

# Attorneys for Children in Oregon – How and Why

## 2021 SFLAC Annual Conference

### I. Statutory Authority in Oregon for the Appointment of Attorneys for Children

- a. **ORS 107.425(6)** provides the statutory authority for the appointment of an attorney for a child:

*(6) The court, on its own motion or on the motion of a party, may appoint counsel for the children. However, if requested to do so by one or more of the children, the court shall appoint counsel for the child or children. A reasonable fee for an attorney so appointed may be charged against one or more of the parties or as a cost in the proceedings but shall not be charged against funds appropriated for public defense services.*

- b. While the statute is not a model of clarity and provides no procedural direction, it is an important tool for the courts in making difficult determinations regarding a child's care and placement.

### II. The Appointment Process

- a. **When to Appoint.** There must be a pending action regarding the child. Typical circumstances which appointment of counsel is made:
  - i. *Written request of the child.* If the parents are not in agreement regarding a parenting plan, and the child requests the appointment of an attorney, the Court must appoint counsel.
  - ii. *Need for clarity of child's position.* A parent may believe that the other parent is influencing the child to hold certain beliefs or to distort reality. The attorney can assist the parties and the Court by providing a forum for the child to express beliefs free from direct parental influence.
  - iii. *Investigation of placement options.* The parents may be unable to afford a custody or parenting evaluation and the Court appoints a best interest attorney to assist in developing the evidence for the Court to consider.
  - iv. *Case settlement.* The child's attorney is often uniquely placed to have the trust of both parents and the child and can facilitate a settlement.
- b. **Whom to Appoint.** Courts have a variety of local approaches to the appointment of counsel.
  - i. In some counties, if the parties identify and agree to the appointment of a particular attorney, that attorney is appointed; if not, the Court identifies the attorney to be appointed, taking into account identified gender issues, attorney availability and location of the case or client.
  - ii. Some courts will hold a short hearing to determine if the parties have some ideas about who should provide representation and whether funds may be

available as an initial retainer. Some counties have an automatic revolving list of interested attorneys for these roles.

- iii. The Court would prefer seasoned family law attorneys who have an affinity for working with children. The attorney must be conversant with the local rules and practice and must be familiar with the ABA Standards for the representation of children.

### **III. Role of the Child's Attorney**

- a. Local practice varies, but the attorney must define the attorney's role as either a "best interest" attorney or a more standard "advocacy attorney," depending on the age and sophistication of the client, as viewed in light of the ABA Standards.
- b. In some courts, the attorney can present evidence and arguments, cross examine witnesses and make objections to testimony. In other courts, the role may be much reduced, some to as little as advising the Court of the attorney's position.
- c. The attorney must be familiar with local practice and, if in disagreement with local practice, take up the matter with the SLR Committee, local bar association and/or the presiding judge to effect change.

### **IV. Why You Should Serve and a Court-Appointed Attorney for Children**

- a. Many lawyers who represent children by court appointment report that it is the work they intended to do when they went to law school.
- b. Most find it a rewarding way to provide pro bono or modified pro bono service.
- c. Many family law practitioners find that advocating from the position of the child enhances and informs their family law practice and helps them better advise their adult clients regarding parenting and custody disputes.

### **V. When the Appointment Ends.**

- a. When the judgment has been entered and there is no further proceedings, the attorney appointment ends and the Court lacks the authority to continue the appointment. *Thomason and Thomason*, 174 Or App 37 (2001).

## **ABA STANDARDS FOR REPRESENTING CHILDREN**

The ABA and National Association of Counsel for Children have provided standards of practice for lawyers who represent children. They address representation in juvenile and probate court as well as family law. Attached to your materials is a redacted version of the standards. What follows here is a further condensed version to highlight those standards. They address the duties of both lawyers and, to some extent, judges.

### **A. LAWYER STANDARDS**

#### Basic obligations

1. Obtain copies of pleadings and relevant materials.
2. Participate in depositions, negotiations, and court conferences and hearings.
3. Inform all parties of your representation and identify a reasonable expectation of a change in circumstances which affects the child or the family.
4. Counsel the child about the proceedings, the attorney's role in representation, and discuss likely outcomes.
5. Develop a trial strategy. This will involve the presentation of the child's concerns and desires.
6. Identify appropriate resources for your client and the child.
7. Identify potential conflicts of interest and, if representing multiple children in a family whose positions are not consonant, withdraw from representing all of the children.
8. Identify any challenges which your client may have.

#### Actions to be taken

1. Meet with the child and develop a professional relationship.
2. Investigate the case, meeting with education, health and counseling professionals, reviewing records, and contacting the other professionals in the case for input, including lawyers.
3. Meet with the parents (with attorney permission).
4. File appropriate pleadings, including discovery and contempt motions.
5. Request that the child and family members receive appropriate services.

#### Hearings

1. Participate in any hearings.
2. Explain the process to the child.
3. Present evidence.
4. Determine whether or not the child should appear and/or testify.

#### Post Hearings

1. Review the judgment and propose changes.
2. Communicate the contents of the judgment to the child.
3. If appeals or post judgment hearings are filed, seek retention as counsel.
4. Participate in appeals.

## **B. JUDGES' ROLE**

1. Assure the independence of the child's attorney.
2. Establish uniform representation rules.
3. Encourage lawyer relationships with court connected personnel.
4. Make timely appointments.
5. Provide immediate access for lawyer to treatment and school records.
6. Assure that lawyers appointed to represent children are adequately trained.
7. Allow child to hire their own independent counsel.
8. Participate in educational training to ensure competent counsel.
9. Assure adequate compensation for lawyers.

**NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN  
AMERICAN BAR ASSOCIATION  
STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN**

Provided by the American Bar Association Center on Children and the Law.  
The Abuse & Neglect Standards were drafted by the American Bar Association Representing Children Standards of Practice Committee.  
Adopted, The American Bar Association February 5, 1996.  
Adopted, with reservation as to Standard B-4, National Association of Counsel for Children, October 13th, 1996.  
Amended, Section B-4 and B-5, National Association of Counsel for Children, April 21, 1999.

**PART I:**  
**STANDARDS FOR THE CHILD'S ATTORNEY**

**A. DEFINITIONS**

**A-1. The Child's Attorney.** The term "child's attorney" means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

**Commentary**

These Standards explicitly recognize that the child is a separate individual with potentially discrete and independent views. To ensure that the child's independent voice is heard, the child's attorney must advocate the child's articulated position. Consequently, the child's attorney owes traditional duties to the child as client consistent with ER 1.14(a) of the Model Rules of Professional Conduct. In all but the exceptional case, such as with a preverbal child, the child's attorney will maintain this traditional relationship with the child/client. As with any client, the child's attorney may counsel against the pursuit of a particular position sought by the child. The child's attorney should recognize that the child may be more susceptible to intimidation and manipulation than some adult clients. Therefore, the child's attorney should ensure that the decision the child ultimately makes reflects his or her actual position.

**A-2. Lawyer Appointed as Guardian Ad Litem.** A lawyer appointed as "guardian ad litem" for a child is an officer of the court appointed to protect the child's interests without being bound by the child's expressed preferences.

**Commentary** In some jurisdictions the lawyer may be appointed as guardian ad litem. These Standards, however, express a clear preference for the appointment as the "child's attorney." These Standards address the lawyer's obligations to the child as client.

A lawyer appointed as guardian ad litem is almost inevitably expected to perform legal functions on behalf of the child. Where the local law permits, the lawyer is expected to act in the dual role of guardian ad litem and lawyer of record. The chief distinguishing factor between the roles is the manner and method to be followed in determining the legal position to be advocated. While a guardian ad litem should take the child's point of view into account, the child's preferences are not binding, irrespective of the child's age and the ability or willingness of the child to express preferences. Moreover, in many states, a guardian ad litem may be required

by statute or custom to perform specific tasks, such as submitting a report or testifying as a fact or expert witness. These tasks are not part of functioning as a "lawyer."

**A-3. Developmentally Appropriate.** "Developmentally appropriate" means that the child's attorney should ensure the child's ability to provide client-based directions by structuring all communications to account for the individual child's age, level of education, cultural context, and degree of language acquisition.

#### Commentary

The lawyer has an obligation to explain clearly, precisely, and in terms the client can understand the meaning and consequences of action. See DAVID A. BINDER & SUSAN C. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977). A child client may not understand the legal terminology and for a variety of reasons may choose a particular course of action without fully appreciating the implications. With a child the potential for not understanding may be even greater. Therefore, the child's attorney has additional obligations based on the child's age, level of education, and degree of language acquisition. There is also the possibility that because of a particular child's developmental limitations, the lawyer may not completely understand the child's responses. Therefore, the child's attorney must learn how to ask developmentally appropriate questions and how to interpret the child's responses. See The child's attorney may work with social workers or other professionals to assess a child's developmental abilities and to facilitate communication.

### **B. GENERAL AUTHORITY AND DUTIES**

**B-1. Basic Obligations.** The child's attorney should:

- (1) Obtain copies of all pleadings and relevant notices;
- (2) Participate in depositions, negotiations, discovery, pretrial conferences, and hearings;
- (3) Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;
- (4) Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;
- (5) Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;
- (6) Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and
- (7) Identify appropriate family and professional resources for the child.

### Commentary

The child's attorney should not be merely a fact-finder, but rather, should zealously advocate a position on behalf of the child. (The same is true for the guardian ad litem, although the position to be advocated may be different). In furtherance of that advocacy, the child's attorney must be adequately prepared prior to hearings. The lawyer's presence at and active participation in all hearings is absolutely critical. Although the child's position may overlap with the position of one or both parents, third-party caretakers, or a state agency, the child's attorney 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 a mere endorsement of another party's position. While subsection (4) recognizes that delays are usually harmful, there may be some circumstances when delay may be beneficial. Section (7) contemplates that the child's attorney will identify counseling, educational and health services, substance abuse programs for the child and other family members, housing and other forms of material assistance for which the child may qualify under law. The lawyer can also identify family members, friends, neighbors, or teachers with whom the child feels it is important to maintain contact; mentoring programs, such as Big Brother/Big Sister; recreational opportunities that develop social skills and self-esteem; educational support programs; and volunteer opportunities which can enhance a child's self-esteem.

### **B-2. Conflict Situations.**

- (1) If a lawyer appointed as guardian ad litem determines that there is a conflict caused by performing both roles of guardian ad litem and child's attorney, the lawyer should continue to perform as the child's attorney and withdraw as guardian ad litem. The lawyer should request appointment of a guardian ad litem without revealing the basis for the request.
- (2) If a lawyer is appointed as a "child's attorney" for siblings, there may also be a conflict which could require that the lawyer decline representation or withdraw from representing all of the children.

### Commentary

The primary conflict that arises between the two roles is when the child's expressed preferences differ from what the lawyer deems to be in the child's best interests. As a practical matter, when the lawyer has established a trusting relationship with the child, most conflicts can be avoided. While the lawyer should be careful not to apply undue pressure to a child, the lawyer's advice and guidance can often persuade the child to change an imprudent position or to identify alternative choices if the child's first choice is denied by the court. The lawyer-client role involves a confidential relationship with privileged communications, while a guardian ad litem-client role may not be confidential. Because the child has a right to confidentiality and advocacy of his or her position, the child's attorney can never abandon this role. Once a lawyer has a lawyer-client relationship with a minor, he or she cannot and should not assume any other role for the child, especially as guardian ad litem. When the roles cannot be reconciled, another person must assume the guardian ad litem role.

**B-3. Client Under Disability.** The child's attorney should determine whether the child is "under a disability" pursuant to the Model Rules of Professional Conduct or the Model Code of Professional Responsibility with respect to each issue in which the child is called upon to direct the representation.

Commentary

These Standards do not accept the idea that children of certain ages are "impaired," "disabled," "incompetent," or lack capacity to determine their position in litigation. Further, these standards reject the concept that any disability must be globally determined. Rather, disability is ontexual, incremental, and may be intermittent. The child's ability to contribute to a determination of his or her position is functional, depending upon the particular position and the circumstances prevailing at the time the position must be determined. Therefore, a child may be able to determine some positions in the case but not others. Similarly, a child may be able to direct the lawyer with respect to a particular issue at one time but not at another. This Standard relies on empirical knowledge about competencies with respect to both adults and children.

**\*\*NOTE ON Section B-4:** Two versions of Standard B-4 are presented below. The first version is the "ABA Version" which is the version drafted and adopted by the ABA. The second version is the "NACC Version" adopted by the NACC as a recommended replacement to the "ABA Version." The NACC had originally adopted the ABA Standards with reservation as to Standard B-4 because of "concerns about the availability to the court of information about the interests of the child." The NACC Board of Directors subsequently adopted the "NACC Version." The NACC version is *not* approved or adopted by the ABA.

**B-4. ABA Version.** Client Preferences. The child's attorney should elicit the child's preferences in a developmentally appropriate manner, advise the child, and provide guidance. The child's attorney should represent the child's expressed preferences and follow the child's direction throughout the course of litigation.

Commentary

The lawyer has a duty to explain to the child in a developmentally appropriate way such information as will assist the child in having maximum input in determination of the particular position at issue. The lawyer should inform the child of the relevant facts and applicable laws and the ramifications of taking various positions, which may include the impact of such decisions on other family members or on future legal proceedings. The lawyer may express an opinion concerning the likelihood of the court or other parties accepting particular positions. The lawyer may inform the child of an expert's recommendations germane to the issue.

