

## Specific Standards for Representation in *Juvenile Dependency Cases*

This chapter pertains to representation of children and parents in juvenile dependency cases. These cases are primarily civil in nature and procedure, but are often referred to as *quasi-criminal* because of the significance of the rights and deprivations involved. At stake for children are their liberty, their right to membership in their family of origin, and their right to be safe, healthy, and protected. At stake for parents is their right to raise their children as they think best without state interference and, ultimately, the absolute and final termination of their parental rights.

Practice in juvenile dependency cases is unique and challenging, requiring continual training to assure the best legal representation of clients. Juvenile dependency cases may be as different and varied as the children and families involved in them. These training and practice standards are intended to help lawyers better meet the needs of their clients in juvenile dependency cases, and to improve the level of practice in these cases. The participation of a lawyer on behalf of all parties subject to juvenile and family court proceedings is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of those proceedings. These Standards recognize the importance of independent representation for children in juvenile dependency cases, and recommend that the lawyer represent the child's articulated position in all but the exceptional case.

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### STANDARD 3.1 Prerequisites for Representation

A lawyer must provide competent representation to a client. Competent representation requires the legal knowledge, skill, experience, thoroughness, training, and preparation reasonably necessary for the representation.

#### Implementation

1. Every dependency case is different, and varied approaches may be required in the legal representation of a child or parent. Effective legal practice in dependency cases requires a wide variety of skills unique to this practice.
2. In addition to meeting the requirements for experience and training contained in Standard 1.1, *supra*, a lawyer for children, parents, or guardians in dependency cases should:
  - a. meet the requirements of the *Qualification Standards for Court-Appointed Counsel to Represent Indigent Persons at State Expense*, Oregon Judicial Department (1990), Standard 3.1 G.;
  - b. for all cases, have knowledge of juvenile justice statutes, relevant rules, case law, standards, and procedures; have observed at least one contested juvenile court case; be generally familiar with services available to children and parents in the juvenile system; and have reviewed and is familiar with the materials listed below:
    - (1) Oregon Revised Statutes chapters 419A, 419B, and 419C, Oregon Juvenile Code.

- (2) Oregon Revised Statutes chapter 417, Interstate Compact on Juveniles and the Community Juvenile Services Act.
- (3) Oregon Revised Statutes chapter 418, Child Welfare Services.
- (4) Oregon Revised Statutes chapter 420, Youth Correction Facilities; Youth Care Centers; and chapter 420A, Oregon Youth Authority; Youth correction Facilities; and applicable Oregon Administrative Rules.
- (5) JUVENILE LAW (Oregon CLE 1995 & Supp 2000).
- (6) Public Law No. 105-89, Adoption and Safe Families Act of 1997.
- (7) Public Law No. 95-608, Indian Child Welfare Act of 1978, 25 USC §§1901–1963 (1982), and the Refugee Child Act, ORS 418.925–418.945.
- (8) Public Law No. 105-17, Individuals with Disabilities Education Act.
- (9) Public Law No. 93-112, Title V, §504, Rehabilitation Act of 1973, as amended, 29 USC §794 (1982).
- (10) Article 1, Sections 42 and 43 of the Oregon Constitution and statutory provisions regarding the rights of victims.

c. be familiar with:

- (1) the causes and available treatment for child abuse and neglect;
  - (2) the child welfare and family preservation services available through Department of Human Services–Child Welfare (formerly State Offices for Services to Children and Families (SOSCF) referred to hereinafter as DHS-CW) and available in the community and the problems they are designed to address; and
  - (3) the basic structure and functioning of DHS-CW and the juvenile court, including court procedures, the functioning of the citizen review board (hereinafter referred to as CRB) and court-appointed special advocates (hereinafter referred to as CASA) programs.
3. A lawyer new to dependency cases is encouraged to work with a mentor for the first three months and at a minimum should observe or co-counsel each type of dependency hearing from shelter care through review of permanent plan before accepting appointments.
  4. In termination–of-parental-rights cases, a lawyer for children or parents must meet the standards for dependency cases and have handled dependency cases for a minimum of six months as a full-time juvenile defender or must have handled at least 25 juvenile dependency cases that have gone past the jurisdictional phase.
  5. A lawyer should develop a basic knowledge of child development and adequate communication skills to communicate with child clients and witnesses.
    - a. Interviewing techniques should be age-appropriate and conducted in private, confidential, and age- appropriate settings.
    - b. Communicating with a child client, especially with regard to legal matters, may require efforts beyond those normally required for effective communications with adult clients. A lawyer for children should therefore be especially sensitive to the child's stage of development, including:

- (1) cognitive, emotional, and social growth stages;
  - (2) level of education;
  - (3) cultural context; and
  - (4) degree of language acquisition.
- c. As with any client, a lawyer may advise the child client about his or her position in the case, but a lawyer should recognize that the child client may be more susceptible to intimidation and manipulation, and should ensure that the client's ultimate decision actually reflects the client's actual desires.
6. A lawyer for children, parents, or guardians in dependency cases should also visit at least two of the following:
- a. a shelter home or facility;
  - b. a foster home;
  - c. a group home;
  - d. a residential treatment facility;
  - e. the Oregon State Hospital Child or Adolescent Psychiatric Ward; or
  - f. an outpatient treatment facility for children.
7. All lawyers representing children, parents, or guardians in dependency cases should average at least 15 hours of continuing legal education (CLE) each year, at least 8 hours of which should relate to the practice of juvenile law.
- a. A lawyer is encouraged to seek training in the subject areas listed in Implementation 2, 3, 4, 5, and 6, *supra*.
  - b. A lawyer is also encouraged to seek training in the following areas:
    - (1) child abuse reporting;
    - (2) substance abuse and resources for substance abusing families;
    - (3) cultural and ethnic differences as they relate to child-rearing;
    - (4) government benefits available in dependency cases, such as Social Security payments including non-needy relative grants, AFDC, and AFDC-FC, adoption assistance programs, and crime victims programs;
    - (5) transition plans and independent living programs;
    - (6) emancipation laws and programs;
    - (7) family preservation services;
    - (8) resources for the diagnosis and treatment of sexual abuse, physical abuse, and emotional abuse;
    - (9) patterns of child growth as related to neglect;
    - (10) resources for the treatment and recognition of non-organic failure to thrive;

- (11) educational, mental health, and other resources for special needs children;
- (12) the use and appropriateness of psychotropic drugs for children;
- (13) domestic violence, its effect on parents, children, and families and appropriate resources;
- (14) immigration law issues in juvenile court;
- (15) transitional aspects of placement and the child's return home;
- (16) the importance of placing siblings together when appropriate;
- (17) the appropriateness of various types of placement;
- (18) the efforts that should be made to ensure a smooth, timely transition;
- (19) the effect of the placement on visitation by parents, siblings, and other relatives;
- (20) the effect of the placement on the service needs of the child;
- (21) the transracial, transcultural, and language aspects of the placement;
- (22) risk assessment prior to reunification;
- (23) the basics of case planning;
- (24) accessing private insurance for services;
- (25) consolidated cases in the family court;
- (26) the Indian Child Welfare Act, Native American families, and appropriate resources;
- (27) the Refugee Children's Act;
- (28) the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA);
- (29) the Parental Kidnapping Prevention Act;
- (30) the Interstate Compact for the Placement of Children;
- (31) the Interstate Compact on Juveniles;
- (32) guardianships; and
- (33) adoption placement preferences;
- (34) the rights a client might have as a result of being the victim of a crime.

