

WASHINGTON STATE SUPREME COURT --
COMMISSION ON CHILDREN IN
FOSTER CARE

On Request of

THE WASHINGTON STATE LEGISLATURE

*REPRESENTATION OF CHILDREN AND
YOUTH IN DEPENDENCY CASES
PRACTICE, CASELOAD, AND TRAINING
STANDARDS*

(Rev. Sept. 2022)

Workgroup Members

In accordance with Section 9, Chapter 210, Laws of 2021, the Washington State Supreme Court Commission on Children in Foster Care convened a workgroup to review and update the standards of practice, caseload limits, and training guidelines to which attorneys representing children and youth in dependency and termination proceedings under RCW 13.34.212 must adhere. Per the legislative directiveⁱ, the Workgroup was comprised of relevant stakeholders, including an independent expert in attorneys' ethical duties, and included the following members:

Jill Malat and Emily Stochel (co-chairs)

Annie Chung (Children's attorney, Legal Counsel for Youth and Children)

Bailey Zydek (Program Manager, Office of Civil Legal Aid, Children's Representation Programⁱⁱ)

Carl McCurley (Court Research Manager, Washington State Center for Court Research)

Chori Folkman (Youth Attorney, Tulalip Office of Civil Legal Aid)

Colleen Shea Brown (Children's attorney, Legal Counsel for Youth and Children)

D'Adre Cunningham (Attorney, Washington Defender Association)

Dre Thornock (Tribal Foster Care Alumni)

Dorian Brajkovich (Youth Advocate)

Erin McKinney (LICSW, CMHS)

Esther Taylor (Youth Contributor)

The Hon. Megan Valentine (Judge, Grays Harbor County District Court and former youth attorney)

The Hon. Sharonda Amamilo (Judge, Thurston County Superior Court and former youth attorney)

Jolie Bwiza (Youth Advocate)

Natalece Washington (Policy Counsel, National Association of Counsel for Children)

Professor Lisa Kelly (Bobbe and Jonathan Bridge Professor of Children and Family Advocacy, University of Washington School of Law)

Professor Suparna Malempati (Director of Advocacy Programs, Atlanta's John Marshall Law School, legal ethics expert)

Sarah Burns (Family and Youth Justice Program, Administrative Office of the Courts)

Tonia Maclanahan (Parent Advocate)

ⁱ"The legislature therefore respectfully requests that the supreme court's commission on children in foster care convene a children's representation work group composed of relevant stakeholders, including an independent expert in attorneys' ethical duties, to review and update, where appropriate, the standards of practice, caseload limits, and training guidelines, referenced in RCW 2.53.045 and section 6 of this act..." Section 9, Chapter 210, Laws of 2021.

ⁱⁱ Pursuant to RCW 2.53.025, the Office of Civil Legal Aid's Children's Representation Program (CRP) is responsible for the implementation of 2SHB 1219, codified at RCW 13.34.212, and for ensuring attorney compliance with the practice, caseload, and training standards contained herein. **The CRP may be contacted at: crp@ocla.wa.gov or at Office of Civil Legal Aid, Children's Representation Program, 1112 Quince Street SE, P.O. Box 4118, Olympia, WA 98504-1183. Office (360) 704-413. Fax (360) 704-400**

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PREFACE

All children subject to dependency or termination of parental rights court proceedings should have legal representation as long as the court jurisdiction continues. These Child Representation Standards are meant to apply when a lawyer is appointed for a child in any legal action based on Chapter 13.34 RCW and Chapter 13.36 RCW (guardianship).¹

1. Decision Making

The child's trust and confidence in the decision-making process is often a function of the responsiveness of that process. The child's attorney may be the first contact the child has with the process; therefore, the attorney has a critical role in developing and guarding the child's trust, confidence, and participation in the process, including basing decision making within the attorney/client relationship on respect for the child's capacity to make informed decisions. A lawyer who provides legal services for a child owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

(1) The child's attorney should determine whether the child's capacity to make adequately considered decisions in connection with a representation is diminished pursuant to the Rules of Professional Conduct (RPC 1.14) with respect to each issue in which the child is called upon to direct the representation. For the purposes of child representation in dependency and termination of parental rights proceedings, a determination of "diminished capacity" should never be based solely on the child's chronological age.

