

Practice Standards

December, 2012

Section XX, Representation of Parent/Guardian in Proceeding for Involuntary Commitment of Developmentally Disabled Person

2. HANDLING THE CASE:

A. Counsel should accept the appointment with the full understanding of the issues and functions to be performed. If counsel considers parts of the appointment to be confusing or incompatible with his or her ethical duties, counsel should inform the court of the conflict and ask the court to clarify or change the terms of the appointment.

B. Immediately after being appointed, counsel should review the file and should inform other parties and other counsel of his or her appointment, and that as counsel of record he or she should receive copies of pleadings, discovery exchanges, and reasonable notification of hearings and major changes of circumstances in the case.

C. Immediately after being appointed, counsel should meet with the parents or guardian of the respondent, adapting all communications to their level of education, cognitive development, cultural background, and degree of language acquisition. Counsel should inform the parents or guardian about the court system, the proceedings, and counsel's responsibilities. Counsel should illicit and assess the parents or guardians views and concerns of the case.

D. Counsel should be aware of and protect all of the procedural rights guaranteed under §53-20-112, MCA, including:

- a. The right to be present at any hearing held pursuant to §53-20-101;
- b. Offer evidence and cross-examine witnesses at any hearing; and,
- c. Have the respondent examined by a professional person of his or her choice.

E. Counsel should thoroughly explain to the parents or guardian the contents of the petition for commitment and discuss all practical and legal considerations that flow from the petition.

F. If the petition provides a medical report, counsel should ascertain whether the physician indicates on the report his or her qualifications and that those qualifications are appropriate to make the recommendation regarding capacity or incapacity contained in the report.

G. If counsel believes it to be appropriate, or the parents or guardian request it, counsel should seek to have a medical evaluation of the disabled person completed by a professional person of their choice, and preserve said examination for further use on behalf of the respondent.

H. Counsel should conduct thorough, continuing, and independent investigations, including reviewing the respondent's social service records, mental health records, if applicable, drug and alcohol related records, medical records, law enforcement records, and other records relevant to the case.

Practice Standards

December, 2012

Section XX, Representation of Parent/Guardian in Proceeding for Involuntary Commitment of Developmentally Disabled Person

I. Counsel should determine whether or not the respondent has an existing trust or durable power of attorney which may be relevant.

J. Counsel should be knowledgeable about all other alternatives and types of medical treatment for the respondent's disability and of the type and duration of treatment requested by the petition.

K. In preparation for court hearings, counsel needs to complete exhaustive trial preparation, witness preparation of both lay and expert witnesses, preparation of trial briefs and stipulations, and all evidentiary considerations.

L. Counsel should stay apprised of any other court proceedings affecting the respondent, the parties, or other household members.

M. If the client is a parent whose location is unknown, all standard means, such as telephone book, internet, and punitive father registration, shall be used to locate the parent. Other parents or guardians who are available should be consulted as to the location of the missing parent. Counsel should use all due diligence in locating said missing parent.

N. At any court proceedings, counsel should present and cross-examine witnesses and offer exhibits as necessary, introduce evidence where appropriate, and make arguments on the parents' or guardian's behalf and ensure that a written order is made and conforms to the court's oral rulings and statutorily required findings and notices. Counsel should abide by the parents' or guardian's decisions about the representation with respect to each issue on which the parents or guardians are competent to direct counsel. Counsel should pursue the parents or guardians expressed objectives, unless their objectives violate counsel's ethical duties or responsibilities as an officer of the court.

O. Counsel should participate in and, when appropriate, initiate negotiations and settlement discussions. Counsel should also participate in all depositions, pre-trial conferences, and hearings.

P. Counsel should determine and advocate for, on behalf of the parents or guardians, whatever treatment alternatives meet the wishes of the parents or guardians. If counsel has reason to believe that the parents or guardians legitimate interests require investigation, counsel should request appropriate alternatives as may be allowed by the court.

Q. After the initial disposition of the case, counsel should discuss the end of the legal representation with the parents or guardians and discuss all avenues of appeal and other assistance in the future on their behalf.

Practice Standards

December, 2012

Section XX, Representation of Parent/Guardian in Proceeding for Involuntary Commitment of Developmentally Disabled Person

- a. When counsel's representation terminates, counsel shall cooperate with the parents or guardians and any succeeding counsel in the transmission of the record, transcripts, file, and other pertinent information.