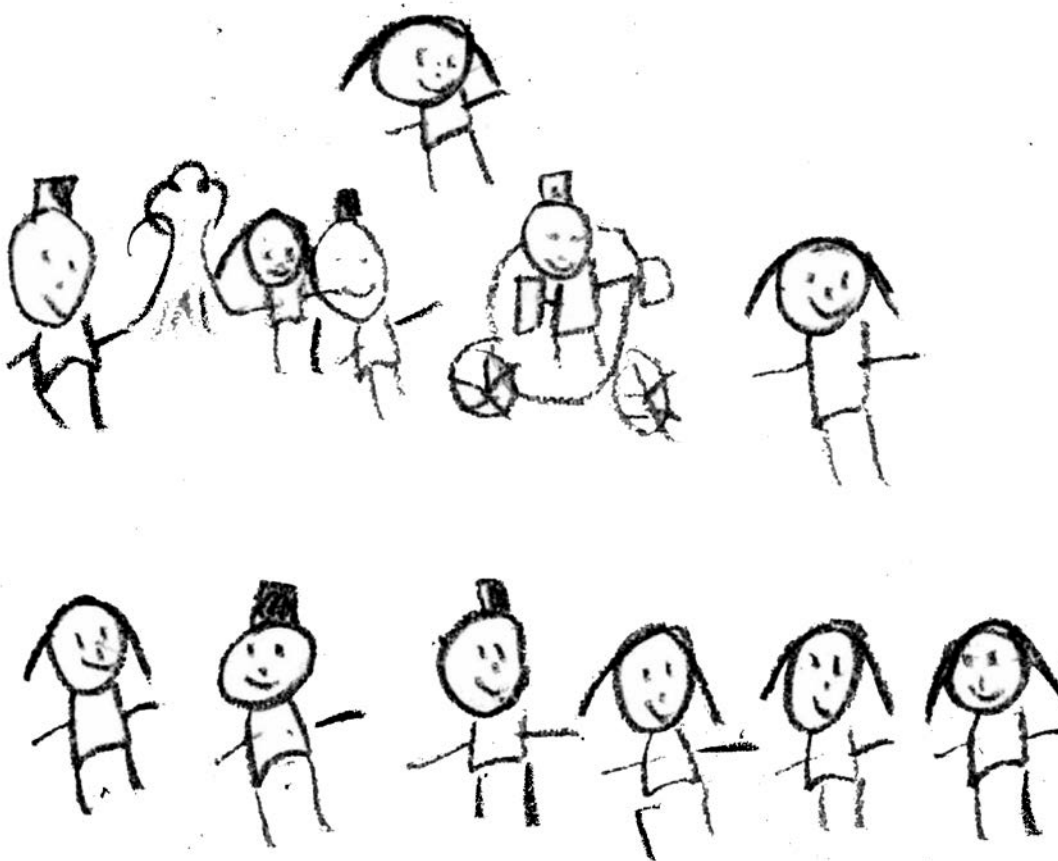


# JUSTICE FOR UNACCOMPANIED IMMIGRANT CHILDREN

*An Advocacy Best Practices Manual  
for Legal Service Providers*



**NATIONAL  
IMMIGRANT  
JUSTICE CENTER**  
A HEARTLAND ALLIANCE PROGRAM

*April 2016*

# JUSTICE FOR UNACCOMPANIED IMMIGRANT CHILDREN:

## *An Advocacy Best Practices Manual for Legal Service Providers*

*April 2016*

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# Introduction

The demand for legal representation of unaccompanied immigrant children in immigration court has skyrocketed since 2013. While there is broad agreement that immigrant children need to have an attorney to ensure a meaningful day in court, children neither have the right to court appointed counsel, nor are there sufficient funds to represent all children. Although there has been an increase in federally-funded programs for legal representation for children, these funds come with restrictions. Legal aid organizations are strained to respond to the demand and many have had to quickly increase staffing, generally hiring younger attorneys with limited experience. With the influx of children over these last few years, additional challenges have arisen relating to immigrant children's legal claims and the need for social services.

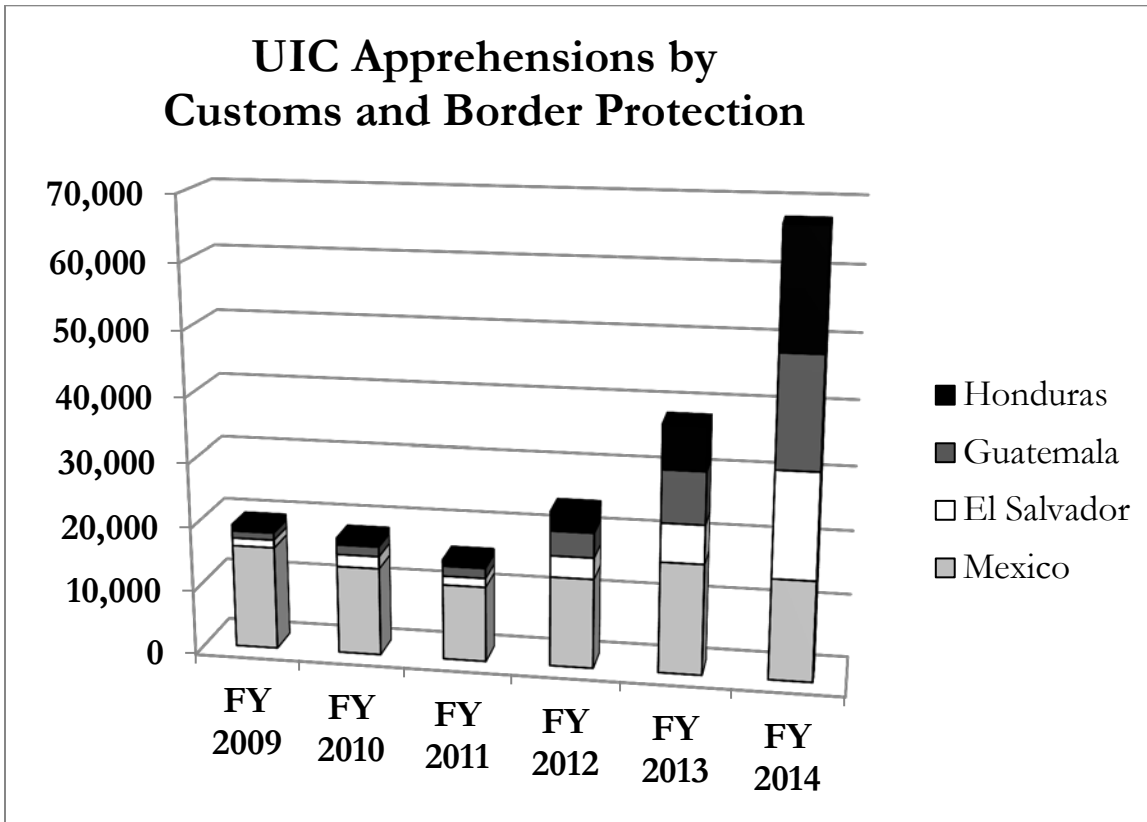
Given resource constraints and the ad-hoc nature of the system that has grown to represent unaccompanied children, legal aid organizations have relied in large part on recruiting, training and supporting *pro bono* attorneys to expand representation of children in immigration proceedings. Despite these barriers, legal aid organizations and the *pro bono* community are committed to providing quality legal representation to as many children as possible.

In June 2015, one year after the influx, expert practitioners from legal service organizations serving immigrant children across the country, as well as *pro bono* attorneys and experts in children's law, convened in Chicago to discuss best practices for managing these larger caseloads, emerging legal and practical issues, and commonly encountered challenges in the current, post-influx landscape. Prior to convening, the National Immigrant Justice Center (NIJC) surveyed participants about existing and emerging best practices and gathered examples of common challenges and solutions from participants. This manual was created in the wake of the convening, and offers best practices to advocate for protecting children's best interests through the provision of legal representation in a very challenging field. Its chapters include valuable guidance for practitioners on the following issues:

- **Building and Maintaining a Legal Team: Recruiting, Onboarding and Retaining Staff**
- **Leveraging Volunteers: Recruiting, Training, Supporting and Retaining Pro Bono Attorneys**
- **Customizing Documents for Children**
- **Striking the Balance: Emerging Legal Issues and Case Prioritization**
- **The Lawyer's Role in Anticipating and Responding to the Social Service Needs of Children**
- **Anticipating and Contending with Conflicts and Ethical Challenges**

The authors of each section, as well as the convening participants whose experiences and insights have been incorporated therein, each have significant experience representing unaccompanied immigrant children and have managed programs providing legal services through the use of *pro bono* attorneys. These *pro bono* attorneys also contributed to this manual, drawing on their experiences in many cases. This manual is not meant to serve as a training curriculum or step-by-step guide on representing children in immigration proceedings, nor should it be taken as legal advice for any particular case or situation. Rather, it seeks to respond to issues that have emerged for those in the field who have been responding to the recent influx of children, and offer suggested best practices.

The manual is designed for easy reference for legal aid organizations and *pro bono* attorneys and also is accessible online at [immigrantjustice.org/UICBestPractices](http://immigrantjustice.org/UICBestPractices), including links to additional information, templates and materials useful for the representation of unaccompanied immigrant children.



*Data source: Department of Homeland Security*

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- The Heartland Alliance's National Immigrant Justice Center (NIJC) staff who contributed to this project: Alexandra Fung, Ashley Huebner, Lisa Koop, Mary Meg McCarthy, Alek Suni, and Tara Tidwell Cullen. NIJC, a nongovernmental organization with offices in Chicago, Indiana, and Washington, D.C., is dedicated to ensuring human rights protections and access to justice for all immigrants, refugees, and asylum seekers through a unique combination of direct services, policy reform, impact litigation and public education.



# Chapter 1:

## **Building and Maintaining a UIC Legal Team: Recruiting, Onboarding and Retaining Staff**

By Meredith Linsky\*

Since the rise of UIC entrants into the United States beginning in 2014, immigration legal service providers assisting unaccompanied children have dramatically increased their staffs (some doubling or tripling in size) to serve the influx of children. Suddenly, these organizations were expected to hire and train staff members while serving their ever-growing client base. Organizations have struggled to invest the time to recruit, train, and provide oversight. Managers responsible for hiring are generally promoted from within the ranks of direct service attorneys and few have a background in human resources or training in recruiting, interviewing, training, or retaining staff. The following is guidance on how to build and maintain a capable team.

### **I. Recruiting<sup>†</sup>**

Each organization has a distinct culture and seeks certain values and qualities in its employees. Qualities that UIC legal providers often prize include the ability to thrive in a team environment, willingness to accept feedback, aptitude for working with government stakeholders, and being comfortable working with children. An organization may identify qualities that do not relate directly to the job description but which may demonstrate a predisposition for this work. These sorts of qualities may include: experience abroad, volunteer experience, and work experience before law or graduate school. Equally important is identifying qualities to avoid. Candidates who may be ill-fitted for work at UIC legal service organizations could include those antagonistic toward some stakeholders (e.g. the government, law enforcement) or some potential clients (e.g. individuals with criminal histories), those who prefer to work autonomously, and those who demonstrate difficulty establishing boundaries.

Be as specific as possible in the job description. For example, will the individual provide “Know Your Rights” presentations? Is it an entry-level staff attorney position to represent non-detained children in applications for relief? Essential qualities for a paralegal working with people who are detained may include someone who is a skilled communicator and presenter, highly organized and self-motivated.

Few paralegals staffing UIC projects have had any previous background in legal work. Because the skills required to work with children in detention are more similar to those of a teacher or school

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\* *Meredith Linsky is the Director of the American Bar Association Commission on Immigration. Previously, she was Director of ProBAR, the South Texas Pro Bono Asylum Representation Project, in Harlingen, Texas. This chapter includes background and insights from Violeta Discua-Salamanca, Supervisory Paralegal at ProBAR.*

† *While it is beyond the scope of this chapter, managers should understand that because hiring decisions often are fraught with employment law compliance issues, consultation with expert resources is critical. One basic resource is provided by the United States Department of Labor, *elaws FirstStep Employment Law Advisor*, available at [webapps.dol.gov/elaws/firststep](http://webapps.dol.gov/elaws/firststep).*

counselor than those of many legal professionals, be open-minded about prospects and consider individuals with diverse employment histories.

Provide a realistic assessment of the job responsibilities as well as requirements and expectations for the position (specific experience, licensing requirements, and language skills, as well as the expected time commitment). If the organization is hiring for a position with restricted government funding, indicate those restrictions in the job description.

There are several national, regional and local options for promoting the job opportunity. Websites include: [idealist.org](http://idealist.org); [nonprofit-jobs.org](http://nonprofit-jobs.org); and listservs including the [Detention Watch Network](#)<sup>1</sup> and [ChildImmigration](#).<sup>2</sup> Target recent law school graduates by sending announcements to law school career centers, or to career centers at universities or community colleges for non-lawyer positions. If the organization prefers to advertise the position locally, it might want to post them on a local jobs website, through a community paper, or through other local nonprofit agencies.

The increase in funding for UIC representation has resulted in the creation of many new positions for UIC legal advocates nationwide, which means competition among legal services organizations for strong candidates has increased. To appeal to potential candidates, outline the organization's unique attributes in the job description. For example, highlight whether it is in an area with a low cost of living or close to a thriving metropolitan environment with frequent art and cultural events. Consider adding or publicizing additional benefits to attract potential candidates like flexible schedules, telecommuting options, or paid time off between Christmas and New Year's. Other options may include establishing a paid (or unpaid) sabbatical policy or opportunities to travel after a certain number of months or years on the job.

## **II. Interviewing**

Carefully consider who should be involved in the interview process and who has responsibility for vetting and selecting candidates. In some organizations the director or the director and a small task force has this responsibility. Often, larger organizations delegate staffing responsibilities to a supervisory team. When those who will supervise new staff play an active role in interviewing and selecting new hires, they likely will be more invested in the employee's success and more willing to spend time training and mentoring.

Interviews are an opportunity to assess applicants (preferably in-person) and allow them to ask questions and interact with staff.

In advance of the interview or at the outset of the conversation, review the salary range available for the position and confirm that the candidate wishes to proceed. This is also a good time to test the candidate's language skills if proficiency in another language is required. Since these two items can be deal-breakers, there is value in addressing them before all parties involved have invested time in the interview.

An effective interview requires preparation and good listening skills. Create standardized interview questions to ask each candidate. Questions should be mostly open-ended to elicit narrative responses. Include questions intended to draw out particular qualities. For example, if a candidate cannot articulate how she would balance her work and personal life, or if she cannot identify coping mechanisms to help deal with potential secondary trauma, this might raise a red flag. If a candidate is unable to articulate reasons why she wants to work with immigrant children or has no awareness of current issues facing immigrant youth, this demonstrates both that she is unprepared for the

interview and likely ill-equipped for the job. Review the applicant's resume thoroughly to develop specific questions related to the applicant's academic and employment experience. Ask about her relationships with prior supervisors. What work structure worked well for her? What supervision style is challenging for her? Address observed weaknesses, such as poor grades in relevant classes or an inferior writing sample. How does she explain the deficiency or plan to compensate for it? Take careful notes during the interview, as these will be important when deciding whom to call back for a second interview or to select as the final candidate.

The best interviews include sample scenarios where the interviewer presents a work-related set of facts for the candidate to decipher, explain, or resolve. This form of interviewing requires the applicant to demonstrate practical skills and allows the interviewer(s) to get a sense of the applicant's substantive knowledge, judgment, and professional demeanor. This could include asking the applicant to analyze relief options from a complicated set of facts or respond to an ethically challenging or frustrating scenario at a detention center. Consider asking the prospect to perform a simulated job-related activity, like translating a document or conducting an intake interview. For a position involving *pro bono* support, a candidate could give a proposed response to a *pro bono* attorney inquiry. These exercises can be quite revealing as to the candidate's practical skills and how she responds under pressure or in an unfamiliar environment. Though these measures require more advance planning by the interviewer, this front-end investment will provide both parties with a more complete picture of each other and allow for more informed hiring decisions.

At the conclusion of the interview, discuss next steps and the hiring timeline. Provide a realistic estimate of when the candidate should expect to hear back about the position. If the candidate appears to be a good fit, invite her to reach back out if she receives other job offers before the hiring process has been completed. Use caution, however, and be sure that only individuals with authority to extend a job offer do so. Be clear about who within the organization (an executive director or human resources department, for example) can extend a formal offer.

