



# REPRESENTING PARENTS IN ABUSE AND NEGLECT PROCEEDINGS



## An Advocacy and Training Guide for Wyoming Practitioners

First Edition - 2016



**CHILDREN'S  
JUSTICE PROJECT**  
A Project of the Wyoming Supreme Court

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**Children's Justice Project  
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Shining a Light on Wyoming  
Juvenile Court

*Resources to capture ideas,  
guidelines, and best practices to  
help children and families in  
Wyoming's Juvenile Courts.*

**Representing Parents in Abuse and Neglect Proceedings**

First Edition (May 2016)

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**For more information about the Wyoming Children's Justice Project (CJP) or to download additional copies visit our webpage at <https://www.courts.state.wy.us/childrens-justice-project/>.**

# Preface

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This handbook is meant to assist attorneys practicing child welfare law and, consequently, improve outcomes for parents and their children by ensuring timely hearings, increasing reunifications, and decreasing the number of parental rights termination findings. Quality representation of parents during child welfare cases can increase cost savings for Wyoming and its citizens and decrease the amount of time children spend in foster care.

The handbook provides a comprehensive starting point for attorneys to improve their skills when representing parents in abuse and neglect proceedings. Attorneys are provided with practical tips and advice and alerted to applicable law for specific proceedings. The accompanying appendix provides attorneys with sample forms for use when drafting pertinent motions in child welfare cases. The handbook can help attorneys improve their advocacy skills and, when necessary, challenge the system to improve outcomes for families.

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**NOTE:** Also see Appendix A for sample forms (page 142).

# Introduction

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In 1972, attorney Jacob Isaacs wrote:

It is difficult to conceive of a party in a court proceeding more in need of independent legal representation than a person charged with brutalizing his child. Even before the charge is proved, newspaper and other media may well have almost condemned the accused as a social outcast. The misdeeds he's charged with may automatically align the entire court staff against the alleged offender. Who but counsel can stand between the accused and public hysteria?<sup>1</sup>

Forty-three years later, the need for competent and caring counsel for parents still exists. Recognizing this, the Wyoming Supreme Court's Children's Justice Project has undertaken the task of educating and training attorneys who represent parents in these cases in order to seek better outcomes for families in Wyoming.

When a child is removed from the home, parents are often faced with daunting challenges and a seemingly never-ending list of requirements in order to secure the return of the child. In most cases, parents must address the issues that led to State involvement including substance abuse, poverty, mental health, criminal behavior, and other challenges that often require major lifestyle changes. If the parents are unable or unwilling to make these changes, the end result may be the permanent termination of the familial relationship.

In Wyoming, lack of parent legal representation can leave parents adrift in legal proceedings where they are unable to match the training and experience of State lawyers, Department of Family Services (DFS) social workers, Guardians ad Litem (GAL), Court Appointed Special Advocates (CASA) advocates, mental health counselors, and others. Competent legal counsel affords parents the opportunity to have the playing field made fair, including the opportunity to present their position, to have someone answer their questions and explain the proceedings, and to have an advocate protect their legal and constitutional rights.

The practice of child welfare law is important. Many attorneys and judges do not believe in the value of child welfare, believing that the practice of child welfare law equates to social work and not legal practice. Research has shown that quality parent representation in abuse and neglect proceedings improves the outcomes for parents and children by ensuring timely hearings, securing more reunifications, and lowering the number of terminations of parental rights.<sup>2</sup> Furthermore, quality representation of parents in child welfare cases can lead to a significant cost-savings to the state and taxpayers by providing for timely resolution of these matters, children spending less time in state funded foster care, and efficient utilization of state funded resources.

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<sup>1</sup> Jacob L. Isaacs, *The Role of the Lawyer in Child Abuse Cases*, in *HELPING THE BATTERED CHILD AND HIS FAMILY* 233 (C. Henry Kempe & Ray E. Helfer eds. 1972).

<sup>2</sup> See Leonard Edwards, *Representation of Parents and Children in Abuse and Neglect Cases: The Importance of Early Appointment*, 63 *JUV. & FAM. CT. J.* 21 (Spring 2012).



Many parents who are involved in the child welfare system are poor, uneducated, and may be suffering from mental health and substance abuse disorders. They arrive in court scared, confused, angry, and unequipped to handle the legal complexities that they now face. They are in need of an advocate to explain the proceedings and the requirements placed on them by the court and DFS. They need someone to argue their position and advocate for visitation and services. They need someone to challenge the system and the law on their behalf in order to work towards reunification with their children.

Counsel can assist parents in working with DFS by explaining case plan requirements, facilitating required evaluations, and mediating disputes between parents and their caseworkers. Furthermore, competent counsel can refer parents to community support services, which can assist the family in addressing the problems that brought them to the attention of the child welfare system. Counsel can also assist in communication between DFS and the client and bring issues to the attention of DFS quickly, such as transportation and financial issues that prevent a parent from fulfilling their obligations.

Representing parents in child welfare and juvenile cases in Wyoming can be an exciting and challenging endeavor. Competent practitioners must be familiar with State and federal statutory and case law, Wyoming Court Rules, DFS and GAL program policy, as well as child development, mental health, substance abuse, and countless other fields that all factor into State involvement in familial relationships. Few fields of practice require attorneys to have such a breadth of knowledge and training.

Child welfare cases, which may ultimately result in the loss of familial relationships, can be highly emotional and trying. Oftentimes, counsel will be required to work with clients who can be challenging due to numerous factors, such as the parents' anger at the system or mental health disorders. However, there is no greater need for competent, caring, and dedicated legal practitioners than in this often overlooked field of law. While the work is challenging, there are few areas of law in which the work done by attorneys is more important than in child welfare law.

The practice of child welfare law is continually changing. However, the one area that never changes is the need for quality legal representation of parents. Those attorneys who accept the challenge of taking on these difficult but rewarding cases are given countless opportunities to make a lasting change in the lives of their clients.

# How to Use This Guide

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This guide serves as a starting point for attorneys who want to learn about or improve their skills in representing parents in abuse and neglect proceedings in Wyoming. While this guide is a start, it is by no means the end. This guide serves as a compass to direct parents' attorneys in the direction they should go to become competent practitioners. Parents' attorneys should continually be studying, learning, practicing, and training to hone their skills.

Each chapter begins with a statement of Chapter Objectives. These objectives lay out the basics of what each chapter will cover. Furthermore, they will set forth the areas of study with which parents' attorneys should be familiar. Throughout the manual, practice tips will also be given to assist counsel in improving representation skills.

For brevity and consistency, several references throughout this guide will be shortened. The term "parent" or "parents" will be used to refer to any individual responsible for the child's welfare, such as a parent, guardian, custodian, step-parent, etc. Reference will be made to the PRACTICE GUIDELINES FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE, NEGLECT, AND TERMINATION OF PARENTAL RIGHTS CASES, promulgated by the Children's Justice Project. For brevity, references in this manual will refer to this document as the WYOMING PRACTICE GUIDELINES. Also, throughout this manual, parents' attorneys will be referred to as "counsel." Child welfare proceedings can be referred to by a variety of terms, including abuse proceedings, neglect proceedings, abuse and neglect proceedings, or juvenile petitions, among others. For purposes of consistency in this manual, these proceedings will be referred to throughout as "abuse and neglect proceedings." The Department of Family Services will be referred to as "DFS." A Guardian ad Litem will be referred to as "GAL."

This guide is intended to provide attorneys representing parents in abuse and neglect proceedings with current and accurate information about juvenile law and related topics. The information in this guide, however, may not be sufficient in dealing with a particular legal problem, and the authors do not warrant or represent its suitability for such purpose. Attorneys or others using this guide do so with the understanding that the information published in this guide should not be relied upon as a substitute for independent legal research to original sources of authority, the advice of a lawyer, or both. Furthermore, the intricacies of abuse and neglect proceedings may vary from jurisdiction to jurisdiction within the State. Counsel should be familiar with localized practice.

Information contained in this manual is current as of November 2015. Laws, policies, and procedures are continually in flux and prone to change. The information contained in this guide may be outdated based on changes in law and policy. It is the responsibility of the individual practitioner to keep current as to changes in law and policy as well as current case law interpreting law and policy.

# Chapter One: Representing Parents in Abuse and Neglect Cases

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## CHAPTER OBJECTIVES

The purpose of this chapter is to introduce counsel to the history of child welfare law and the role of counsel for parents in abuse and neglect proceedings. This chapter also discusses the right to counsel in abuse and neglect proceedings and the need for competent counsel for parents.

At the conclusion of this chapter, counsel should have a basic understanding of the history of child welfare and the need for parent representation in abuse and neglect cases.

## INTRODUCTION

Representing parents in abuse and neglect cases is a newer field of practice, as the history of child abuse and neglect is relatively limited within the United States of America. Nationally, the origin of child welfare law goes back to 1642 in Massachusetts where the first law related to child welfare was recorded. However, the major developments in child welfare law have taken place over the last fifty years, over which time state and federal laws have developed rapidly. During this time frame, research on the effects of child abuse and neglect has also rapidly evolved. Over the last century, Wyoming has developed State law regarding legal proceedings related to child abuse and neglect, and the number of cases involving abuse and neglect has steadily increased. Abuse and neglect proceedings in Wyoming can be intimidating for parents who face the loss of their children and face a complex system of requirements in order to secure their return. Wyoming law allows for the appointment of counsel for parents in abuse and neglect proceedings, and it is incumbent upon attorneys who represent parents in these proceedings to be competent practitioners who zealously advocate for the benefit of their clients.

## THE HISTORY OF CHILD WELFARE LAW<sup>3</sup>

Nationally, the origins of child welfare law date back to 1642, when the State of Massachusetts developed the first law related to child welfare. This law allowed the removal of children from the home if their parents did not “train them up” properly. The first

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<sup>3</sup> See Marvin Ventrell, *The History of Child Welfare Law*, in CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT AND DEPENDENCY CASES 113 (Marvin Ventrell & Donald N. Duquette eds., Bradford Pub. Co. 2005); JOHN BURMAN, JUSTICE FOR CHILDREN: MANUAL FOR GUARDIANS AD LITEM IN JUVENILE COURT AND TPR CASES (Children’s Justice Project, Wyoming Supreme Court 2010).

recorded law involving severe abuse and neglect did not appear until 1825. By 1850, more than fifty orphanages existed in the United States of America. However, foster care was not conceived until 1854, when the Children's Aid Society was created. From the creation of the Children's Aid Society in 1854 until 1929, approximately one hundred thousand children who had been abused or neglected were placed throughout the Midwest after being relocated from the East Coast on "orphan trains." In 1866, the American Society for Prevention of Cruelty to Animals was created, almost a decade earlier than the first Society for Prevention of Cruelty to Children was established in New York in 1875. The first juvenile courts weren't created until 1899, when juvenile courts were established in Chicago and Denver. As of 1919, all but three states, one of which was Wyoming, had established juvenile courts.

It was not until 1946 that social sciences began in earnest to study and recognize abuse and neglect and its effects on children. In 1962, C. Henry Kempe published an article on battered children syndrome, and from there research related to child abuse and neglect took off. From 1962 to 1981, various federal laws were passed regarding child abuse and neglect. However, it was not until 1981 that the United States Supreme Court, in the case of *Santosky v. Kramer*, 455 U.S. 745 (1982), recognized that parents have a fundamental right to raise their children without state intervention unless the state has a compelling reason to intervene. That case established that in termination of parental rights proceedings, parents have a right to due process and the state must establish its case by clear and convincing evidence. To this day, the state is still held to that standard in termination of parental rights proceedings. Since that time, the law has continued to evolve regarding child abuse and neglect with the establishment of various federal laws which influence state involvement when children are abused and neglected.

The history of child welfare law in Wyoming is limited. Wyoming was one of the last states to develop laws on child abuse and neglect. It was not until the 1940s that Wyoming developed laws related to child abuse and neglect. In 1957, the Wyoming Legislature passed the Child Protection Act. It was not until 1971 that the Wyoming Legislature passed a child abuse reporting statute. In 1999, a Court Improvement Project was granted to Wyoming, which eventually evolved into the Children's Justice Project. In 2006, the Wyoming Legislature established the Guardian Ad Litem program to provide attorney representation for children in abuse and neglect cases. To date, there is no statewide program in Wyoming to provide representation to parents in abuse and neglect cases. Appointment of counsel in child abuse and neglect proceedings in Wyoming is governed by local practice and the standards of practice and requirements for appointment in these cases vary between judicial districts. In 2012, the Children's Justice Project published the *Practice Guidelines for Attorneys Representing Parents in Abuse, Neglect, and Termination of Parental Rights Cases* to address some of these issues.

### **THE RIGHT TO COUNSEL**

Child abuse and neglect proceedings in Wyoming are governed by statute and affect the rights of parents. In Wyoming, the legislature has established a statutory right to counsel. Wyoming Statute § 14-3-422 provides:

- (a) At their first appearance before the court and at their initial hearing the child's parents, guardian or custodian shall be advised by the court of their right to be represented by counsel at every stage of the proceedings including appeal, and to employ counsel of their own choice.
- (b) The court shall upon request appoint counsel to represent the child's parents, guardian or custodian if the child's parents, guardian or custodian are unable to obtain counsel. If appointment of counsel is requested, the court shall require the child's parents, guardian or custodian to verify their financial condition under oath, either by written affidavit signed and sworn to by the parties or by sworn testimony made a part of the record of the proceedings. The affidavit or sworn testimony shall state they are without sufficient money, property, assets or credit to employ counsel in their own behalf. The court may require further verification of financial condition if it deems necessary.
- (c) The court may appoint counsel for any party when necessary in the interest of justice.

While the statute requires parents who can afford to hire their own counsel to do so, the reality is that the majority of parents in these proceedings are indigent and will qualify for court-appointed counsel. As such, the majority of parent attorneys are court-appointed.

The right to counsel in Wyoming is further delineated by Rule 5 of the WYOMING RULES OF PROCEDURE FOR JUVENILE COURTS, which states:

- (a) Right to Counsel, Generally. The Respondent is entitled to be represented in all proceedings in Juvenile Court by counsel retained by him, his parent, or by counsel appointed pursuant to this Rule. An out-of-state attorney may enter his appearance and participate in a case only after having been admitted in accordance with Rule 8 of the Rules Governing the Wyoming State Bar and the Authorized Practice of Law and Rule 104 of the Uniform Rules for the District Courts of the State of Wyoming (admission Pro Hac Vice). Once so admitted, his appearance and participation is limited by the restrictions of those rules.
- (b) Right to Counsel, Native American. In proceedings subject to the Indian Child Welfare Act, out-of-state attorneys must comply with Rule 5(a). However, in proceedings subject to the exclusive jurisdiction of the tribe pursuant to 25 U.S.C. § 1919, the tribe's attorney may appear for the limited purpose of requesting transfer of the matter to tribal court, without showing compliance with Rule 5(a). If necessary in all other cases, the tribe shall obtain local counsel.
- (c) Notice of Right. Respondent shall be served with written advice of

the right to counsel with any order setting any initial hearing. Such notice shall advise of the availability of appointed counsel, and shall direct a juvenile, parent or guardian requesting counsel to obtain a financial affidavit and present it to the court at least five (5) days before the hearing. The notice shall also advise that failure to request counsel in advance may result in contempt sanctions and liability for costs resulting from delays.

- (d) **Advisement of Right.** At the initial hearing the court shall advise of the right to counsel as required by statute. A parent, guardian, or juvenile may waive counsel if the Court finds that such waiver is made in accordance with W.S. § 7-6-107.

Rule 5 requires that written notice of the right to counsel be served upon the parents at the same time they are served with an order setting the initial hearing in the matter. Furthermore, pursuant to Wyoming Statute § 7-6-107, if a parent waives his or her right to counsel, the court must find that:

[T]he person has acted with full awareness of his rights and of the consequences of a waiver and if the waiver is otherwise made according to law. Before making its findings, the court shall consider such factors as the person's age, education, familiarity with the English language and the complexity of the crime involved.

In some cases, parents will elect to represent themselves and waive their right to counsel. In situations where parents elect to represent themselves, they may request appointment of counsel at any point during the proceedings, and thus, in some situations, counsel may be appointed later in the proceedings.

### **THE NEED FOR COMPETENT PRACTITIONERS**

Representing parents in abuse and neglect cases requires counsel who are strong advocates, dedicated to improving outcomes for their clients and their families. The challenges presented in these cases can be daunting, and earning a client's trust can take time. Parent attorneys must be educated not only in State child welfare law, but also federal law, court rules, Department of Family Services (DFS) policy and rules, Guardian ad Litem (GAL) policy, and adoption, guardianship, child custody, criminal, education, and administrative law. Parent attorneys must maintain a standard of zealous advocacy and client integrity while developing a relationship of cooperation with state authorities to further client interest. All of this must be done while handling high caseloads, low compensation, and constant criticism from those who believe that parent attorneys harm children by advocating for their return to the home. Those who work with and represent parents in abuse and neglect cases will soon learn that many of their clients were abused and neglected children themselves, forced into adulthood without the opportunity to address and overcome their own trauma and emotional needs.

Parent attorneys play a critical role in abuse and neglect proceedings. Competent parent representation reduces costs to the state, decreases the numbers of unnecessary out-of-home

placements, and leads to improved outcomes for parents and their children.<sup>4</sup> There are few areas of law in which an attorney can provide assistance and relief to a client in greater need. Parent attorneys work to improve the quality of life for their clients, protect critical fundamental rights, and implement system-wide changes that benefit every family who encounters the child welfare system. A parent attorney's advocacy in one case can affect countless cases afterward as the attorney advocates for compliance with the law and better system response. Effective advocacy in one case can put the State on notice that parent attorneys are willing and able to ensure that the system does its job and makes every reasonable effort to reunify a family.

Unfortunately, the historical representation of parents nationwide has left much to be desired. In the past, representation of parents has been treated as a burden, and counsel appointed to represent parents have been ill-trained to practice in this area of law. It is incumbent upon those who choose to represent parents in abuse and neglect proceedings to zealously advocate for their client's interests, including their constitutional and procedural rights. However, representation of parents in abuse and neglect proceedings goes much deeper than the role of counselor and advocate. Many of the clients represented by parent attorneys have trust issues, and it can take a dedicated and concerted effort on the part of counsel to develop a working relationship with their clients. Many of these clients are distrustful of anyone associated with the "system," and this can include their own counsel. Parent attorneys must work with their clients to establish relationships of trust and calm the fears of their clients related to working with state agencies to ensure the permanent return of their children.

Providing quality and effective representation to parents in abuse and neglect cases requires a highly specialized practice. In order to effectively represent these individuals, parent attorneys must educate themselves not only as to the legal aspects of representation, but also regarding the effects of child abuse and neglect, mental health issues, domestic violence, substance abuse, and numerous other issues. It requires true dedication on the part of counsel to fully understand all of the issues related to child abuse and neglect proceedings in order to provide competent representation to clients.

While the task of preparing to adequately represent parents in abuse and neglect proceedings may seem daunting, it is a challenge worth accepting as the reward of working to improve the lives of clients and preserve family relationships are countless. Many attorneys at one point or another in their career find themselves reflecting upon a desire to take on work that allows them to help people. For those looking for that type of work, there is no better work to perform than to represent parents in abuse and neglect cases.

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<sup>4</sup> See Leonard Edwards, *Representation of Parents and Children in Abuse and Neglect Cases: The Importance of Early Appointment*, 63 JUV. & FAM. CT. J. 25 (Spring 2012).

# Chapter Two: The Role of Counsel

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## CHAPTER OBJECTIVES

The purpose of this chapter is to present the basic standards of ethical practice for attorneys who represent parents in abuse and neglect proceedings, including the general responsibilities of counsel and standards of practice.

At the conclusion of this chapter, counsel should have a basic familiarity with the ethical requirements of counsel for parents in abuse and neglect proceedings.

In order to increase competence, counsel should further research the **WYOMING RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS AT LAW**.

## INTRODUCTION

Counsel who represent parents in abuse and neglect cases are met with numerous issues regarding their role in representing their clients. Competent practitioners should adhere to ethical guidelines and zealously advocate for their clients. Counsel must know their role and ensure that their role is clearly explained to their clients. The ultimate consequence of an abuse and neglect case can be termination of a parent's rights when rehabilitative efforts fail. With such a serious outcome, counsel must practice with the highest level of competence and diligence.

Abuse and neglect proceedings are emotionally charged. Counsel must keep a level head and ensure that their clients are involved in every important decision. Parents should be advised of the consequences of every decision they make, as well as alternative choices and the obligations incurred as a result of their choice. Clients should be guided by counsel towards an informed decision. Counsel should consider the directives and decisions of the client at every point in the case, including challenging the facts and investigation in the case whenever necessary.

## GENERAL RESPONSIBILITIES

Representing parents in abuse and neglect proceedings places many responsibilities on counsel for parents. Among these are general responsibilities that apply in every case. These responsibilities include being the parent's partner, advocate, and counselor.

### PARTNER

One of the most important responsibilities of counsel is to serve as a partner to the client. Establishing and maintaining an attorney/client relationship is a joint effort between counsel and the client. Counsel and the client should work in conjunction to establish a mutual relationship of confidence, trust, and openness. While the client establishes the ultimate goals of the representation, the attorney decides how to accomplish those goals.



Counsel and the client must work together to establish these goals. Each party must follow through with their responsibilities to ensure that the ultimate goal is attained. For example, it is the client's obligation to ensure that he or she is complying with the court order, but it is counsel's obligation to make sure the terms and conditions of the court order are fair, legal, and attainable by the client.

As part of the attorney/client partnership, counsel should solicit and follow the directives of the client at every point of representation. WYOMING RULES OF PROFESSIONAL CONDUCT, Rule 1.2(a) states:

[A] lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

Even if counsel does not agree with the client's decision, it is counsel's ethical obligation to work in partnership with the client to carry out the directives of the client. Counsel should ensure that both counsel and client clearly understand the client's objectives and how they will be achieved. Counsel should also ensure that the client clearly knows the roles of both counsel and client in the representation and what obligations both parties carry in the partnership.

#### **PRACTICE TIP**

One of the most effective ways to ensure that counsel and client both understand the goals and objectives of the representation is to place the goals in writing. The goals can then be reviewed at the beginning and conclusion of every client meeting. Furthermore, with the goals, counsel can identify the tasks that each party is to accomplish prior to the next court hearing or meeting.

For some clients, it may be useful to place these goals and other important paperwork in a client binder. The client should then be directed to bring the binder to every client meeting.

#### **ADVOCATE**

Counsel also serves as the advocate for the parent. Advocacy is an art that takes years of practice and study to fine-tune. Advocacy includes everything from how counsel prepares a case to how counsel presents a case in court. Counsel's role as an advocate in

abuse and neglect proceedings is especially important, as the majority of clients in these cases are unable to adequately advocate for themselves, both in and out of the courtroom.

As an advocate, counsel ensures that the parent's interests always come first. The wishes of the client direct the representation. Counsel should also argue for the client's best interests at every step of the legal proceedings in the most effective way possible. Advocacy for the client should be assertive yet professional. However, advocacy is much more than how counsel argues for or presents the client's case in court. Advocacy is action, and counsel should continually advocate for the client's position through active participation in the case process, both in and out of court, including attendance at multidisciplinary team meetings, case planning meetings, and any other events in which the client's rights may be at stake. Advocacy also includes working with other attorneys who represent the client in related proceedings to ensure that information, which may affect the parent in multiple legal proceedings, is disseminated as necessary.

#### **PRACTICE TIP**

In many cases, parents will have multiple legal proceedings going on at the same time. Parents may have pending criminal charges, which may or may not be related to the abuse and neglect allegations. Parents may also be involved in civil custody cases or domestic violence protection order matters. Abuse and neglect allegations also bring administrative proceedings through DFS regarding substantiation, as well as child support proceedings if the children are in State custody. Other legal proceedings may also be pending. Counsel must conduct a thorough investigation of his or her client's background to ensure that counsel is aware of all pending legal matters. Do not rely on the client's recitation of pending legal matters! Many parents cannot recall or are unaware of all of the legal proceedings in which they are involved. A trip to the courthouse to determine what other legal matters are pending against the client will be well worth counsel's time.

Counsel is obligated to advocate for the client's interest regardless of personal belief. In many abuse and neglect cases, counsel will be required to advocate for the return of the children to the home even when counsel does not think it is appropriate. Counsel may also be required to defend clients whose actions they do not agree with. WYOMING RULES OF PROFESSIONAL CONDUCT, Rule 1.2(b) states:

A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

Regardless of how counsel feels about the actions or directives of the client, counsel must ethically advocate for the interests and desires of the client.

## COUNSELOR

One of the most important roles counsel will play is that of counselor. Often the client will not know what is in his or her best interest or will take a position that is contrary to those interests. It is the role of counsel to advise the client of the consequences of every decision, and to actively work to advise and influence the client to make the best decision possible. In order to fulfill this role, counsel must be familiar with the juvenile court process and the consequences of the client's decisions.

Counsel exercises great influence over their clients. Clients must be advised of the best course of action and counsel must not use undue influence to force the client to take action that is not in their best interest. Counsel must be responsible in the advice they give their clients.

The American Bar Association, in its STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES, states:

“The parent’s attorney’s job extends beyond the courtroom. The attorney should be a counselor as well as litigator. The attorney should be available to talk with the client to prepare for hearings, and to provide advice and information about ongoing concerns. Open lines of communication between attorneys and clients help ensure clients get answers to questions and attorneys get the information and documents they need.”<sup>5</sup>

Counsel must explain to the client the limitations of the representation. While clients in abuse and neglect proceedings may have a variety of different legal proceedings at the same time as the abuse and neglect proceeding, appointed counsel must only represent the client within the scope of the abuse and neglect proceeding. However, counsel should also advise the client of the possibility of other related legal matters, such as criminal charges or administrative sanctions, that may arise from the same set of circumstances that led to the abuse and neglect proceeding.

Counsel must also advise the client of non-legal matters related to the legal proceedings. Clients involved in abuse and neglect proceedings often come to the representation with numerous issues beyond court proceedings. Clients may have personal issues which they need to discuss with someone, and frequently that person is their attorney. It is the role of counsel to maintain strict confidence in these matters and to advise and direct the client as to the best course of action.

Counsel may also advise their clients about the non-legal effects of their decisions, including whether the decision of the client is morally the right or wrong thing to do. WYOMING RULES OF PROFESSIONAL CONDUCT, Rule 2.1 states:

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer

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<sup>5</sup> AMERICAN BAR ASSOCIATION STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES 14 (2006).

not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Clients can be advised of how their decisions may affect others. Clients can also be counseled that the attorney does not agree with the position of the client, or that the attorney believes the client is making the wrong decision. But counsel must always remember that the client controls the ultimate goals of the representation and counsel must advocate for what the client wants.

Counsel are also obligated to be truthful with their clients, even when the client is not going to like what he or she is being told. Counsel should be direct and truthful with their clients at all times in order to develop and maintain a relationship of trust. Many clients in abuse and neglect proceedings will have a history of being lied to. While clients may not appreciate directness and frankness at the time, such tactics will ultimately strengthen the attorney/client relationship.

### **COURT APPOINTMENT**

While occasionally a parent may retain private counsel, the reality is that the majority of attorneys who practice in abuse and neglect proceedings do so at the request or order of the Juvenile Court. Counsel who are court appointed are bound by the same ethical standards of practice as retained counsel and must provide the same quality of service to their clients as they would to private clients.

In Wyoming, it is unethical for an attorney to avoid appointment to represent a parent in an abuse or neglect case. However, there are exceptions to when counsel must accept appointment. WYOMING RULES OF PROFESSIONAL CONDUCT, Rule 6.2 states:

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Furthermore, WYOMING RULES OF PROFESSIONAL CONDUCT, Rule 1.16(a) states:

[A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

Every court has its own procedure as to how attorneys are appointed to represent parents in abuse and neglect proceedings. Counsel should be familiar with the local practice regarding appointment to represent parents in abuse and neglect matters.

### **DEFINING THE SCOPE OF REPRESENTATION**

One of the first items counsel should address with a client is defining the scope of representation. Counsel who are appointed by the court to represent the parent are only appointed to represent the parent in the abuse and neglect proceedings. Clients will often have other legal proceedings contemporaneous to the abuse and neglect proceeding and may expect counsel to represent or advise him or her in those matters as well. For this reason, the scope of representation must clearly be defined at the beginning of the representation. If counsel agrees to be retained in a related legal proceeding, the scope of representation for both matters should be clearly defined.

#### **PRACTICE TIP**

While the order appointing counsel in an abuse and neglect proceeding can serve as the written representation agreement, counsel should consider entering into a separate written representation agreement with the client to define the scope of representation.

### **ETHICAL DUTIES**

Counsel for parents in abuse and neglect proceedings are bound by the same ethical duties as attorneys in any other legal matter. The following is a brief overview of the ethical duties of counsel. Counsel should familiarize himself or herself with the ethical requirements of practice in Wyoming and are under a continual obligation to follow the directives of the Wyoming Rules of Professional Conduct.

#### **COMPETENCE**

Counsel for parents in abuse and neglect proceedings have the ethical duty of rendering competent representation. WYOMING PRACTICE GUIDELINE 1.1(a) states: "The paramount obligation of a parent's attorney (attorney) is to provide competent representation to a parent client (client) at all stages of the proceedings, and to preserve, protect, and promote client's rights throughout the proceedings."

The right to counsel includes the right to effective counsel. Competence includes having the necessary legal knowledge and skills to effectively represent a client in a particular matter. Competent counsel will seek out legal and non-legal training necessary to acquire and improve the skills and knowledge required to adequately represent parents in abuse and neglect proceedings. Competent counsel will stay current on changes in the law and practice, attend trainings and educational programs, and comply with State CLE requirements.

The WYOMING PRACTICE GUIDELINES define the knowledge needed by a competent practitioner in abuse and neglect proceedings. WYOMING PRACTICE GUIDELINE 1.2 states:

- (a) Before accepting appointment, an attorney has an obligation to ensure that he or she has sufficient time, resources, legal knowledge, skills and experience reasonably necessary to afford quality representation to client in the particular matter. If it later appears that attorney is unable to provide quality representation in the case, attorney should move to withdraw. See WRPC Rule 1.6. If attorney is allowed to withdraw, he or she should cooperate with new attorney to the extent that such cooperation is in the best interests of client.
- (b) To provide quality representation of client, attorney shall be familiar with applicable Federal, Wyoming and local rules, codes, statutes and case law interpreting them, including but not limited to:
  - (1) The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Wyo. Stat. Ann. §§ 20-2-201, et seq.;
  - (2) The Fostering Connections to Success and Increasing Adoptions Act;
  - (3) Adoption and Safe Families Act (ASFA);
  - (4) The Indian Child Welfare Act (ICWA);
  - (5) The Child Abuse Prevention and Treatment Act (CAPTA);
  - (6) The Interstate Compact on Placement of Children, Wyo. Stat. Ann §§ 14-5-101 et seq.;
  - (7) The Health Insurance Portability and Accountability Act (HIPAA);
  - (8) The Wyoming Child Protective Services and Child Protection Act, Wyo. Stat. 14-3-201 et seq. & Wyo. Stat. 14-3-401 et seq.;
  - (9) Wyoming Rules of Civil Procedure;
  - (10) Wyoming Rules of Criminal Procedure;
  - (11) Wyoming Rules of Appellate Procedure;
  - (12) Wyoming Rules of Procedure for Juvenile Courts;
  - (13) Uniform Rules for District Courts of the State of Wyoming;
  - (14) Wyoming Rules of Evidence;
  - (15) Local Court Rules, if any;
  - (16) Wyoming Department of Family Services (DFS) Policy Manual, available at <http://dfsweb.state.wy.us>;
  - (17) Wyoming Guardians Ad Litem Program Policies, available at <http://gal.state.wy.us/index.php?page=program-policies>;

- (18) Local agencies that provide services pursuant to contract with DFS as well as any agencies in the community that might offer help to parents in meeting their case plans; and
  - (19) Any other relevant federal and state legislation.
- (c) Attorney shall understand the standard of proof that applies at every stage of the proceedings in abuse, neglect, and termination of parental rights cases.
- (d) Attorney should possess an understanding of:
- (1) Criminal and civil law and procedure;
  - (2) Child development;
  - (3) Alcohol and drug abuse;
  - (4) Dynamics of domestic violence and its effects on client;
  - (5) Sexual, physical, and emotional abuse;
  - (6) Psychological trauma and treatment;
  - (7) The effects of abuse and neglect on children;
  - (8) How socioeconomic factors may affect the case including how these factors may affect the reasons for removal and barriers or perceived barriers to return;
  - (9) How parents and children may be affected by DFS involvement in the family unit; and,
  - (10) Attorney should be aware of religious, cultural and ethnic differences that may exist and reasonably advocate consideration where appropriate.
- (e) Attorney should keep up-to-date about changes in this area of the law, should seek continuing legal education in juvenile court representation and general civil trial practice.