(2) As counselor and advisor, the attorney should provide the child with an informed understanding of the child's legal rights and obligations and explain their practical implications in a manner understandable to the child. The attorney should explain all aspects of the case and provide comprehensive counsel and advice on the advantages and disadvantages of different case options to assist the child in identifying case goals and making informed decisions. During these discussions, the attorney should address the child's legal rights and interests as well as issues regarding the child's safety, health, and welfare. At the same time, the attorney should be careful not to usurp the child's authority to decide and direct efforts to achieve the case goals consistent with RPC 1.2 and 1.4.

(3) When communicating with the child, the attorney must be proactive in raising with the child the issues and interests related to the child's care and well-being, making sure the child has all the information about an issue, and has considered consequences when developing their

¹ RCW 13.36 was added in the 2010 session to replace Washington State's former dependency guardianship system and allow for a dependency action to be dismissed after the successful appointment of a guardian through a 13.36 petition. These standards apply to an attorney's activities representing a child in the guardianship proceedings that resulted from a dependency proceeding as well as in actions covered by RCW 13.34 in which a statutory or constitutional right to appointed counsel exists.

opinion. The attorney must continuously counsel their client in this manner to make updated, informed decisions.

2. Stated Interest and Legal Interest

Stated interest advocacy is the presumptive method of representation for all children capable of communicating their wishes. If the child is unable to communicate an interest, the attorney must focus representation on asserting, promoting, and defending the child's legal rights inherent in the proceedings (legal interests).^{2,3}

(1) The attorney providing legal interest representation to a child has an ongoing duty to be aware of the child's evolving capacity to direct counsel. In assessing the child's capacity to direct counsel, the attorney should make firsthand observations of the child.⁴

(2) The attorney should undertake an initial trauma-informed and culturally responsive assessment of the child's ability to articulate their interests. This assessment should be regularly reviewed and updated. The attorney should seek information from collateral sources, such as parents, other family members and loved ones, supportive adults, daycare providers, teachers, and other professionals who have an ongoing relationship with the child.

(3) It may be necessary for the attorney to use the legal interests and stated interest models of representation on different issues based on the developmental capacity of the client.

(4) The attorney should make clear to the court and other parties which model of representation is being used on any given issue being negotiated or heard before the court.

² "Legal interest advocacy" is distinguishable from "best interest advocacy," which may be embraced by the guardian ad litem. "Legal interest advocacy" is also distinguishable from the "substituted judgment" model which asks attorneys to place themselves in the shoes of the client to determine what the client would want while "substituted judgment" is the model recently embraced by the National Association of Counsel for Children (NACC). This model was considered but not adopted here and should not be used for child clients who have never had the opportunity to express their values or the goals they seek to attain through the legal representation.

³ These standards reflect an understanding that the "stated interest" and "legal interest" models of legal representation are the best safeguards against both implicit and explicit biases that are unavoidable under the "best interest" model and are otherwise consistent with the ethical practice of law. Anti-racist lawyering is essential to the ethical and effective practice of law and critical in contexts where systems of state intervention, such as the child welfare system, have the potential to result in racially disproportionate harms to families and communities of color. It is imperative that lawyers for children do not infuse advocacy for children with their own notions of what is in their client's best interests.

⁴ It is important for the attorney to facilitate conversations with the child or youth to identify the child's or youth's legal and non-legal needs, as well as how to get their needs met. For example, if a child is feeling hopeless or experiencing PTSD symptoms, a child may not even know that therapy is available to them or what it entails; or may have been discouraged in the past from seeking therapy due to cultural stigmas. The attorney must introduce the options and work to counsel and listen to the child's concerns.

2.1 Stated Interest

- (1) The child's attorney should represent the child's stated interest, follow the child's direction throughout the course of litigation, and perform their duties in a manner consistent with the child's stated interests. A "stated interest" is an interest communicated to the attorney by the client either verbally, in writing, or through the use of techniques, such as American Sign Language, language interpreters, or assistive communication technologies that aid those children who are unable to communicate verbally.
- (2) In soliciting a client's stated interests, the attorney has the duty to communicate in a developmentally appropriate and culturally responsive manner with clients of all ages, abilities, languages, cultures, and trauma experience. At all times, the attorney should be mindful that communication does not require sophisticated adult speech but does require an ability to express a preference communicated in a manner which allows the attorney to determine that the client has both: (a) formed an opinion as to the interest; and (b) that the client has the developmental ability to understand at least the general nature of the choice and relevant factors. It is not necessary that the client understand all the issues present before stated interest representation is required.
- (3) In soliciting a client's stated interests, the attorney should take care not to impose the attorney's views upon the client and shall not substitute their own judgment as to what the client's stated interest should be.

