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# **A Comprehensive Approach to the Representation of Children: The Child Advocacy Coordinating Council**

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## **I. Introduction**

Children's interests are regularly litigated in our legal system. Children appear as parties or witnesses in every type of legal action, including domestic relations, custody and support disputes, child welfare/juvenile dependency proceedings, mental health actions, probate guardianships, paternity actions, termination of parental rights cases, emancipation matters, domestic violence cases, adoptions and juvenile delinquency matters, as well as in other criminal and civil cases. When children have a significant interest in these legal proceedings, they should have effective and independent representation to address their legal and nonlegal needs, both inside and outside the courtroom. But budgetary constraints, legal norms, and prevailing attitudes have conspired to inhibit the development of a comprehensive and coordinated system of representation for children.

To provide children with appropriate representation whenever they appear in legal proceedings, the interested community should consider the establishment of a child advocacy coordinating council. Any comprehensive system for representing children contains certain necessary elements, not the least of which is a coordinated relationship between the legal system, those who represent children, and the children and families who come before the courts. The best coordination for such an

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effort can come from the establishment of a child advocacy coordinating council. This article identifies obstacles to the creation of coordinated systems and discusses those aspects of a comprehensive scheme that lead to the successful representation of children. Finally, this article traces the development of a child advocacy coordinating council in Santa Clara County, California.

## II. Establishing a System for Representing Children

In order to have both an effective and comprehensive system for representation of children, a number of elements must be present. First, each court system must have a range of interested, well-trained, and able personnel, including attorneys, volunteer advocates, and other support persons, available to ensure that appropriate representation is selected.

Next, there must be a coordinated child advocacy system. Such a system would screen cases to determine the advocacy needs of the child and to assign the child an appropriate representative. In some cases, independent representation of the child's interests may not be necessary, and a parent or other interested person may be able to represent the child adequately. In other cases, however, it may be necessary to have a volunteer advocate or an attorney, or both. There must also be a victim-witness support program that includes services for children who must appear in legal proceedings.

Such a coordinated child advocacy system has the capacity to monitor the child's progress throughout the legal proceedings and to respond creatively to the child's unmet needs. A coordinated and comprehensive system also ensures that there are sufficient resources to sustain those who work within the system.

### A. Attorneys

Trained attorneys are critical to an effective child advocacy system, but children's attorneys often have the least experience, the lowest status, and receive the lowest compensation within the legal community. In part, this may be attributable to our failure to develop and effectuate comprehensive provisions for the representation of children. In 1967, the U.S. Supreme Court ruled that children in juvenile delinquency proceedings had the right to counsel at the state's expense.<sup>1</sup> That holding has yet to be fully implemented<sup>2</sup> and many children continue to appear in juvenile court

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1. *In re Gault*, 387 U.S. 1, 4 (1967).

2. Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083, 1126-30 (1991); Barry C. Feld, *The Right to Counsel in Juvenile Court: An Empirical Study of When Lawyers Appear and the Difference They Make*, 79 J. CRIM. L. & CRIMINOLOGY 1185 (1989).

without counsel. Similarly, although the Federal Child Abuse Prevention and Treatment Act of 1974<sup>3</sup> mandates that every child who was the subject of an abuse or neglect proceeding be appointed a guardian ad litem, many fail to receive that kind of assistance.<sup>4</sup> In other cases, such as child custody and support disputes, statutes governing legal representation are inconsistent, with some jurisdictions providing representation in certain proceedings, and others providing no representation at all.<sup>5</sup>

Second, inadequate resources are allocated to the representation of children. In many jurisdictions where representation is provided, caseloads are so high that attorneys have insufficient time to investigate, consult, and prepare for cases. Such a context simply does not allow for meaningful or effective advocacy.<sup>6</sup> Moreover, in many communities the funding for this type of representation is perceived as unnecessary. Politicians are often reluctant to devote any public funds to provide for representation because they assume others in the legal system will speak for the child. In the competition for scarce dollars, advocacy for children often loses to more powerful political forces.

