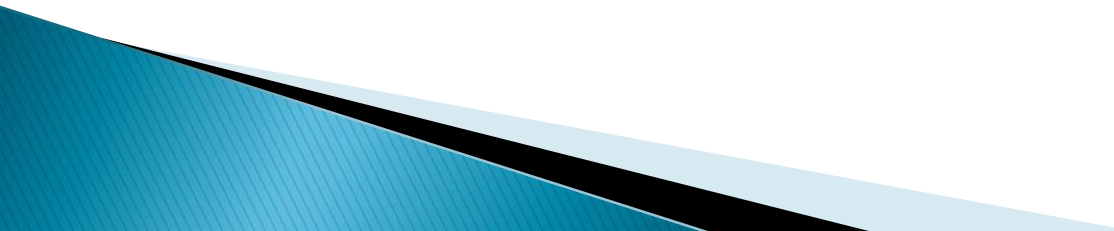


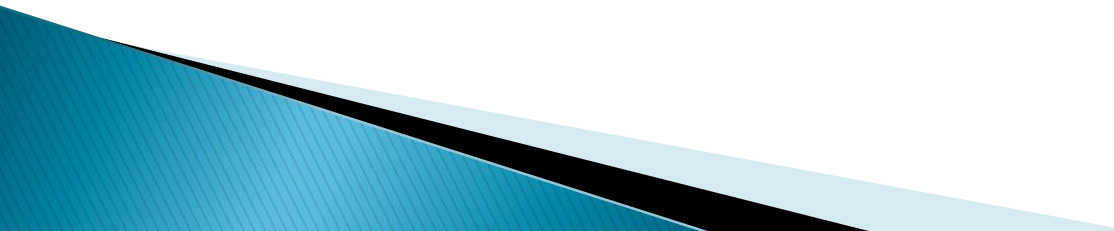
Standards of Practice for Attorneys Representing the DHS Child Welfare Agency and Increased Juvenile Dependency Legal Representation of DHS Child Welfare

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Oregon Department of Justice
August 6, 2018

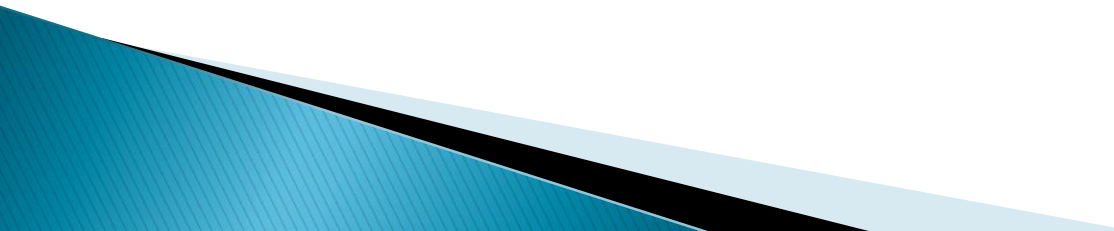
Oregon State Bar (OSB) Performance Standards

- ▶ In 1996, the OSB Board of Governors approved the Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Commitment Cases.
 - ▶ These standards were updated in 2014, when the Board accepted significant revisions to the Specific Standards for Representation in Criminal and Juvenile Delinquency Cases and in Juvenile Dependency Cases.
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OSB Performance Standards (cont'd)

- ▶ The performance standards for attorneys for children and parents in juvenile dependency cases were revised again in June 2017.
 - ▶ No correlated standards existed for government attorneys in juvenile dependency cases.
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Oregon Task Force on Dependency Representation

- ▶ Created by SB 222 (2015).
 - ▶ Looked at legal representation as well as juvenile dependency system improvement.
 - ▶ SB 222 required the task force to “examine the use of performance standards unique to each role within the juvenile court system as a way to create and ensure statewide consistency in practice [and] make recommendations regarding the development and enhancement of existing performance standards.”
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Oregon Task Force on Dependency Representation (cont'd)

