



# Dependency Attorney Performance Standards With Commentary

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# **STANDARDS FOR REPRESENTATION IN JUVENILE DEPENDENCY CASES**

## **INTRODUCTION:**

Oregon Revised Statute 151.216(j) mandates that the Oregon Public Defense Commission (OPDC) “[d]evelop, adopt and oversee the implementation, enforcement and modification of policies, procedures, minimum standards, and guidelines to ensure that public defense providers are providing effective assistance of counsel consistently to all eligible persons in this state as required by statute and the Oregon and United States Constitutions. The policies, procedures, standards, and guidelines described in this paragraph apply to employees of the commission and to any person or entity that contracts with the commission to provide public defense services in this state.”

The following standards were developed by OPDC staff with input from a juvenile dependency defense provider workgroup. Per OPDC policy, these standards will be reviewed and revised one, two, and five years from adoption. OPDC welcomes ongoing provider input regarding the content and efficacy of these standards.

This iteration of the Standards was drawn heavily from the existing Oregon State Bar Specific Standards for Representation in Juvenile Dependency Cases from June of 2017. Each standard sets a baseline for practice of appointed work and is followed by commentary that supplements the baseline standards. OPDC recognizes that in any given case, some standards and commentary might be inapplicable or even mutually exclusive.

Commentary is particularly challenging as there are many times when the commentary is impractical or even against a client’s best interest or desire. OPDC acknowledges that to practice law, exceptions to these baseline rules and their commentary must apply. The commentary provides additional considerations for counsel performing public defense. There are times when items listed in the commentary may be useful or helpful during representation. They are not meant to establish baseline minimum performance standards.

Juvenile Dependency practitioners may represent either a parent or a child in a proceeding and the standards of practice depend on the role of the client. These standards address representation of children and representation of a parent or guardian.

OPDC is grateful to the prior work of the Oregon State Bar and the Oregon Public Defense Commission Dependency Standards Workgroup for the extensive work OPDC drew upon in the development process.

# **STANDARDS FOR REPRESENTATION OF CHILDREN**

## **STANDARD 1.1 – ROLE OF THE CHILD’S LAWYER**

- A. The lawyer for a child in a dependency case should provide quality and zealous representation at all stages of the case. The child-client’s lawyer must determine whether the child-client has sufficient capacity to understand and form a lawyer-client relationship and whether the child-client is capable of making reasoned judgments and engaging in meaningful communication.**
- B. The child-client’s lawyer must advocate for the child’s expressed interests when the child has decision-making capacity, ensure that the child-client is afforded due process and other rights, and protect the child-client’s other interests.**
- C. For a child-client with full decision-making capacity, the child-client’s lawyer must maintain a normal lawyer-client relationship with the child-client, including taking direction from the child-client on matters normally within a client’s control.**
- D. For a child-client with diminished capacity, the child-client’s lawyer must maintain a normal lawyer-client relationship with the child whenever reasonably possible and take direction from the child-client as the child-client develops capacity. A child-client may have the capacity to make some decisions but not others.**
- E. When it is not reasonably possible to maintain a normal lawyer-client relationship generally or with regard to a particular issue, the child-client’s lawyer must conduct a thorough investigation and then determine what course of action is most consistent with what the child-client’s interests would be and act in accordance with that determination.**

### **Commentary:**

1. The child-client’s lawyer should not confuse inability to express a preference with unwillingness to express a preference. If an otherwise competent child-client chooses not to express a preference on a particular matter, the lawyer should determine if the child-client wishes the lawyer to take no position in the proceeding or if the child-client wishes the

lawyer or someone else to make the decision. In either case, the lawyer is bound to follow the child-client's direction.

2. The assessment of a child's capacity must be based upon objective criteria, not the personal philosophy or opinion of the lawyer. The assessment should be grounded in insights from child development science and should focus on the child-client's decision-making process rather than the child-client's choices. Lawyers should be careful not to conclude that a child-client suffers diminished capacity because a child-client insists upon a course of action that the child-client's lawyer considers unwise or at variance with the lawyer's views.
3. In determining whether a child-client has diminished capacity, the *Report of the Working Group on Determining the Child's Capacity to Make Decisions*, 64 Fordham L Rev 1339 (1996), suggests that a child-client's lawyer may consider the following factors:
  - a. A child-client's ability to communicate a preference;
  - b. Whether a child-client can articulate reasons for the preference;
  - c. The decision-making process used by a child-client to arrive at the decision (e.g., is it logical, is it consistent with previous positions taken by the child-client, does the child-client appear to be influenced by others, etc.); and
  - d. Whether a child-client appears to understand the consequences of the decision.

## **STANDARD 1.2 – ADVOCATING FOR A CHILD'S EXPRESSED INTERESTS**

**The child-client's lawyer must explain the nature of all legal and administrative proceedings to the child-client to the extent possible considering the child-client's age and ability. The lawyer must determine the child-client's position and goals. The lawyer also acts as a counselor and advisor. The lawyer must explain the likelihood of achieving the child-client's goals and, when appropriate, identify alternatives for the child-client's consideration. In addition, the lawyer should explain the risks of the child-client's decisions. Once the child-client has settled on positions and goals, the lawyer must vigorously advocate for the child-client.**

Commentary:

1. When a child-client is capable of instructing the lawyer, decisions that are ultimately the child-client's to make include whether to:
  - a. Contest, waive trial on petition, negotiate changes in or testify about the allegations in the petition;
  - b. Stipulate to evidence that is sufficient to form a basis for jurisdiction and commitment to the custody of the Department of Human Services (hereinafter "agency");
  - c. Accept a conditional postponement or dismissal; or
  - d. Agree to specific services or placements.
2. The lawyer should recognize that the child-client may be more susceptible to intimidation and manipulation than some adult clients. Therefore, the lawyer should ensure that the decision the child-client ultimately makes reflects the child-client's actual position.

**STANDARD 1.3 – INVESTIGATING AND PROTECTING A CHILD'S UNEXPRESSED INTERESTS**

- A. When the child-client is incapable of directing the lawyer, the child-client's lawyer must thoroughly investigate the child-client's circumstances, including important family relationships, the child-client's strengths and needs, and other relevant information, and then determine what actions will protect the child-client's interests in safety and permanency.**
- B. If the child-client is able to verbalize a preference but is not capable of making an adequately considered decision, the child-client's verbal expressions are an important factor to consider in determining what course of action to take. The child-client's lawyer may wish to seek guidance from appropriate professionals and others with knowledge of the child, including the advice of an expert.**
- C. When the child-client's lawyer reasonably believes the child-client has diminished capacity, is at risk of physical, sexual, psychological, or financial harm, and cannot adequately act in their own interest, the child-client's lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the child-client.**



### Commentary:

1. In determining what course of action to take when the child-client cannot provide direction, the child-client's lawyer must take into consideration the child-client's legal interests based on objective criteria as set forth in the laws applicable to the proceeding, the goal of expeditious resolution of the case, and the use of the least restrictive or detrimental alternatives available.
2. The child-client's needs and interests, not the adult's or professional's interests, must be the center of all advocacy. The child-client's lawyer should seek out opportunities to observe and interact with the very young child-client. It is also essential that lawyers for very young children have a firm working knowledge of child development and special entitlements for children under age five.
3. When a child with diminished capacity is unable to protect themselves from substantial harm, Oregon RPC 1.14 allows the child-client's lawyer to take action to protect the child-client. Oregon RPC 1.6 and Oregon RPC 1.14(c) implicitly authorize the child-client's lawyer to reveal information about the child-client, but only to the extent reasonably necessary to protect the child-client's interests. If any disclosure by the lawyer will have a negative impact on the child-client's case or the lawyer-client relationship, the lawyer must consider whether representation can continue and whether the lawyer-client relationship can be re-established. The child-client's lawyer should choose the protective action that intrudes the least on the lawyer-client relationship and is as consistent as possible with the wishes and values of the child-client.

