

Oregon State Bar

# Standards of Practice for Attorneys Representing the Child Welfare Agency

**April 20, 2018**

# Foreword

The original version of the Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases (hereafter, the performance standards) was approved by the Board of Governors on September 25, 1996. Significant changes to the original performance standards were adopted in 2006, and an additional set of standards pertaining to representation in post-conviction standards were adopted in 2009.

As noted in the earlier revision, in order for the performance standards to continue to serve as valuable tools for practitioners and the public, they must be current and accurate in their reference to federal and state laws and they must incorporate evolving best practices.

The Foreword to the original performance standards noted that “[t]he object of these [g]uidelines is to alert the attorney to possible courses of action that may be necessary, advisable, or appropriate, and thereby to assist the attorney in deciding upon the particular actions that must be taken in a case to ensure that the client receives the best representation possible.” This continues to be the case, as does the following, which was noted in both the Foreword in the 2006 revision and the Foreword to the 2009 post-conviction standards:

“These guidelines, as such, are not rules or requirements of practice and are not intended, nor should they be used, to establish a legal standard of care. Some of the guidelines incorporate existing standards, such as the Oregon Rules of Professional Conduct, however which are mandatory. Questions as to whether a particular decision or course of action meets a legal standard of care must be answered in light of all the circumstances presented.”

We hope that this addition to the Performance Standards, like the originals, will serve as a valuable tool both to the new, and to the experienced lawyer who may look to them in each new case as a reminder of the components of competent, diligent, high quality legal representation.



Vanessa Nordyke  
Oregon State Bar President



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## **Report of the Child Welfare Agency Performance Standards Work Group**

### **Summary and Background**

In September of 1996, the Oregon State Bar Board of Governors first approved the *Principles and Standards for Counsel in Criminal, Delinquency, Dependency, and Civil Commitment Cases*. These standards have been updated and expanded several times in the intervening years. Previous standards applicable in juvenile dependency cases, however, have always focused on the roles of attorneys for parents and children respectively.

These new standards came about as a result of Senate Bill 222, passed during the 2015 Oregon Legislative Session, which created a task force charged with recommending models of legal representation in juvenile dependency proceedings. The Oregon Task Force on Dependency Representation, staffed by the Governor’s office, convened in 2015 and 2016 and issued its [final report](#) in July 2016. That report made a number of recommendations for improving services in

juvenile dependency proceedings—including the creation of these new performance standards for agency attorneys.

In the fall of 2016, the Oregon State Bar Board of Governors directed the creation of this workgroup. The workgroup was chaired by Joanne Southey (Oregon Department of Justice), and workgroup members included Amy Benedum (Oregon Judicial Department Juvenile Court Improvement Program), Linn Davis (Oregon State Bar), Shannon Dennison (Oregon Department of Justice), Lori Fellows (Multnomah County District Attorney’s Office), Olivia Godinez (Oregon Department of Justice), Amy Miller (Office of Public Defense Services), Rahela Rehman (Oregon Department of Justice), and Matt Shields (Oregon State Bar). Adrian Smith (Former Governor’s Task Force Administrator) also contributed.

The following pages set forth these new performance standards applicable to attorneys who represent the Oregon Department of Human Services (DHS) Child Welfare Program in juvenile dependency proceedings. These standards should be read alongside general standards for attorneys, and may be further informed by reference to the standards applicable to attorneys for parents and children that are presented on the Oregon State Bar website.

## **Role of the Agency Attorney**

The role of the agency attorney is multifaceted. The attorney ensures that the child welfare agency has quality, uniform, continuous, and comprehensive legal representation in the juvenile system statewide. In addition, the attorney has an equal obligation to ensure due process, promote fairness, and advocate for consistent application of the law. Agency representation is essential to a well-functioning child welfare system.

