



ABA Approves Parent Attorney Standards in Child Abuse and Neglect Cases

In August 2006, the American Bar Association (ABA) House of Delegates approved *Standards of Practice for Lawyers Representing Parents in Abuse and Neglect Cases*.¹ Like other *Standards* adopted by the ABA in child-related cases,² these *Standards* focus on improving representation of parties so that children and families are better served by the legal system. The *Standards* promote quality representation and uniformity of practice throughout the country for parents' attorneys in child abuse and neglect litigation.

The *Standards* apply to attorneys who represent parents of children involved in child abuse and neglect cases. Attorneys in this role face a difficult and emotional job with many responsibilities. The *Standards* are intended to help such attorneys prioritize duties and manage their practices to the benefit of each parent they represent.

The *Standards* include "black letter" standards, or requirements, as well as "actions" that further discuss how to fulfill a particular standard. Implementing the "black letter" standard requires the accompanying action. Also included is "commentary" or a discussion of why the standard is necessary and how it should be applied. Several standards relate to specific sections of the Model Rules of Professional Conduct.

The *Standards* are divided into basic obligations of parents' attorneys, obligations of the attorney manager, and the role of the court.

Basic Obligations of Parents' Attorneys

The *Standards* set forth 44 basic obligations of a parent's attorney related to general practice, the relationship with the client, investigation, informal and formal discovery, court preparation, hearings, and post-hearing actions and appeals. Some of these "black letter" standards include:

- Complying with all relevant jurisdiction-specific training and mentoring requirements before accepting a court appointment to represent a parent
- Acquiring sufficient working knowledge of all relevant federal and state laws, regulation, policies and rules
- Understanding and protecting the parent's rights to information and decision making while the child is in foster care
- Actively representing a parent in the pre-petition phase of a case, if permitted
- Avoiding continuances and working to reduce delays in court proceedings unless there is a strategic benefit for the client
- Adhering to all laws and ethical obligations concerning confidentiality
- Providing the client with contact information in writing and establishing a message system that allows regular attorney-client contact
- Meeting and communicating regularly with the client well before court proceedings
- Avoiding potential conflicts of interest that would interfere with competent representation of the client

- Acting in a culturally competent manner and with regard to the socioeconomic position of the parent throughout all aspects of representation
- Being aware of unique issues faced by an incarcerated parent client
- Being aware of the client's mental health status
- Conducting a thorough and independent investigation
- Developing a case theory and strategy
- Timely filing all pleadings, motions and briefs
- Aggressively advocating for regular visitation in a family-friendly setting
- Thoroughly preparing the client to testify at hearings
- Identifying, locating and preparing all witnesses
- Attending and preparing for all hearings, including pretrial conferences
- Preparing and making all appropriate motions and evidentiary objections
- Presenting and cross-examining witnesses
- Preparing 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
- Reviewing court orders to ensure accuracy and clarity and reviewing the orders with the client
- Considering and discussing the possibility of appeal with the client
- Requesting an expedited appeal when feasible and filing all necessary paperwork while the appeal is pending

Obligations of Attorney Managers

The *Standards* also include a section on the responsibilities of attorney managers. This section primarily applies 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 these standards but may find some do not apply. Some standards, however, are relevant to all parents' attorneys, such those about training and caseloads. Attorney managers are urged to, among other things:

- Clarify attorney roles and expectations
- Determine and set reasonable attorney caseloads
- Advocate for competitive salaries for staff attorneys
- Develop a system for continuity of representation
- Provide training and education opportunities
- Establish a regular supervision schedule
- Develop and implement an attorney evaluation process
- Work actively with other stakeholders to improve the system, including court procedures

Role of the Court

A section of the *Standards* concerns the role of the court in implementing them. The ABA and the National Council of Juvenile and Family Court Judges have policies addressing the importance of the court in ensuring that all parties in abuse and neglect cases have competent representation.

(continued on back page)

(continued from front page)

Courts are therefore urged to, among other things:

- Recognize the importance of the parent attorney's role
- Establish uniform standards of representation for parents' attorneys
- Ensure appointed attorneys are qualified, well-trained and held accountable for practice in compliance with the standards
- Ensure appointments are made early and last until the case has been dismissed
- Ensure parents' attorneys receive fair compensation
- Ensure timely payment of fees and costs
- Provide interpreters, investigators and other specialists needed for competent representation
- Ensure attorneys carry reasonable caseloads
- Ensure child welfare cases are heard promptly with a view towards timely decision making and thorough review of issues

Common Themes Throughout the Standards

Throughout the *Standards*, several common themes emerge. These are that:

Representation should be client driven. Many of the standards addressing the attorney's relationship with the parent client promote the concept of client-driven practice. The commentary to one standard states: "[because] 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 that the client can see that the attorney serves the client's interests." It further states that 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."