### **STANDARD 1.4 – RELATIONSHIP WITH THE CHILD-CLIENT**

- A. It is important that the child-client's lawyer, from the beginning of the case, is clear with the child-client that the child-client's lawyer works for the child-client, is available for consultation, and wants to communicate regularly.**
- B. The child-client's lawyer should not advise the court of the lawyer's determination of the child-client's capacity and, if asked, should reply that the relationship between the child-client and the lawyer is privileged.**

**C. The child-client's lawyer may not request the appointment of a court-appointed special advocate (CASA) or other advocate for the child's best interests when the child-client is competent to make decisions.**

Commentary:

1. The child-client's lawyer should explain to the child-client the benefits of bringing issues to the lawyer's attention rather than letting problems persist. The child-client's lawyer should support the client and be sensitive to the child-client's individual needs. The child-client's lawyer may be the child-client's only advocate in the system and should act accordingly.
2. The child-client's lawyer should not give the impression to the child-client that relationships with other lawyers are more important than the representation the child-client's lawyer is providing the child-client. The child-client must feel that the child-client's lawyer believes in, and is actively advocating on, the child's behalf.
3. Requesting the judge to appoint a court-appointed special advocate (CASA) or other best-interest advocate may undermine the relationship the child-client's lawyer has established with the child-client. It also potentially compromises confidential information the child-client may have revealed to the lawyer. The lawyer cannot ever become the best-interest advocate, in part due to confidential information that the lawyer receives in the course of representation.

**STANDARD 1.5 – COLLATERAL REPRESENTATION**

**A. The child-client's lawyer should advocate for actions necessary to meet the child-client's educational, health, cultural, and mental health needs.**

**B. The child-client's lawyer should take appropriate actions on delinquency, immigration, and collateral issues.**

Commentary:

1. Consistent with the child-client's wishes, the child-client's lawyer should identify the child-client's needs and seek appropriate services (by court order if necessary) to access entitlements, to protect the child-client's interests, and to implement an individualized service plan. These services should be culturally competent, community-based whenever possible, and provided in the least restrictive setting appropriate to the child-client's needs. These services may include, but are not limited to:

- a. Family preservation-related prevention or reunification services;
  - b. Sibling and family visitation;
  - c. Domestic violence services, including treatment;
  - d. Medical and mental health care;
  - e. Drug and alcohol treatment;
  - f. Educational services;
  - g. Recreational or social services;
  - h. Housing;
  - i. Semi-independent and independent living services for youth who are transitioning out of care and services to help them identify and link with permanent family connections; and
  - j. Adoption services.
2. Consistent with the child-client's wishes, the child-client's lawyer should ensure that a child-client receives the most appropriate and least restrictive services to address any physical, mental, or developmental disabilities. These services may include, but should not be limited to:
    - a. Special education and related services;
    - b. Supplemental security income (SSI) to help support needed services;
    - c. In-home, community-based behavioral health treatment or out-patient psychiatric treatment;
    - d. Therapeutic foster or group home care; and
    - e. Residential/in-patient behavioral health treatment.
  3. The child-client's lawyer should inquire regarding prior delinquency, status offense, or criminal history. The child-client's lawyer should advise the child-client to contact the lawyer immediately if the child-client is contacted by law enforcement, school authorities, or is otherwise under investigation.
  - 4.. The child-client's lawyer should identify and preserve relevant evidence related to mental health, cognitive functioning, disability, medical treatment, family history, and other mitigating factors.
  5. Whenever possible, the child-client's lawyer in the dependency case should also represent the child-client in the delinquency case. If the child-client has two individual lawyers, they should collaborate regarding case strategy.
  6. If a child-client's lawyer, in the course of representing a child-client under the age of 18, becomes aware that the child-client has a possible claim for damages that the child-client cannot pursue because of the child's age or disability, the child-client's lawyer should consider asking the court that

has jurisdiction over the child-client to either appoint a guardian ad litem (GAL) for the child-client to investigate and take action on the possible claim, or issue an order permitting access to juvenile court records by a practitioner who can advise the court whether to seek appointment of a GAL to pursue a possible claim.

7. The child-client's lawyer may pursue, personally or through a referral to an appropriate specialist, issues on behalf of the child-client, administratively or judicially, even if those issues do not specifically arise from the court appointment. Examples include:
  - a. Delinquency or status offender matters;
  - b. SSI and other public benefits;
  - c. Custody;
  - d. Paternity;
  - e. School and education issues;
  - f. Immigration issues;
  - g. Proceedings related to the securing of needed health and mental health services; and
  - h. Child support.
8. If the child-client might be eligible for Special Immigrant Juvenile Status, the child-client's lawyer should consider consulting with a dependency lawyer experienced in these cases and, if appropriate, consulting with an immigration lawyer. If the child-client appears eligible for Special Immigrant Juvenile Status, the child's trial lawyer should advocate for immigration representation by the agency, if relevant. If the child-client does not qualify for representation by the agency in the immigration matter, the child-client's lawyer should consider attempting to locate an immigration lawyer to represent the child-client.

## **STANDARD 2.1 – COMMUNICATION**

- A. The child-client's lawyer must make reasonable efforts to make contact in writing, electronically, or in person within 3 business days. That contact should take into consideration the age and preferred method of contact for the child.**
- B. During the first meeting with the child-client, the child-client's lawyer must explain the lawyer's role, provide the child-client with contact information in writing, and establish an effective system for the child-client to communicate with the lawyer.**

- C. The child-client's lawyer must meet with the child-client regularly - and at least quarterly - throughout the case. The child-client's lawyer should ask the child-client questions to obtain information to prepare the case and strive to create a comfortable environment so the child-client can ask the lawyer questions. The child-client's lawyer should use these meetings to prepare for court as well as to counsel the child-client concerning issues that arise during the course of the case. Information obtained from the child-client should be used to propel the investigation.**
- D. The child-client's lawyer must ensure a qualified interpreter is involved when the child-client's lawyer and child-client are not fluent in the same language and are engaged in substantive legal discussions.**

Commentary:

1. When feasible, the child-client's lawyer should conduct an initial interview within three business days of appointment. At that meeting, the lawyer should provide the child-client with contact information in writing and explain that even when the lawyer is unavailable, the child-client should leave a message. The child-client's lawyer should respond to the child-client's messages within a reasonable time.
2. The child-client's lawyer should be available for in-person meetings or telephone calls to answer the child-client's questions and address the child-client's concerns. The child-client's lawyer and child-client should work together to identify and review short-term and long-term goals, particularly as circumstances change during the case.
3. Meetings with the child-client should occur well before any hearings, not at the courthouse just minutes before the case is called before the judge. After the first meeting, the child-client's lawyer should have contact with the child-client:
  - a. Before court hearings, case status and pretrial conferences, mediations, and Citizen Review Board (CRB) reviews;
  - b. Before any important decision affecting the child-client's life;
  - c. In response to contact by the child-client;
  - d. Following (and, when possible, before) significant transitions, including but not limited to, initial removal and changes in placement; and
  - e. When a significant change of circumstances must be discussed with the child-client or when a child-client's lawyer learns of emergencies or significant events affecting the child-client;

4. In rare circumstances, a child-client's lawyer may have less-frequent than quarterly contact with their client, such as when their child-client's whereabouts are unknown, when there is strong evidence that the child-client will be adversely affected by communicating with the child-client's lawyer, or when the child-client refuses to communicate with their lawyer.
5. The child-client's position, interests, needs, and wishes change over time. The child-client's lawyer cannot be fully informed of such changes without developing a relationship through frequent contacts.
6. In order to provide competent representation, the child-client's lawyer should initially meet with the child-client in the child's environment to understand the child-client's personal context, unless the child-client indicates that he or she does not want this. The child-client's lawyer should determine whether developing and maintaining a lawyer-client relationship requires that the meetings occur in person in the child-client's environment or whether other forms of communication, such as telephonic or electronic communication, are sufficient.
7. The child-client's lawyer should explain to the child-client, in a developmentally appropriate way, all information and ascertain the child-client's position on the information. This includes the result of all court hearings and administrative proceedings, which will assist the child-client in having maximum input in determining the child-client's position.
8. The child-client's lawyer should be aware of the child-client's cultural background and how that background affects effective communication with the child-client.

