

ANNOTATED BIBLIOGRAPHY

WORKING WITH CHILDREN: ETHICAL ISSUES AND STANDARDS OF PRACTICE

Vera Institute of Justice / Unaccompanied Children Program

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TABLE OF CONTENTS

INTRODUCTION.....	3
PART I: OVERVIEW OF ETHICAL ISSUES IN THE REPRESENTATION OF CHILDREN	4
PART II: SPECIFIC ETHICAL CONSIDERATIONS IN THE REPRESENTATION OF CHILDREN	9
PART III: ETHICAL GUIDELINES AND STANDARDS OF PRACTICE	18
PART IV: SPECIAL CONSIDERATIONS FOR WORKING WITH IMMIGRANT CHILDREN	24

INTRODUCTION

This annotated bibliography is meant as a resource for Vera network legal services providers (LSPs) who are working with unaccompanied immigrant children (UAC) who are, or have been, in immigration detention. As such, it presents a survey of existing resources on legal ethics and standards of practice for representing children of various ages, circumstances, and backgrounds.

This bibliography draws on a wide variety of resources, ranging from academic articles to conference reports to toolkits developed by advocacy organizations. Not all of the sources that are included are targeted to attorneys or involve the immigration legal context. Some discuss representing children involved in child custody or juvenile justice proceedings rather than immigration cases. Others focus on particular ethical challenges of representing a child in a legal case – such as confidentiality, conflicts of interest, and decision-making. Although many of the sources are not explicitly written for providers working with children on immigration cases, they have been included because they contain information that may be helpful in such contexts.

This annotated bibliography is comprised of four parts. **Part I** includes a selection of resources that provide an overview of the ethical considerations that arise when representing children. **Part II** contains articles on specific ethical considerations in the representation of children. **Part III** provides guidelines and standards of practice in representing children. Finally, **Part IV** focuses on specific considerations in representing immigrant children. Because some of the resources contain information on each of these themes, they are listed in multiple categories.

Please contact Daniel Bloch at dbloch@vera.org with any questions or comments.

**PART I:
OVERVIEW OF ETHICAL ISSUES
IN THE REPRESENTATION OF CHILDREN**

American Immigration Lawyers Association (AILA). 2014. **Ethical Issues in Representing Children in Immigration Proceedings**. (Retrieved December 22, 2014). (http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_uac_public_aila_practice_advisory.authcheckdam.pdf).

This brief practice advisory applies the ABA Model Rules of Professional Conduct to ethical challenges faced by lawyers serving children in removal proceedings. The advisory builds on a series of questions, including:

- What is the governing source of ethical guidance for representing minors before the immigration court or agencies?
- Which state rules of professional conduct govern when the tribunal is in one place and the attorney need not be admitted in that jurisdiction to practice there?
- Are there any special rules regarding communications with children?
- What do you do about engagement letters with minors? At what age are engagement letters required/advisable/useless?
- When should a lawyer representing a minor seek to appoint a guardian or guardian *ad litem* in order to go forward in the removal proceeding?
- Are there any other circumstances when an attorney should seek appointment of a guardian?
- How do I deal with conflicts of interest (especially as it pertains to SIJS cases)?

The advisory concludes with the acknowledgement that while “the ethical rules governing a lawyer’s conduct with respect to the representation of minors are far from clear, they should not serve as obstacles to the overriding goal of providing the needed representation” which can have a “significant impact” on the child client’s life.

Chaplan, Janet A. March 1996. **“Youth Perspectives on Lawyers’ Ethics: A Report on Seven Interviews.”** Fordham Law Review 64(1763). (Retrieved from Westlaw on October 10, 2010) (<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3248&context=flr>).

This article includes advice and first-hand experiences from seven youths who each had successful relationships with their respective providers while navigating dependency proceedings in court. It begins by discussing the ethics of being involved in the decision-making process (p. 3-7). Although the youths take different positions on who should make the ultimate decisions, they all valued the opportunity to have their attorneys get to know them and stressed the importance of client-centered conversations. In the next section, the interviewees describe the factors that both help and hinder interviewer-client communication (p. 7-12). Because of the format of the article, which features transcribed excerpts of the youths’ interviews with the author, the recommendations it contains are not as readily accessible as an article in a list format. Nonetheless, here is a brief summary of the recommendations contained in this resource:

- Helpful characteristics in an interviewer/attorney:

- Taking the time to develop a relationship with the client;
 - Listening to the client and engaging in dialogue;
 - Respecting the client's individuality;
 - Awareness that some child clients may view an attorney as an adult who can protect them rather than simply as a lawyer; and
 - Awareness that in the case of neglect or abuse, some youth may be more concerned with their attorneys protecting them from future neglect or abuse than with having them keep this information confidential.
- Unhelpful characteristics in an interviewer/attorney:
 - Being continuously absent or rushed;
 - Maintaining a manner that is unfriendly and uncaring and does not promote trust; and
 - Using a narrow interview technique that does not take into account larger issues affecting the child.