### **III. Hiring**

Before making an offer to a candidate, check references and complete the vetting process. It is important to develop a standardized set of questions for references and use them consistently. Craft questions that elicit more than general, surface-level responses. For example, consider asking about an area for growth for the candidate or a time when the applicant struggled with a task assigned by one of her listed references. Call at least two or three references, and be sure that references are people with whom the candidate has studied or worked recently. Ensure the reference is prepared to discuss the candidate by using an initial email or call to schedule a time to speak more in depth about the candidate.

When extending an offer, make sure the applicant has no additional questions about the job description, understands the benefits package, and knows to whom she will report. Give the candidate a date by which she needs to respond to the offer so that if she declines, the hiring process can continue to move forward in a timely manner. Be prepared for applicants who wish to negotiate salary, benefits, and other aspects of the job offer. Be direct about the prospects for flexibility in these aspects now or in the future. It is important for a candidate to have realistic expectations about the position and that she be prepared to accept the job that is being offered as it has been defined. This is a final opportunity to ensure that the organization and the candidate are a mutually good fit.



#### IV. Onboarding

Once a candidate accepts the job offer, it is time to onboard. This should be an intentional and planned process to most efficiently incorporate new staff into an existing team and help them contribute as quickly as possible. Provide each new staff with the following:

- organizational mission statement
- staff operations manual
- document that outlines the organization's services
- an overview of work flow procedures
- a description of how to complete common duties
- a list of staffing responsibilities
- meeting schedules
- an organizational chart
- an overview of decision-making procedures
- guidance on funding and administration

Duties to include in a manual might be tasks like answering the phone, maintaining database and filing systems, and core work responsibilities like “Know Your Rights” presentations, client screenings, referrals, and case selection procedures. An operations manual also can include information on ethics, such as the receipt of gifts from clients, and emergency protocols. This information is important for all staff because uniform and universal notice and understanding of key policies and procedures is essential to a productive work environment.

When a new employee joins the organization, consider assigning her a mentor, who may be a senior staff member on the team. Have the new hire shadow and observe senior staff. Encourage note-taking and instruct the mentor and new staff member to hold debriefing meetings. Additionally, in the early weeks, instruct the supervisor to schedule frequent check-in meetings with the new hire. The supervisor and new hire should meet at the end of each week to review the previous week and plan for the week ahead. The ideal process for coaching a new hire and training on a particular skill includes:

1. Explaining the what, why, and how related to a particular task
2. Modeling the task for the new employee to observe
3. Allowing the new employee to perform the task on her own with a trainer observing and taking notes
4. Preparing a debriefing report highlighting strengths, weaknesses and recommendations
5. Observing the task again to make sure the employee incorporates the recommendations

Following this process with all new staff will help set realistic expectations and ensure quality work. While each employee brings individual strengths to the organization, a consistent onboarding process establishes baseline expectations for all staff.



## V. Staff Retention

After investing in hiring and training staff, retaining them is essential. When a staff member has performed her responsibilities well, provide opportunities for her to learn and develop additional professional skills. This can include participating in conferences and trainings; identifying or creating opportunities for staff to present at local, regional and national conferences and meetings; or assigning discrete tasks related to position and expertise, like writing an operations manual or creating standardized “Know Your Rights” presentations and intake materials. Having positions/opportunities to which staff can aspire is a good way to retain talented staff and maintain institutional knowledge. Promoting staff to middle management positions allows them to develop additional skills and diversify their job responsibilities.

Good managers invest the time and effort to hire the best and brightest staff. Yet even with the most committed staff, frequent turnover is common, especially for those who provide high-volume services to detained UICs. Managers should watch for signs of burnout and secondary trauma that are common when working with UICs. To help avoid burnout and related issues, managers can meet individually with their direct reports either weekly or bi-weekly to make sure they are up to date on their workload/caseload. Further, encouraging team-building through group activities and staff retreats can build relationships within teams.

Responsiveness to and support of valued staff will help promote retention. An organization composed of strong, motivated individuals will lead to an inspired, productive team and a positive working environment. Ultimately, clients will benefit from a carefully selected and supported staff.

## Chapter 2: **Leveraging Volunteers: Recruiting, Training, Supporting, and Retaining Pro Bono Attorneys**

By Lisa Koop & Ashley Huebner\*

Legal services providers are encouraged by funders and other stakeholders to engage *pro bono* attorneys on matters ranging from simple intakes to complex litigation. *Pro bono* attorneys can add great value when they have the support of experts in the immigration field. Determining when, where, and how to involve *pro bono* partners can exponentially increase an organization's impact. At the same time, if *pro bono* programs are not structured and maintained, they can detract from the organization's work and leave everyone dissatisfied.

Programs must consider the strengths and limits of *pro bono* attorneys. While it is important to facilitate a positive and effective representation experience for both the client and the *pro bono* attorney, an organization must avoid providing technical support to such a degree that inefficiencies abound. A parallel goal for the organization is to avoid "boomerang cases" that are returned to the organization because the *pro bono* attorney-client relationship disintegrates. Implementing a *pro bono* program where all participants have positive experiences is first and foremost important for clients. However, *pro bono* attorneys and their firms can be long-term legal partners and are also potential financial donors to the organization and cultivating these relationships also may lead to broader support.

Here are best practices for recruiting, training, supporting and retaining *pro bono* attorneys:

1. **Recruit strategically.** Consider targeting attorneys who are uniquely positioned to handle children's cases. These might include attorneys who:
  - A. Participated in law school clinics as students, who may bring legal foundations and familiarity with client care issues that are likely to arise when representing a child;
  - B. Have handled more limited *pro bono* matters and may have developed the confidence and interest to take on more complex matters. Note, however, that the effort to transition *pro bono* attorney involvement from more limited matters (like DACA applications) to more complex matters (like asylum cases) sometimes backfires, as firms often appreciate the shorter and less involved commitment of smaller cases and may be less willing to tackle lengthier and more complex cases. Some organizations have found it useful to invite potential *pro bono* attorneys to attend master calendar hearings or participate in outreach to children at immigration court to familiarize attorneys with the types of clients and issues involved in *pro bono* representation.

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\* *Lisa Koop is the associate director for legal services at the National Immigrant Justice Center (NIJC). Ashley Huebner is the managing attorney for NIJC's Asylum Project.*

- 2. Identify *pro bono* attorneys with the resources to manage the cases that need to be placed.** *Pro bono* attorneys often bring enthusiasm, great skill sets, and passion to UIC cases. When deciding which type of case to place with a particular *pro bono* attorney, ensure that resources available to the attorney reflect the requirements of the case. For example, asylum matters can be labor- and resource-intensive and, depending on case posture, may take years to resolve. They may require interpreters, country condition experts, forensic medical exams, etc. SIJS cases, on the other hand, may be more manageable in terms of time and resources. It is important to accurately communicate to *pro bono* attorneys the time and resources cases may require. Often, legal service organizations are unable to offer meeting space, interpretation, or secretarial services to their *pro bono* attorneys. For these reasons, many nonprofits limit placement of larger matters – like asylum cases – to larger firms with significant resources.

Given the rate at which attorneys change jobs, ensure that firms will transition cases to other attorneys within the firm if the *pro bono* attorney assigned to a case leaves. The firm should consider the *pro bono* client to be a client of the firm and not just of the individual *pro bono* attorney. If an attorney from a firm with whom the organization has not previously worked requests a *pro bono* matter, the nonprofit should have a conversation with the firm’s *pro bono* coordinator or a senior partner regarding expectations before placing the case with the attorney.

For organizations that elect to place cases with small firms or solo practitioners, be sure to screen *pro bono* attorneys. While large firms perform this function when hiring, smaller offices may not. Confirm identification, licensure, and good standing by checking with the relevant state bar. Legal services organizations may wish to request references and/or conduct background checks to ensure that children are being placed with safe and competent counsel.

- 3. Cultivate “super volunteers.”** Outreach to potential *pro bono* attorneys is often difficult for legal services providers, who are hampered by a lack of familiarity with firm *pro bono* programs and culture. Some of the most effective recruitment happens from within the firm, when a



successful *pro bono* attorney shares her experience with colleagues, demonstrates that the work is manageable, and attests to the support she received from the placing organization. These “super volunteer” ambassador attorneys are valuable both because they tend to be repeat volunteers and because they recruit their colleagues. They stand out because they have worked well on *pro bono* cases and demonstrated enthusiasm for the work. They are often mid-level associates who have enough seniority and firm familiarity to feel comfortable promoting *pro bono* work. NIJC identifies these *pro bono* attorneys and celebrates their achievements through “Rising Star” awards

distributed at its annual fundraising luncheon. Often, these “super volunteers” can be tapped to help identify new *pro bono* attorneys and also to accept new matters which may be more complex or present unique challenges. They may also serve as *pro bono* mentors.

- 4. Define roles and responsibilities.** Legal services organizations must ensure that prospective *pro bono* attorneys understand their role and the role of the placing organization. For example, some providers ask their *pro bono* attorneys to sign an agreement which states that the provider is a consulting expert, privy to case information and available for case strategy input. NIJC asks its *pro bono* attorneys to sign a set of [guidelines](#)<sup>3</sup> outlining NIJC’s expectations of the *pro bono* attorney as well as NIJC’s training and support. NIJC *pro bono* attorneys agree to attend an NIJC training, adhere to the scope of work defined by NIJC, retain the matter at the firm for the duration of the case, and communicate with NIJC staff about case developments. In turn, NIJC offers technical assistance and support to *pro bono* attorneys throughout the course of representation.

There may be times when a legal services organization seeks *pro bono* involvement in matters in which it lacks expertise, such as in the state court proceeding of SIJS cases. In these cases, the placing organization must clarify that it will not provide expert support, and that the request to *pro bono* counsel is to cover a gap in the organization’s legal expertise. For a good example of this type of *pro bono* partnership, see “The Minnesota Experiment” on page 14.

- 5. Conduct case screenings and craft effective case descriptions.** Legal services organizations placing *pro bono* cases must complete thorough case screenings and convey comprehensive case information to *pro bono* attorneys, especially because children’s cases often are procedurally complex. Investing in good intake practices is likely to minimize confusion and frustration later. NIJC, for example, begins asylum intakes with a brief telephone screening, followed by an in-depth, in-person intake interview conducted by a trained intake worker. The intake worker follows a [list of questions](#)<sup>4</sup> intended to gather the information required to determine asylum eligibility. The intake worker supplements the interview with country condition research. The intake worker then presents the case to a supervising attorney, who typically asks additional questions for the intake worker to explore with the potential client. Once all the information is collected, the supervising attorney makes a case acceptance determination. If accepted, the intake worker drafts a [case description](#)<sup>5</sup> that includes the essential facts, procedural posture, significant legal hurdles, and impending deadlines of the case as well as the country of origin, current location, and language of the client. The case description should flag all critical issues so that the *pro bono* attorney is not surprised by any issues after case acceptance. These case descriptions are circulated to potential *pro bono* attorneys for possible *pro bono* placement.
- 6. Ensure the client understands the role of the *pro bono* attorney.** The legal services organization should explain the concept of *pro bono* representation to clients orally during the intake process and through documents – like [retainers](#)<sup>6</sup> – issued to clients following case acceptance. *Pro bono* involvement is most useful to legal services organizations when the relationship between the *pro bono* attorney and the client is firmly established and the placing organization is removed from most aspects of representation. The aim of the legal services organizations should be to provide ongoing training and support to the *pro bono* attorneys, guide case strategy determinations, and share legal and procedural updates. Placing organizations should promote direct communication between *pro bono* attorneys and clients. Once the placing organization has assigned a *pro bono* attorney to a client, it should resist serving as a conduit for communication between the two. Some organizations recruit and train volunteer interpreters to assist *pro bono* attorneys who may not speak the client’s language, while others require *pro bono* attorneys to secure their own interpreters. Regardless of how the organization seeks to overcome

language barriers, a primary goal must be to ensure that clients understand their roles, their attorneys' roles, and the role of the nonprofit.

7. **Devote sufficient resources to *pro bono* support.** Organizations placing *pro bono* matters should have a designated *pro bono* coordinator who is the main point of contact, available to respond to inquiries from *pro bono* attorneys within one working day. Several leading UIC legal representation organizations have rejected *pro bono* assistance models because they lack resources to support a viable *pro bono* program. For nonprofits that use *pro bono* models, providing *pro bono* support can be a full-time job for one or more staff members. Typically, *pro bono* support involves providing in-depth legal trainings, offering consultations by phone or email to discuss case strategy, working through client interaction issues, identifying experts and interpreters, monitoring upcoming hearings and interviews, and reviewing case filings, such as affidavits and legal briefs. In addition, a regular audit of all *pro bono* matters, including a check-in with the *pro bono* attorneys, should be part of any *pro bono* model.
8. **Remove obstacles for *pro bono* attorneys.** By virtue of being legal services organizations connected to the community, placing organizations may be better-positioned to respond to some issues that arise in UIC representation. While the aim of most *pro bono* placements is to encourage the *pro bono* attorney to handle the heavy lifting involved in representation, organizations should be ready to assist when doing so would promote efficiency and would be likely to retain the *pro bono* attorney as a future volunteer. For example, though NIJC tells *pro bono* attorneys that it is their responsibility to identify interpreters for their clients, NIJC maintains a list of volunteer interpreters to support its *pro bono* partners. The cost to NIJC of maintaining this list is minimal and the benefit of offering *pro bono* attorneys this assistance is significant. Similarly, when clients of *pro bono* attorneys have social service needs, the legal services organization is often best-positioned to make referrals. Additionally, legal nonprofits can facilitate *pro bono* representation by providing *pro bono* attorneys with self-help materials like quick reference guides and frequently asked question sheets that allow *pro bono* attorneys to quickly access information. Some NIJC samples are located [online](#).<sup>7</sup> These tools provide the added benefit of reducing *pro bono* inquiries to the organization, which maximizes the capacity of everyone involved.
9. **Avoid “failure to launch” situations.** The outset of a *pro bono* attorney-client relationship is a critical time during which many promising case placements fizzle. *Pro bono* attorneys may be daunted by the responsibility and unfamiliarity of matters they have accepted. Clients are intimidated both by the process and the prospect of sharing intimate details of their cases with new counsel. While good *pro bono* attorney training and support, combined with strong and clear client intakes can help minimize some of these challenges, placing organizations should consider other models to support the positive launch of these relationships. One option is to borrow clinic models from other contexts, where the organization trains attorneys and immediately



introduces them to their clients at the training location. The legal services organization also may conduct a brief orientation with clients while the attorneys are receiving legal training to reiterate the nature of the *pro bono* representation and prepare clients for their meetings with their attorneys. While matters involving immigrant children almost never will be completed during one attorney meeting, facilitating the first attorney-client meeting will overcome many of the challenges that can be the downfall of a case. An alternative approach is to have a legal worker from the placing organization attend the initial *pro bono* attorney-client appointment at the *pro bono* attorney's office to facilitate introductions, orient the client to the meeting location, and clearly signal to the client that the transition in representation has occurred. Through these efforts, the risk of the attorney losing momentum and delaying initial contact with the client is removed; as is the possibility of client unresponsiveness. Following a face-to-face meeting, both parties will be more invested in the continued success of their relationship. Legal services organizations can ensure that all parties involved leave the meeting with clear next steps and assignments to ensure ongoing communication between the parties.

Leveraging *pro bono* involvement can significantly increase the impact of a legal organization seeking to provide representation to immigrant children. Dedicating the time and resources necessary to train and support attorneys can ensure clients receive high quality services and that the programs are sustainable.

**The Minnesota Experiment:  
A Unique Pro Bono Partnership for SIJ Predicate Orders**  
*By Rebecca Scholtz, attorney, Immigration Law Project, Mid-Minnesota Legal Aid*

Minnesota advocates representing noncitizen children formed the SIJS Roundtable, a 2013 working group, to share best practices in the representation of children in SIJS applications, promote education of child welfare professionals around SIJS issues, and develop pro bono capacity to help SIJS-eligible children. The group observed that while existing nonprofit immigration legal services providers had the capacity to represent SIJS-eligible children before USCIS and the immigration court, often it was difficult or impossible to find pro bono attorneys to represent the adult guardians in the predicate family/juvenile court component of these cases. Most predicate SIJS orders are sought in family court custody proceedings, where an adult custodian—not the child—is the petitioner, seeking custody of the child. In SIJS cases, the typical practice among Minnesota legal services organizations is for the immigration practitioners to refer the family court component rather than handle it in-house, in order to avoid possible conflicts. Further, local immigration practitioners typically do not practice in state family court and thus lack family-law expertise. In some cases, a legal services organization's attorneys may be restricted because of funding.

