

# **Representing Children in Dependency Proceeding: Ethical Issues and Quagmires**

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**To make this as interactive as possible, a PowerPoint is not being provided in advance. The Presenter is asking that participants send their ethical quagmires before Thursday, May 21<sup>st</sup> at noon. These real life questions will be used to develop the PowerPoint and answer the questions presented.**

**Please send any ethical dilemmas to [gerardfglynn63@gmail.com](mailto:gerardfglynn63@gmail.com).**

**Attached are two pieces of material that will be relevant to many of the questions presented. The first is the Rule of Professional Conduct 4-1.14. The second are the Florida Guidelines of Practice for Lawyers who Represent Children in Abuse and Neglect Cases.**

## ***RULE 4-1.14 CLIENT UNDER A DISABILITY***

**(a) Maintenance of Normal Relationship.** When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

**(b) Appointment of Guardian.** A lawyer may seek the appointment of a guardian or take other protective action with respect to a client only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

### **Comment**

The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a mental disorder or disability, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, an incapacitated person may have no power to make legally binding decisions. Nevertheless, a client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. Furthermore, to an increasing extent the law recognizes intermediate degrees of competence. For example, children as young as 5 or 6 years of age, and certainly those of 10 or 12, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

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 person has no guardian or legal representative, the lawyer often must act as de facto guardian. Even if the person does have a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. If a legal representative has not been appointed, the lawyer should see to such an appointment where it would serve the client's best interests. Thus, if a disabled client has substantial property that should be sold for the client's benefit, effective completion of the transaction ordinarily requires appointment of a legal representative. In many circumstances, however, appointment of a legal representative may be expensive or traumatic for the client. Evaluation of these considerations is a matter of professional judgment on the lawyer's part.

If the lawyer represents the guardian as distinct from the ward and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See rule 4-1.2(d).

### **Disclosure of client's condition**

Rules of procedure in litigation generally provide that minors or persons suffering mental disability shall be represented by a guardian or next friend if they do not have a general guardian. However, disclosure of the client's disability can adversely affect the client's interests. The lawyer may seek guidance from an appropriate diagnostician.

**FLORIDA GUIDELINES of PRACTICE  
FOR LAWYERS WHO REPRESENT CHILDREN  
IN ABUSE AND NEGLECT CASES**

Approved by the Florida Bar Standing  
Committee on the Legal Needs of Children  
January 18, 2006

These Guidelines have not been approved by the Florida Bar Board of Governors. The Guidelines are the work product of the Standing Committee and thus non-binding.

FLORIDA GUIDELINES of PRACTICE  
FOR LAWYERS WHO REPRESENT CHILDREN  
IN ABUSE AND NEGLECT CASES

**PREFACE**

All children subject to court proceedings involving allegations of child abuse and neglect should have legal representation as long as the court jurisdiction continues. These Abuse and Neglect Guidelines are meant to apply when a lawyer is appointed or retained for a child in a proceeding pursuant to Chapter 39 of Florida Statutes. These Guidelines were promulgated by the Legal Needs of Children's Standing Committee of the Florida Bar after review of numerous national Guidelines as well as Guidelines adopted by other states' bar associations, courts and legislatures. These Guidelines do not have the force of law. These Guidelines are 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 nondisciplinary 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 give direction to both lawyers and judges on the appropriate role of attorneys appointed to represent children in abuse and neglect cases.

These Guidelines address the specific roles and responsibilities of a lawyer appointed to represent a child in an abuse and neglect case as an attorney. There are guidelines promulgated by the Statewide Office of the Guardian ad Litem that apply when an attorney is appointed as a guardian ad litem.

**PART I—GUIDELINES FOR THE CHILD'S ATTORNEY**

**A. DEFINITIONS**

**A-1. The Child's Attorney. The term "child's attorney" means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and zealous representation to the child as is due an adult client.**

*Commentary —*

These Guidelines explicitly recognize that the child is a separate individual with potentially discrete and independent views. In Florida, the term "attorney ad litem" is often used in these proceedings. These guidelines assume that an "attorney ad litem" shall function as the "child's attorney." To ensure that the child's independent voice is heard, the child's attorney must advocate the child's articulated position. Consequently, the child's attorney owes traditional duties to the child as client consistent with Florida Rules of Professional Conduct, Rule 4-1.14(a). In all but the exceptional case, such as with a preverbal child, the child's attorney will maintain this traditional relationship with the child/client. As with any client, the child's attorney may counsel against the pursuit of a particular position sought by the child. Such counsel is protected by the attorney-client privilege. The child's attorney should recognize that the child may be more susceptible to intimidation and manipulation than some adult clients. Therefore, the child's attorney should ensure that the decision the child ultimately makes reflects his or her actual position.

The lawyer-client role involves a confidential relationship with privileged communications. Because the child has a right to confidentiality and advocacy of his or her position, the child's attorney can never abandon this role. Once a lawyer has a lawyer-client relationship with a minor, he or she cannot and should not assume any other role for the child, especially as guardian ad litem.

**A-2. Lawyer Appointed as Guardian Ad Litem. A lawyer appointed as "guardian ad litem" for a child is an officer of the court appointed to protect the child's interests without being bound by the child's expressed preferences.**

*Commentary —*

A lawyer appointed as a guardian ad litem should look to the *Pro Bono* Standards of Performance promulgated by the Statewide Office of the Guardian ad Litem for guidance on one's responsibilities.

**A-3. Developmentally Appropriate. "Developmentally appropriate" means that the child's attorney should ensure the child's ability to provide client-based directions by structuring all communications to account for the individual child's age, level of education, cultural context, and degree of language acquisition.**

*Commentary —*

The lawyer has an obligation to explain clearly, precisely, and in terms the client can understand the meaning and consequences of action. See e.g., David A. Binder et al., *Lawyers as Counselors: A Client-Centered Approach* (2004). A child client may not understand the legal terminology and for a variety of reasons may choose a particular course of action without fully appreciating the implications. With a child the potential for not understanding may be even greater. Therefore, the child's attorney has additional obligations based on the child's age, level of education, and degree of language acquisition. There is also the possibility that because of a particular child's developmental limitations, the lawyer may not completely understand the child's responses. Therefore, the child's attorney must learn how to ask developmentally appropriate questions and how to interpret the child's responses. See e.g., Anne Graffam Walker, *Handbook on Questioning Children: A Linguistic Perspective* (2D ED. 1999). The child's attorney may work with social workers or other professionals to assess a child's developmental abilities and to facilitate communication. When developing these multi-disciplinary teams, the child's attorney should ensure protection of the attorney-client privilege.

