

**ETHICS: SUBSTANCE OVER FORM:
NEW LEGAL AND ETHICAL DUTIES
OF AD LITEMS**

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1

In re M.S., 115 S.W.3d 534, 544 (Tex. 2003).

The same standards of effective assistance of counsel which apply in criminal cases should apply in DFPS cases. The performance of counsel must be deficient and the errors so serious that the attorney was not functioning as the "counsel" guaranteed by the Sixth Amendment. The deficient performance of counsel must also prejudice the defense, i.e. that the counsel's errors were so serious as to deprive the defendant of a fair trial.

The court should give deference to counsel's performance and indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and include the possibility that counsel's actions are strategic. In other words, the "...conduct must be so outrageous that no competent attorney would have engaged in it."

2

Walker v. DFPS, 312 S.W.3rd 608 (Tex. App.-Houston, [1st Dist] 209, pet. denied)

Father unsuccessfully claimed that his court appointed trial counsel was ineffective because he failed to conduct any pre-trial investigation, failed to communicate with the parent or return phone calls, failed to interview witnesses, failed to provide any information or counsel relative to his rights or obligations, failed to conduct any discovery, failed to object to hearsay and misrepresentations of opposing counsel as to the contents of documents introduced into evidence, and failed to show up for trial.

3

In re V.V., 349 S.W. 3rd 548, 551 (Tex. App. – Houston [1st Dist] 2010, pet. denied)

The initial panel decision unanimously reversed and rendered in favor of the Father in a DFPS termination case holding that there was no evidence to support termination as to the Father and that trial counsel's performance was so deficient that he was wholly deprived of counsel and therefore did not have to demonstrate harm in order to secure a reversal.

In an en banc review, the court vacated the opinion of the panel and found that the evidence supported termination and that because the Father made no showing that the outcome of the case probably would have been different save for his counsel's performance, he was not entitled to reversal on the grounds of ineffective assistance of counsel.

Father could seek an abatement and remand to the trial court for a hearing to determine whether any deficiency in counsel's performance affected the outcome of the case.

Justice Jennings, in dissent, asserted that the majority, by overruling a unanimous panel decision subverted its duty to decide cases upon the law and the facts, engaged in result-oriented decision making, shut down all claims for the constructive denial of counsel in termination cases and sacrificed both the fundamental duties that attorneys owe to their clients along with the strict standards of proof that the Legislature required in parental termination cases.

4

United States v. Cronin, 466 U.S. 648, 658 (1984)

Compliance with the law cannot be accomplished by the mere formal appointment of a lawyer and when the performance is so deficient as to be non-existent, then there is no requirement to prove harm. If no actual assistance of counsel is provided, then the constitutional guarantee is violated. If the lawyer never investigates the facts and never discusses the case facts or applicable law with the Client, the critical role of counsel and the reliability of the process and the existence of a fair trial all falls into question.

5

Strickland v. Washington, 466 U.S. 688 (1984)

The performance of counsel must be deficient and the errors so serious that the attorney was not functioning as the "counsel" guaranteed by the Sixth Amendment. In addition, there must be a showing that the deficient performance of counsel prejudiced the defense, i.e. that the counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result was reliable.

6

§107.013(e) – Mandatory Appointment of Attorney Ad Litem.

A trial court determination of indigency lasts through all appeals unless the court finds the parent is no longer indigent due to a material and substantial change of circumstances.

7

§107.0131 – Powers and Duties of Ad Litem For Parent

Requires the attorney for the parent to:

- 1. Within a reasonable time after appointment, interview:**
 - (a) the Client**
 - (b) each person with significant knowledge of the case; and**
 - (c) the parties to the suit.**
- 2. Investigate the facts of the case;**

8

§107.0131 – Powers and Duties of Ad Litem For Parent (continued)

- 3. Ensure competent representation at hearings, mediations, pre-trial matters and the trial on the merits;**
 - (a) Obtain and review copies of all court files; and**
 - (b) When necessary, conduct formal discovery;**
- 4. Take any action, consistent with the Client's interest to:**
 - (a) encourage settlement and use of alternative dispute resolution Procedures; and**
 - (b) review and sign or decline to sign any proposed or agreed order.**

9

§107.0131 – Powers and Duties of Ad Litem For Parent (continued)

5. Meet with Client before each court hearing, unless the court finds:

- (a) that the attorney has shown good cause why compliance is not feasible; or**
- (b) on a showing of good cause, authorize the attorney to comply with the meeting requirement by conference or telephone.**

6. To become familiar with the American Bar Association Standards of practice for Attorney Representing Parents in Abuse and Neglect Cases;

10

§107.0131 – Powers and Duties of Ad Litem For Parent (continued)

7. Complete at least three (3) hours continuing legal education related to child protection laws unless the court exempts due to experience;

8. Abide by the parent's objectives of representation; and

9. Be trained in child protection laws unless exempted by the court due to experience.

11

§107.0131 – Powers and Duties of Ad Litem For Parent (continued)

The attorney is entitled to:

- 1. Request clarification of the role if it is ambiguous;**
- 2. Request a hearing or trial on the merits;**
- 3. Consent or refuse to consent to an interview of the parent by another attorney;**
- 4. Receive a copy of each pleading or other paper filed with the court;**
- 5. Receive a notice of each hearing in the suit;**

12

§107.0131 – Powers and Duties of Ad Litem For Parent (continued)

6. Notice and an opportunity to participate in any case staffing that the parent is invited to participate in, including, as appropriate:

- (a) case staffing to develop a Family Plan of Service;
- (b) family group conference;
- (c) permanency conference;
- (d) mediation;
- (e) staffing on discharge and return home; and
- (f) any other staffing the department determines would be appropriate for a parent to attend, but excluding internal department staffings and staffings between DFPS and its counsel.

7. Attend all legal proceedings in the suit.

13

Disciplinary Rule 4.02

Prohibits communications with a person, organization, or entity of government that the lawyer knows is represented by another lawyer unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

14

Disciplinary Rule 4.03

Prohibits communications with a party not represented by counsel by a lawyer for another party in a manner that states or implies that the lawyer is disinterested. If the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role, the lawyer is required to make reasonable efforts to correct the misunderstanding

15

Disciplinary Rule 4.04

1. Using means that have no substantial purpose other than to embarrass, delay, or burden a third person;
2. Use methods of obtaining evidence that violate the legal rights of such a person;
3. Presenting, participating in presenting, or threaten to present:
 - (a) criminal or disciplinary charges solely to gain advantage in a civil matter; or
 - (b) civil, criminal, or disciplinary charges against a complainant, a witness, or a potential witness in a bar disciplinary proceeding solely to prevent participation by the complainant, witness, or potential witness

16

§107.0133. Discipline of Attorney Ad Litem for Parent or Alleged Father

A parent that fails to perform the duties outlined in §107.0131 or §107.0132 is subject to disciplinary action under the Government Code.

17

§107.0132. Powers and Duties of Attorney Ad Litem For Alleged Father

The attorney in this role is required to:

1. Conduct an investigation regarding the Petitioner's due diligence in locating the father;
2. Verify that the Petitioner has obtained a certificate of the results of a paternity registry;
3. Interview any party or other person who has significant knowledge of the case and who may have information relating to the identity or location of the alleged father;
4. Conduct an independent investigation to identify or locate the alleged father.

18

§107.0132. Powers and Duties of Attorney Ad Litem For Alleged Father (continued)

If the attorney does locate the alleged father, the attorney shall:

1. Provide to each party and the court the alleged father's name, address, and locating information; and
2. If appropriate, request approval from the court to assert the alleged father in establishing paternity

19

§107.0132. Powers and Duties of Attorney Ad Litem For Alleged Father (continued)

If the alleged father is indigent and adjudicated to be the father, the court may convert the attorney's role and appoint the attorney to represent the parent.

If the attorney does not locate the alleged father, the attorney is required to submit to the court a written statement of the efforts which were made to identify or locate the alleged father and that he/she was unable to do so.

20

UNANSWERED QUESTIONS

1. Has the Legislature overruled In re M.S. and its progeny and established a new standard for ineffective assistance of counsel;
2. Has the Legislature created a negligence per se statute for attorney liability;
3. Who has the duty to monitor the attorney's performance;
4. Who is authorized to file a grievance;

21

UNANSWERED QUESTIONS (continued)

5. Will DFPS always give access to their clients and witnesses to the attorney for the parent so that the attorney can fulfill his/her duties;
6. Will all of the courts allow the attorney to copy the files;
7. Will all courts be willing to pay for Ad Litem trips or indigent parent trips in order to accomplish the meeting requirement before each hearing;
8. Will all courts grant bench warrants before all hearings;

22

UNANSWERED QUESTIONS (continued)

9. Will DFPS and all other attorneys actively seek written permission before they interview a parent;
10. If the attorney invokes a restriction on communication with a parent-Client, will DFPS declare that parent to be uncooperative;
11. Will the State and each county provide sufficient resources so that each attorney actually receives a copy of each pleading or other paper filed with the court;
12. Will DFPS be required to schedule or reschedule any or all of its staffing to accommodate the attorney's schedule and the right of the attorney to be present;

23

UNANSWERED QUESTIONS (continued)

13. Can attorneys still cover hearings and trials for other attorneys and if so, are the duties being transferred with the appearance, and if not, how can any of the duties be enforced;
14. If there is no duty for service on an alleged father in some circumstances, how can an attorney be disciplined for not forcing DFPS into doing its job in finding an alleged father or in not making an effort to find a parent in circumstances when the DFPS does not have to find them;
15. Where is the statute that subjects a DFPS caseworker, supervisor, and program director to discipline for shirking their duties, misleading the court, conducting slipshod investigations, or making placement decisions based upon prohibited factors such as race; and
16. The legislation mandates the State to provide low-cost training to parent attorneys but delegates that responsibility to no one agency in particular who has to provide the training.

24

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A. INTRODUCTION

The 82nd Texas Legislature passed new statutes relative to the powers and duties of Attorney Ad Litem for Parents in DFPS abuse and neglect cases. These statutes are codified in **Sections 107.013; 107.0131; 107.0132; and 107.0133** of the *Texas Family Code*. These sections were enacted largely in response to criticism on the lack of training and effort by parent attorneys in DFPS cases. There was historical frustration with the adequacy of representation in these cases which involve constitutional protections. After the Texas Supreme Court adopted within child protection cases the constitutional right to “effective assistance of counsel”, this frustration continued because the courts seemed reluctant to actually apply the standards of **Strickland v. Washington** and **Cronic v. United States**. A recent study from the Permanent Judicial Commission for Children, Youth and Families stimulated this additional legislation which codifies and provides additional legal and ethical duties and opens the door to sanctions for lawyers who do not adequately represent parent clients in DFPS cases.

B. HISTORY

In 2003, the Texas Supreme Court held that the statutory right to counsel for indigent parents in Texas embodies the right to effective assistance of counsel. **In the Interest of M.S., S.W. 3rd 534, 544 (Tex. 2002).** (Slide 2). The court decided that the same standards of effective assistance of counsel which apply in criminal cases should apply in DFPS cases. **Id. at 545** This standard requires that for a reversal the performance of counsel must be deficient and that the errors were so serious that the attorney was not functioning as the “counsel” guaranteed by the Sixth Amendment. In addition, there must be a showing that the deficient performance of counsel prejudiced the defense, i.e. that the counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result was reliable. **Id. at 545.** In assessing the

performance deficiency, the court must take into account all of the circumstances surrounding the case and primarily focus on whether counsel performed in a “reasonably effective” manner.

Id. Representation must be so grossly deficient as to render the proceedings fundamentally unfair. **Id.** The court should give deference to counsel’s performance and indulge in a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance and include the possibility that counsel’s actions are strategic. **Id.** In other words, the “...conduct must be so outrageous that no competent attorney would have engaged in it.” **Id.**

In sort of a catch-22, the Mother in M.S. complained that her counsel was ineffective because attorney failed to have a record made of the voir dire, charge conference and closing argument. However, because there was no record requested, there was no way for the court to evaluate counsel’s performance. This point was ultimately unsuccessful because the Mother failed to even indicate what errors would have been recorded had a record been made. The mother also complained that her attorney failed to preserve a factual sufficiency complaint by filing a Motion for New Trial and including that point in the Statement of Appellate Points which were requested at the time. **Id. at 545-546.**

Since Texas allows for appellate review, error preservation from the trial court must be viewed in the due process prism. After analyzing the private issues at stake, the government’s interest in the proceeding and the risk of erroneous deprivation of parental rights, the court held that failure to perfect a factual sufficiency review may constitute ineffective assistance of counsel. Accordingly, the Supreme Court reversed and remanded the case to the Court of Appeals to conduct a factual sufficiency review and to determine whether counsel’s failure to perfect that issue was not objectively reasonable. **Id. at 549-550.**

Against this backdrop are the Appellate Court opinions in **Walker v. DFPS** and **In re V.V.** In **Walker**, the father unsuccessfully claimed that his court appointed trial counsel was ineffective because he failed to conduct any pre-trial investigation, failed to communicate with the parent or return phone calls, failed to interview witnesses, failed to provide any information or counsel relative to his rights or obligations, failed to conduct any discovery, failed to object to hearsay and misrepresentations of opposing counsel as to the contents of documents introduced into evidence, and failed to show up for trial. Counsel sent someone else that the Father never met to act as his counsel for the final trial. **Walker v. DFPS**, 312 S.W.3rd 608 (Tex. App.-Houston, [1st Dist.] 209, pet. denied). (Slide 3). In a strong dissent, Justice Jennings argued that the facts of the case warranted the application of the **Cronic** ruling from the U.S. Supreme Court. Jennings asserted that compliance with the law cannot be accomplished by the mere formal appointment of a lawyer and when the performance is so deficient as to be non-existent that there is no requirement to prove harm. **Id. at 628-629. United States v. Cronic, 466 U.S. 648 (1984).** (Slide 5). (See also **Strickland v. Washington**, 466 U.S. 668 (1984). (Slide 6). Justice Sharp dissented from the court's refusal to consider the matter en banc.

In V.V., the initial panel decision unanimously reversed and rendered in favor of the Father in a DFPS termination case holding that there was no evidence to support termination as to the Father and that trial counsel's performance was so deficient that he was wholly deprived of counsel and therefore did not have to demonstrate harm in order to secure a reversal.

In an en banc review, the full court vacated the opinion of the panel and found that the evidence supported termination and that because the Father made no showing that the outcome of the case probably would have been different save for his counsel's performance, he was not entitled to reversal on the grounds of ineffective assistance of counsel. **In re V.V.**, 349 S.W. 3rd

548, 551 (Tex. App. – Houston [1st Dist] 2010, pet. denied). (Slide 4). The Father was incarcerated in the Harris County Jail at the time of the child’s birth and although he was served in jail, he was not brought to court for the Adversary Hearing. After paternity was established in January 2008, subsequent to the Father’s release from jail, the Father’s court appointed attorney for him as alleged Father now became his attorney, as the established Father. The court trial was conducted in April 2008 at which time the Father was back in jail. The trial court denied the Father’s counsel’s request on the day of trial for a bench warrant and a continuance in order to secure his counsel’s attendance at trial. During trial, DFPS counsel requested the court to take judicial notice of the removal affidavit. There was no objection by the Father’s counsel. The caseworker was allowed to testify and introduce unauthenticated documents as to the Father’s extensive criminal history, without objection. DFPS introduced a pending criminal charge against the Father for assault of the Mother, without objection. When DFPS counsel offered photos of the Mother reflecting the Father’s assault, the Father’s counsel objected as follows: “Judge, object. Goes to the criminal side.” The objection was overruled. Father’s counsel did not cross-examine the caseworker who was the only witness in the case. The Reporter’s Record for the trial was five pages long and contained thirty-eight pages of exhibits. The trial court found the appeal to be frivolous. The initial appointed appellate counsel filed a brief which was rejected by the Court of Appeals and the appeal was abated until the trial court appointed new appellate counsel that would brief and address the merits of the Father’s claims, including the claim of ineffective assistance of counsel. **Id. at 553.**

The full court held that despite the lack of proper objections which, if made, may have precluded consideration of the very evidence the court found to be sufficient to support the termination, they would be bound to apply the harmless error test of **T.R.A.P. 44.1. Id. at 558-**

559. According to the full court, the dissent is wrong to characterize the lack of proper objections to the otherwise inadmissible evidence by trial counsel is not ineffective because subsequent events (Father's conviction of assaulting the Mother) could have been established by DFPS if such an objection had been made. **Id. at 560.** This disregards the fact that the conviction had not occurred by the time of trial and could not have been cured. Otherwise, DFPS would not have requested the appellate court to take judicial notice of the finality of convictions on appeal as an argument in favor of the second prong of the **Strickland Standard** and **T.R.A.P. 44.1**. In the final analysis, the court indicated that the Father could have sought an abatement and remand to the trial court for a hearing to determine whether any deficiency in counsel's performance affected the outcome of the case. A sharply divided court held 5-4 with four dissenting and one concurring opinion that the termination be upheld and the claim of ineffectiveness of counsel be denied. **Id. at 561.**

In dissent, Judge Jennings asserted that the majority, by overruling a unanimous panel decision, subverted its duty to decide cases upon the law and the facts, engaged in result-oriented decision making, shut down all claims for the constructive denial of counsel in termination cases and sacrificed both the fundamental duties that attorneys owe to their clients along with the strict standards of proof that the Legislature required in parental termination cases. **Id. at 576-577.**

C. THE LEGISLATION

Against this backdrop, the Texas legislature acted and as a result, repealed the onerous appellate predicates of **§263.405** and enacted four (4) additional statutes designed to spell out new legal and ethical duties on attorneys for parents in DFPS abuse and neglect cases.

