

# CHILDREN’S ACCESS TO JUSTICE

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## I. INTRODUCTION

A child’s access to justice is predicated on the assumption that the subject of the proceeding, the child, will have legal representation to petition the court and have a voice in the proceeding. Two notable United States Supreme Court cases are emblematic of children’s access to justice, marked as they are by the Court’s pronouncement that “[t]he right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is the essence of justice.”<sup>1</sup>

The 1967 landmark case, *In re Gault*,<sup>2</sup> established that children have a constitutional right to counsel in delinquency proceedings. *Gault* followed *Kent v. United States*<sup>3</sup> where the United States Supreme Court held that children may not be transferred from juvenile court to criminal court without a hearing in which they are

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1. *Kent v. United States*, 383 U.S. 541, 561 (1966).
2. 387 U.S. 1 (1967).
3. 383 U.S. 541 (1966).

represented by counsel.<sup>4</sup> While *Gault* involved the delinquent act of making a “lewd or indecent”<sup>5</sup> telephone call, it led to an examination of procedural due process rights in other proceedings involving children, especially in dependency (child protection) proceedings.<sup>6</sup> The court in *Gault* noted:

The right of the state, as *parens patriae*, to deny to the child procedural rights available to his elders was elaborated by the assertion that a child, unlike an adult, has a right ‘not to liberty but to custody’ . . . . On this basis, proceedings involving juveniles were described as ‘civil’ not ‘criminal’ and therefore not subject to the requirements which restrict the state when it seeks to deprive a person of his liberty.<sup>7</sup>

Nevertheless, because delinquency proceedings could result in the loss of liberty for the juvenile, the Court held that children have a right to counsel in all proceedings in which an adverse finding may result in incarceration.<sup>8</sup>

As “the essence of justice,” the right to representation is not limited to delinquent behavior; indeed, even in dependency or child protection proceedings, the state may place the child with strangers, away from home, family and relatives, often against his or her will—resulting in a loss of liberty. While *Kent* and *Gault* dealt with delinquent behavior characterized as “neither criminal nor civil,” they provide the underpinnings for the representation of counsel for children in dependency proceedings.<sup>9</sup>

Indeed, the *Gault* Court’s reliance on the Report by the President’s Commission on Law Enforcement and Administration of Justice *The Challenge of Crime in a Free Society* (1967) is instructive. The Report stated:

The Commission believes that no single action holds more potential for achieving procedural justice for the child in the juvenile court than provision of counsel. The presence of an independent legal representative of the child, or of his parent, is the keystone of the whole

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4. *Gault*, 387 U.S. at 36.

5. *Id.* at 4.

6. See Susan A. Snyder, *Promises Kept, Promises Broken: An Analysis of Children’s Right to Counsel in Dependency Proceedings in Pennsylvania*, 1 JUVENILE LAW CENTER (2001).

7. *Gault*, 387 U.S. at 17.

8. *Id.* at 41.

9. See Catherine J. Ross, *From Vulnerability to Voice: Appointing Counsel for Children in Civil Litigation*, 64 FORDHAM L. REV. 1571, 1579 (1996).

structure of guarantees that a minimum system of procedural justice requires.

Fears have been expressed that lawyers would make juvenile court proceedings adversary. No doubt this is partly true, but it is partly desirable. Informality is often abused . . . . And in all cases children need advocates to speak for them and guard their interests, particularly when disposition decisions are made. It is the disposition stage at which the opportunity arises to offer individualized treatment plans and in which the danger inheres that the court's coercive power will be applied without adequate knowledge of the circumstances.

The Commission recommends: Counsel should be appointed as a matter of course wherever coercive action is a possibility, without requiring any affirmative choice by child or parent.<sup>10</sup>

At the time of the report, Minnesota was one of a few states that already gave the "minor, parent, guardian or custodian the right to counsel."<sup>11</sup> As a result, when the National Conference of Commissioners on Uniform State Laws and the American Bar Association approved the Uniform Juvenile Court Act in 1968, Minnesota was not among the states that adopted the Uniform Juvenile Court Act.<sup>12</sup>

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10. In re *Gault*, 387 U.S. 1, 38-40 n.65 (quoting PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* 86-87 (1967)).