## **B. GENERAL AUTHORITY AND DUTIES**

**B-1. Basic Obligations. The child's attorney should:**

- 1) Obtain copies of all pleadings and relevant notices;**
- 2) Participate in all depositions, negotiations, discovery, pretrial conferences, and hearings;**
- 3) Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's**

**family;**

**4) Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;**

**5) Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;**

**6) Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and**

**7) Identify appropriate family and professional resources for the child.**

*Commentary —*

The child's attorney should not be merely a fact-finder, but rather, should zealously advocate a position on behalf of the child. In furtherance of that advocacy, the child's attorney must be adequately prepared prior to hearings. The lawyer's presence at and active participation in all hearings is absolutely critical.

Although the child's position may overlap with the position of one or both parents, third-party caretakers, or a state agency, the child's attorney should be prepared to participate fully in any proceedings and not merely defer to the other parties. Any identity of position should be based on the merits of the position, and not a mere endorsement of another party's position.

While subsection (4) recognizes that delays are usually harmful, there may be some circumstances when delay may be beneficial. Section (7) contemplates that the child's attorney will identify counseling, educational and health services, substance abuse programs for the child and other family members, housing and other forms of material assistance for which the child may qualify under law. The lawyer can also identify family members, friends, neighbors, or teachers with whom the child feels it is important to maintain contact; mentoring programs, such as Big Brother/Big Sister; recreational opportunities that develop social skills and self-esteem; educational support programs; and volunteer opportunities which can enhance a child's self-esteem.

## **B-2. Conflict Situations.**

*Commentary —*

A lawyer representing a child shall abide by all the Rules of Professional Conduct and in a conflicts area should review and comply with Rule 4-1.7.

**(1) If a lawyer is appointed as a child's attorney for siblings, there may be a conflict which could require that the lawyer decline representation or withdraw from representing all of the children.**

*Commentary —*

Having one lawyer represent siblings is a common and most times advantageous arrangement. However, there may be situations when multiple siblings have different preferences and different interests. Thus, an attorney should review the conflicts rules carefully when representing siblings with potential conflicts and avoid representing multiple siblings when their interests are adverse. A lawyer should never represent siblings when it is alleged that one sibling

has physically or sexually abuse another sibling.

**(2) The child's attorney should be independent from the court, court services, the parties, and the state.**

*Commentary —*

To help assure that the child's attorney is not compromised in his or her independent action, the child's lawyer must be independent from other participants in the litigation. "Independence" does not mean that a lawyer may not receive payment from a court, a government entity, or even from a parent, relative, or other adult so long as the lawyer retains the full authority for independent action. For ethical conflict reasons, however, lawyers should never accept compensation as retained counsel for the child from a parent accused of abusing or neglecting the child. The child's attorney should not prejudge the case. The concept of independence includes being free from prejudice and other limitations to uncompromised representation. *See* R. REG. FLA. BAR 4-1.8(f).

**B-3. Client Under Disability. The child's attorney should determine whether the child is "under a disability" pursuant to the Florida Rules of Professional Conduct with respect to each issue in which the child is called upon to direct the representation.**

*Commentary —*

These Guidelines do not accept the idea that children of certain ages are "impaired," "disabled," "incompetent," or lack capacity to determine their position in litigation. Further, these Guidelines reject the concept that any disability must be globally determined. Rather, disability is contextual, incremental, and may be intermittent. The child's ability to contribute to a determination of his or her position is functional, depending upon the particular position and the circumstances prevailing at the time the position must be determined. Therefore, a child may be able to determine some positions in the case but not others. Similarly, a child may be able to direct the lawyer with respect to a particular issue at one time but not at another. This Guideline relies on empirical knowledge about competencies with respect to both adults and children. *See, e.g., ALLEN E. BUCHANAN & DAN W. BROCK, DECIDING FOR OTHERS: THE ETHICS OF SURROGATE DECISION MAKING 217 (1990).*

**B-4 Client Preferences. The child's attorney should elicit the child's preferences in a developmentally appropriate manner, advise the child, and provide guidance. The child's attorney should represent the child's expressed preferences and follow the child's direction throughout the course of litigation. As in any other lawyer/client relationship, client directed representation does not include "robotic allegiance" to each directive of the client. Client directed representation involves the attorney's counseling function and requires good communication between attorney and client.**

*Commentary —*

The lawyer has a duty to explain to the child in a developmentally appropriate way such information as will assist the child in having maximum input in determination of the particular position at issue. The lawyer should inform the child of the relevant facts and applicable laws and the ramifications of taking various positions, which may include the impact of such decisions on other family members or on future legal proceedings. The lawyer may express an opinion concerning the likelihood of the court or other parties accepting particular positions. The lawyer may inform the child of an expert's recommendations germane to the issue.

As in any other lawyer/client relationship, the lawyer may express his or her assessment of



the case, the best position for the child to take, and the reasons underlying such a recommendation. A child, however, may agree with the lawyer for inappropriate reasons. A lawyer must remain aware of the power dynamics inherent in adult/child relationships. Therefore, the lawyer needs to understand what the child knows and what factors are influencing the child's decision. The lawyer should attempt to determine from the child's opinion and reasoning what factors have been most influential or have been confusing or glided over by the child when deciding the best time to express his or her assessment of the case.

Consistent with the rules of confidentiality and with sensitivity to the child's privacy, the lawyer should consult with the child's therapist and other experts and obtain appropriate records. For example, a child's therapist may help the child to understand why an expressed position is dangerous, foolish, or not in the child's best interests. The therapist might also assist the lawyer in understanding the child's perspective, priorities, and individual needs. Similarly, significant persons in the child's life may educate the lawyer about the child's needs, priorities, and previous experiences.

The child's attorney has dual fiduciary duties to the child which must be balanced. On one hand, the lawyer has a duty to ensure that the child client is given the information necessary to make an informed decision, including advice and guidance. On the other hand, the lawyer has a duty not to overbear the will of the child. While the lawyer may attempt to persuade the child to accept a particular position, the lawyer may not advocate a position contrary to the child's expressed position except as provided by these Abuse and Neglect Guidelines or the Florida Rules of Professional Conduct.

While the child is entitled to determine the overall objectives to be pursued, the child's attorney, as any adult's lawyer, may make certain decisions with respect to the manner of achieving those objectives, particularly with respect to procedural matters. (*See* FLA. R. PRO. CONDUCT 4-1.2.) These Abuse and Neglect Guidelines do not require the lawyer to consult with the child on matters which would not require consultation with an adult client. Further, the Guidelines do not require the child's attorney to discuss with the child issues for which it is not feasible to obtain the child's direction because of the child's developmental limitations, as with an infant or preverbal child.

