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978-0-521-85317-0 - Legal Ethics in Child Custody and Dependency Proceedings: A Guide for Judges and Lawyers

William Wesley Patton

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LEGAL ETHICS IN CHILD CUSTODY AND DEPENDENCY PROCEEDINGS

This book provides the first fully annotated discussion of the ethical universe surrounding state-mandated and private legal disputes involving the custody and best interest of children. It surveys thousands of court cases, statutes, state bar ethics codes, attorney general opinions, and model codes regarding ethical constraints in family and dependency proceedings. The book is unique in several ways. It analyzes ethical rules not only in terms of the chronology of these proceedings but it also surveys those principles for each of the primary participants – children’s counsel, parents’ counsel, government attorneys, and judges. The book contains chapters on prehearing alternative dispute resolution, motion and trial practice, appellate procedures, and separation of powers. Finally, the book provides a complete child abuse case file with a comprehensive analysis of the inherent ethical issues.

William Wesley Patton received his B.A. from California State University and his M.A. and J.D. from University of California, Los Angeles. He is the founding director of the Center for Children’s Rights and Legal Policy Clinic. He is also a professor and the Associate Dean for Clinical Programs at Whittier Law School. He has written many articles and books on the topic of juvenile justice and juvenile law advocacy.

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A GUIDE FOR JUDGES AND LAWYERS

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Whittier Law School, Costa Mesa, CA



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Contents

Foreword, by Martin Guggenheim	<i>page</i>	ix
Acknowledgments		xi
Introduction		1
1 Conflicts of Interest		7
I. Children’s Attorneys: Potential Divided Loyalties		7
II. Conflicts of Interest Involving Parents’ Attorneys		13
III. The Department’s Attorney: Who Is the Client?		16
IV. Judges: Limits and Responsibilities of the Neutral and Detached Magistrate		23
2 Competent and Zealous Representation		27
I. Children’s Attorneys: Zealous Advocates or Best Interest Storytellers?		28
A. Children’s Competence as a Key in Deciding the Model of Advocacy		30
B. The Lawyer’s Role as the Child’s Guardian Ad Litem		33
C. Hybrid Models of Child Representation		35
II. Parents’ Attorneys		35
A. Failure to Complete Lawyering Responsibilities		35
B. Competence and Zealousness		37
III. The Department’s Attorney: Furthering Justice or Zealous Advocate?		44
IV. Judges: Neutral Magistrates or Children’s Defenders?		52
V. Emerging Issues Regarding Substitution of Counsel and Self-Representation		61
A. The Right to Substitute Counsel		61
B. The Right to Self-Representation		65

Cambridge University Press

978-0-521-85317-0 - Legal Ethics in Child Custody and Dependency Proceedings: A Guide for Judges and Lawyers

William Wesley Patton

Frontmatter

[More information](#)

vi	<i>Contents</i>
3 Confidentiality	68
I. Children's Attorneys: Safety Versus Secrecy	69
II. Parents' Attorneys: Duty to Disclose Child Abuse?	74
III. The Department's Attorney: Disclosure and Trial Tactics	79
IV. Judges: Parties' Privacy Versus Public Overseer	82
4 The Ethics of Alternative Dispute Resolution in Child Custody and Dependency Proceedings	88
Introduction	88
I. Alternative Dispute Resolution Versus Litigation in Custody Cases	92
II. Advantages and Disadvantages of Alternative Dispute Resolution in Child Custody and Dependency Proceedings	95
III. Coming Full Circle: The Evolution of Child Custody Mediation	100
IV. The Legitimacy of Informal Settlements and the Limits of Mediators' and Arbitrators' Jurisdiction in Child Custody and Dependency Proceedings	101
A. Finality and Scope of Arbitrated and Mediated Custody and Dependency Settlement Agreements	102
B. The Duty of Candor: Good Faith, Puffing, and Lies	107
V. The Scope of Alternative Dispute Resolution Confidentiality	111
VI. The Role of the Mediator	117
5 Ethical Considerations and Constraints in Child Custody and Dependency Appeals	120
I. The History of the Right to Appointed Appellate Counsel in Child Custody and Dependency Proceedings	121
II. Standing to Appeal	123
III. The Duty of Competence in Custody and Dependency Appeals	124
IV. The Duty and Scope of Zealous Appellate Representation	127
V. The Duty of Candor and Loyalty on Appeal	134
VI. The Procedural and Substantive Scope of Appeals	141
6 The Constitutionality of Legislative and Executive Regulation of the Practice of Law and Defining the Attorney-Client Relationship	145
I. A Short History of the Role of Courts, Legislatures, and the Executive in the Regulation of Attorneys	148

