# Practice & Policy Brief

# Advocating for Very Young Children in Dependency Proceedings:

## The Hallmarks of Effective, Ethical Representation

**October 2010**

**Author**
Candice L. Maze, JD

ABA AMERICAN BAR ASSOCIATION
Center on Children and the Law

Practice & Policy Brief

# Advocating for Very Young Children in Dependency Proceedings:

## The Hallmarks of Effective, Ethical Representation

**October 2010**

**Author**
Candice L. Maze, JD

ABA AMERICAN BAR ASSOCIATION
Center on Children and the Law

**Editor:**
Claire Sandt Chiamulera

This Practice & Policy Brief was supported in full by Grant #G96MC04451, Improving Understanding of Maternal and Child Health, to the American Bar Association's Center on Children and the Law from the U.S. Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Health Bureau.



**About the ABA's Improving Understanding of Maternal and Child Health Project:** This project seeks to help legal professionals improve health outcomes for vulnerable young children who are involved in the legal and judicial systems. It develops new materials and provides training and technical assistance to improve child health-related knowledge and skills of attorneys and judges who handle cases involving very young children.

**About the ABA Center on Children and the Law:** The ABA Center on Children and the Law, a program of the Young Lawyers Division, aims to improve children's lives through advances in law, justice, knowledge, practice, and public policy. Its areas of expertise include child abuse and neglect, child welfare and protective services system enhancement, foster care, family preservation, termination of parental rights, parental substance abuse, child and adolescent health, and domestic violence.

The author wishes to thank the people and organizations who made this publication possible. Special thanks go to ABA Center on Children and the Law attorney Jennifer Renne, whose deep knowledge of legal ethics in child welfare cases and expert review of the ethics sections of the Brief were invaluable. Thank you to Eva J. Klain and Lisa Pilnik for their significant insights and to Claire Sandt Chiamulera for her careful editing. Sincere gratitude to my mentors and colleagues, Dr. Lynne Katz, Judge Cindy Lederman, and Dr. Joy Osofsky, for encouraging and supporting my interest in babies in the child welfare system. Thank you also to the members of the ABA Center on Children and the Law's Improving Understanding of Maternal and Child Health Project Advisory Committee for their helpful review and contributions.

> **" What happens during the first months and years of life matters a lot, not because this period of development provides an indelible blueprint for adult well-being, but because it sets either a sturdy or fragile stage for what follows."[1]**

## Infants, Toddlers, and Preschoolers in the Child Welfare System

From birth to five years old, children develop the foundation for their future development. Their linguistic, cognitive, emotional, social, regulatory, and moral capabilities are shaped in early life.[2] Early childhood development research underscores the importance of parenting and regular, consistent caregiving to a child's overall healthy growth and development.[3] Abuse, neglect, and removal from primary caregivers profoundly affect the growth and development of very young children. As the largest group to enter the child welfare system,[4] very young children involved in dependency court proceedings face many disadvantages, traumas, and losses during a critical time of early brain development.

Attorneys representing very young children can profoundly impact and influence the health, development, and well-being of their clients during and beyond the court process. The brains and bodies of infants, toddlers, and preschoolers are rapidly growing and developing; their needs and interests are dynamic. Whatever neglect or trauma brought the child into the system, effective advocacy can set or maintain the baby, toddler, or preschooler on a healthy developmental track and speed the child towards reunification or another permanency option. With limited verbal skills and capacity to fully comprehend their circumstances, these children require advocates who can understand and interpret their behaviors and environments.

Because very young children, especially those under three years old, do not function independently, but in relationship to others, the quality of their relationships with biological and substitute caregivers largely determines their physical, social/emotional, and cognitive developmental processes. Advocates must be aware of and able to assess the quality of the very young child's relationships with parents and caregivers, and use the legal process to support and create nurturing, healthy attachments when none exist.

**Attorneys representing very young children can profoundly impact and influence the health, development, and well-being of their clients during and beyond the court process.**

# Very Young Children's Experiences with the Child Welfare System:
## Entry, Exits, Length of Stay, and Permanency

Age is strongly associated with (1) the likelihood of children entering the child welfare system; (2) how long children remain in out-of-home placements; (3) how children exit the system; and (4) the likelihood of re-entry.[1] Therefore, very young children experience removal, substitute care and permanency differently than any other group of children in care. Even considering other factors such as economics, policies, administrative structure, and method of service delivery, a child's age largely determines her experience in foster care.[2]

### Entering Care

Of the 273,000 children who entered care across the United States in 2008, those from birth through five years old represented 43% of new admissions.[3] Sixteen percent, or 44,365, of the new admissions were infants less than one year of age.[4] Another national study found that 91,278 babies in the United States under age one were victims of nonfatal child abuse or neglect between October 2005 and September 2006.[5] Of these babies, 29,881 were victims of neglect (70%) or physical abuse (13%) before they reached *one week* of age.[6]

Very young children who enter the child welfare system are disproportionately children of color. Although African American children make up only 15% of the U.S. population of children, they represent approximately 37% of the children in the system.[7] In 2005, the placement rate of infants in foster care was 18.8 for every 1,000 African American children in the United States.[8]

A primary reason for the high incidence of very young children entering the child welfare system is maternal drug and alcohol abuse.[9] This is especially true for newborns identified as exposed to drugs or alcohol through a toxicology report in the hospital.[10] Increased reporting and economic pressures facing families may also contribute to the high number of very young children entering care. Our ever younger child population overall, as well as wider use of early interventions, are likely related to the influx of infants, toddlers, and preschoolers into the child welfare system.[11]

### Length of Time in Out-of-Home Care

Once removed from homes and placed in foster care, infants and toddlers are more likely to stay in foster care for more than one year.[12] According to the 2009 Adoption and Foster Care Analysis and Reporting System (AFCARS) preliminary report for fiscal year 2008, of those children with a goal of adoption and/or whose parental rights had been terminated, 63% entered care at age five or younger.[13] Of the 63% of children "waiting" for adoption as of September 30, 2008, 25% had entered care before their first birthday.[14] Another study underscored the challenges facing these "waiting" children, finding that 50% of the children who were first placed as infants with a permanency plan of adoption took more than 39 months to be adopted, with nearly 17 of the 39 months accruing *after* becoming legally free for adoption.[15]

### How Very Young Children Experience Out-of-Home Care

Because of their exposure to conditions that are not conducive to healthy development, many very young children in care have a mixture of physical, developmental, and emotional challenges. Factors such as low birth weight and lack of prenatal care are closely related to long stays in care.[16] These deficits often cause the child to have multiple needs that may complicate attaining positive and permanent placements. Additionally, infants and toddlers are more likely to be neglected and abused while in care than older children, especially babies who enter care between birth and three months of age.[17]

## Exits from the Child Welfare System

Although the probability of adoption is much higher for children entering out-of-home care before their first birthday than for older children, the likelihood for reunification is much lower.[18] Only 36% of infants who enter care between birth and three months of age reunify with their parents, and 56% of infants who enter care between 10-12 months of age reunify with their parents.[19] Poor reunification rates for the very youngest children partly relate to the physical, emotional, and/or developmental needs resulting from limited prenatal care, unhealthy living situations, or abuse and neglect.[20] Also, because substance abuse is common among mothers of very young children in care, many addicted parents cannot become clean and sober within the constraints of the Adoption and Safe Families Act's (ASFA) timelines.

Just as children of color enter foster care in high numbers, they are disproportionately represented among children exiting foster care. Like older children of color in care, very young children of color spend longer periods in care than their white counterparts and are less likely to be adopted once parental rights are terminated.[21]

## Reentry

One-third of infants discharged from the child welfare system reenter care.[22] Evidence shows that infants who return to foster care experience much longer stays in care upon their return.[23] Reentry rates for infants discharged to relatives are lower than those for infants reunified with biological parents (this is also true for older children).[24]

### Sources:


1. Wulczyn, Fred, Kristen Brunner Hislop and Brenda Jones Harden. "The Placement of Infants in Foster Care." *Infant Mental Health Journal* 23(5), 2002, 463.

2. Ibid.

3. U.S. Department of Health and Human Services, Administration for Children and Families. *The AFCARS Report*. Washington, D.C.: Administration on Children, Youth and Families, Children's Bureau, 2009. Available at www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report16.htm.

4. Ibid.

5. 905,000 children in the U.S. during this period had substantiated allegations of maltreatment, thus infants, those under one year of age, represented 19% of the total number of children.

6. Centers for Disease Control and Prevention. "Nonfatal Maltreatment of Infants—United States, October 2005—September 2006." *Morbidity and Mortality Weekly Report* 57(13), April 2008, 336-339.

7. Wulczyn, Fred and Bridgette Lery. *Racial Disparity in Foster Care Admissions*. Chicago: Chapin Hall Center for Children at the University of Chicago, September 2007, 4.

8. Ibid, 12-14.

9. Lewis, Mary Ann et al. "Drugs, Poverty, Pregnancy and Foster Care in Los Angeles, California, 1989-1991." *The Western Journal of Medicine* 163, 1995, 435-440.

10. Ibid.

11. Centers for Disease Control and Prevention, 2008.

12. Wulczyn, Fred and Kristen B. Hislop. "Babies in Foster Care: The Numbers Call for Attention." *Zero to Three Journal*, April/May 2002, 14.

13. U.S. Department of Health and Human Services, Administration for Children and Families. *The AFCARS Report*. Washington, D.C.: Administration on Children, Youth and Families, Children's Bureau, 2009. Available at www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report16.htm.

14. Ibid.

15. Kemp, Susan P. and Jami M. Bodonyi. "Infants Who Stay in Foster Care: Child Characteristics and Permanency Outcomes of Legally Free Children First Placed as Infants." *Child and Family Social Work* 5, 2000, 101.

16. Wulczyn, Fred. "Status at Birth and Infant Foster Care Placement in New York City." In *Child Welfare Research Review*, Vol. 1, edited by R. Barth, J.D. Berrick and N. Gilbert. New York City: Columbia University Press, 1994, 146-184.

17. Wulczyn and Hislop, 2002, 14.

18. Wulczyn et al, 2002, 466-468.

19. Ibid.

20. Kemp and Bodonyi, 2000, 102-104.

21. Jones Harden, Brenda. *Infants in the Child Welfare System: A Developmental Framework for Policy and Practice*. Washington, DC: Zero to Three, 2007, 56-57.

22. Wulczyn, Fred and Kristen Brunner Hislop. *The Placement of Infants in Foster Care.* Chicago: Chapin Hall Center for Children, University of Chicago, 2000.

23. Ibid.

24. Kemp and Bodonyi, 2000, 99; Wulczyn et al., 2002, 466.

# Representation of Young Children in Child Abuse and Neglect Proceedings

To receive federal funding under the Child Abuse Prevention and Treatment Act (CAPTA), states must provide the Secretary of the U.S. Department of Health and Human Services a written plan for improving the state's child protective services system.[5] The plan must document provisions for appointing a guardian ad litem (GAL) to represent the child's best interests in every case of abuse or neglect that results in a judicial proceeding.[6] The GAL may be an attorney or a court-appointed special advocate (CASA), or both. The GAL must have appropriate training and must obtain a firsthand and clear understanding of the child's needs and situation to make recommendations to the court about the child's best interests.[7]

State statutes delineate *when* the court must appoint a representative for a child in an abuse and neglect (dependency) proceeding and *whom* the court may appoint. In some states, attorneys represent children in the traditional attorney-client manner and are directed by the child's "expressed wishes." In others, attorneys act as guardians ad litem (GAL attorneys) and must represent the child's "best interests." Some states rely on lay GALs or CASAs to provide recommendations to the court regarding the child's needs and best interests. In some states, CASAs are supported by program or staff attorneys.[8]

This brief is directed to children's attorneys functioning in a traditional attorney or GAL attorney child representation model. However, nonlegal child advocates are encouraged to use the information and practice recommendations provided here. Just as attorneys must follow legal ethics rules established by their state bar and are expected to follow practice standards and guidelines, lay advocates also are expected to follow statutory and programmatic standards and guidelines. The ethics discussions here apply to legal representatives of very young children in dependency proceedings who are serving as either a traditional attorney or GAL attorney. When the ethics rules and standards differ or create additional layers of analysis for GAL attorneys, these issues are addressed.

