

Representing Children in Juvenile Court practice hypotheticals

Rules of Professional Conduct, Performance Standards
and Practical Challenges

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Disclaimer

- The hypothetical situations included within this presentation are used as means to provide general guidance on the role of an attorney representing a child in a juvenile dependency case.
- The relevant Oregon Rules of Professional Conduct and Oregon State Bar Performance Standards are provided at the end of each hypothetical situation.
- Your facts may differ, consequently, the application of the ORPCs and Standards may be different.
- We highly recommend you refer to the ORPCs and Standards which are referenced in the in the materials.
- And, when in doubt about your ethical obligations, contact the Oregon State Bar.

Representing Children: hypothetical #1

- Client is a 16 year old who tells you that the conditions within the foster home are deplorable—the pantry is locked so that they can't access food except when the foster parent deems it appropriate; there are two dinners served, one for the bio family which is good food and one for the foster children which is low-quality and small portions, and much of the time the client has to sleep in the bathtub. DHS regularly inspects the house and finds it to be appropriate. The client instructs you “don't tell anyone” as they are afraid of retribution.
- Applicable Oregon Rules of Professional Conduct
 - Rule 1.2 Allocation of Authority Between Client and Lawyer
 - Rule 1.6 Confidentiality of Information
 - Rule 2.1 Advisor
- Applicable Performance Standards
 - Standard 1A. (Role of Lawyer for the Child)
 - Standard 2G. & 2.H. (Relationship with the Child Client)
 - Standard 4D. (General Principles Governing Conduct of the Case)

Representing Children: hypothetical #2

- Client is a 16 year old who tells you that the conditions within the foster home are deplorable—the pantry is locked so that they can't access food except when the foster parent deems it appropriate; there are two dinners served, one for the bio family which is good food and one for the foster children which is low-quality and small portions, and much of the time the client has to sleep in the bathtub. DHS regularly inspects the house and finds it to be appropriate. The client instructs you “don't tell anyone” as they are afraid of retribution. **The client then tells you she is going to run away and asks you not to tell anyone.**
- Applicable Oregon Rules of Professional Conduct
 - Rule 1.2 Allocation of Authority Between Client and Lawyer
 - Rule 1.6 Confidentiality of Information
 - Rule 2.1 Advisor
- Applicable Performance Standards
 - Standard 1A. (Role of Lawyer for the Child)
 - Standard 2G. & 2.H. (Relationship with the Child Client)

Representing Children: hypothetical #3

- Client is a 16 year old who tells you that the conditions within the foster home are deplorable—the pantry is locked so that they can't access food except when the foster parent deems it appropriate; there are two dinners served, one for the bio family which is good food and one for the foster children which is low-quality and small portions, and much of the time the client has to sleep in the bathtub. DHS regularly inspects the house and finds it to be appropriate. The client instructs you “don't tell anyone” as they are afraid of retribution. **The client then tells you she is going to kill herself and not to say anything.**
- Applicable Oregon Rules of Professional Conduct
 - Rule 1.2 Allocation of Authority Between Client and Lawyer
 - Rule 1.6 Confidentiality of Information
 - Rule 2.1 Advisor
- Applicable Performance Standards
 - Standard 1A., 1.B., 1D. (Role of Lawyer for the Child)
 - Standard 2G. & 2.H. (Relationship with the Child Client)
 - Standard 6G. (Court Preparation)

Representing Children: hypothetical #4

- Client is a 14 year old who has recently been returned home. He tells you things are chaotic at home, that his parents have started physically fighting again and that his mother smokes so much marijuana that she stays in bed all day. Your client wants the case to close and to be left alone. DHS wants to close the case. You are concerned that the fighting may turn to physical abuse of your client since that was the pattern prior to DHS involvement.
- Applicable Oregon Rules of Professional Conduct
 - Rule 1.2 Allocation of Authority Between Client and Lawyer
 - Rule 1.6 Confidentiality of Information
 - Rule 2.1 Advisor
- Applicable Performance Standards
 - Standard 1A., 1D. (Role of Lawyer for the Child)
 - Standard 2G. & 2.H. (Relationship with the Child Client)
 - Standard 4E. (General Principles Governing the Conduct of the Case)