Competence also includes thorough preparation at every stage of the proceeding. This includes interviewing witnesses, reviewing records, and working with other attorneys. The American Bar Association recommends that before every factual or critical hearing, counsel should “discuss the matter with [the] client sufficiently in advance to have time to investigate and prepare the case; conduct a thorough, independent investigation; conduct formal discovery, if needed; interview and subpoena necessary witnesses before the hearing; research any legal issues pertinent to the case; and continue with the case until it is specifically relieved.”<sup>6</sup>

## COMMUNICATION

Counsel for parents in abuse and neglect proceedings have the ethical duty of rendering adequate and appropriate communication. WYOMING PRACTICE GUIDELINE 1.3(a) states:

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<sup>6</sup> DIANE BOYD RAUBER & LISA A. GRANIK, REPRESENTING PARENTS IN CHILD WELFARE CASES 5 (Mimi R. Laver ed., American Bar Association 2000).

Attorney should take all reasonable steps to maintain adequate and appropriate contact with client throughout the proceedings. When client is subject to a court order or case plan, attorney should communicate regularly with client and in advance of each hearing to assess whether client is performing as he or she should perform pursuant to the order or plan. Attorney should also ensure that client's right to information and decision making is respected while the child is in care.

Furthermore, WYOMING RULES OF PROFESSIONAL CONDUCT, Rule 1.4 states:

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in 1.0(f), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, except that a lawyer appointed to act as a guardian ad litem shall be ultimately responsible for making decisions in the best interests of the individual.

Consistent communication between counsel and the client will facilitate a strong attorney/client relationship. In abuse and neglect proceedings, the case can change very quickly. Counsel should maintain contact with the client at least weekly to keep apprised of issues that may have arisen in the case.

## **CONFLICTS OF INTEREST**

Counsel for parents in abuse and neglect proceedings have the ethical duty to avoid conflicts of interest. Clients in abuse and neglect proceedings can be particularly sensitive to even the appearance of a conflict of interest. Counsel should clearly communicate and explain the relationship among parties in the proceedings. Counsel should be familiar with the WYOMING RULES OF PROFESSIONAL CONDUCT regarding conflicts of interest, including WYOMING RULES OF PROFESSIONAL CONDUCT, Rule 1.7, which states:



(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) gives informed consent, confirmed in a writing, signed by the client.

Rule 1.7 can be of particular concern to counsel who handle multiple abuse and neglect cases as there is often interplay between the parties in different cases in small communities. For example, counsel may encounter situations where a client from one case starts a romantic relationship with the ex-spouse of a client in another case. Counsel need to be vigilant in watching for conflicts of interest that can arise after representation commences.

Issues related to former clients should also be considered, especially in small communities. Counsel should abide by all ethical duties to former clients and comply with WYOMING RULES OF PROFESSIONAL CONDUCT, Rule 1.9, which states:

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing. For representation of another person in the same matter the former client's informed consent confirmed in writing shall be signed by the client.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing. For representation of another person in the same matter the former client's informed consent confirmed in writing shall be signed by the client.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use confidential information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal confidential information relating to the representation except as these Rules would permit or require with respect to a client.

Another conflict of interest situation can arise when the court directs an attorney to represent both parents in an abuse and neglect proceeding. While not common, this practice does occur in Wyoming. Counsel should take all efforts to avoid being appointed to represent both parents in an abuse and neglect proceeding, as there are inherent conflicts of interest in doing so. WYOMING PRACTICE GUIDELINE 1.4(a) states:

Attorney should avoid conflicts of interest involving client, any additional respondent parent(s), and prior client. Attorney should understand that each parent should have his or her own attorney, and that one attorney should not represent both parents absent some unusual circumstances and express written consent. Attorney should consider consulting with Wyoming State Bar Counsel on any potential conflicts, when appropriate.

## **CONFIDENTIALITY**

Counsel for parents in abuse and neglect proceedings have the ethical duty to maintain confidentiality. This may be the single most important ethical responsibility of counsel, as confidentiality is the bedrock of the attorney/client relationship. Legal ethics provide for attorney/client confidentiality in order to encourage open communication and trust in the legal relationship. An attorney cannot adequately represent a client if the client cannot provide information to the attorney. A client needs to have complete trust that the

information shared will remain confidential in order to trust the attorney with all needed information.

**PRACTICE TIP**

Counsel should advise the client that confidentiality only exists between counsel and the client. Many clients may want a friend or family member to attend appointments with counsel. Any third party in the room during attorney/client discussions eliminates confidentiality, and the client should be advised of the potential consequences of having a third party attend attorney/client meetings.

Clients may also, with or without permission from counsel, record conversations and phone calls between counsel and the client. Clients should be advised that taping interactions with counsel is not appropriate as those records may eliminate confidentiality.

Confidentiality within the attorney/client relationship is governed by WYOMING RULES OF PROFESSIONAL CONDUCT, Rule 1.6, which states:

(a) A lawyer shall not reveal confidential information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

- (1) to prevent the client from committing a criminal act;
- (2) to prevent the client from committing a fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
- (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
- (4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) to comply with other law or a court order;

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client; or

(8) to protect the best interests of an individual when the lawyer has been appointed to act as a guardian ad litem.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, confidential information relating to the representation of a client.

It is vitally important that information shared by a client remain confidential. Clients may potentially be facing criminal charges or dealing with sensitive issues. Disclosure of confidential information could not only jeopardize the attorney client privilege, but could also cause irreparable harm to the client.

Within the context of representing parents in abuse and neglect proceedings, confidentiality may often place counsel in a position that is in conflict with the counsel's personal beliefs. Counsel must keep this information confidential unless an exception under Rule 1.6(b) applies despite counsel's personal beliefs about the safety of the children. This can be difficult for some attorneys, but it is the ethical responsibility of counsel to do so.

#### **PRACTICE TIP**

Confidentiality is the cornerstone of the attorney/client relationship. From the beginning of the representation, counsel should establish a relationship of trust with the client. However, client trust and ethical duties must be balanced. It is a good idea to establish ground rules with the client at the first meeting. Counsel should fully explain confidentiality to the client along with the exceptions of W.R.P.C. 1.6(b). Counsel should clearly explain when confidential information must be disclosed and what will be disclosed at the first client meeting.

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Rule 1.6(b) does require counsel to disclose confidential information in certain situations. Counsel should familiarize themselves with these exceptions. It is necessary to explain to the client from the beginning of representation when confidential information must be shared. Counsel should also ensure that the actions of counsel within the attorney/client relationship do not assist the client in causing harm to another party.

## **DUE DILIGENCE**

Counsel for parents in abuse and neglect proceedings have the ethical duty of due diligence. WYOMING RULES OF PROFESSIONAL CONDUCT Rule 1.3 states: “A lawyer shall act with reasonable diligence and promptness in representing a client.” Due diligence encompasses numerous responsibilities, including:

- Maintaining a reasonable caseload that allows adequate care and attention to each case;
- Conveying settlement offers and negotiations to the client in a reasonable time frame;
- Reviewing and monitoring court orders;
- Maintaining contact with the client;
- Keeping the client reasonably informed about matters;
- Providing enough information to the client to allow them to make an informed decision;
- Facilitating client participation in the matter;
- Discussing case developments with the client; and,
- Protecting the client’s right to notice and participation.

This is the area in which counsel is most likely to find himself or herself in an ethical dilemma. Counsel must take care to ensure that they are acting promptly and diligently in representing the client and protecting the client’s rights.

**PRACTICE TIP**

Counsel should advise the client that confidentiality is a two-way street. Just as counsel should not disclose information gained from the client, the client should not disclose advice given by the attorney, especially when that advice is part of a tactical decision.

## CANDOR TO THE TRIBUNAL

Counsel also owes a duty of candor to the tribunal. WYOMING RULES OF PROFESSIONAL CONDUCT Rule 3.3 states:

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Subsection (a)(3) can be especially important in abuse and neglect proceedings and should be explained in detail to the client. Abuse and neglect proceedings are emotionally charged, and many parents may be willing to do whatever it takes to secure the return of their children. If at any time a client advises counsel that they intend to lie in court, counsel should immediately explain the consequences of that action to the client. Furthermore, as abuse and neglect proceedings are not criminal proceedings, counsel may refuse to call the client as a witness if the attorney believes the client is going to testify falsely on the stand.

#### **PRACTICE TIP**

Counsel should advise the client that the duty of candor to the tribunal trumps confidentiality. Counsel should further advise the client that counsel will not lie to the court to benefit the client. Furthermore, counsel should advise the client that counsel cannot condone perjury or fraud to the court. The client should be advised of these matters from the beginning of representation so as to avoid issues arising in the course of representation.

Another ethical quandary that counsel often encounter regarding candor to the tribunal involves requests from the court to disclose whether the client has maintained contact with counsel. In Wyoming, many parent's attorneys have different opinions regarding whether this information can be shared with the court. Pursuant to W.R.P.C. 1.6(b)(6) counsel may disclose confidential information, such as dates of client contact, to comply with a court order. Pursuant to W.R.P.C. 3.3(a)(1), counsel cannot make a false statement to the court. With these two rules, it appears that counsel *may* be able to disclose this information upon order of the court.

#### **PRACTICE TIP**

In order to adequately represent a client, counsel must have communication with the client. In some jurisdictions, clients are court ordered to maintain consistent contact with counsel. When a client has not contacted counsel for a period of time, counsel should take every reasonable step to try to contact the client. If counsel can't contact the client, counsel should consider filing a motion to withdraw from representation. Counsel should familiarize himself or herself with local practice by consulting with other attorneys to determine how matters such as this are generally handled. If the order appointing counsel orders counsel to advise the court of lack of contact by the client, counsel is ethically obligated to follow the order of the court.

#### **BILLING**

Counsel should be aware of the ethical standards of practice regarding billing. As most counsel are court-appointed, each court may have their own additional rules of practice regarding billing. Counsel should familiarize themselves with the local rules of practice.

Regarding billing, WYOMING PRACTICE GUIDELINE 1.7 states:

- (a) Child Abuse and Neglect Proceedings
- (1) Attorney shall keep an accurate and contemporaneous record of her time. The fee shall represent the product of reasonable hours times the approved rate and include other factors of discretion which would adjust the fee upward or downward. Attorney shall comply with the Wyoming Rules of Professional Conduct Rule 1.5 "Fees." If Attorney has a contract to represent parents at a flat fee, this section does not apply.
  - (2) Attorney shall file a motion with an itemized and detailed bill or submit a bill to the designated office in the county. Unless otherwise agreed, the bill should reveal all the hours for which compensation is sought and how the hours were allocated to specific tasks.
  - (3) Attorney's times shall be efficiently spent. The description of a specific task shall contain sufficient detail to allow the client/judge to measure the nature and merit of the task. Do not "block bill." Attorney shall not engage in the practice of listing a group of discrete tasks in a block summary under a single entry known as "block billing" (i.e. draft interrogatories; telephone conference with GAL; summarize case worker's deposition; review and revise pre-trial memo [6 hours]). Instead, Attorney shall separately itemize each independent task and its corresponding time.
  - (4) Attorney shall exercise good billing judgment, which is that judgment to adjust or write down/off fees and/or expenses incurred because they are either excessive, duplicative, or unnecessary in relation to the legal services rendered. For a discussion of good billing judgment see Praseuth v. Rubbermaid, Inc., 406 F.3d 1245 (10<sup>th</sup> Cir. 2005) and National Association of Concerned Vets v. Secretary of Defense 675 F.2d 1319 (D.C. Cir. 1982) and ABA Opinion, Arbitration Advisory 03-01 "Detecting Attorney Bill Padding," January 29, 2003. Attorney shall exercise such judgment to fulfill the ethical obligation to charge only those fees/expenses that are "reasonable."
  - (5) **With** respect to paralegal, travel, copying and other expenses, Attorney should seek guidance from the county in which the proceeding was filed.

Counsel should also look to the language of Wyoming Statute § 1-14-126(b) for guidance as to billing. Wyoming Statute § 1-14-126(b) states:

(b) In civil actions for which an award of attorney's fees is authorized, the court in its discretion may award reasonable attorney's fees to the prevailing party without requiring expert testimony. In exercising its discretion the court may consider the following factors:

- (i) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;



- (ii) The likelihood that the acceptance of the particular employment precluded other employment by the lawyer;
- (iii) The fee customarily charged in the locality for similar legal services;
- (iv) The amount involved and the results obtained;
- (v) The time limitations imposed by the client or by the circumstances;
- (vi) The nature and length of the professional relationship with the client;
- (vii) The experience, reputation and ability of the lawyer or lawyers performing the services; and
- (viii) Whether the fee is fixed or contingent.

It is important that counsel engage in ethical billing practices. Disputes regarding billing are becoming more common, and counsel should ensure that they are charging a reasonable fee based on reasonable hours. Counsel should exercise billing judgment and remove unnecessary or duplicative charges from billing statements prior to asking for reimbursement for services. Excessive billing is an unethical practice and counsel should not engage in “bill padding.”

#### **PRACTICE TIP**

To avoid ethical violations related to billing, counsel should familiarize themselves with the recent Wyoming Supreme Court cases *In Re NRF*, 2013 WY 9; *In Re KMO*, 2013 WY 113; and *Dishman v. First Interstate Bank*, 2015 WY 154.

### **WORKING WITH OTHER PARTIES**

In the course of representation of a client, counsel will have numerous opportunities and obligations to interact with other parties, both professional and nonprofessional. Counsel have several ethical duties and responsibilities when interacting with other parties. Counsel should maintain a high level of professionalism and respect at all times in dealing with other parties. WYOMING PRACTICE GUIDELINE 1.1(a) states: “Unless inconsistent with client’s interests, attorney should cooperate with and promote a productive relationship between all parties and attorneys in the case.”

## UNREPRESENTED AND REPRESENTED PARTIES

During the course of representation, counsel may encounter a situation in which their client's significant other opts not to have legal representation. Thus, one parent in the process has counsel and the other does not. In the course of representation, counsel may be required to interact with this unrepresented party, such as when the client comes in for an appointment and brings the unrepresented party with them. Counsel should take great care at these times to clarify their role and explain to the unrepresented party that counsel can offer them no legal advice whatsoever. Pursuant to WYOMING RULES OF PROFESSIONAL CONDUCT, Rule 4.3:

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

At times, however, a similar situation can present where a client comes in for an appointment with their significant other, and the significant other *is* represented. Or, counsel may need to speak to the other parent in preparation for trial and the other parent is represented. Counsel are bound by the Wyoming Rules of Professional Conduct in these situations as well. Wyoming Rules of Professional Conduct, Rule 4.2 states:

In representing a client, a lawyer shall not communicate about the subject of the representation with a person or entity the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Counsel should not speak to a represented party without first obtaining permission from that party's attorney.

### **PRACTICE TIP**

In every case, the minor child is appointed a Guardian ad Litem to represent the best interest of the child. Counsel should always remember that the child is a represented party. Counsel should never speak to the child about the case without the prior permission of the Guardian ad Litem.

## WORKING WITH OTHER PROFESSIONALS

Counsel should also be ethical practitioners when working with other professionals in abuse and neglect proceedings, both in and out of court. When it comes to working with other professionals, counsel should be familiar with the requirements of WYOMING RULES OF PROFESSIONAL CONDUCT 3.4 and 4.1. WYOMING RULES OF PROFESSIONAL CONDUCT Rule 3.4 states:

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
  - (1) the person is a relative or an employee or other agent of a client; and
  - (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

WYOMING RULES OF PROFESSIONAL CONDUCT Rule 4.1 states:

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Furthermore, counsel should be familiar with the general standards of professional practice set forth by UNIFORM RULES OF THE DISTRICT COURT, Rule 801, which states:

As one of the learned professions, the practice of law is founded upon principles of fairness, decency, integrity and honor. Professionalism connotes adherence by attorneys in their relations with judges, colleagues, litigants, witnesses and the public to appropriate standards of behavior. The district courts of Wyoming, in furtherance of the inherent power and responsibility of courts to supervise proceedings before them, shall hold attorneys to the following standards of professional behavior:

(a) Standards of Behavior in Adjudicative Proceedings. -

(1) Attorneys shall at all times treat all persons involved in adjudicative proceedings, including litigants, witnesses, other counsel, court staff and judges with candor, courtesy and civility, and demonstrate personal honesty, fairness and integrity in all of their dealings.

(2) An attorney shall at all times be civil and courteous in communicating with all persons involved in the adjudicative process, whether orally or in writing.

(3) Attorneys shall at all times extend reasonable cooperation to opposing counsel. Attorneys shall not arbitrarily or unreasonably withhold consent to opposing counsel's requests for reasonable scheduling or logistical accommodations, nor shall they condition their cooperation on disproportionate or unreasonable demands.

(4) An attorney shall not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or counsel's client and such conduct, in addition to representing a potential violation of the Wyoming Rules of Civil Procedure, shall be deemed a violation of professional standards.

(5) Attorneys shall be reasonably punctual in their communications with all persons involved in the adjudicative process and shall appear on time for all duly scheduled events involved in the adjudicative process, unless excused or detained by circumstances beyond their reasonable control. When an attorney, or an attorney's client, or a witness under the reasonable control of an attorney, becomes unavailable for a duly scheduled event, then the attorney shall promptly notify opposing counsel and, where appropriate, court reporters, court personnel, and others involved in the event.

(6) Attorneys shall not initiate any ex-parte communication with a judicial officer concerning any matter pending before the judicial officer unless such communication is expressly authorized by (a) an applicable rule of procedure, (b) a written order issued by the judicial officer, or (c) an agreement between all counsel involved in the pending matter. This rule shall not apply to communications between attorneys and appropriate personnel of the court or tribunal concerning scheduling or ministerial matters.

(7) Attorneys shall confer with opposing counsel and shall endeavor in good faith to resolve disputes before seeking the Court's intervention. This requirement applies to the filing of motions generally, in addition to those matters that arise under the situations addressed by this rule.

(8) When the Court is required to intervene, the Court may render any or all of the following sanctions against an attorney who is found, after notice and opportunity to be heard, to have violated this rule:

(a) A formal reprimand;

(b) Monetary sanctions, including but not limited to the reasonable expenses, including attorney's fees, caused by the attorney's conduct; or

(c) Such other sanctions as the Court deems appropriate under the circumstances.

(b) Courtroom Decorum. - The conduct, demeanor and dress of attorneys when present during any court proceeding shall reflect respect for the dignity and authority of the Court, and the proceedings shall be maintained as an objective search for the applicable facts and the correct principles of law.

(1) Arguments, objections and remarks shall be addressed to the Court.

(2) Counsel shall stand when addressed by the Court or when speaking to the Court.

(3) When examining a witness, counsel shall stand at the lectern and not walk around the courtroom.

(4) Counsel shall request permission to approach the bench or the witness.

(5) Counsel shall instruct clients and witnesses as to appropriate demeanor and dress.

At every step of the process, from discovery to closure of the case, counsel serves as the representative of the client. Counsel should maintain professionalism at all times and establish cooperative relationships with everyone they work with in order to expedite their client's progress through the abuse and neglect process.

### **TERMINATION OF THE ATTORNEY CLIENT RELATIONSHIP**

In the course of representing parents in abuse and neglect proceedings, there may be times when counsel need to withdraw from representation. This could be for numerous reasons, including a conflict of interest that has arisen or because there is an issue in the attorney/client relationship that prohibits the attorney and client from working together. If, in the course of representation, counsel believes that he or she needs to withdraw from representation, counsel should follow the procedures as established by the WYOMING RULES OF PROFESSIONAL CONDUCT. WYOMING PRACTICE GUIDELINE 1.4 states:

(b) Attorney should be familiar with the applicable Wyoming Rules of Professional Conduct and the obligation to withdraw in certain circumstances. If, at any time during the course of representation, client makes it known to attorney that he or she no longer wants attorney to represent him or her, attorney shall inform client of the potential consequences of withdrawal, including delay in the progress of the case. If it is necessary for attorney to move to withdraw, attorney shall do so in a way that protects client's rights and interests, and does not violate attorney's ethical duties to client. See WRPC 1.6 regarding withdrawal.

(c) If attorney is allowed to withdraw or is discharged by the court at any point in the proceedings, attorney shall take reasonable steps to notify parent of the withdrawal or discharge, the next scheduled court date, and parent's right to reapply for appointed counsel or hire an attorney.

WYOMING RULES OF PROFESSIONAL CONDUCT Rule 1.16 states:

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the rules of professional conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse

effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

In withdrawing from a matter, counsel should also comply with UNIFORM RULES OF THE DISTRICT COURT, Rule 102(c), which states:

Counsel will not be permitted to withdraw from a case except upon court order. Except in the case of extraordinary circumstances, the court shall condition withdrawal of counsel upon the substitution of other counsel by written appearance. In the alternative, the court shall allow withdrawal upon a statement submitted by the client acknowledging the withdrawal of counsel for the client, and stating a desire to proceed pro se. An attorney who has entered a limited entry of appearance shall be deemed to have withdrawn when the attorney has fulfilled the duties of the limited entry of appearance.

Counsel should be aware that until the court has issued an order allowing withdraw, they continue to be the attorney for the client and are bound by all of the ethical duties and responsibilities that come with that relationship. The court may deny the request for withdrawal, and counsel must continue to represent the client to the best of his or her abilities.

## CONCLUSION

In conclusion, counsel who represent parents in abuse and neglect cases must be competent practitioners who adhere to ethical guidelines and zealously advocate for their clients. Counsel must clearly define their role to their clients and ensure that their clients remain involved in every decision of representation. Counsel are ethically bound by the desires of their clients and should ensure their clients are advised of their rights and the consequences of their choices so that the clients can make informed decisions. By adhering to the standards put forth by the WYOMING RULES OF PROFESSIONAL CONDUCT and the WYOMING PRACTICE GUIDELINES, counsel will fulfill their ethical obligations to their clients. In abuse and neglect proceedings, the relationship between counsel and client is one of the most important relationships that will be established and the client must be able to put their full trust in their counsel in order to ensure a positive, productive attorney/client relationship.



## FOR FURTHER INFORMATION ON THESE TOPICS SEE:

Bruce A. Boyer, *Ethical Issues in the Representation of Parents in Child Welfare Cases*, 64 FORDHAM L. REV. 1621 (1996), *available at* <http://ir.lawnet.fordham.edu/flr/vol64/iss4/16>.

JOHN BURMAN, PROFESSIONAL RESPONSIBILITY IN WYOMING (Wyoming State Bar 2008).

DIANE BOYD RAUBER & LISA A. GRANIK, REPRESENTING PARENTS IN CHILD WELFARE CASES (Mimi R. Laver ed., American Bar Association 2000), *available at* <http://apps.americanbar.org/child/rcji/RepresentParents.pdf>.

JENNIFER L. RENNE, LEGAL ETHICS IN CHILD WELFARE CASES (Claire Sandt ed., American Bar Association 2004), *available at* [http://www.americanbar.org/content/dam/aba/administrative/child\\_law/2004\\_LegalEthics.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/child_law/2004_LegalEthics.authcheckdam.pdf).



# Chapter Three: Child Development and the Effects of Abuse and Neglect<sup>7</sup>

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## CHAPTER OBJECTIVES

The purpose of this chapter is to introduce counsel to the basics of child development and the effects of abuse and neglect.

At the conclusion of this chapter, counsel should understand the basic milestones of child development, the role of attachment in child development, the types of abuse and neglect, the causes of abuse and neglect, and how abuse and neglect affect children over their lifespan.

This chapter is not a full treatise on child development and abuse and neglect. In order to increase competence, counsel should actively continue to research and study child development and abuse and neglect in depth.

## INTRODUCTION

Counsel who represent parents in abuse and neglect proceedings should be familiar with child development and the effects of abuse and neglect. In many abuse and neglect cases, the children's failure to reach developmental milestones is used against the parent as evidence of abuse and neglect. Counsel must understand child development in order to combat these allegations or to assist the client in understanding how the client's behavior has affected the children. Furthermore, counsel must have a basic understanding of what constitutes abuse and neglect, how abuse and neglect presents, how abuse and neglect affects children, and how to respond to abuse and neglect.

The Federal Child Abuse Prevention and Treatment Act (CAPTA)<sup>8</sup> defines child abuse and neglect as “[a]ny recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation; or an act or failure to act which presents an imminent risk of serious harm.” Counsel should familiarize themselves with all aspects of child abuse and neglect to be adequately prepared to represent their clients in these matters.

This chapter serves as a basic introduction to childhood abuse and neglect. Child development and abuse and neglect are complex areas of study, and counsel should spend a significant amount of time familiarizing themselves with a deeper study of the concepts.

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<sup>7</sup> This chapter is based on materials taken from the United States Department of Health and Human Services, Child Welfare Information Gateway, <https://www.childwelfare.gov>.

<sup>8</sup> 42 U.S.C. § 5101 note (2010).

### **PRACTICE TIP**

Counsel who intend to handle abuse and neglect cases on a regular basis should make it a priority to attend a training regarding child development and attachment as soon as possible. The principles behind child development and attachment theory are a driving force behind decisions made by the State, the Department, and the GAL, and it is not uncommon for attachment to be brought up in court when discussing the best interest of the child. Attachment can also be a powerful tool of persuasion for the benefit of the parents in court, but only if counsel are aware of the concepts and research behind attachment theory.

### **THE BASICS OF CHILD DEVELOPMENT**

It is important that counsel for parents have a basic understanding of child development, as many of the critical issues within an abuse and neglect case regard a child's failure to meet developmental milestones. In many cases, children will be referred for developmental screenings as part of the court case. Furthermore, childhood abuse and neglect can have long-lasting effects on a child's emotions and behaviors, causing issues that should be addressed within the context of abuse and neglect proceedings. It is important that counsel understand the concerns of other team members and explain to their clients issues related to child development. Furthermore, sometimes the "system" can do more harm than good to a child, so counsel need to be prepared to use developmental principals to argue for children to return to or remain in the home.

Development takes place across the human lifespan. Prior to reaching adolescence, children will develop in a variety of ways, including biologically, socially, and emotionally. For children, there are distinct periods of development from infancy to young adulthood. While most children will follow common established timelines and developmental milestones, every child is different. There are various theories on how, when, and why children develop as they do. However, there are some commonly accepted principles of child development.

The early years of a child's life are important in determining the long-term health of the child. In these formative years, children are rapidly developing socially, emotionally, educationally, and intellectually. The brain is rapidly changing and biologically forming pathways that will determine how the brain will interpret the rest of the child's life and dictate the child's behavior. This development is effected by both genetics and experience. Experience can affect brain development, and brain development can affect how experiences are interpreted. Because experience plays a role in brain development, both familial and social issues can impact child behavior and development. When a child is abused or neglected, their development can be disrupted, having long-term consequences on the quality of his or her life.

### **PRACTICE TIP**

Wyoming law requires children under the age of six in state custody to receive a developmental screening, and this screening will be used in developing services for the family. Furthermore, foster parents and childcare professionals will often comment on child development during multidisciplinary team meetings and in their reports. Counsel should obtain a copy of any developmental screening given to a child. Also, try to obtain copies of the developmental chart used by your local child developmental agency and the materials used by DFS to educate foster parents. In this way, you will be better prepared to counter developmental concerns using the same standards and languages as these other entities.

Children learn at their own pace, but there are general areas where they should develop during certain time frames. For example, there are milestones as to when children should learn to walk, talk, play, and learn. As children age into adolescents, their brains continue to develop. Learning is sequential and each new experience or skill learned builds on the previous one. If one of these skills or experiences is missed, development can be delayed or a child may not develop in the way that they should. There are numerous charts and resources outlining when children should meet certain milestones. Counsel should locate a chart from a reliable source and familiarize themselves with these developmental milestones.

### **ATTACHMENT**

There are several areas of child development that counsel will encounter during representation of parents, but none will be encountered more often than that of attachment. In many cases, someone will argue that it is not in the best interest of the child to return to their parents as the child has formed a new attachment to another individual. Counsel can argue that children should be returned to the home so as not to disrupt the attachment between parent and child. This can be a useful tool to secure the return of the children to their parents. Counsel should familiarize himself or herself with the concept of attachment to be prepared to address these issues during representation.

Attachment is the bond that develops between a child and another individual. Attachment is a key element of human well-being. Attachment is grounded in formative experiences that occur within the first few years of life. What happens during the first few years of life impacts a child's ability to develop relationships with others, and if a child does not have the necessary experiences to develop the ability to attach during those first few years, his or her brain can be permanently altered, the damage of which can never be undone.

Children usually attach to their primary caregivers. A secure attachment relationship develops when a child is consistently cared for by a primary caregiver who responds to the child's needs. From this experience, the child learns that people are dependable and safe. If a child receives inconsistent, hostile, or unpredictable care—as in cases of abuse or neglect—the child develops an insecure attachment. The child develops the expectation that people are not reliable and not available in times of needs. The child does not learn how to appropriately regulate his or her emotions. This failure to develop appropriate attachment relationships may affect the child and his or her relationships and ability to attach to others for the rest of the child's life. The way a person attaches to others determines the quality of their relationships.

#### **PRACTICE TIP**

When representing a client who has had a child under the age of three removed from the home, counsel should make an attachment argument as to why the child should be returned home at every court hearing and MDT meeting. There have been numerous trainings in Wyoming over the last few years regarding attachments and the effects of separation trauma on young children, and many judges are more willing to return young children home as they are aware of the long-term consequences that can occur when a young child is not allowed to bond with his or her parent.

Children who miss out on developing a secure attachment relationship are at risk of developing social and emotional problems including depression, anxiety, aggression, addiction, and other medical problems. In the most severe cases, the children can suffer from reactive attachment disorder, a mental health diagnosis with which counsel should familiarize themselves, as many children in foster care suffer from its effects.

Removal from the home is traumatic for children and disrupts healthy child development. When a child is removed from his or her primary caretaker and placed in foster care, that child is denied the opportunity to develop an attachment relationship with his or her parents. Attachment occurs on a daily basis as parent and child interact and the child learns to trust the parent. Not only is a child in foster care left without the opportunity to bond with his or her parents, the child forms attachments to a substitute caregiver. It is traumatic for a child to be taken away from his or her parents, but it can also be traumatic for a child to be returned to his or her parents after forming an attachment relationship with a substitute caregiver. For this reason attachment theory governs many principals of child well being in abuse and neglect proceedings. Counsel should advocate for the child to remain with his or her parents, or to return to the home as soon as it can be deemed safe. Counsel also need to encourage their clients to address the issues that brought them to juvenile court as soon as possible to limit the amount of time that the parent is separated from his or her child.

## TYPES OF ABUSE AND NEGLECT

Abuse and neglect is typically categorized into four major types: physical abuse, neglect, sexual abuse, and emotional abuse.

Physical abuse is a result of non-accidental physical injury. This includes a range of physical injuries from minor bruising to injuries that can result in death. Physical abuse can be the result of various physical actions against a child, such as kicking, hitting, biting, burning, shaking, choking, or any other physical harm. Physical actions that are not meant to cause harm but ultimately do can also be considered physical abuse. In most cases, spanking does not amount to physical abuse unless it is unnecessarily punitive and causes bodily injury to a child. However, excessive or inappropriate corporal punishment can be considered abuse. Driving a motor vehicle while under the influence of drugs or alcohol can be considered abuse in certain cases.

Neglect is a failure to take some sort of action required for a child's care. Neglect can be physical, medical, educational, or emotional. It can be failure to provide food or shelter, failure to make a child attend school, child abandonment, or failure to provide necessary medical or psychological treatment. There are exceptions to the definition of neglect for cultural and religious beliefs. Neglect can also include parental substance abuse to a degree that places the child in harm's way when the parent is unable to adequately care for the child, such as caring for a child while under the influence or driving a vehicle while under the influence with the children present.

Sexual abuse is defined by CAPTA as "the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or the rape, and in cases of caretaker or inter-familial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children."<sup>9</sup> Wyoming has specifically defined sexual abuse as committing or allowing the commission of a sexual offense as defined by Wyoming criminal law against a child.<sup>10</sup>

Emotional abuse involves taking actions that impair a child's emotional development or self-esteem. This can include withholding of affection, threats, criticism, or rejection of the child. Emotional abuse is incredibly hard to prove in court and requires proof of mental injury to the child.

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<sup>9</sup> 42 U.S.C. § 5106g(4).

<sup>10</sup> See W.S. §§ 6-2-314 through 317.

### **PRACTICE TIP**

The issues related to abuse and neglect can be very complex. Counsel should know the limits of his or her knowledge. Do not be afraid to consult with experts and be open to seeking out the advice of professionals in other areas.

### **SIGNS OF ABUSE AND NEGLECT**

Counsel should be aware of the signs of abuse and neglect, as observation of these signs is typically the primary evidence presented by the State at an adjudicatory hearing.

Children subject to physical abuse may present with:

- Unexplained physical injuries;
- Burns, bites, bruises, broken bones, black eyes;
- Bruises and other injuries in various stages of healing;
- Fear of the parents or sadness when it is time to go home;
- Fear of other adults; and/or,
- Abusive behavior towards animals or pets.