**State statutes delineate *when* the court must appoint a representative for a child in an abuse and neglect (dependency) proceeding and *whom* the court may appoint.**

## Ethics Violations

Attorneys representing very young children who violate ethics rules may be subject to a range of sanctions:

- **Disciplinary Action**—may result from a complaint by a client, another lawyer, or a judge and is determined by disciplinary boards.
- **Malpractice Action**—brought as an action in court by a client due to alleged attorney negligence or professional misconduct.

# Ethics Rules and Standards

Many ethical dilemmas arise when representing very young children in the child welfare system. For example:

- How should an attorney determine the interests of an infant, toddler, or preschooler?
- How can an attorney develop and maintain the attorney-client relationship with a very young child?
- How can the attorney of a very young child assess how a baby or toddler is doing in a placement without basing their view solely on the perspective of the adults involved in caring for that child?
- How will an attorney avoid becoming a witness when representing a baby?
- What does confidentiality and attorney-client privilege mean in the context of representing a preverbal child?
- How can an attorney meet with his client when it requires talking to the child's parent, who is likely represented by counsel?

Ethical guidance for attorneys who represent children of any age in child abuse and neglect cases comes from the same rules that guide the practice of lawyers in any case—the *ABA Model Rules of Professional Conduct*. Most states have ethics rules, usually modeled after the *ABA Model Rules of Professional Conduct*, or the *ABA Model Code of Professional Responsibility*, which preceded the Model Rules.

Recognizing that unique circumstances and challenges arise in child maltreatment cases, the American Bar Association developed its *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*.[9] These Standards are guidelines or nonbinding principles of "best practice." Some are codified in state law and used to define the roles and responsibilities of the child's attorney in child abuse and neglect cases.[10]

This brief refers to both the ABA Model Rules and ABA Standards when discussing practical and ethical considerations that may arise when representing a very young child. Because ethical dilemmas are not clearcut, the issues in this brief may not have one "right" answer. Rather, the ethics discussions illustrate the kinds of challenges that may arise when representing a very young child and a range of appropriate approaches. To provide a framework, the relevant Model Rule(s) (MR) and/or ABA Standards (Standards) are explained and applied.

## Practice Challenges of Representing Very Young Children

Infants, toddlers, and preschoolers are in a constant state of physical, emotional, and cognitive growth and development. Their developmental paths are shaped by their experiences with caregivers and their physical environments. Attorneys must investigate and understand the many influences in the child's life and their advocacy must be informed by the child's developmental needs. With newly verbal or preverbal children, advocates must "communicate" with their very young clients differently than with older child clients. Attorneys must develop a "working relationship" with the baby and his primary caregivers, while not allowing the primary caregivers' perspectives to override an independent, objective assessment of the needs and interests of the very young child. This process requires time and patience and an understanding of early child development.

**Attorneys must investigate and understand the many influences in the child's life and their advocacy must be informed by the child's developmental needs.**

To enhance the effectiveness of legal representation and strengthen the attorney's ability to handle ethical dilemmas that arise, advocacy for very young children should be:

- child-centered,
- research-informed,
- permanency-driven, and
- holistic.

These four hallmarks of representation are interdependent. Each is essential to effective, ethical advocacy and all must be followed to produce the best outcomes for very young children in dependency proceedings.

# Child-Centered Advocacy

"Child-centered" advocacy is the foundation of effective advocacy and involves making the child's viewpoint the focus of all advocacy. This approach relates to the actual language used in advocacy and all actions taken on behalf of a very young child client. The baby's needs and interests, not the adults' or professionals' interests, must be the center of all advocacy.[11] In other words, attorneys representing very young children must truly *see* the world through the baby's eyes and formulate their approach from that perspective.

In other words, attorneys representing very young children must truly *see* the world through the baby's eyes and formulate their approach from that perspective.

## Learn the child's history.

Seeing the world through the eyes of the infant, toddler, or preschooler requires understanding the child's history—however brief.

- What kind of prenatal care did the mother receive?
- What kind of early medical and dental care has the child received? Has a detailed health history been provided and reviewed by the attorney?
- Has the child received immunizations and required health screenings?
- What kind of relationship does the baby or preschooler have with his biological parents and any other key caregivers?
- Who cared for the baby in the first days, weeks, months, years of life before the child entered the child welfare system?
- What child care or early education (i.e., Early Head Start/Head Start or Pre-K) environment, if any, has the baby or preschooler experienced?
- What are the familiar comforting items in the child's life (such as toys, blankets, a "lovey", books, special cup, diaper brands, clothing item, a detergent or lotion with a specific scent, etc.)?

While children's attorneys can obtain some of this information by thoroughly reviewing the medical records, they should investigate the baby's history further by talking to previous caregivers, including parents (ethical issues will be discussed later in this section), relatives, and older siblings. Attorneys should consult with the primary care provider and/or the pediatric nurse practitioner who will be able to discuss and interpret medical information. These professionals are also good sources of information and support as the child's case proceeds. The inquiry into the child's past is not meant to uncover new evidence related to the allegations and the reason the child is under court jurisdiction. However, it will provide insight into the child's early experiences to inform advocacy related to placement, services, treatment, and permanency.

## ABA Standard B-4: Client Preferences

Standard B-4 instructs the child's attorney to "elicit the child's preferences in a developmentally appropriate manner, advise the child, and provide guidance." To do so in a developmentally appropriate manner requires structuring all communications to account for the child's age, level of education, cultural context, and degree of language acquisition. Clearly an infant or young toddler cannot verbally express or understand the context of the litigation; however, there may be circumstances when even a toddler may express concern or happiness about circumstances at home or their child care center. These should not be ignored as irrelevant; the attorney should consider them when formulating an opinion. This underscores how critical it is to be in contact with the very young client and observe him in various environments.

## Get to know your client.

Child-centered advocacy requires attorneys to get to know their clients well. A newly verbal or preverbal child "tells" the attorney how she is doing and what she needs through her behavior. Getting to know the baby takes visiting regularly and interacting during visits. Very young children change rapidly. They require consistent, frequent interactions to form a relationship and recognize a person as familiar. Attorneys should not rely on the social worker's assessment of the child's environment. Similarly, while the foster parent and relative caregiver are key informants about the child's behavior and needs and the attorney should form positive, working relationships with them, these relationships do not supplant the need to form one with the very young child.

The attorney should hold the baby—assuming it does not distress the baby—and talk to her, taking time to notice:

- Does the baby turn and look when spoken to?
- Does the baby make eye contact?
- If seven months old or older, does the baby babble in response to words?

For toddlers and preschoolers, attorneys need to get on their level—literally—by sitting on the floor or on a low stool. Bringing an age-appropriate book or toy can facilitate play with the child, allowing the attorney to observe and identify key information:

- Is the child able to play with you and the toy?
- Is she able to talk?
- If she talks, does she say words, strings of words, or sentences? (see *Early Developmental Milestones,* p. 27).

Even six month olds can experience depression that can manifest as very minimal affect and/or hypervigilence.[12] Attorneys must prepare for the possibility that the infant, toddler, or preschooler may not want to interact at first. Not only has the child been through much change, especially if there has been a removal, but, depending on the developmental stage of the child and her personal experiences, she may have stranger-anxiety or be leery of strangers altogether. Because they are not psychologists, child development experts, or medical professionals, attorneys should seek consultation from such experts to interpret and better understand their observations.

# Developmentally Appropriate Activities to Help Build the Attorney-Client Relationship

Infants, toddlers, and preschoolers develop relationships through regular, consistent contact and interaction. Attorneys will get to know their very young clients by becoming engaged with them during visits to their homes and schools. Many of the activities listed here require getting down to the child's level and playing, talking, or singing with her. Not only will these interactions help develop a relationship, they will also provide much information about the child's health and development. One other important aspect of such interactions—they can be as fun for the adults as they are for the young child!

Remember that many babies in the dependency system are not developmentally "on target" so some of the activities listed below will not be appropriate for them until they are older or make developmental gains. Remember also that from the time a baby is six months old until about 18 months old, it is normal to experience stranger anxiety or express concern about being with an unfamiliar person. They may also experience separation anxiety depending on their circumstances. These normal developmental responses can present challenges when trying to form a relationship with a very young client. Although they should continue to visit the baby, attorneys must respect the baby's need to feel secure and should be careful not to force themselves into the baby's space. She will let you know if and when she is ready.

## Newborns – Three Month Olds

Older babies in this age range should be able to lift their heads up 45 degrees, laugh, and smile.

- If not distressing to the baby and acceptable with her caregiver, hold the baby.
- Talk to the baby, make eye contact, smile.
- Make movements with your mouth for the infant to watch and even imitate (such as opening and closing your mouth or puckering lips).
- Sing a nursery rhyme or read a brief board book.

## Three – Six Month Olds

Babies in this age range can often roll over, turn to a rattling sound, and hold a small rattle/toy.

- Hold the baby.
- Read a book.
- Play peek-a-boo.
- Sing a song that uses hand movements (e.g., Itsy Bitsy Spider).

## Six – Nine Month Olds

Babies in this age range can often sit with no support, turn to a voice, and start to feed themselves.

- Sit on the floor in front of or with the baby facing you.
- Read a book.
- Sing the Itsy Bitsy Spider and do the hand movements.
- Play a developmentally appropriate game (stacking blocks, playing with squeaky toys, putting objects into/out of a container).

## Nine – 12 Month Olds

Babies in this age range can generally pull to stand, say "Mama" and "Dada" or other short words, and wave bye-bye. Those closer to 12 months are typically crawling and walking.

- Play with anything that moves—toy cars, board books with "lift the flap" pages, musical instruments.
- Sing and clap in time. Encourage the baby to clap, too.
- Hide a small toy under a cup and let the baby "find" it.
- Help the baby stand.
- Name and touch different objects.

## 12 – 18 Month Olds

Many one year olds are standing alone and starting to walk. By the time they are 18 months old, they should have started walking. (Note that if the toddler is not walking by 18 months of age, she should definitely have a Part C of IDEA evaluation or have already been evaluated and should be receiving early intervention services.)

- Sit on the ground and pass a ball back and forth.
- Read a touch-and-feel book. Read a book about animals and make the sounds of the animals—see if the child wants to try.
- Push the child in a play car or on a push and ride tricycle.
- Encourage exploring.
- Play with noisy, colorful moving objects or toys.

## 18 – 24 Month Olds

The toddlers in this age range are learning how to run. They can imitate activities and are able to speak some words. As they approach 24 months, they can take a piece of clothing off and on, are learning how to jump, and are starting to combine words. They spend their second year continuing to develop their gross and fine motor skills and learning how to communicate verbally.

- Dance to music.
- Sing songs using instruments.

- Read books that have pictures of words that the child may know (e.g., ball, dog, cat, house) and encourage the child to help you "read" these words.
- Play outside.

## Two – Three Year Olds

By the time a child is three, he can typically speak or say words in an understandable manner and can name one friend. He can balance on one foot. Language skills and fine motor skills are becoming more fine tuned.

- Play at a park with a toddler sized playscape.
- Bring crayons or washable markers and big pieces of paper and color together.
- Read a short book with a basic plot (e.g., Goodnight Moon, The Three Little Pigs, Goldilocks and the Three Bears).
- Play music together and march or clap.
- Ask the child to sing you a song.
- Engage in dramatic play (e.g., pretending to cook in a kitchen or take care of a baby).

## Three – Four Year Olds

By the time a child is four, he can often name four colors, hop on one foot, and copy a "+" symbol. His talking will be more conversational.

- Ask the child to tell you about a favorite toy.
- Color together and ask him to tell you about his picture.
- Go on a short walk together or push him in a swing at the park.
- Do a simple large-pieced puzzle together.
- Engage in more complex dramatic play.

## Four – Five Year Olds

By the time a child is five, she can draw a person with a head, body, arms, and legs, lace a shoe, and walk on her tiptoes. Children attending Pre-K at this age will be learning to identify their letters and to count to 10 or higher.

- Play Simon Says.
- Ask her to draw a picture of herself.
- Do a 20 piece puzzle together.
- Read an I Spy book (the reader has to "spy" certain items among a group of things—e.g., all the red marbles).
- Go on a nature walk and collect small rocks and leaves in a bag.

### Sources:

ABA Center on Children and the Law Bar-Youth Empowerment Project, and National Child Welfare Resource Center on Legal and Judicial Issues. *Engaging Children in the Courtroom Benchcard Series*, available at http://www.abanet.org/child/empowerment/youthincourt.shtml; Smariga, Margaret. *Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know*. Washington, DC: ABA Center on Children and the Law and Zero to Three Policy Center, July 2007.