This article is unique in that it includes the experiences of former child clients told in their own voices.

Fordham Conference on Ethical Issues in the Legal Representation of Children. March 1996.

“Recommendations of the Conference on Ethical Issues in the Legal Representation of Children.” Fordham Law Review 64(1301). (Retrieved from Westlaw on October 10, 2010) (<http://rcif.law.unlv.edu/sites/rcif.law.unlv.edu/files/Fordham%20Conference%20Recommendations.pdf>).

This article spans a wide breadth of suggestions from the Fordham Conference on Ethical Issues in the Legal Representation of Children. It offers recommendations on practice guidelines for the appropriate role of lawyers for children; interviewing and counseling; confidentiality; representing preverbal and impaired children; determining the capability of a verbal child to direct representation; obligations of guardians *ad litem*; and identifying and resolving conflicts of interest. This article gives a detailed overview of some of the main topics that arise when determining appropriate standards of practice for attorneys representing child clients.

Green, Bruce A. and Bernardine Dohrn. March 1996. **“Foreword: Children and the Ethical Practice of Law.”** Fordham Law Review 64 (1281). (Retrieved from Westlaw on October 10, 2010) (<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3231&context=flr>).

This article presents a summary of recommendations on issues addressed by the individual Working Groups at the Conference on Ethical Issues in the Legal Representation of Children at Fordham University School of Law. These recommendations touch on issues such as the appropriate role for a child's LSP, child-client capacity, LSP-client communication, decision-

making, and cross-cultural sensitivity. However, given that this article summarizes the recommendations suggested at the Fordham Conference and does not go into substantial depth, it would best be used as an introduction to more detailed resources concerning appropriate standards of practice for an LSP representing a child client.

Jackson, Kristen, Meredith Linsky and Elissa Steglich. 2014. **“Representing Children in Removal Proceedings: Ethical and Practical Issues.”** American Immigration Lawyers Association’s Immigration Practice Pointers (2014-15 Ed.), AILA Publications. (Retrieved January 5, 2014) (<http://www.americanbar.org/content/dam/aba/administrative/immigration/UACEthicsAILAOct2014.authcheckdam.pdf>).

This brief article adopts an encouraging and plain-spoken tone as it explores a practitioner’s responsibilities to a child client, as well potential ethical issues an attorney might face while building a relationship with his or her client. With a focus on ensuring that attorneys do not simply treat children “like miniature adults,” the article offers several specific recommendations for how to approach working with a child client in removal proceedings, organized in the following sub-sections:

- Setting the parameters of the attorney-client relationship;
- Building rapport at the initial stages;
- Communicating with a child client;
- Questioning a child client;
- Establishing the role of the attorney-client relationship; and
- Keeping in mind the best interests of the child.

The article concludes with a thoughtful consideration of juvenile delinquency adjudications and their possible ramifications on both a child’s case and the attorney’s handling of the case, as well as a brief overview of the most common forms of relief available to unaccompanied children – asylum and SIJS. It also includes a reminder to screen for Deferred Action for Childhood Arrivals (DACA) and to consider requesting prosecutorial discretion when and if appropriate.

Mlyniec, Wallace J. 1996. **“A Judge’s Ethical Dilemma: Assessing a Child’s Capacity to Choose.”** Fordham Law Review 64 (1873). (Retrieved from Westlaw July 15, 2013).

This article analyzes the ethical issues surrounding capacity determinations of children from the point of view of a judge. It begins with some background on child development theory (p. 1875) and decision-making capacity (p. 1883) before moving on to the specific areas of law where judicial determinations of a child’s capacity are most frequently made (p. 1886), which includes custody, adoption, abortion, health, and delinquency. It then concludes with some recommendations for how to make more ethical determinations of children’s decision-

making capacity (p. 1903).

Somers, Aryah M. 2014. **“Children in Immigration Proceedings: Concepts of Capacity and Mental Competency.”** Produced for the Vera Institute of Justice’s Unaccompanied Children Program. Available through the password-protected Extra Legal workspace at <http://my.hdle.it/36832499>.