Children subject to neglect may present with:

- Frequent absences from school;
- Begging or stealing food;
- A lack of needed medical attention; and/or,
- Unclean physical appearance.

Children subject to sexual abuse may present with:

- Difficulty walking or sitting;
- Nightmares or bedwetting;
- Refusing to change for gym;
- Sudden changes in appetite;
- Unusual sexual knowledge; and/or,
- Overly affectionate behavior to strangers.

Children subject to emotional maltreatment present with:

- Extreme behavior, such as overly compliant or overly demanding;
- Inappropriately mature or immature;
- Delays in physical and emotional development; and/or,
- Attempted suicide.

Counsel should also familiarize themselves with the causes of abuse and neglect, as these are the issues the parents will be required to address after adjudication. The causes of

abuse and neglect include such issues as mental health, substance abuse, poverty, criminal behavior, and unresolved trauma.

### **EFFECTS OF ABUSE AND NEGLECT**

Abuse and neglect can have long-term, negative effects on children. This, in part, is why the State intervenes in cases such as these. The long-term effects of abuse and neglect can delay the return of children to the parents as children are kept in foster care to address their needs. Furthermore, these long-term effects can impact a parent's progress through the juvenile court system, as certain individuals may continue to vilify the parents for causing these issues in their children. Counsel should be familiar with the effects of abuse and neglect for these reasons, but more importantly, counsel should be familiar with the effects of abuse and neglect because many of their clients will have been abused and neglected as children themselves and may be suffering from the same issues as adults.

Children subject to abuse and neglect may present with a variety of issues. As discussed above, abuse and neglect can lead to long-term consequences for children. Abused and neglected children often perform poorly in school. They can have medical problems that have not been treated. They can be suffering from separation and loss, attachment issues, and anxiety. Severely abused children or children removed from the home may suffer from Post-Traumatic Stress Disorder. These children may be dealing with depression and anxiety. For a variety of reasons, they may be prone to oppositional behavior and violence. Many of them suffer from mental health diagnoses. As adults, they may turn to alcohol and controlled substances. Because of these issues, many abused and neglected children will need mental health services at an early age. Severely abused or neglect children may need long-term residential treatment to meet their needs. These children may need special educational services to address educational and developmental deficiencies.

#### **PRACTICE TIP**

In the majority of cases, parents will be referred to a parenting class. Counsel should encourage their clients to make arrangements to attend a parenting class as soon as a petition is filed. Doing so shows some effort on the part of the parent to address the concerns of DFS while not placing a lot of restrictions upon the parent pending adjudication. Even if there is no adjudication in the matter, counsel will have directed their client to a beneficial service. Counsel should also attempt to make arrangements for DFS to pay for the costs of the parenting class.

Counsel should be aware of these issues and monitor their clients for similar issues. Parents who have not resolved their own childhood trauma may not be able to move on and

develop the necessary parenting skills to have their children return to the home and remain there. Counsel should assist their clients in seeking out the necessary treatment needed to address the issues which brought the parent to the attention of DFS. They should also assist their clients in locating resources to assist the client in addressing the needs of their children.

### **CONCLUSION**

In conclusion, counsel should familiarize themselves with child development and the effects of abuse and neglect. These concepts are the driving force behind abuse and neglect proceedings, and they are the main issues that parents will be required to address upon adjudication. Furthermore, many parents against whom abuse and neglect allegations are brought will themselves be suffering from the long-term consequences of abuse and neglect, and counsel need to be familiar with these issues in order to assist their clients.



### **FOR FURTHER INFORMATION ON THESE TOPICS SEE:**

*Child Welfare Information Gateway*, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,  
<https://www.childwelfare.gov>.



# Chapter Four: The Wyoming Juvenile Court Process

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## CHAPTER OBJECTIVES

The purpose of this chapter is to introduce counsel to the Wyoming Juvenile Court process, including the terminology used, the parties to the proceedings, and the court process in abuse and neglect cases.

At the conclusion of this chapter, counsel should have a basic understanding of the Wyoming Juvenile Court process and how abuse and neglect cases proceed through the court system.

In order to increase competence, counsel should familiarize themselves with the Wyoming Child Protection Act, Wyoming Statute §§ 14-3-401 through 14-3-441 and the Wyoming Child Protective Services Act, Wyoming Statute §§ 14-3-201 through 14-3-214, as well as other statutory and case law related to abuse and neglect proceedings.

## INTRODUCTION

Child abuse and neglect cases are statutory special proceedings in Wyoming. Because of the statutory nature of the proceedings, counsel should be familiar with the Wyoming Juvenile Court process. Familiarity with the requirements of the Child Protection Act, Wyoming Statute §§ 14-3-401 through 14-3-441, and the Child Protective Services Act, Wyoming Statute §§ 14-3-201 through 14-3-214, will assist counsel in navigating and directing their clients through abuse and neglect proceedings. Understanding the Wyoming Court Rules related to abuse and neglect proceedings can also expedite proceedings. Furthermore, familiarity with statutory and procedural requirements can be a useful when dealing with other parties who are not as familiar with the legal requirements of the law.

In Wyoming, Juvenile Courts are legislatively established. Pursuant to Wyoming Statute § 5-8-101, Juvenile Courts are established in every county, with the district judges presiding. Juvenile Courts have general jurisdiction over “all matters and proceedings commenced there which concern any minor alleged to be neglected, his parents, and all persons living in the same household.”<sup>11</sup>

Abuse and neglect proceedings are special proceedings.<sup>12</sup> These cases are civil in nature, and the WYOMING RULES OF CIVIL PROCEDURE apply.<sup>13</sup> A special set of procedural

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<sup>11</sup> *In re CDR*, 2015 WY 79, ¶ 21, 352 P.3d 264, 269, (Wyo. 2015) (citing WYO. STAT. ANN. § 5-8-102(a)(i), (v)).

<sup>12</sup> *In re GC*, 2015 WY 73, ¶ 33, 351 P.3d 236, 245, (Wyo. 2015) (quoting *In re HP*, 2004 WY 82, ¶ 23, 93 P.3d 982, 989 (Wyo. 2004)).

rules, the RULES OF PROCEDURE FOR JUVENILE COURTS also apply. The statutory authority for proceedings comes from the Child Protection Act, Wyoming Statute §§ 14-3-410 through 14-3-441.

## TERMINOLOGY

Before addressing the specifics of the Wyoming Juvenile Court process, it is important to understand the terminology used in these proceedings. Juvenile courts are special courts, and as such, they use terminology that differs from criminal and civil proceedings. While civil cases have trials, juvenile cases have adjudications. While criminal cases hold sentencing hearings, juvenile courts hold disposition hearings. The first step in understanding the Wyoming Juvenile Court process is understanding the language used.

Many of the necessary statutory definitions can be found in Wyoming Statute §§ 14-3-202 and 14-3-402. Some of the more relevant definitions are as follows:

**Abuse:** “means inflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of a child other than by accidental means, including abandonment, unless the abandonment is a relinquishment substantially in accordance with W.S. 14-11-101 through 14-11-109, excessive or unreasonable corporal punishment, malnutrition or substantial risk thereof by reason of intentional or unintentional neglect, and the commission or allowing the commission of a sexual offense against a child as defined by law[.]”<sup>14</sup>

**Adjudication:** “means a finding by the court or the jury, incorporated in a decree, as to the truth of the facts alleged in the petition[.]”<sup>15</sup>

**Initial Hearing:** “means a hearing held in accordance with W.S. 14-3-426[.]”<sup>16</sup>

**Legal Custody:** “means a legal status created by court order which vests in a custodian the right to have physical custody of a minor, the right and duty to protect, train and discipline a minor, the duty to provide him with food, shelter, clothing, transportation, ordinary medical care, education and in an emergency, the right and duty to authorize surgery or other extraordinary medical care.”<sup>17</sup>

**Mental Injury:** “means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in

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<sup>13</sup> W.R.C.P. 1.

<sup>14</sup> WYO. STAT. ANN. § 14-3-202(a)(ii).

<sup>15</sup> *Id.* § 14-3-402(a)(i).

<sup>16</sup> *Id.* § 14-3-402(a)(xxi).

<sup>17</sup> *Id.* § 14-3-402(a)(x).

his ability to function within a normal range of performance and behavior with due regard to his culture[.]”<sup>18</sup>

**Neglect:** “means a failure or refusal by those responsible for the child's welfare to provide adequate care, maintenance, supervision, education or medical, surgical or any other care necessary for the child's well being. Treatment given in good faith by spiritual means alone, through prayer, by a duly accredited practitioner in accordance with the tenets and practices of a recognized church or religious denomination is not child neglect for that reason alone[.]”<sup>19</sup>

**Neglected Child:** “means a child [w]ho has been subjected to neglect as defined in W.S. 14-3-202(a)(vii); [or] [w]ho has been subjected to abuse as defined in W.S. 14-3-202(a)(ii).”<sup>20</sup>

**Parties:** “the child, his parents, guardian or custodian, the state of Wyoming and any other person made a party by an order to appear, or named by the juvenile court[.]”<sup>21</sup>

**Physical Injury:** “means any harm to a child including but not limited to disfigurement, impairment of any bodily organ, skin bruising if greater in magnitude than minor bruising associated with reasonable corporal punishment, bleeding, burns, fracture of any bone, subdural hematoma or substantial malnutrition[.]”<sup>22</sup>

**Protective Supervision:** “means a legal status created by court order following an adjudication of neglect, whereby the child is permitted to remain in his home subject to supervision by the department of family services, a county or state probation officer or other qualified agency or individual the court may designate[.]”<sup>23</sup>

**Shelter Care:** “means the temporary care of a child in physically unrestricting facilities pending court disposition or execution of a court order for placement or commitment[.]”<sup>24</sup>

**Shelter Care Hearing:** “means a hearing held in accordance with W.S. 14-3-409[.]”<sup>25</sup>

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<sup>18</sup> *Id.* § 14-3-202(a)(ii)(A).

<sup>19</sup> *Id.* § 14-3-202(a)(vii).

<sup>20</sup> *Id.* § 14-3-402(a)(xii).

<sup>21</sup> *Id.* § 14-3-402(a)(xiv).

<sup>22</sup> *Id.* § 14-3-202(ii)(B).

<sup>23</sup> *Id.* § 14-3-402(a)(xv).

<sup>24</sup> *Id.* § 14-3-402(a)(xvii).

<sup>25</sup> *Id.* § 14-3-402(a)(xxii).

**Temporary Protective Custody:** “means a legal status created prior to a shelter care hearing when a court, law enforcement officer, physician, physician's assistant or nurse practitioner takes a child into protective custody pursuant to W.S. 14-3-405. Temporary protective custody vests in a custodian the duty to protect the child and arrange for the provision of food, shelter, clothing, transportation, ordinary medical care and education. Temporary protective custody shall be transferred from the law enforcement officer, physician, physician's assistant or nurse practitioner to the local child protection agency as soon as practicable to facilitate such care. Temporary protective custody divests the parent or custodian of his right to the custody and control of the child[.]”<sup>26</sup>

Counsel should familiarize themselves with the other statutory definitions found in Wyoming Statute §§ 14-3-202 and 14-3-402.

While not defined by statute, the term disposition also plays a key role in understanding the Wyoming Juvenile Court process. In child abuse and neglect cases, after the court has adjudicated the child abused or neglected, a dispositional hearing should be held within 60 days. At the dispositional hearing, the court decides who will have legal custody of the child, placement of the child, and places conditions upon the parties for resolution of the case. All the orders of the court may change at future review and permanency hearings, but disposition in child abuse and neglect cases should not be confused with case closure or with the review or permanency hearings, both of which should occur after the disposition hearing. These hearings will be explained in further detail in Chapter Eight.

## **PARTIES**

Abuse and neglect cases are also unique in that they involve multiple parties beyond the usual prosecutor/defense attorney combination. It is important for counsel to understand which parties are involved in these cases. To begin, parties include “the child, his parents, guardian or custodian, the state of Wyoming and any other person made a party by an order to appear, or named by the juvenile court[.]”<sup>27</sup> In most cases, the parties will include a representative of the County/District Attorney’s office, the Guardian ad Litem (GAL), a representative of DFS, a Court Appointed Special Advocate (CASA), the parents, the parent’s attorneys, and the child. Counsel should be aware of the special roles played by two parties in particular, the GAL and the CASA.

### **GUARDIAN AD LITEM**

The Guardian ad Litem (GAL) is the attorney for the child. Federal and State statutory law requires the appointment of a GAL for the child in abuse and neglect proceedings.<sup>28</sup> Wyoming Statute § 14-3-211(a) states:

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<sup>26</sup> *Id.* § 14-3-402(a)(xix).

<sup>27</sup> *Id.* § 14-3-402(a)(xiv).

<sup>28</sup> 42 U.S.C. 5106a(b)(2)(B)(xiii).

(a) The court shall appoint counsel to represent any child in a court proceeding in which the child is alleged to be abused or neglected. Any attorney representing a child under this section shall also serve as the child's guardian ad litem unless a guardian ad litem has been appointed by the court. The attorney or guardian ad litem shall be charged with representation of the child's best interest.

This is mirrored in part by Wyoming Statute § 14-3-416, which states:

The court shall appoint a guardian ad litem for a child who is a party to proceedings under this act if the child has no parent, guardian or custodian appearing in his behalf or if the interests of the parents, guardian or custodian are adverse to the best interest of the child. A party to the proceeding or employee or representative thereof shall not be appointed guardian ad litem for the child.

In Wyoming, the Legislature has established the Wyoming Guardian ad Litem Program to provide GALs for children in abuse and neglect, child in need of supervision, and delinquency proceedings. These GALs are licensed attorneys and are entitled to participate in full courtroom advocacy for their clients. Counsel should take the time to familiarize themselves with the GAL program and its policies and procedures.<sup>29</sup> As a parent's attorney, counsel should establish professional working relationships with the GALs with whom they work and should encourage their clients to do the same. Judges around the state have great respect for the GAL program and its attorneys. As such, many judges give significant consideration to the position of the GAL in abuse and neglect proceedings.

## **CASA**

Court Appointed Special Advocates, or CASA, is a nationwide organization that provides lay advocates for children. These advocates are volunteers who go through a basic introductory training regarding advocating for abused and neglected children. Some judicial districts in Wyoming have CASA programs, while others do not. In Wyoming, Juvenile Courts may appoint CASAs to cases pursuant to Rule 8 of the WYOMING RULES OF PROCEDURE FOR JUVENILE COURTS, which states:

(a) General Requirements. The local Court Appointed Special Advocates Program serving the judicial district where the Juvenile Court is located may provide volunteers to serve without compensation as Court Appointed Special Advocates (CASAs) at the order of the Juvenile Court. The local Court Appointed Special Advocates Program must have completed the required standards for current members in good standing with the National Court Appointed Special Advocates Association. The local Court Appointed Special Advocates Program shall designate the individual CASA volunteer for assignment to a case.

(b) Qualifications of Court Appointed Special Advocates. The CASA must

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<sup>29</sup> Information regarding the Wyoming Guardian ad Litem Program can be found at <http://gal.wyo.gov>.

have successfully completed the screening and training as required by the local Court Appointed Special Advocate Program and mandated by the National Court Appointed Special Advocates Association. All CASAs are subject to the direction of their local Court Appointed Special Advocates Program.

(c) Appointment. The Juvenile Court may appoint a CASA to serve the best interests of a child in abuse or neglect actions. All CASAs must be sworn in by the Juvenile Court before beginning their duties. The CASA serves at the pleasure of the court. The CASA volunteer shall not act as the legal representative or attorney guardian ad litem of any child in any appointed case. The CASA serves a role that is separate from the role of the attorney guardian ad litem although it is the expectation of the court that the attorney guardian ad litem and the CASA would collaborate and cooperate in the best interests of the child. The CASA serves until the case is concluded or the court enters an order for removal.

(d) Duties of Court Appointed Special Advocates. The Court Appointed Special Advocate shall:

- (1) Serve the best interests of the child in abuse proceeding, neglect proceeding or both;
- (2) Provide independent, factual information including, but not limited to, a written report to each party regarding the cases to which the CASA is appointed;
- (3) Submit a written report to the parties at least five (5) business days prior to each dispositional or other post-adjudicatory hearing involving the child/children;
- (4) Be allowed to observe all depositions, pretrial conferences, and hearings;
- (5) Upon appointment, have access to review and make copies of all Department of Family Services records regarding the child and his or her family with the consent of the guardian ad litem; have access to review and make copies of the court file in the judicial district court where the action is pending; and have access to review and receive copies of other records as allowed and ordered by the court;
- (6) Receive reasonable notice from the Department of Family Services of changes in placement, school, or any other change of circumstances affecting the child;
- (7) Monitor cases to which they are appointed to assist in assuring that the terms of the court's orders are fulfilled and

timely permanency for the child is achieved; and

(8) Ascertain the wishes of the child and assist in making the wishes known to the parties.

Counsel should be aware of the role of CASAs as well as program policies and procedures.<sup>30</sup> The role of counsel is to zealously advocate for and protect the rights of their clients and, because of this, a word of caution is warranted regarding CASAs. CASA advocates are laypersons, and, as such, they have limited specialized training in abuse and neglect proceedings. CASA advocates serve an important role in assisting in making a child's voice heard in the court process, and they spend a significant amount of time with the children they represent. However, counsel should ensure that all parties remain aware that CASAs are volunteers and any input they have in the case planning process is strictly based on their personal opinion and observations and not on a detailed knowledge of juvenile law and the requirements of reunification. As a parent's attorney, counsel should be vigilant to ensure that a CASA does not have a negative effect on the progress of their client's case, and, if need be, should request removal of the CASA.

### **THE WYOMING CHILD NEGLECT COURT PROCESS**

To provide effective representation for parents in abuse and neglect proceedings, counsel must have a strong knowledge of the law governing these proceedings and the statutorily mandated court process. However, counsel should be aware that abuse and neglect practice in Wyoming can be very localized. One judge can carry out juvenile proceedings in a completely different manner than another judge. Some judges may strictly adhere to one statute, but loosely apply another. One county or district attorney may have a different procedure for filing petitions than another. Counsel should take the time to familiarize themselves with the attorneys and judges that they work with to understand the unwritten local practice rules of the courtrooms in which they represent parents.

It is also of note that it is a rare case in which counsel is appointed to represent parents in abuse and neglect cases in Wyoming prior to the commencement of an official court proceeding. In many cases, appointment of counsel does not occur until after the parents have made their first court appearance. However, the events that occurred prior to the appointment of counsel can be extremely relevant to matters related to representation. Counsel should be aware of the procedural and legal requirements for proceedings before the official commencement of court process to ensure that the rights of their clients to have the correct legal procedure followed are protected.

Below is a description of the Wyoming abuse and neglect proceeding process. For further reference on this topic, counsel should read the Wyoming Supreme Court case *In re GC*, 2015 WY 73, 351 P.3d 236, (Wyo. 2015).

### **COMMENCEMENT OF PROCEEDINGS**

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<sup>30</sup> Information about the Court Appointed Special Advocates program can be found at <http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5301295/k.BE9A/Home.htm>.

Abuse and neglect proceedings in Wyoming begin when a petition is filed with the Clerk of the District Court.<sup>31</sup> Petitions arise in one of two ways: either the child is taken into temporary protective custody by law enforcement, a medical practitioner, or court order and, after notification of the protective custody, the prosecuting attorney elects to file a petition; or the prosecuting attorney files a petition with the court based on information that the prosecuting attorney has obtained through other means.<sup>32</sup> Proceedings can be commenced in the county where the child is living, or in a county where the child is present when the proceedings are commenced.<sup>33</sup>

### TEMPORARY PROTECTIVE CUSTODY

Pursuant to Wyoming Statute § 14-3-405, a child can be taken into state custody without the parents' permission in three situations. The first is when a law enforcement officer has reasonable grounds to believe that the child is abandoned, lost, suffering from an illness or injury, or would be seriously endangered by his or her surroundings and the child needs immediate custody for protection.<sup>34</sup> Law enforcement may also take protective custody of a child when the child's behavior or conduct seriously endangers the child and it appears that immediate custody is necessary.<sup>35</sup> The second situation is when a medical practitioner, defined by statutes as a physician, physician's assistant or nurse practitioner, has reasonable cause to believe an imminent danger to the child's life, health or safety would exist if the child was not taken into protective custody.<sup>36</sup> The third situation is when the court issues an order of protection as a result of a petition filed by the prosecuting attorney, DFS, law enforcement, the administrator of a hospital in which a child is being treated, or a medical practitioner.<sup>37</sup> To issue an order placing a child in protective custody without a hearing, the court must find "there is reasonable cause to believe that a child has been abused or neglected and that the child, by continuing in his place of residence or in the care and custody of the person responsible for his health, safety and welfare, [the child] would be in imminent danger of his life, health or safety[.]"<sup>38</sup> DFS cannot take protective custody of a child on its own.

A child may not remain in temporary protective custody for longer than 48 hours without a court hearing, weekends and holidays excluded.<sup>39</sup> A child must be released from temporary protective custody upon a parent's written promise to present the child to the court upon request, unless it is necessary to protect the child, prevent the child from being removed from the jurisdiction, if there is no person to care for the child, or when there is a court order.<sup>40</sup> If the child is not released from temporary protective custody, he or she is placed in what is referred to as shelter care. Once a child is in shelter care, the child is placed

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<sup>31</sup> W.S. § 14-3-412(a).

<sup>32</sup> W.S. §§ 14-3-405 and 411.

<sup>33</sup> W.S. § 14-3-404.

<sup>34</sup> *Id.* § 14-3-405(a).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* § 14-3-405(b).

<sup>37</sup> *Id.* § 14-3-405(c).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* § 14-3-405(d).

<sup>40</sup> *Id.* § 14-3-406(b).



in the custody of DFS pending a court hearing.<sup>41</sup> A child can be released from shelter care if the prosecuting attorney determines that shelter care is no longer needed, unless the temporary custody was taken pursuant to a court order.<sup>42</sup> If the county or district attorney determines that continued shelter care is needed, he or she must file a juvenile petition pursuant to Wyoming Statute § 14-3-412.

While a child is in shelter care, DFS is required to accept custody of the child, make reasonable efforts to inform the parents that the child is in shelter care, arrange for the care and supervision of the child, investigate the allegations against the parent, assess the needs of the child, and provide ordinary and emergency medical care.<sup>43</sup> If it is in the best interest of the child, DFS must place the child with a noncustodial parent or extended family member. The placement will occur upon conclusion of a background check, which will ensure the noncustodial parent has not committed a crime involving serious harm to a child and is not on the central child abuse registry.<sup>44</sup>

Once a child is placed in shelter care and the prosecuting attorney has filed a juvenile petition, the court must hold a hearing within forty-eight hours of the child being taken into custody.<sup>45</sup> At the shelter care hearing, the court must advise the parents of the contents of the petition and the nature of the allegations.<sup>46</sup> The parents must be advised of their rights, and the court must advise the parents of the State's obligation to seek termination of parental rights if the child remains in foster care for fifteen of the most recent twenty-two months.<sup>47</sup>

At the shelter care hearing, the court must also:

[D]etermine whether or not the child's full-time shelter care is required to protect the child's welfare pending further proceedings. If the court determines that returning the child to the home is contrary to the welfare of the child, the court shall enter the finding on the record and order the child placed in the legal custody of the department of family services. If the court finds that full-time shelter care is not required, the court shall order the child released and may impose one (1) or more of the following conditions:

- (i) Place the child in the custody and supervision of his parents, guardian or custodian, under the supervision of the department of family services or under the protective supervision of any individual or organization approved by the court that agrees to supervise the child; or
- (ii) Impose any other terms and conditions of release deemed reasonably necessary to assure the appearance of the

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<sup>41</sup> *Id.* § 14-3-407(a).

<sup>42</sup> *Id.* § 14-3-408(b).

<sup>43</sup> *Id.* § 14-3-208(a).

<sup>44</sup> *Id.* § 14-3-208(a)(iii).

<sup>45</sup> *Id.* § 14-3-409(a).

<sup>46</sup> *Id.* § 14-3-409(b)(i).

<sup>47</sup> *Id.* § 14-3-409(b)(vi).

child at subsequent proceedings or necessary to his protection from harm.<sup>48</sup>

In making this decision, the court can consider any relevant and material evidence that is helpful in assisting the court to determine whether there is a continued need for shelter care.<sup>49</sup>

A shelter care hearing can be combined with the next procedural hearing, the initial appearance, if the court complies with the requirements of Wyoming Statute § 14-3-413. From the initial appearance forward, the case process is the same regardless of whether the case was commenced by the taking of protective custody or the filing of a petition.

### FILING OF A PETITION

Abuse and neglect proceedings can begin without the taking of protective custody. Pursuant to W.S. §§ 14-3-411 and 412, the county or district attorney can file a petition alleging neglect of a minor child without the taking of protective custody. Upon filing, the court issues an Order to Appear for an initial appearance, which is served upon the parents.<sup>50</sup> The Order to Appear can direct that the child be taken into temporary protective custody at the time it is served if the court believes, based on a affidavit accompanying the petition, that the child's conduct, condition, or surroundings seriously endanger the health or welfare of the child, or if the court finds that the child may be removed from the jurisdiction prior to the court hearing.<sup>51</sup> The petition must be served in accordance with Wyoming Statute § 14-3-414, and counsel should familiarize themselves with that statute.

The Order to Appear directs the parent to appear for an initial appearance. At the initial appearance:

[T]he child and his parents, guardian or custodian shall be advised by the court of their rights under law and as provided in this act. They shall also be advised of the specific allegations in the petition and given an opportunity to admit or deny them. They shall also be advised of the possible liability for costs of treatment or services pursuant to this act. It is not necessary at the initial hearing for the district attorney to establish probable cause to believe the allegations in the petition are true.

After proceedings have commenced, the court is required to order DFS to prepare a predisposition study and report, a document detailing the history of the child and family for use by the court in making future decisions.<sup>52</sup> The court also must appoint a multidisciplinary team.<sup>53</sup> Pursuant to Wyoming Statute § 14-3-427:

(e) Before the first multidisciplinary team meeting, the department of family

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<sup>48</sup> *Id.* § 14-3-409(d).

<sup>49</sup> *Id.* § 14-3-409(e).

<sup>50</sup> *Id.* § 14-3-413(a).

<sup>51</sup> *Id.* § 14-2-413(b).

<sup>52</sup> *Id.* § 14-3-427(a).

<sup>53</sup> *Id.* § 14-3-427(b).

services shall provide each member of the multidisciplinary team with a brief summary of the case detailing the allegations in the petition that have been adjudicated, if any. The multidisciplinary team shall review the child's personal and family history, school records, mental health records and department of family services records and any other pertinent information, for the purpose of making case planning recommendations. To the extent appropriate, the team shall involve the child in the development of the recommendations.

(f) At the first multidisciplinary team meeting, the team shall formulate reasonable and attainable recommendations for the court outlining the goals or objectives the parents should be required to meet for the child to be returned to the home or for the case to be closed, or until ordered by the court in termination proceedings. At each subsequent meeting, the multidisciplinary team shall review the progress of the parents and the child, and shall reevaluate the plan ordered by the court. For cause, which shall be set forth with specificity, the multidisciplinary team may adjust its recommendations to the court with respect to the goals or objectives in the plan to effect the return of the child to the home or to close the case. In formulating recommendations, the multidisciplinary team shall give consideration to the best interest of the child, the best interest of the family, the most appropriate and least restrictive case planning options available as well as costs of care. After each multidisciplinary team meeting, the coordinator shall prepare for submission to each member of the team and to the court a summary of the multidisciplinary team meeting specifically describing the recommendations for the court and the goals and objectives which should be met to return the child to the home or to close the case. If the recommendations for the case plan have been changed, the summary shall include a detailed explanation of the change in the recommendations and the reasons for the change.

DFS is also tasked with preparing a case plan for the family when there is a recommendation to place the child outside of the home.<sup>54</sup> Generally, a case plan will be developed in every case regardless of placement. The case plan should be an agreement between DFS and the parents as to what tasks the parent will accomplish and how DFS will assist in those tasks. The parent must comply with the terms and conditions of the case plan. “If a parent chooses not to comply with or participate in the case plan developed by the department, that parent is prohibited from later objecting to or complaining about the services that were provided to the child and family.”<sup>55</sup> Case plans will be discussed in further detail in Chapter Eight.

## ADJUDICATION

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<sup>54</sup> *Id.* § 14-3-427(k).

<sup>55</sup> *Id.*

The next step in the case process is that of adjudication. A child can be adjudicated as a neglected child in one of two ways: (i) by an admission by a parent, or (ii) by a finding that the facts alleged in the petition are true at trial. At the initial appearance, the parents are given an opportunity to admit or deny the allegations.<sup>56</sup> If the parent admits:

[T]he court shall make the appropriate adjudication and may proceed immediately to a disposition of the case, provided the court has the predisposition report and multidisciplinary team recommendations, in accordance with the provisions of W.S. 14-3-429, except that a commissioner acting in the absence or incapacity of the judge may take testimony to establish a factual basis and accept an admission and perform all other requirements of the initial hearing but shall not proceed to disposition.<sup>57</sup>

If the parent denies the allegations:

[T]he court may, with consent of the parties, proceed immediately to hear evidence on the petition or it may set a later time not to exceed sixty (60) days for an adjudicatory hearing, unless the court finds good cause to delay or postpone the hearing. In no case shall the court hold the adjudicatory hearing more than ninety (90) days after the date the petition is filed. Only competent, relevant and material evidence shall be admissible at an adjudicatory hearing to determine the truth of the allegations in the petition. If after an adjudicatory hearing the court finds that the allegations in the petition are not established as required by this act, it shall dismiss the petition and order the child released from any shelter care.<sup>58</sup>

The adjudicatory hearing may be a bench trial or, if the parent demands a jury within ten days after being advised of his or her right to a jury, it may be a jury trial.<sup>59</sup> At the adjudicatory hearing, the allegations of the petition must be proved by a preponderance of the evidence.<sup>60</sup> At the adjudicatory hearing, only competent, relevant, and material evidence is admissible.<sup>61</sup> Adjudicatory hearings are held in compliance with the WYOMING RULES OF CIVIL PROCEDURE. At the conclusion of the adjudicatory hearing, if there is an adjudication, the matter can proceed immediately to disposition or the court can set a dispositional hearing. If there is not an adjudication, the matter is dismissed. If the child was removed from the home the child is returned to his or her parents.<sup>62</sup>

The statutes provide one alternative to adjudication. Pursuant to Wyoming Statute §14-3-428, if the parties are able to negotiate an agreement, a consent decree may be entered. A consent decree is entered pre-adjudication and holds future proceedings in abeyance. The parties negotiate the terms and conditions of the consent decree, and the parties are expected to comply with the decree. If the parent successfully completes the terms and

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<sup>56</sup> *Id.* § 14-3-426(c).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* § 14-3-426(b).

<sup>59</sup> *Id.* § 14-3-423(b).

<sup>60</sup> *Id.* § 14-3-425(a).

<sup>61</sup> *Id.* § 14-3-426(b).

<sup>62</sup> *Id.*

conditions of the consent decree, the case is dismissed without an adjudication. If the parent does not complete the terms and conditions of the consent decree, the district attorney can file a petition to have the proceedings reinstated. Consent decrees will be discussed in further detail in Chapter Eight.

Adjudication will be discussed in further detail in Chapter Seven.

### **POST-ADJUDICATION**

Once there has been an adjudication, the next procedural hearing is the disposition hearing. Wyoming Statute § 14-3-429(a) provides:

In determining the disposition to be made under this act in regard to any child:

(i) The court shall review the predisposition report, the recommendations, if any, of the multidisciplinary team, the case plan and other reports or evaluations ordered by the court and indicate on the record what materials were considered in reaching the disposition;

(ii) If the court does not place the child in accordance with the recommendations of the predisposition report or multidisciplinary team, the court shall enter on the record specific findings of fact relied upon to support its decision to deviate from the recommended disposition;

(iii) When a child is adjudged by the court to be neglected the court shall enter its decree to that effect and make a disposition as provided in this section that places the child in the least restrictive environment consistent with what is best suited to the public interest of preserving families and the physical, mental and moral welfare of the child;

(iv) When a child is adjudged to be neglected the court shall ensure that reasonable efforts were made by the department of family services to prevent or eliminate the need for removal of the child from the child's home or to make it possible for the child to return to the child's home. Before placing a child outside of the home, the court shall find by clear and convincing evidence that to return the child to the child's home would not be in the best interest of the child despite efforts that have been made.

Wyoming Statute § 14-3-429 further provides:

(b) If the child is found to be neglected the court may:

(i) Permit the child to remain in the legal custody of his parents, guardian or custodian without protective supervision, subject to terms and conditions prescribed by the court;

(ii) Place the child under protective supervision;

(iii) Transfer temporary legal custody to a relative or other suitable adult the court finds qualified to receive and care for the child, with or without supervision, subject to terms and conditions prescribed by the court;

(iv) Transfer temporary legal custody to the department of family services or a state or local public agency responsible for the care and placement of neglected children, provided the child shall not be committed to the Wyoming boys' school, the Wyoming girls' school or the Wyoming state hospital.