Juvenile dependency proceedings are a complex interplay between social work and law. It is essential that the agency attorney have a thorough understanding of the agency's social-work practices, procedures, policies, and obligations to effectively advocate on the agency's behalf to promote safe and positive outcomes for children and families. The attorney must have direct and privileged communication with agency employees in order to take legal action supported by sound casework practice, which is based on the agency's assessment of and work with the child and family. Legal advocacy partnered with the agency's expertise enhances the agency's credibility in court and improves outcomes for all. In addition, unified and statewide agency representation allows for consistent interpretation and application of laws and coherent decision making.

The child welfare agency's legal representation is provided by the Oregon Department of Justice (DOJ) statewide. Assistant Attorney Generals (AAGs) provide legal advice and litigation support to the agency on specific issues and individual cases. AAGs also play a significant role outside of the courtroom providing guidance and advice on legal issues with statewide implications. The AAG represents the agency as a legal entity and does not represent individual caseworkers. That being said, the AAG works closely with agency caseworkers to prepare cases for court, advise caseworkers of the agency's legal obligations, and assists with specialized training. Agency representation is a safeguard against caseworkers engaging in the unauthorized practice of law.

## **Standard 1 – General Obligations of the Agency Attorney**

### **A. Acquire a working knowledge of all relevant federal and state laws, regulations, policies, and rules**

Action: At a minimum, the agency attorney should be familiar with the following:

#### Oregon State Laws—

1. ORS chapter 109 – Parent and Child Rights and Relationships (includes Uniform Child Custody Jurisdiction and Enforcement Act)
2. ORS chapter 125 – Protective Proceedings, Guardianships
3. ORS chapter 409 – Department of Human Services
4. ORS chapter 418 – Child Welfare Services
5. ORS chapter 419A – Juvenile Code: General Provisions and Definitions
6. ORS chapter 419B – Juvenile Code: Dependency
7. ORS chapter 419C – Juvenile Code: Delinquency
8. OAR chapter 413 – Administrative Rules, DHS Child Welfare Programs
9. Interstate Compacts on Juveniles and Children, ORS chapter 417; Interstate Compact on Placement of Children (ICPC), ORS 417.200–417.260 and OAR 413-040-0200 to 413-040-0330
10. The Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), ORS 109.701–109.834
11. DHS Child Welfare Policy Index – Oregon Administrative Rules and Protocols
12. DHS Oregon Safety Model
13. State laws and rules of civil procedure including Uniform Trial Court Rules and Supplemental Trial Court Rules
14. Oregon Constitution
15. State laws and rules of criminal procedure
16. State laws and rules of administrative procedure
17. State laws concerning public benefits, education, and disabilities
18. State laws regarding domestic violence

#### Federal laws—

19. The Adoption and Safe Families Act of 1977 (ASFA), Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended at 42 U.S.C. §§ 620–679); and the ASFA regulations, 45 C.F.R. pts. 1355–1357
20. The Indian Child Welfare Act (ICWA), Pub. L. No. 96-608, 92 Stat. 3069 (codified as amended at 25 U.S.C. §§ 1901–1963); the ICWA regulations, 25 CFR pt 23 (effective Dec 12, 2016); and the Bureau of Indian Affairs’ *Guidelines for Implementing the Indian Child Welfare Act* (Dec 2016), available at [www.bia.gov](http://www.bia.gov)
21. Americans with Disabilities Act (42 U.S.C. §§ 12101–12213) and section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 794)

22. Social Security Act (SSA), Title IV-E eligibility provisions (42 USC §§ 670–673); and Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews, 65 Fed Reg 4020 (2000)
23. Individuals with Disabilities Education Act (IDEA), Pub. L. No. 91-230, 84 Stat. 191 (1970) (codified as amended at 42 USC §§ 1400–1482)
24. Child Abuse Prevention Treatment Act (CAPTA), Pub. L. No. 93-247, 88 Stat. 4 (1974)
25. Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (2008)
26. Multiethnic Placement Act of 1994 (MEPA), as amended by the Interethnic 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)
27. Foster Care Independence Act of 1999 (FCIA), Pub. L. No. 106-169, 113 Stat. 1822
28. Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104-191, § 262(a), 110 Stat. 1936 (codified as amended at 42 U.S.C. § 1320d-2)
29. Public Health Service Act (42 U.S.C. § 290dd-2) and 42 C.F.R. part 2 (pertaining to confidentiality of individual information)
30. Immigration laws relating to child welfare and child custody