## **STANDARD 2.2 – CONFIDENTIALITY**

- A. The child-client's lawyer must abide by confidentiality laws, as well as ethical obligations, and adhere to both with respect to information obtained from or about the child-client.**
- B. The child-client's lawyer must fully explain to the child-client the advantages and disadvantages of choosing to exercise, partially waive, or waive a privilege or right to confidentiality. If the child-client's lawyer determines that the child-client is unable to make an adequately considered decision with respect to waiver, the lawyer must act with respect to waiver in a manner consistent with, and in furtherance of, the child-client's position in the overall litigation.**

- C. Consistent with the child-client's interests and goals, the child-client's lawyer must seek to protect from disclosure confidential information concerning the child-client.**
- D. The child-client's lawyer may only report abuse or neglect discovered through lawyer-client communication if the child-client consents to the disclosure.**

Commentary:

1. The child-client's lawyer should try to avoid publicity connected with the case that is adverse to the child-client's interests. The child-client's lawyer should protect the child-client's privacy interests, including asking for closed proceedings when appropriate. The child-client's lawyer must be aware that Article I, Section 10 of the Oregon Constitution limits the ability for closed proceedings.
2. The child-client's lawyer should discuss with the child-client the potential consequences of communicating via electronic communication or broadcasting over social media. While social media may be a convenient way to locate and communicate with the child-client, the child-client's lawyer and child-client should be aware that electronic communications may not be confidential or protected by lawyer-client privilege.

## **STANDARD 2.3 – CONFLICTS OF INTEREST**

- A. A child-client's lawyer, or a lawyer associated in practice, must not represent two or more clients who are parties to the same or consolidated juvenile dependency cases or closely related matters unless it is clear there is no conflict of interest between the parties as defined by the Oregon Rules of Professional Conduct. The child-client's lawyer should follow Oregon RPC 1.7 to 1.13 relating to conflicts of interest and duties to former clients.**
- B. In analyzing whether a conflict of interest exists, the child-client's lawyer must consider whether pursuing one client's objectives will prevent the lawyer from pursuing another client's objectives, and whether confidentiality may be compromised.**

Commentary:

1. The child-client's lawyer should be especially cautious when accepting representation of more than one child. The child-client's lawyer should avoid representing multiple siblings when their interests may be adverse

and should never represent siblings when it is alleged that one sibling has physically or sexually abused another sibling.

2. The child-client may not be capable of consenting to multiple representations even after full disclosure. For the child-client incapable of considered judgment or unable to execute any written consent to continued representation in a case of waivable conflict of interest, the child-client's lawyer should not represent multiple parties.

### **STANDARD 3.1 – EDUCATION, TRAINING AND EXPERIENCE OF CHILD-CLIENT'S LAWYER**

- A. The child-client's lawyer must provide competent representation to a child-client. Competent representation requires the legal knowledge, skill, training, experience, thoroughness, and preparation reasonably necessary for the representation. The lawyer must not accept an appointment unless the lawyer is able to provide quality representation and diligent advocacy for the child-client.**
- B. The child-client's lawyer must be sufficiently familiar with applicable state and federal law affecting dependency proceedings so as to be able to recognize when they are relevant to a case, and they should be prepared to research these and other applicable issues.**
- C. The child-client's lawyer must know how to offer documents, photos, physical objects, electronic records, etc., into evidence.**
- D. Prior to accepting appointment in a dependency, termination of parental rights, or permanent guardianship case, a lawyer must be certified for that case type by OPDC, either independently or under supervision.**

#### **Commentary:**

1. The child-client's lawyer must read and understand all state laws, policies, and procedures regarding child abuse, neglect, and other related matters, including but not limited to the following:
  - a. Oregon Revised Statutes (ORS) chapters 419A, 419B, and 419C, Oregon Juvenile Code;
  - b. ORS chapter 418, Child Welfare Services;
  - c. ORS 418.925–418.945, Refugee Child Act;



- d. Oregon Revised Statutes concerning paternity, guardianships, and adoption;
  - e. ORS 417.200–417.260, Interstate Compact on Placement of Children, and Oregon Administrative Rules;
  - f. ORS 109.701–109.990, Uniform Child Custody Jurisdiction and Enforcement Act, and Oregon Administrative Rules;
  - g. The basic structure and functioning of the Department of Human Services and the juvenile court, including court procedures, the functioning of the CRB and CASA programs; and
  - h. Indian Child Welfare Act 25 USC §§ 1901-1963, Bureau of Indian Affairs Guidelines, and Oregon Administrative Rules.
2. Newer lawyers are encouraged to work with mentors for the first three months and, at a minimum, should observe or co-counsel each type of dependency hearing from shelter care through review of permanent plan before accepting appointments.
  3. The child-client’s lawyer should have a working knowledge of child development, family dynamics, placement alternatives case and permanency planning, and services for children and families in dependency cases.
  4. The child-client’s lawyer should become familiar with normal growth and development in children and adolescents as well as common types of condition and impairments.
  5. The child-client’s lawyer should be familiar with the range of placement options in dependency cases and should visit at least two of the following:
    - a. A shelter home or facility;
    - b. A foster home;
    - c. A group home;
    - d. A residential treatment facility; or
    - e. A state child or adolescent psychiatric ward.
  6. The child-client’s lawyer must be familiar with case-planning and permanency-planning principles, and with child welfare and family preservation services available through the agency and available in the community and the problems they are designed to address.

## **STANDARD 3.2 – OBLIGATIONS OF CHILD-CLIENT COUNSEL REGARDING WORKLOAD**

- A. Before accepting appointment as counsel, the child-client’s lawyer has an obligation to ensure that they have sufficient time, resources, knowledge, and experience to offer quality representation to a child-client in a dependency matter without hampering their representation of existing clients. If it later appears that the lawyer is unable to offer quality representation in the case, the lawyer must move to withdraw.**

### Commentary:

1. A lawyer should have access to sufficient support services and resources to allow for quality representation, including investigation.
2. A lawyer should evaluate their ability to appear in court with clients when deciding whether to accept an appointment in a case. Lawyers should not overly rely on other lawyers to cover their appearances.
3. When possible, lawyers should appear in person or in the same manner as their clients.

## **STANDARD 4.1 – THEORY OF THE CASE**

- A. The child-client’s lawyer must actively represent the child-client in the preparation of a case as well as at hearings.**
- B. The child-client’s lawyer must develop a theory and strategy of the case to implement at hearings, including the development of factual and legal issues.**

### Commentary:

1. Regardless of any alignment of position among the child-client and other parties, the child-client’s lawyer should develop the lawyer’s own theory and strategy of the case and ensure that the child-client has an independent voice in the proceeding.
2. The child-client’s lawyer should not be merely a fact finder, but rather should zealously advocate a position on behalf of the child-client. Although the child-client’s position may overlap with the position of one or both parents, third-party caretakers, or the agency, the child-client’s lawyer should be prepared to present the child-client’s position independently and to participate fully in any proceedings.

3. When consistent with the child-client's interest, the child-client's lawyer should take every appropriate step to expedite the proceedings.
4. The child-client's lawyer should communicate with lawyers for the other parties, CASA, the caseworker, foster parents, and service providers to learn about the child-client's progress and the child's views of the case, as appropriate.

## **STANDARD 4.2 – OUT OF COURT ADVOCACY**

- A. The child-client's lawyer must advocate for the child-client both in and out of court.**
- B. The child-client's lawyer must engage in case planning and advocate for a case plan and social services that will help achieve the child-client's goals in the case.**
- C. If the child-client's goals include a continued relationship with the parent, the child-client's lawyer should advocate strongly for frequent visitation in a family-friendly setting.**

### Commentary:

1. The child-client's lawyer should advocate for an effective visiting plan consistent with the child-client's wishes. Courts and the agency may need to be encouraged to develop visitation plans that best fit the needs of the individual family.
2. When the child-client desires visits and when necessary, the child-client's lawyer should seek court orders to compel the child welfare agency to provide appropriate visitation for the child-client, consistent with the child-client's wishes. The child-client's lawyer may also need to take action to enforce previously entered orders.
3. A child-client's lawyer who plans to attend meetings about the case should be aware that other represented parties may be present without their lawyers and should take necessary steps to comply with the Rules of Professional Conduct. A child-client's lawyer who does not plan to attend meetings about the case should be aware that other represented parties will attend with their lawyers at the meeting and thus should take steps to protect the client's interests.
4. A child-client's lawyer must be mindful that meeting with their child-client may involve interacting with a represented party, usually a parent. When

the child-client is younger, it would be almost impossible not to discuss the subject of the representation with the parent, as the subject matter is the child-client. The child-client's lawyer must have permission if this is the case.