As in any other lawyer/client relationship, the lawyer may express his or her assessment of the case, the best position for the child to take, and the reasons underlying such recommendation. A child, however, may agree with the lawyer for inappropriate reasons. A lawyer must remain aware of the power dynamics inherent in adult/child relationships. Therefore, the lawyer needs to understand what the child knows and what factors are influencing the child's decision. The lawyer should attempt to determine from the child's opinion and reasoning what factors have been most influential or have been confusing or glided over by the child when deciding the best time to express his or her assessment of the case. Consistent with the rules of confidentiality and with sensitivity to the child's privacy, the lawyer should consult with the child's therapist and other experts and obtain appropriate records. For example, a child's therapist may help the



child to understand why an expressed position is dangerous, foolish, or not in the child's best interests. The therapist might also assist the lawyer in understanding the child's perspective, priorities, and individual needs. Similarly, significant persons in the child's life may educate the lawyer about the child's needs, priorities, and previous experiences.

The lawyer for the child has dual fiduciary duties to the child which must be balanced. On one hand, the lawyer has a duty to ensure that the child client is given the information necessary to make an informed decision, including advice and guidance. On the other hand, the lawyer has a duty not to overbear the will of the child. While the lawyer may attempt to persuade the child to accept a particular position, the lawyer may not advocate a position contrary to the child's expressed position except as provided by these Abuse and Neglect Standards or the Code of Professional Responsibility.

While the child is entitled to determine the overall objectives to be pursued, the child's attorney, as any adult's lawyer, may make certain decisions with respect to the manner of achieving those objectives, particularly with respect to procedural matters. These Abuse and Neglect Standards do not require the lawyer to consult with the child on matters which would not require consultation with an adult client. Further, the Standards do not require the child's attorney to discuss with the child issues for which it is not feasible to obtain the child's direction because of the child's developmental limitations, as with an infant or preverbal child. To the extent that a child cannot express a preference, the child's attorney shall make a good faith effort to determine the child's wishes and advocate accordingly or request appointment of a guardian ad litem.

#### Commentary

There are circumstances in which a child is unable to express a position, as in the case of a preverbal child, or may not be capable of understanding the legal or factual issues involved. Under such circumstances, the child's attorney should continue to represent the child's legal interests and request appointment of a guardian ad litem. This limitation distinguishes the scope of independent decision-making of the child's attorney and a person acting as guardian ad litem.

#### Commentary

The child's failure to express a position is distinguishable from a directive that the lawyer not take a position with respect to certain issues. The child may have no opinion with respect to a particular issue, or may delegate the decision-making authority. For example, the child may not want to assume the responsibility of expressing a position because of loyalty conflicts or the desire not to hurt one of the other parties. The lawyer should clarify with the child whether the child wants the lawyer to take a position or remain silent with respect to that issue or wants the preference expressed only if the parent or other party is out of the courtroom. The lawyer is then bound by the child's directive. The position taken by the lawyer should not contradict or undermine other issues about which the child has expressed a preference.

If the child's attorney determines that the child's expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer's opinion of what would be in the child's interests), the lawyer may request appointment of a separate guardian ad litem and continue to represent the child's expressed preference, unless the child's position is prohibited by law or without any factual foundation. The child's attorney shall not reveal the basis of the request for appointment of a guardian ad litem which would compromise the child's position.

## Commentary

One of the most difficult ethical issues for lawyers representing children occurs when the child is able to express a position and does so, but the lawyer believes that the position chosen is wholly inappropriate or could result in serious injury to the child. This is particularly likely to happen with respect to an abused child whose home is unsafe, but who desires to remain or return home. A child may desire to live in a dangerous situation because it is all he or she knows, because of a feeling of blame or of responsibility to take care of the parents, or because of threats. The child may choose to deal with a known situation rather than risk the unknown world of a foster home or other out-of-home placement. In most cases the ethical conflict involved in asserting a position which would seriously endanger the child, especially by disclosure of privileged information, can be resolved through the lawyer's counseling function. If the lawyer has taken the time to establish rapport with the child and gain that child's trust, it is likely that the lawyer will be able to persuade the child to abandon a dangerous position or at least identify an alternate course. If the child cannot be persuaded, the lawyer has a duty to safeguard the child's interests by requesting appointment of a guardian ad litem, who will be charged with advocating the child's best interests without being bound by the child's direction.

As a practical matter, this may not adequately protect the child if the danger to the child was revealed only in a confidential disclosure to the lawyer, because the guardian ad litem may never learn of the disclosed danger. Confidentiality is abrogated for various professionals by mandatory child abuse reporting laws. Some states abrogate lawyer-client privilege by mandating reports. States which do not abrogate the privilege may permit reports notwithstanding professional privileges.

The policy considerations underlying abrogation apply to lawyers where there is a substantial danger of serious injury or death. Under such circumstances, the lawyer must take the minimum steps which would be necessary to ensure the child's safety, respecting and following the child's direction to the greatest extent possible consistent with the child's safety and ethical rules. The lawyer may never counsel a client or assist a client in conduct the lawyer knows is criminal or fraudulent. Further, existing ethical rules requires the lawyer to disclose confidential information to the extent necessary to prevent the client from committing a criminal act likely to result in death or substantial bodily harm, see ER 1.6(b), Model Rules of Professional Conduct, and permits the lawyer to reveal the intention of the client to commit a crime.

While child abuse, including sexual abuse, are crimes, the child is presumably the victim, rather than the perpetrator of those crimes. Therefore, disclosure of confidences is designed to protect the client, rather than to protect a third party from the client. Where the child is in grave danger of serious injury or death, the child's safety must be the paramount concern. The lawyer is not bound to pursue the client's objectives through means not permitted by law and ethical rules. Further, lawyers may be subject personally to sanctions for taking positions that are not well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

**B-4. NACC Version. Client Preferences.** The child's attorney should elicit the child's preferences in a developmentally appropriate manner, advise the child, and provide guidance. The child's attorney should represent the child's expressed preferences and follow the child's direction

throughout the course of litigation. Except as specifically provided herein. Client directed representation does not include "robotic allegiance" to each directive of the client. Client directed representation involves the attorney's counseling function and requires good communication between attorney and client. The goal of the relationship is an outcome which serves the client, mutually arrived upon by attorney and client, following exploration of all available options.

#### Commentary

The lawyer has a duty to explain to the child in a developmentally appropriate way such information as will assist the child in having maximum input in determination of the particular position at issue. The lawyer should inform the child of the relevant facts and applicable laws and the ramifications of taking various positions, which may include the impact of such decisions on other family members or on future legal proceedings. The lawyer may express an opinion concerning the likelihood of the court or other parties accepting particular positions. The lawyer may inform the child of an expert's recommendations germane to the issue. As in any other lawyer/client relationship, the lawyer may express his or her assessment of the case, the best position for the child to take, and the reasons underlying such recommendation. A child, however, may agree with the lawyer for inappropriate reasons. A lawyer must remain aware of the power dynamics inherent in adult/child relationships. Therefore, the lawyer needs to understand what the child knows and what factors are influencing the child's decision.

The lawyer should attempt to determine from the child's opinion and reasoning what factors have been most influential or have been confusing or glided over by the child when deciding the best time to express his or her assessment of the case. Consistent with the rules of confidentiality and with sensitivity to the child's privacy, the lawyer should consult with the child's therapist and other experts and obtain appropriate records. For example, a child's therapist may help the child to understand why an expressed position is dangerous, foolish, or not in the child's best interests. The therapist might also assist the lawyer in understanding the child's perspective, priorities, and individual needs. Similarly, significant persons in the child's life may educate the lawyer about the child's needs, priorities, and previous experiences.

The lawyer for the child has dual fiduciary duties to the child which must be balanced. On one hand, the lawyer has a duty to ensure that the child client is given the information necessary to make an informed decision, including advice and guidance. On the other hand, the lawyer has a duty not to overbear the will of the child. While the lawyer may attempt to persuade the child to accept a particular position, the lawyer may not advocate a position contrary to the child's expressed position except as provided by these Abuse and Neglect Standards or the Code of Professional Responsibility.

While the child is entitled to determine the overall objectives to be pursued, the child's attorney, as any adult's lawyer, may make certain decisions with respect to the manner of achieving those objectives, particularly with respect to procedural matters. These Abuse and Neglect Standards do not require the lawyer to consult with the child on matters which would not require consultation with an adult client. Further, the Standards do not require the child's attorney to discuss with the child issues for which it is not feasible to obtain the child's direction because of the child's developmental limitations, as with an infant or preverbal child.

While the default position for attorneys representing children under these standards is a client directed model, there will be occasions when the client directed model cannot serve the client and exceptions must be made. In such cases, the attorney may rely upon a substituted judgment process (similar to the role played by an attorney guardian ad litem), or call for the appointment of a guardian ad litem, depending upon the particular circumstances, as provided herein. To the extent that a child cannot express a preference, the child's attorney shall make a good faith effort to determine the child's wishes and advocate accordingly or request appointment of a guardian ad litem.

#### Commentary

There are circumstances in which a child is unable to express a position, as in the case of a preverbal child, or may not be capable of understanding the legal or factual issues involved. Under such circumstances, the child's attorney should continue to represent the child's legal interests and request appointment of a guardian ad litem. This limitation distinguishes the scope of independent decision-making of the child's attorney and a person acting as guardian ad litem.

To the extent that a child does not or will not express a preference about particular issues, the child's attorney should determine and advocate the child's legal interests. If the child cannot meaningfully participate in the formulation of the client's position (either because the child is preverbal, very young or for some other reason is incapable of judgment and meaningful communication), the attorney shall substitute his/her judgment for the child's and formulate and present a position which serves the child's interests. Such formulation must be accomplished through the use of objective criteria, rather than solely the life experience or instinct of the attorney.

The criteria shall include but not be limited to:

- a. Determine the child's circumstances through a full and efficient investigation;
- b. Assess the child at the moment of the determination;
- c. Examine each option in light of the two child welfare paradigms; psychological parent and family network; and
- d. Utilize medical, mental health, educational, social work and other experts.

#### Commentary

The following resources are recommended reading regarding assessing children's best interests:

1. The Best Interests of the Child, The Least Detrimental Alternative, the landmark trilogy of Beyond the Best Interests of the Child, Before the Best Interests of the Child, and In the Best Interests of the Child, by Goldstein, Solnit, Goldstein and Freud, Copyright 1996 The Free Press, New York, NY.
2. Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions, by Jean K. Peters, Copyright 1997, LEXIS Law Publishing, Charlottesville, VA.
3. Advocating for the Child in Protection Proceedings: A Handbook for Lawyers and Court Appointed Special Advocates, by Donald Duquette, Copyright Jossey-Bass, Inc., San Francisco, CA.

4. The Child's Attorney, by Ann M. Haralambie, Copyright 1993 American Bar Association, ABA Section of Family Law, Chicago, IL (Call 303/864-5320).

5. Handling Child Custody, Abuse and Adoption Cases, by Ann M. Haralambie, Second Edition Copyright 1993 Shepard's McGraw-Hill, Colorado Springs, CO, now published by Clark, Boardman, Callaghan, Deerfield, IL.

6. Department of Justice, National Institute of Justice, Research Preview, Jeremy Travis, 10 February 1996.

The child's failure to express a position is distinguishable from a directive that the lawyer not take a position with respect to certain issues. The child may have no opinion with respect to a particular issue, or may delegate the decision-making authority. For example, the child may not want to assume the responsibility of expressing a position because of loyalty conflicts or the desire not to hurt one of the other parties. The lawyer should clarify with the child whether the child wants the lawyer to take a position or remain silent with respect to that issue or wants the preference expressed only if the parent or other party is out of the courtroom. The lawyer is then bound by the child's directive. The position taken by the lawyer should not contradict or undermine other issues about which the child has expressed a preference.

It is possible for the child client to develop from a child incapable of meaningful participation in the litigation as set forth in section B-4 (2), to a child capable of such participation during the course of the attorney client relationship. In such cases, the attorney shall move from the substituted judgment exception of B-4 (2) to the default position of client directed representation described in section B-4 "Client Preferences."

If the child's attorney determines that the child's expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer's opinion of what would be in the child's interests), the lawyer may, after unsuccessful use of the attorney's counseling role, request appointment of a separate guardian ad litem and continue to represent the child's expressed preference, unless the child's position is prohibited by law or without any factual foundation. The child's attorney shall not reveal the basis of the request for appointment of a guardian ad litem which would compromise the child's position.

#### Commentary

One of the most difficult ethical issues for lawyers representing children occurs when the child is able to express a position and does so, but the lawyer believes that the position chosen is wholly inappropriate or could result in serious injury to the child. This is particularly likely to happen with respect to an abused child whose home is unsafe, but who desires to remain or return home. A child may desire to live in a dangerous situation because it is all he or she knows, because of a feeling of blame or of responsibility to take care of the parents, or because of threats. The child may choose to deal with a known situation rather than risk the unknown world of a foster home or other out-of-home placement. In most cases the ethical conflict involved in asserting a position which would seriously endanger the child, especially by disclosure of privileged information, can be resolved through the lawyer's counseling function. If the lawyer has taken the time to establish rapport with the child and gain that child's trust, it is likely that the lawyer will be able to persuade the child to abandon a dangerous position or at least identify an alternate course. If the child cannot be persuaded, the lawyer has a duty to

safeguard the child's interests by requesting appointment of a guardian ad litem, who will be charged with advocating the child's best interests without being bound by the child's direction. As a practical matter, this may not adequately protect the child if the danger to the child was revealed only in a confidential disclosure to the lawyer, because the guardian ad litem may never learn of the disclosed danger. Confidentiality is abrogated for various professionals by mandatory child abuse reporting laws. Some states abrogate lawyer-client privilege by mandating reports. States which do not abrogate the privilege may permit reports notwithstanding professional privileges. The policy considerations underlying abrogation apply to lawyers where there is a substantial danger of serious injury or death. Under such circumstances, the lawyer must take the minimum steps which would be necessary to ensure the child's safety, respecting and following the child's direction to the greatest extent possible consistent with the child's safety and ethical rules.

