

**Superior Court of the
District of Columbia
Child Abuse and Neglect
Attorney Practice Standards**

**Submitted to Rufus G. King, III, Chief Judge
Superior Court of the District of Columbia
February 2003**

By

**The Family Court Advisory Rules Committee
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**Adopted by Administrative Order 03-07
February 28, 2003**

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Acknowledgments

The Family Court Advisory Rules Committee (formerly known as the Family Division Advisory Rules Committee) was established in January 2000 by Eugene N. Hamilton, then Chief Judge of the Superior Court of the District of Columbia. One of the goals of the Committee, then chaired by Judge Kaye K. Christian, formerly Deputy Presiding Judge of the Family Division, was to develop standards of practice for attorneys appointed to represent children and parents in abuse and neglect cases. Following an internal review by the Chief Judge, the practice standards were published for comment.

This document, *Superior Court of the District of Columbia Abuse and Neglect Attorney Practice Standards*, would not have been possible without the dedication and hard work of the members of the Family Court Advisory Rules Committee who were chosen because they have a manifest interest in the practice of child abuse and neglect law and possess both the depth of experience and practical insight in this area of the law necessary to effect change.

Deep gratitude is also owed to Judge Christian and Judge Mitchell-Rankin, whose leadership launched the creation of standards and made their ultimate implementation possible, and to the committee members and the American Bar Association Center on Children and the Law who facilitated the work of the Committee.

The Court gratefully acknowledges all the individuals, both inside and outside the Court, whose knowledge and expertise were instrumental in the completion of this report, especially the following:

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We would also like to acknowledge the D.C. Bar Association, especially Bar Counsel Joyce Peters and Assistant Bar Counsel Katherine Kello, who met with the Committee as they developed these standards and graciously answered their many questions. With their help we were able to clarify many issues that led to an improved product. We also acknowledge the important role played by Jennifer Renne, Esquire and Katy Gallagher of the American Bar Association Center on Children and the Law.

The American Bar Association Center on Children and the Law's work on this project was made possible through a grant from the Freddie Mac Foundation.

Superior Court of the District of Columbia Child Abuse and Neglect Attorney Practice Standards

Executive Summary

Quality legal representation is essential to a high functioning court process. Attorneys practicing in the child abuse and neglect field must be well trained and educated to deliver high quality representation for all parties. These practice standards are intended to define the role of counsel in the child abuse and neglect system in the Superior Court of the District of Columbia and improve the level of representation for all parties in that system. The standards apply to parents' counsel, guardians ad litem and attorneys for children, and the Office of the Corporation Counsel.

Basic Obligations

The practice standards address the general authority and duties of child abuse and neglect attorneys. Under these standards, attorneys shall only accept an appointment or otherwise appear in child abuse and neglect proceedings if they are knowledgeable of substantive and procedural child abuse and neglect laws and have participated in the required training programs. The fundamental obligations are based on the DC Rules of Professional Conduct and the Superior Court Rules. They are elements that help define competent representation.

The standards also address the role of individual counsel:

- ❑ The guardian ad litem, who is appointed by the Court to represent the child in abuse and neglect proceedings. The role of the guardian ad litem is to protect a child's basic needs and interests. The guardian ad litem should always be mindful of the child's safety and well being and take all steps to promote speedy permanency for the child.
- ❑ Parent's counsel, who is appointed to provide legal representation to one of a child's parents. Since passage of the Adoption and Safe Families Act and the implementation of its shortened timeframes this job has become even more challenging and essential.
- ❑ Office of the Corporation Counsel, which represents the District of Columbia in child abuse and neglect proceedings and has the responsibility to assist the court in guaranteeing safety and speedy permanency for children and protecting due process rights for all parties to the action.

Responsibilities to the Client

Establishing and maintaining a trusting relationship with a client is the foundation of quality representation. These standards identify an attorney's responsibilities to his or her client, including:

- ❑ solid, honest communication;
- ❑ thorough investigation of all necessary and relevant information;
- ❑ attempts to settle the case or as many issues as possible, through formal or informal alternative dispute methods;
- ❑ adequate pre-trial preparation;
- ❑ attendance and participation in court conferences and hearings;
- ❑ post-hearing follow-up and review of any orders, including assisting clients with accessing services or navigating the system; and
- ❑ discussion with the client about his or her right to appeal and whether the appeal has merit.

Finally, the Family Court Panels Committee is developing procedures for evaluating attorneys appointed to represent children and parents. After the panels of attorneys have been established, in order to remain on a panel, attorneys must be in full compliance with these practice standards.

***Superior Court of the District of Columbia
Child Abuse and Neglect Attorney Practice Standards***

Statement of Intent

D.C. Code §16-2304(b)(1) provides that children and parents involved in abuse and neglect cases in the Superior Court of the District of Columbia are entitled to representation at all critical stages of the proceedings. The District of Columbia Family Court Act of 2001, Pub. L. 107-114, provides that the Superior Court shall establish standards of practice for attorneys appointed as counsel in matters under the jurisdiction of the Family Court. The Court recognizes the legal and psychosocial complexity of child welfare matters and its oversight role with respect to attorneys appointed to represent children and parents in abuse and neglect cases. To accomplish the goals of the Family Court Act and to promote high quality representation for all parties in abuse and neglect proceedings, the Chief Judge issued Administrative Order No. 02-15, which requires the Family Court Panels Committee to establish panels of qualified attorneys to represent children and families in abuse and neglect cases. Also, the following Child Abuse and Neglect Attorney Practice Standards have been developed.