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## **STANDARD 3.2**

### **Special Considerations for the Client Who Is a Citizen of Another Country or Has Ties to Other Jurisdictions**

A lawyer should be aware of the impact on the lawyer's clients, who are citizens of other countries, of various state and federal laws, including treaties that are applicable in the juvenile court setting.

#### **Implementation**

1. A lawyer should be familiar with the requirements and effect of the following laws:

- a. ORS 419B.851(3), statutory implementation of the Vienna Convention on Consular Relations, April 24, 1963, Article 36, regarding service of process, and 8 CFR §236.1.
  - b. The Uniform Child Custody Jurisdiction and Enforcement Act, ORS 109.704–109.990.
  - c. The Parental Kidnapping Protection Act (PKPA), 28 USC §1738A, giving Full Faith and Credit to judgments of sister states, and the corresponding Federal Fugitive Felon Act.
  - d. The International Parental Kidnapping Crime Act of 1993 (IPKCA), 18 USC §1204 (1993).
  - e. The Hague Convention on the International Aspects of Child Abduction, implemented by ICARA, 42 USC §11603 et seq.
  - f. The Hague Convention on the Service of Judicial and Extrajudicial Documents Abroad.
  - g. Refugee Children’s Act, ORS 418.925.
  - h. The Missing Children's Act of 1982, 28 USC §534(a).
  - i. The National Child Search Assistance Act of 1990, 42 USC §5780.
  - j. The Missing Children's Assistance Act, 42 USC §5771 et seq., and the establishment of the National Center for Missing and Exploited Children( NCMEC).
2. A lawyer should be aware of the type of services that may be available and how to contact the consulate and website of the embassy of the client’s country of citizenship.
  3. A lawyer should know how to contact and access the services of an immigration specialist.
  4. A lawyer should know how to access the U.S. Department of State website (travel.state.gov).
  5. A lawyer should know about the availability of protections against international abduction afforded parties in consolidated custody cases pursuant to ORS 109.035.

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### **STANDARD 3.3**

#### **General Duties and Responsibilities of a Lawyer to Client; Avoiding Conflicts of Interest; Professionalism and Zealous Representation**

A lawyer or a lawyer associated in practice should not represent two or more clients who are parties to the same or consolidated juvenile dependency cases or closely related matters unless it is clear there is no conflict of interest between the parties as defined by the Oregon Rules of Professional Conduct (ORPC). Lawyers should also follow ORPC 1.8–1.13 relating to conflicts of interests and duties to former clients. A lawyer should act in a professional manner in zealously advocating the client's position.

#### **Implementation**

1. A lawyer should comply with Standard 1.2, Implementation 5, *supra*. A lawyer should be especially cautious when accepting representation of more than one parent, guardian, or child. A lawyer should avoid representing both parents in dependency cases and should never represent both parents in cases that involve allegations of sexual, physical, or emotional abuse, or when the interests of the parents may be adverse. A lawyer should avoid representing multiple siblings when their interests may be adverse and should never represent siblings when it is alleged that one sibling has physically or sexually abused another sibling. Child clients may not be capable of consenting to multiple representations even after full disclosure. For a child client not capable of

considered judgment or unable to execute any written consent to continued representation in a case of waivable conflict of interest, the lawyer should seek appointment of an alternate lawyer to determine whether a waiver of the conflict is in the best interests of the child.

2. A lawyer should preserve the attorney-client privilege and not disclose, without the client's permission or as otherwise provided by law, confidential information. A lawyer should try to avoid publicity connected with the case, that is adverse to the client's interests. A lawyer should be cognizant of the emotional nature of these cases, the confidential nature of the proceedings, and the privacy needs of the client. A lawyer should protect the client's privacy interests, including by asking for closed proceedings when appropriate.
3. A lawyer should initiate and answer all correspondence and telephone calls that are necessary to the effective representation of the client.
4. A lawyer should not engage in ex parte communication regarding pending cases with the judicial officer before whom the case is pending.
5. A lawyer should maintain professional decorum when appearing before the juvenile court. A lawyer should identify for the record any person who is present in the courtroom on behalf of a client.
6. A lawyer may not contact represented parties without the consent of their counsel.
7. A lawyer should attend all court appearances and be prompt and prepared for such appearances. A lawyer should avoid sending substitutes to court appearances.
8. A lawyer should make informed decisions about whether to participate and, if so, whether to appear personally or through a representative at administrative proceedings including Citizen Review Board hearings and meetings outside of court hearings involving the client's case. A lawyer should also request to be notified of such proceedings and meetings.
9. If a lawyer, in the course of representation of a client under the age of 18, becomes aware that the client has a possible claim for damages that the client cannot pursue because of his or her civil disability, the lawyer should consider asking the court that has jurisdiction over the child to either appoint a guardian ad litem for the child to investigate and take action on the possible claim or issue an order permitting access to juvenile court records by a practitioner who can advise the court whether to seek appointment of a guardian ad litem to pursue a possible claim.

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### **STANDARD 3.4**

#### **Role of a Lawyer**

When representing parents and children capable of considered judgment, the lawyer should follow ORPC 1.2 in determining the scope of the lawyer's representation and the allocation of authority between a client and a lawyer.

When a client's capacity to make adequately considered decisions in connection with representation is diminished, whether because of minority, mental impairment, or for some other reason, in compliance with ORPC 1.14, the lawyer shall, as far as reasonably possible, maintain a normal attorney-client relationship with the client.

It is the duty of the lawyer for a child to determine whether the child is capable of considered judgment. If the lawyer determines that the child is not capable of considered judgment, counsel should advocate for what is in the client's best interests.

If a parent, due to mental or physical disability, lacks substantial capacity to either understand the nature and consequences of the proceeding or give direction and assistance to the parent's lawyer, a guardian ad litem may be appointed. If a guardian ad litem is appointed, a lawyer for the parent should (1) consult with the guardian ad litem, (2) accept direction from the guardian ad litem on the decisions that would ordinarily be made by the parent, and (3) inquire at every critical stage in the proceeding about whether the parent's competence has changed and, if appropriate, request removal of the guardian ad litem.