The lawyer may never counsel a client or assist a client in conduct the lawyer knows is criminal or fraudulent. Further, existing ethical rules requires the lawyer to disclose confidential information to the extent necessary to prevent the client from committing a criminal act likely to result in death or substantial bodily harm and permits the lawyer to reveal the intention of the client to commit a crime. While child abuse, including sexual abuse, are crimes, the child is presumably the victim, rather than the perpetrator of those crimes. Therefore, disclosure of confidences is designed to protect the client, rather than to protect a third party from the client. Where the child is in grave danger of serious injury or death, the child's safety must be the paramount concern. The lawyer is not bound to pursue the client's objectives through means not permitted by law and ethical rules. See DR-7-101(A)(1), Model Code of Professional Responsibility. Further, lawyers may be subject personally to sanctions for taking positions that are not well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

NOTE ON Section B-5: Section B-5 below describes the determination of the child's "legal interests" as used in Section B-4 (2) (ABA Version) which reads: "to the extent that a child does not or will not express a preference about particular issues, the child's attorney should determine and advocate the child's legal interests." Under the NACC version of B-4, however, the ABA's Section B-4 (2) has been deleted. Because the NACC version of B-4 does not use the term "legal interests," B-5 is irrelevant and has been deleted.

**B-5. Child's Interests.** The determination of the child's legal interests should be based on objective criteria as set forth in the law that are related to the purposes of the proceedings. The criteria should address the child's specific needs and preferences, the goal of expeditious resolution of the case so the child can remain or return home or be placed in a safe, nurturing, and permanent environment, and the use of the least restrictive or detrimental alternatives available.

#### Commentary

A lawyer who is required to determine the child's interests is functioning in a nontraditional role by determining the position to be advocated independently of the client. The lawyer should base the position, however, on objective criteria concerning the child's needs and interests, and not merely on the lawyer's personal values, philosophies, and experiences. The child's various needs and interests may be in conflict and must be weighed against each other. Even nonverbal children can communicate their needs and interests through their behaviors and developmental

levels. The lawyer may seek the advice and consultation of experts and other knowledgeable people in both determining and weighing such needs and interests. A child's legal interests may include basic physical and emotional needs, such as safety, shelter, food, and clothing. Such needs should be assessed in light of the child's vulnerability, dependence upon others, available external resources, and the degree of risk. A child needs family affiliation and stability of placement. The child's developmental level, including his or her sense of time, is relevant to an assessment of need. For example, a very young child may be less able to tolerate separation from a primary caretaker than an older child, and if separation is necessary, more frequent visitation than is ordinarily provided may be necessary. In general, a child prefers to live with known people, to continue normal activities, and to avoid moving. To that end, the child's attorney should determine whether relatives, friends, neighbors, or other people known to the child are appropriate and available as placement resources. The lawyer must determine the child's feelings about the proposed caretaker, however, because familiarity does not automatically confer positive regard. Further, the lawyer may need to balance competing stability interests, such as living with a relative in another town versus living in a foster home in the same neighborhood. The individual child's needs will influence this balancing task. In general, a child needs decisions about the custodial environment to be made quickly. Therefore, if the child must be removed from the home, it is generally in the child's best interests to have rehabilitative or reunification services offered to the family quickly. On the other hand, if it appears that reunification will be unlikely, it is generally in the child's best interests to move quickly toward an alternative permanent plan. Delay and indecision are rarely in a child's best interests. In addition to the general needs and interests of children, individual children have particular needs, and the lawyer must determine the child client's individual needs. There are few rules which apply across the board to all children under all circumstances.

### **C. ACTIONS TO BE TAKEN**

**C-1. Meet With Child.** Establishing and maintaining a relationship with a child is the foundation of representation. Therefore, irrespective of the child's age, the child's attorney should visit with the child prior to court hearings and when apprised of emergencies or significant events impacting on the child.

#### Commentary

Meeting with the child is important before court hearings and case reviews. In addition, changes in placement, school suspensions, in-patient hospitalizations, and other similar changes warrant meeting again with the child. Such in-person meetings allow the lawyer to explain to the child what is happening, what alternatives might be available, and what will happen next. This also allows the lawyer to assess the child's circumstances, often leading to a greater understanding of the case, which may lead to more creative solutions in the child's interest. A lawyer can learn a great deal from meeting with child clients, including a preverbal child.

**C-2. Investigate.** To support the client's position, the child's attorney should conduct thorough, continuing, and independent investigations and discovery which may include, but should not be limited to:

- (1) Reviewing the child's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case;

#### Commentary

Thorough, independent investigation of cases, at every stage of the proceedings, is a key aspect of providing competent representation to children. See, RESOURCE GUIDELINES, AT 23. The lawyer may need to use subpoenas or other discovery or motion procedures to obtain the relevant records, especially those records which pertain to the other parties. In some jurisdictions the statute or the order appointing the lawyer for the child includes provision for obtaining certain records.

- (2) Reviewing the court files of the child and siblings, case-related records of the social service agency and other service providers;

#### Commentary

Another key aspect of representing children is the review of all documents submitted to the court as well as relevant agency case files and law enforcement reports. Other relevant files that should be reviewed include those concerning child protective services, developmental disabilities, juvenile delinquency, mental health, and educational agencies. These records can provide a more complete context for the current problems of the child and family. Information in the files may suggest additional professionals and lay witnesses who should be contacted and may reveal alternate potential placements and services.

- (3) Contacting lawyers for other parties and nonlawyer guardians ad litem or court-appointed special advocates (CASA) for background information;

#### Commentary

The other parties' lawyers may have information not included in any of the available records. Further, they can provide information on their respective clients' perspectives. The CASA is typically charged with performing an independent factual investigation, getting to know the child, and speaking up to the court on the child's "best interests." Volunteer CASAs may have more time to perform their functions than the child's attorney and can often provide a great deal of information to assist the child's attorney. Where there appears to be role conflict or confusion over the involvement of both a child's attorney and CASA in the same case, there should be joint efforts to clarify and define mutual responsibilities.

- (4) Contacting and meeting with the parents/legal guardians/caretakers of the child, with permission of their lawyer;

#### Commentary

Such contact generally should include visiting the home, which will give the lawyer additional information about the child's custodial circumstances.

- (5) Obtaining necessary authorizations for the release of information;

#### Commentary

If the relevant statute or order appointing the lawyer for the child does not provide explicit authorization for the lawyer's obtaining necessary records, the lawyer should attempt to obtain authorizations for release of information from the agency and from the parents, with their lawyer's consent. Even if it is not required, an older child should be asked to sign authorizations.



for release of his or her own records, because such a request demonstrates the lawyer's respect for the client's authority over information.

- (6) Interviewing individuals involved with the child, including school personnel, child welfare case workers, foster parents and other caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses;

Commentary

In some jurisdictions the child's attorney is permitted free access to agency case workers. In others, contact with the case worker must be arranged through the agency's lawyer.

- (7) Reviewing relevant photographs, video or audio tapes and other evidence; and

Commentary

It is essential that the lawyer review the evidence personally, rather than relying on other parties' or counsel's descriptions and characterizations of the evidence.

- (8) Attending treatment, placement, administrative hearings, other proceedings involving legal issues, and school case conferences or staffings concerning the child as needed.

Commentary

While some courts will not authorize compensation for the child's attorney to attend such collateral meetings, such attendance is often very important. The child's attorney can present the child's perspective at such meetings, as well as gather information necessary to proper representation. In some cases the child's attorney can be pivotal in achieving a negotiated settlement of all or some issues. The child's attorney may not need to attend collateral meetings if another person involved in the case, such as a social worker who works the lawyer, can get the information or present the child's perspective.

**C-3. File Pleadings.** The child's attorney should file petitions, motions, responses or objections as necessary to represent the child. Relief requested may include, but is not limited to:

- (1) A mental or physical examination of a party or the child;
- (2) A parenting, custody or visitation evaluation;
- (3) An increase, decrease, or termination of contact or visitation;
- (4) Restraining or enjoining a change of placement;
- (5) Contempt for non-compliance with a court order;
- (6) Termination of the parent-child relationship;
- (7) Child support;
- (8) A protective order concerning the child's privileged communications or tangible or intangible property;
- (9) Request services for child or family; and
- (10) Dismissal of petitions or motions.

#### Commentary

Filing and arguing necessary motions is an essential part of the role of a child's attorney. Unless the lawyer is serving in a role which explicitly precludes the filing of pleadings, the lawyer should file any appropriate pleadings on behalf of the child, including responses to the pleadings of the other parties. The filing of such pleadings can ensure that appropriate issues are properly before the court and can expedite the court's consideration of issues important to the child's interests. In some jurisdictions, guardians ad litem are not permitted to file pleadings, in which case it should be clear to the lawyer that he or she is not the "child's attorney" as defined in these Standards.

**C-4. Request Services.** Consistent with the child's wishes, the child's attorney should seek appropriate services (by court order if necessary) to access entitlements, to protect the child's interests and to implement a service plan. These services may include, but not be limited to:

- (1) Family preservation-related prevention or reunification services;
- (2) Sibling and family visitation;
- (3) Child support;
- (4) Domestic violence prevention, intervention, and treatment;
- (5) Medical and mental health care;
- (6) Drug and alcohol treatment;
- (7) Parenting education;
- (8) Semi-independent and independent living services;
- (9) Long-term foster care;
- (10) Termination of parental rights action;
- (11) Adoption services;
- (12) Education;
- (13) Recreational or social services; and
- (14) Housing.

#### Commentary

The lawyer should request appropriate services even if there is no hearing scheduled. Such requests may be made to the agency or treatment providers, or if such informal methods are unsuccessful, the lawyer should file a motion to bring the matter before the court. In some cases the child's attorney should file collateral actions, such as petitions for termination of parental rights, if such an action would advance the child's interest and is legally permitted and justified. Different resources are available in different localities.

**C-5. Child With Special Needs.** Consistent with the child's wishes, the child's attorney should assure that a child with special needs receives appropriate services to address the physical, mental, or developmental disabilities. These services may include, but should not be limited to:

- (1) Special education and related services;
- (2) Supplemental security income (SSI) to help support needed services;
- (3) Therapeutic foster or group home care; and
- (4) Residential/in-patient and out-patient psychiatric treatment.

#### Commentary

There are many services available from extra-judicial, as well as judicial, sources for children with special needs. The child's attorney should be familiar with these other services and how to assure their availability for the client.

**C-6. Negotiate Settlements.** The child's attorney should participate in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child. The child's attorney should use suitable mediation resources.

#### Commentary

Particularly in contentious cases, the child's attorney may effectively assist negotiations of the parties and their lawyers by focusing on the needs of the child. If a parent is legally represented, it is unethical for the child's attorney to negotiate with a parent directly without the consent of the parent's lawyer. Because the court is likely to resolve at least some parts of the dispute in question based on the best interests of the child, the child's attorney is in a pivotal position in negotiation. Settlement frequently obtains at least short term relief for all parties involved and is often the best resolution of a case. The child's attorney, however, should not become merely a facilitator to the parties' reaching a negotiated settlement. As developmentally appropriate, the child's attorney should consult the child prior to any settlement becoming binding.

### **D. HEARINGS**

**D-1. Court Appearances.** The child's attorney should attend all hearings and participate in all telephone or other conferences with the court unless a particular hearing involves issues completely unrelated to the child.

**D-2. Client Explanation.** The child's attorney should explain to the client, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.

**D-3. Motions and Objections.** The child's attorney should make appropriate motions, including motions in limine and evidentiary objections, to advance the child's position at trial or during other hearings. If necessary, the child's attorney should file briefs in support of evidentiary issues. Further, during all hearings, the child's attorney should preserve legal issues for appeal, as appropriate.

**D-4. Presentation of Evidence.** The child's attorney should present and cross examine witnesses, offer exhibits, and provide independent evidence as necessary.

#### Commentary

The child's position may overlap with the positions of one or both parents, third-party caretakers, or a child protection agency. Nevertheless, the child's attorney should be prepared to participate fully in every hearing and not merely defer to the other parties. Any identity of position should be based on the merits of the position (consistent with Standard B-6), and not a mere endorsement of another party's position.

**D-5. Child at Hearing.** In most circumstances, the child should be present at significant court hearings, regardless of whether the child will testify.

### Commentary

A child has the right to meaningful participation in the case, which generally includes the child's presence at significant court hearings. Further, the child's presence underscores for the judge that the child is a real party in interest in the case. It may be necessary to obtain a court order or writ of habeas corpus ad testificandum to secure the child's attendance at the hearing.

A decision to exclude the child from the hearing should be made based on a particularized determination that the child does not want to attend, is too young to sit through the hearing, would be severely traumatized by such attendance, or for other good reason would be better served by nonattendance. There may be other extraordinary reasons for the child's non-attendance. The lawyer should consult the child, therapist, caretaker, or any other knowledgeable person in determining the effect on the child of being present at the hearing. In some jurisdictions the court requires an affirmative waiver of the child's presence if the child will not attend. Even a child who is too young to sit through the hearing may benefit from seeing the courtroom and meeting, or at least seeing, the judge who will be making the decisions.

The lawyer should provide the court with any required notice that the child will be present. Concerns about the child being exposed to certain parts of the evidence may be addressed by the child's temporary exclusion from the court room during the taking of that evidence, rather than by excluding the child from the entire hearing. The lawyer should ensure that the state/custodian meets its obligation to transport the child to and from the hearing. Similarly, the lawyer should ensure the presence of someone to accompany the child any time the child is temporarily absent from the hearing.

**D-6. Whether Child Should Testify.** The child's attorney should decide whether to call the child as a witness. The decision should include consideration of the child's need or desire to testify, any repercussions of testifying, the necessity of the child's direct testimony, the availability of other evidence or hearsay exceptions which may substitute for direct testimony by the child, and the child's developmental ability to provide direct testimony and withstand possible cross-examination. Ultimately, the child's attorney is bound by the child's direction concerning testifying.