International Laws—

31. The International Parental Kidnapping Crime Act of 1993 (IPKCA), Pub. L. No. 103-173, 107 Stat. 1998 (codified as amended at 18 U.S.C § 1204)
32. The Hague Convention on the International Aspects of Child Abduction, implemented by ICARA, 22 U.S.C. § 9001–9011
33. Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361
34. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 32 I.L.M. 1134
35. Vienna Convention on Consular Relations, art 36, April 24, 1963, 21 U.S.T. 77 (regarding foreign nationals in the United States and the rights of consular officials to assist them, implemented at ORS 419B.851(3) and 8 C.F.R. § 236.1)

Action: The attorney should establish some familiarity with the following subjects and participate in training as needed:

1. Stages of child development
2. Attachment and sibling relationships
3. Cultural child rearing practices
4. Substance abuse and available treatment options
5. Domestic violence and available resources
6. Diagnosis and treatment of mental health and abuse (sexual, physical, and emotional)
7. Educational, mental health, and other resources for children
8. Placement matching options and considerations (including placement of siblings, visitation, language, and culture)
9. Use of psychotropic medication for children

10. Agency funding resources (adoption assistance, guardianship assistance, Social Security benefits, and state assistance for families in need).
11. Transition plans and independent-living programs for teens

Commentary: The attorney represents the agency in juvenile dependency and termination-of-parental-rights proceedings, and advises the agency on the legality of actions and policies. To best perform these functions, the attorney should read and become familiar with all relevant laws.

Action: The attorney must understand and comply with state and federal privacy and confidentiality laws. The attorney should also assist the agency to access confidential information from external sources as needed on a case-by-case-basis, such as obtaining a court order to access mental health or drug and alcohol information.

Commentary: Given the sensitive nature of child welfare cases and the impact on the lives of children and families, the attorney should be vigilant about protecting the confidentiality of child welfare information and assist the agency to do the same. The identity of the child, parents, and child-abuse reporters, as well as treatment records and HIV status of any of the parties, for example, must all be kept confidential. Some information may also need to be kept confidential between parties (e.g., domestic-violence records and protected health information). The attorney should work with the agency to ensure that disclosure of confidential information is pursuant to applicable laws or with appropriate authorization. For example, a party may sign a release authorizing disclosure of drug and alcohol treatment records or protected health information.

Commentary: Confidential information regarding the juvenile dependency case may only be disclosed as provided by statute, a court order, or by a signed release of information. For example, an agency attorney in a dependency case may not share information with a prosecutor in a related criminal case or an attorney in a related domestic-relations case absent statutory authority or a court order.

## **B. Promote timely hearings and reduce case continuances**

Action: The agency attorney must be prepared to move forward in a timely manner. The agency attorney should carefully consider all circumstances when requesting or responding to a motion for a continuance. The agency attorney should be fully prepared for all hearings.

Commentary: The agency has a duty to ensure that statutory timelines are met and that children do not remain in foster care longer than necessary. The agency attorney must assist the agency to meet this duty. Requesting or agreeing to case continuances should be unusual rather than routine practice.

## **C. Protect and promote the agency's credibility**

Action: The attorney should counsel the agency regarding its legal position and must file only meritorious cases, motions, and appeals. The attorney should be professional, knowledgeable, and promote candor when presenting cases to the court. In representing the agency, the attorney should be respectful and courteous to agency representatives and promote a positive image of the agency with parties, community partners, and the court.

Commentary: At times, the agency may take a legal position in a case or implement a policy that is not popular. It is important that the attorney adequately explain the agency's decision-making process and, if applicable, protect any confidential case-related information. The attorney should counsel the agency to consistently apply its policy and avoid taking positions that undermine the agency's credibility. The attorney's role includes supporting the agency in the courtroom and in other forums.