(c) In cases where a child is ordered removed from the child's home:

(i) If a child is committed or transferred to an agency or institution under this section, at least every three (3) months the agency or institution shall recommend to the court if the order should be continued;

(ii) The court shall order the parents or other legally obligated person to pay a reasonable sum for the support and treatment of the child as required by W.S. 14-3-435, or shall state on the record the reasons why an order for support was not entered;

(iii) In cases where the child is placed in custody of the department, support shall be established by the department through a separate civil action;

(iv) Any order regarding potential placement at a psychiatric residential treatment facility shall not specify a particular psychiatric residential treatment facility or level of care for the placement of the child.

(d) As a part of any order of disposition and the terms and conditions thereof, the court may:

(i) Impose any demands, requirements, limitations, restrictions or restraints on the child, and do all things with regard to the child that his parents might reasonably and lawfully do under similar circumstances;

(ii) Order the child, or his parents, or both, to undergo evaluation and indicated treatment or another program designed to address problems which contributed to the adjudication. A parent who willfully violates or neglects or refuses to comply with any order of the court may be found in contempt and punished as provided by W.S. 14-3-438;

(iii) Require the child's parents or guardian to attend a parenting class or other appropriate education or treatment designed to address problems which contributed to the adjudication and to pay all or part of the cost of the class, education or treatment in accordance with the court's determination of their ability to pay;

(iv) Require the child's parents or guardian and the child to participate in a court supervised treatment program qualified under W.S. 7-13-1601 through 7-13-1615, provided the court supervised treatment program accepts the child's parents or guardian and the child for participation in its program.

The order of disposition remains in effect for an indefinite period until terminated by the court. The court can terminate the order and close the case whenever it appears the purpose of the order has been achieved and the child's best interests require that the case be closed.<sup>63</sup>

If the case remains open and the child remains out of the parents' home, whether a result of an adjudication or a consent decree, the court is required to hold review hearings every six months pursuant to Wyoming Statute § 14-3-431(c), which states:

The court shall conduct a review hearing six (6) months from the date of the child's removal from the home and every six (6) months thereafter. At the six (6) month review hearing the court shall review the case plan to determine:

- (i) The health and safety of the child;
- (ii) The continuing necessity for the placement;
- (iii) The appropriateness of the current placement;
- (iv) The reasonableness of efforts made to reunify the family and the consistency of those efforts with the case plan;
- (v) The appropriateness of the case plan and the extent of compliance with the case plan including the permanent placement of the child;

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<sup>63</sup> *Id.* § 14-3-431(a).

(vi) If progress has been made toward alleviating or mitigating the causes necessitating placement outside the home and the extent of that progress; and

(vii) The date the child is expected to be returned to the home or placed for adoption or legal guardianship.

The court is also required to hold a permanency hearing twelve months after the child's removal from the home and every twelve months thereafter if the child remains out of the home.<sup>64</sup> The purpose of the permanency hearing is to determine if DFS has made reasonable efforts, as defined by Wyoming Statute § 14-3-440, to return the child to the home and effectuate a permanency plan for the child.<sup>65</sup> The permanency plan is the long-term goal for the child, whether it be returning the child to the home, finding a permanent guardian for the child, or planning for the child's adoption after parental rights have been relinquished or terminated.<sup>66</sup>

Wyoming Statute § 14-3-431 states the following about permanency hearings:

(d) The court shall conduct a permanency hearing no later than twelve (12) months from the date of the child's removal from the home and not less than once every twelve (12) months thereafter if the child remains in out-of-home placement or more frequently as deemed necessary by the court.

(e) If the court determines as provided in W.S. 14-2-309(a)(vi), (b) or (c) that reasonable efforts to preserve and reunify the family are not required, a permanency hearing shall be held for the child within thirty (30) days after the determination.

(f) At the permanency hearing, the court shall make determinations of reasonable efforts as outlined in W.S. 14-3-440.

(g) A permanency hearing is not required if the case was dismissed, the child was not removed from the home or the child was returned to the child's parent or guardian.

(h) The permanency hearing may be combined with a hearing required by other sections of this chapter if the hearing is held within twelve (12) months from the date of the child's removal from the home. If a permanency hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing shall be met in addition to the requirements of this section.

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<sup>64</sup> *Id.* § 14-3-431(d).

<sup>65</sup> *Id.* § 14-3-431(d) and (j).

<sup>66</sup> *Id.* § 14-3-431(j).



(j) At the permanency hearing, the department of family services shall present to the court the efforts made to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding other permanency options and set forth the proposed plan to carry out the placement decision, including specific times for achieving the permanency plan. The department of family services shall provide the court a compelling reason for establishing a permanency plan other than reunification, adoption or legal guardianship.

(k) At the permanency hearing, the court shall determine whether the permanency plan is in the best interest of the child and whether the department of family services has made reasonable efforts to finalize the plan. The court shall order the department of family services to take any additional steps necessary to effectuate the terms of the permanency plan.

(m) When a child has been placed in foster care under the responsibility of the state for fifteen (15) of the most recent twenty-two (22) months the state shall file a petition to terminate parental rights or seek to be joined as a party to the petition if a petition has been filed by another party, unless:

(i) The child is in the care of a relative;

(ii) The state agency has documented in the case plan a compelling reason for determining that filing the petition is not in the best interest of the child; or

(iii) The state agency has not provided services to the child's family deemed to be necessary for the safe return of the child to the home, if reasonable efforts described in W.S. 14-3-440 are required to be made.

The permanency hearing is a critical point in the proceeding, as the order from the permanency hearing determines the direction the case will take. If the court orders that DFS continue to make reasonable efforts, the matter will proceed under the dispositional order with continued review hearings until such time as the court determines that the case should close. If the court orders the permanency plan be changed to adoption, then DFS will file a separate, civil proceeding seeking termination of parental rights. If, in that separate proceeding, parental rights are terminated, the parents are released from the juvenile case and the child is placed in the custody of the Department of Family Services for adoption.

All hearings should be scheduled based on the date of removal. Case plans and permanency hearings will be discussed in greater detail in Chapter Eight.

## CONCLUSION

The above text serves as a brief overview of the juvenile court process regarding abuse and neglect proceedings. There are numerous other details and requirements contained within the Child Protection Act, and counsel should familiarize themselves with the requirements of those statutes. Counsel who have a strong knowledge of the statutory

requirements in these proceedings will be in a position to make sound legal arguments on behalf of their clients.



**FOR FURTHER INFORMATION ON THESE TOPICS SEE:**

Wyoming Child Protection Act, W.S. §§ 14-3-401 through 14-3-441.

Wyoming Child Protective Services Act, W.S. § 14-3-201 through 14-3-214.

# Chapter Five: Establishing the Attorney-Client Relationship

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## CHAPTER OBJECTIVES

The purpose of this chapter is to introduce counsel to the basics of developing an attorney/client relationship with parents involved in abuse and neglect proceedings.

At the conclusion of this chapter, counsel should be familiar with methods regarding how to work with and interact with clients in abuse and neglect proceedings.

In order to increase competence, counsel should further research and study materials related to representation of clients and the obligations of counsel.

## INTRODUCTION

The attorney/client relationship is the bedrock of the entire course of representation. Upon appointment or retention, counsel should immediately begin to form an attorney/client relationship with the client. Forming a quality relationship with the client from the beginning of the representation will not only assist counsel in representing the client, but also establish trust with the client. Counsel should actively work to establish and maintain a professional working relationship with their clients.

Many parents in abuse and neglect proceedings have deep distrust of authority figures and anyone associated with the court system. Initially, clients may be resistant to being truthful with counsel. It is critical that counsel earn the trust of their clients as soon as possible so that they can adequately represent their clients. Counsel must also fulfill their professional and ethical obligations to their clients in order to earn client trust and confidence.

In some cases, there may be barriers to establishing the attorney/client relationship, such as a parent's incarceration or residence out of state. In situations such as these, counsel must take whatever steps necessary to overcome these barriers in order to provide the highest quality representation possible in light of the circumstances. These situations also raise special issues that counsel may need to discuss with the client.

This chapter serves as a guide for counsel on methods to establish a quality relationship with their clients. It also outlines the basic obligations of counsel to clients in abuse and neglect proceedings.

## INITIAL MEETING

The first step in establishing an attorney/client relationship is to meet with the client. WYOMING PRACTICE GUIDELINE 2.4 states

[An] attorney shall attempt to arrange for an initial interview with the parent as soon as practicable after agreeing to represent client. Attorney should try to ensure during this interview and all successive interviews and proceedings that barriers to communication, such as disabilities or differences in language or literacy, are accommodated. Attorney should consider using a translator or interpreter when needed.

To arrange the initial meeting, counsel must locate the client. In some cases, this may be as simple a phone call with the client. In other cases, this may involve some effort on the part of the counsel, such as when the client is incarcerated. Once the client is located, the initial meeting should be scheduled as soon as possible. Abuse and neglect proceedings move quickly, and the status quo can change at any time. Meeting with the client as soon as possible will allow counsel to become aware of the facts of the situation and advise the client on how to proceed before the client has time to potentially make matters worse for himself or herself.

At the initial meeting, counsel should advise the client of counsel's role in the proceedings, the limitations of the representation, and the obligations and responsibilities of counsel. Counsel should interview the client and learn the client's version of the facts of the case. The client should be questioned about alternative placement options for the child. Counsel should also advise clients of their rights in abuse and neglect proceedings and how juvenile cases proceed. If counsel has had an opportunity to review the petition and other supporting documentation in the matter, counsel should advise the client of potential options for proceeding and what other discovery counsel intends to obtain. Counsel should explain the discovery process to the client. Counsel should also explain the roles of all of the parties in the proceedings.

A discussion should be had regarding confidentiality and attorney client privilege. Counsel should explain fully the requirements of confidentiality and trust. Counsel should also explain to the client that the requirement of confidentiality can work both ways and at times counsel may advise the client of certain things which the client must not share with others.

#### **PRACTICE TIP**

Client trust is rarely earned in the first meeting. Clients come to the case with their own background and they may often distrust anyone associated with the "system," including their own attorneys. Furthermore, clients may believe that attorneys who are paid by the court are acting on behalf of the court. Attorneys can gain client trust by:

- Clearly and repeatedly explaining their role in the process and emphasizing that their role is to

represent the best interests of the client.

- Making positive statements about the client as often as possible, especially in conversations with other parties.
- Avoiding casual conversations with other parties in the presence of the client as this can appear to show divided loyalty.
- Explaining to the client that attorneys often have friendly relationships with adversarial parties outside of the courtroom.
- Listening to the client's story and show empathy to the client and their situation.
- Validating the client's feelings when necessary.

The initial meeting should include a thorough interview of the client. The following information should be collected regarding the client and any other members of the client's household:

- Personal information such as date of birth, social security number, address, phone number, and emergency contacts;
- Educational background;
- Criminal history and pending criminal charges;
- Employment background and current employer; and,
- Child custody information.

Counsel should also collect information regarding:

- Potential witnesses;
- Potential placement options for the child;
- Prior DFS history;
- Contacts with DFS since the time of the allegations;
- Requests made by DFS to date;
- Services provided by DFS to date;
- Last contact with the child;
- Child's medical providers, medical history, and medications;
- History of domestic violence in the home;
- Drug and alcohol history; and,
- Mental health diagnosis and treatment.

Counsel should also give the client an opportunity to ask any questions he or she may have regarding the proceedings. Once the client's questions have been answered completely, and the proceedings have been fully explained to the client, counsel and the client should work together to establish the goals of the representation. This should include the tasks that need to be accomplished and the timeline on which they will be completed.

At the initial interview, counsel should also explain to the client that it is in the client's best interest to cooperate as much as possible with DFS without waiving his or her parental rights. Early efforts to establish a working relationship with DFS will pay off in the long run for the client if there is an adjudication. Clients should be advised not to burn bridges with DFS, the GAL, and CASA early on in the case, as it may be difficult to reestablish positive relationships.

At the conclusion of the initial interview, counsel should assure the client that they will contact the client as soon as they have an update on the case and ensure that the client has the appropriate contact information for counsel. It is good practice to remind the client of the attorney/client privilege and confidentiality.

### **PROTECTING AND ADVISING OF RIGHTS**

One of the most important duties counsel has is to advise their clients of their rights and ensure that their client's rights are protected. Counsel need to familiarize themselves with the rights of the parents they represent in abuse and neglect proceedings so that they can vigorously protect these rights.

Parents have a fundamental right to raise their children as they see fit within the limits of the law. Both the United States and Wyoming Constitutions provide that a citizen may not be deprived of life, liberty, or property without due process of law. When the State intervenes in the parent/child relationship, it must ensure that a parent receives due process of the law and that the rights of the parents are protected.

Due process and fundamental fairness are the cornerstones of parental rights. In Wyoming, the Supreme Court has held:

Wyo. Const. art. 1, § 6, provides that “[n]o person shall be deprived of life, liberty or property without due process of law.” The similar provision found in the Fifth Amendment to the United States Constitution was made applicable to the states by the Fourteenth Amendment. “Notice and the opportunity to be heard are touch stones of this due process of law.” *Pecha v. Smith, Keller & Associates*, 942 P.2d 387, 391 (Wyo.1997). The notice and hearing opportunity must be “appropriate to the nature of the case,” and the opportunity to be heard must be “ ‘at a meaningful time and in a meaningful manner.’ ” *Jones v. Jones*, 903 P.2d 545, 548 (Wyo.1995) (quoting *Moore v. Board of Educ. Of Fulton Public School No. 58*, 836 S.W.2d 943, 947 (Mo.1992), cert. denied, 507 U.S. 916, 113 S.Ct. 1270, 122 L.Ed.2d 666 (1993)). The party claiming an infringement of his right to due process has the burden of demonstrating both that he has a protected interest and that such interest has been affected in an impermissible way. *Meyer v. Norman*, 780 P.2d 283, 289 (Wyo.1989). The question is whether there has been a denial of fundamental fairness. *Id.*

Actions infringing upon the parent-child relationship may affect fundamental rights, thereby entitling parents to due process. *Matter of SAJ*, 942 P.2d 407,

409 (Wyo.1997) (custody and visitation); *MB [v. Laramie County Dept. Family Services In the Interest of LB]*, 933 P.2d [1126] at 1129 [(Wyo. 1997)] (parental rights termination). Not all such infringements, however, are of the same magnitude. See *A v. X, Y, and Z*, 641 P.2d 1222, 1226 (Wyo.), cert. denied, 459 U.S. 1021, 103 S.Ct. 388, 74 L.Ed.2d 518 (1982) (under equal protection challenge, strict scrutiny not required of legislative classification disallowing non-family member from attacking a presumption of paternity). Termination of parental rights, for instance, requires clear and convincing evidence. Wyo. Stat. Ann. § 14-2-309 (LexisNexis 2003); *MB*, 933 P.2d at 1129. Child neglect, on the other hand, need only be shown by a preponderance of the evidence. Wyo. Stat. Ann. § 14-3-425(a) (LexisNexis 2003). In the realm of due process, this is consonant with the requirement that notice and the opportunity to be heard must be appropriate to the nature of the case.<sup>67</sup>

The Wyoming Child Protection Act also gives parents many statutory rights. As discussed in Chapter Two of the Act, parents have the right to counsel in abuse and neglect proceedings.<sup>68</sup> They have a right to notice of all of the charges against them.<sup>69</sup> Parents have the right to confront and cross-examine witnesses, to present their own witnesses and evidence, and to have court process issued to compel witness attendance and production of evidence.<sup>70</sup> If they follow the proper statutory procedure, they have a right to a jury trial.<sup>71</sup> They have the right to appeal adverse decisions.<sup>72</sup> They are also entitled to certain statutory protections related to the confidentiality of the proceedings.<sup>73</sup>

#### PRACTICE TIP

Beyond advising clients of their rights, they should be advised of their responsibilities as well, such as:

- It is the parent's responsibility to comply with the orders of the court or he or she could face contempt charges.
- It is the parent's responsibility to visit his or her child and to arrive at the visits on time.
- It is the parent's responsibility to follow through with case plan requirements.
- It is the parent's responsibility to contribute monetary support for the child's care.
- It is the parent's responsibility to make all appointments with DFS.
- It is the parent's responsibility to keep counsel updated on changes in contact information.

<sup>67</sup> *In re 'H' Children*, 2003 WY 155, ¶¶ 38-39, 79 P.3d 997, 1008 (Wyo. 2003).

<sup>68</sup> WYO. STAT. ANN. §§ 14-3-409(b)(ii) and 14-3-422.

<sup>69</sup> *Id.* § 14-3-423(a)(i).

<sup>70</sup> *Id.* §§ 14-3-409(b)(iii) and 14-3-417.

<sup>71</sup> *Id.* § 14-3-409(b)(iv).

<sup>72</sup> *Id.* §§ 14-3-409(b)(v) and 14-3-432.

<sup>73</sup> *Id.* §§ 14-3-424 and 14-3-437.

- It is the parent’s responsibility to ask for clarification from counsel or DFS if they don’t understand something.

Parents should also be advised of other items of protocol, such as:

- The parent may not speak to the judge outside of the courtroom or send the judge letters.
- What items of clothing are appropriate to wear to court.
- How to behave in court.
- How to address issues with the DFS caseworker.

Counsel should also advise the client of what decision-making authority lies with the parent when the child is in the care of the State, and what lies with the child welfare agency. Clients should be advised of their residual parental rights, which are defined by Wyoming Statute § 14-3-402(xvi) as:

(xvi) "Residual parental rights and duties" means those rights and duties remaining with the parents after legal custody, guardianship of the person or both have been vested in another person, agency or institution. Residual parental rights and duties include but are not limited to:

- (A) The duty to support and provide necessities of life;
- (B) The right to consent to adoption;
- (C) The right to reasonable visitation unless restricted or prohibited by court order;
- (D) The right to determine the minor's religious affiliation;  
and
- (E) The right to petition on behalf of the minor.

The American Bar Association, in its STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES, states:

“Unless and until parental rights are terminated, the parent has parental obligations and rights while a child is in foster care. Advocacy may be necessary to ensure the parent is allowed to remain involved with key aspects of the child’s life. Not only should the parent’s rights be protected, but continuing to exercise as much parental responsibility as possible is often an effective strategy to speed family reunification. Often, though, a parent does not understand that he or she has the right to help make decisions for, or obtain information about, the child. Therefore, it is the parent’s attorney’s responsibility to counsel the client



and help the parent understand his or her rights and responsibilities and try to assist the parent in carrying them out.”<sup>74</sup>

At the initial meeting, counsel should advise their clients of these rights, as well as fully explain how these rights should affect their decisions. Counsel should also clearly explain the legal issues as well as expectations of the court and DFS and the potential consequences of the client failing to meet those expectations.

### ONGOING COMMUNICATION

The key to a successful attorney/client relationship is communication. Communication requires frequent contact between counsel and the client. Quality communication also requires counsel to communicate information to the client as soon as counsel obtains the information. In many cases, the court will order the client to maintain regular contact with the attorney. However, counsel should also take steps to ensure that there is continued communication with the client.

The American Bar Association, in its STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES states:

“Gaining the client’s trust and establishing ongoing communication are two essential aspects of representing the parent. The parent may feel angry and believe that all of the attorneys in the system work with the child welfare agency and against that parent. It is important that the parent’s attorney, from the beginning of the case, is clear with the parent that the attorney works for the parent, is available for consultation, and wants to communicate regularly. This will help the attorney support the client, gather information for the case and learn of any difficulties the parent is experiencing that the attorney might help address. The attorney should explain to the client the benefits of bringing issues to the attorney’s attention rather than letting problems persist. The attorney should also explain that the attorney is available to intervene when the client’s relationship with the agency or provider is not working effectively. The attorney should be aware of the client’s circumstances, such as whether the client has access to a telephone, and tailor the communication system to the individual client.”<sup>75</sup>

WYOMING PRACTICE GUIDELINE 1.3 states:

- (a) Attorney should take all reasonable steps to maintain adequate and appropriate contact with client throughout the proceedings. When client is subject to a court order or case plan, attorney should communicate regularly with client and in advance of each hearing to assess whether client is performing as he or she should perform pursuant to the order or plan. Attorney should also ensure that client’s right to information and decision making is respected while the child is in care.

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<sup>74</sup> AMERICAN BAR ASSOCIATION STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES 10 (2006).

<sup>75</sup> AMERICAN BAR ASSOCIATION STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES 13 (2006).

- (b) Attorney shall take all reasonable steps to ensure that client is notified in advance of all court dates. Attorney shall also provide client with copies of all petitions, court orders, case plans, and other important documents in the case.

In order to maintain communication with the client, counsel should instruct the client of the importance of keeping counsel apprised of current contact information. Counsel may wish to ask the client for the name and contact information of an individual they can contact in the event that counsel is not able to locate the client.

In the event that counsel cannot locate the client, counsel should take whatever action is deemed ethical in the situation. WYOMING PRACTICE GUIDELINE 1.3(f) states: “If [the] client cannot be located during the pendency of the proceedings and attorney is unaware of [the] client’s objectives, attorney should act in accordance with any applicable ethics opinions, including filing of a motion to withdraw if appropriate.”

### **REPRESENTING INCARCERATED PARENTS**

In some cases, counsel may be appointed to represent a client who is incarcerated. Working with incarcerated parents raises special issues that may hinder representation and, ultimately, reunification with the child. The parent may be incarcerated in another area of the State or out of State, hindering communication between counsel and the client, as well as the client and DFS. The parent may be incarcerated for a crime against the child, which leads to “no contact” provisions through the abuse and neglect proceeding or criminal bond conditions. The parent may be incarcerated for a time period that makes reunification within statutorily mandated timeframes impossible.

WYOMING PRACTICE GUIDELINE 1.6(a) states the following about representing incarcerated parents:

Attorney shall recognize that an incarcerated client can actively participate in his or her case. Attorney should explore what aspects of the case plan and parenting can be accomplished despite incarceration such as visitation, involvement in case planning or the court process. Attorney should determine if client is incarcerated in a facility that offers classes or services that may be required under the case plan or court order. If appropriate, attorney shall attempt to make arrangements with the prison or jail for a contact visit between a service provider and the incarcerated client.

Once appointed to represent an incarcerated parent, parent’s counsel should immediately take steps to contact the incarcerated parent. This may involve meeting with the client at the county jail, or, if the client is incarcerated in the State or federal system, contact may have to be made through the parent’s prison social worker. Parent’s counsel should also ensure that the DFS caseworker is aware of where the parent is located and how to maintain contact with the parent.

In many cases, when a parent is incarcerated for a substantial period of time, the reality of the situation may warrant an immediate discussion with the parent about the potential possibility of termination of parental rights. It is important to consult with the client and determine what the parent's intentions are, whether it is seeking placement of the child with a family member through a guardianship, relinquishment of parental rights or continued efforts towards reunification. If the incarcerated parent desires to continue to work towards reunification, counsel should immediately contact the facility in which the parent is incarcerated to determine what services the client can participate in while incarcerated. Counsel should also advise the client to maintain contact with their DFS caseworker.<sup>76</sup> Counsel should advocate with DFS, the GAL, and the court to ensure as much visitation as possible for the client. The frequency and type of visitation will be dependent upon the policies of the facility in which the parent is incarcerated. However, counsel should advocate at a minimum for regular letters and phone calls whenever possible.

### **REPRESENTING THE NON-OFFENDING PARENT**

Some abuse and neglect petitions only include allegations against one of the parents. When this is the case, counsel can be appointed to represent the non-offending parent. The non-offending parent has all the same rights that the offending parent does. The non-offending parent, while having committed no wrong, is still subject to the jurisdiction of the court and is in a position where an adjudication against the other parent can place his or her parental rights in jeopardy. Additionally, some non-offending parents may live out of the area, or even out of state, complicating matters further.

If you are appointed to represent a non-offending parent, you should immediately advocate for the child to be placed in the custody of the non-offending parent if the non-offending parent resides in Wyoming. As stated in Chapter Four, if it is in the best interest of the child, DFS must place the child with a noncustodial parent upon conducting a background check to ensure the individual has not committed a crime involving serious harm to a child and has not been placed on the central child abuse registry.<sup>77</sup> If the non-offending parent does not reside in Wyoming, matters can be more difficult. The INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC) is a federal law that requires coordination between states when children in state custody are moved across state lines. The ICPC requires a home study and an extensive background check on the out-of-state parent before the children can be moved. This process can take months and can result in children being placed in foster care in Wyoming for extended periods of time even when they have capable out-of-state parent. This is one of the most frustrating aspects of an abuse and neglect case for an out-of-state parent. Counsel should immediately obtain a court order directing DFS to begin the ICPC process if the child is placed in foster care. Furthermore, counsel should review DFS Placement Policy 2.1.2, Placement with a Non-Custodial Parent, and ensure that DFS complies with the policy.

#### **PRACTICE TIP**

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<sup>76</sup> DIANE BOYD RAUBER AND LISA A. GRANIK, REPRESENTING PARENTS IN CHILD WELFARE CASES 13 (MIMI R. LAVER ED., AMERICAN BAR ASSOCIATION 2000).

<sup>77</sup> WYO. STAT. ANN. § 14-3-208(a)(iii).

When representing an out-of-state parent, and it appears that the child may remain in foster care for a period of time, counsel should direct the client to file for civil custody immediately. If the parent is willing to come to Wyoming to pick up the children, it may be easier for a parent to obtain civil custody and then request closure of the juvenile case than to obtain an approved ICPC home study.

Once an adjudication is entered, the non-offending parent can be ordered to complete any of the requirements the offending parent is ordered to complete, and, in some cases, the non-offending parent may face more restrictive requirements in order to secure custody of his or her child. Counsel should advocate for the least restrictive requirements possible for the non-offending parent and argue that the non-offending parent did not abuse or neglect the child. Non-offending and out-of-state parents have full rights to participate in case planning and services and counsel should ensure that DFS does not leave the client out of these matters.

The non-offending parent client should be given as much care and attention as an offending client. The attorney/client relationship needs to be established as soon as possible, and continued communication needs to occur between counsel and client. Representing out-of-state parents can be difficult given the inability to meet in person with the client. Counsel should take extra care to communicate by phone, mail, and electronic means with the client whenever necessary. Counsel should also ensure that out-of-state parents are advised of MDT and court proceedings and arrangements are made for their attendance by phone at those appointments.

### **REPRESENTING A CLIENT WITH DIMINISHED CAPACITY**

Some of the hardest representation issues that counsel will deal with will arise when representing a client with diminished capacity. As abuse and neglect proceedings are civil in nature, the client has no right to a finding- of- competency to proceed. Raising issues of competency can actually be detrimental to the client if the State argues that the parent is not competent to parent the child.

WYOMING RULES OF PROFESSIONAL CONDUCT Rule 1.14 states:

- (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting

with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

Counsel should also consider WYOMING PRACTICE GUIDELINE 1.5, which states:

- (a) Attorney shall take into account client's objectives when client is mentally competent. When client's capacity to make adequately considered decisions in connection with the representation is diminished, attorney should act in accordance with the Wyoming Rules of Professional Conduct and any applicable statutory and case law. See WRPC 1.4 on representing a diminished capacity client.
- (b) If another party seeks appointment of a Guardian Ad Litem (GAL) for the parent, attorney shall consider all relevant factors in determining whether to oppose or consent to the appointment, including the services a GAL would provide and any inferences about client's capacity or parenting ability that may be drawn from attorney's position or the appointment of a GAL.

Every client is entitled to competent representation and communication, even those with diminished capacity. Clients may have competency issues related to mental health, substance abuse, or medical issues. Ethically, an attorney must advocate for the wishes of the client. The ethical rules presume that every client has the capacity to direct the course of the representation. This can place counsel in a position where they are faced with deferring to the client's wishes when they know those wishes are not in the client's best interest.

When representing a client with diminished capacity, counsel must make every attempt to maintain a normal attorney/client relationship, including fostering a relationship of loyalty and trust. However, counsel should use their persuasive skills to direct the client towards the best possible choices in the representation. Counsel should take into account the wishes and values of the client and respect the client's right to make decisions. When representing clients with diminished capacities, counsel should look for resources to help them maximize client capacities, such as working cooperatively with the client's counselor to help the client understand what is in his or her best interest.

Counsel are required to present the client's position in court and advocate for the wishes of the client. This may require counsel to make arguments that they do not agree with or which they have no possibility of winning, such as arguing for the child to return to the home when a parent has not addressed the substance abuse issues that brought them to the attention of authorities. However, it is the ethical obligation of counsel to do so, and, fortunately, most judges will appreciate the position in which this puts counsel.

**PRACTICE TIP**

When representing a client who has diminished capacity, it

may be helpful to utilize a client binder. The attorney creates a binder with all of the important paperwork for the representation inside. The client is directed to bring the binder to every appointment. At the conclusion of every appointment, counsel can memorialize the important concepts discussed and the tasks to be accomplished in simple language for the client to place in the binder for future reference.

Establishing an attorney/client relationship with clients who have diminished capacities can be difficult. They are often distrustful of everyone and may not be able to distinguish the difference between counsel and other parties they are required to work with in the proceedings. These clients may need counsel to explain things to them multiple times. Counsel may find himself or herself having the same conversation multiple times with the client. Counsel may also need to bring third parties into conversations to ensure that the client understands everything that is going on, so long as the client consents to the third party being present and sensitive attorney/client privileged information is not discussed. Concepts may need to be simplified and placed into writing for the client to review. It may be helpful for counsel to contact individuals who work with those of diminished capacities to ask for tips on how to interact with the client. Above all, the attorney must actively work to establish trust with the client.

## CONCLUSION

Counsel must immediately begin to establish the attorney/client privilege upon appointment to represent a parent in an abuse and neglect proceeding. Communication with clients is the most important aspect of maintaining the attorney/client relationship, and counsel must ensure that clients are advised of how their cases are proceeding. Certain situations may make establishing the attorney/client privilege more difficult, but counsel can educate themselves on how to address these particular issues. Client trust is the key to a successful attorney/client relationship, and counsel should continually seek to maintain a relationship of trust with the client.



# Chapter Six: Pre-Adjudication Advocacy

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## CHAPTER OBJECTIVES

The purpose of this chapter is to educate counsel on methods and concepts of pre-adjudication advocacy.

At the conclusion of this chapter, counsel should have a basic understanding of several ways in which they can advocate for their client's prior to adjudication.

In order to increase competence, counsel should further research and study representation techniques, child development concepts, case law, and legal principles.

## INTRODUCTION

Client advocacy should begin immediately upon appointment. Counsel should immediately begin to research the issues of the case, gather discovery and investigative materials, and prepare for courtroom hearings. In some cases, counsel may be appointed shortly before or the day of the shelter care or initial appearance. As abuse and neglect proceedings move quickly, counsel should be prepared to start working on a case as soon as they are appointed. There are numerous opportunities for counsel to advocate for their client prior to the adjudicatory hearing. Counsel should address issues that arise prior to the adjudicatory hearing to defend their client's rights and to be adequately prepared for adjudication.

## SHELTER CARE AND INITIAL APPEARANCE

In many cases, if counsel is appointed prior to the shelter care hearing, counsel is given minimal notice. Counsel may receive more notice if they are appointed prior to an initial appearance that is not held in conjunction with a shelter care hearing. Shelter care hearings and initial appearances are held quickly, and it can be difficult to put a defense of the parent together in such a short time. Complicating this is the fact that the Wyoming Rules of Evidence don't apply at shelter care and initial hearings.<sup>78</sup> This allows the State to present hearsay evidence to the court, which can be difficult to counter.

Counsel should first attempt to make contact with the client prior to any scheduled hearing. Wyoming Practice Guideline 2.3 states:

Attorney shall attempt to make contact with client before the shelter care or initial hearing if contact information is available. Attorney should determine if reasonable efforts have been

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<sup>78</sup> See W.R.P.J.C. Rule 1(d); W.R.E. Rule 1101(b)(3).

made to keep the child at home. If child is in foster care, attorney should consult with client about a safe place for the child to reside including relatives or trusted friends. Attorney should also request regular and appropriate visits between parent and child.

This initial contact should at a minimum include a brief explanation of the proceedings and the allegations against the client. Counsel should ascertain whether the client desires to admit or deny the allegations. Even if the client wishes to admit the allegations, counsel should discuss with the client whether a denial should be entered so that counsel has more time to explain the client's rights to him or her. If the client intends to enter a denial, counsel should ask the client if they are still willing to participate in certain services with DFS. If the child has been or could be removed from the home, counsel should also speak with the client about potential family placement options to avoid having the child placed in foster care.

### **PRACTICE TIP**

The Wyoming Children's Justice Project has put together a Handbook for Parents, Guardians, and Custodians in Child Abuse and Neglect Proceedings which explains the Juvenile Court process. Counsel should consider providing a copy of this Handbook to clients at the beginning of representation.

Copies can be downloaded at  
<http://www.courts.state.wy.us/Initiatives/CJP>.

