

# Guidelines of Practice

## For Lawyers who Represent Parents in Chapter 39 Proceedings

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Committee on the Legal Needs of Children  
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**NOTICE TO READERS:**

These are practice “guidelines” of lawyers who represent parents in delinquency proceedings. They are the work product of The Florida Bar’s Standing Committee on the Legal Needs of Children. This compilation should not be referred to as “standards” because the work was never intended to prescribe such levels of professional behavior.

# PREFACE

## Preface to Parent Guidelines

Child welfare legal proceedings bring the power of the state to intervene in the most personal aspects of family life. The stakes are extraordinarily high – at one extreme, proceedings can result in the severance of the parent / child relationship - the civil equivalent of the death penalty. At the other extreme, even necessary and temporary separation of families can have long-lasting and deleterious consequences for children and parents. The longer families linger in the system, the greater the risk of adverse outcomes.

Given the serious nature and complexity of these legal proceedings it is vital that all parents receive the assistance of high-quality representation. A growing body of research shows that the provision of high-quality representation contributes or is associated with:

- increases in party perceptions of fairness;
- increases in party engagement in case planning, services and court hearings;
- more personally tailored and specific case plans and services;
- increases in visitation and parenting time;
- expedited permanency and
- cost savings to state government due to reductions of time children and youth spend in care.<sup>1</sup>

Research also shows that standards, or guidelines of practice, are an important aspect of providing high quality representation. With that in mind, these Guidelines were promulgated by The Florida Bar Standing Committee on the Legal Needs of Children. They are based on the ABA Model Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases issued in 2006. A large and diverse committee of dependency practitioners considered each model standard in light of current Florida law and practice and drafted these Guidelines to assist their colleagues.

The Guidelines do not have the force of law. They were designed to help attorneys comply with the Florida Rules of Professional Conduct but they are not authoritative interpretations of those Rules and a violation of these guidelines is not a basis for a disciplinary action. Furthermore, a violation of a guideline should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, a violation of a guideline does not necessarily warrant any other non-disciplinary remedy, such as disqualification of a lawyer in pending litigation. The guidelines are designed to provide guidance to lawyers.

It is hoped that publication and widespread dissemination of these Guidelines will promote high quality representation for all parents.

<sup>1</sup> ACYF-CB-IM-17-02, Children's Bureau Memo on High Quality Legal Representation for All Parties in Child Welfare Proceedings

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# Guidelines of Practice for Lawyers Who Represent Parents in Chapter 39 Proceedings: Summary of Provisions

## General

1. Adhere to all relevant jurisdiction specific training and mentoring requirements before accepting a court appointment to represent a parent in an abuse, abandonment, or neglect case.
2. Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, rules, and applicable timelines.
3. Understand and protect the parent's rights to information and decision making while the child is in out of home care.
4. If engaged prior to shelter, actively represent the parent.
5. Avoid continuances and work to reduce delays in court proceedings unless there is an emergency or to preserve the rights of the client.
6. Cooperate and communicate regularly with other professionals in the case.
12. Work with the client to develop a case timeline.
13. Provide the client with copies of all petitions, court orders, case plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule or court order.
14. Be alert to and avoid potential conflicts of interest that would interfere with the competent representation of the client.
15. Act in a culturally competent manner and with regard to the socioeconomic position of the parent throughout all aspects of representation.
16. Take diligent steps to locate and communicate with a missing parent and decide representation strategies based on that communication.
17. Be aware of the unique issues an incarcerated client faces and provide competent representation to the incarcerated client.

## Relationship with the Client

7. Advocate for the client's goals and empower the client to direct the representation and make informed decisions based on thorough counsel.
8. Act in accordance with the duty of loyalty owed to the client.
9. Adhere to all laws and ethical obligations concerning confidentiality.
10. Provide the client with contact information in writing and establish a communication system that allows regular attorney-client contact.
11. Meet and communicate regularly with the client before court proceedings. Counsel the client about all legal matters related to the case, within the scope of representation, including specific allegations against the client, the case plan, the client's rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with case plans.
18. Be aware of the client's health, mental health or disability status and be prepared to assess whether the parent can assist with the case and determine what additional actions the attorney must take to address the client's needs.

## Investigation

19. Conduct a thorough and independent investigation at every stage of representation throughout the entire case.
20. Interview the client well before each hearing, in time to use client information for the case investigation.

## Discovery

21. Obtain all necessary documents, including but not limited to copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers.

- a. Review Case File
- b. Obtain Records
- c. Use additional formal discovery methods to obtain information

### Court Preparation

22. Develop a case theory and strategy to follow at hearings and negotiations.
23. Timely file all pleadings, motions, and briefs. Research applicable legal issues and advance legal arguments when appropriate.
24. Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.
25. Aggressively advocate for regular visitation in a family-friendly setting.
26. With the client's permission, and when appropriate, engage in settlement negotiations and mediation to resolve the case.
27. Thoroughly prepare the client to testify at the hearing.
28. Identify, locate and prepare all witnesses.
29. Identify, secure, prepare and qualify expert witness when needed. When possible, interview opposing counsel's experts.

### Hearings

30. Attend and prepare for all hearings, including pretrial conferences.
31. Prepare and make all appropriate motions and evidentiary objections.
32. Present and cross-examine witnesses, prepare and present exhibits.
33. Request closed proceedings (or a cleared courtroom) in appropriate cases.
34. Request the opportunity to make opening statements and closing arguments.
35. Prepare proposed findings of fact, conclusions of law and orders when they will be used in the court's decision or may otherwise benefit the client.

### Post Hearings/Appeals

36. Review court orders to ensure accuracy and clarity and review with client.
37. Take reasonable steps to ensure the client complies with court orders and to determine whether the case needs to be brought back to court.
38. Consider and discuss the possibility of appeal or extraordinary writ with the client.
39. If the client decides to appeal or seek an extraordinary writ, timely and thoroughly file the necessary post-hearing motions and paperwork and closely follow Rules of Appellate Procedure.
40. Communicate the results of the appeal or extraordinary writ and its implications to the client.

# Guidelines of Practice for Lawyers who Represent Parents in Chapter 39 Proceedings

The parent's attorney shall:

## General

1. **Adhere to all relevant jurisdiction-specific training and mentoring requirements before accepting a court appointment to represent a parent in an abuse, abandonment, or neglect case.**

Action: The parent's attorney must participate in all required training and mentoring before accepting an appointment.

Commentary: As in all areas of law, it is essential that attorneys learn the substantive law as well as local practice. A parent's fundamental liberty interest in the care and custody of his or her child is at stake, and the attorney must be adequately trained to protect this interest. Because the stakes are so high, all parents' attorneys should receive a minimum of 20 hours of relevant training before receiving an appointment and a minimum of 15 hours of related training each year. Training should directly relate to the attorney's child welfare practice. In addition, the parent's attorney should actively participate in ongoing training opportunities. Even if the attorney's jurisdiction does not require training or mentoring, the attorney should seek it. Training may include relevant online or video training.