2.2 Legal Interest

- (1) Legal interest representation should be based on the laws that are related to the purposes of the proceedings. Accordingly, the attorney must be well-versed in applicable state and federal statutory and constitutional law regulations, caselaw, court rules, and administrative policies which confer rights upon the child and obligations upon the state. These rights include, but are not limited to, the child's substantive due process right to be free from the unreasonable risk of harm while in state care as outlined in *Braam v. State*.⁵
- (2) The presumption is that legally recognized rights of the child³ are in the child's best interest. Therefore, the first step for the attorney is to identify all the legally-recognized rights of the child that are relevant to a particular stage of the proceeding. The second step is for the attorney to gather and present to the court all facts that are relevant to all the legally recognized rights at issue and also present legal briefing. If the child has a clearly established legal right, the attorney has a duty to argue for that right. Where there are competing legal rights of the child, the attorney is to present facts and

⁵ 150 Wn.2d 689, 81 P.3d 851 (2003).

legal authority on all the legal rights at issue, but not take a position on which legal right should prevail. The attorney should not argue what is in the child's best interests, because it is the court's duty to assess and determine the best interest of the child. The focus is on providing to the court all facts and legal authorities that the court needs to weigh the applicable standards and reach an informed decision.

3. Experience, Education, & Training

Attorneys need to be qualified through training or experience to effectively fulfill the duties of representing children in dependency court. Training is an essential component of any effective advocacy. Attorneys should be provided access to relevant training and continuing legal education related to the practice. Provision should be made to ensure that compensation models include expectations that attorney time will be spent achieving and maintaining competency in the practice.

3.1 Experience

Attorneys with no or little legal experience representing children in these proceedings should receive intensive training on effective representation consistent with these standards. Before undertaking representation, attorneys new to child representation practice should receive training covering the core competency areas below. It is assumed that attorneys new to this area of law will receive lower caseloads to meet the standards for child representation for at least a three-month period or until their proficiency is assessed to be sufficient, whichever is longer.

3.2 Education and Training

Before representing a child or youth in a dependency proceeding, an attorney should understand applicable federal and state laws and regulations, court rules, ethical duties, trial skills, interviewing skills, and relevant social science, including trauma and child and adolescent development. Attorneys should receive initial and ongoing training on the above topics along with cultural humility, the impact of systemic racism, and disproportionate and disparate outcomes experienced by black and indigenous children, as well as LGBTQIA+ youth. The following list is illustrative of topics with which the attorneys should be fluent.⁶

- (1) Relevant federal and state laws, regulations, policies, rules, and court decisions;
- (2) Trial advocacy and trial-related skills;
- (3) Infant, young child, and adolescent development needs and abilities, including the impact of trauma and disability;

⁶ *A list of training areas developed by a subcommittee of the Children's Representation Standards Work Group is attached in the Appendix.*

- (4) Developmentally appropriate interviewing and counseling skills;
- (5) The role of the attorney for the child and their ethical responsibilities to the client;
- (6) Racial disparity in treatment and legal outcomes in the dependency system;
- (7) Strategies for affirmatively representing clients to prevent adverse consequences of race-based or race-influenced decision making;⁷
- (8) Other biases that operate within the child welfare, juvenile, and criminal legal systems that could interfere with the ability of the attorney to successfully advocate for a child's stated interest;
- (9) The ability to ethically and effectively represent inter-, cross-, and multi-cultural children and youth clients. This includes understanding religious values and boundaries, including religions other than one's own, if applicable, and advocating for the youth's religious or spiritual preferences, including a preference not to practice a religion;
- (10) Effective and affirming representation of LGBTQ+ youth and children and youth, and those exploring their gender and sexual identities;
- (11) The practices, policies, regulations, program supports, and opportunities of dependent youth approaching dependency exit (age out);
- (12) Strategies for consulting with experts who can assist attorneys on various case issues;
- (13) Family dynamics and dysfunction, such as impacts of various trauma on family relationships. Knowledge of family preservation services and family supports available in the community;
- (14) The role and authority of the Department of Children, Youth, and Families (DCYF) and both public and private organizations connected to the dependency court system; and
- (15) Understanding the intersection of other systems and processes that often affect the trajectory of a case or the resource needs of individual children/youth (e.g., education/special education; juvenile justice; family civil litigation including domestic violence and child custody; and public and private resources available to children, youth, and families.)

