

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

INTRODUCTION:

“Parents have a natural, legal, and moral right, as well as a duty, to care for and support their children and such rights are protected by state and federal laws as well as the Constitution. To that end, it is presumed that the best interests of a child are ordinarily served by leaving the child in the custody of the parents, who are expected to have the strongest bond of love and affection and to be best able to provide a child those needed qualities that make a child’s life safe and secure...” . 10A O.S. §1-1-102.

Attorneys who represent parents in child protective proceedings play a crucial role in safeguarding these liberty interests. The Standards for Attorneys Representing Parents in Deprived Child Proceedings are intended to serve several purposes.

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

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

Lastly, these Standards promote uniformity of practice throughout the state for parents’ attorneys in deprived child cases.

The terms “parent” and “client” are used interchangeably throughout the document. The Standards apply to all attorneys who represent parents in deprived child cases, whether they work for a legal organization or privately.

The Parent's Attorney shall:

A. General:

- A.1 Adhere to all educational and mentoring requirements before accepting a court appointment to represent a client in a deprived child proceeding.
- A.2 Acquire and maintain sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules.
- A.3 Acquire, maintain working knowledge of, and adhere to the provisions of federal and state Indian Child Welfare Acts (ICWA and OICWA) as well as the regulations and guidelines provided for the application of the Acts.
- A.4 Acquire and maintain a current working knowledge of the evaluation, diagnosis and treatment options, as well as the theories underlying the same for behaviors that may create risk which are common in child welfare cases, as well as available services and resources that address risk creating behaviors or environments.
- A.5 Acquire and maintain information on accessible child welfare, family preservation, medical, educational, addiction, and mental health resources for clients and their families, including placement, evaluation/diagnostic, and treatment services.
- A.6 Understand and protect the parent's rights to information and decision-making while the child is placed outside the home.
- A.7 Actively represent a parent in the pre-petition phase of a case.
- A.8 Avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the client.
- A.9 Cooperate and communicate regularly with other professionals in the case.
- A.10 Attend all court hearings until the case is closed or the client's parental rights have been terminated.
- A.11 Diligently and zealously protect and advance the client's interests, rights, and goals during all in-court proceedings and out-of-court activities.
- A.13 Devote the requisite amount of time to comply with the Standards of Practice and/or the Rules of Professional Conduct.

B. Relationship with the Client:

- B.1 Advocate for the client's goals and empower the client to direct the representation and make informed decisions based on thorough counsel.
- B.2 Act in accordance with the duty of loyalty owed to the client while adhering to all laws and ethical obligations concerning confidentiality.
- B.3 Provide the client with contact information and respond promptly to all contacts from the client concerning the client. Establish a system that promotes regular, timely, and adequate attorney/client two-way conversation.
- B.4 Counsel the client about all legal matters related to the case, including specific allegations against the client, the service plan, the client's rights in the pending proceedings, any orders entered against the client, and the potential consequences of failing to obey the court orders or cooperate with service plan.
- B.5 Provide the client 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.
- B.6 Work with the client to develop a case timeline and calendar system that informs the client of significant case events and court hearings and sets a timeframe describing when specific case requirements (such as services) should be completed.
- B.7 Identify any potential or actual conflict of interests that would impair the ability to represent a client. Notify the court as soon as practicable of the conflict to allow the court to appoint another attorney for the client prior to the next hearing.
- B.8 Take diligent steps to locate and communicate with an absent parent and decide representation strategies based on that communication or lack thereof. Be mindful of ethical considerations after a prolonged period without contact with the client and consider whether withdrawing from representation is required.
- B.9 Be aware of the unique issues an incarcerated or institutionalized parent faces and provide competent representation to that client by taking reasonable steps to communicate with that client and establishing a plan for the client to meaningfully participate in case-related events whenever possible.
- B.10 Be aware of the client's cognitive health status and be prepared to assess whether the parent can assist with the case.