## Promoting Physical, Social-Emotional, and Developmental Health for Very Young Children in Care

- Ensure the child received an initial health screen within 24 hours of entering care. This should include a mental health and developmental screen as well.
- Ensure the child receives a comprehensive health assessment within 30 days of placement that includes a developmental and mental health screen by a qualified provider. If not included in the comprehensive health assessment, request a comprehensive mental health assessment and developmental assessment within 30-60 days of placement.
- Ensure the child has been properly immunized at the first hearing and on an ongoing basis and advocate for catchup immunizations if needed.
- Advocate for a medical home and work to eliminate barriers to using a medical home.
- Ensure the child receives appropriate dental services and has a dental home.
- Determine whether health insurance is a barrier to medical care and treatment.
- Ensure placements for very young children promote long-term stability and healthy attachments.
- Ensure the child and/or his caregivers are linked with all recommended services and that progress reports and treatment plan modifications are provided to you and the judge.

**Source:**

*Healthy Beginnings, Healthy Futures: A Judge's Guide*. ABA Center on Children and the Law, National Council of Juvenile & Family Court Judges, and Zero to Three National Policy Center, 2009, 15, 55.

## View "health" as an interconnected concept for very young children.

The American Academy of Pediatrics recommends all children receive a comprehensive health assessment within 30 days of placement in care. This is critical for very young children because their physical, emotional, and cognitive health and development are intertwined. For example, if a two-year old has a specific medical condition such as chronic asthma, his ability to explore his environment will be compromised if the asthma goes untreated. Exploring and interacting with his environment are key to his cognitive and social-emotional development. Child-centered advocacy requires that the attorney understand the connected needs of the whole child and receive and review the comprehensive health assessment. Attorneys must also be aware of red flags that may appear across the health and development domains.

## Caregiver Qualities

Caregivers of infants must be:

- able to empathize with the baby, flexible, and adaptable;
- able to handle dysregulated infants;
- positive in responding to a baby's expressed needs;
- willing to play with and follow the baby's nonverbal cues (crying, rubbing eyes, chewing on hands, etc.); and
- supportive of relationships with biological parents if the permanency goal is reunification.

**Source:**

Jones Harden, Brenda. *Infants in the Child Welfare System: A Developmental Framework for Policy & Practice*. Washington, DC: Zero to Three, 2007.

**Child-centered advocacy requires that the attorney understand the connected needs of the whole child and receive and review the comprehensive health assessment.**

## Observe the child's interactions with substitute caregivers.

Because very young children develop in the context of their relationships, the advocate must be aware of and knowledgeable about their clients' primary relationships.

- Are these relationships meeting the needs of the baby?
- Does the foster parent or relative caregiver interact in a loving, gentle manner with the baby?
- Are they nurturing and warm in their caregiving?

Just as important as observing how caregivers behave towards a very young child in their care, advocates should be able to interpret basic client behaviors:

- Do the caregivers smile and speak kindly to the baby? Does the baby smile and gurgle back?
- Does the toddler use her caregiver as a point of reference—physically or verbally connecting with the caregiver once she's explored the playground or a new environment?
- Does the preschooler talk with her caregiver and show her new skills (e.g., drawing)?

These are the ways that a very young child communicates feeling secure with her environment.

## Understand the parent-child relationship.

To determine what advocacy position to pursue, the child's advocate must understand the relationship between the parent and child. Often, advocates rely on second or thirdhand information about the quality of the parent-child relationship provided by the visitation supervisor, grandparent, social worker, or therapist. While these are important sources of information and should be considered in determining a position, the child-centered approach requires an attempt to see the child's perspective of his relationship with his parent. How else will the attorney for a nonverbal or very young child be able to determine what position to take regarding visitation, reunification, or termination of parental rights?

Interpreting the behaviors of a parent-child interaction can be complicated and confusing. A baby may be agitated and cry when transitioning from her grandmother to her mother. This can mean the baby is attached to the grandmother and may have nothing to do with her feelings or responses to her mother. If visits are infrequent, the baby may be responding this way as well. It is important to look at how the parent handles these "normal" responses, taking time to consider:

- Does the mother gently soothe the baby's cries or is she rough and dismissive?
- Does the father join in the toddler's play or does he talk on his cell phone?
- Is the parent making an effort to interact—building with blocks, reading a book—with his preschooler or does he compete with the child for toys?
- When the child requires redirection or discipline, is this handled with understanding or is the parent rough and demeaning towards the child?

The more engaged the parent is with his child, especially during a time-limited interaction, the more responsive he can be to his child's needs. A lack of parental interaction with the child or a young child's unresponsiveness to a parent may require advocacy for additional parent education or a relationship-based therapeutic intervention (e.g., Child-Parent Psychotherapy) to build or strengthen the parent-child relationship. Child-Parent Psychotherapy (CPP) is a relationship-based psychotherapy facilitated by a trained infant mental health clinician. CPP uses a structured relationship-based process to support healthy attachment between the parent and her child from birth to five years old.[13] As a therapeutic intervention, CPP should *not* supplant family time or a parenting program. Of course, visits that involve violence or totally inappropriate behavior will require advocacy to modify visitation to ensure the baby's safety and emotional well-being.

**The more engaged the parent is with his child, especially during a time-limited interaction, the more responsive he can be to his child's needs.**

# Ethical Consideration:
## Communicating with Represented Parties

*You represent a two-year-old boy who has been reunified with his mother, but the dependency case is still open for post-placement supervision. The mother is represented by a court-appointed attorney. In attempting to meet with the child, observe the child's home environment, and determine whether to continue supporting reunification, you must visit the child in his mother's home. You pick up the phone to call the mother. Should you proceed? If so, how?*

Dependency cases involve many parties who, depending on state law, may or may not be entitled to an attorney. The ability to competently represent a very young child is impacted by MR 4.2, which expressly states, "A lawyer shall not communicate *about the subject of the representation* with a person the lawyer knows to be represented by another lawyer…." The exceptions are when (1) the lawyer has received consent of the other lawyer authorizing such communication, or (2) the lawyer is authorized by law or a court order to communicate with the represented party. Thus, MR 4.2 potentially complicates competent representation (an ethical obligation per MR 1.1) by making it hard for a child's attorney to easily visit a child client who has been reunified to observe parent-child interactions and the child's home environment with the parent.

What is the best way to comply with both ethics rules? Comment 4 to MR 4.2 clarifies that an attorney may communicate with a represented party about matters "outside the representation," including those things that are "administrative" in nature, such as setting up a home visit or finding out where the baby attends day care. However, this only gets you in the front door. When visiting a baby in the parent's home, you will need to observe the baby with her parent and ask the parent to share how the baby has been adjusting (sleeping, eating, playing, etc.) and items the baby may require. These discussions are beyond "administrative" and directly relate to the "subject of representation." Similar ethical challenges may arise when you attend a family team meeting, mediation, family group conference, or case staffing where a represented party is attending without his or her counsel. Ideally, you should obtain prior consent from the absent attorney in order to talk about substantive issues; otherwise, the meeting may be unproductive at best, and a complete waste of time at worst.

**Speaking to Represented Parents:** Focusing on the first exception to MR 4.2, you should seek permission from the parent's attorney to observe the visitation and/or speak with the parent outside the presence of her attorney. Even if the parent volunteers that she is happy to meet and speak with you about anything, confirm this with her attorney. If the attorney does not permit you to speak with the parent, you should still visit the child in the home, but you will have to gather ancillary information about the baby's functioning elsewhere.

Another option is to ask the attorney to allow you to speak with the parent with her counsel present. If this approach is not acceptable to the attorney and you are preparing for a hearing at which substantive issues—such as case closure, additional treatment or services, or ongoing

reunification—are being discussed, you may have to set the parent for a deposition to ascertain your position. Alternatively, under the second exception to MR 4.2, you could request a court order to observe a visit or speak with a parent about how the child is doing in the home. Pursue a deposition or a court order only when efforts to work out a mutually agreeable arrangement with the parent's attorney have failed. Some states have strictly construed MR 4.2, while others have determined that strict application of this rule would cause the child welfare system to grind to a halt.

The parent should be advised by her lawyer that the child's attorney may be required by law (which is the case in 21 states) to report any child abuse or neglect she observes or becomes aware of. Ideally, if an agreement to speak with the parent or observe visitation is made, the child's lawyer should not be alone with the parent and child. Someone else (e.g., social worker, case manager, therapist) should also be required to report abuse and serve as a witness if abuse occurs.

**Speaking to Unrepresented Parents:** Although in most jurisdictions a parent has a right to court- appointed counsel when indigent, a parent who does not meet the financial threshold for indigency often proceeds *pro se.* This is a challenging area for children's attorneys. They need to speak with parents, especially custodial parents, but, with the many parties and participants in a dependency case, a parent can easily misconstrue the attorney's role and intentions.

MR 4.3 directs attorneys regarding interactions with unrepresented parties. Put simply, an attorney may not state or imply to the unrepresented party that the attorney is without bias. When the attorney knows, or reasonably should know, the unrepresented parent misunderstands the attorney's role, he must make reasonable efforts to correct the misunderstanding. To avoid this issue from the outset, clearly and succinctly explain your role vis-à-vis the child at the first interaction. Explain that you do not represent the parent; however, sometimes the position of the child and parent are the same (e.g., when a child's attorney is advocating reunification). You must explain that any information the parent provides to you is not confidential. MR 4.3 states the only advice an attorney may give an unrepresented party is to "get a lawyer."

**Speaking to Child Protection Agency Case Manager:** In a typical dependency case, the agency's case manager makes referrals to services, and speaks with the parents, relatives, service providers, etc. It is also typical for the agency to be represented by an attorney in a dependency proceeding as they are a party to the case. Often, a child's attorney will rely on information the case manager provides about the parent's compliance with services, treatment, and other case-related matters. Again, you need to confirm with the agency attorney that you would like to communicate with the case manager about the specifics of the case, not just "administrative" matters. Even if the agency attorney grants access to her client, effective and ethical representation of your very young client requires that you confirm information provided by the case manager or collect information independently.

## Special Considerations for GAL Attorneys

MR 4.2 can apply differently to GAL attorneys depending on state statute, jurisdictional rules and state case law. Some states have determined that because GAL attorneys are not serving as traditional attorneys and typically serve as an extension of the court, they are not bound as strictly to MR 4.2 as a traditional attorney would be.

## Become familiar with the young child's environment.

Research shows the development of a very young child's brain is significantly impacted by the environment (family, education, community, etc.) in which the child lives.[14] Rather than being a dichotomous relationship, nature and nurture are symbiotic; that is, traits for which a child is genetically predisposed can be positively or negatively influenced by the type of environment in which the child lives and the child's experiences.[15] For a very young child whose brain is rapidly developing, a healthy, secure, and safe environment is essential and has the potential to moderate the impact of early trauma and neglect. A loving foster parent or relative and a high-quality child care environment can help "rewire" the baby's brain so she can trust and learn, form healthy relationships, and moderate her impulses throughout her development, not only in her early years.

Because babies, toddlers, and most preschoolers are not verbal enough to describe what is taking place in their home environments, advocates must visit their very young child client wherever he spends considerable time—foster home, grandparents' house, parents' home, child care centers, early education/preschools. In addition to observing and assessing the quality of the caregiver/child interactions, as discussed above, advocates should observe the physical environment to ensure it supports the child's healthy development, is safe and age-appropriate, and is culturally familiar to the child.

- In the child's home, are there developmentally appropriate books and toys?
- Does the child have a safe place to sleep, eat, and play (inside and outside)?
- Does the child have weather-appropriate clothing?
- Are the child's cultural background and experiences reflected in the environment (i.e., foods, languages, customs)?

If the answer to any of these questions is "no" the attorney should try to remedy the deficits or concerns with the caseworker and the caregiver. If there are serious issues with the child's environment or in-court advocacy can improve the child's placement, seeking judicial action may be necessary. For example, if a caseworker was supposed to provide a crib to a relative, but has not done so despite the attorney's communication with the agency attorney, the child's attorney will need to ask the court to order that a crib be provided. If there are no books or appropriate toys, sometimes a simple phone call to friends with young children or a visit to Goodwill can solve the problem. Very young children do not require many material things. They need environments in which they can safely explore and interact and that stimulate and nurture their development.