### **Implementation**

1. When representing parents who have not had a guardian ad litem appointed, and children capable of considered judgment, decisions that are ultimately the client's to make include whether to:
  - a. admit the allegations of the petition;
  - b. agree to jurisdiction, wardship, and temporary commitment to DHS-CW;
  - c. accept a conditional postponement; or
  - d. agree to specific services or placements.
2. A lawyer should advise the client concerning the probable success and consequences of adopting any posture in the proceedings. It is the duty of a lawyer to give the client the information necessary to make an informed decision, including advice and guidance, but to not overbear the will of the client. A lawyer may not advocate a position contrary to the client's expressed position unless directed to do so by the client's guardian ad litem.
3. When representing parents who have not had a guardian ad litem appointed, and children capable of considered judgment, a lawyer is bound by and should advocate for the client's definition of his or her interests, and may not substitute counsel's judgment for the client's, nor ignore the client's wishes because they are perceived not to be in the best interests of the child.
4. In determining whether a child is capable of considered judgment, a lawyer should consider:
  - a. the child's chronological and intellectual age and assume that an
  - b. average and normal child of seven is presumably capable of considered judgment.
  - c. the child's developmental stage;
  - d. the child's sophistication and experience;
  - e. whether the child is articulating a position concerning the issues of the case; and
  - f. the presence of undue influence.
5. Whether a child is capable of considered judgment and able to contribute to a determination of his or her position in the case depends on the context and circumstances at the time the position must be determined. A child may be able to determine some positions in the case but not others.
6. When a child has been injured or suffers from a disability or congenital condition that results in the child having a progressive illness that will be fatal and is in an advanced stage, being in a coma, persistent vegetative state, or suffering brain death, the lawyer for the child should consult with the parent if appropriate and consider seeking appointment of a guardian ad litem under the juvenile and probate code in a consolidated case with the authority to consent to medical care, including the provision or withdrawal of life sustaining medical treatment, and the execution of an advanced health directive pursuant to ORS 127.505 et seq.

7. If a child client is not capable of considered judgment, a lawyer should inquire thoroughly into all circumstances that a careful and competent person in the child's position should consider in determining the child's best interests with respect to the proceeding. After consultation with the child, the parents through their counsel if any (not appear to conflict), the caseworker, the CASA, or foster parent and any other family members or interested persons, such as the child's therapist, a lawyer shall advocate what the lawyer determines to be the best interests of the child.
8. When there is a conflict between what the lawyer has determined would be in the best interests of a child who is not capable of considered judgment, and the child's stated desires, the lawyer must to the greatest extent possible resolve the conflict by working with the young client, although this sensitive issue cannot always be avoided or completely resolved. If unable to resolve the conflict, the lawyer should communicate the child's wishes to the court but advocate for what the lawyer determines to be the best interests of the child.
9. When a parent client's ability to make adequately considered decisions in connection with the representation is impaired, because of mental or physical disability of other reason, the lawyer shall, as far as reasonably possible maintain a normal attorney-client relationship. It is, however, a violation of due process to fail to appoint a guardian ad litem for a parent who, due to mental or physical disability, lacks substantial capacity to either understand the nature and consequences of the proceeding or give direction and assistance to the lawyer. Requests for appointment of a guardian ad litem must only be made when parents truly lack substantial capacity, because it is also a violation of due process to unnecessarily deprive a parent of control of the litigation in a dependency or termination-of-parental-rights case if the parent does not meet the standard for appointment of a guardian ad litem. A lawyer should only request appointment of a guardian ad litem for a client when the client consistently demonstrates a lack of capacity to act in his or her own interests and it is unlikely that the client be able to retain the requisite mental capacity to assist in the proceedings in a reasonable time. *See* OSB Formal Op. No. 2000-159 (2000), "Zealous Representation: Requesting a Guardian ad Litem in a Juvenile Dependency Case."
10. If a lawyer serves as a guardian ad litem, the lawyer should be aware of the distinct fiduciary duties, obligations, and powers of a guardian ad litem and how those differ from the ethical duties, obligations and powers of the lawyer in an attorney-client relationship.
11. The parent's lawyer should consult with a guardian ad litem and may generally be directed by the guardian ad litem in the decisions that would ordinarily be made by the parent in the litigation. The parent's lawyer, however, has an ongoing obligation to the client to assure that the guardian ad litem is adequately asserting the parent's interests in the case and to seek removal of a guardian ad litem if the parent's situation changes such that the parent no longer requires a guardian ad litem.
12. Unless inconsistent with the client's interests, a lawyer should cooperate with other parties to the case.
13. Assure that necessary interpreter services are provided for all phases of the proceeding.

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### **STANDARD 3.5**

#### **Obligations of a Lawyer Regarding Shelter Hearings and Pretrial Placements**

When a child has been removed from the parent's home and placed in shelter care, a lawyer should advocate for the placement order and other temporary orders the client desires, unless the client is a child incapable of considered judgment, in which case a lawyer should advocate for the placement order and other temporary orders that are in the best interests of the child.

## Implementation

1. A lawyer should be familiar with statutory and case law that requires DHS-CW to make reasonable efforts or active efforts to prevent removal of a child.
2. A lawyer should be familiar with the types of placements available to children and placement issues, including:
  - a. the impact of removal and placement on the child;
  - b. the necessity of placement;
  - c. specially certified placements for the client;
  - d. relative placement;
  - e. the importance of placing siblings together when appropriate;
  - f. alternatives to placement;
  - g. the appropriateness of the placement;
  - h. the efforts that can be made to ensure a smooth transition to a new placement;
  - i. the effect of the placement on visitation;
  - j. the effect of the placement on service needs of the child or family;
  - k. the transracial, transcultural, and language aspects of the placement; and
  - l. placement preferences under the Indian Child Welfare Act.
3. At the shelter care hearing, a lawyer should:
  - a. obtain copies of all relevant documents;
  - b. take time to talk to the client, caution the client about self incrimination, and ask for a recess or continuance if necessary;
  - c. if appropriate, assert client's Fifth Amendment and other constitutional rights; and
  - d. assist the client in exercising his or her right to an evidentiary hearing to demonstrate to the court that the child can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process before adjudication;
  - e. when appropriate, present facts and arguments regarding:
    - (1) jurisdictional sufficiency of the petition;
    - (2) appropriateness of venue;
    - (3) adequacy of notice provided to parties, and tribes if applicable, particularly if they are not present;
    - (4) the necessity of shelter care;
    - (5) why continuation of the child in the home would or would not be contrary to the child's welfare or why it is or is not in the best interests and for the welfare of the child that the child be removed from home or continued in care;