To address this need, Mid-Minnesota Legal Aid partnered with the Volunteer Lawyers Network (VLN) and Faegre Baker Daniels LLP, a law firm that had provided pro bono representation in SIJS predicate matters on behalf of many immigration legal services clients, to launch a project to represent adult custodians of SIJS-eligible children in family court. The project, housed at VLN, recruits and trains volunteer attorneys and assigns them to cases referred by immigration legal services providers. VLN provides mentoring and support throughout the process, and often the immigration attorneys work in partnership with the pro bono family law attorneys to ensure that the predicate order is sufficient for SIJS purposes. Since its inception, the project has grown in number of volunteers and cases, and also in scope. As volunteers have developed expertise, the project has represented families in more complex cases which go beyond the third-party custody actions where the project initially focused. Volunteers have now represented clients in adoption proceedings, paternity actions, custody establishment actions, guardianship actions in probate court, and juvenile court guardianships. From an initial pool of approximately five attorneys, the project has engaged more than 25 volunteers and has built relationships with three large firms in Minneapolis that now routinely accept project cases.

# Chapter 3: Customizing Documents for Children

By Claire R. Thomas\*

Too often, advocates working with children use materials created for adults in their representation. Instead, advocates should strive to use culturally and linguistically sensitive, age- and developmentally appropriate materials with their young clients. UICs present particular challenges for advocates because most have limited English proficiency and many have had their education interrupted. Even the most basic documents required for legal representation, such as retainer agreements and intake forms, can be overwhelming and misunderstood by young people who are unfamiliar with the English language, and who are from cultural backgrounds in which institutions like the legal system are completely unfamiliar. For many UICs, this will be the first time they have worked with an attorney, making clear communications between the child and the attorney even more crucial.

Customizing documents for children will enhance the attorney-client relationship and increase a young client's understanding of the legal process. *How* information is presented can be as important as *what* is presented. For example, using images can help make information more understandable and user-friendly, and videos or interactive [flow charts](#)<sup>8</sup> may be useful communication tools for child clients.

Among the most commonly used documents in UIC representation are retainers, releases, intake forms, and flowcharts or other informational documents to help explain the legal process. When creating or customizing these documents for use with children, they should be accessible and culturally appropriate, enhance the attorney/client relationship, and improve communication between advocates and their child clients. The rubric linked in [this manual's online document bank](#)<sup>9</sup> can serve as a guide for advocates to assess commonly used documents against these criteria.

1. **Accessible.** Present documents in a style and format that is child-friendly. Clarity and brevity are important. Explanations should be basic and understandable, but not so vague as to miss important details or relevant information.
  - A. **Use clear language.** Legal documents often use sophisticated language that is better suited to an educated, adult audience and not to the young immigrant client. Documents developed for UICs should use text that is clear, short, and direct. Avoid run-ons, compound sentences, and legal jargon. Remember that the document will likely be translated, either verbally or in writing, and clarity will facilitate the ease and quality of the translation.
  - B. **Consider different formats.** When drafting a retainer agreement or other documents, consider the purpose of the tool and if the medium is the best format for the message and audience. While it is clear that some instruments, such as retainer agreements, should be

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written documents, consider supplementing documents with video, graphics, or verbal guidance to clarify certain sections for particular audiences. See, for example, the [five-part video series on SIJS](#)<sup>10</sup> created by the New York City-based organization [Atlas DIY](#).

2. **Culturally appropriate.** Understanding the customs, beliefs, behaviors, language, and perspective of the young client is paramount to successful representation. For each document or tool, advocates should consider its appropriateness in terms of the client's age, competency, capacity, cultural background or other characteristics.

- A. **For more information about cultural competency and awareness,** see the [Curricula Enhancement Module Series](#),<sup>11</sup> a project of the National Center for Cultural Competence at Georgetown University's Center for Child and Human Development.

- B. **For more information about children's developmental stages and the growth of their intellectual abilities,** see the [Child Development Institute website](#).<sup>12</sup>

3. **Enhance the attorney/client relationship.** There is no substitute for frequent communication with the client to ensure her continued understanding of the role of the legal advocate. When customizing a retainer agreement or any other document for child clients, advocates should

consider who will review the document with the client (e.g., paralegal, immigration attorney, *pro bono* attorney) to ensure that the information in the document will be understood clearly by both parties. It is important for the advocate to clarify for the child that her role is to pursue the child's expressed interests. Often, this will be the first time the client has worked with an attorney, so clarify roles early and throughout the representation.



- A. **Ensure accuracy.** Customizing a document for a child must not detract from its accuracy. Review documents to ensure that information is presented clearly, and is not vague or misleading. Consider asking the child to explain her understanding of the document to test her comprehension.

- B. **Reduce stress.** Children participating in the legal process often are anxious about the proceedings. Immigrant children face additional stress such as their migration trauma, pending removal proceedings, and acculturation to a new environment and language. Advocates should anticipate their clients' questions or concerns and use tools that reduce their stress. For example, using a flowchart or video component to illustrate the process of legal representation might enable

clients to more fully understand their role, and make the experience less foreign and frightening. (See SIJS video by [Atlas DIY](#) above.)

**C. Empower UICs to make informed decisions.** Reviewing a retainer agreement with a young person should be a joint activity requiring participation from both parties. This collaborative approach can make the process of completing a retainer agreement or document an empowering and engaging experience for clients, and also helps them to more clearly understand roles and responsibilities.

**D. Further legal representation.** While documents tailored for children should be as simple as possible, they must contain all the information to further the legal representation, and meet the purpose of the documents themselves. For example, effective retainer agreements convey:

- Scope of the representation
- Confidentiality of communications
- Expectations regarding the representation (such as the importance of honesty in communications with counsel)
- Grounds for termination by either the child or the attorney
- Fees
- Any service- or case-specific supplements
- Signature or other written acknowledgment

See the following samples of commonly used documents customized for child clients<sup>13</sup>

- [KIND Retainer Agreement for Child Clients](#)
- [New York Law School Safe Passage Project Limited Scope Agreement for Child Clients](#)
- [Legal Services for Children Authorization to Release Records](#)

**4. Improve communication.** Using child-friendly documents enhances communication on many fronts: between the attorney and the client; the mentor organization and *pro bono* counsel; with internal or external social services providers; and between the attorney and adult family/sponsors.

**A. Communication between mentor organization and *pro bono* counsel.** Often, *pro bono* partners need to use their firm's retainer agreements even when representing clients as volunteers. Using a standard retainer agreement, drafted for a sophisticated corporate client, presents a problem when used with young people who may not understand it or who may feel anxious and confused when presented with it. This is a good (and important) opportunity for *pro bono* counsel and legal services organization staff to collaborate so that *pro bono* counsel can revise their retainer agreements with language their young clients are more likely to understand.

Compare, for example, an [adult retainer](#)<sup>14</sup>, with a more [child-centered agreement](#).<sup>15</sup>

**B. Communication with social services providers.** It even may be necessary to have different retainers, releases, and other forms for use between different providers or different programs within each office. For example, social workers working within the same organization as the legal service provider might have their own forms for clients to sign,

including retainer agreements or forms allowing for the release of medical information and records under the federal Health Insurance Portability and Accountability Act (HIPAA).

- Authorization for release of information documents should include the child's name, date of birth, and address; the specific information being requested; information about the requestor and the provider; and the duration of the validity of the authorization. Releases should be signed by the client/patient and/or an individual legally authorized to sign on her behalf, and also include the date on which the release is signed. See, for example, this [sample authorization for release of information for school or social services records](#).<sup>16</sup>
- HIPAA-compliant consent forms vary state by state. In general, to comply with the HIPAA, forms should include the same information noted in the paragraph above. See, for example, the [New York State HIPAA form](#),<sup>17</sup> as well as [a sample form from California](#).<sup>18</sup>

Keep in mind that that the client may not understand the differences between or the need to sign multiple documents. She might even become nervous by the amount of forms required. Advocates recommend taking the time to explain to the child why the forms – and multiple signatures – are required.

**C. Communication with caretakers.** Often, UICs will rely on adult caretakers to bring them to legal appointments, hearings, and to help them comply with responsibilities relating to their immigration cases. These caretakers may have many questions for advocates, including if an advocate can help with *their* own immigration cases or request confidential information about the child's case. Advocates often grapple with how to involve adult caretakers without creating a conflict.

One possibility is to create separate caretaker agreements to outline the caretaker's role in the child's case. This document specifically states that it does not create an attorney-client relationship with the caretaker. It clearly articulates that the advocate represents the child client and can discontinue communication with the caretaker at the client's request. Informational pamphlets addressing frequently asked questions by caretakers could also be helpful in recognizing the caretaker's important role in the child's life without giving legal advice that could present a conflict.

## CONCLUSION

Customizing documents such as retainer agreements, releases, and intake forms specifically for young people will help advocates better serve their clients. Documents and tools should be accessible, enhance the attorney-client relationship, and improve communication between various parties involved in the representation, including adult caretakers. Non-traditional presentation styles, such as interactive flow charts and videos, are potentially useful for communicating with young clients who have limited English proficiency and interrupted education. Modifying documents to make them more user-friendly for young clients can promote their meaningful participation in their representation, strengthen their understanding of their rights and responsibilities, and ensure that they are treated fairly and with dignity.

# **Chapter 4:**

## **Striking the Balance:**

### **Emerging Legal Issues and Case Prioritization**

By Lisa Koop

This conversation plays out frequently at immigration legal nonprofits serving immigrant children:

- Attorney 1: We just completed intake with another child with a “future fear” forced recruitment gang case from El Salvador.*
- Attorney 2: Any past persecution?*
- Attorney 1: Not really. Gang members hung around his school. Some of his friends were forced to join. The gang approached him once but didn’t do anything after he said he needed time to think about joining.*
- Attorney 2: How many cases are on our pro bono case list?*
- Attorney 1: 48. Two attorneys took cases last week and we have an asylum training next month. We can place a few cases there.*
- Attorney 2: Can we prepare this one in-house? Can an intern do it?*
- Attorney 1: We have eight in-house cases with approaching filing deadlines and have three Asylum Office interviews in the next month. It would be a stretch to add this case.*
- Attorney 2: Will he be able to hire someone if we decline?*
- Attorney 1: His family is at 87% of the poverty line, so probably not.*
- Attorney 2: Well, country condition documents suggest he will more than likely be recruited again if he’s returned. He’s already in removal proceedings, so he’s got nothing to lose.*
- Attorney 1: The particular social group would be Salvadoran males who resist gang membership? Or Salvadoran males who come from gang-controlled neighborhoods?*
- Attorney 2: We won’t win at the Asylum Office but he’s got a shot before the immigration judge and this is an issue we want to push...*
- Attorney 1: Yes, but we’ve already got a handful of similar cases in the works...*

It pains children’s advocates to decline any colorable asylum case and a persistent voice tells them there is room for just one more case on the in-house docket. At the same time, advocates know that children’s asylum cases are almost always complex and difficult to prepare. The legal issues surrounding particular social group (PSG) asylum claims are complicated, nuanced, and ever-evolving. Child clients require more interviews of shorter duration to gather their stories. And the basic logistics of getting these clients to the office for meetings are often taxing. Advocates understand there is a point where trying to provide assistance in every case means something will fall through the cracks; a deadline will be missed, a client neglected, an argument made poorly. Given how high the stakes are in these matters, it is critical for advocates to be intentional about how they manage and sustain caseloads. Here are some best practices for managing case acceptance.



1. **Keep the big picture in mind.** Litigating one child's case can impact subsequent cases for better or for worse. Though asylum officers and immigration judges do not issue precedential decisions, their future decisions are informed by their current caseload. Once cases have risen to the Board of Immigration Appeals and the federal courts of appeals, published decisions can alter the course of the law dramatically.
  - A. **Make creative arguments.** There is no set list of particular social groups from which advocates must choose when developing a case theory. Similarly, case law surrounding what constitutes a political opinion continues to evolve. The BIA has recognized that "married Guatemalan women in relationships they cannot leave" can be a PSG. *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014). Where gangs target children and select them as "girlfriends" against their wills, the same reasoning should apply. Several courts have recognized that individuals who are at risk of being trafficked can be a PSG. *Cece v. Holder*, 733 F.3d 662 (7th Cir. 2013). Likewise, children forced to do work for gangs are also victims of labor trafficking and may have asylum claims on that basis. If the bourgeoisie in some cultures can be a PSG, *Benitez-Ramos v. Holder*, 589 F.3d 426, 431 (7th Cir. 2009), and landowning class of cattle farmers qualify in others, *Tapiero de Orejuela v. Gonzales*, 423 F. 3d 666 (7th Cir. 2005), why *not* affluent Central Americans? Or individuals who have been Americanized? Cases involving "children without familial protection" and "female heads of household" are also gaining traction. And gender alone as a PSG remains potentially viable, *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010). Advocates should not accept that an argument that fails once will

fail always. With different facts and/or before different adjudicators, the law is applied and interpreted differently. Advocates should not accept wholesale rejections of certain types of cases, but instead keep pushing the law to recognize the refugee status of children in need of protection.

**B. Keep a finger on the legal pulse.** Asylum case law changes often. Lawyers should refresh their knowledge regularly rather than merely recycle old briefings and arguments. While referencing current BIA and home circuit decisions may be most effective in briefing and before adjudicators, consider incorporating persuasive decisions from other circuits. [Sign up](#) to receive Board decisions as they are issued.<sup>19</sup> The National Immigrant Justice Center [blogs](#) all circuit court immigration decisions.<sup>20</sup> Creating and participating in listservs like those hosted by the [National Immigration Project](#) and working groups where practitioners share local practices – including the litigation practices of the ICE trial attorneys – can inform and improve litigation strategies.

**C. Preserve issues.** The law changes in ways that benefit children when advocates think strategically from the outset and contemplate BIA and federal court litigation. Issues only can be litigated on appeal when they have been preserved at the trial-court level. This means that advocates must make their records by briefing and arguing issues – even those that judges do not like and dismiss as nonstarters. For example, questions around the PSG analysis have been percolating in recent years. The NIJC’s [practice advisory on PSG](#)<sup>21</sup> includes sample language advocates can use to preserve the ability to challenge the validity of the “social distinction” and “particularity” concepts, while also making arguments about eligibility under the Board’s current law.

**D. Don’t concede that other arguments don’t work.** There is little to be gained by conceding that a PSG cannot prevail. Some judges commonly make statements that gender alone never can be a PSG or that a PSG never can be defined by the harm an applicant has experienced. Neither of these statements is true – See *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010) and *Lukwago v. Ashcroft*, 329 F.3d 157 (3d Cir. 2003) – and allowing the perception that they are settled legal issues undermines the larger advocacy effort. Take opportunities when they arise to educate adjudicators. Push back against unsupported assertions by ICE trial attorneys that threaten to mislead adjudicators. Understand case law in order to take a bold stand against any tide that threatens to undermine protection for children.

**2. Think about who can really be helped.** Implementing the above strategies is both time- and labor-intensive. Striving to win protection for one child while seeking to advance the aims of the overall movement is a significant undertaking. Advocates must make hard decisions about which cases to accept and which to decline. Having a protocol for case acceptance saves both time and anguish by establishing criteria for making these decisions. The following are suggested questions to ask when deciding which cases to accept:

**A. Is this a winnable case?** A very high percentage of children present colorable asylum claims and as discussed above, it behooves advocates to push the law to recognize them. But there are children who simply do not present asylum claims. Either they have no fear or the fear they express is entirely untethered from a protected ground or lacks evidentiary support. Advocates are hardwired to be sympathetic, but it is not responsible to advance a

foundationless claim and see if it sticks. Clients are not well served by this strategy and advocates risk creating bad law for individuals who need asylum protection. Learn to say no to these cases.

**B. Is this a child who can benefit from our representation?** Some UICs present asylum claims but other obstacles prevent them from being clients who can be effectively served by a legal services organization. Does the child live within the organization's geographic service area? Is she going to stay there? Can she arrange for transportation to the office for appointments? Does the child speak a language spoken by staff or for which an interpreter will be available? Is the child capable of cooperating with the lawyer or does she have behavioral issues that prevent her from participating in her representation? Where social services can be engaged to overcome these challenges, these obstacles need not be deal-breakers. But where these obstacles mean an advocate will be spending an inordinate amount of time on ancillary and logistical matters and prevented from providing effective representation, cases should be declined.