**(1) To the extent that a child cannot express a preference, the child's attorney shall make a good faith effort to determine the child's wishes and advocate accordingly or request appointment of a guardian ad litem.**

*Commentary —*

There are circumstances in which a child is unable to express a position, as in the case of a preverbal child, or may not be capable of understanding the legal or factual issues involved. Under such circumstances, the child's attorney should continue to represent the child's legal interests and request appointment of a guardian ad litem if one has not already been appointed.

**(2) To the extent that a child does not or will not express a preference about particular issues, the child's attorney should determine and advocate the child's legal interests. The determination of the child's legal interests should be based on but not limited to the child's specific needs and preferences, the goal of expeditious resolution of the case so the child can remain or return home or be placed in a safe, nurturing, and permanent environment, and the use of the least restrictive or detrimental alternatives available.**

*Commentary —*

The child's attorney has an obligation to protect the child's legal rights and interest while

advocating for the child's position with regard to issues in the case. The issues of the case should be viewed in light of the child's legal interest. For example, everyone, including the child, might agree that an out of state relative placement may be desirable but the attorney should ensure the proper legal steps are followed to protect the stability and legality of the placement.

The child's failure to express a position is distinguishable from a directive that the lawyer not take a position with respect to certain issues. The child may have no opinion with respect to a particular issue, or may delegate the decision-making authority. For example, the child may not want to assume the responsibility of expressing a position because of loyalty conflicts or the desire not to hurt one of the other parties. The lawyer should clarify with the child whether the child wants the lawyer to take a position or remain silent with respect to that issue or wants the preference expressed only if the parent or other party is out of the courtroom. The lawyer is then bound by the child's directive. The position taken by the lawyer should not contradict or undermine other issues about which the child has expressed a preference.

A child's legal interests may include basic physical and emotional needs, such as safety, shelter, food, and clothing. Such needs should be assessed in light of the child's vulnerability, dependence upon others, available external resources, and the degree of risk. A child needs family affiliation and stability of placement. The child's developmental level, including his or her sense of time, is relevant to an assessment of need. For example, a very young child may be less able to tolerate separation from a primary caretaker than an older child, and if separation is necessary, more frequent visitation than is ordinarily provided may be necessary.

In general, a child prefers to live with known people, to continue normal activities, and to avoid moving. To that end, the child's attorney should determine whether relatives, friends, neighbors, or other people known to the child are appropriate and available as placement resources. The lawyer must determine the child's feelings about the proposed caretaker, however, because familiarity does not automatically confer positive regard. Further, the lawyer may need to balance competing stability interests, such as living with a relative in another town versus living in a foster home in the same neighborhood. The individual child's needs will influence this balancing task.

In addition to the general needs and interests of children, individual children have particular needs, and the lawyer must determine the child client's individual needs. There are few rules which apply across the board to all children under all circumstances.

The following resources are helpful readings regarding assessing children's legal interests but there are many more resources to be explored:

1. DONALD N. DUQUETTE, ET AL., CHILDS. BUREAU, U.S. DEP'T HEALTH & HUMAN SERVS., ADOPTION 2002: THE PRESIDENT'S INITIATIVE ON ADOPTION AND FOSTER CARE, GUIDELINES FOR PUBLIC POLICY AND STATE LEGISLATION GOVERNING PERMANENCE FOR CHILDREN, CH. 7 (1999), *available at* [HTTP://WWW.ACF.HHS.GOV/PROGRAMS/CB/PUBLICATIONS/ADOPT02/02ADPT7.HTM](http://www.acf.hhs.gov/programs/cb/publications/adopt02/02adpt7.htm).
2. JOSEPH GOLDSTEIN, ET AL., THE BEST INTERESTS OF THE CHILD, THE LEAST DETRIMENTAL ALTERNATIVE, (2d ed. 1998).
3. JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS (2d ed. Matthew Bender & Co. 2001) (1997)
4. DONALD DUQUETTE, ADVOCATING FOR THE CHILD IN PROTECTION PROCEEDINGS: A HANDBOOK FOR LAWYERS AND COURT APPOINTED SPECIAL ADVOCATES (Lexington Books 1990).
5. ANN M. HARALAMBIE, THE CHILD'S ATTORNEY (1993).
6. Martin Guggenheim, *A Paradigm for determining the Role of Counsel for Children*, 64 FORDHAM L. REV. 1399 (1996).

7. ANN M. HARALAMBIE, *HANDLING CHILD CUSTODY, ABUSE AND ADOPTION Cases* (2d ed. West. Pub. Co. 1993).
8. Debra Whitcomb & Mark Hardin, *Coordinating Criminal and Juvenile Court Proceedings in Child Maltreatment Cases*, National Institute of Justice Research Preview (OCTOBER 1996).

**(3) If the child's attorney determines that the child's expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer's opinion of what would be in the child's interests), the lawyer may request appointment of a separate guardian ad litem and continue to represent the child's expressed preference. The child's attorney shall not reveal the basis of the request for appointment of a guardian ad litem which would compromise the child's position.**

*Commentary —*

One of the most difficult ethical issues for lawyers representing children occurs when the child is able to express a position and does so, but the lawyer believes that the position chosen is wholly inappropriate or could result in serious injury to the child. This is particularly likely to happen with respect to an abused child whose home is unsafe, but who desires to remain or return home. A child may desire to live in a dangerous situation because it is all he or she knows, because of a feeling of blame or of responsibility to take care of the parents, or because of threats. The child may choose to deal with a known situation rather than risk the unknown world of a foster home or other out-of-home placement.

In most cases the ethical conflict involved in asserting a position which would seriously endanger the child, especially by disclosure of privileged information, can be resolved through the lawyer's counseling function. If the lawyer has taken the time to establish rapport with the child and gain that child's trust, it is likely that the lawyer will be able to persuade the child to abandon a dangerous position or at least identify an alternate course.

If the child cannot be persuaded, the lawyer has a duty to safeguard the child's interests by requesting appointment of a guardian ad litem, who will be charged with advocating the child's best interests without being bound by the child's direction.

**B-5. Cessation of Representation. The child's attorney should discuss the end of the legal representation and determine what contacts, if any, the child's attorney and the child will continue to have.**

*Commentary —*

When the representation ends, the child's lawyer should explain in a developmentally appropriate manner why the representation is ending and how the child can obtain assistance in the future should it become necessary. It is important for there to be closure between the child and the lawyer.