Third, those offices and organizations that do represent the interests of children often have other responsibilities and, in the competition for high-quality attorneys, children's needs usually come last. Particularly in public law offices, assignments involving the representation of children have the least status and are the least desirable. Attorneys in these offices view any work with children in juvenile court as less important than the "real work" of the office, such as representing felony defendants.<sup>7</sup> Assignment policies reflect the widespread belief that juvenile court and child representation is merely a form of training to be completed before a felony trial assignment, and a senior lawyer who is assigned to work with children's issues is often perceived as being punished. In addition, career ladders for attorneys working with children are much more limited.

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3. Pub. L. No. 93-247 (codified as amended in scattered sections of 42 U.S.C., ch. 67).

4. CSR, INC., U.S. DEP'T OF HEALTH & HUMAN SERVICES, NATIONAL STUDY OF GUARDIAN AD LITEM REPRESENTATION 1, 41 (1990).

5. Such representation is discretionary in California. See CAL. CIV. CODE § 4606 (West 1983 & Supp. 1993). It is mandatory in Wisconsin. See WIS. STAT. ANN. §§ 767.045 (West 1993), 757.48(1)(a) (West 1987 & Supp. 1993).

6. The cases of *In re Ashley K.*, 571 N.E.2d 905 (Ill. App. Ct. 1991), and *LaShawn A. v. Dixon*, 762 F. Supp. 959 (D. D.C. 1991) offer examples of tragically under-resourced juvenile court systems, in which attorneys have little or no impact upon case outcomes because of high caseloads, insufficient services and perfunctory hearings. See also ALEX KOTLOWITZ, THERE ARE NO CHILDREN HERE: THE STORY OF TWO BOYS GROWING UP IN THE OTHER AMERICA 274 (1991).

7. CALIFORNIA ATTORNEY GENERAL'S OFFICE, CALIFORNIA CHILD VICTIM WITNESS JUDICIAL ADVISORY COMM., FINAL REPORT 67 (Oct. 1988).

In jurisdictions that utilize a court-appointed panel system for the representation of children, the results are similar. Representing children is the first and most basic assignment given to new attorneys.<sup>8</sup> The pay and status are lower, the experience level necessary for appointment is less, and the training requirements are less substantial than those for criminal attorneys. As a result, attorneys conclude that representing children demands less skill and care, deserves less time and energy, and should be phased out of their law practice as soon as higher-paying opportunities arise. Such an attitude necessarily reduces the quality of legal services provided to children.

The quality of representation in any field of law is directly related to the interest, ability, and length of time a particular attorney has practiced in that area. When there is rapid turnover, when attorneys remain in an assignment for only a few months, or when attorneys regard the assignment as a stepping stone to more important work, their work will inevitably be of lower quality.

Change is possible, but change depends on commitment and leadership within the legal community at the national, state, and local levels. At the national level, leaders should encourage state and local bar associations to form legal sections devoted to advocacy for children. These leaders should provide technical assistance in the start-up, organization, and operation of these efforts and should offer training and training materials for the attorneys representing children. The bar should support the notion that representing children is important, that it involves special legal skills, and that lawyers should receive adequate pay for such representation.

National leaders such as the Youth Law Center, the National Center for Youth Law, the American Bar Association, the ABA Children's Center, and the National Association of Counsel for Children should help establish model law offices throughout the United States. These model offices could be developed through a grant process in which legal communities bid for grant money in order to create a better system for legal representation for children. These organizations can also provide technical assistance in the form of publications.<sup>9</sup> State bar associations

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8. NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES, METRO. CT. JUDGES COMM. REPORT, DEPRIVED CHILDREN: A JUDICIAL RESPONSE, 73 RECOMMENDATIONS 14 (1986).