Aiming to develop a general understanding of the concepts of capacity and competency and the different types of limited capacity in children—intellectual and cognitive disabilities, mental health disorders and those related to child development—this resource addresses the ways in which a child’s capacity is implicated in the immigration legal context in a wide variety of decisions or tasks including, for example, filing for legal relief, providing assistance to his or her attorney, and agreeing to be interviewed as a victim or witness of trafficking. It provides practical tools and best practices for identifying children with limited capacity and how to determine a child’s decision-making ability, as well as interviewing and counseling these children. Furthermore, it explores the role of the attorney, including ethical considerations and when attorneys should take protective action when working with children in the immigration context.

**PART II:
SPECIFIC ETHICAL CONSIDERATIONS
IN THE REPRESENTATION OF CHILDREN**

American Bar Association (ABA). August 2004. **“Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States.”** (Retrieved June 28, 2012) (<http://tinyurl.com/8r39l7u>)

This comprehensive document presents a set of holistic and child-centered standards for the custody, placement, care, legal representation, and adjudication of UAC. It discusses the full rights of children, the legal service provider’s (LSP) appropriate role, and standards of professional conduct, as well as suitable standards for the custody, placement, and care of UAC. This resource also includes a brief section on child-sensitive and culturally appropriate interviewing techniques (p. 16-18), establishing the client relationship and creating a child-appropriate setting (p. 24-26), and strategies for using an interpreter (p. 26-27). While it touches on a number of topics, the bulk of this document is devoted to the rights and procedures concerning UAC in the contexts of custody, placement, care, and adjudication.

American Immigration Lawyers Association (AILA). 2014. **Ethical Issues in Representing Children in Immigration Proceedings.** (Retrieved December 22, 2014) (http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lc_pb_uac_public_aila_practice_advisory.authcheckdam.pdf).

This brief practice advisory applies the ABA Model Rules of Professional Conduct to ethical challenges faced by lawyers serving children in removal proceedings. The advisory builds on a series of questions, including:

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Appell, Annette Ruth. Summer 2008. **“Representing Children, Representing What?: Critical Reflections on Lawyering for Children.”** Columbia Human Rights Law Review 39 (3): 573-635. (Retrieved from SocINDEX on July 16, 2012) (http://www3.law.columbia.edu/hrlr/hrlr_journal/39.3/Appell_preview.pdf).

This article reflects on some of the challenges that arise for LSPs who are representing children, arguing that they should ultimately “pursue different methods for achieving justice for children that are more holistic and reflective of the norms of child clients, their families, and their communities.” It is divided into the following sections:

- Part I presents the Introduction;
- Part II discusses the social construction of childhood and its implications in representing a child (p. 8-14);
- Part III describes the children’s bar (p. 14-23);
- Part IV is devoted to reflections about children’s attorneys and norms and is divided into five “observations”:
 - The extraordinary power of children’s attorneys (p. 23-30);
 - The parental role of children’s attorneys (p. 30-36);
 - Disparities between children’s attorneys and the clients they serve (p. 36-39);
 - Children’s rights as reinforcing dominant social norms (p. 40-47); and
 - The tendency for children’s attorneys to take legalistic approaches to problem-solving, rather than addressing systematic socio-economic conditions relating to their clients (p. 47-51);
- Part V examines the intersection of children’s rights and representation (p. 51-63).

This article presents more of a critique of existing paradigms for representing children than a set of concrete recommendations for transforming them. In addition, some of the content may be more applicable to LSPs representing children in the child welfare or juvenile justice systems.

Buss, Emily. March 1996. **“You’re My What? The Problem of Children’s Misperceptions of their Lawyers’ Roles.”** Fordham Law Review 64 (1699). (Retrieved from Westlaw on October 10, 2010) (<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3247&context=flr>).

This article examines the issue of a lawyer’s duty to communicate his or her role to the child client, particularly in dependency and custody proceedings. It begins by summarizing the current debate of the lawyer’s appropriate role (p. 2-3) – the “traditional attorney” versus the “guardian *ad litem* (GAL)” model. It then discusses how children may misperceive the role of their lawyer (p. 3-5) and the importance of correct perceptions (p. 5-7), in fostering the client-lawyer relationship, client trust, and maintaining ethical representation. In doing so, it draws on guidance from the Model Rules of Professional Conduct to examine the ethical obligations under both the traditional

attorney and GAL models (p. 7-19), and discusses the value of ethical representation to children (p. 19-20). The following section then attempts to reconcile the lawyer's ethical obligations with the child's capacity to understand the lawyer's role (p. 19-22). The article concludes with a discussion of how to effectively communicate the lawyer's actual role to the child by drawing on lessons from developmental psychology and learning theory (p. 22-26).

Federle, Katherine Hunt. March 1996. **"The Ethics of Empowerment: Rethinking the Role of Lawyers in Interviewing and Counseling the Child Client."** Fordham Law Review 64(1655). (Retrieved from Westlaw on October 10, 2010) (<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3246&context=flr>).