11. In 1959, Minnesota adopted the Juvenile Court Act, which on the subject of appointment of counsel stated, "The minor, parent, guardian or custodian have the right to counsel. If they desire counsel but are unable to employ it, the court shall appoint counsel to represent the minor or his parents or guardian in any other case in which it feels that such appointment is desirable." 1959 Minn. Laws, ch. 685, subd. 2, 1288. The Act made no distinction between delinquency and child protection proceedings. Indeed, delinquency and child protection proceedings were combined in the juvenile code until 1999 when the juvenile delinquency provisions of the Juvenile Court Act were codified in chapter 260B and the child protection provisions of the Juvenile Court Act were codified in chapter 260C. The *Gault* Court cited Minnesota as one of "a few states" that required advising the child of the right to counsel and to have counsel appointed. *Gault*, 387 U.S. at 37 n.63 (citing MINN. STAT. ANN. § 260.155(2) (Supp. 1966) (replaced by MINN. STAT. §§ 260B.163, 260C.163 (2000))).

12. Minnesota had a connection to the National Conference of Commissioners on Uniform State Laws: the late William Mitchell College of Law Professor Maynard Pirsig was Chair of the Commission in 1968.

## II. OUTLINE OF ARTICLE

Despite the foresight of the 1959 Minnesota Legislature in giving children the right to counsel in juvenile court, the reality of children's access to justice in 2001 falls short of this promising start. This article will discuss systemic and substantive issues that have implications for children's access to justice in Minnesota. The child's right to counsel in delinquency proceedings is not within the scope of this article.

Systemically, there are funding and policy issues related to providing lawyers for children. In juvenile protection proceedings where the state/county is the petitioner, even where there is agreement that children have the right to counsel, there is not enough funding to pay lawyers to represent children. In custody proceedings in Family Court, where the litigants are private parties, on the other hand, there is disagreement about whether children should have a voice in the proceedings. Indeed there is no statutory right to counsel.

Substantively, a recent change in the Minnesota Juvenile Protection Rules has affected a child's access to justice. The amended rule provides that the child who is the subject of a juvenile protection matter is a participant, not a party,<sup>13</sup> resulting in lesser procedural rights for the child.

Finally, this article will discuss the *Standards for Legal Representation of Children in Abuse and Neglect Cases* promulgated by the American Bar Association. Providing "high quality legal representation" to children is the goal of these standards; achieving that goal will go far to improve access to justice for children.

## III. JUVENILE PROTECTION PROCEEDINGS

Juvenile protection proceedings are civil proceedings where the state/county is the petitioner and the parent is the respondent. The child, as the subject of the proceeding, has an interest in the outcome of the proceeding and has a right to legal counsel. The *Kent* and *Gault* decisions are reminders that when there is state action and the power of the state can be brought to bear on decisions affecting the child in profound ways such as where and with whom the child will live, counsel for the child is imperative.<sup>14</sup>

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13. MINN. R. JUV. PRO. 58.01 (2000).

14. *Gault*, 387 U.S. at 1; *Kent v. United States*, 383 U.S. 541, 541 (1966).

Since the 1959 Juvenile Court Act, not only has Minnesota continued to give children the right to counsel, it has been explicit about what kind of counsel: "The child, parent, guardian or custodian has *the right to effective assistance* of counsel in connection with a proceeding in juvenile court."<sup>15</sup> In addition, the statute is prescriptive: "Counsel for the child shall not also act as the child's guardian ad litem."<sup>16</sup>

Yet, in a move that circumscribed children's access to justice, the statute was amended in 2000 to limit appointment of counsel to children ten years of age or older. "[I]f the child desires counsel but is unable to employ it, the court shall appoint counsel to represent the child who is ten years of age or older . . . in any case in which it feels such an appointment is appropriate."<sup>17</sup>

The amendment is indicative of the systemic impediments to providing representation to children. Until 2000, when children in child protection proceedings had the right to counsel without regard to age,<sup>18</sup> the state did not provide sufficient funding to ensure vindication of that right. Consequently, many children did not get lawyers. If they did, in some counties they often did not have continuity of representation because they had a different lawyer for each hearing thereby compromising the quality of the representation.

In 1998, there were 18,854 children in out of home

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15. MINN. STAT. § 260C.163, subd. 3(a) (2000) (emphasis added). The effective assistance of counsel standard comports with the "quality representation" and "high quality representation" described in the STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (American Bar Assoc. 1996) (adopted by the ABA House of Delegates on February 5, 1996) and the "competent representation" referred to in NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES 22 (1995).