5. If visiting an older child-client for whom it is possible to limit conversation with the represented party to pleasantries and a request to speak privately with the child-client, the child-client's lawyer should, as a professional courtesy, notify the parent's lawyer that they will be making a visit to the child-client and will speak to the parent only to schedule and facilitate a private conversation with the child-client.
6. Of course, even in the case of an older child, the child-client's lawyer could seek consent to have additional conversation with the represented party. The child-client's lawyer should be careful not to disclose confidential information or to elicit any information from the parent on the subject of the representation unless consent has been given.

## **STANDARD 5 – PRE-PETITION**

- A. The child-client's lawyer must counsel the child-client about his or her rights in the investigation stage as well as the realistic possibility of achieving the child-client's goals.**
- B. The child-client's lawyer should discuss available services and help the child-client gain access to those services in which they wish to participate.**

### Commentary:

1. If a child-client would likely be eligible for appointed counsel at state expense, is the subject of a juvenile court dependency petition, and pre-petition representation is necessary to preserve and protect the rights of the child-client, the child-client's lawyer may seek approval from OPDC for funding to commence representation prior to court appointment. Contact OPDC for more information.
2. If the child-client's lawyer agrees to represent the child-client, the goal of representation should depend on the child-client's wishes when the child-client is capable of instructing the lawyer or expressing a preference. Sometimes this may mean avoiding having a petition filed, while other times it may mean filing a petition.

## **STANDARD 6 – INVESTIGATION**

- A. The child-client’s lawyer must conduct a thorough, continuing, and independent review and investigation of the case, including obtaining information, research, and discovery to prepare the case for trial and hearings.**
- B. The child-client’s lawyer should not rely solely on the disclosure information provided by the agency caseworker, the state, or other parties as the investigation of the facts and circumstances underlying the case.**
- C. The child-client’s lawyer must review the case record of the child-client and the supplemental confidential file, and the case record of the child-client’s siblings when permitted by the juvenile code, Oregon Rules of Professional Conduct, and other confidentiality statutes.**
- D. The child-client’s lawyer must review relevant photographs, video or audio tapes, and other evidence. When necessary, the child-client’s lawyer should obtain protective orders to keep information confidential once obtained.**
- E. If the child-client is not a U.S. citizen and does not have Lawful Permanent Resident status, the child-client’s lawyer must determine or seek an opinion from a lawyer qualified to make a determination if the child-client likely qualifies for Special Immigrant Juvenile status.**
- F. The child-client’s lawyer must research and review relevant statutes and case law to identify defenses and legal arguments to support the child-client’s case.**
- G. The child-client’s lawyer should obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and respond to requests for documents from other parties.**
- H. The child-client’s lawyer should have potential witnesses, including adverse witnesses, interviewed by an investigator or other appropriately trained person.**

### **Commentary:**

- 1. The child-client’s lawyer should research and review relevant statutes and case law to identify defenses and legal arguments to support the child-client’s case.**

2. The child-client's lawyer should contact and meet with the parents, legal guardians, or caretakers of the child with permission of their lawyer(s).
3. The child-client's lawyer should obtain necessary releases of information in order to thoroughly investigate the case.
4. The child-client's lawyer should interview individuals involved with the child-client and the parent.
5. The child-client's lawyer should determine whether obtaining independent evaluations or assessments of the child-client is needed for the investigation of the case.
6. The child-client's lawyer should attend treatment, placement, and administrative hearings involving the child-client and parent, as needed.
7. The child-client's lawyer should work with a team that includes investigators and social workers to prepare the child-client's case. If necessary, the child-client's lawyer should petition OPDC for funds.
8. The child-client's lawyer should ask for and review the agency case file as early during the course of representation as possible and at regular intervals throughout the case. After reviewing the agency file, the child-client's lawyer should determine if any records or case notes of any social worker or supervisor have not been placed in the file and move to obtain those records as well either through informal or formal discovery.
9. When appropriate, the child-client's lawyer, or another trained and qualified person, should observe visitations between the parent and the child-client.
10. It is a good practice to have interviews conducted by an investigator employed by the child-client's lawyer. However, if the child-client's lawyer conducts the interview, a third person such as a member of the child-client's lawyer's office should be present so that the third person can be used at trial to impeach the witness.

## **STANDARD 7 – COURT PREPARATION**

- A. The child-client’s lawyer must develop a case theory and strategy to follow at hearings and negotiations. Once the child-client’s lawyer has completed the initial investigation and discovery, including interviews with the child-client, the child-client’s lawyer should develop a strategy for representation.**
- B. The child-client’s lawyer should timely file all pleadings, motions, objections, and briefs, and research applicable legal issues and advance legal arguments when appropriate.**
- C. The child-client’s lawyer must file answers and responses, motions, objections, discovery requests, and responsive pleadings or memoranda that are appropriate for the case. The pleadings and memoranda must be thorough, accurate, and timely. The pleadings must be served on all lawyers or unrepresented parties.**
- D. The child-client’s lawyer must explain to the child-client, in a developmentally appropriate manner, what is expected to happen before, during, and after each hearing and facilitate the child-client’s attendance at hearings when doing so is consistent with the child client’s goals. When the child-client wishes to attend the proceedings, the child-client’s lawyer must request that the agency, as the child’s legal custodian, transport the child-client to the hearing.**
- E. The child-client’s lawyer must identify, locate, and prepare witnesses, including expert witnesses, consistent with the case theory and strategy for representation.**
- F. In consultation with the child-client, the child-client’s lawyer should determine whether to call the child-client to testify. When the child-client will offer testimony or will be called by another party, the child-client’s lawyer should prepare the child-client to testify and seek to minimize any harm that testifying might cause to the child-client.**

### **Commentary:**

- 1. When a case presents a complicated or new legal issue, the child-client’s lawyer should conduct the appropriate research before appearing in court and should consider preparing a memorandum of law to present to the court. The child-client’s lawyer should be prepared to distinguish case law

that appears unfavorable and to preserve challenges to unfavorable law if the argument is unlikely to prevail at trial level.

2. The child-client's lawyer should promote and participate in settlement negotiations and mediation to resolve the case quickly.
3. The child-client's lawyer should not assume that other parties will call any potential witnesses, even if named in that party's witness list. The child-client's lawyer should, when possible, contact potential witnesses to determine if their testimony will be helpful to the child-client's theory of the case and independently secure the attendance of such witnesses at relevant hearings. The child-client's lawyer should set aside time to prepare such witnesses in advance of hearings.
4. The child-client's lawyer is bound by the child-client's decision of whether to testify if the child-client is capable of considered judgment. If the child-client does not wish to testify or would be harmed by being forced to testify, the child-client's lawyer should seek a stipulation of the parties not to call the child-client as a witness or file a motion pursuant to ORS 419B.310 to take the testimony of the child-client outside the presence of the parent(s) and other parties. If the child-client is not capable of considered judgment the lawyer must decide whether to call the client as a witness.