2. **Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, rules, and applicable timelines.**

Action: Parents' attorneys may come to the practice with competency in the various aspects of child abuse and neglect practice, or they need to be trained on them. It is essential for the parent's attorney to read and understand all state laws, policies and procedures regarding child abuse and neglect. In addition, the parent's attorney must be familiar with the following laws to recognize when they are relevant to a case and should be prepared to research them when they are applicable:

- Florida Statutes including but not limited to Chapters: 39, 63, 110, 393, 402, 409, 414, 741, 744 751, 827
- Florida Administrative Code, including but not limited to Section 65C
- Department of Children and Families Operating Procedures and Policy Memoranda.
- Florida Rules of: Juvenile Procedure, Appellate Procedure, Civil Procedure, Evidence, and Family Law.
- Florida Bar Rules of Professional Responsibility
- Titles IV-B and IV-E of the Social Security Act, including the Adoption and Safe Families Act (ASFA), and the Family First Prevention and Services Act of 2017, 42 U.S.C. §§ 620-679 and the ASFA Regulations, 45 C.F.R. Parts 1355, 1356, 1357.
- Child Abuse Prevention Treatment Act (CAPTA), P.L. 108-36
- Indian Child Welfare Act (ICWA) 25 U.S.C. §§ 1901-1963, the ICWA Regulations, 25 C.F.R. Part 23, and the Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67, 584 (Nov. 26, 1979)

- Florida's implementation of Indian Child Welfare Act 65C-28.103 Florida Administrative Code.
- Multi-Ethnic Placement Act (MEPA), as amended by the Inter-Ethnic Adoption Provisions of 1996 (MEPA-IEP) 42 U.S.C. § 622 (b)(9) (1998), 42
- U.S.C. § 671(a)(18) (1998), 42 U.S.C. § 1996b (1998).
- Interstate Compact on Placement of Children (ICPC)
- Foster Care Independence Act of 1999 (FCIA), P.L. 106-169 Individuals with Disabilities Education Act (IDEA), P.L. 91-230 Family Education Rights Privacy Act (**FERPA**), **20 U.S.C. § 1232g**
- Health Insurance Portability and Accountability Act of 1996 (HIPAA), P. L., 104 - 192 § 264, 42 U.S.C. § 1320d-2 (in relevant part)
- Public Health Act, 42 U.S.C. Sec. 290dd-2 and 42 C.F.R. Part 2 Immigration laws relating to child welfare and child custody
- The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption; Intercountry Adoption Act of 2000; 22 CFR Sections 96-99
- Federal and state document repositories: Child Welfare Information Gateway, and the USF Center for Child Welfare

**Commentary:** Although the burden of proof is generally on the child welfare agency to demonstrate probable cause, in practice the parent and the parent's attorney generally must demonstrate that the parent can adequately care for the child. The parent's attorney must consider all obstacles to this goal, such as criminal charges against the parent, immigration issues, substance abuse or mental health issues, confidentiality concerns, permanency timelines, and the child's individual service issues. To perform these functions, the parent's attorney must know enough about all relevant laws to vigorously advocate for the parent's interests. Additionally, the attorney must be able to use procedural, evidentiary and confidentiality laws and rules to protect the parent's rights throughout court proceedings.

### **3. Understand and protect the parent's rights to information and decision making while the child is in out of home care.**

**Action:** The parent's attorney must explain to the parent what decision-making authority remains with the parent and what lies with the child welfare agency while the child is in out of home care. The parent's attorney should seek updates and reports from any service provider working with the child/family or help the client obtain information about the child's safety, health, education and well-being when the client desires. Where decision-making rights remain, the parent's attorney should assist the parent in exercising his or her rights to continue to make decisions regarding the child's medical, mental health and educational services. If necessary, the parent's attorney should intervene with the child welfare agency, provider agencies, medical providers and the school to ensure the parent has decision-making opportunities. This may include seeking court orders when the parent has been left out of important decisions about the child's life.

**Commentary:** Unless and until parental rights are terminated, the parent has parental obligations and rights while a child is in out of home care, which usually include the right to make a private adoptive placement for a child. Advocacy may be necessary to ensure the parent is allowed to remain involved with key aspects of the child's life. Not only should the parent's rights be protected but continuing to exercise as much parental responsibility as possible is often an effective strategy to speed family reunification.

Often, though, a parent does not understand that he or she has the right to help make decisions for, or obtain information about, the child. Therefore, it is the parent's attorney's responsibility to counsel the client and help the parent understand his or her rights and responsibilities and try to assist the parent in carrying them out.

#### **4. If engaged prior to shelter, actively represent the parent.**

Action: The goal of representing a parent prior to shelter is often to deter the agency from deciding to file a petition or to deter the agency from attempting to remove the client's child if a petition is filed. The parent's attorney should counsel the client about the client's rights in the investigation stage as well as the realistic pros and cons of cooperating with the child welfare agency (i.e., the parent's admissions could be used against the client later but cooperating with services could eliminate a shelter petition filing). The parent's attorney should acknowledge that the parent may be justifiably angry that the agency is involved with the client's family, and help the client develop strategies so the client does not express that anger toward the caseworker in ways that may undermine the client's goals. The attorney should discuss available services and help the client enroll in those in which the client wishes to participate. The attorney should explore conference opportunities with the agency. If it would benefit the client, the attorney should attend any conferences or team meetings. There are times that an attorney's presence in a conference can shut down discussion, and the attorney should weigh that issue when deciding whether to attend. The attorney should prepare the client for issues that might arise at the conference, such as services and available kinship resources, and discuss with the client the option of bringing a support person to a conference.

Commentary: Parents who can obtain counsel can benefit from early representation. During the prepetition phase, the parent's attorney has the opportunity to work with the parent and help the parent fully understand the issues and the parent's chances of retaining custody of the child. The parent's attorney 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 attorney should work intensively with the parent to explore all appropriate services.

#### **5. Avoid continuances and work to reduce delays in court proceedings unless there is an emergency or to preserve the rights of the client.**

Action: The parent's attorney should not request continuances unless there is an emergency or to preserve the rights of the client. If continuances are necessary, the parent's attorney should request the continuance in writing, as far as possible in advance of the hearing, and should request the shortest delay possible, consistent with the client's interests. The attorney must notify all counsel of the request. The parent's attorney should object to repeated or prolonged continuance requests by other parties if the continuance would harm the client.

Commentary: Delaying a case often increases the time a family is separated and can reduce the likelihood of reunification. Appearing in court often motivates parties to comply with orders and cooperate with services. When a judge actively monitors a case, services are often put in place more quickly, visitation may be increased or other requests by the parent may be granted. If a hearing is continued and the case is delayed, the parent may lose momentum in addressing the issues that led to the child's removal or the parent may lose the opportunity to prove compliance with case plan goals. Additionally, state and federal timelines continue to run despite continuances.

#### **6. Cooperate and communicate regularly with other professionals in the case.**

Action: The parent's attorney should communicate with attorneys for the other parties. Similarly, the parent's attorney should communicate with the "participants" and persons connected with the family such as caseworkers, caregivers, relatives, nonrelatives, service providers, and others, as appropriate, to learn about the client's progress and their views of the case, as appropriate. The parent's attorney should have open lines of communication with the attorney(s) representing the client in related matters (e.g. criminal, child support, family, guardianship, injunction, Baker Act, and Marchman Act) so as to mitigate any conflicts with the client's goals in the dependency case.

Commentary: The parent's attorney must have all relevant information to try a case effectively. This requires open and ongoing communication with the other attorneys and service providers working with the client and family. Rules of professional ethics govern contact with represented and unrepresented parties. Because Florida has contracted out different aspects of child welfare in different jurisdictions, attorneys must take special care to determine whether an individual is employed by a represented party. For example, in some circuits the Child Protective Investigators are employees of a represented party, the Department of Children and Families, but in other circuits they are employees of a Sheriff's department which is not a represented party. The parent's attorney must seek permission to speak with represented parties when that would further the client's interests.

## Relationship with the Client

### 7. Advocate for the client's goals and empower the client to direct the representation and make informed decisions based on thorough counsel.

Action: Attorneys representing parents must understand the client's goals and pursue them vigorously. The attorney should explain that the attorney's job is to represent the client's interests and regularly inquire as to the client's goals, including ultimate case goals and interim goals. The attorney should explain all legal aspects of the case and provide comprehensive counsel on the advantages and disadvantages, including the likelihood of success, of different options. At the same time, the attorney should be careful not to usurp the client's authority to decide the case goals.