- (6) whether reasonable or active efforts were made to prevent removal;
  - (7) whether reasonable and available services can prevent or eliminate the need to separate the family;
  - (8) whether the placement proposed by DHS-CW is the least disruptive and most family-like setting that meets the needs of the child;
  - (9) the possibility of placement with appropriate noncustodial parents and relatives;
  - (10) a plan for release of the child prior to the jurisdictional hearing;
  - (11) if the child remains in shelter care, arrangements for visits and alternatives to shelter care to be explored such as relative placement, intensive in-home services, and mediation; and
  - (12) applicability of the Indian Child Welfare Act and appropriate parties and tribes to receive notice.
- f. propose return to parents or placement that is the least restrictive with regard to the client.
4. If a child is returned to parents or placed in shelter care or other state placement, a lawyer for the child should ensure that the child's needs for safety and right to receive treatment are met by the child's caretakers or agencies responsible for the child's care. A lawyer should inform the court, DHS-CW, and the caretakers for the child about any medical, psychiatric, or security needs of the client, if directed by the client.
  5. A lawyer should request any temporary orders that the client directs or, if representing a child not capable of considered judgment, that are in the best interests of the child, including:
    - a. temporary restraining orders, including orders expelling an allegedly abusive parent from the home;
    - b. orders governing future conduct of the parties, i.e., remaining clean and sober while the child is present, etc.;
    - c. orders for any services agreed-on before adjudication;
    - d. visitation orders that are reasonable and flexible and take into consideration the parties' work and counseling schedules and available transportation and that specify the terms and conditions of visitation;
    - e. orders for the parent or parents to pay child support if appropriate;
    - f. orders for DHS-CW to investigate relatives and friends of the family as potential placements, or to place sibling groups together; and
    - g. orders for the agency to provide appropriate treatment for the child.
  6. A lawyer should consult with the client about transfer of the case to tribal court and take appropriate action as directed by the client.
  7. A lawyer should inform the client of the possibility of a review of the referee's or court's order at the shelter care hearing and the possibility of pursuing a writ of habeas corpus.
  8. If the court sets conditions of the child's placement, a lawyer should explain to the client and any third party the conditions and potential consequences of violating those conditions. A lawyer should seek review of shelter care decisions as appropriate and advise clients or any third parties of

changes in conditions for pretrial placement that would be likely to get the court to agree with the client's plan.

9. A lawyer should ask the court to inquire of parties concerning the paternity of the child and the applicability of the Indian Child Welfare Act or the Uniform Child Custody Jurisdiction Enforcement Act.

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## **STANDARD 3.6**

### **Initial Client Interview and Client Contact**

Establishing and maintaining a relationship with the client is the foundation of the attorney-client relationship. A lawyer should conduct an initial interview of the client if possible at the initial court hearing or, if the lawyer is not appointed until after the hearing, within 72 hours, and maintain regular contact with the client throughout the case. A lawyer shall keep the client reasonably informed about the status of a matter and promptly comply with all reasonable requests for information. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

### **Implementation**

1. A lawyer should comply with ORPC 1.3 and 1.4 and Standard 1.2, Implementations 1, 2, and 3, and Standard 1.3, *supra*, and, in addition, on being retained or appointed, a lawyer should make an initial contact with the client or the client's caretaker within 24 hours and, when appropriate, conduct an initial interview within 72 hours. At the initial interview, a lawyer should explain to the client in age-appropriate language:
  - a. juvenile court and DHS-CW procedures;
  - b. the client's rights;
  - c. the role and responsibilities of the lawyer;
  - d. the role of each player in the system;
  - e. alternatives and options available to the client, including referrals to available resources in the community to resolve domestic relations issues;
  - f. the consequences of applicable timelines;
  - g. the consequences of aggravated circumstances or extreme conduct pleaded in the petition and the consequences of selecting one option over another in light of applicable planning timelines, including the impact of the timelines established by the ASFA;
  - h. the impact of the concurrent case planning required under the AFSA on the case and the client's participation in such planning;
  - i. the consequences of failing to appear in particular proceedings;
  - j. rights under the Indian Child Welfare Act, if applicable; and
  - k. rights under the Refugee Children's Act, if applicable.
2. A lawyer should give the client time to ask questions and consider the alternatives. A lawyer should obtain information from the client about:
  - a. the client's prior contacts with DHS-CW;

- b. the client's knowledge about the allegations of the petition;
  - c. the accuracy of information provided by the state supporting the petition;
  - d. alternative or additional allegations that should be added to the petition;
  - e. services provided before removal or intervention;
  - f. reasons for removal or intervention;
  - g. services the client feels would have avoided the need for removal;
  - h. alternatives to removal, including relative placements, in-home services, or removal of the perpetrator;
  - i. current efforts to reunify the family;
  - j. family history, including paternity issues, if any, and identity of prior caretakers of the child;
  - k. services needed by the child, parents, or guardians;
  - l. the client's concerns about placement;
  - m. the client's long- and short-term goals;
  - n. current visitation and the client's desires concerning visitation;
  - o. whether the client wishes to attend the hearing and, if the client is a child, whether the client wishes to address the court outside the presence of the other parties;
  - p. the applicability of the Indian Child Welfare Act, the Refugee Children's Act, and relevant other cultural, religious, social, and sexual preference issues; and
  - q. any other relevant information.
3. A lawyer representing a child should gather information from the child and the child's caretakers, caseworker, and therapist, if any, to assist in determining whether the child is capable of considered judgment.
  4. All child clients should, at a minimum, be personally contacted by a lawyer and/or lawyer's trained and qualified staff to determine the client's wishes, if possible, and to assess the client's well-being. It is important for a lawyer or lawyer's staff to observe the child, the child's interactions with others in the home or foster home, and to assess the severity of the injuries and the child's general health and condition. Children four years of age or old enough to communicate should be personally interviewed in private by a lawyer. If possible, a lawyer should interview child clients in a setting outside of the court.
  5. A lawyer should have contact with clients:
    - a. before court hearings and CRB reviews;
    - b. in response to contact by the client;
    - c. when a significant change of circumstances must be discussed with the client;
    - d. whenever notified that the child's placement is changed; or
    - e. when a lawyer is apprised of emergencies or significant events impacting the child.

6. For younger children, a lawyer, personally or the lawyer's staff, is encouraged to have regular face-to-face contact with the client in the child's home or foster home every three months or as needed. Older children could be contacted by phone if not in person, in their homes, at school, or at the lawyer's office with a similar frequency.
  7. A lawyer should confer with the client as often as necessary after the initial interview to ascertain all relevant facts and otherwise necessary information. After a lawyer is fully informed on the facts and the law, the lawyer should advise the client concerning all aspects of the case.
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## **STANDARD 3.7**

### **Independent Investigation**

A lawyer should conduct a thorough, continuing, and independent review and investigation of the case, including obtaining information, research, and discovery in order to prepare the case for trial. A lawyer should not rely solely on the report of the DHS-CW caseworker as the investigation of the facts and circumstances underlying the case.

