

Oklahoma Standards of Practice for Attorneys Representing Children in Deprived Child Proceedings

Introduction:

“A child has a right to be raised by the mother and father of the child as well as a right to be raised free from physical and emotional abuse or neglect. When it is necessary to remove a child from a parent, the child is entitled to a permanent home and to be placed in the least restrictive environment to meet the needs of the child...”. 10A O.S. §1-1-102.

All children subject to court proceedings involving allegations of child abuse and neglect have the absolute right to have independent high quality legal representation as long as the court jurisdiction continues. These Standards apply only to lawyers whose statutory duty are set forth in 10A O.S. §1-4-306(2)(c): legally representing and advocating for the child’s articulated position, or in the case where the child is unable to articulate a position, using *statutorily required* substituted judgement to advocate for the child. These Standards do not apply to those attorneys appointed as guardian ad litem.

Consequently, the child’s attorney owes traditional duties to the child as client consistent with the Oklahoma Rules of Professional Responsibility and in all but the exceptional case, such as with a preverbal child, the attorney will maintain this traditional relationship with the child/client. These Standards explicitly recognize that the child is a separate individual with potentially discrete and independent views and therefore the child’s attorney must advocate the child’s articulated position.

As with any client, the child’s attorney may counsel against the pursuit of a particular position sought by the child and should recognize that the child may be more susceptible to intimidation and manipulation than some adult clients. Therefore, the child’s attorney should ensure that the decision of the child ultimately makes reflects his or her actual position.

The Standards for Attorneys Representing Children in Deprived Child Proceedings are intended to serve several purposes.

First and foremost, the Standards are intended to encourage counsel to perform to a high standard of quality representation and to promote professionalism in the representation of children in deprived child proceedings.

The Standards are also intended to alert counsel to courses of action that may be necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions to be taken in each case to ensure that the client receives the best representation possible.

Lastly, these standards promote uniformity of practice throughout the state for children's attorneys in deprived child proceedings and will give direction to both lawyers and judges on the appropriate role of appointed children's attorneys.

These Standards are meant to apply when a lawyer is appointed for a child in a proceeding pursuant to 10A O.S.A. 1-4-306(A)(1)(a). These Standards do not have the force of law. These Standards are designed to help attorneys comply with the Oklahoma Rules of Professional Conduct but they are not authoritative interpretations of those Rules and a violation of these guidelines is not a basis for a disciplinary action. Furthermore, a violation of a Standard should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, a violation of a Standard does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Standards are designed to provide guidance to lawyers.

The terms "child" and "client" are used interchangeably throughout the document. The Standards apply to all attorneys who are appointed to represent children in deprived child proceedings whether they work for the Public Defender, legal organization, or privately.

The Child's Attorney shall:

A. General

- A.1 Provide legal services for a child owing the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.
- A.2 Serve as the independent legal representative for the child's expressed preferences and follow the child's direction throughout the course of litigation. To the extent that a child is unable to express a preference, use the statutorily required substituted judgement and advocate accordingly.
- A.3 Adhere to all educational and mentoring requirements before accepting a court appointment to represent a client in deprived child proceedings.
- A.4 Acquire and maintain sufficient working knowledge of all relevant federal and state regulations, policies and rules.
- A.5 Acquire, maintain working knowledge of, and adhere to the provisions of federal and state Indian Child Welfare Acts (ICWA and OICWA) as well as the regulations and guidelines provided for the application of the Acts.
- A.6 Acquire and maintain a current working knowledge of family dynamics and dysfunction and the use of kinship care.

- A.7 Acquire and maintain information on accessible child welfare, family preservation, medical, educational, and mental health resources for child clients and their families, including placement, evaluation/diagnostic, and treatment services.
- A.8 Acquire and maintain a current working knowledge of behavioral, developmental and physical health conditions that may be likely for deprived children as well as the treatment options and programs appropriate for these conditions.
- A.9 Acquire and maintain a current working knowledge regarding education issues and systems.
- A.10 Inform other parties and their representatives that the child has legal representation and expect reasonable notification prior to cases conferences, changes of placement, and other changes of circumstances affecting the child and the child's family.
- A.11 Begin legal services sufficiently in advance of the initial hearing so as to provide time for preliminary investigation and exploration of options to protect the child with minimum disruption of the child's world.
- A.12 Avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings to ensure that the court recognizes the need to speedily promote permanency for the child.
- A.13 Attend all hearings and participate in all telephone or other conferences with the court unless a particular hearing involves issues completely unrelated to the child.
- A.14 Participate fully in all placement decisions seeking to minimize the disruption of the child's world by focusing on solutions to remove the danger and not the child. Assure that all placement decisions are made with care and deliberation and when placement is necessary, help identify alternatives that maximize kinship placement.
- A.15 Devote the requisite amount of time to comply with the Standards of Practice and/or the Rules of Professional Conduct.

B. Relationship with the Client:

- B.1 Be vigilant and thoughtful about maximizing the child's participation in determine the positions to be taken in the case. Elicit the child's preferences in a developmentally appropriate manner, advise the child, and provide guidance.
- B.2 If the child's expressed preference would be seriously injurious to the child,

request appointment of a separate guardian ad litem and continue to represent the child's expressed preference, unless the child's position is prohibited by law. Do not reveal the basis of the request for appointment of a guardian ad litem which would compromise the child's position.