## **STANDARD 8 – HEARINGS**

- A. The child-client's lawyer must prepare for and participate in all hearings and other court appearances. That participation must include:**
  - 1. preparing the child-client to testify if called;**
  - 2. preparing to call witnesses and offer exhibits to advance the child-client's position;**
  - 3. making motions and evidentiary objections consistent with child-client's objectives and trial strategy; and**
  - 4. making closing arguments that advocate for findings of fact, conclusions of law, and orders that are consistent with the child-client's objectives.**
- B. The child-client's lawyer must be prepared to state the child-client's position at each hearing.**



- C. The child-client's lawyer must be able to effectively present witnesses to advance the child-client's position. Witnesses must be prepared in advance and the child-client's lawyer should know what evidence will be presented through the witnesses. The child-client's lawyer must also be skilled at cross-examining opposing parties' witnesses.**
- D. The child-client's lawyer should be strategic in determining when to request and when to make an opening statement.**
- E. If the court proceeds in the absence of the child-client's lawyer, the lawyer must consider filing a motion to set aside.**

Commentary:

1. The child-client's lawyer should seek out training in trial skills and watch other lawyers to learn from them. Presenting and cross-examining witnesses are skills with which the child-client's lawyer must be comfortable. In particular, examining or cross-examining a child requires unique skills.

## **STANDARD 9 – POST HEARINGS**

- A. The child-client's lawyer should take reasonable steps to ensure the child-client and all other parties comply with court orders and should continuously assess whether the case needs to be brought back to court.**
- B. If the child-client is unhappy with an order or judgment, the child-client's lawyer should counsel the child-client about any options to appeal, or, when the order was entered by a referee, request a rehearing pursuant to ORS 419A.150, but should explain that the order is in effect unless a stay or other relief is secured.**
- C. If an appeal is consistent with the child-client's objectives, the child-client's lawyer must timely facilitate the appointment of an appellate lawyer for the child-client.**

Commentary:

1. At the conclusion of the hearing, the child-client's lawyer should request and obtain a copy of the written order or judgment to ensure it reflects the court's verbal order. If the order or judgment is incorrect, that is, it does not reflect the court's verbal rulings, the child-client's trial lawyer should take

whatever steps are necessary to correct it to the extent that the corrections are beneficial to the child-client.

2. Once the order or judgment is final, the child-client's lawyer should provide the child-client with a copy of the order or judgment, if age appropriate, and should review the order or judgment with the child-client to ensure the child-client understands it and the obligations of all of the parties under the order or judgment.
3. If an order or judgment adversely affects the child-client, the child-client's lawyer should advise the client of the remedies, which include moving to modify or set aside the order or judgment.
4. The child's court-appointed lawyer should work with the appellate lawyer and identify for the appellate lawyer the parties to the case (for example whether there are any interveners), appropriate issues for appeal, and promptly respond to all requests for additional information or documents necessary for the appellate lawyer to prosecute the appeal. The lawyer should promptly comply with the court's order to return exhibits necessary for appeal.
5. The child-client's lawyer should monitor the progress of an appeal taken by another party to the juvenile case and continuously evaluate whether the child-client should participate in the appeal.

## **STANDARDS FOR REPRESENTATION OF PARENTS AND GUARDIANS**

Lawyers in Dependency matters may be called on to represent different types of parties who have taken a parental role over a child who is the subject of the petition. Generally, those persons fall into two categories: Parents (persons whose rights to a child are rooted in parentage) and Guardians (persons whose rights to a child are granted by a guardianship order). For the purposes of these standards, Indian Custodians under ORS 419B.603(6) and putative fathers who are named in a petition are considered Parents.

Standards 1.1 and 1.2 are split between Parents and Guardians. In all other standards, when the standard refers to a parent, it also refers to a Guardian.

### **STANDARD 1.1A – ROLE OF THE PARENT LAWYER**

- A. The parent-client’s lawyer must maintain a normal lawyer-client relationship with the parent-client, including advocating for the parent-client’s goals and empowering the parent-client to direct the representation and make informed decisions.**
- B. The parent-client’s lawyer must be aware of the parent-client’s mental health status and be prepared to assess whether the parent-client can assist with the case.**
- C. When it is not reasonably possible to maintain a normal lawyer-client relationship generally or with regard to a particular issue, the parent-client’s lawyer must conduct a thorough investigation and then determine what course of action is most consistent with protecting the parent-client’s interests in the particular situation and represent the parent-client in accordance with that determination.**
- D. If the court has appointed a Guardian Ad Litem over a parent-client due to the parent-client’s lack of competence, the parent-client’s lawyer is required to follow directions provided by the guardian ad litem but must continually assess whether the parent-client’s competence has changed. If appropriate, the parent-client’s lawyer must request removal of the guardian ad litem.**

#### Commentary:

1. The parent-client’s lawyer should explain that the lawyer’s job is to represent the parent-client’s interests and regularly inquire as to the

parent-client's goals, including ultimate case goals and interim goals. The lawyer should explain all legal aspects of the case including the advantages and disadvantages of different options. At the same time, the lawyer should be careful not to usurp the parent-client's authority to decide the case goals.

2. When representing a parent-client with diminished capacity because of age, mental impairment, or for some other reason, the parent-client's lawyer should, as far as reasonably possible, maintain a normal lawyer-client relationship with the parent-client. A parent-client may have the capacity to make some decisions but not others.
3. When it is not reasonably possible to maintain a normal lawyer-client relationship, the determination of what course of action to take should be based on objective facts and information and not the lawyer's personal philosophy or opinion.

## **STANDARD 1.1B – ROLE OF THE LAWYER FOR GUARDIANS**

- A. The guardian-client's lawyer must maintain a normal lawyer-client relationship with the guardian-client, including advocating for the guardian-client's goals and empowering the guardian-client to direct the representation and make informed decisions.**
- B. The guardian-client's lawyer must be aware of the guardian-client's mental health status and be prepared to assess whether the guardian-client can assist with the case.**
- C. When it is not reasonably possible to maintain a normal lawyer-client relationship generally or with regard to a particular issue, the guardian-client's lawyer must conduct a thorough investigation and then determine what course of action is most consistent with protecting the guardian-client's interests in the particular situation and represent the guardian-client in accordance with that determination.**

### Commentary:

1. The guardian-client's lawyer should explain that the lawyer's job is to represent the guardian-client's interests and regularly inquire as to the guardian-client's goals, including ultimate case goals and interim goals. The lawyer should explain all legal aspects of the case including the advantages and disadvantages of different options. At the same time, the

lawyer should be careful not to usurp the guardian-client's authority to decide the case goals.

2. When representing a guardian-client with diminished capacity because of age, mental impairment, or for some other reason, the guardian-client's lawyer should, as far as reasonably possible, maintain a normal lawyer-client relationship with the guardian-client. A guardian-client may have the capacity to make some decisions but not others.
3. When it is not reasonably possible to maintain a normal lawyer-client relationship, the determination of what course of action to take should be based on objective facts and information and not the lawyer's personal philosophy or opinion.

### **STANDARD 1.2A – RELATIONSHIP WITH THE PARENT-CLIENT**

- A. The parent-client's lawyer must clearly explain the allegations made against the parent-client; what is likely to happen before, during, and after trial and each hearing; and ascertain the parent-client's position on the allegations.**
- B. The parent-client's lawyer must explain what steps the parent-client can take to increase the likelihood of achieving the objectives of the representation.**
- C. The parent-client's lawyer must advise the parent-client of the parent's rights, the lawyer's role and responsibilities, the role of each participant in the system, and alternatives and options available to the parent-client.**
- D. The parent-client's lawyer must advise the parent-client of the relevant state and federal statutory timelines and help the parent-client develop a system to remember important projected deadlines and important dates.**
- E. The parent-client's lawyer must take diligent steps to locate and communicate with a missing parent-client and decide representation strategies based on that communication.**

- F. The parent-client's lawyer must inform the parent-client that if the parent-client fails to appear for any hearing on a petition to establish jurisdiction or terminate parental rights to which the parent-client has been summoned or ordered to appear, the court has no discretion to allow the lawyer to appear on the merits of the case on the parent-client's behalf and that the court may allow the other parties to proceed in the parent-client's absence.**
- G. The parent-client's lawyer must show respect and act professionally with the parent-client.**

Commentary:

1. The parent-client's lawyer should provide or ensure that the parent-client is provided 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. The lawyer has an ethical obligation to share all information in the file with a client. A lawyer must consider this ethical obligation in determining how to share information with a client.
2. If the parent-client has difficulty reading, the parent-client's lawyer should read the documents to the parent-client. In all cases, the lawyer should be available to discuss and explain the documents to the parent-client.
3. The parent-client's lawyer and the parent-client should identify barriers to the parent-client engaging in services such as employment, transportation, financial issues, inability to read, and language differences. The lawyer should work with the parent-client, caseworker, and service provider to remove those barriers and advocate with the child welfare agency and court for appropriate accommodations.
4. The parent-client's lawyer should inform the parent-client that if the parent does not appear at a hearing to which the parent has not been summoned or ordered to appear, the lawyer will exercise his or her best judgment about whether to advocate for the parent-client's last known position, remain silent, and/or request a continuance.
5. If a parent fails to attend a hearing, the parent-client's lawyer may appear to explain the parent-client's failure to appear and move to continue the hearing. If the parent-client was not summoned or ordered to appear, the parent-client's lawyer should assess whether the parent-client's interests are better served by advocating for the parent-client's last clearly

articulated position or declining to state a position in further court proceedings, and act accordingly.