This article begins by reviewing two dominant lawyering paradigms – the client autonomy model and the lawyer autonomy model. It proceeds to analyze how issues of client autonomy and capacity interact with lawyering models in delinquency, abuse and neglect, and divorce custody proceedings, respectively. The article also discusses how client competence affects the way in which an attorney communicates with his or her client. It concludes with a discussion of a lawyering approach that stems from an empowerment perspective on the rights of children and how such an approach affects the methods used for interviewing and counseling a child client. This article explores the way in which different lawyering philosophies influence an LSP's interactions with the child client. However, it offers few practical strategies for implementing the lawyering approach it describes.

Fordham Conference on Ethical Issues in the Legal Representation of Children. March 1996. **"Recommendations of the Conference on Ethical Issues in the Legal Representation of Children."** Fordham Law Review 64(1301). (Retrieved from Westlaw on October 10, 2010) (<http://rcif.law.unlv.edu/sites/rcif.law.unlv.edu/files/Fordham%20Conference%20Recommendations.pdf>).

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Guggenheim, Martin. March 1996. **“A Paradigm for Determining the Role of Counsel for Children.”** Fordham Law Review 64(1399). (Retrieved from Westlaw on October 10, 2010) (<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3240&context=flr>).

This article proposes a methodology for determining the role of counsel for children at different levels of development. Stating that a lawyer’s first and foremost role is to enforce and advance his or her client’s legal rights, the article argues that determining the role of counsel for children necessitates “a careful study of the legal rights that a child enjoys in the particular subject matter implicated by the proceeding.” The article then proceeds to apply its proposed paradigm to juvenile delinquency, custody, and child protective proceedings, respectively. Overall, this article may be helpful to LSPs seeking to adopt an appropriate and ethical approach for advocating for children.

Jackson, Kristen, Meredith Linsky and Elissa Steglich. 2014. **“Representing Children in Removal Proceedings: Ethical and Practical Issues.”** American Immigration Lawyers Association’s Immigration Practice Pointers (2014-15 Ed.), AILA Publications. (Retrieved January 5, 2014) (<http://www.americanbar.org/content/dam/aba/administrative/immigration/UACEthicsAILAOct2014.authcheckdam.pdf>).

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Margulies, Peter. March 1996. **“Report of the Working Group on Determining the Child’s Capacity to Make Decisions.”** Fordham Law Review 64(1339). (Retrieved from Westlaw on October 10, 2010) (<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3234&context=flr>).

This article presents the recommendations of the Working Group on Determining the Child’s Capacity to Make Decisions from the Fordham Conference on Ethical Issues in the Legal Representation of Children. It examines factors to be considered by lawyers when determining a child client’s capacity. These include the child’s developmental stage, medical status, and personal history. During the “determination phase,” LSPs should consider the clients ability to communicate with the lawyer, the individuals decision-making process, and his or her ability to understand consequences.

Margulies, Peter. March 1996. **“The Lawyer as Caregiver: Child Client’s Competence in Context.”** Fordham Law Review 64(1473). Retrieved from Westlaw on October 10, 2010) (<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3242&context=flr>).

This article examines how to determine competence when representing a child client. After briefly describing elements that influence child capacity and discussing two competing legal approaches to determining child competence, the article seeks to apply a contextual approach to assessing the competence of a child. The author argues that a determination of client capacity should be informed by several factors, including the child’s ability to articulate reasoning, variability of state of mind, and his or her ability to understand consequences. The article also describes a contextual approach for representing an “incompetent child.” The suggestions described in this article may be especially relevant for LSPs representing children with diminished capacity due to disability or lack of education.

Maze, Candice L., JD. October 2010. **“Advocating for Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation.”** Washington DC: American Bar Association, Center on Children and the Law. (Retrieved February 15, 2012) (<http://tinyurl.com/9ypbgxb>).

This resource addresses the ethical standards and practice challenges that arise in working with very young children in child welfare cases. It states that child welfare advocacy for very young children should be child-centered, research-informed, permanency-driven, and holistic, and examines each of these standards in detail. It includes a table of developmentally appropriate activities to help build the attorney-client relationship (p. 11), as well as a list of “developmental milestones” for children of different ages (p. 27). This resource also discusses ways to handle ethical issues that arise, such as representing a child with “diminished capacity,” determining a

young child's interests, and conducting "diligent representation."

Mohr, Pamela. March 1996. **"Report of the Working Group on the Allocation of Decision Making."** Fordham Law Review 64(1325). (Retrieved from Westlaw on October 10, 2010) (<http://tinyurl.com/9jzodg6>).