A. General Authority and Duties

A-1 Prerequisites for Appointments and Training – Counsel shall only accept an appointment or otherwise appear in child abuse and neglect proceedings if they are knowledgeable of substantive and procedural child abuse and neglect laws and have participated in the required training programs. Counsel must certify, in writing, that he or she has read and understands these standards, the District of Columbia Rules of Professional Conduct and the Superior Court Rules and Statutes governing Neglect Proceedings.

Prior to an initial appointment, all counsel must receive certification of training that includes classroom instruction as well as courtroom observation. Further, to be eligible to receive an appointment, counsel must obtain a Certificate of Discipline from the District of Columbia Bar Counsel. This certificate shall be presented to the CCAN Director.

Each year, all counsel on the CCAN eligibility list must attend 16 hours of continuing formal CCAN training on abuse and neglect-related topics to continue to represent parties in child abuse and neglect proceedings.

Similarly, an Assistant Corporation Counsel must participate in 16 hours of training per year, which can include formal CCAN programs or trainings organized by the Office of the Corporation Counsel. The Office of the Corporation Counsel will oversee the initial

training program for the Assistant Corporation Counsels.

Any training program must be approved by the CCAN Director or Office of the Corporation Counsel training supervisor in order for the attorney to receive credit. CCAN counsel must present a Certificate of Completion to the CCAN Director at or near the end of the calendar year.

Attorneys appearing pro bono in abuse and neglect matters must ensure that they receive the necessary training on child welfare issues to provide competent representation in these matters.

Appropriate training topics can include but not be limited to relevant legal topics as well as specific child welfare topics such as:

- federal laws, including the Adoption and Safe Families Act (ASFA), the Multi-Ethnic Placement Act (MEPA), the Indian Child Welfare Act (ICWA), the Child Abuse Prevention and Treatment Act (CAPTA), the Foster Care Independence Act of 1999, Social Security entitlements, disabilities law, and fiduciary law;
- DC neglect law;
- professional ethics;
- termination of parental rights law;
- evidence and trial procedure;
- legal permanency options;
- adoption subsidies;
- developmental psychology
- communicating with clients in developmentally appropriate language;
- medical issues and medical evidence in child abuse and neglect cases;
- negotiation strategies and techniques;
- appeals procedures;
- understanding mental illnesses and mental retardation;
- issues arising from substance abuse;
- the impact of domestic violence on children;
- cultural, ethnic and socioeconomic issues;
- available services and resources for families;
- immigration law issues that relate to child welfare;
- special education laws and resources.

Commentary -

See DC¹ 1.1 Competence

The practice of child abuse and neglect law is complex and multi-faceted. It

¹ District of Columbia Rules of Professional Conduct, referred to throughout as “DC”.

involves knowledge of traditional legal sources such as case law, statutes, evidence and trial practice, but is further complicated by the need to understand information generally not part of legal practice. In addition, the stakes for children and families involved in the child welfare and court systems are very high. Therefore, attorneys practicing in the field must be well trained and educated to deliver high quality representation for all parties.

Counsel seeking inclusion on the CCAN eligibility list shall receive training certification from the CCAN office. Counsel appearing pro bono shall receive certification from the legal services organization with which they are affiliated, or from their employer, that they are eligible to receive appointment in abuse and neglect matters. This certification shall be subject to review by the CCAN office.

As part of the training process, new attorneys are strongly encouraged to seek the advice and input of more experienced lawyers who have represented parties in abuse and neglect proceedings. Correspondingly, experienced attorneys are encouraged to provide mentoring to new attorneys, including assisting new attorneys in preparing cases, debriefing following court hearings, and answering questions as they arise. Experienced attorneys designated by the CCAN Director as “trainer attorneys” will receive credit toward their 16 hours of continuing training for the time they spend instructing new attorneys.

All counsel will be assisted in obtaining meaningful training opportunities by the CCAN office or by the legal services organization with which they are affiliated. Training seminars will be offered on issues impacting on child welfare practice, videotapes of the training will be made available, and other resource materials will be provided.