Preparation is essential. Similarly, several of the standards address the need to be fully prepared well in advance, e.g., be alert to and avoid potential conflicts of interest, obtain all necessary documentation and pleadings, develop a case theory and strategy, and thoroughly prepare the client and other witnesses for testimony. As the commentary states, "For the parent to have a fair chance during the hearing, the attorney must be prepared and present in court."

A multidisciplinary model of representation is preferred. The *Standards* recognize that a multidisciplinary model of representation involving social workers, paralegals, parent mentors and other professionals can help achieve the best

possible outcomes for the client. Attorneys can decrease their non-legal work by relying on the expertise of others. In addition, attorneys are encouraged to work with other stakeholders on systemic change. Such collaboration ensures that projects and procedures are equitably developed and protect parents' interests.

Conclusion

The parent attorney standards are meant to improve practice while also remaining realistically attainable given the difficulties of day-to-day practice. While local adjustments may be necessary to incorporate the *Standards* into practice, jurisdictions should strive to meet their fundamental principles and spirit.

This article is adapted from the Report submitted to the ABA House of Delegates in support of the parent attorney standards. For more information on the Standards, contact Mimi Laver at (202) 662-1736 or laverm@staff.abanet.org. The Standards can be found online at http://www.abanet.org/child/documents/Parent_Standards_HODpassed.pdf.

Notes

1. The *Standards* were drafted by the ABA Center on Children and the Law's Child Welfare Resource Center for Legal and Judicial Issues through a grant from the Children's Bureau of the US Department of Health and Human Services and with the assistance of an expert committee of practicing parents' attorneys, child welfare professionals from various jurisdictions, and representatives of various ABA entities.
2. Specifically, the *Standards of Practice for Lawyers Representing Children in Abuse and Neglect Cases* (1996), the *Standards of Practice for Lawyers Representing Children in Custody Cases* (2003) and the *Standards of Practice for Lawyers Representing Child Welfare Agencies* (2004).

Education Conference Features Child Welfare

The ABA Center on Children and the Law and the National Association for the Education of Homeless Children and Youth (NAEH CY) announce a track devoted to the education of children in foster care at NAEHCY's 18th annual conference, November 11-14, 2006, in Little Rock, AR. The child welfare track includes a pre-conference session on children in foster care and their education needs; a related curriculum for school personnel; "child welfare 101 – what school personnel need to know;" IDEA reauthorization and children in foster care; decision-making and confidentiality issues; state foster care education legislation; and a youth panel. The track and a networking reception are sponsored by Casey Family Programs. Register at <http://www.naehcy.org/2006conference.html>



Child CourtWorks keeps judges, court administrators, attorneys, social workers, court appointed special advocates, foster parents and others informed of new developments and innovations across state court improvement projects and offers suggestions for productive juvenile dependency court reform. Items may be reprinted if attributed to the National Child Welfare Resource Center on Legal and Judicial Issues, ABA Center on Children and the Law. Please provide copies to *CCW*. News article suggestions to Eva J. Klain at (202) 662-1681 or KlainE@staff.abanet.org. For subscription information, please contact Amanda Cusick at (202) 662-1513 or CusickA@staff.abanet.org. © 2006 American Bar Association

Child CourtWorks is published bimonthly by the National Child Welfare Resource Center on Legal and Judicial Issues, a service of the Children's Bureau. This publication is made possible through a grant from the Children's Bureau, US Department of Health and Human Services. The views expressed herein have not been approved by the House of Delegates or Board of Governors of the American Bar Association or by the Children's Bureau and should not be construed as representing the policy of either.



**National Child Welfare Resource Center
on Legal and Judicial Issues,
a service of the Children's Bureau
ABA Center on Children and the Law
740 15th Street, NW
Washington, DC 20005-1022
www.abanet.org/child/rciji**

Non-Profit
U.S. Postage
PAID
Permit #273
Annapolis, MD

