

# Practice Standards

September 26, 2018

## Section XXII, Representation of Children in Dependent/Neglect Cases

### 5. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the various health and social services that may be available to the children and families in the community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to the youth.

C. Counsel shall advise the child(ren) of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall advocate the youth's express wishes and shall not substitute his or her judgment about what is in the best interests of the youth. The primary role of counsel is to represent the perspective of the youth alone and not that of the youth's best interests, of the youth's parents or guardian, or of the Department of Public Health and Human Services. Appointment of a guardian-ad-litem to investigate the best interests of the child is a matter within the exclusive province of the court.

E. Counsel shall ensure that children do not waive appointment of counsel. Counsel should be assigned at the earliest possible opportunity and shall actively represent the youth at all stages of the proceeding. When counsel becomes aware of the assignment, counsel shall meet with the youth as soon as possible to permit effective preparation.

F. When meeting with the child for the first time, counsel shall identify himself or herself by name and affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other healthcare facility, counsel shall make it clear to the minor that he or she is not a member of the facility staff. Counsel shall inform the child that the conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve that attorney-client confidentiality. Counsel shall also inform the child that he or she has a right to remain silent.

G. During the conference, counsel shall:

- a. Explain the issues and possible dispositions;
- b. Explain the court process, timelines, and the role of all the parties involved, such as judge, prosecutor, guardian ad-litem, child and parent;
- c. Inform the child not to make statements to anyone concerning the case without prior consultation with counsel;

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- d. Obtain signed releases for medical and mental health records, education records, and other necessary records. Counsel should advise the client of the potential use of this information and the privileges that attach to this information;
- e. Obtain information from the client concerning the facts and whether there were any statements made, witnesses, and other relevant information.

H. Counsel shall maintain the attorney-client privilege with the understanding that the attorney represents the youth alone and not the youth's parents or guardians. The potential for a conflict of interest between one or both parents should be clearly recognized and acknowledged. Counsel should inform the parent that he or she is counsel for the youth and that in the event of a disagreement between a parent or guardian and the youth, counsel is required to serve exclusively the wishes of the youth.

I. If counsel is unable to communicate with the client because of language or disability, counsel shall use the experts necessary to ensure the ability to communicate with the client.

**DURATION OF APPOINTMENT.** Unless otherwise provided by a court order, an appointment of a child's lawyer in an abuse and neglect proceeding continues in effect until the lawyer is discharged by court order or the case is dismissed. The appointment includes all stages thereof, from removal from the home or initial appointment through all available appellate proceedings, pursuant to OPD policy and procedure.