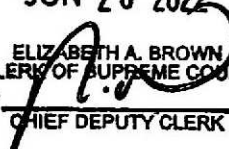


Since 1958  
**LEGAL AID CENTER**  
■■■■ of Southern Nevada

June 16, 2022

Via Email: [nvscclerk@nvcourts.nv.gov](mailto:nvscclerk@nvcourts.nv.gov)

Elizabeth A. Brown  
Clerk of the Supreme Court  
201 South Carson Street  
Carson City, NV 89701

**FILED**  
JUN 20 2022  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

Re: ADKT 0598  
*Response to June 14, 2022 letter filed as 22-19069*

Dear Ms. Brown,

We respectfully submit this response to the letter dated June 14, 2022 from the collaboration of the Juvenile Divisions of the District Attorney's Offices for Clark County, Washoe County and Carson City County (the "District Attorneys' letter"). We are strongly opposed to the suggestions contained in that letter, and wish to respond. We apologize for doing so after the deadline contained in the Court's order dated May 26, 2022; however, the District Attorneys' letter is based upon several fundamental errors which warrant addressing as soon as possible.

First, and foremost, the proposed Rules of Conduct for Lawyers Representing Children in Child Welfare Cases ("Rules of Conduct") are exactly that – Rules of Conduct. The rules are not designed, written, or intended to impact in any way the law set forth in Chapter 432B of the Nevada Revised Statutes or supporting case law. In fact, in drafting the rule from the American Bar Association's 2011 Model Act Governing Representation of Children in Abuse, Neglect, and Dependency Proceedings, any provisions within the 2011 Model Act affecting existing Nevada law and procedure were intentionally omitted. These Rules of Conduct are akin to the Nevada Rules of Professional Conduct, and as such, are properly before this Court.

The Children's Attorneys Project of Legal Aid Center of Southern Nevada has represented infants, victims of child abuse, and disabled children for 21 years using a client-directed model of representation. That model was recommended to us by the American Bar Association. Over the years, the ABA and the National Association of Counsel for Children, of which we are an organizational member, have endorsed and continue to endorse this model of representation as best practice. In study and in practice, client directed representation works for our child clients. While we value the

role our District Attorney's Offices serve in child dependency court, they represent the child welfare agency. Our office, which includes four certified Child Welfare Law Specialists, has direct knowledge of how a lawyer can effectively represent a child, who is a party to the action, in court.

Second, instead of raising concerns based upon social science and by academia, the District Attorneys' letter focuses on Matter of S.B., 475 P.3d 776 (Table), 2020 WL 6872884, Docket No. 79394 (Nov. 20, 2020). Matter of S.B. is not binding authority pursuant to NRAP 36(c). It is merely persuasive, and cannot be used to affirmatively state that Nevada has already adopted a model of representation for children in dependency cases.

To the extent that S.B. should be considered in response to Petition ADKT 0598, the primary holding of that decision is one of statutory construction of language in NRS 432B.594, and whether the child or the child's attorney informs the child welfare agency about a child's decision to voluntarily stay under the court's jurisdiction after reaching the age of majority. When looking at the remainder of the S.B. decision, it actually supports adopting the Rules of Conduct in their current form. The S.B. Court specifically declined to enforce rules of conduct that had not been adopted. It did not say those rules were incorrect; there had been no effort to have them formally enacted.

Moreover, S.B. addresses a distinction in Nevada statute that, if the suggestions from the District Attorney's Offices are included, will render part of the Nevada statute nugatory. NRS 432B.500 provides every child with a guardian ad litem, and every guardian ad litem must represent the child's best interest. NRS 432B.420 gives every child a lawyer, with the same rights and responsibilities as other lawyers for the other parties. If the child's attorney is required to advocate for best interests when the child lacks capacity to direct representation, then both the guardian ad litem and the attorney are doing the same job. Yet, the statutory scheme contemplates these roles, of guardian ad litem and attorney, be separate and distinct. S.B. specifically states that the child's attorney and the guardian ad litem have different roles. Guardians ad litem in child welfare cases are different from those in traditional civil cases. Their duties are specifically set out in NRS 432B; they are volunteers who do excellent work and recommend what is in the best interests of the child. But, they are not lawyers operating under a traditional attorney/client relationship. They cannot advocate for statutory or constitutional rights.

Third, the District Attorney's Office rely on testimony given in 2017 regarding SB 305 is misinterpreted. Barbara Buckley, who helped create the Children's Attorneys Project, has been one of its strongest proponents for children's rights for over 21 years and testified that that lawyers should not impose their own personal judgment on kids. That Substituted judgment is not that, and the comments within the ABA Model Act and the proposed Rules of Conduct explicitly state as much. Substituted judgment involves extensive investigation of the development, health, and wellbeing of the child, the family circumstances, and the potential options being presented to decision makers. It involves the analysis of legal rights, which may some time appear to call for differing outcomes. It involves contemplating what a child may want, given their cultural and ethnic background. The child's attorney comes to a conclusion about the direction of the case, in line with the client's rights, and then advocates for that – that conclusion is substituted for a client's judgment.

We have wholehearted support from the State Bar of Nevada Board of Governors for the adoption of the Rules of Conduct using the model proposed by the American Bar Association (see attachment). If the suggestions in the District Attorneys' letters are accepted, then children's law in Nevada will be set back by decades. We respectfully request this Court adopt the Rules of Conduct in their current form.

Sincerely,

Barbara E. Buckley, Esq.  
Executive Director  
Legal Aid Center of Southern Nevada

Janice Wolf, Esq., CWLS  
Directing Attorney, Children's Attorneys Project  
Legal Aid Center of Southern Nevada

# STATE BAR OF NEVADA

June 16, 2022

Ms. Barbara Buckley  
Executive Director  
Legal Aid Center of Southern Nevada, Inc.  
725 E. Charleston Blvd.  
Las Vegas, NV 89104

Dear Ms. Buckley:

The State Bar of Nevada's Board of Governors reviewed Legal Aid Center of Southern Nevada's (LACSN) proposed rule to the *Nevada Rules of Professional Conduct* (NRPC). Simply put, the proposed rule sets forth guidelines for lawyers representing children in child welfare cases.

For almost twenty-three years LACSN has followed the American Bar Association Model Rules covering representation for children in dependency actions. While Nevada never formally adopted the ABA Model Rules, most of them are implicit and compatible with the NRPC.

To ensure that every child in foster care in Nevada receives a quality lawyer, the State Bar of Nevada Board of Governors supports adoption of the proposed rules of conduct for lawyers based upon those developed by experts at the American Bar Association. The support of this new rule is germane to the mission of the State Bar of Nevada as the rule sets forth in the NRPC guidance to attorneys on how to represent a child client – with duties of zealousness, competence, and confidentiality.

The Board of Governors joins LACSN in supporting these proposed rules and thanks LACSN for the work LACSN does daily – protecting the public interest.

Sincerely,



Ann Morgan  
President  
State Bar of Nevada



3100 W. Charleston Blvd.  
Suite 100  
Las Vegas, NV 89102  
phone 702.382.2200  
cell fax 800.254.2797  
fax 702.385.2878

9456 Double R Blvd., Ste. B  
Reno, NV 89521-5977  
phone 775.329.9100  
fax 775.329.0522

[www.nvbar.org](http://www.nvbar.org)