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THE ROLE OF THE LAWYER IN REPRESENTING MINORS IN THE NEW FAMILY COURT

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A MAJOR innovation of the new Family Court Act[1] is the establishment of a system of "law guardians" to provide legal representation for minors in neglect proceedings under article 3 of the Act and in delinquency and person in need of supervision proceedings under article 7.[2] The law guardian system is designed to implement an express legislative finding that "counsel is often indispensable to a practical realization of due process of law and may be helpful in making reasoned determinations of fact and proper orders of disposition"[3] and represents the culmination of a significant reversal of an earlier viewpoint which opposed the participation of lawyers as incompatible with the objectives and procedures of "social courts."

The tremendous impact of the law guardian system on the court is evidenced by the fact that while counsel rarely appeared before the Domestic Relations Court in the City of New York or in Children's Courts elsewhere in the State,[4] during the period from September 1, 1962 (when the new Family Court Act became effective) until December 31, 1962, law guardians appeared on behalf of minors in over 3,000 cases in the Family Court in New York City alone.[5] It is also safe to assume that with increased emphasis on the importance of

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1. N.Y. Sess. Laws 1962, ch. 686 as amended by N.Y. Sess. Laws 1962, ch. 687, 700, 702, 703.

2. N.Y. Family Ct. Act art. 2, part 4. Under § 242 of the Act, a law guardian is defined as an attorney admitted to practice in the State of New York and designated to represent minors in proceedings under articles 3 and 7 of the Act. Law guardians may be provided by a legal aid society under an agreement with the appropriate Appellate Division or from a panel of law guardians in each county designated by the Appellate Division (§§ 243, 244, 245). The costs of law guardians are includable in the budget for each Appellate Division and are payable by the State (§ 248). Section 249 requires that at the request of a minor in a proceeding under article 3 (Neglect) or 7 (Delinquency or Person in Need of Supervision) or on the request of a parent or person legally responsible for the minor's care, the court must appoint a law guardian to represent such minor if independent legal representation is not available to the minor by reason of inability to pay other counsel or other circumstances. The Court may also make such appointment on its own motion.

3. N.Y. Family Ct. Act § 241.

4. It has estimated that in 1959, 92% of the respondents in delinquency and neglect proceedings in the Domestic Relations Court of the City of New York were not represented by counsel. See Schinitsky, *Role of the Lawyer in Children's Court*, 17 Record of N.Y.C.B.A. 10, 15 (1961).

5. Statistics supplied by the Chief Attorney of the Law Guardian staff of the Family Court of the City of New York. The breakdown of the cases in which law guardians appeared is as follows:

Juvenile Delinquency	1220
Person in Need of Supervision	973
Neglect	712
Violations of Probation	194
Other	4

legal representation, the incidence of appearance of private counsel will also increase substantially.

The proper role of the lawyer in the Family Court will have to be forged in the crucible of actual experience and in a long range process of adaptation and accommodation which must inevitably occur between the lawyer, the social and diagnostic services which are attached to or utilized by the court and the court itself. However, in view of the importance which the Legislature has attached to the law guardian program[6] some attempt to define this role, even at this early stage, would appear warranted.

In this article, I shall attempt to describe the historical context from which the law guardian concept has emerged, to define in general terms the functions of a lawyer in the new Family Court, and to apply this conception to the particular problems with which counsel will be confronted in representing minors in delinquency, person in need of supervision and neglect proceedings under the Family Court Act. Discussion is limited to these categories of proceedings not only because the Legislature has determined that they present the greatest areas of need for legal representation,[7] but also because experience of lawyers in other courts will furnish little guide to the nature of the duties imposed upon counsel in these proceedings.[8] Although emphasis will be given to the law guardian concept, there is no intention to suggest that there is any difference between the proper role of the law guardian and that of private counsel, but rather that the law guardian system is sound in conception and, if properly implemented, should serve as the prototype for all legal representation in the Court.

I

The Historical Context of the Law Guardian System

The creation of separate juvenile courts was the by-product of new insights provided by the development of the behavioral sciences. The beginning accumulation of knowledge about human behavior revealed by work in the field of psychiatry, psychology and social work about the turn of the last century brought with it dissatisfaction with the application to children of legal attitudes and procedures designed for adult criminals. Juvenile courts were established with the objective of emphasizing an individualized approach to the cases coming before them, with less preoccupation with the facts of anti-social

6. N.Y. Joint Legis. Committee on Court Reorganization, Rep. II (The Family Court Act) 2 (1962).

7. The Joint Legislative Committee which drafted the Family Court Act characterized the law guardian system as "an important element in the workings of the new Family Court." *Ibid.*

8. Other proceedings in which lawyers may appear in the Family Court include support proceedings (art. 4), paternity proceedings (art. 5), guardianship, adoption and custody proceedings (art. 6), and family offense cases (art. 8). Lawyers have always participated in these cases to a greater degree than in delinquency or neglect cases and their experience in other courts generally provides some basis for familiarity with their roles in these proceedings.

behavior and more concern over the motivation for such conduct.[9] The ultimate goal was to treat rather than to punish. Since at the heart of the juvenile court movement was the vision of the court as a benevolent parent dealing with his erring child,[10] the thesis was widely held that legal counsel could serve little function in the new scheme of things other than to obstruct and delay the providing of necessary diagnosis and treatment by pettifoggery and technical obstructionism.[11]

Experience ultimately demonstrated, however, that excessive rejection of traditional legal safeguards and procedures carried with it the seeds of abuse of individual rights. The jurisdiction of the new juvenile courts could be invoked in some jurisdictions on the basis of vague allegations of anti-social behavior.[12] Informality of procedure was sometimes equated not only with the absence of legal representation but also with the acceptance of uncorroborated admissions, hearsay testimony and untested social investigations as the basis for adjudication.[13] The usual protections against self-incrimination[14] and double jeopardy[15] were repeatedly rejected as inapplicable to the civil rehabilitative approach embraced by the court. The judge wielded great discretionary power shielded from the glare of public scrutiny, his broad range of dispositional powers including commitments for indefinite periods to institutions having

9. See A New Pattern For Family Justice 9-18 (Bureau of Public Affairs, Community Service Society of New York 1954). It has been estimated that there are presently 3,000 or more juvenile courts in the United States which handle over 1,000,000 young people each year. In 1957, 603,000 delinquency cases alone were adjudicated in juvenile courts. See Kohler, *Procedure in the Juvenile Court—Accent on Social Services, Legal Rights or Both*, Summary of Proceedings, Family Law Section of A.B.A. 56 (Wash., D.C. 1960).

10. Kohler, *supra* note 9, at 57; Fisher, *Juvenile Court: Purpose, Promise, and Problems*, 34 Social Service Rev. 75, 77 (1960).