- (A) **§107.013(e) – Mandatory Appointment of Attorney Ad Litem.** A trial court determination of indigency lasts through all appeals unless the court finds the

parent is no longer indigent due to a material and substantial change of circumstances. **(Slide 7). (Appendix “A”).**

(B) §107.0131 – Powers and Duties of Ad Litem For Parent. This entirely new statute requires the attorney for the parent to:

1. Within a reasonable time after appointment, interview:
 - (a) the Client
 - (b) each person with significant knowledge of the case; and
 - (c) the parties to the suit.
2. Investigate the facts of the case; **(Slide 8).**
3. Ensure competent representation at hearings, mediations, pre-trial matters and the trial on the merits;
 - (a) Obtain and review copies of all court files; and
 - (b) When necessary, conduct formal discovery;
4. Take any action, consistent with the Client’s interest to:
 - (a) encourage settlement and use of alternative dispute resolution Procedures; and
 - (b) review and sign or decline to sign any proposed or agreed order. **(Slide 9).**
5. Meet with Client before each court hearing, unless the court finds:
 - (a) that the attorney has shown good cause why compliance is not feasible; or
 - (b) on a showing of good cause, authorize the attorney to comply with the meeting requirement by conference or telephone.
6. To become familiar with the American Bar Association Standards of practice for Attorney Representing Parents in Abuse and Neglect Cases; **(Slide 10). (Appendix “B”)**

7. Complete at least three (3) hours continuing legal education related to child protection laws unless the court exempts due to experience;
8. Abide by the parent's objectives of representation; and
9. Be trained in child protection laws unless exempted by the court due to experience. **(Slide 11).**

The attorney is entitled to:

1. Request clarification of the role if it is ambiguous;
2. Request a hearing or trial on the merits;
3. Consent or refuse to consent to an interview of the parent by another attorney;
4. Receive a copy of each pleading or other paper filed with the court;
5. Receive a notice of each hearing in the suit; **(Slide 12).**
6. Notice and an opportunity to participate in any case staffing that the parent is invited to participate in, including, as appropriate:
 - (a) case staffing to develop a Family Plan of Service;
 - (b) family group conference;
 - (c) permanency conference;
 - (d) mediation;
 - (e) staffing on discharge and return home; and
 - (f) any other staffing the department determines would be appropriate for a parent to attend, but excluding internal department staffing and staffing between DFPS and its counsel.
7. Attend all legal proceedings in the suit. **(Slide 13).**

In addition, this statute and **§107.0133** also cross-references to the Texas Disciplinary Rules of Professional Conduct and a subsequent section cross-references the Texas Government Code for discipline issues for parents' lawyers that do not comply with these duties.

Disciplinary Rule 4.02 prohibits communications with a person, organization, or entity of government that the lawyer knows is represented by another lawyer unless the lawyer has the consent of the other lawyer or is authorized by law to do so. **(Slide 14). (Appendix “D”).**

Disciplinary Rule 4.03 prohibits communications with a party not represented by counsel by a lawyer for another party in a manner that states or implies that the lawyer is disinterested. If the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role, the lawyer is required to make reasonable efforts to correct the misunderstanding. **(Slide 15). (Appendix “E”).**

Disciplinary Rule 4.04 prohibits a lawyer from:

1. Using means that have no substantial purpose other than to embarrass, delay, or burden a third person;
2. Use methods of obtaining evidence that violate the legal rights of such a person;
3. Presenting, participating in presenting, or threaten to present:
 - (a) criminal or disciplinary charges solely to gain advantage in a civil matter; or
 - (b) civil, criminal, or disciplinary charges against a complainant, a witness, or a potential witness in a bar disciplinary proceeding solely to prevent participation by the complainant, witness, or potential witness. **(Slide 16). (Appendix “F”)**

C. §107.0133. Discipline of Attorney Ad Litem for Parent or Alleged Father.

The Government Code cross-reference is to a statute that specifically indicates that a lawyer for a parent that fails to perform the duties outlined in **§107.0131** or **§107.0132** is subject to disciplinary action under the Government Code. **(Slide 17). (Appendix “G”).**

This section references to the Government Code establishes the legal authority for the Texas Attorney Grievance and Disciplinary Process. **(Appendix “H”).**

There is also a cross-reference and requirement that an attorney representing a parent become familiar with the American Bar Association Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases. **§107.0131(1)(H). (Appendix “I”).**

D. §107.0132. Powers and Duties of Attorney Ad Litem For Alleged Father. (Appendix “C”).

The attorney in this role is required to:

1. Conduct an investigation regarding the Petitioner’s due diligence in locating the father;
2. Verify that the Petitioner has obtained a certificate of the results of a paternity registry;
3. Interview any party or other person who has significant knowledge of the case and who may have information relating to the identity or location of the alleged father;
4. Conduct an independent investigation to identify or locate the alleged father. **(Slide 17).**

If the attorney does locate the alleged father, the attorney shall:

1. Provide to each party and the court the alleged father’s name, address, and locating information;
2. If appropriate, request approval from the court to assert the alleged father in establishing paternity. **(Slide 19).**

If the alleged father is indigent and adjudicated to be the father, the court may convert the attorney’s role and appoint the attorney to represent the parent.

If the attorney does not locate the alleged father, the attorney is required to submit to the court a written statement of the efforts which were made to identify or locate the alleged father and that he/she was unable to do so. **(Slide 20).**

D. UNANSWERED QUESTIONS

The statutes pose some interesting questions and dilemmas:

1. Has the Legislature overruled **In re M.S.** and its progeny and established a new standard for ineffective assistance of counsel;
2. Has the Legislature created a negligence, per se statute for attorney liability;
3. Who has the duty to monitor the attorney's performance;
4. Who is authorized to file a grievance; **(Slide 21)**.
5. Will DFPS always give access to their clients and witnesses to the attorney for the parent so that the attorney can fulfill his/her duties;
6. Will all of the courts allow the attorney to copy the files;
7. Will all courts be willing to pay for Ad Litem trips or indigent parent trips in order to accomplish the meeting requirement before each hearing;
8. Will all courts grant bench warrants before all hearings; **(Slide 22)**.
9. Will DFPS and all other attorneys actively seek written permission before they interview a parent;
10. If the attorney invokes a restriction on communication with a parent-client, will DFPS declare that parent to be uncooperative;
11. Will the State and each county provide sufficient resources so that each attorney actually receives a copy of each pleading or other paper filed with the court;
12. Will DPFS be required to schedule or reschedule any or all of its staffings and conferences to accommodate the attorney's schedule and the right of the attorney to be present; **(Slide 23)**.
13. Can attorneys still cover hearings and trials for other attorneys and if so, are the duties being transferred with the appearance, and if not, how can any of the duties be enforced;
14. If there is no duty for service on an alleged father in some circumstances, how can an attorney be disciplined for not forcing DFPS into doing its job in finding an alleged father or in not making an effort to find a parent in circumstances when the Petitioner does not have to find them;

15. Where is the statute that subjects a DFPS caseworker, supervisor, and program director to discipline for shirking their duties, misleading the court, conducting slipshod investigations, or making placement decisions based upon prohibited factors such as race; and
16. The legislation mandates the State to provide low-cost training to parent attorneys but delegates that responsibility to no one agency in particular. **(Slide 24).**

E. CONCLUSION

The new legal and ethical duties both impose and raise a lot of questions. It is unclear, subsequent to the statute, whether **Strickland**, **Cronic**, or the statute would apply as a metric relative to a deficient performance. It is both unfortunate and beneficial to have statutory guidance. It is also somewhat shameful that the Legislature felt compelled to pass legislation for parents mandating that attorneys in abuse and neglect cases actually have to live up to ethical and legal standards in representing their clients. Only time will tell if the effort will bear fruit or if some adjustments will be made and performance of the parent's attorneys will remain essentially the same. Understanding the frustration that was the genesis of the legislation does not mean these efforts have solved the problem. The legislation imposes legal duties that defy some practical application, but the elimination of **§263.405** may make some of this easier to live with in the long run.

APPENDIX "A"

§ 107.013. Mandatory Appointment of Attorney ad Litem for Parent

(a) In a suit filed by a governmental entity in which termination of the parent-child relationship is requested, the court shall appoint an attorney ad litem to represent the interests of:

(1) an indigent parent of the child who responds in opposition to the termination;

(2) a parent served by citation by publication;

(3) an alleged father who failed to register with the registry under Chapter 160 and whose identity or location is unknown; and

(4) an alleged father who registered with the paternity registry under Chapter 160, but the petitioner's attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful.

(b) If both parents of the child are entitled to the appointment of an attorney ad litem under this section and the court finds that the interests of the parents are not in conflict, the court may appoint an attorney ad litem to represent the interests of both parents.

(c) In a suit filed by a governmental entity requesting temporary managing conservatorship of a child, the court shall appoint an attorney ad litem to represent the interests of an indigent parent of the child who responds in opposition to the suit.

(d) A parent who claims indigence under Subsection (a) must file an affidavit of indigence in accordance with Rule 145(b) of the Texas Rules of Civil Procedure before the court can conduct a hearing to determine the parent's indigence under this section.

(e) A parent who the court has determined is indigent for purposes of this section is presumed to remain indigent for the duration of the suit and any subsequent appeal unless the court, after reconsideration on the motion of the parent, the attorney ad litem for the parent, or the attorney representing the governmental entity, determines that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances.

Added by Acts 1995, 74th Leg., ch. 751, § 15, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 561, § 3, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 821, § 2.11, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 262, § 1, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 268, § 1.06, eff. Sept. 1, 2005; Acts 2007, 80th Leg., ch. 526, § 1, eff. June 16, 2007; Amended by Acts 2011, 82nd Leg., ch. 75 (H.B. 906), § 1, eff. Sept. 1, 2011.

APPENDIX "B"

§ 107.0131. Powers and Duties of Attorney Ad Litem for Parent

(a) An attorney ad litem appointed under Section 107.013 to represent the interests of a parent:

(1) shall:

(A) subject to Rules 4.02, 4.03, and 4.04, Texas Disciplinary Rules of Professional Conduct, and within a reasonable time after the appointment, interview:

- (i) the parent, unless the parent's location is unknown;**
- (ii) each person who has significant knowledge of the case; and**
- (iii) the parties to the suit;**

(B) investigate the facts of the case;

(C) to ensure competent representation at hearings, mediations, pretrial matters, and the trial on the merits:

- (i) obtain and review copies of all court files in the suit during the attorney ad litem's course of representation; and**
- (ii) when necessary, conduct formal discovery under the Texas Rules of Civil Procedure or the discovery control plan;**

(D) take any action consistent with the parent's interests that the attorney ad litem considers necessary to expedite the proceedings;

(E) encourage settlement and the use of alternative forms of dispute resolution;

(F) review and sign, or decline to sign, a proposed or agreed order affecting the parent;

(G) meet before each court hearing with the parent, unless the court:

- (i) finds at that hearing that the attorney ad litem has shown good cause why the attorney ad litem's compliance is not feasible; or**
- (ii) on a showing of good cause, authorizes the attorney ad litem to comply by conferring with the parent, as appropriate, by telephone or video conference;**

(H) become familiar with the American Bar Association's standards of practice for attorneys who represent parents in abuse and neglect cases;

(I) complete at least three hours of continuing legal education relating

to child protection law as described by Subsection (b) as soon as practicable after the attorney ad litem is appointed, unless the court finds that the attorney ad litem has experience equivalent to that education; and

(J) abide by the parent's objectives of representation;

(2) must be trained in child protection law or have experience determined by the court to be equivalent to that training; and

(3) is entitled to:

(A) request clarification from the court if the role of the attorney ad litem is ambiguous;

(B) request a hearing or trial on the merits;

(C) consent or refuse to consent to an interview of the parent by another attorney;

(D) receive a copy of each pleading or other paper filed with the court;

(E) receive notice of each hearing in the suit;

(F) participate in any case staffing conducted by the Department of Family and Protective Services in which the parent is invited to participate, including, as appropriate, a case staffing to develop a family plan of service, a family group conference, a permanency conference, a mediation, a case staffing to plan for the discharge and return of the child to the parent, and any other case staffing that the department determines would be appropriate for the parent to attend, but excluding any internal department staffing or staffing between the department and the department's legal representative; and

(G) attend all legal proceedings in the suit.

(b) The continuing legal education required by Subsection (a)(1)(I) must:

(1) be low-cost and available to persons throughout this state, including on the Internet provided through the State Bar of Texas; and

(2) focus on the duties of an attorney ad litem in, and the procedures of and best practices for, a proceeding under Chapter 262 or 263.

APPENDIX “C”

§ 107.0132. Powers and Duties of Attorney Ad Litem for Alleged Father

(a) An attorney ad litem appointed under Section 107.013 to represent the interests of an alleged father shall:

(1) conduct an investigation regarding the petitioner’s due diligence in locating the alleged father, including by verifying that the petitioner has obtained a certificate of the results of a search of the paternity registry under Chapter 160;

(2) interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the alleged father; and

(3) conduct an independent investigation to identify or locate the alleged father, as applicable.

(b) If the attorney ad litem identifies and locates the alleged father, the attorney ad litem shall:

(1) provide to each party and the court the alleged father’s name and address and any other locating information; and

(2) if appropriate, request the court’s approval for the attorney ad litem to assist the alleged father in establishing paternity.

(c) If the alleged father is adjudicated to be a parent of the child and is determined by the court to be indigent, the court may appoint the attorney ad litem to continue to represent the father’s interests as a parent under Section 107.013(a)(1) or (c).

(d) If the attorney ad litem is unable to identify or locate the alleged father, the attorney ad litem shall submit to the court a written summary of the attorney ad litem’s efforts to identify or locate the alleged father with a statement that the attorney ad litem was unable to identify or locate the alleged father.

APPENDIX “D”

Rule 4.02 Communications with One Represented by Counsel

- (a) In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.
- (b) In representing a client a lawyer shall not communicate or cause another to communicate about the subject of representation with a person or organization a lawyer knows to be employed or retained for the purpose of conferring with or advising another lawyer about the subject of the representation, which the lawyer has the consent of the other lawyer or is authorized by law to do so.
- (c) For the purpose of this rule, organization or entity of government includes: (1) those persons presently having a managerial responsibility with an organization or entity of government that relates to the subject of the representation, or (2) those persons presently employed by such organization or entity and whose act or omission in connection with the subject of representation may make the organization or entity of government vicariously liable for such act or omission.
- (d) When a person, organization, or entity of government that is represented by a lawyer in a matter seeks advice regarding the matter from another lawyer, the second lawyer is not prohibited by paragraph (a) from giving such advice without notifying or seeking consent of the first lawyer.

APPENDIX “E”

Rule 4.03 Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

APPENDIX “F”

Rule 4.04 Respect for Rights of Third Persons

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
- (b) A lawyer shall not present, participate in presenting, or threaten to present:
 - (1) criminal or disciplinary charges solely to gain an advantage in a civil matter; or
 - (2) civil, criminal or disciplinary charges against a complainant, a witness, or a potential witness in a bar disciplinary proceeding solely to prevent participation by the complainant, witness or potential witness therein.

APPENDIX “G”

§ 107.0133. Discipline of Attorney Ad Litem for Parent or Alleged Father

An attorney ad litem appointed for a parent or an alleged father who fails to perform the duties required by Section 107.0131 or 107.0132, as applicable, is subject to disciplinary action under Subchapter E, Chapter 81, Government Code.

Added by Acts 2011, 82nd Leg., ch. 647 (S.B. 1026), § 1, eff. Sept. 1, 2011.

1987.

APPENDIX "H"

SUBCHAPTER E. DISCIPLINE

§ 81.071. DISCIPLINARY JURISDICTION. Each attorney admitted to practice in this state and each attorney specially admitted by a court of this state for a particular proceeding is subject to the disciplinary and disability jurisdiction of the supreme court and the Commission for Lawyer Discipline, a committee of the state bar.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 795, § 19, eff. Sept. 1, 1991.

§ 81.072. GENERAL DISCIPLINARY AND DISABILITY PROCEDURES. (a) In furtherance of the supreme court's powers to supervise the conduct of attorneys, the court shall establish disciplinary and disability procedures in addition to the procedures provided by this subchapter.

(b) The supreme court shall establish minimum standards and procedures for the attorney disciplinary and disability system. The standards and procedures for processing grievances against attorneys must provide for:

- (1) classification of all grievances and investigation of all complaints;
- (2) a full explanation to each complainant on dismissal of an inquiry or a complaint;
- (3) periodic preparation of abstracts of inquiries and complaints filed that, even if true, do or do not constitute misconduct;
- (4) an information file for each grievance filed;
- (5) a grievance tracking system to monitor processing of grievances by category, method of resolution, and length of time required for resolution;
- (6) notice by the state bar to the parties of a written grievance filed with the state bar that the state bar has the authority to resolve of the status of the grievance, at least quarterly and until final disposition, unless the notice would jeopardize an undercover investigation;
- (7) an option for a trial in a district court on a complaint and an administrative system for attorney disciplinary and disability findings in lieu of trials in district court, including an appeal procedure to the Board of Disciplinary Appeals and the supreme court under the substantial evidence rule;
- (8) an administrative system for reciprocal and

compulsory discipline;

(9) interim suspension of an attorney posing a threat of immediate irreparable harm to a client;

(10) authorizing all parties to an attorney disciplinary hearing, including the complainant, to be present at all hearings at which testimony is taken and requiring notice of those hearings to be given to the complainant not later than the seventh day before the date of the hearing;

(11) the commission adopting rules that govern the use of private reprimands by grievance committees and that prohibit a committee:

(A) giving an attorney more than one private reprimand within a five-year period for a violation of the same disciplinary rule; or

(B) giving a private reprimand for a violation that involves a failure to return an unearned fee, a theft, or a misapplication of fiduciary property; and

(12) distribution of a voluntary survey to all complainants urging views on grievance system experiences.

(c) In addition to the minimum standards and procedures provided by this chapter, the supreme court, under Section 81.024 shall prepare, propose, and adopt rules it considers necessary for disciplining, suspending, disbarring, and accepting resignations of attorneys.

(d) Each attorney is subject to the Texas Rules of Disciplinary Procedure and the Texas Disciplinary Rules of Professional Conduct.

(e) The state bar shall establish a voluntary mediation and dispute resolution procedure to:

(1) attempt to resolve each allegation of attorney misconduct that is:

(A) classified as an inquiry under Section 81.073(a)(2)(A) because it does not constitute an offense cognizable under the Texas Disciplinary Rules of Professional Conduct; or

(B) classified as a complaint and subsequently dismissed; and

(2) facilitate coordination with other programs administered by the state bar to address and attempt to resolve inquiries and complaints referred to the voluntary mediation and dispute resolution procedure.