# Assessing Quality Child Care

Child care centers, family child care, and preschools must meet minimal state licensing standards. No child involved with the child welfare system should be in an unlicensed child care or preschool. Additionally, child care centers and preschools may be accredited voluntarily by a variety of national and/or state accreditation organizations or boards. Although not a panacea, accreditation is often a good gauge of child care quality. Programs accredited by the National Association for the Education of Young Children (NAEYC) are generally considered high quality. Accreditation and reaccreditation is an intensive and sometimes costly process that many programs cannot afford. Some states have their own Quality Rating and Improvement System (QRIS) that are a good source for more detailed information on quality. (Information about QRIS can be found at http://qrisnetwork.org/.)

If a program is not accredited, and even when it is, attorneys should meet the child's caregivers/teachers at the program and observe the classroom environment. Some qualities to look for are:

- The teachers should get down to the child's level when talking to the child.
- There should be no yelling or voices raised, and the child should be given consequences for inappropriate behaviors that are not shaming.
- At minimum, the program should provide developmentally appropriate books, toys (indoor and outdoor), and materials (paper, crayons, markers, playdough).
- The environment (indoor and outdoor) must be safe and designed for very young children.
- Changing/diapering area and age-appropriate bathroom for preschoolers (e.g., toilets and sinks at a height that are easy for children to use and encourage toilet learning skills).

If these minimal elements are not present, the advocate should discuss with the child's caregivers and caseworker the need for the child care to remedy its deficiencies or to consider placing the child in a higher-quality child care environment.

### Source:

*See* www.rightchoiceforkids.org/sites/default/files/file/brochures/FamilyGuide.pdf for a comprehensive checklist for assessing quality in the child care environment.

# Ethical Consideration: Model Rule 1.6 – Confidentiality of Information[1]

*You represent a one year old who is living in his grandmother's home. From everything you have observed, the home is safe and appropriate for the child and he is happy, adjusted, and thriving. During a client visit, the grandmother tells you that, although she knows she's not supposed to leave the baby alone with his mother, she has to do this sometimes to go to her monthly doctor appointments. She reveals that the last time the mother came over to help, the mother appeared under the influence of drugs or alcohol, so the grandmother sent her away and cancelled her doctor's appointment.*

MR 1.6 states "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)." Paragraph (b) goes on to set out six exceptions to this rule, explaining that, "A lawyer *may* (emphasis added) reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary: (1) to prevent reasonably certain death or substantial bodily harm;…(6) to comply with other law or court order."

At first glance, client confidentiality rules seem not to apply to the representation of infants, toddlers, and preschoolers. After all, what is a nonverbal child going to "tell" her attorney? However, the rule applies not only to what the client communicates, but also *to all information related to the representation*. With this in mind, how would you respond to the following questions about the scenario above:

- Is the information the grandmother provided considered confidential?
- Would you reach the same conclusion if the child was five years old and told you about the mother babysitting him?
- Does the information about the mother provided by the grandmother apply to the overall representation of the child?
- Could revealing this information adversely affect the child's otherwise safe and happy placement?

An argument can be made that the information provided by the grandmother is considered confidential. It "relates to the representation" in that it specifically impacts the child's safety and placement. An attorney acting in the traditional attorney role would have to balance child safety with the obligation to protect client confidentiality. MR 1.6 is not cut-and-dry; reasonable attorneys may disagree on the correct course of action and still be operating within the confines of their ethical duty to protect confidential information relating to the representation of their client. The rule allows significant discretion by saying an attorney *may* reveal confidential information pursuant to the exceptions listed to the *extent* the attorney *believes it is necessary*. Not only can the attorney make a judgment call on whether or not to reveal, an attorney can also use his discretion to decide what information to disclose.

The core of the analysis hinges on the safety determination.[2] Assuming after your risk and safety assessment you decide the child is not at risk for "certain death or substantial bodily harm," and you determine that reporting might jeopardize an otherwise safe, nurturing, and stable placement, this would be an instance in which you could ethically choose not to report. If you decide not to reveal this information to the judge or caseworker, it would help to strongly reinforce to the grandmother that she may not have the mother there unsupervised and request babysitting services or respite care for the grandmother during her monthly doctor appointment.

## Special Considerations for GAL Attorneys

MR 1.6 creates unique challenges for GAL attorneys. Although MR 1.6 applies to all attorneys, the requirement to maintain confidential information may fly in the face of the GAL attorney's duty to report information to the court that is relevant to the best interests analysis. Some jurisdictions have made adjustments to address this conflict for GAL attorneys by clarifying that confidentiality exists unless nondisclosure would result in harm. Others have specific rules or statutes explaining that the confidentiality rules do not apply to GAL attorneys, with one jurisdiction determining that GAL attorneys lack an attorney/client relationship because they represent the child's "best interests" and not the child directly.

### Sources:

1. *See* Renne, Jennifer L. *Legal Ethics in Child Welfare Cases*. Washington, DC: ABA Center on Children and the Law, 2004, 19, for a full discussion of amendments to MR 1.6.

2. To assist with the risk and safety analysis, attorneys should consult Lund, Terry R. and Jennifer L. Renne. *Child Safety: A Guide for Judges and Attorneys*. Washington, DC: ABA Center on Children and the Law, 2009.

## ABA Standard D-5: Child at Hearing

Standard D-5 instructs attorneys to ensure children are present at hearings regardless of whether they will testify. Regarding very young children, the Commentary to D-5 shows the "child-centered" concept, explaining:

> the child's presence underscores for the judge that the child is a real party in interest in the case…Even a child who is too young to sit through a hearing may benefit from seeing the courtroom and meeting, or at least seeing, the judge who will be making the decisions.

Unless there is evidence that the child does not want to attend or a professional confirms the child would be traumatized by attending, the attorney should ensure arrangements are made to have the child brought to and supervised at the hearing.

### Ensure "consultation" by the judge.

Child-centered advocacy requires the advocate to ensure the child is not just a "paper child" to the judge[16] represented by a case number and a mass of official documents in a court file. Judges should "consult the child" in the decision-making process and are required to do so for permanency hearings.[17] Even preverbal children must have a voice in the process. Although the "consult the child" language has not been interpreted to require that the child actually appear in court, unless a professional thinks bringing the very young child to a hearing would be emotionally damaging for the child, the child should "appear in court" so the judge can see her and even interact with her.[18] Verbal toddlers and preschoolers often enjoy visiting with the judge. The judge can see firsthand how the child talks and interacts. Even very young children should be engaged in their court cases. The presence of the very young child keeps the parties, judge, attorneys, and other professionals focused on *that* child.

Consultation by the judge does not have to occur at every hearing, but judicial reviews and permanency reviews offer good opportunities. Advocates can work with case managers and substitute caregivers to manage the logistics and should ensure a safe, comfortable setting (maybe a visit with the judge in chambers or sidebar). If no-contact orders are in place, the parent's attorney can be present in-chambers rather than the parent.

# Research-Informed Advocacy

Effective advocacy for abused and neglected babies, toddlers, and preschoolers is closely linked to the advocate's basic knowledge of early childhood development, state and federal entitlements for very young children, and services to identify and meet developmental delays experienced by very young children in the child welfare system. Informed advocates will harness the power of federal entitlements and local services to meet their young clients' developmental needs.

## Learn basic early child development and the impact of maltreatment on a very young child's development.

Just as an attorney representing a doctor in a medical malpractice case needs to be familiar with medical terms and conditions to effectively represent the doctor, attorneys for very young children must understand early child development and how child abuse and neglect can derail healthy physical, social/emotional, and cognitive development. Excellent and highly accessible resources by experts in child development and behavior are available and at least one or two should be in every attorney's library (see *Recommended Reading on Child Development and Child Maltreatment*, p. 52). Further, attorneys should seek specialized training about child development and behavior in the early years, the impact of substance abuse on very young children, secure and insecure attachment, and the effect of maltreatment on very young children. Child welfare conferences and local and state summits on child welfare often offer such training at a minimal cost.

## Take a developmental approach[19] to formal and informal advocacy.

Once attorneys have a basic understanding of the building blocks of early child development, the concept of "child development" should be a framework for advocacy efforts regarding permanency, placement, services/treatment, and visitation. This approach allows the baby's developmental needs and interests to guide the attorney's analysis of the child's interests and provide support for the client's position in court.

For example, if a placement change is being considered, the attorney's analysis of the situation and the child's needs may determine it is best for the child to remain in that placement. In this case, a developmentally-based argument in support of maintaining the placement would focus on the child's healthy attachment to the caregiver and how another attachment disruption could harm the child. The attorney could also recommend additional services for the family that would reduce concerns about the placement and support the healthy development of the child (e.g., early intervention services, economic or medical services, enrollment in Early Head Start). A developmental approach grounds the attorney's arguments about what is best for the very young client in the science of early child development.

# Early Developmental Milestones

| | Hearing and Understanding | Talking and Communicating |
|---|---|---|
| **Birth – 6 months** | Startle to loud sounds.<br><br>Respond to changes in tone of your voice. | Cry differently for different needs.<br><br>Babbling sounds more speech-like with many different sounds, including *p*, *b* and *m*. |
| **6 – 12 months** | Enjoy games like peek-a-boo and pat-a-cake.<br><br>Recognize words for common items like "cup," "shoe," "book," or "juice." | Imitate different speech sounds.<br><br>Use gestures to communicate (waving, holding arms to be picked up). |
| **12 – 24 months** | Follow simple directions and understand simple questions ("Roll the ball," "Kiss the baby," "Where's your shoe?").<br><br>Point to pictures in a book when named. | Say more words every month.<br><br>Put two words together ("more cookie," "no juice," "mommy book"). |
| **24 – 36 months (2–3 years)** | Understand differences in meaning ("go-stop," "in-on," "big-little," "up-down").<br><br>Follow two requests ("Get the book and put it on the table."). | Use two or three words to talk about and ask for things.<br><br>Speech is understood by familiar listeners most of the time. |
| **36 – 48 months (3–4 years)** | Hear you when you call from another room.<br><br>Answer simple who, what, where, and why questions. | People outside of the family usually understand child's speech.<br><br>Use a lot of sentences that have four or more words. |
| **48 – 60 months (4–5 years)** | Pay attention to a short story and answer simple questions about it.<br><br>Hear and understand most of what is said at home and in school. | Communicate easily with other children and adults.<br><br>Use sentences that give lots of details (e.g., "The biggest peach is mine."). |

**Source:**

Adapted from American Speech-Language-Hearing Association. "How Does Your Child Hear and Talk?" Available at www.asha.org/public/speech/development/chart.htm (last accessed February 18, 2009). View the online chart for a complete list of milestones and ways to help children who are not reaching them.

# Ethical Consideration:
## MR 1.14 – Diminished Capacity[1]

*You represent a bright and verbal 3 1/2 year-old girl who has been living with her father for six months. She has been having consistent weekly unsupervised visitation with her mother for about a month. The mother attends a substance abuse treatment outpatient program and has been clean for three months. The father tells you and the caseworker that after each visit the child's behavior deteriorates for a day or so with uncharacteristic temper tantrums, bedwetting, and a change in eating and sleeping behaviors. He is concerned the mother is acting inappropriately or doing something to upset the child. The father and the agency file a joint motion to modify visitation so it can be supervised by the agency caseworker. You meet with the child who tells you she really likes seeing her mother, but sometimes her mom says bad things about her father during the visits. She says she wants to keep visiting her mother and is not afraid. How will you proceed?*

MR 1.14 states that:

"(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action…."[2]

The attorney must first determine whether the child's capacity to make decisions is diminished. Attorneys should consider the following factors in reaching this determination:

- the child's cognitive ability;
- emotional and mental development, and stability;
- ability to communicate;
- ability to understand consequences;
- consistency of decisions;
- strengths of wishes; and
- opinions of others (while guarding for potential bias). (Comment 6)

When representing children birth to five years old, the first response to the question of diminished capacity is usually, "Of course they have diminished capacity—they aren't even in Kindergarten yet!" However, the commentary to MR 1.14 explains, "children as young as five or six years of age, and certainly those of 10 or 12, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody." (Comment 1).

Knowledge of child development (informed advocacy) and your unique client (child-centered advocacy) are essential when determining whether the girl in this scenario has the capacity to guide your advocacy regarding visitation with her mother. Moreover, as the commentary to the rules explains, capacity is a continuum (Comment 1). A very young child's capacity to direct representation will change as she develops. Since most cases last at least a year, you will likely still be representing the young girl in the scenario above when she is 4 ½ or five years old. Barring any cognitive delays, she will be a very different child cognitively and emotionally than she is now at 3 ½ years old. Knowing about basic child development and your client's special physical, emotional, and developmental needs is essential to effectively explaining the legal and practical situation now and as she gets older.