16. MINN. STAT. § 260C.163 subd. 3(c). While Minnesota has been clear that the lawyer for the child cannot also be the guardian ad litem, in other states, such as Pennsylvania, guardians ad litem must be an attorney at law and represent both the legal and best interests of the child. *See, e.g.*, 42 PA. CONS. STAT. § 6311(a); *see generally* ABA Standards, *supra* note 15, ABA Standard A-1 (stating "[t]he term 'child's attorney' means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.").

17. MINN. STAT. § 260C.163 subd. 3(b).

18. There is agreement that all children in child protection proceedings have legal rights that need protection. For a full discussion on the appointment of counsel for every child see *Minnesota Supreme Court Foster Care and Adoption Task Force Final Report*, 102-06 (1997) [hereinafter *Adoption Task Force*].

placements in Minnesota.<sup>19</sup> Other than a few non-profit organizations,<sup>20</sup> representation for children in child protection proceedings is provided by the public defender system, a system primarily geared towards criminal proceedings. In a six county survey conducted by the Minnesota Supreme Court Foster Care and Adoption Task Force in 1997, the major metropolitan counties, Hennepin and Ramsey, showed very low rates of attorney representation for children; 5% for Hennepin County and 6% for Ramsey County.<sup>21</sup> Otter Tail and Anoka Counties had the highest rate of attorney representation for children.

Besides the unavailability of counsel for children, the child's right to effective assistance of counsel can be compromised when juvenile court and family court matters are combined. For example, when custody proceedings are between two divorcing parents—private parties—the child, one of the subjects of the proceeding, does not generally have standing to be heard in court and there is no statutory right to counsel.<sup>22</sup> Indeed, one might argue that the same rationale for providing lawyers in juvenile protection matters does not pertain in family court matters because the state is not involved in the potential removal of the child from the family or the custodial parent.

In some instances, however, juvenile protection matters are combined with family court matters, and counsel is appointed for the child because of the child protection issues. Despite the appointment, some judges decide not to hear what the child's express wishes are with regard to where the child wants to live. When the judge makes a decision *a priori* not to hear from the child or even consider the child's wishes, it is difficult not to conclude

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19. CHILDREN'S DEFENSE FUND, MINNESOTA KIDS: A CLOSER LOOK, 2001 DATA BOOK 31 (2001).

20. The Youth Law Project of Legal Aid of Minneapolis, Children's Law Center of Minnesota, and Centro Legal are among the few Minnesota non-profit organizations that represent children in CHIPS and TPR proceedings.

21. See *Adoption Task Force*, *supra* note 18 and accompanying text. Since the survey conducted in 1997, Children's Law Center of Minnesota's representation of over 350 children in CHIPS and TPR proceedings in Ramsey County changes this 6% figure. *Id.* On the other hand, Children's Law Center of Minnesota's representation of state wards in Hennepin County will not change the 5% figure because state wards were not entitled to representation before 1997. *Id.*

22. Under permissive intervention, the child has sometimes been allowed to intervene to be heard in court. Property distribution and child custody are among the subjects in divorce proceedings in family court.

that the child's access to justice is diminished.<sup>23</sup>

#### IV. PARTY VERSUS PARTICIPANT STATUS OF THE CHILD

Whether or not the child is a party in juvenile protection proceedings affects the child's access to justice. On March 1, 2000, the newly amended Minnesota Juvenile Protection Rules came into effect.<sup>24</sup> Until then, the Rules had not been amended since their enactment in December 1982. While a body of case law has not yet developed regarding the amended Juvenile Protection Rules, there is one rule that has due process and access to justice implications for children who are the subject of a child in need of protection or services ("CHIPS") proceeding or a termination of parental rights ("TPR") petition. This rule provides that the child who is the subject of a juvenile protection matter is a *participant*, not a party, in the juvenile protection matter.<sup>25</sup>

The distinction between participant and party status has created a new issue for lawyers appointed to represent children in juvenile protection proceedings. While it may not be obvious, there are significant differences between the two designations. A child who is a party has all the rights usually associated with those involved in litigation, including: the right to receive notice, have legal representation, be present at all hearings, conduct discovery, bring motions before the court, participate in settlement agreements, and otherwise participate in the action.<sup>26</sup> In contrast, the rights of a participant are *limited* to receiving notice, attending hearings, and offering information at the discretion of the court.<sup>27</sup>

The Advisory Committee Comment to the Participant Status Rule, Minnesota Rules of Juvenile Procedure 58.01, notes that "[t]he former rules did not distinguish between parties and

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23. While having a lawyer does not guarantee that the child will get his or her wish with regard to where he or she will live, having a lawyer should mean that the judge will at least listen to the child's concerns even if the judge subsequently does not grant the request. To do otherwise conjures up Dean Pound's vision of juvenile court in 1937, "The powers of the Star Chamber were a trifle in comparison with those of our juvenile courts." *In re Gault*, 387 U.S. 1, 18(1967).