### Commentary

There are no blanket rules regarding a child's testimony. While testifying is undoubtedly traumatic for many children, it is therapeutic and empowering for others. Therefore, the decision about the child's testifying should be made individually, based on the circumstances of the individual child and the individual case. The child's therapist, if any, should be consulted both with respect to the decision itself and assistance with preparation. In the absence of compelling reasons, a child who has a strong desire to testify should be called to do so. If the child should not wish to testify or would be harmed by being forced to testify, the lawyer should seek a stipulation of the parties not to call the child as a witness or seek a protective order from the court. If the child is compelled to testify, the lawyer should seek to minimize the adverse consequences by seeking any appropriate accommodations permitted by local law, such as having the testimony taken informally, in chambers, without presence of the parents. Whether the in-chambers testimony will be shared with others, such as parents who might be excluded from chambers, before agreeing to this forum. The lawyer should also prepare the child for the possibility that the judge may render a decision against the child's wishes which will not be the child's fault.

**D-7. Child Witness.** The child's attorney should prepare the child to testify. This should include familiarizing the child with the courtroom, court procedures, and what to expect during direct and cross-examination and ensuring that testifying will cause minimum harm to the child.

Commentary

The lawyer's preparation of the child to testify should include attention to the child's developmental needs and abilities as well as to accommodations which should be made by the court and other lawyers. The lawyer should seek any necessary assistance from the court, including location of the testimony (in chambers, at a small table etc.), determination of who will be present, and restrictions on the manner and phrasing of questions posed to the child. The accuracy of children's testimony is enhanced when they feel comfortable. Courts have permitted support persons to be present in the courtroom, sometimes even with the child sitting on the person's lap to testify. Because child abuse and neglect cases are often closed to the public, special permission may be necessary to enable such persons to be present during hearings. Further, where the rule sequestering witnesses has been invoked, the order of witnesses may need to be changed or an exemption granted where the support person also will be a witness. The child should be asked whether he or she would like someone to be present, and if so, whom the child prefers. Typical support persons include parents, relatives, therapists, Court Appointed Special Advocates (CASA), social workers, victim-witness advocates, and members of the clergy. For some, presence of the child's attorney provides sufficient support

**D-8. Questioning the Child.** The child's attorney should seek to ensure that questions to the child are phrased in a syntactically and linguistically appropriate manner.

Commentary

The phrasing of questions should take into consideration the law and research regarding children's testimony, memory, and suggestibility. The information a child gives in interviews and during testimony is often misleading because the adults have not understood how to ask children developmentally appropriate questions and how to interpret their answers properly. The child's attorney must become skilled at recognizing the child's developmental limitations. It may be appropriate to present expert testimony on the issue and even to have an expert present during a young child's testimony to point out any developmentally inappropriate phrasing.

**D-9. Challenges to Child's Testimony/Statements.** The child's competency to testify, or the reliability of the child's testimony or out-of-court statements, may be called into question. The child's attorney should be familiar with the current law and empirical knowledge about children's competency, memory, and suggestibility and, where appropriate, attempt to establish the competency and reliability of the child.

Commentary

Many jurisdictions have abolished presumptive ages of competency. The jurisdictions which have rejected presumptive ages for testimonial competency have applied more flexible, case-by-case analyses. Competency to testify involves the abilities to perceive and relate. If necessary, the child's attorney should present expert testimony to establish competency or reliability or to rehabilitate any impeachment of the child on those bases.

## **D-10 Omitted.**

**D-11. Conclusion of Hearing.** If appropriate, the child's attorney should make a closing argument, and provide proposed findings of fact and conclusions of law. The child's attorney should ensure that a written order is entered.

### Commentary

One of the values of having a trained child's attorney is such a lawyer can often present creative alternative solutions to the court. Further, the child's attorney is able to argue the child's interests from the child's perspective, keeping the case focused on the child's needs and the effect of various dispositions on the child.

**D-12. Expanded Scope of Representation.** The child's attorney may request authority from the court to pursue issues on behalf of the child, administratively or judicially, even if those issues do not specifically arise from the court appointment. For example:

- (1) Child support;
- (2) Delinquency or status offender matters;
- (3) SSI and other public benefits;
- (4) Custody;
- (5) Guardianship;
- (6) Paternity;
- (7) Personal injury;
- (8) School/education issues, especially for a child with disabilities;
- (9) Mental health proceedings;
- (10) Termination of parental rights; and
- (11) Adoption.

### Commentary

The child's interests may be served through proceedings not connected with the case in which the child's attorney is participating. In such cases the lawyer may be able to secure assistance for the child by filing or participating in other actions. With an older child or a child with involved parents, the child's attorney may not need court authority to pursue other services. For instance, federal law allows the parent to control special education. A Unified Child and Family Court Model would allow for consistency of representation between related court proceedings, such as mental health or juvenile justice.

**D-13. Obligations after Disposition.** The child's attorney should seek to ensure continued representation of the child at all further hearings, including at administrative or judicial actions that result in changes to the child's placement or services, so long as the court maintains its jurisdiction.

### Commentary

Representing a child should reflect the passage of time and the changing needs of the child. The bulk of the child's attorney's work often comes after the initial hearing, including ongoing permanency planning issues, six month reviews, case plan reviews, issues of termination, and so forth. The average length of stay in foster care is over five years in some jurisdictions. Often a child's case workers, therapists, other service providers or even placements change while the

case is still pending. Different judges may hear various phases of the case. The child's attorney may be the only source of continuity for the child. Such continuity not only provides the child with a stable point of contact, but also may represent the institutional memory of case facts and procedural history for the agency and court. The child's attorney should stay in touch with the child, third party caretakers, caseworkers, and service providers throughout the term of appointment to ensure that the child's needs are met and that the case moves quickly to an appropriate resolution.

Generally it is preferable for the lawyer to remain involved so long as the case is pending to enable the child's interest to be addressed from the child's perspective at all stages. Like the active representation as long as the court retains jurisdiction over the child. To the extent that these are separate proceedings in some jurisdictions, the child's attorney should seek reappointment. Where reappointment is not feasible, the child's attorney should provide records and information about the case and cooperate with the successor to ensure continuity of representation.

## **E. POST-HEARING**

**E-1. Review of Court's Order.** The child's attorney should review all written orders to ensure that they conform with the court's verbal orders and statutorily required findings and notices.

**E-2. Communicate Order to Child.** The child's attorney should discuss the order and its consequences with the child.

### Commentary

The child is entitled to understand what the court has done and what that means to the child, at least with respect to those portions of the order that directly affect the child. Children may assume that orders are final and not subject to change. Therefore, the lawyer should explain whether the order may be modified at another hearing, or whether the actions of the parties may affect how the order is carried out. For example, an order may permit the agency to return the child to the parent if certain goals are accomplished.

**E-3. Implementation.** The child's attorney should monitor the implementation of the court's orders and communicate to the responsible agency and, if necessary, the court, any non-compliance.

### Commentary

The lawyer should ensure that services are provided and that the court's orders are implemented in a complete and timely fashion. In order to address problems with implementation, the lawyer should stay in touch with the child, case worker, third party caretakers, and service providers between review hearings. The lawyer should consider filing any necessary motions, including those for civil or criminal contempt, to compel implementation.

## **F. APPEAL**

**F-1. Decision to Appeal.** The child's attorney should consider and discuss with the child, as developmentally appropriate, the possibility of an appeal. If after such consultation, the child wishes to appeal the order, and the appeal has merit, the lawyer should take all steps necessary

to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the child during the pendency of the appeal.

Commentary

The lawyer should explain to the child not only the legal possibility of an appeal, but also the ramifications of filing an appeal, including the potential for delaying implementation of services or placement options. The lawyer should also explain whether the trial court's orders will be stayed pending appeal and what the agency and trial court may do pending a final decision.

**F-2. Withdrawal.** If the child's attorney determines that an appeal would be frivolous or that he or she lacks the necessary experience or expertise to handle the appeal, the lawyer should notify the court and seek to be discharged or replaced.

**F-3. Participation in Appeal.** The child's attorney should participate in an appeal filed by another party unless discharged.

Commentary

The child's attorney should take a position in any appeal filed by the parent, agency, or other party. In some jurisdictions, the lawyer's appointment does not include representation on appeal. If the child's interests are affected by the issues raised in the appeal, the lawyer should seek an appointment on appeal or seek appointment of appellate counsel to represent the child's position in the appeal.

**F-4. Conclusion of Appeal.** When the decision is received, the child's attorney should explain the outcome of the case to the child.

Commentary

As with other court decisions, the lawyer should explain in terms the child can understand the nature and consequences of the appellate decision. In addition, the lawyer should explain whether there are further appellate remedies and what more, if anything, will be done in the trial court following the decision.

**F-5. Cessation of Representation.** The child's attorney should discuss the end of the legal representation and determine what contacts, if any, the child's attorney and the child will continue to have.

Commentary

When the representation ends, the child's lawyer should explain in a developmentally appropriate manner why the representation is ending and how the child can obtain assistance in the future should it become necessary. It is important for there to be closure between the child and the lawyer.



## PART II ENHANCING THE JUDICIAL ROLE IN CHILD REPRESENTATION

### **PREFACE**

Enhancing the legal representation provided by court-appointed lawyers for children has long been a special concern of the American Bar Association. Yet, no matter how carefully a bar association, legislature, or court defines the duties of lawyers representing children, practice will only improve if judicial administrators and trial judges play a stronger role in the selection, training, oversight, and prompt payment of court-appointed lawyers in child abuse/neglect and child custody/visitation cases. The importance of the court's role in helping assure competent representation of children is noted in the JUVENILE JUSTICE STANDARDS RELATING TO COURT ORGANIZATION AND ADMINISTRATION (1980) which state in the Commentary to 3.4D that effective representation of parties is "essential" and that the presiding judge of a court "might need to use his or her position to achieve" it. These Abuse and Neglect Standards, like the RESOURCE GUIDELINES, recognize that the courts have a great ability to influence positively the quality of counsel through setting judicial prerequisites for lawyer appointments including requirements for experience and training, imposing sanctions for violation of standards (such as terminating a lawyer's appointment to represent a specific child, denying further appointments, or even fines or referrals to the state bar committee for professional responsibility). The following Standards are intended to assist the judiciary in using its authority to accomplish the goal of quality representation for all children before the court in abuse/neglect related proceedings.

### **G. THE COURT'S ROLE IN STRUCTURING CHILD REPRESENTATION**

**G-1. Assuring Independence of the Child's Attorney.** The child's attorney should be independent from the court, court services, the parties, and the state.

#### Commentary

To help assure that the child's attorney is not compromised in his or her independent action, these Standards propose that the child's lawyer be independent from other participants in the litigation. "Independence" does not mean that a lawyer may not receive payment from a court, a government entity (e.g., program funding from social services or justice agencies), or even from a parent, relative, or other adult so long as the lawyer retains the full authority for independent action. For ethical conflict reasons, however, lawyers should never accept compensation as retained counsel for the child from a parent accused of abusing or neglecting the child. The child's attorney should not prejudge the case. The concept of independence includes being free from prejudice and other limitations to uncompromised representation.

JUVENILE JUSTICE STANDARD § 2.1(d) states that plans for providing counsel for children "must be designed to guarantee the professional independence of counsel and the integrity of the lawyer-client relationship." The Commentary strongly asserts there is "no justification for . . . judicial preference" to compromise a lawyer's relationship with the child client and notes the "willingness of some judges to direct lawyers' performance and thereby compromise their independence."

**G-2. Establishing Uniform Representation Rules.** The administrative office for the state trial, family, or juvenile court system should cause to be published and disseminated to all relevant

courts a set of uniform, written rules and procedures for court-appointed lawyers for minor children.

#### Commentary

Although uniform rules of court to govern the processing of various types of child-related judicial proceedings have become common, it is still rare for those rules to address comprehensively the manner and scope of representation for children. Many lawyers representing children are unclear as to the court's expectations. Courts in different communities, or even judges within the same court, may have differing views regarding the manner of child representation. These Standards promote statewide uniformity by calling for written publication and distribution of state rules and procedures for the child's attorney.

**G-3. Enhancing Lawyer Relationships with Other Court Connected Personnel.** Courts that operate or utilize Court Appointed Special Advocate (CASA) and other nonlawyer guardians ad litem, and courts that administer nonjudicial foster care review bodies, should assure that these programs and the individuals performing those roles are trained to understand the role of the child's attorney. There needs to be effective coordination of their efforts with the activities of the child's attorney, and they need to involve the child's attorney in their work. The court should require that reports from agencies be prepared and presented to the parties in a timely fashion.

#### Commentary

Many courts now regularly involve nonlawyer advocates for children in various capacities. Some courts also operate programs that, outside of the courtroom, review the status of children in foster care or other out-of-home placements. It is critical that these activities are appropriately linked to the work of the child's attorney, and that the court through training, policies, and protocols helps assure that those performing the nonlegal tasks (1) understand the importance and elements of the role of the child's attorney, and (2) work cooperatively with such lawyers. The court should keep abreast of all the different representatives involved with the child, the attorney, social worker for government or private agency, CASA volunteer, guardian ad litem, school intermediary, counselors, etc.

### **H. THE COURT'S ROLE IN APPOINTING THE CHILD'S ATTORNEY**

**H-1. Timing of Appointments.** The child's attorney should be appointed immediately after the earliest of:

- (1) The involuntary removal of the child for placement due to allegations of neglect, abuse or abandonment;
- (2) The filing of a petition alleging child abuse and neglect, for review of foster care placement, or for termination of parental rights; or
- (3) Allegations of child maltreatment, based upon sufficient cause, are made by a party in the context of proceedings that were not originally initiated by a petition alleging child maltreatment.