11. Although the more respected judicial pioneers in the juvenile court movement paid at least lip service to the notion that there was a place in the court for the "socially conscious lawyer," there is found in their public statements recurring expressions of concern that lawyers will maneuver to "beat the rap" or be "constitutionally contentious, or vainly legalistic or mentally myopic." See, *e.g.*, Sicher, *Socialized Procedures of the Domestic Relations Court of the City of New York: The Lawyer's Role in its Children's and Family Court Divisions* 14, County Lawyers Association, New York City (1951); Alexander, *Constitutional Rights in Juvenile Court*, 46 A.B.A.J. 1206, 1209 (1960).

12. See *e.g.*, In re Bentley (Harry v. State), 246 Wisc. 69, 16 N.W.2d 390 (1944); State *ex rel.* Raddue v. Superior Court, 106 Wash. 619, 180 Pac. 875 (1919).

13. *No Requirement of Warning of Right to Counsel:* People *ex rel.* Weber v. Fifield, 136 Cal. App. 2d 741, 289 P.2d 303 (Dist. Ct. App. 1955), Dudley v. State, 219 S.W.2d 574 (Tex. Civ. App. 1949). In New Hampshire counsel was actually excluded by the court, resulting in a reversal by the appellate court. In re Poulin, 100 N.H. 458, 129 A.2d 672 (1957).

Uncorroborated Admissions: In the Matter of Gonzales, 328 S.W.2d 475 (Tex. Ct. App. 1959); Matter of McDonald, 153 A.2d 651 (D.C. Munic. Ct. App. 1959).

Hearsay: In re Holmes, 379 Pa. 599, 109 A.2d 523 (1954), *cert. denied*, 348 U.S. 973 (1955); State v. Christensen, 119 Utah 361, 227 P.2d 760 (1951); Sylvester v. Commonwealth, 253 Mass. 244, 148 N.E. 449 (1925); State v. Scholl, 167 Wisc. 504, 167 N.W. 830 (1918).

14. In re Holmes, 379 Pa. 599, 109 A.2d 523 (1954), *cert. denied*, 348 U.S. 773 (1955); People v. Lewis, 260 N.Y. 171, 183 N.E. 353 (1932), *cert. denied*, 289 U.S. 709 (1933).

15. People v. Silverstein, 121 Cal. App. 2d 140, 262 P.2d 656 (1953).

"therapeutic" facilities of at least questionable value.[16] The safeguard of appellate review, although available, was scarcely invoked.[17]

Perhaps the perfect judge could also act the perfect parent and dispense true justice and understanding without the fetters of elementary due process. Unfortunately, however, judges being human suffered the imperfections of humanity, and the existence of recurrent instances of disregard of individual rights in the social courts were soon noted, and a rising wave of criticism emerged.[18] Corrective measures were initiated to meet these abuses. Appellate court decisions began to measure juvenile court procedures and determinations against more rigid standards of basic due process.[19] More recently, statutes governing juvenile or family courts or parts of courts were amended to incorporate or provide greater legal safeguards for individual rights.[20] A significant aspect of more recent development has been the repudiation of the thinking that had discouraged the participation of lawyers in the "social" courts and

16. See N.Y. Joint Legis. Committee on Court Reorganization, Rep. II (The Family Court Act) 8 (1962).

17. In 1959 and 1960, out of a total of almost 20,000 children adjudicated delinquent or neglected in the Domestic Relations Court of the City of New York, 4 cases were appealed and reviewed by appellate courts. See Schinitsky, *supra* note 4, at 15.

18. See, *e.g.*, Paulsen, *Fairness to the Juvenile Offender*, 41 Minn. L. Rev. 547 (1957); Kohler, *Procedure in the Juvenile Court*, *supra* note 9; Antieau, *Constitutional Rights in Juvenile Courts*, 46 Cornell L.Q. 387 (1961); Fisher, *supra* note 10.

19. In the leading case of People v. Lewis, 260 N.Y. 171, 183 N.E. 353 (1932), the Court of Appeals stated (260 N.Y. at 178, 183 N.E. at 355):

> . . . When it is said that even in cases of lawbreaking delinquency constitutional safeguards and the technical procedure of the criminal law may be disregarded, there is no implication that a purely socialized trial of a specific issue may properly or legally be had. The contrary is true. There must be a reasonably definite charge. The customary rules of evidence shown by long experience as essential to getting at the truth with reasonable certainty in civil trials must be adhered to. The finding of fact must rest on the preponderance of evidence adduced under those rules. Hearsay, opinion, gossip, bias, prejudice, trends of hostile neighborhood feeling, the hopes and fears of social workers, are all sources of error and have no more place in Children's Courts than in any other court.

Other cases in which the courts have reiterated the necessity for basic elements of due process include:

Privilege Against Self-Incrimination: Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269 (1944);

Requirement of Notice of Right to Counsel: In re Barkus, 168 Neb. 257, 95 N.W.2d 674 (1959); Shioutakon v. District of Columbia, 236 F.2d 666 (D.C. Cir. 1956); State v. Cronin, 220 La. 233, 56 So.2d 242 (1951);

Rejection of Uncorroborated Confession as Basis for Adjudication: People v. Fitzgerald, 244 N.Y. 307, 155 N.E. 584 (1927); In re Coyle, 122 Ind. App. 217, 101 N.E. 2d 192 (1951);

Protection Against Double Jeopardy: United States v. Dickerson, 168 F. Supp. 899 (D.D.C. 1958), *rev'd*, 271 F.2d 487 (D.C. Cir. 1959) (without deciding whether jeopardy can ever attach to a disposition made by a juvenile court, the court found that a preliminary hearing was not a sufficient stage at which jeopardy would attach);

Appointment of Counsel: McDaniel v. Shea, 278 F.2d 460 (D.C. Cir. 1960);

Exclusions of Hearsay: In re Barkus, 168 Neb. 257, 95 N.W.2d 674; In re Mantell, 157 Neb. 900, 62 N.W.2d 308 (1954); In re Contreras, 109 Cal. App. 2d 787, 241 P.2d 631 (1952); In re Sippy, 97 A.2d 455 (D.C. Munic. Ct. App. 1953); see also Beemsterboer, *The Juvenile Court—Benevolence in Star Chamber*, 50 J. Crim. L., C. & P.S. 464, 473 (1962).