**C. Is this child particularly vulnerable?** Many legal services providers prioritize very young children, homeless children, mothering teens, and other subcategories of children. Identifying focus areas such as these can be a useful way to limit cases. However, remember that virtually no child is capable of navigating the complex immigration system alone and proceeding *pro se* is a terrible option for any asylum seeker.

**D. Will this child find help elsewhere?** Children who have support systems to pay for private counsel should do so where competent private counsel is available. Likewise, legal services providers who can provide court representation to children may consider prioritizing court cases if other nonprofits in the community only provide representation before USCIS. Declining cases of potential clients who are most likely to find other counsel is a good strategy to preserve capacity for clients who have no other options.

**E. Are we at capacity?** While most legal service providers will be unable to identify a magic number at which the office reaches capacity, organizations should set a ballpark figure that can be used to guide case acceptance decisions. An attorney with limited other responsibilities probably has capacity to handle about 30 asylum cases per year. Where the attorney has strong paralegal support, that number may be higher. Where the attorney has other responsibilities, that number is likely to be lower. Though there will be variance across attorneys and organizations, developing and maintaining a case acceptance barometer is a good practice.

**3. Suspend intake if necessary.** Most legal services providers will reach capacity from time to time. When that happens, management must make the difficult decision to decline new cases. Failing to do so has the potential to put current clients at risk and also accelerates and exacerbates staff burnout, which can lead to attorney error and staff turnover. Staff likely will resist closing intake as they, too, will fear for the prospective clients unable to access help during the intake suspension. Organizations also will have to determine if closing intake is possible given obligations to funders and other stakeholders. However, closing intake may be the best among undesirable choices available to organizations that are operating at or beyond their capacity. The following are suggestions for managing an intake suspension.

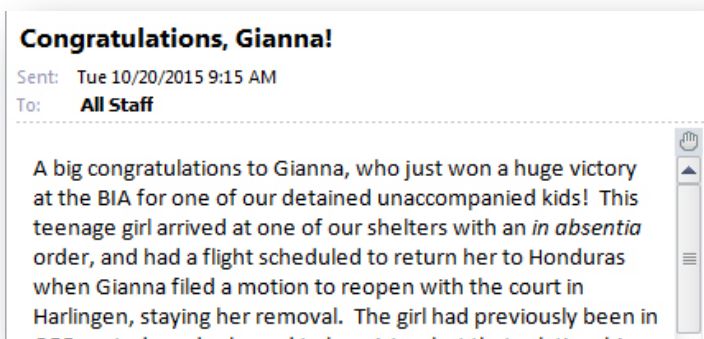
- A. **Set temporal limits.** It may be simplest to determine that closing intake for a set period of time will allow the organization the breathing room it needs to catch up on and resolve existing cases in order to create capacity for new matters. Most likely, a closure for less than a month will be insufficient. A three-month closure may strike the balance between shutting off the flow of new cases long enough to help staff manage their cases but not so long that potential clients and partners interpret the temporary closure as permanent.
  - B. **Set trigger points.** Another intake suspension model involves setting trigger points that, once reached, determine when intake is suspended and resumed. An organization may determine that when it has 50 cases awaiting *pro bono* placement, it has reached capacity and intake is suspended until the case number returns to 30. Having the upper and lower trigger points set this far apart means that intake will be suspended infrequently, but those suspensions may be somewhat lengthy since they will persist until the necessary number of cases is resolved.
  - C. **Provide limited assistance.** In conjunction with either of the models described above, organizations may consider providing limited support during intake suspension. For example, intake phone lines normally used to schedule intake appointments could remain open but be used to provide limited case support, guidance about things such as the one-year filing deadline, and referrals to other service providers. In the alternative, intake phone lines can be set to offer recorded messages that provide basic guidance, referrals, and links to web resources.
  - D. **Consider *pro se* support.** Most legal services providers agree that *pro se* models are not well-suited for asylum matters and, in particular, are a poor fit for children. However, when legal services providers are unable to accept new matters and there are no other attorneys available, directing children and their custodians to *pro se* materials is an option that should be considered. The Florence Immigrant and Refugee Rights Project has developed some of the best [pro se materials](#)<sup>22</sup> available.
4. **Take care of staff.** The issue of staff burnout is raised here to address the ways organizations' capacity issues impact staff and to offer practices intended to help make services for children sustainable.
- A. **Recognize the impact of intake on young staff.** Seasoned practitioners may forget how harrowing it can be for staff new to this work to listen to story after story of persecution and abuse. Acknowledge to new staff members that intake can be difficult and invite them to raise concerns and/or to share if they are feeling overwhelmed. Some organizations place a cap on the number of intakes any individual may complete in a given week to create and support recovery time for intake workers.
  - B. **Rotate staff on the front lines.** Organizations should avoid having one individual handle all intake work. Involving other staff with intake will reduce the impact on any single individual and create a built-in support system for intake workers to share experiences with each other.



**C. Address the challenges of intake with staff.** Whether this happens at weekly case review meetings, designated staff retreats, or during the course of any given day, supervisors should be intentional about checking in with staff to ask about how they are handling intake. It may be appropriate to ask staff how they “decompress” or how they relax outside of work. Strongly encourage staff to take their vacation time and to use that time to disconnect from the work. Acknowledging that parts of the work can be emotionally difficult and prompting staff to think about ways they cope with the difficulties can help make the work more sustainable.

**D. Give staff members resources to connect traumatized individuals with therapy.** Feeling helpless in the face of the trauma of potential clients can be very taxing on intake workers. Once potential clients share their stories, staff often will feel compelled to offer support. Since legal intake workers are not therapists, help them know that their role is not to offer therapy, but rather to collect information that will help the legal team secure protection for potential clients, thus reducing the likelihood of new trauma. Simultaneously, many clients will need mental health care. Provide intake workers with referrals for mental health counselors who may be available to potential clients. Equip staff to explain to potential clients that while the role of legal workers is limited, they can help connect potential clients with specialists who can respond to their mental health needs. *See Chapter 6 of this manual for more guidance in this area.*

**E. Direct staff to resources for themselves.** Familiarize staff with counseling resources available to them. Organizations should have in-house options and help-lines available. Where that is not possible, ensuring that insurance policies offered through the organization cover psychological care is a good way to provide resources for staff members working on these difficult issues.



**F. Celebrate victories.** Few things make the work feel worthwhile more than seeing a child win her case. Be sure to celebrate the success of the child and those who made it possible. Supervisors might send an email to all staff members about successful cases or recognize them at staff meetings. Small gestures can have a big impact, like ringing a bell when a case is won or listing the case on an office chalkboard. Some offices celebrate court victories with ice cream or other treats. Take time to stop and appreciate the victories when they happen!

## **Chapter 5:** **Special Immigrant Juvenile Status: Expanding Access to Protection for Abused and Neglected UICs**

By Alexandra Fung\*

In a legal landscape with little recognition of a child's unique vulnerabilities, Special Immigrant Juvenile Status (SIJS) is a welcome exception, providing protection to children who have been abused, abandoned, or neglected by their parents and offering a pathway to lawful permanent residence and citizenship. Yet SIJS presents a particular challenge to lawyers representing UICs because the Immigration and Nationality Act (INA) created a bifurcated process to demonstrate eligibility, taking children outside of immigration law and practice at the outset of the SIJS process and into state and family court systems. Before a child can apply for SIJS, a juvenile court must first make findings regarding the child's custody, as well as abuse, neglect, or abandonment by one or both parents. INA § 101(a)(27)(J).

Only after a juvenile court makes these findings can a child submit her SIJS petition with U.S. Citizenship and Immigration Service (USCIS). Although children who are not in removal proceedings can file their applications to adjust status with USCIS concurrently with their SIJS petitions, children in removal proceedings, including most UICs, must wait until USCIS approves their SIJS petitions before making their requests to adjust status in immigration court.



This multi-step process spanning two very different legal systems presents a particular challenge to UIC advocates, who are typically immigration attorneys accustomed to working within the federal immigration system and are generally unfamiliar with the nuances of the state juvenile and family court systems. Increasingly, legal service providers must think strategically about how to help their clients access state courts to proceed with SIJS petitions. This chapter outlines two such strategies: (1) developing in-house family law expertise to represent children (or caretakers) before the state court, as well as in their immigration cases, and (2) partnering with family law experts to manage the state-court component while preserving internal resources to represent UICs exclusively in their immigration proceedings.

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## DEVELOPING IN-HOUSE FAMILY LAW EXPERTISE

Many legal service providers serving UICs have developed family law expertise to represent children both in initial state court actions and before USCIS and the immigration court. Although the majority of these legal services providers did not have internal expertise in child and family law when they began representing UICs, they identified this expertise as an important area for organizational growth to expand their ability to serve SIJS-eligible children. Below are some best practices for organizations that want to develop in-house expertise:

1. **Anticipate potential conflicts.** Some states allow children to petition for the appointment of their custodian or guardian; others designate the parent or proposed guardian as the party responsible for filing state-court petitions. In SIJS cases, attorneys must remember who the client is in any particular action, and avoid entering into representation agreements if an actual conflict or significant potential for conflict exists between clients.
  - A. When possible, attorneys should **limit representation** in both the state court action and the immigration case so that only the child is the client. Most organizations that manage both the state court and immigration components of an SIJS case represent only the child in both actions; whether or not this is possible will depend on the specifics of state law, and if the child can file her own petition or request for SIJS findings in state court. The age of the child may be a limiting factor in her ability to present such a petition, particularly in actions to name a guardian or determine matters of custody between two parents. Where this is the case, some organizations limit their representation to children who are old enough, under state law, to file such petitions. By representing only the child in the state court action, lawyers avoid the possibility of diverging or conflicting interests between the child and her caretaker, which may compromise the lawyer's ability to represent the child in her immigration case.
  - B. If state law or other considerations make it impossible or highly impractical to represent the child in state court, attorneys should carefully consider if a **dual representation** arrangement may be possible, where the attorney represents the caretaker in state court and represents the child in her immigration proceedings. Before entering into a dual representation agreement with the family, attorneys should discuss the arrangement candidly with the prospective clients and communicate to both the child and her caretaker the potential for conflicts in a dual representation arrangement. Although the interests of the child and her caretaker may be aligned at the start of the representation, an important aspect of the attorney's role is to help the family recognize potential conflicts so that they enter into the agreement fully informed. For example, a possible conflict could arise in connection to a caretaker's undocumented status and the potential risks of becoming involved in legal proceedings on the child's behalf. Additionally, families should consider the possibility of a breakdown in the relationship between the caretaker and the child which may jeopardize the custody order from the state court before the SIJS and adjustment case is completed. If the child and the caretaker both agree to the dual representation after having discussed the potential for conflicts, it is a good practice to have each acknowledge this agreement in writing. See, for example, this [sample dual representation agreement](#)<sup>23</sup> drafted by attorneys at the [American Bar Association's Children's Immigration Law Academy](#) in Houston, Texas (please note, this particular agreement was drafted with the Texas Rules of Professional Responsibility in mind, and advocates should review their own state laws when drafting

similar agreements). As with all documents customized for child clients, attorneys should use simple, clear, age-appropriate, and child-friendly language when drafting dual representation agreements for SIJS cases. (See Chapter 3, “Customizing Documents for Children.”)

**C.** When conflicts cannot be avoided or the possibility of a conflict is too great, consider **partnering with other community advocates** to represent the child’s caretaker. In some cases, it may be impossible to represent the child in the state court action or enter into a dual representation agreement with both the child and her caretaker. For example, judges in certain jurisdictions explicitly prohibit dual representation or require independent representation of all parties. Or, cases may arise where it is clear that the potential for conflict between the caretaker and the child is so great at the outset of representation that the attorney cannot in good faith enter into a dual representation agreement. In these cases, the child’s attorney should consider other resources to represent the caretaker in the family court action. Best practices for developing these partnerships are examined in more detail below.

**2. Develop family and child law expertise in-house.** Legal services providers with in-house family law capability can help UIC clients precede with their SIJS petitions in state court without having to refer them to other attorneys. Strategies for building an in-house family law expertise include:

**A. Hire staff with family law expertise.** Some legal services providers serving UICs, such as [Legal Services for Children](#) in San Francisco and [The Door, Inc.](#) in New York City, have long and rich histories of representing children in legal proceedings beyond immigration matters. However, most legal services providers serving UICs are staffed by immigration attorneys with little (or no) family law experience. Increasingly, immigration legal services organizations that work regularly with UICs are hiring staff with family law experience to grow their SIJS programs. In addition to having someone on staff manage the state court component of these cases, in-house experts also can help train and mentor colleagues in state court practice, helping to expand SIJS services.

**B. Seek out community experts to help train staff.** Legal services providers can also reach out to family law practitioners in the community to help train staff in local state court practice and procedure. Law school clinics, legal aid organizations specializing in family law, and private family law practitioners are all potential training resources. Juvenile and family courts also may offer occasional trainings for attorneys, in addition to continuing legal education seminars offered by local bar and other professional associations.

**C. Establish mentoring relationships.** In addition to identifying trainings for staff, organizations should identify opportunities for ongoing support through mentoring relationships. Mentoring staff in family law could be a great *pro bono* opportunity for attorneys who want to support UIC work and engage in the issue, but who have limited capacity or interest in handling individual cases. Seek mentors from state bar associations, listservs for family law practitioners, law school clinics, or other non-profit legal services providers. Mentors can provide practitioners with practical advice for their cases, including insights regarding particular judges or clerks, filing tips, and ongoing support and advice as an organization develops its expertise.

**D. “If at first you don’t succeed, try, try again.”** Regardless of how well-prepared an attorney may be before seeking that first SIJS predicate order in state court, there will be a learning curve and it will take time and experience to learn the nuances of a new legal system and local practice.

- 3. Assess capacity.** Developing the expertise to practice in state court will take significant time and resources, so it is important for an organization to assess if it is a good resource investment or if other options, such as the partnerships discussed below, might be a better option.

### **CREATING PARTNERSHIPS WITH FAMILY LAW PRACTITIONERS**

Although many legal services providers complete the state court portion of SIJS cases in-house, it can be a labor intensive process. It is a particularly challenging endeavor for organizations whose service area may span multiple jurisdictions, requiring attorneys to file state court petitions in many different cities, counties, or even states, each with its own particular laws, court rules, and practices. If the service area crosses state lines, an organization also must have attorneys licensed in multiple states to practice in state court, as well as a familiarity with the law governing family court proceedings in each state.

Developing strategic partnerships with legal practitioners in the community allows legal service providers with expertise in immigration law to focus on that component of SIJS proceedings while relying on family law experts to represent clients in state court. When developing these partnerships, consider the financial constraints of many SIJS clients and identify practitioners willing to provide *pro bono* or “low” *bono* services where possible. Even small or solo family law practices may be willing to consider some limited *pro bono* or reduced-fee services for clients, not only to support these clients, but also as a way to grow their practices and expand their client base. Equally important to identifying low-cost services, however, is guiding clients to competent and trustworthy practitioners, particularly when relying on referrals to the private bar.

- 1. Develop *pro bono* partnerships.** A *pro bono* partnership might take different forms, including identifying law firms or solo practitioners with family-law background to take the state-court portion of SIJS cases, or partnering with legal services agencies with family law expertise to jointly serve families of SIJS-eligible youth. These partnerships may be distinct from the typical *pro bono* model of many immigration legal service providers because the referring agency may not have the expertise to provide training or technical support to the *pro bono* attorney in the state court proceedings, relying instead on the *pro bono* attorney’s existing or developing expertise. Also, these cases may be distinct from more traditional, discrete *pro bono* matters with respect to the expected time frame of the *pro bono* attorney’s commitment. Given the ongoing nature of family law proceedings (particularly if the court monitors any custody issues), *pro bono* partners must be aware upfront if their commitment might extend beyond the entry of the SIJS special findings order.

**A. Law firms** interested in developing this specific area of *pro bono* expertise may be attracted to this type of partnership. (Read about “The Minnesota Experiment” on page 14.) Law firm partners willing to invest in an SIJS *pro bono* project can develop this specialized *pro bono* program, growing it to allow them to offer training and mentorship opportunities within the

firm, likely only needing limited support from the legal services partner regarding SIJS requirements for the predicate order.