Representing Children: hypothetical #5

- 12-year-old client wants to attend her next court (or CRB) hearing. Foster parent and DHS caseworker think this is a bad idea because client is more stable than she has been in months and they think the hearing will trigger her and cause decompensation. Also, they are concerned about client missing school.
- Applicable Oregon Rules of Professional Conduct
 - Rule 1.2 Allocation of Authority Between Client and Lawyer
 - Rule 1.4(b) Communication
- Applicable Performance Standards
 - Standard 1A., 1B., 1C. (Role of Lawyer for the Child)
 - Standard 2A. (Relationship with Child Client)
 - Standard 4A. (General Principles Governing Conduct of the Case)
 - Standard 6D. & 6E. (Court Preparation)
 - Standard 7D. (Hearings)
 - Standard 8A. & 8B. (Post-hearings)

Representing Children: hypothetical #6

- You represent three siblings, ages 5, 9 and 11. The 5- and 9-year-olds are placed together; the 11-year-old poses severe behavioral challenges and is placed separately. The 11-year-old wants to see his siblings and asks you why he doesn't see them. The reason is that they don't want to see him. The therapist doesn't think the 11-year-old can handle that information and if he has another blowout his current (good) placement may be jeopardized.
- Applicable Oregon Rules of Professional Conduct
 - Rule 1.2 Allocation of Authority Between Client and Lawyer
 - Rule 1.4(b) Communication
 - Rule 1.8 Conflict of Interest: Current Clients: Specific Rules
- Applicable Performance Standards
 - Standard 1A., 1B., 1C. (Role of Lawyer for the Child)
 - Standard 2C., 2G., 2F. (Relationship with Child Client)

Representing Children: hypothetical #7

- You represent a 6-year-old who is in relative foster care with grandma. Although your client is happy with grandma, she wants to return to her mother's home. At the court hearing (or CRB), you advocate for reunification with mother. The Judge (or Board) asks whether you are advocating for your client's expressed wishes. The Judge (or Board) then asks when you last spent time meeting with your client and whether you met with your client in her foster home.
- Applicable Oregon Rules of Professional Conduct
 - Rule 1.2 Allocation of Authority Between Client and Lawyer
 - Rule 1.6(a) Confidentiality of Information
 - Rule 1.8(b) Conflict of Interest: Current Clients: Specific Rules
- Applicable Performance Standards
 - Standard 1E. (Role of lawyer for the child)
 - Standard 2A. (Relationship with the child client)

Representing Children: hypothetical #8

- Client is 11 years old and tells you she is using controlled substances but tells everyone else she is not. The DHS caseworker and foster parents suspect your client is using but have not been able to prove it. At court(or CRB), your client is asked if she is using, she says no and that the caseworker and foster parent are lying.
 - Alternatively, the court (or board) asks you if your client is using, you say “I have had many conversations with my client and this information is not true.”
- Applicable Oregon Rules of Professional Conduct
 - Rule 2.1 Advisor
 - Rule 3.3 Candor toward the tribunal
 - Rule 3.7 Lawyer as Witness
 - Rule 4.1 Truthfulness in Statements to Others
- Applicable Performance Standards
 - Standard 2E. (Relationship with the child client)

Representing Children: hypothetical #9

- Your client is on the run from the foster home and has not been in contact with DHS or with you (the lawyer). DHS asks you if you have had contact with your client.
- Applicable Oregon Rules of Professional Conduct
 - Rule 1.6(a) Confidentiality of Information
 - Rule 1.8(b) Conflict of Interest: Current Clients: Specific Rules
 - Rule 4.1 Truthfulness in Statements to Others
 - Rule 4.2 Communication with Person Represented by Counsel
- Applicable Performance Standards
 - Standard 2B. & 2E. (Relationship with the child client)

Representing Children: hypothetical #10

- You represent a verbal child who is 7 years old and high functioning. Every time you bring up the case and try to ascertain your client's position as to whether your client wants to return home to father, your client clams up and refuses to talk about it. You don't know what your client wants, don't know whether your client has decision-making capacity, and don't know whether your client is just avoiding the situation.
- Applicable Oregon Rules of Professional Conduct
 - Rule 1.14 Client with Diminished Capacity
 - Rule 1.6(a) Confidentiality of Information
- Applicable Performance Standards
 - Standard 1A., 1B., 1C. (Role of lawyer for the child)