24. The author was a member of the Minnesota Supreme Court Juvenile Protection Rules Committee that assisted in drafting the amended Juvenile Protection Rules.

25. MINN. R. JUV. PRO. 58.01.

26. *Id.* at 57.02.

27. *Id.* at 58.02, subd. 1.

participants.”<sup>28</sup> The new distinction was justified on the basis that “[t]here may be many individuals concerned about the best interests of a child who do not have the immediate connection to the child that justifies treating them as parties. The intent of this rule is to assure that such individuals are aware of the proceedings and are available to provide information useful to the court in making decisions concerning that child.”<sup>29</sup> If “immediate connection” to the child is the justification for treating the individual as a party, then surely the child, the subject of the petition, has the most immediate connection and, who better than the child has “information useful to the court in making decisions” concerning the child? Thus, the rationale for the rule undermines the distinction the new rule creates.

The new rule is also inconsistent with relevant statutes. For example, under Minnesota Statute section 260C.163, subdivision 2, “[a] child who is the subject of a petition, and the parents, guardian, or legal custodian of the child have the right to participate in all proceedings on a petition.”<sup>30</sup> Further, “[t]he minor and the minor’s parent, guardian, or custodian are entitled to be heard, to present evidence material to the case, and to cross-examine witnesses appearing at the hearing.”<sup>31</sup> The right to participate encompasses the right to be heard, to present evidence and to cross-examine witnesses—all rights of a party under the Minnesota Rules of Juvenile Procedure. However, unless the child is granted party status under the new Rules of Juvenile Procedure, the child will be denied the rights these statutes provide to the child.

The new Rules and the statute also differ with regard to inspection of reports and records. For example, the statute is explicit: “[a]n attorney representing a child . . . shall be given access to records, local social services agency files, and reports which form the basis of any recommendation made to the court.”<sup>32</sup> However, the Rules limit the child’s right to inspect records in some cases if the child is not a party to the proceeding. Minnesota Rules of Juvenile Procedure 67.03 provides that “[p]rior to the emergency protective care hearing, *the parties* shall be permitted to

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28. *Id.* at 58.01 cmt.

29. *Id.*

30. MINN STAT. § 260C.163, subd. 2.

31. *Id.* § 260C.163, subd. 8.

32. *Id.* § 260C.171, subd. 3.

inspect reports or other written information or records that any party intends to present at the hearing.”<sup>33</sup>

Finally, Minnesota Statutes allow a child to testify outside the courtroom setting “when it is in the child’s best interest to do so.”<sup>34</sup> However, because the statute does not refer to participants, a child who is the subject of a petition and, thus, a participant cannot move the court to receive his or her testimony outside of the courtroom unless the child is also a party. Thus, if the child is not a party, the child may not be able to use the very law enacted for his or her benefit.

Thus, if the child is not a party, the child’s lawyer cannot fulfill her responsibilities and duties to carry out the representation under the *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*.<sup>35</sup> As defined by the ABA, the term “child’s attorney” means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.<sup>36</sup>

The basic obligations of the child’s attorney include obtaining copies of all pleadings and relevant notices, participating in depositions, negotiations, discovery, pretrial conferences, and hearings and developing a theory and strategy of the case to implement at hearings.<sup>37</sup> The Commentary to *ABA Standard B-1* states: “[T]he child’s attorney should be prepared to participate fully in any proceedings and not merely defer to the other parties.”<sup>38</sup> These standards assume that the child, the subject of the proceeding, is a party.

To ensure that the client is afforded all of the rights available under Minnesota law and to ensure that counsel complies with his or her obligations, counsel appointed to represent the child should file a motion for intervention in the case. The child who is the subject of the juvenile protection matter shall have the right to intervene as a party.<sup>39</sup> Setting out the procedure for intervention of right, the Rules provide that the person with the right to intervene shall file with the court and serve upon all parties and the county

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33. MINN. R. JUV. PRO. 67.03 (emphasis added).

34. MINN. STAT. § 260C.163, subd. 6.

35. ABA STANDARDS, *supra* note 15.

36. *Id.* at Standard A-1.

37. *Id.* at Standard B-1.

38. *Id.* at Standard B-1 cmt.