#### **D. Communicate on a regular basis with the agency and case-related professionals.**

Action: The attorney should regularly communicate with the agency to discuss case developments. The attorney should communicate regularly with juvenile dependency attorneys and the court.

Commentary: The attorney must have timely, relevant information to effectively represent the agency, which requires open and ongoing communication with caseworkers. When appropriate, the attorney should share information with other professionals, which may include prosecutors, law enforcement, and attorneys. For example, the attorney should communicate with a prosecutor regarding related criminal matters, to ensure that probation orders and disposition orders do not conflict and, where appropriate, are mutually reinforcing (e.g., a visitation order in an abuse and neglect case should not contradict a no-contact order from a criminal court).

Action: The attorney should make efforts to build relationships with other professionals in the juvenile dependency system.

Commentary: Maintaining positive relationships with other professionals benefits the agency as a whole as well as on individual cases. Such professionals may include judges, attorneys, court staff, court-appointed special advocates (CASAs), tribal representatives, service providers, and law enforcement agencies. Recognizing that system partners are an integral part of the juvenile dependency system will likely assist in achieving better outcomes for children and families.

## **Standard 2 – Counseling, Training, and Advice**

### **A. Counsel the agency in all legal matters related to individual cases as well as general policy and practice issues.**

Action: The attorney should be available for in-person meetings, telephone calls, electronic communication, and should routinely staff and monitor legal cases. The attorney should provide clear, concise, timely advice that is readily accessible to the agency. The attorney should advise agency administration on policy concerns and developments that may affect the agency.

Commentary: The attorney's role extends beyond the courtroom. The agency's actions, practices, and decisions may have statewide implications beyond individual cases. The attorney should consider the potential impact and advise accordingly. The attorney should work with the agency to develop a plan for consistent, regular staffings at significant points throughout the case (e.g., prior to filing a petition or before a permanency hearing). The attorney's role is not to act as the caseworker's supervisor, but rather to provide legal guidance and expertise so the agency can make informed decisions. When appropriate, the attorney should confirm significant oral advice by following with written advice.

### **B. Assist with agency training.**

Action: The attorney should be familiar with formalized agency trainings, both initial and ongoing, provided to caseworkers.

Commentary: The child welfare agency provides mandatory standardized trainings for all new caseworkers. Caseworkers are trained on a wide array of topics including the agency's role in juvenile dependency proceedings, child development, and safety and permanency planning. The attorney may need to draw on a caseworker's training in court in order to qualify a caseworker as an expert when testifying in juvenile dependency proceedings.

Action: The attorney should assist the agency in identifying and implementing specific trainings as needed.

Commentary: In the course of their work with caseworkers in local branches, the attorney may identify the need for additional caseworker training specific to juvenile court proceedings. Prior to providing any training, the attorney should consult with his or her managing attorney to ensure that training content is consistent statewide.

## **Standard 3 – Court Preparation**

### **A. Consult with the agency regarding legal sufficiency of removal or other actions taken prior to court involvement.**

Action: The attorney should be readily available to provide legal advice and counsel on actions and decisions that the agency must make prior to filing a petition.

Commentary: Prior to filing a petition, the agency may need advice regarding removal of a child or safety planning with a family. These decisions are often time-sensitive, which may require the attorney to be available outside of regular working hours. The agency may need consultation on a number of issues, such as safety planning with the family, removal, emergency medical decisions, working with law enforcement, missing children, child fatalities, and suitability of a voluntary agreement as opposed to initiating court action.

### **B. Prepare and file dependency petitions.**

Action: Prior to filing a petition, the attorney should review all available supporting documentation. The attorney should work with the agency to draft, review, and file the petition with the court.

Commentary: The petition is a significant legal document. All subsequent legal actions in the dependency case stem from the allegations contained in the petition. The attorney should confirm that each allegation has a factual basis and is legally sufficient to establish juvenile court jurisdiction. The petition notifies the parents and other parties as to the agency's concerns and the legal basis for court intervention.