**B. Legal services organizations** that typically handle family and juvenile court matters may want to develop a discrete project to serve UICs, allowing these attorneys to use their expertise to serve a new population. In Chicago, the [National Immigrant Justice Center](#) (NIJC) partners with [Catholic Charities Legal Assistance](#) (CCLA) to serve SIJS-eligible children and their families. While NIJC provides immigration legal services, CCLA, which offers various family law services, has developed a special project to represent the caretakers of immigrant youth in guardianship and allocation of parental responsibilities (previously known as custody) proceedings. When NIJC identifies SIJS-eligible UICs living within CCLA's service area, it refers the caretakers of these UICs to CCLA, which screens the caretaker as a potential client for guardianship and allocation of parental responsibilities proceedings. NIJC works closely with CCLA to ensure that filings and orders submitted in state court meet the requirements for SIJS. After CCLA obtains a predicate order, NIJC can represent the child in her SIJS and adjustment of status applications. In this model, clients are served at no or low cost by legal services providers each operating within its area of expertise but working together to ensure that children can satisfy both the state court and immigration requirements for SIJS eligibility.

**C. Law school clinics** are another source of *pro bono* legal services and partnership opportunities. If local law schools have family law clinical programs, organizations should consider contacting clinical professors about potential *pro bono* placements to seek SIJS predicate orders.

**2. Provide private referrals.** Since different jurisdictions have varying access to *pro bono* resources, programs that do not provide in-house representation in state court should consider other sources of family law expertise, including referring UICs and their families to private attorneys, or contracting with these attorneys to handle the state court representation for SIJS clients.

**A. Create referral lists and materials.** Legal services providers who screen UICs for SIJS but are unable to help them secure predicate orders should refer the children and their caretakers to other attorneys. Before creating a referral list, establish criteria for identifying attorneys to include. Criteria may include, for example, willingness to take cases *pro bono* or past experience with SIJS cases. Provide informational materials about SIJS for UICs who will be referred out. These may include background information about SIJS for any family law attorneys they seek, or contact information for the immigration legal services provider if it is able to provide technical support to attorneys seeking SIJS predicate orders. Legal services providers should be aware of any ethical rules in their state regarding referrals to other attorneys.

**B. Maintaining referral lists.** Although practitioners may want to offer clients as many options as possible for seeking state court representation, referral lists also offer an opportunity to guide clients toward competent, trustworthy attorneys. One good practice for maintaining the integrity of referral lists is to update them regularly, using a survey or other objective criteria to determine which attorneys remain on the list. [Legal Services for Children](#) (LSC), for example, hosts a local SIJS taskforce and listserv from which it draws

referral sources. Every six months, members of the listserv participate in a [survey](#)<sup>24</sup> through which LSC learns, for example, attorneys' comfort level with SIJS petitions, the counties in which they practice or are willing to practice, and their fee structure. Similarly, members of the taskforce also fill out a [questionnaire](#)<sup>25</sup> which helps determine members' familiarity with and expertise in SIJS cases.

- C. Contract with private attorneys.** A new way in which some organizations are beginning to expand their capacity for SIJS cases is by contracting out the state-court work to private attorneys who can offer low-cost services. In these cases, where possible, the provider pays the private contract attorney a flat fee to handle the family-court portion while accepting the case in-house for representation in immigration proceedings. This may be a particularly useful model in multi-jurisdictional settings, where developing in-house expertise or *pro bono* partnerships across multiple jurisdictions may be time- and resource-prohibitive.
- 3. Other considerations.** Creating wide networks of providers to serve SIJS-eligible children in state court proceedings in any capacity helps increase access to this form of protection for UICs. In addition to *pro bono* partnerships and building relationships with private practitioners, consider developing state or county-wide coalitions of SIJS providers to share best practices, strategies, and referrals. Another opportunity could be to work within state court systems to train and educate professionals in these systems about SIJS, including juvenile court judges, guardians *ad litem*, panel attorneys, and child protection professionals. Partnerships with child protection systems also could be mutually beneficial, resulting in greater understanding and access to family court for immigration practitioners, as well as increased representation in immigration proceedings for non-citizen wards.

## EDUCATING AND DEVELOPING RELATIONSHIPS WITH STATE COURTS

Regardless of whether legal services providers develop state-court expertise in-house or partner with experts in the community, education of state-court judges and other state-court actors such as guardians ad litem, panel attorneys and child protection professionals always will be critical to expand access to SIJS for UICs. Given the local nature of state court proceedings, this education often will happen on a case-by-case basis as local courts and judges are presented with requests for SIJS findings in individual cases. For case-by-case education, resources created specifically for state court actors by USCIS may be particularly persuasive tools, including USCIS's overview of SIJS for [juvenile court judges](#)<sup>26</sup> and [child welfare professionals](#).<sup>27</sup> Some organizations, such as the [Michigan State University College of Law Immigration Clinic](#), have drafted state-specific [legal memoranda](#)<sup>28</sup> to outline the legal background and authority for the state court's role in the SIJS process, and the [Immigrant Legal Resource Center](#) has created an [Immigration Benchbook for Juvenile and Family Courts](#)<sup>29</sup> including information for family courts about SIJS. Finally, as part of public outreach campaign launched in FY2014, the USCIS Office of Policy and Strategy conducts trainings and outreach nationally for state court actors regarding SIJS.

To request outreach on SIJS programs, contact USCIS at [USCIS-IGAOutreach@uscis.dhs.gov](mailto:USCIS-IGAOutreach@uscis.dhs.gov), or for general requests and inquiries, email [Engagement@uscis.dhs.gov](mailto:Engagement@uscis.dhs.gov).

## **Chapter 6:** **Anticipating and Responding** **to the Social Service Needs of UICs**

By Hayley Upshaw\*

Legal services providers representing UICs are often a primary point of contact for children with social services needs (including housing, healthcare and education) that fall outside the purview of immigration representation.

While important, a child's immigration case may not be the top priority for the child or her family if substantial social services needs are unmet. And because a child's overall health and well-being can have a significant impact on the legal case, attorneys working with UICs should look at the child's needs holistically and make appropriate referrals or provide support in-house when possible.

Some of the most common social services needs facing UICs include: enrolling in school, locating and receiving mental health care, finding affordable health care, and working through challenges with their caregivers, among others. Finally, a child also may be affected by a caretaker's social services needs, which may affect the caretaker's ability to care for the child and may impact representation.

Legal representatives who want to help their child client address these social services needs may not know how to identify and/or resolve these issues. Legal service providers generally address these needs by either referring clients to outside organizations or developing internal organizational capacity to address non-legal issues.

Considering the limited number of service providers available in a given area, providers who seek to refer clients should establish relationships with social services agencies and cultivate relationships with other organizations that can help UICs.

Some providers have had great success hiring social workers to provide more intensive case management to clients and help address the mental health needs of children and families so that the children can better participate in their legal cases. Social workers on staff help cultivate relationships with social services agencies, improve referrals, provide trauma-informed services to the individual clients, and help attorneys understand clients' mental health needs and how they may impact the clients' legal cases.

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Practitioners have identified five common social services areas in which clients often have unmet needs:

- **Education**
- **Mental Health**
- **Healthcare**
- **Child Welfare**
- **Working with caregivers**

While it is a best practice to be aware of the social services issues presented by child clients, legal providers must also practice self-care and set boundaries with clients. Attempting to solve every non-legal problem for a client can result in provider burnout and create unrealistic expectations or dependency for the client. Legal education provides little training in setting attorney-client boundaries, and social workers may be better trained to set such boundaries to protect themselves, legal providers, and clients.

## **EDUCATION**

Education is often one of the first issues that clients must address after release from federal custody. Some youth may have come to the United States for educational opportunities and may be excited to attend school. Others, many of whom feel obligated to pay off debt or who support their families or help defray costs in their sponsor's home, may not view education as a priority.

## I. Challenges for Youth

- A. Many school districts require certain documentation for enrollment. Required documentation often includes proof of age, identity (e.g., a birth certificate), immunizations, and educational records. Enrollment for children may be delayed if they do not have the required documentation.
- B. Older youth (age 16 or 17) may be unable to complete high school by the required age and may not be allowed to enroll in school or may be pushed into alternative educational programs like continuation schools, GED programs, adult education, or ESL classes, rather than being enrolled in comprehensive public education.
- C. Immigrant children enrolled in school may have challenges understanding the material or participating in their education due to limited language or prior education, disabilities, or an absence of subject matter expertise and a lack of understanding about U.S. school norms and expectations.
- D. It may be difficult for a child to manage the stress of different messages regarding their education and then to make informed decisions about choosing to work or study. UICs may feel pressure from sponsors to work and defray the cost of supporting them. Yet the Office of Refugee Resettlement (ORR) also tells sponsors and UICs that the children must be enrolled in school upon their release from federal custody. It is not unusual for immigration judges to question children about their enrollment status. If a judge tells a child to enroll in school but she is unable to because of work obligations, she may be reluctant to return to court because of potential conflicts.

## II. Challenges for Providers. Education law is complicated and providers serving UICs may lack the resources to pursue educational claims on behalf of their clients.

- A. Failure to maintain school attendance may prejudice the child before the immigration court and leave her more vulnerable to other problems. School attendance is a way for an institution to track a child's well-being.
  1. Although not required for most forms of immigration relief, an immigration judge may view school attendance favorably in the exercise of the court's discretion.
  2. If a child does not attend school, a judge may inquire into how the child spends the day. The child might respond with activities the judge deems unfit for the child. Some judges will pressure the child to attend school.
  3. School non-attendance may have an impact on discretionary matters such as the length of continuances and if a child is required to be present for the hearing rather than have their appearance waived.
- B. Students and their caregivers may need assistance requesting a school assessment to access educational benefits and protections. Special education laws, however, can raise ethical

issues for attorneys as the child's special education rights are held by the child's parent or legal guardian, who may want something different than the child.

### III. Best Practices & Resources

#### A. Enrollment

1. If a child is not allowed to enroll immediately due to a school's or district's enrollment policies, consider if the policy is permissible. All students, regardless of immigration status, have the right to attend school.
  - See examples of documentation that school districts CANNOT require for enrollment: [www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201405.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201405.pdf)
  - U.S. Department of Justice Office of Civil Rights memo to schools on the right of undocumented children to attend school: [www.justice.gov/crt/about/edu/documents/plylerletter.pdf](http://www.justice.gov/crt/about/edu/documents/plylerletter.pdf)
  - Q&A from U.S. Department of Education for schools on enrolling undocumented students: [www2.ed.gov/about/offices/list/ocr/docs/qa-201405.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/qa-201405.pdf)
  - Resource guide from the U.S. Department of Education on supporting undocumented youth in secondary and post-secondary settings: [www2.ed.gov/about/overview/focus/supporting-undocumented-youth.pdf](http://www2.ed.gov/about/overview/focus/supporting-undocumented-youth.pdf)
2. If a school or district is violating these policies, consider writing a "demand letter" to the school district's general counsel incorporating some of the U.S. Department of Education fact sheets and guidance. Also, attorneys should consider filing a complaint with the Department of Education Office for Civil Rights, available at [www.ed.gov/ocr/complaintintro.html](http://www.ed.gov/ocr/complaintintro.html), or with the U.S. Department of Justice.
3. If the enrollment policies are acceptable and the client does not have the documentation, consider assisting the client in obtaining these records:
  - Vaccination Records from ORR
    - Children can request their immunization records from ORR at: [www.acf.hhs.gov/programs/orr/resource/unaccompanied-childrens-services](http://www.acf.hhs.gov/programs/orr/resource/unaccompanied-childrens-services)
    - Healthcare providers (including school clinics) can submit a request directly to ORR for a child's vaccination records, with the child's or guardian's authorization and following the instructions in the link above. They should receive a response from ORR within 30 minutes.

- Request copy of Birth Certificate from ORR
  - If a child’s ORR file contains a copy of their birth certificate, they can obtain this copy by making an ORR records request at [www.acf.hhs.gov/programs/orr/resource/requests-for-uac-case-file-information](http://www.acf.hhs.gov/programs/orr/resource/requests-for-uac-case-file-information)
  - Though it generally takes several months to receive an ORR file, attorneys who only need the birth certificate can consider filing an urgent, limited scope request to expedite the process.
  
- 4. Many UIC clients technically meet the definition of “homeless” under the McKinney Vento Act and should be allowed to enroll without documentation. Attorneys can determine if their client meets this definition, and if so, contact the district’s homeless child liaison to help with enrollment. For more information see: [www2.ed.gov/programs/homeless/guidance.pdf](http://www2.ed.gov/programs/homeless/guidance.pdf)
  - “Homeless” is defined as an individual who lacks a fixed, regular, and *adequate* nighttime residence, and includes:
    - unaccompanied children not in the physical custody of a parent or legal guardian
    - children in families who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason
    - migratory children
  - Youth who qualify as homeless under McKinney Vento must be allowed to immediately enroll in school, even if the youth is unable to produce the records normally required for enrollment. Youth who are homeless are also eligible for other support including school transportation.
  
- 5. For children denied enrollment in comprehensive public schools or who are directed into alternative educational programs because of their age, consider if that is permissible.
  - Age requirements vary by state:
    - What are the ages for compulsory education?
    - Is there an age at which a child is no longer eligible to enroll in public school?
  - See the following resources to determine compulsory school attendance laws by state, as well as minimum and maximum age limits for required free education in 2015:
    - National Center for Education Statistics: [nces.ed.gov/programs/statereform/tab5\\_1.asp](http://nces.ed.gov/programs/statereform/tab5_1.asp)

- Education Commission of the States:  
[www.ecs.org/clearinghouse/01/18/68/11868.pdf](http://www.ecs.org/clearinghouse/01/18/68/11868.pdf)

- Some schools or districts may require proof that a child has enough credits to meet graduation requirements by a maximum age. Practitioners should consider if the child has any credits from any time in ORR custody, which could be applicable.

B. Understanding and participating in educational program once enrolled

1. Public schools must ensure that English learner students can participate *meaningfully* and *equally* in educational programs. *For more information see*  
[www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-el-students-201501.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-el-students-201501.pdf)
2. Caregivers should be contacted within 30 days of a school identifying a child as limited English proficient. The school should provide the caregiver with information about programs and services to meet the child’s educational needs.

For more information see:

- English:  
[www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501.pdf)
  - Spanish:  
[www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501-sp.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501-sp.pdf)
3. Identify and partner with schools that serve immigrant youth or encourage the district to build capacity to serve these youth, including advocating for funding for services.
    - Some districts have public schools specifically geared toward newcomer immigrant youth. (*See [internationalsnps.org](http://internationalsnps.org)*)
    - Others have developed newcomer student liaisons within the district to identify immigrant children and help connect them with services. Here are two models from California’s Bay Area:
      - Caminos, San Francisco Unified School District (SFUSD): In response to the 2014 humanitarian crisis of increased refugee minors from Mexico and Central America, SFUSD launched Caminos, with a first year mission to increase access to education for Latino newcomer students and families through advocacy, community building, and the coordination of support services. (*See [www.healthiersf.org/News/undocumentedNewcomer.php](http://www.healthiersf.org/News/undocumentedNewcomer.php)*)
      - Unaccompanied Minor Service Specialist at Oakland Unified School District (OUSD): The OUSD specialist supports minors’ enrollment in OUSD educational programs and helps minors access critical support services inside and outside the District. The specialist also collaborates closely with school sites,

community-based organizations, service providers, and unaccompanied minors and their families. (See [oaklandlocal.com/2014/11/children-from-central-america-find-community-in-oakland](http://oaklandlocal.com/2014/11/children-from-central-america-find-community-in-oakland))

### C. Special education

1. Children with disabilities are entitled to special educational protections under the Individuals with Disabilities Educational Act (IDEA). To access those benefits and protections, children must first be identified as having a disability. Children should be assessed if they demonstrate signs of having a disability. If the child struggles in school, teachers and other providers may assume the child lacks language fluency or that her education was interrupted rather than screening the child for a disability.
2. Special education rights are held by the child's parent or legal guardian until the child turns 18. Caregivers of child clients who are not living with a parent and have not established a legal guardianship may qualify as a parent under IDEA if they are "an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare." 34 CFR § 300.30. If the child does not have anyone who can serve as the parent or legal guardian for special education needs, the child can request that the district appoint a "surrogate parent" to advocate for special education protections.
  - If a client struggles in school and the caregiver and child want to request an assessment, encourage them to submit a written request for an evaluation to the school. The parent, legal guardian, or caregiver should outline areas of concern about the child's ability and request an "evaluation" or "assessment." This will trigger strict timelines for the district to respond and develop an assessment plan.
  - If an attorney is concerned that a child client is not being properly evaluated or provided with special education services, she can consider contacting some of these service providers:
    - The Center for Parent Information and Resources maintains information for parents of children with disabilities in English and Spanish. See [www.parentcenterhub.org/find-your-center](http://www.parentcenterhub.org/find-your-center)
    - Each state has a protection & advocacy system, which provides services and support for people with disabilities, including support around special education issues. See [www.acl.gov/programs/aidd/Programs/PA/Contacts.aspx](http://www.acl.gov/programs/aidd/Programs/PA/Contacts.aspx)
    - Although it may not be their primary area of focus, ORR-appointed child advocates can sometimes work with school administrators to seek assessments of children with disabilities and could be an additional resource for UIC clients. See [theyoungcenter.org/act/refer](http://theyoungcenter.org/act/refer)

#### D. School and immigration court

1. Retain a child's school certificates and documentation when possible because some judges take note of attendance records and may inquire about truancy and how it might affect the resolution of the case. When collaborating with teachers or tutors, help them understand the importance of documenting a child's participation and progress in all classes and activities.
2. Educate immigration judges about the negative impact of questioning a child about school without contextualizing the child's decision of whether to attend school or work.
3. Communicate clearly to clients the importance of going to immigration court when required, even if it means missing school.
  - If a child's application is pending with USCIS, consider filing motions to continue or administratively close cases in advance of a hearing rather than waiting to appear in person to avoid the child's absence from school.
  - Request that a child's appearance be waived at future master calendar hearings so that the child does not miss school.
  - If the child must miss school to attend court, consider preparing a letter for the school so that her absence is excused.