6. After a prolonged period without contact with the parent-client, the parent-client's lawyer should consider withdrawing from representation.
7. The parent-client's lawyer should learn about and understand the parent-client's background, determine how that has an effect on the parent-client's case, and always show the parent-client respect. The lawyer should understand how cultural, linguistic, and socioeconomic differences impact interaction with the parent-client, and should interpret the parent-client's words and actions accordingly.

## **STANDARD 1.2B – RELATIONSHIP WITH THE GUARDIAN-CLIENT**

- A. If the petition alleges deficits against the guardian, the guardian-client's lawyer must clearly explain the allegations made against the guardian-client.**
- B. The guardian-client's lawyer must explain to the guardian-client what is likely to happen before, during, and after trial and each hearing; and ascertain the guardian-client's position on the issues raised in the petition.**
- C. The guardian-client's lawyer must explain what steps the guardian-client can take to increase the likelihood of achieving the objectives of the representation.**
- D. The guardian-client's lawyer must advise the guardian-client of the guardian's rights, the lawyer's role and responsibilities, the role of each participant in the system, and alternatives and options available to the guardian-client.**
- E. The guardian-client's lawyer must advise the guardian-client of the relevant state and federal statutory timelines and help the guardian-client develop a system to remember important projected deadlines and important dates.**
- F. The guardian-client's lawyer must take diligent steps to locate and communicate with a missing guardian-client and decide representation strategies based on that communication.**

**G. The guardian-client's lawyer must inform the guardian-client that if the guardian-client fails to appear for any hearing on a petition to establish jurisdiction to which the guardian-client has been summoned or ordered to appear, the court has no discretion to allow the lawyer to appear on the merits of the case on the guardian-client's behalf and that the court may allow the other parties to proceed in the guardian-client's absence.**

**H. The guardian-client's lawyer must show respect and act professionally with the guardian-client.**

Commentary:

1. The guardian-client's lawyer should provide or ensure that the guardian-client is provided 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. The lawyer has an ethical obligation to share all information in the file with a client. A lawyer must consider this ethical obligation in determining how to share information with a client.
2. If the guardian-client has difficulty reading, the guardian-client's lawyer should read the documents to the guardian-client. In all cases, the lawyer should be available to discuss and explain the documents to the guardian-client.
3. The guardian-client's lawyer and the guardian-client should identify barriers to the guardian-client engaging in services such as employment, transportation, financial issues, inability to read, and language differences. The lawyer should work with the guardian-client, caseworker, and service provider to remove those barriers and advocate with the child welfare agency and court for appropriate accommodations.
4. The guardian-client's lawyer should inform the guardian-client that if the guardian does not appear at a hearing to which the guardian has not been summoned or ordered to appear, the lawyer will exercise his or her best judgment about whether to advocate for the guardian client's last known position, remain silent, and/or request a continuance.
5. If a guardian fails to attend a hearing, the guardian-client's lawyer may appear to explain the guardian-client's failure to appear and move to continue the hearing. If the guardian-client was not summoned or ordered to appear, the guardian-client's lawyer should assess whether the guardian-client's interests are better served by advocating for the



guardian-client's last clearly articulated position or declining to state a position in further court proceedings, and act accordingly.

6. After a prolonged period without contact with the guardian-client, the guardian-client's lawyer should consider withdrawing from representation.
7. The guardian-client's lawyer should learn about and understand the guardian-client's background, determine how that has an effect on the guardian-client's case, and always show the guardian-client respect. The lawyer should understand how cultural, linguistic, and socioeconomic differences impact interaction with the guardian-client, and should interpret the guardian-client's words and actions accordingly.

## **STANDARD 2.1 – COMMUNICATION**

- A. The parent-client's lawyer must make reasonable efforts to make contact in writing, electronically, or in person within 3 business days.**
- B. During the first meeting with the parent-client, the parent-client's lawyer must explain the lawyer's role, provide the parent-client with contact information in writing, and establish an effective system for the parent-client to communicate with the lawyer.**
- C. The parent-client's lawyer must ensure that a qualified interpreter is involved when the lawyer and parent-client are not fluent in the same language and are engaged in substantive legal discussions.**
- D. The parent-client's lawyer must communicate with the parent's criminal defense lawyer about issues related to self-incrimination and concerns about delaying the dependency case to strengthen the criminal case or vice versa.**

### Commentary:

1. Subsequent contact should take into consideration the preferred method of contact for the client.
2. After the first meeting, the parent-client's lawyer should have contact with the parent-client before court hearings and Citizen Review Board (CRB) reviews, in response to contact by the parent-client, when a significant change of circumstances must be discussed with the parent-client, or when the lawyer is apprised of emergencies or significant events affecting the child.

3. The parent-client's lawyer should be available for in-person meetings or telephone calls to answer the parent-client's questions and address the parent-client's concerns. The lawyer and the parent-client should work together to identify and review short-term and long-term goals, particularly as circumstances change during the case.
4. The parent-client's lawyer should use a qualified interpreter when practical and would advance the aims of representation.
5. The lawyer should know why the parent-client is incarcerated, the length of the parent-client's incarceration, and post-incarceration release requirements if applicable, particularly any potential restrictions or limitations on contact with children. If the parent-client is incarcerated as a result of an act against the child or another child in the family, the child welfare agency may seek an order excusing the agency from making reasonable efforts, allowing the case to be fast-tracked toward other permanency goals. If the parent-client opposes this step, the parent-client's lawyer must oppose such a motion.
6. The parent-client's lawyer should help the parent-client identify potential kinship placements and relatives who can provide care for the child while the parent-client is incarcerated. The lawyer should understand the implications of the Adoption and Safe Families Act (ASFA) for an incarcerated parent-client.
7. If the parent-client will be incarcerated for a lengthy period, and the child is not placed with the parent-client's relatives, the parent-client's lawyer should ensure that any potential placement options for the child with a relative of the parent-client, or other caretaker proposed by the parent-client, are made known to the agency and explored thoroughly.

## **STANDARD 2.2 – CONFIDENTIALITY**

- A. The parent-client's lawyer must abide by confidentiality laws, as well as ethical obligations, and adhere to both with respect to information obtained from or about the parent-client.**
- B. Consistent with the parent-client's interests and goals, the lawyer must seek to protect from disclosure confidential information concerning the parent-client.**

Commentary:

1. The parent-client's lawyer should read the provisions of local court rules, and state and federal law governing confidentiality of records and documents in juvenile court proceedings, and understand which records and documents are confidential under applicable law. The lawyer must appreciate the existing conflict or tension that exists about what documents and records that the lawyer can give to the parent-client and which the lawyer cannot. The lawyer must understand that this is an evolving area of the law and regularly review the statutes and case law in this area.
2. The parent-client's lawyer should discuss with the parent-client the potential consequences of communicating via electronic communication or broadcasting over social media.