A-2 Basic Obligations – All counsel appearing before the Superior Court in an abuse or neglect case shall:

- be familiar with relevant federal and DC laws, regulations and policies affecting child welfare;
- prepare and file all pleadings and motions in a timely fashion;
- serve all filings and communications with the court on all parties;
 See Superior Court Neglect Rule – Service of Subpoenas
 Superior Court Neglect Rule – Service of Pleadings and Other Papers
- obtain copies of all pleadings and relevant notices filed by other parties;
- maintain a case file on each active case;
- thoroughly prepare for all hearings;
- provide the case file to successor attorneys;
- prepare or help prepare findings of fact and conclusions of law when requested;
- participate in negotiations, discovery, pretrial conferences, mediation sessions and hearings;
- counsel clients concerning matters related to their cases;

See DC 1.4 Communication
DC 2.1 Advisor

- assess client’s needs for services and assist in obtaining those services;
- develop a case theory and strategy to follow at hearings and negotiations;
- cooperate and communicate civilly with other professionals and parties in a case.
See DC Bar Voluntary Standards for Civility in Professional Conduct,
Adopted by the DC Bar Board of Governors June 18, 1996; Amended March
11, 1997

Commentary –

See DC 1.1 Competence
DC 1.3 Diligence and Zeal
DC 1.16(d) Declining or Terminating Representation
DC 2.1 Advisor, Comment 4 Consultation with Other Professionals

These basic obligations are based on the DC Rules of Professional Conduct and the Superior Court Rules. They are elements that define “competent representation” and are not exhaustive. For instance, in most cases, all attorneys should work to reduce case delay because delays generally hinder progress in a case and are not beneficial to any of the parties. There may be times, as part of a case strategy, that delay is necessary, but this should be rare. Additionally, counsel should make an independent determination of what services are necessary to meet the client's needs and to advance the client's interests in the litigation. Counsel should consider any barriers to the client's use of available services including disabilities or transportation, language, cultural, or financial barriers and seek to overcome such barriers.

When counsel is filing a pleading or report with the court, it shall be filed in the neglect court clerk’s office pursuant to the time set by the requisite Superior Court Rule. Counsel must send a courtesy copy of the pleading or report to the judge and serve all parties of record.

A-3 Financial Eligibility Determinations – Pursuant to District of Columbia Code § 16-2304 and Administrative Orders of the Superior Court, immediately upon appointment, counsel must ensure that clients are interviewed to determine their financial eligibility under the CCAN Program. If after investigation, the client is not available, the attorney must file an absent party form with the CCAN office. Once the party is available, the attorney has an obligation to ensure that the eligibility interview is held.

A-4 Case Management – Counsel shall comply with all statutory and court-imposed deadlines. Counsel should develop a timeline for each case that identifies the actions to be taken and their deadlines. Counsel should maintain a manageable caseload to adequately represent clients and avoid numerous scheduling conflicts.

Commentary –

An attorney must be aware of several time-sensitive events set forth in the Adoption and Safe Families Act (ASFA). For example, within 60 days of a child's removal from the home, the agency, in conjunction with the parents, must create a case plan setting forth the services to be delivered and tasks each party must complete. The court must hold a permanency hearing 12 months after the child enters foster care at which time the court will establish a permanency plan for the child. Finally, a termination of parental rights motion must be filed when the child has been in care for 15 of the last 22 months, unless certain exceptions apply.

The attorney must, therefore, know the case specific timeline prescribed by ASFA to manage the process for reaching the permanency goal. For example, in addition to the 12 and 15- month deadlines, the court must hold hearings every six months to consider reasonable efforts to finalize the permanency plan. The attorney must understand the implications of the timeline and understand whether any exceptions apply.

A-5 Role of Individual Counsel –

Guardian ad litem for the Child – A guardian ad litem is an attorney appointed by the Court to represent the child in abuse and neglect proceedings. The guardian ad litem is charged with representation of the child's best interests. A guardian ad litem fulfills a dual role, as neutral fact finder for the judge and as zealous advocate for the child's best interests. The guardian ad litem should also monitor all litigation concerning the child such as delinquency matters and any civil proceedings.

Commentary –

See D.C. Code § 16-2304(3)

In re LH, 634 A.2d 1230 (1993)

SS v. DM, 597 A.2d 871 (1991)

DC Legal Ethics Opinion 252

Independent Representation for the Abused and Neglected Child: The Guardian ad Litem, 13 Cal. W. L. Rev. 16, 33 (1976)

Special Issue: Ethical Issues in the Legal Representation of Children. *Fordham Law Review* 64, March 1996.

The role of the guardian ad litem is to advocate for the child's safety, well being and best interests. In serving this role, the guardian ad litem must fulfill the following functions:

- an investigator whose task it is to discover all the relevant facts
- an advocate whose task is to ensure all the relevant facts are before the court at all hearings

- counsel whose task is to ensure the court has all available options before it at all stages of the proceedings
- a guardian whose task is to ensure the child's interests are fully protected.

The guardian ad litem is responsible for ensuring the child's wishes are expressed to the court, even if these wishes differ from the guardian ad litem's recommendations.

The guardian ad litem has a duty to investigate and preserve tort claims pursuant to DC Legal Ethics Opinion 252.

The guardian ad litem should always be mindful of the child's safety and well being and ensure these issues are raised at every hearing. Further, the guardian ad litem should take all steps to promote speedy permanency for the child, which will generally mean: attempting to reduce case delay, ensuring the issue of reasonable efforts is raised at all hearings, and working with the agency responsible for the care of the child to identify and provide appropriate services to the family and find the child a permanent home. Counsel should visit all placements and conduct appropriate introductions and interviews at the placement.

Lawyers should approach decision making on behalf of their clients with extreme caution. In determining what is in the child's best interests, the guardian ad litem should use objective criteria. The lawyer should avoid relying on experiences from the lawyer's own childhood, stereotypical views of clients whose backgrounds differ from the lawyer's, or the lawyer's instinct.