20. See *Standard Family Court Act—Text and Commentary*, 5 NPPA J. 99 (1959); Breitenbach, *Due Process of Law for Juveniles Revisited*, 37 Calif. S.B.J. 32 (1962).

the mounting demand for legal representation of children in these courts.[21] Of particular interest is the fact that this demand has not originated with the bar but with various social agencies, which have concluded that juvenile and family courts can fulfill their expectations only if a proper balance of legal and social objectives is maintained.[22]

In 1960, the Committee on the Domestic Relations Court of the Association of the Bar of the City of New York, with the cooperation of the Legal Aid Society and the assistance of a grant from the Field Foundation, initiated a study to determine whether lawyers had a proper role in juvenile court proceedings. In the course of this study, which was conducted under the direction of Charles Schinitsky, an experienced Legal Aid attorney, with the assistance of members of the Young Lawyers Committee of the Association of the Bar, the processing of over 1,000 cases in the Domestic Relations Court of the City of New York was observed, and members of the study team participated as counsel for respondents in over 100 cases. In the persuasive report which concluded this study it was found that the presence of counsel was desirable to protect the rights of respondents, to improve the evidentiary standards of the court, to assist the court in elicitation of facts, to avoid unnecessary institutionalization and to work with probation officers in the disposition of cases.[23] The report also recommended the assignment of attorneys on a permanent basis in the court to represent indigent respondents. The law guardian system established by part 4 of article 2 of the Family Court Act has its genesis in this report.[24]

II

THE "LAW GUARDIAN" CONCEPT—THE LAWYER AS ADVOCATE, GUARDIAN AND OFFICER OF THE COURT

The Family Court Act does not attempt to define the role of the law guardian. It is apparent, however, that in using the designation "law guardian"

21. Bertram M. Beck, Director of the Special Juvenile Delinquency Project of the United States Children's Bureau is reported as saying: "I have questioned numerous parents . . . and have yet to find one who would not want to have legal advice if his child were in conflict with the law and subject to the processes of an institution such as the juvenile court today." Gellhorn, Children and Families in the Courts of New York City 78 (1954). Part I of the Report (issued November 1960) of the Governor's Special Study Commission on Juvenile Delinquency, which was appointed by Governor Brown of California to review the procedures of the California juvenile courts, stated (p. 27): "We find no grounds to support the contention that the presence of counsel will destroy the protective philosophy of the juvenile court or alter the informality of proceedings. Where counsel has been employed in the juvenile court . . . judges . . . commented that attorneys perform a valuable service in safeguarding the minor's rights and in interpreting the reason for the court's disposition to the family." See also McMullen, *The Lawyer's Role in the Juvenile Court*, 8 Prac. Law. 49 (1962); Shears, *Legal Problems Peculiar to Children's Courts*, 48 A.B.A.J. 719 (1962); Paulsen, *supra* note 18, at 570.

22. See Peck, A New Pattern for Mental Health Services in a Children's Court 11; Fisher, *supra* note 10.

23. Schinitsky, *supra* note 4, at 25.

24. N.Y. Joint Legis. Committee on Court Reorganization, Rep. II (The Family Court Act) 3 (1962).

rather than "counsel," or "attorney" or "lawyer" the Legislature intended to indicate that the unique characteristics of the Family Court required a new concept of proper legal representation. While it is premature to attempt to delineate definitively the scope of this concept, I would suggest that it contemplates that the lawyer perform at least three separate functions, namely, that of advocate, guardian, and officer of the court.

The Lawyer as Advocate. The Family Court is a court and not a social agency.[25] The order of disposition which may ultimately be issued affects the basic rights of some parent or child. What is denominated as "rehabilitation" often means the loss of personal liberty, and "treatment" may really mean commitment to an institution where treatment facilities are either wholly lacking or grievously inadequate. Accordingly, the lawyer in the Family Court, no less than in any other court, must stand as the ardent defender of his client's constitutional and legal rights.[26] He should bring to this task the usual tools of the advocate—familiarity with the applicable law, the ability to make a thorough investigation and logical presentation of the pertinent facts and the faculty for forceful and persuasive exposition of his client's position. The suggestion found in some writings that "zealous advocacy" is incompatible with the objectives of a Family Court[27] is without merit unless zeal of advocacy is confused with purposeless obstructionism.

The fact that the Family Court is a court, however, should not obscure the fact that it is a court with social objectives and social techniques. Law guardians and other lawyers appearing in the court have the obligation to understand the purposes of the court and "must be familiar with social techniques to give truly effective representation."[28] Conscientious counsel will have to exercise intelligent discrimination in the use of tactics learned in other courts since wholesale importation of techniques developed in the handling of criminal or civil cases before other tribunals may not only threaten the objectives of the court but will rarely serve the interest of the minor client.

The Lawyer as Guardian. The use of the term "guardian" as part of the title assigned to legal counsel in the Family Court would seem to connote an

25. For a good discussion of the "legal" vs. "social" orientation of the court, see A New Pattern For Family Justice, *op. cit. supra* note 9, at 25.

26. "The constitutional safeguards vouchsafed a juvenile in such proceedings are determined from the requirements of due process and fair treatment and not by direct application of the clauses of the Constitution wherein terms apply to criminal cases." Prettyman, J. in Pee v. United States, 247 F.2d 556 (D.C. Cir. 1959). For an excellent discussion of the lawyer's role in protecting the legal rights of his client in a juvenile court see McMullen, *supra* note 21.

27. See, *e.g.*, Sicher, *op. cit. supra* note 11, at 14:

> . . . a lawyer sensitively aware of the Court's constructive aim, its handicap of gravely insufficient personnel, its specialized procedure, its power and lack of powers, completely candid and cooperative—scornful of making the worse appear the better reason and not so much a zealous advocate as a socially minded officer of the Court cognizant of the co-interest of the community—such type of lawyer can contribute materially to the welfare of all concerned.

28. N.Y. Joint Legis. Committee on Court Reorganization, Rep. II (The Family Court Act) 3 (1962).

intention on the part of the Legislature to expand counsel's role beyond advocacy alone. The concept of "guardianship" would seem to require that not only the legal rights but the general welfare of the minor be thrown on the scale in the weighing by counsel of his course of action.[29] The role of the "wise parent" has, in effect, been transferred from the court itself to the law guardian.

In performing the role of "guardian," however, the lawyer must be ever mindful of the fact that he is not a trained social worker and should not attempt to usurp the function of the probation department or other diagnostic services of the court. Neither is he required to forfeit common sense and to accept social evaluation of his client's needs without applying that degree of critical skepticism necessary to insure at the least that the analysis is predicated on complete and accurate facts.

The Lawyer as Officer of the Court. Proper implementation of the law guardian concept would give substance to the oft-repeated and rarely meaningful description of the lawyer as an "officer of the court." The Joint Legislative Committee envisaged the law guardians as performing this role by assisting the court, supplying the Governor and Legislature with an independent view of the practical effect of the new Act, and serving a "seeding" function among the bar generally by informing their colleagues of the practices and needs of the court.[30]

As an officer of the court a lawyer in the Family Court must assume the duty of interpreting the court and its objectives to both child and parent, of preventing misrepresentation and perjury in the presentation of facts, of disclosing to the court all facts in his possession which bear upon a proper disposition of the matter, subject only to the restrictions imposed by the confidentiality of the lawyer-client relationship, of working in close cooperation with the probation service of the court to reach a proper disposition and, where necessary, to help in getting a child or family to accept such disposition.[31]

In large measure the picture of the court which will be retained by the child will be conditioned by his counsel's attitude toward the court. If counsel condones the "beat the rap" approach and substitutes deception for honest but firm concern for the protection of his client's rights, he will not only be doing the court and his profession a disservice, but he will be rendering an even greater disservice to his client.