Commentary: Since many clients distrust the child welfare system, the parent's attorney must take care to distinguish him or herself from others in the system so the client can see that the attorney serves the client's interests. The attorney should be mindful that parents often feel disempowered in child welfare proceedings and should take steps to make the client feel comfortable expressing goals and wishes without fear of judgment. The attorney should clearly explain the legal issues as well as expectations of the court and the agency, and potential consequences of the client failing to meet those expectations.

The attorney has the responsibility to provide expertise, and to make strategic decisions about the best ways to achieve the parent's goals, but the client is in charge of deciding the case goals and the attorney must act accordingly.

These Guidelines emphasize the need for parent attorneys to be both counselors at law and zealous legal advocates. Federal guidance on high quality representation has noted that traditional, zealous legal representation is necessary, but insufficient to achieve the best outcomes for parents and families. Rather, the complexities of child welfare proceedings require the parent attorney to simultaneously assume multiple roles including: advisor, teacher and advocate. It is through this combination of roles that comprehensive representation and the best possible outcome are achieved.

### 8. Act in accordance with the duty of loyalty owed to the client.

Action: Attorneys representing parents should show respect and professionalism towards their clients. Parents' attorneys should support their clients and be sensitive to the client's individual needs. Attorneys should remember that they may be the client's only advocate in the system and should act accordingly.

Commentary: Often attorneys practicing in dependency court are a close-knit group who work and sometimes socialize together. Maintaining good working relationships with other players in the child welfare system is an important part of being an effective advocate. The attorney, however, should be vigilant against allowing the attorney's own interests in relationships with others who also work in the system to interfere with the attorney's primary responsibility to the client. The attorney should not give the impression to the client that relationships with other attorneys are more important than the representation the attorney is providing

the client. The client must feel that the attorney believes in him or her and is actively advocating on the client's behalf.

## **9. Adhere to all laws and ethical obligations concerning confidentiality.**

Action: Attorneys representing parents must understand confidentiality laws, as well as ethical obligations, and adhere to both with respect to information obtained from or about the client. The attorney must fully explain to the client the advantages and disadvantages of choosing to exercise, partially waive, or waive a privilege or right to confidentiality. Consistent with the client's interests and goals, the attorney must seek to protect from disclosure confidential information concerning the client.

Commentary: Confidential information contained in a parent's substance abuse treatment records, domestic violence treatment records, mental health records and medical records is often at issue in dependency cases. Improper disclosure of confidential information early in the proceeding may have a negative impact on the manner in which the client is perceived by the other parties and the court. For this reason, it is crucial for the attorney to advise the client promptly as to the advantages and disadvantages of releasing confidential information, and for the attorney to take whatever steps necessary to protect the client's privileges or rights to confidentiality. This may include reviewing releases or other documents before the client signs them. When there are multiple parents involved, or other persons who may have access to the file, the attorney should consider taking affirmative steps to preclude the improper disclosure of confidential information.

## **10. Provide the client with contact information in writing and establish a communication system that allows regular attorney-client contact.**

Action: The parent's attorney should ensure the parent understands how to contact the attorney, that the attorney knows how to contact the parent, and that the attorney wants to hear from the client on an ongoing basis. The attorney should explain that even when the attorney is unavailable, the parent should leave a message. The attorney must respond to client messages in a reasonable time period. The attorney and client should establish a reliable communication system that meets the client and attorney's needs. For example, it may involve telephone contact, email, text message or private messaging through social media or communication through a third party when the client agrees to it in writing. Interpreters should be used when the attorney and client are not fluent in the same language.

Commentary: Gaining the client's trust and establishing ongoing communication are two essential aspects of representing the parent. The parent may feel angry and believe that all of the attorneys in the system work with the child welfare agency and against that parent. It is important that the parent's attorney, from the outset, is clear with the parent that the attorney works for the parent, is available for consultation, and wants to communicate regularly. This will help the attorney support the client, gather information for the case, and learn of any difficulties the parent is experiencing that the attorney might help address. The attorney should explain to the client the benefits of bringing issues to the attorney's attention rather than letting problems persist. The attorney should also explain that the attorney is available to intervene when the client's relationship with the agency or provider is not working effectively. The attorney should be aware of the client's circumstances, and available technology in order to tailor the communication system to the individual client.

## **11. Meet and communicate regularly with the client before court proceedings. Counsel the client about all legal matters related to the case, within the scope of representation, including specific allegations against the client, the case plan, the client's rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with case plans.**

**Action:** The parent's attorney should spend time with the client to prepare the case and address questions and concerns. The attorney should clearly explain the allegations made against the parent, what is likely to happen before, during and after each hearing, and what steps the parent can take to increase the likelihood of reunification with the child. The attorney should explain any settlement options and determine whether the client wants the attorney to pursue such options. The attorney should explain courtroom procedures. The attorney should communicate with the client to ensure the client understands what happened in court and what is expected of the client.

The attorney should ensure an interpreter is involved when the attorney and client are not fluent in the same language. The attorney should advocate for the use of an interpreter when other professionals in the case who are not fluent in the same language as the client are interviewing the client.

The attorney should be prepared to answer the client's questions and address the client's concerns. The attorney and client should work together to identify and review short and long-term goals, particularly as circumstances change during the case.

The parent's attorney should help the client access information about the child's developmental and other needs by speaking to service providers and reviewing the child's records. The parent needs to understand these issues to make appropriate decisions for the child's care.

The parent's attorney and the client should identify barriers to the client engaging in services, such as employment, transportation, and finances. The attorney should work with the client, caseworker and service provider to resolve any barriers.

The attorney should be aware of any special issues the parents may have related to participating in the proposed case plan, such as an inability to read or language differences, and advocate with the child welfare agency and court for appropriate accommodations.

The attorney should counsel the client on the potential negative effects of information posted on social media.

**Commentary:** The parent's attorney's job extends beyond the courtroom. Within the scope of representation, the attorney should be a counselor as well as litigator. The attorney should be available to talk with the client to prepare for hearings and to provide advice and information about ongoing concerns. Open lines of communication between attorneys and clients help ensure clients obtain answers to questions and attorneys obtaining necessary information and documents.

## **12. Work with the client to develop a case timeline.**

**Action:** At the beginning of a case, the parent's attorney and client should develop a timeline that reflects projected deadlines and important dates as well as a calendar system to remember the dates. The timeline should specify what actions the attorney and parent will need to take and dates by which they will be completed. The attorney and the client should know when important dates will occur and should be focused on accomplishing the objectives in the case plan in a timely way. The attorney should provide the client with a timeline/calendar, outlining known and prospective court dates, service appointments, deadlines and critical points of attorney-client contact. The attorney should record federal and state law deadlines in the system.

**Commentary:** Having a consistent calendaring system can help an attorney manage a busy caseload. The attorney should help the client select a means of keeping track of appointments and important dates that is available to the client and easy for the client to use. This helps parents stay focused on accomplishing case plan goals and meeting court-imposed deadlines.

**13. Provide the client with copies of all petitions, court orders, case plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule or court order.**

Action: The parent's attorney should provide all written documents to the client or ensure that they are provided in a timely manner and ensure the client understands them. If the client has difficulty reading, the attorney should read the documents to the client. In all cases, the attorney should be available to discuss and explain the documents to the client. The parent's attorney should seek an order or case plan language that requires all documents that the parent is asked to sign be provided to counsel for review prior to obtaining the client's signature.

Commentary: The parent's attorney should ensure the client is informed about what is happening in the case. Clients should be provided materials in manner and in a language that they understand and is accessible to them. Part of doing so is providing the client with written documents and reports relevant to the case. If the client has this information, the client will be better able to assist the attorney with the case and fulfill his or her parental obligations. The attorney must be aware of any allegations of domestic violence in the case and not share confidential information about an alleged or potential victim's location.