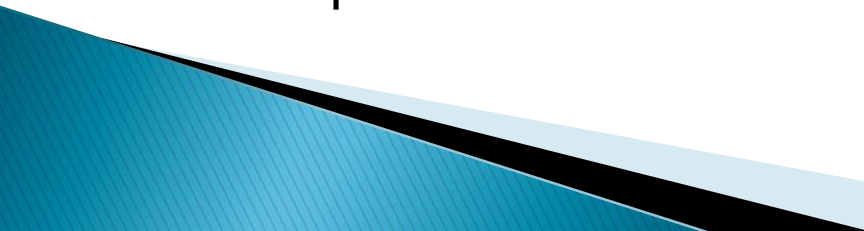
- ▶ Task Force assigned subcommittees including:
 - Subcommittee on performance standards for juvenile dependency attorneys.
- ▶ Task Force final report dated July 2016:
 - https://www.oregon.gov/gov/policy/Documents/LRCD/Oregon_Dependency_Representation_TaskForce_Final_Report_072516.pdf

Oregon Task Force on Dependency Representation (cont'd)

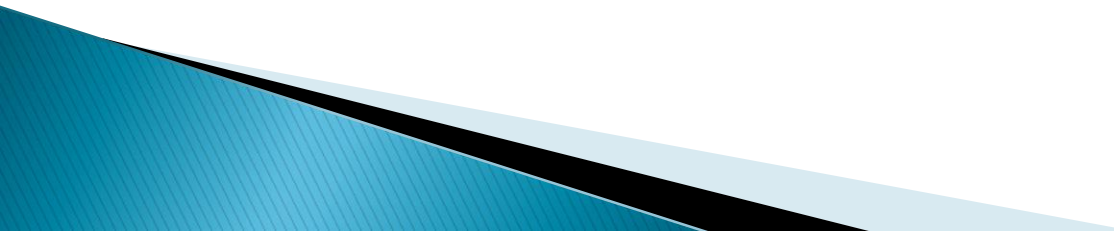
- ▶ Task Force recommendations included performance standards for juvenile dependency practitioners:
 - Performance standards should be adopted for juvenile dependency attorneys who represent parents, children, and the government.
 - Performance standards should be regularly reviewed and updated.

Oregon Task Force on Dependency Representation (cont'd)

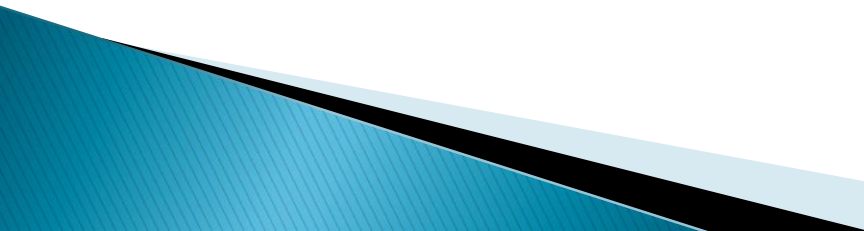
Task Force performance standards recommendations (cont'd):

- Oregon practitioners should be trained on performance standards relevant to their practice and cross-trained on standards relevant to the practice of the other attorneys in the system.
 - Oregon judges should be trained on performance standards for all juvenile dependency attorneys.
 - Non-lawyers who regularly participate in the juvenile dependency system, such as Citizen Review Board (CRB) members, CASA, and DHS workers, should receive training on performance standards.
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Oregon Task Force on Dependency Representation (cont'd)

- ▶ Task Force report resulted in two bills during 2017 legislation session: HB 2345 & SB 525.
 - ▶ Bills did not pass in 2017 session but funding/limitation authority provided to DHS and DOJ for legal representation (HB 5006).
 - ▶ Limited funding provided to include additional counties for OPDS Parent Child Representation Pilot.
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Oregon State Bar (OSB) Performance Standards Workgroups

- ▶ Some Task Force recommendations did not require legislation.
 - ▶ Performance Standards subcommittee.
 - ▶ OSB provided guidance and staffing support to two separate workgroups:
 - Parent/Child Attorney (already existed)
 - Child Welfare Agency Attorney
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OSB Performance Standards Workgroups (cont'd)

- ▶ OSB Workgroup met to work on revisions to **parent/child attorney** performance standards
 - Current revised standards (June 2017) on OSB website:
 - https://www.osbar.org/_docs/resources/juveniletaskforce/JTFR3.pdf