(e-1) All types of information, proceedings, hearing transcripts, and statements presented during the voluntary mediation and dispute resolution procedure established under Subsection (e) are confidential to the same extent the information, proceedings, transcripts, or statements would be confidential if presented to a panel of a district grievance committee.

(f) Responses to the survey provided for in Subsection

(b)(12) may not identify either the complainant or attorney and

shall be open to the public. The topics must include:

- (1) treatment by the grievance system staff and volunteers;
- (2) the fairness of grievance procedures;
- (3) the length of time for grievance processing;
- (4) disposition of the grievance; and
- (5) suggestions for improvement of the grievance system.

(g) A person may not maintain an action against a complainant or witness in a disciplinary proceeding based on a communication made by the complainant or witness to the commission, a grievance committee, or the chief disciplinary counsel. The immunity granted by this subsection is absolute and unqualified.

(h) The state bar or a court may not require an attorney against whom a disciplinary action has been brought to disclose information protected by the attorney-client privilege if the client did not initiate the grievance that is the subject of the action.

(i) A panel of a district grievance committee of the state bar that votes on a grievance matter shall disclose to the complainant and the respondent in the matter the number of members of the panel:

- (1) voting for a finding of just cause;
- (2) voting against a finding of just cause; and
- (3) abstaining from voting on the matter.

(j) A quorum of a panel of a district grievance committee of the state bar must include one public member for each two attorney members.

(k) A member of a panel of a district grievance committee of the state bar may vote on a grievance matter to which the panel was assigned only if the member is present at the hearing at which the vote takes place.

(l) A person may be appointed to serve on a panel of a district grievance committee of the state bar only if the person is a member of the district grievance committee from which the panel was assigned and the person was appointed to serve on the committee in strict accordance with the Texas Rules of Disciplinary Procedure.

(m) A panel of a district grievance committee of the state bar may not be changed in size for the purpose of obtaining a quorum on the panel without the approval of the complainant and the respondent in the grievance matter to which the panel was assigned.

(n) A member of a panel of a district grievance committee of the state bar may not be substituted with another member of the district grievance committee on the day of the hearing for which the panel was assigned without the approval of the complainant and the respondent in the grievance matter.

(o) Whenever a grievance is either dismissed as an inquiry or dismissed as a complaint in accordance with the Texas Rules of

Disciplinary Procedure and that dismissal has become final, the respondent attorney may thereafter deny that a grievance was pursued and may file a motion with the tribunal seeking expunction of all records on the matter, other than statistical or identifying information maintained by the chief disciplinary counsel pertaining to the grievance.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 795, § 20, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1436, § 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 227, § 15, 16, eff. Sept. 1, 2003.

§ 81.073. CLASSIFICATION OF GRIEVANCES. (a) The chief disciplinary counsel's office shall classify each grievance on receipt as:

(1) a complaint, if the grievance alleges conduct that, if true, constitutes professional misconduct or disability cognizable under the Texas Disciplinary Rules of Professional Conduct; or

(2) an inquiry, if:

(A) the grievance alleges conduct that, even if true, does not constitute professional misconduct or disability cognizable under the Texas Disciplinary Rules of Professional Conduct; or

(B) the respondent attorney is deceased, has relinquished the attorney's license to practice law in this state to avoid disciplinary action, or is not licensed to practice law in this state.

(b) A complainant may appeal the classification of a grievance as an inquiry to the Board of Disciplinary Appeals, or the complainant may amend and resubmit the grievance. An attorney against whom a grievance is filed may not appeal the classification of the grievance.

Added by Acts 2003, 78th Leg., ch. 227, § 17, eff. Sept. 1, 2003.

§ 81.074. DISPOSITION OF INQUIRIES. The chief disciplinary counsel shall:

(1) dismiss a grievance classified as an inquiry; and

(2) refer each inquiry classified under Section 81.073(a)(2)(A) and dismissed under this section to the voluntary mediation and dispute resolution procedure established under Section 81.072(e).

Added by Acts 2003, 78th Leg., ch. 227, § 17, eff. Sept. 1, 2003.

§ 81.075. DISPOSITION OF COMPLAINTS. (a) The chief

disciplinary counsel shall review and investigate each grievance classified as a complaint to determine whether there is just cause, as defined by the Texas Rules of Disciplinary Procedure.

(b) After the chief disciplinary counsel reviews and investigates a complaint:

(1) if the counsel finds there is no just cause, the counsel shall place the complaint on a dismissal docket; or

(2) if the counsel finds just cause:

(A) the respondent attorney may request a trial in a district court on the complaint in accordance with the procedures adopted by the supreme court; or

(B) the counsel shall place the complaint on a hearing docket if the respondent attorney does not request a trial in a district court.

(c) A panel of a district grievance committee shall consider each complaint placed on the dismissal docket at a closed hearing without the complainant or the respondent attorney present. The panel may:

(1) approve the dismissal of the complaint and refer the complaint to the voluntary mediation and dispute resolution procedure established under Section 81.072(e); or

(2) deny the dismissal of the complaint and place the complaint on a hearing docket.

(d) A panel of a district grievance committee shall conduct a hearing on each complaint placed on the hearing docket. The commission and the respondent attorney are parties to the hearing, and the chief disciplinary counsel presents the complainant's case at the hearing. Each party may seek and the panel may issue a subpoena to compel attendance and production of records before the panel. Each party may conduct limited discovery in general accordance with the Texas Rules of Civil Procedure as prescribed by rules of the supreme court.

(e) After conducting a hearing under Subsection (d), the panel of the district grievance committee may:

(1) dismiss the complaint and refer it to the voluntary mediation and dispute resolution procedure established under Section 81.072(e);

(2) find that the respondent attorney suffers from a disability and forward that finding to the Board of Disciplinary Appeals for referral to a district disability committee; or

(3) find that professional misconduct occurred and impose sanctions.

Added by Acts 2003, 78th Leg., ch. 227, § 17, eff. Sept. 1, 2003.

§ 81.0751. APPEALS. (a) The commission or a respondent

attorney may appeal:

(1) a finding of a panel of a district grievance committee under Section 81.075(e) only to the Board of Disciplinary Appeals;

(2) a finding of the Board of Disciplinary Appeals to the supreme court; and

(3) a judgment of a district court as in civil cases generally.

(b) In an appeal of a finding of a panel of a district grievance committee made to the Board of Disciplinary Appeals, the board may:

(1) affirm in whole or part the panel's finding;

(2) modify the panel's finding and affirm the finding as modified;

(3) reverse in whole or part the panel's finding and enter a finding the board determines the panel should have entered; or

(4) reverse the panel's finding and remand the complaint for a rehearing to be conducted by:

(A) the panel that entered the finding; or

(B) a statewide grievance committee panel composed of members selected from the state bar districts other than the district from which the appeal was taken.

Added by Acts 2003, 78th Leg., ch. 227, § 17, eff. Sept. 1, 2003.

§ 81.0752. CONFIDENTIALITY. (a) All types of information, proceedings, hearing transcripts, and statements presented to a panel of a district grievance committee are confidential and may not be disclosed to any person other than the chief disciplinary counsel unless:

(1) disclosure is ordered by a court; or

(2) the panel finds that professional misconduct occurred and a sanction other than a private reprimand is imposed against the respondent attorney.

(b) If the requirements of Subsection (a)(2) are met, the panel of the district grievance committee shall, on request, make the information, proceedings, hearing transcripts, or statements available to the public.

Added by Acts 2003, 78th Leg., ch. 227, § 17, eff. Sept. 1, 2003.

§ 81.0753. RULES REGARDING GRIEVANCES. The supreme court shall promulgate rules regarding the classification and disposition of grievances, including rules specifying time limits for each stage of the grievance resolution process.

Added by Acts 2003, 78th Leg., ch. 227, § 17, eff. Sept. 1, 2003.

§ 81.076. COMMISSION FOR LAWYER DISCIPLINE. (a) The Commission for Lawyer Discipline shall review the structure, function, and effectiveness of the disciplinary and disability procedures implemented pursuant to this chapter and supreme court rules.

(b) The commission is a standing committee of the state bar. The commission is composed of 12 persons. Six members must be attorneys, and six members must not be attorneys. The president of the state bar appoints the attorney members. The supreme court appoints the public members. The public members may not have, other than as consumers, an interest, direct or indirect, in the practice of law or the profession of law. The supreme court may remove any member for good cause.

(c) Members serve staggered three-year terms with one-third of the members' terms expiring each year.

(d) The president of the state bar shall designate an attorney member as chairperson of the commission who serves for one year.

(e) The commission shall report its findings annually to the supreme court and the board of directors and include any recommendations concerning needed changes in disciplinary or disability procedures or structures.

(f) All necessary and actual expenses of the commission shall be provided for and paid out of the budget of the state bar.

(g) The commission, with the advice and consent of the board of directors, shall select a chief disciplinary counsel to serve as administrator of the state bar's grievance procedure as provided by the Texas Rules of Disciplinary Procedure. On request of an unauthorized practice of law committee or a grievance committee, the chief disciplinary counsel may investigate and prosecute suits to enjoin members, nonlicensees, and nonmembers of the state bar from the practice of law.

(h) The commission shall report to the board of directors, the supreme court, and the legislature, at least annually, concerning the state of the attorney discipline system and make recommendations concerning the refinement and improvement of the system.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 795, § 21, eff. Sept. 1, 1991.

§ 81.077. DISBARMENT PROCEEDINGS. (a) The supreme court may not adopt or promulgate any rule abrogating the right of trial by jury of an accused attorney in a disbarment action in the county of the residence of the accused attorney.

(b) A disbarment proceeding against a resident attorney shall be instituted in a district court in the county of the attorney's residence, but the accused attorney may apply for change of venue under Rule 257, Texas Rules of Civil Procedure.

(c) This chapter does not prohibit a grievance committee from investigating a complaint of professional misconduct alleged to have occurred in the geographical area served by the committee, but any action must be filed in the county of the attorney's residence.

(d) Venue in a disbarment proceeding against a nonresident member of the state bar is in a district court either in Travis County or in any county where the alleged misconduct occurred.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 795, § 22, eff. Sept. 1, 1991.

§ 81.078. DISCIPLINARY PROCEEDINGS. (a) Except as provided by Subsection (b), until an attorney has been convicted of the charges for disbarment pending against the attorney in a court of competent jurisdiction, the attorney may be suspended from the practice of law only if the attorney concurs in an order of suspension entered by the grievance committee.

(b) On proof of an attorney's conviction in a trial court of competent jurisdiction of any felony involving moral turpitude or of any misdemeanor involving the theft, embezzlement, or fraudulent misappropriation of money or other property, the district court of the county of the residence of the convicted attorney shall enter an order suspending the attorney from the practice of law during the pendency of any appeals from the conviction. An attorney who has been given probation after the conviction, whether adjudicated or unadjudicated, shall be suspended from the practice of law during the probation.

(c) On proof of final conviction of any felony involving moral turpitude or any misdemeanor involving theft, embezzlement, or fraudulent misappropriation of money or other property, the district court of the county of the residence of the convicted attorney shall enter an order disbarring the attorney.

(d) In an action to disbar any attorney for acts made the basis of a conviction for a felony involving moral turpitude or a misdemeanor involving theft, embezzlement, or fraudulent misappropriation of money or other property, the record of conviction is conclusive evidence of the guilt of the attorney for the crime of which he was convicted.

(e) Either the grievance committee for the bar district or the general counsel may seek enforcement of this section.

(f) This chapter does not prevent prosecution of an attorney in a disciplinary action after conviction for a criminal act based

either on the weight of the conviction or on conduct by the attorney that led to the attorney's conviction.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987.

§ 81.079. PUBLIC NOTIFICATION AND INFORMATION. (a) To provide information to the public relating to the attorney grievance process, the state bar shall:

- (1) develop a brochure written in Spanish and English describing the bar's grievance process;
- (2) establish a toll-free "800" telephone number for public access to the chief disciplinary counsel's office in Austin and list the number in telephone directories statewide;
- (3) describe the bar's grievance process in the bar's telephone directory listings statewide; and
- (4) make grievance forms written in Spanish and English available in each county courthouse.

(b) Each attorney practicing law in this state shall provide notice to each of the attorney's clients of the existence of a grievance process by:

- (1) making grievance brochures prepared by the state bar available at the attorney's place of business;
- (2) posting a sign prominently displayed in the attorney's place of business describing the process;
- (3) including the information on a written contract for services with the client; or
- (4) providing the information in a bill for services to the client.

Added by Acts 1991, 72nd Leg., ch. 795, § 23, eff. Sept. 1, 1991.

Amended by Acts 2003, 78th Leg., ch. 227, § 18, eff. Sept. 1, 2003.

SUBCHAPTER F. COMMITTEE ON PROFESSIONAL ETHICS

§ 81.091. COMMITTEE ON PROFESSIONAL ETHICS. (a) The professional ethics committee consists of nine members of the state bar appointed by the supreme court.

(b) Members serve three-year terms with the terms of three members expiring each year.

(c) The supreme court shall designate a chairperson of the committee who serves for one year.

(d) This chapter does not prohibit the supreme court from appointing members of the judicial department to the committee.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987.

§ 81.092. COMMITTEE OPINIONS. (a) The committee shall, either on its own initiative or when requested to do so by a member of the state bar, express its opinion on the propriety of professional conduct other than on a question pending before a court of this state.

(b) Except as provided by Section 81.093, an opinion requires the concurrence of a quorum of the committee members.

(c) Committee opinions are not binding on the supreme court.

(d) As far as possible, the committee must disclose the rationale for its opinion and shall indicate whether it is based on ethical consideration or on disciplinary rules.

(e) The committee shall adopt rules it considers appropriate relating to the procedures to be used in expressing opinions. Rules adopted under this subsection take effect when approved by the supreme court.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987.

§ 81.093. PANELS. The committee may meet in three-member panels to express its opinion on behalf of the whole committee, but an inquirer who is dissatisfied with the panel's opinion may appeal it to the full committee for review.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987.

§ 81.094. CERTAIN COMMITTEE DUTIES. The committee shall:

(1) periodically publish its issued opinions to the legal profession in summary or complete form;

(2) on request provide copies of its issued opinions to members of the state bar or the public;

(3) on request advise or otherwise assist state bar committees or local bar associations relating to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure; and

(4) recommend appropriate amendments or clarifications of the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure that it considers advisable.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 795, § 24, eff. Sept.

1, 1991.

§ 81.095. EXPENSES. The state bar shall pay all necessary and actual expenses of the committee out of the state bar budget.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987.

SUBCHAPTER G. UNAUTHORIZED PRACTICE OF LAW

§ 81.101. DEFINITION. (a) In this chapter the "practice of law" means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.

(b) The definition in this section is not exclusive and does not deprive the judicial branch of the power and authority under both this chapter and the adjudicated cases to determine whether other services and acts not enumerated may constitute the practice of law.

(c) In this chapter, the "practice of law" does not include the design, creation, publication, distribution, display, or sale, including publication, distribution, display, or sale by means of an Internet web site, of written materials, books, forms, computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney. This subsection does not authorize the use of the products or similar media in violation of Chapter 83 and does not affect the applicability or enforceability of that chapter.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 799, § 1, eff. June 18, 1999.

§ 81.1011. EXCEPTION FOR CERTAIN LEGAL ASSISTANCE. (a) Notwithstanding Section 81.101(a), the "practice of law" does not include technical advice, consultation, and document completion assistance provided by an employee or volunteer of an area agency on aging affiliated with the Texas Department on Aging who meets the requirements of Subsection (b) if that advice, consultation, and

assistance relates to:

- (1) a medical power of attorney or other advance directive under Chapter 166, Health and Safety Code; or
- (2) a designation of guardian before need arises under Section 679, Texas Probate Code.

(b) An employee or volunteer described by Subsection (a) must:

- (1) provide benefits counseling through an area agency on aging system of access and assistance to agency clients;
- (2) comply with rules adopted by the Texas Department on Aging regarding qualifications, training requirements, and other requirements for providing benefits counseling services, including legal assistance and legal awareness services;
- (3) have received specific training in providing the technical advice, consultation, and assistance described by Subsection (a); and
- (4) be certified by the Texas Department on Aging as having met the requirements of this subsection.

(c) The Texas Department on Aging by rule shall develop certification procedures by which the department certifies that an employee or volunteer described by Subsection (a) has met the requirements of Subsections (b) (1), (2), and (3).

Added by Acts 2001, 77th Leg., ch. 845, § 1, eff. Sept. 1, 2001.

§ 81.102. STATE BAR MEMBERSHIP REQUIRED. (a) Except as provided by Subsection (b), a person may not practice law in this state unless the person is a member of the state bar.

(b) The supreme court may promulgate rules prescribing the procedure for limited practice of law by:

- (1) attorneys licensed in another jurisdiction;
- (2) bona fide law students; and
- (3) unlicensed graduate students who are attending or have attended a law school approved by the supreme court.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987.

§ 81.103. UNAUTHORIZED PRACTICE OF LAW COMMITTEE. (a) The unauthorized practice of law committee is composed of nine persons appointed by the supreme court.

(b) At least three of the committee members must be nonattorneys.

(c) Committee members serve for staggered terms of three years with three members' terms expiring each year.

(d) A committee member may be reappointed.

(e) Each year the supreme court shall designate a committee

member to serve as chairperson.

(f) All necessary and actual expenses of the committee should be provided for and paid out of the budget of the state bar.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 795, § 25, eff. Sept. 1, 1991.

§ 81.104. DUTIES OF UNAUTHORIZED PRACTICE OF LAW

COMMITTEE. The unauthorized practice of law committee shall:

(1) keep the supreme court and the state bar informed with respect to:

(A) the unauthorized practice of law by lay persons and lay agencies and the participation of attorneys in that unauthorized practice of law; and

(B) methods for the prevention of the unauthorized practice of law; and

(2) seek the elimination of the unauthorized practice of law by appropriate actions and methods, including the filing of suits in the name of the committee.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987.