### **Implementation**

1. A lawyer should, when appropriate, conduct an in-depth interview with the client covering:
  - a. the events giving rise to the allegations in the petition;
  - b. the existence of witnesses or other potential sources of information; and
  - c. information about the child's current placement, condition, and needs.
2. A lawyer should be familiar with and, when appropriate, obtain the assistance of, local juvenile and mental health experts who can provide the lawyer with consultation, evaluation of the client or other parties, including parent-child interaction assessments, and testimony on issues in the case.
3. A lawyer should have potential witnesses, including adverse witnesses interviewed and, when appropriate, subpoenaed by an investigator or other appropriately trained person. If a lawyer conducts a witness interview, the lawyer should do so in the presence of a third person who can be available to appear as a witness at trial. Potential witnesses may include:
  - a. school personnel;
  - b. neighbors;
  - c. relatives;
  - d. caseworkers;
  - e. foster parents and other caretakers;
  - f. mental health professionals;
  - g. physicians; and
  - h. law enforcement personnel.
4. When possible, a lawyer should interview the client in the client's home. When appropriate, a lawyer or lawyer's trained and qualified staff should observe visitations between parent and child.
5. When necessary, a lawyer should conduct or participate in depositions of witnesses.

6. A lawyer should obtain information from representatives of other agencies with whom the family has been involved, either through DHS-CW referral or on the family's own initiative, such as:
  - a. community health nurses;
  - b. school personnel;
  - c. homemaker services;
  - d. family counselors;
  - e. parenting instructors;
  - f. drug or alcohol counselors;
  - g. neighbors;
  - h. ministers, priests, church members, etc.;
  - i. baby-sitters;
  - j. other persons who have had significant contact with the child or family and may have relevant information; k. the child's Indian tribe, if applicable; and
  - k. the consulate of client's country of citizenship, if applicable.
7. A lawyer should comply with discovery statutes and use the same to obtain names and addresses of witnesses, witness statements, results of evaluations, or other information relevant to the case. A lawyer should obtain and examine all available discovery and other relevant information, including:
  - a. the petition and juvenile court legal and social files;
  - b. information that is obtained through requests for discovery;
  - c. information from the DHS-CW caseworker and from reviewing agency records for information about:
    - (1) services provided by the agency in the past;
    - (2) visitation arrangements;
    - (3) the plan for reunification; and
    - (4) current and planned services.
8. A lawyer should obtain records concerning the family from other relevant sources, such as:
  - a. schools;
  - b. hospitals and other medical records sources;
  - c. law enforcement agencies;
  - d. treatment agencies, including mental health and drug and alcohol treatment agencies; and
  - e. psychiatrists, psychologists, therapists, and counselors.
9. When the client's participation in a psychiatric, medical or other diagnostic treatment program is significant in obtaining the client's desired result, a lawyer should so advise client.

10. A lawyer should research and review relevant statutes and case law to identify defenses and legal arguments to support the client's case.
11. A lawyer should investigate and consider whether the case is or should be consolidated with any other case.

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### **STANDARD 3.8**

#### **Pretrial Motions**

A lawyer should research, prepare, file, and argue appropriate pretrial motions or responses with the court whenever there is reason to believe the client is entitled to relief. A lawyer should file briefs or memoranda in support of such motions or responses.

#### **Implementation**

1. A lawyer should make appropriate pretrial motions, including:
  - a. discovery motions;
  - b. motions for medical, psychological, or psychiatric evaluation, parent-child interaction, developmental, or neurological assessment;
  - c. motions challenging the constitutionality of statutes and practices;
  - d. motions to strike, dismiss, or amend the petition;
  - e. motions for transfer; and
  - f. evidentiary motions and motions in limine.
2. A lawyer should seek protective orders, make motions for additional shelter hearings, make appropriate motions in limine, and make other evidentiary motions.
3. A lawyer should make motions to meet the client's needs pending trial, including but not limited to:
  - a. restraining orders;
  - b. orders for family reunification services;
  - c. orders for medical or mental health treatment;
  - d. orders for change of placement;
  - e. motions to increase, decrease, or limit parental or sibling visitation;
  - f. motions seeking child support or waiver of obligation to pay child support;
  - g. motions seeking contempt for violations of court orders;
  - h. if client is indigent, motions for payment of expert witnesses; and
  - i. orders to establish or challenge paternity pursuant to ORS chapter 419B.

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### **STANDARD 3.9**

#### **Negotiating a Settlement**

A lawyer should participate in settlement negotiations to seek expeditious resolution of the case and to obtain petition and disposition terms favorable to the client. In appropriate cases, a lawyer should request a judicial settlement conference.

### **Implementation**

1. If a lawyer concludes, after sufficient investigation, that the petition will probably be sustained, the lawyer should so advise the client and request consent to discuss settlement of the case. A lawyer should negotiate admissions to the petition that cast the client in the most favorable light.
2. A lawyer should fully explain to the client the rights that would be waived by a decision to admit to jurisdiction, including the impact of established timelines established by the AFSA, and keep the client fully informed of settlement negotiations. A lawyer must convey to the client any offers made for settlement and the advantages and disadvantages of accepting the offers. A lawyer may not accept any settlement without the client's authorization.
3. A lawyer should be familiar with available mediation services and should consider whether the client's interests could best be served, and whether the case could be more appropriately resolved, by mediation or other settlement meetings.
4. A lawyer should explain to the client the conditions and limits of the settlement, and the effect of the settlement, especially when admissions made to allegations could give rise to a criminal charge or finding of aggravated circumstances or extreme conduct. These admissions could impact future actions such as domestic relations actions, immigration proceedings, criminal actions, or termination-of-parental-rights petitions.

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## **STANDARD 3.10**

### **Jurisdictional Hearings**

A lawyer should be prepared to provide quality representation and advocacy for the client.

### **Implementation**

1. In most circumstances, a lawyer should have the client present at significant court hearings and reviews and should especially advise the client of all mandatory appearances and the consequences of failing to appear at hearings.
  - a. If a child is not capable of considered judgment, in determining whether to have a child present at a hearing or review, a lawyer should, after consultation with child's therapist, if any, carefully consider the impact of the hearing on the child.
  - b. A decision to exclude a young child from a hearing or review is appropriate if the child does not want to attend, is too young to sit through the hearing, would be significantly traumatized by such attendance, or for other good reasons. The lawyer should consider whether concerns about the child being exposed to some of the testimony can be addressed by having the child temporarily excluded from the courtroom during such testimony.
2. If the child is capable of considered judgment, a lawyer is bound by the client's decision concerning testifying or attendance at hearings.
3. A lawyer should avoid unnecessarily requiring young children to testify in dependency adjudication, review, or termination-of-parental-rights hearings. In determining whether to have the child testify, the child's lawyer should consult with the child's therapist, if any.