**14. Be alert to and avoid potential conflicts of interest that would interfere with the competent representation of the client.**

Action: The parent's attorney must not represent both parents if their interests differ. The attorney should generally avoid representing both parents when there is even a potential for a conflict of interest. In situations involving allegations of domestic violence, the attorney should never represent both parents.

Commentary: In most cases, an attorney should avoid representing both parents in an abuse or neglect case. In the rare case in which an attorney, after careful consideration of potential conflicts, may represent both parents, it must be with their informed consent. Even in cases in which there is no apparent conflict at the outset, conflicts may arise as the case proceeds. If this occurs, the attorney might be required to withdraw from representing one or both parents. This could be difficult for the clients and delay the case. Other examples of potential conflicts of interest that the attorney should avoid include representing multiple fathers in the same case or representing parties in a separate case who have interests in the current case.

In analyzing whether a conflict of interest exists, the attorney must consider "whether pursuing one client's objectives will prevent the lawyer from pursuing another client's objectives, and whether confidentiality may be compromised."

**15. Act in a culturally competent manner and with regard to the socioeconomic position of the parent throughout all aspects of representation.**

Action: The parent's attorney should understand the client's background, determine how that background impacts the client's case, and always show the client respect. The attorney must understand how cultural and socioeconomic differences impact interactions with clients and must interpret the client's words and actions accordingly. The parent's attorney should request an interpreter as a reasonable accommodation for all cases in which the lawyer is not confident that the parent understands and communicates in a language that both the lawyer and client speak.

Commentary: The child welfare system is comprised of a diverse people. Each client and professional comes to this system with his or her own set of values and expectations, but it is essential that each person understand the backgrounds of others. An individual's race, ethnicity, gender, sexual orientation and socioeconomic

position all have an impact on how the person acts and reacts in particular situations. The parent's attorney must be vigilant against imposing the attorney's values onto the client, and should, instead, work with the client within the context of their culture and socioeconomic position. While the court and child welfare agency have expectations of parents in their treatment of children, the parent's attorney must strive to explain these expectations to the clients in a sensitive way. The parent's attorney should also try to explain how the client's background might affect the client's ability to comply with court orders and agency requests.

**16. Take diligent steps to locate and communicate with a missing parent and decide representation strategies based on that communication.**

Action: Upon accepting an appointment, the parent's attorney should communicate to the client the importance of staying in contact with the attorney. While the attorney must communicate regularly with the client and be informed of the client's wishes before a hearing, the client also must keep in contact with the attorney. At the outset, the attorney should tell the client how to contact the attorney and discuss the importance of the client keeping the attorney and the caseworker informed of changes in address, phone numbers, and current whereabouts.

The parent's attorney should attempt to locate and communicate with missing parents to formulate what position the attorney should take at hearings, and to understand what information the client wishes the attorney to share with the child welfare agency and the court. If, after diligent steps, the attorney is unable to communicate with the client, the attorney should assess whether the client's interests are better served by advocating for the client's last clearly articulated position or decline to participate in further court proceedings and should act accordingly. After a prolonged period without contact with the client, the attorney should consider withdrawing from representation.

Commentary:

*Diligent Steps to Maintain Communication:* The attorney should work with the client to establish multiple means of communication, which may include the attorney providing the client with an email address, physical address, cell phone, office phone, and retrieving reciprocal information from the client. The attorney should also request that the client identify a third-party contact that the lawyer can contact when unable to locate the client. The attorney may also consider helping the client create an email address or other form of communication.

*Diligent Steps to Locate:* To represent a client adequately, the attorney must know what the client wishes. It is, therefore, important for parents' attorneys to take diligent steps to locate missing clients. Diligent steps can include speaking with the client's family, the caseworker, the foster care provider and other service providers. It may include contacting the Department of Corrections, local jails, Social Security Administration, and Child Support Office, and sending letters by regular and certified mail to the client's last known address. The attorney may also visit or send an investigator to the client's last known address and ask anyone who lives there for information about the client's whereabouts. Additionally, the attorney should leave business cards with contact information with anyone who might have contact with the client as long as this does not compromise confidentiality. The attorney should consider the client's instructions about communication with specific persons and the possible effect of a search method prior to undertaking it.

*Unsuccessful Efforts to Locate:* If the attorney is unable to find and communicate with the client after initial consultation, the attorney should assess what action would best serve the client's interests. This decision must be made on a case-by-case basis. In some cases, the attorney may decide to take a position consistent with the client's last clearly articulated position. In other cases, the client's interests may be better served by the attorney declining to participate in the court proceedings in the absence of the client because that may better protect the client's right to vacate orders made in the client's absence.

**17. Be aware of the unique issues an incarcerated client faces and provide competent representation to the incarcerated client.**

Action: The parent's attorney must be particularly diligent when representing an incarcerated parent. The attorney must be aware of the reasons for the incarceration, the length of the incarceration, and location of the parent's correctional facility or jail.

*Permanency/Case Planning:* Incarcerated parents have the right to participate in case planning and be provided information regarding the services available to them. The attorney should seek to hold the child welfare agency accountable and bring the matter to the court's attention if the agency fails to comply with its statutory obligations. The parent's attorney should also counsel the incarcerated parent regarding his/her responsibility for complying with the facility's procedures and policies to access services or maintain contact with his or her child as provided in the case plan.

If a parent becomes incarcerated subsequent to case plan development, the parent's attorney must be prepared to argue for or against any amendments to the parent's case plan due to the incarceration. This includes possible modifications regarding visitation and contact, identification of services within the facility, or arguing against a change in a permanency goal or establishing a concurrent case plan goal. The parent's attorney must also be prepared to argue for or against any amendments to the parent's case plan or case plan goal once a parent is released from incarceration.

The attorney should help the client identify potential relative or non-relative placements who can provide care for the child while the parent is incarcerated. The State may choose to terminate an incarcerated parent's rights without first providing a case plan in certain circumstances. If this is the case, the attorney must be prepared to argue against a termination of parental rights petition.

*Services:* Obtaining services such as substance abuse treatment, parenting skills, or job training while in jail or prison is often difficult. The parent's attorney will need to hold the child welfare agency accountable for identifying and assisting the parent in accessing services. The attorney may assist the client with identifying and obtaining these services.

If the parent is incarcerated in federal prison, the Bureau of Prisons website ([www.bop.gov](http://www.bop.gov)) contains information for each federal facility and handbooks for each facility are available online. These handbooks include information regarding programs and services available to the inmates. The attorney may call the facility directly, however, to confirm what services and programs are available.

If the attorney's client is incarcerated in a county jail, the attorney may contact the county jail directly to obtain a list of programs and services that are available to the incarcerated parent

*Communication:* The parent's attorney should counsel the client on the importance of maintaining regular contact with the child, the Department, and the Guardian ad Litem while incarcerated. The attorney may assist in developing a plan for communication and visitation by obtaining necessary court orders and working with the caseworker as well as the parent's classifications officer or chaplain.

If the client cannot meet the attorney before court hearings, the attorney must find alternative ways to communicate. This may include visiting the client in prison or engaging in more extensive phone or mail contact than with other clients. The attorney should be aware of the challenges to having a confidential conversation with the client, and attempt to resolve that issue.

The parent's attorney should also communicate with the parent's criminal defense attorney and or their staff to establish communications and discuss the case. There may be issues related to self-incrimination as well as concerns about delaying the abuse and neglect case to strengthen the criminal case or vice versa.