**B-6 Caseloads. A lawyer should not have such a large number of cases that he or she is unable to comply with these Guidelines and the Rules of Professional Conduct.**

*Commentary —*

Caseloads must not be exceeded where to do so would compel lawyers to forego the extensive fact investigation required in both contested and uncontested cases, or to be less than

scrupulously careful in preparation for trial, or to forego legal research necessary to develop a theory of representation, or to monitor the implementation of court orders and agency case plans in order to help assure permanency for the child. *See* R. REG. FLA. BAR 4-1.1 (Competence) & 4-1.3 (Diligence). An attorney shall not accept appointment of any case for which he or she cannot devote the requisite amount of time.

### **C. ACTIONS TO BE TAKEN**

**C-1. Meet With Child.** A lawyer should conduct a client interview as soon as possible after being retained or appointed by the court, in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning the representation and the case proceedings. Furthermore, establishing and maintaining a relationship with a child is the foundation of representation. Therefore, irrespective of the child's age, the child's attorney should visit with the child prior to court hearings and when apprised of emergencies or significant events impacting on the child. The age and developmental level of the child dictate the type of contact. The type of contact will range from observation of a very young or otherwise nonverbal child and the child's caretaker to a more typical client interview with an older child. A lawyer shall promptly comply with child-client's requests for contact and assistance. At the initial meeting and thereafter as appropriate, the child's attorney should specifically:

- (1) explain the nature of the attorney-client relationship to the child, including the requirements of confidentiality;
- (2) explain how and when to contact the attorney
- (3) ensure the child understands that he or she has the right to speak with the attorney;
- (4) role of each player in the system;
- (5) keep the child informed of the nature and status of the proceeding on an ongoing basis;  
and
- (6) counsel the child on options and decisions to be made.

*Commentary —*

This guideline minimally requires visits with the child at certain specific times in the proceedings. An attorney should conduct the initial interview with the child as soon as possible, preferably within 48 hours, and sufficiently before any court proceeding so as to be prepared for that proceeding. Meeting with the child is important before court hearings and case reviews. In addition, changes in placement, school suspensions, in-patient hospitalizations, and other similar changes warrant meeting again with the child. An attorney should meet with the child-client often to stay informed of the circumstances impacting the child's legal interest. Such in-person meetings allow the lawyer to explain to the child what is happening, what alternatives might be available, and what will happen next. This also allows the lawyer to assess the child's circumstances, often leading to a greater understanding of the case, which may lead to more creative solutions in the child's interest. A lawyer can learn a great deal from meeting with child

clients, including a preverbal child. See, e.g., JAMES GARBARINO, ET AL, WHAT CHILDREN CAN TELL US: ELICITING, INTERPRETING, AND EVALUATING CRITICAL INFORMATION FROM CHILDREN (1992).

The last sentence in Guideline C-1 is in compliance Rule 4-1.4 of the Florida Rules of Professional Conduct. A lawyer should ensure that a child-client has the ability to contact a lawyer without interference by a custodian or others.

Some of the in-person meetings with the child client should be held at the child's residence. However, the attorney should take appropriate steps to ensure that the propriety of the attorney-client relationship could not be called into question.

**C-2. Investigate. To support the client's position, the child's attorney should conduct thorough, continuing, and independent investigations and discovery which may include, but should not be limited to:**

**(1) Obtaining and reviewing the child's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case;**

*Commentary —*

Thorough, independent investigation of cases at every stage of the proceedings is a key aspect of providing competent representation to children. The lawyer should ensure the order of appointment for the child authorizes access to all the child's records. The lawyer should take steps to ensure that the child's records are maintained as confidential. Protecting these records includes keeping them from other parties who may not have access including a parent, the Department or guardian ad litem. Due to the confidential nature of the attorney-client relationship, the attorney may be entitled to records that others may not be entitled to receive.

If the order appointing the lawyer for the child does not provide explicit authorization for the lawyer's obtaining necessary records, the lawyer should pursue records with the authority granted pursuant to FLA. STAT. § 39.202(d)(2005). Even if it is not required, an older child should be asked to sign authorizations for release of his or her own records, because such a request demonstrates the lawyer's respect for the client's authority over information.

The lawyer may need to use subpoenas or other discovery or motion procedures to obtain the relevant records which pertain to the other parties.

**(2) Seeking experts, as needed, to assist counsel in preparation of the case;**

*Commentary —*

Lawyers should not have to pay for experts without compensation. Before incurring expenses for experts, a lawyer for a child should seek free services if they are available. Expert services can be obtained through Universities or other community resources. For example, the University of Florida Shands Hospital offers a Medline psychotropic medications consultation line for anyone involved in the dependency system. A court may also approve and order compensation for expert assistance.

**(3) Reviewing the court files of the child and siblings, case-related records of the social service agency and other service providers;**

*Commentary —*

Another key aspect of representing children is the review of all documents submitted to the

court as well as relevant agency case files and law enforcement reports. Other relevant files that should be reviewed include those concerning child protective services, developmental disabilities, juvenile delinquency, mental health, and educational agencies. These records can provide a more complete context for the current problems of the child and family. Information in the files may suggest additional professionals and lay witnesses who should be contacted and may reveal alternate potential placements and services.

**(4) Contacting lawyers for other parties and nonlawyer guardians ad litem for background information;**

*Commentary —*

The other parties' lawyers may have information not included in any of the available records. Further, they can provide information on their respective clients' perspectives. The GAL is typically charged with performing an independent factual investigation, getting to know the child, and speaking up to the court on the child's "best interests." A volunteer GAL can often provide a great deal of information to assist the child's attorney. Where there appears to be role conflict or confusion over the involvement of both a child's attorney and GAL in the same case, there should be joint efforts to clarify and define mutual responsibilities.

**(5) Investigating current placement and prospective placements;**

**(6) Contacting and meeting with the parents/legal guardians/caretakers of the child, with permission of their lawyer;**

*Commentary —*

Such contact generally should include visiting the home, which will give the lawyer additional information about the child's custodial circumstances. Attorneys must comply with Rule 4-4.2 of the Rules of Professional Conduct when communicating with parents or custodians who are parties represented and Rule 4-4.3 when these persons are unrepresented.