9. These national organizations already offer outstanding publications for attorneys representing children in the legal system: THE GUARDIAN, published by the National Association of Counsel for Children; YOUTH LAW NEWS, published by the National Center for Youth Law, San Francisco, CA; JUVENILE & FAMILY COURT JOURNAL, published by the National Council of Juvenile and Family Court Judges,

should establish committees and sections for those who represent children to assist in the creation of local law offices devoted to the representation of children and to provide technical assistance and political support to communities struggling to create an effective child advocacy system.<sup>10</sup>

Local communities must develop systems for providing quality legal services for children. The leadership for the development of such systems can come from the local bar association. The local bar should meet and develop a comprehensive plan for representation and support services for children in all legal settings. Organizational meetings should include all attorneys who are currently providing legal services for children. At these meetings, the group should determine where children appear in the legal system, whether they are being adequately represented in those settings, and what steps can be taken to provide or improve representation where necessary.

Judges may also play an important role in the development of quality legal representation for children. Often, it is the judge's responsibility to ensure that the child's interests are adequately and effectively represented. The California Judicial Council recently enacted a Standard of Judicial Administration which outlines the responsibilities of the juvenile court judge with regard to the creation and maintenance of adequate representation for children. The presiding judge of the juvenile court is instructed to:

1. Encourage attorneys who practice in juvenile court, including all court-appointed and contract attorneys, to continue their practice in juvenile court for substantial periods of time. A substantial period of time is at least two years, and preferably from three to five years.
2. Confer with the county public defender, county district attorney, county counsel, and other public law office leaders, and encourage them to raise

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Reno, NV; and A.B.A. JUVENILE & CHILD WELFARE LAW REPORTER, published by the American Bar Association National Legal Resource Center for Child Advocacy and Protection, Washington, DC.

10. The American Bar Association's Litigation Section has created a Task Force on Children. Its purpose is to encourage lawyers to undertake pro bono representation of children by supporting the development and improvement of children's law programs. Its three general goals are: (1) to identify and develop information about existing children's legal programs; (2) to recruit attorneys, bar groups and law firms interested in the Task Force goals; and (3) to offer support, training, referrals and information to attorneys and children's law programs in either developing or improving this work.

For further information contact: Bernardine Dohrn, Director, Juvenile Law Project, Northwestern Legal Clinic, Northwestern School of Law, 357 E. Chicago Ave., Chicago, IL 60611-3069, (312)503-1235; or Christopher L. Griffin, Annis, Mitchell, Cockey, Edwards & Roehn, P.O. Box 3433, Tampa, FL 33601-3430, (813)229-3321.

the status of attorneys working in the juvenile courts as follows: hire attorneys who are interested in serving in the juvenile court for a substantial period of their careers; permit and encourage attorneys, based on interest and ability, to remain in juvenile court assignments for significant periods of time; work to ensure that attorneys who have chosen to serve in the juvenile court have the same promotional and salary opportunities as attorneys practicing in other assignments within a law office.

3. Establish minimum standards of practice to which all court-appointed and public office attorneys will be expected to conform. These standards should delineate the responsibilities of attorneys relative to investigation and evaluation of the case, preparation for and conduct of hearings, and advocacy for their respective clients.
4. In conjunction with other leaders in the legal community, ensure that attorneys appointed in the juvenile court are compensated in a manner equivalent to attorneys appointed by the court in other types of cases.<sup>11</sup>

The juvenile court judge is the logical person to provide the leadership and oversight for the development of a system that provides adequate representation for children. Although this is a unique role for a judge, it is one that is demanded by the nature of the work in juvenile courts. Without quality representation for children, the juvenile court will be severely handicapped in its efforts to fashion appropriate remedies for children and families.

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11. CALIFORNIA STANDARDS OF JUDICIAL ADMINISTRATION § 24 (West 1992). The advisory committee comment to these sections is as follows:

The quality of justice in the juvenile court is in large part dependent upon the quality of the attorneys who appear on behalf of the different parties before the court. The presiding judge of the juvenile court plays a significant role in ensuring that a sufficient number of attorneys of high quality are available to the parties appearing in juvenile court.