The foregoing may be of limited utility to the lawyer actually faced with the problem of appearing on behalf of a child. Accordingly, the balance

29. For a discussion of the "guardian" concept of legal representation in a juvenile court, see Blanton, *Juvenile Courts and Constitutional Rights of Minors*, 18 Ala. Law. 12 (1957).

30. N.Y. Joint Legis. Committee on Court Reorganization, Rep. II (The Family Court Act) 2 (1962).

31. See Procedure and Evidence in the Juvenile Court, A Guidebook for Judges 43 (1962); McKesson, *Right to Counsel in Juvenile Proceedings*, 45 Minn. L. Rev. 843 (1961); The Attorney and the Juvenile Court, 33 L.A.B. Bull. 333 (1955).

of this article will be devoted to an attempt to apply these principles to the specific problems which will confront counsel in the handling of delinquency, person in need of supervision, and neglect proceedings.

III

COUNSEL'S ROLE IN JUVENILE DELINQUENCY AND PERSON IN NEED OF SUPERVISION PROCEEDINGS UNDER ARTICLE 7 OF THE ACT

Cases which were denominated as juvenile delinquency proceedings under the former Children's Court Act and Domestic Relations Court Act[32] have now been subdivided into two categories—"juvenile delinquent" and "person in need of supervision." The label "juvenile delinquent" is now applied to a person over seven and under sixteen who does any act which, if done by an adult, would constitute a crime.[33] The new category of "person in need of supervision" encompasses a male less than sixteen years of age and a female less than eighteen years of age who is habitually truant, or incorrigible, ungovernable or habitually disobedient and beyond the lawful control of parent or other lawful authority.[34] Counsel should be aware that there are important distinctions in terms of procedure and judicial power between these two categories of cases.

A. *Proceedings Preliminary to the Filing of Petition*

In the rare instances in which counsel is retained as soon as the parent has been notified that the child has been taken into custody or that the filing of a petition under article 7 of the Family Court Act is contemplated, the first concern of counsel may be the propriety of temporary detention of his client pending the filing of a petition. The Family Court Act reflects a strong legislative policy against the use of temporary detention pending the initiation of Family Court proceedings except in very restricted circumstances, and it is a proper function of counsel to insist that this policy be observed.[35]

Although the Act authorizes arrest without a warrant by a police officer where it appears that an act of juvenile delinquency has been committed,[36] there is no statutory authority for taking a child into custody on the ground that he is or appears to be a person in need of supervision. When arrest is authorized, if the arresting officer does not release a child to the custody of his parent or person responsible for his care, he is required to bring the child forthwith to the Family Court, without his first being taken to a police station house, or to a place designated by rules of court

32. N.Y. Children's Ct. Act § 2(2); N.Y. Dom. Rel. Ct. Act § 2(15).
33. N.Y. Family Ct. Act § 712(a).
34. N.Y. Family Ct. Act § 712(b).
35. See N.Y. Joint Legis. Committee on Court Reorganization, Rep. II (The Family Court Act) 10, 11 (1962).
36. N.Y. Family Ct. Act § 721.

for the reception of children.[37] Rules of Court authorize the probation services to release a child in custody if the case appears to be one involving a person in need of supervision proceeding rather than juvenile delinquency, and in the latter cases custody can be continued only if there are special circumstances requiring detention.[38] A child who is not released must promptly be brought before a judge of the court, if practicable, and no child may be held for more than forty-eight hours without a hearing.[39]

If a child in custody is brought before a judge of the Family Court before the filing of a petition, the court is required to hold a hearing to determine whether the court appears to have jurisdiction over the child.[40] On such a hearing counsel is under a duty to oppose continued detention of his client unless a proper showing is made that the court has jurisdiction, that the events occasioning the taking into custody involve juvenile delinquency and that there is a substantial probability that the child will not appear in court on the return date or that there is a serious risk that he may commit a criminal act before the return date.[41]

Both the Family Court Act[42] and the Rules of Court[43] adopted pursuant thereto contemplate the utilization of an intake procedure preliminary to the filing of a petition for the purpose of screening out cases which do not require judicial attention either because the necessary jurisdictional elements are manifestly lacking or because the matter is amenable to adjustment on an informal voluntary basis. In the larger cities and counties of the State this function will be handled by the probation service of the court or a specialized unit thereof, while in less populous areas intake may be handled through public or private welfare or other family or children's agencies. Counsel is rarely retained as early as the intake level. However, in the rare instances when counsel is in the picture at this early stage, he may serve a valuable function by bringing to the attention of the intake officer any facts or circumstances either related to the particular acts in issue or the family or child which might militate in favor of efforts toward voluntary adjustment. Cooperation by counsel in developing a plan for voluntary adjustment may also help to avoid the need for formal proceedings. Statements made during intake procedures cannot be admitted in evidence at any subsequent adjudica-

37. N.Y. Family Ct. Act § 724. Rules of court have delegated the power of designating children's shelters to the respective Appellate Divisions. N.Y.R. Family Ct. 7.1. "Confessions" taken in a police station may not be admissible in evidence. See Matter of Rutane, 234 N.Y.S.2d 777 (Family Ct. 1962). A bill presently awaiting action by the governor would amend section 724(b) so as to authorize a police officer to take a child for questioning to a facility designated for such purpose by the appellate division of each department. [This bill has been signed—Ed.]

38. N.Y.R. Family Ct. 7.2; N.Y. Family Ct. Act § 727.

39. N.Y. Family Ct. Act § 729. Legislation pending would alter the time to take week-end detention into account. [This bill did not pass—Ed.]

40. N.Y. Family Ct. Act § 728.

41. N.Y. Family Ct. Act § 728(b).

42. N.Y. Family Ct. Act § 734.

43. N.Y.R. Family Ct. 7.3.

tory hearing or, if the proceeding is transferred to a criminal court, at any time prior to a conviction.[44] They may, however, be considered in the dispositional process later discussed.