## **STANDARD 2.3 – CONFLICTS OF INTEREST**

**The parent-client's lawyer must follow Oregon Rules of Professional Conduct (RPC) 1.7 to 1.13 relating to conflicts of interest and duties to former clients.**

Commentary:

1. The parent-client's lawyer, or a lawyer associated in practice, should not represent two or more clients who are parties to the same or consolidated juvenile dependency cases or closely related matters unless it is clear there is no conflict of interest between the parties as defined by the Oregon RPC.

## **STANDARD 3.1 – EDUCATION, TRAINING AND EXPERIENCE OF PARENT-CLIENT'S LAWYER**

- A. The parent-client's lawyer must provide competent representation to a parent-client. Competent representation requires the legal knowledge, skill, training, experience, thoroughness, and preparation reasonably necessary for the representation. The lawyer must not accept an appointment unless the lawyer is able to provide quality representation and diligent advocacy for the parent-client.**

- B. The parent-client's lawyer must be sufficiently familiar with applicable state and federal law affecting dependency proceedings so as to be able to recognize when they are relevant to a case, and the lawyer should be prepared to research the laws when they are applicable.**
- C. The parent-client's lawyer must know how to offer documents, photos, physical objects, electronic records, etc., into evidence.**
- D. Prior to accepting appointment in a dependency, termination of parental rights, or permanent guardianship case, a lawyer must be certified for that case type by OPDC, either independently or under supervision.**
- E. The parent-client's lawyer must be aware of the unique issues an incarcerated parent-client faces in order to provide competent representation to the incarcerated parent-client.**

Commentary:

1. The parent-client's lawyer must read and understand all state laws, policies, and procedures regarding child abuse, neglect, and other related matters, including but not limited to the following:
  - a. Oregon Revised Statutes (ORS) chapters 419A, 419B and 419C, Oregon Juvenile Code;
  - b. ORS chapter 418, Child Welfare Services;
  - c. ORS 418.925–418.945, Refugee Child Act;
  - d. Oregon Revised Statutes concerning paternity, guardianships, and adoption;
  - e. ORS 417.200–417.260, Interstate Compact on Placement of Children, and Oregon Administrative Rules;
  - f. ORS 109.701–109.990, Uniform Child Custody Jurisdiction and Enforcement Act, and Oregon Administrative Rules;
  - g. The basic structure and functioning of the Department of Human Services and the juvenile court, including court procedures, the functioning of the CRB and CASA programs; and
  - h. Indian Child Welfare Act 25 USC §§ 1901-1963, Bureau of Indian Affairs Guidelines, and Oregon Administrative Rules.
2. Newer lawyers are encouraged to work with mentors for the first three months and, at a minimum, should observe or co-counsel each type of dependency hearing from shelter care through review of permanent plan before accepting appointments.

3. The parent-client's lawyer should have a working knowledge of placement alternatives, child development, family dynamics, and parental discipline, as well as case and permanency planning, and services for children and families in dependency cases.
4. The parent-client's lawyer may need to advocate for reasonable/active efforts to be made for the incarcerated parent-client and to assist the parent-client and the agency caseworker in accessing services. The lawyer should assist the parent-client by advocating both with the agency and the jail or correctional facility for these services.
5. The parent-client's lawyer should counsel the parent-client on the importance of maintaining regular contact with the child while incarcerated. The lawyer should assist in developing a plan for communication and visitation by obtaining necessary court orders and working with the caseworker as well as the incarcerated parent's prison counselor.
6. The parent-client's lawyer should advise the parent-client that phone calls are recorded and that letters and electronic communication are read and monitored. Information gleaned from these communications can be used against the parent-client in this case.
7. If the parent-client wants to be transported to court for a hearing, the parent-client's lawyer should move the court for a transport order to do so. If the parent-client does not want to be present, or if having the parent-client present is not possible, the lawyer should explore what other means are available to have the parent-client participate, such as by telephone or video conference. The lawyer should obtain any necessary court order and make the necessary arrangements for the parent-client to participate in the hearing.

### **STANDARD 3.2 – OBLIGATIONS OF PARENT-CLIENT COUNSEL REGARDING WORKLOAD**

**Before accepting appointment as counsel, the parent-client's lawyer has an obligation to ensure that they have sufficient time, resources, knowledge, and experience to offer quality representation to a parent-client in a dependency matter without hampering their representation of existing clients. If it later appears that the lawyer is unable to offer quality representation in the case, the lawyer must move to withdraw.**

Commentary:

1. A lawyer should have access to sufficient support services and resources to allow for quality representation, including investigation.
2. A lawyer should evaluate their ability to appear in court with clients when deciding whether to accept an appointment in a case. Lawyers should not overly rely on other lawyers to cover their appearances.
3. When possible, lawyers should appear in person or in the same manner as their clients.

**STANDARD 4.1 – THEORY OF THE CASE**

- A. The parent-client’s lawyer should actively represent the parent-client in the preparation of a case, as well as at hearings.**
- B. The parent-client’s lawyer should develop a theory and strategy of the case to implement at hearings, including the development of factual and legal issues.**

Commentary:

1. The parent-client’s lawyer should, when consistent with the parent-client’s interest, take every appropriate step to expedite the proceedings.
2. The parent-client’s lawyer should identify family members and professionals who may already be, or who may become, a stable and long-term resource for the family and/or a placement for the child.
3. The parent-client’s lawyer should communicate with lawyers for the other parties, the CASA, the caseworker, and service providers to learn about the parent-client’s progress and their views of the case, as appropriate.

**STANDARD 4.2 – OUT OF COURT ADVOCACY**

- A. The parent-client’s lawyer must advocate for the parent-client both in and out of court.**
- B. The parent-client’s lawyer must engage in case planning and advocate for a case plan and social services that will help achieve the parent-client’s goals in the case.**

**C. If the parent-client's goals include a continued relationship with the child, the parent-client's lawyer should advocate strongly for frequent visitation in a family-friendly setting.**

**D. The parent-client's lawyer or the lawyer's agent may not contact a represented party without the consent of the party's lawyer(s).**

Commentary:

1. The parent-client's lawyer should counsel the parent-client about the advantages and disadvantages of engaging in services before the court orders the client to engage in such services and determine whether the parent-client is willing to engage in services. If the parent-client is willing to engage in services, the lawyer should advocate for those services.
2. The parent-client's lawyer should ensure the parent-client asks for and receives needed services. The lawyer should not agree to services that are beyond the scope of the case.
3. Whenever possible, the parent-client's lawyer should use a social worker as part of the parent-client's team to help determine an appropriate case plan, evaluate social services suggested for the parent-client, and act as a liaison and advocate for the parent-client with the service providers.
4. When necessary, the parent-client's lawyer should seek court orders to compel the child welfare agency to provide frequent, unsupervised visitation to the parent-client. The lawyer may also need to take action to enforce previously entered orders.
5. The parent-client's lawyer should advocate for an effective visiting plan and counsel the parent-client on the importance of regular contact with the child. Courts and the agency may need to be encouraged to develop visitation plans that best fit the needs of the individual family.
6. A parent-client's lawyer who plans to attend case-planning meetings should be aware that other represented parties may be present without their lawyers and should take necessary steps to comply with the Rules of Professional Conduct. A parent-client's lawyer who does not plan to attend case-planning meetings should be aware that other represented parties will attend with their lawyers at the meeting and should take steps to protect the parent-client's interests.

## **STANDARD 5 – PRE-PETITION**

- A. The parent-client’s lawyer should counsel the parent-client about the client’s rights in the investigation stage as well as the realistic possibility of achieving the parent-client’s goals.**
- B. The parent-client’s lawyer should discuss available services and help the parent-client engage in those in which the parent-client wishes to participate.**

### Commentary:

1. If a parent-client would likely be eligible for appointed counsel at state expense if served with a juvenile court petition, and pre-petition representation is necessary to preserve and protect the rights of the parent-client, the parent-client’s lawyer may seek approval from OPDC for funding to commence representation prior to court appointment. Contact OPDC for more information.
2. During the pre-petition phase of a dependency case, the parent-client’s lawyer has the opportunity to work with the parent-client and help the client to fully understand the issues and the parent-client’s chances of securing desired outcomes. The lawyer 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 lawyer should work intensively to explore all appropriate services, including assistance with legal problems involving housing, criminal case matters, public benefits, services for children, domestic violence, and alternate placement plans that might resolve the case. The lawyer should explore opportunities for substantive case meetings such as case-planning meetings or case reviews and, when appropriate, attend those meetings.