⁷ *The attorney should also be fully aware of their own privilege and the potential impact that their own biases may have on the conduct of their representation and the discharge of ethical duties to their clients.*

(16) Understanding issues that adversely impact children and youth in the dependency system, and having competency to identify and to either represent the client or refer the client for legal representation or legal advocacy in other legal systems, such as the education/special education system, juvenile court child custody proceedings, public and other benefits, and immigration-related proceedings.

3.3 Attorney Competency

Attorneys can demonstrate competency by either (1) attending or reviewing recordings of mandatory trainings on the topics outlined above; or (2) showing competency in the topic areas through prior experience, CLE history, etc. Attorneys should endeavor to receive no less than eight (8) hours of continuing legal education credits per year on subjects related to the representation of children and youth in child welfare and related cases. At least one (1) hour of these annual requirements should be dedicated to skills and competencies required to engage in anti-racist and de-biased lawyering.

4. Caseloads

Attorneys representing children and youth in dependency and termination hearings on a full-time basis should be assigned to represent no more than 45 trial-level (not appellate) dependency clients at a time and no more than 60 total cases (including dependency and cases collateral to the dependency case, in which representation is required to properly protect the client's interests in the dependency case).^{8,9,10} Recognizing the unique nature of child representation practice, less experienced attorneys contracted to carry a full-time caseload should be assigned fewer cases

⁸ *The caseload standard assumes that the attorney's entire practice is exclusively devoted to the representation of children involved in Chapter 13.34 RCW and Chapter 13.36 RCW proceedings. For attorneys assigned to representing children on less than a full-time basis, the contract should be based on the actual percentage of time available for children's cases.*

⁹ *The caseload standard establishes a maximum of sixty (60) total cases for an attorney representing children in dependency court on a fulltime basis. The proceedings may comprise dependency, terminations, guardianships, reinstatement proceedings, authorized family law proceedings, and authorized administrative or judicial proceedings. Attorneys should not maintain a caseload that will render them unable to abide by their ethical obligations and these Standards.*

¹⁰ *The risk of ineffective representation is increased if the caseload of an attorney is not reasonably related to the actual work that must be done to represent their clients. The representation of children and youth in the dependency contexts requires a trained attorney to spend significant time building a relationship of trust with their client and making sure that the client understands a complex proceeding that has dramatic consequences in their life.*

until they have demonstrated competency to carry full caseload in a manner consistent with these standards.¹¹

This caseload standard assumes the following:

- (1) Attorneys appointed to represent children and youth in dependency proceedings will have commensurate knowledge, training, experience, and ability to communicate effectively with children.
- (2) Attorneys appointed to represent children and youth in dependency court will have access to funding for support services, including, but not limited to: social workers, investigators, mitigation specialist, paralegals, experts, mentorship support, communities of practice, other technical assistance, and case-related travel.
- (3) That contracts for representation of children and youth in dependency proceedings contain provisions that allow for additional compensation for cases that demand an extraordinary amount of preparation and time.
- (4) Caseload adjustments should be made where attorneys represent a disproportionate number of children and youth with contested or complex litigation; children and youth with cultural, linguistic, behavioral, developmental, or other special needs; and/or where attorneys cannot comply with these Standards.
- (5) Attorney for children and youth meet minimum continuing training requirements outlined in these Standards.

¹¹ The caseload standard (number of maximum cases for each attorney) reflects the majority recommendation from the Children Representation Standards workgroup. It was reached after significant deliberation and discussion among workgroup members, a minority of whom dissent-based on professional and lived experience that the maximum caseload number of 60 cases is too high to allow attorneys to meet these new practice standards; to recruit and retain a diverse group of attorneys; and to maintain, build, and continue support of children's representation in these matters. No member at any point advocated for a higher caseload than that reflected in these Standards. The recommendation of maximum of 45 clients, maximum of 60 cases, is being put forward in part because of the workgroup's unanimous recommendation that this caseload standard may need to be adjusted after further experience and objective, independent research.

Given the expansion of legal services to children passed by the legislature, the desire to recruit and retain a diverse, competent, and qualified group of attorneys, the desire to adequately compensate those attorneys for this important work, and the need to implement this program in a timely and efficient manner, the Children's Representation Standards workgroup further recommends that the caseload standard be reviewed, reconsidered and, if appropriate, updated by a workgroup of independent researchers, practitioners, young people with lived experience, and experts in the field convened by the Supreme Court Commission on Children in Foster Care by July 2027 at the latest; or sooner if requested by the Office of Civil Legal Aid (OCLA), in order to ensure effective implementation of the program.