Juvenile court practice requires attorneys who have both a special interest in and a substantive understanding of the work of the court. Obtaining and retaining qualified attorneys for the juvenile court requires effective recruiting, training and employment considerations.

The importance of juvenile court work must be stressed to ensure that juvenile court assignments have the same status and career enhancement opportunities as other assignments for public law office attorneys.

The presiding judge of the juvenile court should urge leaders of public law offices serving the juvenile court to assign experienced, interested and capable attorneys to that court, and to establish hiring and promotional policies that will encourage the development of a division of the office dedicated to working in the juvenile court.

Fees paid to attorneys appearing in juvenile court are sometimes less than the fees paid to attorneys doing other legal work. Such a payment scheme demeans the work of the juvenile court, leading many to believe that such work is less important. It may discourage attorneys from selecting juvenile court practices as a career option. The incarceration of a child in a detention facility or a child's permanent loss of his or her family through a termination of parental rights proceeding is at least as important as any other work in the legal system. Compensation for the legal work in the juvenile court should reflect the importance of this work.

In another section of the Standard of Judicial Administration, the presiding judge of the juvenile court is urged to:

1. Establish relevant prerequisites for court-appointed attorneys and advocates in the juvenile court.
2. Develop orientation and in-service training programs for judicial officers, attorneys, volunteers, law enforcement personnel, court personnel and child advocates to ensure that all are adequately trained concerning the special needs and issues relating to juvenile court cases. Promote the establishment of a library or other resource center in which information about juvenile court practices (including books, periodicals, videotapes and other training materials) can be collected and made available to all participants in the juvenile system.
3. Ensure that attorneys who appear in juvenile court have sufficient training to perform their jobs competently, as follows: require that all court-appointed attorneys meet minimum training and continuing legal education standards as a condition of their appointment to juvenile court matters; and encourage the leaders of public law offices that have responsibilities in juvenile court to require their attorneys who appear in juvenile court to have at least the same training and continuing legal education required of court-appointed attorneys.<sup>12</sup>

These standards have substantial support from other legal commentators. They confirm the notion that judges as well as attorneys, have a

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12. The commentary for this section of the Standard is as follows:

Juvenile court law is a specialized area of the law that requires dedication and study. The juvenile court judge has a responsibility to maintain high quality in the practice of law in the juvenile court. The quality of representation in the juvenile court depends in good part on the education of the lawyers who appear there. In order to make certain that all parties receive adequate representation, it is important that attorneys have adequate training before they begin practice in juvenile court and on a continuing basis thereafter. The presiding judge of the juvenile court should mandate such training for all court-appointed attorneys and urge leaders of public law offices to provide at least comparable training for attorneys assigned to juvenile court.

A minimum of six (6) hours of continuing legal education is suggested; more hours are recommended. Education methods can include lectures and tapes which meet the legal education requirements.

In addition to basic legal training in juvenile dependency and delinquency law, evidentiary issues and effective trial practice techniques, training should also include important related issues, including, but not limited to, child development, alternative resources for families, effects and treatment of substance abuse, domestic violence, abuse, neglect, modification and enforcement of all court orders, dependency, delinquency, guardianships, conservatorships, interviewing children and emancipation. Education may also include observational experience, such as site visits to institutions and operations critical to the juvenile court.

A significant barrier to the establishment and maintenance of well-trained attorneys is a lack of educational materials relating to juvenile court practice. Law libraries, law offices and court systems traditionally do not devote adequate resources to the purchase of such education materials.

critical role to play in the establishment of effective representation for children within the legal community.