The criteria for determining what is in the child's best interests should include, but not be limited to:

- interviews/observations and/or discussions based on the child's developmental stage with the child in an environment familiar to the child;
- a full and efficient investigation including interviews and consultation with the child's caretakers, relatives, therapists, teachers, doctors, social workers and other service providers to assess the child's circumstances;
- an inquiry into all available placement and visitation alternatives (including sibling).

To provide competent representation, the guardian ad litem should meet with the child in his or her environment. It is important for the guardian ad litem to recognize that children may not be comfortable talking to the guardian ad litem in his or her office. A child will often not trust new adults and may be more willing to confide in the guardian ad litem in a setting that is familiar. Further, it is important for the guardian ad litem to observe a child's home or foster home to be confident that the child's surroundings are safe, nurturing and appropriate. Even

preverbal children can provide valuable information about their needs through their behavior, including their interactions with their caretakers and other adults.

The guardian ad litem must ensure that any apparent and legitimate claims available to the child are explored and, when appropriate, retain or request that the court appoint counsel to institute administrative or court actions related to the claim.

Counsel, and especially the guardian ad litem, may find there are issues presented by the case that are beyond the original appointment. These issues could include child support, delinquency proceedings, domestic violence, SSI and other benefits, personal injury, immigration, special education, probate matters or mental health proceedings.

Parent's Counsel – When representing a parent in a child abuse and neglect proceeding, counsel shall seek the lawful objectives of the client and not substitute counsel's judgment or opinions in those decisions that are the responsibility of the client. Counsel must take all affirmative steps to ascertain the parent's position prior to all hearings, negotiations and dealings with the child welfare agency responsible for the case. Counsel should explain the nature of the overall proceeding and then obtain the client's views and position before advocating on behalf of the client. Counsel should, where appropriate, identify alternatives for the client's consideration. Counsel should explain to the client the risks, if any, in the client's position.

Commentary –

See DC 1.2 Scope of Representation

DC 1.3 Diligence and Zeal

DC 1.4 Communication

DC 1.6 Confidentiality of Information

DC 1.14 Client Under a Disability

DC 2.1 Advisor

Since the passage of the Adoption and Safe Families Act and the implementation of its shortened timeframes, the role of the parent's attorney has become even more challenging and essential. The stakes for parents are higher. The time they have to seek reunification with their children is shorter, and their responsibilities are greater. Therefore, the duty of their attorneys to counsel them about the expedited ASFA timelines and their parental obligations is vital.

The attorney must take all possible steps to locate the client and help the parent understand the gravity of the situation. Parent's counsel may need to employ an investigator to help locate clients. According to the D.C. Bar Counsel, if a judicial officer directs counsel to reveal information on the status of the client's whereabouts, as an officer of the court, counsel must respond to the Court's

inquiry and provide information based upon the attorneys instructions from his client or face the possibility of contempt. Counsel must be mindful of protecting the record when complying with the court's directive.

The attorney may also find him or herself taking on tasks that formerly belonged to others. For example, the attorney may be the best person to help the client obtain services that will increase the chances of reunification. Parent's counsel may also find that mediation and other alternative dispute methods are more helpful to the parent than over-litigating the case. Counsel must be open to these alternatives and always act in furtherance of the client's position.

Office of the Corporation Counsel – The Office of the Corporation Counsel represents the District of Columbia in child abuse and neglect proceedings. The Assistant Corporation Counsel appearing on the case shall present evidence necessary to sustain the government's burden, move for dismissal when appropriate, and ensure that the issues of reasonable efforts, safety and permanency are addressed at each hearing.

Commentary –

See In re J.J.Z., 630 A.2d 186 (1993)

DC 1.2 Scope of Representation

DC 1.3 Diligence and Zeal

DC 1.4 Communication

DC 1.13 Organization as Client

DC 2.1 Advisor

As the representative for the District of Columbia, the Assistant Corporation Counsel has the responsibility to assist the court in guaranteeing safety and speedy permanence for children and protecting due process rights for all parties to the action. The Assistant Corporation Counsel must file appropriate pleadings, present evidence on behalf of the government, and participate in all proceedings relevant to a case.

A-6 Conflict Situations – Counsel shall not represent two or more clients who are parties in the same child abuse and neglect proceeding. A guardian ad litem may represent more than one child unless there is a conflict.

Guardian ad litem – The guardian ad litem shall not represent two or more siblings when their interests are adverse and shall never represent siblings when it is alleged that one sibling has physically or sexually abused the other even when the siblings come to the court's attention at separate times. Further, counsel shall not serve as the guardian ad litem for a minor and her child. The attorney should always give careful consideration to potential conflicts and seek guidance as necessary.

Further, if the guardian ad litem's assessment of the child's best interests conflicts with the views of the child, the guardian ad litem shall notify the court and an attorney may be appointed to serve as the child's counsel. The new attorney for the child will represent the child's views while the guardian ad litem will notify the court of his or her assessment of the child's best interests. As soon as the court resolves the issue that caused the conflict, the attorney for the child shall request leave of court to withdraw.