4.1 Continuity of Representation

Assignment of counsel for a child in dependency court should be prioritized to maintain continuity of representation where possible and where it benefits the child. To limit potential for further disruption of the child's trusted relationships and re-traumatization, it is best that the attorney of record continues to represent the child from the initial court proceeding through all subsequent dependency proceedings, including termination, until resolution or permanency is achieved.

4.2 Representation of Siblings

Appointing one attorney to represent a group of siblings in the same legal proceeding is discouraged. The likelihood of a conflict of interest arising during the course of a dependency and/or termination proceeding is high, and therefore, sibling group appointments should be avoided. Only in rare circumstances, and only if the representation conforms to the ethical obligations of the attorney towards each and every prospective client under the applicable RPCs, should a group of siblings be represented by the same attorney in the same legal proceeding. The "rare circumstances" are, for example, when all the siblings' interests are aligned, the potential for a conflict of interest arising in the representation has been explained to each of them, and they each sign a statement acknowledging that the attorney will seek withdrawal from all the representations should a conflict of interest arise.

5. Communication

5.1 Communication with the Child

The attorney should be aware of the unique developmental issues facing the child and take appropriate steps to ensure that these issues do not interfere with effective legal representation. 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; developmental level; level of education; race; immigration status and other cultural contexts; disability, if any; sexual orientation and gender expression; trauma; psychosocial and socioemotional well-being; and degree of language acquisition.

Attorneys must maintain sufficient and frequent contact with each child to establish a trusting relationship and maintain an attorney/client relationship that will enable counsel to understand the child's standpoint and what's important to them. It is important for the attorney to not only focus on issues and questions related to the case, but also engage each child about their interests and needs.¹² The attorney should work with each child to help them identify their legal interests, legal needs, and legal goals, including working with each

¹² See *Response Ability Pathways (RAP) Framework*, <https://www.neassoc.com/response-ability-pathways>. See also *Maslow's Hierarchy of Needs*, <https://www.simplypsychology.org/maslow.html>.

child to identify the social and cultural supports and activities that matter to them, such as racial/ethnic or religious/spiritual events. Communication should include the following elements:

- (1) The attorney's first contact with the child after receiving the child's contact information should take place within 72 hours following appointment and receipt of the child's contact information, or as shortly thereafter as possible. Attorneys should strive to make that contact an in-person or video contact.
- (2) Provide the child and the child's caretaker with contact information in writing (electronic communication of said information is appropriate depending on available technology and other factors) and establish a message system that allows regular attorney/client contact.
- (3) Attorneys should meet with the child in person well before court hearings at which the substantive interests of the child are at issue. For those cases where the attorney is assigned upon the filing of a dependency petition, an initial meeting between shelter care and the case conference is particularly important in establishing a trusting relationship with the child and gaining an understanding of the child's interests. At these meetings, counsel should listen to the child's understanding of the case; fully answer the child's questions; and assess the child's evolving capacity to understand. Counsel should make every effort to visit the child in each placement unless it is absolutely not feasible. In cases where dependency is established, counsel should have monthly contact with their child client and at least one in person contact every review period. The burden is on the attorney to ensure that the frequency and method of communication with the child is developmentally appropriate and allows the attorney to adequately assess the child's evolving capacity to direct counsel. See Section 1.1 (11).
- (4) Attorneys should learn about and speak respectfully about the child-client's intersecting identities and how it impacts their experience, including their race, opinions or feelings about religion or spirituality, cultural background, immigration status, socioeconomic status, trauma history, sexual orientation, and gender identity.
- (5) Attorneys should advise the child about all legal matters related to the case in a developmentally appropriate manner. Depending on the child's age and functioning, multiple meetings of short duration may be required to fully discuss the service plan, the child's rights and potential consequences in the pending proceeding, and any orders entered regarding expectations of the child and potential consequences of failing to obey court orders or cooperate with service plans.
- (6) Attorneys must adhere to the Rules of Professional Conduct (RPC) 1.6 and other laws related to confidentiality of client information, including its disclosure.