### *B. Volunteer Child Advocates*

A coordinated system of well-trained attorneys will not, standing alone, meet the needs of children in legal proceedings. Because children have many nonlegal needs that attorneys are untrained to handle and it is inefficient and expensive to assign to attorneys many of the tasks necessary to support children through the court process, the use of volunteer child advocates is a necessary part of a comprehensive child advocacy system. Over the past fifteen years, volunteer child advocates have become an increasingly important part of the legal system. In 1977, David Soukup, then a juvenile court judge in King County, Washington, asked volunteers within his community to assist abused and neglected children through the dependency court process. His initiative started the Court Appointed Special Advocate Program (CASA), a nationwide endeavor which now has more than 500 programs across the nation and over 30,000 trained volunteers working in the court system on behalf of children.

While these advocates work primarily in the juvenile dependency court, in some jurisdictions they have appeared on behalf of children in other court settings, including cases involving custody and child support disputes,<sup>13</sup> delinquency matters, and probate guardianship cases.<sup>14</sup> Child advocate responsibilities include case investigation, support for the child, case plan development, monitoring service delivery, resource identification, case reporting and advocacy. The role of the volunteer will vary greatly, depending on the needs of a particular community, the roles of the attorneys and other persons involved in the legal system, and the available resources. Remarkably, these trained volunteer advocates have in some circumstances proven more effective in court than attorneys.<sup>15</sup>

Each community's court system should have a volunteer component. The best method of providing trained volunteers is to implement a CASA program. With hundreds of CASA programs across the country and a strong national office, establishing such a program is not difficult.

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13. Marin County, California, King County, Washington, and the state of Florida are three jurisdictions which utilize CASA volunteers in domestic relations cases. See Barrett J. Foerster, *Children Without a Voice*, 42 JUV. & FAM. CT. J. 9, 16-20 (1991).

14. See the discussion of the Child Advocacy Coordinating Council, *infra*.

15. Donald N. Duquette & Sarah H. Ramsay, *Using Lay Volunteers to Represent Children in Child Protection Court Proceedings*, 10 CHILD ABUSE & NEGLECT: THE INT'L JOURNAL 293-308 (1986).

Suggestions for funding, organization, training and operation are available from the CASA national office.<sup>16</sup>

Because court support for any such volunteer program is necessary, the juvenile court judge is an important person to include in the formation of a CASA program. Juvenile court judges will receive substantial support in their efforts to create a CASA program from the National Council of Juvenile and Family Court Judges. The National Council has strongly supported the growth of CASA programs by providing technical assistance to interested judges.<sup>17</sup> In addition, communities should look to local universities, colleges, and law schools for volunteers to work with children in the court system. Such schools have been supportive of community work efforts by their students, often offering academic credits for such work. Any utilization of such volunteers must include both training and monitoring by responsible persons.

### *C. Victim-Witness Support Program*

In addition to attorneys and volunteer advocates, a comprehensive child advocacy system must have a victim-witness support program. The services offered by such a program would include: the accompanying of a child victim or witness to court in criminal, civil, or other proceedings; and helping children obtain mental health counseling to address the trauma that may be experienced from the precipitating events or from contact with the legal system. Models for such a program exist in Colorado and Wisconsin where statutes allow a "friend of the court" to accompany the child to court and make recommendations to prosecutors and judges concerning the needs and abilities of the child in the legal proceedings.<sup>18</sup> California has a state-funded victim-witness program which provides support services to all crime victims and witnesses, including funding for mental health counseling.<sup>19</sup>

### *D. Establishing a Coordinated System for the Representation of Children in Legal Proceedings*

Each legal community must organize and create a coordinating council to oversee the local child advocacy system. Such a council should

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16. For further information write the National Court Appointed Special Advocate Association, 2722 Eastlake Avenue E., Suite 220, Seattle, WA 98102.

17. For information about the National Council of Juvenile Court Judges, write to the NCJFCJ, P.O. Box 8970, Reno, NV 89507.

18. *See, e.g.,* WIS. STAT. § 950.055(2), *cited in* DEBRA WHITCOMB, U.S. DEP'T OF JUSTICE, NAT'L INSTITUTE OF JUSTICE, *WHEN THE VICTIM IS A CHILD* (2d ed. 1992).