*Appearance in Court:* The client's appearance in court frequently raises issues that require the attorney's attention in advance. The attorney should find out from the client if the client wants to be present in court. In some prisons, inmates lose privileges if they are away from the prison, and the client may prefer to stay at the prison. If the client wants to be present in court, the attorney should work with the attorney for the Department and the court to obtain a writ of habeas corpus for the client to be transported from the prison. Alternatively, the attorney should ensure that the parent's telephonic appearance at the hearing is arranged. The attorney should explain to any client hesitant to appear, that the case will proceed without the parent's presence and raise any potential consequences of that choice. If the client does not want to be present, or if having the client present is not possible, the attorney should be educated about what means are available to have the client participate, such as by telephone or video conference. The attorney should make the necessary arrangements for the client. Note that it may be particularly difficult to get a parent transported from an out-of-state prison or a federal prison.

**18. Be aware of the client's health, mental health, or disability status and be prepared to assess whether the parent can assist with the case and determine what additional actions the attorney must take to address the client's needs.**

*Action:* Attorneys representing parents must be able to determine whether a client's mental status (including mental illness, intellectual disability or cognitive impairment) interferes with the client's ability to make decisions about the case. The attorney should be familiar with any mental health diagnosis and treatment that a client has had in the past or is presently undergoing (including any medications for such conditions). The attorney should get consent from the client to review mental health records and to speak with former and current mental health providers. The attorney should explain to the client that the information is necessary to understand the client's capacity to work with the attorney. If the client's situation seems severe, the attorney should also explain that the attorney may seek the assistance of a clinical social worker or some other mental health expert to evaluate the client's ability to assist the attorney.

Attorneys representing clients with disabilities should endeavor to understand their client's needs in order to determine what services and accommodations can help them parent successfully. The attorney should seek those accommodations and services early in the case; closely monitor their provision; and if unable to informally secure them, challenge the agency's refusal to provide accommodations in court as a failure of reasonable efforts. Attorneys should scrutinize the parenting and bonding assessments that are performed on clients to ensure that they are evidence based and that the evaluator has the training and expertise to work with people with the client's disability.

*Commentary:* Many parents charged with abuse and neglect have serious or long-standing mental health challenges. However, not all of those conditions or diagnoses preclude the client from participating in the defense. Whether the client can assist counsel is a different issue from whether the client is able to parent the children, though the condition may be related to ability to parent. While the attorney is not expected to be a mental health expert, the attorney should be familiar with mental health conditions and should review such records carefully. If the attorney believes that the client's medication impairs the client's ability to assist counsel, the attorney may seek an independent medical evaluation to determine whether the parent is over-medicated to the point of impairment. The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. If the client seems unable to assist the attorney in case preparation, the attorney should seek an assessment of the client's capacity from a mental health expert. Attorneys should also review Florida Rules of Professional Conduct, 4-1.14 Client Under a Disability.

Having a disability is not a ground for dependency or termination of parental rights under Florida law. Parents with disabilities have the right to reasonable accommodations under state and federal law, and failure to provide those accommodations can be challenged as a failure to make reasonable efforts. In order to be successful with those legal arguments, however, the parent's attorney will need to show that the services and

accommodations will benefit the client. That is why knowing the client is an important first step. The attorney should learn the client's symptoms, triggers, medications, and daily challenges. Find out who is working with the client - services providers, peer and informal support and learn from them the needs and opportunities. Focus on the client's parenting strengths and abilities. Attorneys who not already familiar with the parent's disability should conduct research and identify resources to help them understand the strengths, needs and issues related to the disability.

**Examples of modifications that can be requested include:**

- Increase the frequency or length of service provision.
- Ensure the service provider has experience working with parents and the specific disability at issue in the case.
- Provide services at a parent's home or alternate accessible site. If the parent uses a wheelchair, make sure the parent can enter the location where the service is provided.
- Give the parent frequent reminders for services.
- Provide accessible transportation to services.
- Provide information about services in an accessible format (large print, audio tape, braille, digital format).
- Offer note taking of meetings and court activities, especially for parents who are deaf or hard of hearing.
- Provide assistance with reading materials and interpreters if needed.
- Provide day care and respite care services, particularly for parents with psychiatric disabilities who may need to be hospitalized for medication changes.
- Provide foster family or informal support networks (churches, family helper or child care assistant, aide or personal assistant).
- Arrange housekeeping services.
- Arrange adaptive equipment (ramps, lowered counters, adapted doorknobs).

**Resources:**

**National Research Center for Parents with Disabilities**, <https://heller.brandeis.edu/parents-with-disabilities/>

**Representing Parents with Disabilities: Best Practice**, [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-34/february-2015/representing-parents-with-disabilities--best-practice/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/february-2015/representing-parents-with-disabilities--best-practice/)

**Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children** <https://ncd.gov/publications/2012/Sep272012>

**Services for Parents with Disabilities**, <https://www.childwelfare.gov/topics/systemwide/service-array/services-to-children-and-youth-with-disabilities/youth/disabilities/>

**Through the Looking Glass** provides technical assistance and consultations regarding parents with disabilities <https://www.lookingglass.org/home>

## Investigation

### 19. Conduct a thorough and independent investigation at every stage of representation throughout the entire case.

Action: The parent's attorney must take all necessary steps to prepare to represent the client. A thorough investigation is an essential element of representation. The parent's attorney cannot rely solely on what the agency caseworker reports about the parent. Rather, the attorney should contact service providers who work with the client, relatives who can discuss the parent's care of the child, the child's teacher or other people who can clarify information relevant to the case. If necessary, the attorney should seek funds to hire an investigator.

Commentary: In some jurisdictions, parents' attorneys work with social workers or investigators who can meet with clients and assist in investigating the underlying issues that arise as cases proceed. In jurisdictions where those resources are not automatically provided, court-appointed attorneys, and those whose clients are deemed "indigent for costs," should obtain investigative or social work resources by using the appropriate mechanism to obtain state funds for payment of "due process" costs. If, however, the attorney is not able to obtain additional resources, the attorney is still responsible for gaining all pertinent case information.

### 20. Interview the client well before each hearing, in time to use client information for the case investigation.

Action: The parent's attorney should meet with the parent regularly throughout the case. The meetings should occur well before the hearing, not at the courthouse just minutes before the case is called before the judge. The attorney should ask the client questions to obtain information to prepare the case and strive to create a comfortable environment so the client can ask the attorney questions. The attorney should use these meetings to prepare for court as well as to counsel the client concerning issues that arise during the course of the case. Information obtained from the client should be used to propel the investigation.

Commentary: Often, the client is the best source of information for the attorney, and the attorney should set aside time to obtain that information. Since the interview may involve disclosure of sensitive or painful information, the attorney should explain attorney-client confidentiality to the client. The attorney may need to work hard to gain the client's trust, but if a trusting relationship can be developed, the attorney will have an easier time representing the client. The investigation will be more effective if guided by the client, as the client generally knows firsthand what occurred in the case.

## Discovery

### 21. Obtain all necessary documents, including but not limited to copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers.

#### a. Review Case File

Action: The parent's attorney should obtain and review the case file as early during the course of representation as possible. The file contains useful documents that the attorney may not yet have and will instruct the attorney on the agency's case theory. If the agency case file is inaccurate, the attorney should seek to correct it. The attorney must read the case file periodically because information is continually being added by the agency.

**Commentary:** While an independent investigation is essential, it is also important that the parent's attorney understands what information the agency is relying on to further its case. The case file should contain a history about the family that the client may not have shared, and important reports and information about both the child and parent that will be necessary for the parent's attorney to understand for hearings as well as settlement conferences. Unless the attorney also has the information the agency has, the parent's attorney will walk into court at a disadvantage.