B. *The Petition*

All proceedings under the Family Court Act are instituted by the filing of a petition. Juvenile delinquency petitions are usually made by peace officers or by an individual who has allegedly suffered injury as a result of the acts complained of. Parents constitute the petitioners in the great preponderance of person in need of supervision cases, and authorized agencies in almost all the rest. These four categories encompass the authorized petitioners in proceedings under article 7 of the Family Court Act.[45]

The required contents of a petition filed under article 7 are particularized in some detail by the Act. In a juvenile delinquency case the petition must specify the act, which, if done by an adult, would constitute a crime and the time and place of its commission and must allege that the respondent was under sixteen at the time of the alleged act and that he requires supervision, treatment or confinement.[46] The petition in a person in need of supervision case must set forth, in addition to the required age allegations, the specific acts on which the allegations of habitual truancy, incorrigibility, habitual disobedience or ungovernability are based and the time and place of their occurrence, and that the respondent requires supervision or treatment.[47] Although petitions are prepared by court clerks, most of whom are not lawyers, there will rarely be occasion for counsel to interpose objection to them if the official forms adopted by the Judicial Conference are properly used.[48] However, it is clear that it was the intention of the Legislature that the petitioner be given adequate notice of the nature and circumstances of the particular acts alleged, and the sufficiency of a petition which does not meet these requirements and which substitutes vague, generalized or conclusory allegations is properly subject to attack by motion.[49]

In localities having a permanent law guardian staff, counsel may be assigned after a petition has been filed and before the first hearing of the court. In other localities counsel will not usually be assigned until requested at the initial hearing. A brief comment may be appropriate at this juncture with respect to ethical problems of representation that may arise. The problem of potential divided loyalty will never confront the law guardian since by statutory prescription his sole loyalty is to the child he represents. The possibility of adverse interest may arise, however, where private counsel is

44. N.Y. Family Ct. Act § 735.
45. N.Y. Family Ct. Act § 733.
46. N.Y. Family Ct. Act § 731.
47. N.Y. Family Ct. Act § 732.
48. Family Ct. Forms, No. 7-6, 7-7.
49. See Schinitsky, *supra* note 4, at 16; Procedure and Evidence in the Juvenile Court, *op. cit. supra* note 31, at 12.

retained by a parent to represent a child in a juvenile delinquency or person in need of supervision proceeding. In some cases proper defense of the child may require the elicitation of facts reflecting adversely on the parent and which could, in fact, result in the substitution of a petition charging the parent with neglect for that pending before the court at the outset of the proceeding. In such circumstances it would appear to be the ethical duty of counsel either to request that a law guardian be assigned to represent the child or to advise the parent of the potential adverse interest, of his intention to defend the child to the utmost without regard to possible serious consequences to the parent and possibly even to suggest that the parent retain separate counsel.

C. *Hearings*

The new Family Court Act attempts to distinguish the basically legal aspects of a proceeding under article 7 from the primarily social aspects by providing that hearings be held in two phases, the first designated as an "adjudicatory hearing" and the second as a "dispositional hearing."[50] The legal aspects are largely embodied in the "adjudicatory hearing," the function of which is to determine whether the respondent did the particular acts on which the allegations of juvenile delinquency or person in need of supervision are based.[51] The social aspects of the proceeding are emphasized in the dispositional hearing which is designed to determine whether, in the case of a person alleged to be in need of supervision, there is need for supervision or treatment, and, in the case of a person alleged to be a juvenile delinquent, whether the respondent requires supervision, treatment or confinement.[52] No final adjudication of delinquency or person in need of supervision can be made until both hearings have been held.

Counsel coming into the Family Court for a hearing for the first time may be surprised, if not dismayed, by the lack of courtroom formality. The judge, not wearing a robe, may be sitting behind an ordinary conference table with probation personnel, the respondent and counsel sitting as if at an informal meeting. The proceedings may be conducted in what appears to be purely a conversational manner with little regard for the courtroom niceties adhered to in other courts. Forensic ability or intimate acquaintance with the technicalities of courtroom procedures seem to have little place in the picture. Unauthorized persons are generally barred from the court.[53] In a properly conducted court, where informality merely means the absence of technical formalities which tend to confuse or coerce the child,[54] counsel

50. The same concept of dual hearings is found in Standards for Specialized Courts Dealing with Children 53 (1954), which is published by the Children's Bureau of the U.S. Department of Health, Education and Welfare.
51. N.Y. Family Ct. Act § 742.
52. N.Y. Family Ct. Act § 743.
53. N.Y. Family Ct. Act § 741(b).
54. Lou, Juvenile Courts in the United States 129 (1927).

will learn that such informality is desirable as a means of conveying to the child that the court is seeking to help rather than punish him, and that it can be achieved without sacrificing dignity or respect for the authority which the court represents. Counsel must be on his guard, however, that the cloak of "informality" is not used as a disguise for abuse or deprivation of important rights.

In this connection, some note should be made of the special problem confronting the law guardian who is permanently assigned to a single court. He may sit opposite a single judge day after day, and case after case for an extended period of time, and his regular duties will normally bring him into almost daily contact with the probation staff of the court. Under these circumstances the lawyer must exercise constant vigilance and preserve unyielding independence lest his desire to maintain amicable relations with his judicial cohort and with the court and probation personnel reduce him to an ineffective rubber stamp.

1. *The Adjudicatory Hearing*

An adjudicatory hearing must commence not more than three days after the filing of the petition if the respondent is in detention.[55] The issue presented on an adjudicatory hearing in a juvenile delinquency case is generally well defined and limited, namely, whether the respondent committed the particular criminal act or acts alleged. In person in need of supervision cases the issue may tend to be more diffuse since proof of incorrigibility or ungovernability may involve a general pattern of conduct rather than an isolated occurrence and it may be difficult to pinpoint the legal issue to be adjudicated. For example, a substantial portion of these cases involve children who have repeatedly run away from home, who are brought to court on the petition of their parents whose vociferous disclaimers of any desire to have the child restored to the home are met with the child's vehement assertion that he will run away again if forced to return home. It is hard to find a justiciable issue in these cases, the only real question being a social one, namely, what created this situation and what is to be done about it.

Counsel will have to determine prior to hearing whether to advise his client to admit the commission of the acts alleged in the petition or to require that the issues be put to proof. The term "put to proof" is used advisedly since the Family Court Act has no requirement for the entry of anything akin to a plea in a criminal proceeding, and the respondent can, in effect, require that the allegations of the petition be established without either admitting or denying his culpability.[56]

In cases where the child protests his innocence, it is, of course, the responsibility of counsel to require that proper and sufficient proof be

55. N.Y. Family Ct. Act § 747.
56. N.Y. Family Ct. Act §§ 742, 744.

adduced.[57] In cases where the operative facts are admitted, however, counsel should not automatically decide to waive the necessity of proof without further investigation. As a general rule it would appear desirable for counsel to interview at least the complaining witnesses so that he can verify the true nature and extent of his client's complicity and so as to discourage the growth in the court of a cavalier attitude toward the necessity of supporting allegations in the petition with proper proof.[58] Where such verification appears to confirm the child's admission, the child's interest would rarely be served by insisting on a contested hearing, and, in these circumstances, counsel should usually advise the court of his client's willingness to admit the allegations of the petition at the outset of the hearing, reserving, however, if deemed necessary, the right to adduce matter which may have some bearing on the true quality of or motivations for the youth's conduct. In some instances, however, counsel properly may decide to require proof of the allegations of the petition where he feels that only by a full examination of the complaining and other witnesses can the *de minimis* nature of his client's conduct be fully developed.