19. *See* CAL. PENAL CODE §§ 868 (West 1985 & Supp. 1993), 868.5 (West 1985 & Supp. 1993), 1348.5 (West Supp. 1993), 13835-13835.10 (West 1992 & Supp. 1993).

be composed of representatives from the courts, the bar association, law offices that represent children, child advocacy organizations, public service organizations, and victim-witness support organizations. The council should convene regularly to address children's needs within the legal system. It should determine where children appear within the legal system and who, if anyone, speaks for the child in each legal setting. If children are unrepresented or inadequately represented in any setting, the council should develop strategies to provide adequate representation. The council should be prepared to support existing efforts to assist children and to encourage the creation of new initiatives to address unmet needs.

### III. The Santa Clara County Model

#### A. *The Pilot Project*

The Santa Clara County Child Advocacy Coordinating Council began as a result of a grant created pursuant to California state legislation that was designed to encourage a more child-sensitive legal system. The legislation established three types of pilot projects: investigative, judicial, and child advocacy. The investigative project focuses on the contacts that a child victim-witness may have with the legal system after a crime or abuse report is made. It includes developing protocols for reducing the number of interviews that a child may experience in the legal system, training child interview specialists, and establishing an investigative environment that is sensitive to a child's needs.

The judicial project addresses the establishment of a unified family court which combines most of the legal actions concerning children and families.<sup>20</sup> Juvenile, domestic relations, mental health, adoptions, emancipation, child support, and probate calendars are all coordinated under a separate branch of the Superior Court, while civil and criminal calendars are operated by different divisions of the court.<sup>21</sup> The judicial project emphasizes the importance of having judicial officers remain in the unified family court for substantial periods of time, developing protocols for the management of cases which may appear in two or more legal settings simultaneously, and specialized training of judicial officers relative to the needs of children and families.

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20. Several states and jurisdictions within states have created and maintained unified family courts for years. Delaware, Rhode Island, Hawaii, New Jersey, and Washington, D.C. are the most notable examples. Other jurisdictions, including Florida, Nevada, and Utah, are considering development of a unified family courts.

21. This scheme is consistent with the design of the original grant proposal. *See supra* note 7, at n.7, 36-61.

The third pilot project, the child advocacy project, addresses the need for each child to have a representative within all legal settings. Three principles guide the child advocacy project:

- A child advocacy program should be established to provide a full range of advocacy and support services to child victim witnesses throughout all investigative and judicial proceedings.
- Each child victim-witness should be provided a knowledgeable, caring person whose primary responsibility is to guide the child through the difficult investigative and court processes, to look out for the child's emotional well-being and best interests, to protect the child's legal rights, and to identify other advocacy services for the child.
- Programs should be established to make available to each child a trained attorney to represent the child's interests.<sup>22</sup>

### *B. The Child Advocacy Coordinating Council*

In 1991, Santa Clara County was one of two California counties to receive a grant for both the Judicial and Child Advocacy projects. The pilot projects began immediately and were to last for three years. The Santa Clara County Board of Supervisors, in approving the project, passed a resolution which stated in part:

. . . the County recognizes that the special needs of the child victim-witness include greater coordination of legal proceedings, court protection of the child, and a full range of advocacy and support services to the child victim-witness through the investigative and judicial proceedings; and

WHEREAS, participation as a Judicial and Child Advocate Pilot Project would greatly enhance the County's ability to respond to these special needs and interests of the child victim-witness; . . . .<sup>23</sup>

This recognition by local political leaders of the special needs of children in legal proceedings has given the project additional acceptance and support in the community.

The Judicial project began immediately when the Superior Court was reorganized into three divisions: Civil, Criminal, and Family Resources (the unified family court). The Family Resources Division is comprised of thirteen judicial officers, including ten judges and three commissioners, with the administrative support of a Division Manager from the Court Executive's Office. The Superior Court Family Resources Division Manager serves as staff for the Division and for the Council. This position was created to provide the Family Resources Division with administrative support equal to the Civil and Criminal divisions of the court. The Division meets regularly to work on the project

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22. Commentary to Standard 24, *supra* note 11.