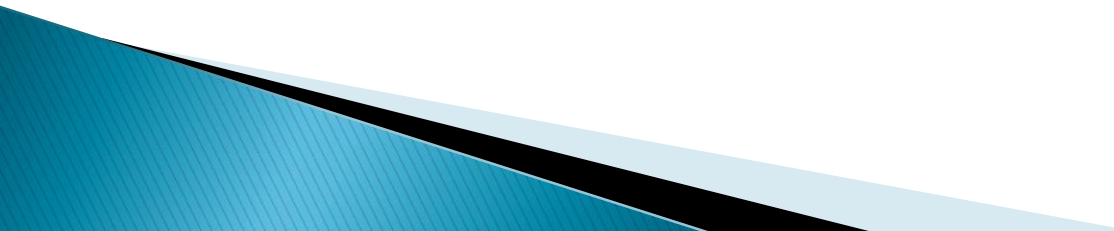
OSB Performance Standards Workgroups (cont'd)

- ▶ OSB Workgroup met to create **child welfare agency attorney** representation performance standards.
 - Workgroup members included attorneys from Oregon DOJ, OSB, ODAA, OPDS, & OJD.
 - Standards modeled on American Bar Association recommendations and modified to be complimentary to Oregon's parent/child attorney performance standards.
 - Final draft circulated to judges, DHS, and others.
 - Final draft and process discussed with juvenile dependency practitioners.

OSB Juvenile Dependency Performance Standards

- ▶ Standards of Practice for Attorneys Representing the Child Welfare Agency on OSB website:
 - https://www.osbar.org/_docs/resources/juveniletaskforce/JTFR1.pdf
- ▶ Adopted by OSB Board of Governors and finalized in April 2018

OSB Performance Standards (cont'd)

- ▶ As with parent/child attorney performance standards:
 - intended to ensure consistency of practice across the state.
 - Intended to be incorporated, to the extent practicable, into statewide system continuous quality improvement efforts.
 - ▶ Child Welfare Agency Attorney performance standards do not apply to Deputy District Attorneys appearing on behalf of the state pursuant to ORS 419B.875(1)(a)(D).
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OSB Performance Standards (cont'd)

- ▶ Performance Standards for Agency Attorneys do not constitute a new ethical standard of conduct.
 - “These guidelines, as such, are not rules or requirements of practice and are not intended, nor should they be used, to establish a legal standard of care. Some of the guidelines incorporate existing standards, such as the Oregon Rules of Professional Conduct, however which are mandatory. Questions as to whether a particular decision or course of action meets a legal standard of care must be answered in light of all the circumstances presented.”

-- Foreward to Standards
- ▶ Standards do overlap with Oregon Rules of Professional Conduct (ORPC).

OSB Performance Standards (cont'd)

- ▶ Role of Child Welfare Agency Attorney outlined in standards
 - DHS Child Welfare (DHS) legal representation provided by Oregon Department of Justice (DOJ).
 - Assistant Attorney Generals (AAGs) provide legal advice and litigation service to DHS statewide.
 - Note: Full juvenile dependency legal representation DHS not yet fully implemented statewide.

OSB Performance Standards (cont'd)

- ▶ Organized by categories:
 - Standard 1 – General Obligations of the Agency Attorney
 - Standard 2 – Counseling, Training, and Advice
 - Standard 3 – Court Preparation
 - Standard 4 – Juvenile Court Proceedings
 - Standard 5 – Post Hearing
 - Standard 6 – Appellate Issues for Trial Attorneys
 - Standard 7 – Issues for Appellate Attorneys

Oregon Rules of Professional Conduct (RPCs) & Performance Standards

- ▶ Standard 1 – General Obligations of the Agency Attorney
 - Related to:
 - RPC Rule 1.1 -- Competence
 - RPC Rule 1.2 -- Scope of Representation
 - RPC Rule 1.3 -- Diligence
 - RPC Rule 1.4 -- Communication

RPCs & Performance Standards (cont'd)

- ▶ Standard 2 – Counseling, Training, and Advice
 - Related to:
 - RPC Rule 1.4 -- Communication