If a child has been removed from the home, the number one goal of a shelter care or initial appearance for counsel is to advocate for the child's return. Research shows that removal from the home of origin can have a lasting negative impact on a child.<sup>79</sup> Once a child is removed from the home, it becomes easier for other parties involved to recommend continued out-of-home placement for the child. The longer the separation between the parents and the child continues, the harder it becomes to reunite the family. At the shelter hearing the court must determine whether it is contrary to the welfare of the child to return the child home. At the initial appearance, even if the child is not in State custody at the time, the court can consider whether the child should be placed into State custody.<sup>80</sup> This will be the most important decision made by the court at the hearing. Counsel should be prepared to advocate for the child's return by arguing such things as: the child should never have been taken into protective custody; the client has addressed the concern that lead to out-of-home placement; or that the child should be returned under the protective supervision of the Department, and that the client will accept services from DFS to protect the child.

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<sup>79</sup> See Leonard Edwards, *Representation of Parents and Children in Abuse and Neglect Cases: The Importance of Early Appointment*, 63 JUV. & FAM. CT. J. 26 (Spring 2012).

<sup>80</sup> WYO. STAT. ANN. § 14-3-426(f).



### **PRACTICE TIP**

Counsel should advise the client that his or her behavior in court is important. Courtroom appearances are the only opportunity for the judge to observe the client. Clients should always be on their best behavior in court as everything they do is observed by the court and can be taken into account by the court.

If the State has failed to obtain a shelter care hearing within forty-eight hours, parent's counsel should ask for the immediate return of the children for failure to comply with statutory requirements. However, if this results in the child being placed in harm's way, the court will more than likely deny the motion.

Whenever possible, counsel should obtain as much discovery as possible prior to the initial appearance. This should include police reports, the Department narrative, copies of charging documents, and any other records in the possession of the State or DFS. Other documents that may be helpful include school records and medical records. It may be necessary to have your client obtain these records and provide them to you in order to secure them in a timely manner. DFS policy requires the caseworker to fill out a Shelter Care/Initial/Detention Hearing Report, or a F-SS-120, whenever a child is taken into custody. Counsel should make every attempt to obtain this document prior to an initial appearance if the child has been removed, as it will contain the details of the initial investigation. DFS records and information should be obtained through the County or District Attorney's office pursuant to W.R.P.J.C. 3(b)(10).

During the shelter care hearing or initial appearance, the court can also place restrictions upon the client. These could be things such as having no contact with a partner, roommate, or friend, or submitting to substance abuse testing. Counsel should always argue for the least restrictive requirements upon the client, reminding the court that the client is presumed innocent until the allegations are established. However, this should be balanced with the client's willingness to cooperate with DFS in order to secure the return of his or her child. The client always controls the scope of representation. If the client wants the court to order certain requirements, then the client's wishes must be represented to the court. Counsel should advise the client of the possible consequences of having certain terms and conditions placed upon him or her, but ultimately, counsel must advocate for the client's desires.

One of the most important considerations at a shelter care hearing or initial appearance will be the visitation the client receives with the child. Counsel should advocate for as much visitation between the client and child as possible. If the court makes a visitation decision that is detrimental to the client, counsel may wish to petition the court at a later date for expanded visitation. For further discussion on this, see the Visitation section below.

At the conclusion of the shelter care or initial appearance, counsel should explain to the client their right to a jury trial and that the demand for a jury trial must be made within 10 days. Counsel should also review the hearing with the client to ensure the client understands the court's order. The client should also be advised not to speak to law enforcement if there is an ongoing investigation or potential criminal charges. This advice should be given in consultation with the client's criminal attorney.

### **PRACTICE TIP**

If the client wishes to have a jury trial, the jury demand *MUST* be filed within ten days of the advisement of the right to a jury trial. At the initial appointment, counsel should advise the client of the right to a jury trial and, if the client desires a jury trial, immediately file a demand.

Prior to adjudication, counsel may be tempted to tell the client not to cooperate with DFS. While this is how client advocacy works in numerous types of cases, in abuse and neglect proceedings refusal to cooperate can actually harm a client's interests. If the child is in State custody, the statutory timelines for reunification have already begin to run, and a delay in working with the State towards reunification can have harmful consequences for the parent's rights in the future. Counsel should advise the client to cooperate with and accept services from DFS as soon as possible, while still maintaining his or her right to remain silent. The client does not have to discuss the case in detail with DFS in order to receive services. If the client advises you that DFS is requiring him or her to make statements about the specifics of the case prior to adjudication, counsel should immediately take action to address the issue, such as contacting the DFS caseworker and informing them you have advised your client not to speak with them about the facts of the case.

If there has not been an initial meeting with the client yet, counsel should immediately schedule an appointment with the client to conduct the initial interview. If there is an existing court order which requires your client to do something in violation of their rights or which places an undue burden on your client, you should file a motion for relief from the particular term and condition. As long as your client is subject to the orders of the Juvenile Court, there is potential for criminal contempt charges for violations of the court's orders. You should actively advocate for the removal of any term and condition of the court order which would violate your client's rights or require your client to take steps that he or she is not capable of taking.

### **INVESTIGATION AND DISCOVERY**

After proceedings have commenced, counsel should begin the investigation and discovery process. WYOMING PRACTICE GUIDELINE 2.5 states:

- (a) Attorney has a duty to conduct an independent case review and investigation of the allegations in the petition, including but not limited to:
  - (1) Review of all pleadings and applicable statutes and case law;
  - (2) Review of all court files;
  - (3) Review of DFS files to the extent permitted by local rules or court order; and
  - (4) An additional in-depth interview or interviews of client.
- (b) Attorney shall take all necessary steps to obtain information in the possession of third parties, such as DFS, law enforcement, and the GAL that may benefit client or help inform client's decisions.
- (c) Attorney shall timely file petitions, motions, discovery requests, and responses and answers to pleadings filed by other parties that are appropriate for the case. These pleadings shall be thorough, accurate and timely. When a case presents a complicated or new legal issue, attorney should conduct the appropriate research prior to any court appearances. If it would advance client's case, attorney should present a memorandum of law to the court.
- (d) Attorney shall identify all potential witnesses and determine priorities regarding which persons to interview. If potential witnesses are represented by counsel, attorney should obtain permission from that counsel.
- (e) Attorney shall take action to bring any of the following to the immediate attention of DFS, the GAL, or the court when applicable:
  - (1) Possible placements for the child, including potential relative or kinship placements;
  - (2) Services that might enable reunification or physical placement of the child in the parental home while DFS retains legal custody, if applicable;
  - (3) Client's wishes regarding visitation; and
  - (4) Client's and child(ren)'s immediate physical and mental needs, if any.
- (f) Attorney shall evaluate DFS's efforts to reunify client and the child, and request DFS to provide appropriate services for client. Attorney should also consider addressing any missing or inappropriate services with the multidisciplinary team or the court.

Upon initiating representation of a parent, one of the first steps counsel should take is to contact the DFS case worker to obtain the details of the case and to discover DFS's position on the case if DFS is willing to speak to counsel. It is important to establish a line of communication with the Department early on in the case to ensure the best possible outcome for your client.<sup>81</sup> Counsel should also file the appropriate discovery requests with the local county or district attorney's office to obtain copies of all reports and documentations in the possession of the State. Pursuant to Wyoming Rules of Procedure

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<sup>81</sup> DIANE BOYD RAUBER & LISA A. GRANIK, REPRESENTING PARENTS IN CHILD WELFARE CASES 14 (Mimi R. Laver ed., American Bar Association 2000).

for Juvenile Courts Rule 3(b)(9) and (10), the State is required to produce DFS records upon request and any other reports in the possession or control of the State or “any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to his office.” This would include any police reports related to the allegations and arguably extend to any medical or mental health records upon which the State is relying in bringing forth the allegations. The State can comply with this requirement by advising the parent or parent’s counsel, in writing or on the record, that the parent or parent’s counsel may inspect the State’s file upon request.<sup>82</sup>

Counsel should be familiar with the provisions of WYOMING RULES OF PROCEDURE FOR JUVENILE COURTS, Rule 3. While quite lengthy, W.R.P.J.C. Rule 3 outlines the special discovery requirements for juvenile court proceedings in Wyoming and it is necessary for counsel to understand the details of the rule. Rule 3 states:

(b) Discovery by the State. The State shall without the necessity of a request by the Respondent or the guardian ad litem, and within thirty (30) days of service of the applicable petition, furnish to the Respondent and guardian ad litem:

(1) Any material or information within the knowledge, possession or control of the State which tends to negate the involvement of the Respondent as to the offense charged;

(2) Any relevant material or information regarding

(a) specific searches and seizures;

(b) the acquisition of statements made by the Respondent; and

(c) prehearing identification of the Respondent by a witness for the State;

(3) The name and address of each person the State intends to call as a witness at any hearing to prove its case in chief or to rebut alibi testimony to the extent then known;

(4) All statements made by the Respondent to a State agent which the State intends to use at a hearing:

(a) A copy of each written or recorded statement; and

(b) The substance of each oral statement and a copy of all reports of each oral statement;

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<sup>82</sup> See W.R.P.J.C. Rule 3(c).

(5) All statements made by a Co-Respondent to a State agent which the State intends to use at a hearing, unless a severance has been ordered by the court:

(a) A copy of each written or recorded statement; and

(b) The substance of each oral statement and a copy of all reports of each oral statement;

(6) Any written reports or statements made in connection with the particular case by each expert consulted by the State, if the State intends to offer the testimony of the expert or the report at any hearing, including the written substance of any oral reports and conclusions made in connection with the particular case by each expert consulted by the State; the results of any physical or mental examination, scientific test, experiment or comparison; and all information on which the expert's opinion is based;

(7) Any book, paper, document, recording, photograph and any tangible object which the State intends to use at any hearing, in order to permit the Respondent to inspect, copy and/or photograph them;

(8) Any item obtained from or belonging to the Respondent which the State intends to use at any hearing, in order to permit the Respondent to inspect, copy and/or photograph it;

(9) The State's obligations under this section extend to material and information in the possession or control of members of the prosecutor's staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to his office; and

(10) Records created or held by the Department of Family Services (DFS) may be subject to discovery in proceedings in juvenile court, pursuant to this Rule. Respondent or the guardian ad litem shall request discovery of DFS records through the State. Upon a request for discovery, DFS shall provide its records to the State and guardian ad litem. The State may, pursuant to this rule, provide the records to the Respondent and the guardian ad litem, or may contest the discovery request pursuant to these Rules. Discovery requests concerning Child Protection records are further subject to the provisions of Wyo. Stat. Ann. §14-3-214, and access to such

records may be limited pursuant to such statutory section. This Rule is specific to discovery requests in juvenile court proceedings and does not relate to discovery of DFS records in other types of proceedings.

(c) Compliance by the State. The State may comply with this rule by advising the Respondent and the guardian ad litem in writing or on the record, that the Respondent and the guardian ad litem may inspect the discoverable portions of the State's file and by allowing such inspection to occur at any time during normal business hours. However, if the State has any exculpatory information specified in this Rule, the State shall promptly furnish such information to the Respondent and the guardian ad litem, whether or not the Respondent or the guardian ad litem has made the inspection provided for by that subsection.

(d) Matters Not Subject to Discovery. This section does not require a party to disclose:

(1) Any documents to the extent that they contain the opinions, theories, conclusions, or other work product;

(2) The identity of a confidential informant of the State, so long as the failure to disclose the informant's identity does not infringe on a constitutional right of the Respondent, and the State does not intend to call the informant as a witness; and

(3) Any matter which the court orders need not be disclosed.

(e) Discovery by Other Parties.

(1) Upon the written request of the State or the guardian ad litem, when pertinent to the issues and upon a showing of good cause, the court may order the Respondent to:

(a) Appear in a lineup for identification;

(b) Speak for identification;

(c) Be fingerprinted, or if the Respondent is a juvenile, be fingerprinted pursuant to Wyo. Stat. Ann. §14-6-240;

(d) Pose for photographs not involving reenactment of a scene, or if the Respondent is a juvenile, be photographed pursuant to Wyo. Stat. Ann §14-6-240;

(e) Try on articles of clothing;

(f) Permit the taking of specimens of material under his fingernails;

(g) Permit the taking from his body of samples of blood, hair, and other material involving no unreasonable intrusion upon his person;

(h) Provide specimens of his handwriting; or

(i) Submit to a reasonable physical inspection of his body or a mental examination, or if the Respondent is a juvenile, physical or mental examinations may be ordered pursuant to Wyo. Stat. Ann §14-6-419;

(2) Upon written request of the State or the guardian ad litem, the Respondent shall:

(a) Produce the names and address of each person the Respondent intends to call as a witness at any hearing;

(b) Produce and permit the State and the guardian ad litem to inspect and copy all written reports made in connection with the particular case by each expert the Respondent intends to call as a witness at the hearing, including the substance of any oral report and conclusion made in connection with the particular case by an expert which the Respondent intends to use at the hearing and the results of any physical or mental examination, scientific test, experiment, or comparison; and

(c) Furnish, upon designation by the State of the time, place and date of the alleged occurrence, the name and address of each witness other than the Respondent whom the Respondent intends to call as a witness to show he was not present at the time, place and date designated by the State or the guardian ad litem in its request.

(f) Procedure for Discovery, Time. The State shall make the disclosure required under this Rule, and may request reciprocal discovery within thirty (30) days from the service of the petition. The Respondent and the guardian ad litem shall furnish the discovery required under this Rule within thirty (30) days after a request is made. The court, for good cause shown, may extend the time for discovery. If discovery is not furnished as required, a motion to compel discovery may be filed

which shall specify the items which have not been furnished. A hearing shall be held no later than three (3) days after the motion is filed. If, at any time during the proceedings, it is brought to the attention of the court that a party has failed to comply with this Rule or an order issued under this Rule, the court may:

- (1) Order such party to permit the discovery of the matters not previously disclosed;
- (2) Strike the testimony to which the undisclosed matter relates;
- (3) Grant a reasonable continuance;
- (4) Prohibit the party from introducing in evidence the matter not disclosed;
- (5) Grant a mistrial; or
- (6) Enter such other order as may be appropriate under the circumstances.

(g) Continuing Duty to Disclose. If, subsequent to compliance with a request made under this Rule or with any order compelling discovery, a party learns of additional information previously requested and required to be furnished, he shall promptly furnish the information to the other party or his counsel. If the additional information is learned during a hearing, he shall, in addition to furnishing the information promptly to the other party or his counsel, notify the court that such matter is being furnished.

(h) Protective Orders. On motion and a showing of good cause, the court may order that specified disclosures be restricted.

(i) Other Orders. In any proceeding, the court may, upon good cause shown, pass such orders in aid of discovery, and inspection of evidence as justice may require.

(j) Timely Disclosure Required. All matters and information to which a party is entitled must be disclosed in time to permit its beneficial use.

More formal means of discovery under the WYOMING RULES OF CIVIL PROCEDURE can also be utilized.

The initial investigation and discovery process should go beyond obtaining discovery from the State. Counsel should also contact and interview any material and relevant witnesses. This could include individuals who witnessed events in question, individuals familiar with the parents and the children, and other individuals who may possess relevant



knowledge which would be helpful to the parent's case. As part of the discovery process, the State is required to provide the name and address of every witness to be called at trial within thirty days of service of the petition.<sup>83</sup>

Counsel should also review all court orders, Department correspondence and records, police reports, and client statements. Counsel should evaluate the petition to see if it is legally sufficient. WYOMING PRACTICE GUIDELINE 2.6 states:

- (a) With any petition alleging abuse, neglect, attorney shall review the petition, summons and return of service and, unless there are sound tactical reasons for not doing so, move to dismiss the pleadings if there are defects such as:

The petition does not set forth all jurisdictional facts including, but not limited to:

- (1) The child's name, date of birth and address;
- (2) The names and addresses of the child's parents, guardian(s) or custodian(s) and the child's spouse, if any;
- (3) Whether the child is being held in shelter care and if so, the name and address of the facility and the time shelter care commenced;
- (4) A statement setting forth with particularity the facts which bring the child within the provisions of the Child Protection Act or the facts bringing the child within the provisions of the Juvenile Justice Act;
- (5) Whether the child is an Indian child as defined in the federal Indian Child Welfare Act, and, if so, a statement setting forth with particularity the notice provided to the appropriate tribal court.

Counsel should also evaluate the case to determine if the Department made and is making reasonable efforts. There is no specific definition of reasonable efforts. Wyoming Statute § 14-3-440 provides the following guidelines:

- (a) Except as provided in W.S. 14-2-309(b) or (c), reasonable efforts shall be made to preserve and reunify the family:

(i) Prior to placement of the child outside the home, to prevent or eliminate the need for removing the child from the child's home; and

(ii) To make it possible for the child to safely return to the child's home.

- (b) In determining what reasonable efforts shall be made with respect to a child and in making those reasonable efforts, the child's health and safety shall be the paramount concern.

- (c) Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with the reasonable efforts described in subsection (a) of this section.

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<sup>83</sup> See W.R.P.J.C. Rule 3(b)(3).

(d) If continuation of reasonable efforts described in subsection (a) of this section is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made for placement of the child in a timely manner in accordance with the permanency plan, and to complete the steps necessary to finalize the permanent placement of the child.

(e) Reasonable efforts determinations shall include whether or not services to the family have been accessible, available and appropriate.

(f) The court shall make the reasonable efforts determinations required under this section at every court hearing. The reasonable efforts determinations shall be documented in the court's orders.

Counsel should familiarize himself or herself with case law regarding reasonable efforts and be prepared to make an argument that the Department has not made reasonable efforts at any point in time.

### CONTINUANCES

Abuse and neglect proceedings move quickly through the court system. Wyoming Statute §14-3-426(b) states:

If the allegations of the petition are denied, the court may, with consent of the parties, proceed immediately to hear evidence on the petition or it may set a later time not to exceed sixty (60) days for an adjudicatory hearing, unless the court finds good cause to delay or postpone the hearing. In no case shall the court hold the adjudicatory hearing more than ninety (90) days after the date the petition is filed.

Because of this, parties may receive short notice of hearings and small time frames in which to prepare. This short time frame may also make it difficult to obtain discovery. This may lead to a party requesting a continuance. As a general practice, counsel should not request and should oppose continuances. WYOMING PRACTICE GUIDELINE 1.3(d) states:

Attorney has an ethical duty to expedite litigation. See WRPC Rule 3.2. Attorney shall avoid unreasonable continuances by any party. If attorney determines it is necessary to request a continuance on behalf of client or that a continuance would materially benefit client's case, attorney shall file a written motion for a continuance that clearly states good cause or compelling reasons. Attorney should object to continuance motions by other parties where appropriate.

If the client's child is in custody, time is accruing towards statutorily mandated termination time frames. Under Wyoming Statute § 14-3-431(m):

(m) When a child has been placed in foster care under the responsibility of the state for fifteen (15) of the most recent twenty-two (22) months the state shall file a petition to terminate parental rights or seek to be joined as a party

to the petition if a petition has been filed by another party, unless:

- (i) The child is in the care of a relative;
- (ii) The state agency has documented in the case plan a compelling reason for determining that filing the petition is not in the best interest of the child; or
- (iii) The state agency has not provided services to the child's family deemed to be necessary for the safe return of the child to the home, if reasonable efforts described in W.S. 14-3-440 are required to be made.

Counsel should take every step possible to ensure that the abuse and neglect proceedings continue in a timely manner. Research consistently shows that the longer a child remains in state custody, the less likely it is that the parent will secure the return of the child. Counsel should ensure that these proceedings stay on track and are prompt and expedient.

### **PLACEMENT**

One of the most critical issues for a client is placement of the child. If the child was placed in State custody, the client may want the child returned immediately. If counsel did not represent the client at the shelter care hearing or the initial appearance, in some cases it may be necessary for counsel to request a rehearing on the matter. While crowded court dockets may not allow for an immediate rehearing, if the court entered an order at either the shelter care hearing or the initial appearance that may have had a different outcome had the client had counsel, a rehearing should be requested. Wyoming Statute § 14-3-426(f) allows the court to reconsider its placement decision at any time prior to disposition. If the client has shown progress, established a support network, and complied with the requirements of DFS, counsel should file a motion for change of placement as soon as possible. In some cases, when the client has proven that the safety issues have been addressed and he or she has a plan to protect the child, counsel may be able to obtain an agreement among the parties that the child should be returned home.

The best way to influence the court and the other parties involved to return the child to the home is to have a clear, detailed plan on how the family intends to address the safety issues that have arisen. Whenever possible, relatives and community resources should be utilized. A parent that is willing to cooperate with and utilize Department resources is more likely to have their child returned than a parent who is noncompliant and uncooperative. Counsel should encourage the client to cooperate with the Department as much as possible while still maintaining their right to remain silent and their presumption of innocence.

If it is not possible to secure the return of the child to the home, counsel should work with the client to find an appropriate relative placement. Department policy requires a search for relative or kinship placement for a child in State custody.<sup>84</sup> Federal law requires

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<sup>84</sup> WYOMING DEPARTMENT OF FAMILY SERVICES, SOCIAL SERVICES DIVISION POLICY, 2.1.3, *available at* <http://dfsweb.wyo.gov/social-services/policy/dfs-policy-manual>.

that within 30 days of removal DFS exercise due diligence to locate and provide notice of the removal of the child to all known adult relatives to allow them to be considered as a placement option. If the parent has identified a relative or kinship placement for the child, counsel should review Department Placement Policy 2.1.3, Relative/Kinship Placement and ensure that the Department follows that policy. The compelling preference under Wyoming law is for a child to be placed with nuclear or extended family members.<sup>85</sup> Failure to consider relative placement can in some cases be considered a failure to provide reasonable efforts. If a suitable relative has been located and the Department will not place the child with the relative, counsel should file a motion for change of placement. Even if the motion is denied, counsel is creating a record of the Department's failure to provide reasonable efforts.

## VISITATION

Another critical issue for the client pending adjudication is visitation. The more frequent the visitation, the more likely there will be reunification. Visitation is important not only for the client, but for the children as well. Frequent visitation can ease the concerns of children who have been removed from the home and maintain the parent/child bond. If the client is only being given limited visitation, or if visitation is being denied, counsel should file a motion requesting immediate visitation. Again, even if the motion is denied, counsel is creating a record of the lack of reasonable efforts.

Clients can be given supervised or unsupervised visitation. Supervised visitation requires a third party, whether a DFS employee, a visitation center, or another designated individual, to be present during the visitation to ensure that the client is complying with the established rules and is parenting the child appropriately. If the client does not comply with the rules of supervised visitation, the visitation may be ended. Counsel should advocate for unsupervised visitation when appropriate. If a client is placed on supervised visitation, counsel should advocate for unsupervised visitation as soon as possible. Because of staffing limitations, clients on supervised visitation often receive less visitation time with the child. Furthermore, both parents and children may be on guard during supervised visitation, thus creating an unnatural environment for the interactions.

Clients may also be required to submit to drug testing prior to visitation. If a client tests positive for substances, DFS may cancel a visitation even if the parent is not actively under the influence of alcohol or controlled substances. Counsel should advocate, both in and out of court, that visitation should not be cancelled due to a failed drug test and that visitation should only be cancelled when the parent is actively under the influence.

Department policy requires that there be a written visitation plan that is reviewed monthly.<sup>86</sup> If the client has not received a written visitation plan, the matter should immediately be addressed. Again, counsel should consider whether a motion is warranted to create a record of the Department's failure to provide reasonable efforts.

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<sup>85</sup> *In re JW*, 226 P.3d 873, 881 (Wyo. 2010).

<sup>86</sup> WYOMING DEPARTMENT OF FAMILY SERVICES, SOCIAL SERVICES DIVISION POLICY, 1.6, *available at* <http://dfsweb.wyo.gov/social-services/policy/dfs-policy-manual>.

Counsel should encourage the client to exercise as much parental responsibility as possible while the child is in State custody. With the permission of DFS, the client should attend all visitations, medical appointments, attend school and sporting events, maintain contact with the child's teacher, attend IEP meetings, and continue to provide whatever necessities they can for the child such as winter clothing or hygiene products. Showing a concerted effort to meet the needs of the child can be an effective strategy for family reunification. Furthermore, counsel should advise the client that visitations may be monitored closely. The client should remain appropriate at all times during visits, to include bringing appropriate snacks and activities, turning off cellphones, and focusing on the children and not the individuals supervising the visitations. Parental behavior during visitation is often a factor in limiting or extending the amount of visitation given in a case.

## **OTHER ISSUES**

### **SUBSTANCE ABUSE TESTING**

Some courts may order that the client submit to substance abuse testing prior to adjudication. Counsel should ensure that this testing is narrowly tailored to the issue of protecting the welfare of the child. Counsel should also advise the client that missed and failed tests may result in contempt charges and may also be considered by DFS as a failed test.

Department Child Protection Services Policy 1.6.1, Substance Abuse Testing, states that the Department will make parents submit to substance abuse testing if there is a valid court order. If the client is not ordered to submit to substance abuse testing, counsel should advise them that they are not required to submit to testing at the request of the Department. However, if the client is willing and able to provide a clean test, it may benefit the client to voluntarily submit to testing. Willingness to cooperate with the Department can go a long way toward earning the trust of the caseworker and securing the return of the child. Counsel should discuss with the client the benefits and detriments of voluntarily submitting to substance abuse testing.

If the parent has tested positive for controlled substances, counsel should review Department Child Protection Services Policy 1.6.1, Substance Abuse Testing, with the client to ensure that the proper protocol for collection of the sample was followed.

### **Child Support**

If the child is in State custody, the Department is obligated to refer the matter to child support authority in certain situations for the establishment of child support and paternity. Counsel should ensure that the client is aware of the obligation to pay child support while the child is in State custody. Furthermore, counsel should advise the client that they are to attend any and all hearings scheduled in a child support action.

### **PROTECTIVE ORDERS**

In abuse and neglect proceedings, the court is empowered to issue protection orders. Wyoming Statute § 14-3-430 states:

(a) On application of any party to the proceedings or on its own motion the court may make an order of protection in support of the decree and order of disposition, restraining or otherwise controlling the conduct of the child's parents, guardian or custodian or any party to the proceeding whom the court finds to be encouraging, causing or contributing to the acts or conditions which bring the child within the provisions of this act.

(b) The order of protection may require the person against whom it is directed to do or to refrain from doing any acts required or forbidden by law and necessary for the welfare of the child and the enforcement of the order of disposition, including the following requirements to:

- (i) Perform any legal obligation of support;
- (ii) Not make contact with the child or his place of abode;
- (iii) Permit a parent reasonable visitation privileges under specified conditions and terms; or
- (iv) Give proper attention to care of the home and to refrain from conduct detrimental to the child and the home environment.

This statute coincides with Wyoming Statute § 14-3-403(a), which states:

(a) Coincident with proceedings concerning a minor alleged to be neglected, the court has jurisdiction to:

- (i) Determine questions concerning the right to legal custody of the minor;
- (ii) Order any party to the proceedings to perform any acts, duties and responsibilities the court deems necessary; or
- (iii) Order any party to the proceedings to refrain from any act or conduct the court deems detrimental to the best interest and welfare of the minor or essential to the enforcement of any lawful order of disposition of the minor made by the court.

The Wyoming Supreme Court has held that Wyoming Statute § 14-3-403(a) gives the court wide discretion over what it can order any party to the proceeding to do:

The legislature endowed the juvenile court with general jurisdiction over all matters and proceedings commenced there which concern any minor alleged to be neglected, his parents, and all persons living in the same household. Wyo. Stat. Ann. § 5-8-102(a)(i), (v) (LexisNexis 2013). Coincident to those general powers in neglect cases, the juvenile court was also granted more specific jurisdiction to order any party to perform any acts, duties, or

responsibilities the court deems necessary, or to order any party to refrain from any act or conduct if the court deems the conduct detrimental to the child's best interest and welfare or deems restraint of the conduct essential to enforcing any lawful court order as to the child's disposition. Wyo. Stat. Ann. § 14-3-403(a).<sup>87</sup>

During the course of representation, the parent may have an order of protection entered against him or her. If this occurs, counsel should advise the client of the specific requirements of the order of protection.

The court can also issue another type of order of protection. Wyoming Statute § 14-3-441 allows the court to enter an order protecting the residential information of a domestic violence victim. When representing the victim of a domestic violence situation, it may be necessary to obtain such an order.

Counsel may also consider using a Motion to Compel needed to obtain a court order requiring the Department to fulfill its obligations to the parent. For example, if the case plan states that the Department will assist in paying for a substance abuse evaluation and the Department later states that it will not pay, an Order compelling DFS to pay can be obtained requiring the Department to pay for the evaluation.

## CONCLUSION

Advocacy for the client should begin immediately upon appointment. By taking an active role in advocating for the client's rights prior to adjudication, counsel can minimize the amount of time the child spends in State custody. Counsel should consider petitioning the court whenever necessary to protect the rights of the client and to create a record of the Department's failure to provide reasonable efforts. Pre-adjudication advocacy sets the course for the case and can put the State on notice that the parent intends to do whatever is necessary to regain custody of their child or to remove State oversight from his or her life.



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<sup>87</sup> *In re* CDR, 2015 WY 79, ¶ 21, 351 P.3d 264, 269 (Wyo. 2015).

# Chapter Seven: Adjudicatory Advocacy

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## CHAPTER OBJECTIVES

The purpose of this chapter is to educate counsel on methods and concepts of adjudicatory advocacy.

At the conclusion of this chapter, counsel should have a basic understanding of several ways in which they can advocate for their clients at adjudication.

In order to increase competence, counsel should further research and study the Wyoming Statutes related to adjudication as well as the Wyoming Rules of Civil Procedure.

## INTRODUCTION

Adjudication is the most critical stage of abuse and neglect proceedings. For parents who have been accused, it is an emotional and trying time. For clients who have had their child removed from the home, it is the moment that can determine how long they are separated from their child. For counsel, it is the moment when zealous advocacy and defense of the client's rights is the most needed. Counsel and client need to consult and determine whether to proceed to an adjudicatory hearing, to negotiate a settlement, to submit to the jurisdiction of the court pursuant to W.R.P.J.C. Rule 7, or to admit to the allegations. Each option will have positive and negative outcomes for the client, and counsel should advise the client of the best course of action.

## PRACTICE TIP

The first 60 days of every case are the most critical days. Often, the events of those first 60 days can influence the entire course of the case. The relationships established or destroyed can carry forward throughout the entire case. Counsel should advise the client to immediately begin establishing positive relationships with the other parties in the case. Counsel should also advocate for as much visitation as possible during the first 60 days, as frequent visitation early on in the case is the most effective step towards reunification.



## PREPARING FOR ADJUDICATION

The WYOMING PRACTICE GUIDELINES give clear direction on preparing for adjudication. WYOMING PRACTICE GUIDELINE 4.2 states:

- (a) Attorney should be familiar with the Rules of Evidence and the law relating to all stages of the adjudicatory process, as well as legal and evidentiary issues that reasonably can be anticipated based on the pleadings, investigation, and discovery, and should be prepared to make appropriate objections. If material allegations are made at the adjudicatory hearing that were not contained in the petition, attorney should consider seeking a continuance or objecting to preserve the issue for appellate review.
- (b) In advance of the adjudicatory hearing, attorney should take steps to complete a thorough investigation, discovery, and research as appropriate under the circumstances of the case, such as:
  - (1) Interviewing and subpoenaing potentially helpful witnesses identified in the course of attorney's review of the case and by client;
  - (2) Interviewing and subpoenaing adverse witnesses, including the child;
  - (3) Examining and subpoenaing physical or documentary evidence;
  - (4) Reviewing and obtaining copies of DFS and GAL reports and attachments;
  - (5) Making timely motion in advance of the hearing for funds for investigators or other experts and arranging for experts to consult and/or testify on issues that are potentially helpful;
  - (6) Reviewing transcripts secured by court order of any prior proceedings in the case or related cases;
  - (7) Obtaining any photographs or prepare charts, maps, diagrams, or other visual aids of all scenes, persons, objects, or information that may help the court better understand the case; and
  - (8) Meeting with client to review the evidence and to discuss the defense and prepare client's testimony;
  - (9) Preparing witnesses.
- (c) Attorney should have the information and materials available at the time of the adjudicatory hearing that will be helpful in presenting their case. This may include:
  - (1) Copies of all relevant documents filed in the case, including the petition;
  - (2) A copy of applicable statutes and cases related to anticipated issues;
  - (3) The DFS and GAL reports and attachments;
  - (4) Expert reports;
  - (5) Copies of subpoenas;

- (6) A list of all exhibits to be offered and the witnesses through whom they will be introduced;
  - (7) Reports, certificates, and notes from assessments, programs and counseling;
  - (8) Documentation concerning client's employment and housing;
  - (9) Documentation regarding any special achievements of the child while in the custody of the parent;
  - (10) Documentation regarding negative drug screen results, if any;
  - (11) An outline or draft of opening and closing statements;
  - (12) Plans or outlines for direct and cross examinations;
  - (13) Proposed amendments to the petition, if applicable; and
  - (14) Proposed findings of fact and conclusions of law to be offered to the judge at the end of the hearing.
- (d) Attorney should consider seeking an advance ruling on issues likely to arise at the adjudicatory hearing by requesting a pre-trial conference, filing a motion *in limine*, or other means.
- (e) Attorney should consider whether there are tactical reasons to stipulate to damaging facts that are readily provable and uncontroverted, where the facts will have less impact on the court if they are summarized rather than the subject of lengthy testimony, and the possibility that the court will view client as accepting responsibility for the stipulated facts or circumstances.
- (f) If information that attorney has requested and is entitled to has not been received prior to the hearing, attorney should make a tactical decision regarding the evidence, including whether to ask that evidence is not admitted or ask for a continuance to discuss the information with client and prepare rebuttal evidence.
- (g) Attorney should remind client of the direct and collateral consequences of an adjudication of abuse or neglect including the effect on any future allegations regarding the children subject to the petition or other children.
- (h) If the adjudicatory hearing is delayed and will not to be held within the time required by W.S. § 14-3-426(b), unless there are sound tactical reasons for not doing so, attorney should make a motion for a prompt hearing to seek a timely resolution of the problem.

