

Standards of Representation

For Parents and Children in Juvenile Court Proceedings

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ORS 151.216: PDSC Duties

The Public Defense Services Commission shall

- Establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.

Provider Attorneys

- Independent Contractors
- Model Contract Terms
(<http://www.oregon.gov/OPDS/CBS/pages/modelcontractterms.aspx>)
 - Postdispositional Juvenile Hearings (Sec. 10.5.1.6)
 - Contractor Obligations (Sec. 7)
- Qualification Standards
(<http://www.oregon.gov/OPDS/CBS/pages/qualificationstandards.aspx>)

Provider Contractual Obligations

- **7.1.1 Representation At All Court Proceedings in the Relevant Court**

Contractor shall provide representation at all stages of a case assigned under this contract as limited by this contract. Representation means the provision of competent legal advice and assistance by appointed counsel to a person that a state court has determined to be financially eligible ...

Provider Contractual Obligations

- **7.1.2 Standards of Representation**

Representation further means providing a level of legal service that meets Oregon and United States constitutional and statutory requirements, and Oregon and national standards of justice.

Attorneys

Regulation and Quality Assurance

- US Constitution
- Oregon Constitution
- National Standards of Justice
- Oregon State Bar (OSB)
 - Rules of Professional Conduct (ORPC)
 - OSB Performance Standards
 - Standards for Representation in Juvenile Dependency Cases
 - Standards for Representation in Criminal and Juvenile Delinquency cases
 - Standards for Representation for Child Welfare Agencies

Attorneys

Regulation and Quality Assurance

- Oregon State Bar (OSB)
 - Rules of Professional Conduct (ORPC)
 - Competence RPC 1.1
 - Scope of representation & allocation of authority 1.2
 - Diligence RPC 1.3
 - Communication RPC 1.4
 - Confidentiality RPC 1.6
 - Diminished Capacity 1.14

OPDS Qualifications for Court Appointed Attorneys

- Level system to qualification for public defense contracts
 - Misdemeanor case qualified for 9 months
 - Lesser felony case qualified or **equivalent experience**
 - Specific knowledge for juvenile practice: statutes, case law, standards, procedures, services
 - Co-counsel and/or observe dependency cases
- Attorneys required to submit questionnaire & certification of qualification

Performance Standards - Dependency

- American Bar Association: separate standards for lawyers representing a child welfare agency, children and parents
 - ABA Standards of Representation - Children
http://www.americanbar.org/content/dam/aba/migrated/family/reports/standards_abuseneglect.authcheckdam.pdf
 - ABA Parent Representation Standards
http://www.americanbar.org/groups/child_law/what_we_do/projects/parentrepresentation/written_materials.html#StandardsofPractice

Performance Standards - Dependency

- Oregon State Bar Standards
 - Recommended by Oregon Task Force on Dependency Representation
 - Adopted by OSB Board of Governors June 2014
 - Aligns Oregon standards with ABA structure; sets forth distinct specific standards for lawyers who represent children & parents
 - Conforms Oregon performance standards with Oregon Rules of Professional Conduct (ORPC)

OSB Performance Standards

- Specific Standards for Representation in Juvenile Dependency Cases
 - Current version adopted June 23, 2017
 - Two Parts
 - Obligations for Lawyers for Children
 - Obligations for Lawyers for Parents
 - Appendix

Representing Child-Clients

- Oregon Law allows for appointment of counsel for children in dependency matters.
- No special ORCP specifically for Child-client
- No Guardian ad litem
- ORPC apply to the attorney client relationship.
 - Key question: decision making capacity

Representing Child-Clients: ORPC

- Oregon Rules of Professional Conduct, adopted in 2005, are based upon the ABA Model Rules of Professional Conduct
- ORPC 1.14 Client with Diminished Capacity
 - addresses representation requirements when the client has diminished capacity, including children
 - Oregon's language is identical to the ABA Model rules

ORPC 1.14

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

ABA Comment on Rule 1.14

“[A] client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.”

Dependency Representation Standards: Child-Client

STANDARD 1 – ROLE OF THE LAWYER FOR THE CHILD

A. The role of the child-client's lawyer is to ensure that the child client is afforded due process and other rights and that the child client's interests are protected. For a child client with full decision-making capacity, the child-client's lawyer must maintain a normal lawyer-client relationship with the child client, including taking direction from the child client on matters normally within the child client's control.

Dependency Representation Standards: Child-Client

Standard 1 (B): For a child client with diminished capacity, the child-client's lawyer should maintain a normal lawyer-client relationship with the child as far as reasonably possible and take direction from the child client as the child develops capacity. A child client may have the capacity to make some decisions but not others.