RPCs & Performance Standards (cont'd)

▶ Standard 3 – Court Preparation

◦ Related to:

- RPC Rule 1.1 -- Competence
- RPC Rule 1.3 -- Diligence
- RPC Rule 1.4 -- Communication
- RPC Rule 1.6 -- Confidentiality of Information
- RPC Rule 3.4 -- Fairness to Opposing Party and Counsel

RPCs & Performance Standards (cont'd)

- ▶ Standard 4 – Juvenile Court Proceedings
 - Related to:
 - RPC Rule 1.1 -- Competence
 - RPC Rule 3.3 -- Candor Toward the Tribunal
 - RPC Rule 3.4 -- Fairness to Opposing Party and Counsel

RPCs & Performance Standards (cont'd)

- ▶ Standard 5 – Post Hearing
 - Related to:
 - RPC Rule 1.1 -- Competence
 - RPC Rule 3.4 -- Fairness to Opposing Party and Counsel

RPCs & Performance Standards (cont'd)

- ▶ Standard 6 – Appellate Issues for Trial Attorneys
 - Related to:
 - RPC Rule 1.1 -- Competence
 - RPC Rule 1.2 -- Scope of Representation
 - RPC Rule 1.3 -- Diligence
 - RPC Rule 1.4 -- Communication

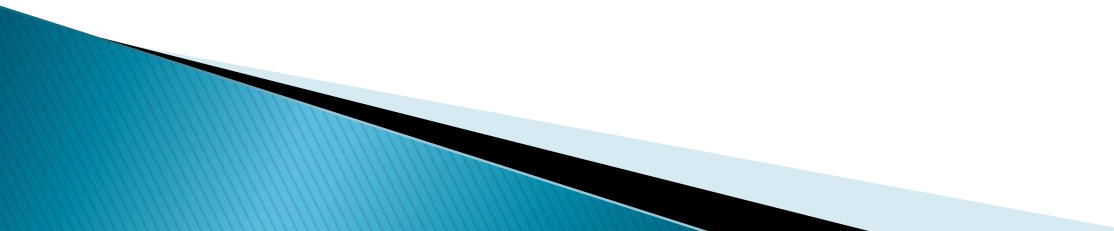
RPCs & Performance Standards (cont'd)

- ▶ Standard 7 – Issues for Appellate Attorneys
 - Related to:
 - RPC Rule 1.1 -- Competence
 - RPC Rule 1.2 -- Scope of Representation
 - RPC Rule 1.3 -- Diligence
 - RPC Rule 1.4 -- Communication

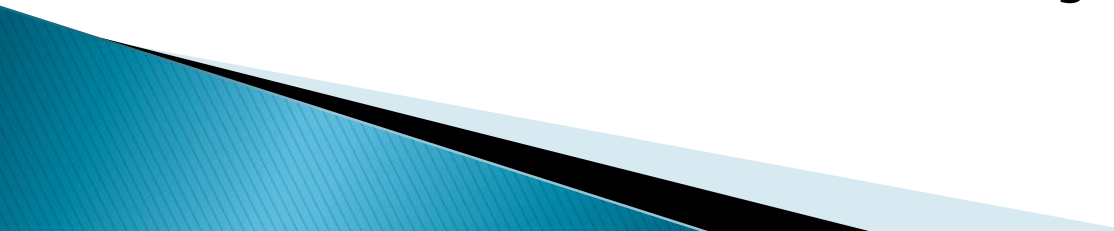
RPCs & Performance Standards (cont'd)

- ▶ RPCs and some relevant cases:
 - Competence – *In re Obert*, 352 Or 231 (2012)
 - Diligence – *In re Magar*, 335 Or 306 (2003)
 - Communication – *In re Snyder*, 348 Or 307 (2010)
 - Ex parte communication – *In re Schenk*, 320 Or 94 (1994);
In re Thompson, 325 Or 467 (1997)
 - Conduct – *In re Carini*, 354 Or 47 (2013)