Commentary: In some instances, the agency may provide draft language for the petition. However, it is essential that the attorney review the petition and supporting documentation prior to filing. The attorney should not rely solely on caseworker reports. Documentation related to the case may include affidavits, police reports, medical and service provider records, reports from other agencies, and witness interviews.

### **C. Ensure compliance with all notice and service requirements.**

Action: The attorney must be knowledgeable of statutory notice and service provisions and should ensure compliance with these requirements.

Commentary: The appropriate method of service depends on the specific facts of each case. Timely resolution of the case may be significantly impacted by defects in service. Parties have a right to notice of court hearings and all pleadings filed with the court. Other entities or individuals may also be entitled to notice of court hearings, including foster parents, grandparents, consulates, tribes, and Indian custodians.

Commentary: Notice and service requirements will differ in cases in which The Hague Convention or the Indian Child Welfare Act apply.

**D. Assist the agency in obtaining relevant case-related material and review documents and information gathered by the agency or filed in the case.**

Action: The attorney should counsel the agency to ensure the agency obtains all records that are necessary to prove the petition, or may be needed for later hearings. For example, the agency file may include mental health and substance abuse treatment records, histories for the children and parents, abuse and neglect reports with supporting materials about the investigation, education records, medical records, birth certificates for the children, death certificates, affidavits of efforts to locate parents, and paternity records.

Action: The attorney should counsel the agency regarding its discovery obligations to timely provide records to all parties.

Commentary: The attorney should review all records to assist the agency in evaluating the most appropriate case plan. Some of these records may not be in the agency's file. Obtaining these records may require assistance from the attorney, which may involve subpoenaing records or requesting court orders.

**E. File timely, accurate, and thorough pleadings.**

Action: The attorney is responsible for filing thorough, accurate, timely pleadings on the agency's behalf. The attorney should review all pleadings filed for completeness and accuracy.

Commentary: Abuse and neglect proceedings are typically initiated by the agency. Agency pleadings frame the case and, therefore, must be comprehensive and contain all necessary information. After reviewing the file, the attorney should exercise professional judgment in identifying information that should be provided to the court. In order for the court to make informed decisions, the attorney must ensure appropriate information known to the agency is provided to the court.

**F. Subpoena and interview witnesses called on behalf of the agency.**

Action: The attorney should work with the agency to develop a witness list in advance of a hearing. The attorney is responsible for determining which witnesses should testify. Prior to testimony the attorney should interview witnesses who may be called on behalf of the agency. The attorney should issue subpoenas and ensure proper service.

Commentary: Advance preparation is the key to successfully resolving a case, whether by negotiation or trial. The attorney should meet with the agency well in advance of the hearing to identify, subpoena, and interview relevant and necessary witnesses. The attorney should consider

working with other parties who share the agency's position when creating a witness list, issuing subpoenas, and interviewing witnesses.

Commentary: The attorney must be aware potential witnesses have busy schedules and need appropriate notice of the date and time of the hearing. The attorney should be considerate of time constraints for witnesses, in particular teachers, healthcare providers, and law enforcement officers and agents. When possible, the attorney should work with others to minimize a witness's time in court or request an alternate manner of appearance.

Commentary: Witnesses may be apprehensive about testifying in court. Preparation well in advance of the appearance may assist the witness in feeling more comfortable with the process and the type of questions that may be asked. This preparation also informs the attorney before trial what information the witness has and what may be elicited as testimony. The attorney should inform the witness of the obligation to provide accurate and truthful testimony.

Action. The attorney should consult with the agency and the child's attorney to determine whether the child should testify at a hearing. If the decision is made that the child should testify, and when the positions of the agency and the child are aligned, the agency attorney and the child's attorney should decide together who will present the child's testimony.

Commentary: In considering whether the child should testify, the attorney should balance the evidentiary needs of the case with the impact that testifying will have on the child. The attorney should give careful consideration to the child's development, emotional needs, and ability to handle both direct and cross-examination. The attorney should also investigate alternatives to in-court testimony to minimize trauma, such as video appearances or an in-chambers conference.