- Normal relationship
- Decision making Capacity – changes over time

Dependency Representation Standards: Child-Client

- Lawyer for child-client is youth/child directed
- Maintain a normal lawyer-client relationship with the child as far as reasonably possible
- Decision-making capacity
 - Threshold: Does client have full decision making capacity?
- Children with diminished capacity
 - Intermediate degrees of competence (ORPC 1.14)
 - Assess competence over time

Dependency Representation Standards: Child-Client

Standard 1 (C) : When [child-client has diminished capacity], the child-client's lawyer should conduct a thorough investigation and then determine what course of action is most consistent with protecting the child client in the particular situation and represent the child client in accordance with that determination. This determination should be based on objective facts and information and not the personal philosophy or opinion of the child-client's lawyer.

Dependency Representation Standards: Child-Client

- Lawyer for child client is youth/child directed.
- Child with Diminished Capacity:
 - Intermediate degrees of competence & assess changes over time
- How determine legal position to advocate:
 - Through investigation
 - Assess child's particularized situation
 - Advocate based on objective facts and information
 - Do not base determination on lawyer's personal philosophy or personal opinion
 - **Can Lawyer take protective action?**

Dependency Representation Standards: Child-Client

Standard 1 (D): When the lawyer reasonably believes child has diminished capacity, is at risk of substantial physical, sexual, psychological or financial harm, and cannot adequately act in his or her own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client.

- Requesting a CASA permitted in extreme cases, i.e., where the child is at risk of substantial physical harm and cannot act in his or her own interest and where the child's lawyer has exhausted all other protective action remedies

Dependency Representation Standards: Child-Client

Takeaways:

- The lawyer's representation is client centered and client driven, in part due to confidential information the lawyer receives during the course of representation.
- The attorney must not advise the court of the lawyer's determination of the child's capacity, and, if asked, must reply that the lawyer's relationship with the client is privileged.

Dependency Representation Standards: Child-Client

- Process Expectations
 - Meet with child within 72 hours of appointment
 - Communicate at least quarterly
 - Developmentally appropriate communication
 - Facilitate attendance at court when appropriate

Dependency Representation Standards: Parent-Client

Standard 1 (A): The parent-client's lawyer must maintain a normal lawyer-client relationship with the parent client, including advocating for the parent client's goals and empowering the parent client to direct the representation and make informed decisions.

- Client driven
- Consistent with ORCP

Standards 1 (B-D) : Parents with Diminished Capacity

Dependency Representation Standards: Parent-Client

- Take diligent steps to locate and communicate with a missing parent (see commentary)
- Interview the parent well before each hearing, in time to use parent information for the case investigation
- Aggressively advocate for regular visitation in a family-friendly setting
- With the client's permission, and when appropriate, engage in settlement negotiations and mediation to quickly resolve the case.

Dependency Representation Standards: Parent-Client

- Assure that findings of fact, conclusions of law and orders that benefit your client are included in the court's decision.
- Review court orders to ensure accuracy and clarity and review with client.
- Take reasonable steps to ensure the client complies with court orders and to determine whether the case needs to be brought back to court.

Role of Lawyer at CRB (and Review)

(Appendix to Performance Standards)

- Fully prepared to represent client at all reviews and CRBs
 - Conduct appropriate investigation
 - Consider submitting written report
 - Seek specific findings
 - Present information to support child's position
 - (Parents) Receive clear and authoritative statement of court's expectations, timelines, possibility of return if sufficient progress is made and risk of implementation of concurrent plan

Common Themes

- Particularized training for lawyers
- No use of a "best interest" standard
- Client-directed advocacy
- Regular and meaningful client communication
- Avoid unnecessary delay
- Conduct thorough and independent investigations

Common Themes, cont.

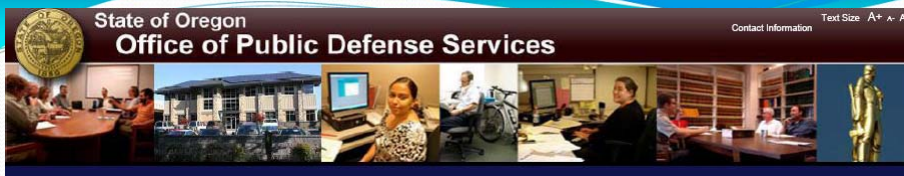
- System Advocacy by Attorney Managers (public defenders, consortium administrators, law firms)
 - Early discovery
 - Immediate appointment upon filing of petition
 - Legal counsel regarding right to and waiver of counsel

Parent Child Representation Program

- August 2014: Linn and Yamhill Counties
- Reduced Caseload for Lawyers
- Greater oversight
- Training & Support
- Independent Social Workers
- Based on Washington State model implemented in 2000

Parent Child Representation Program: Goals

- Ensure that parents and children have meaningful representation at all stages of the case, including shelter hearings.
- Provide competent, effective legal representation throughout life of the case.
- Reduce the number of children in foster care.
- Reduce the time to achieve permanency.
- Increase the number of children who are safely reunified with parents.



<http://www.oregon.gov/OPDS>

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Questions?