The Family Court Act directs that "only evidence that is competent, material and relevant may be admitted in an adjudicatory hearing" in delinquency and person in need of supervision cases.[59] Invocation by counsel of exclusory rules of evidence should be guided by intelligence conditioned with sympathetic understanding of the court's objectives and problems. Since there is no prosecuting attorney, the proceeding is not truly adversary in character, and accordingly greater leeway must be accorded in the elicitation of the affirmative case than might be proper in a criminal trial, in order to avoid placing the judge in the role of the dogged prosecutor. Objections to the form of questions will rarely serve much purpose. The reasons for the rules of evidence rather than all the details of the rules themselves should be counsel's guide. Evidence, such as hearsay statements, which is objectionable because it is inherently untrustworthy or improperly prejudicial should be vigorously resisted, but objections should not be motivated by the desire to display legal acumen or merely to establish a technical basis for possible reversal on appeal.

Neither records of the respondent's prior history in the court nor social evaluation reports prepared by the probation department are properly con-

57. "If we consider the problems that might confront the lawyer, we see that he could not, with an understanding of the court's philosophy and objectives, experience a conflict between its needs and his client's. It is of course the judge's function to determine on the facts presented whether an adjudication will be made. Thus if the respondent desires to present facts to contravene the petition or the prospective disposition it is no more the function of the lawyer in the juvenile case than in any other to overrule the client in this respect. . . ." Procedure and Evidence in the Juvenile Court, *op. cit. supra* note 31, at 43.

58. The dangers of unquestioning acceptance of a child's admissions are discussed in Schinitsky, *supra* note 4, at 25.

59. N.Y. Family Ct. Act § 744(a).

sidered by the court during an adjudicatory hearing, and any effort to inject such information should be opposed.[60] Little difficulty should be encountered by counsel in evaluating the relevancy or materiality of proffered evidence in juvenile delinquency cases in view of the limited issue presented as to whether a particular act was committed by the respondent. Greater difficulty will be encountered in person in need of supervision cases since the petition may rest on a mosaic of conduct, and it may be difficult to assign irrelevancy or immateriality to any information which bears on the respondent's family background or conduct.

Whether the respondent should be advised to invoke his right to remain silent will depend on the particular circumstances of the case. In juvenile delinquency proceedings where the respondent protests his innocence and there has been an insufficient affirmative showing of the acts alleged, counsel is certainly under no duty to advise his client to subject himself to examination. On the other hand, where evidentiary basis for the allegations of the petition has been offered, it is usually wise to permit the respondent to rebut the adverse testimony.

There would appear to be few, if any, person in need of supervision cases where resort to the privilege of remaining silent will serve the best interests of the respondent. In the overwhelming majority of these cases it is only if the respondent is given the opportunity to explain the origins and motivations of his conduct or the attitudes and actions of his parents which precipitated the filing of the petition, that the real issues can be seen in their true perspective and a determination made as to whether the issue is incorrigibility or parental neglect. In this connection it should be noted that the court, on motion of counsel or on its own motion, may at any time in the proceedings substitute a person in need of supervision petition for a delinquency petition or a neglect petition for either a delinquency or person in need of supervision petition.[61]

The term "adjudicatory hearing" is a misnomer since adjudicatory hearings do not conclude with an adjudication or the entry of an order unless the petition is dismissed at this stage.[62] The statute merely contemplates that, as a prerequisite for further proceedings, the court must make a finding at the conclusion of the adjudicatory hearing that the acts on which the petition is predicated have in fact been committed by the respondent. Such determination must be based on a preponderance of the evidence and,

60. N.Y. Family Ct. Act § 746; Procedure and Evidence in the Juvenile Court, *op. cit. supra* note 31, at 57.

61. N.Y. Family Ct. Act § 716.

62. An essential element of the petition is that "the respondent requires supervision, treatment or confinement" in juvenile delinquency cases and "supervision or treatment" in person in need of supervision cases. N.Y. Family Ct. Act §§ 731, 732. Since by definition these issues are to be determined on the dispositional hearing (N.Y. Family Ct. Act § 743) no final adjudication can be made until the dispositional hearing has been held. A bill now awaiting action by the governor would change the name of "Adjudicatory Hearings" to "Fact-Finding Hearings." [This bill has been signed—Ed.]

for this purpose, an uncorroborated confession of the respondent made out of court is not sufficient.[63] Counsel contemplating the possibility of an appeal should press for detailed findings so that the exact basis of the determination is made clear on the record.

Counsel may on occasion find himself subjected to pressure from the judge not to press for dismissal in a case where there is insufficient competent evidence to sustain the petition on the ground that the child requires the court's "help." There is no justification for counsel to succumb to such blandishments. If the Legislature had desired to make amenability to the "help" of the court a ground for jurisdiction, it would have so prescribed. The policy of the Legislature as expressed in the statute is that the interposition of judicial authority is authorized only where there has been a proper showing of the commission of the acts or existence of the circumstances defined by the Act. If this is not the correct policy, then correction lies in the hands of the Legislature and not with the court or counsel.[64]

2. *Dispositional Hearings*

The Act permits the commencement of a dispositional hearing immediately after the adjudicatory hearing has been completed and the required findings made.[65] However, the Act also contemplates that for purposes of determining disposition an inquiry will be made, usually in the form of a probation department investigation, "into the surroundings, conditions and capacities of the respondent," and it authorizes adjournments of the dispositional hearing for this purpose.[66] Unless it is clear that a probation or medical or psychiatric investigation is not required, it is usually wise for counsel to urge that the dispositional hearing be adjourned until the results of such investigation are available. In this connection it should be noted that there are limitations imposed by the statute on the number and length of such adjournments, with special restrictions being imposed in cases where the respondent is being detained.[67] While counsel may consent to waive the statutory limitations, such consent should be given only where a clear showing of the necessity therefor is made. Where the limitations are violated over counsel's objections, counsel should not hesitate to resort to a writ of habeas corpus to obtain release of the respondent from custody.