#### E. Children who do not want to attend school

1. Acknowledge the child's desire or need to work rather than attend school.
2. Consider referrals to vocational, GED, or ESL programs that a client may be able to attend part-time while working.

### **MENTAL HEALTH**

Many UIC clients have experienced traumatic events in their home countries or during their migration. Many may face additional stressors including:

- Fear of return to their home country
- Challenges reunifying with estranged family or sponsors
- Immigration court process
- Acclimating in the United States
- Concerns about siblings or other family members left behind
- Pressures from family relating to migration debt or a sense of obligation to work and send money back to their family
- Living in unsafe situations or with victims of abuse once they are released to a sponsor

All or some of these factors may cause a child significant distress that may become a mental health issue, such as depression, Post-traumatic Stress Disorder (PTSD), or anxiety, which may affect the way the child interacts with providers and the ability to participate in the legal case. UIC providers should use trauma-informed techniques (see Best Practices, below).

## I. Challenges

Children who suffer from PTSD, complex trauma, or other mental health issues may exhibit behaviors which pose particular challenges for service providers, including but not limited to:

- Avoidance: children may avoid meetings with their attorney and other professionals because discussing their case is too difficult;
  - Difficulty remembering events;
  - Non-linear narrative;
  - Risk of becoming “triggered” during meetings;
  - Difficulty establishing a trusting attorney/client relationship
- A. Providers often have insufficient training to assess mental health and may not know when to seek help for clients or refer them.
- B. Clients or caregivers may feel a stigma attached to mental health service and may choose not to pursue referrals or requests for evaluations for fear of being labeled “crazy” or incompetent.
- C. Mental health diagnoses may impact the legal case, and depending on the diagnoses and risk of harm, may trigger inadmissibility grounds under INA § 212(a)(2)(A)(iii).
- D. Tensions may arise when the attorney needs information about traumatic events but the social worker or other mental health provider objects because it is therapeutically inappropriate.
- E. Even if staff identifies a client with mental health needs, often there are issues finding adequate, affordable resources to help them.
1. Geography: It is difficult to find resources in geographically large service areas, especially rural communities.
  2. Cost: Not all areas have extensive access to *pro bono* or low cost services.
  3. Specific needs of client: even with free or low-cost services, it may be difficult to find a provider to match the client’s needs (language, gender, etc.)
- F. Staff mental health or burn out can affect ability to effectively work with clients.



## II. Best Practices & Resources

### A. Train all staff to use trauma-informed interviewing techniques with clients.

See Talia Kraemer and Eliza Patten, *Establishing a Trauma-Informed Lawyer-Client Relationship*, ABA Child Law Practice, Vol. 33, No. 10 (Oct 2014)

[nc.casaforchildren.org/files/public/community/judges/Winter\\_2015/09\\_2\\_TraumaSeries\\_relationship.pdf](http://nc.casaforchildren.org/files/public/community/judges/Winter_2015/09_2_TraumaSeries_relationship.pdf)

#### 1. Before the interview:

- To the extent possible, avoid having children repeat traumatic information. If a colleague (e.g. intake worker, legal assistant, prior provider) has completed a legal screening, review that information before meeting with the client.
- Obtain a copy of any legal screening conducted while the child was in custody and use as a baseline.
- Be transparent with the client about what information you have and how you received it; transparency helps create a trusting relationship.
- Review information with the client and allow her to explain/clarify/change information.

#### 2. During the interview:

- Beginning the interview:
  - Define your role; make sure the client understands your role and what you can and cannot do to help her.
  - Explain the reason for meeting and any information you may seek from the child in advance so the child is prepared for the meeting.
  - Review confidentiality guidelines and any limits to confidentiality (for example, mandated reporting laws where applicable).
- General guidelines:
  - Hold frequent, shorter meetings rather than one long meeting.
  - Respect the client's time and her need to take breaks and/or end the meeting.
  - Talk with the client about her role, and let her know that if she doesn't want to talk about a certain topic, she should say that rather than make something up or say she does not know. If the client does not want to talk about a topic you can inquire about returning to it at a future meeting.
  - Check in with child regularly throughout the interview – see how she is feeling and if she needs a break or wants to stop for the day (if possible).
  - Be non-judgmental.
  - Ask primarily open-ended questions so that the child can elaborate in her own words.

- Mirror the language used by the client when asking clarifying questions. For example, if the client says a parent “punished” her with a beating, mirror that language: “how often did your parent punish you that way?” and not, “how often did your parent abuse you?”

### 3. Post interview:

- Review next steps
  - Discuss what needs to be done, who needs to do it, and by when.
  - If the child needs to do something, consider writing it down along with the timeframe/deadline. A child client should not be given more than three age-appropriate tasks to complete
  - Ask the child to repeat her understanding of next steps; if the child did not understand, affirm that it can be a confusing process and that is why you want to review it again. Try to explain next steps in another way.
- Ask the child if she has questions
- Check in about the child’s emotional state
  - If the interview has touched on challenging topics, acknowledge that.
  - Ask what the child will do after the interview. Brainstorm with the child certain activities she can pursue, or ask if she has a supportive person she can see.
  - If the child has a therapist or mental health provider, ask about her next appointment and if you can talk with that professional to explain your meeting/interview. Tell your client that it’s normal to have different feelings after discussing traumatic events.
- Refer the client to other service providers when appropriate.

### B. Assess competency and capacity

1. For an in-depth discussion about best practices and decision-making tools for assessing mental competency and capacity, *see the 2014 practice advisory by Aryah Somers: Children in Immigration Proceedings: Concepts of Capacity and Mental Competency*, [www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/ls\\_pb\\_uac\\_docs\\_vera\\_institute\\_somers\\_concepts\\_of\\_capacity\\_competency\\_11\\_2014.authcheckeddam.pdf](http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_uac_docs_vera_institute_somers_concepts_of_capacity_competency_11_2014.authcheckeddam.pdf)
2. If competency is an issue, clients may receive a competency hearing and evaluation, and if found incompetent could be appointed counsel based on the *Franco-Gonzalez v. Holder* class action. *See the Department of Justice’s announcement at* [www.justice.gov/eoir/pr/department-justice-and-department-homeland-security-announce-safeguards-unrepresented](http://www.justice.gov/eoir/pr/department-justice-and-department-homeland-security-announce-safeguards-unrepresented)

3. With the client's permission, providers may request the client's ORR file to review if any mental health evaluations or psychological examinations were conducted while the child was in ORR custody To expedite this process, mark the request as urgent, and/or request that the file be provided electronically. The ORR file can also contain other medical or healthcare information, which may be helpful. *See ORR policies and procedures at [www.acf.hhs.gov/programs/orr/resource/requests-for-uac-case-file-information](http://www.acf.hhs.gov/programs/orr/resource/requests-for-uac-case-file-information).*

C. For a child experiencing temporary or long-term mental distress:

1. Discuss with the child that this is a normal reaction and encourage child to go into therapy.
  - Children may be more willing to see a therapist if this is discussed as potentially beneficial to the legal case.
  - Explain that therapy is a safe place where the child can discuss how she is feeling and talk about many topics, not only her trauma.
2. Provide referrals to address mental health needs.
  - Explore opportunities for working with schools of social work or therapy training institutes that have field placements or opportunities for students to earn clinical hours.
  - Partner with other local non-profit organizations that provide mental health services.
  - In case of crises or when working with clients who live in rural areas where access to linguistically appropriate mental health services is difficult to find, keep a list of crisis hotlines for clients.
  - Consider referring the UIC for a child advocate if the child has significant mental health needs. *See [theyoungcenter.org/act/refer](http://theyoungcenter.org/act/refer).*

## HEALTHCARE

UICs may need healthcare for preventive, acute, or reproductive needs.

### I. Challenges

- A. Access to affordable, general, or specialized healthcare coverage as well as specific reproductive health care.
- B. Restrictions on certain providers regarding reproductive health information that they can give to UICs.
- C. Consent for specialized treatments, such as reproductive healthcare, that a UIC client may not want to discuss with her parent or legal guardian.

- D. Legal service providers' comfort discussing medical issues and knowledge of appropriate referrals.
- E. Limited post-release services available to UICs.

## II. Best Practices & Resources

- A. Engage social workers to navigate, manage, and advise on healthcare issues and resources.
  - 1. Encourage partnerships between attorneys and social workers through schools of law and of social work.
  - 2. Consider hiring a professional with a combined JD/MSW degree.
- B. UICs can receive emergency medical care through Emergency Medicaid. What constitutes an emergency is defined by state law. A detailed description of emergency Medicaid and a state by state chart is available at [niwaplibrary.wcl.american.edu/public-benefits/health-care/17.1\\_Emergency-Medicaid-Chart-MANUAL-ES.pdf](http://niwaplibrary.wcl.american.edu/public-benefits/health-care/17.1_Emergency-Medicaid-Chart-MANUAL-ES.pdf)
- C. Some UICs may be eligible for Medicaid or Children's Health Insurance Program (CHIP). *See* National Immigration Law Center's "Facts About Federal Funding for States to Provide Health Coverage to Immigrant Children and Pregnant Women," [www.nilc.org/document.html?id=874](http://www.nilc.org/document.html?id=874). Eligible UICs may include:
  - 1. Trafficking victims. In some states such as California, UICs can receive full scope Medicaid even before receiving certification as a victim of trafficking or being approved for a T visa as long as they can present proof that they have filed, or are preparing to file, a T visa. A statement by the applicant regarding her intent to apply can suffice.
  - 2. U visa applicants. UICs who have applied for a U visa as a principal or derivative or may be eligible for full scope Medicaid with the receipt notice.
  - 3. Asylees
  - 4. Applicants for Special Immigrant Juvenile Status
- D. Some states provide medical assistance to additional categories of immigrants.
  - 1. See the National Immigration Law Center's guide, "Medical Assistance Programs for Immigrants in Various States," [www.nilc.org/wp-content/uploads/2015/11/med-services-for-imms-in-states-2015-09.pdf](http://www.nilc.org/wp-content/uploads/2015/11/med-services-for-imms-in-states-2015-09.pdf).
  - 2. For a definition of "lawfully residing" for the purpose of Medicaid and CHIP coverage of children and pregnant women, see a letter from Cindy Mann, Centers for Medicaid and Medicare Services (CMS), to state health officials, Re: Medicaid and CHIP Coverage of "Lawfully Residing" Children and Pregnant Women (July 1, 2010): [www.cms.gov/smdl/downloads/SHO10006.pdf](http://www.cms.gov/smdl/downloads/SHO10006.pdf).

3. See also CMS letter to state health officials, Re: Individuals with Deferred Action for Childhood Arrivals (Aug. 28, 2012), [www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-12-002.pdf](http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-12-002.pdf)
- E. If a UIC client does not qualify for healthcare coverage, other options include:
1. Community Health Centers. Many independent clinics provide high quality preventive and primary healthcare regardless of status or ability to pay. *See [findahealthcenter.brsa.gov](http://findahealthcenter.brsa.gov)*
  2. State-based health programs. A few states, like California, make a number of health programs available to low-income residents.
  3. Student health plans. Many colleges and universities require students either to buy their school's health insurance policy or show proof of coverage. Immigration status is generally not questioned when students apply for the affordable plans. *See [www.latimes.com/business/la-fi-healthcare-watch-20140420-story.html](http://www.latimes.com/business/la-fi-healthcare-watch-20140420-story.html)*
  4. School-based health centers. Many elementary, middle and high schools have campus clinics that provide basic healthcare as well as services such as mental healthcare.
- F. Reproductive Health
1. Consider making condoms available where clients can access them discreetly (like the bathroom). Do not assume that clients know how to use condoms; include directions provided in the box with the condoms. Provide literature about family planning and healthcare in common areas.
  2. UICs may be able to obtain reproductive healthcare without the consent of a parent or guardian.
    - Comprehensive information about teens' reproductive rights in California, including a Minor Consent and Confidentiality Chart and Minor's Right to Leave School for Confidential Service, is available at [www.teenhealthlaw.org/reproductive\\_health](http://www.teenhealthlaw.org/reproductive_health)
    - Links to information about resources in other states are available at [www.teenhealthlaw.org/resources\\_for\\_other\\_us\\_states](http://www.teenhealthlaw.org/resources_for_other_us_states)

## **CHILD WELFARE**

Some UICs may come into contact with local child welfare agencies because of abuse, neglect, or abandonment by their parents or sponsor following release from ORR custody. Practitioners have noted that some UICs who reunify with their parents, especially as teenagers, struggle during the reunification process. An initial “honeymoon period” may be followed by challenges to the relationship, such as the child’s feelings of resentment for having been left behind in the home

country, especially if she was victimized there. Sometimes parents have new partners (and children) whom the child must get to know and who may make the child feel like an outsider. Some teenagers who have assumed adult responsibilities such as working to provide for the family or caring for younger siblings, or who have been left unsupervised for much of their youth, may challenge limits set by the parent or sponsor and may struggle to adapt to new curfews, expectations, and school. Sometimes these relationships with parents or sponsors deteriorate and children may be abused, neglected, or abandoned, raising the question of who has responsibility for the child.

Involvement with the child welfare agency may provide some supports for the child including a foster home placement, access to healthcare and other basic needs, and case management. However, those supports come at a cost to the child's independence as the child undergoes juvenile court oversight. Many issues can occur with placements chosen by the child welfare agency, including lack of cultural fit, removal of the child from her community, too much structure (or independence) for the child's needs, etc.

## **I. Challenges**

- A. There can be a lack of understanding on the part of local child welfare agencies and juvenile/dependency court judges about their role with UICs. Staff at the child welfare agency may assume that if ORR released a child to a sponsor, ORR or the federal government will continue to oversee and support the child's placement. State court judges may think that they lack jurisdiction to make placement decisions about a child because the child was previously in custody and was released to a sponsor or because the child is before immigration court.
- B. Staff at child welfare agencies may fail to respond to reports of a caretaker's abuse, abandonment, and/or neglect, especially for children who are close to their 18<sup>th</sup> birthday. Also, agencies may seek informal arrangements, like placing a child at a homeless shelter or encouraging her to stay with friends or family, rather than formally bringing the child into state care by bringing the case before the juvenile court.
- C. Issues arise in the few states where attorneys are mandated reporters, as it may be difficult to form a trusting relationship with a child while trying to help her understand that there is some information – if shared with her attorney – that may lead to removal from her home.
- D. ORR expects sponsors to take over responsibility for the child's care, but provides very limited support to families.

## **II. Best Practices**

- A. Coordinate with child welfare experts in the community to understand the local child welfare system and any alternatives for children unable to continue living safely with their sponsors.
- B. Educate juvenile and family courts about the role of ORR and the immigration court so that they understand their jurisdiction in these cases.