23. *Id.*

goals. Several local rules have been adopted that codify the relationships between different court calendars and the agencies serving the court.<sup>24</sup>

The Child Advocacy project in Santa Clara County was initiated when the supervising judge of the newly formed Family Resources Division met with the persons and agencies who represent children in the local legal community. That meeting resulted in the creation of the Santa Clara County Child Advocacy Coordinating Council. Members of the Council include the supervising judge of the Family Resources Division; a court investigator for Probate/Guardianship cases; the director of Family Court Services; the supervising public defender of the Juvenile Court; the supervising district attorney of the Juvenile Court; a private attorney specializing in family law custody cases; a private attorney specializing in family and juvenile dependency cases; the director of the Child Advocate Program (CASA); the director of the Legal Advocates for Children and Youth (a private, nonprofit legal firm representing children, particularly in probate, guardianship, and mental health cases); the director of the Victim Assistance Program; the director of the Legal Aid Society; and the supervising judges of Family, Probate, and Juvenile Court.

These persons and the offices and agencies they represent provide the legal representation, advocacy and support for children who are involved in legal proceedings in Santa Clara County. The private attorneys represent children in a variety of cases including domestic relations, child support, child custody, emancipation, adoptions, juvenile delinquency, juvenile dependency, mental health, and probate guardianship cases.<sup>25</sup> Such representation often crosses into different legal settings if the child is before multiple courts simultaneously. The child advocate program's purpose is to advocate for children in the juvenile dependency system. The agencies investigate domestic relations and probate guardianship cases. The Victim-Witness Program offers support for all victims and witnesses who may appear in criminal or delinquency proceedings.

The primary objective of the Council is to develop and implement a full range of advocacy and support services for children within the legal system. The Council has developed a strategy that has attempted to: (1) maximize the contribution of attorney and advocacy programs already in place; (2) identify those areas in which legal and advocacy services are inadequate or nonexistent; (3) identify resources to fill those gaps; and (4) develop and implement policies and procedures that ensure that each

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24. SANTA CLARA COUNTY SUPER. CT. R. 29(I)(L), 29(II)(G)-(H) (1992).

25. The Council is considering additional members, including other members of the bar association, a child development expert and other community organizations that support children.

child victim is protected throughout the legal system. Implementation of these policies began with a needs assessment survey composed by the Council that includes questions about how well children are represented in various legal settings and how children are supported as they experience the court system. The question/answer format permitted lengthy responses and comments.<sup>26</sup>

Approximately 170 judges, attorneys and others who work regularly with children in the legal system received the survey. Seventy-five persons responded, including several from each category surveyed. From the needs assessment survey several gaps were identified, and three proposals were developed. The three proposals included: (1) expansion of the child advocate program to cover new legal settings, including the use of child advocates in delinquency, domestic relations, probate, and mental health cases; (2) expansion of attorney services at Legal Advocates for Children and Youth, a local public interest law office, to offer wider representation and counseling for children in emancipation and probate guardianship cases; and (3) expansion of the Santa Clara County Victim-Witness program to reach all children who appear in criminal courts as victims or witnesses, and who wish or need assistance.

Two critical issues for the Council have been the identification of children in need of representation and the establishment of a mechanism for appointing or assigning them an advocate. The resolution of these issues has differed, depending upon the type of legal action. In criminal cases, the Council designated a person who reviews each police report as it is filed, attempts to identify any child victim or witness, and then contacts the child or family about support services available through the court system. In child custody cases, the Council has learned that the counselors who provide child custody mediation for separating parents are best suited to identify those cases in which representation for the child is appropriate. In juvenile dependency cases, every child is represented by an attorney, but in the most difficult cases a child advocate is also appointed. The recommendation for such an appointment can be made by a number of different persons, including the social worker, the judge, an attorney, or any other interested person. In juvenile delinquency cases, every child is represented by an attorney. Judges, probation officers, and attorneys have all made suggestions as to those children who would most benefit from a volunteer advocate. In mental health, probate, and emancipation cases, the attorneys, investigators, and judges try to identify those cases in which an attorney, a volunteer advocate, or both would be appropriate to serve the child's interests.