Commentary –

See DC 1.7 Conflict of Interest

DC 1.9 Conflict of Interest: Former Client

AS & JS, 118 DWLR 2221, 2227 n. 15

S.S. v. D.M., 597 A.2d 870 (1991)

DC Legal Ethics Opinion 295

One of the guardian ad litem's most important roles is to counsel the child client and help the child understand the legal process and the guardian ad litem's assessment of the child's situation. If the client, after thorough and informed discussions with the guardian ad litem, continues to disagree with the guardian ad litem about the direction of the case, the guardian ad litem should inform the court of the conflict. This conflict does not include the situation in which the guardian ad litem and the child cannot work together and the child has a personality clash with the guardian ad litem and wants another representative: such a conflict does not warrant the appointment of an attorney for the child. Rather, the court should determine if a new guardian ad litem should be appointed.

Parent's Counsel – Counsel shall not represent more than one parent.

Commentary –

See DC 1.7 Conflict of Interest

DC 1.9 Conflict of Interest: Former Client

AS & JS, 118 DWLR 2221, 2227 n. 15

It is important to have separate counsel for each parent. Based on the Rules of Professional Conduct, one attorney should not represent multiple parties if a conflict is foreseeable. Often in abuse and neglect cases, a situation does not appear to present a conflict at the beginning of the case, but develops into a conflict between the parents as the case progresses. Therefore, a conflict is certainly foreseeable. If only one attorney were to represent multiple parents and such a conflict occurred, the attorney would have to be removed from the case and two new attorneys appointed. In addition to the ethical dilemma this situation presents, there are practical issues such as the waste of time, money and judicial resources that results.

Caretaker's Counsel – Counsel shall not represent multiple caretakers in the same case.

A-7 Continuity of Representation – It is expected that counsel of record shall continue to represent the client from the initial court proceeding through disposition, review hearings, permanency hearings and related TPR, adoption and guardianship proceedings until the case is closed.

Commentary –

See DC 1.16 Declining or Terminating Representation

The best representation for a client occurs when the counsel of record handles the case from the beginning through all stages until the case is closed. To effectuate this principle, counsel are encouraged to remain on a case until it closes.

B. Client Contact

B-1 Meeting with the Client – In all cases counsel must maintain sufficient contact with the client to establish and maintain an attorney-client relationship that will enable counsel to keep abreast of the client's interests and needs, and of the client's position in the case.

The attorney-client relationship and all the obligations that result from that relationship begins at the time of the initial appointment. Immediately upon receipt of notice of the assignment, counsel shall take appropriate steps to locate his or her client. Counsel shall inform the client of the assignment and meet with the client as soon as practicable. To the extent possible, the initial meeting should take place sufficiently prior to the first court hearing to permit counsel to prepare for such hearing. As soon as practicable, and to the extent possible given the client's age and abilities, counsel shall explain to the client the nature of the court proceedings and applicable law, the role of counsel, and the existence of and limits to privileges covering the client's communications with counsel, therapists, social workers and other relevant individuals. Counsel shall also determine the client's interests, goals and position in the proceeding.

Counsel shall remain in communication with the client during the course of the case and especially before court hearings or important planning meetings and when emergencies or changes in the case arise to discuss, to the extent possible given the client's age and abilities, the progress of the case, trial strategy and preparation, negotiation and settlement strategies, and post-trial goals. Counsel shall inform the client of all court hearings and inform the client of his or her right and/or obligation to attend the hearings. Counsel should respond to telephone calls and other types of contact from his or her clients promptly.

Guardian ad litem – Regardless of the child's age, counsel should observe and/or talk with the child regularly, but at least every three months unless the court directs otherwise. It is important for counsel to see the child in the child's own environment. When talking to the child about the case, counsel should be mindful of the child's

emotional well being and developmental stage. Counsel may not need to repeat interviews that have previously been conducted by caseworkers, law enforcement, therapist or medical experts, but rather should learn about the child and the child's wishes concerning the future.

Parent's Counsel – Counsel must meet and communicate with the parent regularly. Prior to each court session counsel must make efforts to communicate with the client and be prepared to respond to the Court's inquiry regarding contacts between the attorney and the client during the hearing. If the client is involuntarily committed or incarcerated and wishes to attend a hearing, counsel shall make all necessary arrangements for the client's participation in the hearing.

Office of the Corporation Counsel – In representing the District of Columbia and children's best interests, the Assistant Corporation Counsel is available for consultation with caseworkers, police, witnesses and agency counsel to prepare for hearings, file pleadings, and develop a responsive, constructive relationship.

Commentary -

See DC 1.2 Scope of Representation

DC 1.3 Diligence and Zeal

DC 1.4 Communication

DC 1.14 Client Under a Disability

DC 2.1 Advisor

In the Matter of Michael S. Lieber, 442 A.2d 153 (D.C. App. 1982)

Establishing and maintaining a trusting relationship with a client is the foundation of representation. For this reason, it is essential that the attorney be in regular contact with a client. A trusting relationship develops over time and is based on solid, honest communication. No matter whom the attorney represents in the child welfare system, communication is necessary for high quality representation. During a proceeding the courts inquiry may include requests for information regarding the contacts made or attempted between an attorney and his or her client. However, the Court may not inquire about the content of the contact.