**(7) Interviewing individuals involved with the child, including school personnel, child welfare case workers, foster parents and other caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses;**

**(8) Reviewing relevant photographs, video or audio tapes and other evidence; and**

*Commentary —*

It is essential that the lawyer review the evidence personally, rather than relying on other parties' or counsel's descriptions and characterizations of the evidence.

**(9) Attending non-court meetings and staffings which affect the child's interest, such as treatment, placement, education, familial contact or legal status.**

*Commentary —*

A child's attorney should attend collateral meetings at which the child has a right to be present. For example, case planning or placement conferences, staffings, citizen review panel meetings, school conferences, independent living staffings, or meetings amongst social workers or others service providers. The child's attorney may have to take specific steps to ensure he or she receives notice of all such meetings. The child's attorney should present the child's perspective at

such meetings, as well as gather information necessary for proper representation. In some cases, the child's attorney can be pivotal in achieving a negotiated settlement of all or some issues at these collateral meeting.

**C-3. Advocate for Placement. The child's attorney should advocate for stable and appropriate placement consistent with the child's wishes. To ensure the attorney is aware of all of the options for each child, the attorney should be familiar with the various types of placement available within the community, including residential treatment centers, therapeutic foster homes and group homes. In addition, the attorney should be aware of the following related placement issues:**

- (1) The impact of removal and placement on the child;**
- (2) The importance of placing siblings together;**
- (3) The trans-racial, trans-cultural and language aspects of the placement;**
- (4) The impact of a change of placement on the child's education progress;**
- (5) The importance of revisiting placements that were previously considered and found to be unacceptable or unavailable but which may now be appropriate and available; and**
- (6) The effect of the placement on the child's visitation and service needs.**

*Commentary —*

In general, a child needs decisions about the custodial environment to be made quickly. Therefore, if the child must be removed from the home, it is generally in the child's legal interests to have rehabilitative or reunification services offered to the family quickly. On the other hand, if it appears that reunification will be unlikely, it is generally in the child's legal interests to move quickly toward an alternative permanent plan. Delay and indecision are rarely in a child's legal interests.

**C-4. File Pleadings. The child's attorney should file petitions, motions, responses or objections as necessary to represent the child.**

*Commentary —*

Filing and arguing necessary motions is an essential part of the role of a child's attorney. The lawyer should file appropriate pleadings on behalf of the child, including responses to the pleadings of the other parties. Such pleadings can ensure that appropriate issues are properly before the court and can expedite the court's consideration of issues important to the child's interests.

**Relief requested may include, but is not limited to:**

- (1) Protection of a Constitutional or statutory right;**
- (2) A mental or physical examination of a party or the child;**

*Commentary -*

The issue of mental examinations of child clients is complex. The attorney must pay close attention to those rights which are protected by law and defend those rights as one would for an adult client. Furthermore, the attorney should be prepared to make independent use of experts for the child and cognizant of the attorney's right to shield from disclosure the reports of such experts, unless and until they may be submitted as evidence or otherwise disclosed in the legal interest of the child. Mental health professionals can often provide cogent assistance to the child's attorney in understanding the child's needs and abilities.

**(3) Objection to a proposed mental or physical examination of the child;**

*Commentary –*

The role of an attorney is critical in protecting the child from unnecessary or excessive examinations. The attorney should monitor examinations so that the child is fairly and professionally treated, actively participate in the choice of experts to examine the child, and prepare or obtain analyses of experts' reports to protect the child's interests and needs. Attorneys should carefully review statutory and constitutional rights of the parents and the child to object or consent to medical, psychological, and psychiatric evaluation or treatment. The child has a right to parental participation, and it should be protected unless the court finds good cause to exclude the parent.

**(4) A parenting, custody or visitation evaluation;**

**(5) An increase, decrease, or termination of contact or visitation;**

**(6) Restraining or enjoining a change of placement;**

**(7) Contempt for non-compliance with a court order;**

*Commentary-*

A child's attorney should use motions to show cause to ensure the Department or Social Service agency is providing reasonable efforts and specific services ordered by the court. These motions can also be used to ensure the parents are complying with court orders. All these efforts should be targeted toward accomplishing the timely successful resolution of the case.

**(8) Termination of the parent-child relationship;**

**(9) Post-termination or post-adoption maintenance of sibling or other familial relationships;**

**(10) Child support;**

**(11) A protective order concerning the child's privileged communications or tangible or intangible property;**

**(12) Services for child or family; and**

**(13) Dismissal of petitions or motions.**



**C-5. Request Services.** Consistent with the child's wishes, the child's attorney should seek appropriate services (by court order if necessary) to access entitlements, to protect the child's interests and to implement a case plan. These services may include, but not be limited to:

- (1) Family preservation-related prevention or reunification services;
- (2) Sibling and family visitation;
- (3) Child support;
- (4) Domestic violence prevention, intervention, and treatment;
- (5) Screening and diagnostic services;
- (6) Medical and mental health care;
- (7) Drug and alcohol treatment;
- (8) Parenting education;
- (9) Independent living services;
- (10) Long-term foster care;
- (11) Adoption services;
- (12) Education;
- (13) Recreational or social services;
- (14) Housing;
- (15) Special education and related services; and
- (16) Supplemental security income (SSI) to help support needed services.

*Commentary* —

The lawyer should request appropriate services even if there is no hearing scheduled. Such requests may be made to the agency or treatment providers, or if such informal methods are unsuccessful, the lawyer should file a motion to bring the matter before the court. In some cases the child's attorney should file collateral actions, such as petitions for termination of parental rights, if such an action would be consistent with the child's wishes, advances the child's interests and is legally permitted and justified.

**C-6. Child With Special Needs.** Consistent with the child's wishes, the child's attorney should assure that a child with special needs receives appropriate services to address the physical, mental, or developmental disabilities.

*Commentary* —

Many services for children with special needs are available from judicial and extra-judicial sources. The child's attorney should be familiar with these other services and how to assure their availability for the client. See generally, Thomas A. Jacobs, *CHILDREN & THE LAW: RIGHTS & OBLIGATIONS* (1995); *LEGAL RIGHTS OF CHILDREN* (2d ed. Donald T. Kramer, ed., 1994).

**These services may include, but should not be limited to:**

- (1) Special education and related services;**
- (2) Supplemental security income (SSI) to help support needed services;**

*Commentary —*

If a child is receiving supplemental security income, the attorney should monitor the master trust account if one is maintained by the Department of the Children and Family Services. See FLA. DEP'T CHILD. & FAM. OP. PROC. 175-59; FL. ADMIN. CODE 65C-17.001-006 (2005); and FLA. STAT. § 402.17 and 402.33 (2005).