- C. If a UIC client's sponsorship becomes unavailable and the client does not have a safe place to live, counsel her about different options, which may include:
1. A family member, family friend, a friend's family, someone from a faith community, etc. Help her think about whom she would feel comfortable living with and who would be willing to care for her.
  2. The child welfare system. Explain what engaging in the child welfare system would look like, including advantages (housing, services, support, possible avenue for pursuing SIJS or U visa, possible support beyond age 18) as well as disadvantages (more oversight by multiple adults, lack of control over placement, possible consequences for the parent or caregiver).
    - For information about how a child may seek the protection of child welfare agencies and/or file reports detailing abuse, neglect or abandonment and the child's need for support, see the U.S. Department of Health & Human Services Child Welfare Information Gateway:  
[www.childwelfare.gov/topics/responding/reporting/how/](http://www.childwelfare.gov/topics/responding/reporting/how/)
    - If child welfare agencies are reluctant to take a case, develop relationships with child welfare staff to facilitate referrals and to educate staff regarding UICs generally and a client's needs in particular. Talk with child welfare attorneys to see if the state allows private actors to file child welfare cases or if there is any way to review a child welfare agency's decision not to open a case of suspected abuse, abandonment, or neglect.
      - Some states allow individuals to petition the juvenile court directly to request that a child be taken into state care.
      - Some states allow individuals to seek judicial overview of a child welfare agency's decision not to bring a child's case before the juvenile court. See, for example, California Welfare and Institutions Code Sections 329 and 331, which provide this opportunity for children residing in California.
    - In cases in which the sponsor is threatening to send the child back to her home country against the child's wishes, seek appointment of a Trafficking Victim's Protection Reauthorization Act (TVPRA) child advocate. Additionally, if the child welfare agency plans to repatriate a child against the child or parent(s) wishes, seek appointment of a TVPRA child advocate. *For more information about child advocate referrals, see [theyoungcenter.org/act/refer](http://theyoungcenter.org/act/refer).*

## **SOCIAL SERVICES NEEDS OF CARETAKERS**

### **I. Challenges**

- A. Addressing the reality that families and sponsors supporting UICs often lack access to social services to provide a stable living environment.

- B. Confidentiality and information-sharing between parties can sometimes raise ethical dilemmas.
- C. Contending with the stress of caretakers who are living in the United States without lawful immigration status and who may see any court involvement (such as seeking a legal guardianship) as personally threatening.
- D. Caregivers may disagree regarding the importance of gaining legal status, especially if they have lived in the United States undocumented without any issue.

## II. Best Practices

- A. Be clear about professional boundaries and loyalties, but provide social services referrals and support to caregivers, as these supports often will help a client by making the caregiver more prepared to care for her.
- B. Develop and maintain a community resources list for caretakers or identify other good referral services.
  1. In New York City, the Mayor's Office of Immigrant Affairs created a manual for caretakers of immigrant children. A similar compilation of local resources could be replicated by other city governments or legal service providers. Such a resource is not complicated to develop, and could easily be compiled as an intern project. Once developed, it could be shared widely to give caregivers access to information on how to best support UICs in their care. See [www.nyc.gov/html/imm/html/recently-arrived/recently-arrived.shtml](http://www.nyc.gov/html/imm/html/recently-arrived/recently-arrived.shtml)
  2. In the San Francisco Bay Area, nonprofit One Degree began providing a web platform to help individuals and organizations find, manage, and share their experiences with community resources such as food banks, employment services, shelters, health clinics, and more. See [www.1deg.org](http://www.1deg.org).
- C. Propose parent care/support groups for caregivers, working with faith- or community-based organizations with experience supporting and connecting similar populations through family fun days, picnics, etc.
- D. Partner with faith-based organizations that can facilitate caregiver support groups. For instance, San Francisco's Good Samaritan Family Resource Center provides a range of support services, including education and family strengthening programs, to low-income Latino families. See [goodsamfrc.org/family-strengthening-services](http://goodsamfrc.org/family-strengthening-services)
- E. If a community lacks services, consider advocating for more services with local government by highlighting the needs, and consider strategic use of media coverage. In Northern California, the Association of Bay Area Governments is writing a report about the services available in different counties, and recommendations to local governments on how best to use limited resources to address unmet needs. See [abag.ca.gov/planning/minors.html](http://abag.ca.gov/planning/minors.html).



# **Chapter 7:** **Anticipating and Contending with Conflicts and Ethical Challenges**

By Alexandra Fung

Attorneys representing UICs face the significant challenge of representing young clients within a legal system that does not account for their unique vulnerabilities and which provides very little guidance on such tricky issues as determining a child's capacity to participate in her legal case or responding to conflicts that arise between a child and her caregiver. While attorneys representing children under other legal systems (such as child protection or child custody) can generally look to statutes, court orders, and other guidance to help define their role in relation to their child clients, no similar guidance exists for attorneys representing children in immigration proceedings, making it particularly challenging to respond to these issues.

This chapter examines four hypothetical scenarios that raise ethical challenges which are commonly encountered by attorneys representing UICs. Drawing on the experience of the legal experts and practitioners who participated in the convening, these scenarios are examined through the lens of the ABA Model Rules of Professional Conduct to highlight key issues and suggest potential responses to these tricky situations. Though the experts found the rules to be generally insufficient guides for addressing the kinds of questions that arise when representing clients of limited means, such as UICs and their families, they nonetheless provide common ground to begin a reflection on approaches to these ethical challenges.

*Please note that this chapter seeks to present ideas about how to approach common ethical scenarios in UIC representation, and is not intended to serve as legal advice. Nothing in this manual should be construed as providing legal advice for any specific case.*

## **REPRESENTING CHILDREN WITH DIMINISHED CAPACITY**

The starting point for representing any child, even a very young child or a child with a cognitive disability, is to maintain a normal attorney-client relationship as far as reasonably possible, including maintaining confidentiality and zealously advocating for the child's legal interest. Attorneys representing children in immigration proceedings almost always do so in a traditional attorney role, which is client-guided and in which the attorney follows the client's expressed wishes (the exception is for attorneys appointed by ORR to serve as a child advocates). To the extent possible, an attorney must advocate for that child's expressed interest in her legal proceedings, which for children in federal custody, could include their custody and release.

When a child's ability to direct her representation is compromised, however, [Rule 1.14 of the ABA Model Rules of Professional Conduct](#) allows an attorney to take protective action on behalf of a client with diminished capacity. The comments to the rule offer guidance on factors that an attorney should consider to determine if a client's capacity is in fact diminished. Notably, age alone does not determine a child's capacity, and the Rules recognize that even very young children may be able to communicate their wishes, thereby directing their representation. Determining if a client has diminished capacity should focus on the client's decision-making process, rather than the decision itself, and the client's ability to articulate a rationale and understand the consequences of her

decision. For example, the following questions may help to determine a child's decision-making capacity:

- Does the child understand the nature and consequences of her decision?
- If yes, does the child retain information regarding the task long enough to make the decision?
- If yes, does the child use or weigh the information as part of arriving at a decision?
- If yes, does the child communicate her decision in some way?<sup>30</sup>

Other criteria that a lawyer should balance to determine a child's capacity to make a decision include the child's developmental stage, cognitive ability, emotional and mental development, consistency of the child's decisions, and the strength of the wishes and opinions of others who know the child, such as family, teachers, or hired experts.<sup>31</sup>

If an attorney determines that a child's diminished capacity impacts her ability to direct her representation, [Rule 1.14](#) allows an attorney to take protective action when she reasonably believes that the client is at substantial risk of physical, financial, or other harm and the client cannot act adequately in her own interest. Such protective measures may include consulting with individuals such as the child's family or hired professionals, seeking the appointment of a guardian *ad litem* – or for UICs, a child advocate appointed by ORR pursuant to the Trafficking Victim's Protection Reauthorization Act (TVPRA) of 2008 – or allowing time to see if there is any clarification or improvement in the client's condition within a specified time period. At all times, a lawyer should minimize her intrusion into the child's decision-making autonomy. Finally, a client's diminished capacity may be incremental and issue-specific. Just because a client lacks capacity to decide a certain question does not mean she lacks capacity to direct her representation in other matters.



## **Case 1: Maria**

*Born in Guatemala and raised by her maternal grandmother, 16-year-old Maria traveled to the United States with a 17-year-old cousin. They reunified with the cousin's mother, Maria's paternal aunt Flor, with whom she has been living for the past several months. Flor makes an appointment for Maria to see an immigration attorney because Maria is in removal proceedings and has a hearing coming up next month. Maria, however, suffers from selective mutism. Since Maria had almost no formal education, she cannot read or write, and the attorney's ability to communicate with her is very limited. From speaking with Flor, the attorney knows that Maria's parents left her in the care of her grandmother when she was five and that they have not been involved in her life since. The attorney believes that Maria is eligible for SIJS. Flor is willing to become Maria's legal guardian, but because Maria's ability to express herself is limited, the attorney cannot be sure how much she understands her case, or if she consents to the attorney's representation or to any legal action on her behalf.*

### **Practical approaches using the ABA Model Rules**

- **Take time to establish rapport.** Since communication is an issue, an attorney working with Maria should consider taking more time than she normally might before initiating representation to assess Maria's ability to understand the attorney's role and the services she will provide, as well as to assess the attorney's own capacity to provide representation in a matter that may require more significant or specialized resources.
- **Seek creative solutions to bridge the communication barrier.** [Rule 1.4 of the ABA model rules](#) governs a lawyer's communications with her client and underscores the importance of providing information to a client to help her make informed decisions regarding her representation. When a client has diminished capacity, the goal is to maintain as much of a normal attorney-client relationship as possible and to minimize any intrusion into this decision-making authority. Since Maria's ability to communicate in a traditional sense is limited, an attorney might consider alternative methods of communication in order to assess Maria's capacity to engage the attorney's services and direct her representation, including drawing pictures or using body language or movement to enhance communication. She can also consider consulting with and observing Maria's family and how they communicate with her, including the aunt with whom she lives, the grandmother who raised her in Guatemala, and any teachers, social workers, or other trusted adults who regularly interact with Maria and may be able to provide insights about particularly effective methods of communication.
- **Engage family and other trusted adults.** An example of a protective action permissible under [Rule 1.14](#) includes consulting with family or other individuals who have the ability to protect the client. Maria's aunt and cousin, as well as her grandmother in Guatemala, may be able to provide her attorney with additional information about Maria not only to assess her eligibility for relief and develop a case strategy, but also to help the attorney learn more about Maria so that she can better assess what Maria's wishes might be on any particular matter in which Maria lacks capacity to express her interests directly. In addition to consulting with family, other trusted adults in Maria's life, such as teachers or religious leaders, also may be able to provide valuable insights.
- **Consider involving other professionals.** There is a growing trend in legal services agencies working with UICs to incorporate social workers into the services provided for these and

other vulnerable clients. While there are many benefits to such cross-disciplinary collaborations, these partnerships also require special care and attention, as both sets of professionals are subject to distinct obligations under their profession's ethical rules. In some agencies, social workers are incorporated as part of the legal team, and [ABA Model Rule 5.3](#) specifies that the conduct of these non-lawyers employed by or associated with the lawyer must be compatible with the professional obligations of the lawyer, including [Rule 1.6](#) on confidentiality. In others, however, attorneys and social workers operate separately, each responsible for adhering to their unique licensing, ethical, and reporting requirements. In Maria's case, a social worker's specialized training may help to facilitate communication and also may help to connect Maria with community services to enhance communication. How the social worker works (independently or as part of the legal team) will determine how information is shared between the two professionals. *To read more about the intersections between the legal and social work professions, see Jane H. Aiken & Stephen Wizner, "Law as Social Work," 11 Washington University Journal of Law & Policy 63-82 (2003) and Alexis Anderson, Lynn Barenberg, and Paul R. Tremblay, "Professional Ethics in Interdisciplinary Collaboratives: Zeal, Paternalism and Mandated Reporting," Clinical Law Review 13, (2007): 659-718.*

## **Case 2: Tomas**

*Tomas is 15 years old and was born in El Salvador. He never knew his father, and his mother died when he was young, so Tomas's maternal grandmother raised Tomas and his older brother. Last year, Tomas's brother was killed by a gang in their neighborhood. After the gang began threatening to hurt Tomas if the grandmother did not pay them "rent," she arranged for him to escape to the United States, where his maternal aunt would care for him. Immigration officials apprehended Tomas after he crossed the border and they placed him in removal proceedings. He spent a few weeks in ORR custody before being released to live with his aunt, who retained an immigration attorney to represent Tomas in his immigration proceedings. Tomas's attorney plans to submit an asylum application. Tomas, however, has a hard time adjusting to life in the United States and misses his grandmother. He feels that he is a burden to his aunt, and since he never received any direct threats from the gang, feels somewhat removed from that danger. Also, the threats to his grandmother have diminished since Tomas left El Salvador, so he feels it is time to return to the home and caretaker he misses dearly. He directs his attorney to help him request voluntary departure at his next court hearing. However, both Tomas's grandmother and his aunt think it would be best for Tomas to remain in the United States because they worry that the gang continues to present a danger to him.*

## **Practical approaches using the ABA Model Rules**

- **Assess the decision-making process, not the decision.** When a child client's expressed wishes appear to conflict with his best interest and even his legal interest, it is natural for an attorney to question the child's capacity to make this decision based solely on the decision that the child has made. In seeking to understand if a child has diminished capacity to make a particular decision, however, the ethical rules distinguish between the decision itself and the *process* by which the decision was reached. When counseling his client, Tomas's attorney can explore with him if he truly understands what it will mean for him to return to El Salvador to be with his grandmother. Does Tomas fully appreciate the consequences of this decision, including the danger to which he will be returning and the potential relief which he will forfeit? Do his reasons for wanting to return take into account these consequences?

Although at 15 years old Tomas is clearly able to articulate his own wishes,<sup>\*</sup> in considering his capacity to make certain decisions, his attorney should consider not only his chronological age, but also his developmental stage, which may impact his ability to appreciate long-term consequences. Another important consideration is the consistency of Tomas's wishes relating to his representation, and if the current decision is consistent with his previously expressed wishes.

- **Provide time for the client's condition to improve.** If an attorney determines that a client lacks capacity to make a certain decision, such as the decision to forgo possible legal relief and return to a dangerous situation in his home country, one protective measure offered in the [comments to Rule 1.14](#) is to allow additional time to see if the client's condition improves. Attorneys representing UICs often find that children who suddenly change their minds about pursuing immigration relief to return to home countries where their safety and well-being may be at risk will often return to their original decision to try and stay in the United States after taking time to consider this new direction. For children in federal custody in particular, detention fatigue often plays a significant part in leading children to act against their own legal and best interests. Providing additional time for Tomas to consider this life-changing decision is a protective measure that preserves his autonomy to make decisions regarding his representation, but which may also allow for the conditions impacting his capacity to be improved.
- **Engage family members and other trusted adults.** Attorneys working with children often find it helpful, and at times necessary, to engage parents or other adult caregivers throughout the course of representing a child client. [Rule 1.14](#) provides shelter for attorneys to engage with these trusted adults in certain circumstances without running afoul of [Rule 1.6](#), which governs confidentiality. For example, the [Comment to Rule 1.14](#) notes that if a child wishes to have family or other individuals present during conversations with his attorney, "the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege," though the attorney will look to the client – and not these family members – to make his own decisions. If, however, a client is unable to adequately communicate or consider decisions regarding his representation, the [comments to Rule 1.14](#) also suggest consulting with family regarding the decision as a protective measure. At all times, the attorney must be careful to consider the interests of the *client*, and not the family being consulted, to guide the protective action taken.
- **Seek appointment of a TVPRA child advocate or guardian *ad litem*.** When a child's lack of capacity compromises legal representation, another protective action contemplated by [Rule 1.14](#) is the appointment of a guardian *ad litem* to represent the child's best interest. For UICs, ORR can appoint independent child advocates to serve a similar role. Child advocates are particularly valuable in applying well-established best interest principles developed in other legal situations in the immigration context. Seeking appointment of a TVPRA child advocate to represent a child's best interest could be a protective measure to consider for a child in Tomas' situation, who may be making legal decisions against his own interest due to a lack of capacity. In deciding whether to seek appointment of a child

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<sup>\*</sup> Comment 1 to Rule 1.14 states as an example that "children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody"

advocate or guardian *ad litem*, the attorney should be guided by the duty to support the client's autonomy as much as possible and to advance his known values and interests even when he lacks capacity to articulate those interests directly. A TVPRA child advocate will present fact-based information in support of a child's best interest. Although a child's best interests may not always be in line with a client's expressed wishes, having separate advocates represent both the child's expressed interest and his best interest may be particularly important when a child's lack of capacity leads him to make decisions which put his safety and well-being at risk. Attorneys may submit requests for the appointment of a TVPRA child advocate by following the instructions at [theyoungcenter.org/act/refer](http://theyoungcenter.org/act/refer).