§ 81.105. LOCAL COMMITTEES. This chapter does not prohibit the establishment of local unauthorized practice of law committees to assist the unauthorized practice of law committee in carrying out its purposes.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987.

§ 81.106. IMMUNITY. (a) The unauthorized practice of law committee, any member of the committee, or any person to whom the committee has delegated authority and who is assisting the committee is not liable for any damages for an act or omission in the course of the official duties of the committee.

(b) A complainant or a witness in a proceeding before the committee or before a person to whom the committee has delegated authority and who is assisting the committee has the same immunity that a complainant or witness has in a judicial proceeding.

Added by Acts 1991, 72nd Leg., ch. 795, § 26, eff. Sept. 1, 1991.

SUBCHAPTER H. MISCELLANEOUS PROVISIONS

§ 81.112. FEE DISPUTE RESOLUTION PROCEDURE. The state bar shall establish a standard fee dispute resolution procedure that may be used by a bar committee or other organization as a model for a fee dispute resolution program.

Added by Acts 1991, 72nd Leg., ch. 795, § 28, eff. Sept. 1, 1991.

§ 81.113. CONTINUING LEGAL EDUCATION. (a) Except as provided by Subsection (b), the state bar shall credit an attorney licensed in this state with meeting the minimum continuing legal education requirements of the state bar for a reporting year if during the reporting year the attorney is employed full-time as an attorney by:

- (1) the senate;
- (2) the house of representatives;
- (3) a committee, division, department, or office of the senate or house;
- (4) the Texas Legislative Council;
- (5) the Legislative Budget Board;
- (6) the Legislative Reference Library;
- (7) the office of the state auditor; or
- (8) the Sunset Advisory Commission.

(b) An attorney credited for continuing legal education under Subsection (a) must meet the continuing legal education requirements of the state bar in legal ethics or professional responsibility.

(c) The state bar shall recognize, prepare, or administer continuing education programs for members of the state bar. A member of the state bar must participate in the programs to the extent required by the supreme court to maintain the person's state bar membership.

Added by Acts 1991, 72nd Leg., ch. 795, § 29, eff. Sept. 1, 1991.

Amended by Acts 2003, 78th Leg., ch. 227, § 19, eff. Sept. 1, 2003.

§ 81.114. ATTORNEY INSTRUCTION RELATED TO GUARDIANSHIP ISSUES. (a) The state bar shall provide a course of instruction for attorneys who represent parties in guardianship cases or who serve as court-appointed guardians.

(b) The state bar shall adopt the rules necessary to accomplish the purposes of this section.

(c) The instruction must include information about:

- (1) statutory and case law relating to guardianships;
- (2) the aging process and the nature of disabilities;

(3) the requirements of the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) and related case and statutory law, rules, and compliance methods;

(4) the principles of equal access and accommodation;

(5) the use of community resources for the disabled;

and

(6) avoidance of stereotypes through a focus on people's individual abilities, support needs, and inherent individual value.

(d) The instruction may include information about:

(1) substantive areas of law concerning the needs of elderly persons and persons with disabilities;

(2) barriers to physical access and methods to overcome those barriers;

(3) communication needs of elderly persons and persons with disabilities and the technology available to provide access to communication;

(4) duties and responsibilities of guardians, guardians ad litem, attorneys, and court personnel in guardianship proceedings;

(5) standard definitions and procedures for determining incapacity;

(6) standards for surrogate decision making;

(7) the doctrine of the least-restrictive alternative;

(8) the dispute resolution process, especially its application to elderly persons and persons with disabilities; and

(9) successful programs and funding efforts for addressing the court-related needs of elderly persons and persons with disabilities.

Added by Acts 1993, 73rd Leg., ch. 905, § 3, eff. Sept. 1, 1993.

§ 81.115. ONLINE ATTORNEY PROFILES. (a) The state bar shall create a profile of each attorney licensed by the state bar. The profile must:

(1) include the information required by Subsection (b);

(2) include the information described by Subsection (c) if that information is provided by the attorney to the state bar; and

(3) be compiled in a format that permits the state bar to make the information contained in the profile available online to the public.

(b) A profile must contain the following information on each attorney:

(1) the name of each law school attended and the date the attorney graduated;

(2) the date the attorney became licensed to practice law in this state;

(3) any specialty certification recognized by the state bar and held by the attorney;

(4) the attorney's primary practice location;

(5) any public disciplinary sanctions issued by the state bar against the attorney during at least the 10-year period preceding the date of the profile; and

(6) any public disciplinary sanctions issued by an entity in another state responsible for attorney discipline in that state against the attorney during at least the 10-year period preceding the date of the profile.

(c) The profile must contain the following information on an attorney if the attorney provides the information to the state bar:

(1) other states in which the attorney is licensed to practice law;

(2) the courts before which the attorney has been admitted to practice law;

(3) whether the attorney provides any language translating services, including translating services for a person with impairment of hearing, at the attorney's primary practice location; and

(4) whether the attorney's client service areas are accessible to persons with disabilities, as defined by federal law.

(d) Information included under Subsection (b) or (c) that is not maintained by the state bar in the ordinary course of the state bar's duties shall be requested from an attorney annually. In requesting information from the attorney, the state bar shall:

(1) inform the attorney that compliance with the request for information under Subsection (b) is mandatory;

(2) inform the attorney that compliance with the request for information under Subsection (c) is voluntary;

(3) inform the attorney of the date the information will be made available to the public; and

(4) instruct the attorney concerning the requirements under Subsection (f) for the attorney to obtain a copy of the attorney's profile to make corrections.

(e) This section does not require the state bar to disclose confidential information.

(f) The state bar shall:

(1) annually provide to each attorney licensed by the state bar a copy of the attorney's profile; or

(2) provide to an individual attorney a copy of the attorney's profile on request. The state bar shall provide an attorney one month from the date a copy of the attorney's profile is provided to the attorney to correct factual errors in the attorney's profile.

(g) The state bar shall annually update the information contained in an attorney's profile. The state bar shall adopt a

form that allows an attorney to update information contained in the attorney's profile. The form shall be made available on the Internet and in other formats as prescribed by rules adopted by the state bar. The state bar may adopt rules relating to the type and content of additional information that may be included in an attorney's profile.

(h) For purposes of administering this section, the state bar may collect from each member of the state bar an annual fee of not more than \$10.

(i) The state bar shall adopt rules as necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 862, § 1, eff. Sept. 1, 2001.

SUBCHAPTER I. EXECUTIVE COMMITTEE

§ 81.121. EXECUTIVE COMMITTEE. (a) The executive committee consists of:

- (1) the president, the president-elect, and the immediate past president of the state bar;
- (2) the chair of the board of directors;
- (3) the president of the Texas Young Lawyers Association; and
- (4) additional members appointed by the president of the state bar.

(b) The general counsel and executive director serve as ex officio members of the committee.

(c) The president of the state bar serves as chair of the committee. The chair of the board of directors serves as vice chair of the committee and presides over committee meetings in the committee chair's absence.

Added by Acts 2003, 78th Leg., ch. 227, § 20, eff. Sept. 1, 2003.

§ 81.122. DUTIES OF EXECUTIVE COMMITTEE. The executive committee shall:

- (1) on the recommendation of the president of the state bar, approve the creation of additional standing and special committees of the state bar in accordance with Section 81.123;
- (2) conduct a comprehensive review of standing and special committees of the state bar at least biennially and more frequently as the executive committee determines necessary to assess whether there is:

- (A) a continued need for each committee; and
- (B) unnecessary overlap of the committees'

activities; and

**AMERICAN BAR ASSOCIATION
YOUNG LAWYERS DIVISION
REPORT TO THE HOUSE OF DELEGATES**

Recommendation

- 1 **RESOLVED**, That the American Bar Association adopts the Standards of Practice for
- 2 Attorneys Representing Parents in Abuse and Neglect Cases, dated August 2006.

American Bar Association

Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases (August 2006)

Introduction

These standards promote quality representation and uniformity of practice throughout the country for parents' attorneys in child abuse and neglect cases. The standards were written with the help of a committee of practicing parents' attorneys and child welfare professionals from different jurisdictions in the country. With their help, the standards were written with the difficulties of day-to-day practice in mind, but also with the goal of raising the quality of representation. While local adjustments may be necessary to apply these standards in practice, jurisdictions should strive to meet their fundamental principles and spirit.

The standards are divided into the following categories:

1. Summary of the Standards
2. Basic Obligations of Parents' Attorneys
3. Obligations of Attorney Manager
4. The Role of the Court

The standards include "black letter" requirements written in bold. Following the black letter standards are "actions." These actions further discuss how to fulfill the standard; implementing each standard requires the accompanying action. After the action is "commentary" or a discussion of why the standard is necessary and how it should be applied. When a standard does not need further explanation, no action or commentary appears. Several standards relate to specific sections of the Model Rules of Professional Conduct, and the Model Rules are referenced in these standards. The terms "parent" and "client" are used interchangeably throughout the document. These standards apply to all attorneys who represent parents in child abuse and neglect cases, whether they work for an agency or privately.

As was done in the *Standards of Practice for Attorneys Representing Child Welfare Agencies*, ABA 2004, a group of standards for attorney managers is included in these standards. These standards primarily apply to parents' attorneys who work for an agency or law firm – an institutional model of representation. Solo practitioners, or attorneys who individually receive appointments from the court, may wish to review this part of the standards, but may find some do not apply. However, some standards in this section, such as those about training and caseload, are relevant for all parents' attorneys.

As was done in the *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, ABA 1996, a section of the standards concerns the Role of the Court in implementing these *Standards*. The ABA and the National Council of Juvenile and Family Court

Judges have policies concerning the importance of the court in ensuring that all parties in abuse and neglect cases have competent representation.

Representing a parent in an abuse and neglect case is a difficult and emotional job. There are many responsibilities. These standards are intended to help the attorney prioritize duties and manage the practice in a way that will benefit each parent on the attorney's caseload.

SUMMARY: ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases

Basic Obligations: The parent's attorney shall:

General:

1. Adhere to all relevant jurisdiction-specific training and mentoring requirements before accepting a court appointment to represent a parent in an abuse or neglect case.
2. Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules.
3. Understand and protect the parent's rights to information and decision making while the child is in foster care.
4. Actively represent a parent in the pre-petition phase of a case, if permitted within the jurisdiction.
5. Avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the client.
6. Cooperate and communicate regularly with other professionals in the case.

Relationship with the Client:

7. Advocate for the client's goals and empower the client to direct the representation and make informed decisions based on thorough counsel.
8. Act in accordance with the duty of loyalty owed to the client.
9. Adhere to all laws and ethical obligations concerning confidentiality.
10. Provide the client with contact information in writing and establish a message system that allows regular attorney-client contact.
11. Meet and communicate regularly with the client well before court proceedings. Counsel the client about all legal matters related to the case, including specific allegations against the client, the service plan, the client's rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with service plans.
12. Work with the client to develop a case timeline and tickler system.

13. Provide the client with copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule or court order.
14. Be alert to and avoid potential conflicts of interest or the appearance of a conflict of interest that would interfere with the competent representation of the client.
15. Act in a culturally competent manner and with regard to the socioeconomic position of the parent throughout all aspects of representation.
16. Take diligent steps to locate and communicate with a missing parent and decide representation strategies based on that communication.
17. Be aware of the unique issues an incarcerated parent faces and provide competent representation to the incarcerated client.
18. Be aware of the client's mental health status and be prepared to assess whether the parent can assist with the case.

Investigation:

19. Conduct a thorough and independent investigation at every stage of the proceeding.
20. Interview the client well before each hearing, in time to use client information for the case investigation.

Informal Discovery:

21. Review the child welfare agency case file.
22. Obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers.

Formal Discovery:

23. When needed, use formal discovery methods to obtain information.

Court Preparation:

24. Develop a case theory and strategy to follow at hearings and negotiations.
25. Timely file all pleadings, motions, and briefs. Research applicable legal issues and advance legal arguments when appropriate.

26. Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.
27. Aggressively advocate for regular visitation in a family-friendly setting.
28. With the client's permission, and when appropriate, engage in settlement negotiations and mediation to resolve the case.
29. Thoroughly prepare the client to testify at the hearing.
30. Identify, locate and prepare all witnesses.
31. Identify, secure, prepare and qualify expert witness when needed. When permissible, interview opposing counsel's experts.

Hearings:

32. Attend and prepare for all hearings, including pretrial conferences.
33. Prepare and make all appropriate motions and evidentiary objections.
34. Present and cross-examine witnesses, prepare and present exhibits.
35. In jurisdictions in which a jury trial is possible, actively participate in jury selection and drafting jury instructions.
36. Request closed proceedings (or a cleared courtroom) in appropriate cases.
37. Request the opportunity to make opening and closing arguments.
38. Prepare 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.

Post Hearings/Appeals:

39. Review court orders to ensure accuracy and clarity and review with client.
40. Take reasonable steps to ensure the client complies with court orders and to determine whether the case needs to be brought back to court.
41. Consider and discuss the possibility of appeal with the client.
42. If the client decides to appeal, timely and thoroughly file the necessary post-hearing motions and paperwork related to the appeal and closely follow the jurisdiction's Rules of Appellate Procedure.

43. Request an expedited appeal, when feasible, and file all necessary paperwork while the appeal is pending.
44. Communicate the results of the appeal and its implications to the client.

Obligations of Attorney Managers:

Attorney Managers are urged to:

1. Clarify attorney roles and expectations.
2. Determine and set reasonable caseloads for attorneys.
3. Advocate for competitive salaries for staff attorneys.
4. Develop a system for the continuity of representation.
5. Provide attorneys with training and education opportunities regarding the special issues that arise in the client population.
6. Establish a regular supervision schedule.
7. Create a brief and forms bank.
8. Ensure the office has quality technical and support staff as well as adequate equipment, library materials, and computer programs to support its operations.
9. Develop and follow a recruiting and hiring practice focused on hiring highly qualified candidates.
10. Develop and implement an attorney evaluation process.
11. Work actively with other stakeholders to improve the child welfare system, including court procedures.

Role of the Court

The Court is urged to:

1. Recognize the importance of the parent attorney's role.
2. Establish uniform standards of representation for parents' attorneys.
3. Ensure the attorneys who are appointed to represent parents in abuse and neglect cases are qualified, well-trained, and held accountable for practice that complies with these standards.

4. Ensure appointments are made when a case first comes before the court, or before the first hearing, and last until the case has been dismissed from the court's jurisdiction.
5. Ensure parents' attorneys receive fair compensation.
6. Ensure timely payment of fees and costs for attorneys.
7. Provide interpreters, investigators and other specialists needed by the attorneys to competently represent clients. Ensure attorneys are reimbursed for supporting costs, such as use of experts, investigation services, interpreters, etc.
8. Ensure that attorneys who are receiving appointments carry a reasonable caseload that would allow them to provide competent representation for each of their clients.
9. Ensure all parties, including the parent's attorney, receive copies of court orders and other documentation.
10. Provide contact information between clients and attorneys.
11. Ensure child welfare cases are heard promptly with a view towards timely decision making and thorough review of issues.

Basic Obligations: The parent's attorney shall:

General¹

1. Adhere to all relevant jurisdiction-specific training and mentoring requirements before accepting a court appointment to represent a parent in an abuse or neglect case.

Action: The parent's attorney must participate in all required training and mentoring before accepting an appointment.

Commentary: As in all areas of law, it is essential that attorneys learn the substantive law as well as local practice. A parent's fundamental liberty interest in the care and custody of his or her child is at stake, and the attorney must be adequately trained to protect this interest. Because the stakes are so high, the standards drafting committee recommends all parents' attorneys receive a minimum of 20 hours of relevant training before receiving an appointment and a minimum of 15 hours of related training each year. Training should directly relate to the attorney's child welfare practice.² This is further detailed in Attorney Managers Standard 5 below. In addition, the parent's attorney should actively participate in ongoing training opportunities. Even if the attorney's jurisdiction does not require training or mentoring, the attorney should seek it. Each state should make comprehensive

training available to parents' attorneys throughout the state. Training may include relevant online or video training.

2. Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules.

Action: Parents' attorneys may come to the practice with competency in the various aspects of child abuse and neglect practice, or they need to be trained on them. It is essential for the parent's attorney to read and understand all state laws, policies and procedures regarding child abuse and neglect. In addition, the parent's attorney must be familiar with the following laws to recognize when they are relevant to a case and should be prepared to research them when they are applicable:

- Titles IV-B and IV-E of the Social Security Act, including the Adoption and Safe Families Act (ASFA), 42 U.S.C. §§ 620-679 and the ASFA Regulations, 45 C.F.R. Parts 1355, 1356, 1357
- Child Abuse Prevention Treatment Act (CAPTA), P.L.108-36
- Indian Child Welfare Act (ICWA) 25 U.S.C. §§ 1901-1963, the ICWA Regulations, 25 C.F.R. Part 23, and the Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67, 584 (Nov. 26, 1979)
- State Indian Child Welfare Act laws
- Multi-Ethnic Placement Act (MEPA), as amended by the Inter-Ethnic Adoption Provisions of 1996 (MEPA-IEP) 42 U.S.C. § 622 (b)(9) (1998), 42 U.S.C. § 671(a)(18) (1998), 42 U.S.C. § 1996b (1998).
- Interstate Compact on Placement of Children (ICPC)
- Foster Care Independence Act of 1999 (FCIA), P.L. 106-169
- Individuals with Disabilities Education Act (IDEA), P.L. 91-230
- Family Education Rights Privacy Act (FERPA), 20 U.S.C. § 1232g
- Health Insurance Portability and Accountability Act of 1996 (HIPPA), P. L., 104-192 § 264, 42 U.S.C. § 1320d-2 (in relevant part)
- Public Health Act, 42 U.S.C. Sec. 290dd-2 and 42 C.F.R. Part 2
- Immigration laws relating to child welfare and child custody
- State laws and rules of evidence
- State laws and rules of civil procedure
- State laws and rules of criminal procedure
- State laws concerning privilege and confidentiality, public benefits, education, and disabilities
- State laws and rules of professional responsibility or other relevant ethics standards
- State laws regarding domestic violence
- State domestic relations laws

Commentary: Although the burden of proof is on the child welfare agency, in practice the parent and the parent's attorney generally must demonstrate that the parent can adequately care for the child. The parent's attorney must consider all obstacles to this goal, such as criminal charges against the parent, immigration issues, substance abuse or mental health issues, confidentiality concerns, permanency timelines, and the child's individual service issues. To perform these functions, the parent's attorney must know enough about all relevant laws to vigorously advocate for the parent's interests. Additionally, the attorney must be able to use procedural, evidentiary and confidentiality laws and rules to protect the parent's rights throughout court proceedings.