In the case above, you must walk through this analysis to determine how much weight to give the child's statement that she is not afraid and wants to continue visiting as she has been. Much of your ability to undertake this analysis will depend on how well you know your child client. Is she cognitively on target or is she delayed? Do her feelings towards her mother fluctuate or are they consistent? Is she a strong communicator who uses detail in her descriptions or does she communicate on a very basic level? Is she adamant about visiting with her mother? Could she have been influenced by a foster parent or the father?

On a practical level, irrespective of the answers to these questions, you must independently assess the situation through communicating with the child's therapist, if she has one, teachers, and other primary caregivers. In this case, consulting an infant mental health clinician who is experienced in working with very young abused and neglected children can help determine potential causes for the post-visit behavior. The clinician can recommend modifications, if necessary, to the visitation arrangement to better support the child's mental heath and developmental needs.[3] Sometimes in very young children, reactions that are perceived as "negative" (bedwetting and tantrums) will actually decrease with increased contact between the child and noncustodial parent.[4] It is possible that the child in this scenario is not afraid of her mother and may need more time with her to cope with the current separation. Assessing the child's capacity to guide your advocacy on an issue determines how much weight you can give her input and how much outside expertise you must seek when identifying the child's position.

## Sources:

1. Note that MR 1.14 applies more directly to attorneys representing children under the 'traditional' attorney model. However, it is good practice for GAL attorneys to consider the child's expressed wishes when developing their analysis and recommendations. The concepts outlined by MR 1.14 and ABA Standard B-3 and commentary offer sound guidance in that regard for GAL attorneys.

2. MR 1.14 was amended in 2002 providing some additional guidance. To view the redlined version of MR 1.14 with changes shown visit: www.abanet.org/cpr/e2k-rule114.html. An explanation of the changes is at www.abanet.org/cpr/e2k-rule114rem.html.

3. For more on mental health assessments for very young children *see* Hill, Sheri and Solchany, Joanne. "Mental Health Assessments for Infants and Toddlers." *ABA Child Law Practice* 24(9), November 2005, available at http://new.abanet.org/child/PublicDocuments/Hill_Solchany_Infant_Mental_Health_Assessments_for_court.pdf.

4. Cohen, Jillian and Michele Cortese. "Cornerstone Advocacy in the First 60 Days: Achieving Safe and Lasting Reunification for Families." *ABA Child Law Practice* 28(3), May 2009, 39.

## Learn how to access federal entitlement programs for very young children.

Attorneys must know about federal programs and entitlements that address physical health and developmental challenges and delays faced by very young children in care. Federal programs are essential to ensuring that babies, toddlers, and preschoolers—and their families and relatives—receive the screening, case management, intervention and treatment needed for healthy development. Advocates must be aware of the various entitlements and how to access them. While the entitlements are available to children and families in all states, states and jurisdictions vary in how they administer these programs. (See box, *Understanding Federal Laws and Programs*, p. 31).

## Know your community's services for children aged 0-5 and their families.

Attorneys for very young children should ensure their clients are screened for developmental delays *and* actually linked to a service or treatment while in care. Further, the attorney should work with the necessary parties to make sure these services can continue once the dependency case closes.

Every community has its own services for very young children and families. Most, if not all, communities should have access to Part B and Part C screening and early intervention services, child care and/or early care and education (Early Head Start/Head Start or voluntary Pre-K and early childhood programs), parenting skills courses for parents of very young children, and possibly even relationship-based infant mental health services (Child-Parent Psychotherapy, for example). In some communities, services are connected with a university conducting research or providing clinical internships. Attorneys need to know how the service structures housed within county health or other agencies, the state child welfare agency, local school districts, or other entities are connected and how to access these services.

## Consult professionals, clinicians, and service providers.

Part of being an informed attorney is consulting specialists and experts knowledgeable about early intervention, infant mental health, medical care, and other services for very young children. These individuals are critical in providing information about the unique needs and interests of very young child-clients. Knowing the right questions to ask will help attorneys make the most of their conversations with those treating their client and their clients' families. Several useful and research-based checklists are available to guide discussions with service providers, foster parents, and other professionals involved in a young client's life.[20] Equally important, the information from service providers (e.g., parenting skills class facilitators) regarding parent-child interactions, child functioning, parent functioning, and special needs of both parents and children is essential to developing positions on behalf of a very young child client.

# Understanding Federal Laws and Programs

The following federal laws and grant programs support efforts to meet the health care needs of very young children in foster care.

## Medicaid

The Medicaid program is jointly funded by the federal and state governments and administered by states according to federal guidelines. Most foster children can receive Medicaid because program requirements are tied to eligibility for state reimbursement for foster care expenses under Title IV-E of the Social Security Act. The federal government requires that "mandatory" services, such as physician and hospital services, family planning, and laboratory and x-ray services be included in all states' Medicaid programs, while other, "optional" services, such as prescription drugs, vision, dental, home-based care, and physical therapy may be included if a state chooses.[1]

Under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) provisions of Medicaid, however, *children* are entitled to all of the services in the federal law's "optional" list, whether or not the state chooses to offer those benefits to adults.[2] EPSDT requires that state Medicaid programs provide a comprehensive set of screening, diagnosis, and treatment services to children under age 21 enrolled in Medicaid. This includes periodic screenings at established age-appropriate intervals for mental and physical health issues, as well as additional screenings if a problem is suspected. The screening component "includes a comprehensive health and developmental history, an unclothed physical exam, appropriate immunizations, laboratory tests, and health education."[3] Despite the broad reach of this benefit, studies show it is underused, causing many children's health needs to go unidentified. Courts can ensure that such services are provided to children in care by routinely asking about screening results.

Two services available for children under EPSDT may be particularly helpful for children in foster care:

- **Targeted Case Management (TCM):** Thirty-eight states use TCM services to provide coordinated care and access to needed medical services for children in foster care.[4] Using these case management services makes it more likely for children to receive physician, prescription drug, hospitalization, rehabilitative, and mental health services than those who do not receive TCM.[5] In states where TCM is used, judges should routinely ask if TCM is being provided for children in care.
- **Rehabilitative Services:** Rehabilitative services may include services to reduce physical or mental disabilities and ensure optimal functioning. The services can also include certain specialized placements including therapeutic foster care and other family support services that improve children's functioning. This option is sometimes used to permit a child in care to remain in the least restrictive setting while receiving essential mental health services.

## Children's Health Insurance Program (CHIP)

Through the 2009 Children's Health Insurance Program Reauthorization Act (CHIPRA),[6] CHIP continues to provide health insurance to low-income children whose families earn too much to qualify for Medicaid.[7] In combination with Medicaid, CHIP aims to decrease the number of uninsured children. The program is an essential source of health insurance for children in the child welfare system who are not eligible for Medicaid or who are transitioning out of care and therefore losing their eligibility for Medicaid. Judges should ensure that foster children will have health insurance when they are no longer in care by requiring that caseworkers and reunifying or adoptive families address this issue while the child is still under the court's jurisdiction.

## Title V Maternal and Child Health Block Grant to States Program

This program provides funding for a range of health-related services, such as respite care for families caring for special needs children, or outreach to educate low-income families about food stamps.[8] States have wide discretion on what to fund with these grants. Some families in your court may benefit from services your state has chosen—check with your state's Title V director. (A list is available at https://perfdata.hrsa.gov/mchb/mchreports/link/state_links.asp.)

## Healthy Start

Healthy Start grants fund local programs that address infant mortality, low birth-weight, and racial disparities in infant health. Services offered include case management to help families access health care and other resources, peer mentoring for parents, and postpartum depression screening. Efforts are also made to connect families to other services to address their specific issues, including housing or employment barriers, substance abuse, domestic violence, or mental health problems. Encourage caseworkers, attorneys and families to look into the services offered by a local healthy start program for infants and/or pregnant women. For more information and to access a list of local programs, visit www.healthystartassoc.org/ and click on "Directory."

## Health Insurance Portability and Accountability Act (HIPAA)[9]

Enacted in 1996, HIPAA prevents the use or disclosure of protected health information (PHI) by certain entities, including child welfare agencies *if* they are considered health care providers. (The Department of Health and Human Services provides a tool to determine when an entity is a health care provider at www.cms.hhs.gov/apps/hipaa2decisionsupport/.) PHI includes any health information that could reasonably be used to identify an individual.

Several exceptions may apply in child welfare proceedings, however. PHI may be used or disclosed when:

- reporting abuse or neglect; and
- the information relates to judicial or administrative proceedings if the request is made through a court order or administrative tribunal.

The exceptions under HIPAA provide for sharing of information between the child welfare agency, courts, and health providers for children, although questions still remain about its application in practice, including the ability of parents to access the records of their children in care.[10] Respecting the privacy rights of even the youngest foster children now can protect them against future discrimination.

## Child Abuse Prevention and Treatment Act (CAPTA)/ Individuals with Disabilities Education Act (IDEA) Part C

CAPTA requires that states refer children under age three who have a substantiated case of child abuse or neglect for screening for early intervention services funded by Part C of IDEA.[11] This federal grant program helps states implement a comprehensive system for early intervention referrals and services. States have some discretion in setting evaluation criteria, therefore eligibility definitions vary significantly from state to state. Once a child is deemed eligible for early intervention services, an Individual Family Services Plan (IFSP) must be developed within 45 days of referral.[12] IDEA Part C can help ensure that very young children's developmental needs are met through services such as occupational and speech therapies, counseling, nursing services, transportation, and more. Ask if each infant and toddler in your courtroom has been evaluated and has received recommended services.

## Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act)[13]

The Fostering Connections Act addresses many issues that promote permanency and affect the health and well-being of very young children in foster care, including:

- making it easier for relatives to care for children;
- increasing adoption incentives and support;
- increasing resources that help birth families stay together or reunite;
- placing greater priority on keeping siblings together;
- helping students stay in the same school or promptly transfer when they enter care;
- providing more direct support to American Indian and Alaskan Native children; and
- increasing support for training of staff working with children in the child welfare system.

The Fostering Connections Act also requires states to develop plans to coordinate and oversee health services for children in foster care, in consultation with health care and child welfare experts. Each state's plan must include a coordinated strategy to identify and respond to children's health care needs, including mental and dental health.

State plans must address:

- schedules for health screenings;
- monitoring and treatment of identified needs;
- sharing and updating of health records;
- continuity of care;
- monitoring of prescription medications; and
- collaboration between the state and health professionals for assessment and treatment of health issues.

### Sources:


1. *Medicare: A Primer*. Menlo Park, CA: The Henry J. Kaiser Family Foundation, January 2009. Available at www.kff.org/medicaid/upload/7334-03.pdf.

2. Ibid.

3. *EPSDT Program Background*. Rockville, MD: Health Resources and Services Administration. Available at www.hrsa.gov/epsdt/overview.htm#1.

4. Geen, Rob, Anna S. Sommers and Mindy Cohen. "Medicaid Spending on Foster Children." Urban Institute Child Welfare Research Program, Brief No. 2, August 2005. Available at www.urban.org/UploadedPDF/311221_medicaid_spending.pdf.

5. Ibid.

6. Pub. L. No. 111-3.

7. Klain, Eva J. "What Passage of CHIPRA Means for Child Advocates." *Child Law Practice* 28(1), March 2009, 12.

8. *Block Grant Program*. Rockville, MD: Health Resources and Services Administration, Maternal and Child Health Bureau. Available at https://perfdata.hrsa.gov/mchb/mchreports/LEARN_More/Block_Grant_Program/block_grant_program.asp.

9. Pub. L. No. 104-191.

10. Klain, Eva J. "Federal Confidentiality Laws and Dependency Courts: Managing Competing Interests." *The Judges' Page Newsletter*, February 2006. Available at www.nationalcasa.org/download/Judges_Page/0602_mental_health_issue_0036.pdf.

11. U.S. Department of Health and Human Services, Administration for Children and Families. *Child Welfare Policy Manual*. Available at www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=354. 20 U.S.C.A. § 1437.

12. Child Welfare Information Gateway. *Addressing the Needs of Young Children in Child Welfare: Part C — Early Intervention Services*, 2007. Available at www.childwelfare.gov/pubs/partc/partc_a.cfm.