### **G. Subpoena and prepare agency staff to testify.**

Action: The attorney should identify and determine which agency witnesses will testify at the hearing and issue subpoenas accordingly. The attorney should sufficiently prepare agency staff witnesses to testify.

Commentary: It is imperative that the attorney adequately prepare agency staff to testify in court, which should include an explanation of the court process and legal issues, the importance of demeanor and professionalism, and questions they are likely to be asked. The attorney should advise the agency representative of the obligation to adequately prepare for court and provide accurate testimony. It may be necessary to request the agency representative to gather additional information and meet with the attorney again before trial.

Action: The attorney should counsel the agency on its obligations when agency staff are served with subpoenas by other parties. The attorney should prepare the agency witness to testify.

Commentary: Agency staff may be apprehensive about being called to testify by opposing counsel. Attorneys should thoroughly prepare agency witnesses so they are more comfortable with the process and the type of questions they may be asked.

## **H. Actively participate in all settlement negotiations, pretrial conferences, and hearings to achieve speedy resolution of the case when appropriate.**

Action: The attorney should participate in all settlement negotiations and hearings to promptly resolve the case, keeping in mind the effect of continuances and delays on the child. The attorney must support the agency's position during negotiations, and communicate all settlement offers to the agency, as it is the agency's ultimate decision whether to settle.

Commentary: During pretrial negotiations, a great deal of information is shared about the family and the allegations in the petition. Therefore, it is important that the attorney be actively involved in this stage. The attorney should be prepared to negotiate and resolve cases during the pretrial process. However, the attorney should understand that certain allegations should not be compromised as they may impact child safety, case planning, and permanency planning. If an appropriate settlement is not reached, the attorney must be prepared to proceed to trial and not compromise merely to avoid litigation.

Commentary: Generally, when agreements have been thoroughly discussed and negotiated, all parties feel they had a say in the decision and are, therefore, more willing to adhere to a plan. The attorney should work with the other parties to ensure that the court is immediately notified of the settlement so it may adjust its calendar accordingly. When appropriate, the attorney should ensure the settlement is included in the court record.

## **I. Assist the agency in meeting legal obligations to adhere to state and federal case timelines.**

Action: The attorney must be aware of federal and state case timelines indicating when certain actions must occur, and must advise the agency accordingly.

Commentary: The agency attorney shares a responsibility with the agency for keeping deadlines in mind and moving a case forward. For example, the Adoption and Safe Families Act (ASFA) requires the court to hold a permanency hearing 12 months after jurisdiction or 14 months after the removal of a child. The ASFA timelines also require the filing of a termination-of-parental-rights petition when the child has been in care for 15 of the most recent 22 months, unless certain exceptions apply.

## **J. Assist the agency with permanency planning for the child.**

Action: The attorney should assist the agency in determining and implementing the agency's permanent plan for the child.

Action: The attorney may need to draft and file motions or petitions for guardianship, petitions to terminate parental rights, or motions to implement other permanent plans. The attorney should review all relevant documentation and confer with the agency prior to filing pleadings.

Commentary: Permanency planning is specific to the facts of each case and may include reunification, another planned permanent living arrangement, placement with a fit and willing relative, guardianship, and adoption. The attorney should investigate other legal actions that could impact the ability to achieve permanency.

Commentary: To effectively assist the agency in implementing a permanent plan, it is essential for the attorney to review the initial jurisdictional petition, any subsequent petitions, jurisdictional and dispositional orders, and all other court orders and judgments in the case. It is equally important that the attorney review all relevant supporting documentation related to the case such as evaluations, case notes, provider updates, treatment records, police reports, court reports, information provided by other parties, and exhibits that may have been entered into the legal record.

## **Standard 4 – Juvenile Court Proceedings**

### **A. Attend and prepare for juvenile court proceedings.**

Action: The attorney must prepare for and attend all court proceedings in the case.

Action: The attorney should have adequate time and resources to competently represent the agency, maintain a reasonable workload, and have access to sufficient support services.