3. Understand and protect the parent's rights to information and decision making while the child is in foster care.

Action: The parent's attorney must explain to the parent what decision-making authority remains with the parent and what lies with the child welfare agency while the child is in foster care. The parent's attorney should seek updates and reports from any service provider working with the child/family or help the client obtain information about the child's safety, health, education and well-being when the client desires. Where decision-making rights remain, the parent's attorney should assist the parent in exercising his or her rights to continue to make decisions regarding the child's medical, mental health and educational services. If necessary, the parent's attorney should intervene with the child welfare agency, provider agencies, medical providers and the school to ensure the parent has decision-making opportunities. This may include seeking court orders when the parent has been left out of important decisions about the child's life.

Commentary: Unless and until parental rights are terminated, the parent has parental obligations and rights while a child is in foster care. Advocacy may be necessary to ensure the parent is allowed to remain involved with key aspects of the child's life. Not only should the parent's rights be protected, but continuing to exercise as much parental responsibility as possible is often an effective strategy to speed family reunification. Often, though, a parent does not understand that he or she has the right to help make decisions for, or obtain information about, the child. Therefore, it is the parent's attorney's responsibility to counsel the client and help the parent understand his or her rights and responsibilities and try to assist the parent in carrying them out.

4. Actively represent a parent in the prepetition phase of a case, if permitted within the jurisdiction.

Action: The goal of representing a parent in the prepetition phase of the case is often to deter the agency from deciding to file a petition or to deter the agency from attempting to remove the client's child if a petition is filed. The parent's attorney should counsel the client about the client's rights in the investigation stage as well as the realistic pros and cons of cooperating with the child welfare agency (i.e., the parent's admissions could be used against the client later, but cooperating with services could eliminate a petition filing). The parent's attorney should acknowledge that the parent may be justifiably angry that the agency is involved with the client's family, and help the client develop strategies

so the client does not express that anger toward the caseworker in ways that may undermine the client's goals. The attorney should discuss available services and help the client enroll in those in which the client wishes to participate. The attorney should explore conference opportunities with the agency. If it would benefit the client, the attorney should attend any conferences. There are times that an attorney's presence in a conference can shut down discussion, and the attorney should weigh that issue when deciding whether to attend. The attorney should prepare the client for issues that might arise at the conference, such as services and available kinship resources, and discuss with the client the option of bringing a support person to a conference.

Commentary: A few jurisdictions permit parents' attorneys to begin their representation before the child welfare agency files a petition with the court. When the agency becomes involved with the families, it can refer parents to attorneys so that parents will have the benefit of counsel throughout the life of the case. During the prepetition phase, the parent's attorney has the opportunity to work with the parent and help the parent fully understand the issues and the parent's chances of retaining custody of the child. The parent's attorney also has the chance to encourage the agency to make reasonable efforts to work with the family, rather than filing a petition. During this phase, the attorney should work intensively with the parent to explore all appropriate services.

5. Avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the client.³

Action: The parent's attorney should not request continuances unless there is an emergency or it benefits the client's case. If continuances are necessary, the parent's attorney should request the continuance in writing, as far as possible in advance of the hearing, and should request the shortest delay possible, consistent with the client's interests. The attorney must notify all counsel of the request. The parent's attorney should object to repeated or prolonged continuance requests by other parties if the continuance would harm the client.

Commentary: Delaying a case often increases the time a family is separated, and can reduce the likelihood of reunification. Appearing in court often motivates parties to comply with orders and cooperate with services. When a judge actively monitors a case, services are often put in place more quickly, visitation may be increased or other requests by the parent may be granted. If a hearing is continued and the case is delayed, the parent may lose momentum in addressing the issues that led to the child's removal or the parent may lose the opportunity to prove compliance with case plan goals. Additionally, the Adoption and Safe Families Act (ASFA) timelines continue to run despite continuances.

6. Cooperate and communicate regularly with other professionals in the case.⁴

Action: The parent's attorney should communicate with attorneys for the other parties, court appointed special advocates (CASAs) or guardians ad litem (GALs). Similarly, the parent's attorney should communicate with the caseworker, foster parents and service providers to learn about the client's progress and their views of the case, as appropriate.

The parent's attorney should have open lines of communication with the attorney(s) representing the client in related matters such as any criminal, protection from abuse, private custody or administrative proceedings to ensure that probation orders, protection from abuse orders, private custody orders and administrative determinations do not conflict with the client's goals in the abuse and neglect case.

Commentary: The parent's attorney must have all relevant information to try a case effectively. This requires open and ongoing communication with the other attorneys and service providers working with the client and family. Rules of professional ethics govern contact with represented and unrepresented parties. In some states, for instance, attorneys may not speak with child welfare caseworkers without the permission of agency counsel. The parent's attorney must be aware of local rules on this issue and seek permission to speak with represented parties when that would further the client's interests.

Relationship with the Client⁵

7. Advocate for the client's goals and empower the client to direct the representation and make informed decisions based on thorough counsel.⁶

Action: Attorneys representing parents must understand the client's goals and pursue them vigorously. The attorney should explain that the attorney's job is to represent the client's interests and regularly inquire as to the client's goals, including ultimate case goals and interim goals. The attorney should explain all legal aspects of the case and provide comprehensive counsel on the advantages and disadvantages of different options. At the same time, the attorney should be careful not to usurp the client's authority to decide the case goals.

Commentary: Since many clients distrust the child welfare system, the parent's attorney must take care to distinguish him or herself from others in the system so the client can see that the attorney serves the client's interests. The attorney should be mindful that parents often feel disempowered in child welfare proceedings and should take steps to make the client feel comfortable expressing goals and wishes without fear of judgment. The attorney should clearly explain the legal issues as well as expectations of the court and the agency, and potential consequences of the client failing to meet those expectations. The attorney has the responsibility to provide expertise, and to make strategic decisions about the best ways to achieve the parent's goals, but the client is in charge of deciding the case goals and the attorney must act accordingly.

8. Act in accordance with the duty of loyalty owed to the client.

Action: Attorneys representing parents should show respect and professionalism towards their clients. Parents' attorneys should support their clients and be sensitive to the client's individual needs. Attorneys should remember that they may be the client's only advocate in the system and should act accordingly.

Commentary: Often attorneys practicing in abuse and neglect court are a close knit group who work and sometimes socialize together. Maintaining good working relationships with other players in the child welfare system is an important part of being an effective advocate. The attorney, however, should be vigilant against allowing the attorney's own interests in relationships with others in the system to interfere with the attorney's primary responsibility to the client. The attorneys should not give the impression to the client that relationships with other attorneys are more important than the representation the attorney is providing the client. The client must feel that the attorney believes in him or her and is actively advocating on the client's behalf.

9. Adhere to all laws and ethical obligations concerning confidentiality.⁷

Action: Attorneys representing parents must understand confidentiality laws, as well as ethical obligations, and adhere to both with respect to information obtained from or about the client. The attorney must fully explain to the client the advantages and disadvantages of choosing to exercise, partially waive, or waive a privilege or right to confidentiality. Consistent with the client's interests and goals, the attorney must seek to protect from disclosure confidential information concerning the client.

Commentary: Confidential information contained in a parent's substance abuse treatment records, domestic violence treatment records, mental health records and medical records is often at issue in abuse and neglect cases. Improper disclosure of confidential information early in the proceeding may have a negative impact on the manner in which the client is perceived by the other parties and the court. For this reason, it is crucial for the attorney to advise the client promptly as to the advantages and disadvantages of releasing confidential information, and for the attorney to take whatever steps necessary to protect the client's privileges or rights to confidentiality.

10. Provide the client with contact information in writing and establish a message system that allows regular attorney-client contact.⁸

Action: The parent's attorney should ensure the parent understands how to contact the attorney and that the attorney wants to hear from the client on an ongoing basis. The attorney should explain that even when the attorney is unavailable, the parent should leave a message. The attorney must respond to client messages in a reasonable time period. The attorney and client should establish a reliable communication system that meets the client's needs. For example, it may involve telephone contact, email or communication through a third party when the client agrees to it. Interpreters should be used when the attorney and client are not fluent in the same language.

Commentary: Gaining the client's trust and establishing ongoing communication are two essential aspects of representing the parent. The parent may feel angry and believe that all of the attorneys in the system work with the child welfare agency and against that parent. It is important that the parent's attorney, from the beginning of the case, is clear with the parent that the attorney works for the parent, is available for consultation, and wants to communicate regularly. This will help the attorney support the client, gather information

for the case and learn of any difficulties the parent is experiencing that the attorney might help address. The attorney should explain to the client the benefits of bringing issues to the attorney's attention rather than letting problems persist. The attorney should also explain that the attorney is available to intervene when the client's relationship with the agency or provider is not working effectively. The attorney should be aware of the client's circumstances, such as whether the client has access to a telephone, and tailor the communication system to the individual client.

11. Meet and communicate regularly with the client well before court proceedings. Counsel the client about all legal matters related to the case, including specific allegations against the client, the service plan, the client's rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with service plans.⁹

Action: The parent's attorney should spend time with the client to prepare the case and address questions and concerns. The attorney should clearly explain the allegations made against the parent, what is likely to happen before, during and after each hearing, and what steps the parent can take to increase the likelihood of reuniting with the child. The attorney should explain any settlement options and determine whether the client wants the attorney to pursue such options. The attorney should explain courtroom procedures. The attorney should write to the client to ensure the client understands what happened in court and what is expected of the client.

The attorney should ensure a formal interpreter is involved when the attorney and client are not fluent in the same language. The attorney should advocate for the use of an interpreter when other professionals in the case who are not fluent in the same language as the client are interviewing the client as well.

The attorney should be available for in-person meetings or telephone calls to answer the client's questions and address the client's concerns. The attorney and client should work together to identify and review short and long-term goals, particularly as circumstances change during the case.

The parent's attorney should help the client access information about the child's developmental and other needs by speaking to service providers and reviewing the child's records. The parent needs to understand these issues to make appropriate decisions for the child's care.

The parent's attorney and the client should identify barriers to the client engaging in services, such as employment, transportation, and financial issues. The attorney should work with the client, caseworker and service provider to resolve the barriers.

The attorney should be aware of any special issues the parents may have related to participating in the proposed case plan, such as an inability to read or language

differences, and advocate with the child welfare agency and court for appropriate accommodations.

Commentary: The parent's attorney's job extends beyond the courtroom. The attorney should be a counselor as well as litigator. The attorney should be available to talk with the client to prepare for hearings, and to provide advice and information about ongoing concerns. Open lines of communication between attorneys and clients help ensure clients get answers to questions and attorneys get the information and documents they need.

12. Work with the client to develop a case timeline and tickler system.

Action: At the beginning of a case, the parent's attorney and client should develop timelines that reflect projected deadlines and important dates and a tickler/calendar system to remember the dates. The timeline should specify what actions the attorney and parent will need to take and dates by which they will be completed. The attorney and the client should know when important dates will occur and should be focused on accomplishing the objectives in the case plan in a timely way. The attorney should provide the client with a timeline/calendar, outlining known and prospective court dates, service appointments, deadlines and critical points of attorney-client contact. The attorney should record federal and state law deadlines in the system (e.g., the 15 of 22 month point that would necessitate a termination of parental rights (TPR), if exceptions do not apply).

Commentary: Having a consistent calendaring system can help an attorney manage a busy caseload. Clients should receive a hard copy calendar to keep track of appointments and important dates. This helps parents stay focused on accomplishing the service plan goals and meeting court-imposed deadlines.

13. Provide the client with copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule or court order.¹⁰

Action: The parent's attorney should provide all written documents to the client or ensure that they are provided in a timely manner and ensure the client understands them. If the client has difficulty reading, the attorney should read the documents to the client. In all cases, the attorney should be available to discuss and explain the documents to the client.

Commentary: The parent's attorney should ensure the client is informed about what is happening in the case. Part of doing so is providing the client with written documents and reports relevant to the case. If the client has this information, the client will be better able to assist the attorney with the case and fulfill his or her parental obligations. The attorney must be aware of any allegations of domestic violence in the case and not share confidential information about an alleged or potential victim's location.

14. Be alert to and avoid potential conflicts of interest or the appearance of a conflict of interest that would interfere with the competent representation of the client.¹¹

Action: The parent's attorney must not represent both parents if their interests differ. The attorney should generally avoid representing both parents when there is even a potential for conflicts of interests. In situations involving allegations of domestic violence the attorney should never represent both parents.

Commentary: In most cases, attorneys should avoid representing both parents in an abuse or neglect case. In the rare case in which an attorney, after careful consideration of potential conflicts, may represent both parents, it should only be with their informed consent. Even in cases in which there is no apparent conflict at the beginning of the case, conflicts may arise as the case proceeds. If this occurs, the attorney might be required to withdraw from representing one or both parents. This could be difficult for the clients and delay the case. Other examples of potential conflicts of interest that the attorney should avoid include representing multiple fathers in the same case or representing parties in a separate case who have interests in the current case.

In analyzing whether a conflict of interest exists, the attorney must consider "whether pursuing one client's objectives will prevent the lawyer from pursuing another client's objectives, and whether confidentiality may be compromised."¹²

15. Act in a culturally competent manner and with regard to the socioeconomic position of the parent throughout all aspects of representation.

Action: The parent's attorney should learn about and understand the client's background, determine how that has an impact on the client's case, and always show the parent respect. The attorney must understand how cultural and socioeconomic differences impact interaction with clients, and must interpret the client's words and actions accordingly.

Commentary: The child welfare system is comprised of a diverse group of people, including the clients and professionals involved. Each person comes to this system with his or her own set of values and expectations, but it is essential that each person try to learn about and understand the backgrounds of others. An individual's race, ethnicity, gender, sexual orientation and socioeconomic position all have an impact on how the person acts and reacts in particular situations. The parent's attorney must be vigilant against imposing the attorney's values onto the clients, and should, instead, work with the parents within the context of their culture and socioeconomic position. While the court and child welfare agency have expectations of parents in their treatment of children, the parent's advocate must strive to explain these expectations to the clients in a sensitive way. The parent's attorney should also try to explain how the client's background might affect the client's ability to comply with court orders and agency requests.

16. Take diligent steps to locate and communicate with a missing parent and decide representation strategies based on that communication.¹³

Action: Upon accepting an appointment, the parent's attorney should communicate to the client the importance of staying in contact with the attorney. While the attorney must communicate regularly with the client, and be informed of the client's wishes before a hearing, the client also must keep in contact with the attorney. At the beginning of the representation, the attorney should tell the client how to contact the attorney, and discuss the importance of the client keeping the attorney informed of changes in address, phone numbers, and the client's current whereabouts.

The parent's attorney should attempt to locate and communicate with missing parents to formulate what positions the attorney should take at hearings, and to understand what information the client wishes the attorney to share with the child welfare agency and the court. If, after diligent steps, the attorney is unable to communicate with the client, the attorney should assess whether the client's interests are better served by advocating for the client's last clearly articulated position, or declining to participate in further court proceedings, and should act accordingly. After a prolonged period without contact with the client, the attorney should consider withdrawing from representation.

Commentary:

Diligent Steps to Locate: To represent a client adequately, the attorney must know what the client wishes. It is, therefore, important for parents' attorneys to take diligent steps to locate missing clients. Diligent steps can include speaking with the client's family, the caseworker, the foster care provider and other service providers. It should include contacting the State Department of Corrections, Social Security Administration, and Child Support Office, and sending letters by regular and certified mail to the client's last known address. The attorney should also visit the client's last known address and asking anyone who lives there for information about the client's whereabouts. Additionally, the attorney should leave business cards with contact information with anyone who might have contact with the client as long as this does not compromise confidentiality.

Unsuccessful Efforts to Locate: If the attorney is unable to find and communicate with the client after initial consultation, the attorney should assess what action would best serve the client's interests. This decision must be made on a case-by-case basis. In some cases, the attorney may decide to take a position consistent with the client's last clearly articulated position. In other cases the client's interests may be better served by the attorney declining to participate in the court proceedings in the absence of the client because that may better protect the client's right to vacate orders made in the client's absence.

17. Be aware of the unique issues an incarcerated parent faces and provide competent representation to the incarcerated client.

Action:

Adoption and Safe Families Act (ASFA) Issues: The parent's attorney must be particularly diligent when representing an incarcerated parent. The attorney must be aware of the reasons for the incarceration. If the parent is incarcerated as a result of an act against the child or another child in the family, the child welfare agency may request an order from the court that reasonable efforts toward reunification are not necessary and attempt to fast-track the case toward other permanency goals. If this is the case, the attorney must be prepared to argue against such a motion, if the client opposes it. Even if no motion is made to waive the reasonable efforts requirement, in some jurisdictions the agency may not have the same obligations to assist parents who are incarcerated. Attorneys should counsel the client as to any effects incarceration has on the agency's obligations and know the jurisdiction's statutory and case law concerning incarceration as a basis for TPR. The attorney should help the client identify potential kinship placements, relatives who can provide care for the child while the parent is incarcerated. States vary in whether and how they weigh factors such as the reason for incarceration, length of incarceration and the child's age at the time of incarceration when considering TPR. Attorneys must understand the implications of ASFA for an incarcerated parent who has difficulty visiting and planning for the child.

Services: Obtaining services such as substance abuse treatment, parenting skills, or job training while in jail or prison is often difficult. The parent's attorney may need to advocate for reasonable efforts to be made for the client, and assist the parent and the agency caseworker in accessing services. The attorney must assist the client with these services. Without services, it is unlikely the parent will be reunified with the child upon discharge from prison.