13. Pub. L. No. 110-351.

## ABA Standard B-5: Determining the Very Young Child's Interests

ABA Standard B-5 states:

> The determination of the child's legal interests should be based on objective criteria as set forth in the laws that are related to the purpose of the proceedings. The criteria should address the child's specific needs and preferences, the goal of expeditious resolution of the case so the child can remain or return home or be placed in a safe, nurturing and permanent environment, and the use of the least restrictive or detrimental alternatives available.

This guidance is essential when considering the needs of very young children. In fact, the Commentary to B-5 specifically addresses the unique needs of very young children:

> The child's developmental level, including his or her sense of time, is relevant to an assessment of need. For example, a very young child may be less able to tolerate separation from a primary caretaker than an older child and, if separation is necessary, more frequent visitation than is ordinarily provided may be necessary.

The Commentary to B-5 reminds attorneys:

> In general, a child prefers to live with known people, to continue normal activities, and to avoid moving. To that end, the child's attorney should determine whether relatives, friends, neighbors, or other people known to the child are appropriate and available as placement resources. The lawyer must determine the child's feelings about the proposed caretaker, however, because familiarity does not automatically confer positive regard. Further, the lawyer may need to balance competing stability interests, such as living with a relative in another town versus living in a foster home in the same neighborhood. The individual child's needs will influence this balancing task.

### Base assessments of the case and the child's position on objective facts and information, not personal beliefs.

Being guided by professionals working with the child and family will also diminish an attorney's natural tendency to rely on her subjective opinion in formulating a position for the child by providing expertise within which to frame the child's position. Guided by a child-centered approach and information learned through observing and consulting experts, attorneys must assess the interests and needs of *this* baby. Although an inevitable temptation, attorneys for very young children must not let their biases, their own childhood experiences, or personal views unduly influence their assessment of their client's interests. The analysis is not "What would I want for my own baby," but rather, "What is best for this baby in light of her special needs and unique family context?"

## Representing Children: Key Questions

Jean Koh Peters' "Seven Questions to Keep Us Honest" are key benchmarks to help attorneys representing children, even very young children, develop positions based on objective criteria.

1. In making decisions about the representation, am I making the best effort to see the case from my client's subjective point of view, rather than exclusively from an adult's point of view?
2. Does the child understand as much as I can explain about what is happening in her case?
3. If my client were an adult, would I be taking the same actions, making the same decisions, and treating her in the same way?
4. If I decide to treat my client differently from the way I would treat an adult in a similar situation, in what ways will my client concretely benefit from that deviation? Is that benefit one which I can explain to my client?
5. Is it possible that I am making decisions for the gratification for the adults in the case, and not for the child?
6. Is it possible that I am making decisions in the case for my own gratification and not for that of my client?
7. Does the representation, seen as a whole, reflect what is unique and idiosyncratically characteristic of this child?

**Source:**

Koh Peters, Jean. *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions.* 

## Offer testimony or reports of experts, clinicians, and service providers.

Informing and educating judges, social workers, and other child welfare system partners is key to informed advocacy. Many judges and caseworkers lack extensive knowledge about the unique needs of very young children. Despite a growing interest in babies, toddlers, and preschoolers, most court and child welfare systems lack training or protocols to address the developmental and mental health challenges of this group.

**Informing and educating judges, social workers, and other child welfare system partners is key to informed advocacy.**

Children's attorneys must take opportunities to bring professionals before the judge so their decision making can be informed by experts, clinicians, and community-based service providers who work with and have expertise in very young children and their parents. Such testimony can be offered at a judicial review hearing, hearings addressing reunification or termination of parental rights, or a special hearing to seek a service or treatment for a child client. The attorney's ability to understand basic child development, appropriate services and treatments, and legal entitlements will be useful in communicating with experts and service providers and presenting their testimony in court.

# Permanency-Driven Advocacy

One year for a one year old is a lifetime. Time is of the essence for any child, especially an infant or toddler. Therefore, permanency should be a priority from day one and should guide advocacy. Contrary to common practice, the permanency goal of a very young child should be regularly assessed—even monthly—to ensure all efforts are made to guide that child towards permanency in a way that preserves healthy attachments and positive relationships.

Often in child abuse and neglect cases, the early events of the case process predict the final case disposition.

## Promote permanency on day one.[21]

Often in child abuse and neglect cases, the early events of the case process predict the final case disposition. All involved in the case begin with a sense of urgency and are generally more responsive to needs identified during the first 30-60 days of the case. Once the adjudication takes place (ideally no longer than 60 days after the removal) and the case plan is put into effect, that sense of urgency tends to wane. For all children, and more critically for very young children, child attorneys must lead the charge for permanency from day one by harnessing the desire of everyone—caseworkers, parents, the judge, other attorneys—to get things done in the early months of the case. Attorneys must keep all players focused on visitation, placement, services, and regular out-of-court conferences in the first, second, fourth, and eighth weeks of the case. The payoff is swift permanency for the very young child and an assurance that reasonable efforts were made to support reunification if, despite focused and intensive efforts, another permanency option is selected.

## Promote concurrent case planning whenever appropriate.

It is well established that very young children are the least likely to be reunified and the most likely to be adopted, with both reunified and adopted infants, toddlers, and preschoolers remaining in care longer than their older counterparts.[22] Concurrent planning has the potential to support positive permanent outcomes in a timely manner while reducing young children's overall time in care. For concurrent planning to be effective, however, foster/adoptive families (also called resource families) and relative/nonrelative caregivers must be cultivated, trained, and educated to understand the dual requirement of committing long term to the child while also mentoring the birth family toward reunification. Relatives interested in becoming permanent guardians or adoptive parents should be sought and vetted for early placement. It is important to search for potential relative placements when the case begins and regularly as new information becomes available.

# Benefits of Concurrent Case Planning for Very Young Children

The following two examples highlight concrete benefits to very young children of successfully implementing a coordinated approach to concurrent planning.

## Increasing Timely Permanency

Colorado's concurrent planning model began in the early 1990s and involves caseworkers who are intensively trained on concurrent case planning. Legislation supports expedited permanency, and state procedures and financial supports encourage frontloading services to families. Some jurisdictions use these supports to implement family group conferencing, family team meetings, or to purchase substance abuse or mental health services. Some jurisdictions assign two caseworkers to each family—one for the child and one for the parents.

Outcomes are favorable:

- 82% of children served attain permanency in one year.
- An additional 18% of children achieve permanency in around 15 months.
- Of 522 children for whom placement data was available:
  - 77% were permanently placed within their family system, with more than 41% returning to the parent from whom they were removed;
  - 9% were placed with another parent; and
  - 26% were placed permanently with relatives.[1]

## Decreasing Length of Stay

San Mateo County, California's concurrent planning practices developed from a family preservation model the county began in 1980. Recognizing the growing numbers of very young children who were not being reunified, the county began using the foster/adoptive parent model. This model emphasizes identifying permanency resources early, fully involving the birth family, and committing to strong reunification efforts, including assessing the family's prognosis for reunification.

Data show that San Mateo County attains permanency for its children faster than the state as a whole:

- 74% of children were reunited within 12 months, compared with 65% statewide during 2003-2004.
- Equally important, 47% of adopted children achieved permanency within 12 months compared with 27% across the state.

The success of this model is attributed to buy-in from the child welfare administration and staff, the courts, and the community. Program managers stress that involving the court and agency staff in designing and implementing the process is key.[2]

### Sources:

1. For more information about the Colorado model, contact the Child Welfare Division of the State Department of Human Services, 303/866-3278.

2. For more information about the San Mateo County model, contact San Mateo County Human Services, Children and Family Services—East Palo Alto Office, 650/363-4185.

## Focus on visitation as a linchpin of permanency.

Consistent contact between the parent and child improves the potential for reunification, promotes healthy attachment between the child and her parent, and can mediate the negative effects of removal.[23] Research shows regular visitation increases the likelihood of successful reunification and reduces time in care and the negative effects of separation.[24] When safe both physically and emotionally, frequent visits and contact between the very young child and her parent(s) are at the "heart of permanency planning"[25] and at the core of permanency-focused advocacy. Unless clearly harmful to a very young child, visitation three-to-four times a week in as normal a setting as possible is essential to healing the parent-child relationship and setting up the best possible chance for reunification.

Advocates, ideally in cooperation with the case manager and other parties in the case, should develop a visitation plan and move the court to formalize it through a court order. The plan should be comprehensive and should detail frequency, duration, opportunities for "normal" interaction, level of supervision, and the need for therapeutic supports (before, during, and after). The plan should work for the child; it should not be solely guided by what is most convenient for the adults involved. The young child's naptimes, feeding schedules, and daily routine should all be considered. Meaningful contact with siblings should also be independently planned for or incorporated into the parental visitation plan. When there is disagreement about what visitation plan would be best for the child, advocates should present both expert and demonstrative evidence to the court to support the plan that best meets the child's needs. The court should regularly review the plan and revise it as the baby's needs change.

**Advocates, ideally in cooperation with the case manager and other parties in the case, should develop a visitation plan and move the court to formalize it through a court order.**

## Arranging Parent-Child Contact

Contact between parents and very young children should be:

- frequent (multiple times weekly);
- long enough to allow a range of experiences for the parent and child (e.g., diaper changing, playing, feeding);
- connected to daily activities (e.g., going to the park, taking a walk, visiting the pediatrician);
- in the least restrictive, most natural, home-like setting;
- conducive to meaningful parent-child interaction.

**Source:**

*Healthy Beginnings, Healthy Futures: A Judge's Guide*. ABA Center on Children and the Law, National Council of Juvenile and Family Court Judges, and Zero to Three National Policy Center, 2009, 105.

## Do not wait until the judicial review or permanency hearing to address the permanency goal.

Permanency for very young children should be revisited monthly, either in court or by a team of professionals, service providers, and child advocates, to assess progress, safety, and well-being. Permanency should not be driven by the court process, but by the child's needs and the parents' ability to provide a safe, stable home for the child that ensures his well-being.

Even a few months are a long time for a very young child. The child is developing rapidly—physically, emotionally, and cognitively—and is forming new attachments that will have to be severed if placements change. If parents are actively engaging in rehabilitative services, visiting consistently, and can provide a safe environment for the child, advocates should consider moving for a reunification transition process. Likewise, if a parent with a substance use disorder is not visiting the baby or engaging in substance abuse treatment within a reasonable time, despite active engagement by the child welfare agency, and the baby is in a potentially permanent home, advocates should consider moving the court to change the goal from reunification to a more appropriate permanency goal.

## Ensure children's primary attachments are considered in placement decisions.

A baby's social-emotional development, specifically attachment to a primary caregiver, is affected by removal from his parent and multiple placements while in care.[26] Research shows that young children, even newborns and infants, experience long-lasting sadness, grief, loss, and rejection.[27] Separations occurring between six months and approximately three years of age are even more likely to cause later emotional disturbances.[28] Thus, moving a baby from an extended foster placement (six months to one year) to relatives who are not identified until later in the case process can harm the baby. Failing to support a potential family connection is also potentially damaging, especially in the long term.

Relative caregivers must be actively sought early and often to avoid unnecessary placement changes. Advocacy to change a baby's or toddler's placement must involve assessing the child's primary attachments with their present caregiver(s) and the short- and long-term impact of another early loss. These decisions must be made case-by-case and should be informed by professionals involved with the child and family.

# Ethical Consideration:
## MR 3.7 – Attorney as Witness

*You have been representing a three-year-old boy since he was one. The child is living in a specialized medical foster home due to serious medical needs. You visit the child regularly and have consistent contact with his foster parents, doctors, and service providers. A third caseworker has just been assigned to his case, but is not familiar with the child or his needs. The child does not have a CASA or lay GAL. At the permanency hearing, frustrated that the agency failed to file a report and anxious to hold the required hearing within the statutory timeframe, the judge asks you to provide testimony about the child's well-being and your recommendations for how to proceed regarding permanency. What do you do?*

MR 3.7 prohibits an attorney from acting as both a witness and advocate in the same case. This is a challenging and frustrating situation for a children's attorney—under the traditional model or as a GAL attorney—especially when representing a child too young to speak for himself and when there is no lay advocate involved to put on as a witness. It is also frustrating to judges who know that children's lawyers often have gathered current and accurate information about the child's present situation and needs. Furthermore, if visiting a child regularly and consistently, the lawyer is likely to have witnessed a variety of caregiver-child interactions and becomes a fact witness about what he has observed.