## **b. Obtain Records**

**Action:** As part of the discovery phase, the parent's attorney should gather all relevant documentation regarding the case that might shed light on the allegations, the case plan and the client's strengths as a parent. The attorney should not limit the scope as information about past or present criminal, protection from abuse, private custody or administrative proceedings involving the client can have an impact on the dependency case. The attorney should also review the following kinds of documents:

Case files of the: Agency, Guardian ad Litem, and Child Protective Investigator

- Social Service Records Court Records
- Medical Records
- School Records
- Evaluations of all Types
- Child's Resource Record (medical and psychological information)

The attorney should be sure to obtain reports and records from service providers.

Discovery is not limited to information regarding the client but may include records of others such as the other parent, stepparent, child, relative and non-relative caregivers.

**Commentary:** In preparing the client's case, the attorney must try to learn as much about the parent and the family as possible. Various records may contradict or supplement the agency's account of events. Gathering documentation to verify the client's reports about what occurred before the child came into care and progress the parent is making during the case is necessary to provide concrete evidence for the court. Documentation may also alert the attorney to issues the client is having that the client did not share with counsel. The attorney may be able to intercede and assist the client with service providers, agency caseworkers and others.

## **c. Use additional formal discovery methods to obtain information.**

**Action:** The parent's attorney should know what information is needed to prepare for the case and understand the best methods of obtaining that information. The attorney should become familiar with the pretrial requests and actions used in the jurisdiction and use whatever tools are available to obtain necessary information. The parent's attorney should consider the following: all types of formal discovery permitted by the Rules of Juvenile Procedure: including but not limited to depositions, requests for production of documents, and motions for mental or physical examination of a party. The attorney should file timely motions for discovery and renew these motions as needed to obtain the most recent records.

The attorney should, consistent with the client's interests and goals, and where appropriate, take all necessary steps to preserve and protect the client's rights by opposing discovery requests of other parties.

## Court Preparation

### 22. Develop a case theory and strategy to follow at hearings and negotiations.

Action: Once the parent's attorney has completed the initial investigation and discovery, including interviews with the client, the attorney should develop a strategy for representation. The strategy may change throughout the case, as the client makes or does not make progress, but the initial theory is important to assist the attorney in staying focused on the client's wishes and on what is achievable. The theory of the case should inform the attorney's preparation for hearings and arguments to the court throughout the case. It should also help the attorney decide what evidence to develop for hearings and the steps to take to move the case toward the client's ultimate goals (e.g., requesting increased visitation when a parent becomes engaged in services).

### 23. Timely file all pleadings, motions, and briefs. Research applicable legal issues and advance legal arguments when appropriate.

Action: The attorney must file petitions, motions, discovery requests, and responses and answers to pleadings filed by other parties that are appropriate for the case. These pleadings must be thorough, accurate and timely.

When a case presents a complicated or new legal issue, the parent's attorney should conduct the appropriate research before appearing in court. The attorney must have a solid understanding of the relevant law and be able to present it to the judge in a compelling and convincing way. The attorney should be prepared to distinguish case law that appears to be unfavorable. If the judge asks for memoranda of law, the attorney will already have done the research and will be able to use it to argue the case well. If it would advance the client's case, the parent's attorney should present an unsolicited memorandum of law to the court.

Commentary: Actively filing motions, pleadings and briefs benefits the client. This practice puts important issues before the court and builds credibility for the attorney. In addition to filing responsive pleadings and discovery requests, the attorney should proactively seek court orders that benefit the client, e.g., filing a motion to enforce court orders to ensure the child welfare agency is meeting its reasonable efforts obligations.

When an issue arises, it is often appropriate to attempt to resolve it informally with other parties. When out-of-court advocacy is not successful, the attorney should not wait to bring the issue to the court's attention.

Arguments in child welfare cases are often fact-based. Nonetheless, attorneys should ground their arguments in statutory, regulatory and common law. These sources of law exist in each jurisdiction, as well as in federal law. Additionally, law from other jurisdictions can be used to sway a court in the client's favor. An attorney who has a firm grasp of the law, and who is willing to do legal research on an individual case, may have more credibility before the court. At times, competent representation requires advancing legal arguments that are not yet accepted in the jurisdiction. Attorneys should be mindful to preserve issues for appellate review by making a record even if the argument is unlikely to prevail at the trial level.

### 24. Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.

Action: The parent's attorney must advocate for the client both in and out of court. The parent's attorney should know about the social, mental health, substance abuse treatment and other services that are available to parents and families in the jurisdiction in which the attorney practices so the attorney can advocate effectively for the client to receive these services. The attorney should ask the client if the client wishes to engage in services. If so, the attorney must determine whether the client has access to the necessary services to overcome the issues that led to the case.

The attorney should actively engage in case planning, including attending major case meetings, to ensure the client asks for and receives the needed services. The attorney should also advise the client to not agree to undesired services that are beyond the scope of the case. A major case meeting is one in which the attorney or client believes the attorney will be needed to provide advice or one in which a major decision on legal steps, such as a change in the child's permanency goal, will be made.

The services in which the client is involved must be tailored to the client's needs, and not merely hurdles over which the client must jump (e.g., if the client is taking parenting classes, the classes must be relevant to the underlying issue in the case).

Whenever possible, the parent's attorney should engage or involve a social worker as part of the parent's "team" to help determine an appropriate case plan, evaluate social services suggested for the client, and act as a liaison and advocate for the client with the service providers.

When necessary, the parent's attorney should seek court orders to force the child welfare agency to provide services or visitation to the client. The attorney may need to ask the court to enforce previously entered orders that the agency did not comply with in a reasonable period. The attorney should consider whether the child's representative (lawyer or GAL) might be an ally on service and visitation issues. If so, the attorney should solicit the child's representative's assistance and work together in making requests to the agency and the court.

Commentary: For a parent to succeed in a child welfare case the parent must receive and cooperate with social services. It is therefore necessary that the parent's attorney does whatever possible to assist the client in obtaining appropriate services, and then counsel the client about participating in such services. Examples of services common to child welfare cases include:

- Evaluations
- Family preservation or reunification services Medical and mental health care
- Drug and alcohol treatment
- Domestic violence prevention, intervention or treatment
- Parenting education
- Education and job training Housing
- Childcare
- Funds for public transportation so the client can attend services

## **25. Aggressively advocate for regular visitation in a family-friendly setting.**

Action: The parent's attorney should advocate for an effective visitation plan and counsel the parent on the importance of regular contact with the child. Preservation of parent-child bonds through regular visitation is essential to any reunification effort. Courts and child welfare agencies may need to be pushed to develop visitation plans that best fit the needs of the individual family. Factors to consider in visiting plans include:

- Frequency
- Length, including protocol for missed visits or late arrivals (including by person bringing the child) Location Supervision
- Types of activities
- Define the financial ability and expectation of parent contribution
- Ability of the parent:

- to take photos and videos of the child;
- to bring food and other items for the child;
- to electronically connect the child with loved ones (e.g. phone or tablet)

Persons allowed to be present at the visit which may include relatives, foster parents, therapists and others.

Visit coaching – having someone at the visit who could model effective parenting skills.

Commentary: Consistent, high quality visitation is one of the best predictors of successful reunification between a parent and child. Often visits are arranged in settings that may be uncomfortable and inhibiting for families. It is important that the parent’s attorney seek a visitation order that will allow the best possible visitation. Effort should be made to have visits be unsupervised or at the lowest possible level of supervision. Families are often more comfortable when relatives, family friends, clergy or other community members are recruited to supervise visits rather than caseworkers. Attorneys should advocate for visits to occur in the most family-friendly locations possible, such as in the family’s home, parks, libraries, restaurants, places of worship or other community venues. Attorneys should also advocate for visits to take place at place of incarceration for parents and on weekends when available. Visits also provide an opportunity for parents to demonstrate support for their children, therefore attorneys should advise their clients to bring supplies for their children when feasible. When visitation in a family-friendly setting is not possible, attorneys should advocate for alternatives such as telephonic or electronic/video means.