- a. In determining whether to have the child testify, the child's lawyer should consider:
    - (1) the child's need or desire to testify;
    - (2) any likely repercussions of testifying;
    - (3) whether the child is likely to be found competent to testify;
    - (4) the necessity for the child's direct testimony;
    - (5) the availability of other evidence that may substitute for the child's testimony; and
    - (6) the child's developmental ability to testify and withstand cross-examination.
  - b. If the child's lawyer determines that it is necessary to have the child testify, a lawyer should consider, and agree, to steps to reduce potential harm to the child caused by testifying, such as arranging for the child's testimony to be taken in chambers
4. A lawyer should be familiar with current law and empirical knowledge about children's competency, memory, and suggestibility as they relate to the child's competence to testify or the reliability of testimony or out-of-court statements.
  5. A lawyer for the child should prepare the child to testify including:
    - a. familiarizing the child with the courtroom and court procedures;
    - b. advising the child what to expect during direct and cross-examination;
    - c. ensuring that testifying will cause minimum harm to the child by:
      - (1) seeking modification in the location of the testimony;
      - (2) limiting who will be present;
      - (3) restricting the manner and phrasing of questions posed to the child; and
      - (4) objecting to questions to the child that are not phrased in a syntactically and linguistically appropriate manner.
  6. A lawyer for the parent should prepare the parent client to testify. If there is the potential for criminal liability, the lawyer should advise the client whether to answer specific questions or assert the client's Fifth Amendment right not to answer specific questions.
  7. At the hearing, a lawyer should be fully prepared by:
    - a. having all relevant materials available at the trial, including all pleadings, discovery, and investigative reports, as well as, relevant statutes, case law, and the evidence code;
    - b. having marshaled facts and legal arguments to prove or disprove the allegations of the petition, ensuring that there is factual support for each service element being sought.
    - c. having a draft or outline of:
      - (1) opening and closing statements;
      - (2) direct and cross-examination plans for all witnesses;
      - (3) amendments to the petition to be requested to conform the petition to the findings; and
      - (4) findings of fact and conclusions of law to be requested at the conclusion of the hearing.

8. A lawyer should make appropriate motions, present and cross examine witnesses, offer exhibits, and provide independent evidence as necessary. During all hearings, a lawyer should preserve legal issues for appeal, as appropriate.
  9. A lawyer should ensure that the client is informed of and understands the nature, obligations, and consequences of the decision, and the need for the client to cooperate with the trial court's orders. A lawyer should also explain the client's rights and possibilities of posttrial motions to reconsider, set aside, modify, or review the jurisdictional finding, as well as the right to appeal. A lawyer should explain the consequences of violating the trial court's order and the continuing jurisdiction of the court.
  10. After the jurisdictional hearing or trial, the lawyer should
    - a. carefully review the judgment and advise the client about potential issues for appeal;
    - b. advise the client in writing of the timelines for filing a notice of appeal and the lawyer's ability to represent the client on appeal; and,
    - c. assist the client in locating an attorney to handle the appeal if the lawyer is unable to undertake such representation and take whatever steps are necessary to preserve the client's right to appeal the judgment.
  11. If a child is found within the jurisdiction of a court following a parent's failure to appear and the lawyer has been relieved as counsel, the lawyer should promptly notify the client of the entry of the judgment and advise them of the steps necessary to set aside the judgment based on excusable neglect. If a lawyer is court-appointed and the client wishes to request that the judgment be set aside, the lawyer should immediately contact the court to request reappointment and thereafter promptly file the necessary pleadings on behalf of the client.
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## **STANDARD 3.11**

### **Disposition**

A lawyer should be prepared to present a disposition plan on behalf of the client, as well as to respond to inaccurate or unfavorable information presented by other parties, ensuring that all reasonably available mitigating and favorable information is presented to the court and obtaining all appropriate orders to protect the client's rights and interests.

### **Implementation**

1. A lawyer should be prepared to participate fully in the dispositional hearing, including filing appropriate motions, which sets a course for the future of the case that will result in either reunification of the family or a severance of family ties. The lawyer should advise the client concerning the disposition prior to the hearing, including explaining to the client the nature of the hearing, the issues involved, and the alternatives open to the court. The lawyer should also explain fully the nature, obligations, and consequences of any proposed dispositional plan.
2. A lawyer should investigate all sources of evidence that will be presented at the hearing and interview material witnesses. A lawyer also has an independent duty to investigate the client's circumstances, including such factors as previous history, family relations, economic conditions, and any other information relevant to disposition.
3. When the court has found evidence sufficient to support jurisdiction, a lawyer should, when appropriate, ask the court not to exercise jurisdiction and move to dismiss the petition on the

ground that jurisdiction is not in the best interests of the child because the child and family do not require supervision, treatment, or placement.

4. A lawyer should advocate the least restrictive disposition possible that can be supported and is consistent with the client's needs and desires. Although a child's position may overlap with the position of one or both parents, third-party caretakers, or DHS-CW, the child's lawyer should be prepared to participate fully in any proceedings and not merely defer to the other parties. Any identity of position should be based on the merits of the position, and not be a mere endorsement of another party's position.
5. A lawyer for the child should ensure that the court recognizes the need to speedily promote permanency for the child if so directed by the client or if representing the child's best interests.
6. A lawyer should, when appropriate, examine fully any witness whose evidence is damaging to the client's interests and challenge the accuracy, credibility, and weight of any reports or other evidence before the court.
7. A lawyer should be prepared to present a disposition plan that will achieve the client's desired ends. A lawyer should be familiar with the dispositional alternatives available to the court and the various agencies that serve children and families that can provide placements, treatment, and other dispositional services and should fully discuss dispositional options, consequences, and procedures with the client.
8. With the client's consent, a lawyer should secure the assistance of psychiatric, psychological, medical, or other experts needed for purposes of evaluation, consultation, or testimony about the dispositional plan. A lawyer should obtain reports or subpoena evaluators or other expert witnesses to testify. A lawyer should prepare the client for any evaluation by explaining the nature of the procedure and encouraging the client's cooperation.
9. A lawyer should obtain the written reports of the Juvenile Department, DHS-CW, and the CASA sufficiently in advance of the dispositional hearing to prepare a response. A lawyer should consider submitting a written dispositional report on behalf of the client to set out the client's plan and to counter information provided in other reports received by the court.
10. At the hearing, a lawyer should, when appropriate:
  - a. request orders that benefit the client;
  - b. be prepared to present evidence on whether the reasonableness or unreasonableness of DHS-CW's efforts and alternative efforts that could have been made, were active, or reasonable;
  - c. request that a "no reasonable or active efforts" finding, if applicable, be made by the court;
  - d. request an order specifying what future services will make the changes in the family needed to correct the problems necessitating intervention and constituting "reasonable efforts" by DHS-CW;
  - e. request orders for services or service agreements that include:
    - (1) family preservation services;
    - (2) medical and mental health care;
    - (3) drug and alcohol treatment;

- (4) parenting education;
- (5) housing;
- (6) recreational or social services;
- (7) domestic violence counseling;
- (8) anger-management counseling;
- (9) independent living services;
- (10) sex-offender treatment; and
- (11) other individualized services.