This article presents recommendations from the Working Group on the Allocation of Decision Making that met at the Fordham Conference on Ethical Issues in the Legal Representation of Children. It discusses the allocation of decision-making in legal proceedings when the LSP is representing children of varying capacities - an unimpaired child, a preverbal child, and a verbal but impaired child. In doing so, it reflects on a crucial issue that may arise for LSPs representing a child client, as well as for those acting as a GAL.

Moore, Nancy J. March 1996. **"Conflicts of Interests in the Representation of Children."** Fordham Law Review 64(1819). (Retrieved from Westlaw on October 10, 2010) (<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3250&context=flr>).

This article considers possible conflicts of interest in representing children. Conflicts of interest (which are distinguished from "conflicting interests") may arise when a lawyer is representing more than one client – such as multiple siblings or a child and a parent – or when client representation is jeopardized by the lawyer's duties to a non-client or by the lawyer's own interests. While untangling some of these conflicts, the author's central point is that such unique aspects of the representation of children often "call for an analysis far more complex than that typically encountered in even the most intractable conflicts" involving adults.

Nugent, Christopher and Steven Schulman. 2001. **"Giving Voice to the Vulnerable: On Representing Detained Immigrant and Refugee Children."** Child Clients are Different: Best Practices for Representing Unaccompanied Minors. American Bar Association (ABA) Center for Continuing Legal Education (CLE). (Retrieved July 16, 2012) (<http://tinyurl.com/9x4mo86>).

This is an essential resource for LSPs working with immigrant and refugee children – and one of the few articles that describes interviewing children who are currently in detention. It discusses the legal advocate's role in representing this specific group (p. 2-3), as well as developmental considerations for children of different ages (p. 3-5) (5 and under, 6 to 12, 13 to 18). The article then discusses various techniques for interviewing children in INS custody (p. 5-9). It concludes with a section on protecting the rights and securing the release of a child from INS (p. 10-19),

focusing on children's remedies from removal (p. 13-19). Ultimately, this is a key resource for LSPs who represent detained immigrant children.

Peters, Jean Koh. March 1996. **"The Roles and Content of Best Interests in Client- Directed Lawyering for Children in Child Protective Proceedings."** Fordham Law Review 64(1505). (Retrieved from Westlaw on October 10, 2010) (<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3243&context=flr>).

This article argues that lawyers representing children in protective proceedings must be guided in their role by Rule 1.14 in the Model Rules of Professional Conduct by representing the "best interests" of the child. It begins by examining four existing models for determining best interests: the guardian *ad litem* Model, the Expert Deference Model, the Psychological Parent Model, and the Family Network Model. It then presents an "integrated model" of guidelines for making determinations of the child client's best interests (p. 51-60), and makes several recommendations for effective representation (p. 61-66). This article offers an in-depth examination of the challenges that arise in determining the best interests of a child client.

Pinard, Michael. 2006. **"The Logistical and Ethical Difficulties in Informing Juveniles about the Collateral Consequences of Adjudications."** Nevada Law Journal 6(1111). (Retrieved from Westlaw on June 19, 2013) (<http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1394&context=nlj>).

This article combines traditional practice techniques, ethical considerations, and criminal law theory to discuss the collateral consequences of adjudications on children, particularly regarding the effects of criminal convictions. These convictions affect everything from eligibility for public benefits, to voting rights, to employment, to eligibility for relief from removal. Reading this article in conjunction with *Padilla v. Kentucky* (559 U.S. 356 (2010)) may help practitioners better understand their ethical obligations to consider and inform *immigrant* children of the collateral consequences of any criminal pleadings or convictions.

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Aiming to develop a general understanding of the concepts of capacity and competency and the different types of limited capacity in children—intellectual and cognitive disabilities, mental health

disorders and those related to child development—this resource addresses the ways in which a child’s capacity is implicated in the immigration legal context in a wide variety of decisions or tasks including, for example, filing for legal relief, providing assistance to his or her attorney, and agreeing to be interviewed as a victim or witness of trafficking. It provides practical tools and best practices for identifying children with limited capacity and how to determine a child’s decision-making ability, as well as interviewing and counseling these children. Furthermore, it explores the role of the attorney, including ethical considerations and when attorneys should take protective action when working with children in the immigration context.

PART III:
ETHICAL GUIDELINES AND STANDARDS OF PRACTICE

American Bar Association (ABA). 1996. **“American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases.”** (Retrieved August 8, 2012) (http://www.americanbar.org/content/dam/aba/migrated/family/reports/standards_abuseneglect.authcheckdam.pdf).