**26. With the client’s permission, and when appropriate, engage in settlement negotiations and mediation to resolve the case.**

Action: The parent’s attorney should, when appropriate, participate in settlement negotiations to promptly resolve the case, keeping in mind the effect of continuances and delays on the client’s goals. Parents’ attorneys should be trained in mediation and negotiation skills and be comfortable resolving cases outside a courtroom setting when consistent with the client’s position. When authorized to do so by the client, the parent’s attorney should share information about services in which the parent is engaged and provide copies of favorable reports from service providers. This information may impact settlement discussions. The attorney must communicate all settlement offers to the client and discuss their advantages and disadvantages. It is the client’s decision whether to settle. The attorney must be willing to try the case and not compromise solely to avoid the hearing. The attorney should use mediation resources when available.

The attorneys should advise the parent that while mediation is generally confidential, statements made in mediation may be used against them in a pending criminal case or to bring new dependency allegations against the client.

Commentary: Negotiation and mediation often result in a detailed agreement among parties about actions the participants must take. Generally, when agreements have been thoroughly discussed and negotiated, all parties, including the parents, feel as if they had a say in the decision and are, therefore, more willing to adhere to a plan. Mediation can resolve a specific conflict in a case, even if it does not result in an agreement about the entire case. Negotiated settlements generally happen more quickly than full hearings and therefore move a case along swiftly. The attorney should discuss all aspects of proposed settlements with the parent, including all legal effects of admissions or agreements. The attorney should advise the client about the chances of prevailing if the matter proceeds to trial and any potential negative impact associated with contesting the allegations. The final decision regarding settlement must be the client’s.

A written, enforceable agreement should result from any settlement, so all parties are clear about their rights and obligations. The parent’s attorney should ensure agreements accurately reflect the understandings of the parties. The parent’s attorney should schedule a hearing if promises made to the parent are not kept.

## **27. Thoroughly prepare the client to testify at the hearing.**

Action: When having the client testify will benefit the case or when the client wishes to testify, the parent's attorney should thoroughly prepare the client. The attorney should discuss and practice the questions that the attorney will ask the client, as well as the types of questions the client should expect opposing counsel to ask. The parent's attorney should help the parent think through the best way to present information, familiarize the parent with the court setting, and offer guidance on logistical issues such as how to get to court on time and appropriate court attire.

Commentary: Testifying in court can be intimidating. For a parent whose family is the focus of the proceeding, the court experience is even scarier. The parent's attorney should be attuned to the client's comfort level about the hearing, and ability to testify in the case. The attorney should spend time explaining the process and the testimony itself to the client. The attorney should provide the client with a written list of questions that the attorney will ask, if this will help the client. The attorney should consider requesting accommodations that will help the client stay calm and focused such as the use of a facility dog.

## **28. Identify, locate and prepare all witnesses.**

Action: The parent's attorney, in consultation with the parent, should develop a witness list well before a hearing. The attorney should not assume the agency will call a witness, even if the witness is named on the agency's witness list. The attorney should, when possible, contact the potential witnesses to determine if they can provide helpful testimony.

The attorney should ensure a subpoena is timely served. The attorney should subpoena potential agency witnesses (e.g., a previous caseworker) who have favorable information about the client. The attorney should set aside time to fully prepare all witnesses in person before the hearing. The attorney should remind the witnesses about the court date.

Commentary: Preparation is the key to successfully resolving a case, either in negotiation or trial. The attorney should plan as early as possible for the case and make arrangements accordingly. Witnesses may have direct knowledge of the allegations against the parent. They may be service providers working with the parent, or individuals from the community who could testify generally about the family's strengths.

When appropriate, the parent's attorney should consider working with other parties who share the parent's position (such as the child's representative) when creating a witness list, issuing subpoenas, and preparing witnesses. Doctors, nurses, teachers, therapists, and other potential witnesses have busy schedules and need advance warning about the date and time of the hearing.

Witnesses are often nervous about testifying in court. Attorneys should prepare them thoroughly so they feel comfortable with the process. Preparation will generally include rehearsing the specific questions and answers expected on direct and anticipating the questions and answers that might arise on cross-examination. Attorneys should provide written questions for those witnesses who need them.

## **29. Identify, secure, prepare and qualify expert witness when needed. When possible, interview opposing counsel's experts.**

Action: Often a case requires multiple experts in different roles, such as experts in medicine, mental health treatment, drug and alcohol treatment, or social work. Experts may be needed for ongoing case consultation in addition to providing testimony at trial. The attorney should consider whether the opposing party is calling expert witnesses and determine whether the parent needs to call any experts.

When expert testimony is required, the attorney should identify the qualified experts and seek necessary funds to retain them in a timely manner. The attorney should subpoena the witnesses, giving them as much advanced notice of the court date as possible. As is true for all witnesses, the attorney should spend as much time as possible preparing the expert witnesses for the hearing. The attorney should be competent in qualifying expert witnesses.

When opposing counsel plans to call expert witnesses, the parent's attorney should issue expert interrogatories, depose the witnesses or interview the witnesses in advance. The attorney should do whatever is necessary to learn what the opposing expert witnesses will say about the client during the hearing.

Commentary: By contacting opposing counsel's expert witnesses in advance, the parent's attorney will know what evidence will be presented against the client and whether the expert has any favorable information that might be elicited on cross-examination. The attorney will be able to discuss the issues with the client, prepare a defense and call experts on behalf of the client, if appropriate. Conversely, if the attorney does not talk to the opposing expert in advance, the attorney could be surprised by the evidence and unable to represent the client competently.

## Hearings

### 30. Attend and prepare for all hearings, including pretrial conferences.

Action: The parent's attorney must prepare for and attend all hearings and participate in all telephone and other conferences with the court.

Commentary: For the parent to have a fair chance during the hearing, the attorney must be prepared and present in court. Participating in pretrial proceedings may improve case resolution for the parent. Counsel's failure to participate in the proceedings in which all other parties are represented, or counsel's participation by telephone when other counsel is present in court disadvantages the parent. Therefore, the parent's attorney should be actively involved in this stage. Other than in extraordinary circumstances, attorneys must appear for all court appearances on time. In many jurisdictions, if an attorney arrives to court late, or not at all, the case will receive a long continuance or worse, the client may receive an adverse ruling. This does not serve the client and does not instill confidence in the attorney. If an attorney has a conflict with another courtroom appearance, the attorney should notify the court and other parties and request a short continuance. The parent's attorney should not have another attorney stand in to represent the client in a substantive hearing, especially if the other attorney is unfamiliar with the client or case.

### 31. Prepare and make all appropriate motions and evidentiary objections.

Action: The parent's attorney should make appropriate motions and evidentiary objections to advance the client's position during the hearing. If necessary, the attorney should file briefs in support of the client's position on motions and evidentiary issues. The parent's attorney should always be aware of preserving legal issues for appeal.

Commentary: It is essential that parents' attorneys understand the applicable rules of evidence, including Daubert motions, and all court rules and procedures. The attorney must be willing and able to make appropriate motions, objections, and arguments (e.g., objecting to the qualification of expert witnesses or raising the issue of the child welfare agency's lack of reasonable efforts).

### 32. Present and cross-examine witnesses, prepare and present exhibits.

Action: The parent's attorney must be able to present witnesses effectively to advance the client's position. Witnesses must be prepared in advance and the attorney should know what evidence will be presented

through the witnesses. The attorney must also be skilled at cross-examining opposing parties' witnesses. The attorney must know how to offer documents, photos and physical objects into evidence.

At each hearing the attorney should keep the case theory in mind, advocate for the child to return home and for appropriate services, if that is the client's position.