#### **PRACTICE TIP**

If the client wishes to have a jury trial, the jury demand *MUST* be filed within ten days of the advisement of the right to a jury trial. At the initial appointment, counsel should advise the client of the right to a jury trial and, if the client desires a jury trial, immediately file a demand.



## NEGOTIATIONS AND CONSENT DECREES

Proceeding to trial on a case in which the client has no chance of winning can cause conflict between the client and the State and the client and DFS. In some cases, it may be more advisable to have the client enter an admission and negotiate with the State as to the terms and conditions of the adjudication order. This could include the specific finding of the court as to the grounds constituting abuse or neglect, allowing objectionable claims of abuse or neglect to be dropped. If the client's case proceeds to termination, it is more than likely that the adjudication order will be used against them in termination proceedings. Counsel can also attempt to negotiate with the State as to the grounds for abuse and neglect contained in the adjudication order.

If negotiating with the State does not work and the client has minimal chance of winning at trial, counsel should discuss with the client the possibility of submitting to the jurisdiction of the court without a negotiation. This can either be done by stipulation or by entering an admission.

Rule 7 of the WYOMING RULES OF PROCEDURE FOR JUVENILE COURTS states:

Subject to approval by the court, parties may stipulate to any matter, including adjudication and disposition. However, stipulations to adjudication and disposition may be accepted only if the court determines that the parties understand their rights and have had a sufficient opportunity to consult with counsel. In the case of a Native American child, a stipulation to adjudication or disposition is not binding on a parent or Native American custodian unless it is in writing, agreed to in court (whether in person or telephonically), and signed by the parent or Native American custodian. No stipulation may be entered that contravenes any applicable statute.

Whenever possible, counsel should encourage the client to stipulate to the jurisdiction of the court pursuant to W.R.P.J.C. Rule 7 rather than making an admission as he or she will not be required to make admissions on the record that could be used against the client at a later point.

Wyoming Statute § 14-3-428 provides that proceedings can be held in abeyance if the parties stipulated to a consent decree. A consent decree is an agreement between the parties that the parents will cooperate with the juvenile court process subject to certain terms and conditions negotiated by the parties. A consent decree can be entered with or without an admission, depending on what is negotiated by the parties. The State's attorney, the GAL, and the parents must agree to a consent decree. If the child is in the home at the time of entry of the consent decree, the parties can negotiate the period of time for which the consent decree will be in effect. If the child is not in the home, the consent decree can only be in affect for six months, but the parties may agree to extend the consent decree for an additional six months only one time. In order to extend the consent decree, the court must find that good cause exists to extend the consent decree. If the parents fail to fulfill their

obligations under the consent decree, the State's attorney may file a petition to have the original proceedings reinstated.

In the case of *In re CDR*, 2015 WY 79, 351 P.3d 264 (Wyo. 2015), the Wyoming Supreme Court stated that consent decrees are contractual in nature and thus should be strictly interpreted based on the language contained therein. Consideration should not be given to the overall purposes of juvenile cases or the intent of the parties at the time of signing. In that case, the father appealed the finding of the District Court that the consent decree should be revoked and an adjudication should be entered based on an alleged violation of the consent decree by the mother. The consent decree contained a term which required the mother to follow all treatment recommendations from her substance abuse evaluation. One of the recommendations from her evaluation was that she refrain from consuming alcohol for the rest of her life. The mother consumed alcohol and, based on that consumption, the District Court revoked the consent decree for violation of the term and condition to follow her treatment recommendations. The Wyoming Supreme Court reversed this decision, finding that because the consent decree did not contain a specific term requiring the mother to refrain from consuming alcohol, she was not required to refrain from alcohol consumption under the consent decree. Specifically, the Court stated “[c]onsent decrees do not result from a court’s resolution of the merits of a dispute, but rather from a contractual agreement between the parties. Consequently, they should be enforced as a contract in accordance with the parties’ intent.” *Id.* at ¶ 24.

WYOMING PRACTICE GUIDELINE 3.1 states the following about negotiations and consent decrees:

- (a) After appropriate investigation and case review, attorney should explore with client and the district or county attorney and the GAL and other required parties, if any, the possibility and desirability of reaching a negotiated consent decree.
- (b) Attorney should be familiar with the conditions under which consent decrees are permissible under W.S. 14-3-428 (West 2010).
- (c) Throughout negotiations, attorney should consider any concessions the district or county attorney, the GAL and other required parties, if any, might offer to client and any concessions client might offer.
- (d) Attorney should explain to client all possible consequences of stipulating to one or more facts or circumstances of entering into a consent decree or other type of stipulated decree.
- (e) Attorney shall keep client fully informed of all offers made by the district or county attorney and the GAL and other required parties, if any, with respect to a consent decree or other type of stipulated decree, and should discuss with client the advantages, disadvantages, and consequences of accepting any offers. Attorney should fully inform client that his or her failure to fulfill the conditions of the consent decree or other type of stipulated decree may result in the reinstatement of the original petition

and proceeding, and the court may proceed as though the consent decree or other type of stipulated decree had never been entered. Attorney should also inform client about the possibility of having the original petition amended to include new allegations against the parent.

- (f) Notwithstanding the existence of ongoing negotiations with the district or county attorney and the GAL and other required parties, if any, attorney should continue to prepare and investigate the case to the extent necessary to protect client's rights and interests in the event that negotiations fail.
- (g) Attorney should discuss with client the goals client seeks to achieve, and should thoroughly inform client of his or her alternatives and the chances of prevailing at a hearing. If client also faces criminal charges arising out of the allegations in the juvenile petition, attorney should advise client regarding potential conflicts and protections. However, the decision whether or not to sign a consent or other stipulated decree ultimately rests with client.

### **ADJUDICATION**

It is the client's choice whether to proceed to trial. However, it is counsel's obligation to advise the client whether it is advisable to proceed to trial. If the matter does proceed to trial, it is counsel's obligation to zealously represent the client's interests by challenging the elements of the State's case, introducing additional evidence favorable to the client whenever possible, and objecting to the State's evidence when necessary. Counsel should preserve the record on appeal in the event that the client wishes to appeal the decision of the court. Counsel should mitigate the detrimental facts and try to portray the client in the best light possible.

The judge may require a pretrial conference.<sup>88</sup> If a pretrial conference is ordered, counsel should comply with the provisions of the order and W.R.C.P. Rule 16.

In preparing for trial, counsel should abide by WYOMING PRACTICE GUIDELINE 4.3, which states:

- (a) Attorney should develop, in consultation with client, an overall case strategy. In deciding on strategy, attorney should consider whether client's interests are best served by not presenting evidence on behalf of client, instead relying on the evidence and inferences, or lack thereof, from the State's case.
- (b) Attorney should discuss with client all of the considerations relevant to client's decision to testify, as well as the possibility that another party may call client to testify, including but not limited to the likelihood of cross-examination and impeachment, and the possibility that client might incriminate himself or herself by testifying in the juvenile proceeding if

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<sup>88</sup> W.R.P.J.C. Rule 6.

client is also facing criminal prosecution. Attorney should also discuss with client the possibility that, by invoking his or her Fifth Amendment privilege against self-incrimination when responding to questions about potentially criminal activity, the juvenile court may infer an answer unfavorable to client.

- (c) In preparing to present client's case, attorney should, where appropriate:
  - (1) Develop a plan for direct examination of client's potential witnesses;
  - (2) Determine the implications that the order of witnesses may have on client's case;
  - (3) Consider the possible use of character witnesses and any negative consequences that may flow from such testimony;
  - (4) Consider the use of demonstrative evidence and the order of exhibits;
  - (5) Be fully familiar with Wyoming statutory and case law on objections, motions to strike, offers of proof, and preserving the record on appeal; and
  - (6) Be fully familiar with Wyoming statutory and case law on the admissibility of documentary evidence, the foundation necessary to secure introduction of evidence, and any hearsay exceptions that might permit introduction of documentary evidence without authentication.
- (d) In developing and presenting client's case, attorney should consider the implications it may have for rebuttal by the State.
- (e) Attorney should prepare all his or her witnesses for direct examination and possible cross examination.
- (f) If a State objection is sustained or client's evidence is improperly excluded, attorney counsel should make appropriate efforts to rephrase the question(s) and make an offer of proof.
- (g) Attorney should take appropriate steps to preserve for appellate review any issues regarding the exclusion of evidence by placing on the record a forecast of the evidence, by describing the documentary or physical evidence sought to be introduced, or by conducting a voir dire examination of the witness.
- (h) Attorney should conduct redirect examination as appropriate.
- (i) At the close of all of the evidence, attorney should consider making a prima facie motion to dismiss the petition for failing to prove the allegations by a preponderance of the evidence, a motion for judgment as a matter of law, and for a new trial, if appropriate.

The American Bar Association, in its STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES states:

“Although the burden of proof is on the [State], in practice the parent and the parent’s attorney generally must demonstrate that the parent can adequately care for the child. The parent’s attorney must consider all obstacles to this goal, such as criminal charges against the parent, immigration issues, substance abuse or mental health issues, confidentiality concerns, permanency timelines, and the child’s individual service issues. To perform these functions, the parent’s attorney must know enough about all relevant laws to vigorously advocate for the parent’s interests. Additionally, the attorney must be able to use procedural, evidentiary and confidentiality laws and rules to protect the parent’s rights throughout court proceedings.”<sup>89</sup>

If counsel believes an expert is needed for trial, counsel should take every step necessary to secure the expert. WYOMING PRACTICE GUIDELINE 2.9 states:

- (a) Throughout case review and investigation, and in preparation for each hearing, attorney should consider whether the assistance of an investigator, licensed clinical social worker, family preservation specialist, mental health expert, or other expert is necessary and appropriate. If necessary and appropriate, attorney shall file a motion with the court setting forth a particularized showing of necessity and requesting funds to secure the assistance of an expert whose evaluation, consultation, or testimony may assist client at each phase of the proceedings.
- (b) If attorney believes an expert evaluation of the child is necessary and appropriate, attorney should serve any motion for expert funding on the legal custodian of the child and the GAL.
- (c) Attorney should obtain reports from experts and prepare them to testify if appropriate. Attorney should also prepare client for any evaluation by explaining the nature of the procedure and encouraging client’s cooperation.
- (d) If, at any hearing attorney learns that DFS or another party intends to call an expert witness to testify, attorney should take steps to determine whether the witness is qualified as an expert in the relevant field. If attorney believes the witness is qualified to testify in a given field, attorney should consider stipulating to the tender. If attorney believes the witness is not qualified or the testimony will address subject matter outside of the witness’s expertise, unless there are sound tactical reasons for not doing so, attorney should challenge the witness’s qualifications and conduct a voir dire of the witness on the record to preserve the issue for possible appellate review.

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<sup>89</sup> AMERICAN BAR ASSOCIATION STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES 9 (2006).

Counsel should also abide by the WYOMING RULES OF CIVIL PROCEDURE and any court orders regarding experts.

And finally, if the adjudicatory hearing is a jury trial, WYOMING PRACTICE GUIDELINE 2.10 states:

(c) Jury Trial Generally.

(1) In addition to the best practice standards as outlined in the *adjudicatory phase* sections , the *termination of parental rights* sections, and the *appeal and post-representation* sections in a jury trial attorney should:

- a. Know the standards and law as to each phase. Attorney should make all appropriate pre-trial motions, e.g. summary judgment motion, motions *in limine*.
- b. Attorney should be aware of the trial procedure in the particular court.
  - i. Impact of the Guardian *ad Litem* considerations -- What is the participation of the Guardian ad Litem in the trial? Will jury strikes be shared between the GAL and the side which the GAL is aligned? What is the presentation of the witnesses and how will the parent's case be affected depending on how the GAL is allowed to present testimony? How are the opening statements and closing arguments affected by the GAL?
- c. Jury Members
  - i. Attorney should be familiar with W.S. §1-11-201, *et. seq.*, and be familiar with the nuances of the fair jury process and the impact on the trial and potential verdict.
  - ii. Attorney should make a clear record of any procedural violation in selection of a fair jury.
  - iii. Obtain the jury list through local procedure.
  - iv. In addition to W.S. §1-11-202 through §1-11-204, Wyoming Rules of Civil Procedure Rule 47(c), attorney should know the jury selection procedures for the particular court, including but not limited to: how voir dire is conducted; how the jury selection is conducted; how many challenges are given to each party; how to assert challenges; how the alternates are determined.
  - v. Confer with client on the jury selection process.
- d. Make appropriate objections to testimony or witnesses outside the purview of the jury. This may include seeking advance rulings by requesting pre-trial conferences and motion hearings.
- e. Make appropriate offers of proof regarding excluded evidence.



- f. Attorney should be familiar with reversible errors in jury trials and make certain that the record is clear on any adverse decisions affecting client's right to a fair trial.
- g. Know the law surrounding jury instructions and be prepared to argue for jury instructions that are not "regularly given" but that are supported by case law both in Wyoming and other states. Attorney should be prepared with argument as to why what is "regularly given" or what is not pattern may be necessary and reasonable under the facts of the particular case.
- h. Submit a proper jury verdict form.
- i. At the close of all of the evidence, attorney should make a motion for judgment as a matter of law (WRCP 50(a)), if appropriate.
- j. After the entry of judgment, attorney should make a renewed motion for judgment as a matter of law (WRCP 50(b)) or for a new trial (WRCP 59), no later than ten days after the entry of the judgment, if appropriate.
- k. If after an unfavorable judgment and appropriate, the attorney should request a stay pursuant to Rule 62 of the Wyoming Rules of Civil Procedure.

Counsel should have the necessary experience to provide competent representation at trial. If counsel does not feel that he or she has the adequate skills, counsel should seek substitution of counsel or obtain guidance and direction from a more skilled advocate. Counsel should seek to improve their trial skills whenever possible to better serve their clients.

If, after trial, there is an adjudication, counsel should ensure that the court record is clear as to the grounds upon which the finding of abuse or neglect is made. In many cases, conflicts may arise between DFS and the client at a later date when the grounds are not made clear. DFS may want the client to participate in rehabilitative services related to a ground for which the client was not adjudicated, or the client may refuse to participate in rehabilitative services because he or she believes he or she was not adjudicated for that ground when he or she actually was.

## **CONCLUSION**

The adjudicatory phase of an abuse and neglect proceeding is a critical moment in defending and advocating for the client. If a negotiation is in the best interest of the client, counsel should explore the best option for the client. Counsel should adequately prepare for adjudication when the matter proceeds to trial. Upon adjudication, counsel should ensure that the court order is accurate. Counsel should continually seek to improve their negotiation and trial skills in order to best represent their clients.



# Chapter Eight: Post-Adjudication Advocacy

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## CHAPTER OBJECTIVES

The purpose of this chapter is to educate counsel on the basics of post-adjudication advocacy.

At the conclusion of this chapter, counsel should have an understanding of the major representation tasks of counsel after adjudication.

In order to increase competence, counsel should familiarize himself or herself with the Wyoming Child Protection Act.

## INTRODUCTION

Once an adjudication order is entered, counsel must immediately task the client to begin working with DFS to address the situation that led to the adjudication. The focus of the representation at this point becomes working towards case closure. The sooner the client begins to work on the requests of DFS, the sooner the case can close. While the client commences work with DFS, counsel should continue to focus on protecting the rights of the client.

## CASE PLANNING

Wyoming Statutes § 14-3-427(k) requires DFS to develop a case plan:

The department shall develop a case plan for a child when there is a recommendation to place the child outside the home. If a parent chooses not to comply with or participate in the case plan developed by the department, that parent is prohibited from later objecting to or complaining about the services that were provided to the child and family.

The case plan should be the map of how the case is going to proceed. Pursuant to the Department Rules § 7(f), a written case plan must be completed within sixty days of out-of-home placement or thirty days after the completion of the investigation, whichever occurs first. DFS is then obligated, pursuant Rule §7(g), to provide services consistent with the case plan. A case plan can be developed before or after adjudication, and when the case plan is developed for any particular case will depend on the facts and circumstances of the case.

“Parents share the burden of ensuring that the child protection system works properly.”<sup>90</sup> It is incumbent upon counsel to advise the client to take every step necessary to accomplish the goals outlined in DFS’s case plan, as well as to follow the directives of the court’s orders. If a client takes substantial steps towards accomplishing the goals of the case plan between adjudication and disposition, it is likely that the case will close quickly. However, if disposition arrives with little effort by the client, the court is likely to impose stricter conditions on the client.

As part of the case plan, DFS will develop a permanency plan with the client. At this point in the proceedings, the permanency plan should be reunification of the child with the client. DFS may also ask the client for a concurrent placement. A concurrent placement is a designation of who the child should go to if the parent is unable to secure reunification.

According to WYOMING PRACTICE GUIDELINE 2.7, counsel should take the following role in case planning:

- (a) Attorney shall actively engage in case planning, including but not limited to, attending multidisciplinary team meetings with or on behalf of client, advocating for appropriate services and regular and appropriate visitation. Attorney should also ensure client does not agree to services that are beyond the scope of the case.
- (b) Attorney shall review any proposed or signed case plan with client to, among other things, verify that it requires services and service providers that are appropriate and tailored to the needs of client and that it conceivably could be completed within the time allowed by the plan. Attorney should consider negotiating with DFS about the specific requirements of the proposed case plan if, after consultation with client, attorney believes that modifications to the required services, the service providers, or the time frame for completion would be favorable to client.
- (c) After consultation with client and taking into account client’s objectives and needs, attorney should advise client whether to agree to and sign a proposed case plan, whether to sign a proposed case plan after deleting those items with which client disagrees, or whether to sign a proposed case plan after adding language in the “comments” section of the plan.

The case plan may require specific tasks of the client. Counsel should monitor every step of the process to ensure the client’s rights are protected and the client is treated fairly. If the client is ordered to get an evaluation, counsel should assess the evaluator by researching credentials and ensuring that the final evaluation abides by evaluation standards. If the case plan requires the client to attend appointments with DFS on a regular basis, counsel should ensure that DFS facilitates or provides transportation services when necessary consistent with the case plan. DFS policy requires assistance in transportation for

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<sup>90</sup> *In re NDP*, 2009 WY 73, ¶ 28, 208 P.3d 614, 620 (Wyo. 2009).

visitation, either by providing transportation or by providing financial aid.<sup>91</sup> If the client is required to take a parenting class, counsel should ensure that the client attends a neutral class and not a program with ties to DFS.

Counsel should continually monitor case progress to ensure DFS is making reasonable efforts towards reunification. “Reasonable efforts are determined on a case-by-cases basis.”<sup>92</sup> If counsel believes that DFS is not making reasonable efforts, counsel should consider filing a motion with the court for a finding that DFS is not making reasonable efforts.

Counsel should advise the client that counsel should be involved whenever DFS wants to amend the case plan. By limiting the number of requirements placed on the client in the case plan, counsel can assist in working towards a quicker closure of the case. As soon as the case plan requirements are met, counsel should petition the court for closure of the case.

### **MDT MEETINGS**

Under the Child Protection Act, the court is required to appoint a multi disciplinary team (MDT) within ten days of the filing of a petition. The purpose of the MDT is to review the family’s history and background for the purpose of making recommendations to the court. “The formation of an MDT is intended to ensure that all the circumstances impacting the child and family, especially those related to the potential strengths and needs, are fully identified and considered in formulating recommendations for the court.”<sup>93</sup>

MDT meetings are governed by Wyoming Statute § 14-3-427, which states:

(b) Within ten (10) days after a petition is filed alleging a child is neglected, the court shall appoint a multidisciplinary team. Upon motion by a party, the court may add or dismiss a member of the multidisciplinary team.

(c) The multidisciplinary team shall include the following:

- (i) The child's parent, parents or guardian;
- (ii) A representative of the school district who has direct knowledge of the child and, if the child receives special education, is a member of the child's individualized education plan team;
- (iii) A representative of the department of family services;
- (iv) The child's psychiatrist, psychologist or mental health

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<sup>91</sup> WYOMING DEPARTMENT OF FAMILY SERVICES, SOCIAL SERVICES DIVISION Policy 1.6 *available at* <http://dfsweb.wyo.gov/social-services/policy/dfs-policy-manual>.

<sup>92</sup> *In re DRS*, 2011 WY 128, ¶ 33, 261 P.3d 697, 706 (Wyo. 2011).

<sup>93</sup> MULTIDISCIPLINARY TEAM GUIDEBOOK, Wyoming Children’s Justice Project (Wyoming Supreme Court 2011).

professional;

(v) The district attorney or his designee;

(vi) The child's attorney or guardian ad litem, if one is appointed by the court;

(vii) The volunteer lay advocate, if one is appointed by the court; and

(viii) The foster parent.

(d) In addition to the persons listed in subsection (c) of this section, the court may appoint one (1) or more of the following persons to the multidisciplinary team:

(i) Repealed By Laws 2005, ch. 236, § 4.

(ii) Repealed By Laws 2005, ch. 236, § 4.

(iii) The child;

(iv) A relative;

(v) If the predispositional study indicates a parent or child has special needs, an appropriate representative of the department of health's substance abuse, mental health or developmental disabilities division who has knowledge of the services available in the state's system of care that are pertinent to those identified needs;

(vi) Other professionals or persons who have particular knowledge relating to the child or his family, or expertise in children's services and the child's or parent's specific disability or special needs, including linguistic and cultural needs.

(e) Before the first multidisciplinary team meeting, the department of family services shall provide each member of the multidisciplinary team with a brief summary of the case detailing the allegations in the petition that have been adjudicated, if any. The multidisciplinary team shall review the child's personal and family history, school records, mental health records and department of family services records and any other pertinent information, for the purpose of making case planning recommendations. To the extent appropriate, the team shall involve the child in the development of the recommendations.

(f) At the first multidisciplinary team meeting, the team shall formulate reasonable and attainable recommendations for the court outlining the goals or objectives the parents should be required to meet for the child to be returned to the home or for the case to be closed, or until ordered by the

court in termination proceedings. At each subsequent meeting, the multidisciplinary team shall review the progress of the parents and the child, and shall reevaluate the plan ordered by the court. For cause, which shall be set forth with specificity, the multidisciplinary team may adjust its recommendations to the court with respect to the goals or objectives in the plan to effect the return of the child to the home or to close the case. In formulating recommendations, the multidisciplinary team shall give consideration to the best interest of the child, the best interest of the family, the most appropriate and least restrictive case planning options available as well as costs of care. After each multidisciplinary team meeting, the coordinator shall prepare for submission to each member of the team and to the court a summary of the multidisciplinary team meeting specifically describing the recommendations for the court and the goals and objectives which should be met to return the child to the home or to close the case. If the recommendations for the case plan have been changed, the summary shall include a detailed explanation of the change in the recommendations and the reasons for the change.

(g) All records, reports and case planning recommendations of the multidisciplinary team are confidential except as provided by this section. Any person who willfully violates this subsection is guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500.00).

(h) The court shall not consider any report or recommendation under this section prior to adjudication of the allegations in the petition without the consent of the child and the child's parents, guardian or custodian.

(j) Any member of a multidisciplinary team who cannot attend team meetings in person or by telephone may submit written reports and recommendations to the other team members and to the court. Individuals who are not members of the multidisciplinary team but have knowledge pertinent to the team's decisions may be asked to provide information to the multidisciplinary team. The individuals shall be bound by the confidentiality provisions of subsection (g) of this section.

(k) The department shall develop a case plan for a child when there is a recommendation to place the child outside the home. If a parent chooses not to comply with or participate in the case plan developed by the department, that parent is prohibited from later objecting to or complaining about the services that were provided to the child and family.

(m) If the child is placed outside the home, the multidisciplinary team shall meet quarterly to review the child's and the family's progress toward meeting the goals or expectations in the case plan and the multidisciplinary team shall provide a written report with recommendations to the court prior to each review hearing.

(n) No later than five (5) business days prior to the dispositional hearing, the multidisciplinary team shall file with the court the multidisciplinary team report which shall include the multidisciplinary team's recommendations and the department case plan in a standard format established by the department.

(o) Five (5) business days prior to each review hearing, the multidisciplinary team shall file with the court a report updating the multidisciplinary team report, the multidisciplinary team's recommendations and the department case plan.

Counsel should secure an agreement, in writing, from the State's attorney that anything the parent says in an MDT meeting will not be used against a parent for the purposes of contempt charges pursuant to W.R.P.J.C. Rule 9.

In some jurisdictions, MDTs deviate from the statutory process. The MDT may turn into a process to impose more requirements on the client, some of which have no rational relationship to the issues that brought the client into the abuse and neglect proceeding. Counsel should advocate for the MDT to abide by the statutory process and, if the MDT does not, should direct the court's attention to the issue. The focus of the case should always remain on addressing the issues that brought the family to the attention of the authorities and then to close the case.

### **MOTION PRACTICE**

An often-overlooked practice in representing parents in abuse and neglect proceedings is that of using motions to expedite matters and to create a record of DFS's failure to provide reasonable efforts. Abuse and neglect proceedings follow statutory timelines that provide for hearings at set intervals, but that does not eliminate the possibility of having hearings on a more rapid timeline. If the client has made significant progress under the case plan, counsel should file a motion for immediate return of the children. If DFS has stated it will pay for a service and then later refuses to pay, counsel should file a motion for payment. Creating a record within the juvenile case file notifies parties that counsel intends to fully represent the client's rights.

The American Bar Association, in its STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES states:

“Actively filing motions, pleadings and briefs benefits the client. This practice puts important issues before the court and builds credibility for the attorney. In addition to filing responsive papers and discovery requests, the attorney should proactively seek court orders that benefit the client, e.g., filing a motion to enforce court orders to ensure the child welfare agency is meeting its reasonable efforts obligations. When an issue arises, it is often appropriate to attempt to resolve it informally with other parties. When out-of-court advocacy is not successful, the attorney should not wait to bring the issue to the court's attention if that would serve the client's goals.”

“Arguments in child welfare cases are often fact-based. Nonetheless, attorneys should ground their arguments in statutory, regulatory and common law. These sources of law exist in each jurisdiction, as well as in federal law. Additionally, law from other jurisdictions can be used to sway a court in the client’s favor. An attorney who has a firm grasp of the law, and who is willing to do legal research on an individual case, may have more credibility before the court. At times, competent representation requires advancing legal arguments that are not yet accepted in the jurisdiction. Attorneys should be mindful to preserve issues for appellate review by making a record even if the argument is unlikely to prevail at the trial level.”<sup>94</sup>

## DISPOSITION

After adjudication, the next hearing in the statutory framework is the disposition hearing. The goal of the disposition hearing should be to set forth the requirements the client is required to achieve prior to case closure. Wyoming Statute § 14-3-429 provides:

(a) In determining the disposition to be made under this act in regard to any child:

(i) The court shall review the predisposition report, the recommendations, if any, of the multidisciplinary team, the case plan and other reports or evaluations ordered by the court and indicate on the record what materials were considered in reaching the disposition;

(ii) If the court does not place the child in accordance with the recommendations of the predisposition report or multidisciplinary team, the court shall enter on the record specific findings of fact relied upon to support its decision to deviate from the recommended disposition;

(iii) When a child is adjudged by the court to be neglected the court shall enter its decree to that effect and make a disposition as provided in this section that places the child in the least restrictive environment consistent with what is best suited to the public interest of preserving families and the physical, mental and moral welfare of the child;

(iv) When a child is adjudged to be neglected the court shall ensure that reasonable efforts were made by the department of family services to prevent or eliminate the need for removal of the child from the child's home or to make it possible for the child to return to the child's home. Before placing a child outside of the home, the court shall find by clear and convincing evidence that to return the child to the child's home would not be in the best interest of the child despite efforts that have been made;

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<sup>94</sup> AMERICAN BAR ASSOCIATION STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES 22 (2006).



(b) If the child is found to be neglected the court may:

(i) Permit the child to remain in the legal custody of his parents, guardian or custodian without protective supervision, subject to terms and conditions prescribed by the court;

(ii) Place the child under protective supervision;

(iii) Transfer temporary legal custody to a relative or other suitable adult the court finds qualified to receive and care for the child, with or without supervision, subject to terms and conditions prescribed by the court;

(iv) Transfer temporary legal custody to the department of family services or a state or local public agency responsible for the care and placement of neglected children, provided the child shall not be committed to the Wyoming boys' school, the Wyoming girls' school or the Wyoming state hospital.

(c) In cases where a child is ordered removed from the child's home:

(i) If a child is committed or transferred to an agency or institution under this section, at least every three (3) months the agency or institution shall recommend to the court if the order should be continued;

(ii) The court shall order the parents or other legally obligated person to pay a reasonable sum for the support and treatment of the child as required by W.S. 14-3-435, or shall state on the record the reasons why an order for support was not entered;

(iii) In cases where the child is placed in custody of the department, support shall be established by the department through a separate civil action;

(iv) Any order regarding potential placement at a psychiatric residential treatment facility shall not specify a particular psychiatric residential treatment facility or level of care for the placement of the child.

(d) As a part of any order of disposition and the terms and conditions thereof, the court may:

(i) Impose any demands, requirements, limitations, restrictions or restraints on the child, and do all things with regard to the child that his parents might reasonably and lawfully do under similar circumstances;

(ii) Order the child, or his parents, or both, to undergo evaluation and indicated treatment or another program designed to address problems which contributed to the adjudication. A parent who willfully violates or

neglects or refuses to comply with any order of the court may be found in contempt and punished as provided by W.S. 14-3-438;

(iii) Require the child's parents or guardian to attend a parenting class or other appropriate education or treatment designed to address problems which contributed to the adjudication and to pay all or part of the cost of the class, education or treatment in accordance with the court's determination of their ability to pay;

(iv) Require the child's parents or guardian and the child to participate in a court supervised treatment program qualified under W.S. 7-13-1601 through 7-13-1615, provided the court supervised treatment program accepts the child's parents or guardian and the child for participation in its program.

Disposition hearings are often overlooked as an opportunity to determine the direction of the case. In some cases, it may be a more important hearing than the adjudication hearing. Disposition is a time to review placement, visitation, case plans, and required services.

WYOMING PRACTICE GUIDELINE 4.5 states:

- (a) If the State or the GAL provides to attorney in advance of the dispositional hearing any reports or documentary evidence that they intend to offer at the hearing, attorney should review them carefully with client to determine whether any information in the reports or evidence may be inaccurate or susceptible to impeachment. Attorney should also consider subpoenaing the authors of the reports to be cross-examined if attorney knows the State or the GAL does not intend to utilize them as live witnesses.
- (b) If any reports or documentary evidence including, but not limited to multidisciplinary team recommendations that are considered that have not been timely provided to attorney prior to court, pursuant to applicable statute or rule, attorney should consider moving to continue the dispositional hearing to allow time for review of the reports or evidence, or filing a motion in limine to prohibit the introduction of the reports or evidence.
- (c) Attorney should be aware that the court shall review the predisposition report, the recommendations, if any, of the multidisciplinary team, the case plan and other reports or evaluations ordered by the court and indicate on the record what materials were considered in reaching the disposition. If the court does not place the child in accordance with the recommendations of the predisposition report or multidisciplinary team, the court shall enter on the record specific findings of fact relied upon to support its decision to deviate from the recommended disposition. If necessary, attorney should ask the court to make appropriate findings on the record.

Disposition hearings are evidentiary hearings. In many cases the only piece of evidence the court has is the Pre-Dispositional Report. Counsel should request that the case plan be submitted to the court. Counsel should independently seek out appropriate alternative services for the client and present those options to the court. Steps should be taken to ensure that the disposition order and case plan not only set out the requirements for the client, but for DFS as well. Arguments can also be made to establish timelines in which DFS must provide certain services. Counsel should oppose any request to add requirements that are not a part of the case plan.