- B.11 Continually reflect on personal bias and cultural humility and evaluate the impact of that personal bias on the representation of the client.
- B.12 Consider how racial, cultural, social, and economic differences may impact the attorney/client relationship.
- B.13 Determine how personal and systemic bias may influence the child welfare system decision making and how to mitigate the negative impact of personal and systemic bias on the client's case goals.
- B.14 Advocate for culturally appropriate supportive services with the child welfare agency and the court.

C. Case Preparation:

- C.1 Conduct a thorough and independent investigation at every stage of the proceeding.
- C.2 Speak with the client well before each hearing, in time to use client information for case investigation and preparation for hearings.
- C.3 Obtain all necessary documents, including copies of all pleadings, and information including records from the caseworker and providers. When necessary, seek an order from the court requiring the exchange of information.
- C.4 Consult with the client to develop a case theory and strategy.
- C.5 Assist in identifying potential kinship placements, as well as those kin who are willing to provide emotional and other support to the child and family.
- C.6 Timely file all pleadings, motions, and briefs.
- C.7 Research applicable legal issues and advance legal arguments when appropriate.
- C.8 Engage in multidisciplinary case planning and advocate for appropriate services and high quality family interaction. When appropriate, effectively participate with the client in family team meetings, mediation, and other negotiations.
- C.9 Thoroughly prepare the client in advance for all hearings, meetings, and other case events, including preparing the client to testify or respond to the court's inquiries.

C.10 Identify, secure, prepare and qualify witnesses, including experts, when needed. When permissible, interview opposing counsel's witnesses and experts.

C.11 Identify and prepare exhibits or other evidence.

D. Out-of-Court Advocacy:

D.1 Attend and advocate at meetings held out of court which are important and relevant to the client's case including, but not limited to meetings related to placement, treatment, family time (previously referred to as "visitation"), family services, permanency, transition planning, and educational or school meetings.

D.2 Work with other parties to reach stipulations and joint recommendations for placement, services, family time, etc.

D.3 Participate, if appropriate, in settlement negotiations and utilize suitable mediation and family conferencing resources to seek expeditious resolution of the case.

D.4 Monitor and ensure the timely implementation of court orders relevant to the client. When necessary, file motions to ensure compliance with court orders.

E. In-Court Advocacy:

E.1 Attend and prepare for all hearings, including pretrial conferences.

E.2 Advocate in and out of court on issues of family time, to ensure that family time between children and parents is a right and not a privilege. Aggressively advocate for regular and frequent family time in a family-friendly setting.

E.3 Prepare and file appropriate motions regarding evaluations, services, placement, family time, compelling reasonable or active efforts, compliance, etc. File objections and motions for reconsideration if appropriate.

E.4 Identify, prepare, and make all appropriate motions and evidentiary objections that require advance ruling by the court.

E.5 Object to repeated or prolonged continuance requests by other parties if the continuance would harm the client.

E.6 Present and cross-examine witnesses, including expert witnesses, offer exhibits, and present rebuttal testimony as necessary.

- E.7 Actively participate in jury selection and drafting jury instructions.
- E.8 Review court orders to ensure accuracy and clarity and review with client. Take reasonable steps to ensure the client complies with court orders and to determine whether the case needs to be brought back to court.

F. Post Hearings and Appeal:

- F.1 Explain the court order and discuss with the client all available options, including appeals.
- F.2 If the client decides to appeal, timely file requisite appeal documents, adhering to the specific timeframes and provisions of the Oklahoma Children's Code and the Oklahoma Supreme Court Rules.
- F.3 If lacking the necessary appellate experience or expertise to represent a client, the court should be notified for immediate appointment of new or substitute counsel.
- F.4 Communicate the results of the appeal and its implications to the client.
- F.5 Respond to inquiries from former client to ascertain if a duty is owed to file any post hearing motions or appeals. If proper, request the court to be reappointed and file all necessary pleadings in accordance with the Oklahoma Children's Code and the Oklahoma Supreme Court Rules.