Some states that use GAL attorneys have specific rules that enable GALs to serve as witnesses in certain circumstances.[1] In fact, in most states, there is either a culture of GAL attorneys testifying or not testifying. In the case above, you may want to ask the judge to delay the hearing one day, stipulating that this will not adversely impact your child client. You can also offer testimony from the medical foster parents and treatment providers at the rescheduled permanency hearing.

You may consider subpoenaing key witnesses to testify at the permanency hearing and/or provide reports that you can offer into evidence. This can eliminate the possibility of being put on the witness stand by the judge and is an excellent proactive approach to pursuing permanency.

**Source:**

1. *See* Renne, Jennifer L. *Legal Ethics in Child Welfare Cases*. Washington, DC: ABA Center on Children and the Law, 2004.

## Plan for transitions between caregivers.

If a placement change is determined to be best for the baby, or if the family is ready for reunification, advocates should negotiate or obtain a court order for a thoughtful transition process, even when the move is an emergency. If the baby or young child does not know the new caregivers, there should be a visitation period in which the foster parent and relative are both present. New caregivers should be prepared by the caseworker for some resistance or distress by the child at visits as well as when first moved to their home. The new caregiver, along with the case manager, should meet or speak to the former caregivers before the first visit to discuss the child's needs, habits, behaviors, personality, likes/dislikes, etc.

Attorneys should ensure that, when safe and appropriate, the former caregivers will remain a resource for the child and the new caregivers. A more gradual and considered approach increases the likelihood of a successful, secure transition for the child and reduces the impact of losing the relationship with previous caregivers. If the move is predicated on a safety-related emergency, transition planning can include several supervised or therapeutic visits with the previous caregiver that allow the child to ease out of the relationship and feel secure in the new placement. Similar transition planning should occur when a child is moved between child care providers, classrooms, or preschools.

## Ensure fathers and paternal relatives are identified early and engaged in the case process.

Identifying and engaging fathers and paternal relatives of children in the child welfare system is a challenge for all professionals. Society and the child welfare system generally hold mothers accountable for the maltreatment of their children, especially when they are not married or involved with the biological father(s). Case managers and other child welfare professionals and advocates often overlook or disregard fathers as uninterested or incapable of caring for a very young child. While this is the case sometimes, many fathers and paternal relatives are willing and able to be a resource for the child, whether as a permanent or temporary placement, another meaningful adult connection, a source of information about the child (e.g., medical history, other relatives), or by providing financial, emotional, or other support.

Advocates must ensure diligent searches for fathers occur early in the process and fathers are offered equal opportunities to parent their children, if interested and capable and no safety concerns exist. When fathers or paternal relatives cannot be located early, despite diligent efforts, the child advocate must ensure the agency continues its search as the case progresses and new information becomes available.[29]

# Engaging Fathers in Child Welfare Cases

**" While it may take extra effort to involve a nonresident father, it is usually in the child's best interest to do so."**

*The Importance of Fathers in the Healthy Development of Children,*
U.S. Children's Bureau's Child Abuse and Neglect User Manual Series

Studies of families involved with the child welfare system have found:

- Involvement by nonresident fathers is associated with more reunifications and fewer adoptions.
- Higher levels of nonresident father involvement are associated with substantially lower likelihood of later maltreatment allegations.
- Highly involved nonresident fathers' children exited foster care faster.
- Children who had had contact with a noncustodial parent in the last year were 46% less likely to enter foster care.

Child advocates can make sure children have every chance to benefit from father involvement by taking the following steps:

- Ask about the father's identity and location and ensure the agency is working diligently to find "missing" parents.
- Assess whether the father could be a placement or other resource for the child.
- Ensure fathers are included in case planning and receive services to be a resource for their children.
- Know the legal rights of fathers in child welfare cases.
- Ensure paternal relatives are located and encouraged to be resources for children.
- Ask verbal children about their fathers and paternal relatives (in a developmentally appropriate way).
- If contacting the father directly (with his attorney's permission), take time to explain your role to him.
- Identify and address your own biases about fathers, and recognize gender differences in how men seek help, interact with professionals, and spend time with their children.
- Try to engage incarcerated fathers, who may be a source of family connections or other support, even if they cannot be a placement resource for their children.
- Remind other system players of the importance of father engagement and to invite fathers to court and agency meetings, including family group decision-making conferences.

### Sources:

Chen, Henry, Karin Malm and Erica Zielewski. *More about the Dads: Exploring Associations between Nonresident Father Involvement and Child Welfare Case Outcomes*. Washington, DC: U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, 2008. Available at http://aspe.hhs.gov/hsp/08/ moreaboutdads/report.pdf; Bellamy, Jennifer L. "A National Study of Male Involvement among Families in Contact With the Child Welfare System." *Child Maltreatment* 14, 2009, 255-262.

This box was adapted from: *Engaging Nonresident Fathers in Child Welfare Cases: A Guide for Children's Attorneys and Lawyer Guardians ad Litem*. Washington, DC: ABA Center on Children and the Law and American Humane, available at www.fatherhoodqic.org.

# Ethical Consideration:
## MR 1.7 – Conflict of Interest

*A baby is born cocaine exposed and removed from the mother at the hospital. The baby, now three months old, has minor medical issues related to her cocaine exposure. The mother has two other children, 11 and 13 years old, placed temporarily with the maternal grandmother. The baby's father has a substance abuse problem as well and is not in treatment. Although the maternal grandmother has been able to care for the older siblings, she did not pass a home study for placement of the baby due to concerns about her ability to handle the baby's special medical needs and that she would not likely become a permanent placement for the baby due to her age (68). The baby is placed in foster care since no other relatives are able and willing to care for her. Mom is requesting that the baby be placed with her in a residential treatment facility.*

*You represent all of the children. The older children have clearly expressed a strong interest in having their baby sibling placed with them; however, you have determined the baby's short- and long-term interests are best served by remaining in foster care until the mother makes some progress in drug treatment and the baby can be placed back in her care.*

Attorneys must be loyal to their clients, use independent judgment, maintain client confidences, and zealously pursue the client's objectives. The Model Rules prohibit lawyers from representing multiple clients when representing one will compromise the duties owed to the other(s). This is considered a conflict. Model Rule 1.7 states that:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  (1) the representation of one client will be directly adverse to another client; or
  (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

However, even if the lawyer determines there is a conflict under 1.7(a), the rule lays out circumstances under which the lawyer may continue to represent both parties. All four of the conditions in 1.7(b) must be present:

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
  (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  (2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
(4) each affected client gives informed consent, confirmed in writing.

To determine whether a conflict exists, you can ask the following questions:[1]

- Does representing one client foreclose alternatives for the other?
- Will confidential information from one client be compromised in representing the other(s)?
- Can the attorney comply with duties owed to each client, including the duty to pursue the client's position?
- Will the client "reasonably fear" that the attorney will pursue her case less effectively because the attorney is deferring to the other client?
- Can the lawyer ask for consent?

The scenario here presents a conflict. As the child's attorney, you cannot possibly zealously advocate for the siblings to be placed together (older children's position) while also advocating for the baby to remain in a foster home. How would you proceed now that a legitimate conflict of interest exists?

In this case, because your older clients and baby client have different positions, it would not be reasonable to believe that you could provide competent and diligent representation to all clients. Thus, you have two choices: (1) withdraw from representation of either the older two children or the baby, or (2) withdraw from representing all children. Although continuity of representation is important for a baby, in this case your best approach is to withdraw from the baby and continue to represent the older children. If you choose to withdraw from the older children's representation and continue to represent the baby, you may face more ethical issues. If you represent the baby, you will likely need to disclose confidential information provided by the older siblings. You may also violate your duty of loyalty to the older siblings, who will very possibly feel abandoned and confused by your withdrawal from their case.

What would be the ethical considerations, however, if the facts were slightly different and the older siblings do not have an opinion regarding placement with their baby sibling? Does a conflict of interest exist? No. Under these circumstances, the position of the older siblings and baby are not directly adverse and there is no significant risk that representing the baby will be materially limited by representing the older sibling. MR 1.7(a)(1-2). In fact, in this modified scenario, one attorney for all children may actually serve the goal of sibling contact and family connection for both the baby and the older siblings.

### Source:

1. Renne, Jennifer L. *Legal Ethics in Child Welfare Cases*. Washington, DC: ABA Center on Children and the Law, 2004.

## Help foster connections with siblings.

The Fostering Connections Act[30] passed in 2008 gives priority to placing siblings together. While it is common for a lawyer to be appointed to represent a sibling group, when this does not occur, the attorney for a very young child must not discount the importance of the child's sibling relationships. In some cases, older siblings may have been the de facto caregivers for the baby while the mother or father was working or using drugs. Often older siblings protect the younger siblings when domestic violence is present in a family. Siblings play together, teach each other, and are often the only familial and cultural connection that a baby has once she is removed and placed into foster care.

Attorneys, whether representing the sibling group or not, should make concerted efforts to ensure siblings are placed together unless doing so poses a safety threat. In some instances, attorneys will have to balance speeding permanency (e.g., an adoptive family that only wishes to adopt the baby not older siblings) with maintaining sibling connections. Even when siblings cannot share a foster or adoptive placement, the baby's attorney must advocate for and craft agreements that support regular sibling visits and contact.

## Negotiate postpermanency arrangements that allow the baby to stay connected to family when safe and appropriate.

When a baby's parents' rights are terminated and he is adopted, ongoing connections with his family of origin must be considered. Babies grow up to be children with questions and a need to at least know about their family of origin. When there are healthy and positive connections with biological parents, grandparents, siblings or other extended family, adoptive parents should be encouraged to maintain some form of connection, even if minimal (for example, a yearly photograph).

Some states have "open adoption" laws that provide for postadoption visitation and contact. These agreements can be crafted in various ways, allowing for current and/or long-term contact. If a foster parent adoption occurs after concurrent planning, often the foster family and biological family already have contact and ties, making an open adoption much more viable. Additionally, families of origin can be encouraged to register with the national adoption registry so their biological children can reach out to them in the future. Ongoing contact is not always appropriate, so advocates must assess the circumstances of each case.

# Holistic Advocacy

Holistic advocacy—the final hallmark of effective advocacy for very young children—is essential to harness the strength of the advocate's tools. Much of what happens in a child welfare court case takes place outside the judge's presence. Thus advocacy outside the courtroom is as important as advocacy inside the courtroom, and children's attorneys must use all their negotiation, advisory, and counseling skills during non-court meetings and proceedings.

Much of what happens in a child welfare court case takes place outside the judge's presence. Thus advocacy outside the courtroom is as important as advocacy inside the courtroom.

## Appear on behalf of your client at all hearings, meetings, and staffings.

While it goes without saying that an advocate must be in court for all hearings, the same is true for all essential planning meetings. Formal and informal permanency, treatment, and service planning take place regularly, often without involving the child's advocate. Older children and teens must be engaged in transition planning and their court cases; however, there is a perception that very young children are not aware of or impacted by the child welfare process. Thus, without their representative present at all hearings and staffings, their perspective and individual needs and interests are not considered during planning efforts and decision making. It is up to you to be the child's voice and to zealously advocate for his needs and interests.

## Advocate for quality, evidence-based interventions and services.

Holistic advocacy requires the attorney to ask critical questions about program effectiveness. Infants, toddlers, and preschoolers are highly impressionable. Services that are not high-quality and proven effective with very young children in the child welfare system can actually do more harm than not having the service.[31] Similarly, if parents are receiving services that do not help them address the circumstances that brought the child into the system, the agency is not making reasonable efforts to achieve the permanency goal—especially if the goal is reunification. When a baby's parents do not receive effective services, but they obtain a certificate of completion for showing up and the baby is reunified, there is a strong likelihood the baby is returning to an unsafe environment.

## Ethical Consideration:
## MR 1.3 – Diligent Representation

*You represent a two year old in a termination of parental rights matter. The case is set for an "advisory" hearing, at which the parents are advised of their right to a court-appointed attorney if they meet financial guidelines for such appointment. The pretrial and trial dates are set at this hearing. No other matters are set to be heard. You have a heavy caseload and other, more pressing matters to address. You decide to skip the advisory hearing and to contact the agency attorney at the end of the day to get an overview of the hearing.*

MR 1.3 requires that lawyers participate fully in the court process and provide diligent representation. Diligence requires "proactive participation" in the court process from start to finish. The rule also expects that lawyers will seek records, file motions for appropriate services, and participate in all non-courtroom activities at which the child's rights, entitlements, and interests must be advocated or protected (e.g., case plan or permanency plan meeting, formal/informal settlement negotiations or mediations). This premise is at the heart of "holistic representation"—it is proactive and encompasses all aspects related to health, well-being, safety, and permanency for the very young child. Attending all hearings, including procedural hearings (e.g., advisory hearings) supports your ethical obligation to fully participate in the court process. Often, matters not set for a hearing are addressed when a hearing is held to speed decisions about placement, visitation, or other issues directly affecting the child or parent(s).