The lawyer has an obligation to explain clearly, precisely, and in terms the client can understand the meaning, implications and consequences of legal proceedings. A client may not understand the legal terminology and, for a variety of reasons, may choose a particular course of action without fully appreciating the implications.

With a child the potential for misunderstanding may be even greater. Therefore, the guardian ad litem has additional obligations based on the child's age, level of education, and language skills. There is also the possibility that, because of a particular child's developmental limitations, counsel may not completely understand the child's responses. Therefore, the guardian ad litem must learn how

to ask developmentally appropriate questions and how to interpret the child's responses. The guardian ad litem must be especially careful when interviewing children so as not to unduly influence the child's statements. The guardian ad litem shall work with social workers or other professionals to assess a child's developmental abilities and to facilitate communication.

At the initial stage of the case, the guardian ad litem should try to minimize the number of interviews a child has by speaking with other professionals or reviewing reports regarding the alleged abuse or neglect. The guardian ad litem should evaluate the impact of the child's participation in a criminal proceeding and take the necessary steps to safeguard the child's best interests.

B-2 Contact with Other Parties – Counsel shall not contact or interview other parties without permission from the party's attorney. This includes discussions with the child without permission from the guardian ad litem. The guardian ad litem may contact represented parties for the limited purpose of scheduling visits with the child. Counsel may not circumvent the Rules of Professional Conduct concerning communication with a represented party by asking a caseworker or other third party to ask the parents for information. *See* Legal Ethics Opinion 295.

Counsel may communicate with the caseworker unless, in exceptional cases, directed otherwise by the Assistant Corporation Counsel or caseworker's counsel.

In dealing with a person who is not represented by counsel, counsel shall not state or imply that he or she is disinterested, and when the unrepresented person misunderstands counsel's role, the lawyer shall make reasonable efforts to correct the misunderstanding.

Commentary –

See DC 4.1 Truthfulness in Statements to Others

DC 4.2 Communication Between Lawyer and Opposing Party

DC 4.3 Dealing with Unrepresented Person

DC 4.4 Respect for Rights of Third Persons

While child abuse and neglect proceedings may at times appear informal, it is important that all counsel fully respect the attorney-client relationship.

B-3 Investigation – Counsel should conduct a thorough, continuing and independent review and investigation of the case, including obtaining information, research and discovery to prepare the case for trial or post-adjudicatory proceedings. The investigation could include but is not limited to:

- Interviewing clients and individuals the client appropriately believes are potential witnesses;
- Identifying and interviewing potential witnesses such as school personnel, neighbors, relatives, foster parents, etc.;

- Talking with the client and the caseworker about necessary services for the client;
- Assisting the client in obtaining the needed services;
- Reviewing client's records including educational, psychological, psychiatric, medical, substance abuse treatment, law enforcement, and court files;
- Conferring with other counsel on the case about settlements or interviews with the other parties;
- Obtaining necessary authorizations for releases of information;
- Reviewing court files and other records concerning the child;
- Reviewing all relevant evidence, which may include photographs, tapes, etc.;
- Retaining the service of a private investigator or other experts when appropriate.

Commentary –

See Superior Court Neglect Rule – Discovery
DC 1.1 Competence

Conducting a thorough investigation is an essential aspect of competent representation because it is through this investigation that the attorney may learn necessary and relevant information about the case and preserve the client's rights.

C. Pre-trial Actions

C-1 Participation in Case Plan and Requests for Services – Counsel should attend case plan meetings. If there is a disagreement about the provision of services, counsel should make a formal request to the court or otherwise preserve the client's interests.

Office of the Corporation Counsel – The Office of the Corporation Counsel shall make efforts to assign an Assistant Corporation Counsel at CFSA's request to be present at case plan meetings.

Commentary –

A case plan meeting must occur within 60 days of the child's removal and the parents must be included in the plan. During these meetings, important decisions are made concerning services, permanency goals and tasks for each party to complete. It is important for counsel to monitor the meetings and request services that will, in the attorney's estimation, assist the client in reaching desired outcomes. A date for the case plan meeting should be established at the initial hearing. If it is not, counsel should request a date.

C-2 Filing Pleadings – When appropriate, counsel must file motions, requests for discovery, and responses and answers to pleadings filed by other parties. These pleadings must be thorough, accurate and timely. They must be served on all parties pursuant to Superior Court Rules.

C-3 Negotiating Settlements – Counsel should participate in settlement negotiations to seek the best result possible for the client consistent with the client's interests and directions to counsel. Counsel should consider using available settlement resources to narrow contested issues or reach global resolution. There are certain issues, however, that cannot be compromised, e.g., the child's health and safety. Prior to entering into any negotiations, counsel shall have sufficient knowledge of the strengths and weaknesses of the client's case, or of the issue under negotiation, to enable counsel to advise the client of the risks and benefits of settlement.

However, it is important for the attorney to keep the client's position in mind while negotiating. The attorney should use alternative dispute resolution resources when appropriate. Counsel shall never make a decision without consulting with his or her client.