Commentary: To advocate on behalf of the agency, the attorney must be prepared for all court appearances. This is not limited to contested trials, but includes all court proceedings (shelter, jurisdiction, disposition, visitation, placement, dismissals, reviews, permanency hearings, etc.). Preparation for hearings will depend on the nature of the hearing, the standard of proof, and the supporting evidence and documentation. For example, a hearing on a parent’s motion to expand visitation may include review of visitation notes, evaluations of the parents and child, and other service provider notes, whereas a jurisdiction hearing may involve records review, extensive witness preparation, and ongoing negotiation with the parties.

Commentary: In addition to the above, the attorney must adhere to the Oregon Rules of Professional Conduct, which require the attorney to provide competent representation including skilled advocacy, thorough preparation, and relevant legal knowledge necessary for representation of the agency.

### **B. Make all appropriate motions and evidentiary objections.**

Action: The attorney should make appropriate motions and evidentiary objections to advance the agency’s position during the hearing. If necessary, the attorney should file briefs, legal memoranda, or pleadings to support the agency’s position. The agency attorney should preserve legal issues for possible appeal.

Commentary: It is essential that attorneys are familiar with and understand the Oregon Evidence Code and all relevant court rules and procedures. The attorney should zealously advocate on behalf of the agency in court by making appropriate motions, objections, and legal arguments. The attorney should also ensure the court has all necessary and relevant information to make statutorily required judicial determinations.

### **C. Present case-in-chief, call and cross-examine witnesses, prepare and offer exhibits**

Action: The attorney must be able to effectively prepare and present witnesses to support the agency’s position. The attorney must also be skilled at cross-examining opposing parties’ witnesses in an effective, respectful manner. The attorney should be familiar with the Oregon Evidence Code and be prepared to offer exhibits.

Commentary: As the agency is the moving party in most hearings, the burden is on the attorney to present a solid case with well-prepared witnesses and documentary evidence. The attorney should create a thorough record to assist the court in making required factual findings and legal conclusions. The attorney should possess the skills to elicit helpful information from both agency and opposing-party witnesses.

#### **D. Request the opportunity to make opening and closing arguments when appropriate.**

Action: When permitted by the court, the attorney should make opening statements and closing arguments to frame the issues and the evidence in the case.

Commentary: As the agency is typically the moving party, the court often relies on the attorney to summarize the issues and evidence in any given hearing. Despite the brevity and informality of some dependency hearings, an effective opening statement and closing argument can help clarify and promote the agency's position.

Commentary: In significant, complex, or extended contested hearings (jurisdictional, guardianship, and termination-of-parental-rights trials), well-prepared opening statements and closing arguments are essential to assist the court understand the agency's legal position, theory of the case, and evidence presented.

#### **E. Prepare judgments and orders.**

Action: The attorney may need to prepare the order on behalf of the agency. When doing so, the attorney must ensure that the order reflects the necessary or required findings of fact and conclusions of law consistent with the record.

Commentary: Upon receipt, the attorney must review every judgment and order to ensure it accurately reflects the court's findings and orders.

## **Standard 5 - Post Hearings**

### **A. Review court orders and judgments to ensure accuracy and clarity.**

Action: The attorney should ensure the accuracy of all orders and judgments and review the same with the agency. When necessary, the attorney should take the necessary steps to correct any errors in orders and judgments.

Commentary: The attorney should promptly review the court's orders and judgments with the agency. If the agency is dissatisfied with the outcome, the attorney should counsel on possible legal options (e.g., request a rehearing, file a motion to set aside, or file a motion to stay the order). The trial attorney may need to consult with the appellate attorney to determine the best legal course.

Commentary: The attorney must be familiar with the requisite findings of fact and conclusions of law the court must make in each type of hearing. For example, the findings a court must make at a shelter hearing differ from those at a permanency hearing.

Commentary: Inaccurate orders may have significant ramifications for the agency. For example, failure to secure a finding of reasonable efforts could affect federal funding for the agency. Additionally, the failure to make a required finding can raise issues on appeal, potentially delaying permanency for the child.

### **B. Take reasonable steps to ensure the agency complies with court orders.**

Action: The attorney should counsel the agency regarding the court's orders and expectations of the agency.