### Commentary

These ABUSE AND NEGLECT STANDARDS take the position that courts must assure the appointment of a lawyer for a child as soon as practical (ideally, on the day the court first has jurisdiction over the case, and hopefully, no later than the next business day). The three situations are described separately because:

- (1) A court may authorize, or otherwise learn of, a child's removal from home prior to the time a formal petition is instituted. Lawyer representation of (and, ideally, contact with) the child prior to the initial court hearing following removal (which in some cases may be several days) is important to protect the child's interests;
- (2) Once a petition has been filed by a government agency (or, where authorized, by a hospital or other agency with child protection responsibilities), for any reason related to a child's need for protection, the child should have prompt access to a lawyer; and
- (3) There are cases (such as custody, visitation, and guardianship disputes and family-related abductions of children) where allegations, with sufficient cause, of serious physical abuse, sexual molestation, or severe neglect of a child are presented to the court not by a government agency (i.e., child protective services) but by a parent, guardian, or other relative. The need of a child for competent, independent representation by a lawyer is just as great in situation (3) as with cases in areas (1) and (2).

**H-2. Entry of Compensation Orders.** At the time the court appoints a child's attorney, it should enter a written order addressing compensation and expense costs for that lawyer, unless these are otherwise formally provided for by agreement or contract with the court, or through another government agency.

### Commentary

Compensation and expense reimbursement of individual lawyers should be addressed in a specific written court order is based on a need for all lawyers representing maltreated children to have a uniform understanding of how they will be paid. Commentary to Section 2.1(b) of the JUVENILE JUSTICE STANDARDS observes that it is common for court-appointed lawyers to be confused about the availability of reimbursement of expenses for case-related work.

**H-3. Immediate Provision of Access.** Unless otherwise provided for, the court should upon appointment of a child's attorney, enter an order authorizing that lawyer access between the child and the lawyer and to all privileged information regarding the child, without the necessity of a further release. The authorization should include, but not be limited to: social services, psychiatric, psychological treatment, drug and alcohol treatment, medical, evaluation, law enforcement, and school records.

### Commentary

Because many service providers do not understand or recognize the nature of the role of the lawyer for the child or that person's importance in the court proceeding, these Standards call for the routine use of a written court order that clarifies the lawyers right to contact with their child client and perusal of child-related records. Parents, other caretakers, or government social service agencies should not unreasonably interfere with a lawyer's ability to have face-to-face contact with the child client nor to obtain relevant information about the child's social services, education, mental health, etc. Such interference disrupts the lawyer's ability to control the representation and undermines his or her independence as the child's legal representative.

**H-4. Lawyer Eligibility for and Method of Appointment.** Where the court makes individual appointment of counsel, unless impractical, before making the appointment, the court should determine that the lawyer has been trained in representation of children and skilled in litigation (or is working under the supervision of an lawyer who is skilled in litigation). Whenever possible, the trial judge should ensure that the child's attorney has had sufficient training in child advocacy and is familiar with these Standards. The trial judge should also ensure that (unless there is specific reason to appoint a specific lawyer because of their special qualifications related to the case, or where a lawyer's current caseload would prevent them from adequately handling the case) individual lawyers are appointed from the ranks of eligible members of the bar under a fair, systematic, and sequential appointment plan.

Commentary

The JUVENILE JUSTICE STANDARDS § 2.2(c) provides that where counsel is assigned by the court, this lawyer should be drawn from "an adequate pool of competent attorneys." In general, such competency can only be gained through relevant continuing legal education and practice-related experience. Those Standards also promote the use of a rational court appointment process drawing from the ranks of qualified lawyers. The Abuse and Neglect Standards reject the concept of ad hoc appointments of counsel that are made without regard to prior training or practice

**H-5. Permitting Child to Retain a Lawyer.** The court should permit the child to be represented by a retained private lawyer if it determines that this lawyer is the child's independent choice, and such counsel should be substituted for the appointed lawyer. A person with a legitimate interest in the child's welfare may retain private counsel for the child and/or pay for such representation, and that person should be permitted to serve as the child's attorney, subject to approval of the court. Such approval should not be given if the child opposes the lawyer's representation or if the court determines that there will be a conflict of interest. The court should make it clear that the person paying for the retained lawyer does not have the right to direct the representation of the child or to receive privileged information about the case from the lawyer.

Commentary

Although such representation is rare, there are situations where a child, or someone acting on a child's behalf, seeks out legal representation and wishes that this lawyer, rather than one appointed by the court under the normal appointment process, be recognized as the sole legal representative of the child. Sometimes, judges have refused to accept the formal appearances filed by such retained lawyers. These Standards propose to permit, under carefully scrutinized conditions, the substitution of a court-appointed lawyer with the retained counsel for a child.

**I. THE COURT'S ROLE IN LAWYER TRAINING**

**I-1. Judicial Involvement in Lawyer Training.** Trial judges who are regularly involved in child-related matters should participate in training for the child's attorney conducted by the courts, the bar, or any other group.

Commentary

JUVENILE JUSTICE STANDARDS § 2.1 indicates that it is the responsibility of the courts (among

others) to ensure that competent counsel are available to represent children before the courts. That Standard further suggests that lawyers should "be encouraged" to qualify themselves for participation in child-related cases "through formal training." The Abuse and Neglect Standards go further by suggesting that judges should personally take part in educational programs, whether or not the court conducts them. The National Council of Juvenile and Family Court Judges has suggested that courts can play an important role in training lawyers in child abuse and neglect cases, and that judges and judicial officers can volunteer to provide training and publications for continuing legal education seminars.

**I-2. Content of Lawyer Training.** The appropriate state administrative office of the trial, family, or juvenile courts should provide educational programs, live or on tape, on the role of a child's attorney.

At a minimum, the requisite training should include:

- (1) Information about relevant federal and state laws and agency regulations;
- (2) Information about relevant court decisions and court rules;
- (3) Overview of the court process and key personnel in child-related litigation;
- (4) Description of applicable guidelines and standards for representation;
- (5) Focus on child development, needs, and abilities;
- (6) Information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in his or her home;
- (7) Information concerning family dynamics and dysfunction including substance abuse, and the use of kinship care;
- (8) Information on accessible child welfare, family preservation, medical, educational, and mental health resources for child clients and their families, including placement, evaluation/diagnostic, and treatment services; the structure of agencies providing such services as well as provisions and constraints related to agency payment for services; and,
- (9) Provision of written material (e.g., representation manuals, checklists, sample forms), including listings of useful material available from other sources.

#### Commentary

The ABUSE AND NEGLECT STANDARDS take the position that it is not enough that judges mandate the training of lawyers, or that judges participate in such training. Rather, they call upon the courts to play a key role in training by actually sponsoring (e.g., funding) training opportunities. The pivotal nature of the judiciary's role in educating lawyers means that courts may, on appropriate occasions, stop the hearing of cases on days when training is held so that both lawyers and judges may freely attend without docket conflicts. The required elements of training are based on a review of well-regarded lawyer training offered throughout the country, RESOURCE GUIDELINES, and many existing manuals that help guide lawyers in representing children.

**I-3. Continuing Training for Lawyers.** The court system should also assure that there are periodic opportunities for lawyers who have taken the "basic" training to receive continuing and "new developments" training.

#### Commentary

Many courts and judicial organizations recognize that rapid changes occur because of new federal and state legislation, appellate court decisions, systemic reforms, and responses to professional literature. Continuing education opportunities are critical to maintain a high level of performance. These Standards call for courts to afford these "advanced" or "periodic" training to lawyers who represent children in abuse and neglect related cases.

**I-4. Provision of Mentorship Opportunities.** Courts should provide individual court-appointed lawyers who are new to child representation the opportunity to practice under the guidance of a senior lawyer mentor.

Commentary In addition to training, particularly for lawyers who work as sole practitioners or in firms that do not specialize in child representation, courts can provide a useful mechanism to help educate new lawyers for children by pairing them with more experienced advocates. One specific thing courts can do is to provide lawyers new to representing children with the opportunity to be assisted by more experienced lawyers in their jurisdiction. Some courts actually require lawyers to second chair cases before taking an appointment to a child abuse or neglect case

### **J. THE COURT'S ROLE IN LAWYER COMPENSATION**

**J-1. Assuring Adequate Compensation.** A child's attorney should receive adequate and timely compensation throughout the term of appointment that reflects the complexity of the case and includes both in court and out-of-court preparation, participation in case reviews and post dispositional hearings, and involvement in appeals. To the extent that the court arranges for child representation through contract or agreement with a program in which lawyers represent children, the court should assure that the rate of payment for these legal services is commensurate with the fees paid to equivalently experienced individual court-appointed lawyers who have similar qualifications and responsibilities.

#### Commentary

JUVENILE JUSTICE STANDARDS § 2.1(b) recognize that lawyers for children should be entitled to reasonable compensation for both time and services performed "according to prevailing professional standards," which takes into account the "skill required to perform...properly," and which considers the need for the lawyer to perform both counseling and resource identification/evaluation activities. The RESOURCE GUIDELINES, at 22, state that it is necessary to provide reasonable compensation for improved lawyer representation of children and that where necessary judges should urge state legislatures and local governing bodies to provide sufficient funding for quality legal representation. Because some courts currently compensate lawyers only for time spent in court at the adjudicative or initial disposition stage of cases, these Standards clarify that compensation is to be provided for out-of-court preparation time, as well as for the lawyer's involvement in case reviews and appeals. "Out-of-court preparation" may include, for example, a lawyer's participation in social services or school case conferences relating to the client.

These Standards also call for the level of compensation where lawyers are working under contract with the court to provide child representation to be comparable with what experienced individual counsel would receive from the court. Although courts may, and are encouraged to, seek high quality child representation through enlistment of special children's law offices, law

firms, and other programs, the motive should not be a significantly different (i.e., lower) level of financial compensation for the lawyers who provide the representation.

**J-2. Supporting Associated Costs.** The child's attorney should have access to (or be provided with reimbursement for experts, investigative services, paralegals, research costs, and other services, such as copying medical records, long distance phone calls, service of process, and transcripts of hearings as requested.

Commentary

The ABUSE AND NEGLECT STANDARDS expand upon JUVENILE JUSTICE STANDARDS § 2.1(c) which recognizes that a child's attorney should have access to "investigatory, expert and other nonlegal services" as a fundamental part of providing competent representation.

**J-3. Reviewing Payment Requests.** The trial judge should review requests for compensation for reasonableness based upon the complexity of the case and the hours expended.

Commentary

These Standards implicitly reject the practice of judges arbitrarily "cutting down" the size of lawyer requests for compensation and would limit a judge's ability to reduce the amount of a per/case payment request from a child's attorney unless the request is deemed unreasonable based upon two factors: case complexity and time spent.

**J-4. Keeping Compensation Levels Uniform.** Each state should set a uniform level of compensation for lawyers appointed by the courts to represent children. Any per/hour level of compensation should be the same for all representation of children in all types of child abuse and neglect-related proceedings.

Commentary

These Standards implicitly reject the concept (and practice) of different courts within a state paying different levels of compensation for lawyers representing children. They call for a uniform approach, established on a statewide basis, towards the setting of payment guidelines.

## **K. THE COURT'S ROLE IN RECORD ACCESS BY LAWYERS**

**K-1. Authorizing Lawyer Access.** The court should enter an order in child abuse and neglect cases authorizing the child's attorney access to all privileged information regarding the child, without the necessity for a further release.

Commentary

This Standard requires uniform judicial assistance to remove a common barrier to effective representation, i.e., administrative denial of access to significant records concerning the child. The language supports the universal issuance of broadly-worded court orders that grant a child's attorney full access to information (from individuals) or records (from agencies) concerning the child.

**K-2. Providing Broad Scope Orders.** The authorization order granting the child's attorney access to records should include social services, psychiatric, psychological treatment, drug and alcohol

treatment, medical, evaluation, law enforcement, school, and other records relevant to the case.

Commentary

This Standard further elaborates upon the universal application that the court's access order should be given, by listing examples of the most common agency records that should be covered by the court order. unable to abide by Part I of these Standards.

Commentary

- (1) Expand, with the aid of the bar and children's advocacy groups, the size of the list from which appointments are made;
- (3) Recruit law firms or special child advocacy law programs to engage in child representation;
- (4) Review any court contracts/agreements for child representation and amend them accordingly, so that additional lawyers can be compensated for case representation time; and
- (5) Alert state judicial, executive, and legislative branch leaders that excessive caseloads jeopardize the ability of lawyers to competently represent children pursuant to state-approved guidelines and seek funds for increasing the number of lawyers available to represent children. related judicial proceedings will be represented at all stages of these proceedings by a fully trained, monitored, and evaluated guardian ad litem in addition to appointed legal counsel.





## Children's Bill of Rights During Family Conflicts

As a child I have the following rights and I need you, my Mom and Dad, to respect these rights:

1. The right not to be asked to "choose sides" between my Mom and Dad.
2. The right to express, or not express, my feelings.
3. The right to have a unique relationship with each of my parents without the other making me feel guilty about it.
4. The right to freely and privately communicate with both my Mom and Dad, and not to be asked questions by either parent about the other.
5. The right to be treated as a person and not as a pawn, possession or negotiating chip.
6. The right not to be expected to be a spy or messenger.
7. The right not to hear either Mom or Dad say bad things about the other.
8. The right to have my life change as little as possible while my Mom and Dad work out their problems.
9. The right to have my own life and remain a child.
10. The right to expect you to be my parents, not my friend.
11. The right not to be expected to be my parents confidante or companion.
12. The right to have what is in my best interest protected at all times.

I agree:

Thank you, I love  
you both.