If the attorney practices in a jurisdiction that has a specialized unit for parents and children, and especially when the client is incarcerated for an offense that is unrelated to the child, the attorney should advocate for such a placement. The attorney must learn about available resources, contact the placements and attempt to get the support of the agency and child's attorney.

Communication: The parent's attorney should counsel the client on the importance of maintaining regular contact with the child while incarcerated. The attorney should assist in developing a plan for communication and visitation by obtaining necessary court orders and working with the caseworker as well as the correctional facility's social worker.

If the client cannot meet the attorney before court hearings, the attorney must find alternative ways to communicate. This may include visiting the client in prison or engaging in more extensive phone or mail contact than with other clients. The attorney should be aware of the challenges to having a confidential conversation with the client, and attempt to resolve that issue.

The parent's attorney should also communicate with the parent's criminal defense attorney. There may be issues related to self-incrimination as well as concerns about delaying the abuse and neglect case to strengthen the criminal case or vice versa.

Appearance in Court: The client's appearance in court frequently raises issues that require the attorney's attention in advance. The attorney should find out from the client if the client wants to be present in court. In some prisons, inmates lose privileges if they are away from the prison, and the client may prefer to stay at the prison. If the client wants to be present in court, the attorney should work with the court to obtain a writ of habeas corpus/bring-down order/order to produce or other documentation necessary for the client to be transported from the prison. The attorney should explain to any client hesitant to appear, that the case will proceed without the parent's presence and raise any potential consequences of that choice. If the client does not want to be present, or if having the client present is not possible, the attorney should be educated about what means are available to have the client participate, such as by telephone or video conference. The attorney should make the necessary arrangements for the client. Note that it may be particularly difficult to get a parent transported from an out-of-state prison or a federal prison.

18. Be aware of the client's mental health status and be prepared to assess whether the parent can assist with the case.

Action: Attorneys representing parents must be able to determine whether a client's mental status (including mental illness and mental retardation) interferes with the client's ability to make decisions about the case. The attorney should be familiar with any mental health diagnosis and treatment that a client has had in the past or is presently undergoing (including any medications for such conditions). The attorney should get consent from the client to review mental health records and to speak with former and current mental health providers. The attorney should explain to the client that the information is necessary to understand the client's capacity to work with the attorney. If the client's situation seems severe, the attorney should also explain that the attorney may seek the assistance of a clinical social worker or some other mental health expert to evaluate the client's ability to assist the attorney because if the client does not have that capacity, the attorney may have to ask that a guardian ad litem be appointed to the client. Since this action may have an adverse effect on the client's legal claims, the attorney should ask for a GAL only when absolutely necessary.

Commentary: Many parents charged with abuse and neglect have serious or long-standing mental health challenges. However, not all of those conditions or diagnoses preclude the client from participating in the defense. Whether the client can assist counsel is a different issue from whether the client is able to parent the children, though the condition may be related to ability to parent. While the attorney is not expected to be a mental health expert, the attorney should be familiar with mental health conditions and should review such records carefully. The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. If the client seems unable to assist the attorney in case preparation, the attorney should seek an

assessment of the client's capacity from a mental health expert. If the expert and attorney conclude that the client is not capable of assisting in the case, the attorney should inform the client that the attorney will seek appointment of a guardian ad litem from the court. The attorney should be careful to explain that the attorney will still represent the client in the child protective case. The attorney must explain to the client that appointment of a GAL will limit the client's decision-making power. The GAL will stand in the client's shoes for that purpose.

Investigation¹⁴

19. Conduct a thorough and independent investigation at every stage of the proceeding.

Action: The parent's attorney must take all necessary steps to prepare each case. A thorough investigation is an essential element of preparation. The parent's attorney can not rely solely on what the agency caseworker reports about the parent. Rather, the attorney should contact service providers who work with the client, relatives who can discuss the parent's care of the child, the child's teacher or other people who can clarify information relevant to the case. If necessary, the attorney should petition the court for funds to hire an investigator.

Commentary: In some jurisdictions, parents' attorneys work with social workers or investigators who can meet with clients and assist in investigating the underlying issues that arise as cases proceed. The drafting committee recommends such a model of representation. However, if the attorney is not working with such a team, the attorney is still responsible for gaining all pertinent case information.

20. Interview the client well before each hearing, in time to use client information for the case investigation.¹⁵

Action: The parent's attorney should meet with the parent regularly throughout the case. The meetings should occur well before the hearing, not at the courthouse just minutes before the case is called before the judge. The attorney should ask the client questions to obtain information to prepare the case, and strive to create a comfortable environment so the client can ask the attorney questions. The attorney should use these meetings to prepare for court as well as to counsel the client concerning issues that arise during the course of the case. Information obtained from the client should be used to propel the investigation.

Commentary: Often, the client is the best source of information for the attorney, and the attorney should set aside time to obtain that information. Since the interview may involve disclosure of sensitive or painful information, the attorney should explain attorney-client confidentiality to the client. The attorney may need to work hard to gain the client's trust, but if a trusting relationship can be developed, the attorney will have an easier time representing the client. The investigation will be more effective if guided by the client, as the client generally knows firsthand what occurred in the case.

Informal Discovery¹⁶

21. Review the child welfare agency case file.

Action: The parent's attorney should ask for and review the agency case file as early during the course of representation as possible. The file contains useful documents that the attorney may not yet have, and will instruct the attorney on the agency's case theory. If the agency case file is inaccurate, the attorney should seek to correct it. The attorney must read the case file periodically because information is continually being added by the agency.

Commentary: While an independent investigation is essential, it is also important that the parent's attorney understands what information the agency is relying on to further its case. The case file should contain a history about the family that the client may not have shared, and important reports and information about both the child and parent that will be necessary for the parent's attorney to understand for hearings as well as settlement conferences. Unless the attorney also has the information the agency has, the parent's attorney will walk into court at a disadvantage.

22. Obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers.

Action: As part of the discovery phase, the parent's attorney should gather all relevant documentation regarding the case that might shed light on the allegations, the service plan and the client's strengths as a parent. The attorney should not limit the scope as information about past or present criminal, protection from abuse, private custody or administrative proceedings involving the client can have an impact on the abuse and neglect case. The attorney should also review the following kinds of documents:

- social service records
- court records
- medical records
- school records
- evaluations of all types

The attorney should be sure to obtain reports and records from service providers.

Discovery is not limited to information regarding the client, but may include records of others such as the other parent, stepparent, child, relative and non-relative caregivers.

Commentary: In preparing the client's case, the attorney must try to learn as much about the parent and the family as possible. Various records may contradict or supplement the agency's account of events. Gathering documentation to verify the client's reports about what occurred before the child came into care and progress the parent is making during the case is necessary to provide concrete evidence for the court. Documentation may also alert the attorney to issues the client is having that the client did not share with counsel.

The attorney may be able to intercede and assist the client with service providers, agency caseworkers and others.

Formal Discovery¹⁷

23. When needed, use formal discovery methods to obtain information.

Action: The parent's attorney should know what information is needed to prepare for the case and understand the best methods of obtaining that information. The attorney should become familiar with the pretrial requests and actions used in the jurisdiction and use whatever tools are available to obtain necessary information. The parent's attorney should consider the following types of formal discovery: depositions, interrogatories (including expert interrogatories), requests for production of documents, requests for admissions, and motions for mental or physical examination of a party. The attorney should file timely motions for discovery and renew these motions as needed to obtain the most recent records.

The attorney should, consistent with the client's interests and goals, and where appropriate, take all necessary steps to preserve and protect the client's rights by opposing discovery requests of other parties.

Court Preparation¹⁸

24. Develop a case theory and strategy to follow at hearings and negotiations.

Action: Once the parent's attorney has completed the initial investigation and discovery, including interviews with the client, the attorney should develop a strategy for representation. The strategy may change throughout the case, as the client makes or does not make progress, but the initial theory is important to assist the attorney in staying focused on the client's wishes and on what is achievable. The theory of the case should inform the attorney's preparation for hearings and arguments to the court throughout the case. It should also help the attorney decide what evidence to develop for hearings and the steps to take to move the case toward the client's ultimate goals (e.g., requesting increased visitation when a parent becomes engaged in services).

25. Timely file all pleadings, motions, and briefs. Research applicable legal issues and advance legal arguments when appropriate.

Action: The attorney must file petitions, motions, discovery requests, and responses and answers to pleadings filed by other parties that are appropriate for the case. These pleadings must be thorough, accurate and timely.

When a case presents a complicated or new legal issue, the parent's attorney should conduct the appropriate research before appearing in court. The attorney must have a solid understanding of the relevant law, and be able to present it to the judge in a compelling and convincing way. The attorney should be prepared to distinguish case law

that appears to be unfavorable. If the judge asks for memoranda of law, the attorney will already have done the research and will be able to use it to argue the case well. If it would advance the client's case, the parent's attorney should present an unsolicited memorandum of law to the court.

Commentary: Actively filing motions, pleadings and briefs benefits the client. This practice puts important issues before the court and builds credibility for the attorney. In addition to filing responsive papers and discovery requests, the attorney should proactively seek court orders that benefit the client, e.g., filing a motion to enforce court orders to ensure the child welfare agency is meeting its reasonable efforts obligations. When an issue arises, it is often appropriate to attempt to resolve it informally with other parties. When out-of-court advocacy is not successful, the attorney should not wait to bring the issue to the court's attention if that would serve the client's goals.

Arguments in child welfare cases are often fact-based. Nonetheless, attorneys should ground their arguments in statutory, regulatory and common law. These sources of law exist in each jurisdiction, as well as in federal law. Additionally, law from other jurisdictions can be used to sway a court in the client's favor. An attorney who has a firm grasp of the law, and who is willing to do legal research on an individual case, may have more credibility before the court. At times, competent representation requires advancing legal arguments that are not yet accepted in the jurisdiction. Attorneys should be mindful to preserve issues for appellate review by making a record even if the argument is unlikely to prevail at the trial level.

26. Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.

Action: The parent's attorney must advocate for the client both in and out of court. The parent's attorney should know about the social, mental health, substance abuse treatment and other services that are available to parents and families in the jurisdiction in which the attorney practices so the attorney can advocate effectively for the client to receive these services. The attorney should ask the client if the client wishes to engage in services. If so, the attorney must determine whether the client has access to the necessary services to overcome the issues that led to the case.

The attorney should actively engage in case planning, including attending major case meetings, to ensure the client asks for and receives the needed services. The attorney should also ensure the client does not agree to undesired services that are beyond the scope of the case. A major case meeting is one in which the attorney or client believes the attorney will be needed to provide advice or one in which a major decision on legal steps, such as a change in the child's permanency goal, will be made. The attorney should be available to accompany the client to important meetings with service providers as needed.

The services in which the client is involved must be tailored to the client's needs, and not merely hurdles over which the client must jump (e.g., if the client is taking parenting classes, the classes must be relevant to the underlying issue in the case).

Whenever possible, the parent's attorney should engage or involve a social worker as part of the parent's "team" to help determine an appropriate case plan, evaluate social services suggested for the client, and act as a liaison and advocate for the client with the service providers.

When necessary, the parent's attorney should seek court orders to force the child welfare agency to provide services or visitation to the client. The attorney may need to ask the court to enforce previously entered orders that the agency did not comply with in a reasonable period. The attorney should consider whether the child's representative (lawyer, GAL or CASA) might be an ally on service and visitation issues. If so, the attorney should solicit the child's representative's assistance and work together in making requests to the agency and the court.

Commentary: For a parent to succeed in a child welfare case the parent must receive and cooperate with social services. It is therefore necessary that the parent's attorney does whatever possible to obtain appropriate services for the client, and then counsel the client about participating in such services. Examples of services common to child welfare cases include:

- Evaluations
- Family preservation or reunification services
- Medical and mental health care
- Drug and alcohol treatment
- Domestic violence prevention, intervention or treatment
- Parenting education
- Education and job training
- Housing
- Child care
- Funds for public transportation so the client can attend services

27. Aggressively advocate for regular visitation in a family-friendly setting.

Action: The parent's attorney should advocate for an effective visiting plan and counsel the parent on the importance of regular contact with the child. Preservation of parent-child bonds through regular visitation is essential to any reunification effort. Courts and child welfare agencies may need to be pushed to develop visiting plans that best fit the needs of the individual family. Factors to consider in visiting plans include:

- Frequency
- Length
- Location
- Supervision
- Types of activities
- Visit coaching – having someone at the visit who could model effective parenting skills

Commentary: Consistent, high quality visitation is one of the best predictors of successful reunification between a parent and child. Often visits are arranged in settings that are uncomfortable and inhibiting for families. It is important that the parent's attorney seek a visitation order that will allow the best possible visitation. Effort should be made to have visits be unsupervised or at the lowest possible level of supervision. Families are often more comfortable when relatives, family friends, clergy or other community members are recruited to supervise visits rather than caseworkers. Attorneys should advocate for visits to occur in the most family-friendly locations possible, such as in the family's home, parks, libraries, restaurants, places of worship or other community venues.

28. With the client's permission, and when appropriate, engage in settlement negotiations and mediation to resolve the case.

Action: The parent's attorney should, when appropriate, participate in settlement negotiations to promptly resolve the case, keeping in mind the effect of continuances and delays on the client's goals. Parents' attorneys should be trained in mediation and negotiation skills and be comfortable resolving cases outside a courtroom setting when consistent with the client's position. When authorized to do so by the client, the parent's attorney should share information about services in which the parent is engaged and provide copies of favorable reports from service providers. This information may impact settlement discussions. The attorney must communicate all settlement offers to the client and discuss their advantages and disadvantages. It is the client's decision whether to settle. The attorney must be willing to try the case and not compromise solely to avoid the hearing. The attorney should use mediation resources when available.

Commentary: Negotiation and mediation often result in a detailed agreement among parties about actions the participants must take. Generally, when agreements have been thoroughly discussed and negotiated, all parties, including the parents, feel as if they had a say in the decision and are, therefore, more willing to adhere to a plan. Mediation can resolve a specific conflict in a case, even if it does not result in an agreement about the entire case. Negotiated settlements generally happen more quickly than full hearings and therefore move a case along swiftly. The attorney should discuss all aspects of proposed settlements with the parent, including all legal effects of admissions or agreements. The attorney should advise the client about the chances of prevailing if the matter proceeds to trial and any potential negative impact associated with contesting the allegations. The final decision regarding settlement must be the client's.

A written, enforceable agreement should result from any settlement, so all parties are clear about their rights and obligations. The parent's attorney should ensure agreements accurately reflect the understandings of the parties. The parent's attorney should schedule a hearing if promises made to the parent are not kept.

29. Thoroughly prepare the client to testify at the hearing.

Action: When having the client testify will benefit the case or when the client wishes to testify, the parent's attorney should thoroughly prepare the client. The attorney should discuss and practice the questions that the attorney will ask the client, as well as the types

of questions the client should expect opposing counsel to ask. The parent's attorney should help the parent think through the best way to present information, familiarize the parent with the court setting, and offer guidance on logistical issues such as how to get to court on time and appropriate court attire.

Commentary: Testifying in court can be intimidating. For a parent whose family is the focus of the proceeding, the court experience is even scarier. The parent's attorney should be attuned to the client's comfort level about the hearing, and ability to testify in the case. The attorney should spend time explaining the process and the testimony itself to the client. The attorney should provide the client with a written list of questions that the attorney will ask, if this will help the client.

30. Identify, locate and prepare all witnesses.

Action: The parent's attorney, in consultation with the parent, should develop a witness list well before a hearing. The attorney should not assume the agency will call a witness, even if the witness is named on the agency's witness list. The attorney should, when possible, contact the potential witnesses to determine if they can provide helpful testimony.

When appropriate, witnesses should be informed that a subpoena is on its way. The attorney should also ensure the subpoena is served. The attorney should subpoena potential agency witnesses (e.g., a previous caseworker) who have favorable information about the client.

The attorney should set aside time to fully prepare all witnesses in person before the hearing. The attorney should remind the witnesses about the court date.

Commentary: Preparation is the key to successfully resolving a case, either in negotiation or trial. The attorney should plan as early as possible for the case and make arrangements accordingly. Witnesses may have direct knowledge of the allegations against the parent. They may be service providers working with the parent, or individuals from the community who could testify generally about the family's strengths. When appropriate, the parent's attorney should consider working with other parties who share the parent's position (such as the child's representative) when creating a witness list, issuing subpoenas, and preparing witnesses. Doctors, nurses, teachers, therapists, and other potential witnesses have busy schedules and need advance warning about the date and time of the hearing.

Witnesses are often nervous about testifying in court. Attorneys should prepare them thoroughly so they feel comfortable with the process. Preparation will generally include rehearsing the specific questions and answers expected on direct and anticipating the questions and answers that might arise on cross-examination. Attorneys should provide written questions for those witnesses who need them.

31. Identify, secure, prepare and qualify expert witness when needed. When permissible, interview opposing counsel's experts.

Action: Often a case requires multiple experts in different roles, such as experts in medicine, mental health treatment, drug and alcohol treatment, or social work. Experts may be needed for ongoing case consultation in addition to providing testimony at trial. The attorney should consider whether the opposing party is calling expert witnesses and determine whether the parent needs to call any experts.

When expert testimony is required, the attorney should identify the qualified experts and seek necessary funds to retain them in a timely manner. The attorney should subpoena the witnesses, giving them as much advanced notice of the court date as possible. As is true for all witnesses, the attorney should spend as much time as possible preparing the expert witnesses for the hearing. The attorney should be competent in qualifying expert witnesses.

When opposing counsel plans to call expert witnesses, the parent's attorney should file expert interrogatories, depose the witnesses or interview the witnesses in advance, depending on the jurisdiction's rules on attorney work product. The attorney should do whatever is necessary to learn what the opposing expert witnesses will say about the client during the hearing.

Commentary: By contacting opposing counsel's expert witnesses in advance, the parent's attorney will know what evidence will be presented against the client and whether the expert has any favorable information that might be elicited on cross-examination. The attorney will be able to discuss the issues with the client, prepare a defense and call experts on behalf of the client, if appropriate. Conversely, if the attorney does not talk to the opposing expert in advance, the attorney could be surprised by the evidence and unable to represent the client competently.