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26. For a copy of the questionnaire and the responses, contact the author.

The Council has concluded that not all children need an attorney. Some children may require no representation at all. In most uncontested marital dissolution cases, for example, the Council has determined that the private ordering by parents should be permitted without an independent representative for the child. With concern for both resource conservation and policy considerations, advocates should be appointed only in those cases where the child's interests are significant, where some conflict is identified, and where the legal system is likely to ignore or overlook those interests.

Other issues to be addressed by the Council as the project continues include the following:

1. Ensuring that high-quality legal representation is available for all children who enter the legal system. In this regard, the Council may adopt specific attorney standards for attorneys involved with children, such as the standards developed by the Bay Area Reasonable Efforts Project for attorneys in juvenile dependency proceedings.<sup>27</sup>
2. Cross-training of all persons and agencies representing children, so that each understands the roles others play in the legal system and knows where to turn for assistance, when problems arise.
3. The proposal of legislation and local court rules that will protect children appearing in legal proceedings and ensure adequate representation.<sup>28</sup>
4. Creation of an organizational structure, so that anyone needing

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27. The Bay Area Reasonable Efforts Project is an organization in the San Francisco Bay Area comprised of judges, attorneys, social workers, probation officers, court administrators, child advocates and other interested persons. The project has undertaken a number of specific tasks, including drafting and implementing standards for attorneys practicing in juvenile dependency court. For a copy of *THE PRACTICE GUIDELINES FOR ATTORNEYS PRACTICING DEPENDENCY LAW IN ALAMEDA, SAN FRANCISCO AND SANTA CLARA COUNTIES*, contact the Bay Area Reasonable Efforts Project, 1663 Mission Street, Fifth Floor, San Francisco, CA 94103.

28. An example of a local rule is *SANTA CLARA COUNTY SUPER. CT. R. 29(I)(E)(2)*, which states:

No party or attorney in a dependency proceeding shall interview the minor about the events relating to the allegation in the petition(s) on file without permission of the minor's attorney or court order.

No party or attorney in a dependency proceeding shall cause the minor to undergo a physical, medical or mental health examination or evaluation without court approval.

The court shall make the selection of the person to perform any such examination. Each party shall have the right to notice and to be heard on the person to be selected.

This Rule does not apply to the investigating probation officer or investigating social worker.

information relating to the provision of advocacy services for children will be able to turn to the Council for assistance.

5. Ensure that representation is provided for children in other settings, such as hearings regarding expulsion from school or eligibility for special services.
6. The expansion of CASA to allow for advocate availability in all legal settings.
7. The expansion of the Council to include a child development expert who would advise the Council on ways to reduce the trauma to children before and during the court process. This advice would include ways to manage courtroom examinations of child victims and witnesses in order to reduce stress and elicit more accurate testimony. The person would also assist in the creation of a list of child development experts who would be able to assist courts in assessing the needs of children who are victims or witnesses.

#### **IV. Summary**

Children who appear in court need effective representation. No longer can we rely upon the good will of other litigants, the support of parents, or judicial oversight to ensure that children are adequately represented in our court system. The more we understand the needs of children, the more we appreciate the necessity for a trained, caring person to represent each child whose interests are at stake in legal proceedings.

Historically, there has been neither the commitment nor the resources to provide adequate representation for children in court. This can change. Courts, bar associations, law offices, and child advocacy groups can organize a coordinated system to provide adequate representation for children. The organization and operation of such a system has been successfully attempted in several jurisdictions, including Santa Clara County, California. With commitment, organization, and resolve, it can happen.