I agree:

\_\_\_\_\_  
Mom

\_\_\_\_\_  
Child

\_\_\_\_\_  
Dad

Prepared and produced by Child Centered Solutions.  
For information, please contact us at (503) 546-6383 or [info@childcenteredsolutions.org](mailto:info@childcenteredsolutions.org)  
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Via USPS and Electronic Mail

September 15, 2021

Mother of Jane  
100 NE Address Lane.  
Portland, Oregon 12345

Father of Jane  
200 SW Address Lane  
Portland, Oregon 12345

Re: *In the Matter of the Marriage of Mother and Father*  
Multnomah County Case No. 0000001

Dear Mother and Father:

As you know, I have been appointed by Judge \_\_\_\_\_ of the Circuit Court of Multnomah County to represent your child, Jane, in the above-captioned pending proceedings. The fact that there is a legal proceeding that involves issues concerning your child, and that your child has been appointed an attorney, invariably puts your child in the middle of conflict between both parents. As your child's advocate, one of my functions is to remove her from that middle position while advocating on her behalf.

It is up to a judge, with input from a child's attorney, therapists (if relevant), other experts, and any other attorneys in this case, to decide the issues of custody and/or parenting time. *It is not your children's role to decide those issues, though her positions and input are at the forefront of my representation in this matter.* As Jane's advocate, I will attempt to shield her from having to make and/or contribute to the making of major decisions bearing on the contested issues in this litigation to the extent possible and/or necessary, and from having to be involved in the "litigation" side of this case out of concern for ongoing exposure to legal and parental conflict and the impact of this conflict on children's healthy development.

**As your child's advocate, part of my job is to act in her best interest:**

I will meet with your child in an effort to learn about her and her interests. Due to social distancing restrictions currently in place, much of my meetings with Jane will occur virtually. I will talk with Jane about her life including her general interests and experiences, i.e. her classes, extracurricular activities, friendships, what she does with each parent in their separate households, etc.

A primary objective of my role is to advocate for Jane's position to the extent that this is possible and to the extent it conforms with my overall assessment of her understanding of her own best interests. The pending proceedings have been brought by the adults and I will do everything possible to protect Jane from any direct involvement in this case, including testimony at a hearing. However, given Jane's age and capacity, my role is to advocate clearly for Jane's current positions in relation to the issues currently presented in this case that affect both parties and their parenting time and decision-making authority over Jane.

**In my role to protect your child from adult conflict and litigation:**

I will be frank with the parents about issues and how they are affecting Jane;

I will make suggestions and if necessary, make recommendations about ways to resolve issues.

If necessary, I will suggest or even set certain rules and/or boundaries or request that the court impose such rules or boundaries on my client's behalf.

I will work to make sure neither parent discusses this case with Jane beyond discussions that best serve Jane's best interests and advance her positions. I will also work to ensure that Jane is not used as a messenger between the parents as a part of this conflict, that neither parent denigrates the other parent in front of Jane, and/or attempts to involve Jane unnecessarily in the issues of this case for personal or legal gain. I ask that each parent respects these concerns and priorities and cooperates to keep Jane out of the proceedings and adult conflict.

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September 15, 2021

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I will work to make sure Jane understands her relationship with her parents is separate from her parents' relationship with each other and the positions they have taken in this case.

When animosity between the parents continues undiminished, children are inevitably caught in the middle. Both parents need to step back from that animosity and neutralize it for your child's sake. Every time you comment negatively on the other parent to Jane, ask yourself what that is doing to your child. Because a child is one-half of each parent, when you comment negatively regarding the other parent, you are sending a message to your child that one-half of them is "bad" or reinforcing a negative narrative that could inorganically affect your child's natural love and affection for their other parent.

Negative comments may be subtle – when you roll your eyes or say "that sounds just like something your mother/father would do", or "if only he or she would be more involved," you are telling your child that you disapprove of the other parent and tacitly encourage or at least suggest that this behavior is encouraged or even required from them as well. This behavior creates loyalty conflicts for your child and ultimately creates stress and burdens the child's natural attachment to both parents. This can occur even when the child maintains a historically or notoriously poor or negative relationship with the other parent, or when both parent and child have experienced the negative impacts of their relationship with the other parent together.

It is important to acknowledge that your feelings towards your ex-spouse are not necessarily the feelings of your child toward her parent. Learn to step back from your own issues towards each other. You may be divorced. You should not expect your child to divorce his or her parent or to be a confidant in your relationship struggles with the other parent.

I know the parents I work with love their children and want what is best for them. In my role as Jane's attorney, I support those relationships and also work to promote her best interests and stated desires supportive of her best interests. I maintain strict confidentiality with Jane as her advocate and cannot and will not provide you with legal advice in this case. If you have or intend to retain legal representation in this matter, please have your lawyer contact me as soon as possible upon hire. As with any attorney-

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September 15, 2021

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client relationship, Jane has the ultimate authority to disclose or retain attorney-client confidences with me. At no time shall you solicit Jane to engage in disclosing attorney-client privileged information nor attempt to solicit further information subject to this privilege in the event of isolated disclosure by Jane.

I have enclosed with this letter a questionnaire which I ask both parents to complete at their earliest convenience and scan or mail back to me upon completion. This questionnaire aids in my understanding of your positions, history and ongoing concerns in relation to my client. Pursuant to my Order of Appointment, I have also enclosed a copy of a general Release of Information document which I ask you to date and sign and return to me by mail or scanned attachment via e-mail at your earliest convenience.

Please contact me by e-mail at [erin@msbfamilylaw.com](mailto:erin@msbfamilylaw.com) if you have any questions.

Sincerely,

Erin K. Morris  
Court-Appointed Counsel

cc: Jane (via e-mail only)  
Enclosure(s) (via e-mail and US Mail)

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September 15, 2021

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## PARENT QUESTIONNAIRE

In order for me to properly represent your child(ren), it is important that I gather as much information as possible. While the child is my first source of information, there is certainly plenty of information the child does not know and probably should not know. For this reason, I request that you please complete this detailed questionnaire. If you are uncomfortable answering any of the questions please put an "X" through that section. If a question does not apply, please write in NA. Please feel free to attach extra pages if you run out of space.

A. IDENTIFYING DATA DATE: \_\_\_\_\_

Case Name and Number: \_\_\_\_\_

Your Present Name: \_\_\_\_\_

Your Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Your Place of Birth: \_\_\_\_\_

Your Religion: \_\_\_\_\_

Your Home Address: \_\_\_\_\_

Your Home Phone No. \_\_\_\_\_ Your e-mail \_\_\_\_\_

Fax No. \_\_\_\_\_ Cell Phone No. \_\_\_\_\_

### B. EMPLOYMENT

Employer: \_\_\_\_\_

Type of Employment \_\_\_\_\_

Length of Employment: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Work Hours: \_\_\_\_\_

If you travel for employment, please describe: \_\_\_\_\_

### C. YOUR CHILDREN INVOLVED IN THIS CASE

Name	Age	Birthdate	School/Grade
------	-----	-----------	--------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

YOUR OTHER CHILDREN (not involved in this court case)

Name	Age	Birthdate	School/Grade
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Children's Personality and Special Emotional or Physical Needs (For each child involved in this case, describe your child as you would to a stranger. Then discuss any physical or educational disability, emotional or behavioral problems, history of psychotherapy or psychiatric care, and special talents or interests that may affect custody arrangements):



This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

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YOUR REQUESTS REGARDING THE ROUTINE PARENTING TIME SCHEDULE (Holidays are addressed later. Please include a proposal for an exact schedule with times and place of exchange; if you would like a different schedule during the school year and summer school break, please state those separately):

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YOUR REQUESTS INVOLVING LEGAL CUSTODY (how parents should communicate and make decisions about health care, education, religion, activities, psychotherapy, etc.):

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[illegible]

YOUR REQUESTS FOR A SCHOOL BREAK, VACATION AND HOLIDAY SCHEDULE (include Winter Break, Spring Break, Summer Break, Thanksgiving, New Years Eve, New Years Day, 4<sup>th</sup> of July, Mother's/Father's Day, all national holidays on Friday or Monday, and relevant religious holidays such as Christmas Eve, Christmas Day, Hanukkah, Passover, Easter, etc.)

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YOUR REQUESTS FOR COUNSELING AND/OR ANY OTHER TYPES OF  
ORDERS IN THIS CASE:

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First \_\_\_\_\_  
Second \_\_\_\_\_  
Third \_\_\_\_\_

Are you remarried: YES \_\_\_\_\_ NO \_\_\_\_\_  
If yes, please give name \_\_\_\_\_

If No, are you in a relationship: YES \_\_\_\_\_ NO \_\_\_\_\_  
If Yes, please give name and age of person and describe your relationship (dating, committed, engaged, etc.) and how much time you spend together and how much time that person spends around the children:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe History with Other Parent in Dispute With: Met (when, where), Relationship Before Marriage:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If married, when and where:  
\_\_\_\_\_  
\_\_\_\_\_

Responsibility for Care of Children During Relationship (include child care providers and description of parents' employment during that time):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page.



Were there any restraining orders requested or issued? If yes, describe:

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#### F. YOUR BACKGROUND AND FAMILY OF ORIGIN

Where Born and Raised:

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Your Mother: (Describe her occupation and your relationship with her. Where does she now live and is she involved with your children?)

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Father: (Describe his occupation and your relationship with him. Where does he now live and is he involved with your children?)

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Your siblings (age, where do they live, how often do you see them and/or talk to them?)

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Describe any Alcohol Abuse, Drug Abuse, Arrests/Criminal History, Psychiatric History (prescribed psychiatric medication, psychiatric hospitalization, suicidal behavior) in members of your Family of Origin, and how it affected you.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

Education (give highest degrees, and area of study):

Work History (briefly describe the kinds of occupations you have had and how long you have worked at your last three positions):

[illegible]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Military History (describe the type of duty and whether you were in combat):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Medical History: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Current Prescribed Medication (and the condition for which is it prescribed):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Psychiatric History (consultation with a psychiatrist, psychiatric hospitalization, suicidal behavior, eating disorder, psychosis. *If you have had a psychiatric hospitalization, please provide the hospital records*):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

List all psychiatric and pain medications you are currently taking:  
\_\_\_\_\_  
\_\_\_\_\_



\_\_\_\_\_

\_\_\_\_\_

List all psychiatric and pain medications you have ever taken:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Alcohol/Drug Use. (If you have been in a drug or alcohol treatment program, please provide the hospital or clinic records) Have you ever experimented with or used the following substances:

	YES	NO
a) Alcohol, more than 8 drinks in a day	_____	_____
b) Marijuana or cannabis in other forms	_____	_____
c) Cocaine	_____	_____
d) Amphetamines/Methamphetamines	_____	_____
e) Barbiturates	_____	_____
f) Hallucinogens	_____	_____
g) Heroin	_____	_____
h) Ecstasy	_____	_____
i) Other_____	_____	_____

If Yes, to any of above about alcohol/drug use, please give information about first use, how long you used, and last use.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Do you drink alcohol?\_\_\_\_\_

If yes, how many drinks per week?\_\_\_\_\_

Do you smoke cigarettes?\_\_\_\_\_

If yes, how many packs per week?\_\_\_\_\_ Do you smoke in your:

home or apartment?\_\_\_\_\_ Do you smoke while driving?\_\_\_\_\_  
Do you smoke in the presence of the children?\_\_\_\_\_

Do you have any concerns about the drug or alcohol use of the  
other party?\_\_\_\_\_If yes, please explain:\_\_\_\_\_

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Psychotherapy including Marital Therapy: (reasons for treatment,  
names and phone numbers for psychotherapists, and dates of  
treatment)

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History of Arrests (for whatever reason), DUI violations, Criminal  
Prosecution, Dishonorable Discharge from Armed Forces *(If there is  
a history of any of the above, provide police, court, DMV,  
probation, discharge records)*

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#### H. ISSUES AND CONCERNS IN THE CURRENT CASE

History of any domestic violence, including specific incidents.  
*(Provide any police reports or restraining orders.)*

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History of any involvement of Department of Children and Family Services (Give dates of reports and investigations, names and phone numbers of investigators *Provide any paperwork you have on case and/or arrange for your attorney to subpoena the file from DCFS*)

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Concerns you may have about the other parent that relate to your custody requests:

[illegible]

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This image shows a single sheet of white paper with horizontal blue or grey ruling lines, typical of notebook paper. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

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Please name all third parties that know the children and have important first hand information they could give to the court. Please summarize what you believe these persons would tell the court. This should specifically include the children's doctor, counselor and daycare provider (if any). If you have contact information for these people, please provide it.

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I. STEPPARENT OR OTHER HOUSEHOLD MEMBER INFORMATION:

If you have remarried or if you now share or plan to share your home with another adult, please complete the following questions in regard to the other adult.

Name: \_\_\_\_\_

Age: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Occupation: \_\_\_\_\_

Relationship to You: \_\_\_\_\_

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Names and ages of this person's children:

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This Person's Relationship with the Child/Children at Issue:

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed: \_\_\_\_\_

## RELEASE AND AUTHORIZATION

RE: JANE CHILD

TO WHOM IT MAY CONCERN

The undersigned Father of Jane Child, does hereby authorize the release of information as follows:

YOU ARE HEREBY AUTHORIZED to furnish any and all information and documents and background information, including medical and personally-identifying health information, records, test results, diagnoses, prescriptions, treatment records, educational or academic files, etc., held by your office concerning my child, Jane Child (DOB: 08/25/07) to the court appointed attorney for the minor child, Erin K. Morris and Morris, Stannard & Batalden Family Law PC, or to any representative, attorney or investigator from said firm.

An electronically transmitted copy of this authorization shall operate with the same force and effect as the original if provided by me or by Morris, Stannard & Batalden Family Law PC.

It is understood any expense of obtaining copies will be paid by me or Ms. Christine M. Rosewood (f.k.a. Christine M. Reichow), Arianna's mother.