Hearings

32. Attend and prepare for all hearings, including pretrial conferences.

Action: The parent's attorney must prepare for, and attend all hearings and participate in all telephone and other conferences with the court.

Commentary: For the parent to have a fair chance during the hearing, the attorney must be prepared and present in court. Participating in pretrial proceedings may improve case resolution for the parent. Counsel's failure to participate in the proceedings in which all other parties are represented may disadvantage the parent. Therefore, the parent's attorney should be actively involved in this stage. Other than in extraordinary circumstances, attorneys must appear for all court appearances on time. In many jurisdictions, if an attorney arrives to court late, or not at all, the case will receive a long continuance. This does not serve the client and does not instill confidence in the attorney. If an attorney has a conflict with another courtroom appearance, the attorney should

notify the court and other parties and request a short continuance. The parent's attorney should not have another attorney stand in to represent the client in a substantive hearing, especially if the other attorney is unfamiliar with the client or case.

33. Prepare and make all appropriate motions and evidentiary objections.

Action: The parent's attorney should make appropriate motions and evidentiary objections to advance the client's position during the hearing. If necessary, the attorney should file briefs in support of the client's position on motions and evidentiary issues. The parent's attorney should always be aware of preserving legal issues for appeal.

Commentary: It is essential that parents' attorneys understand the applicable rules of evidence and all court rules and procedures. The attorney must be willing and able to make appropriate motions, objections, and arguments (e.g., objecting to the qualification of expert witnesses or raising the issue of the child welfare agency's lack of reasonable efforts).

34. Present and cross-examine witnesses, prepare and present exhibits.

Action: The parent's attorney must be able to present witnesses effectively to advance the client's position. Witnesses must be prepared in advance and the attorney should know what evidence will be presented through the witnesses. The attorney must also be skilled at cross-examining opposing parties' witnesses. The attorney must know how to offer documents, photos and physical objects into evidence.

At each hearing the attorney should keep the case theory in mind, advocate for the child to return home and for appropriate services, if that is the client's position, and request that the court state its expectations of all parties.

Commentary: Becoming a strong courtroom attorney takes practice and attention to detail. The attorney must be sure to learn the rules about presenting witnesses, impeaching testimony, and entering evidence. The attorney should seek out training in trial skills and observe more experienced trial attorneys to learn from them. Even if the parent's attorney is more seasoned, effective direct and cross-examination require careful preparation. The attorney must know the relevant records well enough to be able to impeach adverse witnesses and bring out in both direct and cross examinations any information that would support the parent's position. Seasoned attorneys may wish to consult with other experienced attorneys about complex cases. Presenting and cross-examining witnesses are skills with which the parent's attorney must be comfortable.

35. In jurisdictions in which a jury trial is possible, actively participate in jury selection and drafting jury instructions.

Commentary: Several jurisdictions around the country afford parties in child welfare cases the right to a jury trial at the adjudicatory or termination of parental rights stages. Parents' attorneys in those jurisdictions should be skilled at choosing an appropriate jury,

drafting jury instructions that are favorable to the client's position, and trying the case before jurors who may not be familiar with child abuse and neglect issues.

36. Request closed proceedings (or a cleared courtroom) in appropriate cases.

Action: The parent's attorney should be aware of who is in the courtroom during a hearing, and should request the courtroom be cleared of individuals not related to the case when appropriate. The attorney should be attuned to the client's comfort level with people outside of the case hearing about the client's family. The attorney should also be aware of whether the case is one in which there is media attention. Confidential information should not be discussed in front of the media or others without the express permission of the client.

Commentary: In many courts, even if they have a "closed court" policy, attorneys, caseworkers, and witnesses on other cases listed that day may be waiting in the courtroom. These individuals may make the client uncomfortable, and the parent's attorney should request that the judge remove them from the courtroom. Even in an "open court" jurisdiction, there may be cases, or portions of cases, that outsiders should not be permitted to hear. The parent's attorney must be attuned to this issue, and make appropriate requests of the judge.

37. Request the opportunity to make opening and closing arguments.

Action: When permitted by the judge, the parent's attorney should make opening and closing arguments to best present the parent's attorney's theory of the.

Commentary: In many child abuse and neglect proceedings, attorneys waive the opportunity to make opening and closing arguments. However, these arguments can help shape the way the judge views the case, and therefore can help the client. Argument may be especially critical, for example, in complicated cases when information from expert witnesses should be highlighted for the judge, in hearings that take place over a number of days, or when there are several children and the agency is requesting different services or permanency goals for each of them. Making opening and closing argument is particularly important if the case is being heard by a jury.

38. Prepare 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.

Action: Proposed findings of fact, conclusions of law, and orders should be prepared before a hearing. When the judge is prepared to enter a ruling, the judge can use the proposed findings or amend them as needed.

Commentary: By preparing proposed findings of fact and conclusions of law, the parent's attorney frames the case and ruling for the judge. This may result in orders that are more favorable to the parent, preserve appellate issues, and help the attorney clarify desired outcomes before a hearing begins. The attorney should offer to provide the judge with

proposed findings and orders in electronic format. If an opposing party prepared the order, the parent's attorney should review it for accuracy before the order is submitted for the judge's signature.

Post Hearings/Appeals

39. Review court orders to ensure accuracy and clarity and review with client.

Action: After the hearing, the parent's attorney should review the written order to ensure it reflects the court's verbal order. If the order is incorrect, the attorney should take whatever steps are necessary to correct it. Once the order is final, the parent's attorney should provide the client with a copy of the order and should review the order with the client to ensure the client understands it. If the client is unhappy with the order, the attorney should counsel the client about any options to appeal or request rehearing on the order, but should explain that the order is in effect unless a stay or other relief is secured. The attorney should counsel the client on the potential consequences of failing to comply with a court order.

Commentary: The parent may be angry about being involved in the child welfare system, and a court order that is not in the parent's favor could add stress and frustration. It is essential that the parent's attorney take time, either immediately after the hearing or at a meeting soon after the court date, to discuss the hearing and the outcome with the client. The attorney should counsel the client about all options, including appeal (see below). Regardless of whether an appeal is appropriate, the attorney should counsel the parent about potential consequences of not complying with the order.

40. Take reasonable steps to ensure the client complies with court orders and to determine whether the case needs to be brought back to court.

Action: The parent's attorney should answer the parent's questions about obligations under the order and periodically check with the client to determine the client's progress in implementing the order. If the client is attempting to comply with the order but other parties, such as the child welfare agency, are not meeting their responsibilities, the parent's attorney should approach the other party and seek assistance on behalf of the client. If necessary, the attorney should bring the case back to court to review the order and the other party's noncompliance or take other steps to ensure that appropriate social services are available to the client.

Commentary: The parent's attorney should play an active role in assisting the client in complying with court orders and obtaining visitation and any other social services. The attorney should speak with the client regularly about progress and any difficulties the client is encountering while trying to comply with the court order or service plan. When the child welfare agency does not offer appropriate services, the attorney should consider making referrals to social service providers and, when possible, retaining a social worker to assist the client. The drafting committee of these standards recommends such an interdisciplinary model of practice.

41. Consider and discuss the possibility of appeal with the client.¹⁹

Action: The parent's attorney should consider and discuss with the client the possibility of appeal when a court's ruling is contrary to the client's position or interests. The attorney should counsel the client on the likelihood of success on appeal and potential consequences of an appeal. In most jurisdictions, the decision whether to appeal is the client's as long as a non-frivolous legal basis for appeal exists. Depending on rules in the attorney's jurisdiction, the attorney should also consider filing an extraordinary writ or motions for other post-hearing relief.

Commentary: When discussing the possibility of an appeal, the attorney should explain both the positive and negative effects of an appeal, including how the appeal could affect the parent's goals. For instance, an appeal could delay the case for a long time. This could negatively impact both the parent and the child.

42. If the client decides to appeal, timely and thoroughly file the necessary post-hearing motions and paperwork related to the appeal and closely follow the jurisdiction's Rules of Appellate Procedure.

Action: The parent's attorney should carefully review his or her obligations under the state's Rules of Appellate Procedure. The attorney should timely file all paperwork, including a notice of appeal and requests for stays of the trial court order, transcript, and case file. If another party has filed an appeal, the parent's attorney should explain the appeals process to the parent and ensure that responsive papers are filed timely.

The appellate brief should be clear, concise, and comprehensive and also timely filed. The brief should reflect all relevant case law and present the best legal arguments available in state and federal law for the client's position. The brief should include novel legal arguments if there is a chance of developing favorable law in support of the parent's claim.

In jurisdictions in which a different attorney from the trial attorney handles the appeal, the trial attorney should take all steps necessary to facilitate appointing appellate counsel and work with the new attorney to identify appropriate issues for appeal. The attorney who handled the trial may have insight beyond what a new attorney could obtain by reading the trial transcript.

If appellate counsel differs from the trial attorney, the appellate attorney should meet with the client as soon as possible. At the initial meeting, appellate counsel should determine the client's position and goals in the appeal. Appellate counsel should not be bound by the determinations of the client's position and goals made by trial counsel and should independently determine his or her client's position and goals on appeal.

If oral arguments are scheduled, the attorney should be prepared, organized, and direct. Appellate counsel should inform the client of the date, time and place scheduled for oral

argument of the appeal upon receiving notice from the appellate court. Oral argument of the appeal on behalf of the client should not be waived, absent the express approval of the client, unless doing so would benefit the client. For example, in some jurisdictions appellate counsel may file a reply brief instead of oral argument. The attorney should weigh the pros and cons of each option.

Commentary: Appellate skills differ from the skills most trial attorneys use daily. The parent's attorney may wish to seek training on appellate practice and guidance from an experienced appellate advocate when drafting the brief and preparing for argument. An appeal can have a significant impact on the trial judge who heard the case and trial courts throughout the state, as well as the individual client and family.

43. Request an expedited appeal, when feasible, and file all necessary paperwork while the appeal is pending.

Action: If the state court allows, the attorney in a child welfare matter should always consider requesting an expedited appeal. In this request, the attorney should provide information about why the case should be expedited, such as any special characteristics about the child and why delay would harm the relationship between the parent and child.

44. Communicate the results of the appeal and its implications to the client.

Action: The parent's attorney should communicate the result of the appeal and its implications, and provide the client with a copy of the appellate decision. If, as a result of the appeal, the attorney needs to file any motions with the trial court, the attorney should do so.

Obligations of Attorney Managers²⁰

Attorney Managers are urged to:

1. Clarify attorney roles and expectations.

Action: The attorney manager must ensure that staff attorneys understand their role in representing clients and the expectations of the attorney manager concerning all staff duties. In addition to in-office obligations staff attorneys may attend meetings, conferences, and trainings. The attorney may need to attend child welfare agency or service provider meetings with clients. The manager should articulate these duties at the beginning of and consistently during the attorney's employment. The manager should emphasize the attorney's duties toward the client, and obligations to comply with practice standards.

Commentary: All employees want to know what is expected of them; one can only do a high quality job when the person knows the parameters and expectations of the position. Therefore, the attorney manager must consistently inform staff of those expectations. Otherwise, the staff attorney is set up to fail. The work of representing parents is too important, and too difficult, to be handled by people who do not understand their role and

lack clear expectations. These attorneys need the full support of supervisors and attorney managers to perform their highest quality work.

2. Determine and set reasonable caseloads for attorneys.²¹

Action: An attorney manager should determine reasonable caseloads for parents' attorneys and monitor them to ensure the maximum is not exceeded. Consider a caseload/workload study, review written materials about such studies, or look into caseload sizes in similar counties to accurately determine ideal attorney caseloads. When assessing the appropriate number of cases, remember to account for all attorney obligations, case difficulty, time required to prepare a case thoroughly, support staff assistance, travel time, experience level of attorneys, and available time (excluding vacation, holidays, sick leave, training and other non-case-related activity). If the attorney manager carries a caseload, the number of cases should reflect the time the individual spends on management duties.

Commentary: High caseload is considered a major barrier to quality representation and a source of high attorney turnover. It is essential to decide what a reasonable caseload is in your jurisdiction. How attorneys define cases and attorney obligations vary from place-to-place, but having a manageable caseload is crucial. The standards drafting committee recommended a caseload of no more than 50-100 cases depending on what the attorney can handle competently and fulfill these standards. The type of practice the attorney has, e.g., whether the attorney is part of a multidisciplinary representation team also has an impact on the appropriate caseload size. It is part of the attorney manager's job to advocate for adequate funding and to alert individuals in positions of authority when attorneys are regularly asked to take caseloads that exceed local standards.

3. Advocate for competitive salaries for staff attorneys.

Action: Attorney managers should advocate for attorney salaries that are competitive with other government and court appointed attorneys in the jurisdiction. To recruit and retain experienced attorneys, salaries must compare favorably with similarly situated attorneys.

Commentary: While resources are scarce, parents' attorneys deserve to be paid a competitive wage. They will likely not stay in their position nor be motivated to work hard without a reasonable salary. High attorney turnover may decrease when attorneys are paid well. Parents' rights to effective assistance of counsel may be compromised if parents' attorneys are not adequately compensated.

4. Develop a system for the continuity of representation.

Action: The attorney manager should develop a case assignment system that fosters ownership and involvement in the case by the parent's attorney. The office can have a one-attorney: one-case (vertical representation) policy in which an attorney follows the case from initial filing through permanency and handles all aspects of the case.

Alternatively, the cases may be assigned to a group of attorneys who handle all aspects of a case as a team and are all assigned to one judge. If a team approach is adopted, it is critical to establish mechanisms to aid communication about cases and promote accountability.

The attorney manager should also hire social workers, paralegals and/or parent advocates (parents familiar with the child welfare system because they were involved in the system and successfully reunited with their child), who should be “teamed” with the attorneys. These individuals can assist the attorney or attorney team with helping clients access services and information between hearings, and help the attorney organize and monitor the case.

Commentary: Parents’ attorneys can provide the best representation for the client when they know a case and are invested in its outcome. Continuity of representation is critical for attorneys and parents to develop the trust that is essential to high quality representation. Additionally, having attorneys who are assigned to particular cases decreases delays because the attorney does not need to learn the case each time it is scheduled for court, but rather has extensive knowledge of the case history. The attorney also has the opportunity to monitor action on the case between court hearings. This system also makes it easier for the attorney manager to track how cases are handled. Whatever system is adopted, the manager must be clear about which attorney has responsibility for the case preparation, monitoring, and advocacy required throughout the case.

5. Provide attorneys with training and education opportunities regarding the special issues that arise in the client population.

Action: The attorney manager must ensure that each attorney has opportunities to participate in training and education programs. When a new attorney is hired, the attorney manager should assess that attorney’s level of experience and readiness to handle cases. The attorney manager should develop an internal training program that pairs the new attorney with an experienced “attorney mentor.” The new attorney should be required to: 1) observe each type of court proceeding (and mediation if available in the jurisdiction), 2) second-chair each type of proceeding, 3) try each type of case with the mentor second-chairing, and 4) try each type of proceeding on his or her own, with the mentor available to assist, before the attorney can begin handling cases alone.

Additionally, each attorney should attend at least 20 hours of relevant training before beginning, and at least 15 hours of relevant training every year after. Training should include general legal topics such as evidence and trial skills, and child welfare-specific topics that are related to the client population the office is representing, such as:

- Relevant state, federal and case law, procedures and rules
- Available community resources
- State and federal benefit programs affecting parties in the child welfare system (e.g., SSI, SSA, Medicaid, UCCJEA)

- Federal Indian Law including the Indian Child Welfare Act and state law related to Native Americans
- Understanding mental illness
- Substance abuse issues (including assessment, treatment alternatives, confidentiality, impact of different drugs)
- Legal permanency options
- Reasonable efforts
- Termination of parental rights law
- Child development
- Legal ethics related to parent representation
- Negotiation strategies and techniques
- Protection orders/how domestic violence impacts parties in the child welfare system
- Appellate advocacy
- Immigration law in child welfare cases
- Education law in child welfare cases
- Basic principles of attachment theory
- Sexual abuse
- Dynamics of physical abuse and neglect
 - Shaken Baby Syndrome
 - Broken bones
 - Burns
 - Failure To Thrive
 - Munchausen's Syndrome by Proxy
- Domestic relations law

Commentary: Parents' attorneys should be encouraged to learn as much as possible and participate in conferences and trainings to expand their understanding of child welfare developments. While parents' attorneys often lack extra time to attend conferences, the knowledge they gain will be invaluable. The philosophy of the office should stress the need for ongoing learning and professional growth. The attorney manager should require the attorneys to attend an achievable number of hours of training that will match the training needs of the attorneys. The court and Court Improvement Program²² may be able to defray costs of attorney training or may sponsor multidisciplinary training that parents' attorneys should be encouraged to attend. Similarly, state and local bar associations, area law schools or local Child Law Institutes may offer education opportunities. Attorneys should have access to professional publications to stay current on the law and promising practices in child welfare. Child welfare attorneys benefit from the ability to strategize and share information and experiences with each other. Managers should foster opportunities for attorneys to support each other, discuss cases, and brainstorm regarding systemic issues and solutions.

6. Establish a regular supervision schedule.

Action: Attorney managers should ensure that staff attorneys meet regularly (at least once every two weeks) with supervising attorneys to discuss individual cases as well as any issues the attorney is encountering with the court, child welfare agency, service providers or others. The supervising attorney should help the staff attorney work through any difficulties the attorney is encountering in managing a caseload. Supervising attorneys should regularly observe the staff attorneys in court and be prepared to offer constructive criticism as needed. The supervising attorney should create an atmosphere in which the staff attorney is comfortable asking for help and sharing ideas.

Commentary: Parents' attorneys function best when they can learn, feel supported, and manage their cases with the understanding that their supervisors will assist as needed. By creating this office environment, the attorney manager invests in training high quality attorneys and results in long-term retention. Strong supervision helps attorneys avoid the burnout that could accompany the stressful work of representing parents in child welfare cases.

7. Create a brief and forms bank.

Action: Develop standard briefs, memoranda of law and forms that attorneys can use, so they do not "reinvent the wheel" for each new project. For example, there could be sample discovery request forms, motions, notices of appeal, and petitions. Similarly, memoranda of law and appellate briefs follow patterns that the attorneys could use, although these should always be tailored to the specific case. These forms and briefs should be available on the computer and in hard copy and should be centrally maintained. They should also be well indexed for accessibility and updated as needed.