WYOMING PRACTICE GUIDELINE 4.6 states:

- (a) Attorney should present to the court an alternative dispositional plan or report on behalf of client, including placement of the child in the parental home or viable alternative least restrictive placements for the child that are favorable to client, if appropriate. Attorney should present evidence in support of the alternative plan or report.
- (b) Attorney should request that the court direct appropriate placements for the child and specific visitation schedules with client. Attorney should ask the court to direct DFS to conduct a home study of client's home, a potential relative placement, or another suitable placement for the child if appropriate.
- (c) Attorney should be prepared to present all mitigating and favorable information regarding client to the court at the dispositional hearing including evidence of client's achievements and progress after the filing of the petition through documentary evidence, photographs, and the testimony of client and other witnesses. Potential mitigating and favorable information includes, but is not limited to, medical, psychiatric, psychological, social, employment, and educational information.
- (d) Attorney should also request orders for DFS to provide or make referrals for activities or services that may benefit client and aid in reunification.

WYOMING PRACTICE GUIDELINE 4.7 states:

- (a) Attorney should discuss with client the result of the dispositional hearing all responsibilities of client pursuant to the court's ruling, and any available post-disposition actions to set aside an adverse decision. Also review Guideline 4.4.
- (b) Attorney should review any proposed order or orders and suggest amendments, if necessary, to be consistent with the court's dispositional order.

- (c) Attorney should take reasonable steps to monitor client’s compliance with the court’s order, as well as identify and attempt to resolve with client any barriers to client’s compliance such as a lack of transportation. Attorney should monitor the provision of services.

At the conclusion of the dispositional hearing, counsel should discuss with the client the outcome of the hearing and the client’s obligations at that point. Counsel should review the dispositional order fully to ensure it complies with the court’s orders.

### REVIEW AND PERMANENCY HEARINGS

After disposition, the Child Protection Act requires review hearings every six months and a permanency hearing twelve months after the child is removed from the home. Review hearings are an opportunity to create a record that is favorable to the client, point out gaps in services provided, and advocate for a case plan that works for the client.<sup>95</sup> Counsel should utilize updated records and reports to support arguments. Counsel should also make reference to the case plan.

Counsel should also consider requesting review hearings if there is a substantial change in the case that benefits the client. Review hearings allow the court to order a modification in the case plan. If the client is making substantial progress, counsel can argue for a modification in the case plan that places fewer restrictions upon the client. Note that “[counsel] will be most effective if [counsel] appear[s] in court with a clear command of the facts and a proposed case plan that considers the changed circumstances.”<sup>96</sup>

WYOMING PRACTICE GUIDELINE 5.2 states the following about review and permanency hearings:

- (a) In preparation for review and permanency planning hearings, attorney should conduct appropriate investigation and interviews of witnesses. In accordance with all applicable local rules and ethical Guidelines governing interviews of represented parties, attorney should consider interviewing the foster parent(s), caseworker, and any professionals providing services to client. Attorney should also meet with client and other witnesses, review the applicable reports and attachments, and anticipate and prepare for potential information or inferences about client.
- (b) Attorney should verify that any reports or documentary evidence that the state or the GAL seeks to have admitted at a review or permanency planning hearing have been provided to attorney prior to court in compliance with any applicable rules. If any reports or documentary evidence have not been timely provided to attorney, attorney should consider potential remedies, including moving to continue the hearing or a motion to exclude. When reports are provided to attorney in advance,

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<sup>95</sup> DIANE BOYD RAUBER & LISA A. GRANIK, REPRESENTING PARENTS IN CHILD WELFARE CASES 33 (Mimi R. Laver ed., American Bar Association 2000).

<sup>96</sup> *Id.*

attorney should consider subpoenaing the authors of the reports to be cross-examined if attorney knows the state or the GAL does not intend to utilize them as live witnesses.

- (c) Attorney should assess DFS's reunification efforts and consider whether the services meet client's needs or are of appropriate intensity of client warrant specific increased reunification efforts. If applicable, attorney should argue in favor of increased reunification efforts and against ceasing reunification efforts.
- (d) Attorney should verify that DFS has provided all services and visitation promised in case plans or previously ordered, and should consider introducing evidence and requesting an evidentiary hearing about any ordered services that were not provided or services provided that were not appropriate.
- (e) Attorney should present favorable documentary and photographic evidence and testimony about client's progress in meeting his or her case plan and, if necessary, request an evidentiary hearing. Evidence may consist of:
  - (1) Improvements in client's educational, employment, or housing status;
  - (2) Client's payment of child support obligations;
  - (3) Client's payment of mortgages, rent, and utilities;
  - (4) Proper licensure and insurance of a motor vehicle;
  - (5) Client's attendance at group or individual therapy;
  - (6) Client's attendance at alcohol or substance abuse treatment programs or meetings;
  - (7) Client's regular communication and visitation with the child; and
  - (8) Client's compliance with other court orders, including probationary judgments.
- (f) Attorney should ask the court to make specific findings on the record as to DFS's reunification efforts and whether those efforts were sufficient and reasonable. If attorney believes reunification efforts have not been reasonable, attorney should object on the record to preserve the issue for possible appellate review.

If the case proceeds to a permanency hearing, counsel should be prepared to make strong arguments on behalf of the client for the permanency plan to remain reunification of the family. While counsel should be concerned about maintaining a working relationship between the client and DFS throughout the case, a permanency hearing where DFS is seeking to modify the permanency plan to something other than reunification is no longer the time to worry about that relationship.

As to permanency hearings, WYOMING PRACTICE GUIDELINE 5.4 states:

- (a) Attorney should explain to their client the purpose of the hearing and that the judge will make determinations of reasonable efforts as to eliminate the need for the child’s out-of-home placement and to reunify client and child, or relieving DFS of the ongoing obligation to make reasonable efforts.
- (b) Attorney should explain to client that a permanency planning hearing could result in a plan of adoption for the child, which would require the state to initiate termination proceedings.
- (c) Attorney should be prepared at the permanency planning hearing to present an alternative long-term plan if client agrees after full consultation that it would be in the best interest of the child.
- (d) If the court enters a permanency planning order that changes the permanent plan to adoption, attorney should advocate that reunification, custody or guardianship with a relative or other suitable adult, be ordered as a concurrent plan where appropriate. Attorney should also explain to client that, even when adoption is the primary permanent plan for the child, client may still pursue reunification efforts on his or her own and the court may subsequently revise the permanent plan to direct reunification. Attorney should consider reminding client that proceedings are adversarial and explain consequences of compliance or noncompliance with DFS.
- (e) Attorney should advise client to expect service of a petition to terminate parental rights if the permanency goal is adoption. Attorney should be aware that, depending on local practice, attorney may not be served as attorney of record for client and may not receive a copy of the petition or motion from the petitioner’s attorney. Attorney should inform client that he or she shall take action and re-apply for a court appointed attorney.

A parent is entitled to a full evidentiary hearing at a permanency hearing. The Wyoming Supreme Court has said:

Permanency hearings, when there may be a change in the plan from reunification to termination of parental rights, implicate substantial rights and thus require meaningful due process.

We take this opportunity to define the process due at such a hearing. Due process requires that if a change in permanency plan includes adoption or permanent placement other than reunification, the parents must have the right to request, and on request must be provided with, an evidentiary hearing. The parent must request the hearing if he or she desires one, because there may be instances in which parents do not dispute a recommendation or are content with a non-evidentiary hearing. The failure to request such a hearing waives that right.<sup>97</sup>

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<sup>97</sup> *In re GC*, 2011 WY 128, ¶ 33, 351 P.3d 236, 247 (Wyo. 2011).

If the permanency hearing modifies the plan away from reunification, counsel should take every step necessary to ensure that termination proceedings occur in a timely manner. While there may appear to be a few advantages to the delay in of a termination action (i.e, more time for the parent to work on the issues leading to the termination petition), the reality is that time often works against the parent:

In the case of a change in the permanency plan to an alternative that requires termination of parental rights, the effect of the passage of time on the later TPR proceeding is often significant. As one commentator has pointed out, “[t]he time that passes between a permanency plan change away from reunification and any later permanency trial heightens [the] state power and increases the likelihood that a termination of parental rights, adoption, or guardianship motion will both be filed and granted, thereby permanently eliminating parents’ rights to care, custody and control of their children.” Josh Gupta-Kagan, *Filling the Due Process Donut Hole: Abuse and Neglect Cases between Disposition and Permanency*, 10 Conn. Pub. Int. L.J. 13, 38 (2010). By the time the TPR hearing takes place, the child may have been living in foster care (sometimes with potential adoptive parents) for years, and the court will inevitably consider how well he or she is doing there and the bonds formed between the child and his foster family as a factor in determining whether to terminate parental rights. *Id.* In addition, the juvenile court will examine the child’s relationship with his parent, which will necessarily have been affected by the passage of time and separation from them. *Id.* at 38-39. The State controls the timing of filing the proceeding.<sup>98</sup>

As part of a permanency order, the court can determine whether DFS is required to continue to make reasonable efforts for family reunification, even if the court directs DFS to file a termination of parental rights petition. Counsel should zealously argue for DFS to continue reasonable efforts pending the termination proceeding. If the court orders that DFS is no longer required to make reasonable efforts, DFS may opt not to facilitate visitation between the parent and the child anymore. This can be extremely traumatic for both the client and child if the termination petition is dismissed and the child resumes visitation with the parent after a significant time of separation.

If the court directs DFS to pursue termination of parental rights, counsel should continue to advocate for the client as much as possible in light of the situation. If appropriate, counsel should consider advising the client to appeal the order of the permanency hearing.

## CONCLUSION

Counsel should continue to zealously advocate for the client in the post-adjudication phase of representation. Advocacy requires continual monitoring of the case plan requirements and the client’s progress towards the case plan goals. The focus should always remain on working towards case closure as quickly as possible. If the client is unable to achieve the case plan goals and the court directs that the matter proceed to termination of

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<sup>98</sup> *Id.* at ¶ 31.

parental rights, counsel should continue to advocate for the client in the best possible manner in light of the situation.



**FOR FURTHER INFORMATION ON THESE TOPICS SEE:**

MULTIDISCIPLINARY TEAM GUIDEBOOK, Wyoming Children’s Justice Project (Wyoming Supreme Court 2011).



# Chapter Nine: Federal Abuse and Neglect Law

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## CHAPTER OBJECTIVES

The purpose of this chapter is to give a brief overview of the various federal laws that affect abuse and neglect proceedings.

At the conclusion of this chapter, counsel should have a basic understanding of the laws that need to be studied and utilized in abuse and neglect proceedings.

In order to increase competence, counsel should further research and study both state and federal statutory and case law.

## INTRODUCTION

Counsel representing parents in abuse and neglect proceedings in Wyoming need to be familiar with federal law and how it affects state law. This chapter serves as a brief introduction and overview of the laws which counsel should further study in order to represent parents in these matters. The strongest tool an attorney can have in representing parents in abuse and neglect proceedings is a solid knowledge of the laws that these proceedings involve. Counsel should continually keep current on changes in law and policy as well as current case law interpreting laws and policy.

Federal law directly impacts State law regarding abuse and neglect. Much of the funding for abuse and neglect proceedings comes from the federal government, and in order for the state to continue to receive these funds, the State is required to implement Federal laws and guidelines into abuse and neglect proceedings. Many of the Federal laws discussed below have been incorporated into State statutory law or DFS policy.

The following is a brief synopsis of some of the relevant Federal laws governing child welfare practice. This short summary serves as a starting point for learning Federal law. Counsel should familiarize themselves with these laws in further detail, as these summaries only highlight portions of the law. Furthermore, counsel should seek out and study additional Federal laws which affect child welfare practice.

## INTERSTATE ISSUES

Uniform Child Custody Jurisdiction And Enforcement Act (UCCJEA)

The UCCJEA was established to avoid jurisdictional conflicts between state courts. The UCCJEA governs state courts' jurisdiction to make and modify "child-custody determinations," such as custody and visitation orders. The UCCJEA requires state courts to enforce valid child-custody and visitation orders made by other state courts. The UCCJEA does not dictate standards for making or modifying child-custody and visitation decisions. Rather, it determines which states' courts have and should exercise jurisdiction to over the child. A court must have jurisdiction before it can proceed to consider the merits of a case. Counsel should understand that if a state other than Wyoming has jurisdiction over the child, Wyoming can only exercise temporary emergency jurisdiction. Counsel should familiarize themselves with *In re NC*, 2013 WY 2, 294 P.3d 866 (Wyo. 2013) to understand the details of how the UCCJEA interacts with abuse and neglect proceedings.

Under the UCCJEA, a "child custody proceeding" is a legal proceeding where legal or physical custody is at issue, or where visitation with a child is at issue, such as divorce, separation, neglect and abuse, guardianship, paternity, termination of parental rights, or domestic violence protection orders proceedings. The UCCJEA gives priority jurisdiction to the child's home state and gives the home state exclusive continuing jurisdiction to modify child custody orders.

Counsel should know that the rules that govern courts' jurisdiction to make an initial custody determination differ from those governing jurisdiction to modify an existing order. When the UCCJEA is involved, counsel should review the case to determine if the child has lived in another state and if that state has grounds to hear issues related to custody. If another state has grounds to make custody decisions regarding the children, Wyoming may not make a decision regarding custody. If another state has jurisdiction, counsel should file a motion to dismiss for lack of subject matter jurisdiction under UCCJEA.

### **INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)**

The Interstate Compact on the Placement of Children (ICPC) establishes uniform legal and administrative procedures governing the interstate placement of foster children. Before a child in the custody of the state can be placed in a home in another state (whether a foster home, relative's home, child care institution or pre-adoptive placement), ICPC requires the sending state to notify the receiving state of the intention to place the child in a home in the receiving state. The receiving state must then provide notice to the sending state that the proposed placement does not appear to be contrary to the interests of the child.

In practice, the ICPC process includes a home study of the potential home and approval by the receiving state. This process is cumbersome, and can take many months, sometimes years. If the client has potential placements with relatives, noncustodial parents, or other families in another state, counsel should encourage DFS to begin the ICPC process as soon as possible. Anytime placement in a state other than Wyoming is being considered, the requirements of ICPC must be followed, as placing a child in another state without following the ICPC is illegal. DFS must send notice and request a home study or information about the placement. If the home study or information is approved, the child may potentially be placed out of state. This process is done through the state ICPC administrators.

## **CHILD PROTECTION LAWS**

### **CHILD ABUSE PREVENTION AND TREATMENT ACT (1974)**

The Child Abuse Prevention and Treatment Act (CAPTA) provides states a mechanism to access federal funding to assist in responding to cases of child maltreatment. CAPTA includes numerous requirements that a state must meet to receive federal funds including a system of mandated reporting for suspected child abuse or neglect, assessments to determine which reports of suspected child abuse or neglect are valid, and responses that are appropriate based on the level of risk to the child. Of particular importance is CAPTA's requirement that a GAL be appointed to represent a child when judicial intervention is necessary. CAPTA also establishes requirements for DFS worker training and disclosure of information to government entities; requires mandatory child abuse reporting; and provides minimum standards for defining physical child abuse, neglect, and sexual abuse. Wyoming's statutory definitions of child abuse and neglect conform to these minimum standards.

### **ADOPTION ASSISTANCE AND CHILD WELFARE ACT (AACWA) (1980)**

This Act established Titles IV-B and IV-E of the Social Security Act. The AACWA has two primary goals. The first goal is to reduce the number of children entering the foster care system. The second goal is to reduce the length of time children remain in the foster care system.

To accomplish these goals, the AACWA amended Titles IV-B and established Title IV-E of the Social Security Act. In order for a state to be eligible for funding under Titles IV-B and IV-E, the state must comply with the requirements set forth therein.

Title IV-B requires a state to develop a plan to prevent and respond to child abuse or neglect cases in order to receive federal funding. Title IV-E provides federal funding to assist in offsetting the costs of foster care when children are removed from their homes. These Titles also provide federal adoption subsidies for special needs children (specifically, older children and children with emotional or behavioral problems).

In broad terms, Title IV-B and IV-E require that reasonable efforts shall be provided to prevent removal of a child from his or her home; that reasonable efforts shall be provided to reunify children with their families; and that permanency planning for each child, specifically including six (6) month review hearings to monitor progress on the case.

### **ADOPTION AND SAFE FAMILIES ACT (1997)**

The Adoption and Safe Families Act (ASFA) is an extensive federal law that provides specific requirements for states when developing child welfare law practices. Wyoming law has adopted these provisions, and the provisions dictate how each case progresses. ASFA amended Title IV-E and IV-B of the Social Security Act. ASFA continued to provide funding to support family preservation and reunification through the provision of reasonable efforts. However, ASFA made clear that "in determining reasonable efforts to be made with respect to a child . . . the child's health and safety shall be the paramount concern."

ASFA requires that, in most circumstances, reasonable efforts must be provided to facilitate family reunification. Although “reasonable efforts” is not defined, ASFA requires that the state agency establish a written case plan that details the child’s placement, school, medical, and other information, and the services that will be provided to assist in reunification or, if reunification is not the goal, the services that will be provided to reach the alternate permanency goal. ASFA continued the requirement for six (6) month review hearings, and added that a permanency hearing must be held at least once every twelve (12) months while a child is in foster care.

ASFA also established the oft-quoted “15 of 22” rule, requiring a state agency to seek TPR when a child has been in foster care for 15 of the most recent 22 months, unless one of the enumerated exceptions applies. The purpose of this rule is to ensure children do not “linger” in the foster care system without progress toward permanency. For Wyoming’s 15 of 22 rule, see W.S. § 14-3-431(m).

ASFA also clarified that reasonable efforts toward reunification may not be required in cases in which the harm done to the child is significant and, in some situations, even mandates that the state proceed immediately to a TPR. ASFA’s specific circumstances in which reasonable efforts toward reunification need not be provided are mirrored in W.S. § 14-2-309(c).

ASFA also expands alternate permanency options to include permanent guardianships and “another planned permanent living arrangement” (APPLA), and it increased adoption subsidies and incentives.

### **MULTI-ETHNIC PLACEMENT ACT AND THE INTERETHNIC ADOPTION PROVISIONS (1994)**

The Multi-Ethnic Placement Act and the Interethnic Adoption Provisions (MEPA-IEP) seeks to eliminate the consideration of race, color, or national origin when licensing foster parents and when making decisions for foster care or adoptive placements. The MEPA-IEP also requires that DFS make diligent efforts to recruit foster and adoptive parents “that reflect the ethnic and racial diversity of children in the state for whom foster and adoptive homes are needed”. The MEPA-IEP prohibits delay in placement in order to place in a racially congruent home, and prohibits the use of race, color, or national origin to deny eligibility for foster care or adoption or to become a foster or adoptive parent.

Race, color, or national origin can be considered in very restricted circumstances, such as when an older child wishes to be placed with a family of a particular race, or has a special need to be placed with a particular race. MEPA-IEP does not apply to any child who qualifies as an Indian Child under ICWA.

### **THE FOSTER CARE INDEPENDENCE ACT (CHAFEE ACT) (1999)**

The Foster Care Independence Act, known as the Chafee Act, was established to assist children remaining in foster care until the age of eighteen (18) (or twenty-one (21)) to transition into independence. The Chafee Act authorizes the provision of independent

living services including educational services (vocational training, assistance in obtaining a diploma, or post-secondary education), employment services (job placement assistance), self-care services (financial assistance, housing assistance, and counseling), and Medicaid eligibility (the Act authorizes states to extend Medicaid eligibility to former foster youth to age twenty-one (21)). The Chafee Act mandates that a portion of federal funding be used to assist former foster youth to the age of twenty-one (21).

The Chafee Educational and Training Vouchers was added to the Chafee Act in 2000 to provide federal funds (up to \$5,000 per year per youth) for former foster youth to help pay for post-secondary education or vocational education.

### **FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT (FOSTERING CONNECTIONS ACT) (2008)**

The Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections Act) allows states to continue to provide foster care services to youth up to the age of twenty-one (21), as long as those youth are participating in one of the following: completing a secondary education program or program leading to an equivalent credential; enrolled in an institution which provides post-secondary or vocational education; participating in a program or activity designed to promote, or remove barriers to, employment; employed for at least 80 hours per month; or incapable of doing any of the above activities due to a medical condition, which is supported by regularly updated information in the case plan of the child.

Children over the age of eighteen (18) may also continue to be eligible for foster care payments if they are living independently, but in a supervised setting. Finally, the Fostering Connections Act also provides funding for relatives who take guardianship of children in foster care. This law also requires clients to stay in their home school if at all possible.

### **CHILD AND FAMILY SERVICES IMPROVEMENT ACT OF 2006**

The Child and Family Services Improvement Act of 2006 requires that the court consider the wishes of older and transitioning youth when making permanency decisions or developing transition plans. The court must consult with the youth about these decisions in an age-appropriate manner.

### **PREVENTING SEX TRAFFICKING AND STRENGTHENING FAMILIES ACT (2014)**

This law focuses on identifying and finding services for children at risk of or who are victims of sex trafficking. It also requires the state agency to report on these victims. Subtitle B on the act focuses on permanency, one of the biggest changes being that another planned permanent living arrangement (APPLA) can only be used as a permanency goal in limited circumstances. Finally, the Act requires that children have appropriate documentation when they age out of foster care, including copy of their birth certificate, Social Security card, health insurance information, copy of medical records, and a driver's license.

## **INDIAN CHILD WELFARE ACT**

The Indian Child Welfare Act (ICWA) is a substantive federal law whose purpose is to preserve Indian families. ICWA establishes strict guidelines for when an “Indian child” is involved in a “child custody proceeding,” including any action involving foster care placement, adoption, or TPR. Guidance on ICWA issues can be found in the Bureau of Indian Affairs, Guidelines for State Courts; Indian Child Custody Proceedings (BIA Guidelines). Several of ICWA’s provisions are jurisdictional and can thus be raised at any time during the proceedings. Any party can bring a petition to invalidate state court action taken in violation of ICWA.

Before a parent’s rights can be terminated, the Court must find beyond a reasonable doubt that “the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.” The termination proceeding must also include testimony of a qualified expert witness regarding the damage to the child. The Court must also find that “active efforts” were made to return the child to his or her family.

State courts must give full faith and credit to tribal court orders. In cases where state and federal laws are inconsistent, ICWA states the highest protection law shall stand.

### **CONCLUSION**

Counsel should familiarize themselves with the provisions of the above named federal laws, as well as other laws regarding child abuse and neglect proceedings. These federal laws directly impact how child abuse and neglect is handled in Wyoming. The ability to adequately represent clients in abuse and neglect proceedings improves when counsel have adequate knowledge of how federal laws and requirements impact abuse and neglect proceedings.



### **FOR FURTHER INFORMATION ON THESE TOPICS SEE:**

MAJOR FEDERAL LEGISLATION CONCERNED WITH CHILD PROTECTION, CHILD WELFARE, AND ADOPTION, United States Department of Health and Human Services, Child Welfare Information Gateway (2012). *Available at:* <https://www.childwelfare.gov/pubpdfs/majorfedlegis.pdf>.

# Chapter Ten: Special Issues in Abuse and Neglect Proceedings

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## CHAPTER OBJECTIVES

The purpose of this chapter is to educate counsel on several special issues that arise in abuse and neglect proceedings, including mental health, substance abuse, and domestic violence.

At the conclusion of this chapter, counsel should have an awareness of some of the special issues that arise in abuse and neglect proceedings and how those issues affect proceedings. Counsel should further understand the treatment requirements that may be placed on their clients to address these issues.

In order to increase competence, counsel should further research and study these matters, including attending related CLEs and establishing relationships with mental health providers to obtain guidance in working with clients dealing with these and other issues.

## INTRODUCTION

In the course of representing parents in abuse and neglect proceedings, counsel will learn that many of their clients are dealing with issues in addition to court involvement. The majority of parents who abuse and neglect their children have other negative problems in their lives, such as mental health issues, substance abuse issues, or domestic violence. These issues can be contributing factors that lead to parents being involved in the juvenile court system. In most cases, these issues will have to be addressed before the juvenile case can be resolved. Counsel need to be aware of these special issues and how they affect their clients. Counsel also need to understand how these issues are treated so that they can guide their clients to the appropriate resources.

The following chapter is meant to be a brief introduction to some of these special issues. These issues will not be discussed in depth, and counsel should take the time to educate themselves fully on these complex issues, including attending trainings related to these issues.

## MENTAL HEALTH

Some parents who are involved in abuse and neglect proceedings are struggling with some sort of mental health issue, such as temporary depression as a result of having their child removed from the home or another mental health diagnosis. Many of these parents have never received or are not currently receiving medical, psychological, or psychiatric treatment for these issues. In the course of the proceedings, it is likely that the parents will

be required to take some steps to address these issues. Counsel should have a basic understanding of who diagnoses and treats the disorders, how mental health disorders are diagnosed, and what these disorders are. This chapter is not an authoritative treatise on these issues. Counsel should familiarize themselves with issues related to mental health to further assist their clients. Furthermore, counsel should build a collaborative relationship with a trusted mental health professional from whom they can seek counsel and advice.

## **MENTAL HEALTH PROFESSIONALS**

In Wyoming, mental health disorders can be diagnosed by licensed master's level counselors, nurse practitioners, physician's assistants, medical doctors, psychiatrists, and psychologists. Some types of practitioners are more experienced in diagnosing than others. Most parents with significant mental health disorders will be referred to psychiatrists and psychologists. Any of the above listed providers can provide some type of treatment services, such as prescribing medication or providing counseling services. Counsel should familiarize themselves with the differences between these types of providers.

Substance abuse providers will be discussed below and should not be confused with mental health providers. While some mental health providers can provide substance abuse treatment, substance abuse providers cannot provide mental health treatment unless specifically trained and licensed to do so.

The three most commonly utilized mental health providers within abuse and neglect proceedings are master's level counselors, psychologists, and psychiatrists. A master's level counselor is an individual who has obtained their master's degree in a mental health or social work related field. They have completed supervised clinical hours to meet State licensing requirements. Mental health counselors are required to be licensed by the State. The specific requirements for licensure can be found on the Wyoming Mental Health Professions Licensing Board website at <http://mentalhealth.wyo.gov>.

Psychologists are individuals who have obtained a Ph.D. or Psy. D in a field of psychology. Psychologists will diagnose and counsel clients but they cannot prescribe psychiatric medications in Wyoming. Psychologists are required to be licensed by the State. The licensing requirements for psychologists can also be found on the Wyoming Board of Psychology website at <http://plboards.state.wy.us/psychology/>.

Psychiatrists are licensed medical doctors who have completed medical school and have specialized in diagnosis and prevention of mental health issues. Psychiatrists can be board certified, meaning they have met national criteria and passed a national exam. Psychiatrists can specialize in specific areas, such as child psychiatry. Psychiatrists are required to be licensed by the State. Psychiatrists can prescribe medications. The licensing requirements for psychiatrists can be found on the Wyoming Board of Medicine website at <http://wyomedboard.wyo.gov>.

Each of the above listed mental health providers can supervise interns and provisionally licensed providers. It is important for counsel to determine whether the provider seeing the parent is fully or provisionally licensed. In situations where counsel need



to dispute the credibility of the provider, the level of licensure the provider holds can be a factor in disputing credibility.

**DIAGNOSIS**

Clients may see a mental health provider for routine treatment, or they may be ordered by the court to obtain a specific assessment. These assessments can include psychiatric evaluations, psychological evaluations, psychosexual evaluations and counseling or mental health needs assessments, among others. Counsel should be familiar with the various types of mental health evaluations that their clients may be ordered to take. There are numerous different types of evaluations, and counsel should consult with a mental health professional and conduct their own research into the requirements and results of various evaluations.

Mental health disorders are diagnosed using the DSM-5, the authoritative treatise on mental health and diagnosis. The DSM-5 sets forth the criteria used by mental health providers to determine the specific mental health disorders a client is presenting with at the time of evaluation. The provider will interview the client and may administer screening tools prior to diagnosis. The results of that interview and the assessments are then cross referenced with the DSM-5 to determine a diagnosis. Diagnosis of a client is subjective, and it is possible to have different providers determine different diagnoses. Because of this, it is important for counsel to locate a mental health provider they can trust and to know the providers within the community to steer clients away from specific providers.

There are approximately 297 different diagnoses in the DSM-5. Counsel do not need to be familiar with every single diagnosis. However, there are some more common diagnoses that counsel should be aware of. The chart below outlines some of the more common diagnoses, how the client will present, and how best communicate with the client.

Diagnoses	Traits	Communication Strategy
Bipolar Disorder	These clients may have frequent mood swings, going from depression to mania. They can be grandiose and overconfident. They may be frequently sad and require very little sleep. They can be impulsive and moody. They can often be confused and inattentive.	Counsel should avoid being accusatory or critical. The client will not be able to analyze their behavior or problems. Counsel should make positive requests for change, remain calm at all times, and try to find positive praises to include in the conversation. Bipolar clients will want to negotiate a compromise when they disagree with counsel. Counsel should be aware that with bipolar clients, medications are a necessary part of treatment.

Schizophrenia	<p>These clients may suffer from delusions, hallucinations, and disorganized thinking. They may be extremely disorganized. They can show a lack of emotions. They may neglect personal hygiene and be withdrawn.</p>	<p>Counsel should use simple directions. Counsel should work closely with a mental health professional to recognize when clients are not at their best. Counsel should understand that these clients are not always able to grasp reality and counsel may need to continually remind clients of what they need to do. Counsel should be aware that with schizophrenic clients, medications are a necessary part of treatment.</p>
Anti-social Personality Disorder	<p>These clients may appear very charismatic and charming, but they will frequently lie. They can be manipulative and impulsive. They have no regard for safety and lack loyalty in relationships. They can be easily agitated and can get aggressive. They disregard the rules and have a lack of remorse. They do not learn from negative consequences.</p>	<p>Counsel should keep the conversations fact based and should not deviate from relevant, case-based information. Counsel should verify everything the client reports to confirm it is true.</p>
Borderline Personality Disorder	<p>These clients may be unstable in their self-image and emotions. They may be impulsive and engage in risky behaviors. They often struggle with separation and rejection. They may show intense fear of abandonment and display inappropriate anger. When stressed, they can be paranoid.</p>	<p>Counsel should try to be sympathetic and make the client feel like they are being heard. Counsel should stay calm at all times, even if the client is acting out emotionally. Counsel need to immediately set boundaries with these clients or the client will have no boundaries. If the client is upset about a certain situation, counsel should delay talking about the issue. Clients may try to blame issues on counsel, so counsel should be firm and clear in communications.</p>
Narcissistic Personality Disorder	<p>These clients may be grandiose and believe they are incredibly important. They tend to believe they are</p>	<p>Counsel should find ways to provide positive recognition. Counsel should avoid challenging the client.</p>

	<p>successful and powerful. They may believe they are special and demand to be treated as such. They often have a sense of entitlement and lack empathy for others. They can be arrogant and haughty. They believe they are always right.</p>	<p>Communications must be precise and clear. Counsel should explain to the client how things will benefit the client and make the client look good.</p>
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### SUBSTANCE ABUSE

Many parents in abuse and neglect proceedings are suffering from a substance abuse disorder. Whether it be alcohol abuse or issues with controlled substances, the client will be required to participate in treatment as a part of the abuse and neglect proceeding. A parent that chronically struggles with substance abuse may need a significant period of time to stabilize. Relapses may be common early on in recovery. Because of this, it can be extremely difficult for a parent struggling with substance abuse to secure return of their child within the time frames set out by the Wyoming Statutes.

Substance abuse treatment needs are determined during a substance abuse evaluation. A substance abuse assessment is administered by a licensed master’s level counselor or by a licensed addiction therapist (LAT). Licensed addiction therapists are required to have a master’s degree. They can participate in substance abuse treatment. Master’s level substance abuse providers have to be licensed to provide mental health services. The specific requirements for licensure can be found on the Wyoming Mental Health Professions Licensing Board website at <http://mentalhealth.wyo.gov>.

The substance abuse evaluation should include an addiction severity index (ASI) interview. The ASI is designed to gather information about areas of a client’s life that may contribute to their substance abuse problems. The DSM-5 is used to make a diagnosis. Recommendations from the assessment should include a level of treatment ranging from no treatment to intensive inpatient treatment. This is usually given as an ASAM level of treatment. The ASAM Levels are as follows:

<b>ASAM LEVEL</b>	<b>TYPE OF CARE</b>
.5	Early Intervention
1	Outpatient
2.1	Intensive Outpatient
2.5	Partial Hospitalization Services
3.1	Clinically Managed Low-Intensity Residential Services
3.3	Clinically Managed Population Specific High-Intensity Residential Services
3.5	Clinically Managed High-Intensity Residential Services
3.7	Medically Monitored Intensive Inpatient Services

If a client is referred for inpatient treatment, they will have to locate and be accepted at an approved facility. Clients referred for outpatient treatment may be required to attend a class or participate in outpatient or intensive outpatient treatment, which are usually community based.

## **DOMESTIC VIOLENCE**

Many abuse and neglect proceedings involve domestic violence. Domestic violence is an incredibly complex issue, and no two cases will be the same. Counsel should familiarize themselves with the complicated issues related to domestic violence in order to best assist clients. While research has shown the harmful effects that domestic violence can have on a child, the impacts on children can be extremely varied depending on numerous factors. This section is meant as a brief overview of the role domestic violence can play in an abuse and neglect case, but should in no way substitute for an intensive study of the issues related to domestic violence.