Increased legal representation of DHS

- ▶ SB 222 (2015) and the Governor's Task Force on Juvenile Dependency Representation (2016) addressed the need for consistent and predictable DHS legal representation in juvenile dependency cases.
 - ▶ Proposed legislation related to all of the recommendations of the Task Force did not pass -- HB 2345 & SB 525 (2017).
 - ▶ HB 5006-A (2017) and related budget note provided for enhanced juvenile dependency court representation to the DHS Child Welfare.
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Increased legal representation of DHS (cont'd)

- ▶ Among other services, the implementation of enhanced legal representation:
 - Increases the number of juvenile dependency hearings at which DOJ appears and represents DHS
 - Provides for pre-filing consultation and advice regarding the dependency petition
 - Includes consultation and advice regarding the on-going child welfare case
 - Includes assistance with training
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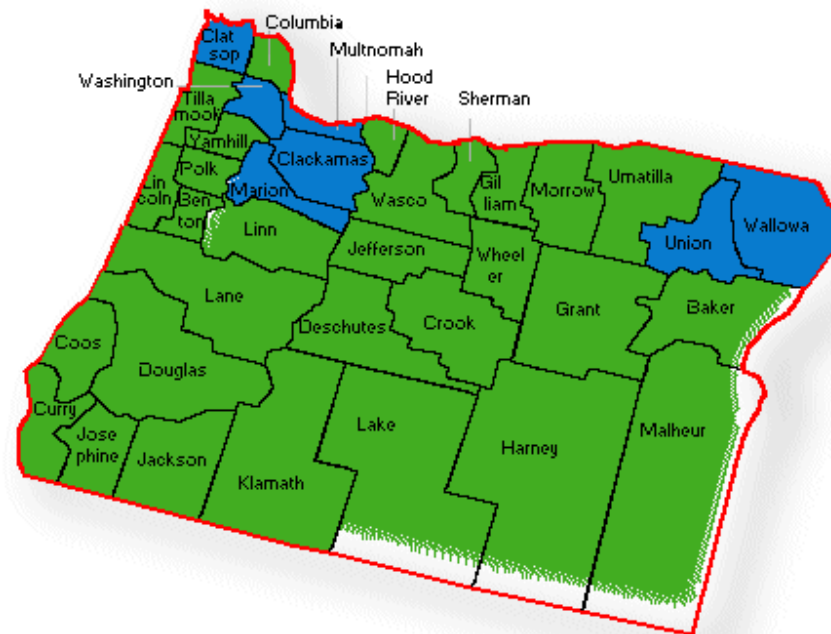
Increased legal representation of DHS (cont'd)

- ▶ Enhanced legal representation directed to be implemented statewide through a three-phase approach:
 - **Phase-I** -- By January 1, 2018 for: Benton; Coos; Gilliam; Grant; Hood River; Josephine; Lane; Lincoln; Linn; Morrow; Polk; Sherman; Tillamook; Wasco; and Wheeler Counties. Also implemented in Douglas County (early from Phase II).
 - **Phase-II** -- By July 1, 2018 for: Columbia; Crook; Deschutes; Douglas; Harney; Jackson; Jefferson; Klamath, Lake; Malheur; Umatilla; and Yamhill counties. Also implemented in Baker and Curry counties (early from Phase III).
 - **Phase-III** -- By July 1, 2019 for: Clackamas; Clatsop; Marion; Multnomah; Union; Washington; and Willowa counties.

Status of implementation of increased legal representation of DHS (August 2018)

DHS Legal Representation

- - Phases I & II
- - Phase III



NOTES:
Phases I & II - fully implemented

Source: diymaps.net (c)

Juvenile Dependency System Efficiencies

- ▶ Legislature also included a requirement for an additional report.
 - The Oregon Judicial Department, Department of Human Services, Department of Justice, and Public Defense Services Commission have been working collaboratively at the state and local levels, to “solicit input on, develop, and implement strategies to improve effectiveness and efficiency of Oregon’s juvenile dependency systems and to determine the appropriate level of legal services.”
 - Local model court team participation and commitment essential.

Oregon Department of Justice Organization

- ▶ DOJ Civil Enforcement Division
 - Child Advocacy Section (ChAS)
 - ChAS AAGs work out of six DOJ offices
 - Portland
 - Salem
 - Eugene
 - Medford
 - Pendleton
 - Bend

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