39. MINN. R. JUV. PRO. 59.01, subd. 1.

attorney a notice of intervention, which shall include the basis for a claim to intervene.<sup>40</sup> The court administrator shall have the notice of intervention as a matter of right form available. The intervention shall be deemed accomplished upon service of the notice of intervention, unless a party or the county attorney files and serves written objection within ten days of the date of service. If a written objection is timely filed and served, the court shall schedule a hearing for the next available date.<sup>41</sup>

Even after the court appoints counsel for the child, attorneys for children in juvenile protection matters may find themselves having to file and argue motions to make the child, the subject of the juvenile proceedings, a party because some courts do not deem the intervention of right form to be sufficient. And, even after the child is a party, some courts have tried to limit the child's input in settlement negotiations. Arguing whether the child should or should not be a party detracts from the main issues before the juvenile court, such as termination of parental rights, sibling visits, where and with whom the child will live, and access to services.

Recognizing the anomalous distinction between the party and participant status of children, courts in one district have resolved the problem by making all children, age ten and older, parties. Noting that it made no particular sense to have the subject of the petition be deemed a participant rather than a party, Chisago, Isanti, Pine and Kanabec counties in the Tenth Judicial District all have adopted a standing order for all CHIPS cases that all children age 10 and older are deemed to be parties. This approach alleviates the problem for lawyers in these counties.<sup>42</sup> However, the issue remains in other jurisdictions.

It is fair to say that in no other matter where lawyers are required to provide effective assistance of counsel is there a distinction between party and participant status of the client. Given the procedural rights that flow from party status, such as access to process, the child's due process rights are compromised when the child is deemed a participant. *Gault* is again instructive on this issue: "Departures from established principles of due

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40. *Id.* at 59.03, subd. 1

41. *Id.* While there is a presumption that intervention should be granted, Children's Law Center of Minnesota's lawyers for children have had to file briefs and argue the motion.

42. Children's Law Center of Minnesota was successful in persuading the court in another county to deem the child a party in the same order appointing Children's Law Center of Minnesota to represent the child.

process have frequently resulted not in enlightened procedure, but in arbitrariness.”<sup>43</sup>

In sum, although not intended at the time the rule was changed, the new rule making the child a participant and not a party presents a significant barrier to the child's access to justice.

#### V. EFFECTIVE ASSISTANCE OF COUNSEL

Meaningful access to justice in juvenile protection proceedings is realized through quality representation provided by competent and diligent lawyers. The *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, promulgated by the American Bar Association in 1996, grew out of concerns of child advocates that even when children were represented, the representation they received was often times inadequate.<sup>44</sup>

The *Standards* were adopted for two main reasons: to give guidance to aid lawyers representing children in abuse and neglect cases and to help implement ABA resolutions on “the importance of legal representation and the improvement of lawyer practice in child protection cases.”<sup>45</sup> In essence, they provide a comprehensive guide to lawyers appointed to represent children.

The *Standards* contain two parts: first “the specific roles and responsibilities of a lawyer appointed to represent a child in an abuse and neglect case;” and second “a set of standards for judicial administrators and trial judges to assure high quality legal representation.”<sup>46</sup>

The *Standards* make clear that the “child's attorney” means “a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.”<sup>47</sup> Similarly, the *Standards* explicitly recognize that the child is a separate

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43. In re Gault, 387 U.S. 1, 18-19 (1967).

44. AMERICAN BAR ASSOCIATION, AMERICA'S CHILDREN AT RISK: A NATIONAL AGENDA FOR LEGAL ACTION 6 (1993). On the subject of representation, it stated: “Children's cases are often ‘processed’ not advocated, and too frequently children's interests are poorly represented. . . . Meaningful protection of children's rights requires that children be represented by highly skilled counsel at critical stages of critical proceedings. Competent professional representation in proceedings that involve children is vital in a system where decisions about children's rights and liberties and those of their parents are decided.” *Id.* at 7.