5.2 Communication with Other Professionals

Child welfare cases require the child's attorney to communicate regularly with numerous professionals involved in the child's dependency or termination case, as well as attorneys who may represent the child in offender matters, truancy, or other cases. Some of these individuals are parties to the proceeding and represented by counsel, while many others are not. The attorney should provide the assigned social worker or case manager with the order of appointment or notice of appearance, which includes attorney's contact information. The attorney should establish a professional working relationship with the social worker or case manager to facilitate the effective resolution of matters related to the child's case without undue delay.

The attorney should communicate regularly as indicated by the circumstances of each case with other parties and professionals, including professionals at the child's school and otherwise be involved in their client's case as required to obtain current information regarding the child. While dependency proceedings may at times appear informal, all attorneys should respect the attorney/client relationship and abide by the RPC's governing client confidentiality and communication with other parties to the proceeding and communications with third parties.

5.3 Confidentiality

The child's attorney shall not disclose information to third parties, which would disclose or lead to disclosure of information relating to the representation of a client without the informed consent of the client pursuant to RPC 1.6.

6. Discovery and Court Preparation

6.1 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 the child prior to court hearings and when apprised of emergencies or significant events impacting on the child. *See also* Standard 2.

6.2 Investigate

To support the client's position and subject to the client's consent if legally required, the child's attorney is expected to conduct thorough, continuing, and independent investigations and engage in discovery which may include, but should not be limited to:

- (1) Obtaining copies of the court file, all pleadings, and relevant notices;
- (2) Reviewing the child's social services, psychiatric, psychological, drug and alcohol,

medical, law enforcement, school, and other records relevant to the case;

(3) Filing notice of appearance and requests or demands for discovery and serving other parties and their representatives, including Guardians ad Litem and court-appointed special advocates. The notice of appearance and discovery demand should include, among other things, that the attorney is representing the child and expects timely notification of: case conferences, changes of placement, current contact information for the child, and other changes of circumstances affecting the child and the child's family;

(4) Participating in depositions, negotiations, other discovery, pretrial conferences, and hearings;

(5) Conducting thorough and independent investigations at every stage of the proceedings and utilizing expert services, as needed;

(6) Counseling 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;

(7) Investigate any concerns raised by the child client including, but not limited to, how they or their family are treated by professionals in the dependency court system as it relates to race, immigration status, cultural background, sexual orientation, gender identity, socioeconomic status, and trauma history;

(8) Identifying appropriate family and professional resources for the child;

(9) Investigating viability of a child's placement with parents and loved ones, including accessing expert resources if necessary to present the child's placement request;

(10) Contacting and meeting with parents or legal guardians and present and past caregivers of the child, with permission of their attorney(s), if represented;

(11) Obtaining necessary authorizations for the release of information;

(12) Interviewing individuals involved with the child, including case workers, court appointed special advocates or Guardians ad Litem, foster parents and other caretakers (such as daycare providers, and babysitters, etc.), neighbors, relatives, school personnel, coaches, clergy, therapeutic professionals, physicians, law enforcement officers, and other potential witnesses;

(13) Fully reviewing all relevant evidence including, but not limited to, physical and electronic photographs, video, and audio recordings;

(14) Learning about the substantive issues affecting the child's rights being addressed

in concurrent administrative hearings and other legal proceedings involving the child's legal rights that relate to the dependency court matter;

(15) Contacting or visiting with and interviewing the child's treatment provider and current placement;

(16) Attending school case conferences or staffing concerning the child as needed; and

(17) Developing a theory of the case and legal strategy to implement at hearings, including factual and legal issues.

6.3 File Pleadings

After consulting with and taking direction from the child about the relationships that matter to them, the child's attorney should timely file appropriate pleadings in the case. Types of pleadings that can be filed include petitions, answers, reports, declarations, motions, responses, witness and exhibit lists, or objections as necessary to advocate for the child's expressed or legal interests. Examples of relief requested may include, but is not limited to:

- (1) An increase, decrease, or termination of contact or visitation;
- (2) A mental or physical examination of a party or the child;
- (3) A parenting, custody, or visitation evaluation;
- (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) Reinstatement of parental rights;
- (8) Establishment of paternity and child support;
- (9) Protective orders concerning the child's privileged communications or records, tangible or intangible property, or contact with other persons who are not parties;
- (10) Order on services for the child and/or family; and
- (11) Dismissal of proceedings.

6.4 Negotiate Settlements

The child's attorney should participate in settlement negotiations to seek expeditious resolution of the case that is aligned with the child's stated or legal interests. The child's attorney should consult with the child and advise the child of their right to participate in mediation. If the child wishes to participate in mediation, the attorney should access suitable mediation supports as necessary.