- B.3 When required to advocate using substituted judgement due to the child's inability to express a preference, the determination should be based on objective criteria set forth in law that are related to the purposes of the proceedings. Advocate for the child's specific needs and preferences, the goal of expeditious resolution of the case so that the child can remain or return home or be placed in a safe, nurturing, and permanent environment, and the use of the least restrictive or detrimental alternatives available.
- B.4 Establish and maintain a trusting relationship with the child.
- B.5 Irrespective of the child's age, visit with the child no less than prior to court hearings and when apprised of emergencies or significant events impacting on the child.
- B.6 Consistent with the child's level of maturity and understanding, work together to set the goals of representation. Strive to understand the child's perspective, assist the child in understanding the situation and options available, and counsel the child as to the positions to be taken.
- B.7 Consistent with the child's level of maturity and understanding, advise the client of the laws and rules governing attorney-client privilege and confidentiality.
- B.8 Determine whether the child is under a disability, consistent with the Oklahoma Rules of Professional Responsibility, with respect to each issue in which the child is called upon to direct the representation.
- B.9 Identify any potential or actual conflict of interests that would impair the ability to represent a child or siblings. Notify the court as soon as practical of the conflict to allow the court to appoint another attorney for the client prior to the next hearing.
- B.10. Continually reflect on personal bias and cultural humility and evaluate the impact of that personal bias on the representation of the client.
- B.11 Consider how racial, cultural, social, and economic differences may impact the attorney/client relationship.
- B.12 Determine how personal and systemic bias may influence the child welfare system decision making and how to mitigate the negative impact of personal and systemic bias on the client's case goals.

- B.13 Advocate for culturally appropriate supportive services with the child welfare agency and the court.

C. Case Preparation:

- C.1 Meet in-person with the child *at least* prior to every court hearing. In addition, changes in placement, school suspensions, in-patient hospitalizations, and other similar changes warrant meeting again with the child.
- C.2 Obtain all necessary documents, including copies of all pleadings and information from the caseworker and providers. Review all social service, medical, mental health, law enforcement and educational records related to the child. When necessary, seek an order from the court requiring the exchange of information.
- C.3 Contact lawyers for others parties and court-appointed special advocates for background information.
- C.4 Contact lawyers for other parties and court-appointed special advocate, if one has been appointed, for background information.
- C.5 Assist in identifying potential kinship placements, as well as those kin who are willing to provide emotional and other support to the child and family.
- C.6 Interview individuals involved with the child, including school personnel, foster parents and other caretakers, relatives, clergy, mental health professionals, physicians, and other potential witnesses.
- C.7 Review relevant photographs, video, or audio tapes and other evidence.
- C.8 Work together with the child to set the goals of representation. Assist the child to understand his/her legal rights and obligations as well as identifying the practical options available to the child.
- C.9 File necessary petitions, motions, responses or objections as is necessary to represent the child.
- C.10 Explain to the child, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.
- C.11 Determine whether to call the child as a witness based on consideration of the child's need or desire to testify, any repercussions of testifying, the necessity of the child's direct testimony, and the child's developmental ability to provide direct testimony and withstand cross-examination.

- C.12 Prepare the child to testify by familiarizing the child with the courtroom, court procedures, and what to expect from direct and cross-examination.

D. Out of Court Advocacy:

- D.1 Attend and advocate at meetings held out of court which are important and relevant to the child's case including, but not limited to meetings related to placement, treatment, family time (previously referred to as "visitation"), family services, permanency, transition planning, and education.
- D.2 Work with other parties to reach stipulations and joint recommendations for placement, services, family time, etc.
- D.3 Adopt a problem-solving attitude and seek cooperative resolution of the case whenever possible. Participate in settlement negotiations and utilize suitable mediation and family conferencing resources to seek expeditious resolution of the case.
- D.4 Consistent with the child's wishes or substituted judgement, assure that a child with special needs receives appropriate services to address the physical, mental, or developmental disabilities.
- D.5 Monitor and ensure the timely implementation of court orders relevant to the child. When necessary, file motions to ensure compliance with court orders.

E. In Court Advocacy:

- E.1 Prepare for, attend and participate in all hearings, including pre-trial conferences.
- E.2 In most circumstances, the child should be present at court hearings regardless of whether the child will testify. A decision to exclude the child should be made based on a particularized determination that the child does not want to attend or would be severely traumatized by such attendance, or for other similar cause.
- E.3 Prepare, file, and argue appropriate motions regarding evaluations, services, placement, family time, sibling visitations, compelling reasonable or active efforts, compliance, etc. File objections and motions for reconsideration if appropriate.
- E.4 Identify, prepare and make all appropriate motions and evidentiary objections that require advance ruling by the court.
- E.5 Request appropriate services to access entitlements, to protect the child's interests and to implement a service plan. Services may include, as

appropriate: family preservation or reunification services, sibling visitations, family time, child support, semi-independent or independent living services, adoption services, special education, recreational or social services, and supplemental security income.

- E.6 Present and cross-examine all witnesses, including expert witnesses, offer exhibits, and provide independent evidence as necessary.
- E.7 Actively participate in jury selection and drafting jury instructions.
- E.8 If necessary, request authority from the court to pursue issues on behalf of the child if those issues do not specifically arise from the court appointment, e.g., paternity, mental health proceedings, adoption, school/education issues, delinquency or status offender matters.
- E.9 Review all written orders to ensure that they conform with the court's verbal orders and statutorily required findings and notices.

F. Post Hearings and Appeal:

- F.1 Determine whether to appeal after explaining the court order and discussing with the client, as developmentally appropriate, all available options, including appeals.
- F.2 If lacking the necessary appellate experience or expertise to represent a client, the court should be notified for immediate appointment of new or substitute counsel and be discharged.
- F.3 If the child decides to appeal and the appeal has merit, timely file requisite appeal documents, adhering to the specific timeframes and provisions of the Oklahoma Children's Code and the Oklahoma Supreme Court Rules.
- F.4 Participate in an appeal filed by another party unless discharged.
- F.5 Communicate the results of the appeal and the implications to the child.
- F.6 Discuss the ending of the legal representation and determine what contacts, if any, will continue.