45. ABA STANDARDS, *supra* note 15, at Preface.

46. *Id.*

47. *Id.* at Standard A-1.

individual with potentially discrete and independent views. To ensure that the child's independent voice is heard, the child's attorney must advocate the child's articulated position."<sup>48</sup> Thus, the child's lawyer "owes traditional duties to the child as client" consistent with the rules of professional conduct.<sup>49</sup>

Communication with the child must be "developmentally appropriate" which means that "the child's attorney should ensure the child's ability to provide client-based directions by structuring all communications to account for the individual child's age, level of education, cultural context, and degree of language acquisition."<sup>50</sup>

The *Standards* recognize that the foundation for representing children is "establishing and maintaining a relationship with the child."<sup>51</sup> Therefore, meeting with the child is important before court hearings and case reviews as well as when there are "changes in placement, school suspensions, in-patient hospitalizations, and other similar changes. Such in-person meetings allow the lawyer to explain to the child what is happening, what alternatives might be available, and what will happen next."<sup>52</sup> The child's lawyer must conduct "thorough, continuing, and independent investigations and discovery which may include, reviewing the child's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case."<sup>53</sup>

The child's lawyer has the basic obligation to not merely be a fact finder, but rather to zealously advocate a position on behalf of the child. It is therefore critical that the child's lawyer be adequately prepared prior to hearings and that the attorney be present at and actively participate in all hearings.<sup>54</sup>

Thus, the lawyer should:

1. Obtain copies of all pleadings and relevant notices;
2. Participate in depositions, negotiations, discovery, pretrial conferences, and hearings;
3. Inform other parties and their representatives that he or she is representing the child and expects reasonable

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48. *Id.* at Standard A-1 cmt.

49. *Id.*

50. *Id.* at Standard A-3.

51. *Id.* at Standard C-1

52. *Id.* at Standard C-1 cmt.

53. *Id.* at Standard C-2.

54. *Id.* at Standard C-2, Standard B-1 cmt.

notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;

4. Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;

5. Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;

6. Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and

7. Identify appropriate family and professional resources for the child.<sup>55</sup>

The *Standards* are also explicit about the duties of the lawyer with regard to hearings: "The child's attorney should attend all hearings and participate in all telephone or other conferences with the court."<sup>56</sup> In addition,

the child's attorney should make appropriate motions, including motions *in limine* and evidentiary objections, to advance the child's position at trial or during other hearings. If necessary, the child's attorney should file briefs in support of evidentiary issues. Further, during all hearings, the child's attorney should preserve legal issues for appeal, as appropriate.<sup>57</sup>

Finally, "the child's attorney should present and cross examine witnesses, offer exhibits, and provide independent evidence as necessary."<sup>58</sup>

The *Standards* also counsel that the child "should be present at significant court hearings, regardless of whether the child will testify."<sup>59</sup> The Commentary explains that the child has a right to "meaningful participation in the case . . . and the child's presence underscores for the judge that the child is a real party in interest in the case."<sup>60</sup>

In addition, the *Standards* explain that even when "[t]he

55. *Id.* at Standard B-1.

56. *Id.* at Standard D-1.

57. *Id.* at Standard D-3.

58. *Id.* at Standard D-4.

59. *Id.* at Standard D-5.

60. *Id.* at Standard D-5 cmt.

child's position . . . overlaps with the positions of one or both parents, third-party caretakers, or a child protection agency, . . . the child's attorney should be prepared to participate fully in every hearing and not merely defer to the other parties. Any identity of position should be based on the merits of the position . . . and not a mere endorsement of another party's position."<sup>61</sup>

After the hearing, the lawyer "should review all written orders to ensure that they conform with the court's verbal orders and statutorily required findings and notices."<sup>62</sup> Furthermore, the lawyer should discuss the order and its consequences with the child.<sup>63</sup>

Thus, the *Standards* are an indispensable tool for lawyers in providing effective assistance of counsel to children in juvenile protection proceedings.<sup>64</sup>

## VI. CONCLUSION

Because what happens in court shapes the child's future, access to effective assistance of counsel matters most.<sup>65</sup> On a daily basis, judges make difficult decisions that affect the lives of children of all ages, races and cultures; it is, therefore, reasonable to assume that hearing from the lawyers who speak on behalf of these children is helpful in making those decisions. Thus, providing children with "high quality representation," as provided by the *ABA Standards*, is imperative. Without such representation, the child's access to justice is an empty promise.

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61. *Id.* at Standard D-4 cmt.

62. *Id.* at Standard E-1.

63. *Id.* at Standard E-2.

64. The ABA STANDARDS also describe the role of the judiciary in enhancing the legal representation for children including assuring independence of the child's attorney, assisting in the training of lawyers, assuring adequate compensation of children's lawyers and authorizing lawyer access to files. *Id.* at Part II—Enhancing the Judicial Role in Child Representation.

65. See Bruce A. Green & Bernardine Dohrn, *Foreword: Children and the Ethical Practice of Law*, 64 *FORDHAM L. REV.* 1281 (1996).