- (3) Therapeutic foster or group home care;**
- (4) Residential/in-patient and out-patient psychiatric treatment; or**
- (5) Services available through the Department of Health for brain injuries and other specialized services.**

**C-7. Negotiate Settlements. The child's attorney should participate in settlement negotiations to obtain terms favorable to the client. The attorney should seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child. The child's attorney should use suitable mediation resources.**

*Commentary —*

Consistent with the rules of professional responsibility, the child's attorney should identify common interests among the parties and, to the extent possible, promote a cooperative resolution of disputed issues through consultation with the child's parent, guardian ad litem, foster care provider, custodian and caseworker. Particularly in contentious cases, the child's attorney may effectively assist negotiations of the parties and their lawyers by focusing on the needs of the child. If a parent is legally represented, it is unethical for the child's attorney to negotiate with a parent directly without the consent of the parent's lawyer. Because the court is likely to resolve at least some parts of the dispute in question based on the best interests of the child, the child's attorney is in a pivotal position in negotiation.

Settlement frequently obtains at least short term relief for all parties involved and is often the best resolution of a case. The child's attorney, however, should not become merely a facilitator to the parties' reaching a negotiated settlement. The child's attorney shall consult the child, in a developmentally appropriate way, prior to any settlement becoming binding.

## **D. HEARINGS**

**D-1. Court Appearances. The child's attorney should attend all hearings and participate in all telephone or other conferences with the court.**

**D-2. Client Explanation.** The child's attorney should explain to the client, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.

**D-3. Motions and Objections.** The child's attorney should make appropriate motions, including motions *in limine* and evidentiary objections, to advance the child's position at trial or during other hearings. If necessary, the child's attorney should file briefs in support of evidentiary issues. Further, during all hearings, the child's attorney should preserve legal issues for appeal, as appropriate.

**D-4. Presentation of Evidence.** The child's attorney should present and cross examine witnesses, offer exhibits, and provide independent evidence as necessary.

*Commentary —*

The child's position may overlap with the positions of one or both parents, third-party caretakers, or a child protection agency. Nevertheless, the child's attorney should be prepared to participate fully in every hearing and not merely defer to the other parties. This includes issuing subpoenas for witnesses when necessary. Any identity of position should be based on the merits of the position and not a mere endorsement of another party's position.

**D-5. Child at Hearing.** In most circumstances, the child should be present at court hearings, regardless of whether the child will testify.

*Commentary —*

A child has the right to meaningful participation in the case, which includes the child's presence at court hearings. FLA. R. JUV. P. 8.255(b). Further, the child's presence underscores for the judge that the child is a legally recognized party. FLA.STAT. § 39.01(51) (2005) and FLA. R. JUV. P. 8.210(a).

The child should be excluded from a hearing only upon a court's finding "that the child's mental or physical condition or age is such that a court appearance is not in the best interest of the child." FLA. R. JUV. P. 8.255(b). If there is a motion to exclude the child, the lawyer should consult the child, therapist, caretaker, and any other knowledgeable person in determining the effect on the child of being present at the hearing. Even a child who is too young to sit through the hearing may benefit from seeing the courtroom and meeting, or at least seeing, the judge who will be making the decisions. Concerns about the child being exposed to certain parts of the evidence may be addressed by the child's temporary exclusion from the court room during the taking of that evidence, rather than by excluding the child from the entire hearing.

The lawyer should ensure that the state/ custodian meets its obligation to transport the child to and from the hearing. Similarly, the lawyer should ensure the presence of someone to accompany the child any time the child is temporarily absent from the hearing. The attorney should take necessary steps including the filing of motions to ensure the child's presence at hearings.

**D-6. Whether Child Should Testify.** The child's attorney should decide whether to call the child as a witness. The decision should include consideration of the child's need or desire to testify, any repercussions of testifying, the necessity of the child's direct testimony, the availability of other evidence or hearsay exceptions which may substitute for direct testimony by the child, and the child's developmental ability to provide direct testimony and withstand possible cross-examination. Ultimately, the child's attorney is bound by the child's direction concerning testifying.

*Commentary —*

There are no blanket rules regarding a child's testimony. While testifying is undoubtedly traumatic for many children, it is therapeutic and empowering for others. Therefore, the decision about the child's testifying should be made individually, based on the circumstances of the individual child and the individual case. The child's therapist, if any, should be consulted both with respect to the decision itself and assistance with preparation. In the absence of compelling reasons, a child who has a strong desire to testify should be called to do so. See ANN M. HARALAMBIE, *THE CHILD'S LAWYER: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES*, ch. 4 (1993).

If the child should not wish to testify or would be harmed by being forced to testify, the lawyer should seek a stipulation of the parties not to call the child as a witness or seek a protective order from the court. If the child is compelled to testify, the lawyer should seek to minimize the adverse consequences by seeking any appropriate accommodations, such as having the testimony taken informally, in chambers, without presence of the parents. See CONTINUING LEGAL ED., FLA. BAR, *FLORIDA JUVENILE LAW AND PRACTICE* §§ 14.10-14.14 (2005). The child should know whether the in-chambers testimony will be shared with others, such as parents who might be excluded from chambers, before agreeing to this forum. The lawyer should also prepare the child for the possibility that the judge may render a decision against the child's wishes which will not be the child's fault.

**D-7. Child Witness. The child's attorney should prepare the child to testify. This should include familiarizing the child with the courtroom, court procedures, and what to expect during direct and cross-examination. The attorney should take steps to ensure that testifying will cause minimum harm to the child.**

*Commentary —*

The lawyer's preparation of the child to testify should include attention to the child's developmental needs and abilities as well as to accommodations which should be made by the court and other lawyers. The lawyer should seek any necessary assistance from the court, including location of the testimony (in chambers, at a small table etc.), determination of who will be present, and restrictions on the manner and phrasing of questions posed to the child. See *FLORIDA JUVENILE LAW AND PRACTICE* §§ 14.10-14.14 (2005).

The accuracy of children's testimony is enhanced when they feel comfortable. See, generally, KAREN SAYWITZ, *A JUDICIAL PRIMER ON CHILD SEXUAL ABUSE* 15 (Josephine Bulkley & Claire Sandt, eds., 1994). Where the rule on sequestering witnesses has been invoked, the order of witnesses may need to be changed or an exemption granted where the support person also will be a witness. The child should be asked whether he or she would like someone to be present, and if so, whom the child prefers. Typical support persons include parents, relatives, therapists, guardians ad litem, social workers, victim-witness advocates, and members of the clergy. The lawyer should take whatever steps are necessary to ensure such support for the child.