11. A lawyer should assure that the order includes a description of actions to be taken by parents to correct the identified problems. A lawyer should request that the court include in its order a timetable for accomplishing the changes required. A lawyer should, when appropriate, seek court approval of a written service agreement prepared by the lawyer or DHS-CW.
12. A lawyer should also request specific visitation orders covering visitation between child and parent, between siblings, and between the child and other significant persons.
13. A lawyer should, when appropriate, request that the court appoint counsel, a court-appointed special advocate (CASA) or an educational advocate (surrogate parent) for the child. When appropriate, a lawyer should seek child support orders.
14. A lawyer should seek to ensure continued representation of the client at all further hearings and reviews. A lawyer should request that the court set the next date for the case to be reviewed.
15. A lawyer should assure that the client is informed of and understands the nature, obligations, and consequences of the dispositional decision, and the need for the client to cooperate with the dispositional orders. A lawyer should also explain the client's rights and possibilities of posttrial motions to reconsider, set aside, modify, or review the disposition, as well as the right to appeal. A lawyer should explain the consequences of violating the dispositional order and the continuing jurisdiction of the court.

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## **STANDARD 3.12**

### **Postdisposition**

A lawyer's responsibility to the client does not end with dismissal of the petition or entry of a final dispositional order. A lawyer should be prepared to counsel the client and provide or assist the client to secure appropriate legal services in matters arising from the original proceeding.

### **Implementation**

1. A lawyer should counsel the client and file any postdisposition motion or appeal that is needed.
2. A lawyer should review the court's order to insure that it conforms to the findings and disposition.
3. A lawyer should file, litigate, or respond to any motions to reconsider, set aside, or modify the jurisdictional finding or disposition, as well as any appeals of referees' orders. A lawyer should, as directed by the client, also file notice of appeal and either provide representation on appeal or assist the client in referral to other appellate counsel. A lawyer should participate in an appeal filed by another party or assist the client in referral to other appellate counsel.

4. If a lawyer's representation continues after disposition, the lawyer should monitor implementation of the case plan and progress in the case, requesting additional services and seeking review or other relief, such as contempt, as appropriate. A lawyer should be familiar with the procedures available to the client after disposition.
  5. A lawyer should monitor the case plan for implementation and maintain contact with both the client and the agency or institution involved in the disposition plan in order to ensure that the client's rights are respected and, when necessary, to counsel the client concerning the dispositional plan.
  6. A lawyer should confer periodically with their client and the caseworker to review the service plan and service agreement, the extent of compliance with the plan by both the agency and the client, and the continued appropriateness of the plan. When needed, the lawyer should request additional services for the client or family.
  7. In monitoring the provision of dispositional services, a lawyer should request a review or permanent planning hearing if necessary to protect the client's interests. The lawyer should investigate and prepare for review or permanent planning hearings as for adjudicatory hearings to the extent that is necessary. *See Standards 3.6 and 3.9, supra.*
  8. A lawyer for the child should file a petition for termination of parental rights when necessary or advocate for the district attorney or attorney general to do so.
  9. When the representation ends, a lawyer should explain why the representation is ending and how the client can obtain assistance in the future should it become necessary.
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### **STANDARD 3.13**

#### **Review Hearings and Citizen Review Board (CRB) Reviews**

State and federal law requires that review hearings or CRB reviews occur at regular intervals.

A lawyer's role is critical at review hearings and CRB review because at the hearing the court or CRB panel reviews the child's conditions and circumstances, evaluates the parties' progress toward achieving the case plan, assesses the adequacy of the services offered to the family, and considers whether jurisdiction should continue. A lawyer should be fully prepared to represent the client at all reviews and CRB reviews.

#### **Implementation**

1. Clients are also entitled to request reviews to review issues in the case as they arise. A lawyer should seek a review to request return of the child when any event happens that may significantly affect the need for continued placement. A lawyer should also request a review when court intervention is necessary to resolve a dispute over such matters as visitation, placement, or services.
2. Whether a review is periodic or at the request of one of the parties, a lawyer should conduct appropriate investigation to prepare for the review, which may include:
  - a. reviewing the DHS-CW file and the report prepared for the review and obtaining all relevant discovery;
  - b. interviewing the client prior to hearings and obtain supplemental reports and information for client prior to the hearing;

- c. interviewing the caseworker to determine his or her assessment of the case, the case plan, the child's placement and progress, and the parent's cooperation and progress;
  - d. contacting other agencies and professionals who are providing services to the child or parents and seeking appropriate documentation to verify the progress by the client;
  - e. interviewing other potential witness, which may include relatives, neighbors, school personnel, and foster parents;
  - f. seeking evaluation of the client or other parties; and
  - g. Subpoenaing needed witnesses and records.
3. At all review hearings and CRB reviews, a lawyer should be prepared to present information supporting the client's position and whether the parties are taking the necessary steps to achieve the chosen plan in a timely fashion. A lawyer should consider submitting a written report on behalf of the client. A lawyer should specifically address:
- a. whether there is a need for continued placement of the child;
  - b. reasons the child can or cannot presently be protected from the identified problems in the home even if services are provided;
  - c. whether DHS-CW is making reasonable or active efforts to rehabilitate and reunify the family or to achieve another permanent plan;
  - d. why services have not been successful to date;
  - e. whether the court-approved plan for the child remains the best plan;
  - f. whether the case plan or service agreement needs to be clarified or modified;
  - g. the client's position on the development of a concurrent case plan;
  - h. the appropriateness of the child's placement; and
  - i. whether previous court orders regarding visitation, services, and other case related issues should be modified.
4. At all review hearings and CRB reviews, a lawyer should request specific findings and orders that advance the client's case.
5. At all review hearings and CRB reviews, a lawyer should ensure that parents receive a clear and authoritative statement of the court's expectations, the statutory timelines, the possibility of return of the child if sufficient progress is made, and the risk of implementation of the concurrent case plan. A lawyer should ask the court to schedule a subsequent hearing, if needed.