63. N.Y. Family Ct. Act § 744.

64. "The conditions under which the State is empowered to intervene in the upbringing of a child should be specifically and clearly delineated in the statutes. Whenever the State seeks to intervene, it should be required to show that those conditions do in fact exist with respect to a child and that its intervention is necessary to protect the child or the community, or both. The State should not be able to interfere with the rights of the parents with respect to their child and assume jurisdiction over such child on the generalized assumption that the child is in need of the care or protection of the State. . . ." Standards for Specialized Courts Dealing with Children, *op. cit. supra* note 50, at 7.

65. N.Y. Family Ct. Act § 746.

66. N.Y. Family Ct. Act § 749.

67. N.Y. Family Ct. Act § 749.

In view of the fact that the dispositional hearing is primarily social in function, it is difficult at this early date to describe the lawyer's role therein with any particularity or confidence. However, certain general observations should be made. Since the primary purpose of the Family Court is not to deal with the "what" but rather with the "why" of the anti-social conduct, the dispositional hearing process is probably the most important stage of the proceeding. The potential of the lawyer's role in this stage has sometimes been unduly minimized. For example, it is important to note that the findings made at the conclusion of an adjudicatory hearing do not in and of themselves provide the basis for sustaining the petition. There remains for establishment at the dispositional hearing the necessary allegations in the petition that the respondent requires supervision, treatment or confinement, in the case of a juvenile delinquency proceeding, or supervision or treatment in the case of a person in need of supervision proceeding.[68] Accordingly, if counsel can establish that notwithstanding the commission of the acts alleged in the petition no real purpose would be served by suspending judgment, probationary supervision, placement or commitment, there would be basis for dismissal of the petition and avoidance of whatever stigma or disability might otherwise attach to an adjudication of delinquency or person in need of supervision.

Even in cases in which dismissal of the petition cannot be achieved the lawyer can utilize his training and experience to good purpose. A probation evaluation must be predicated at least in part on a factual investigation of the background of the matter. Probation staffs are usually understaffed and overworked and often cannot make the investigation to the full extent really needed. Counsel with his special abilities for adducing and collating facts can offer his cooperation to the probation service and make available information which otherwise might not be adduced.

The Act authorizes the court, in its discretion, to withhold from or disclose, in whole or in part, probation reports to counsel.[69] In my view counsel should request disclosure of such reports in almost every case, and there are few circumstances under which a court should deprive counsel of that privilege. There is, however, a concomitant responsibility on the part of counsel not to use such reports in such way as may be detrimental to the child he represents or the child's family. In evaluating probation reports counsel should understand and respect the particular expertise and talents which the probation officer brings into play. This does not mean, however, that he must forfeit his common sense and acquiesce in whatever evaluation or recommendations are forthcoming. Social workers like all humans are sometimes prone to incompetence, laziness and even bias, and it is the duty of counsel to guard his clients against the consequence of such inade-

68. N.Y. Family Ct. Act §§ 731, 732.
69. N.Y. Family Ct. Act § 746(b).

quacies. If counsel feels that the report contains or is based upon inaccurate or incomplete facts, it is the duty of counsel to bring these matters to the attention of the court and to adduce the correct or additional information during the course of the dispositional hearing.

At stake on a dispositional hearing may be the "rights of a child to remain at liberty without interference by the State and the rights of the parents to legal custody of a child."[70] Due process of law, therefore, is equally applicable to this part of the hearing. The statutory requirements as to evidence which may be received on a dispositional hearing differ from those applicable to an adjudicatory hearing only in the omission of the requirement of competency.[71]

Counsel should be aware of the broad range of dispositional powers available to the court,[72] including suspended judgment,[73] probation,[74] placement,[75] and orders of protection[76] in the cases of persons in need of supervision and delinquency cases,[77] and the additional power of commitment in delinquency cases.[78] Generally counsel should attempt to resist dispositions which involve institutionalization unless there is no practicable alternative,[79] and counsel may perform a valuable service to his client by suggesting and attempting to implement programs of treatment which might avoid resort to institutional placement or commitment. Sometimes the persistent ingenuity of counsel may obtain a concededly preferable form of disposition after the well-meaning but overworked social worker has failed in similar efforts.

At the conclusion of the dispositional hearing, unless the petition is dismissed, the court will make its final adjudication of either delinquency or person in need of supervision, setting forth the grounds therefor and the final order of disposition is thereupon entered.[80]

D. *Post-Dispositional Proceedings*

The entry of a dispositional order may not terminate the need for counsel's services. Motions for a new hearing or to stay, modify, set aside

70. Standards for Specialized Courts Dealing with Children, *op. cit. supra* note 50, at 57.
71. N.Y. Family Ct. Act § 745.
72. N.Y. Family Ct. Act §§ 753, 754.
73. N.Y. Family Ct. Act § 755.
74. N.Y. Family Ct. Act § 757.
75. N.Y. Family Ct. Act § 756.
76. N.Y. Family Ct. Act § 759.
77. The court also has power to discharge a person in need of supervision with a warning. N.Y. Family Ct. Act § 754(a). It would appear, however, that in any case where a warning is the only dispositive action deemed required, dismissal of the petition on the ground that no supervision or treatment is required would be warranted.
78. N.Y. Family Ct. Act § 758. A bill presently awaiting action by the governor would permit the placement of persons in need of supervision in state training schools. No such authority existed in the statute as originally exacted. [This bill has been signed—Ed.]
79. Kahn, For Children in Trouble 65 (1957); Interim Rep. XI, Juvenile Delinquency Evaluation Project of the City of New York (1958).
80. N.Y. Family Ct. Act §§ 751-754.

or vacate any order issued in the course of the proceeding may be made.[81] A petition may be filed for an order terminating the placement or commitment directed in the dispositional order.[82] Counsel may also have to re-enter the picture if the respondent is charged with failure to comply with the terms or conditions of a suspended judgment, or with the terms of placement at home or in an authorized agency, or with the terms of probation.[83] There is also available, of course, the ultimate remedy of appeal. Appeals from the Family Court are taken in the first instance to the Appellate Division of the Supreme Court.[84]

IV

Counsel's Role in Neglect Proceedings Under Article 3 of the Family Court Act

Article 3 of the Family Court Act establishes a proceeding for determining whether a child is neglected. A neglected child is defined as a male less than sixteen years of age or a female less than eighteen years whose parents or other person legally responsible for the child do not adequately supply the child with food, clothing, shelter, education or medical or surgical care although financially able or offered financial means to do so; or suffers or is likely to suffer serious harm from improper guardianship, including lack of moral supervision or guidance of his parents or other person legally responsible for his care and requires the aid of the court; or has been abandoned or deserted by his parents or other person legally responsible for his care.[85]