Commentary: The attorney should help the agency understand the court's orders and judgments, provide advice on how to comply, and explain the ramifications of failing to comply.

Commentary: There may be times when the court orders the attorney to take an action on behalf of the agency that the agency opposes, such as filing a termination-of-parental-rights petition. The attorney must counsel the agency to comply with such orders, or seek alternative relief on behalf of the agency.

## **Standard 6 – Appellate issues for trial attorneys**

### **A. Advise the agency regarding the possibility of appeal.**

Action: The trial attorney should consider and discuss with the agency the possibility of an appeal when a court’s ruling is contrary to the agency’s position or interests. The decision to appeal should be jointly made by the attorney and agency and must have an appropriate legal basis.

Commentary: When discussing the possibility of an appeal, the attorney should consider the legal basis for the appeal, the effects of an appeal on the agency, DHS’ statewide policy, and the child’s best interests. For example, if the agency believes the court made a legal error, an appeal may be warranted. Conversely, an appeal might unnecessarily delay permanency for the child or result in other negative consequences.

### **B. Consult with appellate attorney regarding appeal.**

Action: The trial attorney should consult with the appellate attorney to identify appropriate appellate issues within required timelines.

Commentary: The trial attorney has critical insight into witness demeanor, the court’s receptiveness to testimony and evidence, and other events that may have taken place off the record that go beyond what is contained in the trial transcript and provide important context for the appellate attorney. The trial attorney should inform the appellate attorney of the current case status and any developments that may impact the appeal.

### **C. Ensure any necessary posthearing motions are timely filed.**

Action: After consultation with the appellate attorney, the trial attorney may need to file a motion to stay with the trial court.

Commentary: Once a decision to appeal is made, the trial attorney may need to seek a stay of the trial court order if the agency wishes to be relieved temporarily from taking an action or is concerned about the negative impact of an adverse decision.

### **D. Advise the agency during the pendency of the appeal.**

Action: The trial attorney should consult with the appellate attorney while the appeal is pending.

Commentary: Even with a stay, the dependency case continues to be heard by the juvenile court. The trial attorney needs to be aware of any ongoing issues in the underlying case that may impact the appeal and communicate those issues to the appellate attorney. For example, a dismissal of wardship by the juvenile court may moot a pending appeal.

Commentary: There may be a delay between the issuance of the appellate opinion and the entry of the appellate judgment. It is important that the trial and appellate attorneys for the agency remain in good communication during this process.

**E. Communicate the result of the appeal and its implications to the agency.**

Action: The attorney should coordinate with the appellate attorney to explain the result of the appeal and its implications to the agency. Should the result of the appeal require the agency to take action, the attorney should coordinate with the appellate attorney before advising the agency.

## **Standard 7 – Issues for appellate attorneys**

### **A. Consult with the trial attorney and the agency regarding the potential for an appeal.**

Action: The appellate attorney should consider and discuss with the agency and the trial attorney the potential for an appeal when a court's ruling is contrary to the agency's position or interests. The decision to appeal should be jointly made by the attorneys and agency and must have an appropriate legal basis.

### **B. If a decision is made to appeal, timely file the necessary appellate pleadings and attend all scheduled proceedings.**

Action: The appellate attorney must review and be familiar with the Oregon Rules of Appellate Procedure. The appellate attorney must timely file pleadings that may include a motion to stay at the appellate level. The appellate brief should be clear, concise, and comprehensive.

Action: The attorney should zealously advocate on behalf of the agency in court. The attorney must be prepared and organized for all proceedings.

Commentary: Agency appeals may delay the juvenile court case. The attorney should consider the importance of the appellate issues and the impact on the child. The attorney should strive to expedite the appellate process to move the plan for the child forward.

### **C. Communicate the result of the appeal and its implications to the agency.**

Action: The appellate attorney should coordinate with the trial attorney to communicate the result of the appeal and its implications to the agency. Should the result of the appeal require the agency to take action, the appellate attorney should coordinate with the trial attorney before advising the agency.