## **STANDARD 6 – INVESTIGATION**

- A. The parent-client’s lawyer must conduct a thorough, continuing, and independent review and investigation of the case, including obtaining information, research, and discovery in order to prepare the case for trial and hearings.**
- B. The parent-client’s lawyer must review the case record of the parent-client and the supplemental confidential file, and the case record of the child’s siblings when permitted by the juvenile code, Oregon Rules of Professional Conduct, and other confidentiality statutes.**



- C. The parent-client's lawyer must review relevant photographs, video or audio recordings, and other evidence. When necessary, the lawyer should obtain protective orders to keep information confidential once obtained.**
- D. The parent-client's lawyer must research and review relevant statutes and case law to identify defenses and legal arguments to support the parent-client's case.**
- E. The parent-client's lawyer must obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and respond to requests for documents from other parties.**
- F. The parent-client's lawyer should have potential witnesses, including adverse witnesses, interviewed by an investigator or other appropriately trained person. If appropriate, witnesses should be subpoenaed.**

Commentary:

1. The parent-client's lawyer should contact lawyers for the other parties and any CASA for background information.
2. The parent-client's lawyer should obtain necessary releases of information in order to thoroughly investigate the case.
3. The parent-client's lawyer should review the internet presence or personas for parties and witnesses.
4. The parent-client's lawyer should determine whether obtaining independent evaluations or assessments of the parent-client is needed for the investigation of the case.
5. The parent-client's lawyer should attend treatment, placement, and administrative hearings involving the parent-client and child as needed.
6. The parent-client's lawyer should ask for and review the agency case file as early during the course of representation as possible and at regular intervals throughout the case. After reviewing the agency file, the parent-client's lawyer should determine if any records or case notes of any caseworker or supervisor have not been placed in the file and move to obtain those records as well either through informal or formal discovery.

7. It is a good practice to have interviews conducted by an investigator employed by the parent-client's lawyer. However, if the lawyer conducts the interview, a third person, such as a member of the lawyer's office, should be present so that the third person can be used at trial to impeach the witness.

## **STANDARD 7 – COURT PREPARATION**

- A. The parent-client's lawyer must develop a case theory and strategy to follow at hearings and negotiations. Once the parent-client's lawyer has completed the initial investigation and discovery, including interviews with the parent-client, the lawyer must develop a strategy for representation.**
- B. The parent-client's lawyer should timely file all pleadings, motions, answers, responses, objections, discovery requests, responsive pleadings, appropriate memoranda, and briefs, and research applicable legal issues and advance legal arguments when appropriate. All filings must be thorough, accurate, timely, and appropriately served on all the lawyers or unrepresented parties.**
- C. The parent-client's lawyer must communicate all settlement offers to the parent-client and discuss their advantages and disadvantages with the client including the rights that would be waived by a decision to admit to facts sufficient to establish jurisdiction and the impact of timelines established by ORS 419B.470 et. seq.**
- D. It is the parent-client's decision whether to enter admissions. The parent-client's lawyer must be willing to try the case and not compromise solely to avoid the hearing.**
- E. The parent-client's lawyer must take reasonable steps to prepare the parent-client to testify.**
- F. The parent-client's lawyer must take reasonable steps to prepare witnesses who have been identified and located, including expert witnesses, in addition to evidence and exhibits in formats consistent with local court rules as is consistent with the case theory and strategy for representation.**

### Commentary:

1. When a case presents a complicated or new legal issue, the parent-client's lawyer should conduct the appropriate research before appearing in court and should consider preparing a memorandum of law to present to the court. The parent-client's lawyer should be prepared to distinguish case law that appears unfavorable and to preserve challenges to unfavorable law if the argument is unlikely to prevail at trial level.
2. With the parent-client's permission, and when appropriate, the parent-client's lawyer should engage in settlement negotiations and mediation to resolve the case quickly. The parent-client's lawyer should explain to the parent-client the conditions and limits of the settlement and the effect of the settlement, especially when admissions made to allegations could give rise to a criminal charge or finding of aggravated circumstances or extreme conduct. These admissions could affect future actions such as domestic relations proceedings, immigration proceedings, criminal proceedings, or termination-of-parental-rights petitions.
3. The parent-client's lawyer should discuss and practice the questions that the lawyer will ask the parent-client, as well as types of questions the parent-client should expect opposing counsel to ask. The lawyer should help the parent-client think through the best way to present information, familiarize the parent-client with the court setting, and offer guidance on logistical issues regarding getting to court on time and appropriate court attire.

## **STANDARD 8 – HEARINGS**

- A. The parent-client's lawyer must prepare for and participate in all hearings and other court appearances. That participation must include:**
- 1. offering available exhibits and testimony if it advances the parent-client's position;**
  - 2. Making motions and objections consistent with the parent-client's objectives and case strategy; and**
  - 3. Making closing arguments that advocate for findings of fact, conclusions of law, and orders that are consistent with the parent-client's objectives.**
- B. The parent-client's lawyer must be prepared to state and explain the parent-client's position at each hearing.**

- C. The parent-client's lawyer must be able to competently present witnesses to advance the parent-client's position. The lawyer must also be competent at cross-examining opposing parties' witnesses. The lawyer must know how to offer documents, photos, physical objects, electronic records, etc., into evidence.**
- D. The parent-client's lawyer must be strategic in determining when to request and when to make an opening statement.**
- E. If the court proceeds in the absence of the parent-client's lawyer, the lawyer should consider filing a motion to set aside.**

Commentary:

- 1. The parent-client's lawyer should seek out training in trial skills and watch other lawyers to learn from them. Presenting and cross-examining witnesses are skills with which the lawyer must be comfortable. In particular, examining or cross-examining a child requires unique skills.

## **STANDARD 9 – POST HEARINGS**

- A. The parent-client's lawyer must advise the parent-client about complying with court orders. If the parent-client is negatively affected by other parties' non-compliance with court orders, the parent-client's lawyer must consider filing for a hearing.**
- B. The parent-client's lawyer must determine a reasonable frequency at which to assess the progress of a case and take any necessary action for each case.**
- C. Once an order or judgment is final, the parent-client's lawyer must offer the parent-client and the opportunity to review the judgment or order together, which should include a copy of the judgment or order.**
- D. If a judgment or order is inconsistent with a parent-client's objectives, the lawyer must counsel the parent-client about any options to appeal, or, if the order was entered by a referee, request a rehearing pursuant to ORS 419A.150, but must explain that the order is in effect unless a stay or other relief is secured.**
- E. If the parent-client requests to appeal, the parent-client's lawyer must timely submit an appellate referral.**

Commentary:

1. At the conclusion of a hearing, the parent-client's lawyer should request and obtain a copy of the written order or judgment to ensure it reflects the court's verbal order. If the order or judgment is incorrect, that is, it does not reflect the court's verbal rulings, the parent-client's lawyer should take whatever steps are necessary to correct it to the extent that the corrections are beneficial to the parent-client.
2. When reviewing any judgment or order with a client, the parent-client's lawyer should endeavor to explain the material in multiple ways and discuss whether the client should receive a copy of the judgment or order.
3. If an order or judgment adversely affects the parent-client, the parent-client's lawyer should advise the client of the remedies, which include moving to modify or set aside the order or judgment.
4. If an appeal is requested, the parent-client's lawyer should identify for the appellate lawyer the parties to the case (for example whether there are any interveners), appropriate issues for appeal, and promptly respond to all requests for additional information or documents necessary for the appellate lawyer to prosecute the appeal. The lawyer should promptly comply with the court's order to return exhibits necessary for appeal.
5. If another party appeals an order or judgment, the parent-client's lawyer should consult with their client and, if needed, submit an appellate referral.