8. Ensure the office has quality technical and support staff as well as adequate equipment, library materials, and computer programs to support its operations.

Action: The attorney manager should advocate for high quality technical and staff support. The office should employ qualified legal assistants or paralegals and administrative assistants to help the attorneys. The attorney manager should create detailed job descriptions for these staff members to ensure they are providing necessary assistance. For instance, a qualified legal assistant can help: research, draft petitions, schedule and prepare witnesses and more.

The attorney manager should ensure attorneys have access to working equipment, a user-friendly library conducive to research, and computer programs for word processing, conducting research (Westlaw or Lexis/Nexis), caseload and calendar management, Internet access, and other supports that make the attorney's job easier and enhances client representation.

Commentary: By employing qualified staff, the attorneys will be free to perform tasks essential to quality representation. The attorneys must at least have access to a good

quality computer, voice mail, fax machine, and copier to get the work done efficiently and with as little stress as possible

9. Develop and follow a recruiting and hiring practice focused on hiring highly qualified candidates.

Action: The attorney manager should hire the best attorneys possible. The attorney manager should form a hiring committee made up of managing and line attorneys and possibly a client or former client of the office. Desired qualities of a new attorney should be determined, focusing on educational and professional achievements; experience and commitment to representing parents and to the child welfare field; interpersonal skills; diversity and the needs of the office; writing and verbal skills; second language skills; and ability to handle pressure. Widely advertising the position will draw a wider candidate pool. The hiring committee should set clear criteria for screening candidates before interviews and should conduct thorough interviews and post-interview discussions to choose the candidate with the best skills and strongest commitment. Reference checks should be completed before extending an offer.

Commentary: Hiring high quality attorneys raises the level of representation and the level of services parents in the jurisdiction receive. The parent attorney's job is complicated and stressful. There are many tasks to complete in a short time. It is often difficult to connect with, build trust and represent the parent. New attorneys must be aware of these challenges and be willing and able to overcome them. Efforts should be made to recruit staff who reflect the racial, ethnic, and cultural backgrounds of the clients. It is particularly important to have staff who can communicate with the clients in their first languages, whenever possible.

10. Develop and implement an attorney evaluation process.

Action: The attorney manager should develop an evaluation system that focuses on consistency, constructive criticism, and improvement. Some factors to evaluate include: communicating with the client, preparation and trial skills, working with clients and other professionals, complying with practice standards, and ability to work within a team. During the evaluation process, the attorney manager should consider:

- observing the attorney in court;
- reviewing the attorney's files;
- talking with colleagues and clients, when appropriate, about the attorney's performance;
- having the attorney fill out a self-evaluation; and;
- meeting in person with the attorney.

Where areas of concern are noted, the evaluation process should identify and document specific steps to address areas needing improvement.

Commentary: A solid attorney evaluation process helps attorneys know what they should be working on, management's priorities, their strengths and areas for improvement. A

positive process supports attorneys in their positions, empowers them to improve and reduces burnout.

11. Work actively with other stakeholders to improve the child welfare system, including court procedures.

Action: The attorney manager should participate, or designate someone from the staff to participate, in multidisciplinary committees within the jurisdiction that are focused on improving the local child welfare system. Examples of such committees include: addressing issues of disproportional representation of minorities in foster care, improving services for incarcerated parents, allowing parents pre-petition representation, drafting court rules and procedures, drafting protocols about outreach to missing parents and relatives, removing permanency barriers and delays, and accessing community-based services for parents and children. Similarly, the attorney manager should participate in, and strongly encourage staff participation in, multidisciplinary training.

Commentary: Working on systemic change with all stakeholders in the jurisdiction is one way to serve the parents the office represents as well as their children. Active participation of parents' attorneys ensures that projects and procedures are equitably developed, protect parents' interests, and the attorneys are more likely to work on them over the long term. Collaboration can, and generally does, benefit all stakeholders.

Role of the Court:

The court is urged to:

1. Recognize the importance of the parent attorney's role.

Commentary: The judge sets the tone in the courtroom. Therefore, it is very important that the judge respects all parties, including the parents and parents' counsel. Representing parents is difficult and emotional work, but essential to ensuring justice is delivered in child abuse and neglect cases. When competent attorneys advocate for parent clients, the judge's job becomes easier. The judge is assured that the parties are presenting all relevant evidence, and the judge can make a well-reasoned decision that protects the parents' rights. Also, by respecting and understanding the parent attorney's role, the judge sets an example for others.

2. Establish uniform standards of representation for parents' attorneys.

Commentary: By establishing uniform representation rules or standards, the judge can put the parents' attorneys in the jurisdiction on notice that a certain level of representation will be required for the attorney to continue to receive appointments. The rules or standards should be jurisdiction specific, but should include the elements of these standards.

3. Ensure the attorneys who are appointed to represent parents in abuse and neglect cases are qualified, well-trained, and held accountable for practice that complies with these standards.

Commentary: Once the standards are established, the court must hold all parents' attorneys accountable to them. A system should be developed that would delineate when an attorney would be removed from a case for failure to comply with the standards, and what actions, or inactions, would result in the attorney's removal from the appointment list (or a court recommendation to an attorney manager that an attorney be disciplined within the parent attorney office). The court should encourage attorneys to participate in educational opportunities, and the judge should not appoint attorneys who have failed to meet the minimum annual training requirements set out in the rules or standards.

4. Ensure appointments are made when a case first comes before the court, or before the first hearing, and last until the case has been dismissed from the court's jurisdiction.

Commentary: The parent is disadvantaged in a child abuse and neglect case if not represented by a competent attorney throughout the life of the case. The attorney can explain the case to the parent, counsel the parent on how best to achieve the parent's goals with respect to the child, and assist the parent access necessary services. In most child welfare cases, the parent cannot afford an attorney and requires the court to appoint one. The court should make every effort to obtain an attorney for that parent as early in the case as feasible – preferably before the case comes to court for the first time or at the first hearing. In jurisdictions in which parents only obtain counsel for the termination of parental rights hearing, the parent has little chance of prevailing. A family that may have been reunified if the parent had appropriate legal support is separated forever.

5. Ensure parents' attorneys receive fair compensation.

Commentary: While resources are scarce, parents' attorneys deserve a competitive wage. They should receive the same wage as other government and court-appointed attorneys for other parties in the child abuse and neglect case. Parents' rights to effective assistance of counsel may be compromised if parents' attorneys are not adequately compensated. In most jurisdictions, the court sets the attorneys' fees and individual judges can recommend to court administration that parents' attorneys should be well compensated.

6. Ensure timely payment of fees and costs for attorneys.

Commentary: Often judges must sign fee petitions and approve payment of costs for attorneys. The judges should do so promptly so parents' attorneys can focus on representing clients, not worrying about being paid.

7. Provide interpreters, investigators and other specialists needed by the attorneys to competently represent clients. Ensure attorneys are reimbursed for supporting costs, such as use of experts, investigation services, interpreters, etc.

Commentary: Attorneys can not provide competent representation for parents without using certain specialists. For instance, if the client speaks a language different from the attorney, the attorney must have access to interpreters for attorney/client meetings. Interpreter costs should not be deducted from the attorney's compensation. A parent should be permitted to use an expert of the parent's choosing in some contested cases. If the expert charges a fee, the court should reimburse that fee separate and apart from what the court is paying the attorney.

8. Ensure that attorneys who are receiving appointments carry a reasonable caseload that would allow them to provide competent representation for each of their clients.

Commentary: The maximum allowable caseload should be included in local standards of practice for parents' attorneys. This committee recommends no more than 50-100 cases for full time attorneys, depending on the type of practice the attorney has and whether the attorney is able to provide each client with representation that follows these standards. Once this number has been established, the court should not appoint an attorney to cases once the attorney has reached the maximum level. Attorneys can only do high quality work for a limited number of clients, and each client deserves the attorney's full attention. Of course, the caseload decision is closely tied to adequate compensation. If paid appropriately, the attorney will have less incentive to overextend and accept a large number of cases.

9. Ensure all parties, including the parent's attorney, receive copies of court orders and other documentation.

Commentary: The court should have a system to ensure all parties receive necessary documentation in a timely manner. If the parent and parent attorney do not have the final court order, they do not know what is expected of them and of the other parties. If the child welfare agency, for example, is ordered to provide the parent with a certain service within two weeks, the parent's attorney must know that. After two weeks, if the service has not been provided, the attorney will want to follow up with the court. In some jurisdictions, copies of court orders are handed to each party before they leave the courtroom. This is an ideal situation, and if it is not feasible, the court should determine what other distribution method will work.

10. Provide contact information between clients and attorneys.

Commentary: Often parties in child welfare cases are difficult to locate or contact. Some parents lack telephones. The court can help promote contact between the attorney and parent by providing contact information to both individuals.

11. Ensure child welfare cases are heard promptly with a view towards timely decision making and thorough review of issues.

Commentary: Judges should attempt to schedule hearings and make decisions quickly. Allotted court time should be long enough for the judge to thoroughly review the case and conduct a meaningful hearing.

When possible, judges should schedule hearings for times-certain to avoid delaying attorneys unnecessarily in court. When attorneys are asked to wait through the rest of the morning calendar for one brief review hearing, limited dollars are spent to keep the attorney waiting in hallways, rather than completing an independent investigation, or researching alternative placement or treatment options.

Judges should avoid delays in decision making. Delays in decision making can impact visitation, reunification and even emotional closure when needed. If a parent does not know what the judge expects, the parent may lack direction or motivation to engage in services.

¹ Model Rules of Professional Conduct 1.1 (Competence).

² The National Association of Counsel for Children is accredited by the American Bar Association to certify attorneys as specialists in Child Welfare Law. The Certification Program is open to attorneys who represent children, parents, or agencies in child welfare proceedings.

³ Model Rule 1.3 (Diligence).

⁴ Model Rule 1.4 (Communication).

⁵ Model Rule 2.1 (Advisor).

⁶ Model Rule 1.2 (Scope of Representation and Allocation of Authority).

⁷ Model Rule 1.6 (Confidentiality of Information).

⁸ Model Rule 1.4 Communication

⁹ Id.

¹⁰ Id.

¹¹ Model Rules 1.7 (Conflict of Interest: Current Client); 1.8 (Conflict of Interest: Current Clients: Specific Rules); 1.9 (Duties to Former Clients).

¹² Renne, Jennifer L. Chapter 4, page 49, "Handling Conflicts of Interest," *Legal Ethics in Child Welfare Cases*. Washington, DC: American Bar Association, 2004.

¹³ Model Rule 1.3 (Diligence).

¹⁴ Model Rules 1.1 (Competence); 1.3 (Diligence).

¹⁵ Model Rule 1.4 (Communication).

¹⁶ Model Rules 1.1 (Competence); 1.3 (Diligence).

¹⁷ Id.

¹⁸ Id.

¹⁹ Model Rule 3.1 (Meritorious Claims and Contentions).

²⁰ Model Rule 5.1 (Responsibility of Partners, Managers and Supervisory Lawyers).

²¹ Model Rule 1.1 (Competence).

²² The Court Improvement Program (CIP) is a federal grant to each state's (as well as the District of Columbia and Puerto Rico) supreme court. The funds must be used to improve child abuse and neglect courts. States vary in how they allocate the dollars, but funds are often used for training, benchbooks, pilot projects, model courts and information technology systems for the courts.

Report

Standards of Practice for Lawyers Representing Parents in Abuse and Neglect Cases

Introduction

Each year, the nation's juvenile and family courts handle hundreds of thousands of "civil" cases related to child abuse and neglect. These state-initiated child protection or "dependency" cases, ranging from court actions that place children in foster care to judicial orders that permanently terminate parental rights, have obvious critical impact on the parents of the children who are the subject of these proceedings. Most parents involved in these cases are indigent and must therefore rely on court-appointed legal representation.

Having a knowledgeable and diligent court-appointed lawyer can make a big difference in how a judge decides such major questions as: Does this family have the skills and resources to keep this child safe at home? Should this child be returned home from foster care? Have parents been responsive to the child welfare agency's efforts to help them? What does this family need to adequately care for their children? The skills to effectively represent parents in these cases are not those learned in law school, but require appropriate continuing legal education, a familiarity with relevant federal and state laws, and a sensitivity to what families are experiencing related to the trauma of state intervention in their lives.

Drawing from the experiences of attorneys who have long been active in the field of child welfare law, including those who have represented large numbers of parents in civil child protective cases, a set of "best practice" standards have been carefully developed. If these are utilized by individual attorneys, public defender and legal assistance programs, and are shared through continuing legal education activities that are based on the standards, parents — who too often have had inadequate legal representation — will receive much higher quality representation. The beneficiaries of this will not only be the parents, but also the affected children and other family members.

These Standards of Practice for Lawyers Representing Parents in Abuse and Neglect Cases were drafted under the auspices of a federal grant from the Children's Bureau of the U.S. Department of Health and Human Services to the American Bar Association Center on Children and the Law's Child Welfare Resource Center on Legal and Judicial Issues. Like other child-related standards adopted by the ABA, specifically the Standards of Practice for Lawyers Representing Children in Abuse and Neglect Cases (adopted in 1996), the Standards of Practice for Lawyers Representing Children in Custody Cases (adopted in 2003), and the Standards of Practice for Lawyers Representing Child Welfare Agencies (adopted in 2004), these standards focus on improving representation of parties so that children and families are better served by the legal system.

The Standards of Practice for Lawyers Representing Parents in Abuse and Neglect Cases were drafted with the assistance of a distinguished committee of practicing agency attorneys and child welfare professions from different jurisdictions in the country.²²

Standards Overview

A parent attorney, for the purposes of these standards, is an attorney who is an employee or contractor with the court who is charged with the responsibility of representing parents of children who are involved in child abuse and neglect cases.

These standards promote quality representation and uniformity of practice throughout the country for parents' attorneys in child abuse and neglect cases. Many parents' attorneys who read the standards may recognize their practice in the document. The standards are meant to improve practice, but also to be realistically attainable by individual jurisdictions. The standards were written with the difficulties of day-to-day practice in mind, but also with the goal of raising the quality of representation as much as possible. While local adjustments may be necessary to incorporate the standards into practice, jurisdictions should strive to meet the fundamental principles and spirit of the standards.

The standards are divided into the following categories:

1. Summary of the Standards
2. Basic Obligations of Parents' Attorneys
3. Obligations of Attorney Manager
4. The Role of the Court

The standards include "black letter" standards, or requirements written in bold. Following the black letter standards are "actions." These actions further discuss how to fulfill the standard; implementing each standard requires the accompanying action. After the action is "commentary" or a discussion of why the standard is necessary and how it should be applied. When a standard does not need further explanation, no action or commentary appears. Several standards relate to specific sections of the Model Rules of Professional Conduct, and the Model Rules are referenced in these standards. The terms "parent" and "client" are used interchangeably throughout the document.

As was done in the Standards of Practice for Attorneys Representing Child Welfare Agencies, ABA 2004, a group of standards for attorney managers are included in these standards. These standards primarily apply to parents' attorneys who work for an agency or law firm – an institutional model of representation. Solo practitioners, or attorneys who individually receive appointments from the court, may wish to review this part of the standards, but may find some do not apply. However, some standards in this section, such as those about training and caseload, are relevant for all parents' attorneys.

As was done in the Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, ABA 1996, a section of the standards concerns the Role of the Court in implementing these Standards. The ABA and the National Council of Juvenile and Family Court Judges have policies concerning the importance of the court in ensuring that all parties in abuse and neglect cases have competent representation.

Conclusion

Representing a parent in an abuse and neglect case is a difficult and emotional job. There are many responsibilities. These standards are intended to help the attorney prioritize duties and manage the practice in a way that will benefit each parent on the attorney's caseload. As it has done in other areas of legal involvement in child abuse and neglect cases, the ABA should continue to provide a leadership role in ensuring this vital child protective legal work be done and done by qualified, well-trained attorneys.

Respectfully Submitted,

Christina Plum
Chair, ABA Young Lawyers Division
August 2006

GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: Young Lawyers Division

Submitted By: Christina Plum, YLD Chair

1. Summary of Recommendation(s).

The American Bar Association should adopt the Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, including the Commentary, dated August 2006.

2. Approval by Submitting Entity.

The recommendation was approved by the Young Lawyers Division Council on May 18, 2006.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No. In 1996 the ABA approved Standards of Practice for Lawyers Representing Children in Abuse and Neglect Cases, in 2003 the ABA approved Standards of Practice for Lawyers Representing Children in Custody Cases, and in 2004 the ABA approved Standards of Practice for Attorneys Representing Child Welfare Agencies.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

In 1996 the ABA approved Standards of Practice for Lawyers Representing Children in Abuse and Neglect Cases and in 2004 the ABA approved Standards of Practice for Attorneys Representing Child Welfare Agencies. These standards would clarify the role of parents' attorneys in the same type of cases.

5. What urgency exists which requires action at this meeting of the House?

Throughout the country, parents' attorneys and courts are struggling with the role parents' attorneys should play and the best practices used in other parts of the country. The ABA has the opportunity to clarify these questions and provide leadership in

improving the representation parents in child welfare cases receive. The quality of this representation directly results in improved outcomes for children and families.

6. Status of Legislation. (If applicable.)

N/A

7. Cost to the Association. (Both direct and indirect costs.)

None

8. Disclosure of Interest. (If applicable.)

No conflicts of interest are known to exist with regard to this recommendation at this time.

9. Referrals.

The following ABA groups, some of which were involved in drafting the standards, will be approached concerning co-sponsorship:

- Criminal Justice
- Dispute Resolution
- Family Law
- General Practice, Solo and Small Firm Division
- Government and Public Sector Lawyers Division
- Individual Rights and Responsibilities
- Judicial Division
- Litigation
- Standing Committee on Legal Aid and Indigent Defendants
- Steering Committee on the Unmet Legal Needs of Children

10. Contact Person. (Prior to the meeting.)

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11. Contact Person. (Who will present the report to the House.)

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