Commentary: Becoming a strong courtroom attorney takes practice and attention to detail. The attorney must be sure to learn the rules about presenting witnesses, impeaching testimony, and entering evidence. The attorney should seek out training in trial skills and observe more experienced trial attorneys to learn from them. Even if the parent's attorney is more seasoned, effective direct and cross-examination require careful preparation. The attorney must know the relevant records well enough to be able to impeach adverse witnesses and bring out in both direct and cross examinations any information that would support the parent's position. Attorneys are encouraged to consult with other experienced colleagues about challenging issues. Experienced attorneys are encouraged to share their expertise with inquiring colleagues.

### **33. Request closed proceedings (or a cleared courtroom) in appropriate cases.**

Action: The parent's attorney should be aware of who is in the courtroom during a hearing and should request the courtroom be cleared of individuals not related to the case when appropriate. The attorney should be attuned to the client's comfort level with people outside of the case hearing about the client's family. The attorney should also be aware of whether the case is one in which there is media attention. Confidential information should not be discussed in front of the media or others without the express permission of the client.

Commentary: Except in termination of parental rights cases, dependency court is open to the public. However, there may be cases, or portions of cases, that outsiders should not be permitted to hear. The parent's attorney must be attuned to the client's needs and the local court practices and make appropriate requests of the judge.

### **34. Request the opportunity to make opening statements and closing arguments.**

Action: When permitted by the judge, the parent's attorney should make opening statements and closing arguments to best present the parent's attorney's theory of the case.

Commentary: In many child abuse and neglect proceedings, attorneys waive the opportunity to make opening statements and closing arguments. However, clear and concise arguments can help shape the way the judge views the case, and therefore can help the client. Argument may be especially critical, for example, in complicated cases when information from expert witnesses should be highlighted for the judge, in hearings that take place over a number of days, or when there are several children and the agency is requesting different services or permanency goals for each of them.

### **35. Prepare proposed findings of fact, conclusions of law and orders when they will be used in the court's decision or may otherwise benefit the client.**

Action: Proposed findings of fact, conclusions of law, and orders should be prepared before a hearing. When the judge is prepared to enter a ruling, the judge can use the proposed findings or amend them as needed.

Commentary: By preparing proposed findings of fact and conclusions of law, the parent's attorney frames the case and ruling for the judge. This may result in orders that are more favorable to the parent, preserve appellate issues, and help the attorney clarify desired outcomes before a hearing begins. The attorney should offer to provide the judge with proposed findings and orders in electronic format. If an opposing party prepared the order, the parent's attorney should review it for accuracy before the order is submitted for the judge's signature.

## Post Hearings/Appeals

### 36. Review court orders to ensure accuracy and clarity and review with client.

**Action:** After the hearing, the parent's attorney should review the written order to ensure it reflects the court's verbal order. If the order is incorrect, the attorney should take whatever steps are necessary to correct it. Once the order is final, the parent's attorney should provide the client with a copy of the order and should review the order with the client to ensure the client understands it. If the client is unhappy with the order, the attorney should counsel the client about any options to appeal or request rehearing on the order but should explain that the order is in effect unless a stay or other relief is secured. The attorney should counsel the client on the potential consequences of failing to comply with a court order.

**Commentary:** The parent may be angry about being involved in the child welfare system, and a court order that is not in the parent's favor could add stress and frustration. It is essential that the parent's attorney take time, either immediately after the hearing or at a meeting soon after the court date, to discuss the hearing and the outcome with the client. The attorney should counsel the client about all options, including appeal (see below).

Regardless of whether an appeal is appropriate, the attorney should counsel the parent about potential consequences of not complying with the order.

### 37. Take reasonable steps to ensure the client complies with court orders and to determine whether the case needs to be brought back to court.

**Action:** The parent's attorney should answer the parent's questions about obligations under the order and periodically check with the client to determine the client's progress in implementing the order. If the client is attempting to comply with the order but other parties, such as the child welfare agency, are not meeting their responsibilities, the parent's attorney should approach the other party and seek assistance on behalf of the client. If necessary, the attorney should bring the case back to court to review the order and the other party's noncompliance or take other steps to ensure that appropriate social services are available to the client.

**Commentary:** The parent's attorney should play an active role in assisting the client in complying with court orders and obtaining visitation and any other social services. The attorney should speak with the client regularly about progress and any difficulties the client is encountering while trying to comply with the court order or service plan. The attorney should assist the client in advising case management and the court about barriers to case plan completion. When the child welfare agency does not offer appropriate services, the attorney should consider making referrals to social service providers and, when possible, retaining a social worker to assist the client.

### 38. Consider and discuss the possibility of appeal or extraordinary writ with the client.

**Action:** The parent's attorney should consider and discuss with the client the possibility of appeal or an extraordinary writ when a court's ruling is contrary to the client's position or interests. The attorney should counsel the client on the likelihood of success on appeal or extraordinary writ and potential consequences of the same. The attorney should also consider filing an extraordinary writ or motions for other post-hearing relief. If the client declines to pursue an appeal or extraordinary writ, the attorney should document the client's decision.

If the adverse order terminates parental rights the attorney must advise the client of the right to file a motion claiming ineffective assistance of counsel. If the client intends to file such motion the attorney must seek immediate withdrawal.

Commentary: When discussing the possibility of an appeal or extraordinary writ, the attorney should explain both the positive and negative effects, including how the appeal or extraordinary writ could affect the parent's goals and the child's well-being

**39. If the client decides to appeal or seek an extraordinary writ, timely and thoroughly file the necessary post-hearing motions and paperwork and closely follow Rules of Appellate Procedure.**

Action: The parent's attorney should carefully review his or her obligations under the Rules of Appellate Procedure. The attorney should timely file all paperwork, including the appropriate notice and requests for stays of the trial court order, transcript, and case file. If another party has filed an appeal, the parent's attorney should explain the appeals process to the parent and ensure that responsive papers are filed timely.

The appellate brief should be clear, concise, and comprehensive and also timely filed. The brief should reflect all relevant case law and present the best legal arguments available in state and federal law for the client's position. The brief should include novel legal arguments if there is a chance of developing favorable law in support of the parent's claim.

If a different attorney from the trial attorney handles the appeal, the trial attorney should take all steps necessary to facilitate appointing appellate counsel and work with the new attorney to identify appropriate issues for appeal. The attorney who handled the trial may have insight beyond what a new attorney could obtain by reading the trial transcript.

If appellate counsel differs from the trial attorney, the appellate attorney should meet with the client as soon as possible. At the initial meeting, appellate counsel should determine the client's position and goals in the appeal. Appellate counsel should not be bound by the determinations of the client's position and goals made by trial counsel and should independently determine his or her client's position and goals on appeal.

If oral arguments are scheduled, the attorney should be prepared, organized, and direct. Appellate counsel should inform the client of the date, time and place scheduled for oral argument of the appeal upon receiving notice from the appellate court. Oral argument of the appeal on behalf of the client should not be waived, absent the express approval of the client, unless doing so would benefit the client.

Commentary: Appellate skills differ from the skills most trial attorneys use daily. The parent's attorney may wish to seek training on appellate practice and guidance from an experienced appellate advocate when drafting the brief and preparing for argument. An appeal can have a significant impact on the trial judge who heard the case and trial courts throughout the state, as well as the individual client and family.

**40. Communicate the results of the appeal or extraordinary writ and its implications to the client.**

Action: The parent's attorney should communicate the result of the appeal or extraordinary writ and its implications and provide the client with a copy of the appellate decision. If, as a result of the appeal, the attorney needs to file any motions with the trial court, the attorney should do so. The attorney should discuss the possibility of pursuing further appellate remedies that may be available.