- **Engage a professional diagnostician.** If appropriate and if resources allow, professional diagnosticians such as psychologists can help provide guidance regarding the extent and impact of a client's diminished capacity. Credentialed psychiatrists and social workers can also speak to the relationship between child development and decision-making, as well as the impact of trauma or detention on child development and decision-making. These insights can provide an attorney with additional information to put the child's situation in context, and potentially rule out diminished capacity.

#### **ANTICIPATING, PREEMPTING, AND CONTENDING WITH POTENTIAL CONFLICTS BETWEEN UICs AND THEIR CAREGIVERS**

Attorneys should expect to have some level of interaction with their client's caregiver(s), from relying on the caregiver to bring the child to appointments, interviews, or hearings to a caregiver's more substantive involvement in the preparation or handling of the child's case. Children typically rely on adults for their care and well-being, and often these adults are also good sources of information which can be essential to children's cases. For these reasons, adult caregivers can play an important role throughout the course of a child's representation.

However, in any interactions with caregivers and family, attorneys need to be mindful of the potential for conflict when the caregiver's interests are not aligned with the child's. For example, the child's parents or caregivers may be undocumented and may put themselves at risk by engaging in the child's proceedings, such as accompanying the child to hearings or interviews or providing affidavits or other evidence. Alternatively, the child and her parents may have contradictory views about the representation. Varying degrees of inter-family tension also might impact representation, particularly in SIJS cases, where the child's parent or guardian plays a critical role in the case and a break down in the family relationship can hinder or prevent a child from moving forward with relief.

When confronting situations that may present a conflict, an attorney must first identify who the client is, and therefore who directs the representation. Although there may be occasions when an attorney represents both a UIC client and her caregiver, typically only the child is the client and therefore directs the representation, though perhaps tempered by [Rule 1.14](#) when applicable. However, because parents and caregivers may be very involved in a child's representation, all parties must understand that the attorney represents only the child's interests.

When dealing with unrepresented persons, which is likely the case for most UIC parents or guardians, [Rule 4.3 of the ABA Model Rules](#) advises that "a lawyer shall not state or imply that a lawyer is disinterested," and if the unrepresented person misunderstands the role of the lawyer in a matter, "the lawyer shall make reasonable efforts to correct the misunderstanding." In cases where a

child's eligibility for relief depends on the parents' eligibility, such as derivative status on a parent's U visa application, some organizations have adopted a best practice of signing "screening waivers" with parents to screen the parents for relief while making it clear that the screening is to advance the child's interest and not to initiate an attorney-client relationship with the parents at that time. In cases where a reasonable possibility of conflict exists between the interests of the client and the unrepresented person, however, [Rule 4.3](#) directs that "the lawyer shall not give legal advice...other than the advice to secure counsel." As a matter of practice, attorneys should be mindful of the distinction between giving legal advice specific to a person's individual case, which may not be advisable or permissible, and that of providing information, which may be appropriate in certain situations.

Though it is generally a best practice to represent only the child (to avoid any potential conflicts which may arise from dual representation), there may be occasions when an attorney considers representing both a child and her caregiver, most notably in SIJS cases where the caregiver may need representation in state court to obtain a predicate order for the child's SIJS petition. [Rule 1.7 of the ABA Model Rules](#) allows for representation of multiple parties as long as the representation of one client is not directly adverse to another and the attorney will not be "materially limited" in representing one client by his "responsibilities to another client, former client or a third person or by a personal interest of the lawyer." Even if there is a material, concurrent conflict of interest, the rules permit an attorney to ethically represent more than one client if certain conditions are met, including each client giving "informed consent, confirmed in writing."

### ***Case 3: Juan***

*Juan is 6 years old. His parents, Ana and Pablo, arranged for him to join them in the United States after learning that the aunt who cared for him in Guatemala for five years was abusing him. Border Patrol apprehended Juan and placed him in ORR custody. Juan was recently released to his parents' care, and they have retained an attorney to represent Juan in his removal proceedings. Although Juan is able to talk about the abuse he suffered while living with his aunt, most of the information about this abuse has come from Ana, and the attorney's ability to get information from Juan is limited. The attorney thinks she can make an asylum claim for Juan based on the past abuse but needs to rely on sources beyond Juan – primarily his parents – to develop the claim. Ana is undocumented, and Pablo has a prior removal order, but both are willing to help with Juan's case as best they can. Yesterday, Ana called Juan's attorney to say that she and Pablo had received a letter telling them to present themselves to the local ICE office to accept service of Juan's Notice to Appear. Ana is afraid to go but wants to do what is right for Juan and asks his attorney for advice about how to proceed.*

### **Practical approaches utilizing the ABA Model Rules**

- **Identify the client.** Here, the family is looking for representation for Juan in his removal proceedings. If Juan is the client, then the attorney is bound to represent and advance Juan's – and only Juan's – interests. [Rule 1.14](#) contemplates the possibility of involving parents or other individuals in conversations relating to Juan's representation if Juan wants them to be involved and when such involvement is needed to assist in the representation. However, the attorney should be clear in all conversations with Juan and his parents that she serves only Juan's interests and explain up front any potential for material conflicts that may arise between Juan's and his parents' interests. If the attorney perceives that Juan's parents misunderstand her role, [Rule 4.3](#) directs that she should "make reasonable efforts to correct

the misunderstanding,” keeping in mind cultural barriers or expectations which may impact Ana and Pablo’s expectations.

- **Distinguish legal advice from information.** In responding to Ana and Pablo’s request for advice, it is important for Juan’s attorney to be clear that her loyalty lies with Juan and that she is not representing Ana or Pablo. If Ana and Pablo’s interests have a reasonable possibility of conflicting with Juan’s, [Rule 4.3](#) directs a lawyer against giving legal advice other than the advice to secure counsel. However, practitioners who work with UICs know that parents and sponsors may often seek, and even need, information on issues which may impact them during the course the representation of a UIC. Here, the distinction between providing information and providing legal advice becomes very important, and seasoned practitioners note the value of being able to share general information with caretakers, either verbally or through informational handouts. For example, many practitioners will speak generally about the potential risks for undocumented individuals attending court hearings or appointments with ICE without advising the unrepresented individual about their particular situation, and always clarifying the attorney’s exclusive loyalty to the child’s interests.
- **Informed consent.** If there is a significant risk of a material conflict arising between Juan’s and his parents’ interests during the course of representing Juan, an attorney may want to consider seeking informed consent from Juan’s parents acknowledging this potential for conflict. In some jurisdictions, such consent may need to be in writing. At minimum, attorneys should document informed consent conversations in case notes.

#### ***Case 4: Teresa, Victoria, and Yocelyn***

*Yocelyn is the mother of Teresa, age 17, and Victoria, age 14, two sisters who were recently reunified with their mother from ORR custody. Yocelyn has been living in the United States for 10 years, after she fled Honduras because of severe abuse by her daughters’ father. She had left Teresa and Victoria in the care of her mother, who raised them over the past 10 years but could no longer care for them because of her declining health. Yocelyn seeks representation for her daughters in their immigration court proceedings. Yocelyn herself is undocumented, but is willing to do anything to help her daughters in their cases. The girls are eligible for SIJS, but live in a state where Yocelyn would have to file the custody petition in state court to get a predicate order. Although the girls acknowledge that they are happy to be reunified with their mom, they also share some frustrations and conflicts that arise in the home; it had been a long time since they had seen their mom and everyone is having a difficult time adjusting to life together. Teresa, especially, expresses her desire to live on her own as soon as possible.*

#### **Practical approaches utilizing the ABA Model Rules**

- **Informed consent.** [Rule 1.7](#) deals with conflicts of interests between current clients, and prevents the representation of a client when such representation is either directly adverse to another client or there is a significant risk that the attorney will be materially limited by her responsibilities to another client. In the case of Yocelyn and her daughters, Yocelyn seeks representation in custody proceedings to obtain a predicate order which would allow her daughters to pursue SIJS. At this time, their interests are not adverse, but rather complementary. However, it is possible that a break-down in the family relationship may lead to conflicting interests in the future, so it is best to proceed with caution when contemplating dual representation of a UIC client and her parent or guardian in a similar situation. Under [Rule 1.7](#), an attorney can represent multiple clients even when there is a



significant risk of a material conflict as long as: (1) the attorney can provide competent and diligent representation to each client, (2) the representation is not prohibited by law, (3) the representation does not involve the assertion of a claim by one client against the other, and (4) each client gives informed consent, confirmed in writing. Although the [Comments to Rule 1.7](#) indicate that the “mere possibility of subsequent harm” does not require consent, an attorney wishing to be proactive about addressing potential conflicts of interests may consider getting informed consent from Yocelyn and each of her daughters before agreeing to represent Yocelyn in the state court proceedings and the girls in their immigration proceedings. The attorney should be clear that each party is represented for a discrete purpose and explain to each the possibility of any material conflicts which may arise.

- **Tension does not always equal conflict.** As discussed in the [Comments to Rule 1.7](#), key to the analysis is the materiality of the conflict to the representation, and if “a lawyer’s ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer’s other responsibilities or interests.” Certain familial or domestic tensions may present challenges to the clients without constituting an actual conflict of interest and attorneys should be careful about assuming that a conflict exists simply because there is tension within the family.
- **Refer out.** There may be cases where the possibility for conflict between a parent and a child is so great that a lawyer chooses to avoid the dual representation from the start. Similarly, conflicts that arise in the course of the dual representation may require the attorney to withdraw from the representation of one or both clients. In these cases, it will be important to develop referrals or partnerships within the community to serve both parties effectively, thereby expanding access to SIJS for UICs. (*See Chapter 5 [of this manual](#)*).

## Endnotes (All links available at [immigrantjustice.org/UICBestPractices/Links](http://immigrantjustice.org/UICBestPractices/Links))

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- <sup>1</sup> Detention Watch Network listserv, available at [www.detentionwatchnetwork.org/take-action/signup/listserve](http://www.detentionwatchnetwork.org/take-action/signup/listserve)
- <sup>2</sup> ChildImmigration listserv, available at [lists.lirs.org/mailman/listinfo/childimmigration](http://lists.lirs.org/mailman/listinfo/childimmigration)
- <sup>3</sup> NIJC Pro Bono Attorney Guidelines, available at [immigrantjustice.org/UICBestPractices/Links](http://immigrantjustice.org/UICBestPractices/Links)
- <sup>4</sup> NIJC Asylum Project Intake Questions, available at [immigrantjustice.org/UICBestPractices/Links](http://immigrantjustice.org/UICBestPractices/Links)
- <sup>5</sup> NIJC Sample Asylum Project Case Description, available at [immigrantjustice.org/UICBestPractices/Links](http://immigrantjustice.org/UICBestPractices/Links)
- <sup>6</sup> NIJC Pro Bono Retainer, available at [immigrantjustice.org/UICBestPractices/Links](http://immigrantjustice.org/UICBestPractices/Links)
- <sup>7</sup> NIJC Pro Bono Informational Materials, available at [immigrantjustice.org/useful-documents-attorneys-representing-asylum-seekers](http://immigrantjustice.org/useful-documents-attorneys-representing-asylum-seekers)
- <sup>8</sup> SIJS Flowchart for Kids (Spanish), available at [immigrantjustice.org/UICBestPractices/Links](http://immigrantjustice.org/UICBestPractices/Links)
- <sup>9</sup> Rubric for Assessing Tools Used with Immigrant Youth, available at [immigrantjustice.org/UICBestPractices/Links](http://immigrantjustice.org/UICBestPractices/Links)
- <sup>10</sup> ATLAS DIY SIJS video, available at [www.youtube.com/playlist?list=PLBuHjRHHToVtAoWm4iHx1K1xU4Z-lAfcq](http://www.youtube.com/playlist?list=PLBuHjRHHToVtAoWm4iHx1K1xU4Z-lAfcq)
- <sup>11</sup> Georgetown University Center for Child and Human Development National Center for Cultural Competence, *Curricula Enhancement Module Series*, available at [ncccurricula.info/culturalcompetence.html](http://ncccurricula.info/culturalcompetence.html)
- <sup>12</sup> Child Development Institute, *Stages of Development in Children and Teenagers*, available at [childdevelopmentinfo.com/child-development/piaget/](http://childdevelopmentinfo.com/child-development/piaget/)
- <sup>13</sup> These documents are available at [immigrantjustice.org/UICBestPractices/Links](http://immigrantjustice.org/UICBestPractices/Links)
- <sup>14</sup> ABA Sample Pro Bono Retainer for Adult Clients, available at [immigrantjustice.org/UICBestPractices/Links](http://immigrantjustice.org/UICBestPractices/Links)
- <sup>15</sup> Legal Services for Children Retainer for Child Clients, available at [immigrantjustice.org/UICBestPractices/Links](http://immigrantjustice.org/UICBestPractices/Links)
- <sup>16</sup> See endnote 8.
- <sup>17</sup> Authorization for Release of Health Information Pursuant to HIPAA, available at [www.nycourts.gov/forms/hipaa\\_fillable.pdf](http://www.nycourts.gov/forms/hipaa_fillable.pdf)
- <sup>18</sup> Consent for Use, Disclosure, and/or Release of Personal and Health Information, available at [immigrantjustice.org/UICBestPractices/Links](http://immigrantjustice.org/UICBestPractices/Links)
- <sup>19</sup> United States Department of Justice Email Updates, hosted by govDELIVERY, available at [public.govdelivery.com/accounts/USDOJ/subscriber/new?topic\\_id=USDOJ\\_272](http://public.govdelivery.com/accounts/USDOJ/subscriber/new?topic_id=USDOJ_272)
- <sup>20</sup> National Immigrant Justice Center Immigration Litigation Update, available at [www.immigrantjustice.org/litigation/blog](http://www.immigrantjustice.org/litigation/blog)
- <sup>21</sup> National Immigrant Justice Center, *Particular Social Group Practice Advisory: Applying for Asylum After Matter of M-E-V-G- and Matter of W-G-R-*, available at [immigrantjustice.org/UICBestPractices/Links](http://immigrantjustice.org/UICBestPractices/Links)
- <sup>22</sup> The Florence Immigrant & Refugee Rights Project, *How to Defend Your Own Case/ Como Defender su Propio Caso*, available at [firrp.org/resources/prose/](http://firrp.org/resources/prose/)
- <sup>23</sup> American Bar Association's Children's Immigration Law Academy Sample Dual Representation Agreement, available at [immigrantjustice.org/UICBestPractices/Links](http://immigrantjustice.org/UICBestPractices/Links)
- <sup>24</sup> Legal Services for Children Survey for SIJS Listserv Membership, available at [immigrantjustice.org/UICBestPractices/Links](http://immigrantjustice.org/UICBestPractices/Links)
- <sup>25</sup> Legal Services for Children Questionnaire for SIJS Taskforce Membership, available at [immigrantjustice.org/UICBestPractices/Links](http://immigrantjustice.org/UICBestPractices/Links)
- <sup>26</sup> U.S. Citizenship and Immigration Services, *SIJS: Information for Juvenile Courts*, available at [www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Information\\_for\\_Juvenile\\_Courts\\_FINAL.pdf](http://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Information_for_Juvenile_Courts_FINAL.pdf)
- <sup>27</sup> U.S. Citizenship and Immigration Services, *Immigration Relief for Abused Children*, available at [www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Immigration\\_Relief\\_for\\_Abused\\_Children-FINAL.pdf](http://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Immigration_Relief_for_Abused_Children-FINAL.pdf)
- <sup>28</sup> Michigan State University College of Law, *Special Immigrant Juvenile Status in Michigan*, available at [immigrantjustice.org/UICBestPractices/Links](http://immigrantjustice.org/UICBestPractices/Links)
- <sup>29</sup> Immigrant Legal Resource Center, *Immigration Benchbook for Juvenile and Family Courts*, available at [www.ilrc.org/resources/immigration-benchbook-for-juvenile-and-family-courts](http://www.ilrc.org/resources/immigration-benchbook-for-juvenile-and-family-courts)
- <sup>30</sup> Rachel Martin, Jena Gutierrez, Jerome Galang, "Evaluating the Decision-Making Capacity of Children: A Guide for Legal Practitioners," available at [www.law.umich.edu/centersandprograms/pcl/ljohnsonworkshop/Documents/Evaluating%20the%20Decision-Making%20Capacity%20of%20Children%20PDF.pdf](http://www.law.umich.edu/centersandprograms/pcl/ljohnsonworkshop/Documents/Evaluating%20the%20Decision-Making%20Capacity%20of%20Children%20PDF.pdf)
- <sup>31</sup> *Id.*