

# **Practice Standards**

September 26, 2018

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

### **6. HANDLING THE CASE:**

- A. Counsel should seek the most expedient and timely resolution of the proceeding possible while providing effective advocacy for the client. Counsel should only seek the continuance of any phase of the proceedings if it is necessary to effectively advocate for the client.
- B. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in such proceedings, such as reports from agency employees, as well as substantive law in these proceedings.
- C. In preparation for any proceedings such as show cause, adjudicatory or termination, counsel should:
  - a. Review the petition and all other evidence;
  - b. Counsel shall obtain discovery from DPHHS;
  - c. Be fully informed of the rules of evidence, court rules, and the law with relation to all stages of the hearing process;
  - d. Be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the hearing;
  - e. Be aware of the substantive and procedural law regarding the preservation of legal error for appellate review;
  - f. Counsel shall be familiar with applicable principals of confidentiality;
  - g. Prepare the client for the proceeding, explain the issues involved, and the alternatives open to the judge;
  - h. If the child has already been removed from the home, determine the basis for the removal;
  - i. Determine the actions taken by the State to investigate other possible actions to protect the child without removal, such as locating a non-custodial parent or relative, identifying services to address the needs of the parent and child, including intensive home-based services, and other services, such as disability support services;
  - j. Familiarize himself or herself with relevant law; and,
  - k. Interview all witnesses, favorable and adverse.
- D. During any proceedings, counsel shall, where it benefits the client:
  - a. Examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence;

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- b. Offer evidence favorable to the client's case, if available; and,
  - c. Determine whether an expert is needed to assist in preparation of the child's case.
- E. During the show cause hearing, counsel shall examine witnesses as to:
- a. Whether the agency has made all reasonable efforts to explore services that will allow the child to remain safely at home and avoid protective placement of the child;
  - b. Whether there are other responsible relatives or adults available who may be able to care of the child or provide additional supervision;
  - c. The accuracy of the facts contained in the petition or affidavit in support of intervention; and,
  - d. If the court grants the State's request and orders the child to be removed from the home, counsel shall challenge unnecessary supervision and restrictions on visitation.
- F. Where counsel believes that the youth's desires are not in the youth's best interest, counsel may attempt to persuade the youth to change his or her position. If the youth remains unpersuaded, however, counsel should assure the youth that counsel will advocate for the youth's expressed wishes.
- a. Counsel should make sure that the youth is carefully prepared to participate in the procedures required and used in the particular court.
- G. At the adjudicatory hearing, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses, and challenge other non-testimonial evidence regarding:
- a. The accuracy of the facts presented by the State to prove abuse or neglect of the child;
  - b. Factual basis of opinions presented by the State to prove abuse or neglect of the child;
  - c. Whether the agency failed to provide services that would have allowed the child to stay safely in the home;
  - d. If the court grants the State's request and orders the child to be removed from the home, counsel shall investigate supervision and visitation restriction conditions and determine if a challenge is appropriate.
- H. Prior to making admissions or stipulations regarding placement or visitation counsel must:

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- a. Discuss the consequences of such a decision with the child;
  - b. Explain to the child that the ultimate decision to make the admission or voluntarily place the child has to be made by the parent;
  - c. Investigate and, where appropriate, candidly explain to the child the prospective strengths and weaknesses of the case, including the availability of the State's witnesses, concessions and benefits which are subject to negotiation, and the possible consequences of any adjudication.
- I. Counsel's recommendation on the advisability of an admission should be based on a review of the complete circumstances of the case and the child's situation.
- J. In preparation for a disposition hearing, counsel should:
- a. Determine what actions the parent has taken since the adjudicatory proceedings to address the concerns of the State as to the safety of the child;
  - b. Investigate what the agency has done to explore services that will allow the child to remain safely at home or return to the home; and,
  - c. Determine what sort of disruption that the removal of the child has caused the child and the family.
- K. In the disposition hearing, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:
- a. Whether, if the agency objects to placing the child with the parent, the agency sufficiently explored and provided services that would have allowed the child to reside safely in the parent's home;
  - b. Whether the agency appropriately considered the non-custodial parent or other family members as caretakers; and,
  - c. The factual basis of the agency's recommendations for placement outside of the home.
- L. If the court grants the State's request and orders the child to be removed from the home, counsel shall challenge unnecessary supervision and restrictions on visitation.
- M. In preparation for a permanency hearing, and, if parental rights have not been terminated, counsel should:
- a. Keep in contact with the child and determine what actions the parent has taken to address the concerns of the State as to the safety of the child;

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- b. Investigate what the agency has done to explore services that will allow the child to live safely with the parent; and,
  - c. Determine what sort of disruption the removal of the child has caused the child and the family.
- N. In preparation for a parental rights termination proceeding, counsel should:
- a. Determine what actions the parent has taken to address the concerns of the State as to the safety of the child;
  - b. Investigate what the agency has done to explore services that will allow the child to remain safely in the home; and,
  - c. Determine what sort of disruption that the removal of the child has caused the child and the family.
- O. In a parental rights termination proceeding, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:
- a. Whether the statutory grounds for termination have been met;
  - b. Whether termination is in the best interest of the child;
  - c. Whether the agency made reasonable efforts to prevent the need for termination and to safely reunify the family, such as identifying services available to protect the child without removal, in-home baby sitters, intensive home-based services, and other services that address the needs of the child, including disability support services;
  - d. Whether the treatment plan, if one was required, was appropriate.