In Wyoming, exposing a child to domestic violence may be considered neglect depending on the facts and circumstances of the case. The Wyoming Supreme Court has said:

The statutory definition of neglect includes failure to provide adequate care and supervision and abuse is defined to include inflicting mental injury. Causing a child to witness violence and abuse of others is an appropriate consideration in determining whether a parent is guilty of neglect by failing to properly care for and supervise that child and of abuse by subjecting the child to mental and emotional injury.<sup>99</sup>

Counsel who represent parents involved in domestic violence situations should be familiar with the case of *In re KLS*. In *KLS*, the Wyoming Supreme Court established the following precedent regarding exposing children to domestic violence:

Other jurisdictions have recognized that subjecting a child to witnessing domestic violence between parents constitutes neglect and abuse of the child. Children who witness acts of violence between their parents may be in imminent danger of becoming impaired, if they have not already suffered actual emotional harm. Children are victimized by a climate of violence existing between their parents, even if they are not direct targets of the abuse. The New York State Court of Appeals upheld a finding of neglect based on abuse between parents, stating:

While violence between parents adversely affects all children, younger children in particular are most likely to suffer from psychosomatic illnesses and arrested development.<sup>100</sup>

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<sup>99</sup> *In re KLS*, 2004 WY 87, ¶ 18, 94 P.3d 1025, 1029 (Wyo. 2004).

<sup>100</sup> Lynn R. Kurtz, Note, Protecting New York's Children: An Argument for the Creation of a Rebuttable Presumption Against Awarding a Spouse Abuser Custody of a Child, 60 Albany L.Rev. 1345, 1351, n 45 (1997). *In re Lonell J.*, [673 N.Y.S.2d 116](#) (A.D. 1 Dept. 1998).

The law review article cited by the New York court describes scientific support for the proposition that witnessing abuse between parents has a profound negative impact on children:

Studies have shown that children who witness domestic violence suffer many harmful psychological and emotional effects. Areas in which such problems exist include "health[,] socioemotional development[,] and behavior" relating to others. A more recent study, which compared children with no history of domestic violence to children with violent family backgrounds, found that the latter group had borderline to severe behavioral problems, below average adaptive behavior skills, lower reading levels, a significant difference in their social competence and more aggressive responses.

Many, if not most, jurisdictions have echoed the conclusion that subjecting children to domestic violence justifies termination of parental rights. In *In re Stephen Tyler R.*, 213 W.Va. 725, 584 S.E.2d 581 (2003), the facts resemble those we are faced with in this case, and the court affirmed a termination of parental rights. In that case, the father struck the child's mother while she was holding the child in her arms, and repeatedly refused to cooperate in a family case plan or undergo therapy for anger management. In *In re: J.R.*, 991 S.W.2d 318 (Tex.Civ.App.1999), a Texas court terminated mother's parental rights finding that she knowingly placed or allowed the children to remain in conditions or surroundings that endangered their emotional or physical well-being.

A young child is not a mere bystander to domestic violence.<sup>101</sup>

Attorneys in abuse and neglect proceedings commonly utilize *In re KLS* and parents' counsel should review and understand this case.

It is becoming more common to see victims of domestic violence facing allegations of abuse and neglect for exposing the child to domestic violence when they had a reasonable expectation that violence was going to occur based on past assaults. The response of child welfare advocates to domestic violence has been to focus on the child's best interest, which often leads to the child's removal from the home. Counsel should be aware and argue that blaming the victim in a domestic violence situation can be incredibly damaging to the child. Researchers are now stating that in many situations it is better for the child to remain with the non-abusing parent than to be removed from the home.

It is imperative counsel representing parents who are victims of domestic violence understand the dynamics of domestic violence and the barriers to being able to leave safely. Counsel should educate themselves on available resources that can be utilized to improve the

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<sup>101</sup> *Id.* at ¶¶ 21-23.

chances of success and self-sufficiency for their clients. Victims of domestic violence often benefit from strong support from State resources and the courts.

Dealing with domestic violence issues in abuse and neglect proceedings can be complicated if there are related criminal proceedings or a domestic violence protection order. Counsel should be aware of all proceedings that have an affect on the client. Aggressors will likely be referred for an anger management or batterer intervention assessment, both of which can be administered by a licensed counselor. These assessments may recommend that the client participate in group or individual therapy. Victims will likely be referred to mental health services and required to participate in individual counseling. It is becoming more common to see mutual-aggressor situations in domestic violence cases. In these matters, both parents may be referred for anger management or batterer intervention assessments. Both parties may be required to participate in couples counseling. Counsel should be familiar with what these assessments entail and recommend.

### CONCLUSION

Serving as an advocate for the client involves more than just giving legal advice. Counsel should actively advocate for the welfare of their clients and help their clients improve the quality of their lives. Counsel have the opportunity to make a difference in the lives of their clients by helping their clients address issues that are causing discord in their lives. Being supportive of the client and his or her treatment needs and encouraging the client to address issues in his or her life are ways counsel can support and advocate for the client. By helping the client address the issues that contributed to the client's entry into juvenile court, counsel can assist the client in securing the return of his or her children as well as ensuring that the client does not return to juvenile court in the future.



# Chapter Eleven: Related Proceedings

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## CHAPTER OBJECTIVES

The purpose of this chapter is to educate counsel on the basics of abuse and neglect related proceedings, including:

- \* Contempt of Court;
- \* Appeals;
- \* Administrative Proceedings;
- \* Criminal Proceedings;
- \* Civil Custody Proceedings;
- \* Family Violence Protection and Stalking Protection Orders;
- \* Termination of Parental Rights;
- \* Child in Need of Supervision Proceedings; and,
- \* Delinquency Proceedings.

At the conclusion of this chapter, counsel should have an understanding of the basics of these proceedings and how they interplay with abuse and neglect proceedings. Counsel should also know where to look for further information.

In order to increase competence, counsel should further research and study the Wyoming Statutes related to these related proceedings as well as case law arising from these matters.

## INTRODUCTION

In the course of representing parents in abuse and neglect proceedings, counsel often discover that their clients are involved in other related proceedings. While representation in most cases will not extend to these related proceedings, counsel needs to be aware of the basics of these proceedings and how they interplay with abuse and neglect proceedings. This chapter will give a brief overview of these related proceedings.

Counsel should clearly define the scope of his or her representation with the client and explain that representation does not extend to these related matters. If counsel elects to assist the client in one of these matters, counsel must clearly explain to the client what other activities counsel can and will undertake. If counsel cannot assist the parent in one of these collateral matters, counsel should attempt to locate another attorney to assist the client.

## CONTEMPT

Parents who fail to comply with the requirements of the court orders in an abuse and neglect proceeding may face criminal charges for indirect contempt of court. Pursuant to W.S. § 14-3-438:

Notwithstanding any other provision of law, the court upon its own motion or upon the motion of the district or county attorney, or guardian ad litem, may find that the

child's parent, parents, or guardian or any other person who willfully violates, or neglects or refuses to obey or perform any order or provision of this act is liable for contempt of court and may be fined not more than five hundred dollars (\$500.00) or incarcerated not more than ninety (90) days, or both.

Contempt actions must be prosecuted in accordance with WYOMING RULES OF CRIMINAL PROCEDURE Rule 42(c). Additionally, contempt actions must be filed as separate criminal proceedings:

In addition to strict compliance with the due process mandates of W.R.Cr.P. 42(c), a proceeding in indirect criminal contempt must be instituted and conducted as a separate and independent criminal action apart from the original cause in which the contempt arose. *Swain* [v. State], [2009 WY 142,] ¶¶ 15-17, 220 P.3d [504,] 508-09 [(Wyo. 2009)]; *UMWA, Local 1972 [v. Decker Coal Co.]*, 774 P.2d [1274] at 1284 [(Wyo. 1989)]; *Garber v. United Mine Workers of America*, 524 P.2d 578, 579-80 (Wyo.1974). That is, an indirect criminal contempt action may not be pursued and treated simply as a component of the case giving rise to the contemptuous conduct. We have held that the failure to adhere to the separate and independent action rule constitutes a fatal jurisdictional defect which renders any judgment of contempt null and void. *Swain*, ¶ 17, 220 P.3d at 509; *UMWA, Local 1972*, 774 P.2d at 1284.<sup>102</sup>

In some jurisdictions, counsel who represent parents in abuse and neglect proceedings will also be appointed to represent the parent in a contempt action. If counsel is appointed in a contempt action, they should follow normal criminal procedural process.

## APPEALS

Appeals are another collateral matter that counsel should be aware of. Counsel should familiarize themselves with how to preserve the record for appeal within the juvenile case and how to preserve the client's right to appeal. Pursuant to Wyoming Statute § 14-3-432(a):

(a) Any party including the state may appeal any final order, judgment or decree of the juvenile court to the supreme court within the time and in the manner provided by the Wyoming Rules of Appellate Procedure.

Furthermore, pursuant to WYOMING RULES OF APPELLATE PROCEDURE Rule 1.05 (b), parties may appeal any order affecting a substantial right, such as an adjudication order or a permanency order.

The WYOMING PRACTICE GUIDELINES Section 7 states the following about appeals:

(a) Attorney should inform client of his or her right to appeal, and the action that shall be taken to perfect that appeal.

(b) If client wants to file an appeal, attorney shall preserve client's right to do so by filing and serving a notice of appeal in accordance with the procedures and timelines set forth in the Wyoming Rules of Appellate Procedure.

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<sup>102</sup> *In re BD*, 2010 WY 18, ¶ 5, 226 P.3d 272, 274 (Wyo. 2010).



(c) If notice of appeal has been entered, attorney should consider filing a motion for a stay pending appeal in the juvenile matter in accordance with the Wyoming Rules of Civil Procedure. When an appeal is pending for orders other than termination of parental rights, or when a termination of parental rights order has been stayed pending appeal, attorney should continue zealously representing client and promoting client's rights and expressed interests at all subsequent proceedings. If the appeal is from a termination of parental rights order and a stay is denied, attorney should encourage client to comply with prior court orders while the appeal is pending. Attorney should also inform client of the need to maintain regular contact with the appellate attorney throughout the appeal.

(d) Upon conclusion of the appeal and after the decision, attorney should meet with client, explain and provide client with a copy of decision and answer any questions client may have.

Counsel can preserve issues for appeal by clearly presenting them to the trial court and requesting rulings during the trial. Notices of appeal are filed in accordance with Rule 2.01(a) of the WYOMING RULES OF APPELLATE PROCEDURE, which states:

(a) An appeal from a trial court to an appellate court shall be taken by filing the notice of appeal with the clerk of the trial court within 30 days from entry of the appealable order and concurrently serving the same in accordance with the provisions of Rule 5, Wyo.R.Civ.P., (or as provided in Wyo.R.Cr.P. 32 (c)(4)). The pro se filing of a notice of appeal by an inmate confined in a penal institution is additionally subject to the provisions of Rule 14.04. Contemporaneously with the filing of the notice of appeal with the clerk of the trial court, a copy of the notice of appeal shall also be served on the clerk of the appellate court. See Rule 1.03. In criminal cases appealed to the supreme court, the notice of appeal shall be served upon the office of public defender and the office of attorney general. In cases specified in Wyo.Stat.Ann. § 14-12-101(a), the notice of appeal shall be served upon the Wyoming Guardian Ad Litem Program.

Additionally, a certification of transcript request must be filed in compliance with W.R.A.P. 2.05, which states:

(a) Concurrently with filing the notice of appeal, appellant must order and either make arrangements satisfactory to the court reporter for the payment for a transcript of the portions of the evidence deemed necessary for the appeal or make application for in forma pauperis status as provided in Rule 2.09. A certificate of compliance with this rule shall be endorsed upon the notice of appeal. If appellant does not intend to order a transcript, the certificate of compliance shall include a statement indicating whether appellant intends to procure a statement of evidence pursuant to Rule 3.03 or an agreed statement pursuant to Rule 3.08.

(b) If counsel certifies that transcripts have been ordered and arrangement for payment has been made, but fails to actually contact the court reporter and follow through on the request, the court reporter or the district court clerk shall notify the

supreme court and the supreme court may take any action it deems appropriate pursuant to Rule 1.03.

Once a notice of appeal is filed, if the client is unable to afford an attorney to represent them on appeal, counsel should assist the client in filing a *Motion to Proceed In Forma Pauperis* to submit to the Juvenile Court. Counsel should also consider if a motion to stay the decision of the Juvenile Court is needed pursuant to W.S. § 14-3-433.

### **ADMINISTRATIVE PROCEEDINGS**

When DFS receives notice of an allegation of abuse and neglect, it begins an internal administrative process pursuant to statute. While separate from abuse and neglect proceedings, administrative proceedings can have a lasting impact on the client. DFS conducts an internal investigation into the allegations to determine if the alleged perpetrator should be placed on the central registry, a database of information related to child protection. The central registry is established as follows:<sup>103</sup>

(a) The state agency shall establish and maintain a record of all child protection reports and a central registry of "under investigation" or "substantiated" child protection reports in accordance with W.S. 42-2-111.

(b) Through the recording of reports, the state agency's recordkeeping system shall be operated to enable the state agency to:

(i) Immediately identify and locate prior reports of cases of child abuse or neglect to assist in the diagnosis of suspicious circumstances and the assessment of the needs of the child and his family;

(ii) Continuously monitor the current status of all pending child protection cases;

(iii) Regularly evaluate the effectiveness of existing laws and programs through the development and analysis of statistical and other information; and

(iv) Maintain a central registry of "under investigation" reports and "substantiated" reports of child abuse or neglect for provision of information to qualifying applicants pursuant to W.S. 14-3-214(f).

(c) Upon good cause shown and upon notice to the subject of an "under investigation" or "substantiated" report, the state agency may list, amend, expunge or remove any record from the central registry in accordance with rules and regulations adopted by the state agency.

(d) All reports of child abuse or neglect contained within the central registry shall be classified in one (1) of the following categories:

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<sup>103</sup> WYO. STAT. ANN. § 14-3-213

- (i) "Under investigation;" or
- (ii) "Substantiated."
- (iii) Repealed by Laws 2005, ch. 23, § 2.

(e) Within six (6) months all reports classified as "under investigation" shall be reclassified as "substantiated" or expunged from the central registry, unless the state agency is notified of an open criminal investigation or criminal prosecution. Unsubstantiated reports shall not be contained within the central registry.

(f) Any person named as a perpetrator of child abuse or neglect in any report maintained in the central registry which is classified as a substantiated report as defined in W.S. 14-3-202(a)(xi) shall have the right to have included in the report his statement concerning the incident giving rise to the report. Any person seeking to include a statement pursuant to this subsection shall provide the state agency with the statement. The state agency shall provide notice to any person identified as a perpetrator of his right to submit his statement in any report maintained in the central registry.<sup>104</sup>

Under DFS Rule § 6(b)(i) an allegation is substantiated when credible evidence of abuse or neglect is determined. Furthermore, under Department Child Protection, Chapter 2 Rule § 6(b)(ii), DFS must substantiate all reports where a court has accepted a criminal plea of guilty or *nolo contendere* or a civil, juvenile, or criminal court has made a finding that the alleged perpetrator committed certain acts that constitute abuse or neglect under these rules. Clients are given the opportunity to dispute the substantiation finding through an administrative process outside of any Juvenile Court proceedings.

If a client is substantiated against and placed on the central registry, the client may be disqualified in the future from obtaining employment in certain areas such as child and elder care. Even if there is not an adjudication in the abuse and neglect proceedings, the client may still be placed on the central registry by DFS. Many clients may disregard notices received from DFS regarding administrative proceedings. Counsel should advise the client that administrative proceedings should be taken just as serious and abuse and neglect proceedings.

## **CRIMINAL PROCEEDINGS**

Counsel should also be aware of any criminal proceedings that are pending against the client. Many abuse and neglect cases will be associated with criminal proceedings. It is important for counsel to contact and maintain communication with the client's criminal attorney. While confidentiality laws prohibit the disclosure of confidential information from abuse and neglect proceedings, statements made by the child in the abuse and neglect proceeding could negatively affect the client's criminal proceedings. Counsel need to be aware of pending criminal charges and communicate to the client the consequences of entering an admission or taking the matter to an

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<sup>104</sup> *Id.* § 14-3-213.

adjudicatory hearing. In many cases, an adjudicatory hearing may give the State the opportunity to pre-try the criminal case in which the parent could be subject to a significant period of incarceration. In cases such as these, counsel should discuss the benefits and detriments of submitting to the jurisdiction of the juvenile court. In some counties, prosecutors may offer more lenient criminal sentences if the parent has taken substantial steps to address his or her needs within the abuse and neglect case.

Counsel should also be aware of the client's bond conditions. If the client is on bond in his or her criminal matter, the client may be subject to "no contact" requirements that could cause barriers to visitation with the child. For example, a parent may be required not to have contact with the other parent of the child. If this is the case, a third party must be contacted to facilitate exchanges of the child for visitation.

Juvenile cases cannot be delayed because the parties want to determine what is going to happen to the parent in criminal proceedings. WYOMING RULES OF PROCEDURE FOR JUVENILE COURTS Rule 10 states:

Proceedings in Juvenile Court shall not be delayed nor stayed pending criminal proceedings in District Court or Circuit Court. This prohibition includes criminal proceedings involving the juvenile or the juvenile's parent, legal guardian or caretaker. All proceedings in Juvenile Court shall proceed pursuant to the timelines set forth by the various articles of Title 14 of the Wyoming Statutes.

Communication with the client's criminal attorney is key to ensuring that the client's rights are protected in both the juvenile and criminal proceedings. Counsel should consult with the client's criminal attorney when necessary, while keeping in mind the confidential requirements of child abuse and neglect proceedings.

### **TERMINATION OF PARENTAL RIGHTS**

Termination of parental rights proceedings are separate from abuse and neglect proceedings. However, as these proceedings often flow from abuse and neglect proceedings and affect the rights of parents in abuse and neglect proceedings, counsel should spend a significant amount of time familiarizing themselves with the process and requirements of termination of parental rights.

Wyoming Statute § 14-2-309 establishes the grounds for termination of parental rights as follows:

- (a) The parent-child legal relationship may be terminated if any one (1) or more of the following facts is established by clear and convincing evidence:
  - (i) The child has been left in the care of another person without provision for the child's support and without communication from the absent parent for a period of at least one (1) year. In making the above determination, the court may disregard occasional contributions, or incidental contacts and communications. For purposes of this paragraph, a court order of custody shall not preclude a finding that a child has been left in the care of another person;

(ii) The child has been abandoned with no means of identification for at least three (3) months and efforts to locate the parent have been unsuccessful;

(iii) The child has been abused or neglected by the parent and reasonable efforts by an authorized agency or mental health professional have been unsuccessful in rehabilitating the family or the family has refused rehabilitative treatment, and it is shown that the child's health and safety would be seriously jeopardized by remaining with or returning to the parent;

(iv) The parent is incarcerated due to the conviction of a felony and a showing that the parent is unfit to have the custody and control of the child;

(v) The child has been in foster care under the responsibility of the state of Wyoming for fifteen (15) of the most recent twenty-two (22) months, and a showing that the parent is unfit to have custody and control of the child;

(vi) The child is abandoned at less than one (1) year of age and has been abandoned for at least six (6) months;

(vii) The child was relinquished to a safe haven provider in accordance with W.S. 14-11-101 through 14-11-109, and neither parent has affirmatively sought the return of the child within three (3) months from the date of relinquishment;

(viii) The parent is convicted of murder or homicide of the other parent of the child under W.S. 6-2-101 through 6-2-104.

(b) Proof by clear and convincing evidence that the parent has been convicted of any of the following crimes may constitute grounds that the parent is unfit to have custody or control of any child and may be grounds for terminating the parent-child relationship as to any child with no requirement that reasonable efforts be made to reunify the family:

(i) Murder or voluntary manslaughter of another child of the parent or aiding and abetting, attempting, conspiring to commit or soliciting such a crime; or

(ii) Commission of a felony assault which results in serious bodily injury to a child of the parent. As used in this paragraph "serious bodily injury" means as defined by W.S. 6-1-104.

(c) Notwithstanding any other provision of this section, evidence that reasonable efforts have been made to preserve and reunify the family is not required in any case in which the court determines any one (1) or more of the following by clear and convincing evidence:

- (i) The parental rights of the parent to any other child have been terminated involuntarily;
- (ii) The parent abandoned, chronically abused, tortured or sexually abused the child;
- (iii) The parent has been convicted of committing one (1) or more of the following crimes against the child or another child of that parent:
  - (A) Sexual assault under W.S. 6-2-302 through 6-2-304;
  - (B) Sexual battery under W.S. 6-2-313;
  - (C) Sexual abuse of a minor under W.S. 6-2-314 through 6-2-317.
- (iv) The parent is required to register as a sex offender pursuant to W.S. 7-19-302 if the offense involved the child or another child of that parent. This shall not apply if the parent is only required to register for conviction under W.S. 6-2-201;
- (v) Other aggravating circumstances exist indicating that there is little likelihood that services to the family will result in successful reunification.

Termination of parental rights matters are civil cases and proceed according to civil procedure. Termination of parental rights cases can be filed by a parent, the guardian or custodian of the child, or an authorized agency such as DFS.<sup>105</sup>

If the court enters an order terminating a parent's rights, pursuant to W.S. § 14-2-317:

- (a) An order terminating the parent-child legal relationship divests the parent of all legal rights and privileges and relieves the child of all duties to that parent except:
  - (i) The order does not divest that parent of duties and support obligations unless otherwise specifically ordered by the court or the child is adopted; and
  - (ii) Except as provided in W.S. 2-4-107(a)(i), the right of the child to inherit from the parent shall not be affected by the order.
- (b) The parent whose parent-child legal relationship has been terminated is not thereafter entitled to the notice of proceedings for the adoption of the child, nor has he any right to object to the adoption or otherwise participate in the adoption proceedings.

There are numerous issues that interplay between abuse and neglect proceedings and termination of parental rights cases, and counsel should contact the client's termination of parental

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<sup>105</sup> *In the Interest of LB*, 2014 WY 10, 316 P.3d 1184 (Wyo. 2014).

rights attorney and communicate with him or her on a regular basis. In defending a termination proceeding, a parent may need information from counsel regarding the abuse and neglect proceeding, and counsel should provide such information promptly when it is requested.

### **CIVIL CUSTODY AND CHILD SUPPORT PROCEEDINGS**

Civil custody and child support proceedings can be impacted by abuse and neglect proceedings. In cases where the parents no longer reside together, it is important for counsel to ascertain who has primary custody and whether paternity has been established. When the custodial parent has abused or neglected the child, the non-custodial parent may file for a change in custody. Or, in some cases, there is no custody order and the parents will have to file for custody.

If the child is placed in State custody, the parent is obligated to pay child support. DFS will refer the matter to the local child support enforcement office if it is anticipated that the child will remain in foster care longer than sixty days.<sup>106</sup> Parents are required to pay child support while their child is in State custody, and if they don't, it may be used against them in permanency hearings and termination proceedings. If the child is in care and paternity is not established, DFS will also refer the matter to child support enforcement to establish paternity.

### **FAMILY VIOLENCE PROTECTION AND STALKING PROTECTION ORDERS**

Counsel need to be aware of any collateral family violence protection orders and stalking protection orders, as these can impact reunification. Family violence protection orders and stalking protection orders arise from separate, non-criminal proceedings. Wyoming Statute § 35-21-105 provides for the issuance of a family violence protection order:

- (a) Upon finding that an act of domestic abuse has occurred, the court shall enter an order of protection ordering the respondent household member to refrain from abusing the petitioner or any other household member. The order shall specifically describe the behavior that the court has ordered the respondent to do or refrain from doing. As a part of any order of protection, the court may:
  - (i) Grant sole possession of the residence or household to the petitioner during the period the order of protection is effective or order the respondent to provide temporary suitable alternative housing for petitioner and any children to whom the respondent owes a legal obligation of support;
  - (ii) Repealed by Laws 1987, ch. 196, § 2.
  - (iii) Order that the respondent shall not initiate contact with the petitioner;
  - (iv) Prohibit the respondent from abducting, removing or concealing any child in the custody of the petitioner;
  - (v) Restrain the respondent from transferring, concealing, encumbering or

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<sup>106</sup> Wyoming Department of Family Services, Child Support for Child in Out-of Home Care, Policy 2.5.1, <http://dfsweb.wyo.gov/social-services/policy/dfs-policy-manual>.

otherwise disposing of petitioner's property or the joint property of the parties;

(vi) Order other injunctive relief as the court deems necessary for the protection of the petitioner;

(vii) If, after a hearing, it finds by a preponderance of evidence that an act of domestic abuse has occurred or that there exists a danger of further domestic abuse, require the respondent to participate in counseling or other appropriate treatment for a specified period of time not to exceed the term of the order of protection and any extension of the order of protection granted under W.S. 35-21-106(b).

(b) As part of any order of protection pursuant to subsection (a) of this section, the court shall:

(i) When the court finds it to be in the best interests of the children, award temporary custody of any children involved to the petitioner. The court shall in this instance provide for visitation with the respondent only if adequate provision can be made for the safety of the children and the petitioner. To provide for the safety of the children and the petitioner, the court may:

(A) Order an exchange of children to occur in a protected setting;

(B) Order that visitation be arranged and supervised by another person or agency, and if the other person is a family or household member, establish conditions to be followed during the visitation;

(C) Order the respondent to attend and complete to the court's satisfaction a program of intervention or other designated counseling as a condition of visitation;

(D) Order the respondent to abstain from the consumption of alcohol or controlled substances for up to twenty-four (24) hours before the visitation and during the visitation;

(E) Order the respondent to pay a fee through the court to defray the costs of supervised visitation;

(F) Prohibit overnight visitation;

(G) Require the respondent to post a bond to secure the return and safety of any children; or

(H) Impose any other condition it deems necessary for the safety of the petitioner, the children, or other family or household member.

(ii) Order the payment of child support and when appropriate, temporary



support for the petitioner;

(iii) Order the payment of any medical costs incurred by the petitioner as a result of the abuse inflicted by the respondent.

(c) The order shall contain a notice that willful violation of any provision of the order constitutes a crime as defined by W.S. 6-4-404, can result in immediate arrest and may result in further punishment.

(d) No order issued under this act shall affect title to any property nor allow the petitioner to transfer, conceal, encumber or otherwise dispose of respondent's property or the joint property of the parties.

(e) Regardless of whether the court provides visitation under subsection (b) of this section, the court shall, if requested by the petitioner, order the address of the petitioner and any children of the petitioner and respondent be kept confidential.

(f) The court may refer an adult petitioner to attend counseling relating to the petitioner's status or behavior as a victim but shall not order or make as a condition of receiving protection that an adult petitioner attend such counseling.

(g) No act of the petitioner or the respondent may be construed to waive or nullify any provision of an order of protection.

(h) The court shall not make any provisions of a single order of protection mutually effective. The court may issue a separate order of protection to each party, provided:

(i) Each party has filed a separate written petition for an order of protection; and

(ii) The court makes specific findings on the record that both parties have committed acts of domestic abuse and that each party is entitled to a separate order of protection.

(j) The form of the order shall be as provided by rule adopted by the Wyoming supreme court.

Wyoming Statute § 7-3-509 governs stalking protection orders, and states as follows:

(a) Following a hearing under W.S. 7-3-508(a) and upon a finding that conduct constituting stalking or sexual assault has been committed, the court shall enter an order of protection ordering the respondent to refrain from any further acts of stalking or sexual assault involving the victim or any other person. As a part of any order of protection, the court may direct that the respondent:

(i) Stay away from the home, school, business or place of employment of the victim or any other locations the court may describe in the order; and

(ii) Refrain from contacting, intimidating, threatening or otherwise interfering with the victim of the alleged offense and any other persons, including but not limited to members of the family or household of the victim, as the court may describe in the order. Prohibited contact under this paragraph includes telephone calls, mail, e-mail, texting, fax, contacting through social media using the internet or similar technology and any other form of communication.

(b) The order shall contain a notice that willful violation of any provision of the order constitutes a crime as defined by W.S. 7-3-510(c) and can result in immediate arrest. Orders involving stalking shall also state that a violation may in some cases subject the perpetrator to enhanced penalties for felony stalking under W.S. 6-2-506(e).

(c) A request by the victim for the perpetrator to violate an order of protection issued under this section or a temporary order of protection issued under W.S. 7-3-508 shall constitute an affirmative defense to a charge of violation of the order by the perpetrator.

Similar to the issues caused by criminal bond conditions, protection orders can lead to barriers to visitation. If the client is subject to a family violence protection order or stalking protection order issued by the circuit court, the client may be ordered to have no contact with the other parent or child. Some judges will take the position that the Juvenile Court cannot override a Circuit Court order. Until the protection order is modified or dismissed, it may be impossible to facilitate visitation.

### **CHILD IN NEED OF SUPERVISION AND DELINQUENCY PROCEEDINGS**

When representing a client in an abuse and neglect proceeding, the client may have a child that is involved in a Child in Need of Supervision (CHINS) or Delinquency case. In some cases, the court will appoint counsel to represent parents in CHINS or Delinquency cases.

In Wyoming, families may become subject to the CHINS Act, W.S. §§ 14-6-401 through 14-6-440. The CHINS Act allows the State to intervene in the family relationship when a child is found to be a CHINS, defined by W.S. § 14-6-401(iv) as:

A child who has not reached his eighteenth birthday who is habitually truant or has run away from home or habitually disobeys reasonable and lawful demands of his parents, guardian, custodian or other proper authority or is ungovernable and beyond control. "Child in need of supervision" includes any child who has not reached his eighteenth birthday who has committed a status offense.

CHINS cases mirror the process of abuse and neglect proceedings. A child may be taken into shelter care or a petition may be filed. The child appears in court and is advised of his or her rights. The child may admit the allegations, at which time the child is adjudicated a CHINS. The child may also deny the allegations, at which time the matter is set for an adjudicatory hearing. If the child is adjudicated as a CHINS, the matter then proceeds to disposition. Once there is an

adjudication, the child and his or her family are subject to the orders of the court and required to work with DFS to address the concerns that brought the child to the attention of the State.

In Wyoming, families may also become subject to the jurisdiction of the court under the Juvenile Justice Act, W.S. §§ 14-6-201-252. These proceedings are called delinquency proceedings. Delinquency proceedings are a blend of juvenile court proceedings and criminal cases. A child is alleged to be a delinquent child when they have committed a delinquent act, defined by W.S. § 14-6-201(ix) as “an act punishable as a criminal offense by the laws of this state or any political subdivision thereof, or contempt of court under W.S. 14-6-242, or an act violating the terms and conditions of any court order which resulted from the criminal conviction of any child but does not include a status offense.”

Like CHINS cases, delinquency proceedings mirror abuse and neglect proceedings in how they progress through the juvenile court system. Delinquent children are given the same rights related to trial as are adults charged with criminal acts. After adjudication, children in both CHINS and delinquency cases may be placed on probation and the process is similar to that of a criminal case.

While the focus of CHINS and delinquency proceedings is on the child, parents are subject to the jurisdiction of the court and can be ordered to do anything the court deems necessary to address the issues that brought the child before the court. Representing parents in these cases can be a challenge, as counsel must continually ensure that the focus of the proceedings remains on the child and does not shift to the parents. Many parent clients can be extremely frustrated when the court orders them to participate in services as a result of their child’s actions. However, parents are also subject to criminal contempt of court actions for failure to abide by the court’s orders in CHINS and delinquency cases.

Counsel who are appointed to represent a parent in a CHINS or delinquency case should take the time to familiarize themselves with the details of the CHINS Act and the Juvenile Justice Act. In these proceedings, the child’s actions can have a major impact on the parent’s rights. For example, in both proceedings, the child can be removed from the home and placed in State custody for placement in a residential treatment facility. When this happens, the parents will be required to pay child support to the State. Additionally, the child may be placed in foster care and the parent may be required to have supervised visitation. Court involvement can be incredibly frustrating to a parent who feels that the only reason the State is involved is because of the actions of the child. It is incumbent upon counsel in this situation to protect the fundamental rights of the parents to have care, custody, and control of their children.

## CONCLUSION

In conclusion, there are numerous legal proceedings in which parents can be involved at the same time as their involvement in an abuse and neglect proceeding. Counsel need to be aware of what these matters consist of and how they may affect the client in the abuse and neglect proceeding. Counsel should be vigilant to ensure that a client’s rights are protected across proceedings.



**FOR FURTHER INFORMATION ON THESE TOPICS SEE:**

Child In Need of Supervision Act, W.S. §§ 14-6-401 through 14-6-440

Juvenile Justice Act, W.S. §§ 14-6-201 through 252

Termination of Parental Rights Statutes, W.S. §§ 14-2-308 through 319

Wyoming Criminal Code, W.S. §§ 6-1-101 through 6-10-30.