Family Courts in many of the counties throughout the State are automatically appointing law guardians to represent the child in all neglect proceedings.[86] This would seem to be an eminently desirable practice since it is difficult to see how, consonant with ethical principles, adequate representation otherwise can be provided the child. Unlike proceedings under article 7 of the Act, previously discussed, in which the child is respondent, it is the parent or parents who are designated the respondents in neglect proceedings. Since there is more than the speculative possibility of adversity between the interests of the parent and the child's welfare, counsel cannot properly undertake to represent both parent and child.[87] Even in cases where parents are represented by their own counsel, the retention by these parents of separate

81. N.Y. Family Ct. Act §§ 761-763.
82. N.Y. Family Ct. Act §§ 764-768.
83. N.Y. Family Ct. Act §§ 776-779.
84. N.Y. Family Ct. Act art. 10.
85. N.Y. Family Ct. Act § 312.
86. Although the Act does not expressly require the appointment of law guardians in permanent neglect proceedings under article 6, the appointment of counsel to represent the child in these proceedings would seem manifestly desirable, and the role of the lawyer would be similar to that in neglect cases.
87. See McMullen, *The Lawyer's Role in the Juvenile Court*, 8 Prac. Law. 49 (1962).

counsel to represent the child subjects the latter counsel to lingering doubt as to whether his representation can really be an independent one.[88]

The role of the lawyer representing a child in a neglect proceeding may differ substantially from that which he performs in delinquency or person in need of supervision proceedings. It is in the neglect proceeding that his role as a guardian rather than as an advocate becomes predominant. He is not called upon to defend but rather to ascertain where the best interests of his ward lie and to exert his efforts to secure the disposition which in his view would best serve those interests. The ultimate decisions he will be called upon to make will be basically non-legal in character and will impose upon him an awesome responsibility since the disposition made may affect the entire future life of his client for good or ill.

A. *Preliminary Procedures*

The Family Court Act authorizes the temporary removal of a neglected child from the home on order of the court before petition is filed if immediate removal is necessary to avoid imminent danger to the child's life and health,[89] and it is possible that counsel may be brought into the picture at this early stage if an application for temporary removal is made. In the usual case, however, counsel will not be brought into the case until after the intake procedure has been completed and a petition filed. As in the case of delinquency and person in need of supervision proceedings the statute authorizes intake procedures as a means of screening out the cases which are subject to voluntary adjustment without court action.[90]

B. *Petition*

A neglect petition may be filed either by a parent or other person interested in the child; a duly authorized agency, association, society or institution; a peace officer; by any person having knowledge of facts of a nature which convinces him that a child is neglected; or by a person on the court's direction.[91] The petition will give counsel some general idea of the basis of the neglect charged since if drawn in compliance with the requirements of the statute, it will specify the occasions on which the particular instances of neglect alleged were observed.[92]

C. *Removal of the Child from the Home*

One of the first decisions that counsel may be called on to make is whether to make, join in, consent to or oppose a motion to remove the child from the home pending the disposition of the matter, or a motion to compel

88. See In re Sippy, 97 A.2d 455 (D.C. Munic. Ct. App. 1953).
89. N.Y. Family Ct. Act § 327.
90. N.Y. Family Ct. Act § 333.
91. N.Y. Family Ct. Act § 332.
92. N.Y. Family Ct. Act § 331.

the return to the home of a child who was previously removed therefrom.[93] In making this decision counsel will generally have to be guided by the philosophy expressed in the Act that the child should not be removed from or kept away from the home even after the filing of the petition unless there is substantial probability that the child will be found to be a neglected child and that the final order of disposition will involve a placement of the child outside the home.

D. *Hearing*

As in the case of delinquency and person in need of supervision proceedings, neglect hearings are held in two stages—adjudicatory and dispositional. The adjudicatory hearing is designed to determine whether the allegations of the petition are supported by a fair preponderance of the evidence while the dispositional hearing is utilized to determine what order of disposition should be made.[94]

It would appear incumbent on counsel, if time is available prior to an adjudicatory hearing, to make as complete an independent investigation as possible of the background of the neglect charges. On the hearing itself his position will be almost completely nonadversary—to adduce for the court such facts as he may have obtained and to elicit such other facts as may be obtainable from the witnesses and other evidence presented by the petitioner or respondents. Good counsel can be of invaluable assistance to the court in eliciting full disclosure of all the relevant facts and thus avoiding excessive intervention by the judge. The conduct of the adjudicatory hearing is subject to the same rules of evidence as are applicable to proceedings under article 7 previously discussed.[95]

Counsel may also play a most significant role in the dispositional hearing. To properly perform this role, he must have some understanding of the dispositional powers available to the court, ranging from suspending judgment to placement of the child in the custody of a relative or other suitable person or institution,[96] since counsel will ultimately have to decide which of these alternatives to urge. Probation or agency reports may play a big role in the court's decision, and, accordingly, there is even more warrant, in view of the nonpartisan role of counsel for the child, for close cooperation between counsel and the probation staff. Although the Act vests discretion in the court to withhold in whole or in part such reports,[97] it is difficult to conceive circumstances in neglect cases where such material should not be made available in full to counsel for the child. Counsel, of course, must exercise his right of independent evaluation of the conclusions reached

93. N.Y. Family Ct. Act §§ 327, 328.
94. N.Y. Family Ct. Act §§ 344, 345.
95. N.Y. Family Ct. Act § 346.
96. N.Y. Family Ct. Act §§ 352-356.
97. N.Y. Family Ct. Act § 347(a).

in such reports and has the duty of utilizing the dispositional hearings to supplement such reports if they are incomplete or to rebut them if they are inaccurate or erroneous.

E. *Post-Dispositional Proceedings*

As in the case of proceedings under article 7 of the Act, the duties of counsel in a neglect case may not end with the entry of the final dispositional order. Apart from the possibility of motions staying, modifying, setting aside or vacating any order issued in the proceeding,[98] counsel may be required to institute proceedings to terminate a placement,[99] or to otherwise seek the assistance of the court by reason of the failure of the parent or other person responsible for the child to comply with terms and conditions of a suspended judgment or probation,[100] or of violation of an order of protection.[101] Moreover, if a child runs away from a place of placement, the Act requires that the matter be brought to the attention of the court, and the court is authorized to make a new and different disposition. The appointment of a law guardian to represent the child in such a proceeding is mandatory.[102]

The success or failure of the new Family Court may well depend on how effectively the law guardian concept is implemented. The proper place of the lawyer in that court will not be achieved unless the individual lawyer and the organized bar acquire greater knowledge and understanding of the objectives, procedures and problems of the court. The formulation of enlightened norms of professional responsibility to meet the special challenge presented by the new court is a duty which must be assumed and creatively accomplished by the law schools and bar associations throughout the State.

98. N.Y. Family Ct. Act § 361.
99. N.Y. Family Ct. Act § 362.
100. N.Y. Family Ct. Act §§ 371, 372.
101. N.Y. Family Ct. Act § 356.
102. N.Y. Family Ct. Act § 373.