

One attorney may be assigned to represent siblings in a child protective action, a foster care review, a termination of parental rights proceeding, or a custody proceeding. Joint representation is permissible and efficient provided the siblings have a common interest and common wishes. However, joint representation is impermissible when a conflict or perceived conflict arises, or there exists a substantial potential of conflict.<sup>9</sup> In such event, counsel should move to be relieved as to the representation of at least one of the siblings, and the court should assign a different attorney. In light of the attorney-client privilege and the inherent confidential nature of the lawyer-client relationship, a child's attorney may have to be relieved entirely from the case. In *Matter of H. Children*,<sup>10</sup> for example, the court removed an attorney who had been assigned to represent siblings in a child abuse case and assigned two new attorneys, one for each child, when the court found that the original counsel might be required to cross-examine one of her former clients. Joint representation is particularly problematic in a delinquency case where a potential conflict is always present. The courts have applied a high standard, akin to joint representation in criminal cases.<sup>11</sup> In juvenile delinquency proceedings, the court should always appoint separate counsel for each respondent and never permit joint representation.

Conflicts may also arise between the attorney and the older client. In a custody action, for example, the child may prefer to live with a parent that counsel and perhaps independent forensic experts believe to be undesirable or inadequate. Or an abused child may want to remain in the only home he knows.<sup>12</sup>

Family Court Act § 243 provides for three methods to appoint counsel. The appropriate Appellate Division and the Office of Court Administration may use any of the three in designating attorneys to represent children for each county in the state:

- (1) the Office of Court Administration may enter into an agreement with a legal aid society to provide law attorneys for the Family Court of a given county and for appeals arising from such representation;
- (2) the relevant Appellate Division may designate a panel of attorneys to serve the Family Court in a given county and appeals arising from such representation; and

<sup>9</sup>See *Corigliano v. Corigliano*, 297 A.D.2d 328, 746 N.Y.S.2d 313 (2d Dep't 2002) and *Gary D.B. v. Elizabeth C.B.*, 281 A.D.2d 969, 722 N.Y.S.2d 323 (4th Dep't 2001).

<sup>10</sup>*Matter of H. Children*, 160 Misc.2d 298, 608 N.Y.S.2d 784 (Fam. Ct.

1994).

<sup>11</sup>See *Matter of Glenn F.*, 117 A.D.2d 1013, 499 N.Y.S.2d 557 (4th Dep't 1986).

<sup>12</sup>Conflicts between counsel and the child are discussed in § 13:3, *infra*.

- (3) where panel or individual attorneys are assigned to represent siblings in a child protective action, a foster care review, a termination of parental rights proceeding, or a custody proceeding. Joint representation is permissible and efficient provided the siblings have a common interest and common wishes. However, joint representation is impermissible when a conflict or perceived conflict arises, or there exists a substantial potential of conflict.<sup>9</sup> In such event, counsel should move to be relieved as to the representation of at least one of the siblings, and the court should assign a different attorney. In light of the attorney-client privilege and the inherent confidential nature of the lawyer-client relationship, a child's attorney may have to be relieved entirely from the case. In *Matter of H. Children*,<sup>10</sup> for example, the court removed an attorney who had been assigned to represent siblings in a child abuse case and assigned two new attorneys, one for each child, when the court found that the original counsel might be required to cross-examine one of her former clients. Joint representation is particularly problematic in a delinquency case where a potential conflict is always present. The courts have applied a high standard, akin to joint representation in criminal cases.<sup>11</sup> In juvenile delinquency proceedings, the court should always appoint separate counsel for each respondent and never permit joint representation.

In many large urban counties, the Office of Court Administration, with legal aid societies, has entered into agreements with legal aid societies in Orange County, and in other counties, society agreements have been entered into more recent innovative

Attorney panels have been established in the state. Attorneys are recommended by the Office of Court Administration, or the Family Court Association, or the Family Court Training Requirement Commission. The training requirement is for a period of one year on a year basis.<sup>14</sup>

The three methods are not exclusive of each other. A legal aid society may represent a child in custody proceedings while panel attorneys represent a child in delinquency proceedings. In any event, the establishment of panel attorneys is not a prerequisite to the establishment of panel attorneys.

The costs of representation are paid for through agreements with legal aid societies. Compensation on a contract basis is \$75 per hour for court work (e.g., intake, practice, or trial preparation). Overhead, are also provided, though, fortunately, legal aid societies provide representation of the program. The Office of Court Administration maintains a "Child's Rights" program within the department.

In unusually complex

<sup>13</sup>L.1995, c. 443.

<sup>14</sup>FCA § 244.