**D-8. Questioning the Child. The child's attorney should seek to ensure that questions to the child are phrased in a syntactically and linguistically appropriate manner.**

*Commentary —*

The phrasing of questions should take into consideration the law and research regarding children's testimony, memory, and suggestibility. See generally, KAREN SAYWITZ, *CHILD VICTIMS, CHILD WITNESSES: UNDERSTANDING AND IMPROVING TESTIMONY* (Gail S. Goodman & Bette L. Bottoms, eds. 1993); ANN HARALAMBIE, *2 HANDLING CHILD CUSTODY, ABUSE, AND*

ADOPTION CASES §§ 24.09\_24.22 (2nd ed. West Pub. Co. 1993); JOHN E.B. MYERS, 2 EVIDENCE IN CHILD ABUSE AND NEGLECT CASES ch. 2 (3d ed. Wiley Law Pubs. 1997); Ellen Matthews & Karen Saywitz, *Child Victim Witness Manual*, 12/1 C.J.E.R.J. 40 (1992).

The information a child gives in interviews and during testimony is often misleading because the adults have not understood how to ask children developmentally appropriate questions and how to interpret their answers properly. *See* WALKER, *supra*, A-3 Commentary. The child's attorney must become skilled at recognizing the child's developmental limitations. It may be appropriate to present expert testimony on the issue and even to have an expert present during a young child's testimony to point out any developmentally inappropriate phrasing.

**D-9. Challenges to Child's Testimony/Statements. The child's competency to testify, or the reliability of the child's testimony or out-of-court statements, may be called into question. The child's attorney should be familiar with the current law and empirical knowledge about children's competency, memory, and suggestibility and, where appropriate, attempt to establish the competency and reliability of the child.**

*Commentary —*

If necessary, the child's attorney should present expert testimony to establish competency or reliability or to rehabilitate any impeachment of the child on those bases. *See generally*, SAYWITZ, *supra* D-8 at 15; HARALAMBIE, *supra* D-8; MYERS, *supra* D-8; Matthews & Saywitz, *supra* D-8.

**D-10. Conclusion of Hearing. If appropriate, the child's attorney should make a closing argument, and provide proposed findings of fact and conclusions of law which focus on the child's needs and the effect of the various dispositions on the child. The child's attorney should verify that a written order is entered which includes sufficient specificity to ensure compliance and enforcement.**

*Commentary —*

Orders need to be specific to ensure a child receives appropriate services in a timely manner. The child's attorney should verify that an order identifies responsible parties for services and timelines for compliance with an order.

**D-11. Expanded Scope of Representation. The child's attorney may consider pursuing or referring to be pursued by a competent attorney issues administratively or judicially on behalf of the child, even if those issues do not specifically arise from the court appointment. For example:**

- (1) Child support;
- (2) Delinquency or status offender matters;
- (3) SSI and other public benefits;
- (4) Custody;
- (5) Guardianship;
- (6) Paternity;
- (7) Claim for damages;

- (8) **School/education issues, especially for a child with disabilities;**
- (9) **Mental health proceedings; Mental health proceedings including proceedings before Family Service Planning Teams and for placement in residential treatment facilities;**
- (10) **Agency for Persons with Disabilities benefits** including proceedings as to eligibility, prior service authorizations, and administrative or fair hearings.;
- (11) **Adoption;**
- (12) **Independent Living Services post 18 years of age;**
- (13) **Immigration, especially Special Immigrant Juvenile qualifications; or,**
- (14) Health benefits including Medicaid. HMO appeals and other proceedings involving health benefits.

*Commentary —*

The child's interests and rights may be affected through proceedings not connected with the case in which the child's attorney is participating. In such instances the lawyer should protect the child by monitoring or participating in such proceedings. A child may be eligible for specialized educational, medical or mental health services which may be pursued in the case planning process or a collateral proceeding. Nothing in these guidelines requires an attorney to participate in collateral proceeding for which he or she is not entitled to compensation or in which he or she is not competent. (See Rule 4-1.?? on Competency) In such circumstances, an attorney should seek court ordered compensation or with a lawyer who is competent or seek to associate with an attorney who can provide these services on a pro bono basis. The Unified Family Court should facilitate consistency of representation between related court proceedings.

**D-12. Obligations after Disposition. The child's attorney should seek to ensure continued representation of the child at all further hearings, including at administrative or judicial actions that result in changes to the child's placement or services, so long as the court maintains its jurisdiction.**

*Commentary —*

Representing a child should reflect the passage of time and the changing needs of the child. The bulk of the child's attorney's work often comes after the initial hearing, including ongoing permanency planning issues, six month reviews, case plan reviews, issues of termination, and so forth. Often a child's case workers, therapists, other service providers or even placements change while the case is still pending. Different judges may hear various phases of the case. The child's attorney may be the only source of continuity for the child. Such continuity not only provides the child with a stable point of contact, but also may represent the institutional memory of case facts and procedural history for the agency and court. The child's attorney should stay in touch with the

child, third party caretakers, case workers, and service providers throughout the term of appointment to ensure that the child's needs are met and that the case moves quickly to an appropriate resolution. Generally it is preferable for the lawyer to remain involved so long as the case is pending to enable the child's interest to be addressed from the child's perspective at all stages.

**D-13. *Ex Parte* Communications. The child's attorney shall avoid and guard against *ex parte* communications at all stages of the litigation.**

*Commentary –*

The common informality of the dependency process should not be abused by any of the parties. Judges are not, except as authorized by law, to initiate or consider *ex parte* communications concerning a pending or impending proceeding. Thus, no communications with the court should take place without the presence of all the parties.

**E. POST-HEARING**

**E-1. Review or Draft Court's Order. The child's attorney should review all written orders or when necessary draft orders to ensure that the child's interests are protected including that the orders are clear, specific, and, where appropriate, include a time line for assessment, services, placement, treatment and evaluation of the child and the child's family.**

*Commentary –*

Typically in dependency proceedings, form orders are used to expedite the process. When the order specifically addresses issues affecting the child's welfare, the attorney should carefully review or draft the order.

**E-2. Communicate Order to Child. The child's attorney should discuss the order and its consequences with the child.**

*Commentary –*

The child is entitled to understand what the court has done and what that means to the child, at least with respect to those portions of the order that directly affect the child. Children may assume that orders are final and not subject to change. Therefore, the lawyer should explain whether the order may be modified at another hearing, or whether the actions of the parties may affect how the order is carried out. For example, an order may permit the agency to return the child to the parent if certain goals are accomplished.