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### **STANDARD 3.14**

#### **Permanent Planning Hearings**

At permanency hearings, the court determines what the permanent plan for the child should be, including return to parent, adoption, guardianship, or other planned permanent living arrangements. A lawyer should take particular care in preparing for a permanency hearing and ensure that the lawyer is well acquainted with the case history and case files. The lawyer should be prepared present favorable evidence and zealously advocate the client's position about the permanent plan.

## Implementation

1. The lawyer should consider requesting that the court schedule a permanency hearing in furtherance of the client's goals.
2. A lawyer should conduct a similar investigation as required by Standard 3.13, Implementation 2, *supra*. In addition, a lawyer should be prepared to address what the long-term plan for the child should be, including:
  - a. a specific date on which the child is to be returned home, or
  - b. a date on which the child will be placed in an alternative permanent placement;
  - c. whether the child will remain in substitute care on a permanent or long-term basis; and
  - d. whether substitute care will be extended for a specific time, with a continued goal of family reunification.
3. At the permanency hearing, the lawyer should be prepared to present evidence on what the permanent plan for the child should be, including whether to continue toward a plan of family reunification or implementation of a concurrent plan.
  - a. The lawyer should consider whether to request sufficient court time to adequately present the client's position, including live witness testimony.
  - b. A lawyer should also consider submitting a written permanency memorandum in support of the client's position.
4. At a permanency hearing, the lawyer should request specific findings and orders that advance the client's position, including but not limited to:
  - a. the findings set forth in Standard 3.13, Implementation 3, *supra*;
  - b. that a specific extension of time for reunification is appropriate and the specific services and progress required during that time; and
  - c. the development and expansion of the case plan or concurrent plan and a court progress report within 10 days of the hearing.
5. The lawyer should carefully review the court order from the permanency hearing with the client and discuss a client's option to seek review, including appellate review of any final orders.

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## STANDARD 3.15

### Termination-of-Parental-Rights Hearings

Because termination of parental rights is a drastic and permanent deprivation of the fundamental right of family membership, and only the death penalty is a more severe intrusion into personal liberty, a lawyer should be zealous and meticulous in investigating and preparing for termination-of-parental-rights hearings.

## Implementation

1. A lawyer should prepare for and try termination-of-parental-rights cases zealously and meticulously as for adjudicatory hearings. *See* Standards 3.6, 3.7, 3.8, 3.9, and 3.11, *supra*. In addition, a lawyer should:

- a. thoroughly review the entire record of the case, carefully analyzing court orders and CRB findings and recommendations and review the case with the client;
  - b. completely investigate the case, paying particular attention to issues unique to termination, such as the adoptability of the child and whether termination of parental rights is in the child's best interests, including:
    - (1) the child's relationship with his or her parents;
    - (2) the importance of maintaining a relationship with the child's siblings and other relatives;
    - (3) the child's ability to bond to an adoptive resource; and
    - (4) preserving the child's cultural heritage.
  - c. prepare a detailed chronology of the case to use in case presentation and in developing a theory and strategy for the case;
  - d. research termination statutes and case law, with particular attention to constitutional issues, and prepare trial memoranda if necessary;
  - e. obtain and review records to be submitted to the court and prepare objections or responses to objections to these documents;
  - f. subpoena and carefully prepare witnesses;
  - g. carefully prepare the client to testify at the termination trial and advise the client of the consequences of failing to appear at a mandatory court appearance in the termination proceeding;
  - h. evaluate evidentiary issues and file motions in limine as appropriate and lay proper evidentiary foundations as needed during the trial;
  - i. be aware of the heightened standard of proof in termination cases—clear and convincing evidence for most cases, and beyond a reasonable doubt in cases covered by the Indian Child Welfare Act;
  - j. be prepared to present evidence of or address DHS-CW's failure to adequately assist parents;
  - k. evaluate and be prepared if necessary to move to recuse or disqualify the trial judge; and
  - l. be aware of alternatives to termination of parental rights, including but not limited guardianship and open adoption to achieve permanency for the child.
2. The lawyer should meet with the client to discuss the termination petition and the consequences of an involuntary judgment of termination of parental rights. The lawyer should also discuss alternatives to trial with the client, including voluntary relinquishment of parental rights, open adoption agreements, postadoption contact agreements; guardianship other planned permanent living agreements, conditional relinquishments, and continuance of the trial. If the client wishes to pursue an alternative to trial, the lawyer should advocate for the client's position.
  3. When a parent client fails to appear at a mandatory termination proceeding:
    - a. a lawyer for the child should be prepared to prosecute or defend the termination petition; and

- b. a lawyer for the absent parent should consider the following options:
    - (1) to seek a continuance in order to allow the client to appear;
    - (2) to request withdrawal as attorney of record for the absent parent;
    - (3) to take other action to protect the client's interests.
  - c. If a judgment of termination is entered as a result of a court proceeding after a parent's failure to appear and the lawyer has been relieved as counsel, the lawyer should promptly notify the client of the entry of the judgment and advise the client of the steps necessary to set aside the judgment based on excusable neglect. If a lawyer is court-appointed and the client wishes to request that the judgment be set aside, the lawyer should immediately contact the court to request reappointment and thereafter promptly file the necessary pleadings on behalf of the client.
4. In preparation for and during the termination trial, the lawyer should be:
- a. prepared to submit a trial memorandum in support of client's position;
  - b. prepared to offer or agree to stipulations regarding the evidence;
  - c. prepared to offer and stipulate to facts;
  - d. prepared to examine witnesses both on direct and cross-examination;
  - e. prepared to lay the proper evidentiary foundations;
  - f. prepared to make opening and closing statements; and
  - g. create an adequate record of the case and preserve any issues appropriate for appeal.

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### **STANDARD 3.16**

The lawyer's obligation to the client may continue after a judgment of termination of parental rights has been entered.

#### **Implementation**

1. After the trial, the trial, the lawyer should:
  - a. carefully review the judgment and advise the client about potential issues for appeal;
  - b. advise the client in writing of the timelines for filing a notice of appeal and the lawyer's ability to represent the client on appeal; and
  - c. assist the client in locating a lawyer to handle an appeal if the lawyer is unable to undertake such representation and take whatever steps necessary to preserve the client's right to appeal.
2. If the lawyer's representation of a parent client continues after the trial, the lawyer should assist the parent in seeking a mediated postadoption contact agreement or open adoption agreement.
3. If the lawyer's representation of a child client continues after trial, the lawyer should assist the child in negotiating a postadoption contact agreement, monitor efforts to finalize the adoption of the child, advocate for the child with respect to selection of the adoptive placement, seek sufficient

adoption subsidy, and seek appropriate services and court reviews pending finalization of the adoption.

[BACK TO INDEX](#)