This seminal document establishes a set of ABA-approved standards for attorneys representing children in abuse and neglect cases. Part I, which is of most relevance, addresses the specific responsibilities of a lawyer appointed to represent a child in an abuse and neglect case. These describe general authority and duties, including those regarding conflict, clients with disabilities, client preferences and interests; actions to be taken, including when meeting with the child, investigating the case, filing pleadings, requesting services, and assisting children with special needs; and appropriate conduct during the hearing, post-hearing, and appeal. Part II provides a set of standards for judicial administrators and trial judges to assure high-quality legal representation.

American Bar Association (ABA). August 2004. **“Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States.”** (Retrieved June 28, 2012) (<http://tinyurl.com/8r39I7u>).

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- Which state rules of professional conduct govern when the tribunal is in one place and the attorney need not be admitted in that jurisdiction to practice there?
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Elrod, Linda D. March 1996. **“An Analysis of the Proposed Standards of Practice for Lawyers Representing Children in Abuse and Neglect Cases.”** Fordham Law Review 64(1999). (Retrieved from Westlaw on October 10, 2010) (<http://washburnlaw.edu/faculty/elrod-linda-fulltext/1996-64fordhamlawreview1999.pdf>).

This article presents an analysis of standards of practice for lawyers who are representing children in abuse and neglect cases, in response to the 1995 “Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases” approved by the Family Law Section of the American Bar Association. Relevant issues addressed include the allocation of decision-making, the capacity of the child to make decisions, confidentiality, and conflicts of interest (such as between the child’s wishes and the lawyer’s perception of the child’s best interest). This article raises some key issues that may arise for attorneys representing children in a variety of proceedings.

Fordham Conference on Ethical Issues in the Legal Representation of Children. March 1996. **“Recommendations of the Conference on Ethical Issues in the Legal Representation of Children.”** Fordham Law Review 64(1301). (Retrieved from Westlaw on October 10, 2010) (<http://rcif.law.unlv.edu/sites/rcif.law.unlv.edu/files/Fordham%20Conference%20Recommendations.pdf>).

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the Legal Representation of Children. It offers recommendations on practice guidelines for the appropriate role of lawyers for children; interviewing and counseling; confidentiality; representing preverbal and impaired children; determining the capability of a verbal child to direct representation; obligations of guardians *ad litem*; and identifying and resolving conflicts of interest. This article gives a detailed overview of some of the main topics that arise when determining appropriate standards of practice for attorneys representing child clients.

Herman, Gregg. March 1996. **“Report of the Working Group on Interviewing and Counseling.”** Fordham Law Review 64(1351) (Retrieved from Westlaw on October 10, 2010) (<http://tinyurl.com/9fa37xt>).

This article presents recommendations from the Working Group on Interviewing and Counseling that met at the Fordham Conference on Ethical Issues in the Legal Representation of Children regarding changes to the ABA Model Rule of Professional Conduct 1.14, which guides attorney relationships with clients with “diminished capacity.” Section II (p. 4-10) is most relevant, featuring recommendations on practice guidelines for working with child clients. These suggestions concern the location, frequency, and substance of contact, as well as strategies for working with “noncommunicative” clients. Although this article consists of recommended changes to professional guidelines, some of the suggestions may be useful in and of themselves when interviewing clients, particularly those outlined in section D, “Substance of contact” (p. 6-8).

Jackson, Kristen, Meredith Linsky and Elissa Steglich. 2014. **“Representing Children in Removal Proceedings: Ethical and Practical Issues.”** American Immigration Lawyers Association’s Immigration Practice Pointers (2014-15 Ed.), AILA Publications. (Retrieved January 5, 2014) (<http://www.americanbar.org/content/dam/aba/administrative/immigration/UACEthicsAILAOct2014.authcheckdam.pdf>).

This brief article adopts an encouraging and plain-spoken tone as it explores a practitioner’s responsibilities to a child client, as well potential ethical issues an attorney might face while building a relationship with his or her client. With a focus on ensuring that attorneys do not simply treat children “like miniature adults,” the article offers several specific recommendations for how to approach working with a child client in removal proceedings, organized in the following sub-sections:

- Setting the parameters of the attorney-client relationship;
- Building rapport at the initial stages;
- Communicating with a child client;

- Questioning a child client;
- Establishing the role of the attorney-client relationship; and
- Keeping in mind the best interests of the child.

The article concludes with a thoughtful consideration of juvenile delinquency adjudications and their possible ramifications on both a child's case and the attorney's handling of the case, as well as a brief overview of the most common forms of relief available to unaccompanied children – asylum and SIJS. It also includes a reminder to screen for Deferred Action for Childhood Arrivals (DACA) and to consider requesting prosecutorial discretion when and if appropriate.