7. Hearings

7.1 Court Appearances

The child's attorney shall attend all hearings and participate in all telephone, virtual, or other conferences with the court. If a child is attending a court hearing in person, the attorney must appear in person. If the child's attorney is unable to attend a hearing, the attorney is responsible for arranging a fully-prepared coverage attorney. Attorney participation in hearings includes, but is not limited to, the following actions:

- (1) Preparing and making all appropriate motions, including *motions in limine* with accompanying briefs if necessary, and evidentiary objections to advance the child's position at trial or hearing and to preserve issues for appeal;
- (2) Presenting and cross-examining witnesses, including experts;
- (3) Preparing and presenting exhibits;
- (4) Filing trial briefs;
- (5) Timely filing motions;
- (6) Making opening and closing arguments;
- (7) Preparing proposed findings of fact, conclusions of law, and orders when they will be used in the court's decision or may otherwise benefit the client; and
- (8) Avoiding continuances and working to reduce delays in court proceedings if doing so aligns with the child's interests.

7.2 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.

7.3 Child at Hearing

The child has a right to be present at court hearings and should be encouraged to do so if appropriate. The child's attorney should consult with the child regarding the child's desire to be present at each court hearing, including procedural hearings at which the substantive interests of the child are not at issue and regardless of whether the child will testify. The child's attorney is expected to consult with the child prior to each scheduled hearing to ensure that the child understands their right to be present at the hearing, to advise the child on the nature of the hearing, what to expect during the hearing, and to determine whether

the child wishes to be present. After consultation, the attorney shall follow the child's decision regarding whether they will attend the court hearing. If the child wishes to attend the hearing, the attorney should work with the Department and or placement to ensure attendance at hearing. Attorneys should advocate for hearings to occur during times that have the least impact on child's schedule.

7.4 Whether Child Should Testify

The attorney's responsibility for developing and guarding the child's trust, confidence, and participation in decision-making is particularly important when it comes to the decision of whether a child should be called to testify in a dependency or termination proceeding. Consistent with RPC 1.2 and 1.4, the child's attorney is expected to fully counsel and advise the child regarding a decision as to whether to call the child as a witness, including assessing the child's competency to testify.

(1) Among the factors that should be considered is the child's need or desire to testify. Other factors include, but are not limited to, potential repercussions of testifying or not testifying, including potential criminal/juvenile offender liability; 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.

(2) As a child may be called to testify by any party, competency should be considered prior to all testimonial hearings regardless of whether or not the attorney and child intend to have the child testify. Relevant to competency, the attorney should consider prior to any testimonial hearing, the developmental ability of the child to recall and relate events and whether or not the child is able to understand the difference between a truth and a lie. The child's propensity for truthfulness is immaterial to competency, and competency is presumed regardless of age of the witness. If the attorney anticipates that their client will be called to testify and anticipates a challenge to the competency of their client, the attorney should explain in developmentally appropriate terms the purpose and procedure of a competency hearing.

7.5 Child Witness

If the child is to testify, the attorney should effectively prepare them to do so. This preparation should include familiarizing the child with the courtroom, court procedures, and what to expect during direct and cross-examination. Attorneys should ensure, through motions, if necessary, that testifying will cause minimum harm to the child. The child's attorney is expected to work with other parties who may call the child as a witness to ensure as much as possible that the child is afforded an opportunity to testify in a manner that safeguards the child's emotional well-being. The child's attorney should seek to ensure that questions to the child are phrased in a syntactically and linguistically appropriate manner.

7.6 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.

7.7 Conclusion of Hearing

The child's attorney should make a closing argument and provide proposed findings of fact and conclusions of law to the court. The child's attorney should ensure that a written order is entered.

7.8 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, to further the child's stated interest, which may include permission to pursue appellate review. *See* Standard 9, below.

8. Advocacy for Services

8.1 Services

Consistent with the child's stated interest, the child's attorney or a member of the attorney's legal team should seek to set up appropriate and desired supports or services (by court order if necessary), to: access entitlements such as housing, food, clothing, and education; to protect the child's interests; and to implement a service plan tailored to meet the child's needs. These services may include, but are not limited to:

- (1) Family preservation or reunification services;
- (2) Sibling and parental visitation supports, such as transportation;
- (3) Trauma-related services;
- (4) Medical care, including treatment for substance use disorder and psychosocial conditions;
- (5) Parenting education;
- (6) Semi-independent and independent living services;
- (7) Financial supports and entitlements, such as survivors' benefits or social security benefits;
- (8) Services supporting the implementation of the permanent plan;
- (9) Recreational or social supports;
- (10) Gender affirming care, including health care and the procurement of legal gender marker and/or name changes.

