the adoption of rules regarding the appointment of attorneys in child-related proceedings often preceded both the systematic thinking about the appropriateness of such rules and the levels of complexity and ambiguity created by their adoption in a conceptual vacuum. Consistent with this observation, Professor Guggenheim's article urges judges and policymakers to move with caution and precision in deciding whether to appoint counsel for children in custody, visitation and child protection cases. In contrast, Professor Kell brings an interdisciplinary perspective to the question of how familial relationships between families and children affect a client's decisionmaking process in child-related proceedings. He concludes that these relationships play an important role in supporting the position advocated by the ABA Standards and a majority of child advocates that an attorney is ethically obligated to respect a competent child client's judgment as to his or her own best interests. These articles help frame the debate that has now begun in earnest on ethical issues in the legal representation of children in Illinois. They also serve as part of Loyola University Chicago's response to the American Bar Association's call for law schools to take a leadership role in meeting the legal needs of child clients.<sup>53</sup>

---

51. See Martin Guggenheim, *Reconsidering the Need for Counsel for Children in Custody, Visitation, and Child Protective Proceedings*, 29 LOY. U. CHI. L.J. 299 (1998).

52. See William Kell, *Ties That Bind?: Children's Attorneys, Children's Agency, and the Dilemma of Parental Affiliation*, 29 LOY. U. CHI. L.J. 353 (1998).

53. See PRESIDENTIAL WORKING GROUP ON THE UNMET LEGAL NEEDS OF CHILDREN AND THEIR FAMILIES, AMERICAN BAR ASSOCIATION, AMERICA'S CHILDREN AT RISK, A NATIONAL AGENDA FOR LEGAL ACTION 1-8 (1993). In addition to publication of relevant articles in the Loyola Law Journal, the Law School also has established a comprehensive pediatric law curriculum for law students and lawyers who seek specialized training in the representation of child clients. See Diane Geraghty, *The Role of Legal Education in the Emerging Legal Specialty of Pediatric Law*, 26 LOY. U. CHI. L.J. 131 (1995) (describing Loyola's ChildLaw Program and curriculum).