Mandelbaum, Randi. March 1996. **“Rules of Confidentiality when Representing Children: The Need for a Bright Line Test.”** Fordham Law Review 64(2053). (Retrieved from Westlaw on October 10, 2010) (<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3262&context=flr>).

This brief article comments on the discussion at the Conference on Ethical Issues in the Legal Representation of Children concerning Rule 1.6, “Confidentiality of Information,” of the ABA Model Rules for Professional Conduct. Of particular relevance is the second issue addressed in the article pertaining to the application of Rule 1.6 when representing an impaired child (such as a nonverbal child or one with developmental disabilities). The article ultimately argues for the development of a “bright line” test which would determine whether a child is deemed “impaired” and whether or not Model Rule 1.6 regarding confidentiality should apply.

National Association of Counsel for Children (NACC). 2001. **“NACC Recommendations for Representation of Children in Abuse and Neglect Cases.”** (Retrieved October 10, 2010) (<http://tinyurl.com/98ekpbz>).

The most relevant section of this article on representing children in abuse and neglect proceedings is Part III (p. 6-10), which presents a checklist of the needs of children involved in abuse and neglect cases. These range from the child's need for meaningful communication with his or her attorney to the need to be protected from unnecessary harm from legal proceedings. They ultimately constitute more of a list of characteristics a child seeks in his or her attorney than a set of standards of practice. Nonetheless, the items are recommended reading for any attorney who is working with a child client who has experienced abuse or neglect.

Tandy, Kim Brooks and Teresa Heffernan. 2006. **“Representing Children with Disabilities: Legal and Ethical Considerations.”** Nevada Law Journal 6(1396). (Retrieved June 19, 2013) (<http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1413&context=nlj>).

This article addresses the dilemmas faced by lawyers who represent children with claims that fall under the Individuals with Disabilities Education Act (IDEA). It discusses the legal theories surrounding children as clients in IDEA cases (p. 1397), suggests strategies for involving parents and guardians while avoiding conflicts of interest (p. 1401), and proposes ways to address any difficulties with client-centered representation (p. 1405).

US Department of Justice, Office of the Chief Immigration Judge. 2004. **“Interim Operating Policies and Procedures Memorandum 04-07: Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children,”** in Child Clients are Different: Best Practices for Representing Unaccompanied Minors. American Bar Association (ABA) Center for Continuing Legal Education (CLE). (Retrieved July 16, 2012) (<http://tinyurl.com/9x4mo86>).

This memorandum outlines Department of Justice guidelines on cases involving immigrant children, and focuses on how to effectively question an immigrant child in a courtroom setting. It begins with a brief description of the basic principles of representing a child (p. 3-4), such as keeping the child’s best interest in the forefront. Next, the memo presents the appropriate procedures for enabling a child to effectively testify in court (p. 6-7). Attorneys and judges should:

- Be mindful of the interpreter;
- Be aware of the time, as stress and fatigue can impact the child’s ability to participate;
- Explain to the child that it is all right if they don’t know the answer to a question;
- Employ child-sensitive questioning, with careful attention to language and tone;
- Recognize that children will not be able to present testimony with the same precision as adults; and
- Ensure that there are as few people in the court as possible.

Additionally, “Attachment A” (p. 9-10) includes tips for “child-sensitive questioning” techniques issued by DHS.

PART IV:
SPECIAL CONSIDERATIONS FOR WORKING WITH IMMIGRANT CHILDREN

American Bar Association (ABA). August 2004. **“Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States.”** (Retrieved June 28, 2012) (<http://tinyurl.com/8r39l7u>).

This comprehensive document presents a set of holistic and child-centered standards for the custody, placement, care, legal representation, and adjudication of UAC. It discusses the full rights of children, the legal service provider’s (LSP) appropriate role, and standards of professional conduct, as well as suitable standards for the custody, placement, and care of UAC. This resource also includes a brief section on child-sensitive and culturally appropriate interviewing techniques (p. 16-18), establishing the client relationship and creating a child-appropriate setting (p. 24-26), and strategies for using an interpreter (p. 26-27). While it touches on a number of topics, the bulk of this document is devoted to the rights and procedures concerning UAC in the contexts of custody, placement, care, and adjudication.

American Immigration Lawyers Association (AILA). 2014. **Ethical Issues in Representing Children in Immigration Proceedings.** (Retrieved December 22, 2014) (http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lis_pb_uac_public_aila_practice_advisory.authcheckdam.pdf).