8.2 Special Needs

Consistent with the child's stated interest, the child's attorney should ensure that a child with special needs receives appropriate services to address the physical, psychosocial, or developmental conditions. These services may include, but should not be limited to:

- (1) Special education and related services;
- (2) Therapeutic and medical care, including occupational therapy;
- (3) Accessibility services and supports;
- (4) Therapeutic foster services;
- (5) Residential, in-patient, and/or outpatient psychiatric treatment.

9. Review: Appeals, Discretionary Review, & Revision

9.1 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.

9.2 Communicate Order to Child

The child's attorney must discuss the order and its consequences with the child.

9.3 Implementation

The child's attorney is expected to monitor the implementation of the court's orders; take reasonable steps to ensure that all parties comply with the court's order; assess and investigate material changes in circumstances that affect the child's stated interests and the effective implementation of court orders; and determine whether the case needs to be brought back to court.

9.4 Decision to Review

The child's attorney should consider and discuss with the child, as developmentally appropriate, the possibility of review on appeal, revision, or discretionary review. If after such consultation, the child wishes to have the order reviewed, and there is a basis in law and fact for doing so, the lawyer shall take all steps necessary to initiate and perfect the review process. The child's attorney should seek, when appropriate, temporary orders or extraordinary writs necessary to protect the interests of the child pending review.

Whether an appeal or discretionary review is filed on behalf of the child or by another party, the child's attorney should take necessary steps to facilitate access to appellate counsel where a right to appointed counsel on appeal exists and support efforts to secure

that attorney's appointment. The attorney for the child should coordinate with the child's appellate counsel to ensure that appropriate steps are taken to protect the client's interests while the appellate review is pending.

9.5 Conclusion of Review

When the decision after appeal, revision, or discretionary review is received, the child's attorney should meet with the child and explain the outcome of the case.

10. Withdrawal and Termination of Representation

10.1 Withdrawal Upon Resolution of Case

The child's attorney is expected to close their case and withdraw from the legal representation in a timely manner when a final resolution of the case has been entered by the court and the attorney's responsibilities to the client have been completed. In general, the attorney should close the case and withdraw from representation within 40 days of entry of a final order.

10.2 Withdrawal Prior to Resolution of Case

(1) If circumstances necessitate the attorney's withdrawal prior to resolution of the case, pursuant to Civil Rule 71(b), the attorney must discuss the withdrawal with the child before filing the motion and order for withdrawal and substitution. If a motion to withdraw is granted, the attorney is expected to take all necessary steps to protect the client's interests and arrange for the orderly transfer of the client's file and discovery to substituting counsel.

(2) If an attorney is appointed to represent a child, there is an ongoing obligation to conduct conflict of interests checks regularly throughout the legal representation. If an issue arises that must be resolved by withdrawal by the attorney, the attorney must promptly note the motion and seek appropriate relief pursuant to Civil Rule 71(b).

10.3 Cessation of Representation

The child's attorney should prepare the child for the end of the attorney/client relationship. Prior to case closure, the attorney should help the child identify legal goals and whether they have been met. If appropriate, the attorney should make every attempt to either aid the child with their legal goals or obtain appropriate referrals prior to case closure. Upon case closure, the attorney should make clear to the child in an age- and developmentally-appropriate manner that the attorney/client relationship has ended. Examples of legal goals that may need to be addressed at the end of the representation include, but may not be limited to:

- (1) Addressing remaining desires and interests related to a basic needs framework¹³ and going beyond basic needs to address those things that empower children and youth and support their autonomy and agency;
- (2) Addressing who they are connected to, such as their siblings, parents, other relatives, mentors, educators, and other social supports;
- (3) Addressing whether the child's placement is supportive of other important identity and cultural values, including their approach to spirituality or religious beliefs, whether they're religious or not;
- (4) Developing a safety plan with the child, if necessary.

¹³ See Responsibility Pathways Framework, <https://www.neassoc.com/response-ability-pathways>; *See also* <https://www.simplypsychology.org/maslow.html>