



Child Law Practice

Vol. 26 No. 1

March 2007

Helping Lawyers Help Kids

BETTER LAWYERING

Promoting Quality Parent Representation through Standards of Practice

by Mimi Laver

As an attorney representing parents of children involved in the child welfare system you probably have clients who love their children and want to provide what is best for them. But these parents face many challenges. Among them are poverty, language barriers, substance abuse, mental illness problems, and unsuitable housing. Your clients may have harmed their children, or failed to care for them, but they still want the best for them.

The Need for Standards

As a parent's attorney, you face your own challenges when advocating for your client. You may be a solo practitioner with little office support. You may never have learned about child welfare law during law school. Substance abuse, mental health, and housing may feel like social work. You may only speak English. You are probably not getting paid well, and lack a team of social workers or paralegals to help prepare your cases. You may be one of two attorneys representing parents in your jurisdiction and feeling isolated. If you are facing any of these issues, you are not alone.

While preparing to draft standards of practice for parents' attorneys, I spoke with many parents' attorneys. I heard stories like these and learned it can be difficult to represent parents in the child welfare system, but when done well, attorneys can make a difference for their clients and their

families. For example, parents' attorneys who are aware of local services, such as mother-child substance abuse treatment programs, can advocate for their clients to access these services. Attorneys who truly understand the importance of the parent-child bond and the increased likelihood of reunification if that bond is maintained can argue for increased visitation in comfortable settings. Attorneys who take time to get to know their clients will be able to advocate for the clients' goals both in and out of court. This type of vigorous advocacy can mean the difference between a parent having a child reunified or having parental rights terminated.

Standards Take Shape

For 18-months, I worked with a committee of parents' attorneys from around the country, representatives of national organizations and ABA members to draft the *Standards of Practice for Attorneys Representing*

Parents in Abuse and Neglect Cases. The goals of the committee included promoting quality representation and uniform practice by parents' attorneys throughout the country, helping attorneys prioritize their duties and manage their practices in ways that will benefit each parent on the attorney's caseload, and clarifying the role of the parent attorney in child abuse and neglect cases.

Structure and Organization

The standards are organized around 44 "Basic Obligations" or black letter standards for attorneys, 11 obligations for managers, and 11 suggestions for courts to improve practice by parents' attorneys. The 11 standards for attorney managers apply to parents' attorneys who

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work for an agency or law firm—an institutional model of representation. If you are a solo practitioner, or attorney who receives appointments from the court, you will find some standards in this section, such as those about training and caseload, are relevant for you and all parents' attorneys.

Each standard is followed by actions and commentary that discuss implementing the standard. The standards are broken into several categories:

- General obligations
- Relationship with the Client
- Investigation
- Informal Discovery
- Formal Discovery
- Court Preparation
- Hearings
- Post Hearings/Appeals

To view the entire document, please visit our website at: <http://www.abanet.org/child/clp/ParentStds.pdf>. As a whole, the document is intended to guide attorneys toward best possible practice.

ABA Endorsement

In August 2006, the ABA House of Delegates approved the Standards as official ABA policy. This means the ABA recommends their adoption by state and local jurisdictions and an ABA witness could testify about them. This action by the House of Delegates shows the ABA's commitment to high quality representation in child welfare cases. These standards join *Standards of Practice for Children's Attorneys* and *Standards of Practice for Attorneys Representing Child Welfare Agencies in Abuse and Neglect Cases*, both previously approved by the ABA.

Key Themes

The standards emphasize some

important themes that stem from the committee's ongoing discussions and are issues practitioners identify as keys to excellent parent representation. These themes are: client-driven representation, preparation, and using a multidisciplinary model of representation.

Client-Driven Representation

Representing parents in the child welfare system can be challenging for the reasons above. However, the parent's attorney must remember his or her role is to protect the client's interests and express the client's wishes. While the attorney must provide expertise and make strategic decisions about the best ways to achieve the parent's goals, the client decides the case goals and the attorney must act accordingly. The standards discuss this responsibility in a number of places. For example:

- **Understand and protect the parent's rights to information and decision making while the child is in foster care. (Standard 3)**
- **Advocate for the client's goals and empower the client to direct the representation and make informed decisions based on thorough counsel. (Standard 7)**
- **Act in accordance with the duty of loyalty owed to the client. (Standard 8)**

The clients in these cases are parents who are the primary decision makers for their children. Once children are removed from a parent's care, many jurisdictions ignore or work around the parent. The parent's attorney should work hard to empower the client to be involved with the child and make decisions about the child's care. For example, the parent should be involved in education and medical decisions, be invited to the child's doctor appointments, and learn about any special needs the child may have. If the par-

ent is not included in these decisions, the attorney should work with the agency, and the court if necessary, to change this. The attorney must learn what the client's goals in the case are and work with the child welfare agency and the court to achieve those goals. The attorney should not assume each client wants the same outcome, but rather get to know each client and work for each client as needed.