**E-3. Implementation. The child's attorney should monitor the implementation of case plans and court orders, and determine whether services the court ordered for the child or the child's family are being provided in a timely manner and are accomplishing their purpose. The child's attorney should consider appropriate action if the services are not being provided in a timely manner, if the family fails to take advantage of the services, or if the services are not accomplishing their intended purpose.**

*Commentary –*

The lawyer should ensure that services are provided and that the court's orders are

implemented in a complete and timely fashion. In order to address problems with implementation, the lawyer should stay in touch with the child, case worker, third party caretakers, and service providers between review hearings. The lawyer should not wait until the next review hearing to learn whether there has been compliance with previous court orders. The lawyer should consider filing any necessary motions, including those for civil or criminal contempt, to compel implementation. For example, the timely implementation of an interstate placement through the Interstate Compact for the Placement of Children will require strong advocacy by the child's attorney.

## **F. APPEAL**

**F-1. Decision to Appeal.** The child's attorney should consider and discuss with the child, as developmentally appropriate, the appellate process and the possibility of an appeal. If after such consultation, the child wishes to appeal the order, and the appeal has merit, the lawyer should take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the child during the pendency of the appeal.

### *Commentary —*

The lawyer should explain to the child not only the legal possibility of an appeal, but also the ramifications of filing an appeal, including the potential for delaying implementation of services or placement options. The lawyer should also explain whether the trial court's orders will be stayed pending appeal and what the agency and trial court may do pending a final decision.

**F-2. Withdrawal.** If the child's attorney determines that an appeal would be frivolous or that he or she lacks the necessary experience or expertise to handle the appeal, the lawyer should notify the court and seek to be discharged, replaced, or additional counsel appointed to handle the appeal.

### *Commentary —*

It is not unusual to have one attorney handle the appellate matters while another attorney handles the ongoing juvenile court matters. To avoid a delay in the appeal, if an attorney representing a child in the juvenile court realizes he or another's party's attorney will not or can not participate in the appeal, the child's attorney should take all steps to ensure expedited appointment of attorneys to handle the appeal to avoid delay in permanency for the child.

**F-3. Participation in Appeal.** The child's attorney should participate in an appeal filed by another party unless discharged.

### *Commentary —*

The child's attorney should take a position in any appeal filed by the parent, agency, or other party. If the child's interests are affected by the issues raised in the appeal, the lawyer should seek an appointment on appeal or seek appointment of appellate counsel to represent the child's position in the appeal.

**F-4 Expediting an Appeal.** Recognizing a child's need for permanency, the child's attorney should use all means available to expedite matters on appeal and encourage all parties to do likewise.

**F-5. Conclusion of Appeal.** When the decision is received, the child's attorney should



**explain the outcome of the case to the child.**

*Commentary —*

As with other court decisions, the lawyer should explain in terms the child can understand the nature and consequences of the appellate decision. In addition, the lawyer should explain whether there are further appellate remedies and what more, if anything, will be done in the trial court following the decision.

## **G. CONTINUING LEGAL EDUCATION**

**G-1. Lawyer Training. A lawyer representing children should maintain sufficient training in dependency law and related topics to competently represent a child client. Lawyers should receive training prior to representing a child and receive continuing and "new developments" training.**

**(1) At a minimum, the requisite training should include:**

- a) Information about relevant federal and state laws and agency regulations;**
- b) Information about relevant court decisions and court rules;**
- c) Overview of the court process and key personnel in child-related litigation;**
- d) Ethical obligations for child representation including these guidelines for representation;**
- e) Child development, needs, and abilities including grief and attachment;**
- f) Information concerning family dynamics and dysfunction including substance abuse, domestic violence, effects of family dissolution, importance of visitation, familial contact and the use of kinship care; and**
- g) Information on accessible child welfare, family preservation, medical, educational, and mental health resources for child clients and their families, including placement, evaluation/diagnostic, and treatment services; the structure of agencies providing such services as well as provisions and constraints related to agency payment for services.**

**(2) Additional legal education may include, but is not limited to:**

- a) Mental health diagnosis and treatment including the use of psychotropic medications;**
- b) Trial and appellate advocacy.**

- c) **Information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in his or her home;**
- d) **Information on educational rights including special educational rights and services;**
- e) **Communication and communication with children skills and information gathering and investigative techniques;**
- f) **Information on religious background and racial and ethnic heritage, and sensitivity to issues of cultural and socio-economic diversity as they relate to child rearing and the child's rights to practice a religion of choice; and**
- g) **Information on confidentiality issues for children.**

*Commentary —*

Children are a special class of client and dependency matters are special types of cases in which legal issues have to be resolved in the context of familial relationships. Obtaining a good resolution requires a holistic approach. For these reasons, it is especially important that those appointed to advocate on behalf of the child have sufficient specialized training. Many courts and judicial organizations recognize that rapid changes occur because of new federal and state legislation, appellate court decisions, systemic reforms, and responses to professional literature. Continuing education opportunities are critical to maintain a high level of performance. These Guidelines require these "advanced" or "periodic" training to lawyers who represent children in abuse and neglect related cases. Although this general training is necessary, the attorney has a continuing obligation to become knowledgeable about the special issues that may arise in individual cases.

At a minimum, an attorney should be familiar with Florida Statutes, Chapter 39, the Florida Rules of Juvenile Procedure and the Department of Children and Families regulations. In addition, the attorney should be aware that issues may arise that may require knowledge of other significant areas of the law such as education or access to government benefits. To become knowledgeable of these diverse sources of relevant law an attorney may want to review books such as the Florida Bar *Juvenile Law Practice and Procedure* or the National Association of Counsel for Children *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect and Dependency Cases*. Useful national sources of information or training include the American Bar Association Center for Children and the Law [www.abanet.org/child](http://www.abanet.org/child) or the National Association of Counsel for Children, [www.naccchildlaw.org](http://www.naccchildlaw.org).

**G-2. Mentorship. Individual lawyers who are new to child representation should take the opportunity to practice under the guidance of a senior lawyer mentor.**

*Commentary —*

In addition to training, particularly for lawyers who work as sole practitioners or in firms

that do not specialize in child representation, more experienced advocates are a useful resource to help educate new lawyers for children. Attorneys are encouraged to join and participate in at least one professional group or organization that will be a resource for needed information. Such groups include the National Association of Counsel for Children and relevant committees of the Florida Bar.