ABA Standards C-1 through C-6 explain all required actions to be taken, more clearly defining what "diligent representation" of a child should involve in a dependency proceeding:

- Meet with the child and establish a relationship.
- Conduct thorough, continuing, and independent investigations of the child's case and circumstances.
- File pleadings for services and visitation.
- Request services to meet the individual needs of your child client—even when no hearing is filed—through informal or formal means.
- Ensure a child with special needs receives appropriate services to address those special needs.
- Negotiate settlements to seek "expeditious resolution of the case," including using mediation.

## Go beyond dependency court to seek remedies and obtain entitlements.

ABA Standard D-12—Expanded Scope of Representation—is based on the notion that attorneys may have to become involved in nondependency-related proceedings or forums to effectively serve their child-client's interests. Standard D-12 encourages attorneys to request court authority to pursue issues such as child support, SSI/public benefits, custody in a domestic relations matter, guardianship, paternity, personal injury, school/educational issues, and adoption. Attorneys representing very young children should be mindful that children's needs change quickly. Therefore, when analyzing clients' needs and interests, attorneys must evaluate their short- and long-term needs and ensure steps are taken in appropriate venues.

## Be a bridge between service providers, case managers, and the court.

Often in dependency court, the child's attorney is the one consistent professional involved with the case from the beginning (along with the CASA in jurisdictions that appoint both). The attorney knows the case history better than anyone and should connect with caregivers, caseworkers, child care/early education providers, CASAs, and others involved in the child's case. Children's attorneys should educate service providers, new case managers, and teachers about the baby (using facts to support statements) and make sure these professionals understand the baby's special needs and attachments. Set the tone for a collaborative process by communicating outside court with caseworkers about transportation or service provision issues. Not only will such out-of-court advocacy generally solve issues, it will also preserve key professional relationships when in-court advocacy is needed. This kind of collaboration helps overcome barriers to meet the needs of the baby, toddler, or preschooler.

## Advocate for a coordinated system of care for very young children in dependency court.

Although all states must have some service systems for very young children, these systems often are not designed to meet the specific needs of infants, toddlers, and preschoolers in the child welfare system. There may be little coordination and integration among systems. Community-based providers may not fully understand the dependency process and the experiences and needs of very young children involved in dependency proceedings. As a result, services to very young children in the dependency system may be unavailable, inaccessible, unknown, or fragmented, resulting in a lost opportunity to intervene therapeutically and set the child on a healthy developmental track.

**The attorney knows the case history better than anyone and should connect with caregivers, caseworkers, child care/early education providers, CASAs, and others involved in the child's case.**

## Evidence-Based Practices and Programs for Very Young Children and Their Parents

A program or practice is evidence-based if (a) evaluation research shows that the program produces positive results; (b) the results can be attributed to the program itself, rather than to other extraneous factors or events; (c) the evaluation is peer-reviewed by experts in the field; and (d) the program is "endorsed" by a federal agency or respected research organization and included in their list of evidence-based programs.

Three federal Web sites describe evidence-based parenting programs:

- www.modelprograms.samhsa.gov
- www.ojjdp.gov
- www.nctsn.org

The first two describe federally designated *model programs*, including those that develop parenting skills among high-risk parents. The Web sites explain how the programs were selected and tested for scientific rigor, the programs' effectiveness, and program logistics (facilitator training, implementation costs, and assessment tools). These lists include various parenting programs and therapies. In communities without any programs, advocates should ask the provider whether any research has evaluated the program's effectiveness for very young children and/or their parents. They can also ask whether and how improvements over time are captured and measured, and what progress is required to complete the program.

**Source:**

Cooney, S. et al. "Evidence-Based Programs: An Overview." *What Works: Wisconsin-Research to Practice Series*. University of Wisconsin-Madison, 2007.

In response to this challenge, over the past decade efforts have focused on developing a coordinated system of care for very young children that involves the juvenile court, community providers, and the child welfare system. Child advocates frustrated by the lack of such a system in their jurisdictions can advocate for change. Simple steps include meeting with key players, especially child advocacy groups, judicial leaders, and child welfare administrators to discuss establishing a system of care. Child advocates have good models around the country of court-community partnerships centered on the needs of babies and their families and can learn from them when developing such systems in their jurisdictions.[32]

# Conclusion

Representing very young children in dependency proceedings can be challenging. Effective and ethical representation often demands that the attorney be proactive, seeking out opportunities to observe and interact with the very young child client and speed the legal process, while also maintaining the child's critical relationships. Attorneys for very young children need a firm understanding of child development and special entitlements for children under age five. They need to be willing to sit on the floor and read to a toddler, hold and talk to an infant, and do a puzzle with a preschooler. They must listen to and hear clients who often cannot verbalize their thoughts and feelings about their situations.

This is not easy work, but it is rewarding. Effective advocacy for a very young child can change the child's life forever. Ensuring a child receives speech therapy through the early intervention system can tremendously impact her experiences in school and with peers. A baby whose hearing problem is identified and treated early will experience the world in a new way, changing how his brain develops in the early formative years. A toddler who receives relationship-based psychotherapy with her mother has the opportunity to develop healthy primary attachments and future relationships—possibly breaking the cycle of intergenerational abuse and neglect.

Lawyers who commit to child-centered, informed, permanency-driven, and holistic advocacy can promote the best outcomes—legal and developmental—for every infant, toddler, and preschooler they represent.

**Effective advocacy for a very young child can change the child's life forever.**

# Recommended Reading on Child Development and Child Maltreatment

## Ethical Considerations

- Koh Peters, Jean. *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions.* Lexis Nexis, 2001.
- Renne, Jennifer L. *Legal Ethics in Child Welfare Cases.* Washington, DC: ABA Center on Children and the Law, 2004.

## Early Child Development & Maltreatment

- Shonkoff, Jack P. and Deborah A. Phillips, eds. *From Neurons to Neighborhoods: The Science of Early Childhood Development.* National Research Council and Institute of Medicine Committee on Integrating the Science of Early Childhood Development. Washington, DC: National Academy Press, 2000.
- Jones Harden, Brenda. *Infants in the Child Welfare System: A Developmental Framework for Policy & Practice.* Washington, DC: Zero to Three, 2007.

## Infant Mental Health & Early Trauma

- *Handbook of Infant Mental Health, Third Edition.* Zeanah, Charles H., ed. New York: The Guilford Press, 2009.
- *Young Children and Trauma: Intervention and Treatment.* Osofsky, Joy, ed. New York: The Guilford Press, 2007.

## Health & Well-Being

- *Healthy Beginnings, Healthy Futures: A Judge's Guide.* ABA Center on Children and the Law, National Council of Juvenile and Family Court Judges, and Zero to Three National Policy Center, 2009.
- Osofsky, Joy et al. *Questions Every Judge and Lawyer Should Ask about Infants and Toddlers in the Dependency System.* Reno, NV: National Counsel of Juvenile and Family Court Judges, 2001.

## System Advocacy

- Dicker, Sheryl. *Reversing the Odds: Improving Outcomes for Babies in the Child Welfare System.* Baltimore: Brookes Publishing, Inc., 2009.
- Katz, Lynne, Cindy Lederman and Joy Osofsky. *Child-Centered Practices for the Courtroom and Community: A Guide to Working Effectively with Young Children and their Families in the Child Welfare System.* Baltimore: Brookes Publishing, Inc., 2010.

## Endnotes


1. Shonkoff, Jack P. and Deborah A. Phillips, eds. *From Neurons to Neighborhoods: The Science of Early Childhood Development.* National Research Council and Institute of Medicine Committee on Integrating the Science of Early Childhood Development. Washington, DC: National Academy Press, 2000, 5.

2. Ibid., 5.

3. Ibid., 7.

4. Wulczyn, Fred, Kristen Brunner Hislop and Brenda Jones Harden. "The Placement of Infants in Foster Care." *Infant Mental Health Journal* 23(5), 2002, 463.

5. The Child Welfare Information Gateway, www.childwelfare.gov/systemwide/laws_policies/Statutes/represent.cfm, downloaded March 31, 2010.

6. 42 U.S.C. § 5106a(b) (2003).

7. 42 U.S.C. § 5106a(b)(2)(xiii) (2003).

8. For a state-by-state analysis of child representation models, visit The Child Welfare Information Gateway at www.childwelfare.gov/systemwide/laws_policies/Statutes/represent.cfm.

9. Available at http://new.abanet.org/child/PublicDocuments/repstandwhole.pdf.

10. Much of the ethics discussion in this brief has been informed by the thorough and succinct analysis provided in Renne, Jennifer L. *Legal Ethics in Child Welfare Cases.* Washington, DC: ABA Center on Children and the Law, 2004.

11. Koh Peters, Jean. *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions.* Lexis Nexis, 2001.

12. Foulds, Brooke et al. *Infant Toddler Module 1: Social Emotional Development with the Context of Relationships.* Washington, DC: Center on the Social and Emotional Foundations for Early Learning, 2008.

13. Lieberman, Alicia F. and Patricia Van Horn. *Psychotherapy with Infants & Young Children: Repairing the Effects of Stress and Trauma on Early Attachment.* NY, London: The Guilford Press, 2008.

14. Shonkoff and Phillips, 2000.

15. Ibid.

16. The concept of 'paper children' in the dependency court context is used by Nancy Schleifer, Esq., child advocate and author.

17. 42 U.S.C. § 675(5)(c).

18. Note that some states have made appearances by the child required. The ABA Center on Children and the Law's Bar-Youth Empowerment Project has several publications on the topic of children appearing in court. Of note are their Engaging Children Benchcards and a State-by-State Summary of Youth Involvement in Court, available at www.abanet.org/child/empowerment/youthincourt.shtml.

19. Jones Harden, Brenda. *Infants in the Child Welfare System: A Developmental Framework for Policy & Practice.* Washington, DC: Zero to Three, 2007.

20. *See* Osofsky, Joy. et al. *Questions Every Judge and Lawyer Should Ask about Infants and Toddlers in the Dependency System.* Reno, NV: National Counsel of Juvenile and Family Court Judges, 2001; *Ensuring the Healthy Development of Foster Children: A Guide for Judges, Advocates and Child Welfare Professionals.* New York State Permanent Commission on Justice for Children, available at www.courts.state.ny.us/ip/justiceforchildren/PDF/ensuringhealthydevelopment.pdf.

21. Cohen, Jillian and Michele Cortese. "Cornerstone Advocacy in the First 60 Days: Achieving Safe and Lasting Reunification for Families." *ABA Child Law Practice* 28(3), May 2009, 39.

22. Wulczyn et al., 2002, 466.

23. Smariga, Margaret. *Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know.* Washington, DC: ABA Center on Children and the Law and Zero to Three National Policy Center, July 2007, 6.

24. Ibid.

25. Ibid.

26. Wulczyn et al., 2002, 454-475, 457.

27. Shonkoff and Phillips, 2000, 28.

28. Cohen, Julie and Victoria Youcha. "Zero to Three: Critical Issues for the Juvenile and Family Court." *Juvenile and Family Court Journal* 17, spring 2004, 15-28.

29. For more information on how and why to engage fathers in your cases, read *Engaging Nonresident Fathers in Child Welfare Cases: A Guide for Children's Attorneys* (or the companion guide for CASAs), available at www.fatherhoodqic.org.

30. Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351.

31. Greenwood, Peter W. *Changing Lives: Delinquency Prevention as Crime-Control Policy.* Chicago: University of Chicago Press, 2006.

32. *See* Hudson, Lucy et. al. *Healing the Youngest Children: Model Court-Community Partnerships.* Washington, DC: ABA Center on Children and the Law and Zero to Three Policy Center, 2007, available at http://new.abanet.org/child/PublicDocuments/practice_policybrief_march07.pdf.


Center on
Children and the Law

740 15th Street NW
Washington, DC 20005
phone 202.662.1720
fax 202.662.1755
abanet.org/child