You are further authorized to rely upon a copy of this Release and Authorization when provided to you by Erin K. Morris and Morris, Stannard & Batalden Family Law PC or its representatives, attorneys or investigator from said firm.

This authority shall continue in force until revoked by me in writing.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

Father's Name and Signature  
Legal parent of Jane Child

## **8.036 APPOINTMENT OF COUNSEL FOR CHILDREN**

The court may appoint counsel for children in cases arising under ORS Chapter 107 upon its own motion or upon motion of either party pursuant to ORS 107.425(3), and shall appoint counsel if requested to do so by one or more of the children. A reasonable fee may be imposed by the court against either or both of the parties or as a cost in the proceedings.

The procedure for appointment of counsel for children in cases arising under ORS Chapters 107-109 shall be as follows:

- (1) In its sole discretion, the court may appoint counsel for the children on its own motion with or without prior notice to the parties.
- (2) A party seeking such appointment on his or her own motion or forwarding the request from a child shall ensure that the motion or request is filed with the court and served on all parties.
- (3) Orders appointing counsel issued by the court may contain provision for payment of attorney fees and terms for payment. No appointment order will be issued until counsel has agreed to accept such appointment upon the fee terms set forth.
- (4) To the extent possible, appointed counsel will represent their clients' legal interests in obtaining a secure, stable home life and a balanced relationship with both parents and will be answerable only to their client and to the court. The parents or persons having physical custody of the child shall cooperate in allowing counsel opportunity for private consultation with the child or children, including making or assisting with arrangements for the children's transportation to the attorneys' office or some other reasonable meeting place and reasonable phone communication if needed.
- (5) Counsel to be appointed for children shall meet the court's standards for qualification in family law matters and in the resolution of custody/parenting time issues.



# Children's Representation Project

## Program Information

Multnomah County's Children's Representation Project provides for court appointed lawyers for children whose parents cannot agree on custody and/or parenting time. **The judges have agreed that this is the exclusive way for lawyers to be appointed for children in this county.**

ORS 107.425(6) provides for mandatory appointment when requested by the child(ren). This does not happen often and most appointments arise from referrals from judges and at the request of one of the parents. The Project also receives requests from Family Court Services and occasionally from private therapists.

If the case is retained by a judge, requests/motions for appointment must go to that judge. In non-retained cases, requests/motions are presented at ex parte and e-filed. Many requests come directly to Department 16, which administers the program.

Once a judge has granted a motion/request for counsel, that judge fills in the information sheet and routes that sheet to Travis Comfort. Travis then contacts the volunteer lawyers on the list to see if they are willing and available to take the case. **Parents and their lawyers may not hand-pick the child's attorney.** Most cases are pro bono. On the rare occasion when payment is available, we try to appoint a lawyer who has done several pro bono cases. Travis notifies the originating judge of the available lawyer. That judge generates the appointment order and provides the lawyer with copies (at the lawyers election, either paper or electronic) of the case file and case files of related cases (eg. a restraining order). Judges' staff also notify the parents, or their lawyers if they are represented, of the appointment. Depending on the age of the child, staff may also send a letter to the child notifying her/him of the appointment.

There is currently a group of about 150 lawyers who volunteer to represent children in Multnomah County. Each meets with Judge Svetkey before being placed on the list. Lawyers are also provided written material such as the form of order, the information sheet and materials from CLE's. We also try to set-up CLE's for the lawyers on an irregular basis.

The consensus among Multnomah County judges is that lawyers appointed to represent children should perform that role as lawyers. We expect they will investigate, negotiate, try to settle their case. If a case goes to trial, we expect they may file trial/hearing memos, cross-examine witnesses, call witnesses, make opening statements, closing arguments, make objections.

As the Order of Appointment states: “The appointment of an attorney for a child is to assist the court in determining what is in the child’s best interest. To the extent possible, a child’s attorney will represent the child’s legal interest in a secure, stable home life and a balanced relationship with both parents. A child’s attorney will be answerable only to the child and the court. The child’s attorney does not ultimately make a best interests determination, but where appropriate may make recommendations to the court so that the court may consider those recommendations along with the evidence in making a best interest determination.

A child’s age, maturity level and other case-specific factors may inform the child’s attorney in determining whether to advocate for what the child expressly desires with respect to custody and parenting time or, in the alternative whether to recommend to the court a course of action that the attorney reasonably believes is in the child’s best interest. A child’s attorney shall use his/her best judgment in determining whether to advocate for a child’s express legal position; recommend what the attorney believes is in the child’s best interest; or a combination of both depending on the particular circumstances of the case.”

Because the statute provides for appointment of lawyers for children, we expect children’s lawyers to perform their roles as they would representing anyone else.

Requested by:

Request Date:

**INFORMATION NEEDED FOR APPOINTMENT OF ATTORNEY FOR CHILD**

<b>Case Name:</b>	
<b>Case Number:</b>	
<b>Related Case No:</b>	
<b>Petitioner Full Name &amp; DOB:</b>	
<b>Petitioner Atty:</b>	
<b>Petitioner Address &amp; Phone:</b>	
<b>Respondent Full Name &amp; DOB:</b>	
<b>Respondent Atty:</b>	
<b>Respondent Address &amp; Phone:</b>	
<b>Outstanding Issue:</b>	
<b>Children Full Names &amp; DOB/Age:</b>	
<b>Next Hearing Date</b> (Firm? Negotiable?)	
<b>Retained:</b>	
<b>Pro Bono? or Hourly Rate of \$____, paid by:</b>	
<b>Other Relevant Info:</b> (current custody with whom? Mediation/Evaluations ordered? Parties out of town? Special needs?)	



IN THE CIRCUIT COURT OF THE STATE OF OREGON  
COUNTY OF MULTNOMAH

In the Matter of:

Case No. \_\_\_\_\_

\_\_\_\_\_  
**Petitioner**

and

**MOTION and DECLARATION for  
APPOINTMENT OF ATTORNEY FOR  
MINOR CHILD(REN)**

\_\_\_\_\_  
**Respondent**

**MOTION**

Based on ORS 107.425 and Multnomah County SLR 8.085, the party signing below asks the court to appoint an attorney for the child(ren) in this case.

**DECLARATION**

Is there a Petition/Motion Pending? ☐ Yes ☐ No

Did you give two (2) judicial days' notice to all parties in this case of making this request? ☐ Yes ☐ No

Name of child(ren) \_\_\_\_\_

Next hearing date: \_\_\_\_\_

Reason why you are asking for an attorney for your child(ren): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Declaration re Truth of Statement: I hereby declare that the above statement is true to the best of my knowledge and belief. I understand it is made for use as evidence in court and is subject to penalty for perjury.**

Date: \_\_\_\_\_

Signature of ☐ Petitioner ☐ Respondent ☐ Other

\_\_\_\_\_

**Submitted by:**

\_\_\_\_\_  
Submitting Party, *Print Name*

\_\_\_\_\_  
Telephone or Contact Telephone

\_\_\_\_\_  
Address or Contact Address

\_\_\_\_\_  
City / State / Zip

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
COUNTY OF MULTNOMAH

\_\_\_\_\_  
**Petitioner**

Case No. \_\_\_\_\_

**and**

**ORDER APPOINTING ATTORNEY for  
MINOR CHILD/REN**

\_\_\_\_\_  
**Respondent**

**ORDER**

Based on the motion and declaration of ☐ Petitioner ☐ Respondent ☐ \_\_\_\_\_  
☐ the Court's own Motion, the Court orders that:

\_\_\_\_\_ An attorney will be appointed for the children by separate Court order.

\_\_\_\_\_ An attorney will not be appointed for the child/ren.

\_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.:

\_\_\_\_\_  
Circuit Court Judge

\_\_\_\_\_  
Print Name

**Submitted by:**

\_\_\_\_\_  
Submitting Party, *Print Name*

\_\_\_\_\_  
Telephone or Contact Telephone

\_\_\_\_\_  
Address or Contact Address

\_\_\_\_\_  
City / State / Zip

I certify that this is a true copy:

\_\_\_\_\_  
Signature

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH  
Department of Domestic Relations

In the Matter of the Marriage of	)	
	)	Case No.
_____	)	
Petitioner.	)	ORDER FOR APPOINTMENT
	)	OF ATTORNEY FOR
	)	
	)	MINOR CHILD OF THE
_____	)	PARTIES
Respondent.	)	

THIS MATTER having come before the Court upon the Court's motion for the Appointment of (OSB#: ) as attorney for the minor child and the files and records herein, and the Court being fully advised now, therefore,

IT IS HEREBY ORDERED THAT:

1. Under the provisions of ORS 107.425(6) and 2020 Multnomah County Supplementary Local Rule 8.036, is appointed as attorney for the minor child of the parties.
2. Both parties shall provide any and all information, including, but not limited to, medical, dental, Department of Human Services, and C.A.R.E.S. records pertaining to the minor child of the parties, and each party shall sign any and all releases for obtaining any information requested.
3. Both parties shall encourage mutual access and communication between the attorney and the child, and neither of the parties shall interfere in any way with any communications between and the child.

4. Both parties are absolutely enjoined from discussing with the child the nature, extent or content of any communication between \_\_\_\_\_ and the child.
5. Both parties and \_\_\_\_\_ shall cooperate in the scheduling of the time and location of appointments. However, in the unlikely event that such cooperation proves difficult, \_\_\_\_\_ shall have the sole discretion and authority to determine the place, duration and circumstances of his/her interview and interactions with the child. In any event, unless otherwise agreed to by the appropriate party, \_\_\_\_\_ shall provide at least 48 hours notice to the appropriate party of the time and place of such planned interviews with the child.
6. The fees and costs of \_\_\_\_\_'s services shall be paid as follows:

\_\_\_\_\_.

DATED this \_\_\_\_\_ DAY of \_\_\_\_\_ 2020.

\_\_\_\_\_

#### **NOTICE TO PARENTS, PARTIES AND COUNSEL**

The appointment of an attorney for a child is to assist the court in determining what is in the child's best interest. To the extent possible, a child's attorney will represent the child's legal interest in a secure, stable home life and a balanced relationship with both parents. A child's attorney will be answerable only to the child and the court. The child's attorney does not ultimately make a best interests determination, but where appropriate may make recommendations to the court so that the court may consider those recommendations along with the evidence in making a best interest determination.

A child's age, maturity level and other case-specific factors may inform the child's attorney in determining whether to advocate for what the child expressly desires with respect to custody and parenting time or, in the alternative whether to recommend to the court a course of action that the attorney reasonably believes is in the child's best interest. A child's attorney shall use his/her best judgment in determining whether to advocate for a child's express legal position; recommend what the attorney believes is in the child's best interest; or a combination of both depending on the particular circumstances of the case.



## WASHINGTON COUNTY CIRCUIT COURT

### *Lawyers for Children Program 2021*

In Washington County, an attorney appointed to represent a child receives party status, per local rule, enabling full participation in discovery and litigation.

When the program was formalized, lawyers were invited to sign up to provide either pro bono services or reduced fee services in representing children. The list is available publicly in the event that parties wish to agree on an attorney.

An agreed appointment can be made at ex parte, utilizing our forms; the parties should have confirmed that the lawyer is willing to accept the case and the applicable financial terms, and has no conflict. If there isn't an agreement, some judges just appoint from the list; one has at least a short hearing to assure that any gender and location issues are addressed and to assure no objection to the proposed attorney. Financial issues need to be addressed with the parties and attorney being appointed, with an hourly rate set, and allocation of initial retainer amounts. If the parties lack resources, the attorney will be asked to serve pro bono, with the opportunity to file an ORCP statement if assets become available.

The Court contacts the attorney for conflict checks and to assure that the attorney is not already too busy to accept the appointment; if the attorney is willing and available, the Court makes the appointment, adjusts hearing dates to accommodate the child's attorney's schedule, and puts the attorney's name into a private drop box for the judges [so we don't over-utilize any one attorney]. The Court prepares the order and sends it to the parties and child's attorney. Pertinent pleadings and documents are usually provided to the child's attorney if they are not readily available eg sealed records.

The appointment order preliminarily defines the attorney's role as advocate or best interest, subject to the attorney's right to revision. [Age 12 is the presumptive age for an advocacy attorney.] The order creates party status for the child. See ORCP 29A. The attorney is invited to subject an ORCP 68 statement in the appropriate case.

Our Court's form of order accompanies this document. You can also review our homegrown video on the ABA standards at: <http://courts.oregon.gov/Washington/Pages/Attorney411.aspx>.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF WASHINGTON

, )  
Petitioner, ) Case No.  
v. )  
) ORDER APPOINTING ATTORNEY FOR  
) CHILDREN  
)  
Respondent. )

This matter came before the Hon. Keith R. Raines on

\_\_\_ at the request of the child(ren) referenced below.

\_\_\_ at the request of counsel for the petitioner/respondent.

\_\_\_ on the court's own motion.

IT IS HEREBY ORDERED that:

1. Under the provision of ORS 107.425, \_\_\_\_\_ is appointed as attorney for the  
minor children \_\_\_\_\_ in this proceeding until resolution of  
pending pleading(s). Prior to the resolution of the pending proceedings, only the court  
can relieve the attorney of representation.
2. The child shall be treated as a party.
3. The attorney shall act as  
\_\_\_ a best interest attorney  
\_x\_ traditional, advocacy attorney.
4. If the attorney, in the course of representation determines that a different category of  
representation is more appropriate, the attorney shall notify the Court who will  
accommodate the change.
5. Payment of counsel shall be handled as follows.  
\_\_\_ The court-appointed attorney has volunteered to perform services at no initial  
expense to the parties. Counsel shall keep track of the time expended. The court reserves

jurisdiction to assess a child's attorney fees to either or both parents at the conclusion of the proceeding. The court may decline to order any award for attorney fees and/or costs.