Commentary –

See DC 1.2 Scope of Representation

Negotiated settlements often provide clients with a greater sense of ownership and empowerment because of their participation in the process. Direct participation in alternative dispute resolution leads to a higher degree of compliance with a plan and generally reduces delay, which can have a negative effect on the child and family. Furthermore, contested litigated actions are detrimental to the development of positive,

trusting relationships between parents, children, social workers and others involved in the case.

While all issues may not be resolved through an alternative dispute program, in the interest of reaching positive results for all parties, counsel should attempt to settle the case or as many issues as possible, through formal or informal alternative dispute methods.

C-4 Mediation – Counsel shall participate in mediation sessions in good faith. Good faith implies the obligation of full preparation prior to the mediation session, including appropriate consultation with clients and other parties, performance of site visits, investigation, research, and preparation of all required reports.

C-5 Evidence and Preparation for Hearings – Counsel shall prepare as early as possible for each hearing. Counsel should develop a witness list well in advance of a hearing. Counsel should subpoena witnesses and obtain records in a timely manner. Counsel should set aside adequate time to prepare their witnesses and exhibits before the

hearing. Counsel must follow the Superior Court Rules of Civil Procedure in preparing all cases.

Commentary –

See Superior Court Neglect Rules:

Service of Process

Service of Pleadings and Other Papers

Petition

Discovery

Mental and Physical Examinations

Motions

Preparation is the key to successfully resolving a case, either in negotiation or trial. By spending time preparing the case, counsel will generally save time later and will certainly provide a higher level of representation for the client. At a minimum, adequate preparation requires communicating with the client in advance of the hearing, attempting to resolve issues prior to the hearing, preparing witnesses in advance of the hearing, preparing exhibits and conducting necessary legal research on relevant topics when appropriate.

Counsel should present a written plan and/or position on behalf of the client as well as respond to inaccurate or unfavorable information presented about the client. Further, being familiar with and following the relevant Evidentiary and Procedural Rules governing proceedings before the Family Court, Neglect Branch in the District of Columbia Superior Court is vital.

D. Hearings

D-1 Court Appearances – Counsel must attend and be prepared for all hearings and participate in all telephone or other conferences with the court. If counsel has a conflict, he or she has an obligation to call the court's conflict line and notify the courtroom clerk and all other counsel. Counsel should maintain a manageable caseload to adequately represent clients and avoid numerous scheduling conflicts.

D-2 Client and Witness Testimony – Counsel should explain to the client and the witnesses in clear, developmentally appropriate language what is expected to happen before, during and after each hearing. Counsel should prepare clients and witnesses for direct and cross-examination.

D-3 Child as Witness – **In determining whether to call a child as a witness, counsel should consider the child's competency to testify and the need for the testimony.**

If counsel decides to call a child as a witness, counsel must contact the child's legal

representative (B-2) and may not have discussions with the child without permission from the guardian ad litem. If the guardian ad litem objects to discussion with the child, counsel must file the appropriate motions for relief.

If the child is to serve as a witness, the GAL shall ensure that the child is prepared to testify and understands the process of testifying in court.

Counsel should consider whether the child should be present at the hearings even if he or she is not testifying because the proceeding concerns the child's life and the child's input must be considered. In the event that the child does not testify, the guardian ad litem should present the child's position to the court and incorporate the child's position in the court record.

Commentary –

See Maryland v. Craig, 497 U.S. 836 (1990)

Hicks-Bey v. United States, 649 A.2d 569 (DC 1994)

Whitcomb, Debra. *When the Victim is a Child*, 2d ed. Washington DC: US Department of Justice, March 1992.

Testifying in court can be difficult for any witness, but may be even more so for a child. Counsel, even those representing parents, should be mindful of the negative impact testifying could have on the child and consider ways to lessen potential trauma to the child such as: taking the child to see the courtroom ahead of time, having the child testify in chambers, phrasing questions in ways the child can understand, keeping argumentative questions to a minimum, requesting support persons are present, using closed-circuit television, conducting trials at multidisciplinary centers or using special one-way mirrors during the child's testimony.

When considering whether to have a child appear in court when he or she is not testifying, thought should be given to the child's age, level of understanding of the proceedings, the child's desire to attend, the child's educational needs, activities and regular schedule, and whether the child would be traumatized by the experience. Some children benefit from being present in court and hearing directly from the judge and other parties about issues fundamental to their lives. Therefore, the guardian ad litem must carefully weigh the potential value to the child against any possible detrimental effects.

D-4 Motions and Objections – Counsel should make appropriate motions and evidentiary objections during hearings to advance the client's position. Counsel should file appropriate motions with memoranda of points and authorities and proposed orders in support of the client's position. Counsel must preserve legal issues for appeal.

Commentary –

See Superior Court Neglect Rule – Motions

D-5 Presentation of Evidence – When necessary to advance the client’s position, counsel must present and cross-examine witnesses and prepare and present exhibits.

Office of Corporation Counsel – It shall be the obligation of Corporation Counsel to present evidence in support of all petitions in the Superior Court of the District of Columbia.

Commentary –

See District of Columbia Code § 16-2316.

