

NATIONAL COALITION FOR FAMILY JUSTICE, INC.
Santa Clara County Chapter
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ATTORNEYS FOR CHILDREN

The attorney for the child has perhaps the most difficult job of all those involved in family law or juvenile court matters. In representing a child, an attorney must juggle competing interests--those of the child, the parents, and the court. First and foremost, the child's attorney must hold the needs and best interests of the child above all else. Often times the waters become murky as a child's attorney must sort out what is best given conflicting claims of parents, opinions of court personnel and judges, and even stated preferences of children. A good place to start in attempting to ascertain what is best for a child is to listen to the child herself (or himself).

Other countries have taken a decidedly more intelligent approach to children's rights in custody proceedings. In New Zealand, for example, children's viewpoints are considered important and are routinely heard at proceedings. Almost 200 countries have ratified the U. N. Convention on Rights of the Child and many countries are implementing the platform into family laws in their countries. It is interesting to note that the United States, clearly a leader among countries in most regards, has failed to ratify the U.N. Convention on Rights of the Child. In this country, we rarely listen to what our children want with respect to custody. Family Code Section 3042 states, "If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to the wishes of the child in making an order granting or modifying custody." Nevertheless, children's wishes are routinely ignored, or never even solicited. An attorney for the child's first duty is to the child and as such the child's wishes and preferences need to be ascertained by speaking with the child. The child's wishes then need to be represented to the court either directly or through the child's attorney. Too often, we treat children as if they are chattel property or apprentice people. They are, however, human beings with very distinct wishes, hopes, and opinions. Their voices should be heard and considered in family law and juvenile dependency issues.

Judith Wallerstein, world renowned expert on the long term effects of divorce on children found in the 25 year study that she conducted on how divorce impacts children that the children she studied wished their voices had been listened to in court. Furthermore, young people who were forced into custody and visitation schedules against their will grew to resent the parent with whom they were being forced to have contact. She found that children typically felt like second class citizens during custody proceedings, without a voice in major decisions that directly impacted their lives.

We have come to learn of shocking abuses and unethical behavior among attorneys for children including aligning themselves with one of the parents (usually the

father), engaging in ex parte communication with one side, the judge, or with other court related personnel involved in the cases, and taking an advocacy role that supports the dominant parent instead of maintaining neutrality and only advocating what is in the child's best interests or what the child wishes.

In Family Court, children are appointed attorneys by judges under Family Code section 3151 which states that counsel for children are to represent the child's best interest. Their role is to gather facts that bear on the child's best interests and present that to the court. We have, however, seen attorneys for children join forces with one of the parents (almost always the father) and in court, one party then finds themselves up against two attorneys on the other side and the child has effectively no true neutral representation.

As counsel for the child, it is important to ask yourself at every turn if you are truly representing your client's best interests or if you are advancing your own career at the child's expense. Too often, we see attorneys for children willing to sacrifice their client's needs in order to gain favor with the court. As attorneys are appointed by the court, it is easy to see the inherent conflict in the job of representing children. If you represent children but you don't follow the court's lead in terms of the direction a case is heading, you may not get future referrals. Sensing this, many attorneys make the mistake of advocating positions that support those of other court referred personnel and the judge, but are clearly not in the best interests of the children.

It is all too common place to now hear about perfectly fit mothers being placed on supervised visitation for no just cause. This type of visitation should be reserved for extreme cases such as where drugs or alcohol are involved or one of the parents poses a danger to the child. Family Court in particular has become the Twilight Zone and more often than not, decisions emanating from the court make no sense when examined in light of what is in the best interests of the child. As attorneys representing children, you are in a difficult position having to juggle many competing interests yet you are also in a position to be able to make a real difference in the life of a child. **We all know inside what is the right thing to do and we would implore you to do the right thing with respect to your clients.**

REMEMBER: Your clients may be small and powerless now, but if you do not represent them fairly and competently, with their best interests always first and foremost in your actions, you may find yourself being held accountable in a court of law facing a malpractice lawsuit when your client reaches sufficient age and begins to explore seeking legal redress for injuries suffered from lack of competent and neutral representation. Be part of the solution, not the problem. Help clean up the mess in family and juvenile courts and don't be one of the lemmings advancing your career in the courthouse at the expense and well-being of your clients. Do the right thing and you can help create a new environment in family and juvenile courts that will honor the rights of children in our society.