\_\_\_\_ The court-appointed attorney shall be paid by one parent. The payment arrangements are to be made between the attorney and the parent.

\_\_\_\_ The court-appointed attorney shall be paid by both parents. Each parent shall pay an initial retainer of \_\_\_\_\_. . Absent other order of the court, both parents are liable for 50 percent of the reasonable attorney fees of the court-appointed attorney. The court shall retain jurisdiction to apportion the cost of a child's attorney between the parents as is equitable.

6. When the court-appointed attorney reports time, counsel should submit only summary bills to the parties in order to protect all attorney-client confidences between said attorney and a child.

7. The court-appointed attorney shall have access to all information regarding the child/children without the necessity of any further order or release. Such information includes but is not limited to records of social services, drug and alcohol treatment, medical records, school records, and law enforcement records.

8. Each of the parties is ordered to facilitate and encourage access and communication between a child and the attorney appointed for representation in this proceeding. Neither party shall interfere in any way with any communication between the attorney and a child. Neither party shall monitor or record attorney/child communications.

9.. Each of the parties is enjoined from discussing with a child the nature, extent, or content of any communications between a child's appointed attorney and a child.

10. By accepting appointment in this case, the attorney represents that he or she is familiar with the ABA Standards of Practice for Lawyers Representing Children (available on county web site) and has reviewed the training video prepared by the Washington County Family Law Bench/Bar committee (on website.)

DATED this \_\_\_\_ day of February, 2019.

\_\_\_\_\_  
Keith R. Raines  
Circuit Court Judge

Verified Correct Copy of Original 7/12/2021.

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CLACKAMAS  
2021 JUL -7  
ENTERED  
By. JJ

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS

In the Matter of (X) the Marriage of:

Case No. :

Petitioner

CHILD REPRESENTATION  
APPOINTMENT ORDER

and

Respondent.

I. REASON FOR APPOINTMENT

This matter came before the court, and it appearing to the court that appointing a Child's Attorney or Best Interest Attorney is necessary to assist the Court in deciding issues in this case due to the following factors or allegations:

A. Mandatory appointment grounds:

(X) Appointment is required under ORS 107.425(6).

B. Discretionary grounds warranting appointment:

( ) Consideration of extraordinary remedies such as supervised parenting time, terminating or suspending parenting time with a parent, or awarding custody or parenting time to a non-parent;

( ) Relocation that could substantially reduce the child's time with a parent or sibling;

(X) The child's concerns or views;

( ) Harm to the child from illegal or excessive drug or alcohol abuse by a child or a party;

- ☐ Disputed paternity;  
☐ Past or present child abduction, or risk of future abduction;  
☐ Past or present family violence;  
☐ Past or present mental health problems of the child or a party;  
☐ Special physical, educational, or mental health needs requiring investigation or advocacy;  
☐ A high level of acrimony;  
☐ Inappropriate adult influence or manipulation;  
☐ Interference with custody or parenting time;  
☐ A need for more evidence relevant to the best interests of the child;  
☐ A need to minimize the harm to the child from family separation and litigation;  
☐ Specific issue(s) to be addressed: \_\_\_\_\_

## II. NATURE OF APPOINTMENT

Gregory Soriano #732859, a lawyer who is willing to  
 serve as \_\_\_\_\_'s Attorney (X) Best  
 Interest Attorney, for the child(ren) \_\_\_\_\_ to  
 represent the child(ren) in accordance with the Standards of Practice for Lawyers  
 Representing Children in Custody Cases, a copy of which ( ) is attached (X) has been  
 furnished to the appointee. A Child's Attorney represents the child in a normal attorney-  
 client relationship. A Best Interests Attorney investigates and advocates the child's best  
 interests as a lawyer. Neither kind of lawyer testifies or submits a report. Both have duties  
 of confidentiality as lawyers, but the Best Interests Attorney may use information from the  
 child for the purpose of representation.

III. FEES AND COSTS

The hourly rate of the lawyer appointed is \$ 200., for both in-court and out-of-court work.

☒ The parties shall be responsible for paying the reasonable attorney fees and costs. The parties shall deposit \$ 1,000. with the appointed lawyer. Petitioner shall deposit \$ 500., and respondent shall deposit \$ 500.. The parties' individual shares of the responsibility for the fees and costs as between the parties (☒) are to be determined later (☐) are as follows: Petitioner to pay \_\_\_\_\_%; Respondent to pay \_\_\_\_\_%.

☐ The lawyer has agreed to serve without payment. However, the lawyer's expenses will be reimbursed as follows: Petitioner to pay \_\_\_\_\_%; Respondent to pay \_\_\_\_\_%.

IV. ACCESS TO CONFIDENTIAL INFORMATION

The lawyer appointed shall have access to confidential information about the child(ren) as provided in the Order for Access to Confidential Information that will be signed at the same time as this Order.

Signed this 2<sup>nd</sup> day of July, 2021.

T. J. O'Connell  
\_\_\_\_\_  
T J O'Connell

SORIANO'S PROPOSED FORM OF ORDER

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF COLUMBIA

7 In the Matter of the Marriage of )  
8 ) No.  
9 Petitioner, ) ORDER OF APPOINTMENT  
10 and ) OF ATTORNEY FOR MINOR  
11 ) CHILD OF THE PARTIES  
12 Respondent, ) (RETAINED BY JUDGE TED

14 THIS MATTER having come before the Court upon the Court's motion for the  
15 Appointment of Gregory P Soriano (BAR No. 732859) as the best interest attorney for the minor  
16 child and the Court being fully advised now, therefore,

17 ITS IS HEREBY ORDERED THAT:

- 18 1. Under the provisions of ORS 107.425(6) Gregory B. Soriano is appointed as attorney  
19 for the minor child,  
20 2. Both parties shall provide any and all information, including, but limited to, medical,  
21 dental, Department of Human Services, and C.A.R.E.S. record pertaining to the minor  
22 child of the parties, and each party shall sign any and all releases for obtaining any  
23 information requested.

Page 1  
ORDER OF APPOINTMENT OF  
ATTORNEY FOR MINOR  
CHILD OF THE PARTIES

Gregory B. Soriano\*  
greg@sorianofamlaw.com

SORIANO & ASSOCIATES, LLC

Attorneys at Law  
1000 SW Broadway, Ste. 2300  
Portland, Oregon 97205  
(503) 924-3090  
Fax: (503) 274-1214  
www.sorianofamlaw.com

- 1           3. Both parties shall encourage mutual access and communication between the attorney  
2           and the child, and neither of the parties shall interfere in any way with any  
3           communications between Gregory B. Soriano and the child.
- 4           4. Both parties are absolutely enjoined from discussing with the child the nature, extent or  
5           content of the any communication between Gregory B. Soriano and the child.
- 6           5. Both parties and Gregory B. Soriano shall cooperate in the scheduling of the time and  
7           location of appointments. However, in the unlikely event that such cooperation proves  
8           difficult, the court shall have the sole discretion and authority to determine  
9           the place, duration and circumstances of his/her interview and interactions with the  
10          child. In any event, unless otherwise agreed to by the appropriate party, Gregory B.  
11          Soriano shall provide at least 48 hours notice to the appropriate party of the time and  
12          place of such planned interviews with the child.
- 13          6. The fees and costs of Gregory B. Soriano services shall be paid as follows: \$150.00 per  
14          hour. Balance of a child's attorney fees shall be paid by Father. The court shall retain jurisdiction  
15          to apportion the cost of a child's attorney between the parents as is equitable.
- 16          7. The court-appointed attorney does report time, counsel should submit only summary to  
17          the parties in order to protect all attorney-client confidences between said attorney and a  
18          child.
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1           **NOTICE TO PARENTS, PARTIES, AND COUNSEL:**

2           The appointment of an attorney for a child is to assist the court in determining what is the  
3           child's best interest. To the extent possible, a child's attorney will represent the child's legal interest  
4           in a secure, stable home life and a balanced relationship with both parents. A child's attorney will be  
5           answerable only to the child and the court. The child's attorney does not ultimately make a best  
6           interests determination, but where appropriate may take recommendations to the court so that the  
7           court may consider those recommendations along with the evidence in making a best interest  
8           determination.

9           A child's age, maturity level and other case-specific factors may inform the child's attorney  
10          in determining whether to advocate for what the child expressly desires with respect to custody and  
11          parenting time or, in the alternative whether to recommend to the court course of action that the  
12          attorney reasonably believes is in the child's best interest. A child's attorney shall use his/her best  
13          judgment in determining whether to advocate for a child's express legal position; recommend what  
14          the attorney believes is in the child's best interest; or a combination of both depending on the  
15          particular circumstances of the case.

16          **Submitted By:**  
17          SORIANO & ASSOCIATES, LLC

18          \_\_\_\_\_  
19          Gregory B. Soriano OSB#732859  
20          Attorney for Minor Child

21          **Approved as to form:**

22          \_\_\_\_\_  
23          Attorney for Petitioner

\_\_\_\_\_  
Attorney for Respondent

Page 3  
ORDER OF APPOINTMENT OF  
ATTORNEY FOR MINOR  
CHILD OF THE PARTIES

Gregory B. Soriano\*  
greg@sorianofamllaw.com

**SORIANO & ASSOCIATES, LLC**

*Attorneys at Law*  
1000 SW Broadway, Ste. 2300  
Portland, Oregon 97205  
(503) 924-3090  
Fax: (503) 274-1214  
www.sorianofamllaw.com

1 CERTIFICATE OF READINESS

2 This proposed judgment is ready for judicial signature because:

3 ☐ Each opposing party affected by this judgment has stipulated to the judgment, as  
4 shown by each opposing party's signature on the document being submitted.

5 ☐ Each opposing party affected by this judgment has approved the judgment, as  
6 shown by signature on the document being submitted or by written confirmation of  
7 approval sent to me.

8 ☐ I have served a copy of this judgment on all parties entitled to service and:

9 ☐ No objection has been served on me.

10 ☐ I received objections that I could not resolve with the opposing party  
11 despite reasonable efforts to do so. I have filed a copy of the objections I received  
12 and indicated which objections remain unresolved.

13 ☐ After conferring about objections, the opposing party agreed to  
14 independently file any remaining objection.

15 ☐ The relief sought is against an opposing party who has been found in default.

16 ☐ An order of default is being requested with this proposed judgment.

17 ☐ Service is not required pursuant to subsection (3) of this rule, or by statute, rule or  
18 otherwise.

19 ☐ This is a proposed judgment that includes an award of punitive damages and  
20 notice has been served on the Director of the Crime Victims' Assistance Section as  
21 required by subsection (4) of this rule.

22 \_\_\_\_\_  
23 Gregory B. Soriano OSB#73285

Page 4  
ORDER OF APPOINTMENT OF  
ATTORNEY FOR MINOR  
CHILD OF THE PARTIES

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## QUESTIONS FOR ATTORNEY PANEL RE: CHILD REPRESENTATION

1. Under what circumstances do you think it is a good idea for an attorney to be appointed for a child?
  - a. Is there an age where the appointment of an attorney for a child is less beneficial?
  - b. Who pays for the child's attorney?
  - c. Mandatory is child asks for one? What if specifically coached by a parent to ask for an attorney? Can court refuse?
2. What role do you expect the child's attorney to take? More important, does the attorney go into chambers with the other attorneys? Does the attorney sit at counsel table? Do you allow the child's attorney to ask questions, objection to evidence, cross-examine, and present an opening and/or closing argument?
  - a. How is a child's attorney different than an attorney for a business that is at issue in a divorce? Is the child's attorney just an attorney or a witness, and not an attorney for a party in the case?
  - b. What testimony can be elicited from an attorney appointed on behalf of a child? Are their privileges or confidentialities?
  - c. Advocacy vs. Best Interests? Need to cover the scope and purpose of child attorney - are we advocating for the child's best interest (as we see it) or are we representing child with his/her wishes as the driving force. Different orders for appointment?
  - d. The child isn't a party to the case, so why does the child's attorney get any role in the proceedings?

3. If you have decided to allow the child's attorney to participate in the case in the same manner that the mother and father's attorneys are participating, what is a good and respectful way for mother or father's attorney to object? Would a motion be preferable?
4. Appeal rights for child's attorney?
5. Conflicts of interest? What if Court wants attorney to represent more than one child from a family? Is there a waiver? What happens if the children want different outcomes?

### QUESTIONS FOR JUDICIAL PANEL RE:

#### APPOINTMENT OF ATTORNEYS FOR CHILDREN

1. When is it appropriate to have a child testify? Is there an age when you believe it becomes less problematic.
  - a. What is different about having a child testify in dependency cases? I get the impression that's more accepted than letting a child testify in a dissolution or custody case, but I don't know if that impression is well informed.
  - b. What are the pros and cons of calling a child as a witness? Are you helping the situation or hindering the situation? Might you upset your judge if you decide to call a child witness?
2. Will you allow the child to speak with you in chambers rather than in the courtroom for formal testimony? Do you clear out the courtroom except for the children and the attorneys in order to make sure that their testimony is on the record?
  - a. How will the judge handle the record? Will he recuse the parents from hearing the testimony? I had a judge once state that he felt the parents had a constitutional right to be present during the child's testimony and he would not recuse the parents from the courtroom, though allowed by statute.

3. What have you seen people do as an alternative to having a child testify but still presenting the necessary evidence? How to avoid hearsay issues? Counselor? Custody evaluator?
4. What should an attorney do when they are having a child testify to make the child more comfortable and the process less traumatic?
5. Does the judge want to control the questions presented to the child and then allow the attorneys follow up questions? Or is it a “free for all” by the attorney calling the child as a witness? What are your thoughts on cross-examining a child witness?
6. How does the judge filter the “coaching” of a child by a parent and/or the attorney?
7. Can a judge refuse to hear the testimony of a child?