There may be times when the guardian ad litem’s position is the same as the government’s or a parent’s position. The guardian ad litem should communicate in advance with the Assistant Corporation Counsel or parents’ attorneys and coordinate the presentation of evidence, rather than duplicating efforts. However, the guardian ad litem should be prepared to fully participate in the hearing.

D-6 Conclusion of Hearing – Counsel may make a closing argument and when requested provide proposed findings of fact and conclusions of law. Counsel should take necessary actions to ensure a written order is entered and provided to the client.

Commentary –

See Superior Court Neglect Rule – Fact finding hearing

Superior Court Neglect Rule – Stipulations

Superior Court Neglect Rule – Dismissal

E. Post-Hearing

E-1 Reviewing Order with Client – The attorney and client shall review any written order to ensure it reflects the court’s oral order and the client understands what is required. If the client objects to the order, counsel should consider filing a motion to reconsider and/or pursuing an appeal if so directed by the client.

Commentary –

It is important to review the order with the client soon after the order is entered.

If the client has tasks to perform as a result of the order, the client needs to understand them and begin taking action immediately. In reviewing the order, the attorney should remind the client of the ASFA timelines and possible implications of compliance or non-compliance with the court order. If the client wants to pursue an appeal, the attorney must take action within the time allowed by District of Columbia statutes and Superior Court Rules.

E-2 Implementation of the Order – Counsel should monitor the client’s and agency’s efforts to implement the order and answer any questions the client may have about his or

her obligations under the order. Counsel should be available to assist the client in obtaining services or navigating the system.

Commentary –

See Superior Court Neglect Rule – Disposition
Superior Court Neglect Rule – Review

Counsel’s role since ASFA’s passage has expanded. Attorneys may find themselves helping clients obtain such services as counseling, housing or substance abuse treatment. While this is not the traditional role of the attorney, it may be the best way to help the client attain his or her goals.

The guardian ad litem must ensure that any apparent and legitimate claims available to the child are explored and, where appropriate, retain or request that the court appoint counsel to institute administrative or court actions related to the claim.

Counsel, and especially the guardian ad litem, may find there are issues presented by the case that are beyond the original appointment. These issues could include child support, delinquency proceedings, domestic violence, SSI and other benefits, personal injury, immigration, special education, probate matters or mental health proceedings.

F. Appeal

F-1 Decision to Appeal – Counsel shall consider and discuss with the client the client’s right to appeal and whether the appeal has merit. When discussing the possibility of an appeal, counsel should explain both positive and negative effects. Counsel should discuss with the client the possibility of expediting the appeal. Counsel should also discuss whether he or she will represent the client in the appeal or whether another attorney will be appointed.

If the client decides to appeal, trial counsel must file any necessary post-hearing motions and the notice to appeal, and he or she must order the transcript. If trial counsel does not serve as appellate counsel, he or she must transmit all documents relevant to the appeal to appellate counsel.

Trial counsel must protect his or her client’s interests by responding in a thorough and timely manner to any post trial motions, notice of appeal and order for transcript filed by any adverse party. This obligation remains in effect until appellate counsel has been appointed for his or her client.

Commentary –

See DC 3.1 Meritorious Claims and Contentions
DC 1.16 Declining or Terminating Representation
District of Columbia Code § 16-2328; 16-2329

Superior Court Neglect Rule – Reconsideration and interlocutory appeal of shelter care determination

F-2 While the Appeal is Pending – Trial counsel, if appointed to handle the appeal, must carefully review his or her obligations as defined by the Rules of the District of Columbia Court of Appeals.

F-3 Concluding Appeals – Trial counsel must communicate the result of an appeal and its implications to the client in a developmentally appropriate manner. If, as a result of the appeal, the client must take action in the case, counsel should instruct the client to do so. Counsel must file any necessary motions with the trial court that result from the appeal. If trial counsel did not handle the appeal, he or she must keep apprised of the matter and monitor whether necessary motions are filed with the trial court.

G. Effective Date

G-1 Effective immediately – These practice standards shall take effect immediately, except that attorneys already engaged in the practice of abuse and neglect law before the District of Columbia Family Court may satisfy the certification requirements of subsection **A-1** by June 1, 2003, and need not meet the training requirements applicable prior to an initial appointment. For the balance of 2003, attorneys already in practice may fulfill the annual training requirement by attending 12 hours of continuing, formal CCAN training.

G-2 After 2003 – **After calendar year 2003, all attorneys practicing abuse and neglect law before** the District of Columbia Family Court must fulfill all requirements of these Practice Standards and the requirements for membership in one or more of the practice panels to be established in the near future.

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VI. Internet Resources

American Bar Association Center on Children and the Law

<http://www.abanet.org/child>

Association of Family and Conciliation Courts

<http://www.afccnet.org>

Child Welfare League of America

<http://www.cwla.org>

Children's Defense Fund

<http://www.childrensdefense.org>

National Council of Juvenile and Family Court Judges

<http://www.ncjfcj.unr.edu/homepage>

National Court Appointed Special Advocate (CASA) Association

<http://www.nationalcasa.org>

Office of Juvenile Justice and Delinquency Prevention

<http://www.ojjdp.ncjrs.org>

U.S. Department of Health and Human Services

<http://www.acf.dhhs.gov>