This brief practice advisory applies the ABA Model Rules of Professional Conduct to ethical challenges faced by lawyers serving children in removal proceedings. The advisory builds on a series of questions, including:

- What is the governing source of ethical guidance for representing minors before the immigration court or agencies?
- Which state rules of professional conduct govern when the tribunal is in one place and the attorney need not be admitted in that jurisdiction to practice there?
- Are there any special rules regarding communications with children?
- What do you do about engagement letters with minors? At what age are engagement letters required/advisable/useless?
- When should a lawyer representing a minor seek to appoint a guardian or guardian *ad litem* in order to go forward in the removal proceeding?
- Are there any other circumstances when an attorney should seek appointment of a guardian?
- How do I deal with conflicts of interest (especially as it pertains to SIJS cases)?

The advisory concludes with the acknowledgement that while “the ethical rules governing a lawyer’s conduct with respect to the representation of minors are far from clear, they should not serve as obstacles to the overriding goal of providing the needed representation” which can have a “significant impact” on the child client’s life.

Bryant, Susan. Fall 2001. **"The Five Habits: Building Cross-Cultural Competence in Lawyers."** Clinical Law Review 8(33). (Retrieved from Westlaw on October 10, 2010) (<http://www.volunteerlawyersnetwork.org/files/Five%20Habits%20of%20Cross%20Cultural%20Competence.pdf>).

This article presents five habits of cross-cultural lawyering. It then offers strategies for teaching these habits to legal service providers. The five habits consist of: analyzing how similarities and differences between the attorney and client may influence their interactions; examining the consequences of this influence; exploring alternative explanations for client behavior; focusing on cross-cultural communication; and promoting reflection to eliminate bias and stereotype. Ultimately, this is an essential resource for any attorney who is working with a client from a different ethnic, cultural and/or linguistic background.

Collopy, Dree K. 2012. **"No Minor Issue: The Diminished Capacity of Minors in Our Immigration System."** Immigration Briefings. (Retrieved from Westlaw July 22, 2013).

This briefing gives a broad overview of the issues that arise in the immigration context due to a child's diminished capacity to "exercise mature judgment and to understand the laws, the legal system, and the consequences of their actions." It specifically discusses how immigration law lacks the capacity protections available in the laws surrounding juvenile delinquency and child custody. It argues that immigrant children do not have the capacity to commit fraud or make willful misrepresentations for immigration purposes. To date, there is no clear agency rule on this issue, but when read in conjunction with *Sandoval v. Holder*, 641 F.3d 982 (8th Cir. 2011), this briefing may serve as a good starting point for guidance when working with immigrant children facing inadmissibility under certain grounds involving fraud or misrepresentation.

Jackson, Kristen, Meredith Linsky and Elissa Steglich. 2014. **"Representing Children in Removal Proceedings: Ethical and Practical Issues."** American Immigration Lawyers Association's Immigration Practice Pointers (2014-15 Ed.), AILA Publications. (Retrieved January 5, 2014) (<http://www.americanbar.org/content/dam/aba/administrative/immigration/UACEthicsAILAOct2014.authcheckdam.pdf>).

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Nugent, Christopher and Steven Schulman. 2001. **“Giving Voice to the Vulnerable: On Representing Detained Immigrant and Refugee Children.”** Child Clients are Different: Best Practices for Representing Unaccompanied Minors. American Bar Association (ABA) Center for Continuing Legal Education (CLE). (Retrieved July 16, 2012) (<http://tinyurl.com/9x4mo86>).

This is an essential resource for LSPs working with immigrant and refugee children – and one of the few articles that describes interviewing children who are currently in detention. It discusses the legal advocate's role in representing this specific group (p. 2-3), as well as developmental considerations for children of different ages (p. 3-5) (5 and under, 6 to 12, 13 to 18). The article then discusses various techniques for interviewing children in INS custody (p. 5-9). It concludes with a section on protecting the rights and securing the release of a child from INS (p. 10-19), focusing on children's remedies from removal (p. 13-19). Ultimately, this is a key resource for LSPs who represent detained immigrant children.

Somers, Aryah M. 2014. **“Children in Immigration Proceedings: Concepts of Capacity and Mental Competency.”** Produced for the Vera Institute of Justice's Unaccompanied Children Program. Available through the password-protected Extra Legal workspace at <http://my.hdle.it/36832499>.

Aiming to develop a general understanding of the concepts of capacity and competency and the different types of limited capacity in children—intellectual and cognitive disabilities, mental health disorders and those related to child development—this resource addresses the ways in which a child's capacity is implicated in the immigration legal context in a wide variety of decisions or tasks including, for example, filing for legal relief, providing assistance to his or her attorney, and agreeing to be interviewed as a victim or witness of trafficking. It provides practical tools and best

practices for identifying children with limited capacity and how to determine a child's decision-making ability, as well as interviewing and counseling these children. Furthermore, it explores the role of the attorney, including ethical considerations and when attorneys should take protective action when working with children in the immigration context.