Preparation

All attorneys know they must be prepared for a hearing, yet often attorneys meet their clients for the first time five minutes before a hearing or receive documents from the child welfare agency as they are walking into court. Parents' attorneys are often overworked and underpaid, but that does not relieve them of their duty to provide competent representation to each client. To do so, the attorney must thoroughly prepare for all aspects of the case. The standards reflect this obligation. In fact, the sections about Investigation, Informal Discovery, Formal Discovery, Court Preparation and Hearings focus on aspects of preparation with which parents' attorneys must comply. Some important standards dealing with preparation include:

- **Interview the client well before each hearing, in time to use client information for the case investigation. (Standard 20)**
- **Obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the case-worker and providers. (Standard 22)**
- **Thoroughly prepare the client to testify at the hearing. (Standard 29)**
- **Identify, locate and prepare all witnesses. (Standard 30)**

- **Identify, secure, prepare and qualify expert witness when needed. When permissible, interview opposing counsel's experts. (Standard 31)**
- **Attend and prepare for all hearings, including pretrial conferences. (Standard 32)**

While some of these standards seem obvious, they are not necessarily easy to carry out. Meeting with clients in advance can be a logistical problem. Parents may not be able to travel to the attorney's office and the attorney may not have time to go to the client's home. Or, the client may not have a steady address or phone number, so contacting the client may be difficult. Or, pretrial conferences may conflict with hearings the attorney has on other cases.

Despite these challenges, the standards are clear that preparation is a key to high quality representation. An attorney cannot effectively represent the client's wishes if the attorney has not discussed case goals with the client and counseled the client about the chances of achieving the goals. The attorney must talk to the client in advance to identify witnesses who could help the client's case. Then the attorney must spend time talking with the witness before the hearing. This kind of solid preparation ensures the client is fairly treated and improves the client's chances of reunifying with a child.

As the parent's attorney, you should talk to your client at the beginning of your representation about how you will communicate. For example, you may ask your client for an emergency contact number for when you can't reach the client. Or, you can tell your client the best way to be in touch with you. Creating a plan can help you overcome some of the challenges listed above. Additionally, if you work with a paralegal or social worker (see below), that person can go to the client's

home for interviews. That does not relieve you of your duty to prepare and understand your client's wishes, but it can help in the preparation process.

Multidisciplinary Model of Representation

One challenge in representing any party in the child welfare system is that the best quality of representation often involves some law and some social work. Attorneys do not always feel comfortable with the social work aspect of the job, but it is essential for the client that whoever is providing representation know what services are available in the community and can access those services on behalf of the client. For this reason, the committee felt strongly that the standards require the parent attorney to:

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

In most places in the country, parents' attorneys lack access to social workers, legal assistants, investigators, or parent advocates. However routinely using these professionals would decrease attorneys' "social work" and increase their legal work in the case. Merely assisting a client in the courtroom is not enough. The client needs help during case planning meetings. They need help understanding what services are part of the case plan and how to cooperate with them. The attorney or the attorney's team must be available.

If you are a solo practitioner, you could consider hiring or contracting with a paralegal or social worker to assist you on your child welfare cases. To ease your financial burden, you could also work with other solo practitioners in your area to jointly hire or contract with such

a person, making sure the individual does not work for more than one attorney on a case. Additionally, if you need investigators or interpreters for individual cases and you do not employ them, you could seek reimbursement for the costs of these necessary services when you submit your bill to the court. (See below for discussion of court's obligation on this topic.)

In the section for attorney managers, the standards suggest, "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." (Attorney manager Standard 4, Action)

Similarly, the standards suggest that courts

- **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. (Court Standard 7)**

The standards recognize that attorneys can not provide competent representation without using certain specialists. For example, it is essential when the attorney and client speak different languages that the attorney have access to an interpreter for client meetings. It is unfair for the court to expect that the attorney pay for these specialists out of the attorney's compensation on court-appointed cases. As the parent's attorney, you should ask the court to pay for reasonable costs for

specialists and the court should comply.

Conclusion

Generally, families become known to the child welfare system because the family needs help. The parents are often not able to access the help they need in the community. It is essential that all professionals who are involved with the family, including the agency and the parent's attorney focus on assisting the parent so the best possible outcomes

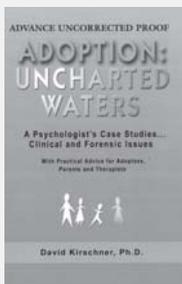
can be achieved for the child and the family.

The standards are one tool to improve parents' attorneys' representation and make it consistent across the country. The standards set priorities for parents' attorneys and suggest how attorney managers and courts can achieve its goals. As addressed in the standards, training, manageable caseloads, reasonable pay and support are needed to make high quality representation a reality for parents in the child welfare sys-

tem. By focusing on these issues, and making high quality representation a priority, all communities in the country can better serve parents and their families.

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New in Print

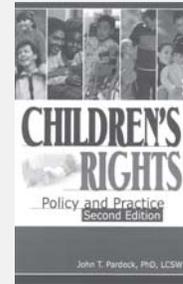


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