Cambridge University Press
 978-0-521-85317-0 - Legal Ethics in Child Custody and Dependency Proceedings: A Guide
 for Judges and Lawyers
 William Wesley Patton
 Frontmatter
[More information](#)

<i>Contents</i>	vii
A. Wisconsin: Separation of Powers in Regulating Attorneys in Child Custody and Dependency Proceedings	151
B. California: Comity over Independence?	156
II. Conclusion	163
 Appendix A. National Association of Counsel for Children Standards	 165
 Appendix B. American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases	 185
 Appendix C. <i>In re Car</i> Simulation and Analysis	 223
Other Authorities	239
Cases and Ethics Opinions	247
Index	255

Cambridge University Press

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William Wesley Patton

Frontmatter

[More information](#)

Foreword

The United States spends considerable efforts trying to prove to itself and the world that it is as child-friendly and child-centered as the next country. But this is a difficult challenge for a country that remains alone in the world in its refusal to sign the United Nations Convention on the Rights of the Child, and it remains in the company of many significantly poorer nations in its refusal to guarantee a minimum degree of public support or health benefits for children. Even worse, for those who insist on ranking the United States as a nation devoted to the well-being of children, children comprise the largest group of extremely poor Americans. Worse still, the percentage of the population of children who are poor has grown considerably larger over the past generation, even as the United States has all but eliminated extreme poverty for the elderly.

According to the KIDS COUNT Data Book, published annually by the Annie E. Casey Foundation, there were more than 13 million children living in poverty in the United States in 2003, an increase of more than 500,000 since 2000. More than 4 million children currently live in households where no parent has worked within the past year. The Children's Defense Fund reports that more than 9 million children, more than 12 percent of all of America's children, go without any kind of health insurance.

Nonetheless, the United States is able to point with pride to the very large number of legal matters that are litigated on a daily basis in American courts that affect children and their well-being. These cases include a virtual explosion of child custody, visitation, and relocation cases, as well as an ever-growing number of child welfare cases in which parents are charged with inadequately caring for their children, and related foster care review and termination of parental rights and adoption matters. Add all of these matters together, and the United States plainly is the world leader in the extent to which children are the subject of legal proceedings.

But more is owed children than that the significant questions concerning their lives be decided by judges in contested legal proceedings. Even if one were to regard the extraordinarily high number of cases involving children that are contested each day in the courts within the United States as a positive

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Frontmatter

[More information](#)

sign, we should rejoice only if it were true that the investment in the judicial system ensured the level of careful, individualized attention that children require if we are to make thoughtful and intelligent decisions about them.

Regrettably, few jurisdictions in the United States commit sufficient resources to these systems. Instead, too often the children are treated as persons without adults who care very much for or about them. In many cities, legislatures and court officials allow judges routinely to handle as many as fifty cases each day on their dockets. Lawyers assigned to represent children sometimes carry caseloads of more than 300 active cases. And other lawyers performing equally crucial roles in custody and child welfare cases are too often vastly underpaid relative to the other available markets for lawyers, and they are undertrained, undermotivated, or overwhelmed with work to give any given case the level of attention it demands and deserves.

In short, too often in too many quarters in the United States, the justice being meted out in cases involving children is a second-class justice that would be unacceptable to judges, legislators, and voters if it affected them and their families. What can be done about all of this?

In addition to complaining about and recognizing the problem, we need to apply the same principles of fairness, ethics, and justice to matters involving children that we insist be made available to the richest corporations that use the justice system when necessary to advance their interests. An important first step toward eliminating the second-class status of courts that address matters involving children is to pay the same degree of attention to them that is paid to our most important institutions. This means more than acknowledging the ways in which we underfund children's court. It also means insisting upon the same requirements for professional standards that are expected in our most important institutions.

This book is especially important because it strives to clarify and establish basic rules of ethical conduct for children's lawyers and other legal representatives of children, as well as for all of the professionals (including the judges) who handle these cases. Beyond explaining the various roles that different jurisdictions expect of professionals in these cases, this book insists that the standards of representation and professional performance improve, if we are to be true to the call for justice for children and if the justice system affecting children is to live up to the basic rules established elsewhere in the legal profession.

This is an important and worthy goal, and those who care about children would do well to insist on raising the bar for everyone associated with legal matters involving children.

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Frontmatter

[More information](#)

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I also thank Marvin Ventrell and the National Association of Counsel for Children for permission to publish their *Recommendations for Representation of Children in Abuse and Neglect Cases* and the American Bar Association for granting permission to publish its *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*.

This book is dedicated to the hundreds of children I have had the opportunity to represent in custody, dependency, delinquency, and educational proceedings. Although the life of a child advocate can be described as the poet Milton characterized Samson after pulling down the temple pillars, "*all passion spent*," the hope is that, either incrementally or in one blinding revelation, the legal system will stop failing our children.